

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION

SURROUNDING COMMUNITY ARBITRATION BETWEEN
MASS GAMING & ENTERTAINMENT, LLC
AND
THE TOWN OF EASTON

REPORT AND FINAL ARBITRATION AWARD

This Report and Final Arbitration Award is filed with the Massachusetts Gaming Commission and issued to the parties hereto pursuant to 205 CMR 125.01(6)(c)7.

Procedural Background

There are eight municipalities that border on the City of Brockton, the host community to the gaming establishment proposed by Mass Gaming & Entertainment, LLC (MGE). Those communities are Abington, Avon, East Bridgewater, Easton (the "Town"), Holbrook, Stoughton, West Bridgewater and Whitman. Each of these was voluntarily designated by MGE as surrounding communities in its RFA-2 application for a Category 1 gaming license from the Massachusetts Gaming Commission.

Being unable to reach agreement on a Surrounding Community Agreement between them, MGE and the Town served notice on the Commission of their intent to commence this arbitration pursuant to 205 CMR 125.01(6)(c)2. Subsequently, the parties commenced the process of selecting a panel of arbitrators (the "Panel"), with Hon. Gregory R. Baler (Ret.) selected by MGE, J. Raymond Miyares selected by the Town, and Peter D. Corbett mutually selected by the other two arbitrators for the Panel.

MGE and the Town submitted their best and final offers ("BAFOs") for a Surrounding Community Agreement to the Panel pursuant to *M.G.L. c. 23K, §15(9)* and 205 CMR 125.01(6)(c)3. Pursuant to 205 CMR 125.01(6)(c)4, MGE also submitted copies of the surrounding community agreements it has executed with Abington, Avon, East Bridgewater, Holbrook, Stoughton and Whitman. Each party also provided the Panel with briefing, affidavits and exhibits in support of their respective positions.

A one-day arbitration hearing was held on February 2, 2016, during which the parties presented arguments. In particular, MGE's traffic expert, Robert Michaud of MDM Transportation Consultants, Inc., presented the results of the firm's traffic study and a critique of two traffic memoranda submitted by the Town's traffic expert, BETA Group, Inc., (prepared by Kien Ho and Tyler de Ruiter). Because representatives of BETA were not present at the hearing, the Town was given the opportunity to submit a written response to Mr. Michaud's critique. That response was submitted on February 3, 2016.

The Panel deliberated after the close of the hearing on February 2, and again by telephone on February 5, 2016. Based on these deliberations, the Panel hereby submits this Report specifying which of the BAFOs of the parties shall be the surrounding community agreement between MGE and the Town, as required by 205 CMR 125.01(6)(c)7.

Discussion and Report

The parties' respective BAFOs differ in four principal ways:

- (1) MGE's BAFO provides for an initial Community Impact Fee of \$60,000, to be paid prior to the proposed gaming establishment's being open for business to the general public. See MGE's Appendix A, §2. The Town's BAFO sets this payment at \$150,000. See Easton's Exhibit O, §2.
- (2) MGE's BAFO provides for an annual Community Impact Fee of \$130,000, the initial quarterly installment payment of which is to be paid prior to the proposed gaming establishment's being open for business to the general public. See MGE's Appendix A, §§1.1, 2. The Town's BAFO sets this payment at \$250,000. See Easton's Exhibit O, §§1.1, 2.
- (3) MGE's BAFO provides for the annual Community Impact Fee to be increased by 5% commencing on the fifth anniversary of the proposed gaming establishment's being open for business to the general public, with additional 5% increases every five years thereafter. See MGE's Appendix A, §§1.1, 2. The Town's BAFO provides for annual 2½% increases commencing on the fifth anniversary of the proposed gaming establishment's being open for business to the general public. See Easton's Exhibit O, §§1.1, 2.
- (4) The Town's BAFO includes a provision granting the Town a "Unilateral Right to Amend" the Surrounding Community Agreement under specified circumstances. See Easton's Exhibit O, §10.5. MGE's BAFO contains no such provision.

The Panel recognizes that "[i]n reaching its decision, the arbitrators shall select the best and final offer of one of the parties and incorporate those terms into the report." 205 CMR 125.01(6)(c)7. This is what is often referred to as "baseball arbitration," where each party presents its BAFO and the Panel must choose one BAFO without modification. The governing rules leave no option for the Panel to make any adjustments to the selected BAFO. See 205 CMR 125.01(6)(c)7.

The applicable regulations do not specify the standard to be used in choosing between the parties' BAFOs. The Massachusetts Gaming Commission, however, has issued a Handbook for Binding Arbitration between an Applicant for a Gaming Establishment License and a Surrounding Community to Reach a Surrounding Community Agreement, which suggests (at page 7) that "the goal of the arbitration process is to arrive at a fair and reasonable agreement," and lists (at page 7-8) 12 factors that the Panel "may consider," including "[t]he degree to which the proposed mitigation fee adequately and reasonably compensates the surrounding community of the adverse impacts found by the [Panel] to affect the surrounding community [and t]he reasonableness of other conditions included in each party's BAFO...."

At the hearing, the parties' arguments appear to have assumed that the "fair and reasonable" standard was to govern the Panel's decision, and the Panel agrees.

In support of its BAFO, MGE submitted a Traffic Study prepared by MDM, as well as the six Surrounding Community Agreements that MGE has entered into with other Surrounding Communities. MGE's position, in starkest terms, is that "Easton's roads will receive negligible casino resort related traffic." See Arbitration Statement of Mass Gaming & Entertainment, LLC at page 1. In addition, "Easton is expected to experience fewer impacts than will several other Surrounding Communities," that voluntarily entered into Surrounding Community Agreements with equivalent or less advantageous provisions than are contained in MGE's BAFO. *Id.*

The Town, on the other hand, submitted a Traffic Study prepared by BETA, a Preliminary Assessment on Public Safety Impacts, prepared by Municipal Resources, Inc., together with the supporting affidavits and memoranda of the Town Administrator, the Director of Planning and Economic Development, the Fire Chief and the Police Chief, as well as a number of Surrounding Community Agreements for other proposed facilities around the Commonwealth. On February 3, the Town submitted an additional memorandum (as authorized by the panel during the hearing) from Kien Ho of BETA, entitled "Easton – Brockton Casino Arbitration Response." The Town's position is that commencement of operations at the gaming establishment will require intersection improvements with Easton, which are estimated to cost approximately \$1.38 million. See Town of Easton's Arbitration Statement at 15. Thereafter, according to the Town, the necessary annual operating budget "increase needed to accommodate additional police and fire officers would be at least" \$391,000. *Id.*

The traffic consultants for the parties have widely divergent views of the probable traffic impacts of the casino on Easton. However, the MDM Traffic Study was submitted as part of MGE's Environmental Notification Form, filed with the Commonwealth MEPA Unit in May 2015 as required by the Commonwealth's process for reviewing and evaluating environmental impacts of projects such as the casino. Comments on the adequacy of the MDM Traffic Study were filed by MassDOT, Old Colony Planning Council and BSC Group (a traffic consultant representing the City of Brockton). None of these expert commenters questioned the methodology of the MDM Traffic Study in general, or the amount of casino traffic allocated to Easton roads.¹ Given the expertise of MassDOT in traffic matters, and given that both Route 123 and I-24 are under the jurisdiction of MassDOT, the panel gives great deference to what it perceives as MassDOT's acceptance of MDM's allocation of traffic to the roadways of the Town.

According to the testimony of Mr. Michaud, the MDM Traffic Study assumed, in each instance, that 100% of the vehicle trips to and from the proposed gaming establishment would take place along the route from and to other points that would result in the shortest travel time during normal operating conditions. BETA's submissions, in contrast, suggested that at least some of these vehicle trips would utilize different routes, especially when traffic delays along the preferred routes were being experienced. BETA,

¹ MassDOT did question certain other traffic allocations made by MDM (*e.g.*, with respect to traffic travelling to and from the casino site to the east along Route 123. It did not question the allocation of traffic traveling to and from the casino site along Route 123 west of the casino.

therefore, suggested that some percentage of vehicle trips should be assigned to these alternative routes.

Mr. Michaud objected strongly to the percentages suggested by BETA, noting that BETA itself had admitted that its "methodology ensured that all study intersections received some traffic burden." Easton's Exhibit L at 22, quoted in MGE's Arbitration Statement, Appendix Q at 22. The inference that Mr. Michaud apparently wished the Panel to draw was that BETA has selected its methodology because it showed traffic burden on Easton's intersection, rather than on an objectively defensible basis. At the end of the hearing, the Panel specifically offered the Town an opportunity to respond to Mr. Michaud's objection. However, BETA's post-hearing submission did not do so directly.

In its petition and oral presentation at the hearing, the Town argued that, even if MDM's traffic allocation numbers were correct, the Town would suffer substantial impacts due to traffic violations, traffic accidents and DUI incidents. While the panel found these allegations plausible, there was insufficient evidence submitted supporting these claims, or linking them to the number and timing of expected trips from the casino through the Town. The Panel thus concluded that the Town's claims were largely speculative, and provided insufficient basis for the Impact Fees set forth in the Town's BAFO.

The Town also alleged that the mere presence of the casino would cause a reduction of property values in the Town. The evidence submitted in support of this allegation was a paper prepared by the National Association of Realtors. However, no author of the paper, or his or her credentials, could be identified, and the panel found that the paper cited portions of several studies which had contradictory findings, and then, with little reason that the panel could see, drew a strong conclusion of negative impact on property values. The panel therefore finds that this allegation by the Town was not supported by sufficient evidence presented to the Panel.

The Panel questioned the parties regarding their respective methodologies for arriving at the payments included in their respective BAFOs. Neither of the parties was able to justify with any precision the actual initial and annual Community Impact Fees specified in its BAFO. Rather, MGE has argued that the Community Impact Fees in its BAFO are well in excess of the "negligible" impacts of its proposed gaming establishment; and the Town has argued that its proposed Community Impact Fees fall far short of the establishment's true impacts.

At the hearing, the parties were also asked to justify their proposed escalation provisions. The Town offered that its annual levy limit is permitted, under law, to grow by 2½%, and that this annual percentage increase in all revenue streams is commonly assumed to be needed in order to keep pace with anticipated spending increases. MGE, in contrast, offered no justification at all, in response to specific questioning, for its proposal to increase annual Community Impact Fees only once every five years. With respect to its setting the increase at 5%, which translates to annual increases less than 1%, MGE offered only that, once an impact has been remediated, there should be no need to remediate it again. MGE did not directly address the need for escalation of payment designed to compensate for ongoing operational costs.

With respect to these two provisions, the Panel finds the Town's rationale to be far more persuasive. An annual 2½% increase in the impact fees should be an essential component of a fair and reasonable Surrounding Community Agreement.

Finally, with respect to section 10.5 of the Town's BAFO, the Panel finds that, in principle, such a provision cannot be considered fair and equitable, but that, given the context of this matter, its applicability would be unlikely.

Because neither party has presented sufficient justification for either its initial or its annual Community Impact Fee, the Panel assumes that both parties' BAFOs may fail to reflect appropriately the true impacts of the proposed gaming establishment. In such a circumstance, the Panel must consider the practical consequences of an incorrect decision: If impacts are, in fact, "negligible," as MGE has argued, but substantial impact fees are nevertheless paid, the Town will have received a windfall. If, on the other hand, impacts are substantial, and impact fees are low, the Town has an opportunity to seek compensation from the Community Mitigation Fund pursuant to *M.G.L. c.23K, §61*.

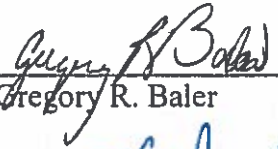
The Panel finds that the impacts of the proposed gaming establishment on the Town of Easton could be more than merely negligible, as argued by MGE, but may also be less than the full levels suggested by the Town. The Panel further concludes that the BAFO submitted by MGE provides more fair and equitable Community Impact Fees in the situation where impacts are, indeed, negligible, while the BAFO submitted by Town provides more fair and equitable Community Impact Fees in the situation where impacts are as substantial as the Town alleges. The record in this proceeding provides no basis for choosing between the submitted BAFOs in other circumstances.

Final Award

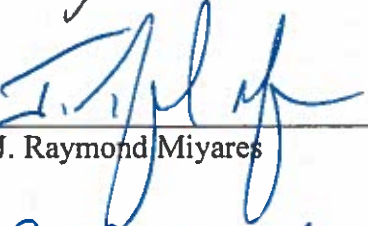
After deliberation, the Panel concludes that, based on the evidence presented by the parties, neither of the BAFOs submitted by the parties could be found to be completely fair and equitable, and that, instead, the constraints imposed by 205 CMR 125.01(6)(c)7, requiring the Panel to choose between them, forces an imperfect result. The Panel therefore reluctantly selects the Best and Final Offer of Mass Gaming and Entertainment, LLP, which BAFO is attached to this Report and Award as Exhibit A, and its terms are hereby incorporated by reference in this Report as required by 205 CMR 125.01(6)(c)7.

Because MGE's BAFO includes a plainly inadequate escalation provision, the Panel considers its selection to be fair and equitable only in the event that the true impacts of the proposed gaming establishment prove to be negligible. Therefore, the Panel believes that any impacts that are not negligible should form the basis for compensation from the Community Mitigation Fund pursuant to *M.G.L. c.23K, §61*. The Panel recommends that the Gaming Commission, in considering any such requests from Easton, disregard any amount of Impact Fees received by the Town in its assessment of the Town's demonstrated need pursuant to *M.G.L. c.23K, §61(c)*.

By the Arbitration Panel



Gregory R. Baler



J. Raymond Miyares



Peter D. Corbett

EXHIBIT A

Surrounding Community Agreement

[See BAFO of MGE, attached hereto]

SURROUNDING COMMUNITY AGREEMENT

By and Between the Town of Easton, Massachusetts

and

Mass Gaming & Entertainment, LLC

This Surrounding Community Agreement (the “**Agreement**”) is made and entered into as of February __, 2015 (the “**Effective Date**”), by and between the Town of Easton, Massachusetts, a municipality of the Commonwealth of Massachusetts with its offices at 136 Elm Street, Easton, MA 02356 (the “**Town**”), and Mass Gaming & Entertainment, LLC, a Delaware limited liability company with its principal office at 900 North Michigan Avenue, Chicago, Illinois 60611 (“**MGE**”) (each a “**Party**”, both collectively, the “**Parties**”).

WHEREAS, MGE is in the process of applying to the Massachusetts Gaming Commission (the “**Commission**”) for a Category 1 gaming license as defined by Chapter 23K of the General Laws of the Commonwealth of Massachusetts (“**Chapter 23K**” or the “**Act**”), to construct and operate a gaming establishment and ancillary hotel, dining, entertainment, and other amenities (collectively, the “**Project**”) to be built on a portion of the Brockton Fairground off Belmont Street in Brockton, Massachusetts (the “**Property**”);

WHEREAS, as provided for by Chapter 23K, MGE has entered into a Host Community Agreement with the City of Brockton, which calls for MGE to work in a good faith and non-discriminatory manner to give reasonable preference in the hiring for Project construction jobs and permanent Project positions, first to properly-qualified Brockton residents, and then to properly-qualified residents of Surrounding Communities, and to utilize properly-qualified, price-competitive local contractors and suppliers for the operation of the Project and to provide reasonable assistance to such local vendors in satisfying the Commission’s requirements;

WHEREAS, the Town and MGE anticipate that the Project will create regional benefits for Brockton and its surrounding and adjacent communities, including the Town, and Chapter 23K provides a mechanism for the applicant for a Category 1 gaming license to enter into an agreement with a Surrounding Community, setting forth a Community Impact Fee for the Surrounding Community to address the adverse impacts, if any, on the Surrounding Community, and all stipulations of responsibilities between the Surrounding Community and the applicant;

WHEREAS, in addition to any payments to be provided by MGE under this Agreement, the Town has the right to seek and intends to seek monies available to the Town under the Act, including but not limited to, those monies in the Community Mitigation Fund; and

WHEREAS, in furtherance of these goals, and in satisfaction of the requirements of Chapter 23K, the Parties are entering this Agreement to set forth their mutual understandings in effectuating the purposes set forth above.

NOW, THEREFORE, in consideration of the promises, terms, conditions, agreements, and mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Definitions.

Any term used in this Agreement that is defined in Section 2 of Chapter 23K shall be given such definition for purposes of this Agreement unless a different definition is expressly provided herein.

1.1 “**Annual Community Impact Fee**” means an annual Community Impact Fee in the amount of \$130,000.00 (One Hundred Thirty Thousand Dollars), paid in Quarterly Installments by MGE to the Town. The amount of the Annual Community Impact Fee will increase by five percent (5%) on the fifth anniversary of the day the Project is first Open for Business to the General Public to \$136,500.00 (One Hundred Thirty-Six Thousand, Five Hundred Dollars), by an additional five percent (5%) on the tenth anniversary of the day the Project is first Open for Business to the General Public to \$143,325.00 (One Hundred Forty-Three Thousand, Three Hundred Twenty-Five Dollars), and by an additional five percent (5%) on each subsequent five-year anniversary for so long as MGE continues to operate the Project.

1.2 “**Community Impact Fee**” means the payment to the Town called for by Section 15(9) of the Chapter 23K.

1.3 “**Comparable Surrounding Community**” means any of the municipalities of Abington, Avon, East Bridgewater, Easton, Holbrook, Pembroke, Stoughton, West Bridgewater, and Whitman other than the Town.

1.4 “**Quarterly Installments**” means that MGE will pay each Annual Community Impact Fee to the Town in four equal, quarterly installments over the course of a 365-day period (366 days when the period includes February 29th of a leap year), with the first installment due on the day the Project is first Open for Business to the General Public, and thereafter on the annual anniversary of that day, and each of the three subsequent installments each year due on the same date of the month of the first installment, but three, six, and nine months thereafter. By way of example, if the Project is first Open for Business to the General Public on June 10th, then the first quarterly installment would be due on that date and the subsequent quarterly installments would be due on September 10th, December 10th, and March 10th. If the date for payment of a quarterly installment falls on a weekend or holiday, MGE will pay that quarterly installment on or before the next following business day. MGE may pay at its election any quarterly installment before it is due; any such early payment by MGE of a quarterly installment will not change the dates on which subsequent quarterly installments are due.

1.5 “**Open for Business to the General Public**” means that the Project’s gaming area (as defined in the Act) is open for business to the general public.

1.6 “**Project License Fee**” means the Category 1 gaming establishment license fee paid by MGE for the Project under Section 10(d) of Chapter 23K.

Section 2. Community Impact Fee.

On or before one year after MGE pays the Project License Fee, but before the Project is Open for Business to the General Public, on a date of MGE’s choosing, MGE will pay the Town an initial Community Impact Fee in the amount of \$60,000.00 (Sixty Thousand Dollars).

Contemporaneous with or after MGE's payment to the Town of the initial Community Impact Fee, but on or before the date the Project is first Open for Business to the General Public, on a date of MGE's choosing, MGE will begin making Annual Community Impact Fee payments to the Town, with the payment of subsequent Annual Community Impact Fees to begin on the anniversaries of the day the Project is first Open for Business to the General Public. MGE's obligation to pay Annual Community Impact Fees to the Town will continue until the expiration or earlier termination of MGE's initial Category 1 gaming license or any renewal thereof, as applicable.

Section 3. Reimbursement of Consulting and Legal Fees

Notwithstanding anything else in this Agreement, within thirty (30) calendar days after the execution of this Agreement, MGE shall reimburse the Town for up to Ten Thousand Dollars (\$10,000.00) in third-party, out-of-pocket consulting and legal fees incurred by the Town in connection with evaluating the impacts, if any, of the Project on the Town and with negotiating and executing this Agreement and advising the Town regarding the same, for which the Town provides MGE with copies of third-party invoices; provided that the Town need not provide MGE with the portions of invoices from the Town's legal counsel containing descriptions of the work performed, and that MGE will pay such invoices without dispute as to amount (subject to the aforementioned \$10,000.00 aggregate limit). This consultant and legal fee reimbursement shall not be subject to setoff or reduction for any reason, and this obligation shall survive the termination of this Agreement and shall be unaffected by whether the Commission awards a Category 1 gaming license to MGE.

For avoidance of doubt, MGE's reimbursement under this Section 3 of the Town for third-party, out-of-pocket consulting fees incurred by the Town shall be in addition to the up to Twenty-Five Thousand Dollars (\$25,000.00) that MGE agreed to pay the Town (acting on behalf of itself and West Bridgewater) toward the cost of hiring BETA Group, Inc. to prepare its "Traffic Assessments Related to Brockton Casino – Town of Easton and West Bridgewater."

Section 4. Town Obligations

In consideration of the mitigation measures that MGE will undertake, and in further recognition of the benefits the Project will bring to the Town, the Town will do the following:

4.1 Not Oppose MGE's license application

The Town will not oppose MGE in its application for a Category 1 gaming license from the Commission. Nothing herein shall be construed to preclude any Town resident or employee from exercising his or her personal, constitutional rights of expression or to petition government.

4.2 No new taxes or fees targeting the Project

The Town will not attempt, directly or indirectly, to adopt or implement, nor will the Town accept, any taxes, fees, or other assessments specific or unique, by language or effect, to a gaming establishment, its customers, employees, tenants, vendors, suppliers, or owners that do not generally apply to non-gaming businesses in the Town. Nothing herein shall prevent the Town from seeking or accepting any grant or other funds from the Commonwealth of Massachusetts available to municipalities under the Act, including, but not limited to, from the Community Mitigation Fund under G.L. c. 23K, § 61, and the request for or award of any such funds by or to the Town shall not

change the timing of or the amount of the initial Community Impact Fee or the Annual Community Impact Fee.

Section 5. Term.

The term of this Agreement commences on the Effective Date and will end on the earliest of:

A. Any date on which MGE provides written notice that it elects to abandon efforts to obtain a Category 1 gaming license for the Project;

B. Any date on which the Commission has issued a Category 1 gaming license for Region C to another applicant and MGE has provided written notice that it has decided to discontinue pursuit of a Category 1 gaming license for the Project;

C. Any date on which MGE provides written notice that it elects not to construct, or to permanently cease operations of, the Project;

D. Any date upon which the Category 1 gaming license previously issued to MGE for the Project is revoked, rescinded, or expires without having been renewed; or

E. By the mutual agreement of the Parties to terminate the Agreement.

Section 6. Notices.

Any notices given under this Agreement must be made in writing and delivered by hand, nationally-recognized overnight delivery service, or certified mail, postage pre-paid (return receipt requested), and will be effective upon receipt for hand or overnight delivery, and three (3) calendar days after mailing for mailed notice, to the other Party at the following addresses:

If to the Town:

Easton Board of Selectmen
Easton Town Hall
136 Elm Street
Easton, MA 02356
Attn: Town Administrator

With a copy to:

Blatman, Bobrowski, Mead & Talerman, LLC
730 Main Street, Suite 2B
Millis, MA 02054
Attn: Jason R. Talerman, Esq.

If to MGE:

Mass Gaming & Entertainment, LLC
900 N. Michigan Avenue, Suite 1600
Chicago, IL 60611
Attention: Legal Department

With a copy to:

Dain, Torpy, Le Ray, Wiest & Garner, P.C.
745 Atlantic Avenue, 5th Floor
Boston, MA 02111
Attention: Charles N. Le Ray, Esq.

After the Project is first Open for Business to the General Public, with a 2nd copy to:

[Name of Category 1 gaming establishment to be provided by MGE]
[Street address to be provided by MGE]
Brockton, MA 02301
Attention: General Manager

Any Party may change its notice address(es) hereunder by giving notice to the other of the new notice address(es) as provided by this section.

Section 7. Limitation on Liability.

The Parties agree that neither Party shall be liable for indirect, special, consequential, or punitive damages arising out of or related to this Agreement. For avoidance of doubt, the Parties agree that MGE's only obligations under this Agreement shall be to make the payments to the Town provided for under Sections 2, 3, and 9 of this Agreement and to provide the Town with such notice as may be required under Sections 5, 10.5, and 10.8 of this Agreement.

Section 8. No Third Party Beneficiaries.

No provision of this Agreement shall be construed in any manner so as to create any rights in any third parties not party to this Agreement. The Agreement shall be interpreted solely to define specific duties and responsibilities of and between the Town and MGE, and shall not provide any basis for claims of any other individual, partnership, corporation, organization, municipal entity, or any other third party.

Section 9. Transferability/Assignment

MGE may transfer or assign, subject to the Act and the Commission's regulations, its rights and obligations under this Agreement to any transferee or assignee of the Category 1 gaming license to operate the Project as approved by the Commission, provided that the transferee or assignee assumes all obligations and liabilities hereunder. The Town will be bound by this Agreement regardless of any such transfer or assignment. Any transferee or assignee of MGE will likewise be bound by this Agreement to the fullest extent allowed by law and shall promptly give notice to the Town as provided herein upon the completion of such transfer or assignment. For the avoidance of

doubt, after any transfer or assignment of the Agreement in accordance with the terms of this Section 9, MGE shall have no further obligations under this Agreement provided that MGE has paid and performed all of its obligations up to the date of assignment or transfer, and further provided that the assignee or transferee has accepted and assumed all of MGE's responsibilities under this Agreement.

The Town acknowledges and agrees MGE and its successors or assigns may, at any time and on one or more occasions, to provide security to a lender, mezzanine lender, or equity holder in connection with a financing or equity contribution, pledge or otherwise collaterally assign this Agreement and all documents, agreements, understandings, and arrangements relating to the transaction contemplated by this Agreement. The Town will, to the extent permitted by law, within fifteen (15) business days after receiving such a request, or within a commercially reasonable time thereafter, execute any commercially reasonable and customary instruments that do not deviate from, limit, or waive its rights or increase its obligations, provided that MGE shall within thirty (30) calendar days after receipt of invoices (which need not include the portions containing descriptions of the legal work performed) reimburse the Town for any reasonable legal fees and expenses incurred in reviewing and evaluating such request(s).

The Town shall not transfer or assign, in whole or in part, its obligations or benefits under this Agreement.

Section 10. Miscellaneous.

10.1 Integration. This Agreement constitutes the entire agreement between the Parties with respect to the subject hereof. No agent, representative, employee, or officer of the Town or MGE has authority to make, or has made, any statement, agreement, or representation, oral or in writing, in connection with this Agreement which in any way can be deemed to modify, add to, or detract from, or otherwise change or alter the terms and conditions of this Agreement. No negotiations between the Parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this Agreement. No modifications, alterations, or changes to this Agreement or to any of its terms and conditions shall be valid or binding unless memorialized by a written amendment signed by both Parties in accordance with the terms and conditions of this Agreement.

10.2 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute a single instrument. Facsimile or electronically-scanned signatures shall be considered as valid signatures as of the date thereof.

10.3 Construction of Agreement. The Parties each acknowledge that they were represented by separate and independent counsel in connection with the drafting, review, and negotiation of this Agreement, and that this Agreement shall not be subject to the principle of construing its meaning, or the meaning of any part of the Agreement, against the Party that drafted the same. Each Party acknowledges that it relied solely on its own judgment, legal counsel, and other advisors in entering this Agreement, without relying in any manner on any statements, representations, or recommendations of the other Party other than as expressly set forth in this Agreement, that it understands and accepts the implications of this Agreement, and that it voluntarily entered into this Agreement.

10.4 Amendment. This Agreement shall not be amended except upon the written consent of both Parties.

10.5 Town's Termination Right. Upon entering any surrounding community agreement with a Comparable Surrounding Community, MGE will provide a copy of that agreement to the Town. If that agreement is More Beneficial to the other community (exclusive of a surrounding community agreement entered into as a result of an adverse ruling in an arbitration proceeding under 205 CMR 125.01(6)(c)(7), in which the arbitrator selects the best and final offer of such other surrounding community) then within fourteen (14) calendar days after receipt of a copy of such agreement, the Town may elect in writing to terminate this Agreement. For purposes of this paragraph, the term "More Beneficial" means that a surrounding community agreement with a Comparable Surrounding Community includes: (a) initial or annual Community Impact Fee payments in excess of those provided under Sections 1 and 2 hereof; (b) other payments not provided for herein; (c) MGE's construction, installation, or funding of public infrastructure improvements or other improvements within such Comparable Surrounding Community; or (d) hiring or vendor preferences that exceed those stated herein or give priority to such Comparable Surrounding Community beyond those provided for herein. In the event of such termination, the parties shall negotiate in good faith toward executing a new Surrounding Community Agreement. If the parties are unable to negotiate a new Surrounding Community Agreement within thirty (30) calendar days after termination, the parties shall notify the Commission and engage in binding arbitration, pursuant to the provisions of 205 CMR 125.01(6)(c), and the Commission's *Handbook for Binding Arbitrations Between An Applicant For a Gaming Establishment License and a Surrounding Community to Reach a Surrounding Community Agreement*.

10.6 Governing law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts, as amended from time to time, including without limitation Chapter 23K and the Commission's rules and regulations, without regard to the Commonwealth's conflict of laws provisions. Any dispute arising under or in connection with this Agreement shall be within the exclusive jurisdiction of the Massachusetts Superior Court for Suffolk County.

THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE RELATIONSHIP OF MGE AND THE TOWN, AND/OR ANY CLAIM OF INJURY OR DAMAGE, AND ANY EMERGENCY STATUTORY OR ANY OTHER STATUTORY REMEDY.

Notwithstanding the foregoing provisions for forum selection, the Parties agree that before resorting to any formal dispute resolution process concerning any dispute arising from or in any way relating to this Agreement, they will first engage in good faith negotiations in an effort to find a solution that serves their respective and mutual interests. If the Parties agree to engage the services of a professional mediator or arbitrator, MGE and the Town will bear the cost of such services equally, and the non-prevailing Party in any arbitration or litigation between the Parties shall promptly reimburse the prevailing Party for the prevailing Party's reasonable costs, including attorneys' fees, as shall be awarded by such arbitrator or court.

10.7 Relationship of the Parties. Nothing in this Agreement is intended to create, nor shall be deemed or construed to create, any relationship between the Parties other than that of independent parties contracting with each other for the purpose of affecting the provisions of this Agreement. The Parties are not, and will not be construed to be, in a relationship of joint venture or partnership. Neither Party has the authority to make any statements, representations, promises, or commitments of any kind on behalf of the other Party.

10.8 Force Majeure. MGE shall not be in default in its performance of its obligations under this Agreement to the extent that performance is impaired by a Force Majeure event attributable to circumstances beyond MGE's reasonable control. If MGE is delayed or prevented in the performance of any obligation under this Agreement by a Force Majeure event, it will provide reasonable notice to the Town of the circumstances delaying or preventing performance and the expected duration thereof, if known.

10.9 Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the Parties and upon their respective successors and assigns.

10.10 Exercise of Rights and Waivers. The failure of any party to exercise any right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof; nor shall a waiver by any Party of any provisions hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

10.11 Headings and Construction. The section headings in this Agreement are inserted for convenience of reference only and shall in no way affect, modify, define, or be used in construing the text of the Agreement. Where the context requires, all singular words in the Agreement shall be construed to include their plural and vice versa, and all words of neuter gender shall be construed to include the masculine and feminine forms of such words.

10.12 Authority. Each Party represents and warrants to the other that it has full power and authority to enter this Agreement and to perform its obligations hereunder, and that the person signing this Agreement on that Party's behalf has the authority to sign and to bind that Party.

[signatures on following page]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date set forth above, on the date(s) set forth below.

Mass Gaming & Entertainment, LLC

**Town of Easton, Massachusetts
acting by and through its Board of Selectmen**

By: Neil G. Bluhm
Title: Chairman
Date:

Name:

Name:

Name:

Name:

Name:

Date: