

THE COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS GAMING COMMISSION

Grant, made as of _____, 2013

*Grant from the Massachusetts Gaming Commission to _____, Massachusetts
in accordance with G.L. c.23K, §15(11) and 205 CMR 114 et seq.*

This Grant Agreement, (the “Grant”), dated as of _____, 2013 (“Effective Date”) is entered into by and between the Massachusetts Gaming Commission (“Commission”), an agency of the Commonwealth of Massachusetts, and the Town/City of _____ (“Town/City” or “_____”).

RECITALS

WHEREAS, the Commission has been created to ensure public confidence in the integrity of the gaming licensing process and in the strict oversight of all gaming establishments through a rigorous regulatory scheme; and

WHEREAS, the Town/City of _____ has been identified as a potential host/surrounding community by the Commission as defined in G.L. c.23K, §2; and

WHEREAS, the Town/City of _____ has engaged in the process of negotiating an agreement with _____ and in studying the impact of locating a gaming establishment in Town/City _____; and

WHEREAS, the Town/City of _____ anticipates expending funds in the process of studying the potential impacts of the location of a gaming establishment in Town/City _____ and/or in negotiating an agreement with _____; and

WHEREAS, G.L. c.23K, §15(11) provides that not less than \$50,000 of the application fee paid by applicants for a gaming license shall be used to reimburse the host and surrounding municipalities for the cost of determining the impact of a proposed gaming establishment and for negotiating community mitigation impact agreements; and

WHEREAS, in accordance with G.L. c.23K, §4(7) the Commission may receive and approve requests from a municipality to provide for reasonable costs related to legal, financial and other professional services required for the negotiation and execution of host and surrounding community agreements as provided in G.L. c.23K, §15; and

WHEREAS, the Town/City of _____ and the applicant, _____, have submitted a letter of authorization to the Commission in accordance with 205 CMR 114.03 authorizing disbursements to Town/City from available amounts paid by the applicant to the Commission for such purposes; and

WHEREAS, the Town/City of _____ has applied for and desires to receive monies from the Commission pursuant to the provisions of G.L. c.23K, §15(11) for advisory services, as it is more particularly described elsewhere in this Grant instrument; and

WHEREAS, the Town/City of _____ has submitted an application for a Grant of funds commensurate with anticipated expenditures associated with the negotiation of studying the potential impacts of the location of a gaming establishment in _____ and in negotiating an agreement with _____; and

WHEREAS, the Commission has determined that the Town/City of _____ is eligible for the receipt of a Grant and that the Town/City of _____ has agreed to accept the funds subject to all of the terms and conditions of this Grant; and

WHEREAS, the Commission has determined that there are sufficient funds available in the custody of the Commission, as provided in 205 CMR 114.03(2), to make disbursements to the Town/City; and

WHEREAS, the Commission has been granted the power to execute all instruments necessary or convenient for accomplishing the purposes of G.L. c.23K; and

WHEREAS, the Commission has been granted the power to enter into agreements or other transactions with a person, including, but not limited to, a public entity or other governmental instrumentality or authority in connection with its powers and duties under G.L. c.23K;

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Grant, the receipt and legal sufficiency of which are hereby acknowledged, the Commission and the Town/City of _____, intending to be legally bound, hereby agree as follows:

The Commission agrees to provide a Grant of funds to the Town/City of _____, subject to all of the following terms and conditions:

**SECTION 1
LETTER OF AUTHORIZATION**

Letter of authorization shall mean the agreement entered into between the Town/City and applicant for a gaming license detailing the agreed upon costs of determining the impact of a proposed gaming establishment and/or for negotiating community mitigation impact agreements. The *letter of authorization* shall include detailed estimates, including the scope of work, from prospective contractors, vendors, and/or service providers.

**SECTION 2
THE GRANT**

As of the Effective Date and subject to the satisfaction of or compliance with, as reasonably determined by the Commission: (a) all of the terms and conditions of this Grant, (b) the applicable provisions of G.L. c.23K, Chapter 194 of the Acts of 2011, and 205 CMR, and (c) any other rule, regulation, policy, guideline, approval, or directive of the Commission, the Commission hereby approves the following Grant: an amount that shall under no circumstances exceed \$ _____. The Parties hereby acknowledge and agree that the amount set forth in this section as determined by the Commission in its sole discretion, is the maximum amount of funding that the municipality may receive from the Commission under this specific Grant. To the extent that the municipality realizes a need to make further expenditures in the determination of the impact of a proposed gaming establishment and/or for negotiating a community impact mitigation agreement, it must submit a further *letter of authorization*.

**SECTION 3
COVENANTS, REPRESENTATIONS, AND WARRANTIES**

The Town/City covenants and agrees that in exchange for this Grant, the Town/City shall and shall cause its employees, agents, and representatives to perform and comply with the following covenants, and otherwise represents and warrants as follows:

3.1 The Town/City shall and shall cause its employees to comply with all provisions of this Grant, and all provisions of law that are applicable to the Grant; the Town/City shall take all action necessary to fulfill its obligations under this Grant and under all other agreements related to the Grant that have been referenced herein or otherwise approved by the Commission.

3.2 The Town/City hereby acknowledges and agrees that neither the Town/City nor any of its employees, officials or agents has submitted nor shall submit any false or intentionally misleading information or documentation to the Commission in connection with this Grant, including the *letter of authorization*, and further acknowledges and agrees that the submission of any such information or documentation shall be a material breach of this Grant and may be cause for the Commission to revoke any and all payments otherwise due to the Town/City, to recover any previous payments made to the Town/City, and/or make the Town/City ineligible for any further funding from the Commission. The Town/City hereby further agrees that it shall have a continuing obligation to update and notify the Commission in writing when it knows or has any reason to know that any information or documentation submitted to the Authority contains false, misleading or incorrect information.

3.3. The Town/City certifies that the funds from this Grant will be used solely for the purposes outlined in **SECTION 4- SCOPE OF GRANT**.

3.4 The Town/City hereby agrees that it shall use its best efforts and resources to diligently satisfy and complete each of the terms and conditions of this Grant and the purposes for which the funding is being provided, as set forth in **SECTION 4- SCOPE OF GRANT**, as promptly as possible.

3.5 The Town/City hereby acknowledges and agrees that all expenditures of Grant funds shall be subject to review and audit by the Commission.

3.6 The Town/City hereby acknowledges and agrees that it shall provide the Commission with a monthly update on the expenditure of the Grant funds

3.7 The Town/City hereby acknowledges and agrees that it shall keep all records and receipts related to or generated by any expenditure of Grant funds.

3.8 With respect to all actions taken in relation to the Grant, the Town/City and all of its officers, agents and employees shall observe and obey, and shall include language in all of its contracts with the contractors and vendors requiring them to observe and obey all federal, state and local laws, regulations, ordinances, codes, statutes, orders and directives and any other applicable provisions of law.

3.9 The Town/City shall furnish to the Commission such further affidavits, certificates, opinions of counsel, surveys and other documents and instruments as may be required by the Commission to ensure that the terms of this Grant are being observed and performed in all respects.

3.10 The Town/City hereby acknowledges and agrees that the terms set forth in the Grant are intended solely to govern the disbursement of funds in accordance with G.L. c.23K, §15(11) and 205 CMR 114 *et seq.* Nothing herein shall be construed as advice to, nor create a duty to provide advice to, the Town/City regarding legal or contractual requirements or best practices. Further, nothing in this Grant shall be construed as creating a duty or obligation on the part of the Commission to oversee or monitor the performance of any contractor, vendor, or other project participants.

3.11 The Town/City represents that the acceptance of funding in accordance with the terms of this Grant does not and will not conflict with or result in the violation of any charter, by-law, ordinance,

order, rule, regulation, statute or any other applicable provision of law or any order, rule, regulation or judgment of any court or other agency of government.

3.12 The Town/City represents that it has duly obtained all necessary votes, resolutions, appropriations, and local approvals for the actions set forth in **SECTION 4- SCOPE OF GRANT**, and has taken all actions necessary or required by law to enable it to execute this Grant and to perform its obligations hereunder.

3.13 The Town/City has read and fully understands the provisions of the Massachusetts Conflict of Interest law, M.G.L. c. 268A, and has implemented policies and procedures to ensure that all employees, agents, consultants and representatives working on or for any project for which Grant funds will be used are in compliance with G.L. c. 268A to the extent that it is applicable.

3.14 The Town/City has implemented policies and procedures to prevent and eliminate fraud, waste and abuse of public funds in connection with the expenditure of the funds from this Grant.

3.15 The Town/City represents that all meetings of all public bodies in the Town/City that relate in any way to the expenditure of funds from this Grant have been conducted, and shall be conducted, in compliance with the provisions of G.L. c. 30A, §§18–25, 940 CMR 29.00 *et seq.*, and all other applicable law.

SECTION 4 SCOPE OF GRANT

Having received and reviewed the *letter of authorization* dated _____ and supporting documentation submitted by the Town/City and (developer), the Commission hereby finds that the following are necessary and reasonable costs in determining the impact of a proposed gaming establishment and/or for negotiating a community mitigation impact agreement:

- 1.
- 2.
- 3.
- 4.

SECTION 5 DISBURSEMENT OF THE GRANT

Subject to the terms and conditions set forth in this Grant, the Commission shall disburse Grant funds in accordance with the following:

1. Having completed review of the *letter of authorization* submitted by and between the Town/City and _____ the Commission has determined that the Town/City is eligible for funding in the amount set forth in **SECTION 2- THE GRANT**.
2. The funding is solely intended for use towards the execution of the items delineated in **SECTION 4- SCOPE OF GRANT**.
3. Within 30 days of execution of this instrument the Commission shall either issue a check or transfer monies electronically to the Town/City. The check shall be delivered via

certified or registered mail to the Town/City. The Town/City shall provide the Commission, in writing, the name and address of the individual to whose attention the check should be directed or provide wiring instructions.

4. Acceptance and processing of the monies by the Town/City shall indicate receipt of the grant funds in full satisfaction of the request articulated in the *letter of authorization*.
5. To the extent that the municipality realizes a need to make further expenditures in the determination of the impact of a proposed gaming establishment and/or for negotiating a community impact mitigation agreement, it must submit a new *letter of authorization* for review and consideration by the Commission for purposes receiving a separate Grant.

SECTION 6 FINAL REVIEW AND AUDIT

Upon expenditure of all funds distributed under this Grant, the Town/City shall forward an accounting to the Commission of all expenditures made pursuant to the terms of this Grant which shall include, at a minimum, an itemization of all funds expended, a description of the work performed or service provided, the identification of the party that performed the work or provided the service, a copy of the final invoice, and proof of payment. The Commission may request any supplemental information it deems necessary to ensure that the funds were expended in accordance with **SECTION 4- SCOPE OF GRANT**. The Commission may conduct, or cause to be conducted, an audit of the transactions and expenditures made by the Town/City in connection with this Grant.

In the event that the Commission detects any irregularity in the expenditure of any Grant funds, it may request reimbursement of those misspent funds or pursue any other remedy available by law.

Unused funds must be promptly returned to the Commission upon the completion of the municipality's review of the impact of a proposed gaming establishment and negotiation of a community mitigation impact agreement. In the event of disagreement, the Commission may make a final determination as to when the review and negotiation is complete.

SECTION 7 INDEMNIFICATION

To the fullest extent permitted by law, the Town/City shall indemnify, defend, and hold harmless the Commission, commissioners, agents and employees from and against any and all claims, actions, damages, awards, judgments, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation whatsoever which may be incurred by or for which liability may be asserted against the Commission, its commissioners, agents or employees arising out of any activities undertaken by, for, or on behalf of the Town/City relative to the expenditure, disbursement, or use of the funds associated with this Grant or any activities, acts or omissions in relation to the Grant including, but not limited to, the performance of any contract or obligation directly or indirectly related to the Grant. This Section shall not be construed to negate or abridge any other obligation of indemnification running to the Commission which would otherwise exist.

No member or employee of the Commission shall be held personally or contractually liable by or to the Town/City or the developer under any provision of this Grant, because of any breach of this Grant, or because of its execution or attempted execution.

**SECTION 8
NOTICE**

Any notices required or permitted to be given by either of the Parties hereunder shall be given in writing and shall be delivered to the addressee (a) in-hand (b) by certified mail, postage prepaid, return receipt requested; or (c) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

If to the Commission:

Massachusetts Gaming Commission
84 State Street, suite 720
Boston, MA 02109
Attention: Executive Director

If to the Town/City of _____ :

or to such other address or addressee as the Commission and the Town/City may from time to time specify in writing. Any notice shall be effective only upon receipt.

**SECTION 9
AMENDMENTS**

This Grant may be amended only through a written amendment signed by duly authorized representatives of the Commission and the Town/City.

**SECTION 10
ATTESTATION**

All certifications, filings, and submissions to the Commission in furtherance of this Grant shall contain a statement, signed by a duly authorized representative of the Town/City, that such certification, filing, or submission is true, complete and accurate, to the best of the Town/City's knowledge.

**SECTION 11
GOVERNING LAW, VENUE, AMENDMENT AND SEVERABILITY**

10.1 This Grant shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts. In case any provision(s) hereof shall be determined invalid or

unenforceable under the applicable law, such provision(s) shall, insofar as possible, be construed or applied in such manner as will permit the enforcement of this Grant; otherwise, this Grant shall be construed as though such provision(s) had never been made a part hereof.

10.2 Any civil action brought against the Commission by the Town/City, or any person or entity claiming through or under it, which arises out of the provisions of this Grant, shall only be brought in the Superior Court for Suffolk County, Massachusetts. The Town/City, for itself and for any person or entity claiming by through or under it, hereby waives any defenses that it may have as to the venue to which it has agreed herein, including, but not limited to, any claim that this venue is improper or that the forum is inconvenient. The Town/City for itself and for any person or entity claiming by through or under it, hereby waives all rights, if any, to a jury trial in any civil action against the Commission that may arise out of the provisions of this Grant.

10.3 This Grant and any amendments hereto shall be deemed null and void and of no further force or effect unless it is executed by a duly authorized representative of the Commission and a duly authorized representative of the Town/City. The undersigned, who are signing on behalf of the Town/City, hereby warrant and represent that they possess the full legal authority to execute this Grant on behalf of the Town/City and to bind the Town/City to its terms and conditions. In the event that the Commission later determines that the undersigned are not duly authorized to execute this Grant and to bind the Town/City, the Commission may, in its sole discretion, take whatever action it deems necessary to terminate this Grant, to suspend or terminate payments to the Town/City and to recover any funds disbursed to the Town/City. Any rights and remedies available to the Commission under the provisions of this Grant shall be in addition to any other rights and remedies provided by law.

SECTION 12 WAIVERS

11.1 The terms, conditions, covenants, duties and obligations contained in this Grant may be waived only by written agreement executed by duly authorized representatives of the Commission and the Town/City. No waiver by either party of any term, condition, covenant, duty or obligation shall be construed as a waiver of any other term, condition, covenant, duty or obligation nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or a different section, subsection, paragraph, clause, phrase, or other provision of this Grant. Forbearance or indulgence in any form or manner by either Party to this Grant shall not be construed as a waiver, nor in any way limit the remedies available to that party.

11.2 The Commission's payment(s) to the Town/City under this Grant or its review, approval or acceptance of any actions by the Town/City under this Grant shall not operate as a waiver of any rights or remedies available to the Commission under this Grant or as otherwise provided by law.

IN WITNESS WHEREOF, the Massachusetts Gaming Commission and the Town/City of
have caused this Grant Agreement to be executed by their duly authorized representatives this
day of _____ in the year 2013.

**MASSACHUSETTS
GAMING COMMISSION**

TOWN/CITY OF

By: _____
(signature)

By: _____
(signature)

(print name)

(print name)

Title: _____

Title: _____

