



# 20

## COMMUNITY MITIGATION FUND

### APPENDIX F

#### 2020 Non-Transportation Planning Project Application

BD-20-1068-1068C-1068L-46130

☐

Check if joint application

*Please complete the entire application*

Town of West Springfield

1. NAME OF MUNICIPALITY(IES)/GOVERNMENT ENTITY(IES)/DISTRICT(S)

Marketing Video Campaign

2. PROJECT NAME (Limit 10 words)

Create a series of videos to market West Springfield's attractions, businesses and amenities.

3. BRIEF PROJECT DESCRIPTION (Limit 50 words)

Sharon A. Wilcox, Chief Financial Officer

2. NAME AND TITLE OF INDIVIDUAL RESPONSIBLE FOR HANDLING OF FUNDS ON BEHALF OF MUNICIPALITY/GOVERNMENTAL ENTITY (CONTRACT MANAGER)

Sharon A. Wilcox, Chief Financial Officer

3. LEAD APPLICANT – NAME AND TITLE OF INDIVIDUAL RESPONSIBLE FOR HANDLING OF FUNDS ON BEHALF OF MUNICIPALITY/GOVERNMENTAL ENTITY (CONTRACT MANAGER)

26 Central Street, West Springfield, MA 01089

4. ADDRESS OF INDIVIDUAL RESPONSIBLE FOR HANDLING OF FUNDS ON BEHALF OF MUNICIPALITY/GOVERNMENTAL ENTITY (CONTRACT MANAGER)

(413)263-3025 swilcox@tows.org

5. PHONE # AND EMAIL ADDRESS OF INDIVIDUAL AUTHORIZED TO HANDLE FUNDS ON BEHALF OF MUNICIPALITY/GOVERNMENTAL ENTITY

N/A

6. NAME AND CONTACT INFORMATION OF JOINT APPLICANTS – MUNICIPALITIES/GOVERNMENTAL ENTITIES/DISTRICTS

William C. Reichelt, Mayor

7. NAME AND TITLE OF INDIVIDUAL(S) AUTHORIZED TO COMMIT FUNDS ON BEHALF OF MUNICIPALITY(IES)/GOVERNMENTAL ENTITY(IES)

26 Central Street, West Springfield, MA 01089 (413)263-3041 wreichelt@tows.org

8. ADDRESS, PHONE # AND EMAIL ADDRESS OF INDIVIDUAL(S) AUTHORIZED TO COMMIT FUNDS ON BEHALF OF MUNICIPALITY(IES)/GOVERNMENTAL ENTITY(IES)

MGM Springfield

9. NAME OF GAMING LICENSEE

### **1. IMPACT DESCRIPTION**

**Please describe in detail the related impact that is attributed to the operation of a gaming facility. Please provide support for the determination that the operation of the gaming facility caused, is causing or may cause the impact.**

The MGM Springfield Casino is a regional casino, and accordingly it draws largely from the region immediately surrounding it. The Casino has been open and operating for 17 months at the time of this application, but it has been marketing itself to the region for much longer than that. One of the impacts resulting from its regional nature and thorough marketing campaign is new competition for local dollars. Local service and retail businesses are negatively affected by this because they rely on the same pool of discretionary income that the casino and nearby attractions draw from. Restaurants and entertainment-based businesses are particularly affected by the presence of the casino and the amenities within it, such as its restaurants, movie theater, and bowling alley. However, it is not just the regular offerings within the casino that are impacting local businesses across the river in West Springfield, it is also the numerous events at the casino and its affiliated properties including Symphony Hall and the MassMutual Center.

In order to mitigate the impact described above, the Town of West Springfield is proposing to create a marketing campaign to promote our local attractions, businesses, and amenities.

### **2. PROPOSED USE OF PLANNING FUNDS**

**a) Please identify the amount of funding requested.**

\$50,000

**b) Please identify below the manner in which the funds are proposed to be used. Please provide a detailed scope, budget and timetable for the use of funds.**

The funds are proposed to be used to hire a production company to create a series of video segments highlighting West Springfield attractions, businesses, and amenities.

The project scope would include:

1. Pre-production
  - a. Identifying segment themes
  - b. Developing scripts and outlines of video content
  - c. Scheduling
2. Production
  - a. Filming of segments
3. Post-Production
  - a. Film editing
  - b. Sound editing
  - c. etc.

The budget of \$50,000 is based upon quotes received from two local production companies, and includes the scope items outlined above.

The expected timetable to complete the videos is 6 months but may vary slightly depending on the availability and workload of the production company. Some of the footage may also be weather and seasonally dependent.

**c) Please provide documentation (e.g. - invoices, proposals, estimates, etc.) adequate for the Commission to ensure that the funds will be used for the cost of planning to mitigate the impact from the operation of a gaming establishment.**

Two quotes have been attached (Attachment A). They are both from local production companies experienced in the creation of marketing videos.

**d) Please describe how the planning request will address the impact indicated. Please attach additional sheets/supplemental materials if necessary.**

The request to hire and work with a production company to market local attractions, businesses, and amenities will address concerns related to the Casino taking away business from West Springfield. The marketing videos will better position local businesses to attract customers from the surrounding area, as well as capitalize on casino patrons that are interested in exploring the area around the casino. The exposure provided by the videos will ideally remind people already familiar with the area of the various options available to them for dining, shopping, recreating, etc., while also introducing the businesses to new customers who did not already know about them.

**e) Please describe how the planning request will address the impact indicated.**

See answer above

**f) For joint grant requests, please state the amount requested for the joint request. Please also state the amount of any Regional Planning Incentive Award requested and provide separate detail on the use of these additional funds.**

N/A

### **3. CONNECTION TO GAMING FACILITY**

**Please provide specificity/evidence that the requested funds will be used to address issues or impacts directly related to the gaming facility.**

The funds will be used exclusively for the hiring of a production company to create marketing videos. This will address the impacts of MGM Springfield diverting consumer spending from West Springfield businesses. The marketing videos will be targeted towards drawing new and existing patrons to West Springfield, and encourage them to enjoy the offerings here. It will give exposure to local businesses that do not have the budget to create their own marketing videos, particularly those of a quality consistent with the content that MGM is putting out.

### **4. INTERNAL CONTROLS/ADMINISTRATION OF FUNDS**

**Please provide detail regarding the internal controls that will be used to ensure that funds will only be used in planning to address the impact. If non-governmental entities will receive any funds, please describe what reporting will be required and how the applicant will remedy any misuse of funds.**

All funds received from this grant will be used exclusively on the contract between the Town and the selected production company for services including those outlined in the proposed scope of work. If awarded the grant, a copy of the final executed contract between the Town and the firm can be provided to the Gaming Commission as well as a copy of the invoices and purchase order documenting the use of the grant and town funds.

West Springfield will maintain separate fund accounting for all grant related expenditures. Only expenditures approved for funding by the terms of the grant agreement between the MA Gaming Commission and the Town of West Springfield will be charged to the grant fund.

**5. CONSULTATION WITH REGIONAL PLANNING AGENCY (RPA)/NEARBY COMMUNITIES**

**Please provide details about the Applicant's consultation with the Regional Planning Agency serving the community and nearby communities to determine the potential for cooperative regional efforts regarding planning activities.**

The Town is a member of the Pioneer Valley Planning Commission (PVPC) and works closely with PVPC whenever possible to address regional and local needs. While there is an ongoing regional marketing campaign, the Town and PVPC agree that it is beneficial for individual communities to market their unique assets and opportunities for entertainment, shopping, dining etc. The Town fully supports and participates in the regional marketing strategy, however we feel there is a need to supplement that with our marketing videos.

**6. MATCHING FUNDS FROM GOVERNMENTAL OR OTHER ENTITY**

**Please demonstrate that the governmental or other entity will provide significant funding to match or partially match the assistance required from the Community Mitigation Fund. Please provide detail on what your community will contribute to the planning projects such as in-kind services or planning funds.**

If awarded the grant, the Town of West Springfield will provide significant in-kind matching funds in the form of staff time. Town staff that will participate in the oversight of the production process include the Mayor's Community Outreach Coordinator and the Town Planner. The Town staff will also work with local organizations such as the West of the River Chamber of Commerce to leverage additional in-kind support.

**7. RELEVANT EXCERPTS FROM HOST OR SURROUNDING COMMUNITY AGREEMENTS AND MASSACHUSETTS ENVIRONMENTAL POLICY ACT (MEPA) DECISION**

**a) Please describe and include excerpts regarding the impact and potential mitigation from any relevant sections of the community's Host or Surrounding Community Agreement.**

- MGM voluntarily designated West Springfield as a "surrounding community", and as such acknowledged that West Springfield will be significantly and adversely impacted by the construction and operation of the MGM Springfield Casino. Excerpt from the Surrounding Community Agreement Arbitration Agreement (Attachment B):  
"Whereas, pursuant to 205 CMR 125.00 (the 'Surrounding Community Regulation'), MGM has designated West Springfield as a Surrounding Community, thereby recognizing that West Springfield will experience significant adverse impacts as a result of the Project..."
- In the Surrounding Community Agreement (Attachment C) between the Town of West Springfield and Blue Tarp Redevelopment, it was agreed upon that a "1st Year Look Back Study" and a "5th Year Look Back Study" would be conducted. The Study Scope included "Net Substitution of Existing Commercial/Retail Activity" as a potential area of adverse impact to be studied.

**b) Where applicable, please also briefly summarize and/or provide page references to the most relevant language included in the most relevant MEPA certificate(s) or comment(s) submitted by the community to MEPA.**

N/A

**c) Please explain how this impact was either anticipated or not anticipated in that Agreement or such MEPA decision.**

Commercial and retail activity in West Springfield were anticipated to be adversely impacted in the Surrounding Community Agreement. As stated above, the scope for the required Look Back studies identifies net substitution of retail and commercial activity as an area of potential adverse impact that will be studied by a third party consultant. The Town expects that when the first Look Back study is completed it will show local dollars leaving the community to be spent at the casino, and that this substitution of spending is adversely impacting our local businesses.

- d) If planning funds are sought for mitigation not required under MEPA, please provide justification why funding should be utilized to plan for such mitigation. For example, a community could provide information on the significance of potential impacts if the impact exceeds projected estimates.

Mitigation of economic impacts were not considered within the Environmental Impact Report provided to MEPA, however they are a critical area of concern relative to the development and operation of the MGM Casino. As a "regional casino", MGM is designed to attract people from within the region, as opposed to a "destination casino", which draws from a larger area. The result is that MGM has created new competition for local dollars which our local businesses rely upon. It is essential to mitigate this by strategically marketing our local businesses to ensure that they receive the exposure and advertising that they need to stay competitive.

**NO COMMUNITY IS ELIGIBLE FOR MORE THAN ONE  
NON-TRANSPORTATION REGIONAL PLANNING INCENTIVE AWARD.**

**CERTIFICATION BY MUNICIPALITY/GOVERNMENTAL ENTITY**

On behalf of the aforementioned municipality/governmental entity I hereby certify that the funds that are requested in this application will be used solely for the purposes articulated in this Application.



Signature(s) of Responsible Municipal Official(s)/  
Governmental Entity(ies)

  
Date:

# **Attachment A**

## **Video Production Quotes**





35 Springfield Street, Agawam, MA 01001  
Phone: 413.786.4454 Fax: 413.789.4240  
pplvideo.com

January 9, 2020

Carly Camossi  
Mayor's Outreach Coordinator  
Town of West Springfield  
26 Central Street  
West Springfield, MA 01089

Hi Carly,

Thanks for speaking with me yesterday about the gaming commission grant funding and the associated marketing videos you are looking to produce. To recap our conversation, you're looking to produce a series of short videos that focus on "West Springfield, a Great Place to Live, Work and Play".

Each video segment would be approximately 1.5 to 3 minutes in length on topics like:

- What goes on in Town Hall
- Community Groups in Town
- Why Businesses call West Springfield home
- West Springfield Schools
- Great places to eat in West Springfield
- Fun things to do in West Springfield
- West Springfield Police and Fire Departments
- West Springfield Parks and Rec Department
- Other topics to be determined

Each segment will share a common open and close to provide a uniform look.

The segments will feature individuals (appropriate to the topic) who will appear on camera as well as in voice over, to provide the overall narrative. Cover footage (b-roll) that supports the narrative will be filmed as available.

Once filming is complete, we will edit the on-camera comments to create a program narrative that will be submitted for approval.

Once the narrative has been approved, we will finish the segment, adding b-roll cover shots, on-screen titles and other text identifiers as needed, and music.

As the specific content has not yet been identified, I'd like to provide a-la-carte pricing that includes the following:

<b>Pre-Production:</b> <ul style="list-style-type: none"> <li>• Work with you to identify segment topic.</li> <li>• Develop script/outline of video content to be filmed, individuals, and locations.</li> <li>• Review existing photos or video that can be used.</li> <li>• Scheduling of interviews, b-roll, and locations to be filmed.</li> </ul>	\$150/segment
<b>Production:</b> <ul style="list-style-type: none"> <li>• Full Production days are defined as up to 8hrs, door-to-door of HD video production. This includes travel, crew, with up to 3 cameras, sound, lighting and all associated equipment. Aerial drone filming is included (weather and FAA rules permitting).</li> <li>• Half Production days include the same as above, up to 4hrs.</li> </ul> <p><i>*The number of full and half days needed will vary depending on the logistics of each segment, such as travel time, the number of interviews, and locations.</i></p>	<p>\$1,500.00*/ full day</p> <p>\$1,000.00*/ half day</p>
<b>Post-Production: Common Open &amp; Close</b> <ul style="list-style-type: none"> <li>• One-time fee to create program open and close, includes 2D-motion graphics as well as royalty-free music fees and music search.</li> </ul>	\$650.00
<b>Post-Production: Individual Segments</b> <ul style="list-style-type: none"> <li>• Additional Royalty-free music fees and music search.</li> <li>• Preliminary edit of all sound bites to create overall narrative of approximately 1.5 to 3-minutes with up to 2-rounds of revisions.</li> <li>• Graphic services to import and prep supplied logos and on-screen bullet points or text for clarification as needed.</li> <li>• Secondary edit to add b-roll, graphics, and music to a finished video of approximately 1.5 to 3-minutes with up to 2 additional rounds of revisions</li> </ul> <p><i>*Complete segment rate is based on 1-day of production. Add \$320 (10%) to this price for each addition half day of production.</i></p>	<p>\$165.00/hr.</p> <p>\$3,200.00*/segment</p>

Based on the pricing shown, below is projected costs relative to the number of production days, associated editing, and number of segments produced.

*Note: there may be additional savings if content for more than one segment can be filmed on the same day.*

<b>Cost Per Segment:</b>	<b>1 to 4</b>	<b>5 or more - <i>Save 10%</i></b>
With 1-day of production	\$4,850.00	\$4,365.00
With 1.5-days of production	\$6,170.00	\$5,553.00
With 2-days of production	\$6,990.00	\$6,291.00

	<i>Number of segments produced</i>				
<b>Total Cost :</b>	<b>2</b>	<b>4</b>	<b>6</b>	<b>8</b>	<b>10</b>
With 1-day of production	\$9,700.00	\$19,400.00	\$26,190.00	\$34,920.00	\$43,650.00
With 1.5-days of production	\$12,340.00	\$24,680.00	\$33,318.00	\$44,424.00	\$55,530.00
With 2-days of production	\$13,980.00	\$27,960.00	\$37,746.00	\$50,328.00	\$62,910.00

In all cases the one-time post-production fee of \$650.00 to create the common open and close will be additional to the projected costs above.

As you can see, the pricing is variable depending on the number of production days and associated editing cost. For grant purposes, I suggest you use the largest projected cost to cover the largest effort.

All finished videos will be delivered electronically. No tangible media is included.

The quoted prices are firm based on the efforts described above and will not change unless the scope of the project changes. If you request any significant changes to the scope of the project, we will respond in writing with a revised quotation.

**Progress Billing:** No advance payments are necessary; however, we will invoice you as progress is made. Production costs will be invoiced as completed. Post-production services will be invoiced upon delivery of finished videos.

**Payment Terms:** Invoices are payable net 25 days from invoice date.

Carly, I hope this provides you enough information to submit your grant application. Please don't hesitate to contact me if you have any questions at all.

Thanks very much for the opportunity quote.

John Shanahan  
President  
Penfield Productions, Ltd.

**CHRIS  
TEEBO**  
FILMS

# PRODUCTION PROPOSAL

WEST SPRINGFIELD PROMOS

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DATE

13 JANUARY 2020

BY

CHRIS THIBAUT

# PROJECT OVERVIEW

## OBJECTIVE

Create a set of promotional films that not only educates the viewers on key aspects of the town, but entertains them in the process.

The film(s) should feel comparable to national competitors in regards to quality.

The work we have done with other municipalities has proven to be successful time and time again.

This is partly because we have the experience, skill, talent, equipment and resources needed to tackle large projects that can overwhelm if not properly prepared.

But the real reason our films are successful is because we actually care. We love creating things that resonate with an audience.





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# PROJECT OVERVIEW

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## STYLE & DELIVERABLES

We envision creating the promotional films with the energy of a good movie trailer. Not too long, not too short but impactful and entertaining.

### **MAIN FILM** (3-5 minutes)

This would be the "long" version that would tell West Springfield's story in a way that can be easily consumed by viewers.

### **SHORT FILMS #1-5** (around 1-2 minutes)

These would be separate films based on segments from the long version that talk a little more in depth about key talking points about West Springfield. Topics would be determined in the Pre-Production process and may include "School System", "Shopping", "Location", "Public Services", "Restaurants", etc.



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# EXAMPLES

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City of Springfield Promotional Film - [CLICK HERE](#)



Western Mass Visitor's Bureau TV Spot - [CLICK HERE](#)



Bright Nights Mini-Documentary - [CLICK HERE](#)

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# ESTIMATED COST

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## PRE-PRODUCTION

\$2,000

- Script development
- Location scouting
- Detailed shot list prep
- General Pre-Pro Producing tasks

## PRODUCTION (estimated for entire project)

\$20,000

### Crew

- Director/DP
- Producer
- Production Assistant

### Equipment

- Dual cinema camera with premium lensing
- Audio
- 1 Ton Lighting and grip trailer
- Wireless monitoring
- Dolly / tracks
- Drone services
- Studio space/time

## POST-PRODUCTION

\$18,000

- (1) "Main Film" (around 3-5 minutes)
- (5) "Short Films" (around 1-2 minutes)
- Color grading
- Visual FX services
- Music search and licensing
- Professional voice-over narration

## TOTAL

\$40,000



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# TERMS

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50% is due **before** any Pre-Production work is completed or any Production dates are reserved.

Remaining balance is due after final cut(s) are approved but **before** delivery of hi-resolution media to stations or for archival purposes.

<b>Print</b>	<b>Sign</b>	<b>Date</b>
<b>Print</b>	<b>Sign</b>	<b>Date</b>

**CHRIS  
TEEBO**  
FILMS

865 Memorial Avenue  
Suite C  
West Springfield, MA 01089

413-650-5524  
[christeebo.com](http://christeebo.com)

# **Attachment B**

## **Surrounding Community Arbitration Agreement**

COMMONWEALTH OF MASSACHUSETTS  
MASSACHUSETTS GAMING COMMISSION

SURROUNDING COMMUNITY ARBITRATION BETWEEN  
BLUE TARP reDEVELOPMENT, LLC AND MGM RESORTS INTERNATIONAL, INC.  
AND  
THE TOWN OF WEST SPRINGFIELD

REPORT AND FINAL ARBITRAL AWARD

This Report and Final Arbitral Award is filed with the Massachusetts Gaming Commission, (the "Commission"), and issued to the parties hereto, pursuant to 205 CMR 125.01(6)(c)7., as amended. The matter involved is an arbitration between Blue Tarp reDevelopment LLC and MGM Resorts International, Inc., (the "Applicant" or "MGM"), on one side, and the city known as the Town of West Springfield, Massachusetts, (the "Surrounding Community" or the "Town"), on the other.

Procedural Background

The Town was one of seven communities voluntarily designated as a "surrounding community" by MGM. The other six were Ludlow, Wilbraham, East Longmeadow, Agawam, Chicopee and Holyoke. The Town of Longmeadow, on its petition to the Commission, was similarly designated.

Being unable to reach agreement on a surrounding community agreement between them, on March 26, 2014, MGM and the Town served notice on the Commission of their intent to commence this arbitration. 205 CMR 125.01(6)(c)2., as amended. In that notice, the Commission was advised that the parties were in the process of selecting a panel of separate arbitrators, (the "Panel"), with Hon. Allan van Gestel (Ret.) to serve as the third neutral, independent arbitrator for the Panel. Shortly thereafter, MGM designated Hon. Margaret R. Hinkle (Ret.) as its neutral, independent arbitrator, and the Town designated Hon. Charles B.

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CITY OF WEST SPRINGFIELD

Swartwood, III (Ret.) as its neutral, independent arbitrator.

On March 27, 2014, MGM and the Town submitted to the Commission their best and final offers ("BAFOs") for a surrounding community agreement pursuant to G.L. c. 23K, §15(9). See 205 CMR 125.01(6)(c)3., as amended. MGM and the Town also provided the Panel with copies of their BAFOs, and other required and permitted documentation, see 205 CMR 125.01(6)(c)4., including briefing, pre-filed testimony and exhibits, which service was completed by April 16, 2014.

On April 8, 2014, counsel for MGM and the Town held a telephonic conference with Mr. van Gestel, the latter speaking for and with the permission of the other two selected arbitrators. After that conference, a Memorandum, Agreement and Order Regarding Proceedings issued on April 9, 2014. Pursuant thereto, a one-day arbitral hearing was held on April 18, 2014, at which each party utilized slightly more than three hours for their oral presentations. It is out of that arbitral process, and the Panel's deliberations thereafter, that this Report and Final Arbitral Award issues, all pursuant to G.L. c. 23K and 205 CMR 125.01(6)(c), as amended.

It should be noted that MGM, on April 3, 2014, and the Town, on April 4, 2014, filed petitions with the Commission, under 205 CMR 125.01(6)(c)6., as amended, objecting that the BAFO of the other party contains a term or terms that are fundamentally inconsistent with a provision or the purposes of G.L. c. 23K. While the Panel has reviewed those objections in the process of reaching its conclusions, it is aware that any proceedings related to resolving those petitions are to be addressed by the Commission and are not subject to review or report by the Panel. See 205 CMR 125.01(6)(c)6. and 7., as amended.

### Discussion and Report

The parties each requested a hearing to present their respective evidence and arguments. Consequently, as noted, a hearing was held on April 18, 2014.<sup>1</sup> At that hearing, in addition to the documentation previously filed, the parties presented witnesses, oral arguments, comments, and pictorial slides, charts and exhibits, reflecting their respective positions with regard to their own BAFO and that of the other side.

It is required that the BAFOs submitted “shall be in the form of an executable surrounding community agreement.” 205 CMR 125.01(6)(c)3., as amended. The Panel finds that each of the two BAFOs considered in this matter meet that requirement.

Both MGM and the Town have submitted petitions to the Commission with regard to the other’s BAFO, claiming that it contains items that are inconsistent with or contrary to the provisions of G.L. c. 23K. As noted above, it is for the Commission, not this Panel, to resolve those issues. That, however, was not seen as preventing this Panel from looking at and considering, without commenting on, the nature of the objections. Having done so, the Panel concludes that each BAFO could benefit from some modifications. But for this Panel to make, or even suggest what they might be, is beyond our jurisdiction under the amended binding arbitration procedure in 250 CMR 125.01(6)(c).

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

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<sup>1</sup> The panel was assisted in its process by its review of G.L. c. 23K, 205 CMR 125.01(6)(c), as amended, and the Handbook for Binding Arbitration Between an Applicant for a Gaming Establishment License and a Surrounding Community to Reach a Surrounding Community Agreement (December 19, 2013).

125.01(6)(c)7., as amended. This is what is often referred to as “baseball arbitration” where each party presents its proposed best offer – here the BAFOs – and, after a hearing, the arbitral Panel must choose one BAFO, without modification. This form of arbitration limits the Panel’s discretion in arriving at its decision. In fact, the governing rules leave no option or availability for the arbitrators to make any adjustments to the selected best and final offer, even if necessary to ensure that this report is consistent with G.L. c. 23K. The recent amendment to the Binding Arbitration Procedure rules struck that power from the original version of 205 CMR 125.01(6)(c)3. and added new subsections 6. - 12. to the amended version of these rules.

In making this report and conducting this arbitration, the Panel has kept in mind the goal that it is to arrive at a fair and reasonable agreement between the applicant and the surrounding community.

Further, the Panel is bound and controlled by the definition of surrounding communities in the Gaming Act, G.L. c. 23K, §2, which reads:

“‘Surrounding communities’, municipalities in proximity to a host community which the commission determines experience or are likely to experience impacts from the development or operation of a gaming establishment, including municipalities from which the transportation infrastructure provides ready access to an existing or proposed gaming establishment.”

In the process, the Panel considered and weighed, from all the materials presented, the 12 specific factors listed in the Commission’s Handbook for Binding Arbitration Between an Applicant for a Gaming Establishment License and a Surrounding Community to Reach a Surrounding Community Agreement (December 19, 2013), at pp. 7 and 8.

To this Panel, the most convincing factors in making its ultimate award are that the Town’s BAFO appears more fair and reasonable than that of MGM, and the proposed payments

appear to be lower than the actual costs the Town will incur in responding to its likely impacts from the MGM project.

One of the features of both BAFOs is the one-year and five-year look-back provisions. On their face, they suggest a possible way of avoiding having to estimate up front what might happen in the future and instead rely on what actually occurs. The look-back provisions may not be the panacea for which they are touted. They have a tendency to shift the burden of proof and the burden of response from the applicant to the surrounding community. They put the surrounding community in the position of having to front-end studies and costs of repairs and additions to its infrastructure and incur costly additional police and fire protection. Then the Town must demonstrate – and in the process amass the necessary evidence, an expensive process in its own right – that the amounts it spent were necessary and directly caused by the introduction of the gaming establishment. By definition, the Town, as a surrounding community, is presumed to “experience or [is] likely to experience impacts from the development of” MGM’s gaming establishment.

In making its selection, the Panel has reviewed the six surrounding community agreements already signed between MGM and Agawam, Chicopee, East Longmeadow, Holyoke, Ludlow and Wilbraham. It also has examined the competing BAFOs involved in the pending Longmeadow arbitration. The Panel concludes that three particular factors make the Town of West Springfield different from the rest.

First, the Pioneer Valley Planning Commission’s traffic engineering firm, GPI, has concluded that “[o]f all of those communities considered in this review process the Town of West Springfield is considered the most heavily impacted in relation to traffic.” The Panel observes, as

do some of the experts, that the Town's roads are not currently adequate to absorb the increased traffic flows as a result of the casino's location.

Second, the Town is by far the closest geographically to the site of the MGM project. It is within plain view and 800 yards walking distance across a bridge from the MGM site. This leads to the Town's neighborhoods of Merrick and Memorial, which are its lowest rent and lowest cost areas. The Panel concludes that this proximity is likely to cause public safety issues, including increased crime.

Third, the Panel concludes, as do some of the experts, that smaller and less affluent communities generally are more affected by the kind of adverse impacts a project of this sort presents.

In addition, the Panel finds that the reimbursement dollar amounts proposed for the Town in MGM's BAFO are considerably lower than those appearing in other surrounding community agreements in the Commonwealth, including those impacted by the slots-only project at Raynham Park.

Still further, the Panel is aware that MGM voluntarily designated the Town as a surrounding community to its proposed gaming establishment. This designation carries with it the presumptions that the Town's infrastructure will be significantly and adversely affected by the gaming establishment, will also be significantly and adversely affected by the development of the gaming establishment before its opening, will be significantly and adversely affected by the operation of the gaming establishment after its opening, and will be significantly and adversely affected by any other relevant potential impacts. See 205 CMR 125.01(2)(b)1., 2., 3., 4. and 5.




Final Award

After deliberation, this Panel unanimously selects the Best and Final Offer of the Town of West Springfield, which BAFO is attached to this Report and Final Award as Exhibit A, and its terms are hereby incorporated by reference in and made a part of this Report as required by 205 CMR 125.01(6)(c)7., as amended.

By the Arbitral Panel:

  
Allan van Gestel

  
Margaret R. Winkle

  
Charles B. Swartwood, III

Dated: April 24, 2014

Exhibit A

## SURROUNDING COMMUNITY AGREEMENT

This surrounding community agreement (this "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2014 (the "Effective Date") by and between Blue Tarp reDevelopment, LLC ("MGM"), a Massachusetts limited liability company, with an office address of 1441 Main Street, Suite 1137, Springfield, MA, owner and developer of the MGM Springfield project in Springfield, Massachusetts and West Springfield, Massachusetts (the "Community", the "Town" or "West Springfield"), a municipality in the Commonwealth of Massachusetts (MGM and the Community hereinafter collectively the "Parties" or individually a "Party").

### RECITALS

WHEREAS MGM is an affiliate of MGM Resorts International (NYSE: MGM) ("MGM Resorts").

WHEREAS, the MGM Springfield project is a destination casino resort planned for downtown Springfield, Massachusetts expected to cost approximately \$800 million and include 1,000,000 square feet (the "Project"). When constructed, it is anticipated to be the largest private development in Western Massachusetts history. The Project is anticipated to have 250 hotel guest rooms, a 125,000 square foot casino, 54 market rate apartments, a 15-lane bowling alley, a 12-screen luxury movie theatre, an outdoor park and seasonal skating rink, and dozens of shops and restaurants, in addition to large open outdoor public spaces.

WHEREAS, the Project is anticipated to employ 2,000 construction workers and, upon completion, 3,000 permanent workers.

WHEREAS, MGM has submitted RFA-1 and RFA-2 applications under Chapter 23k (the "Gaming Act") to the Massachusetts Gaming Commission (the "Commission"), seeking approval to proceed with an application for Issuance of the sole Western Massachusetts gaming license (the "Gaming License").

WHEREAS, the Gaming Act provides a mechanism by which communities, other than the host community, that are proximate to the Project and are expected to be significantly and adversely impacted by the Project, have an opportunity to mitigate such adverse impacts on their respective communities through designation as a "Surrounding Community".

WHEREAS, pursuant to 205 CMR 125.00 (the "Surrounding Community Regulation"), MGM has designated West Springfield as a Surrounding Community, thereby recognizing that the West Springfield will experience significant adverse impacts as a result of the Project...

### AGREEMENT

NOW THEREFORE, for valuable consideration, the sufficiency and receipt of which are hereby acknowledged by the Parties, and in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Upfront Payment of \$665,000 for a Community Grant plus Reimbursement of Consulting and Legal Fees. Within thirty (30) days of the Commission's award of the Gaming License to MGM, MGM shall pay to the Community Six Hundred and Sixty-Five Thousand Dollars (\$665,000.00), representing the design and permitting costs (but not the construction costs) for reconstruction of Memorial Avenue in West Springfield. In addition, within thirty (30) days of the effective date of this agreement, MGM shall reimburse the Town for the actual expenses incurred by the Town for the payment of any consultants or legal advisors, whether internal or external (collectively, its "Advisors" or "the Community's Advisors") providing services related to or in any way arising from the Community's review of the Project ("Project Review"), including without limitation participation in the arbitration proceeding giving rise to this agreement. MGM's payment for Project Review fees shall be reduced by the amount of any previous grants to the Town for this purpose.

2. Guaranteed Minimum Annual Payments. The Parties agree that, commencing with the opening of the Project to the public (i.e., the date on which MGM begins to collect revenue under the terms of the Gaming License) (the "Grand Opening") and for each year following the Grand Opening through the expiration of MGM's initial gaming license and any extensions thereof (the "Term"), MGM shall pay to the Community: (i) Three Hundred and Seventy-Five Thousand Dollars annually (\$375,000.00) (the "Annual Mitigation Payment"); and (ii) a total of Seven Hundred and Fifty Thousand Dollars (\$750,000.00) in annual payments pursuant to the schedule further detailed below which are acknowledged to be reimbursement of expenses for participation in the Look Back Studies, as defined below (the "Annual Study Cost Reimbursement"). The Annual Study Cost Reimbursement shall be paid as follows: (i) Fifty Thousand Dollars (\$50,000.00) in the first year following the Grand Opening; (ii) One Hundred Thousand Dollars (\$100,000.00) in the second year following the Grand Opening; (iii) Fifty Thousand Dollars (\$50,000.00) in each of the third through fifth years following the Grand Opening; (iv) One Hundred Thousand Dollars (\$100,000.00) in the sixth year following the Grand Opening; and (v) Fifty Thousand Dollars (\$50,000.00) in the seventh through thirteenth years following the Grand Opening. The Parties acknowledge that the Community shall be free to direct the Annual Mitigation Payment and Annual Study Cost Reimbursement (together, the "Annual Payments") to any uses it deems appropriate and shall not be restricted to use the funds for any purpose set forth herein. The Annual Payments shall be made within ninety (90) days of the Grand Opening, and on each twelve month anniversary, as long as such payments are due hereunder, and shall be adjusted annually by the CPI Adjustment Factor applied to host community impact fee payments, as defined in §1(gg) of and as set forth in Exhibit A to the Host Community Agreement between MGM and the City of Springfield.

3. Baseline Study of Surrounding Community Conditions. MGM shall, at its own expense, engage a neutral, qualified and independent third party (the "Third Party") to perform a comprehensive study (the "Initial Study") of the current conditions existing in the Community pursuant to the study scope and other requirements set forth on Exhibit A (the "Study Scope"). MGM shall make clear to the Third Party that MGM is not the client of the Third Party and that the obligations of the Third Party are to impartially and fully evaluate all matters within the Study Scope. MGM shall request that the Third Party commence the Initial Study no later than sixty (60) days after the issuance of the Gaming License to MGM and complete the Initial Study within ninety (90) days of commencing the Initial Study (the "Initial Study Period"). The Community shall cooperate with all of the Third Party's reasonable requests for information in connection with the Initial Study, including but not limited to providing the Third Party with documentation, data and access to relevant municipal personnel.

MGM shall not be entitled to review and comment on any drafts of the written report(s) to be produced by the Third Party prior to such drafts being provided to the Community. The Community shall have the opportunity to review and comment upon any report(s) of the Third Party prior to it being finalized.

4. Retroactive "Look Back" Studies.

(a) The 1<sup>st</sup> Year Look Back Study. MGM shall, at its own expense, engage the Third Party to conduct an additional study fifteen (15) months following the Grand Opening (the "1<sup>st</sup> Year Look Back Study"). The 1<sup>st</sup> Year Look Back Study will be based on data collected by the Third Party within the Study Scope from the first twelve (12) months following the Grand Opening (the "Initial Look Back Period"). The 1<sup>st</sup> Year Look Back Study will analyze the areas within the Study Scope to determine the dollar value of any significant and adverse impact the Community has experienced during the Initial Look Back Period. The results of the 1<sup>st</sup> Year Look Back Study will be set forth by the [TBD 3d Party] in a report setting forth [TBD 3d Party]'s findings (the "1<sup>st</sup> Year Study Report").

MGM shall not be entitled to review and comment on any drafts of the written report(s) to be produced by the Third Party prior to such drafts being provided to the Community. Prior to issuance of the 1<sup>st</sup> Year Study Report, however, the Parties agree that the Third Party shall first provide to each of the Parties a draft of its report, and provide each of the Parties thirty (30) days to review and provide comments to the report (respectively, "Community's 1<sup>st</sup> Year Study Comments" and "MGM's 1<sup>st</sup> Year Study Comments", collectively the "1<sup>st</sup> Year Study Comments"). Within thirty (30) days following the expiration of that review period and receipt

of the 1<sup>st</sup> Year Study Comments, if any, the Third Party will issue to the Parties its 1<sup>st</sup> Year Study Report.

(b) The 5<sup>th</sup> Year Look Back Study. MGM further shall, at its own expense, engage the Third Party to conduct an additional study five (5) years and three (3) months following the Grand Opening (the "5<sup>th</sup> Year Look Back Study"). The 5<sup>th</sup> Year Look Back Study will be based on data collected by the Third Party within the Study Scope from the five (5) year period following the Grand Opening (the "Full Look Back Period"). The 5<sup>th</sup> Year Look Back Study will analyze the areas within the Study Scope to determine the dollar value of any significant and adverse impact the Community has experienced during the Full Look Back Period. The results of the 5<sup>th</sup> Year Look Back Study will be set forth by the [TBD 3d Party] in a report setting forth the Third Party's findings (the "5<sup>th</sup> Year Study Report"). Prior to issuance of the 5<sup>th</sup> Year Study Report, however, the Parties agree that the Third Party shall first provide to each of the Parties a draft of its report, and provide each of the Parties thirty (30) days to review and provide comments to the report (respectively, "Community's 5<sup>th</sup> Year Study Comments" and "MGM's 5<sup>th</sup> Year Study Comments", collectively the "5<sup>th</sup> Year Study Comments"). Within thirty (30) days following the expiration of that review period and receipt of the Parties' 5<sup>th</sup> Year Study Comments, if any, the Third Party will issue to the Parties its 5<sup>th</sup> Year Study Report.

5. The Third Party Role. The Parties agree that notwithstanding MGM's agreement to fund the Third Party for the Initial Study, the 1<sup>st</sup> Year Look Back Study, and the 5<sup>th</sup> Year Look Back Study, the Third Party shall conduct such studies independently pursuant to this Agreement. MGM shall select the Third Party in good faith, in consultation with the Community and upon mutual agreement of MGM, on the one hand, and a majority of the Abutters (as defined in Section 8 below). The Parties agree that the Third Party should be neutral and independent and qualified in the area of economic development and impacts thereof (both positive and adverse), including traffic, land use, public safety, business impacts, social impacts and any other matters within the Study Scope. In the reasonable discretion of the Third Party, the Third Party may subcontract with other experts and/or consultants as reasonably necessary to ensure the breadth of expertise necessary and appropriate to study the full range of potential impacts on the Community. The Community shall have full and unfettered access to the Third Party throughout the course of its engagement.

6. Determination of Net Adverse Impact Amounts.

(a) Year One Net Adverse Impact Amount. Upon issuance of the 1<sup>st</sup> Year Study Report, the Parties will work in good faith to mutually agree upon the dollar value of the net significant and adverse impact on the Community, if any, based on the 1<sup>st</sup> Year Study Report (the "Year One Net Adverse Impact Amount"). If the Parties cannot agree on the Year One Net Adverse

Impact Amount, then, no later than the forty-fifth (45<sup>th</sup>) day following the issuance of the 1<sup>st</sup> Year Study Report, the Community shall present to MGM a written offer setting forth the amount proposed to be the Year One Net Adverse Impact Amount and the reasons supporting such offer (the "Community's Year One Offer"). Within fifteen (15) days of receipt of that offer, MGM shall either (i) accept the Community's Year One Offer as the Year One Net Adverse Impact Amount, in which case such offer shall become the Year One Net Adverse Impact Amount or (ii) present a written counter offer proposed to be the Year One Net Adverse Impact Amount and the reasons supporting such offer ("MGM's Year One Counter Offer"). Upon receipt of MGM's Year One Counter Offer, the Community will have fifteen (15) days within which to accept or reject it. If the Community accepts MGM's Year One Counter Offer, such counter offer shall become the Year One Net Adverse Impact Amount. If the Community rejects MGM's Year One Counter Offer, the Parties shall follow the arbitration procedure set forth in subsection 6(c) below.

(b) Year Five Net Adverse Impact Amount. Upon Issuance of the 5<sup>th</sup> Year Study Report, the Parties will work in good faith to mutually agree upon the dollar value of the net significant and adverse impact on the Community, if any, based on the 5<sup>th</sup> Year Study Report (the "Year Five Net Adverse Impact Amount"). If the Parties cannot agree on the Year Five Net Adverse Impact Amount, then, no later than the forty-fifth (45<sup>th</sup>) day following the issuance of the 5<sup>th</sup> Year Study Report, the Community shall present to MGM a written offer setting forth the amount proposed to be the Year Five Net Adverse Impact Amount and the reasons supporting such offer (the "Community's Year Five Offer"). Within fifteen (15) days of receipt of that offer, MGM shall either (i) accept the Community's Year Five Offer as the Year Five Net Adverse Impact Amount, in which case such offer shall become the Year Five Net Adverse Impact Amount or (ii) present a written counter offer proposed to be the Year Five Net Adverse Impact Amount and the reasons supporting such offer ("MGM's Year Five Counter Offer"). Upon receipt of MGM's Year Five Counter Offer, the Community will have fifteen (15) days within which to accept or reject it. If the Community accepts MGM's Year Five Counter Offer, such counter offer shall become the Year Five Net Adverse Impact Amount. If the Community rejects MGM's Year Five Counter Offer, the Parties shall follow the arbitration procedure set forth in subsection 6(c) below.

(c) Arbitration of Net Adverse Impact Amounts. The Parties agree that to the extent they are not able to agree upon the Year One Net Adverse Impact Amount or the Year Five Net Adverse Impact Amount (collectively, the "Net Adverse Impact Amounts"), the Net Adverse Impact Amounts shall be determined by an arbitration hearing held in Hampden County, Massachusetts. Said arbitration shall be conducted by a three person panel (unless the parties agree on the identity of a single arbitrator), with each Party choosing one member of the arbitration panel, and each of those selections agreeing on the third member. Each party shall

notify the other party of its choice of arbitrator within thirty (30) days following the rejection of MGM's Year One Counter Offer or Year Five Counter Offer, as the case may be. With respect to the Year One Adverse Impact Amount, the arbitrator shall select either the Community's Year One Offer or MGM's Year One Counter Offer, unless either party chooses to make a last and best offer prior to the conclusion of the Arbitration proceedings, in which case the other party shall have the right to make its own last and best offer prior to the arbitrator rendering its decision. With respect to the Year Five Net Adverse Impact Amount, the arbitration panel shall select either the Community's Year Five Offer or MGM's Year Five Counter Offer, unless either party chooses to make a last and best offer prior to the conclusion of the Arbitration proceedings, in which case the other party shall have the right to make its own last and best offer prior to the arbitrator rendering its decision. The arbitration shall be subject to the rules of the American Arbitration Association. Each Party shall bear its own costs of the arbitration, except that the fees of the arbitrators shall be borne by MGM. The Parties agree that the decision of the arbitration panel, which shall be rendered within thirty (30) days of the date of the arbitration hearing, shall be final, binding and non-appealable.



7. Payment of Net Adverse Impact Amounts.

(a) Priority of Reimbursement Obligations. The Parties hereby agree that the Community shall look exclusively to the Annual Mitigation Payment for satisfaction of the first Three Hundred and Seventy-Five Thousand Dollars (\$375,000.00) of the Net Adverse Impact Amounts. The Parties further agree that the Community shall next exercise good faith efforts to secure state funding for any remaining Net Adverse Impact Amounts through the Community Mitigation Fund established by M.G.L. c. 23k, §61, as applicable (the "State Mitigation Fund"). To the extent that any Net Adverse Impact Amounts remain unfunded after application of the Annual Mitigation Payment and any funding received from the State Mitigation Fund, MGM agrees to pay the balance to the Community as set forth below. To the extent that the Community receives funding from one of the State Mitigation Fund after MGM has paid any Net Adverse Impact Amount beyond the Annual Mitigation Payment, MGM shall be entitled to a credit toward any future Net Adverse Impact Amount payment obligations in excess of its Annual Mitigation Payment obligation.

(b) Payment of Year One Net Adverse Impact Amount. MGM shall pay the unfunded Year One Net Adverse Impact Amount, if any, in excess of the Annual Mitigation Payment and any funding the Community has received from the State Mitigation Fund, within thirty (30) days of the determination of said amount pursuant to Section 6 above and, to the extent that such amount is deemed to be an annual obligation, shall continue to make such payment annually thereafter until the determination of the Year Five Net Adverse Impact Amount. The Parties further acknowledge that if the 1<sup>st</sup> Year Look Back Study demonstrates a net positive impact, or the Year One Net Adverse Impact Amount is determined to be less than the Annual Mitigation Payment plus any funding the Community has received from the State Mitigation Fund, MGM shall have no further monetary obligations to the Community beyond the Annual Payments during the period up to the determination of the Year Five Net Adverse Impact Amount.

(c) Payment of Year Five Net Adverse Impact Amount. MGM shall pay the unfunded Year Five Net Adverse Impact Amount, if any, in excess of the Annual Mitigation Payment and any funding the Community has received from the State Mitigation Fund, within thirty (30) days of the determination of said amount pursuant to Section 6 above and, to the extent that such amount is deemed to be an annual obligation, shall continue to make such payment annually thereafter through the remainder of the Term. The Parties further acknowledge that if the 5<sup>th</sup> Year Look Back Study demonstrates a net positive impact, or the Year Five Net Adverse Impact Amount is determined to be less than the Annual Mitigation Payment plus any funding the Community has received from the State Mitigation Fund, MGM shall have no further monetary obligations to the Community beyond the Annual Payments, except in the event this agreement is reopened in accordance with 205 CMR 127.

8. Assignment. This Agreement may not be assigned or transferred by either Party without the prior written consent of the other Party; provided, however: (i) MGM may assign this Agreement to an acquirer of all, or substantially all, of its assets or equity interests; and (ii) MGM may assign this Agreement to any affiliate so long as such assignment does not relieve MGM of any obligation hereunder.

9. Term and Termination. This Agreement shall continue for the Term as defined above or until terminated by the mutual written agreement of all of the Parties. The Parties agree that their respective obligations and commitments hereunder are subject to such Party's compliance with the terms and conditions of this Agreement, and that in the event such Party materially breaches such obligations, the non-breaching Party shall have the right to terminate this Agreement. Upon written notice to the Community, MGM shall have the right to terminate (with or without cause) on the date on which (i) MGM provides notice to Community that it is no longer eligible to receive or continue to pursue a Gaming License; or (ii) following the approval of MGM for a Gaming License, such Gaming License is no longer effective. Such termination shall not relieve MGM of the obligation to reimburse the Community for any consultant fees incurred prior thereto or for any other payment obligations that have arisen prior thereto.

10. Entire Agreement. This Agreement contains all of the terms, promises, conditions and representations, made or entered into by and among the Parties, supersedes all prior discussions, agreements and memos, whether written or oral between and among the Parties, and constitutes the entire understanding of the Parties and shall be subject to modification or change only in writing and signed by all Parties.

11. Compliance with Laws. The Parties shall perform all of their respective obligations under the Agreement in compliance with all applicable laws, ordinances, regulations, or codes. This Agreement shall be governed by, and construed according to, the laws of the Commonwealth of Massachusetts, without regard to any choice of law provisions thereof which would require application of the laws of another jurisdiction.

12. Execution in Counterparts. This Agreement may be signed upon any number of counterparts with the same effect as if the signatures on all counterparts are upon the same instrument.

13. Severability; Captions. In the event that any clause or provision of this Agreement should be held to be void, voidable, illegal, or unenforceable, the remaining portions of this Agreement shall remain in full force and effect. Headings or captions in this Agreement are added as a matter of convenience only and in no way define, limit or otherwise affect the construction or interpretation of this Agreement.

14. Interpretation. This Agreement shall be given a fair and reasonable interpretation of the words contained in it without any weight being given to whether a provision was drafted by one Party or its counsel.

15. Authority. Each Party represents and warrants to the other Parties that it has full power and authority to make this Agreement and to perform its obligations hereunder and that the person signing this Agreement on its behalf has the authority to sign and to bind that Party.

**ACKNOWLEDGED AND AGREED TO BY:**

**Community:**

**MGM:**

TOWN OF WEST SPRINGFIELD

BLUE TARP reDEVELOPMENT, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

## **EXHIBIT "A"**

### **A. Study Scope**

Each of the Initial Study, 1<sup>st</sup> Year Look Back Study, and 5<sup>th</sup> Year Look Back Study (the "Studies") shall assess the dollar value of any significant and adverse impact of the Project on a Surrounding Community, after offsetting for the dollar value of any positive impacts of the Project on such community. In determining such assessment the Studies shall consider the following:

#### **1. Potential Areas of Adverse Impact**

- a. Construction Impacts, including without limitation heavy truck travel through West Springfield, code enforcement and other public safety expenses resulting from new or temporary residence in the Town by construction-related employees; noise, dust and other environmental impacts resulting from construction of the Project.
- b. Net Substitution of Existing Commercial/Retail Activity
- c. Traffic Improvement Needs Reasonably Related to Travel to and from the Project Site based upon traffic analysis conducted by, or at the direction of, the Pioneer Valley Planning Commission (PVPC), similar in scope and process as that conducted by PVPC
- d. Utility Infrastructure Needs Reasonably Related to the Project
- e. Crime Rates and Public Safety
- f. Residential Real Estate Values
- g. Public Education
- h. Public Health, including but not limited to addiction
- i. Additional Municipal Administrative Burdens, including but not limited to code enforcement.

#### **2. Potential Areas of Positive Impact and Mitigation**

- a. Increase in municipal revenue resulting from additional Commercial/Retail Activity
- b. Increase in municipal revenue resulting Tourism and Community Business Development
- c. Increase in municipal revenue resulting Local Vendor/Supplier Spending in the Community
- d. Improved traffic and infrastructure directly attributable to MGM or MGM Tax Revenues Pursuant to M.G.L. c. 23k to the extent that such amounts are not in place of other state funding currently received by the Community as of the date of this Agreement;
- e. Crime Rates and Public Safety

- f. Increase in municipal revenue resulting from increased Residential Real Estate Values
- g. Receipt of MGM Tax Revenues Pursuant to M.G.L. c. 23k or any other third party funding, whether private or public, state or federal, which otherwise offsets or mitigates or is available to mitigate the specific potential adverse impact to the extent that such amounts are not in place of other state funding currently received by the Community as of the date of this Agreement ("Other Mitigation Funding");
- h. Increase in municipal revenue resulting from employment of Residents



THE RESOLUTION EXPERTS®

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Town of West Springfield / Blue Tarp reDevelopment LLC, et al.  
Reference No. 1400014869

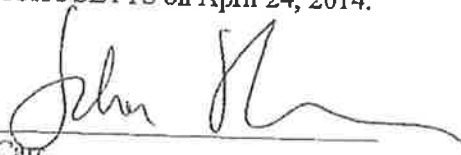
I, John J. Carr, not a party to the within action, hereby declare that on April 24, 2014 I served the attached Report and Final Arbitral Award on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at Boston, MASSACHUSETTS, addressed as follows:

Seth Stratton Esq.  
Fitzgerald Attorneys at Law  
One Monarch Place, Ste. 1440  
Springfield, MA 01144  
Tel: 413-486-1110  
Email: sns@fitzgeraldatlaw.com  
Parties Represented:  
Blue Tarp reDevelopment LLC  
MGM Resorts International

Jonathan Silverstein Esq.  
Kopelman & Paige, PC  
101 Arch St.  
Boston, MA 02110  
Tel: 617-556-0007  
Email: jsilverstein@k-plaw.com  
Parties Represented:  
Town of West Springfield

Jed Nosal Esq.  
Brown Rudnick LLP  
One Financial Center  
Boston, MA 02111  
Tel: 617-856-8272  
Email: jnosal@brownrudnick.com  
Parties Represented:  
MGM Grand, Inc.

I declare under penalty of perjury the foregoing to be true and correct. Executed at Boston,  
MASSACHUSETTS on April 24, 2014.

  
\_\_\_\_\_  
John J. Carr  
jcarr@jamsadr.com

# **Attachment C**

## **Surrounding Community Agreement**

## **SURROUNDING COMMUNITY AGREEMENT**

This surrounding community agreement (this "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2014 (the "Effective Date") by and between Blue Tarp reDevelopment, LLC ("MGM"), a Massachusetts limited liability company, with an office address of 1441 Main Street, Suite 1137, Springfield, MA, owner and developer of the MGM Springfield project in Springfield, Massachusetts and West Springfield, Massachusetts (the "Community", the "Town" or "West Springfield"), a municipality in the Commonwealth of Massachusetts (MGM and the Community hereinafter collectively the "Parties" or individually a "Party").

### **RECITALS**

WHEREAS MGM is an affiliate of MGM Resorts International (NYSE: MGM) ("MGM Resorts").

WHEREAS, the MGM Springfield project is a destination casino resort planned for downtown Springfield, Massachusetts expected to cost approximately \$800 million and include 1,000,000 square feet (the "Project"). When constructed, it is anticipated to be the largest private development in Western Massachusetts history. The Project is anticipated to have 250 hotel guest rooms, a 125,000 square foot casino, 54 market rate apartments, a 15-lane bowling alley, a 12-screen luxury movie theatre, an outdoor park and seasonal skating rink, and dozens of shops and restaurants, in addition to large open outdoor public spaces.

WHEREAS, the Project is anticipated to employ 2,000 construction workers and, upon completion, 3,000 permanent workers.

WHEREAS, MGM has submitted RFA-1 and RFA-2 applications under Chapter 23k (the "Gaming Act") to the Massachusetts Gaming Commission (the "Commission"), seeking approval to proceed with an application for issuance of the sole Western Massachusetts gaming license (the "Gaming License").

WHEREAS, the Gaming Act provides a mechanism by which communities, other than the host community, that are proximate to the Project and are expected to be significantly and adversely impacted by the Project, have an opportunity to mitigate such adverse impacts on their respective communities through designation as a "Surrounding Community".

WHEREAS, pursuant to 205 CMR 125.00 (the "Surrounding Community Regulation"), MGM has designated West Springfield as a Surrounding Community, thereby recognizing that the West Springfield will experience significant adverse impacts as a result of the Project...



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2. Guaranteed Minimum Annual Payments. The Parties agree that, commencing with the opening of the Project to the public (i.e., the date on which MGM begins to collect revenue under the terms of the Gaming License) (the "Grand Opening") and for each year following the Grand Opening through the expiration of MGM's initial gaming license and any extensions thereof (the "Term"), MGM shall pay to the Community: (i) Three Hundred and Seventy-Five Thousand Dollars annually (\$375,000.00) (the "Annual Mitigation Payment"); and (ii) a total of Seven Hundred and Fifty Thousand Dollars (\$750,000.00) in annual payments pursuant to the schedule further detailed below which are acknowledged to be reimbursement of expenses for participation in the Look Back Studies, as defined below (the "Annual Study Cost Reimbursement"). The Annual Study Cost Reimbursement shall be paid as follows: (i) Fifty Thousand Dollars (\$50,000.00) in the first year following the Grand Opening; (ii) One Hundred Thousand Dollars (\$100,000.00) in the second year following the Grand Opening; (iii) Fifty Thousand Dollars (\$50,000.00) in each of the third through fifth years following the Grand Opening; (iv) One Hundred Thousand Dollars (\$100,000.00) in the sixth year following the Grand Opening; and (v) Fifty Thousand Dollars (\$50,000.00) in the seventh through thirteenth years following the Grand Opening. The Annual Mitigation Payment and Annual Study Cost Reimbursement (together, the "Annual Payments") shall be made within ninety (90) days of the Grand Opening, and on each twelve month anniversary, as long as such payments are due hereunder, and shall be adjusted annually by the CPI Adjustment Factor applied to host community impact fee payments, as defined in §1(gg) of and as set forth in Exhibit A to the Host Community Agreement between MGM and the City of Springfield.

3. Baseline Study of Surrounding Community Conditions. MGM shall, at its own expense, engage a neutral, qualified and independent third party (the "Third Party") to perform a comprehensive study (the "Initial Study") of the current conditions existing in the Community pursuant to the study scope and other requirements set forth on Exhibit A (the "Study Scope"). MGM shall make clear to the Third Party that MGM is not the client of the Third Party and that the obligations of the Third Party are to impartially and fully evaluate all matters within the Study Scope. MGM shall request that the Third Party commence the Initial Study no later than sixty (60) days after the issuance of the Gaming License to MGM and complete the Initial Study within ninety (90) days of commencing the Initial Study (the "Initial Study Period"). The Community shall cooperate with all of the Third Party's reasonable requests for information in connection with the Initial Study, including but not limited to providing the Third Party with documentation, data and access to relevant municipal personnel.

MGM shall not be entitled to review and comment on any drafts of the written report(s) to be produced by the Third Party prior to such drafts being provided to the Community. The Community shall have the opportunity to review and comment upon any report(s) of the Third Party prior to it being finalized.

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MGM shall not be entitled to review and comment on any drafts of the written report(s) to be produced by the Third Party prior to such drafts being provided to the Community. Prior to issuance of the 1<sup>st</sup> Year Study Report, however, the Parties agree that the Third Party shall first provide to each of the Parties a draft of its report, and provide each of the Parties thirty (30) days to review and provide comments to the report (respectively, "Community's 1<sup>st</sup> Year Study Comments" and "MGM's 1<sup>st</sup> Year Study Comments", collectively the "1<sup>st</sup> Year Study Comments"). Within thirty (30) days following the expiration of that review period and receipt

of the 1<sup>st</sup> Year Study Comments, if any, the Third Party will issue to the Parties its 1<sup>st</sup> Year Study Report.

(b) The 5<sup>th</sup> Year Look Back Study. MGM further shall, at its own expense, engage the Third Party to conduct an additional study five (5) years and three (3) months following the Grand Opening (the "5<sup>th</sup> Year Look Back Study"). The 5<sup>th</sup> Year Look Back Study will be based on data collected by the Third Party within the Study Scope from the five (5) year period following the Grand Opening (the "Full Look Back Period"). The 5<sup>th</sup> Year Look Back Study will analyze the areas within the Study Scope to determine the dollar value of any significant and adverse impact the Community has experienced during the Full Look Back Period. The results of the 5<sup>th</sup> Year Look Back Study will be set forth by the [TBD 3d Party] in a report setting forth the Third Party's findings (the "5<sup>th</sup> Year Study Report"). Prior to issuance of the 5<sup>th</sup> Year Study Report, however, the Parties agree that the Third Party shall first provide to each of the Parties a draft of its report, and provide each of the Parties thirty (30) days to review and provide comments to the report (respectively, "Community's 5<sup>th</sup> Year Study Comments" and "MGM's 5<sup>th</sup> Year Study Comments", collectively the "5<sup>th</sup> Year Study Comments"). Within thirty (30) days following the expiration of that review period and receipt of the Parties' 5<sup>th</sup> Year Study Comments, if any, the Third Party will issue to the Parties its 5<sup>th</sup> Year Study Report.

5. The Third Party Role. The Parties agree that notwithstanding MGM's agreement to fund the Third Party for the Initial Study, the 1<sup>st</sup> Year Look Back Study, and the 5<sup>th</sup> Year Look Back Study, the Third Party shall conduct such studies independently pursuant to this Agreement. MGM shall select the Third Party in good faith, in consultation with the Community and upon mutual agreement of MGM, on the one hand, and a majority of the Abutters (as defined in Section 8 below). The Parties agree that the Third Party should be neutral and independent and qualified in the area of economic development and impacts thereof (both positive and adverse), including traffic, land use, public safety, business impacts, social impacts and any other matters within the Study Scope. In the reasonable discretion of the Third Party, the Third Party may subcontract with other experts and/or consultants as reasonably necessary to ensure the breadth of expertise necessary and appropriate to study the full range of potential impacts on the Community. The Community shall have full and unfettered access to the Third Party throughout the course of its engagement.

6. Determination of Net Adverse Impact Amounts.

(a) Year One Net Adverse Impact Amount. Upon issuance of the 1<sup>st</sup> Year Study Report, the Parties will work in good faith to mutually agree upon the dollar value of the net significant and adverse impact on the Community, if any, based on the 1<sup>st</sup> Year Study Report (the "Year One Net Adverse Impact Amount"). If the Parties cannot agree on the Year One Net Adverse

Impact Amount, then, no later than the forty-fifth (45<sup>th</sup>) day following the issuance of the 1<sup>st</sup> Year Study Report, the Community shall present to MGM a written offer setting forth the amount proposed to be the Year One Net Adverse Impact Amount and the reasons supporting such offer (the "Community's Year One Offer"). Within fifteen (15) days of receipt of that offer, MGM shall either (i) accept the Community's Year One Offer as the Year One Net Adverse Impact Amount, in which case such offer shall become the Year One Net Adverse Impact Amount or (ii) present a written counter offer proposed to be the Year One Net Adverse Impact Amount and the reasons supporting such offer ("MGM's Year One Counter Offer"). Upon receipt of MGM's Year One Counter Offer, the Community will have fifteen (15) days within which to accept or reject it. If the Community accepts MGM's Year One Counter Offer, such counter offer shall become the Year One Net Adverse Impact Amount. If the Community rejects MGM's Year One Counter Offer, the Parties shall follow the arbitration procedure set forth in subsection 6(c) below.

(b) Year Five Net Adverse Impact Amount. Upon issuance of the 5<sup>th</sup> Year Study Report, the Parties will work in good faith to mutually agree upon the dollar value of the net significant and adverse impact on the Community, if any, based on the 5<sup>th</sup> Year Study Report (the "Year Five Net Adverse Impact Amount"). If the Parties cannot agree on the Year Five Net Adverse Impact Amount, then, no later than the forty-fifth (45<sup>th</sup>) day following the issuance of the 5<sup>th</sup> Year Study Report, the Community shall present to MGM a written offer setting forth the amount proposed to be the Year Five Net Adverse Impact Amount and the reasons supporting such offer (the "Community's Year Five Offer"). Within fifteen (15) days of receipt of that offer, MGM shall either (i) accept the Community's Year Five Offer as the Year Five Net Adverse Impact Amount, in which case such offer shall become the Year Five Net Adverse Impact Amount or (ii) present a written counter offer proposed to be the Year Five Net Adverse Impact Amount and the reasons supporting such offer ("MGM's Year Five Counter Offer"). Upon receipt of MGM's Year Five Counter Offer, the Community will have fifteen (15) days within which to accept or reject it. If the Community accepts MGM's Year Five Counter Offer, such counter offer shall become the Year Five Net Adverse Impact Amount. If the Community rejects MGM's Year Five Counter Offer, the Parties shall follow the arbitration procedure set forth in subsection 6(c) below.

(c) Arbitration of Net Adverse Impact Amounts. The Parties agree that to the extent they are not able to agree upon the Year One Net Adverse Impact Amount or the Year Five Net Adverse Impact Amount (collectively, the "Net Adverse Impact Amounts"), the Net Adverse Impact Amounts shall be determined by an arbitration hearing held in Hampden County, Massachusetts. Said arbitration shall be conducted by a three person panel (unless the parties agree on the identity of a single arbitrator), with each Party choosing one member of the arbitration panel, and each of those selections agreeing on the third member. Each party shall

notify the other party of its choice of arbitrator within thirty (30) days following the rejection of MGM's Year One Counter Offer or Year Five Counter Offer, as the case may be. With respect to the Year One Adverse Impact Amount, the arbitrator shall select either the Community's Year One Offer or MGM's Year One Counter Offer, unless either party chooses to make a last and best offer prior to the conclusion of the Arbitration proceedings, in which case the other party shall have the right to make its own last and best offer prior to the arbitrator rendering its decision. With respect to the Year Five Net Adverse Impact Amount, the arbitration panel shall select either the Community's Year Five Offer or MGM's Year Five Counter Offer, unless either party chooses to make a last and best offer prior to the conclusion of the Arbitration proceedings, in which case the other party shall have the right to make its own last and best offer prior to the arbitrator rendering its decision. The arbitration shall be subject to the rules of the American Arbitration Association. Each Party shall bear its own costs of the arbitration, except that the fees of the arbitrators shall be borne by MGM. The Parties agree that the decision of the arbitration panel, which shall be rendered within thirty (30) days of the date of the arbitration hearing, shall be final, binding and non-appealable.

7. Payment of Net Adverse Impact Amounts.

(a) Priority of Reimbursement Obligations. The Parties hereby agree that the Community shall look exclusively to the Annual Mitigation Payment for satisfaction of the first Three Hundred and Seventy-Five Thousand Dollars (\$375,000.00) of the Net Adverse Impact Amounts. The Parties further agree that the Community shall next exercise good faith efforts to secure state funding for any remaining Net Adverse Impact Amounts through the Community Mitigation Fund established by M.G.L. c. 23k, §61, as applicable (the "State Mitigation Fund"). To the extent that any Net Adverse Impact Amounts remain unfunded after application of the Annual Mitigation Payment and any funding received from the State Mitigation Fund, MGM agrees to pay the balance to the Community as set forth below. To the extent that the Community receives funding from one of the State Mitigation Fund after MGM has paid any Net Adverse Impact Amount beyond the Annual Mitigation Payment, MGM shall be entitled to a credit toward any future Net Adverse Impact Amount payment obligations in excess of its Annual Mitigation Payment obligation.

(b) Payment of Year One Net Adverse Impact Amount. MGM shall pay the unfunded Year One Net Adverse Impact Amount, if any, in excess of the Annual Mitigation Payment and any funding the Community has received from the State Mitigation Fund, within thirty (30) days of the determination of said amount pursuant to Section 6 above and, to the extent that such amount is deemed to be an annual obligation, shall continue to make such payment annually thereafter until the determination of the Year Five Net Adverse Impact Amount. The Parties further acknowledge that if the 1<sup>st</sup> Year Look Back Study demonstrates a net positive impact, or the Year One Net Adverse Impact Amount is determined to be less than the Annual Mitigation Payment plus any funding the Community has received from the State Mitigation Fund, MGM shall have no further monetary obligations to the Community beyond the Annual Payments during the period up to the determination of the Year Five Net Adverse Impact Amount.

(c) Payment of Year Five Net Adverse Impact Amount. MGM shall pay the unfunded Year Five Net Adverse Impact Amount, if any, in excess of the Annual Mitigation Payment and any funding the Community has received from the State Mitigation Fund, within thirty (30) days of the determination of said amount pursuant to Section 6 above and, to the extent that such amount is deemed to be an annual obligation, shall continue to make such payment annually thereafter through the remainder of the Term. The Parties, further acknowledge that if the 5<sup>th</sup> Year Look Back Study demonstrates a net positive impact, or the Year Five Net Adverse Impact Amount is determined to be less than the Annual Mitigation Payment plus any funding the Community has received from the State Mitigation Fund, MGM shall have no further monetary obligations to the Community beyond the Annual Payments, except in the event this agreement is reopened in accordance with 205 CMR 127.

8. Assignment. This Agreement may not be assigned or transferred by either Party without the prior written consent of the other Party; provided, however: (i) MGM may assign this Agreement to an acquirer of all, or substantially all, of its assets or equity interests; and (ii) MGM may assign this Agreement to any affiliate so long as such assignment does not relieve MGM of any obligation hereunder.

9. Term and Termination. This Agreement shall continue for the Term as defined above or until terminated by the mutual written agreement of all of the Parties. The Parties agree that their respective obligations and commitments hereunder are subject to such Party's compliance with the terms and conditions of this Agreement, and that in the event such Party materially breaches such obligations, the non-breaching Party shall have the right to terminate this Agreement. Upon written notice to the Community, MGM shall have the right to terminate (with or without cause) on the date on which (i) MGM provides notice to Community that it is no longer eligible to receive or continue to pursue a Gaming License; or (ii) following the approval of MGM for a Gaming License, such Gaming License is no longer effective. Such termination shall not relieve MGM of the obligation to reimburse the Community for any consultant fees incurred prior thereto or for any other payment obligations that have arisen prior thereto.

10. Entire Agreement. This Agreement contains all of the terms, promises, conditions and representations, made or entered into by and among the Parties, supersedes all prior discussions, agreements and memos, whether written or oral between and among the Parties, and constitutes the entire understanding of the Parties and shall be subject to modification or change only in writing and signed by all Parties.

11. Compliance with Laws. The Parties shall perform all of their respective obligations under the Agreement in compliance with all applicable laws, ordinances, regulations, or codes. This Agreement shall be governed by, and construed according to, the laws of the Commonwealth of Massachusetts, without regard to any choice of law provisions thereof which would require application of the laws of another jurisdiction.

12. Execution in Counterparts. This Agreement may be signed upon any number of counterparts with the same effect as if the signatures on all counterparts are upon the same instrument.

13. Severability; Captions. In the event that any clause or provision of this Agreement should be held to be void, voidable, illegal, or unenforceable, the remaining portions of this

Agreement shall remain in full force and effect. Headings or captions in this Agreement are added as a matter of convenience only and in no way define, limit or otherwise affect the construction or interpretation of this Agreement.

14. Interpretation. This Agreement shall be given a fair and reasonable interpretation of the words contained in it without any weight being given to whether a provision was drafted by one Party or its counsel.

15. Authority. Each Party represents and warrants to the other Parties that it has full power and authority to make this Agreement and to perform its obligations hereunder and that the person signing this Agreement on its behalf has the authority to sign and to bind that Party.

**ACKNOWLEDGED AND AGREED TO BY:**

**Community:**

**MGM:**

TOWN OF WEST SPRINGFIELD

BLUE TARP reDEVELOPMENT, LLC

By: Edward C. Sullivan By: Michael C. Mathis  
Michael C. Mathis

Its: Mayor

Its: Authorized Signatory

Dated: 5-8-14

Dated: May 8, 2014

(AS REQUIRED BY 205 CMR 125.01(6)(C)(10))



## **EXHIBIT "A"**

### **A. Study Scope**

Each of the Initial Study, 1<sup>st</sup> Year Look Back Study, and 5<sup>th</sup> Year Look Back Study (the "Studies") shall assess the dollar value of any significant and adverse impact of the Project on a Surrounding Community, after offsetting for the dollar value of any positive impacts of the Project on such community. In determining such assessment the Studies shall consider the following:

#### **1. Potential Areas of Adverse Impact**

- a. Construction impacts, including without limitation heavy truck travel through West Springfield, code enforcement and other public safety expenses resulting from new or temporary residence in the Town by construction-related employees; noise, dust and other environmental impacts resulting from construction of the Project.
- b. Net Substitution of Existing Commercial/Retail Activity
- c. Traffic Improvement Needs Reasonably Related to Travel to and from the Project Site based upon traffic analysis conducted by, or at the direction of, the Pioneer Valley Planning Commission (PVPC), similar in scope and process as that conducted by PVPC
- d. Utility Infrastructure Needs Reasonably Related to the Project
- e. Crime Rates and Public Safety
- f. Residential Real Estate Values
- g. Public Education
- h. Public Health, including but not limited to addiction
- i. Additional Municipal Administrative Burdens, including but not limited to code enforcement.

#### **2. Potential Areas of Positive Impact and Mitigation**

- a. Increase in municipal revenue resulting from additional Commercial/Retail Activity
- b. Increase in municipal revenue resulting Tourism and Community Business Development
- c. Increase in municipal revenue resulting Local Vendor/Supplier Spending in the Community
- d. Improved traffic and infrastructure directly attributable to MGM or MGM Tax Revenues Pursuant to M.G.L. c. 23k to the extent that such amounts are not in place of other state funding currently received by the Community as of the date of this Agreement;
- e. Crime Rates and Public Safety

- f. Increase in municipal revenue resulting from increased Residential Real Estate Values
- g. Receipt of MGM Tax Revenues Pursuant to M.G.L. c. 23k or any other third party funding, whether private or public, state or federal, which otherwise offsets or mitigates or is available to mitigate the specific potential adverse impact to the extent that such amounts are not in place of other state funding currently received by the Community as of the date of this Agreement ("Other Mitigation Funding");
- h. Increase in municipal revenue resulting from employment of Residents