

MEMORANDUM

TO: Mayor Domenic J. Sarno

FROM: Kevin E. Kennedy, Chief Development Officer

DATE: February 11, 2013

RE: Evaluation of and Recommendation Concerning Phase II – RFQ/P Responses for a Proposed Destination Casino Resort Development for the City of Springfield

1. **Purpose of this Memorandum.**

The purpose of this memorandum is to (i) summarize the evaluation of the responses received by the City to the City’s Phase II - RFQ/P, bid no. 13-134, dated November 1, 2012, covering a proposed destination casino resort to be located in the City (the “Phase II - RFQ/P”); and (ii) provide you with a recommendation as to whether the responses to the Phase II – RFQ/P qualify the responders to participate in the second phase of the casino selection process.

2. **Background.**

The Phase II – RFQ/P process provided in Section 4.D. of the Phase II-RFQ/P for the Proposed Destination Casino Resort for the City of Springfield, Massachusetts, Bid No. 13-213 (the “RFQ/P”) provides that on November 14, 2012, the City would hold a public informational meeting with all proposers. A notice was issued on November 7, 2012 to advise the proposers and the public of the protocol for that meeting. The protocol advised:

1. The new proposers’ informational meeting is open to the public.
2. The sole purpose of the meeting is to allow the proposers to ask questions concerning the RFQ/P. Accordingly, the public will not be permitted to ask questions or make statements.
3. The City representatives who will be present at the meeting will include the Chief Development Officer, the Law Department and department heads who the City believes will be involved in furnishing information to proposers. The City’s casino consultants also will be present.
4. The meeting will be a “working session” to introduce the City representatives and consultants to the proposers, and to provide the proposers with the opportunity to publicly ask specific questions as to where/how to obtain information; seek clarifications of specific RFQ/P criteria or submission requirements; and gain a better understanding of any process related issues.
5. The City expects each proposer to send representatives of their companies who have responsibility to respond to the RFQ/P; it is not expected that the proposers’ senior executives will attend.

6. The City will furnish a stenographer to record the proceedings and prepare a transcript which will be posted to the Springfield Redevelopment Authority webpage.
7. If a question cannot be answered at the meeting because it involves a policy matter that has not been discussed/determined by the City or requires further investigation, the City will respond by posting the answer to the SRA webpage.
8. The City is mindful of the fact that proposers may have questions that involve information that would be entitled to confidential treatment pursuant to the provisions of Section 4.G. of the RFQ/P. Proposers should not ask such questions during the meeting; the City will arrange to meet each of the proposers privately to respond to any such questions.
9. The City will commence the meeting with brief opening remarks and introductions.

A stenographic record of the public meeting with the developers was prepared as minutes of the meeting, and a copy was made available by posting on the City's SRA website dedicated to the casino process.

Amendments # 1 and # 2 to Phase II.

On November 9, 2012 the City issued Amendment #1 – RFQ/P process. At the request of one of the proposers and with the concurrence of the other two proposers, pursuant to Section 4.G. of the Phase II, Request for Qualifications/Request for Proposals, Bid No. 13-213, dated November 1, 2012 (the “Phase II-RFQ/P”), the City hereby amends the Phase II-RFQ/P by extending the due date for responses to the Phase II-RFQ/P from December 14, 2012 at 2:00 p.m. to January 3, 2013 at 2:00 p.m.

All other action dates set forth in Section 1.6 of the Phase II-RFQ/P are unchanged although the City reserves the right to further amend the Phase II-RFQ/P to extend such dates.

Pursuant to Section 4.E. of the Phase II, Request for Qualifications, Bid No. 13-213, dated November 1, 2012 (the “Phase II – RFQ/P”), the City hereby amends the Phase II – RFQ/P in the following respects. Terms not otherwise defined in this Amendment No. 2 shall have the same meanings as set forth in the Phase II-RFQ/P.

1. Notwithstanding the extension of the due date for responses to the Phase II-RFQ/P from December 14, 2012 to January 3, 2013 as set forth in Amendment No. 1 to the Phase II-RFQ/P, by December 14, 2012, 2:00 p.m. EST, the proposer must: (i) submit to the City confirmation that the \$400,000 application fee referred to in Section 2.A.9 of the Phase II-RFQ/P has been paid to the Commission and (ii) pay to the City the \$250,000 Phase II-RFQ/P submission fee required under Section 2.B of the Phase II-RFQ/P. Evidence that the proposer has become an “applicant” with the Commission need not be submitted until January 3, 2013 at 2:00 p.m., EST.

2. In order to clarify what is meant by “schematic drawings” in Section 2.A.1(c) of the Phase II-RFQ/P, the opening sentence of that section is hereby deleted and the following substituted in its place:

“(c) Submit as Exhibits 1(c)(i) through 1(c)(x) drawings illustrating (at a minimum) the following items, which, while drawn to scale, are not intended to be detailed architectural plans:”

3. In order to eliminate a possible conflict between Section 4.G. of the Phase II-RFQ/P and paragraph 3 of Exhibit A captioned “Acknowledgement, Consent and Release,” the phrase “unless the City determines otherwise pursuant to Section 4.G. of the RFQ/P” has been added to the end of such paragraph 3. Accordingly, Exhibit A is hereby deleted in its entirety and the attached Exhibit A is substituted in its place.

Pursuant to Section 4.E. of the Phase II, Request for Qualifications, Bid No. 13-213, dated November 1, 2012 (the “Phase II – RFQ/P”), the City hereby amends the Phase II – RFQ/P in the following respects. Terms not otherwise defined in this Amendment No. 2 shall have the same meanings as set forth in the Phase II-RFQ/P.

1. Notwithstanding the extension of the due date for responses to the Phase II-RFQ/P from December 14, 2012 to January 3, 2013 as set forth in Amendment No. 1 to the Phase II-RFQ/P, by December 14, 2012, 2:00 p.m. EST, the proposer must: (i) submit to the City confirmation that the \$400,000 application fee referred to in Section 2.A.9 of the Phase II-RFQ/P has been paid to the Commission and (ii) pay to the City the \$250,000 Phase II-RFQ/P submission fee required under Section 2.B of the Phase II-RFQ/P. Evidence that the proposer has become an “applicant” with the Commission need not be submitted until January 3, 2013 at 2:00 p.m., EST.
2. In order to clarify what is meant by “schematic drawings” in Section 2.A.1(c) of the Phase II-RFQ/P, the opening sentence of that section is hereby deleted and the following substituted in its place:

“(c) Submit as Exhibits 1(c)(i) through 1(c)(x) drawings illustrating (at a minimum) the following items, which, while drawn to scale, are not intended to be detailed architectural plans:”

3. In order to eliminate a possible conflict between Section 4.G. of the Phase II-RFQ/P and paragraph 3 of Exhibit A captioned “Acknowledgement, Consent and Release,” the phrase “unless the City determines otherwise pursuant to Section 4.G. of the RFQ/P” has been added to the end of such paragraph 3. Accordingly, Exhibit A is hereby deleted in its entirety and the attached Exhibit A is substituted in its place.

Exhibit A provided:

A. The City of Springfield, Massachusetts (the “City”) is soliciting proposals and information regarding qualifications from enterprises (each, a “Proposer”) desirous of entering into a host community agreement with the City in connection with the development, construction and operation of a destination casino resort project (a “Host Community Agreement”) as set forth in a certain Phase II-RFQ/P dated November 1, 2012 issued by the City, together with all alterations, supplements or amendments thereto (collectively, the “RFQ/P”).

B. To evaluate the personal, business and financial qualifications and professional capabilities and standing of each Proposer and its affiliates (each, a “Releasor” and collectively, the “Releasors”), the City requires certain information about each Releasor which could be considered confidential and/or proprietary (“Information”).

C. The collection of Information by the City is essential to select the highest quality proposal for the City.

D. Some of the Information may be collected directly or indirectly from the Releasor and/or other Releasors.

E. Other Information will be collected directly or indirectly from others such as law enforcement agencies, courts, gaming and other regulatory bodies, former employees, and financial sources.

NOW, THEREFORE, the Releasor, in consideration of the City’s accepting for review a proposal in which Releasor has an economic interest and other valuable consideration the sufficiency of which is hereby acknowledged, agrees as follows:

1. The definitions contained in the RFQ/P are incorporated herein by reference.

2. The Releasor hereby consents and agrees to abide by all of the City’s terms, conditions, ordinances, rules, regulations and policies concerning the RFQ/P.

3. The Releasor agrees that the City does not acknowledge or agree that any of the Information is confidential and/or proprietary, unless the City determines otherwise pursuant to Section 4.G of the RFQ/P.

4. Information collected may be used in at least the following ways:

a. To evaluate Releasor’s personal, financial and business history;

b. To evaluate Releasor’s personal, financial and business integrity, and criminal history, if any;

c. To evaluate Releasor’s professional qualifications and capabilities and demonstrated past performance; and

d. Such other uses as the City reasonably believes are necessary to evaluate the Proposer and its response to the RFQ/P.

5. The City may or may not use the Information in any decision with respect to involvement in gaming in the City and may provide this Information to the Commission.

6. Information may be shared with other state, local or federal government agencies, departments or advisors who may work with the City.

7. The City is subject to the federal law, the laws of the Commonwealth and City ordinances. The Releasor acknowledges that such laws and ordinances may provide access by third parties to the Information regarding the Releasor.

8. The Releasor and its successors and assigns, and on behalf of its affiliates and their successors and assigns, hereby release: (i) the City including all departments, agencies and commissions thereof; (ii) Shefsky & Froelich Ltd.; and (iii) their respective principals, agents, subcontractors, consultants, attorneys, advisors, employees, officers and directors (the “Releasees”), and hold each of them harmless from any damages, claims, rights, liabilities, or causes of action, which the Releasor ever had, now has, may have or claim to have, in law or in equity, against any or all of the Releasees, arising out of or directly or indirectly related to the (i) RFQ/P process and the selection and evaluation of proposals submitted in connection therewith; (ii) negotiation of a Host Community Agreement between the City and the Releasor or any other Proposer; (iii) release or disclosure of any Information whether intentional or unintentional; and (iv) use, investigation of, or processing of the Information.

9. The Releasor acknowledges that commencement of negotiations of a Host Community Agreement is no guaranty that the City will execute a Host Community Agreement with Releasor or its affiliates or that if executed, the Host Community Agreement will be approved by the City’s City Council. During the course of the negotiations of the Host Community Agreement, the City shall have the right, in its sole discretion, to terminate such negotiations and thereafter commence or continue negotiations on a Host Community Agreement with another party, or abandon all such negotiations and the selection process for a destination resort casino development or recommence such process in any matter that the City deems to be in its best interests.

Public Presentations

On November 30, 2012, Ameristar Casinos announced that it was not going to participate in Phase II of the City’s – RFQ/P.

Thereafter, arrangements went forward for the two remaining proposers to make public presentations. Section 1.6 of the Phase II-RFQ/P for the Proposed Destination Casino Resort for the City of Springfield, Massachusetts, Bid No. 13-213 provides that the casino companies vying for a gaming license in Springfield will make public presentations of their proposals. A notice was issued on December 5, 2012 to advise the proposers and the public of the protocol for those presentations. The notice provided:

1. The presentations will be open to Springfield residents and business owners on a first come basis. City Stage doors will open at 4:30 p.m. The City Stage seats approximately 400 persons. There will be no reserved seating. The presentations were also be broadcasted on local TV and the internet.

2. The session will commence promptly at 5:00 p.m. with brief opening remarks by Mayor Sarno. Each of Penn Gaming, Ameristar and MGM (in that order) will then make a formal presentation of its respective casino proposal. The order of the three presentations was decided by a “blind” drawing conducted by the Mayor’s ad hoc casino review committee. Each casino company will be allotted up to 30 minutes to make its presentation. After each

presentation there will be an approximately 10 minute intermission to allow the next casino company to set up for its presentation. No questions will be permitted during the presentations.

3. Immediately following the conclusion of the last of the presentations, representatives of the casino companies as well as the City's consultants will respond to questions from Springfield residents and business owners. The City's consultants will moderate the session. Interested organizations, such as regional planning and tourism boards, which are not Springfield businesses, may submit written questions to Kevin Kennedy. Mr. Kennedy will ask such questions at the end of the meeting, time permitting, or have the casino companies respond in writing.

4. Springfield residents and business owners who wish to ask questions at this session will be required to sign-in when they arrive, indicating their name and street or business address. Questions may be addressed to any of the casino companies and the City's consultants. Each resident will have two minutes to speak. Residents and business owners are encouraged to ask questions rather than make statements concerning whether or not they are in favor of casinos.

5. The casino companies have been requested to decline to comment on the proposals of the other casino companies; accordingly, any questions put to one casino company to comment on another company's proposal will not be answered.

6. The City expects all attendees to show a high degree of respect to the proposers and those Springfield residents and business owners who choose to ask questions. Banners, placards or signs of any kind will not be permitted in the facility.

7. The session will end promptly at 10:00 p.m.

8. A recording of the session will be posted to the Springfield Redevelopment Authority webpage.

The Public Casino Presentations were held as scheduled on Tuesday December 11th, from 5:00pm - 9:00pm at CityStage and a video is posted on the City's SRA website dedicated to the casinos.

Fees paid by applicants

Pursuant to Section 2.B. of the Phase II, Request for Qualifications, Bid No. 13-213, dated November 1, 2012 (the "Phase II – RFQ/P") each proposer was required to pay fee to the "Springfield Redevelopment Authority" (the "SRA") in the amount of Two Hundred Fifty Thousand and no/100 dollars (\$250,000).

In addition, pursuant to Section 1(1.2), each participant in the Phase II-RFQ/P is required to become an "applicant" for a "category 1 license" (as defined under the Act) with the Commission by: (1) paying to the Massachusetts Gaming Commission ("MGC" or "Commission") its \$400,000 application fee (if not previously paid), and (2) submitting to the Commission its completed application in response to the Commission's Request for Applications Phase 1 (the "RFA-1"). The RFA-1 is the first phase of the Commission's announced two-phase

bidding process. For information concerning the Commission and its bidding process, visit the Commission's website at: www.mass.gov/gaming.

Both proposers submitted the required fees and application to the MGC by the required deadline.

Amendment #3

Pursuant to Section 4.E. of the Phase II, Request for Qualifications, Bid No. 13-213, dated November 1, 2012 (the "Phase II – RFQ/P"), the City amended the Phase II – RFQ/P in the following respects. Terms not otherwise defined in this Amendment No. 3 shall have the same meanings as set forth in the Phase II-RFQ/P.

1. We received a request from a proposer asking us to confirm the number of Phase II-RFQ/P responses to be provided.

After further review of the General Submission Instructions set forth in Section B. of the Phase II-RFQ/P, the City has determined to revise the number and types of copies of the Phase II-RFQ/P responses to be provided by each proposer to the City and its consultants as follows:

The proposer must submit:

- three (3) hard copies of its complete response and fifteen (15) hard copies of its redacted response, assembled in three-ring binders of a type which may be opened and individual pages may be removed. Each separate page must clearly set forth the proposer's name and date of submission in case the pages are separated from the binders;
- each copy of the response must include a clearly marked executive summary of the response, no more than two standard pages in length;
- three (3) electronic copies of its complete response and three (3) electronic copies of its redacted response on a CD-ROM or flash drive;
- acknowledgements, consents and releases in the form attached hereto as Exhibit A executed by proposer, and any direct or indirect owner of proposer having a five percent (5%) or greater direct or indirect equity interest in proposer (excluding any equity holders of any publicly held parent company)¹; and
- a submission fee in the form of a cashier's check made payable to the "Springfield Redevelopment Authority" (the "SRA") in the amount of Two Hundred Fifty Thousand and no/100 dollars (\$250,000). In lieu of a cashier's check, funds may be wired by following the instructions on Exhibit B. This submittal fee is non-refundable. All submittal fees will be used by the SRA to pay the cost of consultants who will be advising the City and the SRA in the RFQ/P process and

¹ After reviewing the proposer's ownership chart, the City may require that other parties having an indirect ownership in proposer also execute a release and consent in the form of Exhibit A.

to defray certain other costs incurred by the City and the SRA in connection with this process. Neither the SRA nor the City shall have any obligation to account to the proposers as to the expenditure of these funds. Any unexpended funds will be transferred to the City.

The delivery of the responses to the City of Springfield Office of Procurement shall be the official submission to the proposer. In addition, by the same date and time listed above, each proposer must submit:

- three (3) hard copies of its complete response and **one (1)** hard copy of its redacted response, assembled three ring binders as indicated above; and
- one (1) electronic copy of its complete response and **one (1)** electronic copy of its redacted response on a CD-ROM or flash drive to:

Shefsky & Froelich Ltd.
111 East Wacker Drive, #2800
Chicago, Illinois 60601
Attn: Cezar M. Froelich, Esq.

All other submission requirements including the date and time for submitting Phase II-RFQ/P proposals remain unchanged.

Phase II Responses

Both proposers submitted responses to Phase II, Request for Qualifications, Bid No. 13-213, dated November 1, 2012 (the "Phase II – RFQ/P") by the January 3, 2013 deadline.

Section 9(b) of the Massachusetts Gaming Act allows casino proposers to withhold from public disclosure "trade secrets, competitively-sensitive or other proprietary information provided in the course of an application for a gaming license under this chapter, the disclosure of which would place the applicant at a competitive disadvantage" Based on this statutory exemption from the Massachusetts public records law, the proposers have requested confidential treatment for certain information submitted to the City as part of the Phase II-RFQ/P process. The City is reviewed request and the timing of the release of such information to the public.

Copies of the public portions of the proposals were posted on the City's SRA website dedicated to the casino process. Unredacted copies were provided to members of your ad hoc six-member advisory committee that serves to screen the three companies that are competing to build a casino in Springfield. In addition, unredacted copies were provided to members of the City's internal review team.

The City's Casino Consultants, Shefsky & Froelich Ltd. ("Shefsky & Froelich"), engaged an urban planning firm, a financial advisor, an economic impact consultant, a traffic consultant, a mitigation consultant and an environmental law expert to provide services relative to evaluation and analysis relating to the responses to the City's Phase II Request for Qualifications for the development of a proposed destination casino resort. The consultants worked in conjunction with the City's internal review committee to carry out the evaluation tasks related to the criteria specified in the Phase II – RFQ/P.

Shefsky & Froelich (“S & F”) distributed to each member of the evaluation team copies of those portions of the Phase II proposals for which that team member has review responsibility. Evaluation team members then provided S&F with a list of any questions/clarifications regarding proposals which S&F will then submit to proposers. After receipt of clarification information, the consultants retained by S & F then submitted their reports to S&F, who in turn transmitted information from the reports to appropriate City evaluation team members for their review to complete their review of proposals and outside consultant reports.

Amendment #4 to Phase II

Pursuant to Section 4.E. of the Phase II, Request for Qualifications, Bid No. 13-213, dated November 1, 2012 (the “Phase II – RFQ/P”), the City hereby amends the Phase II – RFQ/P in the following respects. Terms not otherwise defined in this Amendment No. 4 shall have the same meanings as set forth in the Phase II-RFQ/P.

As a consequence of Amendment No. 1 to the Phase II – RFQ/P issued on November 9, 2012, which amendment extended the due date for responses to the Phase II – RFQ/P from December 14, 2012 to January 3, 2013, the City hereby amends the timetable in Section 1.6 of the Phase II – RFQ/P to extend the date on which the City will announce proposer(s) qualifying for the right to negotiate a host community agreement from January 25, 2013 to February 11, 2013. No decisions have been made with respect to any other changes in the timetable.

Evaluation of Responses.

After receiving the Phase II responses, S&F and the ad hoc advisory committee participated in a series of bi-weekly meetings during which (i) S&F provided the ad hoc advisory committee with information concerning the proposals including updates on the progress and results of the consultants’ review of the proposals and (ii) the ad hoc advisory committee engaged in a discussion of various aspects of the proposals.

Responses to the Phase II – RFQ/P were summarized in a matrix used by the ad hoc advisory committee and the internal review team. A copy of the matrix with public information was posted on the City’s SRA website dedicated to the casino process. A copy is attached to this memorandum.

On February 7, 2013, you, along with members of your ad hoc advisory committee, the City’s internal review committee, and the City’s consultants, met to review and discuss all available information, from 12:00 noon until 4:00 P.M.

Conclusion.

After careful review and consideration of the proposals submitted by MGM and Penn JV in response to the City’s Phase II-Request for Qualifications/Request for Proposals; all members of your ad hoc advisory group and the City’s internal review committee decided that both proposals have qualified to proceed to this next step in the selection process.

As such, it is recommended that the City negotiate host community agreements for the development, construction and operation of a destination resort casino with each of Blue Tarp Redevelopment, LLC, an affiliate of MGM Resorts International (“MGM”) and Springfield Gaming and Redevelopment, LLC, a joint venture between an affiliate of Penn National Gaming and an affiliate of Mr. Peter Picknelly (“Penn JV”)

However, commencement of such negotiations should not guaranty that the City will reach an agreement with either MGM or Penn JV. During the course of such negotiations, if it is in the City’s best interests, the City may agree to terms in a host community agreement which differ from those in a proposer’s submission. Any host community agreement negotiated with a proposer will require approval of the City’s City Council as well as the City’s voters as required under the Massachusetts Gaming Act. A host community agreement is a requirement for an applicant for a category 1 gaming license.