

MUNICIPAL COUNCIL AGENDA ADDENDUM
NOVEMBER 12, 2013
7:00 PM

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CHESTER R. MARTIN MUNICIPAL COUNCIL CHAMBERS
TEMPORARY CITY HALL
141K STREET, TAUNTON, MA 02780

Pg. 1-8 Com. from City Solicitor – Tentative agreement reached with Raynham
slot parlor developer, Surrounding Community Agreement

Respectfully submitted,



Rose Marie Blackwell
City Clerk

TAUNTON, MA
CITY CLERK

2013 NOV 12 A 8:29

RECEIVED
CITY CLERK'S OFFICE

SURROUNDING COMMUNITY AGREEMENT

This Surrounding Community Agreement ("Agreement") is made and entered into this _____ day of November 2013, by and between the City of Taunton, a Massachusetts municipal corporation with its principal office at 15 Summer Street, Taunton, MA 02780 ("City"), and Raynham Park, LLC, a Delaware limited liability company, with its principal office at 1958 Broadway, Raynham MA 02767 ("Raynham Park"), (collectively the "Parties"), and their respective successors and assigns.

WHEREAS, Massachusetts General Laws, Chapter 23K, establishes and provides for expanded gaming in the Commonwealth consistent with the terms and requirements set forth therein; and

WHEREAS, under M.G.L. c. 23K, §15, an applicant for a license to own and operate a gaming establishment must enter into an agreement with a community designated or determined to be a surrounding community of the proposed gaming establishment, which shall set forth the conditions to have a gaming establishment located in the proximity of the surrounding community; provided, however, that the agreement shall include a community impact fee for the surrounding community and all stipulations of responsibilities between the surrounding community and the applicant, including stipulations of known impacts from the development and operation of a gaming establishment; and

WHEREAS, Raynham Park is an applicant for a Category 2 gaming license to own a gaming establishment to be located at 1958 Broadway (Route 138), Raynham, Massachusetts ("the Premises"); and

WHEREAS, on October 2, 2013, Raynham Park designated the City as a surrounding community, and on October 11, 2013, the City accepted said designation; and

WHEREAS, the Parties desire to address the potential impacts that may result from the development and operation of the gaming establishment at the Premises, and facilitate the positive economic benefits to be derived from the project; and

WHEREAS, in furtherance of those goals, and in satisfaction of the requirements of M.G.L. c. 23K, the Parties have agreed to enter into this Agreement and thereby set forth their mutual understandings in effectuating the purposes set forth above.

NOW, THEREFORE, in consideration of the covenants and mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be bound hereby, agree as follows:

1. Agreement to Location of Gaming Establishment: The City hereby agrees to the location of the gaming establishment at the Premises as shown on Exhibit 1 attached hereto and made a part hereof by incorporation by reference which shows the proposed facilities at which Category 2 gaming license activities will take place. The Parties recognize that the gaming establishment and/or any other buildings related or proximate thereto may change, and the impact fee with annual increases and other terms of this Agreement will apply notwithstanding such changes, including any

increase in the size of the total floor area of the gaming establishment. Further, this Agreement is predicated on Raynham Park's gaming establishment being limited to 1,250 slot machines and no table games. In the event that Raynham Park is allowed more slot machines and/or table games, then the parties shall negotiate a revised and/or new surrounding community agreement to address the additional impacts to the City, if any, of the additional gaming positions.

2. Annual Community Impact Fee. Beginning thirty (30) days after Raynham Park's commencement of operation of a Category 2 gaming establishment at the Premises, Raynham Park shall pay an annual Community Impact Fee to the City in the sum of Two Hundred Thousand Dollars \$200,000.00 per year (the "Community Impact Fee"). Commencing in year four and continuing through year twenty, the Community Impact Fee shall increase by 2.5% per annum. (As an example, in year four, the Community Impact Fee shall be Two Hundred Five Thousand Dollars (\$205,000.00), and in year five the Community Impact Fee shall be Two Hundred Ten Thousand One Hundred Twenty-Five Dollars (\$210,125.00)). Commencing in year twenty-one and in each year thereafter, the Community Impact Fee shall continue to increase by 2.5% per annum; provided, however, that in no event after year twenty shall the Community Impact Fee increase in any one particular year at a rate of increase that exceeds the rate of increase of the Annual Mitigation Payment that Raynham Park pays to the Town of Raynham in accordance with the formula expressed in paragraph eight of that certain Host Community Agreement between Raynham Park and the Town of Raynham dated June 11, 2013. The Community Impact Fee shall continue for as long as Raynham Park (or its successors, assigns, or any parent, subsidiary or related entity) owns, controls or operates a Category 2 gaming establishment at the Premises. Such payments shall be paid to the City in equal monthly amounts pro-rated for the first calendar year of operation in recognition that the City has a July 1 - June 30 fiscal year. For the purposes of this Agreement, Raynham Park shall be deemed to have commenced operations upon the date that the Category 2 gaming establishment at the Premises is open for business to the general public.

3. Community Impact Fee Compensatory Of All Impacts. The Parties agree that the Community Impact Fee agreed to in Paragraph 2 is compensatory to the City of all impacts of the Raynham Park gaming establishment, including all potential impacts set forth in 205 CMR (2)(b)1. – 5, and all reasonable and direct costs (including but not limited to planning and peer review costs) of determining the impacts of the project and negotiating this Agreement and any related agreements, as well as other reasonable and direct costs incurred by the City in connection herewith (including but not limited to costs incurred in connection with communicating with/appearing before the commission in connection with Raynham Park's license application and participating in other proceedings relative to the project). The Parties recognize and acknowledge that the City may hereafter petition the Commonwealth of Massachusetts and/or the Massachusetts Gaming Commission for funds, including those funds available under the Massachusetts Gaming Act, specifically including, but not limited to, those funds in the Community Mitigation Fund. Raynham Park shall not oppose any such petition made by the City. The parties agree that the receipt of any such funds shall not in any way affect the Community Impact Fee.

- 4. Local Hiring and Purchasing Preference. Subject to any requirements under or inconsistencies with any applicable state or federal law, and to any similar local hiring and preference provisions in the Host Community Agreement and any other Surrounding Community Agreements executed prior to the execution of this Agreement, and subject further to the terms and conditions set forth herein and to its application for a Category 2 gaming license being approved by the Massachusetts Gaming Commission and affirmed upon final appeal, Raynham Park shall work in good faith with the City to: (i) employ (or cause its contractors to employ) residents of the City during the construction and operation of the proposed gaming establishment, provided that such residents are qualified for employment and satisfy any suitability requirements imposed by state law or the Massachusetts Gaming Commission; and (ii) purchase goods and services from local vendors provided that the cost and quality of those goods and services is competitive with competitors and the vendors satisfy any suitability requirements imposed by state law or the Massachusetts Gaming Commission.

Prior to hiring/retaining contractors, subcontractors or servicers in connection with construction of the project, Raynham Park shall advertise and hold at least one event for Taunton residents, at a venue to be approved by the City, at which Raynham Park will publicize its construction needs and explain to attendees the process by which they may seek to be hired in connection with construction of the project.

Prior to beginning the process of hiring employees (other than internally transferred Raynham Park employees) for the project, Raynham Park shall advertise and hold at least one event for Taunton residents, at a venue to be approved by the City, at which Raynham Park will publicize its hiring needs and explain to attendees the process by which they may seek to be hired in connection with the project.

Raynham Park shall make a good faith effort to utilize local contractors and suppliers for the construction and operation of the project and shall afford such opportunities to local vendors when such contractors and suppliers are properly qualified and price competitive. Such efforts shall include actively soliciting bids from Taunton vendors through local advertisements, coordination with the Taunton Area Chamber of Commerce, and other such reasonable measures.

Raynham Park agrees that it will include as part of its reward/frequent guests/loyalty or similar such programs voucher/gift certificates to Taunton businesses. Raynham Park commits to purchase and issue at least \$5,000.00 in such voucher/gift certificates annually.

- 5. Responsible Gaming in Taunton. Raynham Park recognizes that, while gaming is an enjoyable leisure and entertaining activity for most, there is a small percentage of the population which cannot game responsibly. While gaming is a part of Raynham Park's business, responsible gaming is a part of Raynham Park's culture. Therefore, Raynham Park shall implement a responsible gaming plan that satisfies or exceeds any applicable law, including its existing responsible gaming plan, if any, at the Premises, the chief goal of which is to make sure that those people who cannot game responsibly get the help they need and to make sure that people who can game responsibly understand the importance of gaming responsibly.

Raynham Park will accomplish the responsible gaming goals in Taunton by: (1) educating its employees and providing information to patrons about the odds of games and how to make responsible gaming decisions; (2) promoting responsible gaming in daily operations; and (3) supporting public awareness of responsible gaming.

Raynham Park will join and actively participate in the Massachusetts Partnership on responsible gambling for the express purpose of assisting the City, or its designee, to address issues of treatment for compulsive behavior, especially problem gaming in Taunton.

- 6. Term. This Agreement shall become effective on the date upon which it is fully executed by the Parties, unless lawfully terminated by either party, and shall continue so long as Raynham Park (or its successors, assigns, or any parent, subsidiary or related entity) owns, controls or operates a valid Category 2 gaming license at the Premises.
- 7. City Professional Fees. Raynham Park agrees to pay the reasonable and customary fees and expenses incurred by the City for its engagement of attorneys, engineers or other third party professionals in connection with its review and execution of this Agreement. Subject to the terms of this Agreement, this provision expressly does not apply to attorney and other professional fees related to litigation or the resolution of disputes over this Agreement.
- 8. Notices. Any notice required hereunder shall be made in writing and delivered by hand delivery or by facsimile or e-mail transmission, with a copy to follow by first class mail, addressed as below. Notices shall be deemed given on the date delivered:

If to the City:

City of Taunton
Office of the Mayor
15 Summer Street
Taunton MA 02780

With a copies to:

City of Taunton Municipal Council
c/o City Clerk
15 Summer Street
Taunton MA 02780

City of Taunton
Office of the City Solicitor
15 Summer Street
Taunton MA 02780

If to Raynham Park:
Raynham Park, LLC
1958 Broadway
Raynham, MA 02767

With a copy to:

Grace Lee, Esq. Eckert Seamans
Two International Place
16th Floor
Boston, MA 02110-2602

- 9. No Third Party Beneficiaries. No provisions of this Agreement shall be construed in any manner so as to create any rights in any third parties not party to this Agreement. The Agreement shall be interpreted solely to define specific duties and responsibilities between the City and Raynham Park, and shall not provide any basis for claims of any other individual, partnership, corporation, organization, or municipal entity.
- 10. Assignment, Transfer or Collateral Use. Neither Party may assign any interest in this Agreement, and shall not transfer any interest in this Agreement by novation or assignment, without the prior written consent of the non-assigning Party, which consent shall not be unreasonably delayed or denied.
- 11. Relationship of the Parties. None of the provisions of this Agreement is intended to create, nor shall be deemed or construed to create, any relationship between the Parties other than that of independent parties contracting with each other for purposes of effecting the provisions of this Agreement. The Parties are not, and will not be construed to be, in a relationship of joint venture or partnership. Neither Party has the authority to make any statements, representations or commitments of any kind on behalf of the other Party, or to use the name of the other Party in any publication or advertisements, except with the written consent of the other Party.
- 12. Force Majeure. Raynham Park shall not be considered to be in default in the performance of its obligations under this Agreement to the extent that performance of any such obligation is prevented or delayed by a Force Majeure Event. If Raynham Park is prevented or delayed in the performance of any such obligation by a Force Majeure Event, it shall provide reasonable notice to the City of the circumstances preventing or delaying performance and the expected duration thereof, if known. For the purposes of this Agreement, a Force Majeure Event is any circumstance not within the reasonable control, directly or indirectly, of the Party affected and includes, but is not limited to, the following: strikes or other significant labor disputes; significant supply shortages; adverse weather conditions and other acts of nature; acts of God; fire, other substantial property damage or any condition that prevents or significantly interferes with the operations of Raynham Park's gaming establishment; significant subsurface conditions; riot or civil unrest; the suspension or loss of Raynham Park's Category 2 gaming license (but only during the period of such suspension or loss); the forced closure of all gaming establishments by the Commonwealth of Massachusetts or the Massachusetts Gaming Commission; and actions or failures to act of any governmental authority or agency.
- 13. Integration Clause. This Agreement and any attachments hereto constitute the entire agreement between the parties. No agents, representative, employee or officer of the City or Raynham Park has authority to make, or has made, any statement, agreement

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or representation, oral or written, in connection with this Agreement which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the Parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this Agreement. No modifications, alterations, or changes to this Agreement or any of its terms shall be valid or binding unless accomplished by a written amendment signed by all Parties in accordance with the terms herein.

- 14. Amendment. This Agreement shall not be amended except upon written consent of all parties hereto.

- 15. Governing Law, Construction and Forum Selection. This Agreement shall be interpreted under the law of the Commonwealth of Massachusetts. The titles of the sections and subsections herein have been inserted as a matter of convenience and reference only, and shall not control or affect the meaning or construction of any of the terms or provisions herein. The Parties agree that any cause of action raised in relation to this Agreement may be heard in any Commonwealth or federal court in Massachusetts having jurisdiction and venue over the action.

- 16. Counterparts. This Agreement shall be executed in any number of counterparts which, taken together, shall constitute one and the same Agreement. To evidence the fact that it has executed this Agreement, a Party may send a copy of its executed counterpart to the other Party by facsimile or electronic transmission. In such event, such party shall forthwith deliver to the other Party an original counterpart of this Agreement executed by such Party.

- 17. Severability. Should any section or any part of any section of this Agreement be rendered void, invalid or unenforceable by any court of law, for any reason, such a determination shall not render void, invalid or unenforceable any other section or part of any section of this Agreement.

7.

IN WITNESS WHEREOF, and intending to be bound hereby, the Parties hereto have caused this Agreement to be duly executed on their behalf by their authorized officers and applicably attested, all as of the day and year first above written.

ATTEST:

CITY OF TAUNTON

By: _____

By: _____

Thomas C. Hoye, Jr.
Mayor

Approved as to form:

By: _____

Jason D. Buffington, Esq.
City Solicitor

ATTEST:

RAYNHAM PARK, LLC, by its manager
RAYNHAM MANAGER, INC.

By: _____

By: _____

Anthony D. Ricci, President

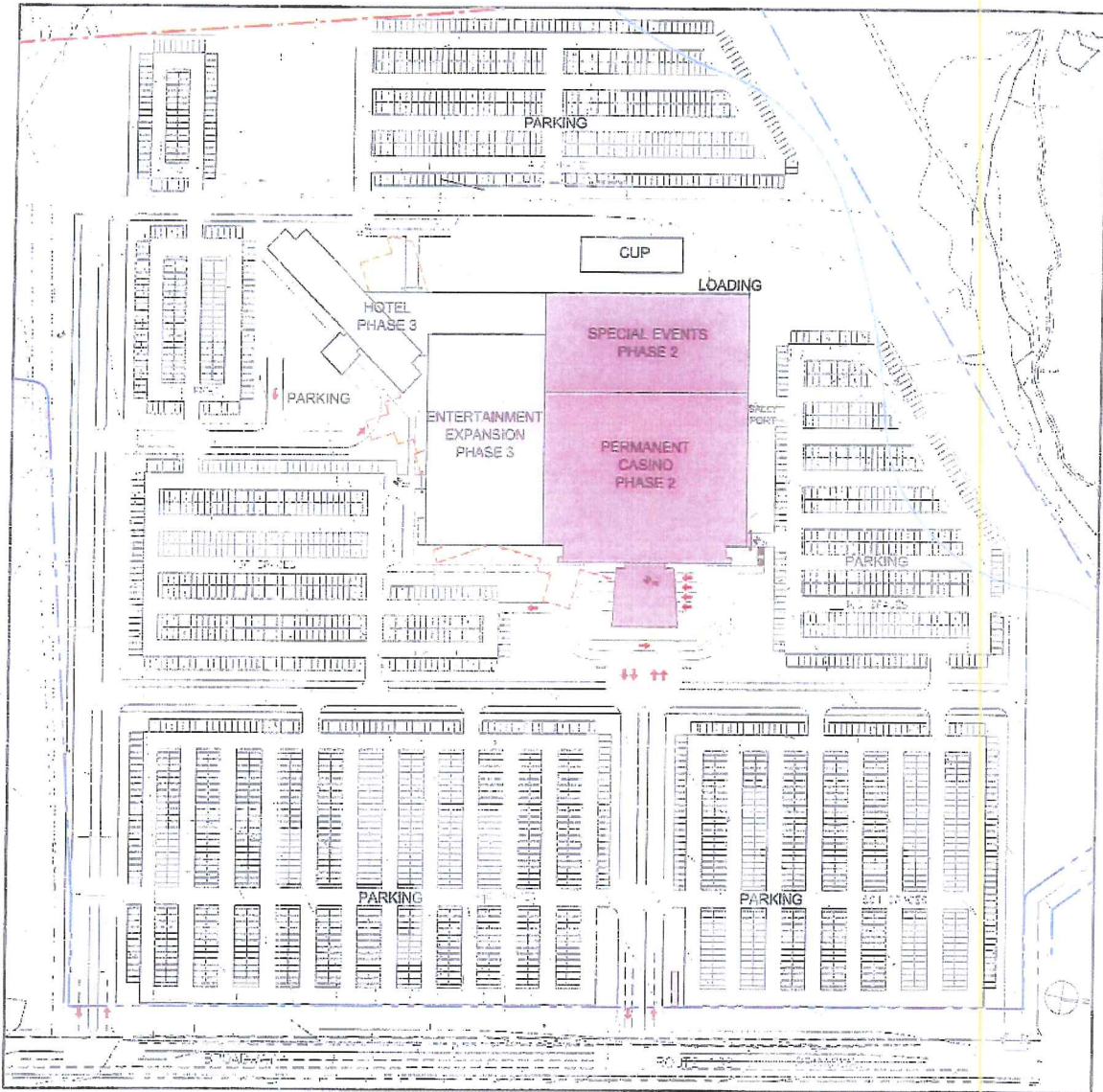


EXHIBIT 1