

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), dated for reference purposes as of September 13, 2010 (the “Effective Date”), is made by and between THE STATE OF NEW YORK ACTING BY AND THROUGH THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY (the “State”), PURSUANT TO CHAPTER 18 OF THE LAWS OF 2008, AS AMENDED, having an address at c/o Executive Chamber, The Capitol, Albany, New York 12224, and GENTING NEW YORK LLC, having an address at c/o Steven Wilner, 1 Liberty Plaza, New York, New York 10006 (“Vendor”). (Individually, each of State and Vendor is referred to herein as a “Party”; collectively, State and Vendor are referred to herein as the “Parties”).

RECITALS

WHEREAS, State has determined that it is in the public interest that a state-of-the-art video lottery facility (the “Video Lottery Facility”), including a parking facility structure (the “Parking Facility”), be developed and operated at the site of certain real property and improvements commonly known as Aqueduct Racetrack in the Borough of Queens, City of New York, State of New York, which racetrack is described with particularity in MOU Exhibit A attached hereto (“Aqueduct”), consistent with certain legislation enacted by the State as Chapter 18 of the Laws of 2008, as amended by legislation enacted as Chapter 140 of the Laws of 2008 (the “Chapter Amendment”), and as it may be further amended from time to time (the “Legislation”); and

WHEREAS, Aqueduct comprises both land (the “Aqueduct Lands”) and the improvements now or hereafter located thereon including the clubhouse (“the “Clubhouse”) and the grandstand (the “Grandstand”) as they now exist or may be altered (the “Aqueduct Improvements”); and

WHEREAS, on September 12, 2008, The New York Racing Association Inc. (“Old NYRA”), irrevocably relinquished and conveyed all of Old NYRA’s right, title and interest in Aqueduct to State, pursuant to (i) the Legislation; (ii) a certain plan of reorganization pursuant to a certain voluntary petition filed by Old NYRA on November 2, 2006 under Chapter 11 of United States Bankruptcy Code with the U.S. Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), as confirmed by an order, dated April 28, 2008, of the Bankruptcy Court, which plan became effective on said date; and (iii) a certain State Settlement Agreement made by and among The New York Racing Association, Inc. (“NYRA”), Old NYRA, the State, the New York State Franchise Oversight Board and the New York State Division of the Lottery (the “Division of the Lottery”), dated as of said date; and

WHEREAS, contemporaneously with the conveyance of Aqueduct by Old NYRA to State, State leased portions of Aqueduct to NYRA pursuant to a certain Facilities Ground Lease Agreement (the “Facilities Ground Lease”) and a Ground Lease

Agreement, each dated September 12, 2008, which portions comprise all of Aqueduct; and

WHEREAS, State, NYRA and Vendor intend that: (i) NYRA will assign its interest as lessee in the Facilities Ground Lease to Vendor, pursuant to a certain Assignment and Assumption of Facilities Ground Lease between NYRA, as assignor, and Vendor, as assignee (the “**Assignment and Assumption of Facilities Ground Lease**” attached as RFP Exhibit B), such assignment to be approved in accordance with the State Finance Law; and (ii) Vendor, as sublessor, and NYRA, as sublessee, will enter into that certain Sublease Agreement (the “**Sublease**” attached as RFP Exhibit C) for a portion of the Aqueduct Lands and the Aqueduct Improvements leased under the Facilities Ground Lease, which are to be occupied by NYRA and will not contain any portion of the Video Lottery Facility or any area for other future development as described in Exhibit B of the Sublease (the “**NYRA Premises**”); and

WHEREAS, State has consulted with NYRA with respect to the development of the Video Lottery Facility and Parking Facility on the Aqueduct Lands; and

WHEREAS, pursuant to the Legislation, (i) State has appropriated to ESDC the sum of \$250,000,000 for services and expenses related to funding the design, acquisition, construction and equipment of such structures and facilities as may be necessary to properly house video lottery gaming at Aqueduct and the New York State Urban Development Corporation d/b/a Empire State Development Corporation (“**ESDC**”) is also authorized to issue bonds or notes to pay such amounts and to finance one or more debt service reserve funds or to pay costs of issuance of bonds or notes; and

WHEREAS, State, or ESDC acting on behalf of State, intends to utilize such funds to make a grant (the “**Capital Construction Grant**”) in aggregate not to exceed Two Hundred Fifty Million Dollars (\$250,000,000) for eligible capital construction costs of the Video Lottery Facility pursuant to a “**Capital Construction Grant Funding Agreement**” or “**Grant Disbursement Agreement**” attached as MOU Exhibit C; and

WHEREAS, State has appropriated up to Twenty-Five Million Dollars (\$25,000,000) for a loan by ESDC to NYRA pursuant to an “**ESDC Loan Agreement and Note**” attached as RFP Exhibit I, which will be assigned by ESDC to Vendor upon (i) Vendor’s reimbursement to ESDC of the loan amount(s) disbursed to NYRA by ESDC and (ii) Vendor’s agreement to a “**NYRA Financing Agreement**” attached as RFP Exhibit J; and

WHEREAS, the Division of the Lottery issued a Request for Proposals on May 11, 2010, soliciting proposals from experienced vendors seeking award of a Video Lottery License to develop and operate a Video Lottery Facility at Aqueduct Racetrack, and clarified the requirements of the Request for Proposals with (a) Questions and Answers dated May 25, 2010, June 11, 2010, and June 22, 2010, and (b) amendment(s) dated June 22, 2010, (collectively, the “**RFP**”); and

WHEREAS, Vendor submitted a Proposal dated June 29, 2010 (the "Proposal"), which received the highest score among competing proposals by the State's evaluation team; and

WHEREAS, video lottery gaming at Aqueduct is subject to Article 1, section 9 of the New York State Constitution, Article 34 of the Tax Law (the "New York State Lottery for Education Law"), and the rules and regulations, bulletins, and instructions of the Division of the Lottery, including rules and regulations governing the grant of video lottery agent licenses.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

ARTICLE 1

PROJECT COMPONENTS

The activities to be conducted under this MOU, the RFP, and the Proposal are referred to collectively herein as the "**Project**." The RFP and the Proposal are hereby incorporated into this MOU with the same force and effect as if they were fully set forth herein. It is the intention of the Parties that the Project be developed as follows:

1.1 The Video Lottery Facility shall be developed and operated in accordance with this MOU, the Division of the Lottery's regulations, bulletins and instructions and all applicable laws.

1.2 State shall at all times own the Video Lottery Facility, Parking Facility, and any other improvements constructed or operated by Vendor at Aqueduct. State shall retain ownership of the Aqueduct Lands and all property and improvements located thereon, subject only to use and occupancy rights granted by State and consistent with all applicable laws.

1.3 Design, Construction and Operation of the Video Lottery Facility

1.3.1 Vendor shall, at Vendor's sole cost and expense, design, obtain any necessary financing in excess of the Capital Construction Grant, as provided in this MOU, for and construct, complete and furnish the Video Lottery Facility, as described in the RFP and the Proposal, that will house, among other things, at least 4,500 Video Lottery Terminals (the "**VLTs**"), which, together with related development, shall comprise (a) a newly constructed entry lobby, along with a porte cochere (the "**Construction Premises**"); (b) renovated premises within the Clubhouse and Grandstand including interconnections with the premises to be occupied by NYRA (the "**Renovation Premises**"); (c) the Parking Facility, containing not less than 2,000 parking spaces; and (d) such other improvements as are required by SEQRA (as hereinafter defined) review including site work (including entrances to Aqueduct, parking lot repaving and restriping, lane widening, landscaping, tree planting and a covered elevated pedestrian walkway

connection to the subway station adjacent to Aqueduct). Subject to the approval of the Division of the Lottery and compliance with applicable building and safety codes, the Video Lottery Facility shall be constructed, completed and furnished in a manner comparable to or exceeding the architecture, construction quality and level of finishes in the existing video lottery facilities located at Empire City Casino at Yonkers Raceway in Yonkers, New York (“**Empire City**”) and Saratoga Gaming and Raceway in Saratoga Springs, New York (“**Saratoga**”). In connection with the construction of the Video Lottery Facility, Vendor shall have the right to perform work in other portions of the Aqueduct Lands, including in portions of the NYRA Premises, for the installation of additional infrastructure to support the Video Lottery Facility, including, without limitation, HVAC equipment in the Clubhouse. The Vendor shall be permitted to operate, maintain, repair and replace such infrastructure. The Division of the Lottery shall approve plans for gaming floor layouts, office space for Division of the Lottery staff members, work and storage space for VLT suppliers, office space for the staff of the video lottery central computer system provider, space for the data center for the video lottery central computer system, space and locations of the cage, count room(s) and armored car bay, and space for security and surveillance equipment and operations. Subject to the approval of the Division of the Lottery, design procedures and specifications shall be in accordance with the RFP and the Proposal (the “**Design Procedures**”). The Video Lottery Facility shall comprise interior space specifically designated and dedicated to house 4,500 VLTs (or such greater number of VLTs as may be approved by the Division of the Lottery) and must also include interior spaces within the Renovation Premises for immediately ancillary or complementary activities such as are commonly located in comparable facilities such as food and beverage services and retail uses. With the approval of the Division of the Lottery, the Video Lottery Facility may be opened in phases beginning with a Preliminary Phase comprising a portion of the final gaming floor including less than 4,500 VLTs (the “**Preliminary Phase**” or “**Preliminary Facilities**”). The activities described in this subsection shall collectively be referred to herein as the “**Video Lottery Project.**” The Division of the Lottery shall have the authority to specify the priorities for development of the phases and components of the Video Lottery Project.

1.3.2 The control and disbursement of the Capital Construction Grant shall be consistent with applicable provisions of Chapter 90 of the Laws of 2010 and in accordance with the provisions of a funding agreement between ESDC and Vendor, to be implemented as set forth in MOU Exhibit C attached hereto, (the “**Capital Construction Grant Funding Agreement**” or “**Grant Disbursement Agreement**”). The disbursement of the Capital Construction Grant shall be made in a prompt and timely manner in order to directly pay the eligible capital construction costs associated with the construction of the Video Lottery Facility to the extent of the Capital Construction Grant. To the extent that costs of the construction of the Video Lottery Facility are projected to exceed or do exceed the Capital Construction Grant amount, Vendor shall provide the State and ESDC with assurances satisfactory to the State and ESDC of the sources and availability of any required additional funding. In such an event, disbursement of the Capital Construction Grant shall be coordinated with the Vendor’s other sources of funding in a manner as may be set forth in the Capital Construction Grant Funding Agreement.

1.3.3 The duties and obligations of the Parties with respect to the Video Lottery Project are further described in **Article 10** of this MOU (the “**Video Lottery Facility Development**”).

1.3.4 As soon as the Video Lottery Facility shall have been completed and the VLTs installed therein, Vendor shall either operate the Video Lottery Facility or cause the Video Lottery Facility to be operated in accordance with the requirements of the Division of the Lottery.

1.3.5 Vendor, directly or indirectly, as the licensed Aqueduct video lottery agent, shall have sole control over the operation of the Parking Facility (which shall be available only to patrons of the Video Lottery Facility and horse racing on the Aqueduct Lands) and shall be free to set pricing for use of the Parking Facility, including providing discounts to customers of the Video Lottery Facility.

ARTICLE 2

OPERATION

2.1 The Vendor agrees to comply with all licensing requirements of the Division of the Lottery.

2.2 Vendor shall at all times include an entity satisfactory to the Division of the Lottery with significant experience in the development and operation of a large-scale gaming facility comparable to the Video Lottery Facility.

2.3 Vendor shall, at Vendor’s sole cost and expense, operate the Video Lottery Facility in a manner comparable to or exceeding operations located at Empire City Casino at Yonkers Raceway in Yonkers, New York (“**Empire City**”) and Saratoga Gaming and Raceway in Saratoga Springs, New York (“**Saratoga**”), as of the Effective Date, acquire and maintain all required security and surveillance equipment, maintain the Video Lottery Facility and the exterior surfaces of the VLTs in a clean and attractive manner, and market the Video Lottery Facility so as to maximize the number of visitors and amount of revenues. The Division of the Lottery shall maintain and operate the VLTs, bases, chairs, signage, and the video lottery central system that controls the VLTs, either directly or through contractors selected by the Division of the Lottery, so that they are operational at all times approved by the Division of the Lottery in accordance with the provisions of the New York State Lottery for Education Law.

2.3.1 Vendor may install a proprietary player-tracker system and Vendor shall have full ownership of any data produced therefrom; provided, the Division of the Lottery shall have the right to unfettered access and use of such data while maintaining the confidentiality thereof subject to the provisions of the Freedom of Information Law and the Personal Privacy Protection Law.

2.4 Vendor shall ensure that (a) the Video Lottery Facility is maintained at all times in good condition and repair, in accordance with the standard set forth in Section 2.3 and the requirements of the Division of the Lottery, (b) to the extent applicable, the Video Lottery Facility is fully tenanted, and (c) any occupants thereof comply at all times with the provisions of their subleases or occupancy agreements.

2.5 The hours of operation of the Video Lottery Facility shall be in accordance with all applicable laws, including without limitation the Legislation and any applicable rules and regulations of the Division of the Lottery.

2.6 During the term of this MOU, Vendor shall have the right, subject to the approval of the Division of the Lottery and compliance with applicable building and safety codes, to design, construct and operate, and from time to time alter or modify, at its sole expense, such restaurants, bars, conference centers, meeting rooms, retail sales areas, entertainment venues, and other food service and hospitality facilities within the Renovation Premises as are consistent with other large-scale gaming facilities (collectively, the “**Hospitality Facilities**”). Vendor shall not be required to pay any additional consideration to State for the development and operation of the Hospitality Facilities beyond that provided in **Article 5** of this MOU.

ARTICLE 3

MARKETING

3.1 Vendor shall make best efforts to market and promote the Video Lottery Facility subject to the approval of the Division of the Lottery and in accordance with all applicable laws and consistent with the customary manner of marketing comparable operations in the industry and so as to attract the maximum number of visitors to the Video Lottery Facility.

3.2 Use of Gaming Brand and Customer Service Programs: Vendor shall use Vendor’s gaming brand, as described in the Proposal, in all marketing and promotion of the Video Lottery Facility undertaken by Vendor. At no time shall there be a licensing fee charged for use of Vendor’s gaming brand or proprietary customer service programs and standards in conjunction with the Video Lottery Facility. Vendor shall allow State, without royalty or other charge of any kind, to use Vendor’s gaming brand in all marketing and promotion of the Video Lottery Facility undertaken by State and State shall be deemed to have been granted a license from Vendor for such use of Vendor’s gaming brand. Vendor shall have the right, at no cost to Vendor, to use “Aqueduct,” “Aqueduct Racetrack” and similar terms in its marketing and promotion of the Video Lottery Facility.

3.3 Non-Compete Covenant: Vendor and its member companies and affiliates shall not operate, advise, invest in, or otherwise facilitate gaming operations within a fifty (50) mile radius of Aqueduct without the written consent of State; provided, however,

that Vendor shall have the right to participate in any future request for proposals or other processes undertaken by State in connection with gaming operations. Vendor shall not utilize the Video Lottery Facility in any way to attract patrons to other gaming facilities that are not New York video lottery facilities, whether through transportation arrangements, discount programs, or other services or attractions. Without limiting the generality of the foregoing, in order to prevent the diversion of Video Lottery Facility patrons to other gaming venues, Vendor is prohibited from use of the Video Lottery Facility gaming customer database for any purpose other than the advertisement, marketing and promotion of Video Lottery gaming at Aqueduct or other New York video lottery facilities. Furthermore, Vendor and its member companies and affiliates shall not advertise, market or promote any non-New York Lottery gaming venue in the New York City metropolitan area without the approval of the Division of the Lottery.

ARTICLE 4

TERM

4.1 Initial Term: The term of this MOU and related development shall commence on the date on which all approvals necessary for the effectiveness of this MOU shall have been received and a fully executed copy of this MOU shall have been approved and filed in the Office of the State Comptroller pursuant to Section 112 of the State Finance Law (“**MOU Effective Date**”) and, unless earlier terminated pursuant to the provisions hereof, shall terminate on a date that is thirty (30) years following substantial completion of the Video Lottery Facility, which shall be evidenced by issuance by the New York State Office of General Services of a temporary certificate of occupancy for the entire Video Lottery Facility (the “**Initial Term**”).

4.2 Extension Term: So long as Vendor is not in default under any of the provisions of this MOU and subject to approval of the Division of the Lottery, which shall not be unreasonably withheld, State hereby agrees that Vendor may exercise one (1) option to extend the Initial Term by an additional ten (10) years in consideration for the payment by Vendor of a supplemental Licensing Fee to State on or before the date such additional ten-year term commences. The supplemental Licensing Fee shall be an amount equal to one-third of the 5-year average of annual Aid to Education produced by the Aqueduct Video Lottery Facility during the last five (5) years of the initial 30-year term of this MOU. Such extension term, if applicable, shall be subject to the same provisions as the Initial Term, except that Vendor shall continue to make capital expenditures to upgrade and maintain the Aqueduct Video Lottery Facility during the extension term according to a supplemental capital plan approved by the Division of the Lottery and except that Vendor shall have no further extension right.

ARTICLE 5

CONSIDERATION

5.1 State Expenses Fund: Separate and apart from the Entry Fee and the Upfront Licensing Fee, upon execution by the Parties of this MOU, Vendor shall deposit with the State the amount of One Million Dollars (\$1,000,000) as an initial deposit into a replenishable expense fund (the “**State Expenses Fund**”) to be used and drawn by State or ESDC to cover all costs and expenses incurred by State and ESDC in connection with transactions and activities contemplated in this MOU incurred after March 9, 2010 including, without limitation, (i) fees and disbursements of outside counsel, engineers, appraisers, consultants, financial and real estate advisors retained by State or ESDC, (ii) costs for dedicated State and ESDC staff engaged in such transactions and activities, and (iii) the costs of design review, construction oversight and inspection (collectively, the “**State Expenses**”), all of which shall be paid from the State Expenses Fund. State and ESDC shall have the right to withdraw such amounts from time to time from the State Expenses Fund as are necessary to reimburse State and ESDC for the State Expenses. State shall notify Vendor periodically of amounts drawn by State and ESDC from the State Expenses Fund, itemizing the purposes for which the funds were drawn. At State’s or ESDC’s request, Vendor shall replenish the State Expenses Fund within thirty (30) days to an amount designated by State or ESDC; provided however, that in no event shall Vendor be required to pay more than the aggregate sum of Three Million Dollars (\$3,000,000) to the State Expenses Fund.

5.2 Licensing Fee: As and for consideration to State for being selected by State as the Aqueduct Video Lottery agent for development of the Video Lottery Facility, Vendor shall pay to State an upfront licensing fee as specified in the Proposal (the “**Licensing Fee**”), which Vendor shall pay to the State within ten (10) business days after the State delivers to the Vendor this MOU signed by the Governor, the Temporary President of the Senate, and the Speaker of the Assembly.

5.3 Capital Construction Grant: In accordance with applicable provisions of Chapter 90 of the Laws of 2010, the ESDC Loan Agreement (RFP Exhibit I), the NYRA Financing Agreement (RFP Exhibit J) and the Legislation, State shall provide for ESDC to fund the Capital Construction Grant in the sum of Two Hundred Fifty Million Dollars (\$250,000,000), all of which shall be available to be applied by Vendor to pay eligible capital construction costs associated with the construction of the Video Lottery Facility, as provided in the Legislation (including, without limitation, reimbursement of amounts advanced by Vendor with respect to the construction of the Video Lottery Facility). The Capital Construction Grant shall be disbursed to Vendor as eligible capital construction costs of the construction of the Video Lottery Facility are incurred by Vendor and such disbursement shall at all times be subject to the procedures as set forth in the Capital Construction Grant Funding Agreement (MOU Exhibit C, “**Grant Disbursement Agreement**”). To the extent that any bonds or notes may be issued by State or ESDC in connection with the Video Lottery Project, as authorized by Chapter 90 of the Laws of

2010 and the Legislation, State or ESDC shall be responsible for all debt service on the bonds.

5.4 Additional Construction Costs: Vendor shall pay all costs of the Video Lottery Project including any such costs that exceed the net proceeds of the Capital Construction Grant. Vendor shall provide State with assurances satisfactory to State of the sources and availability of any required additional funding. Based on its anticipation of the costs of developing the Video Lottery Project, Vendor hereby certifies to State that it is prepared to expend or finance the amount specified in the Proposal in hard and soft construction costs in addition to the Capital Construction Grant. Without limiting the generality of the foregoing sentence, no portion of the Capital Construction Grant shall be used to pay such debt service or to pay for any costs or expenses associated with the issuance or sale of such bonds or notes.

5.5 Vendor Fee and Vendor's Marketing Allowance: During the term of this MOU, Vendor shall receive from State, through the Division of the Lottery, a percentage of the net total revenue wagered at the Video Lottery Facility after payout of prizes, in accordance with Tax Law Section 1612 (the "**Video Lottery Revenues**").

5.6 Payments to NYRA: Vendor shall make payments to NYRA as required by the NYRA Financing Agreement (RFP Exhibit J).

5.7 Operating Payments: Commencing on the date that Vendor commences operations of the Preliminary Phase and continuing throughout the term of this MOU, Vendor shall make and State shall be entitled to receive payments in accordance with the requirements of the Legislation.

ARTICLE 6

CONDITION OF PREMISES

6.1 The Aqueduct Lands shall be provided to Vendor and Vendor shall accept the same in their as-is, where-is condition subject to (a) any encumbrances of record; (b) any violations of record imposed by any governmental authority, other than any such violations as of the date of transfer that are dangerous or hazardous to the health and safety of occupants of the Video Lottery Facility, or the public, which shall be the responsibility of State; and (c) any pre-existing environmental conditions, which pre-existing environmental conditions shall be the responsibility of Vendor up to a limit of One Million Dollars (\$1,000,000), and which pre-existing environmental conditions shall be the responsibility of State to the extent such conditions result in costs exceeding One Million Dollars (\$1,000,000). Such State-borne costs shall not be paid with any of the monies constituting part of the Capital Construction Grant or the State Expenses Fund.

6.2 Vendor, at its sole cost and expense, shall cure and remove all violations at the Video Lottery Facility that are the responsibility of Vendor under Section 6.1 or

arising or occurring after the MOU Effective Date including any that are dangerous or hazardous to the health and safety of occupants of the Video Lottery Facility or to the public. In connection with any such environmental conditions, Vendor shall contact the New York State Department of Environmental Conservation (currently to be contacted to file a complaint at <http://www.dec.ny.gov/regulations/393.html>), shall comply with all applicable laws and regulations and shall pay all penalties arising out of any and all of such violations. Thereafter, Vendor shall promptly cure and remove all other violation conditions (other than violation conditions that will be eliminated by the construction of the Video Lottery Facility).

ARTICLE 7

NO CONDITIONS PRECEDENT

7.1 There shall be no conditions precedent with respect to payment of the upfront Licensing Fee, which shall be due and payable no later than ten (10) business days after the State delivers to the Vendor this MOU signed by the Governor, the Temporary President of the Senate, and the Speaker of the Assembly as more fully described in Section 5.2 of this MOU.

ARTICLE 8

VENDOR'S DUE DILIGENCE

Following the signing and delivery of this MOU, the following shall occur:

8.1 State shall provide to Vendor reasonable access to the Video Lottery Facility, and all information and documents with respect to the Video Lottery Facility, for the making, at Vendor's sole cost and expense, of invasive and non-invasive physical due diligence examinations, reviews, surveys, investigations and assessments, including, without limitation, engineering studies, environmental assessments and other investigations, that Vendor deems necessary or beneficial in connection with the development of the Video Lottery Facility and the SEQRA process. Vendor agrees that State shall arrange for the SEQRA review of the Video Lottery Project at Vendor's cost and expense and that the State shall confirm that the environmental reports identified in MOU Schedule B (collectively, the "**Existing Environmental Reports**") are available to Vendor. Vendor acknowledges that Vendor has had the opportunity to review the Existing Environmental Reports prior to submission to State of Vendor's proposal for the Video Lottery Project, and further acknowledges that such review of the Existing Environmental Reports satisfies the obligation of State set forth in this Section 8.1 to provide Vendor information on the physical condition of the Video Lottery Facility in connection with the SEQRA process.

8.2 Vendor shall submit to the Division of the Lottery, for its review and approval, pre-schematic design documents, schematic design documents, design development documents and the building department filing and construction documents for the Video Lottery Project, each of which shall be subject to review and approval by State in its sole and absolute discretion. Vendor shall also submit to the Division of the Lottery any revised plans and specifications or other material changes for the Video Lottery Project for review and approval by State solely as to compliance with this MOU and SEQRA. Such plans shall not contemplate increasing the gross bulk of the building comprising the Clubhouse and Grandstand by more than 30,000 square feet or increasing the height of the Video Lottery Facility. Any new rooftop additions constructed by Vendor on the Clubhouse and Grandstand, including mechanical space and equipment, shall also be subject to Division of the Lottery review and approval in the Division of the Lottery's sole discretion. All aspects of the Video Lottery Project shall comply with the Legislation. Notwithstanding anything to the contrary set forth in this MOU, Vendor shall have the exclusive right to determine the scope of work, the level of finish, and the extent of the investment to be made by Vendor in constructing and furnishing the Video Lottery Facility, provided that all such work, finish, investments and improvements shall, at all times, comply with the requirements set forth in Section 1.3.1 and the Design Procedures. The approvals by the Division of the Lottery of Vendor's design documents, plans and specifications described in this Section 8.2 shall not be unreasonably withheld or delayed. Approval of a submission shall be deemed given if the Division of the Lottery does not respond (including by request for clarification or additional information) to such submission within thirty (30) days from receipt by the Division of the Lottery of the submission of the request for approval.

ARTICLE 9

VIDEO LOTTERY FACILITY

9.1 Prohibited Uses: The Video Lottery Facility and the Video Lottery Project shall not be used for any unlawful, illegal or hazardous uses or uses in any manner that constitute a nuisance or for any purpose or use that violates the certificate of occupancy or, in the reasonable judgment of the Division of the Lottery, detracts from or degrades Aqueduct, or that renders void or voidable any insurance then in force and required by the Division of the Lottery's regulations. Examples of such prohibited uses include: sale or display of pornographic, obscene, graphically violent or immoral items or services, adult entertainment establishments, and liquor store(s) selling alcoholic beverages for off-premises consumption.

9.2 Assignment: Except as set forth in Section 9.3, this MOU may not be assigned by Vendor in whole or in part, nor may control of Vendor be transferred or encumbered, without the prior written consent of the Division of the Lottery, the giving of which consent shall be in the Division of the Lottery's sole discretion.

9.3 Financing:

9.3.1 Vendor shall provide its financing plan, sources of funds, and uses of such funds (“**Vendor Financing Plan**”) in sufficient detail and with sufficient documentation from financing sources to demonstrate Vendor’s ability to meet the financial commitments and development commitments described in this MOU, and in particular, its secured financing to make its full Licensing Fee payment as required in Section 5.2 hereof. Such Vendor Financing Plan is set forth in Vendor’s Proposal.

9.3.2 In no event shall Vendor’s Proposal be subject to Vendor’s ability to obtain financing as proposed in Vendor Financing Plan, and notably, there shall be no conditions precedent to the full and timely payment of the Licensing Fee other than the execution and delivery of this MOU.

9.3.3 All obligations and liabilities of Vendor under this MOU, or under any federal, state or local law, regulation, permit, approval, agreement or instrument, shall be non-recourse against State. Financing obtained by Vendor for the Video Lottery Project shall be subordinate to this MOU; provided however, that the lenders which provide Vendor with financing for the Video Lottery Project shall have the benefit of a non-disturbance agreement having provisions reasonably acceptable to State, Vendor and such lenders. Leasehold mortgage financing shall be permitted by Permitted Lenders (as hereinafter defined) or any syndicated lending transaction which is arranged by or through a Qualified Agent (a "Permitted Financing") and in compliance with the Division of the Lottery’s regulations. A Permitted Financing may include provisions for a pledge of the equity interests in Vendor as additional security for the Permitted Financing. A Permitted Lender or Qualified Agent shall mean a lender or agent approved by the Division of the Lottery. Anything contained herein to the contrary notwithstanding, in no event shall this MOU be assigned to nor shall control of Vendor be assumed by any Prohibited Person, as defined in MOU Schedule C attached.

9.4 Insurance:

9.4.1 Vendor shall obtain and maintain, at its sole cost and expense, insurance coverage as specified in this section. All insurance required shall be obtained at the sole cost and expense of Vendor, shall be maintained with insurance carriers authorized to do business in New York State and acceptable to the Division of the Lottery; shall be primary and non-contributing to any insurance or self insurance maintained by State; shall be endorsed to provide written notice be given to State and ESDC, at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, and shall name State and ESDC and any agencies or affiliates thereof, their respective officers, agents, trustees, directors and employees as additional insureds thereunder, except for Workers Compensation or Disability coverage.

9.4.2 General Liability Additional Insured Endorsement shall be on Insurance Service Office’s (ISO’s) form number **CG 20 26 11 85**, or a substitute form providing equivalent coverage. The additional insured requirement does not apply to Workers Compensation or Disability coverage.

9.4.3 Vendor shall require any subcontractors hired, to carry insurance with the same provisions provided herein. Contractors involved in the construction, maintenance, renovation or repair of the premises will maintain Commercial General Liability limits of not less than \$5,000,000 each occurrence or in the case of major construction, additions or renovations limits agreed to by State and General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO's) form number **CG 20 10 11 85**.

9.4.4 Vendor shall be solely responsible for the payment of all deductibles and self insured retentions to which such policies are subject. Deductibles and self insured retentions must be approved by the Division of the Lottery. Such approval shall not be unreasonably withheld.

9.4.5 Each insurance carrier must be rated at least "A-" Class "VIII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VIII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the Division of the Lottery and rated at least "A-" Class "VIII" in the most recently published Best's Insurance Report.

9.4.6 Vendor shall cause all insurance to be in full force and effect as of the MOU Effective Date and to remain in full force and effect throughout the term of this MOU. Vendor shall not take any action, or omit to take any action, that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

9.4.7 Not less than thirty (30) days prior to the expiration date or renewal date, the Vendor shall supply State updated replacement Certificates of Insurance and amendatory endorsements.

9.4.8 Vendor shall obtain and maintain the following insurance with limits not less than those described below, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

9.4.8.1 Commercial General Liability Insurance with a limit of not less than \$50,000,000 each occurrence. Such liability shall be written on the Insurance Service Office's (ISO's) occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products completed operations, broad form property damage including completed operations, personal & advertising injury, cross liability coverage, liability assumed in a contract including the tort liability of another and explosion, collapse and underground. The limit for Fire Damage Legal shall not be less than \$100,000.

9.4.8.1.1 If such Commercial General Liability Insurance contains an aggregate limit, it shall apply separately to each location.

9.4.8.2 Workers' Compensation/Disability Insurance as set forth in Section 2.11 of the RFP.

9.4.8.3 Comprehensive Business Automobile Liability Insurance with a limit of not less than \$10,000,000 for each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non owned automobiles.

9.4.8.4 Commercial Property Insurance on the Premises covering at a minimum, the perils insured under the ISO Special Causes of Loss Form (CP 10 30), or a substitute form providing equivalent coverages, for loss or damage to any owned, borrowed, leased or rented personal property, improvements and betterments, equipment, tools, including tools of their agents and employees, and property of State held in their care, custody and/or control.

9.4.8.5 Rental Value Insurance providing coverage for fair rental value of any portion of the described premises occupied by the Vendor.

9.4.8.6 Garage Keepers Legal Liability Coverage with a limit of not less than \$1,000,000 at each location for Comprehensive and Collision Coverage for damage to a customer's automobile or automobile equipment in your care, custody or control.

9.4.8.7 If the Vendor uses, stores, handles, processes or disposes of hazardous materials, then Vendor shall maintain in full force and effect through the period required by the Division of the Lottery, Environmental Impairment Liability insurance with limits of not less than \$5,000,000, providing coverage for bodily injury, property damage or loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against The People of the State of New York or ESDC, arising from Vendor's use, storage, handling, processing or disposal of hazardous materials

9.4.8.8 If Vendor sells, distributes, serves or furnishes alcoholic beverages, then Vendor shall maintain in full force and effect through the term, Liquor Liability Insurance with limits of not less than \$5,000,000.

9.4.8.9 During the performance of any construction work, restoration or alteration, Vendor will maintain or require the contractors to maintain builder's risk coverage on a completed value form covering the perils insured under the ISO special causes of loss form, including collapse, water damage, and transit and theft of building materials, with deductible reasonably approved by the Division of the Lottery, in non reporting form, covering the total value of work performed and equipment, supplies and materials at the location of the job as well as at any offsite storage location used with respect to the Video Lottery Project. The policy shall cover the cost of removing debris, including demolition as may be legally necessary by the operation of any law, ordinance

or regulation. Such policy shall name as insureds, The People of the State of New York, ESDC, Vendor, Contractor and Subcontractors. Consent of the carrier must be included to allow for the occupancy or use of the property by Vendor and State.

9.4.8.10 If any construction work, restoration or alteration involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any hazardous material or substance, petroleum or petroleum product, Vendor will require the Contractor to maintain in full force and effect throughout the term hereof, Pollution Legal Liability insurance with limits of not less than \$10,000,000, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against State or ESDC arising from Contractor's work.

9.4.8.11 Coverage should be written on an occurrence basis. If not available and subject to the approval of the Division of the Lottery, if coverage is written on a claims-made policy, Vendor warrants that any applicable retroactive date precedes or matches the MOU Effective Date; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two (2) years from the time work on the Video Lottery Facility is completed.

9.4.8.12 If any agreement between State and Vendor includes disposal of materials from the job site, the Contractor must furnish to State evidence of pollution legal liability insurance with a limit of not less than \$5,000,000 maintained by the disposal site operator for losses arising from the disposal site accepting waste under such agreement.

9.4.8.13 If autos are to be used for transporting hazardous materials, the Vendor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90.

9.4.8.14 Waiver of Subrogation. Vendor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against State, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Vendor waives or has waived before the casualty, the right of recovery against State or (ii) any other form of permission for the release of State.

9.4.8.15 In the event of a loss in excess of a specified amount, the senior mortgagee, or if none, the Division of the Lottery, shall be the depository of all insurance proceeds for purposes of advancing the proceeds to pay for restoration costs as the work progresses. All proceeds of Video Lottery Facility and casualty insurance shall be applied to restore the Video Lottery Facility.

9.5 Limitation on Liability: During the term of this MOU, neither State, ESDC nor any other agency nor their respective directors, officers, employees, agents or independent contractors shall be liable to Vendor or to any other person for accident or injury to person or damage to the Video Lottery Facility, or the Video Lottery Project, or any matter arising out of or in connection with the development, financing, construction, subleasing, use or occupancy of the Video Lottery Facility and the Video Lottery Project, other than obligations of State or ESDC to Vendor under this MOU.

9.6 Indemnification: Vendor shall defend, indemnify and save State, any of its agencies, departments, authorities, subdivisions, commissions, boards or other entities, and ESDC, and their respective directors, officers, commissioners, members, employees, agents and independent contractors (collectively, the “**Indemnitees**”) free and harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable attorneys’ fees and disbursements, that may be imposed upon or incurred by, or asserted against, any of the Indemnitees by reason of any construction work, renovation, hazardous substances, environmental condition, whether now existing or arising hereafter, accident or injury to person or damage to the Video Lottery Facility, including the Video Lottery Project, or any other matter related to operation, leasing, use and occupancy of the Video Lottery Project and the Video Lottery Facility, subject, however, to the limitation set forth in Section 6.1 hereof with respect to existing environmental conditions. The foregoing indemnities shall apply notwithstanding fault or negligence on the part of State or any of its agencies, departments, authorities, subdivisions, commissions, boards or other entities, or any of their respective directors, officers, commissioners, members, employees, agents or independent contractors, or irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability; provided, however, that such indemnities will not be applicable to a particular Indemnitee with respect to willful misconduct or gross negligence on the part of such Indemnitee. Vendor shall be given prompt written notice of any claim for indemnification together with copies of any correspondence, demands or pleadings relating to such claim and shall have the sole right to control the defense or settlement of any third party action or claim underlying a claim for indemnification with counsel of its own choosing, provided Indemnitees shall be given not less than thirty (30) days prior written notice of any proposed terms of settlement not covered by insurance. Indemnitees shall be obligated to reasonably cooperate with Vendor in the defense or settlement of any such third party action or claim and no Indemnitee shall compromise or settle any such third party action or claim without obtaining the prior written consent of Vendor, which consent shall not be unreasonably withheld or delayed. The foregoing indemnity shall not impose any personal liability with respect to the parent companies, subsidiaries, affiliates, officers, directors, agents or employees of Vendor.

9.7 Maintenance and Repair: During the term of this MOU, Vendor shall be responsible for all restoration, maintenance and repair, both interior and exterior, at the Video Lottery Project and the Video Lottery Facility. Without limiting the generality of the foregoing, Vendor intends to make annual maintenance capital expenditures with respect to the Video Lottery Project as described in the Proposal. Any such

improvement, restoration, maintenance or repair shall comply with all applicable statutes, codes, rules and regulations applicable to the building. Notwithstanding the foregoing, if State determines that Vendor has failed to so maintain and repair the exterior of the Video Lottery Project or the Video Lottery Facility and such failure poses a threat to health and safety and continues for thirty (30) days after written notice to Vendor, subject to unavoidable delays (or, if such maintenance and repair cannot be completed in thirty (30) days, if Vendor has failed to commence to maintain and repair the Video Lottery Project or the Video Lottery Facility in thirty (30) days and to diligently prosecute such maintenance and repair to completion), State and its agents and assigns, may enter the Video Lottery Facility and the Video Lottery Project to perform such maintenance, subject to agreed cure rights of any lender providing financing for the Video Lottery Facility or the Video Lottery Project. Vendor shall promptly pay to the Division of the Lottery the amount equal to the actual costs and expenses incurred by State for such maintenance and repairs.

9.8 Casualty: If the Video Lottery Project or the Video Lottery Facility shall be damaged or destroyed (in whole or in part) at any time during the term of this MOU, State shall have no obligation to replace, repair, rebuild or restore the Video Lottery Project or the Video Lottery Facility. If the Project or the Premises shall be destroyed in whole or in part, there shall be no abatement or reduction in the amounts payable by Vendor under this MOU. Vendor shall promptly as practicable under the circumstances (subject to the availability of adequate insurance proceeds and the agreement of any mortgagee to release such proceeds for such purpose) replace, repair, rebuild or restore the Video Lottery Project and the Video Lottery Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction and may use insurance proceeds for all such purposes. All plans for such replacements, repairs, rebuilding or restorations shall require the prior approval of the Division of the Lottery, but only as to matters that are subject to the Design Procedures, and such replacements, repairs, rebuilding or restorations shall be in accordance with the Design Procedures. The replacement, repair, rebuilding or restoration work shall also be subject to the same requirements as the work performed in developing the Video Lottery Project.

9.9 No Brokers. No brokerage fees, finders' fees, commissions or other compensation will be payable by State or Vendor in connection with this MOU or the conveyance of a leasehold interest in the Video Lottery Facility to Vendor. Vendor shall indemnify State from and against any and all expenses, damage or liability (including, without limitation, costs and expenses of legal counsel) arising out of any claim for such fees, commissions or other compensation made in connection with the foregoing matters due to acts of such party. Each Party shall be responsible for the payment of its own attorneys' fees and costs in connection with this MOU or the conveyance of a leasehold interest in the Video Lottery Facility to Vendor.

9.10 Defaults: During the period Vendor is the tenant of the Video Lottery Facility, if Vendor fails to pay amounts due under this MOU, or to perform any of its other obligations thereunder, the lenders will be given notice and a reasonable time to cure provided that the lenders have requested, in writing, written notice of the same. If

not cured timely, State will have the right to pursue remedies available under this MOU, in law and in equity, to enforce payment and performance of any obligations under this MOU and/or the right to terminate this MOU.

9.11 Payments to State: Vendor shall pay to State the following:

9.11.1 PILOT: Vendor shall make payments in lieu of taxes (“PILOT”) to State in the amount of full real estate taxes that would otherwise be due for the Aqueduct Lands, subject to any applicable real estate tax abatement program that would be available as of right to the Video Lottery Project or portions thereof if State were not the owner of the Video Lottery Facility. Insofar as the Aqueduct Lands, or any portion thereof, shall not be exempt from the payment of Taxes, Vendor shall pay all such Taxes on or before the date any penalty or interest shall be payable by reason of the nonpayment of such Taxes, and any PILOT payments which would have otherwise been payable by Vendor shall be reduced by an equivalent amount.

9.11.2 PILOST: Vendor shall be solely responsible for making all payments due to State in connection with sales tax on materials, goods, fixtures, equipment and other items of property incorporated in or used in connection with the construction/renovation of the Video Lottery Project and incurred prior to the Certificate of Occupancy for the Video Lottery Facility, including any services provided in connection therewith, at the prevailing local sales tax rate in an amount equal to State and local sales and compensating use taxes on materials, goods, fixtures, equipment and other items of property incorporated in or used in connection with the construction of the Video Lottery Project, including any service provided in connection therewith. Vendor, its contractors and subcontractors, shall have no right not to pay any of the foregoing as a result of the ownership of the fee interest being vested in State or a tax-exempt entity. In the event Vendor is relieved for any reason of the obligation to pay such amounts, Vendor shall then pay Payments in Lieu of Sales Tax (“PILOST”) for the Video Lottery Project quarterly, in arrears, within thirty (30) days after the end of each quarter, based upon evidence provided by Vendor to State of the actual cost of materials acquired or work performed during such previous quarter which were subject to sales tax. In computing the amount of PILOST, Vendor shall be entitled to any exemptions for which Vendor and/or the Video Lottery Facility qualifies and continues to qualify, other than an exemption by reason of the ownership of the fee interest being vested in State or a tax-exempt entity.

9.11.3 PILOMRT: Vendor shall be solely responsible for making all payments due to State in connection with the New York State and New York City mortgage recording tax (“MRT”) due on any mortgage financing or refinancing negotiated and obtained by Vendor and secured by a leasehold interest in the Video Lottery Facility. Vendor shall have no right not to pay any of the foregoing as a result of the ownership of the fee interest being vested in State or a tax-exempt entity or the landlord being a corporate governmental agency of New York State. In the event Vendor is relieved for any reason of the obligation to pay such amounts, Vendor shall then pay substitute amounts to State in the amount of MRT that would otherwise be due and payable. Any such amounts due for MRT payments shall be due on the date of closing of the mortgage

financing or refinancing. Vendor shall be entitled to any credits available from the payment of MRT in connection with mortgages on the Video Lottery Facility for which the Vendor has paid MRT.

9.11.4 Impositions: Vendor shall pay all of the following items (collectively, "Impositions") imposed by any governmental authority (including State, acting in its governmental capacity), all of which shall be calculated without taking into account exemptions available arising on account of the ownership of the Aqueduct Lands by State: (a) Taxes; (b) personal property taxes; (c) occupancy and rent taxes; (d) water, water meter and sewer rents, rates and charges; (e) excises; (f) levies; (g) license and permit fees; (h) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply, if any; (i) fines, penalties and other similar or like governmental charges applicable to the foregoing and any interest or costs with respect thereto and (j) any and all other governmental charges, and any interest or costs with respect thereto.

9.12 Licensing Fee Non-Payment. Non-payment of the Licensing Fee when due shall be a default under this MOU which shall entitle State to exercise all remedies, including termination of this MOU.

9.13 Division of the Lottery. Any permanent or final suspension, revocation or termination of any license, authorization or other approval necessary in order for Vendor to act as a video lottery agent of the Division of the Lottery at Aqueduct by a governmental authority or court having jurisdiction over such matters shall constitute a default under this MOU.

ARTICLE 10

VIDEO LOTTERY FACILITY DEVELOPMENT

10.1 Vendor shall be the developer of the Video Lottery Facility (the "**Video Lottery Developer**") and State shall be the owner. Vendor entity shall at all times include an entity with significant experience in the development and operation of large-scale gaming facilities.

10.2 Milestone Dates: Video Lottery Developer shall undertake development of the Video Lottery Facility so as to meet the following milestone dates:

10.2.1 subject to the Parties reaching mutual agreement as to the scope of the Preliminary Facilities as set forth in Section 1.3.1 hereof, construction of the Preliminary Facilities shall commence immediately following the date that the Division of the Lottery approves the initial plans and specifications for the Preliminary Facilities as set forth in Section 10.4.2 below;

10.2.2 construction of the Renovation Premises shall commence immediately following the later of (i) the completion of SEQRA review, or (ii) the date that the Division of the Lottery approves the initial plans and specifications for the Renovation Premises as set forth in Section 10.4.2 below; and

10.2.3 construction of the Construction Premises shall likewise commence immediately following the later of (i) the completion of SEQRA review, or (ii) the date that the Division of the Lottery approves the initial plans and specifications for the Construction Premises as set forth in Section 10.4.2 below.

10.2.4 Video Lottery Developer shall substantially complete, subject to force majeure delays, construction of the Video Lottery Facility and all related projects within the timeframes specified in the Proposal. The issuance of a temporary certificate of occupancy for the Video Lottery Facility shall be deemed to mean that the Video Lottery Facility shall be considered substantially complete. The definition of “force majeure” delays shall be based on industry standards for construction projects such as the Video Lottery Facility.

10.3 Records: All records of Video Lottery Developer related to or concerning the construction of the Video Lottery Project or the subleasing of any part of the Video Lottery Facility shall be subject to audit by State, at State’s cost, on reasonable advance notice to Video Lottery Developer during Video Lottery Developer’s regular business hours, provided however, that State’s right to audit such records shall expire, with respect to records relating to the construction of the Video Lottery Project, on a date that is six (6) years after the issuance of the permanent certificate of occupancy for the Video Lottery Project.

10.4 Design and Construction of the Video Lottery Project:

10.4.1 Video Lottery Developer shall pay all costs and expenses of design and construction of the Video Lottery Project.

10.4.2 Prior to the commencement of any work by Video Lottery Developer on the Video Lottery Project, the Division of the Lottery shall have approved the plans and specifications in accordance with the Design Procedures. Video Lottery Developer must obtain the Division of the Lottery’s prior written approval before Video Lottery Developer proceeds to the next phase, such approvals to be given within the time limits specified in Section 8.2 hereof or as otherwise specified in the Design Procedures. If the Division of the Lottery disapproves of any such plans and specifications, the Division of the Lottery, upon request, shall review with Video Lottery Developer the reasons for such disapproval and cooperate with Vendor to develop a plan to address the Division of the Lottery’s concerns.

10.4.3 The Video Lottery Facility shall be developed and constructed to comply with all applicable federal and State laws, codes, rules and regulations, including the Americans with Disabilities Act and with all applicable statutes, codes, rules and

regulations, including the New York City Fire Code (with respect to life and safety only), applicable to the building. Video Lottery Developer shall be required to obtain, at its sole cost and expense, all appropriate governmental permits and approvals as if the fee interest in the Video Lottery Facility and the Video Lottery Project were owned by Video Lottery Developer. State shall cooperate with Video Lottery Developer, at Video Lottery Developer's sole cost and expense, to obtain such permits and approvals.

10.4.4 Video Lottery Developer shall use best efforts to achieve the goals for MWBE utilization and minority and female workforce participation, as required by the RFP and included in the Proposal.

10.5 Cooperation of State. In order to expedite Vendor's construction and renovation work, State shall, from and after the date hereof, at Vendor's sole cost and expense, take all necessary and appropriate actions so that all necessary approvals, permits and consents required by law to construct the Preliminary Facility, Video Lottery Facility and the Parking Facility ("Required Approvals") shall be issued by the Division of the Lottery (or such other applicable State agency responsible for issuing such Required Approvals for other State projects).

ARTICLE 11

VIDEO LOTTERY AGENT LICENSE

11.1 Upon completion of the Video Lottery Facility, Vendor shall operate the Video Lottery Facility or shall cause the Video Lottery Facility to be operated in accordance with the applicable laws and the Division of the Lottery's regulations.

ARTICLE 12

TRANSFER TAXES

12.1 Vendor shall pay applicable State and City transfer taxes, if any, due in connection with this MOU, without regard for any exemption by reason of State's being a party to this MOU.

ARTICLE 13

APPLICABLE STATUTES AND REGULATIONS

13.1 All Applicable Law: The Project shall be subject to and Vendor shall comply with all applicable provisions of Federal, State and local laws, as such laws may be amended from time to time.

13.2 New York State Law: Vendor specifically recognizes that the Project shall be subject to and Vendor shall comply with all applicable provisions of the Legislation, including without limitation, the Racing, Pari-mutuel Wagering and Breeding Law, the Tax Law, the Real Property Tax Law, the Alcoholic Beverage Control Law and the State Finance Law, and including without limitation the following:

13.2.1 Division of the Lottery's Rules: The Video Lottery Project shall be subject to any and all rules and regulations promulgated by the Division of the Lottery pursuant to Section 1617-a of the Tax Law, including without limitation regulations relating to licensing of employees, hours of operation, and compliance with applicable labor laws.

13.2.2 Labor Provisions: The Video Lottery Project shall be subject to any rules and regulations promulgated pursuant to Section 213 of the Racing, Pari-Mutuel Wagering and Breeding Law, including without limitation any requirement of State with respect to hiring of minority and women-owned business enterprises, entering of project labor agreements, payment of prevailing wages, and employment of contractors utilizing apprenticeship programs.

ARTICLE 14

DEFAULT IN MOU OBLIGATIONS

14.1 In the event Vendor is in material default of any of its obligations under this MOU, this MOU may be deemed terminated by written notice from State to Vendor and neither Party shall have any further liability under, or with respect to, this MOU; provided however, that State shall give written notice to Vendor of any material default of any of Vendor's obligations under this MOU, and Vendor fails to cure such default within thirty (30) days after receipt of such notice of default from State or, if the default is not susceptible of cure within thirty (30) days, Vendor fails to commence to cure such default within thirty (30) days after receipt of such notice of default from State or fails to diligently proceed and complete the cure within a reasonable time thereafter, which reasonable time shall in no event exceed two (2) months.

14.2 Except to the extent expressly provided in Sections 6.1 and 15.2 of this MOU, in no event shall State, or any of its agencies, departments, authorities, subdivisions, commissions, boards or other entities, or ESDC be liable for any costs or expenses incurred or to be incurred by Vendor in connection with, or related to, this MOU, the Video Lottery Facility, any other premises described herein or the Project. In no event shall any directors, officers, employees, consultants or agents of State, or any of its agencies, departments, authorities, subdivisions, commissions, boards or other entities or ESDC have any liability under this MOU.

ARTICLE 15

GENERAL PROVISIONS

15.1 Each Party represents that it has the right, power, legal capacity and authority to enter into and perform the obligations under this MOU and to bind its heirs, successors, executors, administrators, assigns, beneficiaries, trustees, and trustors. Each Party has had the opportunity to seek legal advice from attorneys of its/their own choosing.

15.2 In the event of any proceeding arising out of or related to a breach of this MOU by either Party hereto, the prevailing party shall be entitled to recover from the losing party all of the costs and expenses incurred in connection with such proceeding, including court costs and attorney's fees and expert's fees, whether or not such proceeding is prosecuted to judgment.

15.3 This MOU contains the entire understanding and agreement between the Parties, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements, arrangements or understandings, oral or written, relating to the subject matter that are not fully expressed herein.

15.4 This MOU shall not be modified by either Party by oral representation made before or after the execution of this MOU. All modifications must be in writing and signed by the Parties.

15.5 This MOU shall not be construed against the Party preparing it, but shall be construed as if both Parties jointly prepared this MOU, and any uncertainty or ambiguity shall not be interpreted against any one Party.

15.6 The Parties agree that, except as provided in Section 5.1, each Party shall pay and be responsible for all of its own attorney's fees, costs, and expenses in connection with the negotiation and preparation of this MOU.

15.7 The Parties intend to execute all further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the intent and provisions of this MOU.

15.8 This MOU shall be construed and enforced in accordance with and governed by the laws of the State of New York, and venue for any action with respect to its enforcement shall lie in the Court of Claims, to the extent required, or State or Federal Court located in the County of Albany, State of New York.

15.9 This MOU may be executed in counterparts, and when each Party has signed and delivered one such counterpart, each counterpart shall be deemed an original

and, when taken together with the other signed counterpart, shall constitute one MOU, which shall be binding upon and effective as to all Parties.

15.10 Should any part of this MOU be found to be invalid, the validity of any remaining parts or provisions shall not be affected thereby.

15.11 All executory provisions of this MOU are conditional one upon the other.

15.12 The Parties represent and warrant that they understand the contents of this MOU and have executed it voluntarily.

15.13 All promises and covenants contained in this MOU shall survive the execution and delivery of this MOU.

15.14 Each Party acknowledges that such Party is fully aware of the significance and legal effect of this MOU, and is not entering into this MOU in reliance on any representation, promise, or statement made by any party, except those explicitly contained in this MOU.

15.15 No waiver by a Party or of its respective attorney of any condition or term of this MOU shall be deemed a waiver of any other condition or provision of this MOU.

15.16 Time is hereby expressly declared to be of the essence as it pertains to this MOU and to each and every term, covenant, agreement, condition and provision hereof.

15.17 Each person executing this MOU hereby represents and warrants that he/she has the legal power, right and actual authority to bind the Party on whose behalf they are executing this MOU to the provisions of this MOU.

15.18 Each Party to this MOU hereby agrees that, due to the nature of the development contemplated by this MOU, there may be changed circumstances or unexpected events that require future negotiation and agreement between the Parties. Each Party hereby covenants to the other that it will negotiate in such circumstances in good faith and in a fair and equitable manner to effectuate the goals of this MOU.

15.19 No brokerage fees, finders' fees, commissions or other compensation will be payable by State, ESDC or Vendor in connection with this MOU.

15.20 The parties do not intend to create, nor should this MOU be construed as creating, a partnership or joint venture relationship between State and Vendor for any purpose.

15.21 Notwithstanding anything to the contrary set forth in this MOU, the Parties intend that State shall be the sole owner of Aqueduct and the Aqueduct Lands and Aqueduct Improvements for any and all purposes, including all areas of New York law and Federal income tax law, excepting only such rights to use Aqueduct and the

Aqueduct Lands and Aqueduct Improvements as are expressly granted to Vendor pursuant to this MOU.

15.22 State represents and warrants to Vendor that State is the sole owner of Aqueduct, the Aqueduct Lands and the Aqueduct Improvements for any and all purposes, including all areas of New York law and Federal income tax law, excepting only such rights to use Aqueduct, the Aqueduct Lands and the Aqueduct Improvements as are expressly granted to Vendor pursuant to this MOU.

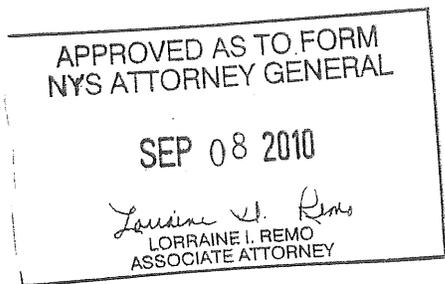
IN WITNESS WHEREOF, the Parties have entered into this MOU as of the Effective Date.

THE STATE OF NEW YORK

By: David A. Paterson
Governor

Temporary President of the Senate

Speaker of the Assembly



THE VENDOR

By: _____

APPROVED _____ 20

Its: _____

FOR THE STATE COMPTROLLER

Diane D Taylor
Asst Director, Office of
State Comptroller
September 13, 2010

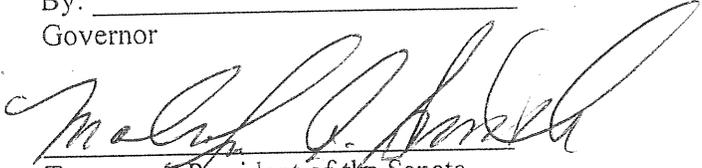
Aqueduct Lands and Aqueduct Improvements as are expressly granted to Vendor pursuant to this MOU.

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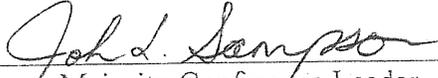
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THE STATE OF NEW YORK

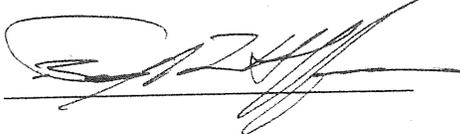
By: _____
Governor


Temporary President of the Senate

Speaker of the Assembly


Senate Majority Conference Leader

THE VENDOR

By: 

Its: Director

Aqueduct Lands and Aqueduct Improvements as are expressly granted to Vendor pursuant to this MOU.

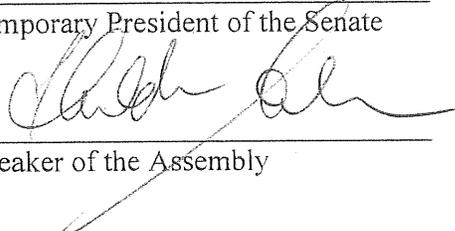
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IN WITNESS WHEREOF, the Parties have entered into this MOU as of the Effective Date.

THE STATE OF NEW YORK

By: _____
Governor

Temporary President of the Senate



Speaker of the Assembly

THE VENDOR

By: _____

Its: _____

Aqueduct Lands and Aqueduct Improvements as are expressly granted to Vendor pursuant to this MOU.

15.22 State represents and warrants to Vendor that State is the sole owner of Aqueduct, the Aqueduct Lands and the Aqueduct Improvements for any and all purposes, including all areas of New York law and Federal income tax law, excepting only such rights to use Aqueduct, the Aqueduct Lands and the Aqueduct Improvements as are expressly granted to Vendor pursuant to this MOU.

IN WITNESS WHEREOF, the Parties have entered into this MOU as of the Effective Date.

THE STATE OF NEW YORK

By: _____
Governor

Temporary President of the Senate

Speaker of the Assembly

Senate Majority Conference Leader

THE VENDOR

By: _____


Its: Director

Each of the undersigned parties hereby executes this Memorandum of Understanding for the purpose of confirming its membership or participation in the Vendor, as defined herein.

DEVELOPMENT ENTITY Genting New York LLC

A handwritten signature in black ink, appearing to be 'G. J. ...', written over a horizontal line.

GAMING ENTITY Genting New York LLC

A handwritten signature in black ink, appearing to be 'G. J. ...', written over a horizontal line.

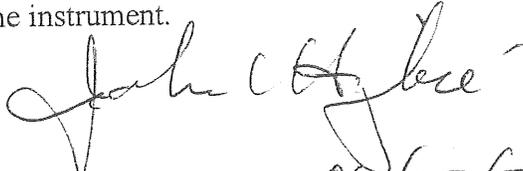
FINANCING ENTITY none

n/a

ACKNOWLEDGMENTS

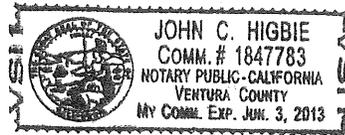
On the 13th day of August, in the year 2010, before me, the undersigned, personally appeared Barry A.L. Hoffman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature



My Commission expires on

06/03/2013



On the ___ day of _____, in the year 2010, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature

My Commission expires on _____

MOU EXHIBIT A

AQUEDUCT PREMISES

As described in Exhibit A of the Facilities Ground Lease Agreement dated September 12, 2008. Such descriptions are subject to amendment if corrective deeds are filed.

MOU EXHIBIT C

CAPITAL CONSTRUCTION GRANT FUNDING AGREEMENT DISBURSEMENT PROCEDURES

The Capital Construction Grant shall be disbursed according to the following general principles:

1. Payments shall be made solely pursuant to requisitions to pay for eligible capital construction costs of the construction of the Video Lottery Facility as provided in the Legislation.
2. The Capital Construction Grant Funding Agreement shall provide for pre-funding of a construction account in a sufficient amount to permit direct payment of applicable and approved construction costs in accordance with ESDC's customary procedures.

MOU Exhibit C

This **GRANT DISBURSEMENT AGREEMENT** includes all exhibits and attachments hereto and is made on the terms and by the parties listed below and relates to the Project described below:

**NEW YORK STATE
URBAN DEVELOPMENT
CORPORATION d/b/a
EMPIRE STATE DEVELOPMENT
CORPORATION ("ESDC"):**

633 Third Avenue
New York, NY 10017
Contact: _____
Phone: _____
Fax: _____
e-mail: _____

THE GRANTEE:

Name: Genting New York LLC
Address: c/o Steven Wilner
1 Liberty Plaza, NY, NY 10006
Contact Name: Barry Hoffman
Contact Title: Director
Phone: 1 323 962 8438
Fax: n/a
e-mail: barry.hoffman@gentingenergy.com

THE PROJECT:

Aqueduct Video Lottery Gaming Facility - Capital Works
and Purposes Necessary to Properly House Video Lottery
Terminal Gaming at Aqueduct Racetrack

PROJECT NUMBER:

GRANT AMOUNT:

\$250,000,000

FUNDING SOURCE:

New York State Urban Development Corporation –
Capital Works or Purposes Bonds

ESDC APPROVAL DATE:

EXPIRATION DATE:

TERMS AND CONDITIONS

1. The Project

- (a) The project will occur as described in the Memorandum of Understanding (the "MOU") a copy of which is attached as Exhibit A. The Grantee will perform the tasks on the schedule and as described in Exhibit A to this Agreement.
- (b) The Grantee shall satisfy the applicable funding design and construction requirements attached hereto as Exhibit B.
- (c) The Grantee will provide the consultant/contractor/vendor disclosure(s) required by Exhibit C.

2. Project Budget and Use of Funds

The Grantee will perform the project in accordance with the overall project budget, which includes the Grant funds, set forth in Exhibit D to this Agreement. The Grant will be applied only to eligible expenses, which are separately identified.

3. Conditions Precedent to Disbursement of the Grant

No grant funds shall be disbursed unless the Grantee is in compliance with the terms and conditions of this Agreement, including, but not limited to, Exhibit F (Disbursement Terms), and the following conditions have been satisfied:

- (a) ESDC has received an opinion of Grantee's counsel, in substantially the form appended to this Agreement as Exhibit E.
- (b) Any necessary approval has been issued by the Director of Budget of the state of New York, and the Grant funds have been received by ESDC.
- (c) The Grantee has completed, signed, had notarized, and delivered to ESDC the Disclosure and Accountability Certification appearing as Exhibit J to this Agreement and the Corporation has, in its sole discretion, considered the disclosure, if any, made therein and determined to proceed in making the Grant.
- (d) ESDC has received an acknowledgement from the New York State Division of the Lottery of Grantee compliance, in substantially the form attached hereto as Exhibit G-3.

4. Disbursement

Subject to the terms and conditions contained in this Agreement, ESDC shall disburse the Grant to the Grantee as follows:

- (a) ESDC shall reimburse the Grantee, in the manner as set forth in Exhibit F, the amount of eligible expenses actually incurred by the Grantee, after presentation to ESDC of a Payment Requisition Form, in the form attached to this Agreement as Exhibit G and its attachments, together with such supporting documentation as ESDC may require, including, the applicable documents in the forms provided in Exhibit B for the funding design and construction requirements.
- (b) The last ten percent (10%) of the Grant shall not be disbursed by ESDC until all of the tasks and reports required under this Agreement have been completed to ESDC's satisfaction.
- (c) In no event will ESDC make any payment which would cause ESDC's aggregate disbursements to exceed the Grant amount.

5. Non-Discrimination and Affirmative Action

The Grantee will comply with ESDC's Non-Discrimination and Affirmative Action policies set forth in Exhibit H to this Agreement.

6. No Liability of ESDC

ESDC shall not in any event whatsoever be liable for any injury or damage, cost or expense of any nature whatsoever that occurs as a result of or in any way in connection with the Project and the Grantee hereby agrees to indemnify and hold harmless ESDC, the State and their respective agents, officers, employees and directors (collectively, the "Indemnitees ") from and against any and all such liability other than that caused by the gross negligence or the willful misconduct of the Indemnitees.

7. Representations, Warranties and Covenants

The Grantee represents, warrants and covenants that:

- (a) It has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- (b) This Agreement was duly authorized, executed and delivered by the Grantee and is binding and enforceable against the Grantee in accordance with its terms.
- (c) It is duly organized, validly existing and in good standing under the laws of the State of its organization, has full power and authority to own its assets and to conduct the activities in which it is now engaged or proposed to be engaged and is duly qualified and in good standing under the laws of each other jurisdiction in which such qualification is required and shall maintain its existence in good standing in each such jurisdiction.

- (d) There are no actions, suits or proceedings or, to the knowledge of Grantee, threatened against, or affecting Grantee before any court, governmental entity or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties or business of the Grantee, except as may have been disclosed in writing to ESDC.
- (e) Grantee is in compliance and shall continue to comply in all material respects with all material applicable laws, rules, regulations and orders. The Grant shall be used solely for eligible expenses in accordance with the terms and conditions of this Agreement.
- (f) The information submitted by the Grantee in connection with its response to the RFP (as defined in the MOU) issued by the New York State Division of Lottery (the "Division of Lottery") for the project described therein, including the Grant, as such response may have been amended or supplemented in accordance with the RFP and as approved in writing by the Division of Lottery (the "Proposal"), is incorporated herein by reference in its entirety. In the event of an inconsistency between the descriptions, conditions, and terms of this Agreement and those contained in the RFP or the Proposal, the provisions of this Agreement shall govern. The Grantee hereby acknowledges that, in making the Grant, ESDC has relied on the statements and representations made by the Grantee in the Proposal. The Grantee hereby represents and warrants that it has made no material misstatement or omission of fact in the Proposal or otherwise in connection with the Grant and that the information contained in the Proposal continues on the date hereof to be materially correct and complete.
- (g) The relationship of the Grantee (including, for purposes of this paragraph, its officers, employees, agents and representatives) to ESDC arising out of this Agreement shall be that of an independent contractor. The Grantee covenants and agrees that it will conduct itself in a manner consistent with such status, that it will neither hold itself out as, nor claim to be, an officer, employee, agent or representative of ESDC or the State by reason hereof, and that it will not by reason thereof, make any claim, demand or application for any right or privilege applicable to an officer, employee, agent or representative of ESDC or the State, including without limitation, worker's compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.
- (h) Exclusive of payments made in accordance with the RFP, neither the Grantee nor any of the members of its Board of Directors or other governing body or its employees have given anything of value to anyone to procure the Grant or to influence any official act or the judgment of any person in the performance of any of the terms of this Agreement.
- (i) Subject to subpart (p) of this Section 7, the Grant shall be used solely for eligible

expenses in accordance with the terms and conditions of this Agreement for capital works or purposes, including, but not limited to, costs for the design, acquisition, construction and equipment for such structures as may be necessary to properly house video lottery terminal gaming at Aqueduct racetrack, including, but not limited to, the costs of studies, appraisals, surveys, testing, environmental impact statements, infrastructure, facility design, construction and equipment, cost of leasing space, professional fees and costs and issuance of insurance, all in accordance with applicable law.

- (j) Grantee is solely responsible and has sufficient funding for all Project costs in excess of the Grant.
- (k) No materials, if any, purchased with the Grant will be used for any purpose other than capital works and purposes for the Project.
- (l) The Grantee shall report in writing to ESDC any grants, commitments or funds received by the Grantee from any source, governmental or non-governmental, in connection with the carrying out of the Project, other than the grant of funds received under this Agreement. No part of the Grant will be applied to any expenses paid or payable from any other funding source.
- (m) The Grant shall not be used in any manner for any of the following purposes:
 - (i) political activities of any kind or nature, including, but not limited to, furthering the election or defeat of any candidate for public, political or party office, or for providing a forum for such candidate activity to promote the passage, defeat, or repeal of any proposed or enacted legislation;
 - (ii) religious worship, instruction or proselytizing as part of, or in connection with, the performance of this Agreement;
 - (iii) payments to any firm, company, association, corporation or organization in which a member of the Grantee's Board of Directors or other governing body, or any officer or employee of the Grantee, or a member of the immediate family of any member of the Grantee's Board of Directors or other governing body, officer, or employee of the Grantee has any ownership, control or financial interest. For purposes of this paragraph, "ownership" means ownership, directly or indirectly, of more than five (5) percent of the assets, stock, bonds or other dividend or interest bearing securities; and "control" means serving as a member of the board of directors or other governing body, or as an officer in any of the above; and
 - (iv) payment to any member of Grantee's Board of Directors or other

governing body of any fee, salary or stipend for employment or services, except as may be expressly provided for in this Agreement.

- (n) Any report or other product of the Grant, after approval of such product by ESDC, shall contain the following acknowledgment:

"Funding provided by a grant from the
Empire State Development Corporation"

- (o) ESDC may make reasonable use of any report or other product of the Grant upon notice to the Grantee.

- (p) Grantee will use ESDC grant funds, and submit payment requisitions, exclusively for eligible expenses related to capital works or purposes in accordance with IRS rules and regulations relating to ESDC's bonds and in accordance with the New York Debt Reform Act. Grantee acknowledges that grant funds must be used solely for authorized capital works and purposes and not for operating expenses or other working capital items or non-capital purposes, irrespective of whether the funds are still used for the benefit of the Project. Grantee acknowledges that the consequences of breaching this covenant could result in violations of state law and/or large bond issuances being treated as taxable instead of tax exempt for federal and state tax purposes, loss of certain federal subsidies to the state, adverse ratings changes for such bonds, and disproportionate negative financial consequences to the state and bondholders. Grantee recognizes its financial obligations, risks and liabilities for breach of this covenant. ESDC may, from time to time, request information from Grantee to confirm its compliance with this covenant and Grantee acknowledges its obligation under Section 8 (a) (ii) of the GDA to provide information upon request to ESDC.

8. Default and Remedies

- (a) Each of the following shall constitute a default by the Grantee under this Agreement:
- (i) Failure to perform or observe any obligation or covenant of the Grantee contained herein to the reasonable satisfaction of ESDC and within the time frames established therefor under this Agreement.
 - (ii) Failure to comply with any request for information reasonably made by ESDC to determine compliance by the Grantee with the terms of this Agreement or otherwise reasonably requested by ESDC in connection with the Grant.
 - (iii) The making by the Grantee of any false statement or the omission by the Grantee to state any material fact in or in connection with this Agreement or the Grant.

- (iv) A default beyond any applicable grace period by the Grantee, or any entity which Grantee directly or indirectly controls, is controlled by, or is under common control with, under any other agreement with ESDC.
- (b) Upon the serving of notice to the Grantee of the occurrence of a default (which notice shall specify the nature of the default), ESDC shall have the right to terminate this Agreement, provided that if the default is pursuant to paragraph 8(a)(i) or 8(a)(ii), no default shall be deemed to have occurred if Grantee cures such default within ten (10) days of notice from ESDC or, if the default cannot reasonably be cured within such ten-day period, Grantee commences to cure such default within the ten-day cure period and cures the default within ninety (90) days thereafter, provided further that ESDC shall not be obligated to make any disbursements during any such cure period.
- (c) Upon such termination of this Agreement, ESDC shall withhold any Grant proceeds not yet disbursed and may require repayment of Grant proceeds already disbursed. If ESDC determines that any Grant proceeds had previously been released based upon fraudulent representations or other willful misconduct, ESDC may require repayment of those funds and may refer the matter to the appropriate authorities for prosecution. ESDC shall be entitled to exercise any other rights and seek any other remedies provided by law.

9. Term

The term of this Agreement shall commence on the date hereof and expire on the Expiration Date, as set forth on the first page of this Agreement.

10. Books and Records: Project Audit

- (a) The Grantee will maintain accurate books and records concerning the Project for the term of this Agreement and for three (3) years from the expiration or earlier termination of this Agreement and will make those books and records available to ESDC, its agents, officers and employees during Grantee's business hours upon reasonable request.
- (b) ESDC shall have the right, upon reasonable notice, to conduct, or cause to be conducted, one or more audits, including field inspections, of the Grantee to assure that the Grantee is in compliance with this Agreement. This right to audit shall continue for three (3) years following the expiration or earlier termination of this Agreement.

11. Survival of Provisions

The provisions of Sections 6, 8 and 10 shall survive the expiration or earlier termination of this Agreement.

12. Notices

- (a) All notices, demands, requests or other communications permitted or required hereunder shall be in writing and shall be transmitted either:
- (i) via certified or registered United States mail, return receipt requested;
 - (ii) by facsimile transmission;
 - (iii) by personal delivery;
 - (iv) by expedited delivery service; or
 - (v) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

Empire State Development Corporation

Name:

Title:

Address: 633 Third Avenue, 34th Floor, New York, NY 10017

Telephone Number:

Facsimile Number:

E-Mail Address:

With a copy to:

Title: General Counsel

Address: 633 Third Avenue, 34th Floor, New York, NY 10017

Telephone Number: (212) 803-3750 Facsimile Number: (212) 803-3975

E-Mail Address: alaremont@empire.state.ny.us

GRANTEE: Genting New York LLC

Name: Barry Hoffman

Title: Director

Address: c/o Steven Wilner, 1 Liberty Plaza, NY, NY 10006

Telephone Number: (323) 962-8438

Facsimile Number: n/a

E-Mail Address: barry.hoffman@gentingenergy.com

- (b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

- (c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

13. No Assignment

The Grantee may not assign or transfer this Agreement or any of its rights hereunder.

14. No Waiver

No waiver of any ESDC's rights arising under this Agreement, or any other source, can occur unless such waiver shall be in writing and signed by ESDC and such written document manifests a clear and unequivocal intent by ESDC to waive its contractual or other legal rights. The term "waiver" as used herein is a term of art as used in the legal profession. ESDC may not be estopped from asserting any of its legal rights, including but not limited to its rights under this agreement, unless ESDC has signed a written document that clearly and unequivocally states that the other party may detrimentally rely upon the terms of such written document. Absent such written document, there shall be no estoppel against ESDC and the other parties' alleged detrimental reliance shall be deemed to be unreasonable. The term "estoppel" is used herein is a term of art as used in the legal profession.

15. Modification

This Agreement may be modified only by a written instrument executed by the party against whom enforcement of such modification is sought.

16. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to any conflict of law rules that might lead to the application of the laws of another jurisdiction. This Agreement shall be construed without the aid of any presumption or other rule of law regarding construction against the party drafting this Agreement or any part of it. In case any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such provision(s) had never been contained herein. In the event of a conflict between the MOU attached hereto as part of Exhibit A and any other term or condition of this Agreement, then the term or condition of this Agreement shall govern.

17. Confidentiality of Information

Information contained in reports made to ESDC or otherwise obtained by ESDC relating to trade secrets, operations and commercial or financial information, including but not limited to the nature, amount or source of income, profits, losses, financial condition, marketing plans, manufacturing processes, production costs, productivity rates, or customer lists, provided that such information is clearly marked "Confidential" by the Grantee, will be kept confidential by ESDC, to the extent such information is determined by ESDC to be exempt from public disclosure under the Freedom of Information Law and not otherwise required by law to be disclosed. Notwithstanding the foregoing, ESDC will not be liable for any information disclosed, in ESDC's sole discretion, pursuant to the Freedom of Information Law or other applicable law, or which ESDC is required to disclose pursuant to legal process.

18. Special Provisions

The Grantee shall comply with the special provisions, if any, set forth in Exhibit I.

19. Litigation Costs

The Grantee shall pay, in any action or proceeding that is commenced to enforce and/or involves the enforcement of the terms and conditions of this Agreement, all of ESDC's costs including, without limitation, ESDC's attorneys' fees. The Grantee shall also pay any and all of ESDC's collection costs including, without limitation, its attorneys' fees.

20. Waiver

The Grantee knowingly and expressly waives the right to a trial by jury and the right to interpose any counterclaims in any action brought by ESDC under the terms of this Agreement.

In witness whereof, the parties have executed this Agreement by their duly authorized representatives as of the latest date written below:

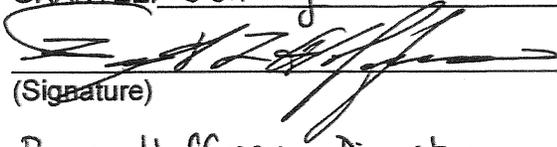
NEW YORK STATE URBAN DEVELOPMENT CORPORATION
d/b/a EMPIRE STATE DEVELOPMENT CORPORATION

(Signature)

(Printed name and title)

(date)

GRANTEE: Genting New York LLC



(Signature)

Barry Hoffman, Director

(Printed name and title)

6/25/10

(date)

Rev. 3/4/2010

ESDC GRANT DISBURSEMENT AGREEMENT

EXHIBITS

EXHIBIT A	Project Description
EXHIBIT A-1	Memorandum of Understanding
EXHIBIT B	Funding Design and Construction Requirements
EXHIBIT C	Consultant/Contractor/Vendor Disclosure Statement
EXHIBIT D	Project Budget
EXHIBIT E	Opinion of Counsel
EXHIBIT F	Disbursement Terms
EXHIBIT G	Payment Requisition Form
EXHIBIT G-1	Payment Requisition Cover Letter
EXHIBIT G-2	Project Cost Documentation
EXHIBIT G-2A	Project Cost Summary for ESDC-Eligible Expenses
EXHIBIT G-3	Lottery Acknowledgement
EXHIBIT H	Non-Discrimination and Affirmative Action Policy
EXHIBIT H-1	M/WBE Compliance Report
EXHIBIT I	Special Provisions
EXHIBIT J	Disclosure and Accountability Certifications

EXHIBIT A: Project Description

GRANTEE: Genting New York LLC

Aqueduct Video Lottery Gaming Facility - Capital Works and Purposes Necessary to Properly House Video Lottery Terminal Gaming at Aqueduct Racetrack, Project
Project Number: _____

See Attached **MEMORANDUM OF UNDERSTANDING**

EXHIBIT B: FUNDING DESIGN AND CONSTRUCTION REQUIREMENTS

Aqueduct Video Lottery Gaming Facility - Capital Works and Purposes Necessary to Properly House
Video Lottery Terminal Gaming at Aqueduct Racetrack, Project

Project Number: _____

See the attached material, forms and documents

EMPIRE STATE DEVELOPMENT CORPORATION
TABLE OF CONTENTS

- Design and Construction Requirements
- Tables of Approval Authority and Facsimile Signature
- Contract Change Order
- Schedule of Change Order
- Summary – Request for Payment
- Request for Payment
- Monthly Project Status Cost Control Report
- Cost Control Instructions D-1
- Contractor's Affidavit
- List of Subcontractors/Vendor Submitted with Request for Payment
- Contractor's Receipt and Waiver of Lien
- Subcontractor's Receipt and Waiver of Lien
- Affidavit and Final Waiver of Claims and Liens and Release of Rights
- Unconditional Waiver and Release
- Consultant's Code Certification Letter – Attachment A
- Contractor's Certification of Completed Construction – Attachment B
- Consultant's Certification of Completed Construction – Attachment C
- Pile Driving Report
- Survey Statement
- Typical Job Sign

EMPIRE STATE DEVELOPMENT CORPORATION
FUNDING DESIGN AND CONSTRUCTION REQUIREMENTS
for
(New York City and Aqueduct Video Lottery Gaming Facility)

The following design and construction submissions and review documents shall be supplied to ESDC:

Design Phase

The Grantee shall furnish to the Design and Construction Department (D&C):

- Project and construction budget
- Work scope including plans & specifications or written descriptions
- Code and zoning analysis
- Special agency approvals (health dept., highways, utility co., asbestos etc.)
- Construction cost estimates (incl. quantities and unit prices)
- Design/Construction Schedule
- Proposed/selected architects/engineers and copy of agreement
- Consultant's code certification letter-See Attachment A
- Project Status Cost Control Report - See Attachments D and D-1.
- Table of Approval Authority and Facsimile Signatures - See Attachments E-1, 2, 3, 4.

Construction Phase

The Grantee shall furnish to D&C copies of the following:

Submittals at the start of construction:

- Building permit
- Asbestos Free Building Certificate for alterations and demolitions (copy submitted to municipality)
- Plans with building department/authority approval stamp
- Contractor and CM Agreements/Cost
- Insurance policies naming New York State Urban Development Corporation d/b/a Empire State Development Corporation as additional insured.
- Construction schedule
- Trade payment breakdown

Submittals during construction:

- Progress schedules and updates
- Minutes of project meetings
- Building Department/authority amendments
- Payment requests
- Foundation survey (new construction only)
- Controlled inspection and test reports with architect's or engineer's approvals
- Project Status Cost Control Report - See Attachment D and D-1
- Change Issue and Change Order Log

Submittals at the completion of construction:

- Final punch lists
- Temporary Certificate of Occupancy (TCO)
- Certificate of Occupancy (CO)
- Contractor's Affidavit and Final Waiver of Claims and Liens and Release of Rights
- New York Board of Fire Underwriters approval (except in New York City)
- Contractor's Certifications of Completed Construction - See Attachment B
- Consultant's Certification of Completed Construction - See Attachment C (for NYC Local Laws and other specific items of work where certifications are desired).

Construction Contract Provisions

The construction agreement shall contain provisions satisfactory to D&C concerning:

- Insurance
- Method, schedule and terms of payments
- Provisions for contractor and subcontractor audits
- Contractor and Subcontractor lien waivers with monthly requisitions
- Contractor's warranty and clearing of liens at completion of construction
- There shall be no payments for stored material
- ESDC sign

Inspections

- ESDC will inspect throughout the construction phase until final completion.

Provisions for D&C Field Representative

If requested, the Grantee/Developer/Contractor shall provide an appropriate space at the job site with a desk, telephone, computer with internet and project website access, plan table, file cabinet, heat and air conditioning satisfactory to ESDC.

(Name of Project)

Table of Approval Authority and Facsimile Signature

(Owner)

<u>Name/Title/Firm</u> (Examples)	<u>Facsimile Signature</u>	<u>Initials</u>	<u>Documents Requiring Approval</u> (See (A) below for Examples)	<u>Approval Auth</u> <u>(\$ Limit)</u>
Director Design and Construction	_____	_____		
Sr. Vice-President Facilities Administration	_____	_____		
Sr. Vice-President Business and Finance	_____	_____		

The above individuals have been delegated authority as stated, in accordance with a meeting of the Board of Directors on _____.

Secretary

(A) Examples of Documents Requiring Approval

- (1) Payment Requisitions
- (2) Change Orders
- (3) Owner Agreements
- (4) Contracts

S - A - M - P - L - E
ATTACHMENT E-1

(Name of Project)

Table of Approval Authority and Facsimile Signature

(Construction Management Firm)

<u>Name/Title/Firm</u> (Examples)	<u>Facsimile Signature</u>	<u>Initials</u>	<u>Documents Requiring Approval</u> (See (A) below for Examples)	<u>Approval Auth</u> <u>(\$ Limit)</u>
Construction Manager	_____	_____		
Project Manager	_____	_____		
Controller	_____	_____		
President	_____	_____		

The above individuals have been delegated authority as stated, in accordance with a meeting of the Board of Directors on _____.

Secretary

(A) Examples of Documents Requiring Approval

- (1) Construction Payment Requisitions
- (2) Change Orders
- (3) Subcontracts
- (4) Owner Agreements
- (4) Contracts

S - A - M - P - L - E
ATTACHMENT E-2

(Name of Project)

Table of Approval Authority and Facsimile Signature

<u>Name/Title/Firm</u> (Examples)	<u>(Contractor)</u>		<u>Documents Requiring Approval</u> (See (A) below for Examples)	<u>Approval Auth</u> <u>(\$ Limit)</u>
	<u>Facsimile Signature</u>	<u>Initials</u>		
Construction Superintendent	_____	_____		
Controller	_____	_____		
Vice President	_____	_____		
President	_____	_____		

The above individuals have been delegated authority as stated, in accordance with a meeting of the Board of Directors on _____.

Secretary

(A) Examples of Documents Requiring Approval

- (1) Construction Payment Requisitions
- (2) Change Orders
- (3) Purchase Orders
- (4) Owner Agreements
- (5) Contracts

(Name of Project)

Table of Approval Authority and Facsimile Signature

(Architect)

<u>Name/Title/Firm</u> (Examples)	<u>Facsimile Signature</u>	<u>Initials</u>	<u>Documents Requiring Approval</u> (See (A) below for Examples)	<u>Approval Auth</u> <u>(\$ Limit)</u>
Partner-in-Charge	_____	_____		
Principal	_____	_____		
Controller	_____	_____		

The above individuals have been delegated authority as stated, by agreement of the Partnership on _____.

(A) Examples of Documents Requiring Approval

- (1) Construction Payment Requisitions
- (2) Change Orders
- (3) Architect Invoices
- (4) Architect/Consultant Contracts

S - A - M - P - L - E
ATTACHMENT E-4

**New York State Urban Development Corporation
d/b/a Empire State Development
Design and Construction Department
Contract Change Order**

Change Order No. _____

Date _____

Project/Location: _____

Contract No. _____

Contractor: _____

YOU ARE HEREBY AUTHORIZED TO COMPLY WITH THE FOLLOWING CHANGES TO THE CONTRACT PLANS AND SPECIFICATIONS

Issue No.	Description of Changes - Attach appropriate quantities, units, Unit Prices if applicable, drawings, cuts, etc.	Decrease in Contract Price	Increase in Contract Price
TOTAL DECREASE			
TOTAL INCREASE			
NET (INCREASE) (DECREASE) CONTRACT PRICE:			

The sum of \$ _____ is hereby added to, deducted from the Total Contract Price and the Total Adjusted Contract Price to date is \$ _____

Contract Completion Date is unchanged, increased, decreased by _____ Calendar Days. This document shall become an amendment to the Contract and all provisions of the Contract will apply hereto.

It is understood and agreed that this Change Order constitutes compensation in full to the contractor and its subcontractors and suppliers for all costs and mark-up directly or indirectly attributable to the change for all delays related thereto and for performance of the change within the time frame stated. Work performed under this Change Order prior to UDC/ESD or Architect's approval is at the Contractor's risk. No increase or decrease in the Contract Amount is authorized without UDC/ESD approval. Except as hereby modified, all items, conditions and provisions of the agreement remain unchanged and in full force and effect.

ACCEPTED:

APPROVED:

Contractor (Authorized Official) Date

UDC/ESD Construction Representative Date

APPROVED:

Architect/Engineer Date

UDC/ESD Director of Construction Date

Construction Manager (As Applicable) Date

UDC/ESD Vice President
Design & Construction Date

Chief Executive Officer
ORDA Date

**New York State Urban Development Corporation d/b/a Empire State Development
Design and Construction Department**

Change Order No. _____

Project/Location: _____

Contract No. _____

Contractor: _____

JUSTIFICATION FOR CHANGE

Reason for change: To qualify as a change, items must involve a change in the Scope of Work and an equal, betterment or necessity.

Identify the originator of this change order.

- Owner
- Funding Agent
- Architect
- Construction Manager
- Contractor
- Other _____

Identify the reason for this change order (use codes below) _____

- ALT** - Alternate - Items of work identified as a component of the base bid but not accepted at time of award
- BAC** - Back-charge – Back-charges against a specific contract for work assigned to another contract
- BND** - Bond/Insurance - Increased cost relating to bonding and/or insurance
- CLA** - Claim Settlement – To settle a claim
- CLO** - Close Out - Reconciliation of work that was not performed
- COM** -Completion Contract - Prime contractor completion of work was terminated and Surety failed to perform.
- COR** - Coordination - Related to the failure to properly coordinate the installation of the work by various contracts.
- DEO** - Design Error or Omission - Work required of the contractor due to design defects or omissions
- EMR** - Emergency Work – An unanticipated situation that results in a life safety/threatening condition
- FLD** - Field Conditions – Conditions that could not have reasonably been anticipated in project design stage
- INF** - Informational – Extension of time or non-cost related
- INS** - Insurance Settlement – Work performed due to an Act of God, fire, flood, hurricane tornado etc.
- PRG** - Program Change – A request by the client to decrease, change, or increase the scope of work of the project
- OTH** - Other – Reason not described above. Supply explanation below

Explanation if required:

CHANGE ORDER IMPACT

- 1. Will proposed change alter the size of the project? Yes No
- 2. Effect of this change on other contractors: Yes No
- 3. Has consent of surety been obtained? Yes No Not Necessary
- 4. Will subject changes effect expiration or extent of insurance coverage? Yes No

UDC/ESD Construction Representative

Date

NEW YORK STATE URBAN DEVELOPMENT CORPORATION
d/b/a EMPIRE STATE DEVELOPMENT CORPORATION
 Design and Construction Department

Summary - Request for Payment

Project _____ Requisition No. _____
 Name & Address of Contractor _____ Project No. _____
 _____ Contract No. _____

Requisition Amount		
Original Contract		
Approved Change Orders		
Extras		
Credits		
Net Change (Add-Deduct)		
Adjusted Contract		
Work Completed To Date		
On Contract		
By Change Order Extras		
By Change Order Credits		
Net Change (Add-Deduct)		
Total Work Completed To Date		
Amount Earned To Date		
Less % Retainer		
Amount Due To Date		
Less Previous Payments		
Contract		
Other (Explain Below)		
Payment Due This Estimate		

Remarks:

The following items are included in this Request for Payment:

- | | |
|--|--|
| <input type="checkbox"/> Summary - Request for Payment | <input type="checkbox"/> Schedules of Change Orders |
| <input type="checkbox"/> Request for Payment | <input type="checkbox"/> Contractor's Receipt and Waiver of Lien |
| <input type="checkbox"/> Contractor Affidavit | <input type="checkbox"/> Subcontractors' Receipt and Waiver of Lien (If Applicable) |
| <input type="checkbox"/> List of Subcontractors | |

SEE PAGE 2 FOR DESCRIPTION OF WORK, AMOUNTS AND APPROVALS

NEW YORK STATE URBAN DEVELOPMENT CORPORATION
d/b/a EMPIRE STATE DEVELOPMENT CORPORATION
 Design and Construction Department

Request for Payment

Project _____ Requisition No. _____

Name & Address of Contractor _____ Project No. _____

_____ Contract No. _____

In accordance with the provisions of the Construction Contract/Letter Agreement dated _____ and Contractor's cost breakdown (schedule of values) attached thereto, this requisition is submitted for the amount of \$ _____ due for work performed up to the _____ day of _____ and as itemized below by the trades listed in the cost breakdown.

Contractor (Signature) _____ Date _____

Trade Item	Trade Item Total Amount	Amounts Completed To Date		Total	Amounts all Previous Requisitions	Amount This Requisition	% Compl.
		Material	Labor				
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
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18							
19							
20							
21							
22							
23							
24							
25							
26							
27							
28							
29							
30							
31							
32 Total							
Less () % Retainer Line (32)							
33 Totals							

Progress Satisfactory Unsatisfactory (If unsatisfactory, attach memo of explanation)

Construction is _____ % Completed.

I certify that I have checked and verified the above application for payment and that to the best of knowledge and belief: (1) It is true and correct statement of work performed and/or material supplied by the Contractor; (2) all work and/or material included in this application has been inspected by me and/or my duly authorized representatives and the work has been performed and/or materials supplied in full in accordance with the requirements of the referenced Contract; and (3) payment claimed and requested by the Contractor is correctly computed on the basis of work performed and/or material supplied to the last day of the period covered by this application.

 Architect Date

 Date

Approved:

UDC Construction Project Manager Date

Director of Construction Date

Vice President Date

Design and Construction

MONTHLY PROJECT STATUS COST CONTROL REPORT

As of _____

FULL COST REPORT SHALL HAVE ONE PAGE
FOR PROJECT TOTAL COST AND ADDITIONAL PAGES
FOR EACH FUNDING SOURCE, INCLUDING ESDC.

(Project)

Total Project Cost: _____ Project Number: _____ Contract Completion Date: _____ Estimated Completion Date: _____ Actual Completion Date: _____

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10)

Description	Contract/ Consultant	Budget (Date)	Original Contract/ Commitments*	Cumulative Approved C.O.'s/Amend	Revised Contract Commitments*	INVOICED			PROJECTED COST		(Over/Under) Budget	% Complete
						Prior Month Thru	This Month (Date)	Total To Date	Balance To Be Completed	Total Estimated Cost		
*Sample Line Items Only - Use Additional Sheet if Required												
• Design												
A/E Fees												
Reimb. & Extra Services												
Other (List each item)												
• Related Design & Construction Cost												
Borings & Soils												
Environmental												
Survey												
Special Consultants (List)												
Other (List)												
• Testing & Inspection												
Soils/Foundation												
Other (List)												
• SUBTOTAL SOFT COSTS												
• Construction												
General Contract												
Other Items (List each item)												
• SUBTOTAL Excluding Contingency												
• Construction Contingency												
• SUBTOTAL HARD COSTS												
• Project Contingency												
• TOTAL PROJECT COST												

*Asterisk Committed Items not yet under formal contract

Prepared By: _____

Date: _____

S - A - M - P - L - E
ATTACHMENT D

Approved By: _____

Date: _____

Empire State Development Corporation
Monthly Project Status Cost Control Report
(Instructions for filling out Attachment D)

ESDC requires that a Monthly Cost Control Report be submitted on all projects funded during construction. This also includes projects in the planning stage which will be funded during construction.

The Cost Report is a management tool for tracking latest costs for all line items against the Budget. On a monthly basis, it keeps the Developer and ESDC informed, and highlights construction cost status, potential problems and variances.

The attached sample Monthly Project Status Cost Control Report illustrates how costs should be listed and separated by line item, for soft costs/other items and construction.

Several items in the form should be highlighted:

Column 1 - Budget -- This is the budget approved by the Developer and ESDC. Once approved, this column should not be changed.

Contingency

The Construction Contingency shown in "Budget" (Column 1) should not be changed. As the contingency is used up and allocated to various line items, the balance should be shown in the line item for Construction Contingency, under "Total Estimated Cost" (Column 9).

Column 2 - "Original Contract/Commitments" -- List approved contracts; also, firm commitments not yet under contract should be listed, and marked with an asterisk.

Column 3 - "Cumulative Approved Change Orders/Amendments" -- List only items approved by ESDC.

Column 4 - "Revised Contract/Commitments" -- Self explanatory.

Column 5 - "Invoiced Prior Months Thru" -- Self explanatory.

Column 6 - Invoiced "This Month" -- Self explanatory.

Column 7 - Invoiced "To Date" -- Self explanatory.

Column 8 - "Balance to be Completed" -- Subtract "Revised Contract/Commitments" (Col 9) from Total Invoiced to Date (Col 7).

Column 9 - "Total Estimated Cost" -- This is Projected Cost for the project -- Add "Invoiced To Date" (Col 7) and "Balance to be Completed" (Col 8).

Column 10 - "(Over/Under) Budget" -- Subtract "Total Estimated Project Cost" (Col 9) from "Budget" (Col 1).

Attachment D-I

**NEW YORK STATE URBAN DEVELOPMENT CORPORATION
d/b/a EMPIRE STATE DEVELOPMENT CORPORATION
Design and Construction Department**

Project _____

Requisition No. _____

Name & Address of Contractor _____

Project No. _____

Contract No. _____

LIST OF SUBCONTRACTORS/VENDOR SUBMITTED WITH REQUEST FOR PAYMENT

The following Subcontractors/Vendors are included for payment with this requisition:

Trade

Subcontractor or Vendor

Amount of Subcontract

My Commission Expires:

Notary Public

Residence County: _____
DC-105i (09/08)

**NEW YORK STATE URBAN DEVELOPMENT CORPORATION
D/B/A EMPIRE STATE DEVELOPMENT CORPORATION
UNCONDITIONAL WAIVER AND RELEASE**

The undersigned (the "Architect") has been paid and has received full payment for all services furnished by Architect and/or employees or others acting for Architect or claiming by, through or under Architect through

_____ to _____
(Date)

on the job of _____
(Owner)

located at _____
(Job Description)

Architect represents and warrants that Architect and all persons and entities acting for or claiming by, through or under Architect have fully performed and furnished all services to have been performed or furnished by Architect and/or any such other person and that there is not now due or owing any amount of money or wages to any party or entity in connection with this job or any part thereof. The Architect does hereby release for itself and any party or entity action for Architect or claiming by, through or under Architect, from any mechanic's liens, stop notice, bond right or claim of any nature whatsoever that the undersigned or any such other party has or may have with respect to the above referenced job.

The Architect further agrees to reimburse and does hold harmless and fully indemnify ESDC its successors and assigns for any losses or expenses should any such claim, lien, or right to a lien be asserted by the Architect or by any person or entity acting for or claiming by, through or under the Architect, including, without implied limitation, attorney's fees incurred in the defense thereof.

In addition, for and in consideration of the amounts and sums received, the undersigned hereby waives, releases and relinquishes any and all claims, rights or causes of action whatsoever arising out of or in the course of the work performed on the above-mentioned project, contract or event.

Date: _____

(Signature)

SEAL

(Company Name)

NEW YORK STATE URBAN DEVELOPMENT CORPORATION
D/B/A EMPIRE STATE DEVELOPMENT CORPORATION
UNCONDITIONAL WAIVER AND RELEASE

The undersigned (the "Construction Manager") has been paid and has received full payment for all labor, services, equipment or material furnished by Construction Manager and/or subcontractors, suppliers, materialmen, laborers, employees or others acting for Construction Manager or claiming by, through or under Construction Manager through

_____ to _____
(Date)

on the job of _____
(Owner)

located at _____
(Job Description)

Construction Manager represents and warrants that Construction Manager and all persons and entities acting for or claiming by, through or under Construction Manager have fully performed and furnished all labor, services, equipment or material to have been performed or furnished by Construction Manager and/or any such other person and that there is not now due or owing any amount of money or wages to any party or entity in connection with this job or any part thereof. The Construction Manager does hereby release for itself and any party or entity action for Construction Manager or claiming by, through or under Construction Manager, from any mechanic's liens, stop notice, bond right or claim of any nature whatsoever that the undersigned or any such other party has or may have with respect to the above referenced job.

The Construction Manager further agrees to reimburse and does hold harmless and fully indemnify ESDC its successors and assigns for any losses or expenses should any such claim, lien, or right to a lien be asserted by the Construction Manager or by any person or entity acting for or claiming by, through or under the Construction Manager, including, without implied limitation, attorney's fees incurred in the defense thereof.

In addition, for and in consideration of the amounts and sums received, the undersigned hereby waives, releases and relinquishes any and all claims, rights or causes of action whatsoever arising out of or in the course of the work performed on the above-mentioned project, contract or event.

Date: _____

(Signature)

NOTORIZED

(Company Name)

**NEW YORK STATE URBAN DEVELOPMENT CORPORATION
D/B/A EMPIRE STATE DEVELOPMENT CORPORATION
UNCONDITIONAL WAIVER AND RELEASE**

The undersigned (the "Engineer") has been paid and has received full payment for all services furnished by Engineer and/or employees or others acting for Engineer or claiming by, through or under Engineer through

_____ to _____
(Date)

on the job of _____
(Owner)

located at _____
(Job Description)

Engineer represents and warrants that Engineer and all persons and entities acting for or claiming by, through or under Engineer have fully performed and furnished all services to have been performed or furnished by Engineer and/or any such other person and that there is not now due or owing any amount of money or wages to any party or entity in connection with this job or any part thereof. The Engineer does hereby release for itself and any party or entity action for Engineer or claiming by, through or under Engineer, from any mechanic's liens, stop notice, bond right or claim of any nature whatsoever that the undersigned or any such other party has or may have with respect to the above referenced job.

The Engineer further agrees to reimburse and does hold harmless and fully indemnify ESDC its successors and assigns for any losses or expenses should any such claim, lien, or right to a lien be asserted by the Engineer or by any person or entity acting for or claiming by, through or under the Engineer, including, without implied limitation, attorney's fees incurred in the defense thereof.

In addition, for and in consideration of the amounts and sums received, the undersigned hereby waives, releases and relinquishes any and all claims, rights or causes of action whatsoever arising out of or in the course of the work performed on the above-mentioned project, contract or event.

Date: _____

(Signature)

SEAL

(Company Name)

**NEW YORK STATE URBAN DEVELOPMENT CORPORATION
D/B/A EMPIRE STATE DEVELOPMENT CORPORATION
UNCONDITIONAL WAIVER AND RELEASE**

The undersigned (the "General Contractor") has been paid and has received full payment for all services furnished by General Contractor and/or employees or others acting for General Contractor or claiming by, through or under General Contractor through

_____ to _____
(Date)

on the job of _____
(Owner)

located at _____
(Job Description)

General Contractor represents and warrants that General Contractor and all persons and entities acting for or claiming by, through or under General Contractor have fully performed and furnished all services to have been performed or furnished by General Contractor and/or any such other person and that there is not now due or owing any amount of money or wages to any party or entity in connection with this job or any part thereof. The General Contractor does hereby release for itself and any party or entity action for General Contractor or claiming by, through or under General Contractor, from any mechanic's liens, stop notice, bond right or claim of any nature whatsoever that the undersigned or any such other party has or may have with respect to the above referenced job.

The General Contractor further agrees to reimburse and does hold harmless and fully indemnify ESDC its successors and assigns for any losses or expenses should any such claim, lien, or right to a lien be asserted by the General Contractor or by any person or entity acting for or claiming by, through or under the General Contractor, including, without implied limitation, attorney's fees incurred in the defense thereof.

In addition, for and in consideration of the amounts and sums received, the undersigned hereby waives, releases and relinquishes any and all claims, rights or causes of action whatsoever arising out of or in the course of the work performed on the above-mentioned project, contract or event.

Date: _____

(Signature)

NOTARIZED

(Company Name)

CONSULTANT'S CODE CERTIFICATION LETTER

Attachment A

The following Certification Letter shall be included in the initial report submitted to ESDC for approval.

DATE

Empire State Development
633 Third Avenue
New York, NY 10017-6754

Attention: Mr. Ed Decatrel, AIA
Vice President
Design and Construction

Re: Consultant's Code Certification of Architect (Engineer)
(Insert Location and Name of Project)

Gentlemen:

The undersigned, a principal of the firm of _____, duly qualified and registered to practice architecture/engineering in the State of New York, in connection with the _____ project, does hereby certify that final plans and specifications will be designed to conform with the (insert name of applicable building code) and applicable municipal regulations.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 20____.

SIGNATURE

ARCHITECT'S (OR ENGINEER'S)NAME

SEAL

CONSULTANT'S CERTIFICATION OF COMPLETED CONSTRUCTION

Attachment B

The following Certification shall be submitted to ESDC at completion of construction on Consultant's letterhead.

DATE

Empire State Development
633 Third Avenue
New York, NY 10017-6754

Attention: Mr. Ed Decatrel, AIA
Vice President
Design and Construction

Re: Consultant's Certification of Completed Construction
(Insert Location and Name of Project)

Gentlemen:

The undersigned, an officer of _____
(firm name), in connection with the _____ project, does
hereby certify that construction of all work required by the construction agreement has
been completed in accordance with final construction requirements of the _____ (insert
name of applicable building code) and applicable municipal regulations.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of
, 20__.

SIGNATURE

OFFICER'S NAME & TITLE

SEAL

CONSULTANT'S CERTIFICATION OF COMPLETED CONSTRUCTION

Attachment C

The following Certification shall be submitted to ESDC at completion of construction on Consultant's letterhead.

DATE

Empire State Development
633 Third Avenue
New York, NY 10017-6754

Attention: Mr. Ed Decatrel, AIA
Vice President
Design and Construction

Re: Consultant's Certification of Completed Construction
(Insert Location and Name of Project)

Gentlemen:

The undersigned, a principal of the firm of _____ duly qualified and registered to practice architecture/engineering in the State of New York, in connection with the (insert location and name of project) project, does hereby certify that to the best of our knowledge construction of work required by the contract has been completed in accordance with the drawings approved by the (insert name of approving agency) and requirements of the (insert name of applicable building code).

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 20____.

SIGNATURE

ARCHITECT'S (OR ENGINEER'S) NAME

SEAL

SURVEY STATEMENT

I CERTIFY TO:

(insert appropriate names)

**The New York State Urban Development Corporation
d/b/a Empire State Development Corporation**

**THAT THE BUILDING IS ERECTED ON SITE, AND WITHIN BUILDING
RESTRICTIONS, IF ANY ON SITE. IT DOES NOT ENCROACH UPON ANY
EASEMENTS OR RIGHT OF WAY IN ANY WAY OTHER THAN SHOWN ON THIS
SURVEY. THIS INFORMATION IS TRUE AND CORRECT.**

Signature of Surveyor

Date

(SEAL)

0 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16

State of New York			0
David A. Paterson , Governor			1
			2
Dennis M. Mullen , Chairman & CEO			3
Description of Project			4
Description of Project in Spanish (as applicable)			5
<hr/>			6
Name of City or Town CITY OFFICIAL, Title	New York State Official Name	Developer/Sponsor Name	7
	New York State Assemblyman Name	Merchant's Association Name, Title	8
	New York State Senator Name	Other Private Sector Name, Title	

ESD CONSTRUCTION SIGN

The contractor shall supply and install one sign identifying the project at commencement of construction which shall remain in place until development is completed. The sign can be a minimum of 4 ft. X 8 ft., up to a maximum of 8 ft. X 16 ft., and constructed of 3/4 in. thick exterior grade plywood, secured or supported to comply with all applicable codes and good construction practice. Exact location will be determined by ESD according to local conditions. The sign shall be painted white, front and back, with three coats of exterior grade enamel.

The text shall include the name of the Governor, the heads of the sponsoring State agencies, the name of the project and a list of regional legislators and officials. The exact text and layout shall be provided by ESD Public Affairs Dept... at the time of contract award.

GRAPHIC SPECIFICATIONS

Size: Minimum of 4 'high X 8' wide
Maximum of 8 'high X 16' wide

Color: Blue lettering on white background.
State map outline to be light grey

Font: Helvetica Bold
Helvetica Light

EXHIBIT C: Consultant/Contractor/Vendor Disclosure Statement

GRANTEE: _____
Aqueduct VLT Gaming Facility, Project – Project Number _____

Grantee must complete the following form for each consultant, contractor or vendor it uses whose fee amounts to at least 10% of the total grant or \$500, whichever is less.

Grantee must attach a contract for any consultant(s) and contractor(s) used.

I, _____, am the _____ of _____ (the "Grantee"), an entity that is duly organized and validly existing under the laws of the State of New York.

I attest that _____ (Consultant/Contractor/Vendor) was chosen as a consultant/contractor/vendor on Project #«Project_Number» by the Grantee to Describe Services.

_____. No member of the Grantee's Board of Directors or other governing body, or any officer or employee of the Grantee, or a member of the immediate family of any member of the Grantee's Board of Directors or other governing body, officer, or employee of the Grantee has any ownership, control or financial interest in the consultant/contractor/vendor as defined by Section 7(m)(iii) of this agreement.

I attest that _____ (Consultant/Contractor/Vendor) was chosen for its services/ products through a process of Describe method of selection, including efforts to involve Minority and/or Women-owned Business Enterprises, as defined in Exhibit H, and a description of any relationship between the grantee and the Consultant/Contractor/Vendor.

Signature: _____ Print Name: _____

Title: _____ Date: _____

EXHIBIT D: Project Budget

«Orgn_Name_Client»
«Project_Name», Project «Project_Number»

USES	ESDC Eligible Expenses	SOURCE: List Source Name [SOURCE: Other	TOTAL
				\$0
Total Project Cost:	\$0	\$0	\$0	\$0

EXHIBIT E: Opinion of Counsel

[Letterhead of Counsel to the Grantee]

[Date]

Empire State Development Corporation
633 Third Avenue
New York, New York 10017

Attention: «Project_Manager»

Re: Aqueduct VLT Facility - Capital Works and Purposes Necessary to Properly House Video Lottery Terminal Gaming at Aqueduct Racetrack – Project Number

Ladies and Gentlemen:

We have acted as special counsel to «Orgn_Name_Client», a corporation [limited liability company] (the “Grantee”), in connection with the execution and delivery of the Grant Disbursement Agreement dated [Date of Agreement] (the “Agreement”) between New York State Urban Development Corporation d/b/a Empire State Development Corporation (“ESDC”) and the Grantee.

This opinion letter is being furnished to you at our client’s request pursuant to Section 3(a) of the Agreement. Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Agreement.

In rendering the opinions set forth herein, we have examined originals, or copies certified or otherwise identified to our satisfaction, of such documents, corporate records and other instruments as we have deemed necessary or appropriate for the purposes of this opinion letter, including (a) the Agreement, (b) the certificate of incorporation of the Grantee and (c) the by-laws of the Grantee. We have also examined and relied upon such other matters of law, documents, certificates of public officials and representations of officers and other representatives of the Grantee as we have deemed relevant, appropriate or necessary to the rendering of our opinions.

In rendering the opinions expressed below, we have assumed the legal capacity of all natural persons signing documents and that the signatures of persons signing all documents in connection with which this opinion letter is rendered are genuine, all documents submitted to us as originals or duplicate originals are authentic and all documents submitted to us as copies, whether certified or not, conform to authentic original documents. Additionally, we have assumed and relied upon the accuracy and completeness of all certificates and other statements, documents, records, financial statements and papers reviewed by us, and the accuracy and completeness of all representations, warranties, confirmations, schedules and exhibits contained in the Agreement, with respect to the factual matters set forth therein.

As to any facts material to the opinions expressed herein that we did not independently establish or verify, we have relied upon oral or written statements and representations of officers and other representatives of the Grantee and of certain public officials. We have also assumed and relied upon the accuracy and completeness of all certificates and other statements, representations, documents, records, financial statements and papers reviewed by us, and the accuracy and completeness of all representations, warranties and exhibits contained in the Agreement with respect to the factual matters set forth therein.

Based upon the foregoing and subject to the assumptions, qualifications and other matters set forth herein, we are of the opinion that:

1. The Grantee is validly existing and in good standing under the laws of the State of New York and has full power and authority to execute and deliver the Agreement and to perform its obligations thereunder.

2. The Agreement has been duly authorized, executed and delivered by the Grantee and (assuming its due authorization, execution and delivery by ESDC) is binding on and enforceable against the Grantee in accordance with its terms, subject to applicable bankruptcy, insolvency reorganization, arrangement, liquidation, moratorium, fraudulent conveyance or transfer and other similar laws relating to or affecting creditors' rights generally from time to time in effect and to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law), and except as rights under the Agreement to indemnity and contribution may be limited by federal or state laws.

We are admitted to practice in the State of New York and we express no opinion as to any matters governed by any laws other than the laws of the State of New York. The opinions expressed herein that are based on the laws of the State of New York are limited to the laws generally applicable in transactions of the type covered by the Agreement.

This opinion letter is for the benefit solely of ESDC and not for the benefit of any other person. We are opining herein only as of the date hereof and we undertake no, and disclaim any, obligation to advise you of any changes in any matter set forth herein, regardless of whether changes in such matters come to our attention after the date hereof. No attorney-client relationship exists or has existed with ESDC by reason of our preparation, execution and delivery of this opinion letter. By providing this opinion letter and permitting reliance hereon by you, we are not acting as your counsel and have not assumed any responsibility to advise you with respect to the adequacy of this opinion letter for your purposes. This opinion letter may not be relied upon by any other person or for any other purpose or used, circulated, quoted or otherwise referred to for any other purpose.

Very truly yours,

EXHIBIT F: Disbursement Terms

GRANTEE: _____
«Project_Name», Project «Project_Number»

Subject to the terms and conditions contained in this Agreement, ESDC shall disburse the Grant to the Grantee as follows:

Initial Disbursement

After the execution of this Agreement by EDDC and the Grantee and its delivery to ESDC, the satisfaction of the conditions set forth in Section 3 of the Agreement, and Grantee' establishment of a separate bank account, in a financial institution satisfactory to ESDC, then ESDC shall disburse to such account of the Grantee a sum equal to five percent (5%) of the Grant. These disbursed Grant proceeds shall be deposited and kept in that account until proceeds are used by Grantee for reimbursement or payment of eligible expenses for the Project. Interest, if any, accruing on the proceeds deposited in such separate account shall be promptly paid to ESDC. Grantee shall promptly transmit to ESDC copies of all statements available or received periodic statements and other correspondence with respect to the account.

Subsequent Disbursements (exclusive of the Final Disbursement)

All disbursements after the initial advance shall be for Eligible Expenses (as set forth and in accordance with the budget in Exhibit D and in compliance with Exhibit A-1) incurred by the Grantee. Requisitions for payment after the initial requisition must include supporting documentation in the forms attached to this Agreement as Exhibit G and its attachments and the applicable forms attached as Exhibit B. In addition, the second requisition must include the supporting documentation for the initial advance. ESDC shall reimburse the Grantee, not more frequently than monthly, for eligible expenses actually incurred by the Grantee, in compliance with this Agreement and after presentation to ESDC of a Payment Requisition Form together with such supporting documentation as ESDC may require, in the form attached to this Agreement as Exhibit G and its attachments and the applicable funding design and construction requirements documentation in the forms attached as Exhibit B. The aggregate of the Initial Disbursement and the Subsequent Disbursements will not exceed ninety percent (90%) of the Grant.

Final Disbursement

As stated in Section 4, paragraph (b) of this Agreement, the final ten percent (10%) of the Grant shall not be disbursed by ESDC until all of the tasks and reports required have been completed to ESDC's satisfaction.

Expenditures eligible for reimbursement must have been incurred after May 25, 2010, the date that Chapter 90 of the Laws of 2010, in which the Grant was authorized, took effect.

Supporting documentation must include copies of invoices as well as proof of payment (e.g. cancelled checks (both sides), bank statements, paid credit card statements, or other proof of payment).

ESDC Design & Construction (D&C) Staff will review the construction documents and, at its option, visit the site during construction. Payments will be reviewed and approved when D&C requirements have been met.

ESDC reserves the right to require additional documentation to support payment requisitions.

Wire Transfer Information:

Grantee must provide a letter from a financial officer of the company/organization certifying to the accuracy of the following information:

Bank Name: _____

ABA #: _____

Acct. Name: _____

Acct. #: _____

EXHIBIT G: Payment Requisition Form

Aqueduct Video Lottery Gaming Facility Project, Project # _____ (attn: ESDC project manager)

Payment Request # _____, for \$ _____ for work completed between _____ and _____,
for Task(s) # _____

Do not re-type this form. Fill in only the version of the form included in the executed GDA. ESDC funds may be applied by Grantee in payment or reimbursement of the following costs:

THIS REQUEST

USES	A: ESDC SHARE	ESDC APPROVED REVISIONS	C: THIS REQUEST	D: TOTAL REQUESTED TO DATE	E: A-C-D BALANCE
TOTAL	\$0				
(10 % Retainage)	\$0				
AVAILABLE	\$0				

FUNDING STATUS

1	Total Project Cost per Exhibit D	
2	Total Eligible Expenses Incurred to Date (including this request)	
3	Balance to be Expended (Line 1 minus Line 2)	

CERTIFICATION

I hereby warrant and represent to the Empire State Development Corporation ("ESDC") that:

- 1) To the best of my knowledge, information and belief, the expenditures for which Grantee is seeking payment and/or reimbursement comply with the requirements of the Agreement between ESDC and Grantee, are Eligible Expenses, and that the payment and/or reimbursement of expenditures for which it is seeking payment and/or reimbursement from ESDC does not duplicate reimbursement or disbursement of costs and/or expenses from any other source.
- 2) I have the authority to submit this invoice on behalf of Grantee have been completed in the manner outlined in the Agreement.
- 3) The disclosure made to ESDC by Grantee on Grantee's Disclosure and Accountability Certification continue to be complete and correct, except as may otherwise have been subsequently disclosed to ESDC in writing.
- 4) I hereby attach the following documents for ESDC approval, in support of this requisition:

- ___ Documents in the forms for the funding design and construction requirements (Exhibit B)
- ___ Consultant/Contractor/Vendor Disclosure Statement (Exhibit C) including contracts as applicable
- ___ Project Cost Documentation (Exhibit G-2) – CPA-Prepared Project Cost Verification Letter
- ___ M/WBE Compliance Report (Exhibit H-1)
- ___ Disclosure & Accountability Certifications (Exhibit J; required only if there is a change to that previously submitted)
- ___ Other: _____

Signature: _____ Date: _____
Print Name: _____ Title: _____

EXHIBIT G-1: Payment Requisition Cover Letter

****ON GRANTEE'S LETTERHEAD****

Date _____

Loans & Grants Invoice Administrator
Empire State Development Corporation
633 Third Avenue
New York, New York 10017

RE: Aqueduct Video Lottery Gaming Facility, Project, Project Number _____

Dear Invoice Administrator:

Enclosed please find our request for payment/reimbursement. The package includes the following:

1. Completed Exhibit B Documentation
2. Completed Exhibit C: Consultant/Contractor/Vendor Disclosure Statement including contracts as applicable
3. Completed Exhibit G: Payment Requisition Form
4. Project Cost Documentation – Completed Exhibit G-2 – CPA-prepared Project Cost Verification Letter
5. Completed Exhibit J: Disclosure & Accountability Certifications form (required only if there is a change to that previously submitted)

If any further information is needed, please give me a call at (____) _____.

Signature

Print Name _____

Title _____

Enclosures

EXHIBIT G-2: CPA-prepared Project Cost Verification Letter

I

[CPA Letterhead]

Report of Independent Accountants

Date

«Grantee Contact_Name_Title»

«Grantee_Orgn_Name»

«Street_Address»

«CitySTZip_Client»

Empire State Development Corporation
633 Third Avenue
New York, New York 10017
(Project Manager)

Re: Aqueduct Video Lottery Gaming Facility Project # _____ -Verification of Project Costs

We have performed the procedures enumerated below, which were agreed to by [Grantee Orgn_Name] (the "Company") and Empire State Development Corporation ("ESD") (collectively the "specified parties"), solely to assist ESD in determining whether cost expenditures were incurred in a manner established by the project documents as follows:

Project costs for capital works or purposes, including, but not limited to, costs for the design, acquisition, construction and equipment, for such structures as may be necessary to properly house video lottery terminal gaming at Aqueduct racetrack, including, but not limited to, the costs of studies, appraisals, surveys, testing, environmental impact statements, infrastructure, facility design, construction and equipment, cost of leasing space, professional fees and costs and issuance of insurance. Expenses must be incurred on or after _____ (the date that the New York State budget, in which the project is authorized, was passed) to be considered eligible project costs.

Management is responsible for Company compliance with those requirements. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose. Our procedures and findings are as follows:

1. Obtained the attached "Statement of Actual Costs" for the Project (Aqueduct Video Lottery Gaming Facility, Project # _____) prepared by the Company.
2. Agreed the total per the Statement of Actual Costs to the Company's financial accounting records -

Unconditional Waiver/09/08

the fixed asset subledger (...or name appropriate financial record report)

3. For costs and expenses appearing on the Statement of Actual Costs, selected a sample for detailed testing of underlying transactions. [CPA will indicate method of selection, dollar value and percentage of items sampled.]
4. For each asset or expense item selected, obtained the supporting documentation, such as purchase orders, receiving reports, invoices and cancelled checks as deemed appropriate [CPA will indicate which documentation was used].
5. Examined the supporting documentation for sampled items, noting the invoice date, invoice number and invoice amount. Agreed the dollar amount on the invoice to the Company's financial accounting records (fixed asset subledger - or appropriate report name) and the statement of actual costs.
6. For each invoice examined, obtained the related wire transfer documentation noting the wire transfer date, number, and amount. Then, agreed the wire transfer amount to the vendor invoice amount.
7. For each asset or expense item selected, determined that such sampled item is a capital expense in accordance with applicable state and federal law.

[Summarize any exceptions, if applicable]

We were not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on compliance. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the specified parties and is not intended to be and should not be used by anyone other than these specified parties.

(CPA)

Attachment: Statement of Actual Costs, (Aqueduct Video Lottery Gaming Facility Project,
Project # _____)

Exhibit G-3
[Lottery Letterhead]

[DATE]

Empire State Development Corporation
633 Third Avenue
New York, New York 10017

Re: Aqueduct Video Lottery Gaming Facility Project # _____
Lottery Acknowledgment

Ladies and Gentlemen:

The New York State Division of the Lottery (the "Lottery") acknowledges and confirms that [NAME OF GRANTEE] (the "Grantee") is in compliance with the Lottery's requirements in connection with the Grant Disbursement Agreement dated [DATE OF AGREEMENT] between the New York State Urban Development Corporation d/b/a Empire State Development Corporation and the Grantee, as of the date of this letter.

Very truly yours,

William J. Murray
Deputy Director and General Counsel

EXHIBIT H: Non-Discrimination and Affirmative Action Policy

It is the policy of the State of New York and ESDC, to comply with all federal, State and local law, policy, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action to ensure that Minority and Women-owned Business Enterprises (M/WBEs), Minority Group Members and women share in the economic opportunities generated by ESDC's participation in projects or initiatives, and/or the use of ESDC funds. The recipient of State funds represents that its equal employment opportunity policy statement incorporates, at a minimum, the policies and practices set forth below:

- 1) Borrower shall (i) not unlawfully discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, (ii) undertake or continue existing programs of affirmative action to ensure that Minority Group Members and women are afforded equal employment opportunities, and (iii) make and document its conscientious and active efforts to employ and utilize M/WBEs, Minority Group Members and women in its workforce on contracts. Such action shall be taken with reference to, but not limited to, solicitations or advertisements for employment, recruitment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- 2) Borrower represents and warrants that, for the duration of the Agreement, it shall furnish all information and reports required by the ESDC Affirmative Action Unit and shall permit access to its books and records by ESDC, or its designee, for the purpose of ascertaining compliance with provisions hereof.

ESDC NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS

Affirmative Action

Shall mean the actions to be undertaken by the Borrower, Grantee and any Contracting Party in connection with any project or initiative to ensure non-discrimination and Minority/Women-owned Business Enterprise and minority/female workforce participation.

Minority Business Enterprise (MBE)

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more Minority Group Members; (ii) an enterprise in which such minority ownership is real, substantial and continuing; (iii) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as a minority business.

Minority Group Member

Shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

Women-owned Business Enterprise (MWBE)

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more citizens or permanent resident aliens who are women; (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing; (iii) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as woman-owned.

EXHIBIT H-1: M/WBE COMPLIANCE REPORT

PROJECT SPONSOR/DEVELOPER
(Use "Reporting Company"):

ESD REPRESENTATIVE

ADDRESS:

PROJECT NAME:

PROJ.#:

TELEPHONE:

PROJECT START DATE:

PERCENT COMPLETE:

ACTUAL COMPLETION DATE:

CONTACT PERSON:

Attach M/WBE contract documentation, i.e. executed contracts, final waivers, completed checks, etc./ or documentation describing "Best Efforts" taken to achieve M/WBE program. This report should be completed by an officer of the Reporting Company.

PRIME CONTRACTOR (Name, Address, Contact Person and Phone)	CONTRACT AMOUNT	M/WBE SUBCONTRACTOR (Name, Address, Contact Person and Phone)	SCOPE OF SERVICES	M/WBE CONTRACT AMOUNT	M/WBE PAYMENT PREVIOUS REPORT	M/WBE PAYMENT CURRENT REPORT	M/WBE AMOUNT PAID TO DATE

CERTIFICATION:

I, _____ (Print Name), the _____ (Title), do certify that I have read this Compliance Report and I, to the best of my knowledge, information and belief, the information contained herein is complete and accurate.

SIGNATURE

DATE

Questions? Please contact: _____ of ESO's Affirmative Action Unit at (202) 893-_____.

EXHIBIT I: Special Provisions

In the event of any conflict between Exhibit A of this Agreement and any other provisions of this Agreement, the terms of such other provisions shall govern.

The following sections of the Terms and Conditions of this Agreement are waived:

If the company is not a corporation but a limited liability company (LLC):

In 7(c), reference to "corporation" shall mean limited liability company, reference to "incorporation" shall mean organization, and reference to "corporate" shall mean organizational.

If Grant will be used for payment to a consultant or vendor who also serves as an officer or board member of grantee or is an "owner," as defined below [you will have to ask the Grantee if this is expected to apply]:

Section 7(m)(iii) of Terms and Conditions is amended as follows (underlined text shows addition):

The grant shall not be used in any manner for any of the following purposes: payments to any firm, company, association, corporation or organization in which a member of the Grantee's Board of Directors or other governing body, or any officer or employee of the Grantee, or a member of the immediate family of any member of the Grantee's Board of Directors or other governing body, officer, or employee of the Grantee has any ownership, control or financial interest, except as disclosed by the Grantee and accepted by ESDC. For purposes of this paragraph, "ownership" means ownership, directly or indirectly, of more than five (5) percent of the assets, stock, bonds or other dividend or interest bearing securities; and "control" means serving as a member of the board of directors or other governing body, or as an officer in any of the above;

Exhibit J: DISCLOSURE & ACCOUNTABILITY CERTIFICATIONS

See Certification Form Attached

SECTION 12: DISCLOSURE & ACCOUNTABILITY CERTIFICATIONS

No Conflict of Interest

Except as otherwise fully disclosed herein and accepted by the parties hereto, the Grantee/Recipient affirms under penalty of perjury that neither the Sponsoring Member(s) nor any Related Parties to Sponsoring Member(s) has any financial interest, direct or indirect, in the Grantee/Recipient or in any of the Grantee/Recipient's equity owners, or has received or will receive any financial benefit, either directly or indirectly, from the Grantee/Recipient or its Related Parties.

Good Standing

Except as otherwise fully disclosed herein and accepted by the parties hereto, the Grantee/Recipient affirms under penalty of perjury that:

- (A) At no time during the past five years has the Grantee/Recipient or any of the Grantee/Recipient's affiliates, principal owners or officers: (1) been debarred from entering into any government contract; (2) been found non-responsible on any government contract; (3) been declared in default and/or terminated for cause of any government contract; (4) been determined to be ineligible to bid or propose on any contract; (5) been suspended from bidding or entering into any government contract; (6) received an overall unsatisfactory performance rating from any government agency on any contract; (7) been subject to any judgments, injunctions or liens including but not limited to, judgments based on taxes owed, fines and penalties assessed by any governmental agency, or elected official against Grantee/Recipient; (8) been investigated by any governmental agency including, but not limited to, federal, state and local regulatory agencies; (9) been convicted of a misdemeanor and/or found in violation of any administrative, statutory or regulatory provisions; (10) been the subject of any felony, misdemeanor, or administrative charges; (11) been subject to any sanctions imposed as a result of judicial or administrative disciplinary proceedings; (12) failed to file any federal, state or city tax returns; (13) (to the extent the entity is a charity or not-for-profit organization) failed to file and all required forms with any government entity regulating the entity; (14) received a grant of immunity for any business-related conduct constituting a crime under local, State or Federal law; (15) agreed to a voluntary exclusion from bidding/contracting; (16) received a violation of State Labor Law deemed willful; (17) received a denial, decertification, revocation or forfeiture of Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise status; (18) received a rejection of a low bid on a local, State or Federal contract for failure to meet statutory affirmative action or M/WBE requirements on a previously held contract; (19) received a consent order with the New York State Department of Environmental Conservation or a Federal, State or local government enforcement determination involving a violation of Federal, State or local government laws; or (20) received an occupational Safety and Health Act citation and Notification of Penalty containing a violation classified as serious or willful;
- (B) At no time within the last seven years has the Grantee/Recipient or any of the Grantee/Recipient's affiliates, principal owners or officers been involved in any bankruptcy proceeding (whether or not closed);
- (C) At no time within the last ten years has the Grantee/Recipient or any of the Grantee/Recipient's Affiliates, principal owners or officers been convicted of a felony, and/or any crime related to truthfulness and/or business conduct; and
- (D) That neither the Grantee/Recipient nor any of the Grantee/Recipient's Related Parties paid any third party or agent, either directly or indirectly, to aid in the securing of this Agreement.

Funds Used Solely for Public Purpose

The Grantee/Recipient affirms under penalty of perjury that all funds to be expended pursuant to the terms of a grant to be awarded in accordance with the terms of the accompanying application are to be used solely and directly for the public purpose or public purposes specified in the accompanying application. The Grantee/Recipient further swears and affirms that all such funds will be used solely in the manner described in the application.

Definitions

As used herein in this Exhibit:

- (1) "Affiliate" means any person or entity that directly or indirectly controls or is controlled by or is under common control or ownership with the specified party.
- (2) "Grantee" or "Recipient" means the party or parties designated to receive funds pursuant to a Member Initiative Form, or their employees and Affiliates.
- (3) "Related Party" means: (i) the party's spouse, (ii) natural or adopted descendants of the party or of the spouse, (iii) any sibling of the party or of the spouse, (iv) the son-in-law, daughter-in-law, brother-in-law, sister-in-law, father-in-law, or mother-in-law of any of the foregoing, (v) any person sharing the home of any of the foregoing, (vi) any staff member, employee, director, officer or agent of the party, and (vii) Affiliates or subcontractors of the party.
- (4) "Sponsoring Member(s)" means the sponsoring Assemblyman or State Senator as identified by the Member Initiative Form and listed herein, or in the event no such specific Assemblyman or Senator is identified on the Member Initiative Form, it shall be the local Assemblyman and State Senator as listed herein. In addition, "Sponsoring Member(s)" shall include the Governor when appropriate as listed herein.

Disclosure (use additional sheets, if necessary; if "none", please so indicate below)

(A) Conflict of Interest (see "I.")

(B) Good Standing (see "II(A)-(D)")

The undersigned: recognizes that this Certification is submitted for the express purpose of assisting the State of New York or its agencies and political subdivisions to make a determination regarding the award of a contract or approval of a subcontract; acknowledges that the State of New York or its agencies and political subdivisions may in its discretion, by means which it chooses, verify the truth and accuracy of all statements made herein; acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law Section 210.40 or a misdemeanor under Penal Law Section 210.45, and may also be punishable by a fine or up to \$10,000 or imprisonment of up to five years under 18 U.S.C. Section 1001; and states that the information submitted in this Certification and any attached pages is true, accurate and complete.

Name of Grantee/Recipient

Signature of Officer/Date

Address

Typed Copy of Signature

City, State, Zip

Title

Sworn to before me this

__ day of _____, 20__

Notary Public