

FOR CONSIDERATION

November 18, 2010

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: Queens (Queens County) – Aqueduct Racetrack Video Lottery Gaming Facility Capital Construction Grant - Civic Project

REQUEST FOR: Civic Project Findings; Authorization to Adopt a General Project Plan; Determination of no Significant Effect on the Environment pursuant to SEQRA; Authorization to Hold a Public Hearing; and Authorization to Take Related Actions

GENERAL PROJECT PLAN

I. Project Summary

Grant: The Project is a \$250 Million capital construction grant (the “Grant”) to Genting New York LLC (“GeNY”) for the construction of a video lottery gaming facility, parking structure, and related improvements at the State-owned Aqueduct Racetrack facility (“Aqueduct”).

Location: 110-00 Rockaway Boulevard, Borough of Queens, Queens County, New York

Site: Aqueduct is owned by the State of New York (the “State”) and comprises both land (the “Aqueduct Lands”) and the improvements located thereon, including the clubhouse (the “Clubhouse”) and the grandstand (the “Grandstand”) and other improvements that now exist or may be altered or constructed (collectively, the “Aqueduct Improvements”).

II. Project Background

The State 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, in the City of New York, (“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, and as it may be further amended from time to time (the “Legislation”). Video lottery gaming at Aqueduct is

subject to Article 1, section 9 of the New York State Constitution, Article 34 of the Tax Law (also known as 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. Net proceeds of the State's share of the revenues from the operation of video lottery gaming at the Video Lottery Facility shall be applied to support education in the State.

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 the Video Lottery Facility at Aqueduct, 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") Pursuant to the RFP process, and after consultation with the Division of Budget and the Office of General Services, Division of Lottery recommended to the Governor, the Speaker of the Assembly, and the Temporary President of the Senate that the GeNY develop and operate the Video Lottery Facility at Aqueduct. These elected officials considered the recommendation, and, acting collectively on behalf of the State, entered in to a Memorandum of Understanding with GeNY for its design, construction, operation, and maintenance of the Video Lottery Facility, the Parking Facility and the related Aqueduct Improvements, and the Aqueduct Lands.

In 2008, the State leased to the New York Racing Association ("NYRA") the Aqueduct Lands and the Aqueduct Improvements. The State has consulted with NYRA with respect to the development of the Video Lottery Facility, Parking Facility and related improvements at Aqueduct. The State, NYRA and GeNY intend that: (i) NYRA assign to GeNY NYRA's interest as lessee in the in the Aqueduct Lands and the Aqueduct Improvements and (ii) GeNY, as sublessor, and NYRA, as sublessee, will enter into that a sublease agreement for the portion of the Aqueduct Lands and the Aqueduct Improvements which are to be occupied by NYRA and that will not contain any portion of the Video Lottery Facility.

The Video Lottery Facility will have approximately 4,500 video lottery terminals ("VLTs"). The Aqueduct Lands and Aqueduct Improvements will be modified by GeNY as follows:

- interior and exterior renovations to the Grandstand and Clubhouse to accommodate VLTs and the food and beverage program supporting the Video Lottery Facility,
- construction of a new building entrance (*porte-cochere*),
- construction of the eight story approximately 2,858 vehicle Parking Facility and repaving the existing surface parking to provide parking in order to accommodate 7,000 vehicles in aggregate,
- construction of a pedestrian bridge to connect the facility to the existing Aqueduct subway station,
- utility connections (*i.e.*, service connections and upgrades),
- improvements to existing on-site and off-site roadways consisting of on-sight circulation improvements, removal of entrance booths on Rockaway Boulevard, and off-site signalization changes,

- construction of an approximately 6,000 square foot electrical service building (transformer enclosure and related switchgear), and
- modifications to the existing storm water management system.

III. Project Description

New York State Urban Development Corporation d/b/a Empire State Development Corporation (“ESDC”), acting on behalf of the State, is required by the Legislation to make a grant (the “Grant”) in aggregate not to exceed Two Hundred Fifty Million Dollars (\$250,000,000) for the funding of all amounts paid or payable 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. ESDC will enter into a grant disbursement agreement with GeNY pursuant to which ESDC will make an initial disbursement of \$12,500,000 (5% of the grant amount), and subsequent disbursements will be based on submission of requisitions, with accompanying cost documentation, and 10% retainage. The estimated total cost of the Video Lottery Facility and the Parking Facility and other structures and facilities necessary to properly house video lottery gaming at Aqueduct is approximately \$360,500,000.

In the event that this General Project Plan (the “Plan”) becomes final at the conclusion of the duly noticed public hearing with respect thereto, ESDC and GeNY would promptly enter into a Grant Disbursement Agreement and funding, pursuant to that agreement, would commence in accordance with the Plan. If affirmation or modification of the Plan is required pursuant to the New York State Urban Development Corporation Act, the Plan will not be effective, and ESDC will not enter into the Grant Disbursement Agreement or disburse Grant funds, unless and until such affirmation or modification occurs.

IV. Project Financing

As described below, the 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. 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.

Pursuant to the Legislation and Section 15 of Chapter 90 of the Laws of 2010 the State appropriated: (a) \$25 million for an ESDC working capital loan to NYRA; (b) \$225 million to ESDC to be disbursed to the designated Aqueduct Video Lottery Facility developer/operator for capital construction expenses at Aqueduct; and (c) an additional \$25 million to ESDC to be disbursed to the designated Aqueduct Video Lottery Facility developer/operator for capital construction expenses at Aqueduct, provided, however, that this \$25 million was contingent upon repayment, by the designated Aqueduct Video Lottery Facility developer/operator, of the advances made to NYRA by ESDC pursuant to the loan described in (a) above. GeNY repaid ESDC in full for the loan advances made to NYRA, ESDC assigned the loan agreement and note

to GeNY, and GeNY assumed the responsibility for making the remaining loan advances to NYRA. The additional \$25 million is now available for the capital construction grant to GeNY, bringing to \$250 million the total available appropriated funding for the Grant.

GeNY is responsible for the cost of construction to the extent such cost exceeds the funding provided by the State pursuant to the Grant. The cost of operation and maintenance of Aqueduct is the responsibility of GeNY, the State-licensed Aqueduct video lottery gaming operator. Other than the disbursement of the said \$250 million in State appropriated funds for the Grant, ESDC has no obligation or commitment to provide any funds to GeNY or with respect to Aqueduct, including the Video Lottery Facility, the Parking Facility, and the related improvements within or adjacent to Aqueduct.

V. Project Implementation

If the proposed Project is approved, it is anticipated that ESDC and GeNY will enter into the Grant Disbursement Agreement, and Grant funding pursuant thereto will commence, promptly after the General Project Plan becomes final or, if necessary, is affirmed or modified by the ESDC Directors, as the case may be.

The construction schedule for the Video Lottery Facility, Parking Facility and related improvements is approximately eighteen months for an estimated completion in 2012.

Pursuant to agreements with the State, GeNY has commenced, or will shortly commence, construction of the Video Lottery Facility and the Parking Facility, and related improvements.

VI. Design & Construction

ESDC's Design & Construction staff will review construction documents, budgets, and construction schedules for the Video Lottery Facility, the Parking Structure, and other Aqueduct Improvements. Staff will review the requisitions and recommend payment of submitted eligible expenses when the Grant requirements are met. In order to facilitate Grant administration, staff will, as necessary, visit Aqueduct in order to observe the progress of the construction and meet with GeNY and its contractors.

VII. Statutory Basis

In order to proceed with the actions requested and the Project, ESDC must make the appropriate findings for the Project under New York State Urban Development Corporation Act ("UDC Act") Section 10. The following sets forth the basis for such findings:

- A. There exists in the area in which the project is to be located a need for the educational, cultural, recreational, community, municipal, public service or other civic facilities to be included in the project.

Aqueduct is owned by the State. The State has determined that it is in the public interest that a video lottery gaming facility be constructed and operated at Aqueduct. The net proceeds of the State's share of the revenues from the operation of VLTs at the facility shall be applied to support education in the State.

- B. That the project shall consist of a building or buildings or other facilities which are suitable for educational, cultural, recreational, community, municipal, public service or other civic purposes.

Pursuant to the Legislation, the Project will disburse construction funding for the State-owned video lottery facility, and related improvements, necessary for the State to house a video lottery gaming facility, to be operated and maintained by a State licensed operator, at the State-owned Aqueduct site.

- C. Such project will be leased to or owned by the State or an agency or instrumentality thereof, a municipality or an agency thereof, a public corporation, or any other entity which is carrying out a community, municipal, public service or other civic purpose, and adequate provision has been, or will be, made for the payment of the cost of acquisition, construction, operation, maintenance and upkeep of the project.

The Aqueduct project site and improvements are owned and controlled by the State which will carry out the civic purposes for the Aqueduct project. GeNY is responsible for the cost of construction to the extent such cost exceeds the funding provided by the State pursuant to the Grant. The cost of operation, maintenance and upkeep of the project is the responsibility of GeNY, the State-licensed Aqueduct video lottery gaming operator.

- D. That the plans and specifications assure or will assure adequate light, air, sanitation and fire protection.

The facilities, structures and other improvements to be funded pursuant to the Project will be constructed in accordance with New York State Building Code and the New York City fire code will be constructed, maintained, and operated so as to assure adequate light, air, sanitation, and fire protection.

- E. No residential relocation is required because there are no families or individuals residing in the Project site, thereby satisfying the requirements of Section 10(g) of the UDC Act.

The grant contemplated by this General Project Plan is authorized pursuant to legislation enacted by the State as section 104 of Chapter 18 of the Laws of 2008, as amended by legislation enacted as Section 15 of Chapter 90 of the Laws of 2010.

VIII. Environmental Review

The New York State Division of the Lottery, as lead agency, completed an environmental review of the proposed project, pursuant to the requirements of the State Environmental Quality Review Act (“SEQRA”) and the implementing regulations of the New York State Department of Environmental Conservation. ESDC was an involved agency for this review. The lead agency found the project to be a Type I Action which would not have a significant effect on the environment and issued a Negative Declaration on October 20, 2010. ESDC staff reviewed the Negative Declaration and supporting SEQRA materials and concurs. It is recommended that the Directors make a Determination of No Significant Effect on the Environment.

IX. Affirmative Action

ESDC’s non-discrimination and affirmative action policies will apply. There is a 20% Minority/Women-owned Business Enterprise contractor and/or subcontractor participation goal during the development of this Project, and an overall goal of 25% minority and female workforce participation during construction.

X. Requested Action

The Directors are requested: to make Civic Project findings and relocation findings pursuant to sections 10(d) and 10 (g) of the UDC Act; to adopt the General Project Plan; to make a Determination of no Significant Effect on the Environment pursuant to SEQRA; to authorize holding a public hearing pursuant to Section 16 of the UDC Act; and to authorize the taking of actions related to the foregoing.

Attachments
Resolutions

Queens (Queens County) - Aqueduct Racetrack Video Lottery Gaming Facility Capital Construction Grant Civic Project – Civic Project Findings; Authorization to Adopt a General Project Plan; Determination of no Significant Effect on the Environment pursuant to SEQRA; Authorization to Hold a Public Hearing; and Authorization to Take Related Actions

BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation (the “Materials”), relating to the Aqueduct Racetrack Video Lottery Gaming Facility Capital Construction Grant Civic Project to fund the design, acquisition, construction and equipment of such structures and facilities as may be necessary to properly house video lottery gaming at Aqueduct Racetrack (the “Project”), the Corporation hereby finds, pursuant to Section 10 (d) (1), (2), (3) and (4) of the New York State Urban Development Corporation Act, as amended (the “Act”), that:

- (1) there exists in the area in which the Project is to be located, a need for the educational, cultural, recreational, community, municipal, public service or other civic facility to be included in the Project;
- (2) the Project shall consist of a building or buildings or other facilities which are suitable for educational, cultural, recreational, community, municipal, public service or other civic purposes;
- (3) such Project will be leased to or owned by the State or an agency or instrumentality thereof, a municipality or an agency or instrumentality thereof, a public corporation, or any other entity which is carrying out a community, municipal, public service or other civic purpose, and that adequate provision has been, or will be, made for the payment of the cost of acquisition, construction, operation, maintenance and upkeep of the Project; and
- (4) the plans and specifications assure or will assure adequate light, air, sanitation and fire protection; and be it further

RESOLVED, that on the basis of the Materials which indicate that no families or individuals reside in nor are to be displaced from the Project area, the Corporation hereby finds that the requirements of Section 10 (g) of the Act are satisfied; and be it further

RESOLVED, that the Corporation does hereby adopt, for the purposes and subject to the requirements of Section 16 of the Act, and as may be appropriate pursuant to other applicable laws, the proposed General Project Plan (the “Plan”) for the Project submitted

to this meeting, together with such changes therein as the President and the Chief Executive Officer of the Corporation, or his designee, may deem appropriate, a copy of which Plan, together with such changes, is hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that the proposed Plan shall not be final until action is taken by the Directors, if necessary, as provided in the Act and until such time as all requirements of applicable laws in connection therewith shall have been satisfied; and be it further

RESOLVED, on the basis of the Materials and review of the Negative Declaration, dated October 20, 2010, made by the New York State Division of Lottery, and the supporting materials therefor, a Determination of No Significant Effect on the Environment is made with respect to the Project in accordance with State Environmental Quality Review Act and the implementing regulations of the New York State Department of Environmental Conservation; and be it further

RESOLVED, that the President and Chief Executive Officer, or his designee, is hereby authorized to take such action as he or she deems necessary or appropriate in connection with the holding of the hearings required pursuant to Section 16 of the Act and any other applicable law (which hearings may be held simultaneously), including without limitation, the providing, filing or making available of copies of the Plan, and/or digests thereof, the fixing of a date for such hearings, the publication of a notice relating to the Plan and such hearings in accordance with the procedures heretofore approved by the Corporation with respect to similar hearings, and the making of a report or reports to the Directors on such hearings, written comments received, and any local governmental recommendations respecting the Plan; and be it further

RESOLVED, in the event that the Plan becomes final and effective at the conclusion of the duly noticed public hearing with respect thereto, and on the basis of the Materials, the Corporation is authorized to enter into a Grant Disbursement Agreement with Genting New York LLC (“GeNY”) and provide grant funding (not to exceed \$250 million entirely funded by State appropriations or bond proceeds eligible to fund the Grant), pursuant to that agreement, provided, however, that in the event that an affirmation or modification of the Plan is required pursuant to the Act, the Plan will not be effective, and the Corporation will not enter into the Grant Disbursement Agreement or disburse the grant funding, unless and until such affirmation or modification occurs in accordance with the Act; and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all related actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.

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