

**Development and Operation of a Video Lottery
Facility at Aqueduct Racetrack
Question & Answers – Round #2
Issued June 22, 2010**

NOTE: Questions and Answers 1 – 120 and 121 - 145 were published at nylottery.org on May 25, 2010 and June 11, 2010. A summary of Questions and Answers 1 - 17 from the Trades and Shared Space Tour was published at nylottery.org on June 15, 2010.

Capital Construction Grant/NYRA

Q146 RFP §1.2: Please clarify exactly what is included in the “hard costs” covered by the Capital Construction Grant? Specifically, are furniture, fixtures and equipment (FF&E) included?

A146 See A124.

Q147 With respect to the \$250 million ESDC capital construction bond proceeds to be disbursed pursuant to the Capital Construction Grant (the "Bond Proceeds"), the Lottery's response to Question 10 in "Questions & Answers - Round #1" issued on May 25, 2010 (the "First Round Q&A") states that soft costs are not anticipated to be eligible for funding from the Bond Proceeds. Please clarify what is included in the "soft costs" and confirm whether "soft costs" include marketing, development fee, general conditions, professional fees, permits/bonding/inspection costs, insurance, construction management fee, FF & Es, etc.

A147 See A124.

Construction & Operation

Q148 First Round Q&A – Nos. 31 and 41: With respect to the HVAC and electrical equipment on the VLF Premises, may the Vendor engage in discussions with MGM, the original purchaser of the equipment, to attempt to resolve any potential claims MGM may have with respect to such equipment?

A148 Yes, the selected Vendor may engage in such discussions with MGM after the award is made. Note that the equipment has been sitting unused for 7 or more years, is not currently installed and that the RFP neither requires nor encourages its use.

Q149 Please provide a copy of any prior asbestos surveys and abatement reports.

A149 See the files recorded on the DVD sent by the Lottery to each bidder on June 2, 2010.

Q150 Please indicate whether there are any asbestos-containing materials remaining on-site that would require abatement or encapsulation in connection with any contemplated site development and the time frame required for such abatement or encapsulation.

A150 See A149. See also the summary (at nylottery.org) of Q and A's from the June 15, 2010 Trades and Shared Space Tours, including A1 in that summary.

Q151 What hazardous substances, chemicals and wastes are or have been used, stored, handled, disposed of, or transported at or from the Video Lottery Premises in the past 7 years?

A151 None that the Lottery is aware of.

Q152 Can the architectural drawings and plans provided as part of the Proposal be on 11x17 paper folded into 8.5x11?

A152 8.5" x 11" is preferred for all pages, but larger formats may be used if necessary for legibility of drawings.

Q153 Please provide color copies of the maps included as exhibits to the Facilities Ground Lease and the Sublease.

A153 The Lottery has sent each bidder that has paid the \$1 million entry fee the following color coded drawings of the General Site Plan in 24" x 48" formats:

- Sublease Agreement boundaries - Sublease exhibit G
- Ground Lease boundaries - Sublease exhibit A1
- Ground Lease boundaries denoting PANYNJ space - Ground lease exhibit A, Sublease exhibits A1 & A2

Q154 Will third parties that operate Hospitality Facilities (such as restaurants, etc.) be required to hire union workers?

A154 Yes. See RFP Exhibit H.

Q155 With respect to the Lottery's response to Questions 31 and 41 of the First Round Q&A, are there any outstanding claims by MGM or does the Lottery anticipate any claims to be made with respect to the mechanical & electrical equipment on the VL T Premises?

A155 NYRA has advised the Lottery that MGM claims ownership of the uninstalled mechanical & electrical equipment stored at Aqueduct. See A148.

Q156 When will the copies of relevant environmental documents mentioned in the Lottery's response to Question 26 of the First Round Q&A be distributed?

A156 See A149.

MTA Aqueduct station and pedestrian enclosure

Q157(a) At the mandatory bidders' conference Lottery stated that proposals that suggest renovations to the MTA train station at Aqueduct would be looked favorably upon. In the RFP, Lottery directed applicants to remain within the footprint of the current SEQRA approval when submitting their proposals. Please confirm that points will

not be deducted for excluding or given for including desired MTA station improvements in the applicant's proposal.

A157(a) The subway station is outside of the SEQRA footprint and is the responsibility of the MTA. The Lottery will consider a Vendor's plans to work with the MTA in improving the station as a factor in evaluating the overall facilities, amenities and marketing proposal.

Q157(b) Please confirm that improvements to the MTA station will be handled with continued negotiations directly with MTA in the future.

A157(b) Yes. The Aqueduct video lottery agent will be expected to deal directly with the MTA regarding improvements to the Aqueduct subway station.

Q157(c) Please confirm that NYRA's desired pedestrian enclosure from the MTA Aqueduct station to the Grandstand entry is part of an already approved SEQRA application.

A157(c) The elevated pedestrian walkway between the Aqueduct grandstand and the Aqueduct subway station, as required by the RFP, was part of the environmental review that was commenced in 2008, continued in 2009, and will be completed after the selection of an Aqueduct video lottery agent on the basis of the Proposals submitted to the Lottery on June 29, 2010. The 2003 environmental assessment of the NYRA/MGM proposal, which resulted in a 2004 Negative Declaration of significant environmental impact, did not include an assessment of the elevated pedestrian walkway. However, the supplemental draft assessment prepared in 2008 did include the garage, *porte cochere* and elevated pedestrian walkway.

SEQRA

Q158(a) Please confirm whether there has been an assessment on how the parking garage would impact traffic patterns, a key focus of the 2004 submission. Please make any such assessment available to applicants.

A158(a) In 2009, the Lottery, through OGS, began an assessment of the traffic conditions surrounding the Aqueduct Racetrack to determine the impacts on the environment of a six (6) story 2,000 space parking garage and elevated pedestrian walkway in configurations based upon prior bidder assumptions/offers which were not finalized. Based upon that draft assessment, the Lottery does not believe the parking garage and elevated pedestrian walkway will have a significant adverse environmental impact on the area. The Lottery did not make a final agency determination since the prior proposals were withdrawn or rejected. The draft assessment will not be released and a final assessment and determination cannot be made until a winning bidder's design drawings have been evaluated.

- Q158 (b) Have there been any changes in the surrounding neighborhood, the political environment, public scrutiny of the facility or otherwise that could impact the assessment?
- A158(b) The Lottery is not aware of any changes that would have an adverse effect on the determinations already made in the 2004 traffic assessment and the 2008 supplemental draft assessment.
- Q158(c) What documentation will need to be revised and what will need to be newly prepared as part of a new SEQRA application?
- A158(c) The selected Vendor must provide engineering details sufficient for the State's SEQRA consultants to make a full environmental assessment of the proposed VLT project. The selected Proposal will have to be assessed and compared to the assumptions made during the 2004 environmental assessment to determine whether revisions to the original determination will be required.
- Q158(d) To what extent are the decision makers from 2004 (the agency and the key individual(s) still in place?
- A158(d) The Lottery continues to be the lead agency, with support from the Office of General Services. Changes in Lottery and Office of General Services personnel have not caused any changes in the relevant policies and practices.
- Q158(e) What is the degree of risk that the agency will not issue a negative determination this time but rather will proceed to the EIS phase?
- A158(e) A Negative Declaration of Environmental Impact is anticipated. No substantial risk of a material environmental impact has been identified. The 2008 supplemental draft assessment of the NYRA/MGM proposal with the addition of a parking garage, elevated pedestrian walkway and expanded *porte cochere* concluded that the anticipated environmental impacts of the project as restricted by the requirements of the RFP would not be significant.
- Q158(f) If the SEQRA review proceeds to the EIS phase, what is the projected timing? As that process would include public participation, is there any potential for community opposition?
- A158(f) See A158(e). If the Lottery decides to require the preparation of an EIS, the time line would be based on the details of the selected Proposal. As a point of reference, the EIS phase for the Yonkers VLT project took ten (10) months to complete after the determination that there would be a significant environmental impact. The Lottery is not aware of any community opposition to the Aqueduct VLT project.
- Q158(g) Please confirm that only the approvals correspondence of the 2004 SEQRA Application was provided to us by Lottery. Please provide the complete 2004 SEQRA

Application including the drawings of the proposed site coverage submitted with the Application.

A158(g) The full 2004 SEQRA Negative Declaration has been published as RFP Exhibit D and is available on the Lottery website (nylottery.org). The owner of the drawings submitted in 2003 asserted a claim of confidentiality which was upheld by OGS deeming the drawings eligible for continued exception from disclosure pursuant to the Freedom of Information Law (Public Officers Law §87[2][d]). The Lottery therefore cannot disclose the requested drawings.

Q159 At the bidders' conference Lottery noted that Con Edison may have begun planning for the additional power to the facility needed to operate the full complement of 4,500 VLTs at the site. In the event that Con Edison fails to bring such power to the site within a one-year period from the date of the award of the License to Vendor, we believe that the Vendor should be entitled to a license fee reduction in an amount to represent the lost revenue to Vendor. We would propose that such reduction be effectuated through a reduction of the State Education Fund portion of the fees from the site. Please comment on whether this is acceptable.

A159 The proposed change is not acceptable. As a regulated public utility, Con Edison is required to deliver electric power within its service area. No unreasonable delay in supplying the necessary electrical power is expected.

Q160 Given that the design for the casino is to utilize existing entries to Aqueduct and not exceed the footprint of the SEQRA approved application and that a garage is a required component of an applicant's proposed design, could an applicant propose, as part of the amendment for the garage structure to the SEQRA application, an interior connection between the garage and the existing Grandstand/Casino facility which might include a small expanded footprint?

A160 The required parking structure should be connected to the existing grandstand with access on multiple levels.

Q161 Who will be the "applicant" on any SEQRA submissions? In a public-private partnership of this kind, would it not be legally, as well as public relations, more defensible to have the State as the lead agency and the vendor as the applicant for SEQRA purposes? Would it not raise potential conflict of interest issues to have the State as both the lead agency and the applicant, where the vendor is the party that is responsible for implementing many of the so-called Proposed Actions here under the various Transaction Documents?

A161 The Lottery has exclusive jurisdiction under the Video Lottery Law (Tax Law section 1617-a) for the review and approval of the construction and layout of all video lottery facilities in the State. The Lottery and the Office of General Services have completed the SEQRA reviews for all VLT projects to date, including the review for the original Aqueduct VLT project proposal. The Lottery is in the best position to conduct the

environmental assessment in a complete, thorough and timely manner. The Lottery will be the Applicant and OGS will be the Applicant's Sponsor.

Q162 If the vendor is not allowed to be the applicant for SEQRA purposes, can the vendor, at a minimum, be responsible for the preparation of the SEQRA impact analyses since we are required to both pay for it, as well as rely upon it being completed in a timely manner?

A162 See A161. The Lottery will include relevant information provided by the Vendor selected to be the Aqueduct video lottery agent and will also consider the agent's suggestions for inclusion in the analyses.

Q163 If the State remains as the applicant for SEQRA purposes, will it defend any legal SEQRA challenge? Will it require the vendor to seek to intervene in any litigation?

A163 The Lottery will be the lead agency and will respond to any legal challenges. The Lottery may require the Aqueduct video lottery agent to participate in the response.

Q164 Would the State commit to and take responsibility for the preparation of an EIS if the vendor stays within the "footprint," but the Negative Declaration is nevertheless challenged and overturned?

A164 A Negative Declaration is anticipated. The Lottery will continue to act as the lead agency for all SEQRA purposes and will comply with all legal requirements, with support from OGS and the State's environmental consultant.

Q165 The 2004 Negative Declaration lists only two agency approvals - Lottery and Racing and Wagering Board. However, it appears that many more approvals will be required. Was the 2004 SEQRA review that led to the Negative Declaration a "coordinated review"? If so, how widely was it circulated? Would any new SEQRA review be a coordinated review under SEQRA?

A165 The 2004 Negative Declaration was based on a coordinated review and all required notices were published in the DEC Environmental Notice Bulletin. If the proposed project development requires a new SEQRA review to be conducted, a coordinated review will be conducted.

Q166 It is our understanding that a SEQRA review in 2010 would be a de novo process. On what basis has the State concluded that the 2010 SEQRA review can be concluded in 6-8 weeks based on the 2008 SEQRA process, assuming the vendor stays within the footprint? What legal effect, if any, do you believe the 2004 Negative Declaration will play under the current SEQRA review?

A166 The Lottery will follow the provisions of 6 NYCRR 617.7 in determining significance when assessing the selected Proposal and will rely on the 2004 Negative Declaration to the extent permitted by law.

- Q167 Are you planning to use 2008 traffic counts, and 2008 existing conditions in the current SEQRA review? Do you plan to limit the traffic study to the same intersections as in 2004? Did the 2008 analysis include, among other impacts, the 275,000 square feet of renovation, a newly built overpass, any train station renovation, and potential new storm water requirements? When will the 2008 analysis and data be made available to the vendors?
- A167 See A158(a). A draft analysis prepared in 2008 included an additional analysis of storm water drainage requirements that were adopted after 2004.
- Q168 What, if any, approvals or jurisdiction will NYC have over the SEQRA process? Are there any existing MOU's between the State and NYC, the Lottery or any other parties concerning the environmental review or any other subjects?
- A168 See A161. The City of New York is not a participant in the SEQRA review of the Aqueduct project. The Lottery is the lead agency, with support from the Office of General Services. Under Tax Law §1617-a, the Lottery has exclusive jurisdiction over the review and approval of the construction and layout of all video lottery facilities in the State. The Lottery will require all building alterations for the development of the Aqueduct Video Lottery Facility to comply with the New York State building code and State and local fire and safety codes. The Lottery and OGS have established working relationships with New York City agencies to obtain local reviews and advisories on a voluntary basis.
- Q169 Does the exception for "pre-existing environmental conditions" in Section 6.1 of the MOU include any off-site contamination?
- A169 The Lottery is not aware of any off-site contamination.
- Q170 Can you please provide a copy of the 2008 SEQRA expansion that was referenced at the bidder's conference? (48 minute mark in audio transcript)
- A170 See A158(a).
- Q171 Can you please provide a copy of the latest Phase 2 environmental report on the property?
- A171 A Phase 2 Environmental Report does not exist.
- Q172 Will the *NY/NJ* Port Authority provide overflow parking at JFK airport on major event days?
- A172 This is a contingency that will have to be pursued on a case-by-case basis depending on the coincidence (if any) of peak parking demand at Aqueduct and JFK. There are no existing commitments or prohibitions.
- Q173 How did the State classify the proposed action here in 2008 SEQRA analysis, Type I or

Unlisted? Any anticipated change for the 2010 action?

A173 The analysis conducted in 2004 determined it was a Type I action, and we believe this will remain unchanged.

Q174 The Yonkers VLT Project was issued a positive declaration under SEQRA, including the Lottery's finding that it "may include the potential for one significant adverse environmental impact." When comparing the Aqueduct Proposal with the Yonkers Project, what similarities or differences do you consider relevant for SEQRA compliance purposes here?

A174 The Lottery cannot prejudge the Proposals expected on June 29, 2010. However, the SEQRA analyses prepared so far for the Aqueduct project have concluded that no significant environmental impact is expected. See RFP Exhibit D at nylottery.org. Since the RFP permits no significant deviations from the footprint used in the previous analyses, the Lottery expects that the project to be described in the Proposal selected from among the competing Proposals submitted on June 29, 2010 will not require a positive declaration of significant environmental impact.

Q175 Will NYRA continue to lease the 1,200 spaces currently leased from the PANYNJ in the North Conduit parking area?

A175 See A172. NYRA intends to continue to apply for a permit for the use by NYRA of the referenced PANYNJ real property. However, NYRA has reported that the PANYNJ has informally advised NYRA that the North Conduit parking area might not be available for PANYNJ-permitted uses in the future.

Q176 The "Aqueduct Access Road" (a.k.a., Racetrack Road) from the Belt Parkway and North Conduit Ave runs along the edge of the North Conduit Parking area. Since that area has been sold to the PANYNJ, is the Access Road still public and available for use?

A176 Yes.

Q177 Are connections to the Aqueduct site from Pitkin Ave and Linden Blvd permitted, encouraged or discouraged?

A177 Permitted: yes. Encouraged or discouraged: uncertain. NYRA has been advised by some local community leaders over the years that some community members prefer that the Pitkin Avenue entrance/exit not be used for racing activities. However, in Aqueduct's heyday, the Pitkin Avenue entrance/exit was heavily used by NYRA and racing fans.

Q178 Reportedly there is a relatively new 10" water main serving the site. Is there any information as to water pressure within that line?

A178 Yes. Fire system: 55 psi. Domestic water: 60 psi.

Q179 Is there any information regarding the existing sanitary sewerage system servicing the

building? Capacity? Condition?

A179 Current condition is estimated to be fair to poor. The original design capacity was for 55,000 persons. The selected Vendor should anticipate the possibility that upgrades may be necessary.

Entry Fee/Bidders' Conference

Q180 If the terms of the Proposal (i.e., changes to the MOU) are considered unacceptable by the State, will the \$1 million entry fee refunded, and if yes, when will it be refunded?

A180 Potential bidders may withdraw from the competition up until the deadline for submission of Proposals (4:00 p.m. ET on June 29, 2010) and receive their entry fees back. Thereafter, non-winning bidders will have their entry fees refunded after the State receives the Upfront Licensing Fee from the winning bidder.

Proposal, Evaluation, Scoring, and Recommendation

Q181 If the Vendor proposes to build the Parking Facility within 5 years of entering into the Transaction Documents, would the Vendor lose points on the scoring of its Proposal?

A181 The evaluation methodology will not assign a predetermined number of points to each Proposal and then deduct points on account of shortcomings in the Proposals. Each Proposal will be evaluated on its merits and will be assigned scores depending on the extent to which it responds to the requirements of the RFP. A Proposal that includes a delay in the construction of the required parking structure will not receive a high number of the points available in that part of the evaluation.

Q182 Section 4.10 of the RFP requests a list of all subcontractors. Will the State reconsider this requirement at this point given the project has not been awarded, a list of subcontractors would be provided upon completion of all trade awards.

A182 All known or planned subcontractors must be identified in each Proposal.

Q183 The RFP requires submission of the Proposal in 8-1/2" x 11" format. Could architectural and engineering plans, sections, elevations and perspectives be submitted in 11" x 17" format?

A183 See A152.

Q184 Please clarify the level of detail you are requesting with regard to the MBE/WBE utilization plans.

A184 RFP Section 2.9 defines specific requirements for equal employment and business participation opportunities for minority group members and New York State Certified Minority/Women-owned businesses. To comply with these requirements the bidder is required to provide information in the Proposal and throughout the MOU term as follows:

Equal Employment Opportunity:

- Proposal - Staffing Plan describing the work force expected to be used on the project. Appendix D-2 should be used for reporting this information. RFP §2.9.A.1 defines the detail of information needed to comply with this requirement.
- Throughout the MOU term – Periodic Work Force Utilization Report showing the actual work force utilized during the reporting period. Appendix D-3 should be used for reporting this information. RFP §2.9.A.2 defines the detail of information needed to comply with this requirement.

Minority/Women-owned Business Participation:

- Proposal – Summary of the MBE/WBE utilization plan that describes anticipated participation of Certified MWBEs during both the construction and operation of the facility. RFP §2.9.B.1 defines the level of detail required to supply this information. There is no specific format required for this summary.

To correct an erroneous reference, RFP §2.9.B.3 is hereby revised as follows: “The contact information for the designated individual who will be assigned the responsibility and authority to administer the MWBE program for the development and operation of the Aqueduct Video Lottery Facility must be provided in Appendix E-2.”

- Following announcement of selection – within 14 days after the Lottery’s announcement of the apparent winning Proposal, the successful Vendor must submit a completed Utilization Plan for review and acceptance by the Lottery. Appendix E-2 should be used for reporting this information.
- Throughout the MOU term – Quarterly Activity Report showing actual use of MWBE’s. RFP §2.9.B.5 defines the level of detail required to report this information. Appendix E-3, Parts 1 & 2 should be used for reporting this information.

Q185 Section 2.9B(2) of the RFP indicates that the successful vendor must submit the completed Utilization Plan within fourteen (14) days after notification of the contract award for review and acceptance by the Lottery. Could the time be lengthened to 30 days? Also, please confirm the requirement is submission of a "preliminary" utilization plan for the anticipated M/WBE participation plan since it would be very difficult to identify all prime contractors within 14 days of announcing the successful bidder.

A185 No, the time for submission of the Utilization Plan will not be extended. The RFP requires each Proposal to include a complete Utilization Plan, not a “preliminary” Utilization Plan.

Q186 Attachment 3 to the RFP (Document Submittal Checklist) indicates a "Summary of MBE/WBE Utilization Plan" must be submitted with proposal. Is there a specific format for this summary?

A186 No specific format is required, but the summary should cover the same areas required by RFP Appendix E-2. See A184.

Q187 Section 1.15 of the RFP (PROPOSALS) requires 8.5" x 11" paper stock and Microsoft Word format. We would like to confirm that it is acceptable for sections of our proposal for which such format is not practical (i.e. renderings, floor plans, etc.) to be submitted in alternate formats.

A187 Confirmed. See A152.

Q188 The 6th bullet of Section 4.5 of the RFP (CAPITAL PLAN) asks for "annual expenditures and long term projections." Can you please clarify if this means revenue projections or just capital spending projections? To what level of detail should these projections flow?

A188 The "Capital Plan" required by the RFP should be primarily a facilities plan, so revenue projections are not required, but long-term capital spending projections (for construction, maintenance, renovation, etc.) are appropriate. They should be of sufficient detail to allow the Evaluation Committee to evaluate and judge the scope of the plan.

Q189 Are there any requirements for the drawings that accompany the proposal (i.e., size, scale, etc.)

A189 See A152.

Q190 If the State believes that a vendor's proposal would not potentially receive a Negative Declaration, will such Proposal be considered "non-conforming"? Who and how will this determination or evaluation be made?

A190 The Lottery expects that a Proposal that meets the RFP requirements would form the basis for a Negative Declaration of significant environmental impact. Failure to meet the RFP requirements will result in the Evaluation Committee recommending rejection of the Proposal or assigning low scores to the Proposal for the relevant portions of the evaluation.

Future of Gaming/Facilities

Q191 The Vendor wishes for the State to reconsider its unwillingness to provide the Vendor with relief in the event of the establishment of a VLF or casino (including one or more casinos on Native American lands) at Belmont or another location within certain proximity of the Aqueduct VLF during the 30-year ground lease.

- A191 See A138. Policy decisions on future gaming in the region will be made by future elected officials. The Aqueduct video lottery agent will have the right to make recommendations intended to influence those decisions.
- Q192 MOU Article 3.4: Notwithstanding the non-compete covenant in Section 3.4 of the MOU, if certain bidders have gaming facilities outside of NYS, will such bidders lose points on the scoring of their proposals as a result of the possibility of using the Video Lottery Facility, including its gaming customer database, to attract patrons to such bidders' other gaming facilities?
- A192 See A107 and A138. The Evaluation Committee will evaluate each Vendor's experience and current operations in the gaming business. The advantages of experience and current operations will be weighed against any disadvantages associated with a competitive conflict of interest. A Vendor that operates a gaming facility outside of New York State should explain in its Proposal the steps it will take to eliminate the risk that its selection as the Aqueduct video lottery agent would be used to help a gaming facility outside of New York State to compete against a gaming facility located in New York State, including, but not limited to, safeguards to prevent Aqueduct patrons from being encouraged to visit gaming facilities outside New York State.

General

- Q193 First Round Q&A – No. 114: Are there any additional approvals required which are not listed in the First Round Q&A – No. 114? If there are, please provide details relating to the application for such approvals, including, without limitation, which entities need to grant the approval and the allocation of responsibilities between the Vendor and the State with respect to obtaining such approvals.
- A193 Q114 was related to approvals required to complete the transaction documents. The MOU has been revised (see RFP Exhibits A.1 and A.2) to eliminate the need for completion of transaction documents after approval of the MOU. The need for a “Closing” has also been eliminated.

All required transaction documents (See RFP Exhibit A.2, Final Form of Memorandum of Understanding; RFP Exhibit B, Assignment and Assumption of Facilities Ground Lease; RFP Exhibit C, Sublease Agreement; RFP Exhibit J, NYRA Financing Agreement; and MOU Exhibit C, Funding Agreement – Grant Disbursement Agreement) must be signed by each bidder in the forms published on the Lottery's website as of June 22, 2010 and included in each Proposal.

After the Governor, the Temporary President of the Senate, and the Speaker of the Assembly approve the Lottery's selection of an Aqueduct video lottery agent, the Governor, Temporary President, and Speaker will sign and deliver the MOU to the Aqueduct video lottery agent. After the Aqueduct video lottery agent pays the upfront licensing fee of \$300 million or more and reimburses ESDC for loan advances already disbursed to NYRA, ESDC will sign and deliver to the Aqueduct video lottery agent the assignment of the NYRA Loan Agreement (RFP Exhibit I) and the Capital Construction

Grant Funding Agreement – Grant Disbursement Agreement (MOU Exhibit C) signed by ESDC.

Lottery and OGS will approve or obtain any approvals required in the SEQRA review process and continue working with the Aqueduct video lottery agent during the construction phase to ensure compliance with the New York State building code and all State and local fire and safety codes.

Q194 Pursuant to which Transaction Document will the Vendor be permitted to utilize one-half of the designated JFK Airport parking lot? Such right does not appear to be referenced in the Facilities Ground Lease or the Sublease.

A194 No document providing for such use currently exists. See A172 and A175.

Q195 MOU Article 8.1.2: What criteria will the Division of Lottery use to determine whether a Video Lottery Agent License Agreement will be required?

A195 No Video Lottery Agent License Agreement will be required. That requirement is not included in the final form of the Memorandum of Understanding. See RFP Exhibits A.1 and A.2.

Q196 In light of the questions posed at the Mandatory Bidders Conference on June 8, what will happen to the RFP process if the Lottery does not receive any bids that are conforming, but rather, receives only non-conforming bids?

A196 See A129. All Proposals must include acceptable responses to the RFP requirements. If only “non-conforming” Proposals are received, the Lottery will decide whether any of the Proposals are sufficiently responsive to the RFP requirements, whether any minor deviations can be excused, or whether all Proposals will be rejected.

Q197 Please confirm that no State or City transfer tax will be due as a result of the assignment and assumption of the Facilities Ground Lease pursuant to the Assignment and Assumption Agreement since no rent is being paid on the property.

A197 Confirmed. In this transaction since there is no rent being paid for the leases, there will be no New York State or New York City transfer taxes. However, if the leases are recorded, the County Clerk will need to determine if a NYS Real Estate Property Tax Return and NYC-Real Property Tax Return will have to be filed.

Q198 Since Vendor will not be responsible for operating the horse racing facilities, please confirm that notwithstanding Section 2836-4.2(c)(4)(i) of Exhibit E of the RFP, Lottery does not intend to require Vendors to obtain a license to engage in pari-mutual wagering activities to be issued by the New York State Racing and Wagering Board.

A198 Confirmed. The Lottery does not intend to require the Aqueduct video lottery agent to obtain a pari-mutuel wagering license, since only NYRA is permitted to conduct pari-mutuel wagering at Aqueduct.

- Q199 The sublease should be revised to reflect physical building restrictions by including changes to the exclusive use requirements pursuant to the RFP. These changes may affect casino design decisions. For example, the live loading of the floor area above the casino may be impacted by design solutions to meet the desired level of finish, including building code required systems, which would result in limited uses of the floor above. It should be clear in the sublease that the Vendor is not responsible to restore floor load capacities to a space above the lease area after project completion. Alternatively, design criteria should be defined, with the understanding that restrictions may limit the level of finish possible in the casino areas. Components that may affect the live loading of the floor include ceiling construction, ductwork, sprinkler piping, cameras, wiring, and light fixtures.
- A199 The Lottery requires the installation of reasonable, commonly acceptable ceiling and infrastructure systems in the Aqueduct Video Lottery Facility. Designs that include unique or specialty features must transfer the loads to the structural frame and must not rely upon the floors above to support such loads. The design must include verification that the structural frame can carry the loads associated with the proposed features.
- Q200 Each authority with jurisdiction should agree that existing conditions at Aqueduct which may not meet current building code standards are subject to “normal” jurisdictional review and interpretation as well as individual applications for variance to allow for some leeway in basing construction costs on the facility. For example, we believe that should the riser height of existing stairs not meet current code requirements, the local authority having jurisdiction will accept industry standard variance applications that often result in reduced exit capacity of existing stairs which have such conditions but do not require demolition and re-construction of such egress components to meet current standards. Please confirm that you are in agreement with our belief.
- A200 The Lottery is the lead agency, with support from the Office of General Services. Under Tax Law §1617-a, the Lottery has exclusive jurisdiction over the review and approval of the construction and layout of all video lottery facilities in the State. The Lottery will require all building alterations for the development of the Aqueduct Video Lottery Facility to comply with the New York State building code and State and local fire and safety codes. All building alterations to develop an Aqueduct Video Lottery Facility must comply with the New York State building code and all state and local fire and safety codes. OGS, as the construction permitting agency, understands that the variance process is an integral part of the code enforcement process. Variances will be considered where prudent and necessary.
- Q201 The MOU repeatedly references approvals, consents and reviews by the "State." Is that the Lottery, the Governor, the Temporary Speaker, Speaker of the Assembly, or all of the above?
- A201 The MOU must be approved by the Governor, the Temporary President of the Senate, and the Speaker of the Assembly. The video lottery license must be approved by the Lottery. The Franchise Oversight Board will approve the occupation and use of the

property under the lease or otherwise. ESDC will approve the Capital Construction Grant Funding Agreement – Grant Disbursement Agreement.

Q202 Can you please provide a more refined estimate of the anticipated annual **PILOT** payment or an estimate on when you will have more information?

A202 Any PILOT payment will be based on the assessed value of the property, as determined by the New York City Department of Finance, and the applicable rate, as applied by the New York City Department of Finance, to the portions of the Aqueduct premises for which the licensed Aqueduct Video Lottery agent will be responsible (i.e., the portions not subleased to NYRA). The current assessed value for the entire Aqueduct parcel is \$38,079,000 and the current tax rate is 10.4260%, for a current tax bill of \$3,970,117.

Q203 Can the "Closing" referred to in Section 8.5.2 occur prior to the following: (a) SEQRA approvals, (b) completion of all the transaction documents or (c) issuance of the ESDC funds.

A203 No "Closing" is required by the final form of the Memorandum of Understanding. See A193 and RFP Exhibits A.1 and A.2.

Q204 As suggested in the Lottery's answers to questions previously posed by bidders regarding revisions to the MOU and certain other documents, we have attached requested revisions to the *MOU*, the *Project Labor Agreement* and the *Sublease Agreement*. In order to provide an understanding of the Lottery's position with respect to requested revisions that are rejected (and the corresponding risk necessarily being assumed by the prospective vendors), will the Lottery please provide a brief explanation of its position with respect to each revision to a transaction document requested by a bidder that is not accepted?

A204 The Lottery has accepted some of the suggested MOU revisions as shown in the final form of the MOU published on the Lottery's website (nylottery.org) as RFP Exhibits A.1 (tracked changes version) and A.2 (signature version). Some of the suggested changes contradicted each other and therefore could not be accepted. Some of the suggested changes were not accepted because they unnecessarily repeated provisions of law. Some of the suggested changes were not accepted because they were deemed not in the best interests of the State of New York. Some of the suggested changes were not accepted because they would have required the Lottery to approve in advance matters that must be decided in the future based on the exercise of discretion and authority by future Lottery officials on the basis of facts and circumstances prevailing at the time and on the identities of the individuals and entities involved (e.g., assignments or delegations of the rights and obligations of the Aqueduct video lottery agent and approval of material debt transactions that depend on an evaluation of the suitability of the individuals and entities involved).

The Project Labor Agreement must be negotiated between the Aqueduct video lottery agent and the labor organization(s) representing the workers to be employed in the development and operation of the Aqueduct video lottery agreement. The Lottery will not require any particular provisions in the Project Labor Agreement. RFP Exhibit H is

only an illustrative example of such an agreement.

The Lease and Sublease were approved by the United States Bankruptcy Court and the State as part of the settlement of the NYRA bankruptcy case and cannot be changed.

The NYRA Loan Agreement and Financing Agreement conform to the requirements of Chapter 90 of the Laws of 2010, have already been finalized and cannot be changed.

The Capital Construction Grant Funding Agreement – Grant Disbursement Agreement conforms to the requirements of State and federal law governing tax exempt financing, as well as ESDC’s customary requirements for the financing of economic development projects. It is not subject to change.

Q205 What will the Lottery do to facilitate the procurement of the following required permits?

(a) NYC DOB:

- Alt one to change the use, egress, enlargement or occupant load.
- Place of assembly permits for all spaces with more than 75 persons.
- Alt two applications for sprinkler, fire alarm, demolition, general construction, structural, mechanical and plumbing.
- Amended certificate of occupancy.
- Temp certificate of occupancy
- Final certificate of occupancy.
- Alt two for emergency generator - needed to run fire alarm, smoke purge, emergency lighting and elevator recall.
- Fire safety plan
- Fire protection plan. Emergency action plan Elevator (install or removal)
- Escalator (install or removal) Hoist
- Crane
- Concrete pumper

A205(a) No approvals are required from the City of New York. The Lottery intends to coordinate and cooperate to the extent necessary and advisable with New York City agencies, but the Video Lottery Law (Tax Law section 1617-a) exempts New York State video lottery facilities approved by the Lottery from local land use requirements.

(b) Department of Environmental Protection:

- Asbestos abatement - acp -7 form RPZ valve.
- New water service.
- New sprinkler service
- Registration of emergency generator.
- SO I & 2 application

A205(b) See A205(a).

(c) NYCFDNY:

- Approval of Fire Alarm system
- Approval of Fire Alarm head end location
- Fuel oil storage permit
- Ansul systems for kitchen and range hoods.
- FM-200 system for data rooms
- Location of yard hydrants

A205(c) See A205(a).

(d) DOT (NYC & NYS):

- Builders/pavers plan for sidewalk and roadway improvements.
- Bus stops and shelters
- Street furniture locations.
- Modifications to street lights, traffic lights, and traffic patterns.
- OCMC meeting for storage on NYC street (might not be necessary)

A205(d) See A205(a).

(e) Con Edison:

Steam Electrical Vaults

A205(e) See A159. The licensed Aqueduct video lottery agent will be expected to deal directly with Con Edison.

(f) Empire city Subway:

Cable lines

(g) Verizon:

Telephone lines

A205(f) and (g) The Lottery has no information that Empire City Subway, a subsidiary of Verizon that specializes in the protection of underground cables, conducts any operations in the Aqueduct area. However, the licensed Aqueduct video lottery agent will be expected to deal directly with Verizon and any other entity possessing easements, rights of way, or other interests affecting the use of the Aqueduct property.

(h) Department of Health:

- Food handling permits
- Health club approvals
- Swimming pools

A205(h) Any food service facilities included in the Aqueduct Video Lottery facility must comply with local food handling requirements administered by the New York City Department of Health or other local agency(ies). Neither a health club nor a swimming pool are required or expected by the RFP.

- (i) SEQRA:
 - Consumer affairs
 - Parking operator's license

A205(i) The Lottery will be the lead agency for complying with SEQRA requirements. No New York City Department of Consumer Affairs approvals or licenses will be required.

MOU Article 1

Q206(a) The RFP and the proposal are incorporated into the MOU. If there is a conflict between the MOU, the RFP, the proposal and the transaction documents, which document controls?

A206(a) The MOU resulting from this RFP will include the following parts:

- Appendix A – Standard Terms for all New York State Contracts
- Addendums to the MOU
- MOU and Grant Disbursement Agreement
- Questions and Answers, Clarifications and Addendums to the RFP
- RFP
- NYRA Financing Agreement
- ESDC Loan Agreement
- Sublease
- Assignment and Assumption of Facilities Ground Lease Agreement
- Facilities Ground Lease Agreement
- Franchise Agreement
- Clarifications to the Vendor's Proposal
- Vendor's Proposal

In the event of a conflict in the provisions of these documents, the order of precedence shall be as listed above from the highest to the lowest.

Q206(b) Section 1.1 states that the parties shall enter into a ground lease for the video lottery facility (the "Video Lottery Facility Ground Lease"). On page 8, A39 of the Q&A - Round #1, it states "The State does not intend to enter into an amended and restated Facilities Ground Lease." If that statement is true, shouldn't Section 1.1 be amended?

A206(b) Yes, the final version of the MOU has been revised accordingly. See RFP Exhibits A.1 and A.2.

Q206(c) At Section 1.3.1, it states that Vendor shall "obtain all requisite entitlements for" ... the Video Lottery Facility. Can you provide a list of all the "requisite entitlements" which are referenced?

A206(c) No "requisite entitlements" are required, and the final version of the Memorandum of

Understanding has been revised accordingly. See RFP Exhibits A.1 and A.2.

Q206(d) Section 1.3.1 states that the VLF must include interior space for immediately ancillary or complementary activities such as are commonly located in comparable facilities such as "simulcast facilities ... " Does this mean that bidder is going to be required to pay for redesigning or adding simulcast facilities for the use of NYRA or NY State?

A206(d) No.

Q206(e) Section 1.3.2 refers to a "Funding Agreement" as set forth in Exhibit C attached. Exhibit C attached is titled "Funding Agreement Disbursement Procedures" as it refers to "Re Funding Agreement". Will there be a separate Funding Agreement or are the "Disbursement Procedures" meant to be the entire Funding Agreement. If there will be a separate Funding Agreement, can it be made available for review?

A206(e) Yes. MOU Exhibit C has been amended to include the ESDC Funding Agreement (entitled "Grant Disbursement Agreement") and related exhibits and attachments. Each Vendor must include a signed Grant Disbursement Agreement in its Proposal.

Q206(f) Can the fifth line in section 1.3.2 be amended to add "and eligible soft costs" after the reference to "pay the eligible capital construction costs"?

A206(f) See A124, which explains the soft costs that are included in "eligible capital construction costs."

MOU Article 2

Q207(a) Section 2.1 refers to Vendors signing a Video Lottery Agent License Agreement. Can a copy of such proposed agreement be made available?

A207(a) No Video Lottery Agent License Agreement will be required. See RFP Exhibits A.1 and A.2.

Q207(b) Section 2.6 refers to a "Video Lottery Facility Ground Lease". See Q2 above. If there will be no Video Lottery Facility Ground Lease, to what document should this refer?

A207(b) The final form of the Memorandum of Understanding has been revised accordingly. See RFP Exhibits A.1 and A.2.

MOU Article 3

Q208(a) Section 3.2 Vendor would propose adding the following language "for so long as Vendor is operating the Video Lottery Facility, Vendor shall have the right at no cost to Vendor to use the words 'Aqueduct', 'Aqueduct Racetrack' and similar terms in the marketing and promotion of the Facility."

A208(a) The marks, which NYRA is permitted to continue to use but which are beneficially owned by the State of New York, will be available for use by the Aqueduct video lottery agent. MOU section 3.2 has been revised accordingly. See RFP Exhibits A.1 and A.2.

Q208(b) Section 3.4 refers to a Confidentiality Agreement. Could we be provided with a copy of the proposed Confidentiality Agreement?

A208(b) No Confidentiality Agreement will be required. See RFP Exhibits A.1 and A.2.

MOU Article 4

Q209(a) Article 4.1 deals with initial term which is supposed to be at least 30 years with an additional 10 year option. Section 4.1 refers to the Video Lottery Facility Ground Lease which we understand is no longer forthcoming. Therefore, the only agreement for the use of the facility, we understand to be the assignment and assumption of the Facilities Ground Lease Agreement, dated 9/12/2008 between New York State and NYRA. The term of that agreement is the length of the Franchise which is 25 years from 2008. Please explain how Vendor can have use of the facilities for 30 or 40 years when the assignment of the lease is for only an additional 23 years?

A209(a) Upon approval by the Governor, the Temporary President of the Senate, and the Speaker of the Assembly, the Memorandum of Understanding will bind the State to provide to the licensed Aqueduct video lottery agent with all necessary rights to use the property for 30 to 40 years. The Franchise Oversight Board will execute all necessary and advisable documents to effectuate that promise.

Q209(b) Will the State of New York provide an additional lease for years 24 through 30 or 40 (if the option is exercised)? Please provide a copy of said proposed lease.

A209(b) If a lease agreement is necessary and advisable it will be executed by the Franchise Oversight Board to provide for a longer term with an optional extension but otherwise in substantially the same form as RFP Exhibit F.

MOU Article 5

Q210(a) Section 5.1 deals with the State Expenses Fund. Please confirm that this Fund covers all costs and expenses incurred by State and ESDC in connection with all transactions and activities including SEQRA. Q14. Will Vendor have the opportunity to review all bills, not only for outside Vendors but all bills proposed reimbursements for State costs (including salaries of State workers) and have the ability to object to same prior to those bills being paid from the Fund?

A210(a) Yes, the State Expenses Fund will cover the cost and expenses of performing the SEQRA review. The Lottery and OGS will provide copies of all relevant records. The Lottery and OGS expect the costs and expenses incurred will be in accordance

with current industry practices, in the best interests of the State.

Q210(b) Section 5.1 states "State will endeavor to notify Vendor". Can this be amended to provide that "State will notify Vendor of all payments made from the Fund"?

A210(b) Yes. See RFP Exhibits A.1 and A.2.

Q210(c) Section 5.1 provides that at State's or ESDC's request, Vendor shall replenish the State Expenses Fund. There is no time of payment term. Can this section be amended to state that Vendor shall replenish the Fund within 30 days of receipt by Vendor of documents establishing the need to replenish the Fund?

A210(c) The final form of the MOU has been revised to provide that the designated amount must be deposited in the State Expenses Fund within 30 days after replenishment is requested by the State or ESDC. See RFP Exhibits A.1 and A.2.

Q210(d) Section 5.3 again refers to eligible Capital Construction Costs. Can this be amended to add "eligible soft costs"?

A210(d) See A124, which explains the soft costs that are included in "eligible capital construction costs."

Q210(e) Section 5.3 states that the State shall be responsible for all debt service on the bond. Given the current economic condition of New York State, can this be amended to provide that Vendor shall be entitled to the \$250,000,000 Capital Construction Grant, regardless of whether State is current or in default on the debt service on the bonds?

A210(e) Once the bond(s) is(are) issued by ESDC, the bond proceeds are received by ESDC, and the disbursement of funds is approved by the Director of the Budget, the Capital Construction Grant will be available for disbursement to the Aqueduct video lottery agent in accordance with the provisions of the Capital Construction Grant Funding Agreement (see MOU Exhibit C, "Grant Disbursement Agreement"). Any default on debt service payment(s) on the bond(s) will have no effect on the Aqueduct video lottery agent's right to receive the Capital Construction Grant.

Q210(f) Section 5.5 states that during the term of VLF Ground Lease, Vendor shall receive a percentage of net total revenue wagered. Since there apparently will be no Video Lottery Facility Ground Lease and as previously noted, the current lease is only for 23 years, this section needs to be amended to provide that during the full 30 year, or 40 year term (if the option is exercised), that Vendor shall receive from the State the statutory revenue.

A210(f) Agreed. The final version of the Memorandum of Understanding has been revised accordingly. See RFP Exhibits A.1 and A.2.

Q210(g) Section 5.7 again references Video Lottery Facility Ground Lease and there is also a reference to "requirements of the Legislation". If this is a reference to Tax Law

Section 1612(d) (3), that should be stated. If that is not the referenced legislation, please provide the specific legislation that is being referenced.

A210(g) Agreed. The final version of the Memorandum of Understanding has been revised accordingly. See RFP Exhibits A.1 and A.2.

MOU Article 6

Q211(a) We understand that NYRA has previously been fined for CAFO violations and/or other environmental violations. Can you please provide details of these violations?

A211(a) NYRA has informed the Lottery that there have been no such violations at Aqueduct Racetrack.

Q211(b) Section 6.1 states that Vendors shall only be liable for pre-existing environmental conditions up to a limit of \$1 million. Please confirm that the \$1 million cap will include any and all additional costs required to be assumed by Vendor, such as all costs relating to removal of asbestos, including additional insurance and trucking costs.

A211(b) Agreed.

Q211(c) What protection can Vendor have if and in the event NYRA is in violation of CAFO or other environmental rules? To the extent Vendor will be sharing some facilities with NYRA and to the extent that NYRA ground water and/or other NYRA activities could commingle with Vendor, how can Vendor be protected from future liability.

A211(c) Given the configuration of Aqueduct Racetrack, any such violations are unlikely to occur. However, any violations related to racehorses would inherently be the sole responsibility of NYRA. The Aqueduct Video Lottery Facility's operations are unlikely to give rise to any CAFO-related violations. NYRA will continue to be responsible for its own conduct, and the licensed Aqueduct video lottery agent will, of course, have the right to assert any claim against NYRA necessary to obtain an appropriate remedy for any harm attributable to NYRA's conduct.

Q211(d) It is proposed that language be added that Vendor is not liable for any acts of NYRA and/or State of New York.

A211(d) Agreed. The final version of the Memorandum of Understanding has been revised accordingly. See RFP Exhibits A.1 and A.2.

Q211(e) Are there any current NYRA or NY State policies of Insurance which would reimburse NYRA/New York State for environmental clean-up costs for existing conditions?

A211(e) Yes. NYRA has informed the Lottery that NYRA's relevant insurance policies provide such coverage. New York State does not provide such coverage.

MOU Article 7

- Q212(a) Section 7.1.1 provides that State shall coordinate and consult with the City of New York regarding environmental review, to the extent determined by State in consultation with Vendor. What standards will the State use in making the determination of how much coordination and consultation with the City of New York will be required?
- A212(a) See A168. The Lottery and OGS will consult with New York City agencies to the extent necessary to assure protection of the health and safety of Aqueduct Video Lottery Facility patrons and staff, as well as the general public.
- Q212(b) Section 7.2 provides that there are no conditions precedent with respect to payments of the licensing fee. Section 7.3 states "Vendor further agrees that State makes no representations, warranty or covenant as to the occurrence of any of the conditions set forth above. Neither Party shall have any liability to the other if any of the conditions are not satisfied." Please confirm that approval of the \$250 million Construction Grant to Vendor is a precondition for the release from joint custody of Comptroller and the Lottery of the \$300 million licensing fee. In other words, please confirm Vendor's understanding that it is a condition of Vendors bid that the ESDC \$250 million grant is approved. Please confirm that Section 7.3 does not release the State from liability for the refund of the \$300 million licensing fee if the ESDC grant is not approved.
- A212(b) See A123. The final version of the MOU has been revised to eliminate conditions precedent to the payment of the upfront licensing fee of \$300 million or more. See RFP Exhibits A.1 and A.2.

MOU Article 8

- Q213(a) Section 8.1.1 again refers to the Video Lottery Facility Ground Lease.
- A213(a) No Video Lottery Facility Ground Lease will be required, and the final version of the MOU has been revised accordingly. See RFP Exhibits A.1 and A.2
- Q213(b) Section 8.1.5 requires agreement between NYRA and Vendor regarding use of common areas and shared facilities at Aqueduct, including any required amendment to the sublease. What happens if NYRA and Vendor cannot reach agreement? Please be aware of Vendor's concerns that once the licensing fee has been received, that Vendor has very little leverage and NYRA has less of an incentive to agree to make any changes which benefit Vendor. The fact that NYRA will be dependent upon video lottery revenues is no longer a large leverage issue since Vendor will be required to keep paying NYRA \$2 million a month while negotiations take place. It should be further noted that the Ground Lease Assignment and Assumption Agreement and the Sublease were executed by NYRA at a time when there was great incentive for NYRA to do so since it was a condition of their being granted a 25 year

franchise. That leverage is no longer present. What guaranty can you provide Vendor that NYRA will act reasonably during negotiations and will sign any required documents?

A213(b) No guaranty will be provided. NYRA is a licensed franchisee of the State of New York. Any bad faith or other unreasonable or improper conduct by NYRA remains subject to disciplinary action by the Racing and Wagering Board, the Franchise Oversight Board or other State agencies.

MOU Article 9

Q214(a) Section 9.1 provides that State will provide Vendor "all non-confidential information and documents with respect to the Video Lottery Premises." What confidential document(s) exists concerning the Video Lottery Premises which will not be provided to Vendor? Please describe the document(s) in sufficient detail for Vendor to be able to make a determination as to whether or not they agree these are confidential.

A214(a) The architect who prepared drawings for the NYRA/MGM 2003 Aqueduct video lottery facility proposal asserted a claim of confidentiality which was upheld by OGS. OGS made a final agency determination in 2009 that the drawings and related records were eligible for continued exception from public disclosure pursuant to the Freedom of Information Law (Public Officers Law §87[2][d]). The State therefore cannot disclose the prior design drawings and related records.

Q215(b) Section 9.1 provides that Vendor agrees that State shall arrange for the SEQRA review at "Vendor's cost and expense". Please confirm that the State's costs for the SEQRA are subject to the \$3 million cap as set forth in Section 5.1. Or, amend Section 9.1 to add "subject to the \$3 million cap" referenced in 5.1, after the words "Vendor's cost and expense".

A215(b) Confirmed. The State Expenses Fund will be used for such expenses, subject to the \$3 million cap set forth in Section 5.1.

Q215(c) Section 9.1 refers to existing environmental reports. Do these include a Phase I environmental or any other environmental reports? If so, may Vendor be provided with a copy?

A215(c) Environmental reports created during the 2003-4 SEQRA review have been provided to the bidders. The State does not have a Phase I environmental report of the subject property. No other environmental reports have been finalized.

MOU Article 10

Q216(a) Section 10.1 cites as examples of prohibited uses "liquor stores, other than liquor stores, hospitality operations and similar purveyors of alcoholic beverages that are establishments approved by State to sell liquor in conjunction with Video Lottery Facility." Please explain what is meant by liquor stores being prohibited other than

liquor stores approved by New York State to sell liquor. It is Vendor's understanding that all sales of liquor in New York State must be approved by the State (SLA). Please confirm that State will not oppose Vendor selling alcoholic beverages pursuant to any on or off-premise licensees at the premises as approved by the SLA. In this regard, section 2.6 provides that Vendor shall have the right to design, construct and operate restaurants, bars, retail sales areas, etc.

- A216(a) The sale of alcoholic beverages for consumption on the premises pursuant to a license issued by the State Liquor Authority will be permitted. Liquor stores for the sale of alcoholic beverages for consumption off-premises will not be permitted. The final version of the Memorandum of Understanding has been revised accordingly. See RFP Exhibits A.1 and A.2.
- Q216(b) Section 10.2 prohibits assignments of the transaction documents. Please confirm that any of the transaction documents may be assigned to a wholly owned subsidiary or wholly owned affiliated entity of the Vendor.
- A216(b) Yes, although no right or obligation of the licensed Aqueduct Video Lottery agent may be assigned or delegated without the consent of the Lottery.
- Q216(c) Section 10.3 once again refers to the Video Lottery Facility Ground Lease.
- A216(c) No Video Lottery Facility Ground Lease will be required, and the final version of the MOU has been revised accordingly. See RFP Exhibits A.1 and A.2.
- Q216(d) Section 10.4.8.7 requires Vendor to maintain Environmental Impairment Liability "through the term" if Vendor uses stores, handles, processes or disposes of hazardous material. How can Vendor know if it can be handling or disposing of hazardous materials until a Phase I Environmental is prepared or if and when construction begins and hazardous materials are found? Vendor does not intend to store, handle, process or dispose of hazardous materials but will be forced to do so if they already exist on the premises. Vendor should not be forced to undergo the cost of maintaining Environmental Impairment Liability insurance for disposing of the hazardous material for the entire term (30 years) if they will only be disposing of hazardous materials during construction.
- A216(d) Environmental Impairment Liability insurance is required for the period that the bidder, based upon its proposed design and plans, will be storing, handling, processing or disposing of hazardous material. The on site tours and documents provided to the bidders included enough information for each bidder to determine how long hazardous material will be stored, handled, processed, or disposed.
- Q216(e) Section 10.4.8.10 references Pollution Legal Liability Insurance if the construction work involves removal, repair, disposal, etc. of hazardous material, petroleum or petroleum products and requires Vendor to require contractor to maintain in full force and effect throughout the term, Pollution Legal Liability Insurance. Please confirm that "the term hereof" refers only to the term of any contract between the Vendor and

contractor and not the 30 year term of the VLF.

- A216(e) The Vendor must require the Contractor to maintain Pollution Legal Liability Insurance providing coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expenses incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit or proceedings against the State arising from Contractor work. Such coverage must be in effect during the term of the construction or removal of the hazardous material and must meet all other requirements set forth in Section 10.4. Typically, these policies are issued on an occurrence basis. However, if the policy is written on a claims-made basis, the Contractor's coverage would be required to provide an extended reporting period of two years.
- Q216(f) Section 10.5 again refers to the term of the Video Lottery Facility Ground Lease.
- A216(f) No Video Lottery Facility Ground Lease will be required, and the final version of the MOU has been revised accordingly. See RFP Exhibits A.1 and A.2.
- Q216(g) Section 10.7 maintenance and repair purports to make Vendor responsible for same during the term of the "Video Lottery Facility Ground Lease" and responsible for all restoration, maintenance, repair (both interior and exterior) at the Video Lottery Project and Video Lottery Premises. Vendor notes that these are not defined terms. If we have missed same, please note where they are defined. If they are not defined terms, then how do we deal with the NYRA shared space issues and issues concerning the interior and exterior premises which will be subleased to NYRA?
- A216(g) NYRA has advised the Lottery that NYRA is open to discussion regarding the issues in question and that NYRA intends to comport itself in a reasonable fashion and to act in good faith throughout the pendency of the project.
- Q216(h) Section 10.11.1, Vendor would like to see this section amended by adding at the end thereof "Vendor shall have the right on behalf of itself and/or State to apply to the City of New York for any as of right exemptions or benefits (including without limitation, abatements associated with the industrial commercial abatement program), and the State shall cooperate with Vendor regarding same."
- A216(h) The proposed amendment is unnecessary since the final version of the MOU allows the Aqueduct video lottery agent to seek the benefits of any "applicable real estate tax abatement program that would be available as of right to the Video Lottery Project or portions thereof." See RFP Exhibits A.1 and A.2.
- Q216(i) Section 10.11.4, Vendor would amend paragraph to add at the end thereof "Vendor shall have the right on behalf of itself and/or State to contest any fee or assessment Vendor in good faith believes was improper, imposed or incorrectly assessed and shall have the further right to pursue any exemption, abatement, off-set, incentive or other benefit that may be available with respect to any such imposition."

A216(i) The proposed amendment is unnecessary since the final version of the MOU does not prohibit the Aqueduct video lottery agent from pursuing any and all protests and appeals, exemptions, abatements, offsets, incentives, or other benefits on its own behalf and the State does not intend to delegate to the Aqueduct video lottery agent the right to pursue proceedings or benefits that are only available to the State. See RFP Exhibits A.1 and A.2.

MOU Article 11

Q217 Section 11.2.1 references the parties reaching mutual agreement as to the scope of the "Preliminary Facilities" as set forth in Section 1.3.1. Reference to said section contains no definition or reference to "Preliminary Facilities". Please define "Preliminary Facilities".

A217 The final form of the MOU has been revised to include a definition of the Preliminary Phase and Preliminary Facilities. See section 1.3.1 of RFP Exhibits A.1 and A.2.

MOU Article 15

Q218 Section 15.1 states that the "Project shall be subject to the prior approval of any entities required by New York State to review and approve the Video Lottery Project." Please advise what NYS entities in addition to the NYS Division of the Lottery will be required to review and approve the Project.

A218 No other approvals are required. The provision in question has been deleted from the final version of the MOU. See RFP Exhibits A.1 and A.2

MOU Article 18

Q219 Section 18.3 provides that there are no representations or agreements, oral or written, relating to the subject matter that are not fully expressed herein. Vendor believes that the Q&A responses and the responses at the mandatory bidders' conference should either be made a part of the agreement or that the agreement should be modified or amended based upon the Q&A.

A219 Agreed. The final form of the MOU has been revised accordingly. See RFP Exhibits A.1 and A.2.

Q220 For purposes of fulfilling the requirements under the RFP which are obligations of the "Vendor" (e.g., completing Appendices B - H of the RFP, etc.), which entity must fulfill such requirements: (1) the newly formed entity (if any) that will be party to the MOU and the Transaction Documents, or (2) the experienced gaming operator which is a shareholder or member of the newly formed entity (if any), submitting the proposal on behalf of the newly formed entity (if any) and providing services in connection with the Aqueduct video lottery facility?

A220 The entity that signs the MOU and other agreements is the Vendor for purposes of the required documents in the RFP. If the Vendor is newly formed, disclosures on behalf of the other members of Vendor's group must be included in the Proposal.

Q221 What is the complete list of all the documents that must be included in each Proposal?

A221 See attached revised Proposal Submittal Checklist – RFP Attachment 3.

PROPOSAL SUBMITTAL CHECKLIST

Description of Document	Section of RFP	Filing Requirements	Checklist
Signed Technical (Volume 1) and Financial (Volume 2) Proposals	§1.15		
Signed: MOU, Assignment and Assumption of the Facilities Ground Lease, Sublease, NYRA Financing Agreement, Grant Disbursement Agreement	§1.1 and §1.2	With Proposal	
Video License Applications	§1.3	With Proposal	
Procurement Lobbying: Bidder/Offeror Disclosure/Certification Form (Appendix B)	§1.9	With Proposal	
Non-Collusive Bidding Certificate (Appendix C)	§1.13	With Proposal	
Freedom of Information Law - Designation of Proprietary Information (Separate document identifying each designation).	§1.14	With Proposal	
NYS Vendor Responsibility Questionnaire (Appendix F)	§2.5	With Proposal	
MacBride Fair Employment Principals (Northern Ireland Stipulation Form) (Appendix G)	§2.6	With Proposal	
Sales & Use Tax (Appendix H) <ul style="list-style-type: none"> • ST220-CA (submit to Lottery) • ST220-TD (submit to DTF) 	§2.7	With Proposal At time of Proposal	
Equal Employment Opportunity (EEO) Policy Statement (Appendix D) <ul style="list-style-type: none"> • Staffing Plan (D-2) 	§2.9	With Proposal	
Minority and Women-Owned Business Enterprise Program <ul style="list-style-type: none"> • Summary of MBE/WBE Utilization Plan • Experience (meeting or exceeding MWBE goals) 	§2.9	With Proposal	
Vendor Acknowledgment of Addendum	Attachment 1	With Proposal	

NOTE: Vendors should include this completed checklist with their technical Proposals.