

## Attachment 2

### Community Benefits Plan

#### 1. Definitions

For purposes of this Exhibit, the terms defined herein below shall have the following meanings:

**“Business Enterprise owned or operated by People with Disabilities”** or **“BEPD”** means a business certified as a BEPD pursuant to MCC 2-92-586, “Contracts – Business enterprises owned or operated by people with disabilities,” as it may be amended from time to time.

**“Certified Firm”** means, generically, a BEPD, MBE, VBE, or WBE.

**“Chief Financial Officer”** means the Chief Financial Officer of the City as defined by MCC 1-4-090, or a designee thereof.

**“Gaming Equipment and Related Services”** means Slot Machines, or the apparatuses used for Table Games, as defined by 230 ILCS 10/4, as it may be amended from time to time, and in each case equipment directly relating thereto, and assembly, maintenance, and repair services related directly thereto which may only be provided by persons or entities holding a Supplier’s License issued by the Illinois Gaming Board pursuant to 86 Ill. Adm. Code 3000.200, “Classification of Licenses” as it may be amended from time to time.

**“Good Faith Effort”** means a Good Faith Effort as defined by MCC 2-92-670(k), “Definitions: Good-Faith Efforts,” as it may be amended from time to time. A non-exclusive list of possible Developer actions that would be considered in evaluating Developer’s Good Faith Efforts (substituting Certified Firms for references to DBEs, and Developer for Bidder) are those found in 49 CFR Part 26 Appendix A, “Guidance Concerning Good Faith Efforts,” under section IV.

**“Minority-Owned Business”** means a business certified as a Minority-Owned Business Enterprise pursuant to MCC Chapter 2-92 Article VI, or a business certified as a Minority- Owned Business pursuant to MCC Chapter 2-92 Article IV, as they may be amended from time to time.

**“Socio-Economically Disadvantaged Area”** or **“SEDA”** means an area of the City that has been designated as socio-economically disadvantaged by the Commissioner of Planning and Development under authority currently codified under MCC 2-92-390, or as otherwise designated by the City.

**“Veteran-Owned Business Enterprise”** or **“VBE”** means a business certified as a Veteran- Owned Business Enterprise pursuant to MCC 2-92-930 as it may be amended from time to time.

**“Woman-Owned Business”** or **“WBE”** means a business certified as a Woman-Owned Business Enterprise pursuant to MCC Chapter 2-92 Article VI, or a business certified as a Woman-Owned Business pursuant to MCC Chapter 2-92 Article IV, as they may be amended from time to time.

#### 2. Construction of Project

Developer will contractually obligate and use reasonable efforts to cause the general contractor and architect/engineer and each subcontractor involved in design and construction work for the Project to abide by the MBE and WBE contracting goals and City resident and SEDA resident goals set forth in this Section 2.

##### a. Contracting Goals

For all design and construction work associated with the Project, Developer will use reasonable efforts to cause at least 36% of the work to be performed by MBE firms and at least 10% of the work to be performed by WBE firms. These goals should be met individually for the Temporary Project and the Permanent Project, and for the expansion of the hotel to five-hundred rooms when it occurs.

##### b. Construction Workforce Work Hours

For all construction work associated with the Project, Developer will use reasonable efforts to cause at least 50% of the work hours to be performed by actual residents of the City and at least 15.5% of the work hours to be performed by actual residents of Socio-Economically Disadvantaged Areas of the City. These requirements will be implemented consistently with those of MCC 2-92-330, except that the SEDA goal replaces the 7.5% Project Area Goal currently codified in that section.

### **c. Participation Schedules and Compliance Reports**

No later than the submittal of the final concept design drawings for the Temporary Project, and for the Permanent Project, Developer must submit a preliminary "Projected Utilization Schedule" identifying the MBE and WBE firms that have been engaged to design each facility, and to what extent and when in the design process they will be utilized.

Prior to beginning construction of each the Temporary Project, of the Permanent Project, and of the expansion of the hotel, Developer must submit a "Projected Utilization Schedule," and a "Workforce Compliance Plan" in a form acceptable to the City and must meet with City monitoring staff to demonstrate understanding of the goals and reporting requirements. The Projected Utilization Schedule must show when and to what extent in the schedule for design and construction MBE and WBE firms are expected to be utilized, and to the extent practicable, identifying the specific MBE and WBE firms that will be engaged to perform the work. The "Workforce Compliance Plan" must show how Developer intends to comply with its City and SEDA resident obligations throughout the construction of the applicable facility.

Throughout construction of the Project, Developer must deliver to the City quarterly written progress reports detailing compliance with these requirements, as well as participation by local businesses as described in Section 7 below, and any other metric related to contracting equity and inclusion or economic impact as the City may reasonably request. With respect to MBE and WBE utilization, the reports must compare the Projected Utilization Schedule with actual utilization. City may require submission of reports through electronic means compatible with its contract monitoring systems.

Developer's quarterly reports shall include, inter alia, the name and business address of each MBE and WBE solicited by Developer or its contractors to work on the Project, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the Project, a description of the work performed or products or services supplied, the date and amount of such work, product or service, and such other information as may assist the City's monitoring staff in determining Developer's compliance with its commitments. Developer shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs in connection with the Project for at least five years after completion of all construction of the Project, including the hotel expansion. The City's monitoring staff shall, upon providing Developer at least ten (10) Business Days' notice, be provided access to records of Developer reasonably requested by such staff to allow the City to review Developer's compliance with its commitments to MBE/WBE participation and the status of any MBE or WBE performing any portion of the construction work on the project.

Quarterly reports may also include, as directed by City monitoring staff: (i) subcontractor's activity report; (ii) MBE/WBE utilization report by month; (iii) payroll showing worker hours and residency; (iv) evidence that MBE/WBE contractor associations have been informed of the Project via written notice and hearings; and (v) evidence of compliance with job creation/job retention requirements.

If any such reports prior to 100% completion of the Temporary Project, Permanent Project or hotel expansion indicate a shortfall in compliance or discrepancy of greater than 5% in the participation of MBEs or WBEs, or greater than 5% in the employment of City and SEDA residents, Developer must make Good Faith Effort to correct the shortfall and must deliver an explanation for the shortfall or discrepancy and provide a plan outlining, to the Chief Financial Officer's satisfaction, the manner in which Developer will endeavor to correct any shortfall or discrepancy ("Recovery Plan").

## **3. Sourcing of Goods and Services**

### **a. Contracting Goals**

Except for the purchase of Gaming Equipment and Related Services, in the sourcing of goods and services through the life of the Agreement, including but not limited to maintenance, repair, and renovation of the facilities, any construction work after initial development of the Project (other than the hotel expansion), as well as all provisioning and consumables, and professional consulting services, Developer\* commits to making a Good Faith Effort to spend, of overall annual spending each year, at least 26% with MBEs, at least 10% with WBEs, at least 2% with BEPDs, and at least 3% with VBEs.

Developer's Good Faith Efforts to achieve these goals must include, but will not be limited to:

- Eliminating disparities in the initial procurement process by issuing all contracts and bids in excess of \$10,000 as a competitive RFP, it being understood that a competitive RFP shall not be required in those limited situations in which the limited number of vendors or the time pressures make the use of an RFP impracticable.
- Listing all RFP vendor opportunities on Bally's Chicago website.
- Hosting an annual diversity vendor fair onsite.
- Joining or partnering with local business organizations such as the Illinois Black Chamber of Commerce, Illinois Hispanic Chamber of Commerce, Chicago Minority Supplier Development Council, Chicago Urban League, and the Chicago Business Leadership Council.

- Utilizing selection criteria that put a weighted emphasis on MBE, WBE, VBE, and BEPD certifications and Chicago-based vendors.
- Hiring a Diversity, Equity and Inclusion expert in sourcing, monitoring, compliance and contracting MBE, WBE, VBE, and BEPD vendors to leverage their network of vendors, suppliers and individuals seeking jobs to push notifications, recruit bidders, and support bidders in the process.

**b. Utilization Schedules and Compliance Reports**

By such date as the Chief Financial Officer may direct, but no later than the opening of the Temporary Project, Developer must submit a Business Diversity Program in a form acceptable to the City outlining how Developer intends to comply with obligations under this Section 3, which must be updated prior to the opening of the Permanent Project and then annually. It should include a detailed buying plan, and Projected Utilization Schedule for the year which must show in which quarter of the upcoming year and to what extent Certified Firms are expected to be utilized, and to the extent practicable, identifying the specific Certified Firms that will be engaged to provide the applicable goods or services.

Additionally, throughout the life of this Agreement, Developer must submit quarterly reports, in a format acceptable to the City, regarding compliance with the goals of this Section 3 as well as participation by local businesses as set forth in Section 0 below, and any other metric related to contracting equity and inclusion or economic impact as the City may reasonably request. With respect to Certified Firm utilization, the quarterly reports must compare the Projected Utilization Schedule with actual utilization.

Developer's quarterly reports shall also include, inter alia, the name and business address of each Certified Firm solicited by to provide goods or services, and the responses received from such solicitation, the name and business address of each Certified Firm actually engaged, a description of the work performed or products or services supplied, the date and amount of such work, product or service, the amount paid, and such other information as may assist the City's monitoring staff in determining Developer's compliance with its commitments. If requested by the Chief Financial Officer, Developer must identify all firms engaged to provide goods or services. Developer shall maintain records of all relevant data with respect to the utilization of Certified Firms in connection with the Project for at least five years after purchase of the applicable goods or completion of the applicable service. The City's monitoring staff shall, upon providing Developer at least ten (10) Business Days' notice, be provided access to records of Developer reasonably requested by such staff to allow the City to review Developer's compliance with its commitment to participation by Certified Firms and the status of any Certified Firm providing goods or services.

Quarterly reports must also include the amount of excluded expenses associated with the provision or maintenance of Gaming Equipment, and upon request of the Chief Financial Officer, the details of such transactions.

If any quarterly reports indicate a shortfall in participation by Certified Firms of greater than 7.5% of the applicable goal, Developer must provide an explanation for the shortfall and make Good Faith Efforts to correct the shortfall. However, if Developer does not reasonably believe that the shortfall will be corrected before the next quarterly report is due and so promptly informs the City, Developer should also provide a detailed Recovery Plan and proposed revised Projected Utilization Schedule, and if the shortfall is not corrected when the next quarterly report is due, a detailed Recovery Plan and revised Projected Utilization Schedule are required.

Developer must also submit an annual summary report no later than a date determined by the Chief Financial Officer containing information about the Developer's Business Diversity Program and its compliance with the goals and plans therein. Information to be provided will include information on expenditure of goods and services from Certified Firms during the prior calendar year, expressed in dollars and percentages, and for each year after the first year, information on progress or changes in the program since the prior year. The report should include information about the construction of the Project if construction of the Temporary Project, Permanent Project, or hotel expansion took place during the prior calendar year.

The City may require submission of reports through electronic means compatible with its contract and business diversity monitoring systems.

**4. Counting Certified Firm Participation in Contracting**

Participation by Certified Firms in contracting will be counted following the applicable rules of the Department of Procurement Services for construction work or non-construction work as they may be amended from time to time. However, from time to time the City may establish alternate rules which will be utilized instead, or Developer may propose alternate rules acceptable to Chief Financial Officer.

However, Certified Firms that hold more than one certification may only be counted under one category to demonstrate compliance with the contracting goals set forth in Sections 2.a. and 3.a above. For example, a firm certified as both an MBE

and a WBE may only be counted as an MBE or a WBE, but not as both. To be counted, Certified Firms must be performing a commercially useful function as described in 49 CFR 26.55(c)(2).

#### 5. Requests for Reduction or Waiver of Goals

If Developer believes that it will not be possible to correct a shortfall in Certified Firm contract participation, City resident work hours, or SEDA resident work hours due to causes beyond Developer's reasonable control and despite Developer making Good Faith Efforts, it may request that the Chief Financial Officer grant a reduction or waiver of the applicable goal in accordance with the procedures and standards established by the City for goal reduction or waiver requests under the applicable section of MCC Chapter 2-92. The granting of such requests shall be in the sole discretion of the Chief Financial Officer. Requests for reduction or waiver of goals in contracting for goods and services will be granted only on an annual basis.

#### 6. Remedies for Shortfalls.

Because the utilization of MBE, WBE, and other Certified Firms, and the employment of City residents and SEDA residents is essential to the economic vitality of the City, if (1) there is a shortfall in MBE, WBE contract participation or in City resident work hours or SEDA work hours at 100% completion of Temporary Project, at 100% completion of the Permanent Project or at 100% of the hotel expansion, or there is shortfall in Certified Firm participation in the supply of goods and services at the end of any calendar year, and (2) the Developer has not made a convincing showing that it made Good Faith Efforts to correct the shortfall in connection with the construction of the applicable facility or expansion or annual participation goal, then the City will have been harmed in a manner difficult to quantify. Therefore, the Parties agree that in the event of such a shortfall, the following liquidated damages represent a reasonable estimate of the City's damages, and are not a penalty, provided that no liquidated damages will be payable with respect to a shortfall in missing a goal in any calendar year to the extent that at least 92.5% of such goal is met:

- i. Shortfall in MBE or WBE participation, construction of Project: the amount of the shortfall, as a percentage of the sum of the final aggregate hard construction costs and architectural design and engineering costs for the Temporary Project, or for the Permanent Project, or for the hotel expansion, as applicable.
- ii. Shortfall in City resident or SEDA resident work hours: 1/20 of 1 percent (0.0005) of the sum of the final aggregate hard construction costs for the Temporary Project, or for the Permanent Project, or for the hotel expansion, as applicable per percent shortfall.
- iii. Shortfall in Certified Firm participation in the sourcing of goods and services: the amount of the shortfall, as a percentage of the annual overall spending for goods and services. With respect to a shortfall in meeting a goal of the type contemplated in this clause (iii) with respect to a calendar year, liquidated damages shall be payable (except as provided below) promptly two years after the end of such calendar years if Developer does not average at least 92.5% of such goal during the next two calendar years (the "Succeeding Years"). Notwithstanding the foregoing such liquidated damages shall be payable immediately if Developer did not meet at least 75% of such goal for such calendar year. Liquidated damages with respect to such goal with respect to either of the Succeeding Years shall be payable promptly after such Succeeding Year.

Any liquidated damages paid to the City under this Exhibit will be placed into a fund to be utilized for support of the City's contracting equity and workforce development programs, and related uses.

Additionally, to prevent future shortfalls and to help ensure continued compliance with the requirements of this Exhibit through the life of the Agreement, if there is a shortfall related to the construction of the Project, either in MBE/WBE participation or work hours, or continuing shortfalls in participation of Certified Firms in sourcing of goods and services, the City may require more stringent reporting requirements and engage in stricter oversight than set forth in this Exhibit, which may include, but is not limited to, engagement of an integrity monitor or other experts or consultants at Developer's expense to assist the Chief Financial Officer in monitoring compliance with the contracting and workforce goals, and increasing the frequency and/or detail of reporting.

Furthermore, if there are significant or continuing shortfalls in participation of Certified Firms in construction of the Project or the sourcing of goods and services, or in the work hours of City or SEDA residents, the City may exercise a right of specific performance, an injunction, or any other appropriate equitable remedy, as may be applicable.

#### 7. Local Businesses.

In all contracting related to the Project, both during construction and during operation of the Casino, Developer and Casino Manager must provide a reasonable preference for competitively priced firms, that are, to the extent required by applicable

law, qualified by or registered with the Illinois Gaming Board, located or based within the City, and secondarily for firms located within the counties of Cook, DuPage, Kane, Lake, McHenry or Will in the State of Illinois. These preferences should operate similarly to that set forth in MCC 2-92-412 "Contracts – Bid preference for city-based businesses," but Developer may establish alternate preference(s) acceptable to the City, that will serve to encourage local businesses.

8. **Independent Venues**

Throughout the Term, Developer will engage in good faith discussions with independent venues in the City for the purpose of coordinating the booking of live entertainment events at its Temporary and Permanent Facilities. Developer must report annually to the Chief Financial Officer on its compliance with this section.

9. **Monitoring; Transparency**

Developer shall at all times designate a management employee to monitor its compliance with the terms set forth in this **Exhibit**, which employee shall meet with the City as requested by the City from time to time to discuss the status of such compliance and any issues relating thereto. In support of the City's commitment to transparency, Developer must comply with City's reasonable requests for redacted versions of any reports to be submitted under this Exhibit that may contain confidential or proprietary business information, suitable for posting on the City website or other public information system of the City.