

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

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BELLE OF SIOUX CITY, L.P.,

CASE NO. CVCV009254

Petitioner,

**CITY OF SIOUX CITY'S  
MOTION TO INTERVENE  
AND REQUEST FOR  
EMERGENCY RELIEF**

vs.

IOWA RACING AND GAMING  
COMMISSION,

Respondent.

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**EMERGENCY RELIEF REQUESTED; IMMEDIATE ALLOWANCE OF  
INTERVENTION AND REQUEST FOR HEARING TO BE SET ON JANUARY 30,  
2014; AND ALLOWANCE FOR THE CITY TO PARTICPATE AND PRESENT  
EVIDENCE IN THE MATTER BEFORE THE COURT SET FOR JANUARY 30, 2014.**

COMES NOW, the City of Sioux City, Iowa ("City"), as Intervenor, pursuant to Iowa Rule of Civil Procedure 1.407, and respectfully moves the Court to allow it to intervene in the above captioned matter and serve and file the attached Petition of Intervention. City hereby submits this Motion to Intervene and hereby states:

**INTRODUCTION**

1. Petitioner, the Belle of Sioux City, L.P. (the "Belle" or "Petitioner") is a limited partnership organized and existing under the laws of Iowa with its principal place of business at 100 Larsen Park Road, Sioux City, Iowa.
2. The Petitioner has filed various Petitions for Judicial Review under Iowa Code Sections 17A19, 99D, and 99F. The particular action at hand, and the most recent filing

was on May 17, 2013. The Petitioner challenges the issuance and effectiveness of the licenses issued to Sioux City Partners, LLC ("SCE") and non-profit Missouri River Historical Development, Inc. ("MRHD"), for the development and operation of a casino located in Sioux City, Iowa ("Casino Project").

3. Respondent, the Iowa Racing and Gaming Commission ("IRGC" or "Respondent"), is a state agency organized and existing under the laws of Iowa with its principal place of business in Des Moines, Polk County, Iowa.

4. The Respondent has resisted the Petition for Judicial Review as filed by the Petitioner on or about May 17, 2013.

5. SCE is an Iowa Limited Liability Company engaged in the business of gaming development and operation. SCE is an affiliated company of Warner Gaming, LLC, whose principal place of business is in Las Vegas, Nevada. SCE is also affiliated with Sioux City Entertainment, Inc., which is an Iowa corporation.

6. The City is a municipal corporation with a principal address of 405 6<sup>th</sup> Street, Sioux City, Iowa, and motions to the Court in its corporate capacity as such.

7. On April 18, 2013, the IRGC issued a gaming license to SCE and MRHD.

8. Pursuant to the IRGC's award of the gaming license to SCE and MRHD, on April 25, 2013 the City and Sioux City Entertainment, Inc. mutually executed an Updated Letter of Understanding (attached hereto and incorporated herein as Exhibit A) formulating and memorializing the two Parties' intent to proceed with Sioux City Entertainment, Inc. plans to develop a casino operating under the name "Hard Rock Sioux City" ("Casino Project").

9. On April 29, 2013 pursuant to Chapter 403 of the Iowa Code in accordance with Iowa Urban Renewal laws and by resolution of the City Council for the City of Sioux City, the City invited proposals for the sale and sublease of land in the Combined Central Sioux City – CBD Urban Renewal Area and announced the City's intent to accept the proposal of Sioux City Entertainment, Inc. The proposal of Sioux City Entertainment, Inc. contained the terms to develop the Casino Project as outlined in the Updated Letter of Understanding, previously attached hereto as Exhibit A. No other proposal for the sale and sublease of the specified land was received.

10. On June 3, 2013 by resolution of the City Council for the City of Sioux City, the City entered into a Development Agreement ("Development Agreement" or "Agreement") with Sioux City Entertainment, Inc. (attached hereto and incorporated herein as Exhibit B). The Development Agreement contemplated that the terms and obligations under the Development Agreement may be assumed by a Qualified Transferee. SCE became a Qualified Transferee as set forth below.

11. That terms of the Agreement required that Sioux City Entertainment, Inc. construct the Casino requiring an investment of not less than One Hundred Million Dollars (\$100,000,000) in the Combined Central Sioux City – CBD Urban Renewal Area of Sioux City by no later than January 1, 2015.

12. On June 3, 2013 by resolution of the City Council for the City of Sioux City, the City entered into a Minimum Assessment Agreement ("Minimum Assessment Agreement" or "Assessment Agreement") with Sioux City Entertainment, Inc. (attached hereto and incorporated herein as Exhibit C).

13. Under the terms of the Assessment Agreement, Sioux City Entertainment, Inc. guaranteed a minimum property assessment of Fifty One Million Dollars (\$51,000,000).

14. On June 6, 2013 the Development Agreement with the attached Minimum Assessment Agreement was formally approved by the IRGC.

15. That for and in consideration of the obligations being assumed by Sioux City Entertainment, Inc., the City agreed to make an Economic Development Grant to Sioux City Entertainment, Inc. in the aggregate amount of Twenty Two Million Dollars (\$22,000,000) ("Grant"). This amount was agreed to be disbursed in four separate installments, each in the amount of one-fourth (1/4) of the Grant at timed intervals according to percentages of completion of the Casino Project. See Agreement at pages 13 and 14.

16. That for and in consideration of the obligations being assumed by Sioux City Entertainment, Inc., the City agreed to vacate street, alleys, right-of-way, and transfer such real estate as is set forth in attachments A-1 and A-2 to the Development Agreement marked as Exhibit B .

17. That for and in consideration of the obligations being assumed by Sioux City Entertainment, Inc. the City agreed to make such public improvements as are set forth in Exhibit D to the Agreement. Such public improvements included the closure of Pearl Street between 3<sup>rd</sup> Street and 4<sup>th</sup> Street and the rerouting of public utilities.

18. The City did in fact vacate streets, alleys, right-of-way, and caused a plat to be filed. Real estate was transferred by the City to Sioux City Entertainment, Inc. and late SCE. The closure of Pearl Street has been completed and the rerouting of public utilities is also complete.

19. On July 2, 2013 Sioux City Entertainment, Inc. executed an Assignment and Assumption of Agreements document (attached hereto and incorporated herein as Exhibit D) with SCE. SCE obligated itself along with Sioux City Entertainment, Inc. to the City under the terms of the Development Agreement and Minimum Assessment Agreement.

20. Having received its lawfully issued license to operate, SCE broke ground on the Casino Project on August 16, 2013.

21. Pursuant to the Development Agreement and Minimum Assessment Agreement, the Casino Project would provide the following benefits for the State of Iowa, the City of Sioux City, and the Siouxland community:

- (a) In excess of \$2.4 million annually to the City;
- (b) More than \$500,000 annually to Woodbury County;
- (c) More than \$3.9 million per year to Missouri River Historical Development, the Casino Project's licensed qualified sponsoring organization (for distribution to local charitable organizations);
- (d) In excess of \$20 million per year in state gaming taxes;
- (e) More than 400 construction jobs (currently working on the Casino Project);
- (f) More than 500 permanent casino related jobs (upon commencement of operations);
- (g) Numerous Project construction and ongoing operational contracts for local businesses.

22. On August 21, 2013 SCE Partners, LLC (as successor in interest to Sioux City Entertainment, Inc.) made application to the City for the first installment of the Grant in the amount of Five Million Five Hundred Thousand Dollars (\$5,500,000) by its certification that construction on the Casino Project had commenced.

23. That City disbursed the first installment of Five Million Five Hundred Thousand Dollars (\$5,500,000) of the Grant on September 19, 2013 to SCE (as successor in interest to Sioux City Entertainment, Inc.) pursuant to the terms of the Development Agreement.

24. Belle did not move for a stay under 17A.19(5) of the licenses granted to SCE and MRHD until September 16, 2013, nearly six months after their issuance and only after SCE had broke ground and triggered obligations for the City's payment of the first installment under the Grant.

25. On December 10, 2013 the District Court for Polk County issued a Stay relating to the issuance and effectiveness of the licenses granted to SCE and nonprofit entity Missouri River Historical Development, Inc. ("MRHD") for the development and operation of a land-based casino in Woodbury County, Iowa, and all other actions by Respondent Iowa Racing and Gaming Commission were stayed pending final resolution of the instant consolidated actions for judicial review.

26. On December 19, 2013, SCE filed a Petition for Writ of Certiorari with the Iowa Supreme Court and requested relief from the Stay issued on December 10, 2013 by the District Court for Polk County.

27. On December 19, 2013, the IRGC filed a Motion for Stay and/or to Vacate and Motion for Temporary Stay with the Iowa Supreme Court of the Stay issued on December 10, 2013 by the District Court for Polk County.

28. Additionally, on December 19, 2013, the IRGC filed an Application for Appeal in Advance of Final Judgment with the Iowa Supreme Court.

29. On December 19, 2013 the Iowa Supreme Court temporary stayed the order entered by the District Court for Polk County on December 10, 2013.

30. On January 8, 2014, the Iowa Supreme Court remanded the case back to the District Court for Polk County for the limited purpose of holding a hearing to determine whether the District Court had authority to stay the license of SCE and whether SCE should have been joined as a party to the judicial review proceedings pursuant to Iowa Rule of Civil Procedure 1.234 or on any other basis, prior to the issuance of the stay.

31. On January 3, 2014 SCE Partners, LLC (as successor in interest to Sioux City Entertainment, Inc.) made application to the City for the second installment of the grant in the amount of Five Million Five Hundred Thousand Dollars (\$5,500,000) by its certification of completion of thirty percent (30%) of the Casino Project.

32. The City has disbursed the second installment in the amount of Five Million Five Hundred Thousand Dollars (\$5,500,000) of the Grant to SCE (as successor in interest to Sioux City Entertainment, Inc.) pursuant to the terms of the Development Agreement.

33. Construction of the Casino Project is well under way, with SCE, MHRD, and the City having expended significant funds and resources in relation to the project. A copy of the affidavit of Robert K. Padmore, Interim City Manager for the City outlining the City's commitments is attached hereto as Exhibit E.

34. The City now seeks to intervene to the extent that the Court's adjudication of issues under 17A.19(5) and Iowa Rule 1.1507 impacts the City's material interests. The resolution of these issues stands to directly affect the City's significant commitments to transfer property interests and provide funds to SCE for the development of the Casino Project.

35. The City now seeks to intervene, seeks emergency relief, and, in pleadings filed simultaneously herewith, requests that a hearing on its intervention be scheduled for January 30, 2014. Additionally, the City requests to be allowed to present evidence and fully participate in the hearing on the additional matters set before the Court January 30, 2014, and to be granted further emergency relief to prevent additional and undue prejudice.

36. The equities of these matters demand that the City be entitled to intervene. Additionally, technicalities notwithstanding, the equities also demand that the City be allowed to fully participate and present evidence, in the hearing currently set before the Court on January 30, 2014 at 1 p.m.

## **ARGUMENT**

### **A. The City Is Entitled to Intervene as a Matter Of Right**

37. An applicant is entitled to intervention as a matter of right if three requirements are met: (1) the applicant claims an interest in the subject matter of the action; (2) the disposition of the action may as a practical matter impair or impede the applicant's ability to protect its interest; and (3) the applicant's interest is not adequately represented by existing parties. Iowa R. Civ. P. 1.407(1). Intervention is remedial and should be liberally construed to reduce litigation and expeditiously determine matters before the court. *Rick v. Boegel*, 205 N.W.2d 713, 717 (Iowa 1973); *Peters v. Lyons*, 168 N.W.2d 759, 762 (Iowa 1969). The City of Sioux City meets each of the standards as set forth above.

38. The City has a direct and material interest in the subject matter of this action. The test of the right of intervention is "interest" and not necessity. *In Interest of J.R.*, 315



N.W.2d 750, 752 (Iowa 1982). Courts approach the inquiry with flexibility and focus on the circumstances of each case. *State ex rel. Miles v. Minar*, 540 N.W.2d 462, 465 (Iowa Ct. App. 1995). Furthermore, as stated throughout this motion and the attached Petition of Intervention, the City has more than a general interest in the subject matter of the jurisdiction. See 59Am.Jur.2d *Parties* § 134, at 591-92 (1987)(to have an interest in an action, a person must assert more than a mere general interest in the subject matter of the litigation).

39. Iowa Code Chapter 99F authorizes the operation of gaming facilities in Iowa. Pursuant to that Chapter, the IRGC issued a license to develop and operate a casino in Woodbury County, Iowa and within the City of Sioux City.

40. As Belle now challenges the very issuance and effectiveness of SCE's license, the outcome of this dispute will undoubtedly have a direct impact on the City of Sioux City's interests. If the Petitioner prevails in its pursuit of a stay of the licensing, or a reversal or remand of the IRGC's award of a gaming license to SCE, the City will be directly impacted pursuant to the Development Agreement, Minimum Assessment Agreement, and all obligations entered into with SCE pursuant to the IRGC awarding a gaming license to SCE and MRHD.

41. The City's interests are not adequately represented by the existing parties. Likely, a gaming casino will be placed somewhere in Woodbury County. The IRGC will benefit from a casino in Woodbury County wherever it may land. However, the City has taken steps in reliance upon the award of a gaming license to SCE. The City has already disbursed Eleven Million Dollars (\$11,000,000) of the Twenty Two Million Dollar (\$22,000,000) Grant. The City's recoupment of the funds expended for the Grant is

contingent upon the Casino Property's increased tax valuation. Said increased tax valuation of Fifty One Million Dollars (\$51,000,000) is scheduled to begin as of January 1, 2015 when the Casino Project is to be substantially completed pursuant to the terms of the Development Agreement.

42. Additionally, the City has conveyed both City parcels and vacated City owned streets, alleys, and rights of ways to SCE. The City has removed and relocated vast stretches of public utilities and infrastructure. Streets and alleys have been torn up and replaced at the expense of the City to relocate these public utilities and infrastructure in preparation for SCE's casino. All of this work and expense was performed upon the reliance of IRGC's granting of a gaming license to SCE. These actions and expenses would be extremely difficult, albeit impossible, to reverse. Neither the IRGC nor SCE stand to incur these set costs which the City will bear if SCE's license is revoked or the IRGC's initial decision awarding the license is altered. No other party is directly representing the City's interests in this regard.

43. In addition to the impact to the State of Iowa and the IRGC, as stated above, the City, Woodbury County, and the Siouxland area would be impacted by the losses outlined below as follows:

- (a) Loss of in excess of \$2.4 million annually to the City;
- (b) Loss of more than \$500,000 annually to Woodbury County;
- (c) Loss of more than \$3.9 million per year to Missouri River Historical Development, the Casino Project's licensed qualified sponsoring organization (for distribution to local charitable organizations);
- (d) Loss of more than 400 construction jobs (currently working on the Casino Project);

- (e) Loss of more than 500 permanent casino related jobs (upon commencement of operations);
- (f) Loss of numerous Project construction and ongoing operational contracts for local businesses.

44. For the foregoing reasons, the City should be allowed to intervene as a matter of right.

**B. Alternatively, the City Is Entitled to Intervene Permissively**

45. Iowa Rule of Civil Procedure, 1.407(2) states that permissive intervention may be granted when an applicant's claim or defense and the main action have a question of law or fact in common. The Court shall consider all applications for permissive intervention and grant or deny the application as the circumstances requires. Iowa R. Civ. P. 1.407(4). Courts are granted broad discretion in whether to grant an applicant's motion for permissive intervention. See *In re H.N.B.*, 619 N.W.2d 340, 342-43 (Iowa 2000); *In Interest of A.G.*, 558 N.W.2d 400, 403 (Iowa 1997).

46. As detailed in the attached Petition of Intervention, the City is legally entitled to intervene.

47. Furthermore, the City acted upon the issuance of the gaming license. The City relied upon the issuance of the gaming license and subsequently entered into a Development Agreement with SCE and executed a Minimum Assessment Agreement with SCE. Without action by the IRGC, and subsequent issuance of a gaming license, the City never would have entertained the thought of entrance into such agreements.

48. As detailed in the attached Petition of Intervention, the City would not have undertaken the entrance into a Development Agreement and the obligations thereto

without an award of the gaming license by the IRGC to SCE and MRHD. Judicial determination of the IRGC's issuance of licenses to SCE and MRHD is necessary for a resolution of the claims before the Court in this action and, there is clear, substantial overlap of matters of fact and law among all of the claims.

49. In exercising their discretion, courts also consider whether the intervention will unduly delay or prejudice the adjudication or the rights of the original parties. Iowa R. Civ. P. 1.407(2). This motion has been filed at an early stage in the case and not for the purpose to delay or prejudice the parties' rights. The City does not seek to move any current deadlines. This motion has only been filed after Belle's actions in this matter have materially affected and impacted the City's rights.

50. Accordingly, even if the City is not entitled to intervene in this action as of right, the Court should exercise discretion to permit the City to intervene permissively.

WHEREFORE, the City for the foregoing reasons, respectfully requests that this Court grant its Motion to Intervene in this action and file the attached Petition of Intervention. Additionally, the City respectfully requests that this Court allow the City's request for intervention to be heard on January 30, 2014, and to allow the City to fully participate in the additional matters currently set for hearing before the Court on January 30, 2014 at 1 p.m. and for further emergency relief as to prevent additional and undue prejudice.

Date this 16<sup>th</sup> day of January 2014.

Respectfully submitted,

CITY OF SIOUX CITY, IOWA

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ATTORNEYS FOR THE  
CITY OF SIOUX CITY, IOWA

CERTIFICATE OF SERVICE

I hereby Certify that on January 16, 2014, I electronically filed the foregoing with the Clerk of Court using the EDMS system which will send notification of such filing to the attorneys of record for each party as listed below. Additionally, the forgoing instrument was mailed by U.S. first class to each of the attorneys of record herein at their respective addresses below:

/s/ Justin R. Vondrak

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