



June 12, 2018

Fort McDowell Yavapai Nation
P.O. Box 17779
17661 E. Yavapai Road
Fountain Hills, AZ 85269
Attn: President Bernadine Burnette

Re: Review of Indenture for the Ft. McDowell Yavapai Nation

Dear Tribal Council:

This letter responds to your May 10, 2018 request on behalf of the Fort McDowell Yavapai Nation for the National Indian Gaming Commission's Office of General Counsel to review Loan Documents among the Tribe, Key Bank, and various lenders. Specifically, you have asked for my opinion whether the financing documents constitute a management contract requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act, and whether they violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following submission:

- Credit Agreement, marked SMRH:227337327.12 in lower left hand corner, among the Nation, the Bank as administrative agent and L/C issuer, the other Lenders party thereto, and the Bank as sole lead arranger and sole bookrunner;
- The Exhibits to the Credit Agreement, with a draft date of May 10, 2018 on the first page;
- Security Agreement given by the Nation in favor of the Bank, marked SMRH227380503.5;
- Deposit Account Control Agreement (DACA) among the Nation, the Bank as administrative agent and the depository bank with a draft date of May 10, 2018 on the first page;
- Intellectual Property Security Agreement (IPSA), marked SMRH:227580539.4; and
- Fee Letter from Key Bank to Fort McDowell Yavapai Nation, dated December 20, 2017.

The Loan Documents contain terms similar to other agreements the Office of General Counsel has reviewed and analyzed that are available on the NIGC website. Applying the same analysis here, it is my opinion that the Loan Documents are not management contracts and do not require the approval of the Chair. It is also my opinion that the Loan Documents do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the Loan Documents are represented to be in substantially final form with respect to terms affecting this opinion. If they change in any material way prior to closing, this opinion shall not apply. Further, this opinion is limited to the Loan Documents listed above and does not include or extend to any other agreements or documents not submitted for review.

Please note that it is my intent that this letter be released to the public through the NIGC's website. If you have any objection to this disclosure, please provide a written statement explaining the grounds for the objection and highlighting the information that you believe should be withheld. 25 C.F.R. § 517.7(c). If you object on the grounds that the information qualifies as confidential commercial information subject to withholding under Exemption Four of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4), please be advised that the information was voluntarily submitted and, as such, that any withholding should be analyzed in accordance with the standard set forth in *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992). Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter." 25 C.F.R. § 517.7(c). Please submit any written objection to FOIASubmitterReply@nigc.gov **within thirty (30) days of the date of this letter.** After this time elapses, the letter will be made public and objections will no longer be considered. *Id.* If you need any additional guidance regarding potential grounds for withholding, please see the United States Department of Justice's Guide to the Freedom of Information Act at <http://www.justice.gov/oip.doj-guide-freedom-information-act-0>.

If you have any questions, please contact NIGC Senior Attorney Maria Getoff at (202) 632-7003.

Sincerely,



Michael Hoenig
General Counsel