



July 24, 2018

Via U.S. Mail & Facsimile

Bill Kekahbah, Chairman
Kaw Gaming Inc., Board of Directors
5640 N. LA Cann Rd.
Newkirk, OK 74647
Fax: 580-269-1157

Re: Review of Consulting Agreement for the Kaw Nation

Dear Chairman Kekahbah:

This letter responds to the May 14, 2018 request on behalf of Kaw Nation for the National Indian Gaming Commission's Office of General Counsel to review a Consulting Agreement. Specifically, you have asked for my opinion on whether the Agreement is a management contract requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act. You also asked for an opinion whether the agreement violates IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following document submitted on behalf of the Nation which was unexecuted, but was represented to be in substantially final form:

- Consulting Agreement, marked as "DocuSign Envelope ID: 79A0E4B5-2E36-47EB-BF90-47B4EA1D3D60"

Confining my review to the four corners of the documents, it is my opinion that the Consulting Agreement is not a management contract and does not require the approval of the NIGC Chairman. It is also my opinion, confining my review to the four corners of the document, that the Consulting Agreement does not violate IGRA's sole proprietary interest requirement.

The Agreement does not create a management relationship between KGI and CNHC because the agreement is limited to activities that will occur pre-opening and does not authorize CNHC to have any on-going influence once the operation is open. A future agreement could alter this analysis were it to also be "non-management" but result in CNHC implementing the recommendations produced under this agreement.

The Agreement also does not violate IGRA's requirement that the Tribe maintain the Sole Proprietary Interest in its gaming operation because the term of the contract is for a little less than two years and will not extend into the opening or operation of the gaming enterprise. It

Chair Secondine Hensley

Re: Review of financing agreements on behalf of the Kaw Nation

July 24, 2018

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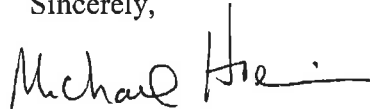
also doesn't give CNHC any control over the gaming activity. Finally, CNHC's compensation is a fixed amount, is not based on a percentage of the casino's revenues, gross or net, and appears to be reasonably tied to the tasks performed. Based on this analysis, it is my opinion that the Agreement does not grant a control interest in the Nation's gaming operation.

It is my understanding that the drafts are represented to be in substantially final form, and if the Revised Financing Documents change in any material way prior to closing or are inconsistent with assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Revised Financing Documents listed above. This opinion does not include or extend to any other agreements 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 Staff Attorney Heather McMillan Nakai at (202) 527-5577.

Sincerely,



Michael Hoenic
General Counsel

cc: Yonne Tiger
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