



December 13, 2018

Via U.S. Mail & Email

Stephen Ward
Conner & Winters, LLP
4000 One Williams Center
Tulsa, OK 74172-0148

**Re: Review of financing agreements between CrossFirst Bank & the Kiowa Casino
Operations Authority**

Dear Mr. Ward:

This letter responds to the request for financing between the Kiowa Casino Operations Authority and CrossFirst Bank for the National Indian Gaming Commission's Office of General Counsel to review its loan documents. Specifically, you asked for an opinion whether these agreements are management contracts requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act. You also asked for an opinion whether the agreements violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following documents (collectively "the Financing Agreements") submitted, all of which are unexecuted but represented to be in substantial final form:

- Revolving and Term Loan Agreement – Confidential NIGC DRAFT: December 11, 2018
- Term Promissory Note - KCOA-02 – Confidential NIGC DRAFT: October 19, 2018
- Promissory Note (Revolving Note) - KCOA-03 – Confidential NIGC DRAFT: October 19, 2018
- Security Agreement - KCOA-04 – Confidential NIGC DRAFT: October 19, 2018

The Financing Agreements contain terms similar to other agreements the Office of General Counsel reviewed and analyzed; please refer to the agency's website. Applying the same analysis here, it is my opinion that collectively the Financing Agreements are not management contracts and do not require the approval of the Chair. It is also my opinion they do not violate IGRA's sole proprietary interest requirement.

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It is my understanding the Financing Agreements are represented to be in substantially final form with respect to terms affecting this opinion, and if such terms change in any material way prior to closing or are inconsistent with the assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Financing Agreements listed above. This opinion does not include or extend to any other agreements or documents not submitted for review.

Please note it is my intent 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.¹ 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),² 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*.³ Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."⁴ 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>.

I realize your letter referenced FOIA and the mention of confidential information. Please be sure to follow the instructions above to ensure your confidential information is protected.

If you have any questions, please contact NIGC Staff Attorney Mary Modrich-Alvarado at (202) 632-7003.

Sincerely,



Michael Hoenig
General Counsel

¹ 25 C.F.R. § 517.7(c).

² Freedom of Information Act, 5 U.S.C. § 552(b)(4) (1966).

³ *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992).

⁴ 25 C.F.R. § 517.7(c).

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