



March 10, 2017

Scott Wheat, General Counsel
Spokane Tribe of Indians
P.O. Box 100
Wellpinit, WA 99040

Re: Review of credit facility

Dear Mr. Wheat:

This letter responds to your requests of December 31, 2016, and February 13, 2017, on behalf of the Spokane Tribe of Indians for the National Indian Gaming Commission's Office of General Counsel to review a credit facility between the Tribe and Citizens Bank, N.A., who will act as the administrative agent. Specifically, you have asked for my opinion whether the agreements constitute a management contract requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act and 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 submissions (collectively, "the Agreements"), which were represented to be in substantially final form:

- Credit Agreement, marked at the bottom left corner as "US-DOCS\71260488.45" with the following appendix and exhibits:
 - Appendix A - Principal Offices, marked at the bottom left corner as "US-DOCS\75992368.3";
 - Exhibit A - Form of Term B Note, marked at the bottom left corner as "US-DOCS\75993927.3";
 - Exhibit B - Form of Funding Notice, marked at the bottom left corner as "US-DOCS\ 76015764.3";
 - Exhibit C-1 - Form of Guaranty, marked at the bottom left corner as "US-DOCS\75994081.5";
 - Exhibit E - Form of Compliance Certificate, marked at the bottom left corner as "US-DOCS\75994279.6";
 - Exhibit F - Form of Assignment and Acceptance, marked at the bottom left corner as "US-DOCS\75993466.3";
 - Exhibit G - Form of Lender Addendum, marked at the bottom left corner as "US-DOCS\75993240.3";

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- Exhibit H - Form of Non-Bank Certificate, marked at the bottom left corner as "US-DOCS\75993058.3";
- Exhibit I - Form of Closing Certificate, marked at the bottom left corner as "US-DOCS\76015612.7";
- Exhibit J - Insurance Requirements, submitted March 9, 2017; and,
- Exhibit K - Form of Intercompany Subordinated Demand Promissory Note, marked at the bottom left corner as "US-DOCS\75992555.4".
- Disbursement Agreement, marked at the bottom left corner as "US-DOCS\71472695.25" with the following exhibits:
 - Exhibit A - Form of Disbursement Request, marked at the bottom left corner as "US-DOCS\75996027.11";
 - Exhibit B - Form of Project Cost Schedule Certificate, marked at the bottom left corner as "US-DOCS\75996027.11";
 - Exhibit C - Form of Project Budget Amendment Certificate, marked at the bottom left corner as "US-DOCS\75996027.11";
 - Exhibit D-1 - Form of Opening Date Certificate, marked at the bottom left corner as "US-DOCS\75996027.11"
 - Exhibit D-2 - Form of Borrower's Opening Completion Certificate, marked at the bottom left corner as "US-DOCS\75996027.11";
 - Exhibit D-3 - Form of Borrower's Final Completion Certificate, marked at the bottom left corner as "US-DOCS\75996027.11";
 - Exhibit E - Form of Consent to Collateral Assignment, marked at the bottom left corner as "US-DOCS\75996027.11";
 - Exhibit F - Form of Lien Releases, marked at the bottom left corner as "US-DOCS\75996027.11";
 - Exhibit G - List of Key Construction and Design Contracts, marked at the bottom left corner as "US-DOCS\75996027.11";
 - Exhibit H - Project Schedule, marked at the bottom left corner as "US-DOCS\75996027.11";
 - Exhibit J - Construction Contract Amendment Certificate, marked at the bottom left corner as "US-DOCS\75996027.11";
 - Exhibit K - Additional Construction Contract Certificate, marked at the bottom left corner as "US-DOCS\75996027.11"; and
 - Exhibit L - Subguard Insurance Coverage, marked at the bottom left corner as "US-DOCS\80758627.11".
- Security Agreement, marked at the bottom left corner as "USDOCS\75681595.11" with the following annex and exhibits:
 - Annex I - Joinder Agreement, marked at the bottom left corner as "US-DOCS\75725728.2";
 - Exhibit A - Security Agreement Supplement, marked at the bottom left corner as "US-DOCS\75725658.2";
 - Exhibit C - Securities Account Control Agreement, marked at the bottom left corner as "US-DOCS\75726535.2"; and

- Exhibit D - Uncertificated Securities Control Agreement, marked at the bottom left corner as "US-DOCS\75725847.2".
- Intellectual Property Security Agreement; marked at the bottom left corner as "US-DOCS\ 76059058.4";
- Deposit Account Control Agreement (Citizen Bank – Construction Disbursement Account and Cash Management Account), marked at the bottom left corner as "US-DOCS\76208424.3";
- Deposit Account Control Agreement (Citizen – Blocked Account), marked at the bottom left corner as "US-DOCS\76228677.4";
- Deposit Account Control Agreement (U.S. Bank), marked at the bottom left corner as "US-DOCS\76208229.3";
- Subordination Agreement (Developer), marked at the bottom left corner as "US-DOCS\80075728.6";
- Consent and Agreement (Contractor), marked at the bottom left corner as "US-DOCS\76183899.7"; and
- Consent and Agreement (Developer), marked at the bottom left corner as "US-DOCS\76016547.6".

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

It is my understanding that the Agreements are represented to be in substantially final form with respect to terms affecting this opinion. If the Agreements change in any material way prior to closing, this opinion shall not apply. Further, this opinion is limited to the Agreements 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.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

¹ 25 C.F.R. § 517.7(c).

² 5 U.S.C. § 552(b)(4).

³ 975 F.2d 871 (D.C. Cir. 1992).

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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>.

If you have any questions, please contact NIGC Staff Attorney Esther Dittler at (202) 420-9229.

Sincerely,

A handwritten signature in blue ink that reads "Michael Hoenig". The signature is written in a cursive style with a large, stylized initial "M" and a long, sweeping underline.

Michael Hoenig
General Counsel

⁴ 25 C.F.R. § 517.7(c).