



August 16, 2019

VIA FIRST CLASS MAIL & EMAIL

Peter Larson, Partner
Lewis Rocha Rothgerber Christie LLP
201 E. Washington Street, Suite 1200
Phoenix, AZ 85004-2595

Re: Review of Amendment to the Credit Agreement for Ak-Chin Indian Community

Dear Mr. Larson:

This letter responds to your request of July 17, 2019, on behalf of the Ak-Chin Indian Community for the National Indian Gaming Commission's Office of the General Counsel to review an amendment to an existing credit facility to the Community from Bank of America, N.A.. Specifically, you have asked for my opinion whether the agreements submitted constitute a management contract requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act and whether this agreement violates IGRA's requirement that a Tribe have the sole proprietary interest in its gaming operation.

This letter serves as a correction to the August 2, 2019 letter. Due to a clerical oversight, I inadvertently listed the First Amendment to Credit Agreement dated 7.16.2019 instead of the agreement dated 7.25.2019 as part of the documents considered in my review. In my review, I considered the following submissions (collectively, "the Amendment") which are unexecuted, but were represented to be in substantially final form:

- First Amendment to Credit Agreement, OHS DRAFT 7.25.2019;
- Tax Exempt Note in favor of BOKF, N.A., dba BoK Financial ("BOKF Note"), OHS DRAFT 7.16.2019; and
- Tax Exempt Note in favor of Bank of America, N.A. ("B of A Note"), OHS DRAFT 7.16.2019.

The Amendment contains terms similar to other agreements the Office of General Counsel has already reviewed and analyzed. Some of these letters may be found on the NIGC website. Applying the same analysis here, it is my opinion that collectively the Amendment is not a management contract and does not require the approval of the Chair. It is also my opinion that it does not violate IGRA's sole proprietary interest requirement.

Peter Larson

Re: Review of Amendment to the Credit Agreement for the Ak-Chin Indian Community

August 16, 2019

Page 2 of 2

It is my understanding that the Amendment is 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 assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Amendment listed above. This opinion 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. See 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 any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*, No. 18-481, 2019 WL 2570624, at *7 (U.S., June 24, 2019). Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter." See 25 C.F.R. § 517.7(d). 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 have any questions, please contact NIGC Staff Attorney Suzanne Nunn at (202) 632-7003.

Sincerely,

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

Michael Hoenig
General Counsel

cc: Brandon Peters, Treasurer, Ak-Chin Indian Community, BPeters@ak-chin.nsn.us
Robert Palmquist, Legal Counsel to the Community, RPalmquist@stricklandlaw.net
Michael Schrader, Counsel to Bank of America, N.A., MSchrader@orrick.com