



February 18, 2020

Via U.S. Mail & Facsimile

Glen D. Nenema, Chairman
Kalispel Tribe of Indians
PO Box 39
Usk, Washington, 99180
Fax: (509) 445-1705

Re: Review of Credit Agreement and Security Agreement

Dear Chairman Nenema:

This letter responds to the November 08, 2019, request on behalf of the Kalispel Tribe of Indians for the National Indian Gaming Commission's Office of General Counsel to review loan documents between the Kalispel Tribe and KeyBank National Association. Specifically, you have asked for my opinion on whether the loan documents constitute a management contract requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act. You also asked for an opinion whether the documents violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following documents submitted on behalf of the Tribe, which were unexecuted, but were represented to be in substantially final form (Collectively "Loan Documents"):

- Credit Agreement, marked as: 4819-4216-2088.8
- Security Agreement, marked as 4844-4576-5802
- Exhibits to Credit Agreement, marked as 4826-8820-1132.1
- Guaranty Exhibit I to Credit Agreement, marked as 4850-3773-2268.1

The Loan Documents contain terms similar to other agreements the Office of General Counsel has reviewed and analyzed, opinion letters for which are available on the NIGC website. Applying the same analysis here, it is my opinion that the Loan Documents are not management contracts or collateral agreements to a management contract, 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

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

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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*, 139 S. Ct. 2356, at *7 (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 Heather McMillan Nakai at (202) 527-5577.

Sincerely,

A handwritten signature in blue ink that reads "Michael Hoenig". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

Michael Hoenig
General Counsel

cc: Christine Masse
Brie Coyle Jones