



September 2, 2020

VIA EMAIL

Chad DePetro, General Counsel
Grand Traverse Band of Ottawa and Chippewa Indians
2605 N. West Bay Shore Drive
Peshawbestown, MI 49682-9275

Re: Review of Consulting Agreements with American Wagering dba William Hill

Dear Mr. DePetro:

This letter responds to your June 26, 2020 request for the National Indian Gaming Commission's Office of General Counsel to review two Consulting Agreements between the Grand Traverse Band's Economic Development Corporation and American Wagering, Inc., dba William Hill US (William Hill). Specifically, you have asked for my opinion whether the Agreements are management contracts requiring the NIGC Chairman's approval under the Indian Gaming Regulatory Act. You also asked for my opinion whether the Agreements violate IGRA's requirement that the Tribe have the sole proprietary interest in its gaming activity.

As part of this review, I analyzed the following documents (collectively, the Agreements):

- Consulting Agreement (Turtle Creek property), August 12, 2020, 14 total pages
 - Exhibit A – Consultant Tasks
 - Exhibit B – Tribe Responsibilities
- Consulting Agreement (Leelanau Sands property), August 12, 2020, 14 total pages
 - Exhibit A – Consultant Tasks
 - Exhibit B – Tribe Responsibilities
- Letter from Michigan Governor Gretchen Whitmer to Grand Traverse Band Chairman Thurlow "Sam" McClellan agreeing to the addition of sports betting as an additional Class III game under the compact, February 27, 2020.

Overview:

The Grand Traverse Band Economic Development Corporation (EDC) is a federally chartered wholly owned company of the Grand Traverse Band of Ottawa and Chippewa Indian.¹ Through its EDC, the Tribe operates two casinos in Michigan: the Turtle Creek Casino and the Leelanau Sands Casino. The Tribe desires to offer in-person sports betting at both facilities as soon

¹ For simplification, Tribe and EDC are used interchangeably throughout this letter.

as possible with services provided by William Hill. Both facilities will offer self-service wagering kiosks and Turtle Creek will include a fully-staffed counter.

Services:

William Hill will provide the following sportsbook services at Turtle Creek:

- Trading and risk management consulting services, including providing the wagering menu and content, subject to the direction of GTB EDC.

[REDACTED]

- Provide maintenance and any necessary upgrades or enhancements for the sports betting hardware and software.

[REDACTED]

The Leelanau Sands Agreement³ is nearly identical in describing William Hill's tasks, except for the following:

[REDACTED]

Term:

[REDACTED]

² Turtle Creek Agreement, Exhibit A

³ Because the agreements are nearly identical, citations reference both agreements unless otherwise indicated.

⁴ Leelanau Sands Agreement, Exhibit A

⁵ Agreements § 1(a)

Fees:

[REDACTED]

Management Analysis:

The Agreements do not permit any management of gaming activity by William Hill. The scope of services provided by William Hill are well defined. The Tribe has the discretion to accept or reject the sports betting recommendations received from William Hill, including changing lines on events and suspending events. The Tribe is not required to implement the data or services provided by William Hill.⁹ The Agreements include detailed language prohibiting specific management activities,¹⁰ and state that the Tribe has the ultimate responsibility for the Turtle Creek and Leelanau Sands' sportsbooks.¹¹

Sole Proprietary Interest:

The term of the Agreements – [REDACTED] – is longer than some agreements reviewed by this office, but it does not raise sole proprietary interest concerns. The Agreements also do not grant any control to William Hill over the Tribe's sportsbooks. As stated above, the Tribe has the ultimate authority over its sportsbooks, can accept or reject the services provided by William Hill, and will have the ability to change lines and suspend events. Accordingly, there are no issues of control.

[REDACTED]

[REDACTED] This is roughly consistent with the fee being paid elsewhere in the region for sports betting.

Despite the slightly longer term, the Agreements, on balance, do not raise sole proprietary interest concerns because they are commercially reasonable and do not include elements of control by William Hill.

⁶ Agreements § 3(a)

⁷ See 25 C.F.R. § 502.16. [REDACTED]

⁸ Agreements § 3(d)

⁹ Agreements § 2(a)

¹⁰ Agreements § 2(b)

¹¹ Agreements § 4(a)

Conclusion:

It is my opinion that the Agreements are not management contracts and do not require the approval of the NIGC Chair. It is also my opinion that they do not violate IGRA's sole proprietary interest requirement.

Additional Considerations:

It is my understanding that the drafts are represented to be in substantially final form, and if the Agreements change in any material way prior to execution or are inconsistent with assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Agreements. This opinion does not include or extend to any other 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.¹² 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),¹³ please be advised that any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*.¹⁴ Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."¹⁵ 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.¹⁶

If you have any questions, please contact NIGC Senior Attorney Jennifer Lawson at (202) 632-7003.

Sincerely,



Michael Hoenic
General Counsel

¹² See 25 C.F.R. § 517.7(c)

¹³ 5 U.S.C. § 552(b)(4)

¹⁴ 139 S. Ct. 2356, 2366 (2019)

¹⁵ See 25 C.F.R. § 517.7(d)

¹⁶ *Id.*