



September 12, 2023

VIA EMAIL

Stephen R. Ward, Esq.
Connor & Winters LLP
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15 East Fifth Street
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Re: Review of Amendments to Loan Agreement for the Muscogee Nation Gaming Enterprises, LLC and the Muscogee (Creek) Nation of Oklahoma

Dear Mr. Ward:

This letter responds to your request of June 22, 2022, for the National Indian Gaming Commission's Office of General Counsel to review a financing agreement amendment between the Muscogee Nation Gaming Enterprises, LLC (the gaming enterprise of the Muscogee (Creek) Nation of Oklahoma (Nation)), and BOKF, NA d/b/a Bank of Oklahoma. Specifically, you have asked for my opinion whether the amendment constitutes a management contract requiring the NIGC Chairman's approval under the Indian Gaming Regulatory Act (IGRA). You have also asked for my opinion whether the amendment violates IGRA's requirement that the Nation have the sole proprietary interest in its gaming activity.

In my review, I considered the following submissions (Loan Documents) which are unexecuted, but represented to be in substantially final form:

1. **Amended and Restated Loan Agreement** (marked on the top right corner of page 1 as "FDL Draft 8-30-23", marked in the bottom left corner as "#1016648v14", 187 pages) including the exhibits thereto:
 - a. Exhibit A - Revolving Loan Note
 - b. Exhibit B - Term Loan Note
 - c. Exhibit C - Request for Loan
 - d. Exhibit D - Compliance Certificate
 - e. Exhibit E - Assignment Agreement

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2. **Amended and Restated Security Agreement** (marked on the top right corner of page 1 as “NIGC Submission Draft 6-20-23”, marked in the bottom left corner as “#1016770v6”, 33 pages);
3. **Deposit Account Control Agreement** (Bank of Oklahoma) (marked on the top right corner of page 1 as “FDL Draft 8-23-23”, marked in the bottom left corner as “#1048439v4”, 17 pages);
4. **Deposit Account Control Agreement** (MidFirst Bank) (marked on the top right corner of page 1 as “FDL Draft 8-18-23”, marked in the bottom left corner as “#1038448v7”, 9 pages);
5. **Deposit Account Control Agreement** (Regent Bank) (marked on the top right corner of page 1 as “FDL Draft 8-23-23”, marked in the bottom left corner as “#1048684v3”, 17 pages);
6. **Securities Account Control Agreement** (U.S. Bank) (marked on the top right corner of page 1 as “FDL Draft 8-23-23”, marked in the bottom left corner as “#1053277v4”, 10 pages); and
7. **Non-Impairment Agreement** (marked on the top right corner of page 1 as “NIGC Submission Draft 6-20-23”, marked in the bottom left corner as “#1016484v6”, 15 pages).

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

It is my understanding that the drafts are represented to be in substantially final form, and if the Loan Documents 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 Loan Documents listed above. This opinion does not include or extend to any other agreements 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 any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*.³ Any claim of

¹ 25 C.F.R. § 517.7(c).

² 5 U.S.C. § 552(b)(4),

³ 139 S. Ct. 2356 (2019).

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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.⁵ 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 <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

If you have any questions, please contact NIGC Staff Attorney Logan Takao Cooper at (503) 318-7524 or by email at Logan.Takao-Cooper@nigc.gov.

Sincerely,



Rea Cisneros
Acting General Counsel

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⁴ 25 C.F.R. § 517.7(d).

⁵ *Id.*