



October 16, 2023

VIA EMAIL

Jason B. Coutant, Esq.
GableGotwals
110 N. Elgin Avenue, Ste. 200
Tulsa, OK 74120

Re: Review of the 2023 Loan Documents for the Fort Sill Apache Tribe

Dear Mr. Coutant:

This letter responds to your June 28, 2023 request, on behalf of the Fort Sill Apache Tribe Economic Development Authority, a governmental instrumentality of the Fort Sill Apache Tribe (Tribe), for the National Indian Gaming Commission Office of General Counsel to review certain financing agreements between BOKF, NA dba Bank of Oklahoma and the Tribe. Specifically, you have requested my opinion as to whether these documents are management contracts requiring the NIGC Chairman's approval pursuant to the Indian Gaming Regulatory Act of 1988. You have also asked for my opinion as to 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 submission ("the 2023 Loan Documents"):

- Loan Agreement between Fort Sill Apache Tribe Economic Development Authority, as Borrower, and BOKF, NA dba Bank Of Oklahoma, as Lender (Loan Agreement) (marked at bottom as "{2698332;12}")
- Term Loan Note (marked at bottom middle as "{2701140;2}")
- Revolving Loan Note (marked at bottom middle as "{2701141;2}")
- Security Agreement (marked at bottom left as "{2701143;5}")
- Non-Impairment Agreement (marked at bottom left as "{2701147;4}")

The 2023 Loan Documents contain terms similar to other agreements that OGC has previously reviewed and analyzed. Applying the same analysis here, it is my opinion that the 2023 Loan Documents are not management contracts 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.

It is my understanding that the 2023 Loan Documents are represented to be in substantially final form, and any further changes will not be material to OGC's analysis. This opinion shall not apply if the 2023 Loan Documents change in any material manner prior to closing or are inconsistent with the assumptions made herein. Further, this opinion is limited to the aforementioned 2023 Loan Documents and 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 the information was voluntarily submitted and, as such, any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*.³ Any claim of 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 FOIA@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 Rachel Hill, Staff Attorney, at (918) 581-6214 or Esther F. Dittler, Acting Associate General Counsel, at (301) 751-6108.

Sincerely,



Rea Cisneros
General Counsel (Acting)

cc: Valerie Devol, counsel to the Borrower

¹ See 25 C.F.R. § 517.7(c).

² 5 U.S.C. § 552(b)(4).

³ 139 S. Ct. 2356 (2019).

⁴ See 25 C.F.R. § 517.7(d).

⁵ *Id.*