



March 6, 2008

*Via Facsimile and First Class Mail*

Michell Hicks, Principal Chief  
Eastern Band of Cherokee Indians  
P.O. Box 455  
Cherokee, NC 28719  
Fax: (828) 497-7007

William L. Buffalo  
Vice President and Deputy General Counsel  
Harrah's Entertainment Inc.  
One Harrah's Court  
Las Vegas, NV 89119-4312  
Fax: (702) 407-6286

Re: Consulting and Project Management Agreement between the Eastern Band of Cherokee Tribal Casino Gaming Enterprise and Harrah's NC Casino Company LLC dated July 10, 2007.

Dear Chief Hicks and Mr. Buffalo:

Thank you for providing us the July 10, 2007 consulting agreement between the Eastern Band of Cherokee Indians (Tribe) and Harrah's NC Casino Company LLC (HNC). As is our practice, the Office of General Counsel reviewed the agreement to determine whether it constitutes a management contract or a collateral agreement to a management contract and thus requires the Chairman's approval. 25 U.S.C. § 2711.

It is my opinion, as it is yours, that the consulting agreement is not a management contract. By its terms, however, the consulting agreement is collateral to the parties' April 14, 2004 management agreement approved by the Chairman. As such, the Office of General Counsel will forward the consulting agreement to the Contracts Division for its determination as to whether the consulting agreement will require changes to the approved management agreement.

#### Authority

The authority of the NIGC Chairman to review and approve gaming-related contracts is limited by IGRA to management contracts and collateral agreements to management contracts to the extent that they implicate management. 25 U.S.C. § 2711. The authority of the Secretary of the

Interior to approve such agreements under 25 U.S.C. § 81 was transferred to the NIGC pursuant to the IGRA. 25 U.S.C. § 2711(h).

### Management Contracts

The NIGC defines the term "management contract" to mean "any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation." 25 C.F.R. § 502.15. The NIGC defines "collateral agreement" to mean "any contract, whether or not in writing, that is related either directly or indirectly, to a management contract, or to any rights, duties or obligations created between a tribe (or any of its members, entities, organizations) and a management contractor or subcontractor (or any person or entity related to a management contractor or subcontractor)." 25 C.F.R. § 502.5.

Management encompasses activities such as planning, organizing, directing, coordinating, and controlling. *See NIGC Bulletin No. 94-5.* The performance of any one of these activities with respect to all or part of a gaming operation constitutes management for the purpose of determining whether an agreement for such goods and services is a management contract requiring the Chairman's approval.

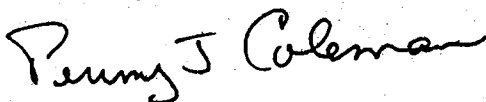
### Determination

After careful review of the consulting agreement, I conclude that the agreement is not a management contract. The agreement calls for HNC to act as the project manager for the design and construction of an expansion of the Tribe's existing gaming facility. HNC is also permitted to advise the Tribe on selecting vendors for other goods and services in connection with the project. As described in the agreement, these activities do not rise to the level of management.

However, HNC has a previously approved management agreement with the Tribe, and the consulting agreement's terms make it collateral to the management agreement. The consulting agreement specifically references the management agreement and incorporates its terms. Consulting agreement §§ 1.1, 6.3, 7.4. Thus by definition, the consulting agreement is collateral to the management agreement.

As such, the Office of General Counsel will forward the consulting agreement to the Contracts Division for its determination as to whether the consulting agreement will require changes to the approved management agreement. Further, we will also provide a copy to the Office of Indian Gaming for its review. If you have any questions, please contact Staff Attorney Rebecca Chapman at (202) 632-7003.

Sincerely,



Penny J. Coleman  
Acting General Counsel

cc: Office of Indian Gaming, with incoming  
NIGC Contracts Division  
Michael Gross, NIGC Associate General Counsel, General Law  
Rebecca Chapman, NIGC Staff Attorney