



June 22, 2022

VIA EMAIL

Michael K. Pignato, Esq.
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498

Re: Review of the 2022 First Amendment Documents for Pala Band of Mission Indians

Dear Mr. Pignato:

This letter responds to your May 25, 2022 request, on behalf of the Pala Band of Mission Indians, for the National Indian Gaming Commission, Office of General Counsel, to review certain transaction documents and to provide an opinion as to whether these transaction 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 transaction 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 2022 First Amendment Documents"):

- *First Amendment to Credit Agreement* (marked at top right as "NIGC Submission Draft (05-25-2022)," and at bottom left as "US.137891266.03"); and
- (Redlined) *Credit Agreement Dated as of April 22, 2021, among Pala Band of Mission Indians, as the Borrower, U.S. Bank National Association, as Administrative Agent, Swing Line Lender and L/C Issuer, Comerica Bank and Wells Fargo Bank, National Association, as Syndication Agents, The Other Lenders Party Hereto and U.S. Bank National Association, Comerica Bank and Wells Fargo Bank, National Association, as Joint Lead Arrangers and Joint Book Managers, As amended by a First Amendment to Credit Agreement dated as of [], 2022* (marked at top right as "Annex A to First Amendment to Credit Agreement, NIGC Submission Draft (05-25-2022)," and at bottom left as "US.137902433.07").

The 2022 First Amendment 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 2022 First Amendment 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.

Letter to Michael K. Pignato, Esq.

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It is my understanding that the 2022 First Amendment 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 2022 First Amendment 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 2022 First Amendment Documents and does not include or extend to any other agreements not submitted for review. That said, the prior opinion expressed in the OGC declination letter issued to the Tribe on April 8, 2021, concerning those financing agreements, remains in effect.

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 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 Armando Acosta, Senior Attorney, at (202) 632-7003.

Sincerely,



Michael Hoenig
General Counsel

cc: Jennifer D. Miernicki, Esq., of Faegre Drinker Biddle & Reath LLP (via email)

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.*