

# NATIONAL INDIAN GAMING COMMISSION

---

## SETTLEMENT AGREEMENT

---

SA-17-03

This settlement agreement is entered into by and between the Crow Tribe of Montana (Tribe) through its duly authorized representatives and the Chairman of the National Indian Gaming Commission (NIGC) to resolve the issues related to the notice of violation (NOV-17-03) and proposed civil fine assessment (CFA-17-03) issued to the Tribe.

### I. RECITALS

1. Whereas, the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2705(a)(2) and 2713(a)(1), and NIGC regulations, 25 C.F.R. § 575.4, authorize the Chairman to issue civil fines not to exceed \$50,276 per violation against a tribe, management contractor, or individual operating Indian gaming for violations of IGRA, NIGC regulations, or tribal regulations, ordinances, or resolutions approved by the Chairman.
2. Whereas, pursuant to 25 C.F.R. § 575.4(a)(2), if the violation continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation.
3. Whereas, IGRA authorizes the Chairman to issue an order of temporary closure of an Indian gaming operation for substantial violation of IGRA, NIGC regulations, or an approved tribal ordinance under 25 U.S.C. §§ 2705(a)(1) and 2713(b)(1).
4. Whereas, under NIGC regulations, at 25 C.F.R. § 573.3(a), the Chairman may issue a notice of violation to any person for violations of any provision of IGRA, NIGC regulations, or an approved tribal gaming ordinance or resolution.
5. Whereas, by letter dated June 15, 2017, the Chairman informed the Tribe of the missed compliance date for the submission of the annual audit report, financial statements, and agreed-upon procedures reports for each of the Tribe's two gaming operations for fiscal year 2016.
6. Whereas, on August 3, 2017, the Chairman issued to the Tribe a Notice of Violation, NOV-17-03, for failing to submit to the NIGC annual independent audits, financial statements, and agreed-upon procedure reports for the 2016 fiscal year for each of its two operations.
7. Whereas, on November 27, 2017, the Chairman issued to the Tribe a proposed civil fine assessment, CFA-17-03, for \$75,000.

8. Whereas the Tribe timely appealed the Notice of Violation on September 5, 2017 and is awaiting a Commission decision on the matter.
9. Whereas, the Chairman and the Tribe desire to resolve issues related to the notice of violation (NOV-17-03) and the proposed civil fine assessment (CFA-17-03).
10. Therefore, the Chairman and the Tribe have agreed to execute this Agreement and perform in accordance with the following terms:

## II. STIPULATIONS

1. The Tribe agrees that the NIGC has jurisdiction over this matter.
2. The Tribe admits that it was required to submit to the NIGC the annual independent audit reports, financial statements, and agreed-upon procedure reports for all gaming operations within 120 days of the end of fiscal year 2016, as required by IGRA and NIGC regulations.
3. The Tribe admits that it owned and operated two gaming operations in 2016: Apsaalooke Nights Casino and Center Lodge Bingo (aka Edison Real Bird Racing Complex).
4. The Tribe admits that the documents it provided to the NIGC on October 30, 2017, entitled "Apsaalooke Nights Casino Financial Statements and Independent Auditors Report, December 31, 2016 and 2015" and "Apsaalooke Nights Casino Report of Independent Accountants on Applying Agreed-Upon Procedures to Assist in Evaluating Compliance with the NIGC Minimum Internal Control Standards for the year ended December 31, 2016" were submitted after the applicable deadlines and did not adequately constitute the annual independent audit reports, financial statements, and agreed-upon procedure reports of all tribal gaming operations for the 2016 fiscal year required by IGRA and NIGC regulations.
5. The Tribe admits that its failure to submit to the NIGC the annual independent audit reports, financial statements, and agreed-upon procedure reports of Center Lodge Bingo is a violation of IGRA, 25 U.S.C. § 2710(b)(2)(C), NIGC regulations, 25 C.F.R. §§ 571.12, 571.13, and 543.23(d), and the Crow Tribal Gaming Ordinance of 2015.
6. The Tribe is aware of its right to:
  - a. Appeal the notice of violation to the full Commission under 25 C.F.R. part 585;
  - b. Obtain a hearing to contest the matter under 25 C.F.R. part 584; and
  - c. Appeal any final determination by the full Commission to a federal district court under 25 U.S.C. § 2714.

7. The Tribe stipulates that this Settlement Agreement shall be deemed a final order of the Commission and a final agency action pursuant to 25 C.F.R. § 573.5.

### **III. TERMS OF SETTLEMENT**

1. The Tribe agrees to cease and desist from any gaming activity at Apsaalooke Nights Casino and any other locations within the Crow Reservation by December 28, 2017.
2. The NIGC Chairman agrees to suspend assessment of the \$75,000 proposed civil fine and forego issuing a temporary closure order for failure to correct the violation (non-submission of Center Lodge Bingo audit) by the date provided in the Notice of Violation.
3. The Tribe agrees that it will not engage in or permit gaming within the Crow Reservation for five years or until it satisfies the pre-opening conditions set forth below.
4. The Tribe agrees that gaming within the Crow Reservation is subject to the post-opening conditions set forth below.
5. The Chairman agrees upon execution of this Agreement to waive the right to impose any further civil fine against the Tribe for the notice of violation, NOV-17-03.
6. The Tribe waives all rights to further pursue an appeal of NOV-17-03 or CFA-17-03 before the Commission, waives all rights to pursue an appeal to a presiding official, and waives all rights to judicial review of such proceedings.
7. In exchange for the terms, conditions, and understandings set forth in this Agreement, the Tribe waives its right to any administrative review of this settlement, under 25 C.F.R. §§ 584 and 585, to submit information prior to the issuance of a civil fine assessment, under 25 C.F.R. § 575.5, to seek reduction or waiver of a civil fine, under 25 C.F.R. § 575.6, and the right to seek judicial review, under 25 U.S.C. § 2714, including the right to have the Chairman provide his written analysis of the factors to be considered in assessing a civil fine set forth under 25 C.F.R. § 575.4.
8. The Tribe agrees that this Agreement does not restrict the NIGC Chairman from issuing new notices of violations and other enforcement actions for new violations of IGRA, NIGC regulations, and/or the Tribe's gaming ordinance.
9. The Tribe agrees that if the NIGC Chairman determines that gaming activities conducted on the Crow Reservation are not operated in compliance with IGRA, NIGC regulations, the Tribe's gaming ordinance, and/or this Agreement, the NIGC Chairman may reinstate

the \$75,000 fine under proposed CFA-17-03; assess additional civil fines or penalties for the stipulated violation(s); and/or direct the Tribe to cease its gaming activities(s).

- a. If the NIGC Chairman directs the Tribe to cease its gaming activities, the Tribe agrees that it will close the operation(s) at issue within 10 calendar days of receiving written notice to do so from the NIGC Chairman or his designee.
- b. Unless the Chairman or his designee specify a re-opening date for the operation(s) in the notice describing the violations, the Tribe must follow the procedure described in Section V of this Agreement to re-open the operation(s).

#### IV. PRE-OPENING CONDITIONS

1. At least 60 days prior to recommencing gaming activities within the Crow Reservation, the Tribe, through its tribal gaming commission, shall submit to the NIGC its approved tribal internal control standards (TICS) that are at least as stringent as the standards set forth in the NIGC Minimum Internal Control Standards found at 25 C.F.R. Parts 542 and Part 543. For purposes of this Agreement, references to 25 C.F.R. Part 542 include any related guidance documents the Commission may publish regarding Class III Minimum Internal Control Standards.
2. At least 60 days prior to recommencing gaming activities within the Crow Reservation, management of the gaming operation shall submit to the NIGC its written system of internal controls (SICS) implementing the TICS. The SICS should, at a minimum, include:
  - a. An organizational chart depicting segregation of functions and responsibilities;
  - b. A detailed narrative description of the administrative and accounting procedures designed to satisfy the requirements of the tribal internal control standards;
  - c. A written statement signed by the gaming operation's chief financial officer, general manager, or comparable position attesting that the organization's internal controls satisfy the requirements of the tribal internal control standards adopted by the tribal gaming regulatory authority.
3. Within 45 days of receipt of the TICS and SICS, the NIGC Audit Division will review the submission and provide a written response to the Tribe. The response will either approve the submission or note the sections of the submission that do not comply with NIGC regulations and/or this agreement.
  - a. If the Audit Division notes compliance exceptions that pose an unacceptable risk to the gaming operation's integrity (critical exceptions), the Tribe must remedy the exception(s) prior to opening. The Tribe agrees that it will not (re)commence

gaming until it has received written confirmation from the NIGC that the critical exception(s) were remedied.

- b. Less significant exceptions shall require the Tribe to demonstrate correction within 60 days of receipt of the Audit Division's review. If the deficiencies remain after the 60-day correction period, the NIGC Chairman may reinstate all or any portion of the \$75,000 civil fine assessment proposed by CFA-17-03; assess additional civil fines or penalties for the stipulated violation(s); and/or direct the Tribe to cease all gaming activities on the Crow Reservation until the Tribe provides documentation that all exceptions have been resolved.
4. At least 60 days prior to recommencing gaming activity, the Tribe shall provide evidence that the Tribe has established and the gaming operation is in compliance with a minimum bankroll formula which ensures the gaming operation maintains cash or cash equivalents (on hand and in the bank, if readily accessible) in an amount sufficient to satisfy obligations to the gaming operation's customers as they are incurred. This condition is satisfied only if the NIGC Chairman or his designee approves the submission in writing.
5. Prior to recommencing gaming activity, the Tribe and casino management shall draft a cash management policy for the operation and submit it to NIGC for review and comment. For purposes of this agreement, a cash management policy is a plan for utilizing cash in a manner that is consistent with the needs and strategic goals of the operation.
6. Prior to recommencing gaming activity, the Tribe shall provide to the NIGC Chairman a copy of the executed letter of engagement with a certified public accounting firm to conduct the audit of the operation's financial statements and issue an Agreed Upon Procedures Report for the fiscal year gaming recommenced.

#### **V. RECOMMENCING GAMING ACTIVITY**

1. The Tribe agrees that it will only permit gaming to recommence at Apsaalooke Nights Casino or anywhere else on the Crow Reservation upon the NIGC Chairman's written authorization.
2. The NIGC Chairman's authorization to recommence gaming on the Crow Reservation is exclusively limited to a letter issued by the NIGC Chairman or an authorized designee (the "NIGC Letter") stating that the Tribe has fully complied with the provisions of Section IV, including correcting any critical exceptions noted in the TICS and SICS review by NIGC auditors. The Tribe may not presume agreement in the absence of the NIGC Letter.
3. The parties agree that the NIGC Chairman shall have sole discretion to determine whether the Tribe has met the requirements of this Agreement.

4. The NIGC Chairman agrees that he will issue the NIGC Letter within 30 days of the date that the Tribe provides evidence reasonably demonstrating that it has satisfied the pre-opening conditions described in Section IV of this Agreement.
5. If the evidence provided by the Tribe does not demonstrate satisfactory compliance with the pre-opening conditions, the NIGC Chairman or his designee will provide written notice of the deficiencies. Once the Tribe has corrected the deficiencies, it may submit additional documentation to the NIGC Chairman or his designee showing that it has satisfied this Agreement the NIGC Chairman or his designee will then review the additional evidence.

## **VI. POST-OPENING CONDITIONS**

1. The Tribe agrees to the following post-opening conditions for a five year period from the date a gaming activity recommences. This five year heightened monitoring period begins on the date gaming activity recommences on the Crow Reservation.
2. The NIGC will monitor the Tribe's operation(s) and regulation of its gaming activities with heightened scrutiny for a period of five years for the purpose of determining that the Tribe, in the operation and regulation of its gaming activities, is in material compliance with IGRA; NIGC regulations, including 25 C.F.R. Parts 542 and 543; the Tribe's gaming ordinance; and this Agreement.
3. In the event the NIGC Chairman or his designee determines that any post-opening condition has been violated, the NIGC shall provide the Tribe a letter describing the violation(s) and setting forth a reasonable time period to correct the violation(s), which for purposes of this Agreement, the parties agree will be no less than 30 days following the date of the Chairman's letter, unless otherwise agreed or unless the violation is a "substantial violation" as that term is used in 25 C.F.R. § 573.6, in which case the NIGC Chairman or his designee may establish a shorter period or order closure without allowing a timer period for correction.
4. The Tribe shall at no time operate gaming activities without approved TICS that are at least as stringent as the MICS in 25 C.F.R. Parts 542 and 543.
5. The Tribe shall conduct and regulate gaming activities at each authorized operation in material compliance with the provisions of this Agreement, the IGRA, NIGC regulations—including 25 C.F.R. Parts 542 and 543, the Tribe's gaming ordinance and gaming regulations, and the TICS and SICS.
6. In the event that management of an authorized gaming operation, the Tribal Gaming Commission, or the Tribe determines that gaming activities are being conducted or

regulated in material violation of any provisions of the IGRA, NIGC regulations, the Tribal gaming ordinance or gaming regulations, the TICS, or this Agreement, the Tribe shall promptly notify the NIGC Region Office in Rapid City, South Dakota of the violation(s) and take immediate steps to correct the violation(s).

7. The Tribe acknowledges that the NIGC may conduct unannounced audits of the books and records of the Tribe's Class II and Class III gaming operation(s) and review and observe the facilities. The Tribe shall cooperate fully with such audits and site visits.
8. Within nine months of recommencing gaming activity—or longer at the sole discretion of NIGC—the Tribe shall cooperate with NIGC in an internal control assessment of both Class II and Class III gaming for the gaming operation(s).
  - a. NIGC intends the audit primarily as a training tool for the Tribe.
  - b. Unless the assessment reveals an immediate and material risk to the interest of the public or Tribe, NIGC Chairman will allow the Tribe six months to correct any exceptions, and may, at its option, conduct a follow-up assessment at any time during or subsequent to the correction period.
  - c. The Tribe shall correct all exceptions found in the assessment within six months of receiving written notice of them.
9. The Tribe shall maintain the approved minimum bankroll formula for the duration of the heightened monitoring period set forth in this Agreement, unless it receives written approval from the NIGC Chairman or his designee of a modified formula. The Tribe agrees that failure to maintain compliance with the minimum bankroll formula poses an immediate and material risk to the interest of the public and could result in a closure order by the NIGC Chairman without allowing a time period for correction.
10. The Tribe shall provide internal controls training for all employees who are directly involved in the conduct of the games or the support thereof (*i.e.*, surveillance, cage, drop and count, dealers, internal audit, etc.). The Tribe will submit documentation of the training sessions and attendees' names and titles to the NIGC within 60 days after recommencing gaming activity.
11. The Tribe shall provide internal controls training within six months of hiring new employees into gaming-related positions. The Tribe will send documentation of the training and attendees to NIGC within 15 days after each training session occurs.

12. The Tribe shall send at least one gaming commission representative, and shall cause the gaming operation management to send at least one internal auditor, revenue auditor, cage/vault supervisor, gaming machine supervisor, table game supervisor, and surveillance supervisor to an NIGC-hosted training on internal controls within six months of opening. The Tribe acknowledges that the NIGC training schedule may not allow for this training to take place on the Crow Reservation and travel may be required.
13. The five year post-opening condition monitoring period will be tolled for the duration of any closure of any of the Tribe's gaming facilities.

#### **VII. TERM OF THE AGREEMENT**

1. This Agreement will be considered fulfilled if no Class II or III gaming occurs on the Crow Reservation within five years of the execution of this Agreement.
2. If the Tribe does undertake or authorize gaming on the Crow Reservation within five years of the execution date of this Agreement, the Agreement will continue through the entire five year period of heightened monitoring described in Section VI. Thus, the Agreement will be fulfilled upon the final day of the gaming operation's fifth full fiscal year following the execution of this Agreement (excluding any periods of tolling for closure).
3. If more than one operation begins gaming after execution of this Agreement, the Agreement will be fulfilled at the earliest conclusion of five full fiscal years for a single operation.
4. Notwithstanding the provisions above, in no event will this Agreement continue beyond January 1, 2026.

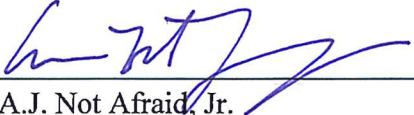
#### **VIII. ADDITIONAL COVENANTS**

1. This Agreement constitutes the entire agreement between the Chairman and the Tribe relating to NOV-17-03 and CFA-17-03 and supersedes all prior verbal or written agreements and understandings between the parties related to the subject matter. No warranties, representations, covenants, or agreements shall be binding upon any party except as set forth herein. Any modification or waiver of any term of this Agreement, including the modification or waiver of term, must be in writing and signed by the parties.
2. The Tribe agrees that this Agreement shall be deemed a final order of the Commission and a final agency action, under 25 C.F.R. § 573.5.
3. The Chairman and the Tribe expressly agree and acknowledge that time is of the essence in this Agreement. The recitals herein and set above shall be binding upon the parties, their agents, heirs, personal representatives, successors and assigns.



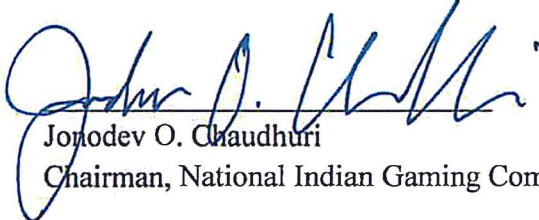
4. A signature produced by facsimile shall be deemed to be an original signature and shall be effective and binding for purpose of the Agreement.

For the Crow Tribe of Montana

By:   
A.J. Not Afraid, Jr.  
Chairman, Crow Tribe of Montana

Date: 12/28/17

For the National Indian Gaming Commission:

By:   
Jonodev O. Chaudhuri  
Chairman, National Indian Gaming Commission

Date: 12/15/17