

# NATIONAL INDIAN GAMING COMMISSION

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## SETTLEMENT AGREEMENT

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SA-18-02

This Settlement Agreement (Agreement) is entered into by and between the Metlakatla Indian Community (Tribe) through its duly authorized representative and the Chairman of the National Indian Gaming Commission (NIGC) to resolve the issues related to the Notice of Violation (NOV-18-02) issued to the Tribe.

### RECITALS

1. 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 \$51,302 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. 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. The IGRA authorizes the Chairman to issue an order of temporary closure of an Indian gaming operation for a substantial violation of IGRA, NIGC regulations, or an approved tribal ordinance under 25 U.S.C. §§ 2705(a)(1) and 2713(b)(1).
4. 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. IGRA requires an annual audit of each gaming operation and requires that a copy of the results of the annual audit be submitted to the NIGC pursuant to 25 U.S.C. § 2710(b)(2)(C).
6. NIGC regulations require that a tribe shall prepare comparative financial statements covering all financial activities of each class II and class III gaming operation on the tribe's Indian lands for each fiscal year. 25 C.F.R. § 571.12(a).
7. NIGC regulations require that a tribe engage an independent certified public accountant to provide annual independent audits of the financial statements of each gaming operation located on Indian lands for each fiscal year. 25 C.F.R. § 571.12(b).

8. The NIGC regulations further require a tribe to submit a copy of the financial statements and audits, with any management letter(s) and other documents/reports setting forth the results of the annual audit(s) to the NIGC within 120 days after the end of each gaming operation's fiscal year. 25 C.F.R. § 571.13.
9. The NIGC regulations also require a tribe to submit within 120 days after the end of the fiscal year an Agreed Upon Procedures report for each class II operation. 25 C.F.R. § 543.23(d).
10. The fiscal year for the Tribe's gaming facility, MIC Bingo, ends on September 30. The comparative financial statement, audit, and Agreed Upon Procedures report were due to the NIGC on or before January 28, 2018.
11. The financial statement, audit, and Agreed Upon Procedures report were submitted by the Tribe to the NIGC on February 23, 2018; 26 days late. However, the financial statement was not comparative.
12. On March 27, 2018, the Chairman issued to the Tribe a Notice of Violation, NOV-18-02, for failure to timely submit to the NIGC annual independent audits, comparative financial statements, and the Agreed Upon Procedures report for the 2017 fiscal year for MIC Bingo.
13. As directed in the Notice of Violation, the Tribe submitted a comparative financial statement with a revised audit report for the 2017 fiscal year for MIC Bingo on April 9, 2018.
14. Whereas, the Chairman and the Tribe desire to resolve issues related to the Notice of Violation (NOV-18-02).
15. The Chairman and the Tribe have agreed to execute this Agreement and perform in accordance with the following terms:

#### **STIPULATIONS**

16. The Tribe agrees that the NIGC has jurisdiction over this matter.
17. The Tribe admits that it was required to submit to the NIGC the annual independent audit report with a comparative financial statement of its gaming operation and the Agreed Upon Procedures report within 120 days of the end of fiscal year 2017, as required by IGRA and NIGC regulations.
18. The Tribe admits that it owned and operated MIC Bingo in fiscal year 2017.
19. The Tribe admits that the financial statement, audit, and Agreed Upon Procedures report were submitted by the Tribe to the NIGC on February 23, 2018, which was 26 days after

the applicable deadline, and on April 9, 2018, submitted a comparative financial statement with a revised audit report.

20. 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.
21. 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(b).

#### **TERMS OF SETTLEMENT**

22. This Agreement is entered into pursuant to 25 C.F.R. § 584.10 and shall become effective upon the date it is signed by the last party to sign this Agreement.
23. For a period of two years following the execution of this Agreement, the Tribe agrees to engage an audit firm to prepare an annual independent audit report and the Agreed Upon Procedures report for the Tribe's gaming operation no later than July 1. The engagement letter will provide that the audit firm will provide the completed audit report, with comparative financial statements, and Agreed Upon Procedures report to the Tribe by January 14, and will reference the specific date on which the Tribe's audit and Agreed Upon Procedure report is due to the NIGC pursuant to IGRA and NIGC regulations.
24. For a period of two years beginning with the execution of this Agreement, the Tribe agrees to provide the NIGC Director of Compliance a copy of the executed engagement letter with a Certified Public Accountant to perform annual independent audit and Agreed Upon Procedures for the Tribe's gaming operations by July 14.
25. For a period of two years beginning with the execution of this Agreement, the Tribe shall submit the audit reports, comparative financial statements, and Agreed Upon Procedures report within 120-days of the end of its fiscal year, as required by 25 C.F.R. §§ 543.23(d) and 571.13.
26. Within 90 days of execution of this Agreement, the Tribe agrees to provide appropriate training on its accounting software to its Financial Officer, and other finance staff as appropriate. Within 30 days of execution of this Agreement, the Tribe will notify the NIGC Director of Compliance of the training scheduled, identify the personnel to be trained, and describe the training. The Tribe will notify the NIGC Director of Compliance within 7 days after the training is completed. Such notice will identify the staff that participated in training and describe the training, if different.

27. For a period of two years beginning with the execution of this Agreement, the Tribe further agrees to provide appropriate training on any new accounting software to its Financial Officer, and other finance staff as appropriate, within 90 days of implementation. Prior to implementation of any new accounting software, the Tribe will notify the NIGC Director of Compliance of the scheduled training, identify the personnel to be trained, and describe the training. The Tribe will notify the NIGC Director of Compliance within 7 days after the training is completed. Such notice will identify the staff that participated in training and describe the training, if different.
28. Failure to submit the comparative financial statements with the audit report, pursuant to 25 C.F.R. § 571.13(a), and failure to submit the Agreed Upon Procedures report, pursuant to 25 C.F.R. § 543.23(d), are separate violations. 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.
29. Each daily omission is deemed a separate violation for purposes of the total civil fine assessed. 25 C.F.R. § 575.3. The Chairman has determined that the maximum amount of civil fines that may be assessed against the Tribe for the violations alleged in NOV-18-02 is \$ 2,667,704.
30. Of the \$ 2,667,704 in civil fines that could be assessed, the Tribe agrees to pay, and the Chairman agrees accept, the amount of \$ 51,302, payable to the U.S. Treasury and delivered to the NIGC at 1849 C Street, N.W., Mail Stop #1621, Washington, D.C. 20240, subject to the conditions set forth in paragraph 31.
31. The Chairman agrees to suspend \$46,302 of the civil fine pending the Tribe's adherence to the terms of this Agreement. Accordingly, the Tribe shall pay the remaining \$5,000 within 30 days after it receives a fully executed copy of this Agreement from the Chairman or the Chairman's designee. The civil fine is payable to the U.S. Treasury and delivered to the NIGC at 1849 C Street, N.W., Mail Stop #1621, Washington, D.C. 20240.
32. The Tribe agrees that if any term of this Agreement is not met, the balance of the civil fine in the amount of \$46,302 will become due, and payment must be made within 30 days of the Tribe receiving written notice by the Chairman. The civil fine is payable to the U.S. Treasury and delivered to the NIGC at 1849 C Street, N.W., Mail Stop #1621, Washington, D.C. 20240.
33. The NIGC Chairman agrees upon execution of this Agreement to waive the right to impose any further civil fine against the Tribe relating to the violations described in Notice of Violation, NOV-18-01.
34. The Tribe waives all rights to further pursue an appeal of NOV-18-01 before the Commission, waives all rights to pursue an appeal to a presiding official, and waives all rights to judicial review of such proceedings.
35. 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 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.

36. 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.

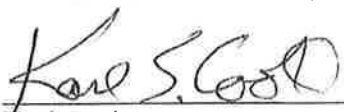
#### TERM OF THE AGREEMENT

37. This Agreement shall terminate upon the fulfillment of all terms listed under the Terms of Settlement.

#### ADDITIONAL COVENANTS

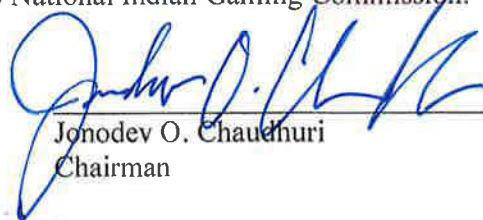
38. This Agreement constitutes the entire agreement between the Chairman and the Tribe relating to NOV-18-02 and supersedes all prior verbal or written agreements and understandings between the parties related to the subject matter. No warranties, representations, covenants, or agreements shall be binding 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.
39. 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(b).
40. 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.
41. 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 Metlaktla Indian Community:

By:   
Karl Cook  
Mayor

Date: 5-10-18

For the National Indian Gaming Commission:

By:   
Jonodev O. Chaudhuri  
Chairman

Date: 5/16/18