

# National Indian Gaming Commission

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## SETTLEMENT AGREEMENT

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SA 18-03

This Settlement Agreement (Agreement) is entered into by and between the Cheyenne River Sioux Tribe, through its duly authorized representative, and the Chairman of the National Indian Gaming Commission to resolve violations of the Indian Gaming Regulatory Act, NIGC regulations, and the Tribe's gaming ordinance identified in Notice of Violation 18-03, to resolve the Tribe's appeal of NOV 18-03, and to resolve Proposed Civil Fine Assessment 18-03.

### RECITALS

1. Pursuant to IGRA and NIGC regulations, the NIGC Chair may issue a notice of violation to any person for violations of any provision of IGRA, NIGC regulations, or any provision of a tribal gaming ordinance or resolution approved by the NIGC Chair.<sup>1</sup>
2. Pursuant to IGRA and NIGC regulations, the NIGC Chair has authority to levy and collect appropriate civil fines, not to exceed \$51,302 per violation, against a tribe, a management contractor, or an individual operating Indian gaming for any violation of any provision of IGRA and NIGC regulations.<sup>2</sup> If noncompliance continues for more than one day, the NIGC Chair may treat each daily illegal act or omission as a separate violation.<sup>3</sup>
3. 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.<sup>4</sup>
4. NIGC regulations require a tribe to 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.<sup>5</sup>
5. 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.<sup>6</sup>

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<sup>1</sup> 25 U.S.C. § 2713(a)(3); 25 C.F.R. § 573.3(a).

<sup>2</sup> 25 U.S.C. § 2713(a)(1); 25 C.F.R. § 575.4; Annual Adjustment of Civil Monetary Penalty to Reflect Inflation, 83 Fed. Reg. 2,059 (Jan. 16, 2018).

<sup>3</sup> 25 C.F.R. § 575.4(a)(2).

<sup>4</sup> 25 U.S.C. § 2710(b)(2)(C).

<sup>5</sup> 25 C.F.R. § 571.12(b).

<sup>6</sup> 25 C.F.R. § 571.13(a).

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6. Section 9 of the Cheyenne River Sioux Tribe Gaming Ordinance, approved by the NIGC Chair on April 10, 2018, requires the Tribe to conduct annual independent audits of its gaming operations and to submit the results of those audits to the NIGC within 120 days after the end of each fiscal year of the gaming operation.<sup>7</sup>
7. The Tribe operated its gaming operation, Cheyenne River Sioux Tribe Bingo (CRST Bingo), at 2001 Main Street, Eagle Butte, South Dakota, during part of fiscal year 2017.
8. Based on the most recent financial statements and audit submitted to the NIGC, the fiscal year for CRST Bingo runs from October 1 to September 30. Therefore, the financial statements and audit for CRST Bingo for fiscal year 2017 were due to the NIGC on or before January 28, 2018.
9. The Tribe failed to submit the fiscal year 2017 financial statements and audit to the NIGC by January 28, 2018.
10. On October 24, 2018, the NIGC Chair issued Notice of Violation 18-03 to the Tribe for the failure to submit annual audited financial statements for fiscal year 2017 for CRST Bingo.
11. On November 2, 2018, the Tribe appealed NOV 18-03.<sup>8</sup>
12. On November 21, 2018, the NIGC Chair issued Notice of Proposed Civil Fine Assessment 18-03 to the Tribe, wherein the NIGC Chair assessed a fine against the Tribe in the amount of \$76,953.00.
13. On December 11, 2018, Mark Van Norman, Special Counsel for the Tribe, delivered the fiscal year 2017 audit for CRST Bingo to the NIGC by email.
14. The Tribe and the NIGC Chair desire to resolve the issues related to NOV 18-03, the Tribe's appeal of NOV 18-03, and CFA 18-03.
15. The Tribe and the NIGC Chair 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.

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<sup>7</sup> See also Cheyenne River Sioux Tribe Gaming Ordinance, Ordinance 53B, § 5 (approved by the NIGC Chair on May 4, 1995) (stating, "The Tribe shall require an independent audit of gaming operations to be conducted annually and the Tribe shall submit the resulting audit reports to the National Indian Gaming Commission.").

<sup>8</sup> See Letter from Harold Frazier, Chairman, Cheyenne River Sioux Tribe, to Jonodev Chaudhuri, NIGC Chair (Nov. 2, 2018).

17. The Tribe admits that it was required to submit to the NIGC the comparative financial statements and annual independent audit of CRST Bingo 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 CRST Bingo in fiscal year 2017.
19. The Tribe admits that the fiscal year 2017 comparative financial statements and audit for CRST Bingo were submitted to the NIGC on December 11, 2018, which was 317 days after the audit was due (January 28, 2018).
20. The Tribe is aware of its rights to:
  - a. Appeal NOV 18-03 and CFA 18-03 to the full Commission pursuant to 25 C.F.R. part 585;
  - b. Obtain a hearing to contest the matter pursuant to 25 C.F.R. part 584; and
  - c. Appeal any final determination by the full Commission to a federal district court pursuant to 25 U.S.C. § 2714.
21. The Tribe stipulates that this 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 three years following the execution of this Agreement, the Tribe shall submit to the NIGC the comparative financial statements and audits, together with management letters, or a review of financial statements if so permitted by the Commission,<sup>9</sup> for CRST Bingo within 120 days of the fiscal year end, as required by 25 C.F.R. § 571.13.
  - a. For fiscal year end 2018, the Tribe shall submit the reviewed financial statements or comparative financial statements and audits, together with management letters, for CRST Bingo no later than January 28, 2019.
  - b. For fiscal year end 2019, if the Tribe conducts Class II or Class III gaming, the Tribe shall submit the reviewed financial statements or comparative financial statements and audits, together with management letters, for CRST Bingo no later than January 28, 2020.

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<sup>9</sup> See 25 C.F.R. § 571.12(c).

- c. For fiscal year end 2020, if the Tribe conducts Class II or Class III gaming, the Tribe shall submit the reviewed financial statements or comparative financial statements and audits, together with management letters, for CRST Bingo no later than January 28, 2021.
24. For the fiscal year end 2019 and 2020 audits, if the Tribe conducts Class II or Class III gaming, the Tribe agrees to engage an independent certified public accountant, no later than July 1 for each respective year, to prepare an annual audit of the comparative financial statements for CRST Bingo. The engagement letter must state that the independent certified public accountant will provide the annual audit to the Tribe by January 14 of each respective year and must state the specific date on which the Tribe's audit is due to the NIGC pursuant to IGRA and NIGC regulations. The Tribe must provide the NIGC Director of Compliance a copy of the executed engagement letter by July 14 of each respective year.
25. For both the fiscal year end 2019 and 2020 audits, the Tribe must implement adequate internal controls such that the independent certified public accountant engaged by the Tribe will receive sufficient audit evidence to provide a basis for an audit opinion regarding the comparative financial statements of CRST Bingo. If the independent certified public accountant provides either an adverse or disclaimed opinion for either the fiscal year end 2019 audit or the fiscal year end 2020 audit, the Tribe will have breached this term of settlement.
26. The Tribe agrees that all members of the Cheyenne River Sioux Tribe Gaming Commission, the board members and Executive Director of the Cheyenne River Economic Development Company (CREDCO), and any manager or director of CRST Bingo will each attend a minimum of 8.0 hours of NIGC training addressing the violations set forth in NOV 18-03, and adequate internal controls for financial close and reporting, revenue audit controls, payroll controls, revenue and expense classifications, reconciliation of related party balances and controls over voids and refunds; preparing for an annual independent audit; and any other matters deemed pertinent by the NIGC to the enhancement of the Tribe, its Gaming Commission, CREDCO, and CRST Bingo. This training will be conducted by the NIGC at a facility on the Tribe's lands. The NIGC and the Tribe will schedule mutually agreeable dates for this training. The Tribe agrees that it will provide at least four (4) potential weeks between date of this Agreement and May 31, 2018, when this training may occur. Expenses associated with the training, such as travel, meals and accommodations, will be covered by the Tribe, CREDCO, or the person attending the training and incurring the expense.
27. The Tribe agrees that it will adopt and implement adequate internal controls for CRST Bingo that address the internal control deficiencies stated in the fiscal year 2017 audit for CRST Bingo, specifically financial close and reporting, revenue audit controls, payroll controls, revenue and expense classifications, reconciliation of related party balances and controls over voids and refunds. The Tribe agrees that it will, in consultation with the NIGC, adopt said internal controls by July 1, 2019. The NIGC Director of Compliance

must approve the internal controls. If the NIGC Director of Compliance has any concerns regarding the Tribe's internal controls, the NIGC Director of Compliance will provide the Tribe the concerns in writing, and the Tribe agrees to work in good faith with the NIGC to remedy the concerns.

28. Of the \$76,953.00 proposed civil fine assessed against the Tribe in CFA 18-03, the Tribe agrees to pay, and the NIGC Chair agrees to accept, the amount \$1,000.00, payable to the U.S. Treasury and delivered to the NIGC at 1849 C. Street NW, Mail Stop #1621, Washington, D.C. 20240. The Tribe must pay the \$1,000.00 within 10 days of execution of this Agreement.
29. The NIGC Chair agrees to suspend the remaining amount of the civil fine assessment from CFA 18-03 in the amount of \$75,953.00, pending the Tribe's adherence to the terms of this Agreement. The NIGC Chair agrees that if the Tribe fully complies with the terms of this Agreement, the balance of the civil fine assessment in the amount of \$75,953.00 will be waived.
30. The Tribe agrees that if any term of this Agreement is not met, the balance of the civil fine assessment in the amount of \$75,953.00 will be become fully due and payable. Payment must be made within 30 days of the Tribe receiving a demand letter from the NIGC Chair.<sup>10</sup> The Tribe agrees that the NIGC and/or U.S. Department of Treasury may proceed with debt collection of the \$75,953.00 civil fine (less amounts already paid) against the Tribe and may assess interest, penalties, and administrative costs from the date of breach of this Agreement, as provided in 25 C.F.R. § 513.5. In such circumstance, the Tribe waives any rights to any hearing pursuant to 25 C.F.R. § 513.6, but the NIGC shall provide the Tribe with a reasonable opportunity to submit written material supporting a request to reconsider the determination that the Tribe is in breach of this Agreement or to challenge the method by which the NIGC calculated the debt.
31. The NIGC Chair 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 NOV 18-03, specifically the Tribe's failure to submit the fiscal year 2017 audit for CRST Bingo.
32. The Tribe waives all rights to further pursue an appeal of NOV 18-03 and CFA 18-03 before the Commission, waives all rights to pursue an appeal before a presiding official, and waives all rights to judicial review of such proceedings.
33. In exchange for the terms, conditions, and understandings set forth in this Agreement, the Tribe waives its rights to any administrative review of this Agreement pursuant to 25 C.F.R. parts 584 and 585, to seek reduction or waiver of a civil fine pursuant to 25 C.F.R. § 575.6, and the right to seek judicial review pursuant to 25 U.S.C. § 2714.

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<sup>10</sup> See 25 C.F.R. § 513.4.

34. The Tribe agrees that this Agreement does not restrict the NIGC Chair from exercising his enforcement authority for any other violation of IGRA, NIGC regulations, and/or the Tribe's gaming ordinance not described in NOV 18-03.

**TERM OF THE AGREEMENT**

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

**ADDITIONAL COVENANTS**

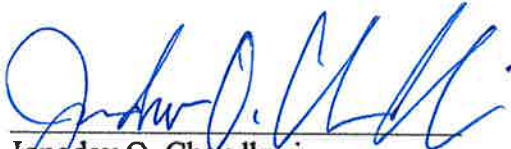
36. This Agreement constitutes the entire agreement between the NIGC Chair and the Tribe relating to NOV 18-03, the appeal of NOV 18-03, and CFA 18-03, and supersedes all prior verbal or written agreements and understanding between the parties related to the subject matter. No warranties, representations, 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.
37. The Tribe agrees that this Agreement shall be deemed a final order of the Commission and a final agency action pursuant to 25 C.F.R. § 573.5(b).
38. The NIGC Chair and the Tribe agree and acknowledge that time is of the essence in this Agreement, and that recitals, circumstances, terms, and covenants herein and set forth above shall be binding upon the parties, their agents, heirs, personal representatives, successors, and assigns.
39. A signature produced by facsimile shall be deemed to be an original signature and shall be effective and binding for purposes of this Agreement.

For the Cheyenne River Sioux Tribe:

By:   
Harold Frazier  
Chairman

Date: 1/17/19

For the National Indian Gaming Commission:

By:   
Jonodev O. Chaudhuri  
Chairman

Date: 1/17/19