

# National Indian Gaming Commission

---

## SETTLEMENT AGREEMENT SA-11-01

---

### INTRODUCTION

This Settlement Agreement (Agreement) is entered into by and between the Flandreau Santee Sioux Tribe (Tribe), a federally-recognized Indian tribe, and the Chairwoman of the National Indian Gaming Commission (NIGC Chairwoman), as a consequence of Notice of Violation, NOV-11-01.

### RECITALS

1. Whereas, the Indian Gaming Regulatory Act (IGRA) authorizes the NIGC Chair to issue civil fines for violations of IGRA, National Indian Gaming Commission (NIGC) regulations, and tribal regulations, ordinances, or resolutions approved by the NIGC Chair under IGRA, 25 U.S.C. §§ 2710 and 2712. 25 U.S.C. § 2713(a)(1).
2. Whereas, under NIGC regulation, 25 C.F.R. § 573.3(a), the NIGC Chair may issue a notice of violation (nov) to any person for violations of any provision of the IGRA, NIGC regulations, or any provision of a tribal gaming ordinance or resolution approved by the Chair.
3. Whereas, under NIGC regulation, 25 C.F.R. § 573.6(a)(7), it is a substantial violation of IGRA for a management contractor to manage an Indian gaming operation without a contract approved by the Chair or under an unapproved modification to a management contract.
4. Whereas, failure to comply with NIGC regulation, 25 C.F.R. § 571.13(a), is grounds for issuance of a notice of violation. This regulation requires the submission of management letters prepared by a gaming operation's independent auditor within 120 days of the end of the operation's fiscal year.
5. Whereas, failure to comply with IGRA, 25 U.S.C. § 2710(b)(2)(B); NIGC regulation, 25 C.F.R. § 522.6; and the Flandreau Santee Gaming Ordinance is grounds for issuance of the notice violation, because making payments to a management contractor from net gaming revenue that exceeds the amount set forth in the approved management contract violates IGRA's use of net gaming revenue mandates, NIGC regulations, and the Flandreau Santee Sioux Gaming ordinance requirements.

6. Whereas, on May 19, 2011, the NIGC Chairwoman issued NOV-11-01 to the Tribe for: allowing Bettor Racing, Inc. and Mr. J. Randy Gallo to manage its gaming operation without an approved management contract from September 24, 2004 through March 16, 2005; operating under two unapproved modifications to the management contract from February 15, 2007 through April 5, 2010; failing to submit management letters with their annual audits for fiscal years 2005 and 2006; and paying net gaming revenues to Bettor Racing, Inc. and Mr. J. Randy Gallo over and above what was allowed under the approved management contract.
7. Whereas, the NIGC Chairwoman and the Tribe desire to achieve an amicable resolution of Notice of Violation, NOV-11-01.
8. Therefore, the Chairwoman and the Tribe agree to execute this Agreement and to perform in accordance with the following covenants and conditions:

#### TERMS OF SETTLEMENT

9. This Agreement is entered into pursuant to NIGC regulation, 25 C.F.R. § 575.6(b), and shall be effective upon the date that it is signed by the last party to sign this Agreement (Effective Date).
10. The Tribe acknowledges that IGRA and NIGC regulations authorize a third party to manage a gaming operation or a part thereof only under a management contract that has been approved by the NIGC Chair.
11. The Tribe admits that it allowed Bettor Racing, Inc. and Mr. J. Randy Gallo to manage and operate its gaming operation without an approved management contract from September 24, 2004 through March 16, 2005 in violation of IGRA and NIGC regulations.
12. The Tribe acknowledges that IGRA and NIGC regulations required that the two modifications to its management contract be approved by the NIGC Chair prior to the parties acting under them.
13. The Tribe admits that it, along with Bettor Racing and Mr. J. Randy Gallo, operated under two unapproved modifications to their approved management contract from February 15, 2007 through April 5, 2010 in violation of IGRA and NIGC regulations.
14. The Tribe acknowledges that NIGC regulations mandate that all management letters be submitted with annual audits of the financial statements of its gaming operations within 120 days of the gaming operations' fiscal years.

15. The Tribe admits that it did not submit the management letters with its annual audits as required by NIGC regulations for fiscal years 2005 and 2006 in violation of NIGC regulations.
16. The Tribe acknowledges that IGRA, NIGC regulations, and the Flandreau Santee Sioux Gaming Ordinance set forth specific categories of permissible uses of net gaming revenue.
17. The Tribe admits that paying Bettor Racing, Inc. and Mr. J. Randy Gallo net gaming revenues beyond the amount permitted in their approved management contract violated IGRA, NIGC regulations, and the Flandreau Santee Sioux Gaming Ordinance.
18. For a period of three years beginning on September 30, 2011, the Tribe agrees that the Chairman of the Flandreau Santee Sioux Tribe will provide a certification to the NIGC that the annual audit submission is complete, includes all management letters and other documented auditor communications and/or reports issued as a result of the annual audits, and complies with NIGC regulation, 25 C.F.R. § 571.13.
19. The Tribe agrees that all tribal council members; the general manager of Royal River Casino; the comptroller of Royal River Casino; the tribal gaming commission and its staff; Royal River Casino finance staff; and anyone authorized to sign checks for the Casino will attend NIGC training addressing the violations set forth in the NOV-11-01. This training will be conducted by NIGC at a facility on the Tribe's lands. The NIGC and the Tribe will schedule mutually agreeable dates for this training; however, the Tribe agrees that it will provide at least four (4) potential weeks between the effective date of this Agreement and July 1, 2012 when this training may occur. Expenses incurred associated with the training, such as travel, meals, and accommodations, will be covered by the Tribe or the person attending the training and incurring the expense.
20. The Tribe agrees that all tribal council members; the general manager of Royal River Casino; the comptroller of Royal River Casino; the gaming commission and its staff; Royal River Casino finance staff; anyone authorized to sign checks for the Casino; and any person deemed necessary by the Tribe to ensure the financial integrity of its gaming operation; will attend NIGC training addressing Minimum Internal Control standards. This training will be conducted by NIGC at a facility on the Tribe's lands. The NIGC and the Tribe will schedule mutually agreeable dates for this training; however, the Tribe agrees that it will provide at least four (4) potential weeks between the effective date of this Agreement and July 1, 2012 when this training may occur. Expenses incurred associated with the training, such as travel, meals, and accommodations, will be

covered by the Tribe or the person attending the training and incurring the expense.

21. The Tribe agrees that it will provide a certification to the NIGC that all funds received from Bettor Racing, Inc. or Mr. J. Randy Gallo as a result of the notice of violation, any subsequent enforcement action, or settlement agreements, were provided to the Tribal Government for use in compliance with federal and tribal law. Each certification will detail the date that the funds were provided to the Tribal Government.
22. For a period of three years beginning on September 30, 2011, the Tribe agrees that it will provide the NIGC an annual training fund assessment letter detailing the amount of training funds dedicated to training the tribal gaming commission, internal audit staff, and employees of its gaming operation, including the accounting department, identifying the amount of funds dedicated to each, and an explanation of whether such funds are sufficient. Funds expended relating to training provided by the NIGC in accordance with this agreement shall not be included in the assessment. If the Tribe does not believe that some or all the funds dedicated to training are sufficient, it will advise the NIGC of the additional amounts of funding it agrees to dedicate to training; the specific staff to receive such training; and the time period, not to exceed one year from the date of the assessment letter, in which it will perform such training. The Tribe agrees that it will provide this training fund assessment to the NIGC within 3 months of the effective date of this Agreement and thereafter annually for the two additional years. If the NIGC has any concerns regarding the Tribe's training fund assessment or its schedule of training, it will provide the Tribe its concerns in writing, and the Tribe agrees to work in good faith with the NIGC to remedy its concerns.
23. The Tribe agrees to submit documentation to the NIGC demonstrating the expenditure of the additional training funds described in paragraph 22 within 30 days of each training.
24. The Tribe agrees to set aside \$100,000 of all funds received as a result of NOV 11-01, any subsequent enforcement action, or any settlement agreement, from Bettor Racing, Inc. or Mr. J. Randy Gallo for training of its tribal gaming commission, internal audit staff, and employees of its gaming operation, including the accounting department as well as enhancements to the Casino's gaming commission, internal audit department, accounting department, and finance departments. The Tribe agrees to submit documentation to the NIGC demonstrating the proper expenditure of these funds within 24 months of the receipt of the funds. Evidence of these expenditures shall be provided to the NIGC no later than 30 days after each training or enhancement.

25. The Tribe agrees to submit every contract related to Royal River Casino and any new gaming operation that it enters into with a third party for which compensation is \$100,000 or more to the NIGC Office of General Counsel for review and a legal opinion regarding whether the contract is a management contract and whether it violates the sole proprietary interest mandate of IGRA.
26. If the Tribe breaches any provision of this Agreement, it agrees and consents that a civil fine of \$ 750,000 will become fully due or payable on the date of the breach. In such circumstance, the NIGC shall issue a written notice (also known as a demand letter) to the Tribe pursuant to NIGC debt collection regulations, 25 C.F.R. part 513. The Tribe agrees that the NIGC and/or U.S. Department of Treasury may proceed with debt collection of the \$ 750,000 civil fine against the Tribe, and may assess interest, penalties, and administrative costs from the date of breach of this Agreement, as provided in NIGC regulation, 25 C.F.R. § 513.5. In such circumstance, the Tribe agrees that it waives any rights to an oral hearing under 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 the Agreement.
27. The Tribe agrees that by executing this Agreement, it waives its right to further review of matters addressed in this Agreement, including all rights to appeal to the full Commission as set forth in 25 C.F.R. Part 577 and judicial review pursuant to 25 U.S.C. § 2714.

#### ADDITIONAL COVENANTS

28. This Agreement constitutes the entire agreement between the NIGC Chairwoman and the Tribe relating to the enforcement matter set forth at the beginning of this Agreement and it supersedes all prior verbal or written agreements and understandings between the parties related to the subject matter hereof. Any amendments to this Agreement must be in writing and signed by both parties.
29. The Tribe agrees that this Agreement shall be deemed to be the subject of a final order of the NIGC Commission under 25 C.F.R. § 575.4(c)(1) and a final agency action pursuant to 25 C.F.R. § 577.9(d).
30. The NIGC Chairwoman and the Tribe expressly agree and acknowledge that time is of the essence in this Agreement. The recitals herein shall be binding upon the parties, their agents, heirs, personal representatives, successors, and assigns.
31. The parties agree that after the effective date, this Agreement shall be a public document and may be published or disclosed by either party.

32. This Agreement may be executed on one or more counterparts and each shall constitute an original. A signature produced by facsimile shall be deemed to be an original signature and shall be effective and binding for purpose of the Agreement.

Flandreau Santee Sioux Tribe

National Indian Gaming Commission

  
Tony Reider, President

  
Tracie Stevens, Chairwoman

Date: 7-7-11

Date: 07-20-2011