



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR 19 2024

The Honorable Janet Alkire
Chairwoman, Standing Rock Sioux
Tribe of North and South Dakota
1 Standing Rock Avenue
Fort Yates, North Dakota 58538

Dear Chairwoman Alkire:

On January 22, 2024, the Office of Indian Gaming received the Gaming Compact (Compact) between the Standing Rock Sioux Tribe of North & South Dakota (Tribe) and State of South Dakota (State) for review, approval, and publication in the *Federal Register*. The Compact governs the conduct of Class III gaming activities by the Tribe.

Under the Indian Gaming Regulatory Act (IGRA), the Secretary of the Interior (Secretary) may approve or disapprove a compact within 45 days of its submission. 25 U.S.C. § 2710(d)(8). If the Secretary does not affirmatively approve or disapprove the compact within 45 days, the IGRA provides that the compact is considered to have been approved by the Secretary, “but only to the extent that the compact is consistent with the provisions of [IGRA].” 25 U.S.C. § 2170(d)(8)(c).

DECISION

We have undertaken a thorough review of the Compact and the materials provided by the Tribe and State. The Compact permits the Tribe to conduct class III gaming on its reservation in South Dakota where it currently operates class III gaming operations. I have significant concerns with several provisions in the Compact, however I decline to use my authority to take action on the Compact within the prescribed 45-day review period. As a result, the Compact is “considered to have been approved by the Secretary, but only to the extent [it] is consistent with the provisions of [IGRA].” 25 U.S.C. § 2710(d)(8)(C).

The Compact takes effect upon the publication of notice in the *Federal Register* pursuant to IGRA.¹ We have set forth an explanation of our concerns below.

Permissible Subjects of Compact Terms

The Compact contains several notable provisions implicating the limitations on compact terms and conditions prescribed by Congress in IGRA. The IGRA established a statutory scheme that limited tribal gaming and sought to balance Tribal, State, and Federal interests in regulating gaming activities on Indian lands. To ensure an appropriate balance between tribal and state interests, Congress, through IGRA, limited the terms over which tribes and states could include in a class III

¹ 25 C.F.R. § 293.15.

gaming compact and include:

- (i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of [governing gaming activities Indian lands];
- (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;
- (iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;
- (iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;
- (v) remedies for breach of contract;
- (vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and
- (vii) any other subjects that are *directly related to the operation of gaming activities*.

25 U.S.C. § 2710(d)(3)(c) (*emphasis added*).

The above referenced provision limits the terms that can be included in a class III tribal-state gaming compact. The Secretary fulfills the Department of the Interior's (Department) trust responsibilities to Tribes by enforcing the provisions of IGRA and ensuring that states do not leverage Tribal gaming compacts as a means to impose jurisdiction or influence over matters unrelated to gaming. While Congress, through IGRA's Tribal-State compact provisions, allowed for the consideration of states' interests in the regulation and conduct of class III gaming activities, they also sought to establish "boundaries to restrain aggression by powerful states."² We conduct our review of Tribal-State gaming compacts against this backdrop and the premise that IGRA codified the Tribal governments inherent authority to regulate gaming activities on their own lands. Therefore, we must view the scope of prescribed state regulatory authority over tribal gaming activities narrowly.

Impermissible Compact Terms

Each Compact is reviewed according to its unique facts and circumstances. One of the most challenging aspects of this review is determining whether a particular provision complies with IGRA's "catch-all" category "... subjects that are directly related to the operation of gaming activities."³ In the context of applying the "catch-all" category, we do not simply ask, 'but for the existence of the Tribe's class III gaming operation, would the particular subject regulated under a

² *Rincon Band v. Schwarzenegger*, 602 F. 3d 1019 (9th Cir. 2010) (citing S. Rep. No. 100-446, at 33).

³ 25 U.S.C. § 2710(d)(3)(C)(vii).

compact provision exist?’ Instead, we must look to whether the regulated activity or compact provision has a *direct connection* to the Tribe’s conduct of class III gaming activities.⁴ The Compact terms below give rise to significant concerns and could be construed to demonstrate violations of IGRA:

Compact Section 8.5: Number of Gaming Devices

We are concerned that Compact Section 8.5 impermissibly requires the Tribe to dedicate funding between \$75,000 and \$250,000 annually to the Tribe’s tribal youth programs should the Tribe utilize 500 or more Class III gaming devices. The parties have provided no information demonstrating a direct connection between funding the Tribe’s tribal youth programs and the Tribe’s gaming operations, beyond the use of gaming revenues to fund the program. While funding a Tribal youth program is clearly an allowable use of gaming revenues under IGRA, it is our view that this provision is not directly related to the operation of gaming activities. Rather, it interferes with the Tribe’s inherent sovereign authority to determine for itself how to annually allocate its gaming profits by linking that with the number of gaming devices the Tribe chooses to operate.⁵

Nothing in IGRA or its legislative history indicates that Congress intended to allow gaming compacts to be used to expand state regulatory authority over tribal activities that are not directly related to the conduct of class III gaming. It is solely a Tribe’s prerogative flowing from its inherent tribal sovereignty to choose which Tribal governmental programs it shall fund and to what amounts of its net gaming revenue it shall devote to those programs. In other words, a governmental program’s use of net gaming revenues does not, in and of itself, make it a legal term within a compact under IGRA. Under IGRA, it is not permissible for tribal-state compacts to provide for state regulation of activities such as a Tribe’s use or allocation of funding towards specific governmental programs. The provisions of Section 8.5 are inconsistent with IGRA and if implemented as contemplated, not enforceable under IGRA.

Section 12: Tribal Reimbursement of State Costs and Expenses

The proposed compact allows the State to charge the Tribe \$70 per hour for “state employee time”. A review and comparison to the previous compact, approved in 2020, indicated a fee of \$60 per hour for “state employee time” for the initial period of the compact and if an extension of the compact was granted that hourly rate would increase to \$70 per hour. In addition to those hourly rates, separate assessments for travel expenses are included in the Compact. Further the review of another recent South Dakota compact found that the hourly fee rate for “state employee time” was maintained at \$60 per hour for the next 10 years.

The Department reads IGRA’s provision permitting the State to assess regulatory costs narrowly and as inherently limited in scope, allowing states to assess only reasonable costs associated with the regulation of class III gaming activities.⁶ However, in this case neither the Tribe nor the State could provide a reasonable explanation as to why one Tribe may be charged \$10 more per hour for

⁴ See *Chicken Ranch Rancheria of Me-Wuk Indians v. Cal.*, 42 F.4th 1024, 1036 (9th Cir. 2022), citing favorably the Department’s “directly related” test applying 25 U.S.C. § 2710(d)(3)(C)(vii).

⁵ 25 U.S.C. § 2710(b)(2)(B).

⁶ 25 U.S.C. § 2710(d)(3)(C)(iii)

State employees time than a neighboring Tribe. This difference brings into question as to whether or not the Tribes are being charged the actual and reasonable costs necessary to defray the State's expenses of regulating the gaming activity or if this difference is a prohibited tax, fee, or other assessment under IGRA.⁷ Without evidence to the contrary, I have serious concerns that this discrepancy between compacts negotiated at or about the same time between different Tribes appears to be an impermissible tax, fee, or charge in violation of IGRA.

Compact Section 13: Personal Injury and Property Damage Remedy for Patrons

We also have significant concerns regarding Section 13 of the Compact. This provision appears to require the Tribe to maintain and enforce a tort claims ordinance that covers visitors of the Tribe's gaming facility for injury or property damage. The term indicates that the insurance must cover the gaming operation, its agents, and its employees against claims by visitors of the gaming facility for bodily injury or property damage arising out of the operation of the gaming facility. Section 12 requires the Tribe to maintain public liability insurance and waive its sovereign immunity against claims of up to \$1 million per person or occurrence.

Like many tribes, the Tribe has developed several ancillary amenities in the form of a casino resort complex that includes a hotel and campground. Absent the existence of class III gaming under IGRA, no State civil regulatory laws or local government ordinances, for example, would apply to the hotel or anywhere else on the Tribe's lands. However, the term gaming facility in the Compact is undefined, making it conceivable that the provision could be misconstrued as impermissibly requiring the Tribe to apply it to the entire casino complex and to individuals or guests who are unassociated with the operation of gaming activities.

Because IGRA is very specific about the lawful reach of a compact to protect the sphere of tribal sovereignty, we must construe its provisions narrowly and avoid inferences that diminish tribal sovereignty. In this context, we interpret IGRA's "catch-all"⁸ provision as applying only to the spaces where the operation of class III gaming actually takes place such as the casino floor, vault, surveillance, count room, casino management, casino information technology, storage areas for gaming devices and supplies that we refer to as "Gaming Spaces".⁹ This term does not include areas where no gaming activities take place, such as ancillary businesses and places that are simply close in proximity. We therefore caution the parties to avoid interpreting Section 12 as applicable to areas beyond Gaming Spaces. To the extent that the Compact is implemented in such a way as to apply the tort provision to the Tribe's entire commercial complex, it is not lawful.

⁷ 25 U.S.C. 2710(d)(4);

⁸ 25 U.S.C. § 2710 (d)(3)(c)(vii)

⁹ See e.g. Letter to the Honorable Jose Simon III, Chairman, Middletown Rancheria of Pomo Indians of California (Tribe), from Bryan Newland, Assistant Secretary-Indian Affairs, dated July 22, 2022, disapproving the *Middletown Rancheria of Pomo Indians of California and State of California class III gaming compact*, pages 5-7.

CONCLUSION

As explained above, I have significant concerns with several provisions in the Compact, however I decline to use my authority to take action on the Compact within the prescribed 45-day review period. As a result, the Compact is “considered to have been approved by the Secretary, but only to the extent [it] is consistent with the provisions of [IGRA].” 25 U.S.C. § 2710(d)(8)(c).

The Compact is effective upon the publication of notice in the *Federal Register*, as required by 25 U.S.C. § 2710(d)(8)(D). A similar letter is being sent to the Honorable Janet Alkire, Chairwoman, Standing Rock Sioux Tribe of North and South Dakota.

Sincerely,



Wizipan Garriott
Principal Deputy Assistant Secretary - Indian Affairs
Exercising by Delegation the Authority of the
Assistant Secretary – Indian Affairs

Enclosure

**GAMING COMPACT BETWEEN THE STANDING ROCK SIOUX TRIBE
AND THE STATE OF SOUTH DAKOTA
(Including 2001, 2009, 2020, 2022, and 2023 Amendments)**

This Agreement, having been entered into on August 31, 1992, is is now amended by and between the Standing Rock Sioux Tribe (Tribe), and the State of South Dakota (State).

WHEREAS, the Tribe is a federally recognized Indian Tribe whose reservation is located in Corson County, South Dakota and Sioux County, North Dakota; and

WHEREAS, the Great Sioux Nation entered into the 1868 Treaty with the United States of America, (Fort Laramie Treaty of April 29, 1868, 15 Stat. 635), and the Act of March 2, 1889 (25 Stat. 888) established the Standing Rock Sioux Reservation for the benefit of the Standing Rock Sioux Tribe from among the lands of the 1868 Great Sioux Reservation;

WHEREAS, Article IV section 1a of the Constitution of the Tribe provides that the governing body of the Tribe shall be the Tribal Council which has the constitutional authority to negotiate with State government; and

WHEREAS, the State has, through constitutional provisions and legislative acts, authorized limited gaming activities to be conducted in Deadwood, South Dakota; and

WHEREAS, the Congress of the United States has enacted the Indian Gaming Regulatory Act, Public Law 100-497, 102 Stat. 2426, 25 U.S.C. 2701, et seq. (1988), which permits Indian tribes to operate Class III gaming activities on Indian reservations pursuant to a Tribal-State Compact entered into for that purpose; and

WHEREAS, the Tribe operates gaming activities on the Standing Rock Sioux Reservation in Corson County, South Dakota since the Tribe and the State entered into a gaming compact in 1992; and

WHEREAS, the Tribe continues its operation of such gaming activities; and

NOW, THEREFORE, in consideration of the foregoing, the Tribe and the State hereto do promise, covenant, and agree as follows:

1. DECLARATION OF POLICY

In the spirit of cooperation, the Tribe and the State hereby set forth a joint effort to implement the terms of the Indian Gaming Regulatory Act. The State recognizes the positive economic benefits that gaming may provide to the Tribe. The Tribe and the State recognize the need to insure that the

Filed this 11th day of

January 2024
Monae L. Johnson

SECRETARY OF STATE

health, safety and welfare of the public and the integrity of the gaming industry in South Dakota is protected.

2. PURPOSE AND SCOPE OF COMPACT

This Compact and the Tribe's gaming regulations and ordinances shall govern the regulation and operation of Class III gaming on South Dakota portion of the Standing Rock Sioux Reservation. This Compact shall not apply to any Class I or Class II gaming whether conducted within or without the Tribal gaming establishment identified in Section 8.5 and shall not confer upon the State any jurisdiction or other authority over such Class I or Class II gaming conducted by the Tribe on Indian Lands. The purpose of this Compact is to provide the Tribe with the opportunity to operate gaming activities in a manner that will benefit the Tribe economically, that will insure fair operation of the games, and that will minimize the possibility of corruption.

3. TYPE OF GAMING PERMITTED

The Tribe shall operate blackjack, pari-mutuel wagering, slot machines, and sports wagering pursuant to the terms of this Compact and the Tribe's gaming regulations and ordinances. The Tribe shall be permitted to operate such other gaming as may be authorized by state law after the date of the signing of this Compact, upon written amendment of this Agreement, or under a separate Agreement.

For the purposes of this Compact; the terms "blackjack," and "slot machines" are defined by South Dakota Codified Laws 42-7B-4(6), (38), respectively, except that the term "slot machines" does not include "video lottery machines" as defined by SDCL 42-7A-1(18).

For purposes of this Compact. the term "sports wagering system" shall be as defined in ARSD 20:18:35:01(36) and "sports wagering services provider" shall be as defined in SDCL 42-7B-4(43).

4. OPERATION OF GAMING

- 4.1 The Tribe shall operate its gaming activities pursuant to this Compact and the ordinances and regulations enacted by the Tribe's Tribal Council which ordinances and regulations shall be at least as stringent as those adopted by the State of South Dakota in SDCL Chapt. 42-7B and ARSD 20:18, *et seq.* All such ordinances and regulations shall be made available to the State. The Tribe shall operate pari-mutuel wagering on horses and dogs pursuant to the terms of this Compact and the Tribe's gaming regulations and ordinances, which ordinances and regulations shall be at least as stringent as those adopted by the State of South Dakota in SDCL 42-7-56 and ARSD 20:04:15, *et seq.* and 20:04:15.01, *et seq.* for greyhound racing and in SDCL 42-7-56 and

ARSD 20:04:30, *et seq.* for horse racing. The Tribe may operate pari-mutuel wagering on horse and dog racing occurring within or without the United States. All equipment used by the Tribe, including electrical or mechanical tote board devices, in conducting pari-mutuel wagering shall be of the type and meet the standards for size and information display set forth by the South Dakota Commission on Gaming. The South Dakota Commission on Gaming agents shall be authorized to inspect (not to include audits) the equipment used by the Tribe in conducting pari-mutuel wagering to determine that it is in accordance with the laws and rules adopted in the Compact. Any periodic inspection of pari-mutuel wagering equipment shall only occur if the state inspector is accompanied by a member of the Tribal Gaming Commission or a designee. Any such inspection shall be carried out in a manner and at a time which will cause minimal disruption of the gaming operation. The Tribal Gaming Commission and the South Dakota Commission on Gaming shall be notified of all such inspections and the results of those inspections. If the results of any such inspection reveal that the equipment fails to meet applicable standards, the Tribe will not use such equipment until the equipment meets the applicable standards. Any simulcast signal received at the Tribal gaming establishment shall be provided by a simulcast provider authorized by the South Dakota Commission on Gaming to provide satellite wagering on satellite facilities in South Dakota.

- 4.2 The Tribe shall appoint a Tribal Gaming Commission which shall supervise the gaming activities, issue licenses as provided herein, inspect all premises where gaming is conducted and otherwise be responsible for enforcing the Tribe's Gaming Act and regulations. The Standing Rock Sioux Tribe Gaming Commission shall have primary responsibility for supervision and regulation of gaming on the Standing Rock Sioux Reservation. This shall include, but not be limited to, the licensing of gaming employees and the inspection and regulation of all gaming devices. Any discrepancies in the gaming operation and any violation of Tribal Gaming Commission regulations and rules of this Compact shall be immediately reported to the Tribal Gaming Commission and the South Dakota Gaming Commission for appropriate action by the Tribal Gaming Commission pursuant to the terms of this Compact.
- 4.3 Any suspected violation of any law or rule, adopted in the State-Tribal Compact, shall be reported to the Tribal Gaming Commission and the South Dakota Gaming Commission upon discovery, or as soon as practical not to exceed two (2) days. If either the State or the Tribe concludes that a violation has occurred, the violation will be addressed by the Tribe within five (5) days of that conclusion.

5. LAW ENFORCEMENT

5.1 All criminal matters arising from or related to Class III gaming shall be dealt with according to applicable Tribal, State, or Federal law. Nothing in this Compact shall deprive the Courts of the Tribe, the United States, or the State of South Dakota of such criminal jurisdiction as each may enjoy under applicable law.

5.2 The Tribe agrees to adopt Class III gaming ordinances and regulations to regulate gaming on the Standing Rock Sioux Reservation which ordinances and regulations are at least as stringent as those statutes and administrative rules adopted by the State of South Dakota to regulate gambling in Deadwood, South Dakota. The Tribe shall furnish the State with copies of such ordinances and regulations and shall advise the State of any amendment, revision or rescission of the gaming regulations. The State shall furnish the Tribe with any amendment, revision or rescission of its gaming regulations. The Tribe agrees that in no event shall it amend, revise or rescind any gaming regulations which would result in the tribal regulations being less stringent than the statutes and rules adopted by the State of South Dakota.

6. CIVIL JURISDICTION (OTHER THAN APPEALS FROM THE COMMISSION)

All civil matters arising from or related to Class III gaming shall be dealt with according to applicable Tribal, State, or Federal law. Nothing in this Compact shall deprive the Courts of the Tribe, The United States, or the State of South Dakota of such civil jurisdiction as each may enjoy under applicable law. Nothing in this provision shall be construed to be a waiver of the sovereign immunity of the Standing Rock Sioux Tribe or of the State of South Dakota.

7. LICENSING OF GAMING OPERATORS AND EMPLOYEES

All individuals who operate or manage a gaming operation on the Standing Rock Sioux Reservation shall be licensed by the Tribal Gaming Commission. All individuals employed to work directly with the gaming operation shall be licensed by the Commission.

The Tribal Gaming Commission shall have primary responsibility for the licensing of individuals who operate or manage a gaming operation or who are employed in the tribal gaming operation. Any person seeking to be licensed hereunder shall submit an application to the Tribal Commission which application shall include a written release by the applicant authorizing the Tribal Gaming Commission to conduct a background investigation of the applicant. A written report shall be provided to the State for its records within 30 days of the Tribal Gaming Commission's receipt of such report.

The Tribal Gaming Commission shall not issue a license to any unsuitable applicant. A suitable applicant is one who is determined suitable for a Tribal gaming license by the Tribal Gaming Commission according to tribal ordinance and by the South Dakota Gaming Commission pursuant to SDCL ch. 42-7B and the South Dakota Gaming Commission rules and regulations, provided that no credit check will be conducted for tribal license applicants and no applicant shall be deemed unsuitable because of issues pertaining to credit.

8. REGULATORY STANDARDS FOR GAMING ON THE STANDING ROCK SIOUX RESERVATION

In recognition of the valid public policy interests of the State, which are similarly appreciated as desirable by the Tribe, the following regulatory standards are established for gaming operated and played within the federally-recognized boundaries of the Reservation.

8.1 NO CREDIT EXTENDED

All gaming shall be conducted on a cash basis. Except as herein provided, no person shall be extended credit for gaming by the gaming facility operated within the Reservation, and no operation shall permit any person or organization to offer such credit for a fee. This restriction shall not apply to credits won by players who activate play on gaming machines after inserting coins, currency, tickets or tokens into the game, and shall not restrict the right of the Tribe or any other person to offer check cashing or to install or accept bank card or credit card transactions in the same manner as would be normally permitted at any retail business within the State.

8.2 MINIMUM AGE REQUIREMENTS AND GAMBLING ADDICTION PROGRAM

No person under the age of twenty-one (21) shall play or be allowed to play any gaming device authorized by this Compact. The Tribe will continue to require all casino employees receive mandatory training in identifying persons under age 21, procedures to verify individuals' age via proper identification, and methods to detect potentially invalid identification. The Tribe shall prohibit any form of advertising targeting or enticing underage gambling. The Tribe will maintain procedures and policies to enforcement this provision on the gaming facility which permits underage gambling to occur. Any violation of this provision shall be enforceable pursuant to paragraph 5.1. Violations prosecutable in state court shall proceed under SDCL 42-7B-35. Violations prosecutable in tribal court shall proceed under applicable tribal law.

No person under the age of twenty-one (21) shall be permitted on premises where gaming is conducted pursuant to this Compact, except as authorized by state law and tribal ordinance.

The Tribe shall adopt programs to address gambling addiction and promote responsible gaming to include mandatory training for all casino employees to identify possible gambling addiction behavior in patrons and post responsible gaming signage with gambling helpline phone numbers. The Tribe commits to contributing \$25,000 per year to most effectively support gambling addiction treatment, education, training, and prevention programs.

8.3 TECHNICAL STANDARDS FOR GAMING DEVICES AND SPORTS WAGERING SYSTEMS

All gaming machines and sports wagering systems operated and played within the Standing Rock Sioux Reservation pursuant to this Compact shall meet or exceed the hardware and software specifications set forth by the South Dakota Gaming Commission and SDCL 42-7B-43 and ARSD 20:18 prior to play. Gaming machine prototypes will be tested and approved prior to play by the State according to State procedures and by the Tribe according to tribal procedures.

8.4 APPROVAL OF GAMING DEVICES AND SPORTS WAGERING SYSTEMS

No gaming device or sports wagering system shall be operated on the Standing Rock Sioux Reservation unless:

- 1.e The gaming device is purchased, leased or acquired from a manufacturer or distributor licensed to sell, lease or distribute gaming devices by the State, or the sports wagering system is purchased, leased, or acquired from a sports wagering service provider licensed as a sports wagering services provider by the State, pursuant to SDCL ch. 42-7B and ARSD 20:18, and
- 2.e The gaming device, or sports wagering system, or a prototype thereof, has been tested, approved and certified by a gaming test laboratory meeting the requirements and standards of this Compact. For purposes of this Compact, a gaming test laboratory shall be a laboratory agreed to and designated in writing by the South Dakota Gaming Commission and the Tribal Gaming Commission.

8.5 NUMBER OF GAMING DEVICES

The Tribe shall be authorized to operate a total of 1,000 slot machines in a tribal establishment located in the SE1/4 of Section 35, T. 19 N, R. 29 E.,

Less 10 acres, Taken Area, Tract No. T 5579, of reservation trust land in Corson County, South Dakota provided that the Tribe makes annual payments to its tribal youth program(s) on the following schedule:

1. During the month the Tribe puts into operation its 500th gaming device, the Tribe will begin making an annual contribution of \$75,000 to its tribal youth program(s), paid on a quarterly basis.

By illustration, if the 500th gaming device is put into operation on January 1, then the Tribe will contribute \$18,750 in January, April, July, and October of that year, and for each year thereafter, as long as 500 or more gaming devices are operated.

2. During the month the Tribe puts into operation its 600th gaming device, the Tribe will increase its annual contribution to \$100,000 to its tribal youth program(s), paid on a quarterly basis.
3. During the month the Tribe puts into operation its 700th gaming device, the Tribe will increase its annual contribution to \$125,000 to its tribal youth program(s), paid on a quarterly basis.
4. During the month the Tribe puts into operation its 800th gaming device, the Tribe will increase its annual contribution to \$150,000 to its tribal youth program(s), paid on a quarterly basis.
5. During the month the Tribe puts into operation its 900th gaming device, the Tribe will increase its annual contribution to \$200,000 to its tribal youth program(s), paid on a quarterly basis.
6. During the month the Tribe puts into operation its 1,000th gaming device, the Tribe will increase its annual contribution to \$250,000 to its tribal youth program(s), paid on a quarterly basis.

There shall be no limits placed on the number of blackjack tables that may be operated. If the gaming device limits per retail license set by state law shall increase, the Tribe may request an increase in the numbers allowed to it and the State and the Tribe shall be required to negotiate in good faith with regard to that request. The parties acknowledge that a request to renegotiate the number of devices under this Section will allow the State to raise any matter which it deems appropriate and which could be raised in a negotiating session under the terms of the federal Indian Gaming Regulatory Act.

The Tribe shall be entitled to have up to forty (40) gaming devices in reserve as replacements for devices which are out of service as a result of mechanical problems. These additional devices are only to be used in such an event and shall meet the requirements of 8.3 (Technical Standards) of this Compact.

8.6 INSPECTION PROCEDURE

South Dakota Gaming Commission agents shall be authorized to inspect (not to include audits) the tribal gaming establishment in accordance with the laws and rules adopted in the Compact.

Any periodic inspection of gaming machines shall only occur if the state inspector is accompanied by a member of the Tribal Gaming Commission, the executive secretary of the Tribal Gaming Commission or a designee. Any such testing shall be carried out in a manner and at a time which will cause minimal disruption of the gaming operation. The Tribal Gaming Commission and the South Dakota Gaming Commission shall be notified of all such testing and the results of such testing.

In addition to the gaming machine inspections authorized above, any inspections of other gaming devices and the tribal gaming establishment by state inspectors shall be limited to a maximum of 100 hours per year plus travel. These inspections are specifically authorized to be unannounced and may be in the nature of an undercover inspection. The Tribal Gaming Commission and the South Dakota Gaming Commission shall be notified of the results of such inspections.

8.7 REMEDIES FOR NON-COMPLYING GAMING DEVICES

Upon inspection pursuant to paragraph 8.6, the State may designate gaming devices which it believes do not comply with tribal gaming laws. The machines shall immediately be removed temporarily from play. Gaming devices removed from play pursuant to this section may be returned to play only after such gaming device comes into compliance with the provisions of 8.4 herein.

In the event that the State designates gaming devices as being not in compliance, the Tribe may accept the finding of non-compliance, remove the gaming devices from play, and take appropriate action to ensure that the Tribe, manufacturer, distributor or other responsible party cures the problem.

Nothing in this section shall limit the rights or remedies available to the parties under any other provision of this Compact or under the IGRA.

8.8 LIMIT ON WAGERS

The amount of a bet may not be more than one thousand (\$1,000) dollars on the initial bet or subsequent bet subject to rules promulgated by the Tribal Gaming Commission. Class III gaming operations on the South Dakota portion of the Standing Rock Sioux Reservation may offer such higher bet

limits as are consistent with the acts of the South Dakota legislature, and regulations of the South Dakota Gaming Commission and authorized by the Tribal Gaming Commission. No runner may place a bet on behalf of any other person.

9. ACCOUNTING AND AUDIT PROCEDURES

The Tribe shall adopt accounting standards which meet or exceed those standards established in Chapter 20:18:22 of the South Dakota Rules and Regulations for Limited Gaming.

The Tribe shall conduct independent audits of the gaming operation and provide copies to the State. If the Tribe so requests, the State may at its discretion audit the tribal operation, at the Tribe's expense.

The Tribe shall engage an independent certified public accountant to audit the books and records of all gaming operations conducted pursuant to this Compact and shall make copies of the audit and all current internal accounting and audit procedures available to the State upon written request. The Tribe shall permit the State, in the presence of authorized tribal representatives, to consult with the auditors before or after any audits or periodic checks on procedures which may be conducted by the auditors, and shall allow the State to submit written or oral comments or suggestions for improvements regarding the accounting and audit procedures. Within 30 days of receipt of any written or oral comments, the Tribe shall: (a) accept the comments and modify the procedures accordingly; or (b) respond to the comments with counterproposals or amendments.

10. CONTRIBUTION OF GAMING PROCEEDS

The Tribe may, in its discretion, contribute a sum to be used to provide public services for the citizens of Corson County or Sioux County. Such contributions shall be made without consultation with the State and the State shall bear no obligation or liability for such contributions.

11. DURATION

This Compact shall become effective upon execution by the Governor of the State and the Chairman of the Tribe, approval by the Secretary of the Interior and publication of that approval in the Federal Register pursuant to the IGRA.

The term of this Compact shall be for ten years or until December 30, 2033, whichever is earliest, and subject to review at ten year intervals dating from the effective date of this Compact or December 30, 2033, whichever is earliest. The Compact may be extended by written agreement of the parties

for additional periods not to exceed ten years each. At least one hundred eighty days prior to the expiration of the ten year period, either party to the Compact may give notice to the other party of provisions they believe require an amendment. Such notice shall be in writing and shall be sent by certified mail to the Governor of the State or Chairman of the Tribe at the appropriate governmental office.

Upon receipt of such notice, the parties shall engage in good faith efforts, to resolve the issues identified in the notice. The parties shall have one hundred eighty days to negotiate and all further procedures and remedies available under the Indian Gaming Regulatory Act shall apply. The State and the Tribe may agree to extend the one hundred eighty day period without prejudice to the rights of either party.

In the event the parties are unable to resolve the issues identified in the notice within the one hundred eighty day period, upon the expiration of the one hundred eighty days unless extended by the parties hereto, this Compact shall terminate and the parties shall be subject to the procedures provided for in the IGRA.

Either party may terminate this Compact upon a substantial breach by the other party regardless of any other provision of this Compact. Upon identification of what either party believes to be a substantial breach of the terms of this Compact, such party shall notify the other party in writing, via certified mail, return receipt requested as to the nature of the substantial breach. The party issuing the notice of noncompliance shall refrain from terminating this Compact unless 30 days have elapsed from receipt of notice of noncompliance by the other party.

12. GENERAL PROVISIONS

The following conditions shall be applicable throughout the term of this Agreement:

- 12.1 The parties hereto agree that the Tribe will be responsible for the costs incurred by the State associated with the State's performance of its responsibilities as provided for herein. The intent of this Compact is to provide for the reimbursement of the costs and expenses of the State in performing its responsibilities as provided herein with respect to inspections of gaming authorized under this Compact. The hourly rate to be paid to the State for its services pursuant to section 8.6 is seventy dollars (\$70.00) for the state employees' time. Travel, per diem and other expenses shall be paid to the State at the rates set out in South Dakota Administrative Rules ARSD 05:01:02. Should the rates set out in the Administrative Rules be changed during the time of this Compact, the rates to be paid to the State for such expenses shall likewise be altered.

- 12.2 Unless otherwise indicated, all notices, payments, requests, reports, information or demand which any party hereto may desire or may be required to give to the other party hereto, shall be in writing and shall be personally delivered or first class certified or registered United States mail, postage prepaid, return receipt requested, and sent to the other party at its address appearing below or such other address as any party shall hereinafter inform the other party hereto by written notice given as aforesaid:

Notice to the Tribe shall be sent to:

Standing Rock Sioux Tribe
PO Box D
Fort Yates, ND 58538

Notice to the State shall be sent to:

Governor's Office
500 East Capitol
Pierre, SD 57501

All notices, payments, requests, reports, information or demand so given shall be deemed effective upon receipt or if mailed upon receipt or the expiration of the third day following the day of mailing, whichever occurs first, except that any notice of change of address shall be effective only upon receipt by the party to whom said notice is addressed.

- 12.3 This Agreement is the entire Agreement between the parties and supersedes all prior agreement whether written or oral, with respect to the subject matter hereof. Neither this Agreement nor any provision herein may be changed, waived, discharged, or terminated orally, but only by an instrument in writing.
- 12.4 This Agreement may be executed by the parties hereto in any number of separate counterparts with the same effect as if the signatures hereto and hereby were upon the same instrument. All such counterparts shall together constitute but one and the same document.
- 12.5 The State and/or the Tribe may not assign any of its respective right, title, or interest in this Agreement, nor may the State and/or the Tribe delegate any of its respective obligations and duties under this Agreement, except as expressly provided herein. Any attempted assignment or delegation in contravention of the foregoing shall be null and void.
- 12.6 Nothing in this Compact shall be construed to limit the rights of remedies available to the parties hereto under the Indian Gaming Regulatory Act,

provided that the Tribe agrees during the initial term of this Compact, the only games as to which it will seek to enter a compact with the State are blackjack, pari-mutuel wagering, slot machines, and any Class III game, not currently authorized in any form under South Dakota law, which becomes authorized for any purpose by the State during the initial term of this Compact.

12.7 This Compact shall not be construed to waive or diminish the sovereignty of the Standing Rock Sioux Tribe or the State of South Dakota, except as specifically provided by the terms of the Compact.

13. PERSONAL INJURY REMEDY FOR PATRONS

13.1. During the term of this Compact, the Tribe shall obtain and maintain public liability insurance insuring the Tribe, the Tribe's class III gaming operation in South Dakota, and their agents and employees, against claims by visitors of the gaming facility for bodily injury or property damage arising out of the operation of the gaming facility. Such insurance coverage shall provide coverage of no less than \$1 million per person and \$1 million per occurrence, and shall cover both negligent and intentional torts.

13.2. The Tribe agrees it will not assert the defense of sovereign immunity for any claim within the scope of the coverage and policy limits of the insurance provided under this section. The Tribe shall assure that any insurance policy it obtains to fulfill the requirements of this section shall include language expressly stating that the insurer agrees not to assert the defense of sovereign immunity within the scope of coverage and the policy amounts of the insurance policy required by this section. Nothing in this Compact shall be construed as a waiver of the Tribe's sovereign immunity with respect to any claim not covered by insurance maintained under this section, and nothing in this Compact shall be construed as agreement by the Tribe to pay punitive damages or attorneys' fees in connection with any claim.

13.3. Nothing in this section enlarges or diminishes the jurisdiction of any court.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and effective as of the date of the completion of events described in Section 11 above.

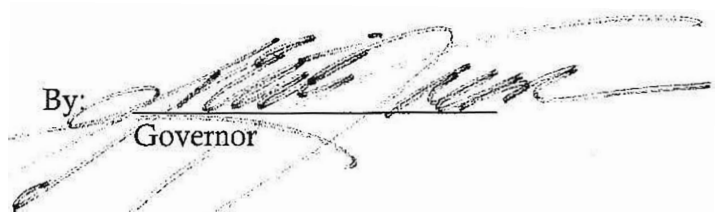
Standing Rock Sioux Tribe

1-10-24
Date

By: 
Chairwoman

State of South Dakota

1-10-24
Date

By: 
Governor

The United States of America
Department of Interior

Date

By:
Assistant Secretary – Indian Affairs