

## **SETTLEMENT AGREEMENT**

### **IN THE MATTER OF:**

### **NOTICE OF VIOLATION 19-02 ISSUED TO THE ST. CROIX CHIPPEWA INDIANS OF WISCONSIN AND RELATED APPEAL, DIR-2019-0048**

### **PROPOSED CIVIL FINE ASSESSMENT ISSUED TO THE ST. CROIX CHIPPEWA INDIANS OF WISCONSIN AND RELATED APPEAL, DIR-2019-0052**

This Agreement is entered into between the St. Croix Chippewa Indians of Wisconsin ("Tribe"), through its duly authorized representatives, and the National Indian Gaming Commission ("NIGC" or "Commission"), for the purposes of resolving the regulatory violations in Notice of Violation 19-02 ("NOV-19-02"), and the related appeals of the Notice of Violation and Civil Fine Assessment, DIR-2019-0048 and DIR-2019-0052, respectively.

The parties by their signatures below represent and agree that they have authority to execute this Agreement according to the terms and provisions set forth herein.

#### **I. Procedural History**

1. The Tribe is a federally recognized tribe with its headquarters located in Burnett County, Wisconsin. Under its Tribal Gaming Ordinance, the St. Croix Tribal Council has the authority and responsibility to manage and operate the Tribe's gaming activities under the provisions of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. 2701-2721.

2. The St. Croix Tribal Gaming Commission ("SCTGC") is a duly created agency of the Tribe and has been granted authority and responsibility by the Tribal Council to regulate the Tribe's gaming activities.

3. The Tribe currently operates facilities at three locations: the Turtle Lake Casino located in Turtle Lake, Wisconsin, the St. Croix Casino located in Danbury, Wisconsin and the St Croix Casino located in Hertel, Wisconsin.

4. Under IGRA and NIGC regulations, the NIGC Chairman may issue a Notice of Violation 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 Chairman. 25 U.S.C. § 2713(a)(1) & (a)(3), 25 C.F.R. § 573.3(a).

5. On April 11, 2019, the NIGC Chairman issued NOV-19-02 to the Tribe alleging various counts of misuse of net gaming revenues and failure to audit contracts for gaming related goods and services exceeding \$25,000 in a fiscal year.

6. IGRA authorizes the Chairman to issue civil fines for violations of IGRA, NIGC regulations, or tribal regulations, ordinances, or resolutions approved by the Chairman. 25 U.S.C. 2713(a)(1).

7. The Chairman has authority to levy and collect appropriate civil fines, not to exceed \$52,596 per violation, against a tribe, management contractor, or individual operating Indian gaming for any violation of any provision of IGRA and NIGC regulations. 25 U.S.C. § 2713(a)(1); 25 C.F.R § 575.4.

8. On May 9, 2019, the Chairman issued a Notice of Proposed Civil Fine Assessment to the Tribe in the amount of \$5,500,000.

9. The Tribe admits the violations set forth in NOV-19-02 covering the period between June 2015 and September 2017.

10. The current Tribal Council was elected on June 8, 2019 and assumed control over the tribal government on that date.

## **II. Purpose of the Settlement Agreement**

1. Over the course of the last several months the Tribe and the NIGC have engaged in negotiations for the purposes of resolving the violations set forth in NOV-19-02 and modifying the amount of the proposed fine set forth in CFA-19-02. In the course of these negotiations, the NIGC has closely monitored steps taken by the Tribe to improve its oversight of its gaming facilities.

2. The Tribe is committed to taking all necessary additional steps to enhance the regulatory capacity of the SCTGC, and to improve the management of its gaming operations.

## **III. Obligations of the Tribe and the SCTGC**

1. The Tribe agrees to an adjusted civil fine in the amount of \$4,500,000 to be paid according to the schedule below.

a. The Tribe shall pay \$1,000,000 in five equal installments of \$200,000 each. The

first payment shall be made within 90 days of the effective date of this Agreement. Subsequent payments shall be made by August 31 in each of years 2021, 2022, 2023, and 2024.

b. The remaining \$3,500,000 shall be suspended pending the Tribe's implementation of remedial actions necessary to correct the violations set forth in NOV-19-02, as more particularly detailed in paragraph IV.2 and its subparagraphs.

c. The Tribe shall make the civil fine payable to the U.S. Treasury and shall deliver it to the NIGC at 1849 C St, N.W., Mail Stop #1621, Washington, D.C. 20240.

2. The Tribe shall adopt, and submit to the NIGC within 45 days of the effective date of this Agreement for review and comment, policies and procedures covering the distribution of all gaming revenues to ensure that such distributions comply with all applicable laws, tribal and NIGC regulations, and the Tribe's Revenue Allocation Plan. Any changes to these policies and procedures shall be submitted to NIGC within 30 days of their adoption for review and comment.

3. The Tribe shall adopt, and submit to the NIGC within 90 days of the effective date of this Agreement for review and comment, policies and procedures to ensure that all distribution of gaming revenues for travel, entertainment, marketing and promotional expenses are duly approved by officials of the Tribe's gaming operations, are directly related to the gaming operations, and are fully accounted for in the books and records of the Tribe's gaming operations. Any changes to these policies and procedures shall be submitted to NIGC within 30 days of their adoption for review and comment.

4. The Tribe shall review, and submit to the NIGC for review and comment, documents establishing all governmental programs intended to benefit individual tribal members that are funded all, or in part, with net gaming revenues to ensure that such programs serve a recognized governmental purpose, have written eligibility requirements, and comply with the Tribe's Revenue Allocation Plan. This shall occur within 30 days of the effective date of this Agreement and within 30 days from any revisions or the development of any new plans or eligibility criteria.

5. The Tribe shall submit all existing consultant contracts to the NIGC for review and comment 45 days from the execution of this agreement and any future consultant contracts within 30 days from their execution.

6. Additionally, the Tribe shall maintain all vendor contracts for review upon NIGC request and for use in the Use of Revenues audit described in Section III.9.

7. The SCTGC shall retain all gaming-related vendor license applications and

background investigations reports for inspection by the NIGC for no less than three years from the date the vendor relationship between the Tribe and the vendor is established.

8. The Tribe agrees to submit all future gaming related contracts to the SCTGC for its review prior to their approval and execution, and make them available to the NIGC upon request. The Tribe shall maintain evidence of SCTGC review and approval.

9. The Tribe agrees that, within 60 days from the Effective Date, it will engage an outside independent auditor to perform an annual agreed upon procedures engagement in accordance with attestation standards established by the American Institute of Certified Public Accountants (AICPA) to evaluate the Tribe's compliance with the net gaming revenue use restrictions found in IGRA, NIGC regulations, the Tribe's Class III gaming ordinance, the Tribe's Revenue Allocation Plan (the "RAP"), and Tribal programs that are funded with net gaming revenue. For the avoidance of doubt, the annual engagements described in this paragraph and its subparagraphs below (the "Use of Revenues Audit") is distinct in purpose and procedures from both the annual financial statements audit required by NIGC regulations 25 C.F.R. Part 571 and the Minimum Internal Control Standards Agreed Upon Procedures audit described in NIGC regulations 25 C.F.R. Part 543. Further, the Tribe agrees that:

a. The outside auditor will, conduct the Use of Revenues Audit in accordance with attestation standards established by the AICPA. The standards and procedures used in the Use of Revenues Audit must include a detailed review of the Tribe's programs that are funded by net gaming revenue, as defined at 25 U.S.C. § 2703(9) and 25 C.F.R. § 502.16. This includes, but is not limited to, a review of the eligibility criteria of the programs, sample testing of compliance within the programs, and a detailed review of each program where the NIGC has notified the Tribe that potential violations may have occurred;

b. Within 60 days of the effective date, the Tribe will submit to the NIGC the procedures and engagement letter that will be used to conduct the Use of Revenues Audit. If the NIGC has any concerns with the procedures, the NIGC shall notify the Tribe in writing within 15 days and the Tribe shall work in good faith with the NIGC to remedy such concerns;

c. The outside independent auditor will, for a period consisting of three fiscal years, commencing with the fiscal year ending September 30, 2020 (or for such lesser time as the NIGC may determine), compile an annual report setting forth the results of the Use of Revenues Audit, which report will be made available to the NIGC upon request. The Tribe

shall make good faith efforts to have the annual report of the Use of Revenues Audit completed by June 30 of the following fiscal year;

d. The Tribe will maintain and make available to the outside independent auditor all necessary documentation, work papers, and records to conduct the annual review and prepare the audit report;

e. Any proposed substantive changes to tribal programs (such as changes to eligibility or benefits) funded with net gaming revenue will, prior to their adoption, be provided to either the General Counsel of the Tribe, or an outside law firm engaged by the Tribe, for review to ensure that such substantive changes comply with IGRA, NIGC regulations, the Tribe's Class III gaming ordinance, and the Tribe's RAP;

f. The Tribe will, based on the findings of the Use of Revenues Audit described herein, require repayment to the Tribe of all net gaming revenue paid to a member of the Tribe outside the terms of a program and cease any payments of net gaming revenue to vendors or contractors made outside the terms of a program. The Tribe shall take all reasonable and necessary actions to collect repayment from Tribal members, as well as take any other steps necessary to come into compliance with the requirements of this paragraph;

g. The Tribe will provide annual training for tribal program managers on the policies and procedures of the tribal programs funded with net gaming revenue on which they oversee and work to ensure that the program requirements are being adhered to by employees. Training provided by the Tribe will include courses on subjects recommended by the outside independent auditor to ensure that adequate corrective measures are taken to ensure compliance with federal and tribal laws concerning the use of net gaming revenue;

h. The Tribe will allow the NIGC, for a period of up to 90 days after the issuance of the third Use of Revenues Audit (or for such lesser period as the NIGC may determine), upon its request, to review the audit report to confirm that provisions (a)-(g) above have been and are being implemented.

i. The Tribe agrees to submit engagement letters for the Use of Revenues audit to the NIGC within 30 days of their execution for each year this Settlement Agreement remains in effect. These engagement letters shall include specific testing of casino procurement and distribution procedures, including the review and testing of credit card transactions, check registers, wire transfers, cash withdrawals, and expense reports. If the NIGC has any concerns with the procedures described in the letters, the NIGC shall notify the

Tribe in writing within 15 days and the Tribe shall work in good faith with the NIGC to remedy such concerns.

10. The Tribe agrees to submit amendments to its Tribal Gaming Ordinance to comply with NIGC regulations within 120 days of the effective date of this Agreement.

11. The Tribe agrees that, for the first year in which this agreement is in effect, it shall file with the NIGC quarterly reports within 30 days of the end of each quarter for the following: distributions to the Tribe and related parties, distributions for non-operating expenses, donations (if any), and wire transfers and payments, and other than bona fide operating expenses to individuals. For the second and third year this agreement is in effect, the Tribe shall retain the quarterly reports on file, and submit them to the NIGC if requested.

12. The Tribe agrees to require annual NIGC-sanctioned "use of gaming revenue" training for three years for members of casino operations management, members of the SCTGC, and members of the Tribal Council. Such training shall commence within six months of the effective date of this Settlement Agreement. The Tribe shall maintain proof of training records for the duration of this agreement.

13. The Tribe agrees to develop an ethics program within 45 days of the effective date of this Agreement and submit to NIGC for review and comment, and require annual ethics training for three years for members of casino management, members of the SCTGC, and members of the Tribal Council. The Tribe shall retain proof of training for NIGC review for the duration of this agreement.

14. The Tribe agrees that the casino shall make periodic distributions of net revenues to the tribal government pursuant to an established schedule. The Tribe shall not allow payments from the casino for tribal expenses on an ad hoc basis.

15. The Tribe agrees to submit to the NIGC within 30 days of the effective date of this Agreement a plan to recover from individuals listed in paragraphs 16 to 23 below improper payments identified in NOV-19-02 and submit quarterly updates on the status of its recovery efforts.

16. The Tribe shall seek repayment of \$345,632 to former Tribal Council Member Elmer "Jay" Emery and his associated company, Rez Connections, as detailed in NOV-19-02.

17. The Tribe shall seek repayment of \$86,000 payments to former Tribal Gaming Commission Chairman Jeff Taylor and former Administrative Assistant to the Tribal Gaming Commission Chairman Kate Wolfe Taylor as detailed in NOV-19-02

18. The Tribe shall seek repayment of \$309,000 paid to former Tribal Chairman Lewis

Taylor, former Tribal Council Member Crystal Peterson, former Tribal Council Member Carmen Bugg, and former Tribal Council Member Stuart Bearheart, as detailed in NOV-19-02.

19. The Tribe shall seek repayment of \$378,000 paid to consultant Lawrence Larsen as detailed in NOV-19-02.

20. The Tribe shall seek repayment of \$52,873.91 paid to former tribal employee Duane Emery as detailed in NOV-19-02.

21. The Tribe shall seek repayment of \$25,954.92 paid to former tribal employee Neil Oustigoff, Sr. as detailed in NOV-19-02.

22. The Tribe shall seek repayment of \$13,333.19 paid to former tribal employee Leva "Dino" Oustigoff as detailed in NOV-19-02.

23. The Tribe shall seek repayment of \$28,893.80 from Raven Emery for payments made on her behalf for university tuition as detailed in NOV-19-02.

24. Consistent with 25 C.F.R. Parts 556 and 558, and applicable provisions of its Tribal Gaming Ordinance (as amended in accordance with this Agreement), within five days of the effective date of this Agreement, the Tribe shall suspend gaming licenses for the following individuals, and shall deny to these individuals any future gaming license applications and prohibit these individuals from entering into a gaming-related contract or a gaming-related employment relationship with the Tribe:

- a. Former Tribal Chairman Lewis Taylor
- b. Former Tribal Council member Elmer "Jay Emery"
- c. Former Tribal Council member Crystal Peterson
- d. Former Tribal Council member Carmen Bugg
- e. Former Tribal Council member Stuart Bearheart
- f. Former Tribal Gaming Commission Chairman Jeff Taylor
- g. Former Administrative Assistant to the Tribal Gaming Commission Chairman Kate Wolfe Taylor
- h. Former employee Duane Emery
- 1. Neil Oustigoff, Sr.
- J. Lawrence Larsen

k. Leva "Dino" Oustigoff

l. Nicki Neilsen

#### **IV. Procedure for Reducing or Rescinding Civil Fine Assessment**

1. On or before August 31, 2023, The Tribe shall provide written notification with supporting documentation to the NIGC once it has achieved timely compliance with provisions III.2-24 above. Upon receipt of such written notification, the NIGC will have 90 days to complete a review and assessment of the Tribe's compliance with each of the provisions of Section III.

2. The Chairman shall rescind the suspended civil fine described in Section III.1 above in the following incremental amounts, pending a determination that the Tribe has complied with the relevant provision.

a. For substantial and timely compliance with the policies and procedures provisions in paragraph III.2, the Chairman shall rescind \$100,000 of the suspended fine.

b. For substantial and timely compliance with the policies and procedures provisions in paragraph III.3, the Chairman shall rescind \$100,000 of the suspended fine.

c. For substantial and timely compliance with the existing and future government program provisions in paragraph III.4, the Chairman shall rescind \$100,000 of the suspended fine.

d. For substantial and timely compliance with the existing and future consultant contracts provisions in paragraph III.5, the Chairman shall rescind \$100,000 of the suspended fine.

e. For compliance with the vendor contracts provisions in paragraph III.6, the Chairman shall rescind \$100,000 of the suspended fine.

f. For compliance with the vendor background information provisions in paragraph III.7, the Chairman shall rescind \$100,000 of the suspended fine.

g. For compliance with the gaming contracts provisions in paragraph III.8, the Chairman shall rescind \$100,000 of the suspended fine.

h. For compliance with the Engagement Letters provisions in paragraphs III.9(b) and (i), the Chairman shall rescind \$100,000 of the suspended fine for each Letter, \$300,000 in total.

i. For compliance with the Use of Revenues audits provisions in paragraph III.9 and its subparagraphs, the Chairman shall rescind \$300,000 of the suspended fine for each Audit report, \$900,000 in total, but only so long as the Tribe—timely and on its own initiative—complies with paragraph III.9(f) for any prohibited payments.



j. For compliance with amended gaming ordinance provision in paragraph III.10, the Chairman shall rescind \$200,000 of the suspended fine.

k. For compliance with the quarterly reports provisions in paragraph III.11, the Chairman shall rescind \$25,000 of the suspended fine for each quarterly report, \$300,000 in total.

l. For compliance with the annual Use of Gaming Revenues training provisions in paragraph III.12, the Chairman shall rescind \$300,000 of the suspended fine.

m. For compliance with the annual ethics training program provisions in paragraph III.13 the Chairman shall rescind \$300,000 of the suspended fine.

n. For substantial compliance with the prohibition of ad hoc payment provisions in paragraph III.14, the Chairman shall rescind \$300,000 of the suspended fine.

o. For compliance with improper payment recovery plan provisions in paragraph III.15 and substantial compliance therewith, the Chairman shall rescind \$100,000 of the suspended fine.

p. For timely compliance with licensing, contract, and employment provisions of paragraph III.23, the Chairman shall rescind \$100,000 of the suspended fine

3. If the Tribe fails to meet a deadline described in paragraphs III.2 through III.24, the Chairman may, in his sole discretion, grant an extension in writing. The Tribe is responsible for maintaining any documentation of extensions.

4. If the Tribe fails to comply with items where no deadline is specified, the Chairman or his designee shall notify the Tribe of the deficiency and allow the Tribe 30 days to cure the deficiency. If the deficiency remains at the expiration of the time to cure, the Tribe shall be deemed out of compliance with the provision.

5. If the Chairman determines that the Tribe has failed to comply with provisions of this Agreement and portions of the suspended fine remain, the Tribe agrees to pay the remaining fine amount within 120 days of receiving the NIGC's assessment of noncompliance at the expiration of the agreement.

## **V. Additional Terms**

1. Nothing in this Agreement prevents the NIGC Chairman from issuing a separate notice of violation, order of temporary closure, and/or proposed civil fine assessment to the Tribe for any additional violations of IGRA, NIGC regulations, or the Tribe's gaming ordinance, pursuant to 25 C.F.R Parts 573 and 575.

2. The Chairman may delegate within the NIGC any powers or responsibilities granted

by this Agreement.

3. This Agreement shall be binding on the parties, their agents and representatives.

4. This Agreement shall be effective on the date that it is executed by the last party to sign the Agreement ("Effective Date").

5. The term of the remedial obligations of the Tribe and SCTGC identified in paragraphs III.2-24 above is three years from the Effective Date.

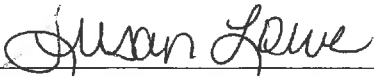
6. The Parties agree that in the event that all of the Tribe's gaming operations are closed due to acts of nature, civil emergency, or pandemic, the deadlines for making any payments contemplated herein shall be tolled, provided:

a. The Tribe shall promptly notify NIGC of the dates of any closure and reopening;

b. The deadlines shall be extended by a number of days equal to the closure(s), but shall not extend beyond August 31, 2026. The Parties agree that any amounts tolled shall become due and payable upon the conclusion of last day of the tolled period or upon August 31, 2026, whichever occurs first; and

c. The Tribe agrees to make a good faith effort toward alleviating any condition that may prevent reopening of the gaming operation.

7. This Agreement may be executed in one or more counterparts and each shall constitute an original. A signature produced by facsimile shall be deemed an original signature and shall be effective and binding for the purposes of this Agreement.

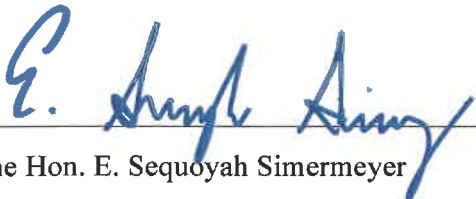


The Hon. Susan Lowe

Chairperson, St. Croix Chippewa Indians of Wisconsin

DATE

8-24-2020



The Hon. E. Sequoyah Simermeyer

Chairman, National Indian Gaming Commission

DATE

8/21/2020