United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

TAKE PRIDE IN AMERICA

DEC 08 1992

Honorable Charles W. Murphy
Chairman, Standing Rock Sioux
Tribal Council
P.O. Box D
Fort Yates, North Dakota 58538

Dear Chairman Murphy:

On August 14, 1992, we received the Gaming Compact Between the Standing Rock Sioux Tribe (Tribe) and the State of South Dakota (State).

We have reviewed the Compact and conclude that it does not violate the Indian Gaming Regulatory Act (IGRA), Federal Law, or our trust responsibility. Therefore, pursuant to my delegated authority and Section 11 of the IGRA, we approve the Compact. The Compact shall take effect when notice of our approval, pursuant to Section 11(d)(3)(B) of the IGRA, is published in the FEDERAL REGISTER.

Please be advised that Section 11(d) of the IGRA requires the Chairman of the National Indian Gaming Commission (NIGC) to approve tribal ordinances authorizing Class III gaming. On July 8, 1992, the NIGC's proposed regulations to govern approval of Class II and Class III gaming ordinances were published in the FEDERAL REGISTER. Once the regulations become final and are in effect, we expect the NIGC will request submission of existing ordinances for review and approval in accordance with the standards contained in the final regulations. It may be useful for the Tribe to review the proposed regulations to insure that the Tribe's ordinances are consistent with or do not otherwise conflict with NIGC requirements.

We wish the Tribe and the State success in this economic venture.

Sincerely,

/S/ Ronal D. Eden

Assistant Secretary - Indian Affairs

Enclosures

Identical Letter to: Honorable George Mickelson
Governor of South Dakota
500 East Capital
Pierre, South Dakota 57501

cc: Aberdeen Area Director w/copy of approved Compact
Supt., Standing Rock Agency w/copy of approved Compact
Kevin Meisner, SOL(2)
National Indian Gaming Commission w/copy of approved Compact
Twin Cities Field Solicitor w/copy of approved Compact
South Dakota United States Attorney w/copy of approved Compact

GAMING COMPACT BETWEEN THE STANDING ROCK SIOUX TRIBE

AND THE STATE OF SOUTH DAKOTA

This Agreement is made and entered into as of the _____ day of _____, 1992, 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, Article IVa 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 intends to operate gaming activities on the Standing Rock Sioux Reservation in Corson County, South Dakota; and

WHEREAS, the Tribe and the State desire to negotiate a Tribal-State Compact to permit the 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 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. 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, poker and slot machines 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," "poker" and "slot machines" are defined in South Dakota Codified Laws 42-7B-4(3), (18), (21), respectively, except that the term "slot machines" does not include "video lottery machines" as defined by SDCL 42-7A-1(13).

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.

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. This Commission shall consist of four members who shall be appointed by the Tribal Council. The Standing Rock Sioux Tribal Gaming Commission shall have primary responsibility for the 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 DISCIPLINARY ACTION OF MISCONDUCT BY LICENSES

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. 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. If the executive director of the South Dakota Gaming Commission concludes that the disciplinary action undertaken by the Tribal Gaming Commission is adequate, it shall so inform the Tribal Gaming Commission in writing, providing the factual and legal basis for its position. The Tribal Gaming Commission, or its designee, shall have two (2) days to respond in writing to the South Dakota Gaming Commission, providing the factual and legal basis for its position, provided that the executive director of the South Dakota Gaming Commission may, upon written notice to the Tribal Gaming Commission (a) in an emergency situation, shorten the time for the Tribal Gaming Commission's response or (b) where circumstances warrant, lengthen the time for the Tribal Gaming Commission's response. If, following due consideration of the Tribal Gaming Commission's position or, upon expiration of the time for response, the South Dakota Gaming Commission concludes that the disciplinary action of the Tribal Gaming Commission is inadequate, a more severe penalty shall be imposed by the Tribal Gaming Commission as requested by the executive director of the South Dakota Gaming Commission.

5. LAW ENFORCEMENT

5.1 Criminal proceedings against defendants who are members of the Standing Rock Sioux Tribe shall occur in tribal court. Criminal proceedings against defendants who are non-members shall occur in South Dakota state court except as consistent with State v. Larson (1990). Nothing contained in this provision shall deprive the federal courts of any jurisdiction which they might otherwise have.

It is understood by the parties that the provisions of this paragraph are limited to criminal cases arising from transactions related to or arising from gaming conducted on the Standing Rock Reservation pursuant to this compact.

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)

Cases involving only tribal members shall be heard in tribal court. Cases involving one or more persons who are not tribal members shall be heard in state court, unless all parties stipulate the action shall be heard in tribal court.

It is understood by the parties that the provisions of this paragraph are limited to civil cases arising from transactions related to or arising from gaming conducted on the Standing Rock Reservation pursuant to this Compact. This provision shall not be construed to be a waiver of the sovereign immunity of the Standing Rock Sioux Tribe.

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 Standing Rock Sioux 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 first submit an application to the Tribal Commission which application shall include a written release by the applicant authorizing the State to conduct a background investigation of the applicant on behalf of the Tribal Gaming Commission. The State shall agree to conduct an investigation of the applicant on behalf of the Commission, upon receipt of the executed release and payment of the fee as provided in the South Dakota Commission on Gaming rules and regulations for such investigations. The State shall provide the Commission with a written report regarding each applicant within 30 days of the receipt of the request and fee or soon thereafter as practical.

The Tribal Gaming Commission shall not issue a license to any unsuitable applicant. A suitable applicant is one who is determined suitable 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.

Should the Tribal Gaming Commission disagree with the State's determination on suitability, the Tribal Gaming Commission may invoke the following arbitration procedure:

The dispute shall be determined by a three-person binding Arbitration Board. One member of the Board shall be selected by the Tribal Gaming Commission, one member shall be selected by the State Gaming Commission, and one member shall be jointly selected by the State Gaming Commission, and the Tribal Gaming Commission. Within thirty (30) days of the signing of this Agreement, the parties hereto shall appoint the members to the Arbitration Board for a three-year term. In the event of death, resignation, or expiration of a term, new members shall be appointed on the same basis as the original members. The Arbitration Board shall determine whether the applicant is deemed suitable, taking into consideration the ordinance and regulations adopted by the Tribal Gaming Commission and the statutes and rules adopted by the State of South Dakota. The Arbitration Board shall further decide the suitability issue in the best interest of the public. If permitted by law, either the State or the Tribe may appeal the arbitration decision to federal district court.

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 or currency 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 with the State.

8.2 MINIMUM AGE REQUIREMENTS

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

8.3 TECHNICAL STANDARDS FOR GAMING DEVICES

All gaming machines 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 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

No gaming device shall be operated on the Standing Rock Sioux Reservation unless:

1. The gaming device is purchased, leased or acquired from a manufacturer or distributor licensed to sell, lease or distribute gaming devices by the State, pursuant to SDCL ch. 42-7B and ARSD 20:18, and

2. The gaming device or a prototype thereof, has been tested, approved and certified by a gaming test laboratory as 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 180 gaming devices in a tribal gaming 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. It is acknowledged between the parties hereto that the gaming device limitation of 180 constitutes two times the number of gaming devices permitted per individual in State law. Any increase or decrease of this gaming device limitation contained in State law will automatically result in a proportional increase or decrease in the gaming device limitation of 180 set forth in this Agreement.

It is further understood and agreed that 70 additional gaming devices shall be authorized in the tribal gaming establishment provided the following conditions are met:

a. At lease nine months have elapsed since the tribal gaming establishment was open for business; and

b. That within the last 60 consecutive business days from the date of determining whether these conditions have been met, 75 percent of the projected adjusted gross revenue (as defined by the South Dakota Commission on Gaming rules and regulations) per device per day has been realized on the average on all 180 devices. The projected adjusted gross revenue, for purposes of this calculation, shall be $85.00 per device per day.

The Tribe shall be entitled to have up to five gaming devices to be used to replace gaming devices which are out of services as a result of mechanical problems. These additional devices are only to be used in such an event and shall not be operated in addition to the maximum number of devices authorized by this provision. Further, these additional devices shall meet the requirements of paragraph 8.3 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. Any violations detected pursuant to this paragraph shall be enforced consistent with the procedure contained in the above section entitled Disciplinary Action for Misconduct by Licensees.

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 machine 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.

1. 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; or

2. contest the finding of non-compliance before the Arbitration Board as provided in paragraph 7 above. In the event the Arbitration Board finds that the gaming device in noncomplying, such device shall be removed 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.

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 five 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.

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 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 subject to review at three year intervals dating from the date of execution of this Compact. The Compact may be extended by written agreement of the parties for additional periods not to exceed three years each. At least ninety days prior to the expiration of the three year period, either party to the Compact may give notice to the other party of provisions they believe require or 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 180 day period, upon the expiration of the 180 days unless extended by the partied 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 until 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 in the event that a dispute arises as to an interpretation of the provisions of this Compact, in any of the rights, responsibilities or obligations attaching to the parties hereto, either party may commence an action in federal district court for the purpose of resolving such dispute.

12.2 The parties hereto agree that the Tribe will be responsible for the costs incurred by the State and 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 and background checks of potential licensees. Attached hereto is a schedule of cots marked Attachment A which is incorporated herein by reference as through fully set forth.

12.3 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 sent by telegram 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 Capital
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 of whom said notice is addressed.

12.4 This Agreement is the entire Agreement between the parties and supersedes all prior agreements 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.

12.5 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.

12.6 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.

12.7 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, poker, 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.

12.8 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 set forth above.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

STANDING ROCK SIOUX TRIBE

JULY 14, 1992
(Date)

By: _____
CHAIRMAN

STATE OF SOUTH DAKOTA

8/6/92
(Date)

By: _____
GOVERNOR

APPENDIX A

The hourly rate to be paid to the State for its services pursuant to paragraph 12.2 of the attached Compact is thirty dollars ($30.00). Travel, per diem, and other expenses shall be paid to the State at the rates set out in South Dakota Administrative Rules be charged during the time of this Compact, the rates to be paid to the State shall likewise be altered.