

MEMORANDUM OF INCORPORATION
of
MOST FAVORED NATION AMENDMENTS
To The

TRIBAL-STATE COMPACT
FOR CLASS III GAMING

Between the

KALISPEL INDIAN TRIBE

and the

STATE OF WASHINGTON

The Kalispel Indian Tribe (“Tribe”) and the State of Washington (“State”) entered into a Tribal-State Compact for Class III Gaming (“Compact”) on October 20, 1988, and amended the Compact by mutual agreement on February 25, 1999, May 31, 2007 (X2), and April 8, 2015 (Compact and X2). Pursuant to Section XV.D.8 of the Compact, modifications to the scope of gaming in the compact shall be amended automatically. The following amendments in this Memorandum of Incorporation (“MOI”) are hereby automatically incorporated in the Compact. Modifications that require formal amendment or renegotiation will be addressed separately. Anything not specifically authorized or amended by this MOI but provided for in the Tribe’s Compact, any other appendices, or the Most Favored Nations Section XV(D)(8) shall remain in full force and effect.

1. Sections II: K, L are amended as follows:

- K. “Gaming Employee” means any individual employed in the operation or management of gaming in connection with the Tribe’s gaming operation or ~~facility~~ facilities, whether employed by or contracted to the Tribe or by or to any person or enterprise providing gaming operation and management services to the Tribe, including, but not limited to, gaming operation managers and assistant managers, accounting personnel, surveillance and security personnel, cashiers, dealers or croupiers, box men, floor men, pit bosses, shift bosses, cage personnel, collection personnel, gaming consultants, pari-mutuel clerks, management companies and their principals, and any person whose employment duties require or authorize access to areas of the gaming ~~facility~~ facilities related to gaming which are not otherwise open to the public, or to areas designated by the Tribal and State Gaming Agencies.

L. “Gaming Facility” or “Gaming Facilities” means the building or buildings or portions thereof in which Class III Gaming occurs. Anytime the word “facility” is referenced in all of the Tribe’s underlying agreements with the State in reference to gaming the context indicates the correct usage of “Facility” or “Facilities”.

2. Section III: E, F, G, H, I, J, L, M, and N are amended as follows:

E. Authorized Gaming Operation and Facility Facilities. The Tribe may establish one Class III Gaming Facility, on its land located in Airway Heights, Washington, and a second Class III Gaming Facility, on its Indian Lands located in Pend Oreille County, Washington; for the operation of any Class III games authorized pursuant to this MOI.

F. Forms of Payment. All payment for wagers made in authorized forms of Class III gaming conducted by the Tribe on its Indian Reservation, including the purchase of chips or tokens, for use in wagering, shall be made by cash, cash equivalent, credit card or personal check. Except for said use of credit cards, no credit shall be extended to any patron of the a Gaming Facility for gaming activities.

G. Size of Gaming Floor. The actual gaming floor devoted to Class III activities within the a Gaming Facility shall be determined by the Tribe.

H. Number of Gaming Stations. ~~During the first six months of operation (“phase one”), the maximum number of Class III gaming stations shall not exceed thirty one (31) plus, at the option of the Tribe,~~ The Tribe has the option to use a total of seventy-five (75) gaming stations authorized for use on the gaming floor within one gaming facility and a total of fifty (50) gaming stations within a second facility. However, the Tribe has the option to use one (1) additional gaming station (“the non-profit station”) for every twenty-five (25) gaming stations allowed in a facility. The proceeds from the non-profit station shall be dedicated to support non-profit organizations and their activities located within the State of Washington. For the purposes of the determination of “proceeds” from the non-profit station only, proceeds shall mean the net win of the non-profit station less the pro rata cost of regulation and operation, specifically excluding capital costs. The net win from the non-profit station is not subject to the community contribution established under Section 5 of this MOI (Compact Section XIV.C). Therefore, the proceeds shall equal the net win of the nonprofit station less the costs of regulation and operation, divided by the thirty-two (32) gaming stations. The Tribal Gaming Agency shall set forth regulations concerning the types of bona-fide non-profit organizations and/or the types of projects of such organizations which shall be supported by the non-profit station. These organizations may not include non-profit organizations affiliated with the Tribe. PROVIDED, that the Tribe is required to obtain transfers of Class III gaming station authorization from another Tribe which has entered into a compact with the State for the use of Class III gaming stations as defined in this MOI, the Compact, and X2 for any Class III gaming stations, except for nonprofit stations, beyond sixty (60) in total for all gaming facilities. PROVIDED FURTHER, that the transfer of Class III gaming station authorization from another shall be effectuated through the use of “Class III

Gaming Station Transfer Agreement” appended hereto as Appendix C of the Compact. -At the end of six (6) months of continued operation of the Class III facility, if the Gaming Operation has met the conditions set forth in Section III.K., “phase two” may be implemented, providing for up to fifty (50) gaming stations plus, at the option of the Tribe, two (2) additional non-profit gaming stations.

- I. Wagering Limitations. ~~During the first six months of operation,~~ The wager limits shall not exceed two hundred fifty dollars (\$250). ~~At the end of six (6) months of continued operation, if the gaming operation has met the conditions set forth in Section III.K., “phase two” may be implemented, providing for wager limits of up to five hundred dollars (\$500).~~
- J. Hours of Operation. ~~The maximum number of operation hours for the a Gaming Facility will be determined as outlined in Appendix X2, Section 16.~~
- L. Ownership of Gaming Facility Facilities and Gaming Operation. The Gaming Operation, including the Gaming Facility Facilities, shall be owned and operated by the Tribe. The Tribe may, if it chooses, contract for management of the Gaming Facility Facilities and Gaming Operation. Any such contract shall subject the manager to the terms of this Compact, including annual certification and licensing.
- M. Prohibited Activities. Any Class III gaming activity not specifically authorized in the Compact is prohibited.
- N. Age Limitations. Prohibition on Minors.
No person under the age of eighteen (18) shall participate in any Gaming activities authorized by this Compact, or be employed in any Gaming Operation, or be allowed on the Class III Gaming floor authorized by this Compact during actual hours of operation. PROVIDED, that such age limitation shall not apply to an individual accompanied by an adult for the specific and limited purpose of proceeding directly and immediately across the Gaming area for legitimate non-gaming purpose, with no Gaming area loitering or Gaming participation by the underage person or accompanying adults. Persons between the ages of eighteen (18) and ~~twenty one years of age~~ twenty (20)¹ may patronize and participate in Class III Gaming activities offered by the Tribe in its Gaming ~~facility~~ Facilities, so long as such patrons do not purchase or consume alcoholic beverages on the premises in accordance with Washington State liquor laws or any applicable written agreement between the Tribe and Washington State Liquor and Cannabis Board.

¹ The Tribe’s Gaming Ordinance, the Kalispel Law and Order Code (KLOC) Ch. 11 may provide more restrictions.

3. Section VI(C) and (E) are amended as follows to facilitate the opening of the second Gaming Facility in Pend Oreille County:²

- C. Reporting of Violations. A Tribal Gaming Agent shall be present in the Gaming Facility Facilities during all hours of Gaming Operation authorized under this Compact, and shall have immediate access to any and all areas of the Gaming Operation for the purpose of ensuring compliance with the provisions of this Compact and Tribal Ordinances. PROVIDED that the Tribal Gaming Agency, to ensure the integrity of the Gaming Facility in Pend Oreille County, shall maintain sufficient monitoring during such times as prescribed by the Tribe through its Gaming Ordinance in an amount sufficient to perform the Tribal Gaming Agency's responsibilities and duties for the second Gaming Facility under this MOI. The Tribal Gaming Agency shall notify the State Gaming Agency of any proposed changes to the Gaming Ordinance that would revise such on-site hours, and no changes in hours will be implemented until the State Gaming Agency has commented or thirty (30) days has lapsed, whichever occurs first. Any violation(s) of the provisions of this Compact, MOI or of Tribal Ordinances by the Tribal Gaming Operation, a gaming employee, or any person on the premises whether or not associated with the Tribal Gaming Operation, shall be reported immediately to the Tribal Gaming Agency. The Tribal Gaming Agency shall notify the State Gaming Agency within seventy-two (72) hours of the time the violation(s) was noted.
- E. Reporting to State Gaming Agency. The Tribal Gaming Agency shall ~~forward~~ make available, on site, copies of all completed incident and investigation reports and final dispositions to the State Gaming Agency on a continuing basis; no copies will be forwarded unless expressly requested by the State Gaming Agency. If requested by the Tribal Gaming Agency, the State Gaming Agency shall assist in any investigation initiated by the Tribal Gaming Agency and provide other related investigation services, for which the Tribe agrees to reimburse the State Gaming Agency.

4. Section XI, B (1)(2)(4) and C (3) are amended as follows:

- B. Additional Operational Requirements Applicable to Class III Gaming. The following additional requirements shall apply to the Gaming Operation conducted by the Tribe:
1. To ensure integrity, the Tribal Gaming Operation shall maintain the following logs as written, or computerized records which shall be available for inspection by the State Gaming Agency in accordance with Section VII.B of this Compact and MOI: A surveillance log recording all surveillance activities in the monitoring room of ~~the~~ each Gaming Facility; a security log recording all unusual occurrences that require an evaluation, investigation, or other decision making process by a Tribal Gaming Agent.
 2. The Tribal Gaming Agency shall establish a list of persons barred from the Gaming Facility Facilities because their criminal history or association with career offenders or

² Changes to this section were considered necessary to facilitate the opening of the second Gaming Facility in Pend Oreille County due to its small size and remote location.

career offender organizations poses a threat to the integrity of the gaming activities of the Tribe. The Tribal Gaming Agency shall employ its best efforts to exclude persons on such list from entry into its Gaming Facility Facilities. The Tribal Gaming Agency shall ~~send a copy of~~ maintain and make available on site copies of its list on a quarterly basis to the State Gaming Agency.

4. The Tribal Gaming Agency shall notify the State Gaming Agency of the rules of each game operated by the Tribe and of any change in such rules. To the extent such rules have been adopted prior to the execution of this Compact and MOI, they are set forth in Appendices A and B hereto and shall be deemed approved by the State. Summaries of the rules of each game relevant to the method of play and odds paid to winning bets shall be visibly displayed or available in pamphlet form in ~~the~~ each Gaming Facility. Betting limits applicable to any gaming station shall be displayed at such gaming station. Rules for games identified in Section III.A, except as specified in Appendix B, shall be based upon such games as commonly practiced in Nevada, including wagering, that does not fundamentally alter the nature of the game as the Tribal Gaming Agency may approve. Rules for games identified in Section III.A, except as specified in Appendix B, shall be submitted to the State Gaming Agency for review, to determine if the rules fundamentally alter the nature of the game. The Tribe will provide the State Gaming Agency ten (10) days advance notice of the rules of each game and any modifications thereof, and will provide adequate notice to patrons of ~~the~~ each Gaming Facility to advise them of the applicable rules in effect. In the event of a dispute, the matter will be handled in accordance with Section XII.C of ~~this~~ the Compact.

C. Regulation of Gaming Facility Facilities. The following requirements shall apply to ~~the~~ each Gaming Facility maintained by the Tribe, or its manager, or management company, if any:

3. The Gaming Operation shall provide the Tribal Gaming Agency and the State Gaming Agency with a description of its minimum requirements for supervisory staffing for each table gaming pit operated in ~~its~~ each Gaming Facility, and in the event that the State Gaming Agency regards such supervisory staffing as inadequate, the Tribal and State Gaming Agencies shall promptly confer in good faith in an effort to reach agreement on supervisory staffing requirements. If agreement cannot be reached between the State and Tribal Gaming Agencies, the dispute shall be handled in accordance with Section XII.C of the Compact.

5. Section XIV(C) subsections (4) through (8) are added to address Impact Mitigation for the second Gaming Facility in Pend Oreille County:³

C. Impact Mitigation Funds.⁴

- 4) Impact Mitigation Fund for Gaming Facility located on the Tribe's Land in Pend Oreille County: Since the inception of the Airway Heights Facility established under the 1998 Compact the Tribe has provided numerous services that have benefitted local communities in both Spokane County and Pend Oreille County. The Tribe has an extensive, established Tribal Court system and has established an additional Tribal Court in Airway Heights on Tribal land. The Tribe has also entered into agreements with surrounding jurisdictions and, in addition to providing law enforcement services under federal law, the Tribe has taken on the additional obligation of law enforcement services that would otherwise be the obligation of the surrounding communities and the Tribal Law Enforcement Officers are now commissioned as general authority Washington Police Officers able to enforce Washington State Laws including, but not limited to, the following functions that fall within the local jurisdictions obligations: inmate transports, Airway Heights' courtroom security involving inmates, and execution of arrest warrants for non-Indians. Further, the Tribe provides the following services to the surrounding communities (this list is not exhaustive): mental health counseling; chemical dependency services; problem gambling treatment; the only public transportation between Pend Oreille County and Spokane County; a wellness center open to the surrounding community (which included therapeutic services; medical and dental services; a large daycare and learning center; victim/witness services; and court-appointed special advocacy services in Pend Oreille County). Further, the Tribe provides fire services off the Reservation in Pend Oreille County, greatly benefitting homeowners and natural resources in Pend Oreille County.
- 5) Nevertheless, the Tribe recognizes that activities directly and indirectly associated with the operation of a Gaming Facility on its Reservation Land in Pend Oreille County may have both positive and negative impacts on the local community and services provided by and to such community. Regardless of the net impact of a Gaming Facility, to the extent negative impacts and increased burdens may occur to adjacent local communities' law enforcement agencies, emergency services, and other services, the Tribe will continue to pay the direct costs of those impacts and to make specific contributions to communities affected by Tribal Gaming Operation(s), consistent with the requirements and limitations set forth below.
- 6) Related solely to the Tribe's Gaming Facility Located in Pend Oreille County, the Tribe shall make available funds for the purpose of providing assistance to adjacent local communities' law enforcement, emergency services, and/or service agencies (including those agencies

³ Changes to this section were considered necessary to facilitate the opening of the second Gaming Facility in Pend Oreille County due to limitations in existing Compact language and location of the second Gaming Facility.

⁴ Subsections 4) and 5) of this section were prepared by the Tribe. The State acknowledges the Tribe is providing numerous services to the surrounding community in Pend Oreille County, but the State has not taken steps to quantify benefits to communities in Pend Oreille County.

responsible for traffic and transportation) actually and directly impacted by the Class III Gaming Facility in Pend Oreille County and shall disburse to those agencies their reasonable costs related to Class III gaming activities, not to exceed cumulatively, two percent (2%) of the Net Win⁵ from the Class III gaming activities, in any Tribal fiscal year, except as otherwise excluded under the provisions of the Compact.

- 7) The Tribe, acting through the Kalispel Business Council, shall consider all requests for funds from adjacent local communities allegedly impacted by Kalispel Class III Gaming in Pend Oreille County, and shall determine⁶ whether to fund such requests and at what level. Such requests shall be supported by appropriate technical reports and/or material related to the subject of the funding request(s). The Tribe shall provide communities requesting said funds with a reasonable opportunity to present their position, and to support said request(s) with appropriate expert testimony and/or reports. Approved payments shall be disbursed every twelve (12) months from the opening date of the second Gaming Facility.
- 8) In the event any adjacent local community disagrees with the Tribe's decision regarding the funding of such requests, it may utilize the dispute provisions set forth in § XII(C)(1)-(6) of the Compact, to resolve that disagreement, subject to the following revisions and additions.⁷
 - a) If, pursuant to XII(C)(2), the Tribe and the aggrieved local community are unable to resolve the disagreement nor agree upon an arbitrator or upon a procedure for the selection of an arbitrator within twenty (20) business days after their meeting, the Tribe and the aggrieved local community shall each select an arbitrator and the two selected, within twenty (20) business days thereafter, shall select a third arbitrator who shall alone decide the matter in dispute. In the event either the Tribe or the aggrieved local community fail for whatever reason to name an arbitrator (who, if named, would be obligated along with the other party's choice for arbitrator to select a third arbitrator to decide the matter), the participating party (i.e., the one selecting an arbitrator) may

⁵ For the purposes of this section, Impact Mitigation Funds, Net Win from the Class III gaming activities is defined as the Net Win from the Gaming Stations drop minus payout; except as provided in Appendix X2, Section 14.1 no Tribal Lottery System gaming device revenues, proceeds from a nonprofit station as authorized under Section III.H, Class II Gaming revenues, or non-gaming revenues, such as but not limited to, food, beverage, wholesale or retail sales, shall be included for this fund.

⁶ In making its determination of funding requests, the Kalispel Business Council shall consider and balance the request with services the Tribe currently provides to the surrounding community (nothing in this agreement shall be construed as an obligation of the Tribe to continue funding services it currently provides).

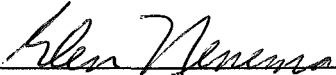
⁷ Nothing in this MOI or this section shall be determined to modify XVI – LIMITATION OF LIABILITY from the Compact. Neither the Tribe nor the State are creating, or intent to create, any rights in third parties which would result in any claims of any nature whatsoever against the Tribe or the State as a result of this MOI or the Compact. Neither the Tribe nor the State has waived immunity from third party suits or claims of any kind or nature whatsoever against them and nothing contained in this MOI or the Compact shall be construed to effectuate a waiver, in whole or in part, of said sovereign immunity.

unilaterally select an arbitrator to decide the matter in dispute. If, after utilizing these procedures, an arbitrator cannot be selected for any reason, the Tribe and the aggrieved local community may jointly petition the United States District Court for the Eastern District of Washington to select an arbitrator to decide the matter in dispute.

- b) If the arbitrator determines the Tribe has acted arbitrarily, capriciously, abusively or not in accordance with § XIV(C)(7) as set forth under this MOI, the powers of the arbitrator shall be limited to assessing fines or equitable relief. Said remedies are limited to directing the Tribe to expend the funds requested by the adjacent local community, or some lesser amount, within thirty (30) days of the arbitrator's decision.

INCORPORATED ON THE LAST DATE ENTERED BELOW:

KALISPEL TRIBE OF INDIANS

BY: 
GLEN NENEMA, Chairman
Kalispel Tribe of Indians

DATED: 5-29-18

THE STATE OF WASHINGTON

BY: 
Dave Trujillo, Director
Washington State Gambling Commission

DATED: 6-1-2018

**KALISPEL INDIAN TRIBE - STATE OF WASHINGTON
CLASS III GAMING COMPACT**

APPENDIX C

Class III Gaming Station Transfer Agreement

This Class III Gaming Station Transfer Agreement ("Agreement") is made and entered into between _____ ("Transferor"), and _____ ("Transferee"), and the State of Washington ("State") for purposes of transferring authority and use of Class III Gaming Stations between Tribes which have entered into Tribal - State Compacts for Class III Gaming with the State and as a Memorandum of Understanding between the State and Tribal parties authorizing and memorializing the transfer.

AGREEMENT

1. **TRANSFER.** Transferor hereby transfers and assigns to Transferee, for the Term set forth below, all of Transferor's Class III Gaming Station authority for the use of _____ Class III Gaming Stations to which Transferor is now or may hereafter become entitled during the Term of this Agreement.

2. **TERM.** The Term of this agreement, and all rights and authority granted hereby, shall be from _____, 20__ through _____, 20__ and shall commence at 12:01 A.M. on the first date entered above and expire 11:59 P.M. on the last date entered above unless other hours are so specified herein.

3. **REPRESENTATIONS AND AGREEMENTS.** Transferor represents and agrees that it is or will become at the commencement of the term of this Agreement, capable and authorized to utilize the number of Class III Gaming Stations noted above, that no other grant or transfer of any rights relative to the number of Class III Gaming Stations which would conflict with the authority transferred hereby has occurred or will occur, and that it fully waives and

surrenders the right to utilize the number of Class III Gaming Stations noted above for the term of this Agreement. Transferee represents and agrees that it is legally authorized to utilize Class III Gaming Stations and is capable and authorized to accept the transfer of authority herein. State represents and agrees that both Transferor and Transferee are authorized under its terms of valid Tribal - State Compacts to utilize Class III Gaming Stations, and, that upon execution of this Agreement by the parties, Transferor and Transferee may effectuate the transfer of authority for the use of the number of Class III Gaming Stations specified for the term of this Agreement.

4. ENTIRE AGREEMENT. This agreement contains the entire agreement of the parties as to the legal capabilities and authorizations for the transfer specified herein. No party is relying on any statement, representation or documentation which is not contained or referenced in this Agreement. Transferor and Transferee may enter into separate agreements related to the utilization of Class III Gaming Stations transferred hereby, PROVIDED, that the terms of such separate agreements shall not affect the legal capabilities and authorizations for the transfer specified herein.

IN WITNESS WHEREOF, the parties have duly executed this Class III Gaming Station Transfer Agreement.

Transferee _____

Transferor _____

By: _____

By: _____