

**AMENDMENT TO THE FOREST COUNTY POTAWATOMI  
COMMUNITY OF WISCONSIN AND STATE OF WISCONSIN  
CLASS III GAMING COMPACT**

**NOV 23 2018**

**AS - IA  
Office of Indian Gaming**

**WHEREAS**, the Forest County Potawatomi Community of Wisconsin (“Tribe”) and the State of Wisconsin (“State”) hereby agree to amend the Forest County Potawatomi Community of Wisconsin and State of Wisconsin Class III Gaming Compact (“Compact”) as follows:

1. The November 2014 Amendment to the Compact is rescinded upon publication in the Federal Register, pursuant to 25 U.S.C. § 2710(d)(8)(D), of the notice of this Amendment.
2. **Compact Section XXII.A.II is deleted in its entirety.**
3. **The Compact is amended by adding a new Section XXXVII as follows:**

**XXXVII. PROCEDURES REGARDING A QUALIFYING CONCURRENCE.**

- A. **Agreement Regarding Qualifying Concurrence.** If, after publication in the Federal Register, pursuant to 25 U.S.C. § 2710(d)(8)(D), of the notice of this Amendment and prior to January 31, 2031, a federally recognized Indian tribe, other than the Tribe, receives a positive determination from the Secretary of the Interior pursuant to 25 U.S.C. § 2719(b)(1)(A) (a “Secretary’s Determination”) regarding a proposed gaming establishment (a “New Facility”) on lands more than 30 miles and within 50 miles of the Tribe’s casino facility in Milwaukee (the “Existing Facility”), the State, acting through the Governor or otherwise, shall not concur in such a determination (a “Qualifying Concurrence”) except as provided for herein.
- B. **Procedures Allowing Concurrence.** The Governor may only concur in a Secretary’s Determination for a New Facility after publication in the Federal Register, pursuant to 25 U.S.C. § 2710(d)(8)(D), of the notice of this Amendment.
- C. **Compact Payment Adjustment.** If the Governor of Wisconsin concurs in a Secretary’s Determination for a New Facility, then an annual Compact Payment Adjustment equal to the Annual Revenue Loss and subject to the Payment Adjustment Cap, is required pursuant to the terms and conditions of this section.
- D. **Definitions.**
  1. “Compact Payment Adjustment.” An adjustment to the revenue sharing payment obligation of the Tribe under Compact Section XXXI (the “Revenue Sharing Payment”) under the terms and conditions provided in this Section XXXVII., including the Payment Adjustment Cap.
  2. “Compact Payment Reserve Account.” A segregated account established by the Tribe into which the Tribe shall deposit Revenue Sharing

Payments due to the State following a Qualifying Concurrence, subject to a maximum balance of \$75 million, and from which funds may be transferred to the general fund of the Tribe to cover a Compact Payment Adjustment as provided in this Section XXXVII.

3. “Payment Adjustment Cap.” A not to exceed cumulative amount of \$250 million which is the maximum of the Compact Payment Adjustment authorized by this Section XXXVII.
4. “Annual Revenue Loss” means the reduction over a Fiscal Year in Milwaukee Net Revenues caused by a New Facility, calculated by subtracting Milwaukee Net Revenues from Anticipated Baseline Net Revenues. (“Fiscal Year” means the fiscal year established and utilized by the Tribe in relation to the Existing Facility, beginning on October 1 and concluding on September 30.)
5. “Milwaukee Net Revenues” means (a) revenue from Class III gaming, earned at the Existing Facility, but not including any Compact Payment Adjustment received by the Tribe and not including any revenue from Class II gaming activity or from ancillary activity such as hotel or retail sales; minus (b) the sum of operating expenses attributable to the production of Class III revenue at the Existing Facility, but not including interest, taxes, depreciation and amortization, consistent with industry standards for comparable facilities and which are in accordance with Generally Accepted Accounting Principles and the most current edition of the “Accounting and Audit Guide—Casinos” published by the American Institute of Certified Public Accountants. The calculation of Milwaukee Net Revenues shall be based upon the audited financial statements of the Existing Facility.
6. “Anticipated Baseline Net Revenues” means the Milwaukee Net Revenues that would have been earned but-for the operation of the New Facility. It is therefore intended that Anticipated Baseline Net Revenues will reflect changes in Milwaukee Net Revenues resulting from other market dynamics, including competition from other jurisdictions. The Anticipated Baseline Net Revenues shall be calculated on the same fiscal year basis and using the same categories of revenue and expenses as applied in the calculation of Milwaukee Net Revenues.
  - a. For the first Fiscal Year during which a New Facility is in operation, Anticipated Baseline Net Revenues shall be the Milwaukee Net Revenues for the immediately preceding Fiscal Year. Thereafter, Anticipated Baseline Net Revenues will be the same from year to year, subject to adjustment as provided below.
  - b. At any time after the first Fiscal Year during which a New Facility is in operation, either the Tribe or the State may propose an adjustment to the Anticipated Baseline Net Revenues, but

only during and for the preceding, then current and/or next Fiscal Year, to reflect changes in the competitive environment, macroeconomic conditions, or any other dynamic that would affect or may have affected Milwaukee Net Revenues. If the Tribe and the State reach agreement regarding a new Anticipated Baseline Net Revenues, then the agreed upon Anticipated Baseline Net Revenues shall be the new Anticipated Baseline Net Revenues utilized under this Section unless and until further modified pursuant to this subsection. If the Tribe and the State do not reach an agreement, then the party proposing an adjustment may include the adjustment in its estimate of Annual Revenue Loss under Section XXXVII.F. and the disagreement shall be resolved as provided therein.

**E. Annual Compact Payment Adjustment.**

1. In the event of a Qualifying Concurrence, the Tribe shall thereafter on each June 30th pay its Revenue Sharing Payment into the Compact Payment Reserve Account so long as the balance does not exceed \$75 million after applying any Compact Payment Adjustment due on that June 30th. In the event that the New Facility does not commence Class III gaming within 3 years of a Qualifying Concurrence, the Tribe shall pay to the State on June 30 of each year the interest earned thereafter on the Compact Payment Reserve Account until such time as Class III gaming is initiated at the New Facility.
2. The Compact Payment Adjustment shall be calculated on June 30th and is equal to any Annual Revenue Loss during the prior Fiscal Year of the Tribe, subject to the Payment Adjustment Cap. The first Compact Payment Adjustment shall be calculated on the June 30th following the first Fiscal Year during which gaming activity commences at a New Facility.
3. The Revenue Sharing Payment due to the State on June 30th shall be reduced by the amount of the Compact Payment Adjustment calculated for that June 30th. The application of the Compact Payment Adjustment shall satisfy the Tribe's obligation for payment under Section XXXI.
4. If the amount of the Compact Payment Adjustment on any June 30th is less than the Revenue Sharing Payment due to the State on that June 30th, then the Tribe shall pay the difference into the Compact Payment Reserve, except that, if the balance of the Compact Payment Reserve is \$75 million or more after applying the Compact Payment Adjustment, then the Tribe shall pay the difference to the State.
5. If the amount of the Compact Payment Adjustment on any June 30th is more than the Revenue Sharing Payment due to the State on that June

30th, then the Tribe shall transfer that difference from any funds in the Compact Payment Reserve Account into the Tribe's general fund.

6. If the full Compact Payment Adjustment is not satisfied under paragraphs 4 and 5 above in any year before 2031, the unsatisfied amount shall be carried forward and added to the Compact Payment Adjustment due on June 30th of the following year and may be applied as set out in paragraphs 4 and 5 above. In no event may a Compact Payment Adjustment be taken after 2031.
7. If at the end of the current term of the Compact, January 31, 2031, there is a remaining balance in the Compact Reserve Account after accounting for any Revenue Sharing Payment and Compact Payment Adjustment that may be due for the period October 1, 2029 thru January 31, 2031, that balance, and any interest earned thereon, shall be paid to the State as soon as the accounting can be reasonably completed, but no later than June 30, 2031.
8. Upon a final determination of a court of competent jurisdiction that Class III gaming may not be conducted at the New Facility the Tribe shall repay any balance of funds held in the Compact Payment Reserve Account to the State with any interest earned thereon.
9. When the total of the Compact Payment Adjustments have reached the Payment Adjustment Cap the obligations of the State to make Compact Payment Adjustments is satisfied and the State has no further obligations regarding subsequent Annual Revenue Loss.

**F. Calculation of Annual Revenue Loss.**

1. Estimates of Future Annual Revenue Losses. The State and Tribe shall each provide the other with a written good faith estimate of the Annual Revenue Loss anticipated during the Tribe's first two Fiscal Years during which any gaming activity will occur at a New Facility. The written estimates shall be provided no later than 90 days before such gaming activity is anticipated to commence. The estimate shall detail the elements of the calculation. Thereafter, the State and Tribe shall each provide to the other a written estimate of the Annual Revenue Loss anticipated during each full Fiscal Year during which gaming activity will occur at a New Facility, no later than 90 days before the start of that Fiscal Year. Both the Tribe and the State may adjust their estimates at any time up to the start of the Fiscal Year. The Tribe will provide the State with any records or information regarding the operation of the New Facility that may assist the State in estimating the Annual Revenue Loss. Those records are subject to the protection of confidentiality required of other records of the Tribe under the Compact.

2. **Estimates of Annual Revenue Loss.** For any Fiscal Year in which the New Facility conducts Class III gaming the Tribe and the State shall exchange estimates of the Annual Revenue Loss for that year within 150 days after the close of the Fiscal Year. The estimates shall detail the elements of the calculation. The Annual Revenue Loss shall be determined by the State annually on June 1 for the prior Fiscal Year, in good faith, based upon the State's choice of the Tribe's estimate or the State's estimate in accordance with the definitions and requirements of Section XXXVII.D. Notwithstanding the foregoing, the parties may mutually agree on an Annual Revenue Loss amount which differs from an estimate of the parties. The Tribe will provide the State with any records or information regarding the operation of the Existing Facility that may assist the State in estimating the Annual Revenue Loss. Those records are subject to the protection of confidentiality required of other records of the Tribe under the Compact.
3. If the State relies on its own final estimate to determine the Annual Revenue Loss for the annual Compact Payment Adjustment to be made on June 30 and the estimate understates the actual Annual Revenue Loss by more than 10%, then the State is subject to a 5% penalty. If the State relies on the Tribe's final estimate and that estimate overstates the actual Annual Revenue Loss by more than 10%, then the Tribe is subject to a 5% penalty. A penalty under this paragraph is payable by the Tribe or the State and is not subject to either the Compact Payment Adjustment or the Compact Payment Reserve Account.
4. Any dispute under this paragraph F, including a dispute over the calculation of the Annual Revenue Loss, or whether a penalty is due is a dispute subject to resolution under Section XXII. The Compact Payment Adjustment based on the Annual Revenue Loss determined by the State shall be applied pending the resolution of a dispute under Section XXII. After a dispute has been resolved, any adjustment to the Annual Revenue Loss shall be applied to the next following Compact Payment Adjustment.

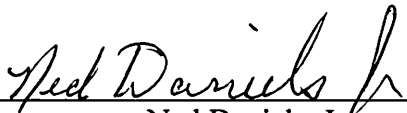
**G. Additional Provisions**

1. This obligation is an obligation arising under a contract with the State and enforceable under this Compact, including Section XXIII.E.
2. The State and Tribe shall not contest the validity of any provisions of this section XXXVII.
3. **Reservation of Rights.** Except for actions expressly required or prohibited by this section XXXVII of the Compact, the Tribe and the State each separately reserve all rights to take any or all actions in support of or in opposition to any proposed gaming establishment in Wisconsin, including the right to participate in, to initiate, or to defend against any

judicial or administrative proceeding and to assert any and all legal or equitable claims or defenses regarding any proposed gaming establishment in Wisconsin, including challenges to the actions and the authority of government officials to act. This section XXXVII. of the Compact shall not be considered in any proceeding or by any governmental agency as evidence of support for or opposition to any such gaming establishment, including as evidence of mitigation of any economic detriment or other impacts on the Tribe, the State, or on any other private or public interest or party. The execution by the Governor of the 2018 Compact Amendment does not constitute concurrence by the Governor, or an agreement to grant concurrence with a Secretarial Determination.

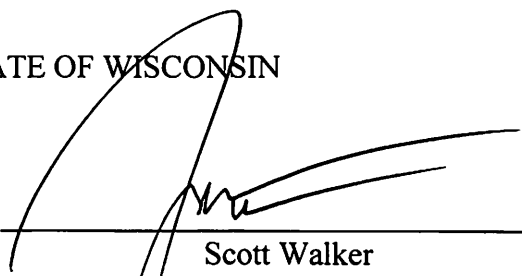
4. In the event this amendment is found to be invalid or otherwise of no force and effect in a final decision of a court of competent jurisdiction, after all available appeals have been exhausted, then the provisions of Section XXII.A.11 shall be in full force and effect.

FOREST COUNTY POTAWATOMI  
COMMUNITY OF WISCONSIN

By:   
Ned Daniels, Jr.  
Chairman

Executed on this 23 day of November 2018

STATE OF WISCONSIN

By:   
Scott Walker  
Governor

Executed on this 23 day of November, 2018