

**THIRD AMENDMENT
TO THE
WISCONSIN WINNEBAGO TRIBE, NOW KNOWN AS THE HO-CHUNK NATION,
AND THE STATE OF WISCONSIN GAMING COMPACT OF 1992**

The State of Wisconsin and the Ho-Chunk Nation have determined that the following amendments to the Wisconsin Winnebago Tribe, Now Known as the Ho-Chunk Nation, and the State of Wisconsin Gaming Compact of 1992, serve the best interests of both parties, and do hereby agree to amend the Compact as follows:

1. Section XXIII.D. is amended to read as follows:

- D. Last, Best Offer Format. When required by the terms of the Compact, or when agreed to by the parties, the arbitration shall proceed in a last best offer format in accordance with the following procedures:
1. Selection of Arbitrator. Within 7 days of service of the notice of demand for arbitration each party shall propose to the other a list of 3 persons with experience in Indian law and Indian gaming to serve as an arbitrator. If the parties cannot agree on an arbitrator within 14 days of service of the notice of demand for arbitration the parties shall acknowledge an impasse in the appointment of an arbitrator and shall petition, no later than 21 days after the service of the notice of demand for arbitration, the United State District Court for the Western District of Wisconsin for appointment of an arbitrator. If either party challenges the ability of the court to appoint an arbitrator, or the court declines to do so, either party may request the Judicial Arbitration Mediation Service (JAMS), or similar commercial arbitration firm if JAMS is unavailable or unwilling, to appoint an arbitrator from the parties' list of arbitrators. In selecting the arbitrator, the third party neutral or JAMS shall choose the person that is most qualified to resolve the arbitration given the issues in dispute. The arbitrator so appointed shall conduct the arbitration.
 2. Procedures. Unless otherwise agreed to by the parties the following procedures shall be followed. The arbitrator shall conduct a scheduling conference within 7 days of the appointment. No later than 30 days after the scheduling conference each party shall submit to the arbitrator and the other party a last, best offer for those issues that will be decided using the last, best offer format. If either party requests a hearing for development of a factual record in support of its last, best offer, the arbitrator shall conduct a hearing if it is determined necessary for the resolution of the dispute. If a hearing is determined to be necessary to resolve the dispute the hearing shall be conducted after submission of the last best offers.
 3. Decision. For each issue to be decided using the last, best offer format, the arbitrator shall, for its decision on the issue, adopt one of the last, best offers submitted, and no other remedy, except remedies in aid of the arbitrators decision. The arbitrator shall select from the two proposed offers the one which best comports with the terms of the Act, the Compact, as amended, and any other applicable federal law. If the arbitrator expressly determines that a last, best offer submitted by a party with respect to an issue or

issues does not comply with the Act and/or the Compact or other applicable federal law, as they may be amended and are interpreted by courts of competent jurisdiction, then the arbitrator shall reject that last, best offer and shall not consider it in rendering its decision. If the arbitrator expressly determines that all of the last, best offers submitted by the parties with respect to an issue or issues are not consistent with or do not comply with the Act and/or the Compact or other applicable federal law, as they may be amended and as they are interpreted by courts of competent jurisdiction, then the arbitrator shall reject all of the last, best offers and shall allow both parties an opportunity to resubmit last, best offers. If the arbitrator determines that the resubmitted last best offers should both be rejected, then the arbitrator shall decide the related issue or issues as if the parties had elected to have the issue or those issues decided without using the "last, best offer" format. In that instance, the arbitration shall be conducted in accordance with Section XXIII.B. If the arbitration is to determine Compact provisions, the arbitrator shall have no authority to award money damages against either party, regardless of whether a last, best offer proposes an award of damages. All proceedings shall be completed and a decision rendered within 120 days of appointment of the arbitrator.

2. Section XXVI. of the Compact shall be deleted in its entirety and replaced with the following:

XXVI. EFFECTIVE DATE AND DURATION

- A. The parties acknowledge and affirm that the Compact is in effect and has been in effect since approval of the Second Amendment to the Compact. The Compact shall be extended for a term of 25 years from the date notification of approval of this 2008 Amendment is published in the Federal Register pursuant to 25 U.S.C. 2710(d)(8)(D).
- B. Thereafter the Compact shall be extended automatically pursuant to subsec. B.2., unless either party serves a notice of nonrenewal pursuant to subsec. B.1.
 - 1. Notice of Nonrenewal.
 - a. By the State. The Governor shall serve a notice of nonrenewal on the Nation not later than 180 days prior to the expiration of the term of the Compact set out in subsec. A., or any extension thereof, but only if the State first enacts a statute directing the Governor to serve a notice of nonrenewal and consenting, on behalf of the State, to be bound by the remedies in subsection E.
 - b. By the Nation. The Nation may serve a notice of nonrenewal on the State not less than 180 days prior to the expiration of the term of the Compact set out in subsec. A., or any extension thereof.
 - 2. Automatic Renewal. If neither party serves a notice of nonrenewal on the other, the procedures in subsec. F. shall be followed.

- C. In the event written notice of nonrenewal is given by either the State or the Nation as set forth in subsection B.1., the Nation shall cease all Class III gaming under this Compact upon the expiration of the Compact or the expiration of any amended, renewed, or successor compact. The Compact remains in effect until the procedures in subsec. E. are concluded.
- D. The Nation may operate Class III gaming while this Compact, or an extension thereof under this Section XXVI., is in effect.
- E. In the event that written notice of nonrenewal of this Compact is given by the State or by the Nation under subsec. B.1., the Nation may, pursuant to the procedures of the Act, request the State to enter into negotiations for an amended, renewed, or successor compact governing the conduct of Class III gaming activities to become effective following the date this Compact is scheduled to expire. Thereafter, the State shall negotiate with the Nation in good faith concerning the terms of an amended, renewed, or successor compact (see sec. 11 (d)(3)(A) of the Act). If an agreement between the Nation and the State is not reached before the expiration date of this Compact, or any extension thereof, the Nation shall do one of the following:
1. Immediately cease all Class III gaming upon the expiration of this Compact, or any extension thereof; or
 2. Commence an action in the United States District Court pursuant to section 11 (d)(7) of the Act, or commence any applicable procedures adopted by the Secretary of the Interior, such as 25 C.F.R. Part 291, in which event this Compact shall remain in effect until the procedures set forth in section 11 (d)(7) of the Act, or 25 C.F.R. Part 291 are completed.
- F. In the event neither party serves a notice of nonrenewal, either party may propose amendments to any term of the Compact, or propose new terms, and the parties shall negotiate in good faith to reach agreement. If the parties have not reached agreement by the expiration of the term of the Compact set out in subsec. A., or any extension thereof, either party may require that disagreements regarding proposed Compact terms be resolved through last best offer arbitration proceedings pursuant to Section XXIII.D The Nation may continue to conduct Class III gaming pursuant to the terms of the Compact in effect at the time of the expiration of the term of the Compact set out in subsec. A., or any extension thereof, until such time as Compact amendments have been executed or the arbitration has resulted in the selection of Compact terms and notification of this Compact Amendment is published in the Federal Register pursuant to 25 U.S.C. 2710(d)(8)(D).
- G. Intermediate Extension
1. On the fifteenth anniversary of the publication of the Notice of Approval of the Compact Amendments in the Federal Register the Compact shall be automatically extended for 25 years in addition to the duration set out in subsec. A. unless the

State serves notice on the Nation, within 90 days preceding the fifteenth anniversary of the publication of the Notice of Approval of the Compact Amendments in the Federal Register, alleging any of the following:

- a. Either party has served a notice of nonrenewal, in which case the Compact shall expire at the conclusion of the initial 25 year duration specified in subsec. A.
- b. The Nation has not made all payments required to date under the terms of the Compact, as amended;
- c. The Nation has been found to be in material breach of the Compact under the dispute resolution procedures of the Compact, or the Nation has refused to participate in a dispute resolution procedure contained in the Compact; or
- d. The State has served notice on the Nation that it is in material breach of the Compact, and that allegation has not been finally resolved under the dispute resolution procedures of the Compact. In this event if the allegation is finally resolved in favor of the Nation, the Compact shall extend as set forth above 30 days after the final resolution.

Disputes regarding whether these conditions have occurred shall be resolved pursuant to Section XXIII.A and B.

2. If the Compact is to be extended pursuant to this subsection G., either party may serve notice on the other, within 90 days preceding the fifteenth anniversary of the publication of the Notice of Approval of the Compact Amendments in the Federal Register, a demand for negotiation of Compact amendments pursuant to subsection F, and the provisions and procedures in subsection F. shall apply, except the length of the Compact extension shall be an additional 25 years.

3. Section XXXII of the Compact shall be amended by deleting the following language:

~~“At any time after June 1, 2010, but not later than August 30, 2010, and at any time after June 1, 2006, if the Nation is unable to obtain the Governor’s approval of a fourth site to conduct Class III gaming, as set forth in Paragraph 9 of this Second Amendment, either Party may request negotiations for an amendment to Paragraph 12 of this Second Amendment establishing the fee the Nation shall pay to the State under the Compact. All requests to amend or renegotiate Paragraph 12 of this Second Amendment shall be in writing, addressed to the President of the Nation or the Governor of the State, as the case may be, and shall include the proposed amendment language. Upon receipt of the request, the Parties shall meet and confer promptly, but in no case more than ten (10) days from receipt of the request, to determine a schedule for commencing negotiations within thirty (30) days of the request. The Parties shall meet and negotiate in good faith for a reasonable period of time not to exceed ninety (90) days. If at the end of the ninety (90) day period, the Parties have not reached agreement, or if prior to the expiration of the ninety (90) days the Parties agree that they have reached impasse, then the Parties shall submit the dispute to binding arbitration before a single arbitrator in accordance~~

~~with the provisions of Section XXIII (B) of the Compact as amended herein (para. 11, below). The decision of the arbitrator shall be in writing, giving the reason for the decision, and shall be binding on the Parties. The decision of the arbitrator shall be limited to increasing the fee to no more than ten percent (10%) of the Nation's "net win" and to reducing the fee to no less than two percent (2%) of the Nation's "net win." Net win shall mean the total amount wagered on Class III games less fills, and minus the amount paid out in jackpots and prizes, including the actual cost of non-monetary prizes, which shall mean any personal property distributed to a patron as the result of a specific legitimate wager, before the deduction of costs and expenses.~~

~~Furthermore, within the thirty (30) days preceding each twenty-fifth (25th) annual anniversary of June 11, 2004, the State, by the Governor as directed by an enactment of a session law by the Wisconsin Legislature, or the Nation may propose amendments to any provision of the Compact, as amended herein. The Nation and the State shall enter into good faith negotiations regarding the proposed amendments. Disputes over the obligation to negotiate in good faith under this Section may be resolved by binding arbitration as provided for in Paragraph 11 of this Second Amendment."~~

4. Section XXXII. of the Compact shall be amended as follows:

The words "In addition," shall be deleted and the words "June 11, 2004" will be deleted and replaced with "October 1, 2008" from the remainder of the Section such that the amended Section shall read as follows:

~~In addition, Within thirty (30) days preceding each fifth (5th) annual anniversary of June 11, 2004~~ October 1, 2008, the State or the Nation may propose amendments to the Compact to enhance the regulation of gaming under the Compact. The Nation and the State shall enter into good faith negotiations regarding the proposed amendments. Disputes over the obligation to negotiate in good faith under this Section may be resolved by binding arbitration as provided for in Section XXIII(A) through (C) of this Second Amendment.

5. Section XXXIV.A. which was numbered Paragraph 12 in the Second Amendment, shall be deleted in its entirety and replaced with the following:

XXXIV. Payment To The State

A. The Nation shall pay to the State the total sum of \$90 million, minus a credit for the \$30 million previously paid, for a total of \$60 million. This payment shall satisfy the Nation's obligations to make payments to the State under this Compact for the period up to and including June 30, 2008, except for the use of the period July 1, 2007, through June 30, 2008, to calculate the payment due May 1, 2009, as set out in the following paragraph, and the obligations arising from Section XXV. This payment shall be made upon publication of the Notice of Compact Amendment in the Federal Register. Failure to make this payment shall revoke and cause this Third Amendment of 2008 to be void, and the parties shall immediately resume the current arbitration proceeding.

On May 1, 2009, and each May 1 thereafter that this Compact, as amended, is in effect, the Nation shall pay to the State, in addition to any payment required under Section XXV., an annual payment (the "Annual Payment") of 5% of the net win from the Nation's Class III gaming facilities. The calculation of the Annual Payment shall be based on the net win for the July 1 through June 30 period preceding the date on which the payment is due. If at any time during the period July 1 through June 30 preceding the date on which the payment is due. If the net win at the Nation's Class III gaming facilities for any July 1 through June 30 period is greater than \$350 million, the Nation shall pay to the State an amount equal to 5.5% of the net win for that period.

Net win shall be defined as the amount wagered in Class III gaming, less fills and the amount paid out in jackpots and prizes, including the actual cost to the Nation of any noncash prize which is distributed to a patron as the result of a specific, legitimate wager.

6. Section XXXIV.B. shall be amended to reflect the following changes:

The words "the amount paid to the State by the Nation under the first and second years of this amendment" shall be deleted and replaced with "\$45 Million" and the words "the amount paid to the State by the Nation under the first and second years of this Second Amendment" shall be deleted and replaced with "\$45 Million" so that the amended paragraph reads as follows:

- B. In the event a change in State law is enacted to permit the operation of electronic games of chance, or other Class III games, as defined in and authorized by this Compact, by any person, organization or entity other than a federally recognized Indian Tribe and/or the Nation under the provisions of the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et. seq., or the State Lottery as authorized by Ch. 565 Wis. Stats., or if the State Lottery is authorized to conduct electronic games of chance and does so operate electronic games of chance, the Nation shall be relieved of its obligations to pay any amounts required to be paid to the State under this Compact and the State shall refund to the Nation ~~the amount paid to the State by the Nation under the first and second years of this amendment~~ \$45 Million. If the State authorizes any person, organization or entity to conduct, play or participate in any Class III game, as defined by the IGRA, other than those games authorized under a Tribal-State Class III Gaming Compact approved by the Secretary of the Interior as defined by the IGRA, or any games conducted by the Wisconsin State Lottery, any charitable games authorized by Wisconsin law on or before January 1, 2003, or any pari-mutual wagering at a facility whose owners were licensed by the State prior to January 1, 2003, within a Sixty-Five (65) mile radius of any facility that the Nation is authorized to conduct gaming at under this Second Amendment, the Nation shall be relieved of its obligations to pay any amounts required to be paid to the State under this Compact and the State shall refund to the Nation ~~the amount paid to the State by the Nation under the first and second years of this Second Amendment~~ \$45 Million.

7. The following language shall be deleted from Section XXXIV. A. of the Compact and shall be inserted as Section XXXIV.C.1. of the Compact, and amended to reflect the following changes:

The words “with the fifth (Year 2007) annual payment that the Nation is required to make to the State under this Compact or Second Amendment” shall be deleted and replaced with “May 1, 2010”.

The words “to pay a fee to the State under this Compact or Second Amendment” shall be deleted and replaced with “to make the Annual Payment,”; and

The words “annual payment to the State made pursuant to this paragraph 12” shall be deleted and replaced with “Annual Payment” so that Section XXXIV.C.1, as amended, shall read as follows:

C. Credits

1. Payments to Counties. Commencing May 1, 2010 ~~with the fifth (Year 2007) annual payment that the Nation is required to make to the State under this Compact or Second Amendment~~ and continuing thereafter for as long as the Nation is required to ~~pay a fee to the State under this Compact or Second Amendment,~~ to make the Annual Payment, the Nation shall deduct from its ~~annual payment to the State made pursuant to this paragraph 12~~ Annual Payment One Thousand Dollars (\$1,000.00) paid to each county for every acre of land owned by the United States of America in trust for the Nation as of the effective date of this Compact and the Second Amendment which is located within the county’s jurisdiction. The payment made by the Nation to the county(s) under this Paragraph, may be expended by each county for any purpose as determined by each county in its sole discretion, except that the county cannot use any of the funds paid to it under this Paragraph that would diminish the Nation’s governmental jurisdiction or have an adverse financial impact on the Nation (“Prohibited Purpose”). If the county uses the funds paid to it by the Nation for a Prohibited Purpose, the Nation shall cease making payments to said county and shall instead pay said county’s payment to the State.

8. The following shall be inserted in Section XXXIV.C., entitled “Credits”, to create subsections XXXIV.C.2 through 6.

2. Payments for Public Works. Beginning with the Annual Payment due May 1, 2010, the Nation may deduct amounts paid by the Nation for public works projects that benefit both the Nation and the State, including its political subdivisions, up to \$1 million. Examples of such projects include, but are not limited to, those listed in Exhibit B of the Second Amendment, which is incorporated in this Compact as Exhibit A. The Nation may make this deduction from the Annual Payment in any year between the first Annual Payment and the Annual Payment made on May 1, 2019, provided that the deduction may be no more than \$1 million from any Annual Payment and the deductions may not exceed \$5 million in total. The Nation shall consult with, but does not need the prior consent of,

the State regarding which public works projects qualify for the deduction prior to initiating the projects.

3. **Projects of Substantial Public Benefit.** The Nation may deduct from its Annual Payment any additional amounts paid by the Nation for projects that the State and the Nation agree provide a substantial public benefit in the areas of economic development, infrastructure improvement, or public health, welfare or safety. Deductions from the Annual Payment for these purposes may not exceed \$4 million in total. Deductions from the Annual Payment for these purposes under this paragraph may not be taken prior to the Annual Payment on May 1, 2019, or after the final credit pursuant to subsec. 2 is taken, whichever is earlier, without the written consent of the State. The Nation shall obtain the agreement of the Secretary of the Department of Administration regarding any project which the Nation uses to authorize a deduction pursuant to this subsection, which agreement shall not be unreasonably withheld. Deductions pursuant to this subsection shall not be greater than \$1 million from any Annual Payment unless a greater amount is agreed to by the State.
4. **Development of Future Projects.** The parties acknowledge that, due to the dispute giving rise to the Compact Amendments of 2008, the public works projects contemplated in paragraph 17 of the Second Amendment, and used as illustrative examples in subsec. 2 and included as Exhibit A to this Compact, were not completed. The parties agree that, within 120 days of January 1, 2019, they will meet and confer to develop a new listing of projects of comparable cost and public value. Upon completion of the list of the projects the parties shall begin the procedures set out in Paragraph 17 of the Second Amendment. Paragraph 17 of the Second Amendment shall remain in effect except as amended by this Paragraph 4.
5. **Enforcement Credits.** In the event the State intentionally fails to comply with a final decision of an arbitrator pursuant to Section XXIII., and the Nation cannot obtain judicial enforcement of the arbitration award and that inability is due to the assertion of immunity by a State officer and/or employee exercising their duties and responsibilities under the authority of the Governor, or under applicable State law, the Nation may demand binding arbitration pursuant to Section XXIII. of the Compact to obtain a determination of the monetary value of the loss to the Nation due to the inability of the Nation to obtain judicial enforcement of the arbitration award. This amount will be increased by 50% of the amount of the award. Any amount determined pursuant to these procedures is a debt of the State, which may be recovered by the Nation under the procedures set out in Sections 16.007 and 775.01 of the Wisconsin Statutes. If the arbitrator cannot proceed because of the State's assertion of immunity from suit, then the Nation's sovereign immunity waiver is revoked pursuant to XXIV.F.

This provision shall not apply if the State ratifies the State's waiver of sovereign immunity in Section XXIV., or waives the State's sovereign immunity from suit to enforce the terms of the Compact. Any amount awarded pursuant to these provisions may be deducted by the Nation from any future Annual Payments due under Section XXXIV.

6. Credits if Notice of Nonrenewal is Served. The parties acknowledge the disruption to the Nation's governmental revenues and programs that would be occasioned by the service of a notice of nonrenewal by the State. In order to prepare for the cessation of Class III gaming activities, the parties agree that in the event the State serves a notice of nonrenewal, the Nation shall be excused from making the final three Annual Payments due under this Section. XXXIV. Annual Payments due after the date the State enacts a law requiring the Governor to serve the notice of nonrenewal shall be reduced by 15% for the remainder of the term of the Compact.

9. The text of Section XXXV. shall be deleted in its entirety and replaced with the following:

In the event that, after the publication of the Notice of Approval of these Compact Amendments of 2008 in the Federal Register, a Compact with a Tribe with an annual net win over \$200 million is amended, the Nation may demand the State amend its Compact with the Nation to include the same amended provision. Upon receipt of this demand the State shall amend its Compact with the Nation to include the new provision and any concession, provision or consideration provided to the State to induce it to agree to the amendment with the other Tribe. Failure by the Nation to agree to any concession, provision or consideration provided to the State to induce it to agree to the amendment with the other Tribe shall void the obligation of the State to amend its Compact with the Nation. This provision shall not apply to any amendments affecting the payment to the State.

10. Section XXXVI. of the Compact shall be amended by adding the following subsection D.

D. In the event that any of these Compact amendments of 2008 are disapproved in whole or in part by the Secretary of the Department of the Interior, or found invalid or unenforceable by a court of competent jurisdiction, then all of these amendments shall be null and void and the parties shall immediately resume the current arbitration proceeding in *State of Wisconsin v. Ho-Chunk Nation* before Hon. William Norris in accordance with the District Court's July 10, 2008 order compelling arbitration.

HO-CHUNK NATION

By: _____

Daniel Brown
Vice-President

Executed on this 17th day of September, 2008

STATE OF WISCONSIN

By: _____

Jim Doyle
Governor

Executed on this 16th day of September, 2008

Consistent with 25 U.S.C.A. Sec. 2710 (d)(8), the Third Amendment to the Wisconsin Winnebago Tribe, now known as the Ho-Chunk Nation, Gaming Compact, dated September , 2008, is hereby approved on this _____ day of _____, 2008, by the Assistant Secretary - Indian Affairs, United States Department of the Interior.

UNITED STATES DEPARTMENT OF THE INTERIOR

EXHIBIT A

GOVERNMENT PROJECTS

1. Ho-Chunk Nation fee payments received by the State shall be credited and rebated to the Ho-Chunk Nation for any Waste Water Facility Cost shares with another municipality entered into by an Intergovernmental Agreement.
2. Ho-Chunk Nation fee payments for any Wisconsin Department of Transportation upgrades, construction and maintenance shall be credited and rebated to the Ho-Chunk Nation for any cost shares with another municipality entered into by an Intergovernmental Agreement.
3. Ho-Chunk Nation fee payments for any basic Municipal Services offered to the Ho-Chunk Nation shall be credited and rebated to the Ho-Chunk Nation.
4. The State shall provide access and right-of-way to Ho-Chunk Nation trust and heirship lands through adjacent or contiguous properties known as the Joe Wolf, Swallow, Hopinka parcels located in Jackson County, Wisconsin.
5. A portion of the Ho-Chunk Nation Gaming Fee payments shall be provided to essential positive public programs such as Wisconsin Judi-care and public housing assistance grants.
6. From Ho-Chunk Nation Gaming Fee payments, based on the cooperative Memorandum of Understanding Concerning Badger Army Ammunition Plant by and between the State and the Ho-Chunk Nation from the 1998 Compact Amendment, the State shall commit a grant to the Ho-Chunk Nation Badger Army Ammunition Plant environmental restoration plan.
7. From Ho-Chunk Nation Gaming Fee payments, based on the cooperative Agreement By and Between the State and the Ho-Chunk Nation, the State shall commit a grant to the Ho-Chunk Nation Kickapoo Reserve environmental restoration plan to match the State of Wisconsin Kickapoo Reserve Management Board (KRMB) grant.
8. From Ho-Chunk Nation Gaming Fee payments, the State shall provide the Ho-Chunk Nation Department of Health and Social Services a grant for the creation of a Community Based Residential Facility Program and a Tribal Government Day Care Program cooperatively with the existing State Programs.
9. From Ho-Chunk Nation Gaming Fee payments, the State shall provide a grant for the purchase and maintenance of needed medical equipment by tribal and non-tribal communities consisting of the following: breast cancer diagnosis equipment, diabetes

dialysis, cancer research, chemotherapy, and administrative support for services at Indian Health Centers provided to non-tribal communities.

10. From Ho-Chunk Nation Gaming Fee payments, the State shall provide a grant for local law enforcement to tribal and non-tribally shared communities such as towns and villages, in addition to County Tribal Law Enforcement Grants.
11. From Ho-Chunk Nation Gaming Fee payments, the State shall provide a grant to the State Department of Commerce exclusively for Business and Enterprise Development for Wisconsin.