UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

STATE OF MICHIGAN,

Plaintiff,

v.

HANNAHVILLE INDIAN COMMUNITY,

Defendant.

No. 2:17-cv-00045

HON. GORDON J. QUIST

MAG. TIMOTHY P. GREELEY

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AGREEMENT AND STIPULATION FOR ENTRY OF A CONSENT JUDGMENT

Plaintiff State of Michigan (the State) and Defendant Hannahville Potawatomi Indian Community (the Community), by and through their respective undersigned counsel, stipulate and agree as follows:

FACTS

1. The Community conducts Class III gaming on lands held by the United States in trust for the benefit of the Community in Harris, Michigan pursuant to

the Compact between the Hannahville Indian Community and the State of Michigan Providing for the Conduct of Tribal Class III Gaming by the Hannahville Indian Community (Compact).

2. The Compact was approved by the United States Department of the Interior's Assistant Secretary for Indian Affairs pursuant to the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2710(d)(8), on November 19, 1993 and became effective upon notice of said approval being published in the Federal Register, 58 Fed. Reg. 63262 (Nov. 30, 1993).

3. Pursuant to Section 12(B) of the Compact, the State provided the Community with written notice of its right to renegotiate the Compact on August 16, 2012.

4. Despite efforts of good faith by the State and Community to renegotiate, the parties have been unable to conclude a successor compact under the provisions set forth in Section 12(C) of the Compact.

AGREEMENT

The State and Community stipulate and agree that it is in their respective best interests to have the Compact remain in effect and to resolve the Compact renegotiation impasse pursuant to a consent judgment in accordance with the following terms:

1. From and after the entry of the Consent Judgment contemplated by this Stipulation, and so long as the Compact or a successor tribal-state Class III gaming compact is in effect between the Community and State pursuant to IGRA,

25 U.S.C. § 2701, *et seq*., as amended or successor law, the Community shall make the following payments:

a. One percent (1%) of the Annual Net Win up to $50 million to Travel Michigan, or its successor, to be used exclusively for regional travel marketing for the Upper Peninsula through the Pure Michigan Advertising Marketing Partnership Program, or any successor program thereof. Travel Michigan, or any successor agency, shall consult with the Community for the purposes of investing payments received under this subparagraph. If Travel Michigan or the Pure Michigan Advertising Marketing Partnership Program cease to exist or are not able to receive payments required under this subparagraph, the Governor of the State of Michigan shall designate a successor state agency to receive the payments for the express purpose of promoting regional travel marketing for the Upper Peninsula.

b. One percent (1%) of the Annual Net Win up to $50 million to an interest-bearing escrow account at a financial institution located within the State of Michigan that is subject to the laws of the State of Michigan and the federal government, to be managed by a third party with the Bark River-Harris School District (School District) as the beneficiary. Except for as otherwise provided in this subparagraph, account funds derived from payments required under this subparagraph shall be used exclusively by the School District for the

express purpose of fulfilling bond payments for the construction of new K-12 public school facilities for the School District. Upon the completion of payments associated with the construction of new public school facilities contemplated by this subparagraph, or alternatively, if the School District fails to secure adequate bond financing to construct new K-12 public school facilities within three (3) years after the entry of a Consent Judgment contemplated by this Stipulation, the Community shall direct all payments required under this subparagraph, including any escrowed funds, to a local unit of state government that is located in the immediate vicinity of the Community's Class III gaming operations for the purpose of financing a project or projects that benefit the health, safety, and welfare of the citizens of Michigan.

c. One percent (1%) of the Annual Net Win up to $50 million to the Michigan Strategic Fund, or its successor. If the Michigan Strategic Fund ceases to exist or is not able to receive the payments required under this subparagraph, the Governor of the State of Michigan shall designate a successor state agency to receive the payments required under this subparagraph.

d. Five percent (5%) of the Annual Net Win over $50 million, but less than $75 million to the Michigan Strategic Fund, or its successor as determined by state law. If the Michigan Strategic Fund ceases to

exist or is not able to receive the payments required under this subparagraph, the Governor of the State of Michigan shall designate a successor state agency to receive the payments required under this subparagraph.

e. Seven percent (7%) of the Annual Net Win over $75 million to the Michigan Strategic Fund, or its successor as determined by state law. If the Michigan Strategic Fund ceases to exist or is not able to receive the payments required under this subparagraph, the Governor of the State of Michigan shall designate a successor state agency to receive the payments required under this subparagraph.

f. Two percent (2%) of the Annual Net Win to any local units of state government that are located in the immediate vicinity of the Community's Class III gaming operations. This payment obligation is new and supersedes the obligation to make payments to local units of government in paragraph 6 of the consent judgment that was entered by this Court on August 20, 1993 in Case No. 1:90-cv-611.

2. The following terms shall be given the meanings stated below:

a. "Annual Net Win" means the total amount wagered on each Electronic Game of Chance, minus the total amount paid to players for winning wagers from such gaming calculated in accordance with Generally Accepted Accounting Principles pursuant to standards established by

the American Institute of Certified Public Accountants. For purposes of computing Annual Net Win, the total amount wagered does not include the initial value of any electronic promotional slot credit provided to a player by the Community's Class III gaming facility, so long as the promotional slot credit is not purchasable for cash and there is no monetary value to the electronic promotional slot credit other than the value applied to an Electronic Game of Chance. If an Electronic Game of Chance machine is part of an inter-linked system or similar enterprise, the "total amount paid to players for winning wagers at such machine" does include the pro-rata share of winnings paid out under that linked system but does not include the payment of fees, costs, royalties, or other expenses associated with or attributable to administering the inter-casino linked system.

b. "Electronic Game of Chance" means an electronic device, which allows a player to play games of chance, which may be affected by an element of skill, activated by the insertion of a coin or currency, or by the use of a credit, and awards game credits, cash, tokens, or replays or a written statement of the player's accumulated credits, which written statements are redeemable for cash. If the Community offers Class III gaming through the internet or through a similar digital, online, or virtual format pursuant to a change in state law authorizing such gaming and additional authorization by the Governor pursuant to

paragraph 4, or pursuant to federal law, it is the intention of the Community and State that "Electronic Game of Chance" shall also mean digital representations of traditional Electronic Games of Chance that are played through the internet on a computer, mobile phone, tablet, virtual reality, or similar device.

c. "Competitive Market Area" means the boundaries defining the jurisdiction of the Michigan counties of Dickinson, Menominee, and Delta.

3. If a change in State law is enacted which is intended to permit or permits the operation of a commercial for-profit casino that is physically located within the Community's Competitive Market Area, or if the Governor of the State issues a concurrence determination to authorize Class III gaming within the Competitive Market Area by a federally-recognized Indian tribe other than the Community pursuant to 25 U.S.C. § 2719(b)(1)(A), the Community is not required to perform the payment terms under paragraph 1. This paragraph shall not apply to games offered by the Michigan State Lottery pursuant to the McCauley-Traxler-Law-Bowman-McNeely Lottery Act, Mich. Comp. Laws § 432.1 *et seq*., as amended, or successor law; charitable gaming authorized by the State pursuant to the Traxler-McCauley-Law-Bowman Bingo Act, Mich. Comp. Laws § 432.101 *et seq*., as amended, or successor law; commercial gaming operated by up to three casinos located within the City of Detroit pursuant to the Michigan Gaming Control and Revenue Act, Mich. Comp. Laws § 432.201 *et seq*., as amended, or successor law; or

any gaming offered by any person through the internet or through a similar digital, online, or virtual format pursuant to a change in state or federal law authorizing such gaming.

4. If a change in state law is enacted which is intended to permit or permits the sale of Class III-style gaming or Electronic Games of Chance through the internet or through a similar digital, online, or virtual format, online operations of said games shall be considered Class III games for purposes of Section 3 of the Compact, but only to the extent that the games are authorized under state law. So long as the Governor authorizes the Community's lawful operation of online games under this paragraph pursuant to Section 3(B)(2) of the Compact, the Community shall pay eight percent (8%) of the Annual Net Win for sales of Class III gaming conducted through the internet or through a similar digital, online, or virtual format to the Michigan Strategic Fund, or its successor as provided by state law. If the Michigan Strategic Fund ceases to exist or is not able to receive the payments required under this subparagraph, the Governor of the State of Michigan shall designate a successor state agency to receive the payments required under this paragraph.

5. The calculations of amounts due under the payment terms set forth in paragraphs 1 and 4 shall be made semi-annually based upon a fiscal year beginning October 1 and ending September 30 of the following calendar year. All payments due shall be paid no later than sixty (60) days after October 1 and March 31 of each year. Any payments due and owing from the Community in the year the Consent

Judgment for this Stipulation is in effect shall reflect the Net Win only for the portion of the year upon which the Consent Judgment is effective.

6. In order to accomplish the Community's and State's joint objective to provide for the integrity of gaming on Indian lands and within the State of Michigan, the Community's tribal gaming regulatory authority shall, in accordance with its tribal gaming ordinance and within one (1) year after the Consent Judgment for this Stipulation is entered, establish and implement minimum internal control standards for Class III gaming substantially similar to those of the State of Nevada, the State of New Jersey, the State of Michigan, or any applicable internal control system promulgated as a national standard by the National Indian Gaming Commission. The Community shall provide a written copy of said minimum internal control standards to the Michigan Gaming Control Board, or its successor as provided by State law, no later than October 1 of each year. Consistent with provisions outlined in Section 4(K)(2) of the Compact and in order to assure Class III gaming is conducted consistent with the minimum internal control standards required under this paragraph, representatives authorized in writing by the Governor of the State shall have the right to inspect the Community's Class III gaming facilities and inspect, examine, and copy all records, including digital and facsimile records, related to the minimum internal control standards and other regulatory requirements established by the Compact.

7. Prior to November 30, 2042, the State shall forbear from exercising its unilateral right to renegotiate or terminate the Compact pursuant to Section 12(C) of the Compact.

8. In the event that either the State or Community gives written notice to renegotiate the Compact pursuant to Section 12(B) of the Compact and a successor compact governing the conduct of Class III gaming activities is not effective within three (3) years after the commencement of negotiations pursuant to Section 12(C) of the Compact, the parties may agree to resolve the compact negotiation impasse by mediation. Unless the parties agree to a different mediation procedure, voluntary facilitative mediation shall be conducted as provided in W.D. Mich. L.R. 16.3. If the parties do not agree to resolve the matter by mediation, or if mediation attempts are unsuccessful, either party may seek relief from the Court as provided by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Michigan.

9. The State and Community each waive their sovereign immunity from suit by the other party for purposes of establishing liability, obtaining judgments, and pursuing collection to the extent necessary to fulfill and enforce the terms and conditions of this Stipulation. The State and Community consent to be sued by the other party in a federal court of competent jurisdiction to the extent necessary to fulfill and enforce terms and conditions of this Stipulation and the Compact. No specific or further pledge of assets by the State or Community is required for a federal court of competent jurisdiction to order either party to comply with the terms and conditions of this Stipulation, including payment obligations established

under paragraphs 1 and 4. For any action subject to this waiver, the Community and the State each agree to personal jurisdiction in federal court, waive personal service of process, and agree that service of process by certified or registered mail, return receipt requested, to the following address shall constitute adequate service:

Hannahville Potawatomi Indian Community
N14911 Hannahville B-1 Rd.
Wilson, MI 49896

Governor of Michigan
111 S. Capitol Ave.
Lansing, MI 48933

10. This Stipulation is solely for the benefit of the State and Community. No third party may rely on this Stipulation or the Consent Judgment entered in this action for any purpose.

11. Nothing in this Stipulation, or in the associated Consent Judgment, is intended to or does alter any terms or provisions of the Compact.

12. If any section or provision of this Stipulation is held invalid by a court of competent jurisdiction, the parties may amend this Stipulation to address the court's ruling or agree in writing how they will proceed under this Stipulation while an appeal of the other action is pending. If the parties do not file an amendment to this Stipulation or their written agreement concerning how to proceed with this Court within ninety (90) days of the ruling holding a section of this Stipulation is invalid, then it is the intent of the parties that the remaining sections or provisions shall not continue in effect.

13. The State and Community agree and consent to the entry of the accompanying Consent Judgment, consistent with the terms and conditions of this Stipulation.

By the signatures below, the Hannahville Potawatomi Indian Community and Governor Rick Snyder, by and through their respective counsel, signify their understanding and acceptance of this Stipulation.

On behalf of the Hannahville Potawatomi Indian Community:

Dated: March 14, 2016

By: /s/ Tony Mancilla
with permission

Tony Mancilla (P58120)
Attorney for Defendant
N14911 Hannahville B1 Road
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Phone: (906) 723-2000
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On behalf of the State of Michigan:

Dated: March 14, 2016

By: /s/ Margaret A. Bettenhausen

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CONSENT JUDGMENT

The parties to the above captioned litigation have entered into an Agreement and Stipulation for Entry of a Consent Judgment (Stipulation). Pursuant to the Stipulation and for good cause shown, it is hereby ORDERED, ADJUDGED and DECREED, that:

1. The terms and provisions of the Stipulation are hereby incorporated by reference into this Consent Judgment as if fully set out herein and thereby made an Order of the Court.

2. The Court shall retain continuing jurisdiction for the purposes of enforcing the Stipulation and this Consent Judgment according to their terms and provisions.

Dated:_____ By:_____
Gordan J. Quist
United States District Court Judge

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2. The Court shall retain continuing jurisdiction for the purposes of enforcing the Stipulation and this Consent Judgment according to their terms and provisions.

Dated: March 15, 2017

/s/ Gordon J. Quist
Gordon J. Quist
United States District Judge