

CONTENT OF MANAGEMENT CONTRACTS

25 CFR PART 531

Sec.

531.1 Required provisions.

531.2 Prohibited provisions.

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

Source: 58 FR 5828, Jan. 22, 1993, unless otherwise noted.

§531.1 Required provisions.

A management contract previously approved by the Secretary of the Interior shall conform to the requirements contained in paragraphs (c), (d), (e), (f), (g), (h), (i), and (j) of this section and a management contract not previously approved by the Secretary shall conform to all of the requirements contained in this section in the manner indicated.

(a) *Governmental authority.* Provide that all gaming covered by the contract will be conducted in accordance with the Indian Gaming Regulatory Act (IGRA, or the Act) and governing tribal ordinance(s).

(b) *Assignment of responsibilities.* Enumerate the responsibilities of each of the parties for each identifiable function, including:

- (1) Maintaining and improving the gaming facility;
- (2) Providing operating capital;
- (3) Establishing operating days and hours;
- (4) Hiring, firing, training and promoting employees;
- (5) Maintaining the gaming operation's books and records;
- (6) Preparing the operation's financial statements and reports;
- (7) Paying for the services of the independent auditor engaged pursuant to §571.12 of this

chapter;

- (8) Hiring and supervising security personnel;
- (9) Providing fire protection services;
- (10) Setting advertising budget and placing advertising;
- (11) Paying bills and expenses;

- (12) Establishing and administering employment practices;
- (13) Obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage;
- (14) Complying with all applicable provisions of the Internal Revenue Code;
- (15) Paying the cost of any increased public safety services; and
- (16) If applicable, supplying the National Indian Gaming Commission (NIGC, or the Commission) with all information necessary for the Commission to comply with the regulations of the Commission issued pursuant to the National Environmental Policy Act (NEPA).

(c) *Accounting.* Provide for the establishment and maintenance of satisfactory accounting systems and procedures that shall, at a minimum:

- (1) Include an adequate system of internal accounting controls;
- (2) Permit the preparation of financial statements in accordance with generally accepted accounting principles;
- (3) Be susceptible to audit;
- (4) Allow a class II gaming operation, the tribe, and the Commission to calculate the annual fee under §514.1 of this chapter;
- (5) Permit the calculation and payment of the manager's fee; and
- (6) Provide for the allocation of operating expenses or overhead expenses among the tribe, the tribal gaming operation, the contractor, and any other user of shared facilities and services.

(d) *Reporting.* Require the management contractor to provide the tribal governing body not less frequently than monthly with verifiable financial reports or all information necessary to prepare such reports.

(e) *Access.* Require the management contractor to provide immediate access to the gaming operation, including its books and records, by appropriate tribal officials, who shall have:

- (1) The right to verify the daily gross revenues and income from the gaming operation; and
- (2) Access to any other gaming-related information the tribe deems appropriate.

(f) *Guaranteed payment to tribe.* Provide for a minimum guaranteed monthly payment to the tribe in a sum certain that has preference over the retirement of development and construction costs.

(g) *Development and construction costs.* Provide an agreed upon maximum dollar amount for the recoupment of development and construction costs.

(h) *Term limits.* Be for a term not to exceed five (5) years, except that upon the request of a tribe, the Chairman may authorize a contract term that does not exceed seven (7) years if the Chairman is satisfied that the capital investment required, and the income projections, for the particular gaming operation require the additional time. The time period shall begin running no later than the date when the gaming activities authorized by an approved management contract begin.

(i) *Compensation.* Detail the method of compensating and reimbursing the management contractor. If a management contract provides for a percentage fee, such fee shall be either:

(1) Not more than thirty (30) percent of the net revenues of the gaming operation if the Chairman determines that such percentage is reasonable considering the circumstances; or

(2) Not more than forty (40) percent of the net revenues if the Chairman is satisfied that the capital investment required and income projections for the gaming operation require the additional fee.

(j) *Termination provisions.* Provide the grounds and mechanisms for modifying or terminating the contract (termination of the contract shall not require the approval of the Chairman).

(k) *Dispute provisions.* Contain a mechanism to resolve disputes between:

(1) The management contractor and customers, consistent with the procedures in a tribal ordinance;

(2) The management contractor and the tribe; and

(3) The management contractor and the gaming operation employees.

(l) *Assignments and subcontracting.* Indicate whether and to what extent contract assignments and subcontracting are permissible.

(m) *Ownership interests.* Indicate whether and to what extent changes in the ownership interest in the management contract require advance approval by the tribe.

(n) *Effective date.* State that the contract shall not be effective unless and until it is approved by the Chairman, date of signature of the parties notwithstanding.

§531.2 Prohibited provisions.

A management contract shall not transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in the contract.