

MANAGEMENT AGREEMENT

This management Agreement made and entered into this 12th day of JAN. 1981 and between the Oneida Tribe of Indians of Wisconsin, 1288 Fish Creek Road, De Pere, Wisconsin 54115, hereinafter referred to as the TRIBE and the Oneida Tribal Development Corporation, P.O. Box 69, Oneida, Wisconsin 54155, a corporation organized and existing under the laws of the Oneida Tribe of Indians of Wisconsin, hereinafter referred to as the CORPORATION;

WHEREAS, the Oneida Tribal Business Committee is the duly authorized and delegated representative of the TRIBE and

WHEREAS, the Oneida Business Committee is charged under the Oneida Tribal Constitution with the duty of enhancing the health, security, and general welfare of the TRIBE; and

WHEREAS, there is a necessity to conduct governmental functions and generate the related expense required to maintain and develop the economy of the Oneida people; and

WHEREAS, by adoption of Resolution # 3/15/76A, the Oneida Tobacco Ordinance, the TRIBE has made provision for the establishment of the Oneida Tobacco Enterprise hereinafter referred to as the ENTERPRISE, and

WHEREAS, the TRIBE is without prior experience in the retail sale and distribution of tax free cigarettes on the Oneida Reservation of Wisconsin; and

WHEREAS, the TRIBE intends to engage in the wholesale and retail sale and distribution of tax free cigarettes on the Oneida Reservation of Wisconsin; and on other Indian Reservations, and

WHEREAS, by adoption of Resolution # 3/15/76A the TRIBE desires to engage the CORPORATION to administer and conduct the management of the ENTERPRISE; and

WHEREAS, it is the intention of the CORPORATION to hire and train members of the TRIBE and to organize and operate the ENTERPRISE on a profitable basis;

NOW, THEREFORE in consideration of the premises and for other good and valuable considerations, receipt of which is hereby acknowledged, it is agreed as follows:

1. **Obligation of CORPORATION:** The CORPORATION shall perform the following services with due diligence and care:

- (A) Provide general management services in respect to day-to-day and overall operations of the ENTERPRISE, subject to such policies, consistent with the terms of this Management Agreement, as the Board of the ENTERPRISE may from time to time adopt.

- (B) Conduct the business of the ENTERPRISE under the direct supervision of the Oneida Business Committee which shall constitute the Board of the ENTERPRISE.
- (C) Accomplish any preliminary negotiations ~~for leases,~~ <sup>except tobacco product</sup> capital expenditures, loans, and purchases, ~~appropriate to the ENTERPRISE~~ subject to a written motion, resolution, or approval by the Oneida Business Committee and/or the Tribal Chairman. Any purchase authorized by the Business Committee in excess of \$500.00 shall be obtained by bid let to a minimum of three prospective suppliers.
- (D) Purchase <sup>in</sup> ~~is~~ TRIBE'S name all cigarettes and other supplies and/or materials required in the ordinary course of business to operate the ENTERPRISE, exercising its best efforts to obtain cigarettes and supplies and/or materials purchased hereunder for the account of ENTERPRISE.
- (E) Obtain, in TRIBE'S name, proper insurance coverage for the ENTERPRISE including without limitation, all cigarettes and other tobacco products and/or supplies and materials purchased hereunder for the account of the ENTERPRISE at the lowest possible prices. The CORPORATION shall be required to let invitations to bid annually to distributors and suppliers for the purchase of tobacco products.
- (F) Open and maintain a federally restricted trust account on behalf of the ENTERPRISE in cooperation with a bank designated by the Oneida Business Committee. All proceeds from the ENTERPRISE shall be deposited to the account including any appropriate interest bearing or checking account. The Oneida Business Committee shall act as Trustees of the Account and shall dispose of net profits as they see fit.
- (G) Collect excise tax revenues in accordance with the Oneida Tobacco Ordinance and accounting for the same and depositing the taxes in total to a federally restricted trust account in a separate recorded deposit.
- (H) Hire, <sup>temporary</sup> from the TRIBE qualified employees necessary to be employed by the CORPORATION for the Operation and Management of the ENTERPRISE and fire such employees as shall give cause therefore, but any such employees shall, until his/her hiring has been approved by the TRIBE, serve at the pleasure of the TRIBE and the TRIBE agrees that such approval shall not be unreasonably withheld. All employees shall be considered TRIBAL employees.
1. Exercise its best effort to market sale of cigarettes to consumers and in that connection, CORPORATION shall undertake promotional and advertising activities comparable in extent and quality to that end commensurate with a budget approved by the Oneida Business Committee.

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Bonded People

- (J) Set up and keep in good order a separate, accurate and full set of books for the ENTERPRISE, and maintain orderly files containing all permanent records, insurance policies, correspondence, receipted bills, and vouchers, and all other documents and papers pertaining to the ENTERPRISE as set forth herein.
- (K) Provide a minimum monthly financial statement, progress report, inventory and sales report, to be submitted with monthly vouchers for cost reimbursement for management and accounting fees plus prescribed profit at 5% of net profit <sup>before</sup> as stated on the previous months financial statement. Such reports and vouchers shall be submitted at the regular meeting on the third Monday of the month or at a special meeting called for that purpose.
- (L) Prepare and submit annually to the Oneida Business Committee not later than December 15 in each calendar year, an operating budget setting forth the anticipated income and expenses of the ENTERPRISE for the coming ~~year, also~~ comparison of such budget to the income and expenses of the preceding and current year and required explanations with respect thereto, including, without limitation, a written report analyzing the operation of the ENTERPRISE for the preceding year, and recommending such improvements as may appear desirable, and evaluating market conditions anticipated for the following year.
- quarterly*
- (M) All accounting records to be kept in conformance with generally acceptable accounting standards and principles. The TRIBE shall retain a certified public accountant for the purposes of conducting an annual audit; such audit to be conducted in a manner best representative of a third party review. The TRIBE may also conduct an internal review and audit by Tribal personnel, but in the case of any financial review, it must be conducted with an advance notice and in full consultation with the accounting office of the CORPORATION. The cost of all audits shall be considered an ordinary business expense and shall be deducted for ENTERPRISE income.
- (N) The CORPORATION shall be required to accomplish the preliminary work necessary to prepare all financial accounting and other data for automatic data processing systems, but such records may be retained on a "lock out" system and shall not be made available except by permission of the Oneida Business Committee. All reports shall be monitored and reconciled by the CORPORATION.
- (O) Generally do all things reasonably necessary or desirable by the CORPORATION for the proper and efficient management of the ENTERPRISE as agreed upon between TRIBE and CORPORATION, including determining the volume of retail sale and distribution of cigarettes.

2. Obligation of the TRIBE:

- (A) The TRIBE specifies that the General Manager of the CORPORATION shall serve as the manager of the ENTERPRISE and shall be the sole person authorized to conduct negotiations or conduct business with other parties relative to ENTERPRISE business except as the Oneida Business Committee shall direct.
- (B) The TRIBE, hereby specifically warrants and represents to CORPORATION that neither party shall encumber through loans or guarantees any part of ENTERPRISE income unless specified by a majority of the Oneida Business Committee.

3. Compensation of CORPORATION: In consideration therefore, TRIBE shall pay to CORPORATION the following sums:

- (A) The amount as set forth in Tribal Resolution # billed by voucher by the CORPORATION on a monthly pro-rate share not to exceed \$31,482. annually.
- (B) A fee of 5% of the net profit of the ENTERPRISE for each proceeding month, such fee to constitute a performance royalty.

4. Joint Venture: Neither CORPORATION nor any employee or consultant of CORPORATION engaged in the performance of the Management Agreement shall be deemed an employee of TRIBE. However, non-accounting and management personnel including all regular employees shall be considered employees of the TRIBE. Nothing contained in this MANAGEMENT AGREEMENT shall be construed to make the parties hereto partners or joint ventures or to render any party liable for the debts or obligations of the other party. Except as and in the manner expressly provided for herein, CORPORATION shall have no authority to bind or otherwise contract for or obligate TRIBE.

5. Term: This Management Agreement shall commence as of the date hereof and shall continue until December 31, 1981 with an option to extend this agreement for an additional year based upon the mutual consent of both parties unless terminated earlier in the events set forth below.

- (A) When there has been a breach by either party of any material provision hereof, which the party not in breach has complained in writing to the party in breach (specifying the nature of such breach), provide, however, that such breach is not cured within thirty (30) days after giving such notice.

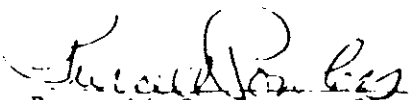
6. Disputes: All claims, demands, disputes, controversies and differences that may arise between the parties hereto concerning this Management Agreement shall be settled by the Oneida Business Committee or lacking that a satisfactory conclusion by a duly constituted tribal court.

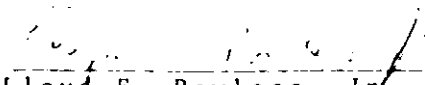
- (A) Either party may, by written notice to the other, stating its claim, within 15 days after such written notice have a hearing with the Oneida Business Committee at a meeting duly called for that purpose.
- (B) The decision of the majority of the Oneida Business Committee shall be binding on both parties hereto, except that the CORPORATION may appeal the Business Committee decision to a duly constituted tribal court, or on any court having proper jurisdiction of both parties.
7. Notice: Any notice necessary or required by this Management Agreement shall be deemed to have validly given if in writing and personally delivered or sent by certified, first class mail, postage prepaid, to the parties at their respective addresses set forth in the introductory paragraph of this Management Agreement, or such other address which any party shall have furnished in writing to the other party.
8. Entire Agreement: This Management Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes and replaces all prior agreements among the parties relating to the subject matter hereof, which are hereby cancelled and rendered of no effect. No amendment, modification, supplement or change in this Management Agreement shall be valid, unless in writing signed by or on behalf of all parties hereto.
9. Assignment: Neither this Management Agreement, nor any right or obligations created hereunder shall be transferred, assigned or assumed, in whole or in part, without the written prior consent of TRIBE and CORPORATION.
10. Waiver: No waiver of any breach or condition of this Management Agreement shall be deemed a waiver of any other or subsequent breach or condition, whether of like or different tenor.
11. Renewal: By written notice at least sixty days prior to the expiration of the original terms of this agreement, TRIBE may indicate intention to renew. If such notice be given then the Agreement shall be extended for an additional one (1) year term on the same terms as contained herein.

IN WITNESS WHEREOF, the parties hereto have caused this Management Agreement to be duly executed as of the date first above written.

TRIBE

CORPORATION

  
Purcell Powless, Chairman  
Oneida Tribe of Indians of Wis.

  
Lloyd F. Powless, Jr. Gen. Manager  
Oneida Tribal Development Corporation

MANAGEMENT  
AND  
ACCOUNTING FEES

GENERAL MANAGER 1/2 Time @ \$16,500 Per Year	\$ 688.00
BOOKKEEPER 3/4 Time @ \$11,960 Per Year	\$ 748.00
ACCOUNTANT 3/4 Time @ \$15,179.84 Per Year	<u>\$ 949.00</u>
	\$ 2,385.00
Overhead 10%	<u>238.50</u>
Total Cost of Reimbursement	\$ 2,623.50

MONTHLY  
LABOR  
REQUIREMENTS

3	Chief Cashier 40 Hrs. @ average \$4.25 - \$ 4.50 Per Hour	\$ 2,340.00
3	Cashier Checkers (Part-time) 26 Hrs. @ \$3.75 - \$ 4.00 Per Hour	\$ 1,352.00
1	Merchandise Distributor 40 Hrs. @ average \$5.50 Per Hour	\$ 953.00
1	Close Out Clerk 15 - 20 Hrs. @ \$5.00	\$ 433.00
1	Stock Clerk 40 Hrs. @ average \$4.50 Per Hour	\$ 780.00
1	Stock Clerk (Part-time) 12 Hrs. @ \$3.75 - \$4.00 Per Hrs..	\$ 208.00
	Sub-Total	\$ 6,066.00
	Fringe @ 25%	1,516.50
	Total Labor	\$ 7,582.50

ONEIDA TOBACCO ENTERPRISE

MONTHLY OPERATING EXPENSE

PERSONNEL

Wages	\$ 6,066.00
25% Fringe For Employees	1,516.50
Management & Accounting Fees	2,623.50
5% of Profit (Approximate)	1,200.00
Legal Services	300.00
Audit Service	<u>125.00</u>
Total	\$ 11,831.00

EQUIPMENT, RENTAL AND LEASE

Vending Machine (1)	20.00
Van	188.17
Portable Toilet	<u>50.00</u>
Total	\$ 258.17

OPERATING EXPENSES

Space Rental	535.00
Insurance (Inventory, Bldg, Fidelity, Fire, Theft, Van)	208.00
Marketing & Advertising	400.00
Office & Operating Expense	30.00
Security	40.00
Bank Charges (Wire Transfer, NSF)	90.00
Vehicle Operation & Maintenance	200.00
Utilities (Electric, Heat & Water)	300.00
Telephone	80.00
Maintenance & Repair	200.00
Miscellaneous	50.00
Total	\$ 2,133.00
Monthly Total	\$ 14,222.17
6 Month Total	\$ 85,333.02