



TFA

Monthly Newsletter

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IN THE NEWS

Are Your Interests Really Aligned?

by Kristi Jackson

Partnerships and joint ventures... they're a way for Tribes to participate in an opportunity where they can benefit greatly from an investment while both sharing the risk of the investment and leveraging off of their partner's core competencies.

While many factors go into what makes for a successful partnership, an alignment of interests is often the most important. Some obvious interests that are typically truly aligned include striving for lowest all-in cost and the highest return possible. This seems obvious, but what often isn't so obvious or for some reason is often ignored is when partners (term broadly applied here) have diverging interests. Understanding and accommodating for this divergence help avoid a major loss of value to one party.

We often see this divergence in the

context of a project with a management company for a Tribal development – gaming or otherwise. Tribes will often leave the details of negotiating the numerous agreements of the business to their partner – this makes sense at first blush as the partner typically brings decades of experience in doing these types of development deals.

It's great when, for example, the construction contractor's budget is being negotiated. Both the Tribe and the management company partner want to make sure the contractor delivers what they say they will – on time and on budget – at the lowest cost.

Interests diverge though when that partner gets paid a fee based on the project size and development budget...

Here are just a few of the areas of con-
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Mohegan Sun, Incheon Ink Casino Land Deal

08/3/16 – CalvinAyre.com

River Rock Casino Seeks to Restructure Debt

08/5/16 – PressDemocrat.com

Tule Tribe Seeks Casino Relocation, Expansion at Porterville Airport

08/9/16 – ICTMN.com

Expansion Plans Underway for Cache Creek Casino Resort

08/14/16 – WorldCasinoDirectory.com

London-Based GAN, Chickasaw Nation Partner on Social Casino

08/15/16 – ICTMN.com

\$153 Million Ho-Chunk Gaming Expansion Includes 120-Room Hotel in Black River Falls

08/22/16 – LacrosseTribune.com

Showdown at OK Corral

08/24/16 – GGBMagazine.com

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cern for us as we review agreements and raise financing for deals where Tribes are dealing with partners:

1. **Development size** – As noted above, if the partner is paid a fee based on the total development cost, this creates a possible conflict of interest vs the Tribe's position as owner/co-owner. For example, we have seen a Tribe's owners' representative (the person who is often the watchdog to protect the Tribe's interests, negotiate a construction contract and keep it on schedule) be compensated based on a percentage of the final contractor's GMP. If this is the case, who is ensuring that the project is being built at the lowest possible cost?
2. **Principal amortization schedule** – If a management fee is paid after all debt service, this point is moot. However, if the management fee definition excludes the principal portion of the debt service, then a management partner may be incentivized to recommend the lender with an accelerated amortization in order to obtain a lower interest rate. While a lower interest rate is generally attractive, a structure like this could come at a severe cost to the Tribal owner in the form of a reduced dis-

tribution stream.

3. **Repayment timing of partner's initial investment** – Often, a Tribe's development partner gets the project rolling by advancing funds to acquire parcels of land, or to pay legal costs incurred to tee the project up. The partner would like their initial outlay to be returned as quickly as possible – ideally, out of the construction financing proceeds. From a lender's perspective, too much going out the door day one puts added financial leverage and stress on the project and will increase the risk profile – which likely increases the interest rate and tightens up other terms. There is a delicate balance to be struck – but it is not always in the

Tribe's best interest to allow this early repayment.

4. **Tribal distribution protection** – Nobody keeps their eyes on this most important point better than the Tribe and its advisors. We have seen \$500+ million deals where the partner recoups their \$150+ million investment day one, and earns 2 to 3x the Tribe's level of distribution for the first several years of the project's operation.

We all need partners – we just need to know where to begin inserting ourselves to protect our own interests. Please call us anytime to discuss.



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