

Downstream Authority of the Quapaw Tribe of Oklahoma Regular Meeting
September 29, 2011

Meeting Called to Order: 1:23pm

ROLL CALL:	John Berrey, Chairman	Present
	Larry Ramsey, Secretary	Present
	Ranny McWatters, Treasurer	Present
	Marilyn Rogers, Member	Present
	Tamara Smiley, Member	Absent

DECLARATION OF QUORUM: announced by Larry Ramsey

Steve Drewes

General Manager Updates

Billboard

- Home for the Holidays Promotion (see attached)
- Consensus of the DDA to use the homeholidays30x10-fowler option

Deferred Comp Program

- Docs presented (see attached)
- General discussion
 - o Employee eligible after 6 mo employment
 - o Company to pay fees

Motion by DDA Secretary Larry Ramsey to approve plan as presented. Seconded by DDA Member Marilyn Rogers. . Vote: JB: yes; RM: absent; LR: yes; MR: yes; TS: absent (3 yes, 0 no, 2 absent, 0 abstain) Motion Carries.

Marketing play and Earn Item review

- Liquid Thermometer
 - o 17" - \$28.00
 - o 13" – \$23.00
 - o Consensus of the DDA to go with the 17"
- Electronics
 - o iPod alarm Clock
 - \$22.50
 - Consensus of the DDA to use
 - o Noise Cancelling Headphone
 - \$25.00
 - No
 - o Digital Camera
 - \$34.00
 - No
- Wax melting pot
 - o Designed to look like the pot in the hotel lobby
 - o Consensus of the DDA to move forward with sample

Adjourn 2:56pm



HOME

for
the *Holidays*

FRIDAYS
NOVEMBER & DECEMBER

DOWNSTREAM[®]
CASINO RESORT



4 MILES WEST OF JOPLIN ON I-44 EXIT 1



FRIDAYS
NOVEMBER & DECEMBER

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4 MILES WEST OF JOPLIN ON I-44 EXIT 1





FRIDAYS NOVEMBER
& DECEMBER

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FRIDAYS NOVEMBER & DECEMBER

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4 MILES WEST OF JOPLIN ON I-44 EXIT 1

HOME
for the Holidays



HOME
for the *Holidays*

**FRIDAYS
NOVEMBER & DECEMBER**

DOWNSTREAM[®]
CASINO RESORT



4 MILES WEST OF JOPLIN ON I-44 EXIT 1

Home for the Holidays

Fridays November 4 - December 23



DOWNSTREAM
CASINO RESORT

4 MILES WEST OF JOPLIN ON I-44 EXIT 1

A hand holding a large, ornate key with a sparkling gem on its head.

Home for the Holidays

Fridays November 4 - December 23

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4 MILES WEST OF JOPLIN ON I-44 EXIT 1



Downstream Development Authority Deferred Compensation Agreement

ARTICLE 1

1.1 **Establishment of Agreement.** Downstream Development Authority (hereinafter called the “DDA”), doing business as the Downstream Casino Resort an entity of the Quapaw Tribe of Oklahoma a federally recognized tribe and a tax-exempt entity under the Internal Revenue Code of 1986 (the “Code”), as amended from time to time (hereinafter called the “Employer”) hereby establishes “Downstream Casino Resort Deferred Compensation Agreement” (hereinafter called the “Agreement”). The Agreement shall be maintained for the exclusive benefit of a select group of covered Employees.

ARTICLE 2

2.1 **Purpose of Agreement.** The primary purpose of the Agreement is to permit a select group of management or highly compensated Employees of Employer to defer some part of their annual compensation to provide supplementary income at the time the Employee retires from employment. Participation in this Agreement shall not be construed to establish or create an employment contract between the Employee and the Employer.

ARTICLE 3

3.1 **Definitions.** For purposes of this Agreement, certain words or phrases used herein shall have the following meanings:

(a) “Compensation” shall mean the total amount of cash remuneration earned by an Employee for personal services rendered to the Employer for the calendar year. In all cases, Compensation shall include amounts deferred under this Agreement and any reductions pursuant to a salary reduction agreement with the Employer.

(b) “Deferred Compensation” shall mean the amount of an Employee’s Compensation not yet earned, which the Employee agrees shall be deferred in accordance with the provisions of this Agreement;

(c) “Employees” shall mean a select group of management or highly compensated employees of Employer;

(d) “Employer” shall mean Downstream Casino Resort, a(n) tribal entity which is exempt from tax under the Code;

(e) “Includible Compensation” shall mean Compensation for services performed for the Employer that is currently includible in the Employee’s gross income for the

taxable year for Federal income tax purposes (W-2 earnings). Such term shall include any amount excludible from gross income under this Agreement.

(f) “Normal Retirement Age” shall mean age 65, provided that in no event shall Normal Retirement Age be earlier than the earliest date on which a Participant may retire under the Employer’s basic retirement Agreement, if any, without the Employer’s consent and receive immediate retirement benefits without incurring an actuarial or similar reduction in benefits;

(g) “Participant” shall mean any Employee who is having compensation deferred to this Agreement pursuant to a wage or salary deferral agreement with the Employer;

(h) “Agreement Year” shall mean the annual period beginning on the first day of January and ending on the last day of December;

(i) “Retirement” shall mean withdrawal from active service under the provisions of law governing the retirement of any Employee; and

(j) “Termination” shall mean severance of employment prior to retirement.

ARTICLE 4

4.1 **Administration.** This Agreement shall be administered by the Employer. The Downstream Development Authority (DDA) of the Employer shall have full power and authority to adopt rules and regulations for the administration of the Agreement, and to interpret, alter, amend, and revoke any rules and regulations so adopted. All decisions concerning withdrawal, payment, method of payment, investment of funds, etc., shall be solely the responsibility of the DDA. The DDA may appoint an Advisory Committee to administer the Agreement. Participants in the Agreement who are Directors of the Employer or are appointed to the Committee *shall not be entitled to make any decisions of any kind with respect to their own participation*. The costs of Administration of the Agreement shall be borne by the Employer and not by the Participants.

ARTICLE 5

5.1 **Eligibility.** Selected individuals who have been identified by the DDA of the Employer and qualify as members of a select group of the Employer’s management or highly compensated Employees shall be eligible to participate in the Agreement.

5.2 Enrollment in the Agreement.

(a) An eligible Employee with respect to participation commencing in the initial year of the Agreement, may become a Participant prior to or within a reasonable time after the Agreement becomes effective by agreeing to defer compensation not yet earned. Selected new Employees who enter into service subsequent to the effective date of the Agreement will

also be afforded a reasonable time to elect to participate in the Agreement. Such an election, either during the initial sign-up period or by a new Employee, must be made prior to the beginning of the month before the salary is earned. Employees who do not elect to participate in the Agreement within a reasonable time after the effective date of the Agreement, or who do not so elect to participate within a reasonable time after entry into service and subsequent selection for participation in the Agreement, may only subsequently elect to participate in the Agreement prior to the beginning of a subsequent calendar year during which Deferred Compensation is earned.

(b) At the time of entering into an agreement hereunder to defer compensation or at the time of re-entry following a withdrawal, a Participant must agree to defer a minimum amount of compensation per annum, as may be determined by the DDA of the Employer from time to time.

(c) A Participant who defers compensation may not modify such agreement to change the amount deferred except with respect to compensation earned in the subsequent calendar year or except as provided in Article 9 hereof with respect to a withdrawal.

(d) A Participant may at any time revoke his or her agreement to defer compensation by notifying the Advisory Committee in writing fifteen (15) days prior to the commencement of any pay period.

(e) A Participant who has taken a withdrawal as set forth in Article 9, or revoked his or her deferral election as set forth in Section 5.2(d) above, may again become a Participant in any calendar year following his or her withdrawal or revocation by satisfying the above conditions, provided his or her new election is made in accordance with Section 5.2(a) above.

ARTICLE 6

6.1 **Elective Deferrals.** A Participant may make elective deferrals to the Agreement in such amounts as determined by the DDA for each Participant.

6.2 **Employer Contributions.** The Employer may make Employer contributions to the Agreement on behalf of each active Participant. The amount of Employer contributions made to the Agreement shall be discretionary and shall be determined annually by the DDA for each Participant. Employer contributions shall be allocated to Participant's Account in amounts determined by the DDA. No Participant shall have the right to elect to receive any amount to be contributed pursuant to this Section 6.2 as cash in lieu of an Employer contribution. For the 2011 Agreement year the employer is contributing a 5% match of the funds contributed to the Agreement. The 5% match will stay in effect for future Agreement years until a decision by the DDA has been made to change the Employer contributions.

6.3 **Maximum Deferred Amount.** The amount of salary an Employee may agree to defer under the Agreement shall not exceed the limitations set forth below:

(a) **Primary Limitation.** The maximum amount of Agreement contributions for any Participant for any Agreement Year shall not exceed the lesser of:

- (1) The Applicable Dollar Amount in effect for the Agreement Year;
or
- (2) 100% of the Participant's Includible Compensation for such Agreement Year.

6.4 **Vesting.**

(a) A Participant shall be fully vested at all times in his or her elective deferrals to the Agreement under Section 6.1 and all accrued benefits relating to such elective deferrals under this Agreement. Such accrued benefits shall be non-forfeitable at all times.

(b) A Participant shall become vested in the Employer contributions made on his or her behalf pursuant to Section 6.2 and all accrued benefits relating to such Employer contributions under this Agreement according to the following schedule:

- (1) Upon completion of twelve (12) months of employment with Employer, Participant shall become vested in twenty percent (25%) of such Employer contributions and accrued benefits;
- (2) Upon completion of twenty-four (24) months of employment with Employer, Participant shall become vested in forty percent (50%) of such Employer contributions and accrued benefits;
- (3) Upon completion of thirty-six (36) months of employment with Employer, Participant shall become vested in sixty percent (75%) of such Employer contributions and accrued benefits;
- (4) Upon completion of forty-eight (48) months of employment with Employer, Participant shall become vested in eighty percent (100%) of such Employer contributions and accrued benefits; and

ARTICLE 7

7.1 **Benefits Under Agreement.** Payments under the Agreement shall be made as follows:

- (a) Payments are payable upon the earlier of the following events:

- (1) Retirement of a Participant; or
- (2) Termination of a Participant, including termination due to disability.

(b) Death benefits are payable when a Participant dies before Deferred Compensation Payments start; and

(c) Withdrawals may be taken due to an unforeseeable emergency in accordance with Article 9 of this Agreement.

7.2 The Employer and each Participant will execute an agreement in writing, confirming their assumptions of the obligations set forth in this Agreement and the amounts of payments and death benefits payable on account of contributions to the Agreement.

7.3 Subject to all the provisions hereof, the Employer agrees to make payments as follows:

(a) In the event of early, normal, or postponed retirement, or in the event of a Participant's disability, to the Participant and for his or her remaining lifetime thereafter, commencing the first day of the month following such retirement or disability;

(b) In case of termination, to the Participant commencing the first day of the month following such termination, or as soon thereafter as administratively feasible;

(c) In any event, and notwithstanding other provisions of this subparagraph, in a lump sum if the Board of Directors determines, in its sole discretion, that the payment of Deferred Compensation is more appropriate in a lump sum than in installments;

(d) In any event, and notwithstanding other provisions of this subparagraph, all distributions payable over a period of more than one year can only be made in substantially non-increasing amounts and not less frequently than annually;

(e) In any event, and notwithstanding other provisions of this subparagraph, all distributions made to Participants must begin by April 1 of the calendar year following the later of the year in which the Participant retires or reaches age 70 1/2;

7.4 If a Participant has qualified to receive Deferred Compensation payments in installments and such Participant dies before receipt of all 240 monthly payments, Employer agrees to continue to pay such monthly payments for the balance of the 240 month period to the Participant's designated beneficiary or to the Participant's estate if there is no designated beneficiary.

7.5 A Participant may designate one or more beneficiaries, and may name contingent beneficiaries to whom the benefits will be payable upon death of any beneficiary. The Participant will also have the right to change the designation of beneficiaries.

7.6 When the Employer becomes obligated to make Deferred Compensation payments or death benefits under the Agreement, necessary funds will be appropriated.

7.7 The Participant may elect to postpone the commencement date specified in the election made pursuant to this Article 7 to a later date if (i) such postponement election is made prior to the original commencement date specified in the election, and (ii) no other postponement election has been made pursuant to this paragraph; and provided further that a Participant may change the form of payment elected at any time prior to the date on which payments will commence.

7.8 For purposes of the preceding paragraph, the “first permissible payout date” is the earliest date on which the Agreement permits payments to begin after separation of service, disregarding payments to a Participant who has an unforeseeable emergency or attains age 70½, or under the in-service distribution provisions of the Agreement.

ARTICLE 8

8.1 **Rights of the Participant.** The rights of the Participant created by the Agreement shall be that of a general creditor of the Employer only, and then solely to the extent of the net value of the Participant’s Deferred Compensation account. Prior to the date on which an obligation to pay Deferred Compensation payments or a death benefit commences, the Participant has no other rights under the Agreement or in the salary deferred under the terms of the Agreement. The rights of the Participant, other than the right to Deferred Compensation payments or to a death benefit, are set forth in Articles 9 through 11 hereof. It is also understood that the Agreement in no way affects the Employer’s or the Participant’s rights to terminate employment at any time, with or without cause.

ARTICLE 9

9.1 **Withdrawals for Unforeseeable Emergency.** A Participant may apply for a withdrawal from the Agreement prior to Retirement or other Termination of employment, but only for an unforeseeable emergency. If such application for withdrawal is approved by Advisory Committee, the Participant will receive an amount from the Participant’s Deferred Compensation account as if the Participant had Terminated his or her employment, in a lump sum. The amount withdrawn and paid will be limited to that amount necessary to meet the unforeseeable emergency. Such amounts as may be distributed shall be further increased by the Advisory Committee to reflect any additional Federal and/or State income tax liability that will be incurred by the Participant as a result of the hardship distribution. Following withdrawal, the Participant’s Compensation will be paid in full without reduction for Deferred Compensation under the Agreement. An unforeseeable emergency shall involve only circumstances of real emergencies which would cause great hardship to the Participant if early withdrawal were not permitted and which could not be foreseen or controlled. The determination as to whether such an emergency exists shall rest solely in the discretion of the Advisory Committee, and such determination shall be based on the merits of each individual case.

9.2 **Deminimus Distributions.**

(a) **Involuntary In-Service Distribution.** The Agreement shall distribute the total amount payable under the Agreement to a Participant who is an active Employee of the Employer if the following requirements are met:

- (1) The total amount payable to the Participant under the Agreement does not exceed Five Thousand Dollars (\$5,000);
- (2) The Participant has not previously received an in-service distribution of the total amount payable to the Participant under the Agreement; and
- (3) No amount has been deferred under the Agreement with respect to the Participant during the 2 year period ending on the date of the in-service distribution.

(b) **Voluntary In-Service Distribution.** A Participant who is an active Employee of the Employer shall receive a distribution of the total amount payable to the Participant under the Agreement if the following requirements are met:

- (1) The total amount payable to the Participant under the Agreement does not exceed Five Thousand Dollars (\$5,000);
- (2) The Participant has not previously received an in-service distribution of the total amount payable to the Participant under the Agreement;
- (3) No amount has been deferred under the Agreement with respect to the Participant during the 2 year period ending on the date of the in-service distribution; and
- (4) The Participant elects to receive the distribution.

9.3 **Agreement Loans.** A loan of any assets of the Agreement to any Participant or other person is expressly prohibited.

ARTICLE 10

10.1 **Leave of Absence.**

(a) If a Participant is on an approved leave of absence from Employer with salary, or on an approved leave of absence without salary for a period of not more than 6 months, his or her participation in this Agreement will continue.

(b) If a Participant is on an approved leave of absence without salary and such

leave of absence continues for more than 6 months, the Participant will be deemed to have withdrawn from the Agreement as of the end of such 6 month period. Employer shall pay such withdrawn Participant Deferred Compensation payments upon the earliest to occur of the Participant's Retirement, Termination, disability or an unforeseeable emergency as described in Article 9 hereof.

ARTICLE 11

11.1 Amendment or Termination of the Agreement. The Employer may at any time terminate this Agreement. Upon such termination, the Participants in the Agreement will be deemed to have withdrawn from the Agreement as of the date of such termination. Upon Agreement termination, Participant's salary will be paid in full, and the Employer shall notify Participants of such termination.

The Employer may also amend the provision of this Agreement at any time. Notice of any amendment shall be given by Employer to each Participant then participating in the Agreement. Such Participants may elect to withdraw from the Agreement within sixty (60) days after such notice. Upon such withdrawal, the Participants' salaries will be paid in full and the Advisory Committee will pay such Participants' Deferred Compensation payments, upon the earliest to occur of the Participant's retirement, termination, disability or an unforeseeable emergency as described in Article 9 hereof.

ARTICLE 12

12.1 Agreement-to-Agreement Transfers. Notwithstanding any other provisions under the Agreement, amounts deferred by a former Participant of the Agreement shall, instead of being distributed upon Separation from Service, be automatically transferred to another Eligible Deferred Compensation Agreement in which the former Participant has become a Participant provided:

(a) The Agreement receiving such amounts provides for acceptance of such transfers;

ARTICLE 13

14.1 Notices. Any notice, consent or demand required or permitted to be given under the provisions of this Agreement shall be in writing, and shall be signed by the party giving or making the same. If such notice, consent or demand is mailed to a party hereto, it shall be sent by United States certified mail, postage prepaid, addressed to such party's last known address as shown on the records of the Employer. The date of such mailing shall be deemed the date of notice, consent or demand.

ARTICLE 14

15.1 Inurement of Benefits. This Agreement shall be binding upon and inure to the

benefit of the Employer, its successors and assigns, and the Participant and his or her heirs, executors, administrators, and legal representatives.

ARTICLE 15

16.1 **Non-Assignability Clause.** Neither a Participant, nor a beneficiary, nor any other designee, shall have any right to commute, sell, assign, transfer or otherwise convey the right to receive any payments hereunder which payments and rights thereto are expressly declared to be non-assignable and non-transferable; and, in the event of any attempted assignment or transfer, the Employer shall have no liability for any payment hereunder. Payments under the Agreement shall not be subject to attachment, garnishment or execution, or be transferable by operation of law in event of bankruptcy, insolvency or otherwise, except to the extent otherwise provided by law.

ARTICLE 16

17.1 **Prohibition Against Funding.** If the Employer acquires an annuity contract, life insurance policy, or any other asset in connection with its liabilities hereunder, neither a Participant nor any beneficiary of the Participant shall have any right with respect to, or claim against, such contract, policy or other asset, and the Employer shall be named the owner and beneficiary of any such contract, policy or other asset. Such contract, policy or other asset shall not be held under any trust for the benefit of a Participant or beneficiaries of a Participant or held in any way as collateral security for the performance of any obligation of the Employer under the Agreement. Any such policy or other asset shall be, and remain, a general, unpledged, unrestricted asset of the Employer.

ARTICLE 17

18.1 **Applicable Law.** Provisions of the Agreement shall be construed in accordance with applicable Federal law and, to the extent otherwise applicable, the laws of the State of Oklahoma.

IN WITNESS WHEREOF, Employer has caused this Agreement to be signed and attested to by its duly authorized officers on the day and year first written above.

Employer:

Downstream Development Authority,
an entity of the Quapaw Tribe of Oklahoma a
federally recognized tribe.

By: _____

Attest:

By: _____

Exhibit A

**Application to Participate in the Deferred
Compensation Agreement of Downstream Casino Resort**

(To be forwarded to the Advisory Committee by
December 1, for Participation Beginning January 1)

_____, 20__

TO: Advisory Committee

Beginning _____, 20__, I wish to participate in the Deferred Compensation Agreement of Downstream Casino Resort to the extent of _____% of my biweekly compensation. I further wish to make an additional elective deferral to the Deferred Compensation Agreement of Downstream Casino Resort to the extent of _____% of my bonus compensation.

I wish to designate the following beneficiary (or beneficiaries) in accordance with Article 7 of the Agreement:

<u>Name</u>	<u>Relationship</u>	<u>Address</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I acknowledge receipt of a copy of the Deferred Compensation Agreement of Downstream Casino Resort and confirm that I have reviewed and understand all of the terms and conditions thereof.

Signed:_____

Home Address:_____

Division:_____

Department:_____

Position:_____

Dated:_____

Exhibit B

Acceptance Letter

_____, 20__

Dear _____:

We are pleased to advise you that your request of _____, 20__ to participate in the Deferred Compensation Agreement of Downstream Casino Resort to the extent of _____% of your biweekly compensation has been approved. We also acknowledge and approve your request to make additional Elective Deferrals of _____% of your bonus compensation to the Agreement. For purposes of the vesting requirements under the Agreement, your employment with the Downstream Casino Resort will be deemed to have commenced on _____, 20____. Subject to all of the terms and conditions of the Agreement, this letter will confirm that you are eligible for benefits resulting from your participation in the Deferred Compensation Agreement.

Kindly confirm your agreement to the foregoing and to all of the terms and conditions of the Deferred Compensation Agreement by signing and returning the attached copy of this letter. Your participation will be effective as of _____, 20__, provided that the signed copy of this letter has been received at this office prior to that date. Thereupon, this letter, together with your request of _____, 20, and the Deferred Compensation Agreement, shall constitute the full agreement between Downstream Casino Resort and you with respect to this transaction.

Very truly yours,

Downstream Development Authority of
Downstream Casino Resort

By: _____

I hereby confirm my understanding and agreement to the matters set forth above and the terms and conditions of the Deferred Compensation Agreement of Downstream Casino Resort, receipt of a copy of which is hereby acknowledged.

Date

Signature