

Downstream Development Authority of the Quapaw Tribe of Oklahoma
Supplement to Minutes dated 6/19/19
Email Poll

Roll Call:	John Berrey, Chairman	Present
	Larry Ramsey, Secretary	Present
	Marilyn Rogers, Member	Present
	Tamara Reeves, Treasure	Present
	Jack Brill, Member	Present

An email poll was conducted on Saturday June 22, 2019.
All,

Attached is a resolution form Steve Ward Authorizing the Construction Contract for Saracen Casino.

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION—DO NOT DISCLOSE

Chairman Berrey:

I am attaching, for approval by the Downstream Authority, a proposed resolution authorizing the construction agreement for the Saracen Casino Resort.

Background: *The Downstream Authority selected Suffolk Construction Co., Inc., and Nabholz Construction to build the new Saracen Casino Resort. The two companies have formed a joint venture for the project. Following prolonged negotiations, agreement has been reached between the parties on the attached agreement, which is in final form, and which includes a primary agreement and separate general terms and conditions.*

The main signatory to the agreement will be Saracen Development, LLC. However, Suffolk has required that the Downstream Authority serve as a guarantor in the event Saracen Development is unable to satisfy its monetary obligations under the agreement. For this reason, the Downstream Authority will be required to grant a limited waiver of immunity for purposes of enforcement of the agreement. The attached proposed resolution authorizes the agreement and the dispute resolution provision on behalf of both Downstream and Saracen.

Negotiations on this agreement were not completed until around 10 o'clock Saturday morning. The project team would like for Suffolk to begin work as soon as Monday. However, Suffolk has included language in the agreement providing that it must have a certified copy of the authorizing resolution before it begin work at the site.

Action Requested: *The Authority's approval and certification of the attached resolution is requested.*

Should you have any questions or comments, please do not hesitate to contact me.

Stephen R. Ward

Please let me know your vote or if you have any questions.

Vote:

John Berrey	Yes	Marilyn Rogers	Yes
Larry Ramsey	Yes	Tamara Reeves	Yes
Jack Brill	Yes		

5 yes, 0 no, 0 abstaining, 0 absent

Motion Carries.



Resolution No. 062219-A

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE DOWNSTREAM AUTHORITY AND SUFFOLK/NABHOLZ, A JOINT VENTURE, RELATING TO THE DEVELOPMENT OF THE SARACEN CASINO RESORT

***WHEREAS**, the Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah) (the "Authority"), is an unincorporated governmental subdivision wholly owned by the Quapaw Nation (the "Nation" or the "Tribe"), a federally recognized Indian nation; and*

***WHEREAS**, the Authority was created under the laws of the Nation and authorized to develop, operate, and manage the Downstream Casino Resort ("Downstream") and to engage in gaming pursuant to Tribal, federal, and state law, including gaming on the Indian lands of the Tribe within the original Quapaw Reservation, as established as a homeland for the Quapaw Nation by the Treaty of May 13, 1833, Quapaw Code Title 17, § 101 et seq.; and*

***WHEREAS**, the Authority has established a subsidiary wholly owned by the Authority, Saracen Development, LLC, a limited liability company created under the laws of the State of Arkansas (the "Company"), to own, operate, and manage the Authority's planned Saracen Casino Resort in Pine Bluff, Arkansas ("Saracen"); and*

***WHEREAS**, the Authority is expressly authorized to exercise its powers in the best interests of the Nation, and to further develop the gaming operations of the Nation and to engage in economic development for the Nation; and*

***WHEREAS**, the Authority, for itself and as the sole member of the Company, is proceeding with the development and construction of Saracen, and, by and through its project team, advisors, and legal counsel, has negotiated a proposed agreement to obtain construction manager services for the construction of Saracen, including an AIA Document A133—2009 and an AIA Document A201—2017, along with various exhibits, to be entered into between the Company and the Authority, solely as a guarantor, and Suffolk/Nabholz, a Joint Venture, of Dallas, Texas (collectively the "Suffolk/Nabholz Agreement"); and*

***WHEREAS**, the Authority has been advised by its project team that the Suffolk/Nabholz Agreement is in final form, and is ready for final approval and execution, and the Authority desires to approve such agreement as set forth herein.*

NOW, THEREFORE BE IT RESOLVED THAT the Authority finds and determines as follows:

1. Findings. The Authority, for itself and as the sole member of the Company, finds and determines that: (a) the recitals and representations in this Resolution are true and correct in all material respects; (b) the Authority has full power and authority to adopt this Resolution; and (c) the Authority's adoption of this Resolution and the approval of the Construction Agreements each are in the best interest of the Nation and the Authority and the Company.



2. Approval of the Approval of the Suffolk/Nabholz Agreement. The Authority, acting for itself and as the sole member of the Company, hereby approves the proposed Suffolk/Nabholz Agreement, and authorizes and directs the Authority's Chairman, or any other officer of the Authority, acting on behalf of the Authority itself and/or the Company, to execute and deliver such agreement on behalf of the Company and the Authority, and its officers, employees, and representatives to perform, and take or cause to be taken such actions as may be required by, or necessary or desirable for the performance of, the Suffolk/Nabholz Agreement.

3. Authorization of Dispute Resolution Provisions. The Authority, acting for itself and as the sole member of the Company, hereby approves the means for the resolution of disputes arising under or related to the Suffolk/Nabholz Agreement, as set forth in such agreement, including the forums set forth therein, or incorporated by reference through, such agreement for the resolution of disputes, the choice of law, and the consents to have disputes resolved through binding arbitration as provided in such agreement.

4. Approval of Limited Waiver of Sovereign Immunity by the Authority as Guarantor. Under the terms of the Suffolk/Nabholz Agreement the Authority will agree to guarantee payment by the Company of its monetary obligations under such agreement, and such agreement therefore incorporates a limited waiver of sovereign immunity by the Authority for purposes of the enforcement of such guarantee (the "Suffolk/Nabholz Sovereign Immunity Waiver Provisions"), and the Authority hereby finally, unconditionally, and irrevocably ratifies and approves such Suffolk/Nabholz Sovereign Immunity Waiver Provisions; provided, that the Authority's limited waiver of immunity provided for purposes of the Suffolk/Nabholz Agreement is limited to a guarantee of the monetary obligations of the Company, and is applicable only in the event the Company lacks the financial resources to satisfy its obligations under the agreement, as determined in dispute resolution, and that the Authority's limited waiver of immunity approved hereunder does not permit enforcement against the Authority of any of the non-monetary obligations of the Company to Suffolk/Nabholz, a Joint Venture, thereunder.

5. Authorization for Further Negotiations. In the event that any terms and conditions of the Agreements remain unresolved, the Authority, acting for itself and as the sole member of the Company, hereby authorizes the Chairman of the Authority to engage in and/or direct further negotiations relating to such matters as are necessary and appropriate, and to approve final contractual provisions, provided that any such additional terms and conditions thereby negotiated do not materially alter or change the proposed Agreements as presented to the Authority for its approval hereunder.

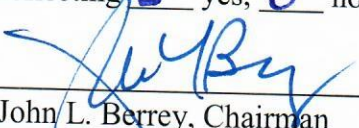
6. Authorization to Execute Ancillary Documents and Instruments. The Authority, acting for itself and as the sole member of the Company, authorizes the Chairman of the Authority, or any other officer of the Authority, to execute and deliver such further documents, agreements, and instruments on behalf of the Authority or the Company as are required or necessary for the performance of the Construction Agreements finally approved hereunder, provided that such additional documents, agreements, and instruments are consistent with the Agreements approved hereunder.

7. Miscellaneous. If any provision of this Resolution or the application of any provision of this Resolution is held to be invalid, the remainder of the Resolution shall not be affected with respect to the same. This Resolution shall become effective as of the date and time

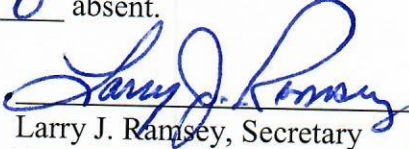
of its passage and approval by the Authority.

CERTIFICATION

The foregoing resolution of the Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah) was presented and duly adopted through an electronic/telephonic vote of the members of the Authority on June 22, 2019, with a vote reflecting 5 yes, 0 no, 0 abstaining, and 0 absent.



John L. Berrey, Chairman
Downstream Development Authority



Larry J. Ramsey, Secretary
Downstream Development Authority