



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF RECLAMATION

Great Plains Region

P.O. Box 36900

Billings, Montana 59107-6900



GP-3700
ADM-13.00

NOV - 6 2007

MEMORANDUM

To: Commissioner
Attention: 91-00000

From: Michael J. Ryan
Regional Director

Donald E. Moomaw

FOR

Subject: Transmittal of the Fiscal Year (FY) 2008 Chippewa Cree Tribe of the Rocky Boys Reservation (Tribe) Self Governance Annual Funding Agreement (AFA) to Congress

Attached is a copy of the FY 2008 Self Governance AFA for the Tribe. This AFA was executed between the Tribe and me. This AFA, in the amount of \$5,000, will continue to fund the planning, design, and construction of the core system of the Rocky Boy's/North Central Regional Water System. The project is authorized by Public Law 107-331, the Rocky Boy's/North Central Montana Regional Water System Act of 2002.

The \$5,000 is the FY 2007 funds provided to the Tribe under Cooperative Agreement No. 03NA601766 and will be carried over and applied to the planning, design and construction activities described in the work plan attached to this AFA. Additional funds will be incorporated into the AFA and allocated as mutually agreeable to the parties subject to FY 2008 project funding by Congress. The Tribe and the Bureau of Reclamation shall revise the budget and work plan to show how they are going to utilize the additional funds under this AFA.

Section 403(f) of P.L. 93-638, as amended, requires AFAs entered into by Department of the Interior agencies be submitted by the Secretary 90 days before the proposed effective date of an agreement to each tribe that is a party to the agreement, to the Committee on Indian Affairs of the Senate, and the Committee on Natural Resources of the House of Representatives.

The attached FY 2008 Chippewa Cree Tribe of the Rocky Boys Reservation AFA has been reviewed for legal sufficiency, which is attached, and is ready for transmittal to Congress and I recommend that you approve and transmit it to the Assistant Secretary, Water and Science, so that the FY 2008 planning, design, and construction can begin pursuant to P. L. 107-331. You may call me or Mr. Kimball Banks, Tribal and Financial Assistance Officer, Great Plains Region, at 406-247-7710, if you have questions regarding this request or the substance of the AFA.

Attachments - 2

ANNUAL FUNDING AGREEMENT
BETWEEN
THE CHIPPEWA CREE TRIBE OF THE ROCKY BOYS RESERVATION
AND THE
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
FOR THE PERIOD OF
OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008

Article 1. Authority and Purpose

Section 1. Authority. - This Annual Funding Agreement (hereinafter referred to as the "AFA") is entered into by the United States Department of the Interior, Bureau of Reclamation (hereinafter referred to as "Reclamation") for and on behalf of the Secretary of the Interior, pursuant to the authority granted by Title IV of Public Law 93-638, as amended by Title II of Public Law 103-413, 108 Stat. 4250 (October 25, 1994) (hereinafter referred to as the "Tribal Self-Governance Act of 1994") and by the Chippewa Cree Tribe of the Rocky Boy's Reservation by the authority of the Constitution and Bylaws of the Chippewa Cree Tribe (hereinafter referred to as the "Tribe") and as delegated by Tribal Resolution No. 83-05, and by Section 904(g) of the Rocky Boy's/North Central Montana Regional Water System Act of 2002 (Public Law 107-331) (hereinafter referred to as the "Act").

Section 2. Purpose. - This AFA will implement the Tribal Self-Governance Act of 1994, with respect to programs, services, function and activities assumed by the Tribe from Reclamation during this funding period. The purpose of this AFA is to set forth the specific programs, services, functions and activities, and the associated resources, to be provided by Reclamation to the Tribe; to identify the functions and resources to be retained by Reclamation; and to set forth the terms and conditions for implementation of this AFA for the funding period October 1, 2007, through September 30, 2008. In the absence of a successor AFA, the Tribe is authorized to continue under the terms and conditions of this AFA, to the extent resources permit, until a successor AFA becomes effective. Specifically, the Tribe shall, in accordance with Section 403(c) of the Tribal Self-Governance Act of 1994, plan, conduct and administer Reclamation programs related to the planning, design and construction of the core system of the Rocky Boy's/North Central Montana Regional Water System as authorized by the Act and

described in Section 904(d) of that Act and the Final Engineering Report (FER) for the Rocky Boy's/North Central Montana Regional Water System.

This Agreement shall be liberally construed to achieve its purposes:

- A. To implement the terms and conditions of the Act pertinent to the planning, design and construction of the core system as authorized by the Act and defined by the FER for the Rocky Boy's North Central Montana Regional Water System;
- B. To enable the Secretary, through Reclamation, pursuant to the Tribal Self-Governance Act of 1994 and subject to appropriations, to transfer to the Tribe, the amount of funds specified for the Tribe in this AFA for the planning, design and construction of the core system;
- C. Consistent with the spirit and intent of Tribal Self-Governance Act of 1994 and the Act, to define and acknowledge the role and responsibility of Reclamation is to provide technical assistance and conduct the necessary construction oversight, inspection and administration unless additional activities are mutually agreed to and specifically identified in this AFA
- D. To enable the Tribe pursuant to Article II Section 4B of this AFA to invest the funds provided under this AFA for the tribal portion of the core system until use for authorized project purposes as defined in the AFA;
- E. To establish the planning, design and construction standards which apply to the development and construction of the core system and which will ensure a safe and adequate rural, municipal, and industrial water supply for the residents of the Rocky Boy's Reservation;
- F. To enable the Tribe to request the temporary assignment of appropriate Reclamation personnel including through the Intergovernmental Personnel Act (IPA)(25 U.S.C. section 3371-3375) to work cooperatively with tribal staff in the planning design, and construction of the core system.
- G. To implement the spirit and intent of the Act by enabling Reclamation to continue its government-to-government relationship with the Tribe through the Tribal Self-Governance Act of 1994 and remove any federal obstacles in implementing the Act.

Article II. Terms and Conditions.

Section 1. Responsibilities of the Tribe.

- A. Project completion in accordance with the terms and conditions specified in this AFA** – The Tribe will plan, design and conduct construction activities pursuant to the Act, the FER, and the project activities as outlined in the attached workplan and scope of work for this AFA.
- B. Notice of proposed changes to the project** –Reclamation shall review and approve any proposed changes in construction activity that require an increase in the negotiated AFA funding amount or an increase in the performance period or are a significant departure from the scope or objective of the construction activities as

agreed to by the parties. Every effort will be made to accomplish any necessary reviews with fourteen (14) calendar days. Any proposed changes or significant departures which amount to \$25,000 or more will be reviewed and approved by Reclamation.

C. Applicable Design and Construction Standards – The Tribe shall comply with the following standards as applicable during the planning, design and construction of the Core System and as specifically identified in the approved project plans and specifications (attachment A):

- Engineers Joint Contract Documents Committee (“EJCDC”)
- American Concrete Institute (ACI)
- American Institute of Steel Construction (AISC)
- American Iron and Steel Institute (AISI)
- American Society for Testing and Materials (ASTM)
- American Water Works Association (AWWA)
- American Welding Society (AWS)
- 1997 Ten States Standards (TSS)
- National Association of Corrosion Engineers (NACE)
- American Association of State Highway and Transportation Officials (AASHTO)
- American National Standards Institute (ANSI)
- Concrete Reinforcing Steel Institute (CRSI)
- National Electric Code
- International Building Code
- Uniform Fire Code
- Uniform Mechanical Code
- Uniform Plumbing Code

The Tribe and Reclamation understand that the utilization of the above codes, standards, guidelines and methods are necessary to assure the quality of construction expected by the parties under this agreement. Reclamation agrees to accept any tribal standards which are deemed by Reclamation to be consistent with or exceed the above standards.

Reclamation and the Tribe intend that all costs that the Tribe incurs under this AFA shall be held to the minimum amount necessary to construct the System in accordance with sound engineering, construction, business, and environmental practices. The Tribe shall conduct Value Engineering (VE) studies in accordance with OMB Circular A-131 and Department of the Interior, Department Manual 369-1 of all major construction contracts relating to the core system as mutually determined necessary by Reclamation and the Tribe.

The Tribe further agrees to develop quality control/quality assurance plans as appropriate.

D. Applicable Health and Safety Standards - In the absence of equivalent Tribal health and safety standards, Reclamation safety and health standards, set forth in the Reclamation publication, "BOR Safety and Health Standards," will apply. Prior to initiating any construction the Tribe and Reclamation will jointly develop a safety program.

E. Acquisition of property and rights of way - Where, in carrying out the construction of the core system, any needed acquisition of property or rights of way will be accomplished pursuant to Sec 904(e) of the Act.

F. Access to construction sites - The Tribe will provide Reclamation reasonable access to construction sites to observe construction activities.

G. Reports and submittals –

(1) Planning Reports. The tribe shall make available to Reclamation, for review and approval, all planning reports, design reports, specifications and drawings, inspector reports, material testing reports and any other reports that document the design and construction of facilities of this AFA. If Reclamation determines that copies of specific documents are necessary, the Tribe upon notice by Reclamation will provide such copies in a timely manner. One set of reproducible project record drawings shall be provided to Reclamation within 1 year of construction completion.

(2) Construction Progress Reports. The Tribe shall provide monthly progress reports to Reclamation within ten (10) calendar days from the last day of the month pertaining to the construction activities on work identified in this AFA.

(3) Project financial status reports. Quarterly Reports pertaining to the financial transactions of the Tribe on work identified in this AFA shall be furnished to Reclamation within 30 calendar days after each quarter's end. The commencement of the reporting period shall be the effective date of this AFA. This information will be reported on SF-269A and accompanied by detailed cost accounting data.

(4) Audit Report. The Tribe shall provide to Reclamation, at the same time the audit is sent to the Inspector General, a copy of the Tribe's annual federal programs single audit as prescribed by the Single Audit Act, (31 U.S.C. Part 7501 et seq).

H. Chippewa Cree Construction Corporation to Plan, Design and Construct the Core and On-Reservation Water System – The Tribe through Tribal Resolution No. 83-05 has delegated to the Chippewa Cree Construction Corporation all responsibilities in implementing the terms and conditions of this AFA.

Section 2. Responsibilities of Reclamation.

A. Review and approval of planning and design documents - Reclamation shall review and approve planning and design documents related to the construction of the core system to ensure (1) adequate health and safety standards are followed (2) compliance with applicable Tribal, State, and Federal laws and regulations, the technical requirements specified in the FER and any project-related environmental requirements, and (3) technical adequacy of designs and specifications. Any issues identified by Reclamation will be resolved between the parties to ensure that proper health and safety standards are achieved. Designs, specifications and/or comments from either Reclamation or the Tribe will be submitted sufficiently in advance of any proposed construction to allow for review and comment. Within fourteen (14) calendar days, Reclamation will notify the Tribe of any potential issues concerning the design and specifications. Reclamation will submit final comments within a thirty (30) calendar day period following the end of the 14 calendar day period. The parties may agree to an extension of the time period.

B. Reservation of use for Federal Government purposes designs produced in the construction program - Reclamation reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use for Federal Government purposes, designs produced in the construction program funded by this AFA, including:

- (1) The copyright to any work developed under a contract or subcontract; and
- (2) Any rights of copyright that the Tribe or Tribal contractor purchases through the AFA;

C. Review and approval of proposed changes in construction project -

Reclamation shall review and approve any proposed changes in construction activity that require an increase in the negotiated AFA funding amount or an increase in the performance period or are a significant departure from the scope or objective of the construction activities as agreed to by the parties. Every effort will be made to accomplish any necessary reviews with fourteen (14) calendar days. Any proposed changes or significant departures which amount to \$25,000 or more will be reviewed and approved by Reclamation.

D. Project Oversight Administration

(1) Construction Oversight - Reclamation will conduct necessary construction oversight, including onsite monitoring visits, as mutually agreed to in Reclamation's project work plan attached to this AFA. Reclamation will retain sufficient funds for all allowable, allocable, and reasonable expenses in the

performance of these activities as mutually negotiated and agreed to in Reclamation's project budget attached to this AFA.

(2) Inspection - Reclamation will conduct necessary inspection as mutually agreed to in Reclamation's project work plan attached to this AFA. Reclamation will retain sufficient funds for all allowable, allocable, and reasonable expenses in the performance of these activities as mutually negotiated and agreed to in Reclamation's project budget attached to this AFA.

(3) Administration of project activities - Reclamation will conduct necessary administration of project activities as mutually agreed to in Reclamation's project work plan attached to this AFA. Reclamation will retain sufficient funds for all allowable, allocable, and reasonable expenses in the performance of these activities as mutually negotiated and agreed to in Reclamation's project budget attached to this AFA.

E. Emergency Suspension of Work.

(1) Notwithstanding the notice provisions of 25 CFR 1000.244(c), if Reclamation determines that there is an imminent occasion of harm or danger regarding safety, health, the environment, or cultural resources during construction, Reclamation has a right to suspend work immediately. If this right is exercised, Reclamation shall provide written notification to the Tribe immediately following the suspension, shall provide immediate technical assistance to the Tribe in an effort to resolve the cause for the suspension as quickly as possible, and shall issue a notice to proceed or to commence work immediately upon resolution;

(2) The Tribe must be compensated for reasonable cost due to any suspension in accordance with 25 CFR 1000.244(d). Any unresolved dispute will be processed in accordance with the terms of the Contract Disputes Act of 1978, 41 U.S.C. 601, et seq.;

(3) If the reasons for the emergency suspension cannot be corrected or resolved, Reclamation may issue a finding of imminent jeopardy. Prior to issuing a finding of imminent jeopardy, Reclamation and the Tribe can negotiate a sixty (60) day extension in order to resolve the reason for the emergency suspension; and

(4) A finding of imminent jeopardy will trigger the Federal reassumption process pursuant to 25 CFR Part 1000 subpart M – Reassumption and as outlined in Article IV of this agreement.

F. Temporary Suspension of construction activities –

(1) Reclamation may require the Tribe to suspend all or part of the work under this AFA for up to thirty (30) calendar days if Reclamation determines that (a) site

conditions adversely affect health and safety or (b) work in progress or completed fails to substantially carry out the terms of the AFA without good cause;

(2) Before suspending work, pursuant to this section, Reclamation will provide a 5-working day written notice and an opportunity for the Tribe to correct the problem;

(3) The Tribe must be compensated for reasonable costs due to any suspension in accordance with 25 CFR 1000.244(d). Any unresolved dispute will be processed in accordance with the Contract Disputes Act of 1978, 41 U.S.C. 601, et seq.; and

(4) If there is a substantial failure to carry out the terms of the AFA without good cause and it is not corrected or resolved during the suspension of work, Reclamation may initiate a reassumption at the end of the 30 calendar day suspension period if an extension has not been negotiated.

G. Reports - In mutually agreed upon format and within 30 calendar days after the quarter's end, Reclamation will provide the Tribe quarterly reports on Reclamation's use and expenditure of costs associated with its technical assistance and necessary construction oversight, inspection, and administration activities pursuant to the Act.

H. Technical Assistance -As negotiated between the parties, Reclamation will provide technical assistance as requested by the Tribe.

Section 3. Regulatory Authority

A. Applicable Federal laws, Program Statutes and Regulations - A list of applicable Federal Laws, Program Statutes, and Regulations is provided in Appendix A. The Tribe, with Reclamation oversight, shall be responsible for compliance with the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA), including the preparation of requisite documents and any requirements and stipulations set forth therein. The Secretary of the Interior, however, shall make the final determinations under such laws. The Tribe will fully participate on an interdisciplinary, interagency team that will oversee compliance with NEPA, NHPA and any other Federal and State environmental and cultural resources laws, regulations, and requirements prior to any ground disturbing activities.

B. Procurement Policy - The Tribe's Procurement Policy shall apply.

C. Tribal TERO - Tribal Employment Rights Ordinance will apply to all activities conducted by the Tribe or its subcontractors under this AFA.

Section 4. Funding.

A. Funding Amount - \$5,000 of FY 2007 funds provided to the Tribe under the FY 2007 Annual Funding Agreement (No. 06NA602127) will be carried over and applied to the planning, design and construction activities described in the work plan attached to this AFA. Additional funds will be incorporated into the AFA and allocated as mutually agreeable to the parties subject to FY2008 project funding by Congress. The Tribe shall revise the budget and work plan to show how they are going to utilize the additional funds under this AFA.

B. Investment of Advance Payments and Use of Interest - The Tribe may invest funds transferred under this AFA if such investment is in:

- (1) Obligations of the United States;
- (2) Obligations or securities that are within the limits guaranteed or insured by the United States or mutual (or other) funds registered with the Securities and Exchange Commission and that only invest in obligations of the United States or securities that are guaranteed or insured by the United States; or
- (3) Deposits insured by an agency or instrumentality of the United States or are fully collateralized to ensure protection of the funds even in the event of a bank failure.

Further, unless otherwise restricted by this AFA, interest or income earned on investments or deposits of funds transferred under this AFA may be:

- (1) Placed in the Chippewa Cree Construction Corporation's general fund and used for any purpose approved by the Construction Corporation Board of Directors; or
- (2) Used to provide expanded services under this AFA and to support some or all of the costs of investment services.

C. Reallocation of funds (No reallocation of funds to projects not authorized by P.L 107-331) - All Reclamation funds transferred to the Tribe and expended by the Tribe under this AFA must be expended for purposes identified in the Act. Significant deviations from the work scheduled under this AFA shall be subject to negotiation of a joint reallocation agreement between the Tribe and Reclamation as prescribed in Section 403(b)(3) of Title IV of P.L. 93-638. For the purposes of this section, significant deviations are deviations that involve line items reallocations that singularly or in total exceed 10% of the total applicable AFA budget.

D. Carryover - The parties acknowledge that all money appropriated and transferred to the Tribe under this AFA will remain available to the Construction Corporation without fiscal year limitation.

E. Financial Management Assurances – The Tribe shall provide assurances to Reclamation, by tribal resolution, that all financial management of funds provided under this funding agreement are to be managed and accounted for by the Chippewa Cree Construction Corporation. The funds to be managed by the Construction Corporation shall be:

1. placed and managed in accounts that are separate from other tribal accounts;
2. managed and accounted for by an accountant other than the tribal accountants;
3. audited by a separate independent auditor other than the auditor for the tribe; and
4. evidence by tribal resolution that all of the above requirements have been met and that the funds and functions under this funding agreement are managed and carried out by the Chippewa Cree Construction Corporation.

Section 5. Payment. – Subject to the availability of appropriated funds and as negotiated by the Tribe and Reclamation, Reclamation shall transfer available funds under this funding agreement as specified in the annual workplan (Attachment B of this AFA) or as otherwise agreed to by the parties. After the AFA has resided with Congress for 90 days, Reclamation shall transfer the available funds to the Construction Corporation’s account utilizing electronic funds transfer within ten (10) business days following the submission of an SF-270.

Section 6. Additional Funding. – Subject to the availability of end of year funds and as negotiated by the Tribe and Reclamation, Reclamation may transfer additional funds to this AFA. Prior to such transfer, the annual workplan (Attachment B of this AFA) must be updated to specify the use of the funds as agreed to by the parties. Reclamation shall transfer any additional funds to the Construction Corporation’s account utilizing electronic funds transfer within ten (10) business days following the submission of an appropriate SF-270.

Article III. Retrocession of Programs by the Tribe. The effective date of any retrocession under this AFA, in whole or in part, shall be 45 calendar days from the date of the Tribe’s retrocession request. If the Tribe requests an effective date that is other than the 45 days from the date of its retrocession request, the Tribe’s request date shall be the effective date, if mutually agreed to. The retrocession shall be implemented consistent with Subpart N of the Final Tribal Self-Governance Rule, 25 CFR Part 1000.

Article IV. Reassumption by the Secretary. Reclamation may reassume the construction portion of this AFA if there is a finding of:

- A significant failure to substantially carry out the terms of the AFA without good cause; or

- Imminent jeopardy to a physical trust asset, to a natural resource, or that adversely affects public health and safety as provided in subpart M of 25 CFR Part 1000.

Any reassumption of this AFA, in whole or in part, will be implemented consistent with Section 403(d)(2) of P.L. 93-638 and Subpart M of the Final Tribal Self-Governance Rule, 25 CFR Part 1000.

Article V. Other Provisions.

Section 1. Designated Officials. - The designated officials for the receipt of all correspondence such as but not limited to notices, proposed amendments to this Agreement or any other purposes or questions that may arise under this Agreement shall be either the Chairman or Vice-Chairman of the Chippewa Cree Tribe and the Chairman and CEO for the Chippewa Cree Construction Corporation or its' designee for the Tribe and the Great Plains Regional Director or Montana Area Office Area Manager for Reclamation

Section 2. Records. - Access to records maintained by Reclamation is governed by the Freedom of Information Act (5 U.S.C. 552) and other applicable Federal law. At the option of the Tribe, except for previously provided copies of the Tribe's records that Reclamation demonstrates are clearly required to be maintained as part of the record keeping system of the Department of the Interior, records of the Tribe shall not be considered Federal records for the purpose of the Freedom of Information Act. The Freedom of Information Act also does not apply to records maintained solely by the Tribe. At the option of the Tribe, records of the Tribe must not be considered Federal records for the purposes of the Privacy Act.

Section 3. Management Systems - The Tribe must maintain management systems that are determined to be adequate by an independent audit through the annual single agency audit report that is required by the Act and OMB Circular A-133.

Section 4. Federal Supply Sources. - For purposes of Section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. Part 481(a) (relating to Federal sources of supply, including lodging providers, airlines and other transportation providers), the Tribe shall be deemed an executive agency when carrying out this AFA, and employees of the Tribe shall be eligible to have access to sources of supply on the same basis that employees of an executive agency have such access.

Section 5. Intergovernmental Personnel Act – The Tribe, through the Intergovernmental Personnel Act (IPA), 25 USC section 3371-3375, may negotiate the temporary assignment of appropriate Reclamation personnel to assist in accomplishing the work authorized under this AFA.

Section 6. Disputes. -

- (a) Disputes shall be addressed through government-to-government discourse. This discourse must be respectful of government-to-government relationships and

relevant Federal-Tribal agreements, treaties, judicial decisions, and policies pertaining to Indian Tribes.

(b) Any disputes which arising under this AFA may use non-binding informal alternative dispute resolution at the option of the Tribe as prescribed in 25 CFR Part 1000.424-427. The Tribe may ask for this alternative dispute resolution any time before the issuance of an initial decision of a formal appeal(s). The appeals timetable will be suspended while alternative dispute resolution is pending.

Section 7. Other Contracts. - For the year and to the extent which funds are provided under this AFA, the Tribe shall not be entitled to contract with Reclamation for such funds under Section 102 of P.L. 93-638, except that the Tribe shall be eligible for new programs on the same basis as other tribes.

Section 8. Title to the Core System. - Title to the core system shall be held in trust by the United States for the Tribe; and shall not be transferred to the Tribe unless a transfer is authorized by an Act of Congress enacted after the date of enactment of P.L. 107-331. Title to the core system, pursuant to 904(i), includes any real property and property rights which were acquired during the construction process as well as project land areas owned by Reclamation mutually agreed to by the Tribe and Reclamation to be part of the core system. Title to the core system will be administratively transferred from Reclamation to the Bureau of Indian Affairs.

Section 9. Trust Responsibility. - This AFA does not waive, modify, or diminish in any way the trust responsibility of the United States with respect to the Tribe and individual tribal members that exists under treaties, Executive orders, and other laws.

Section 10. Amendment of this Agreement. - The terms and conditions in this AFA may be amended during the period that it is in effect if mutually agreed to by both the Tribe and Reclamation.

Article VI. Effective Date of AFA. - This Annual Funding Agreement shall be signed by an authorized representative of the Tribe and by the Secretary of the Interior, or authorized representative, and shall be submitted by the Secretary to the Committee on Indian Affairs of the United States Senate and the Committee on Natural Resources of the United States House of Representatives and shall be effective no earlier than ninety (90) calendar days after such submission in accordance with Section 403(f) of the Tribal Self-Governance Act of 1994.

Chippewa Cree Tribe

By: John C Houle 10-2-07
Date

Title: Tribal Chairman

United States

Department of the Interior

Bureau of Reclamation

By: Ronald E Moomaw 11/6/07
Date

Title: Assistant Regional Director

Attachments:

- A. List of Federal Laws and regulations applicable to the contracted project**
- B. Work Plan**
- C. Budget**
- D. Tribal Resolution 83-05**
- E. Federal Charter of Incorporation Issued by The United States Of America, Department of the Interior, Bureau of Indian Affairs to the Chippewa Cree Tribe of the Rocky Boy's Reservation for Chippewa Cree Construction Corporation**

List of Applicable Federal Laws, Program Statutes and Regulations

Other Federal laws, regulations and Executive Orders applicable to the design and construction activities contracted by the Tribes under this Agreement are the following:

- (1) Indian Self-Determination and Education Assistance Act (P.L. 93-638), as amended) and 25 CFR Part 900
- (2) Energy Policy and Conservation Act (P.L. 94-163)
- (3) Federal Water Project Recreation Act
- (4) Fish and Wildlife Coordination Act
- (5) Resource Conservation and Recovery Act
- (6) Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646)
- (7) Federal Standard No. 313 for any hazardous materials to be utilized under this Agreement
- (8) Applicable Federal environmental laws, regulations and Executive Orders, including the Federal Water Pollution Control Act, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act of 1974, as amended (P.L. 93-523), and associated Environmental Protection Agency (EPA) regulations, standards and guidelines; the National Pollution Discharge and Elimination System (NPDES); the National Environmental Policy Act of 1969 (NEPA), including all commitments identified in environmental compliance documents (i.e., Environmental Assessment (EA), Environmental Impact Statements (EIS), etc.) for contracted projects; the Endangered Species Act of 1973 (ESA), including all commitments/mitigation measures identified in any environmental compliance documents for activities performed under this Agreement; the Bald Eagle Protection Act; the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.); Executive Order 11988 – Floodplain Management; and Executive Order 11990 – Protection of Wetlands
- (9) Applicable Federal cultural resource laws, regulations and Executive Orders, including the Archaeological Resources Protection Act of 1979 (P.L. 96-95); C.F.R. Part 262 – Protection of Archaeological Resources; the National Historic Preservation Act of 1966, as amended; the Native American Graves Protection and Repatriation Act (P.L. 101-604) and associated regulations at 43 C.F.R. Part 10; 36 C.F.R. Part 800 – Protection of Historic and Cultural Properties; 43 C.F.R. Part 7 – Protection of Archaeological Resources: Uniform Regulations; and Executive Order 11593 – Protection and Enhancement of Cultural Environments
- (10) Applicable Federal labor laws, regulations and Executive Orders as applicable to ISDEA construction contracts; including the Occupational Safety and Health Administration (OSHA) (29 U.S.C. 61 et seq) and standards applicable to construction in 29 C.F.R. 1900 to end; the provisions of the Davis-Bacon Act (40 U.S.C. 276c and 18 U.S.C. 874), as applicable, or subcontracts, except for work performed by tribal employees; the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330); Department of Labor regulation 29 C.F.R. Part 5; Copeland “Anti-Kickback Act” (18 U.S.C. 276c) and 29 C.F.R. Part 3

- (11) Federal Tort Claims Act (28 U.S.C. 1346(b), 2401, 2671-2680) and related Department of Justice regulations in 28 C.F.R. Part 14 Contract Disputes Act of 1978 (41 U.S.C. 601 as amended) 43 C.F.R. 4. 110-126, if matter is submitted to the Interior Board of Contract Appeals
- (12) Equal Access to Justice Act (5 U.S.C. 504 and 28 U.S.C. 2412 and regulations at 43 C.F.R. 4. 601 through 619)
- (13) 25 C.F.R. Part 169

The Secretary and the Tribes agree to make a good faith effort to identify other Federal laws, Executive Orders and regulations applicable to the design and construction activities to be performed under this Agreement, to share them with the other party and to refer to them in writing. The parties will also make a good faith effort to identify any tribal laws, ordinances, and resolutions which may affect either party in the performance of this Agreement.

**ROCKY BOY'S / NORTH CENTRAL MONTANA REGIONAL WATER SYSTEM
CHIPPEWA-CREE SCOPE OF WORK AND BUDGET
FY 2008**

SCOPE

The Chippewa-Cree Tribe is planning to perform phase II of the intake design. The scope of work and budget is for carryover of Fiscal Year 2007 funds for the Rocky Boy's / North Central Montana Regional Water System.

BUDGET

Tribe: Perform Phase II Intake Design and \$5,000
Tribal Administration

TOTAL \$5,000

SCHEDULE

Phase II Intake Design October 2007 – September 2008
Tribal Administration October 2007 – September 2008

The Chippewa Cree Tribe of the Rocky Boy's Reservation

Phone: (406) 395-4478 or 4210 - Finance Office
(406) 395-4282 or 4321 - Business Committee

RR #544
Box Elder, MT 59521

A RESOLUTION

NO: 83-05

AUTHORIZING THE INCORPORATION OF THE CHIPPEWA CREE CONSTRUCTION CORPORATION UNDER THE CONSTITUTION AND BYLAWS OF THE CHIPPEWA CREE TRIBE AND TO DELEGATE ALL RESPONSIBILITIES TO THE CORPORATION IN IMPLEMENTING THE TERMS AND CONDITIONS OF THE ROCKY BOY'S/NORTHCENTRAL MONTANA REGIONAL WATER SYSTEM ACT OF 2002 (P.L. 107-331)

WHEREAS, the Chippewa Cree Business Committee is the governing body of the Chippewa Cree Tribe of Rocky Boy's Reservation by authority of the Constitution and By-Laws of the Chippewa Cree Tribe, approved on the 23rd day of November 1935; and

WHEREAS, pursuant to their inherent sovereignty and Constitution and By-Laws of the Chippewa Cree Tribe, the Chippewa Cree Business Committee is charged with the duty to promote and protect the health, security and general welfare of the Chippewa Cree Tribe; and

WHEREAS, the Chippewa Cree Tribe desires to establish the Chippewa Cree Construction Company to provide for construction and economic development related activities for the Chippewa Cree Tribe; and

WHEREAS, the Chippewa Cree Construction Corporation will be tribally incorporated under the Constitution and Bylaws for the Chippewa Cree Tribe and as such shall have the same tax status and immunities under Federal Law as the Tribe; and

WHEREAS, the Chippewa Cree Tribe delegates to the Chippewa Cree Construction Corporation all responsibilities in implementing the terms and conditions of the Rocky Boy's/North Central Montana Regional Water System Act of 2002 (P.L. 107-331), including but not limited to, the planning, designing and constructing of the core system and on-reservation water system.

WHEREAS, the Chippewa Cree Construction Corporation will maintain separate financial accounts from the Tribe and the financial accounts will be managed by separate accountants hired by the Corporation and audited by a auditor separate from the Tribe; and

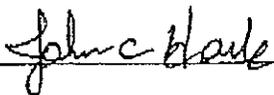
NOW THEREFORE BE IT RESOLVED, the Chippewa Cree Business Committee authorizes the incorporation of the Chippewa Cree Construction Corporation pursuant to the Constitution and Bylaws for the Chippewa Cree Tribe; and

NO: 83-05

BE IT FURTHER RESOLVED, the Chippewa Cree Business Committee delegates to the Chippewa Cree Construction Corporation all responsibilities in implementing the terms and conditions of the Rocky Boy's/North Central Montana Regional Water System Act of 2002 (P.L. 107-331), including but not limited to, the planning, designing and constructing of the core system, the on-reservation water system.

CERTIFICATION

I, THE UNDERSIGNED, AS SECRETARY/TREASURER OF THE BUSINESS COMMITTEE OF THE CHIPPEWA CREE TRIBE HEREBY CERTIFY THAT THE BUSINESS COMMITTEE IS COMPOSED OF NINE MEMBERS, OF WHOM SEVEN (7) MEMBERS CONSTITUTING A QUORUM, WERE PRESENT AT A MEETING, DULY AND REGULARLY CALLED, NOTICED, CONVENED AND HELD THIS 7TH DAY OF JULY, 2005, AND THAT THE FOREGOING RESOLUTION WAS FULLY ADOPTED, AT SUCH MEETING, BY THE AFFIRMATIVE VOTE OF SIX (6) MEMBERS FOR AND ZERO (0) MEMBERS AGAINST, AND THAT THIS RESOLUTION HAS NOT BEEN RESCINDED OR AMENDED IN ANY WAY.



CHAIRMAN, BUSINESS COMMITTEE



SECRETARY/TREASURER

Federal Charter of Incorporation

Issued by

THE UNITED STATES OF AMERICA
Department of the Interior
Bureau of Indian Affairs

To

**The Chippewa Cree Tribe
of the Rocky Boy's Reservation**

For

CHIPPEWA CREE CONSTRUCTION CORPORATION
A Federally Chartered Tribal Business Corporation

ARTICLE I – NAME

The name of the corporation is Chippewa Cree Construction Corporation, here after referred to as (“Corporation”).

ARTICLE II – PRINCIPAL OFFICE

The principal office of the Corporation shall be located within the Rocky Boy's Reservation in Montana. The Corporation may have such other offices, either within or outside the exterior boundaries of the Rocky Boy's Reservation, as the Board of Directors may designate or as the business of the Corporation may require from time to time.

ARTICLE III – AUTHORITY FOR CHARTER

The Corporation is organized, incorporated and chartered under the laws of the United States as a Federally Chartered Corporation under Section 17 of the Indian Reorganization Act of 1934 (25 U.S.C. § 477), as amended, and shall have the powers, privileges and immunities granted by that statute and embodied in this Charter.

ARTICLE IV – STATUS OF CORPORATION

- A. The Corporation is a legal entity wholly owned by the Chippewa Cree Tribe, a federally recognized Indian tribe, but distinct and separate from the Tribal political body as organized under Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. § 476). The activities, transactions, obligations, liabilities and property of the Corporation are distinct and separate from the Chippewa Cree Tribe.
- B. The Corporation shall have the same tax status and immunities under Federal law as the Chippewa Cree Tribe.
- C. The Corporation shall enjoy the sovereign immunity of the Chippewa Cree Tribe as an entity of the Tribe.

ARTICLE V – OWNERSHIP OF THE CORPORATION

The Corporation shall be owned solely by the Chippewa Cree Tribe for the benefit of the Chippewa Cree Tribe and its recognized members. No individual or legal entity other than the Chippewa Cree Tribe shall acquire any ownership interest in the Corporation.

ARTICLE VI – PERIOD OF DURATION

The period of the Corporation's duration is perpetual, or until this Charter is revoked or surrendered by Act of Congress, pursuant to 25 U.S.C. § 477, as amended.

ARTICLE VII – CORPORATION PURPOSES

The purposes for which the Corporation is organized are:

- A. To provide for construction and construction related activities;
- B. To provide for a corporate structure for construction contracting opportunities;

- C. To provide for construction and other business activities separate from the Chippewa Cree Tribe; and
- D. To provide for economic opportunities for the corporation, tribe, tribal entities, and tribal members.

ARTICLE VIII – CORPORATION POWERS

The Corporation is authorized:

- A. To engage in any lawful business permitted to a corporation organized under 25 U.S.C., § 477, as amended.
- B. To implement the terms and conditions of the Rocky Boy's/North Central Montana Regional Water System Act of 2002 (Public Law 107-331).
- C. To engage in economic development activities for the benefit of the corporation and tribe.
- D. To own and/or operate, directly or through subsidiary corporations, joint ventures, associations, partnerships or otherwise any type of business or venture which promotes and enhances the construction responsibilities and economic development opportunities for the Chippewa Cree Tribe.
- E. To form subsidiary corporations and to enter into and form partnerships, joint ventures, associations, and other business arrangements.
- F. To conduct and carry out business either within or outside of the exterior boundaries of the Chippewa Cree Tribe of the Rocky Boy's Reservation.
- G. To buy, sell, lease, and otherwise acquire and maintain buildings, offices, shops and other appurtenances proper and necessary for the carrying on of said business.
- H. To guarantee, purchase hold assign, mortgage, pledge or otherwise dispose of capital stock of, or any bonds, securities or other evidences of indebtedness created by any other corporation or organization that is in existence under the laws of the United States, any state, Indian tribe, nation, government, or country and to exercise all the rights, privileges, and powers of ownership.
- I. To enter into and make contracts of every kind and nature with any person, government agency, firm, association, corporation, municipality, nation, Indian tribe, state or political body, without the approval of the Secretary of the Interior, except when the use of trust of federally restricted Indian property requires such approval.
- J. To purchase, take by gift or bequest, acquire, own lease, manage, operate, deal in and dispose of real and personal property of all kinds and descriptions, wherever situated.

- K. Subject to the limitations imposed by Article V, to incur debts and raise, borrow and secure the payment of any money in any lawful manner, including the issue and sale or other disposal of stocks, bonds, indentures, obligations, negotiable and transferable instruments and evidence of indebtedness of all kinds, whether secured by mortgage pledge, deed of trust or otherwise, without the approval of the Secretary of the Interior, except when the use of trust or federally -restricted Indian property requires such approval.
- L. To apply for, obtain, register, purchase, lease or otherwise acquire, own, hold, use, operate and introduce, and to sell, assign or otherwise dispose of any trademark, trade name, patent invention, improvements, and processes used in connection with or secured under letters patent, and to use, exercise, develop, grant and give licenses in respect thereto.

ARTICLE IX – LIMITATIONS ON CORPORATION POWERS

The Corporation shall have no power:

- A. To expressly or by implication enter into any agreement that impacts the Chippewa Cree Tribe without the consent of the tribe.
- B. To pledge any assets or credit of the Chippewa Cree Tribe.
- C. To dispose of, pledge, or otherwise encumber real or personal property of the Chippewa Cree Tribe, except as explicitly authorized in lease or other agreements between the Corporation and Chippewa Cree Tribe.
- D. To waive any right, privilege or immunity of, or release any obligation owed to, the Chippewa Cree Tribe.
- E. To sell or otherwise dispose of all or substantially all of the Corporation's assets, other than in the usual and regular course of its business. Prior to any such proposed sale or disposition, the Corporation shall give reasonable notice to the Chippewa Cree Tribal Business Committee.

ARTICLE X – BOARD OF DIRECTORS

- A. The business affairs of the Corporation shall be managed exclusively by its Board of Directors. The Chippewa Cree Tribal Business Committee shall have no authority to direct the business affairs of the Corporation, except that the Directors of the Corporation shall have a fiduciary duty to the tribe as the owner and shall be full accountable for the exercise of their business judgment to the Chippewa Cree Tribal Business Committee as the representative of the ownership interests of the Chippewa Cree Tribe.
- B. The initial Board of Directors shall consist of five (5) members appointed for staggered terms by the Chippewa Cree Tribal Business Committee, of which two (2) membership slots shall be reserved for members of the Tribal Business Committee, appointed by the Tribal Business Committee.

The initial Board appointments shall consist of the following:

Name	Business Committee Member	Term Ends
Bruce Sunchild	Yes	November 2006
Brian Kelly Eagleman	Yes	November 2008
Raymond "Jake" Parker	Yes	November 2008
Tim Rosette	No	To be determined
Pete Thomas LaMere	No	To be determined

- C. The Corporation Board will appoint and/or hire a Chief Executive Officer (CEO) to manage the Corporation on a daily basis.
- D. The Corporation Board will appoint any vacancies of the Board of Directors, except the Tribal Business Committee members.
- E. The Chippewa Cree Tribal Business Committee shall name new appointments to fill any vacancies for the two (2) council members of the Board of Directors within thirty (30) days of the Directors meeting where such vacancies occur.

ARTICLE XI – INDEMNIFICATION

The Corporation may, at the discretion of the Board of Directors, indemnify any current or former Director, officer or employee against reasonable expenses actually necessarily incurred by him or her in connection with the defense of any action, suit, or proceeding in which he or she is make a party by reason of being, or having been, such Director, officer or employee of the Corporation and the reasonable cost of settlement of any such action or proceeding, if a majority of Directors not seeking indemnification or otherwise involved in the controversy shall determine in good faith:

1. That such person did not act, fail to act, or refuse to act willfully or with gross negligence or with fraudulent or criminal intent; and
2. That legal fees paid or any settlements made are reasonable; and
3. That the person seeking indemnification did not act beyond the scope of his or her employment or office; and
4. That it is in the best interests of the Corporation that indemnification is made.

ARTICLE XII – FUNDS AND ACCOUNTING

- A. A modern and separate accounting system from the Chippewa Cree Tribe shall be established and used by the Corporation in conformity with generally accepted accounting principles. The accounting system shall insure the availability of information as may be necessary to comply with Federal regulatory requirements.
- B. The Corporation shall employ an accountant or accounting firm separate from the Tribe to manage and account for all the Corporations funds.

- C. The Board shall, no less frequently than on a quarterly basis, report in writing to the Chippewa Cree Tribe on the financial and operating condition of the Corporation.
- D. The Corporation shall, with 180 days following the close of the Corporation's fiscal year, submit to the Chippewa Cree tribe an audited financial statement showing the status of the Corporation as of the last day of the Corporation's fiscal year.

ARTICLE XIII – WAIVER OF SOVEREIGN IMMUNITY

- A. The Corporation is and shall be considered an instrumentality of the Chippewa Cree Tribe and entitled to all the privileges and immunities of the Chippewa Cree tribe. The Corporation and its Directors, officers, employees as agents while acting in their official capacities are immune from suit, and the assets and other property of the Corporation are exempt from any levy or execution, except as provided in this Article XIII.
- B. Notwithstanding any other provision of law, the Corporation is authorized to waive immunity from suit of the Corporation, the Directors, officers, employees or agents for any particular agreement, matter or transaction as may be entered to further the process or interests of the Corporation.
- C. Any waiver by the Corporation authorized by paragraphs A or B of this Article XII shall be in a form of a resolution duly adopted by the Board of Directors, which resolution shall not require the approval of the Chippewa Cree Tribe, or the Secretary of the Interior. The resolution shall identify the party or parties for whose benefit the waiver is granted, the property of the Corporation, which may be subject to executive order.
- D. Any waiver of immunity shall be limited to the assets and/or income of the Corporation and the acts or omissions of the Corporation, its Directors, officers, employees and Agents shall not create any liability, obligation or indebtedness either of the Chippewa Cree Tribe or payable out of assets, revenues or income of the Chippewa Cree Tribe; and
- E. Any waiver of immunity by the Corporation shall not be construed to waive any immunity of the Chippewa Cree Tribe, or any other instrumentality of the Chippewa Cree Tribe, or any other person or entity of the Tribe.

ARTICLE XIV – AMENDMENTS

The Board of Directors may amend this Charter from time to time as necessary and appropriate. No amendments to this charter shall become operative until approved by the Secretary of the Interior.

CERTIFICATE OF APPROVAL

I, Michael D. Olsen, Principal Deputy Assistant Secretary – Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. § 477) as amended, and delegated to me, do hereby approve this Federal Charter of Incorporation for use by the Chippewa Cree Tribe, State of Montana and its enterprise, the Chippewa Cree Construction Corporation. This Charter shall become effective upon ratification by the Chippewa Cree Business Committee, PROVIDED, that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.

Signed – Michael Olsen

Principal Deputy Assistant Secretary – Indian Affairs

Washington, D.C.

Date: November 1, 2005