



Little River Band of Ottawa Indians

375 River Street
Manistee, MI 49660
(231) 723-8288

Resolution # 05-0817-400

Identification of Conditions that Support the Findings of the Tribal Council of Breach of Contract for Failure by Duane Hopkins, Blue Buffalo Consulting, Inc., to Adequately Manage the Auditing Processes

WHEREAS, the status of the *Gaa' Čhing Ziibi Daáwaa Aniřhinaábek* (Little River Band of Ottawa Indians) as a sovereign and Treaty-making power is confirmed in numerous treaties, from agreements with the initial colonial powers on this land, to various treaties with the United States; and

WHEREAS, the Little River Band of Ottawa Indians (Tribe) is descended from, and is the political successor to, the Grand River Ottawa Bands, signatories of the 1836 Treaty of Washington (7 Stat. 491) with the United States, as reaffirmed by federal law in P.L. 103-324, enacted in 1994; and

WHEREAS, the Tribe adopted a new Constitution, pursuant to a vote of the membership on May 27, 1998, which Constitution became effective upon its approval by the Assistant Secretary-Indian Affairs on July 10, 1998; and

WHEREAS, the Tribe adopted amendments to the Constitution on April 26, 2004, which became effective upon approval by the Assistant Secretary-Indian Affairs on May 13, 2004; and

WHEREAS, the Tribal Council is authorized under Article IV, Section 7(a) to provide for the public health, peace, morals, education and general welfare of the Little River Band and its members; and

WHEREAS, the Tribal Council is vested with the authority, under Article IV, Section 7(i)(2), to manage the funds of the Tribe and to appropriate these funds for the benefit of the Tribe and its members; and

WHEREAS, the Tribal Council is vested with the authority, under Article IV, Section 7(b), to authorize and ratify contracts; and

WHEREAS, the Tribal Council ratified a contract with Blue Buffalo Consulting by resolution # 03-0219-52 and as amended by resolution # 03-0604-160; and

WHEREAS, the purpose of obtaining consulting services for the Chief Financial Officer position was the result of audit findings, inadequate audit reporting, inadequate accounting procedures and training, inadequate records management for accounting systems, and the discharge from employment the former Chief Financial Officer and the former Controller; and

WHEREAS, in February 2003, the Tribal Council determined that the contract entered into with Blue Buffalo Consulting was in the best interests of the Tribe in order to provide stability for the accounting department, development of accounting procedures, correcting and implementing accounting systems that would accurately and adequately track the receipts, budgets, expenditures, reporting and other accounting related activities; and

WHEREAS, the Tribal Council also determined that engaging a consultant to fill the needs of the Chief Financial Officer position was a temporary service in order to develop the proper job description, post, hire and train a permanent Chief Financial Officer for the Tribe; and

WHEREAS, the contracted consultant was responsible for -

- developing internal and financial controls;
- maintaining financial records;
- generating timely and accurate financial reports;
- insure accounting and records management processes meet accounting standards and principles;
- staff development and other duties to improve the accounting department's ability to manage the assets of the Tribe; and
- coordinate information and reporting requirements regarding Tribal enterprises;

see January 23, 2003 request for proposals from Ogema Sam; and

WHEREAS, the Tribal Council received, and reviewed with Ogema Sam, a proposal from Blue Buffalo Consulting, Duane Hopkins, regarding the inquiry which identified, at a minimum, the ability to provide accounting support, organizational restructuring, audit preparation services, policy and procedure development, GASB 34 reporting standards, and financial reporting requirements; and

WHEREAS, the Tribal Council has engaged the services of a Comptroller General to provide investigative services on behalf of the Tribal Council to ensure the assets of the Tribe are being properly managed and utilized. The Comptroller General has been reviewing the accounting responses to the Joseph Eve Compliance Audit, and preparation for auditing activities. The Comptroller General has identified that the consultant has not, in two years, adequately addressed the development of accounting procedures, the transition to GASB 34 requirements, and audit preparation services; and

WHEREAS, the Tribal Council engaged an separate accountant, Dan Taylor, CPA, to recreate the accounting and financial records for the prior years as a result of the complex and time consuming nature of that activity and the inability of the accounting department to manage that responsibility at that time. Dan Taylor spent a significant amount of time collecting, inputting, correcting, and providing guidance regarding the prior fiscal years. Dan Taylor was asked to correct the accounting work for an additional year based on the inability of the consulting chief financial officer to correct the accounting processes during that fiscal year; and

WHEREAS, the Tribal Council engaged Ribail, Stauffer & Associates, PLLC, to conduct audits of the Tribe's finances for fiscal years 2003 through 2005 in accordance with Single Audit Act standards, which audits are based on prior fiscal years and for which the accounting department had two years to be trained and prepared to provide assistance and materials in order to conduct the audit in a timely manner; and

WHEREAS, Ribail, Stauffer & Associates, PLLC, upon arrival to conduct field work, found that

- the accounting department had not closed out grants and needed significant training and assistance to analyze each grant to properly record cash receipts and expenditure and close out grants;
- that training and assistance was needed to prepare closing entries for grants which included transfer of operating funds to close out over-expended grants;
- assistance and training to prepare the Schedule of Expenditures of Federal Awards; and
- assistance and training to prepare GASB 34 compliance financial statements; and

WHEREAS, the consultant, Duane Hopkins, Blue Buffalo, Inc., had been engaged to provide the above services and prepare the accounting department to manage these activities, and that the failure to do so resulted in excess charges of \$25,600.00 by Ribail, Stauffer & Associates, PLLC regarding the FY2003 audit which has not yet been finalized; and

WHEREAS, the Tribal Council adopted, by emergency action, the interim Audit Reform Act of 2005, by resolution # 05-0316-113, which transferred the Single Audit Act reporting responsibilities to the Ogema as a result of the litigation filed by the Ogema against the Tribal Council; and

WHEREAS, the Tribal Council has been notified that Joseph Eve & Company must reissue the FY2001 audit as a result of errors in the balance sheet that were identified in February 2005 and have not been corrected as of August 16, 2005, thus resulting in the Tribe being unable to meet the filing deadline for the FY2004 audits which it had committed to filing in a timely manner; and

WHEREAS, the Tribal Council has been notified that during a May 27, 2005, meeting with the Indian Health Services representative regarding the outstanding audit issues the consultant gave assurances that the audits would be timely filed for FY2004 knowing that the audit for FY2002 could not be completed until the fund balance differences had been corrected and that from February 22, 2005 until May 31, 2005 the reason for the differences still had yet to be identified; and

WHEREAS, the consultant has identified in the August 3, 2005 status report that –

- the FY2001 audit will not be completed and reissued until August 15, 2005;
- the FY2002 audit will not be completed until August 31, 2005;
- the FY2003 audit can be scheduled to complete field work and a draft audit work by the end of September, or middle of October; and, finally,
- the FY2004 audit can be scheduled for field work and draft audit by the end of November or December.

The consultant, having presented these dates has not identified that the IHS representative, nor any other federal representative has been notified of the Tribe's inability to meet the proposed deadline, nor informed of the status of the audit reports for the entire year since taking on the external audit responsibilities;

WHEREAS, the Tribal Council finds that –

- financial reports are still incorrect and efforts to present accurate financial reports have not been adequately undertaken,
- accounting procedures remain undocumented or inadequately documented,
- audit reporting requirements remain unmet and time lines are not being met,
- training and supervision is not being conducted in an adequate manner resulting in loss of funds through not meeting audit reporting requirements or providing accurate and timely responses to questions presented by auditors,
- time, as identified through submitted invoices, is allocated to activities unrelated to the purposes for which the consultant was engaged and being conducted outside of the task order requirements of the contract; and

WHEREAS, the Ogema, under Article V, Section (5), has the responsibility and obligation to oversee administration and management of the Tribal government and execute agreements and contracts with consultants and vendors; and

WHEREAS, the Ogema has a fiduciary responsibility to manage contracts to assure that the deliverables are being submitted in a timely manner and meet the requirements and terms identified in the contract; and

WHEREAS, the Ogema's constitutional and fiduciary responsibility includes invoking the termination clauses contained within contracts, and in this contract with Blue Buffalo Consulting, Inc., on behalf of the Little River Band when presented with documentation and findings that the contract responsibilities and deliverables are not being fulfilled;

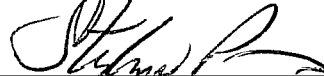
NOW THEREFORE IT IS RESOLVED THAT the Tribal Council of the Little River Band of Ottawa Indians hereby requests a detailed explanation from the Ogema regarding the Ogema's oversight over the consultant's actions, including task orders and/or other written directives to the consultant, and how the Ogema has justified the continued engagement of the consultant in light of the facts presented in this resolution to be submitted to the Tribal Council on during the Council meeting of August 24th.

CERTIFICATE OF ADOPTION

I do hereby certify that the foregoing resolution was duly presented and adopted by the Tribal Council with 8 FOR, 0 AGAINST, 0 ABSTAINING, 0 ABSENT, and 1 VACANT, at a Regular Closed Session of the Little River Band of Ottawa Indians Tribal Council held on August 17, 2005, at the Little River Band's Conference Room in Manistee, Michigan, with a quorum being present for such vote.



Janine M. Sam, Council Recorder



Stephen Parsons, Council Speaker

Attest:

Distribution: Council Records
Tribal Ogema
Tribal Court