

**CROW TRIBAL LEGISLATURE
JUNE 10, 2015 SPECIAL SESSION**

JOINT ACTION RESOLUTION NO. 15-09

Introduced by Darrin Old Coyote, Chairman
Crow Tribal Executive Branch

JOINT ACTION RESOLUTION OF THE CROW TRIBAL LEGISLATURE AND THE
CROW TRIBAL EXECUTIVE BRANCH ENTITLED:

**"RESOLUTION APPROVING THE CROW TRIBE'S LIMITED WAIVER OF
SOVEREIGN IMMUNITY IN THE CONSTRUCTION CONTRACT FOR THE
VETERAN'S CEMETERY PROJECT."**

WHEREAS, on April 14, 2015, the Crow Tribe was awarded a \$1,234,810 grant from the U.S. Department of Veterans Affairs to establish the Apsáalooke Veteran's Cemetery in Crow Agency, Montana ("MT-13-13"); and

WHEREAS, Walker River Construction, Inc. was awarded the contract to construct the Apsáalooke Veteran's Cemetery Project; and

WHEREAS, Exhibit A of the Construction Contract for construction of the Veteran's Cemetery Project, attached hereto and incorporated by reference, requires a limited waiver of sovereign immunity for the limited purpose of enforcing the Owner's obligations under the construction contracts; and

WHEREAS, the Chairman of the Executive Branch has authority and responsibility pursuant to the "enumerated powers" in Article IV, Section 3(a) of the Constitution and Bylaws of the Crow Tribe of Indians to represent the Crow Tribe in negotiations with Federal, State and local government and other agencies, corporation, associations, or individuals in matters of welfare affecting the Crow Tribe, and in Section 3(k) to "negotiate limited waivers of sovereign immunity when such a waiver is necessary for business purposes in accordance with Article V, Section 2(f) of [the] Constitution;" and

WHEREAS, the Legislative Branch has authority and responsibility pursuant to its "powers and duties" in Article V, Section 2(f) of the Constitution to "grant final approval or disapproval of limited waivers of sovereign immunity by the Executive Branch of Government when waivers are necessary for business purposes;" and

WHEREAS, the Executive and Legislative branches of the Crow Tribe passed JAR No. 13-07 ("Designation of Crow Tribal Land Near Crow Agency for the Use of the Crow Office of Veterans Affairs to Establish a Crow Veterans Cemetery"), on April 10, 2013 (signed into law, May 7, 2013, and subsequently amended by JAR No. 14-10), recognizing that the establishment and administration of a Veteran's Cemetery on the Crow Indian Reservation to properly honor

Crow tribal member veterans for their service and sacrifice as military veterans was in the best interests of the Crow Tribe; and

WHEREAS, the limited waiver of sovereign immunity required by the contracting conditions for the construction contract is necessary for the business purpose of construction of the Apsáalooke Veteran's Cemetery.

**NOW THEREFORE, BE IT RESOLVED BY THE CROW TRIBAL LEGISLATURE
AND THE CROW TRIBAL EXECUTIVE BRANCH:**

Section 1. That the limited waiver of sovereign immunity set forth in Exhibit A- "Supplementary Conditions of the Contract for Construction", attached hereto and incorporated by reference, is hereby approved.

Section 2. That the approval granted herein is effective on the date of approval of this Resolution.

[Remainder of Page Left Blank Intentionally]

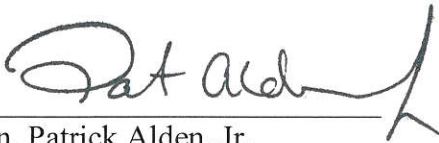
CERTIFICATION

I hereby certify that this Joint Action Resolution for the **“RESOLUTION APPROVING THE CROW TRIBE'S LIMITED WAIVER OF SOVEREIGN IMMUNITY IN THE CONSTRUCTION CONTRACT FOR THE VETERAN'S CEMETERY PROJECT”** was duly approved by the Crow Tribal Legislature with a vote of 16 in favor, 0 opposed, and 0 abstaining, and that a quorum was present on this 10th day of **June, 2015**.



Senator R. Knute Old Crow, Sr.
Speaker of the House
Crow Tribal Legislature

ATTEST:



Sen. Patrick Alden, Jr.
Secretary
Crow Tribal Legislature



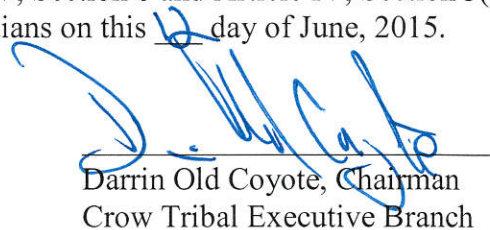
EXECUTIVE ACTION

I hereby

X **APPROVE**

 VETO

this Joint Action Resolution for the **“RESOLUTION APPROVING THE CROW TRIBE'S LIMITED WAIVER OF SOVEREIGN IMMUNITY IN THE CONSTRUCTION CONTRACT FOR THE VETERAN'S CEMETERY PROJECT”** pursuant to the authority vested in the Chairman of the Crow Tribe by Article V, Section 8 and Article IV, Section 3(k) of the Constitution and Bylaws of the Crow Tribe of Indians on this 10 day of June, 2015.



Darrin Old Coyote, Chairman
Crow Tribal Executive Branch

EXHIBIT A
SUPPLEMENTARY CONDITIONS
OF THE CONTRACT FOR CONSTRUCTION

ARTICLE I – DISPUTE RESOLUTION
AND LIMITED WAIVER OF SOVEREIGN IMMUNITY

1.1 Arbitration. (a) Any controversy or claim arising under the Agreement or Crow statutory law, including the Crow Nation Workforce Protection Act, shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) except as otherwise modified herein, and judgment upon the award rendered by the arbitrator(s) may be entered in a court having jurisdiction thereof as further provided in this Article I.

(b) The laws of the Crow Tribe shall be the applicable law, or if not addressed therein, the laws of the State of Montana; provided, that this stipulation does not affect jurisdiction. The arbitrator(s) shall have authority to order specific performance and award appropriate injunctive, declaratory or compensatory monetary relief, including interlocutory orders to mitigate damage or prevent irreparable injury to a party, but shall not have authority to award punitive damages or other noncompensatory damages.

(c) The arbitrators’ fees and all other costs of the arbitration shall initially be borne equally by the parties, but ultimate responsibility for payment of such costs shall be borne by the party against whom the award is rendered, except as the arbitrator(s) may otherwise provide in a written decision.

(d) The award of the arbitrators shall be conclusive and binding on the parties with respect to the matters decided, and shall be complied with by the parties. A party may enter an award and institute Judicial Proceedings to enforce the award in accordance with Section 1.2 of this Article I. In such Judicial Proceedings, neither party, without the consent of the other party, shall be entitled to contend that the award should be vacated, modified or corrected.

1.2 Judicial Proceedings. (a) A party may commence court proceedings (“Judicial Proceedings”) only to compel the other party to participate in arbitration proceedings or to enforce an arbitration award. All Judicial Proceedings conducted pursuant to this Article I shall be initially commenced in Crow Tribal Court. Any Judicial Proceedings conducted in Tribal Court shall be conducted in accordance with the substantive law of the Federal Arbitration Act and the procedural law of the Crow Tribal Court, to the extent that such procedural law is not inconsistent with the Federal Arbitration Act and the procedures expressly provided herein.

(b) Only in the event that the Crow Tribal Court refuses to compel a party to participate in arbitration proceedings or to enforce an arbitration award as written, or fails to perform said functions within 60 days after commencement of Judicial Proceedings, or such further time as the parties may mutually agree, may either party transfer (“remove”) the Judicial Proceedings from Crow Tribal Court to the United States District Court for the District of

Montana, or if it lacks jurisdiction, to the Montana Twenty-Second Judicial District Court for Big Horn County, Montana.

(c) If allowed pursuant to subsection (b) above, removal of Judicial Proceedings from Crow Tribal Court may be accomplished by filing a notice of removal in Crow Tribal Court and filing an appropriate application in the appropriate federal or state court (the "Deciding Forum") in accordance with the procedural rules of that forum. The notice of removal and application need be executed on behalf of only the removing party, and such removal shall not be opposed or contested by the other party. Upon removal, all proceedings in Crow Tribal Court shall be stayed pending final resolution in the Deciding Forum, and all Tribal remedies shall be deemed exhausted. Upon final resolution of the matter, the order or judgment of the Deciding Forum may be entered in Crow Tribal Court.

(d) Notwithstanding anything to the contrary found in the General Conditions to the Contract, the parties hereby waive any rights to pursue judicial proceedings related to this Agreement in any court except as provided in this Article I.

1.3. Limited Waiver of Crow Tribe's Sovereign Immunity. The Crow Tribe of Indians unequivocally and irrevocably grants a limited waiver of its sovereign immunity from suit for the limited purpose of enforcing the Crow Tribe's obligations under the Agreement by means of arbitration proceedings, Judicial Proceedings instituted for the purpose of compelling participation in arbitration proceedings, and Judicial Proceedings for the enforcement of arbitration awards, all in accordance with the provisions of this Article I; provided, however, that:

(a) this limited waiver shall only extend to the other parties to the Agreement, and no other or third parties;

(b) this limited waiver shall not apply to proceedings in any court except the Judicial Proceedings as provided in Section 1.2 this Article I;

(c) this waiver shall extend only for a period of time until all the Crow Tribe's obligations are satisfied under the Agreement; and

(d) the monetary relief available against the Crow Tribe pursuant to this waiver shall be limited to amounts that are expressly due and payable pursuant to the Agreement, including the costs of arbitration if so awarded against the Owner pursuant to this Article I, and shall not include any other indirect, consequential, tort, punitive or noncompensatory damages. In no event shall any judgment or other relief awarded pursuant to this limited waiver result in the encumbrance of any Tribal property or assets which are held in trust for the Crow Tribe by the United States of America.

**JOINT ACTION RESOLUTION ENTITLED: "RESOLUTION APPROVING THE CROW TRIBE'S LIMITED
WAIVER OF SOVEREIGN IMMUNITY IN THE CONSTRUCTION CONTRACT FOR THE VETERAN'S
CEMETERY PROJECT."**

Bill or Resolution: JAR15-09 **Introduced by:** Chairman Darrin Old Coyote **Date of Vote:** 6/10/15
Number

<u>Representative:</u>	Yes	No	Abstained
G. Three Irons	<u> X </u>	<u> </u>	<u> </u>
B. Rogers	<u> X </u>	<u> </u>	<u> </u>
C. J. Stewart	<u> X </u>	<u> </u>	<u> </u>
P. Hill	<u> X </u>	<u> </u>	<u> </u>
E. Birdinground	<u> X </u>	<u> </u>	<u> </u>
A.Coyote-Runs, Sr.	<u> X </u>	<u> </u>	<u> </u>
V. Nomee	<u> X </u>	<u> </u>	<u> </u>
T. Gros Ventre	<u> </u>	<u> </u>	<u> </u>
V. Crooked Arm	<u> X </u>	<u> </u>	<u> </u>
P. Spotted Horse, Sr.	<u> X </u>	<u> </u>	<u> </u>
L. DeCrane	<u> X </u>	<u> </u>	<u> </u>
C. Goes Ahead	<u> </u>	<u> </u>	<u> </u>
B. Hugs	<u> X </u>	<u> </u>	<u> </u>
G. Real Bird, Jr.	<u> X </u>	<u> </u>	<u> </u>
B. Good Luck	<u> X </u>	<u> </u>	<u> </u>
G. Stewart	<u> X </u>	<u> </u>	<u> </u>
P. Alden, Jr. <i>Secretary of the House</i>	<u> X </u>	<u> </u>	<u> </u>
R. Old Crow, Sr. <i>Speaker of the House</i>	<u> X </u>	<u> </u>	<u> </u>
Totals:	<u> 16 </u>	<u> 0 </u>	<u> 0 </u>

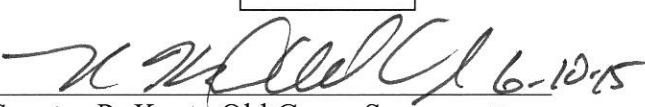
Result of Vote:

Passed

Not Passed

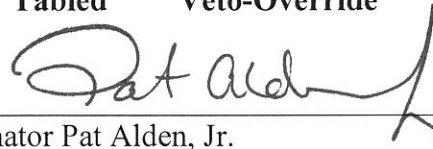
Tabled

Veto-Override



Senator R. Knute Old Crow, Sr.
Speaker of the House

Date



Senator Pat Alden, Jr.
Secretary of the House

Date