## CROW TRIBAL LEGISLATURE JUNE 26, 2007 SPECIAL SESSION

#### JOINT ACTION RESOLUTION NO. JAR07-06

## INTRODUCED BY CARL E. VENNE, CHAIRMAN CROW TRIBAL EXECUTIVE BRANCH

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

"RESOLUTION AUTHORIZING THE CHAIRMAN OF THE EXECUTIVE BRANCH TO OBTAIN A TAX-EXEMPT LOAN FROM FIRST INTERSTATE BANK, SECURED BY INTEREST FROM THE 107TH SETTLEMENT TRUST FUND, TO PROVIDE FUNDS FOR THE COMPLETION OF ON-GOING CONSTRUCTION AT THE LITTLE BIG HORN COLLEGE."

WHEREAS, Little Big Horn College in Crow Agency, Montana is a public two-year community college chartered by the Crow Tribe of Indians in 1980 pursuant to the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. § 1801, et seq.), and is listed in Section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. § 301 note); and

WHEREAS, Little Big Horn College requires additional funds to continue and complete the on-going construction of its Library-Archives-Administration Building and has requested assistance from the Executive Branch in the amount of \$3 million dollars which funds are needed as soon as possible to avoid any disruption in the ongoing construction project; and

WHEREAS, the Crow Tribal Executive Branch has agreed to provide financial assistance to the Little Big Horn College in an effort to benefit its students and Crow Tribal members, provided that revenue currently received by the College from the Tribal Tobacco Tax shall be reduced by amounts necessary for the Tribe to make the payments on the loan; and

WHEREAS, interest income from the Crow Tribal Trust Fund established by the Crow Boundary Settlement Act of 1994 (25 U.S.C. § 1776, et seq.) is available to collateralize the loan and provide sufficient debt service because remaining balances on previous Crow Tribal loans utilizing the 107<sup>th</sup> settlement fund interest income have been significantly reduced, and this purpose qualifies as a use "for education, land acquisition, economic development, youth and elderly programs or other tribal purposes" as required by 25 U.S.C. §§ 1776d(d)(1) and (e); and

WHEREAS, the Chairman of the Executive Branch has authority and responsibility pursuant to the "enumerated powers" in Article IV, Section 3 of the Constitution and Bylaws of the Crow Tribe of Indians to represent the Crow Tribe in negotiations with Federal, State and local governments and other agencies, corporations, associations, or individuals in matters of welfare affecting the Crow Tribe; to "negotiate and approve or prevent any sale, disposition, lease or encumbrance of Tribal lands, interests in lands or other Tribal assets, including buffalo, minerals, gas and oil with final approval granted by the Legislative Branch;" and to "negotiate and approve 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(d) of the Constitution "to grant final approval or disapproval of items negotiated by the Executive Branch of Government pertinent to the sale, disposition, lease or encumbrance of Tribal lands, interests in lands or mineral assets," and in Article V, Section 2(f) to "grant final approval or disapproval of limited waivers of sovereign immunity by the Executive Branch when waivers are necessary for business purposes;" and

WHEREAS, the Chairman of the Executive Branch has negotiated the terms of the loan with First Interstate Bank as set forth on the attached Commitment Letter, including a limited waiver of sovereign immunity in Exhibit A to the Commitment Letter; and

WHEREAS, the tax-exempt nature of the loan, which results in much lower financing costs for the Tribe, will require an opinion of a nationally-recognized bond counsel, and the Tribe has retained the law firm of Dorsey & Whitney to provide such opinion and to complete the drafting of the other loan documents along the lines of a previous tax-exempt loan (copies of which have been provided to the Legislature);

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

- Section 1. That the Chairman of the Executive Branch of the Crow Tribe is hereby authorized to obtain a tax-exempt loan for funding the construction of the Library-Archives-Administration Building for Little Big Horn College in the amount of Three Million Dollars (\$3,000,000.00), and to pledge and/or assign a portion of the interest from the Crow Tribal Trust fund as security for the loan, all in accordance with the Commitment Letter dated June 26, 2007 from First Interstate Bank, attached hereto and incorporated herein by reference, and to execute the Commitment Letter on behalf of the Crow Tribe, subject to final ratification of the final loan documents and agreements by the Legislature as provided in Section 3 below;
- Section 2. That the limited waiver of sovereign immunity in the form set forth as Exhibit A to the Commitment Letter is hereby approved;
- Section 3. That the Chairman of the Executive Branch is hereby authorized to execute such additional documents and agreements and take such further actions on behalf of the Crow Tribe of Indians that are necessary to complete and to administer the loan transaction authorized in Section 1, including additional documents to be prepared by bond counsel; provided, however, that the approval granted by this Resolution is subject to final ratification by further Resolution of the Legislature after all the loan documents and agreements have been finalized and reviewed with the Legislature for consistency with the Commitment Letter prior to the Chairman's execution of any such documents and agreements;
- Section 4. That the funds from the loan authorized by this Resolution shall be used only for the Little Big Horn College Library-Archives-Administration Building construction project and no other purpose (except for transaction costs of the loan), and the loan documents shall so provide; and
- Section 5. That the approval granted herein is effective on the date of approval of this Resolution, and is subject only to final ratification of all the loan documents and agreements by the Legislature after they have been finalized, and to such further approvals as are required by Federal law for the pledge or assignment of the Crow Tribal Trust Fund income as security for the loan.

#### **CERTIFICATION**

I hereby certify that this Joint Action Resolution entitled "RESOLUTION

AUTHORIZING THE CHAIRMAN OF THE EXECUTIVE BRANCH TO OBTAIN A

TAX-EXEMPT LOAN FROM FIRST INTERSTATE BANK, SECURED BY

INTEREST FROM THE 107TH SETTLEMENT TRUST FUND, TO PROVIDE

FUNDS FOR THE COMPLETION OF ON-GOING CONSTRUCTION AT THE

LITTLE BIG HORN COLLEGE" was duly enacted 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

26th, day of June, 2007.

Speaker of the House Crow Tribal Legislature

ATTEST:

Secretary

Crow Tribal Legislature

#### **EXECUTIVE ACTION**

I hereby \_\_\_\_approve or veto.

Carl E. Venne, Chairman

Crow Tribal Executive Branch

Tax-Exempt Loan-from first Interstate Bank For Funds to complete On-Going Construction at LBHC

Bill or Resolution Number JARO7-UoIntroduced by Executive Date of Vote June 26, 2007
Branch

Representative:	Y	es		No		Abstained
L. Plain Bull	_ \	/			,	· · · · · · · · · · · · · · · · · · ·
O. Costa	· .					
V. Crooked Arm						
M. Not Afraid			·. 			
R. Iron			_			· · · · · · · · · · · · · · · · · · ·
B. House		/				
E. Fighter						· · · · · · · · · · · · · · · · · · ·
L. Costa	<u>_                                    </u>					
L. Hogan						
S. Fitzpatrick						
K. Real Bird	<b>L</b>		_			
M. Covers Up	<u> </u>		—			
L. Not Afraid			<del></del>			
B. Shane	<u> </u>					
J. Stone	<u> </u>			· · · · · · · · · · · · · · · · · · ·		
D. Wilson			_			
R. Old Crow Secretary of the House	<u>L</u>					
D. Goes Ahead Speaker of the House	<u> </u>	<u> </u>				· · · · · · · · · · · · · · · · · · ·
Totals:		لو		0		
Result of Vote:						
	Passed	Not P	assed	Tabled	V	eto Override
Signature Office	r: Carlo	an D	ns A	(_Q	ate: (c	-26-07



First Interstate Bank 402 N. Center P.O. Box 903 Hardin, MT 59034-0903 406-665-3822 www.firstinterstatebank.com

June 26, 2007

Mr. Carl Venne, Chairman Crow Tribe of Indians P.O. Box 129 Crow Agency, MT 59022-0129

Dear Mr. Venne:

I am pleased to notify you that First Interstate Bank in Hardin, Montana ("Lender"), has approved and commits to the Crow Tribe of Indians ("Borrower") the following Loan, subject to the terms and conditions set forth below:

#### **BASIC CREDIT TERMS**

Borrower:

The Crow Tribe of Indians

Amount:

\$3,000,000.00

Type and Purpose:

Term loan, the purpose of which is restricted to fund or reimburse the construction and acquisitions costs of the following projects with the following approximate costs:

Little Big Horn College Buildings (\$3,000,000)

The Loan may be funded based approximately on the specific projects and their initial start and completion dates. As determined by bond counsel some proposed projects and their uses may not qualify for tax-exemption for federal income tax purposes and any projects or funding thus determined will accrue interest as described in the second sentence of the following Interest Rate section.

**Interest Rate:** 

Variable rate of five and thirty-six hundredths percent (5.36%), adjusted semi-annually from and after the date of the Loan with an index of the Prime Rate as published in the Money Rate Section of the Wall Street Journal, Western Edition (currently 8.25%) divided by 1.538, based on the assumption that interest is excluded from gross income for federal income tax purposes (discussed below) and that the Borrower Note (defined below) is designated as a "qualified tax-exempt obligation" under Section 265(b)(3) of the Code. In the event there is a determination, ruling or decision that the

interest is includable for federal income tax purposes in the gross income of the Lender, the interest rate will increase to the Prime Rate as published in the Money Rate Section of the Wall Street Journal, Western Edition (currently 8.25%), adjusted semi-annually from and after the date of the Loan with an index of the Prime Rate as published in the Money Rate Section of the Wall Street Journal, Western Edition, with such increase to be effective as of the date and time specified in such determination, ruling or decision that such interest rate becomes includable.

Fees:

A loan origination fee of one percent (1%) of the principal amount of the Loan.

Maturity and Repayment:

Twenty (20) years from the date of closing of the Loan. Borrower will make monthly payments of principal and interest sufficient to fully amortize the Loan, the amount of which payments shall be subject to the semi-annual adjustments of the interest rate.

Evidence of Loan; Tax –Exempt Status:

The Loan will be evidenced by Promissory Note (the "Borrower Note") in form acceptable to Lender and Lender's counsel. The Borrower will take all actions necessary to (i) designate the Borrower Note as a "qualified tax-exempt obligation" under the provisions of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) to insure that interest on the Borrower Note is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations (except to the extent that, for the purpose of computing the federal alternative minimum tax imposed on corporations as defined for federal income tax purposes, such interest is taken into account in determining adjusted current earnings).

Collateral:

Third priority collateral assignment of payments or amounts due to become due from the trust fund(s) created by the 107 boundary dispute settlement, subordinate in lien priority only to the collateral assignment of payment or amounts due for the 1998 Crow Tribal Bonds and the 2000 Crow Tribal Notes, acceptable to Lender and Lender's counsel.

#### CONDITIONS PRECEDENT TO CLOSING

Tribal and Governmental Authorizations: The Borrower must provide evidence satisfactory to the Lender that the Borrower has taken all necessary action under Tribal and Federal law to authorize the transactions contemplated herein. In addition, the Borrower must provide evidence satisfactory to the Lender that the Borrower has secured all necessary Federal Government authorizations and approvals of the transactions contemplated herein, including but not limited to confirmation and approval of the United States Department of Interior, Bureau of Indian Affairs.

**Documentation:** The Borrower shall execute and deliver such documents and instruments, and do such other acts and things as the Lender may require, to effect the transaction described in this commitment. All proceedings, agreements, instruments, documents and other matters relating to the making of the Loan and the transactions herein contemplated shall be satisfactory in form and substance to the Lender and its counsel. The Borrower shall pay all fees, costs, charges and other expenses incurred in connection with the documentation of, preparation for and the closing of the Loan and transaction herein contemplated, including but not limited to reasonable fees of the Lender's counsel and all recording and filing fees or charges, all whether or not the Loan and transaction herein contemplated close.

No Material Adverse Change: Prior to closing, there shall not have occurred, in the opinion of the Lender, any material adverse change in the Borrower's financial condition from that reflected in the Borrower's financial statements dated September 30, 2005.

**Financial Statements:** During the term of the Loan, Borrower shall furnish Lender with CPA-audited fiscal year-end financial statements within 270 days after the end of each fiscal year.

Opinions of Counsel: Borrower shall provide a written opinion of nationally-recognized bond counsel, dated as of the closing date and addressed to the Lender, in form satisfactory to the Lender, to the effect that (i) the interest paid on the Borrower Note will be excluded from gross income from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations (except to the extent that, for the purpose of computing the federal alternative minimum tax imposed on corporations as defined for federal income tax purposes, such interest is taken into account in determining adjusted current earnings), and (ii) the Borrower Note is a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code, and that in the case of certain financial institutions (within the meaning of Section 265(b)(5) of the Code), a deduction is allowed for 80 percent of that portion of such financial institutions' interest expense allocable to interest on the Borrower Note. The opinion of bond counsel may be subject to the condition that the Borrower comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Borrower Note in order that interest

thereon be, or continue to be, excluded from gross income for federal income tax purposes.

The Borrower shall also provide a written opinion of counsel, dated as of the closing date and addressed to the Lender, in form satisfactory to the Lender, to the effect that (i) the Borrower has taken all necessary action to execute and deliver the loan documents, and to perform its obligations thereunder, (ii) the loan documents have been duly executed and delivered and constitute valid and binding obligations of the Borrower, and (iii) the actions taken by the Borrower constitute an effective waiver of its sovereign immunity as to all matters associated with the Loan, and that such immunity shall not constitute an effective defense or bar to the Lender's enforcement of the loan documents.

#### **MISCELLANEOUS**

Period for Acceptance: This commitment shall become effective upon Borrower's written acceptance below and our receipt of the accepted commitment on or before June 27, 2007, and, upon the Borrower's acceptance, shall remain effective until September 24, 2007. Unless otherwise agreed in writing, the Lender shall have no further obligation hereunder after September 24, 2007.

Assignment; Participations: This commitment is not assignable by the Borrower. Subject to applicable federal and state securities laws, the Lender reserves the right to sell to other banks or financial institutions participations in the Loan and to disclose to the participants such information regarding the Borrower's affairs as the Lender may possess.

Governing Law; Jurisdiction; Limited Waiver of Sovereign Immunity: This commitment and the Loan shall be governed by and construed in accordance with the laws of the State of Montana, provided that this is not intended and shall not be interpreted as a concession by the Borrower that the State of Montana has lawful authority to regulate the project or any activities of the Borrower or its officers, employees or agents. The loan documents shall specifically provide that any controversy or claim arising out of, or in any way related to, the enforcement or subject matter of the Loan shall be settled by binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, and judgment upon the award rendered by the arbitrator(s) may be entered in a court(s) with jurisdiction of the matter, all in accordance with the provisions set forth in Exhibit A attached hereto. The parties shall waive any right to litigate such matters in any other court or tribunal, and the Borrower shall grant a limited waiver of its sovereign immunity for the sole purpose of enforcing the Borrower's obligations in the form provided in Exhibit A.

Entire Agreement: The terms of this commitment supersede all prior written or oral communications between the Lender and the Borrower with respect to the terms of this commitment and the Loan to be made pursuant hereto. No modification or waiver of

any provisions hereof shall be effective unless set forth in writing and signed by the party to be bound thereby.

If the terms of this commitment are acceptable to the Crow Tribe of Indians, please evidence your acceptance by signing below in the space indicated, and return a signed copy of this letter to me. We appreciate the opportunity to assist you in your credit needs and look forward to a long and favorable relationship with you. If you have any questions or comments on this commitment please contact me at (406) 665-3810.

Sincerely,

FIRST INTERSTATE BANK

Hardin Office

By: William Figh

President

COM	MITMENT ACC	EFIED:	
Date:	· · · · · · · · · · · · · · · · · · ·	, 2007	
CRO	W TRIBE OF INI	DIANS	
Ву:	Carl Venne, Chai	rman	
Attest:	Secretary		

#### **EXHIBIT A**

## <u>DISPUTE RESOLUTION</u> <u>AND</u> LIMITED WAIVER OF SOVEREIGN IMMUNITY

- 1.1 <u>Arbitration</u>. (a) Any controversy or claim arising under the Loan Agreement(s), the Notes or the Collateral Documents 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 Exhibit A.
- (b) The arbitration shall be conducted in Billings, Montana. 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 <u>not</u> have authority to award punitive damages or other noncompensatory damages. The Federal Rules of Evidence shall govern evidentiary matters in any arbitration brought hereunder.
- (c) The arbitrators' fees and other 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 Exhibit A. 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 <u>Judicial Proceedings</u>. (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 Exhibit A 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) 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, either party may 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) 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) The parties waive any rights to pursue judicial proceedings related to the Loan Agreement(s), Notes and Collateral Documents in any court except as provided in this Exhibit A.
- Borrower unequivocally and irrevocably grants a limited waiver of its sovereign immunity from suit or the limited purpose of enforcing the Borrower's obligations under the Loan Agreement(s), the Notes or the Collateral Documents 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 Exhibit A; provided, however, that:
- (a) this limited waiver shall only extend to the Bank, its successor and assigns, 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 Exhibit A;
- (c) this waiver shall extend only for a period of time until all the Borrower's obligations are satisfied under the Loan Agreement(s), Notes or Collateral Documents; 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 Loan Agreement(s), notes or Collateral Documents (including the costs of arbitration if so awarded against the Borrower pursuant to this Exhibit A), and shall <u>not</u> include any other indirect, consequential, tort, punitive or noncompensatory damages, and 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 except those trust assets specifically pledged or assigned pursuant to the Collateral Documents.



Crow Country

#### Legislative Branch

Pryor:
Arrow Creek
Larry Plain Bull, Sr.
Oliver Costa
Carlson Goes Ahead
Speaker of the House

Big Horn:
Valley of the Give
Away
Vincent Crooked Arm
Marlin D. Not Afraid
Ralph Iron, Jr.

<u>Dunmore:</u>
<u>Black Lodge</u>
Bruce R. House
Ertis Fighter, Sr.
Larry Costa

Reno: Center Lodge Lloyd Hogan, Jr. Sidney Fitzpatrick, Jr. Kennard Real Bird

Lodge Grass:
Valley of the Chief
Manuel Covers Up, Sr.
Rudolph K. Old Crow
Secretary of the House
Leroy Not Afraid

Wyola: Mighty Few Beverly M. Shane J.D. Stone, Dana Wilson

#### Staff

Jackie Blacksmith, Administrator

William Old Crow Finance Officer/Admin. Assist.

Noel Two Leggins Legal Assistant

Kenny Pretty On Top Maintenance/Custodian

Ronald Ameson, Esq., Attorney At Law

# LEGISLATIVE BRANCH OF THE CROW TRIBAL GOVERNMENT

P.O. Box 309 – MAKAWASHA Avenue Crow Agency, Montana 59022

Phone: (406) 638-2023/2025/2238

Fax: (406) 638-2030

#### OFFICIAL CERTIFICATE OF DELIVERY

I, Rudolph K. Old Crow, Secretary of the Legislative Branch of the Crow Tribal Government hereby this Transitional Action do deliver a True and Correct Official copy Of the Final Approval for the following Bill:

INTRODUCED BY: CARL E. VENNE, CHAIRMAN CROW TRIBAL EXECUTIVE BRANCH

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

"RESOLUTION AUTHORIZING THE CHAIRMAN OF THE EXECUTIVE BRANCH TO OBTAIN A TAX-EXEMPT LOAN FROM FIRST INTERSTATE BANK, SECURED BY INTEREST FROM THE 107<sup>TH</sup> SETTLEMENT TRUST FUND, TO PROVIDE FUNDS FOR THE COMPLETION OF ON-GOING CONSTRUCTION AT THE LITTLE BIG HORN COLLEGE."

Bill No. JAR0/-00 to	m the
Position of: Tribal Attorney	for the
Crow Tribal Executive Branch.	
Done and dated this 274 day of	_a.m./p.m.
Purch K Old Co	lul /
Rudolph K. Old Cro	ow
Secretary of the Hor	

Served by:

Legislative Branch Staff

Cc: file



Legislative Branch of the Crow Tribal Government