

**JUNE 5, 2014 SPECIAL SESSION  
CROW TRIBAL LEGISLATURE**

**JOINT ACTION RESOLUTION NO. JAR 14-12**

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 2014 MONTANA DEPARTMENT OF  
COMMERCE ICED PROGRAM AGREEMENT.”**

**WHEREAS**, the Montana General Appropriations Act authorizes the Montana Indian Country Economic Development Program (the “ICED”) to distribute funds to eligible Tribal governments for business development projects, workforce training projects, entrepreneurial training, feasibility studies and other business development projects, and the State-Tribal Cooperative Agreements Act, MCA §§ 18-11-101, *et seq.*, authorizes the ICED to enter into agreements for distributing funds to Tribes for such purposes; and

**WHEREAS**, the Montana Department of Commerce has prepared the attached “Indian Country Economic Development Program Agreement # MT-ICED-14-005” (the “ICED Agreement”) for distributing funds to the Crow Tribe, which is attached hereto and incorporated by reference; and

**WHEREAS**, the \$70,000 in funds distributed pursuant to the 2014 ICED Program will be used by the Crow Tribe for continued operation and improvement of the Apsaalooke Revolving Loan Fund (which provides start-up and expansion loans and technical assistance for businesses owned by Tribal members), including staff training and salaries, grant-writing and outreach activities, and additional principal for the Loan Fund, as provided in the ICED Agreement; and the sum of \$5,000 will be deposited into the State Tribal Economic Development Commission special revenue account for the 2017 State Tribal Economic Development Commission Indian Equity Fund; and

**WHEREAS**, the State of Montana has by statute waived its sovereign immunity from suit for contract actions and disputes arising under the Agreement (*see* MCA Title 18, Chapter 1, Part 4), and has requested that the Crow Tribe (and other Tribes participating in the ICED Program) also provide a limited waiver of its sovereign immunity for the sole purpose of enforcement of the ICED Agreement, in the form set forth in Section 25 of the Agreement; 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, 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(f) of the Constitution 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 limited waiver of the Crow Tribe’s sovereign immunity as set forth in Section 25 of the ICED Agreement, receiving the funding provided by the ICED Agreement is in the best interests of the Crow Tribe, and the limited waiver of sovereign immunity is necessary for the business purpose of entering into the ICED Agreement;

**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 in the form set forth in the Montana Department of Commerce Indian Country Economic Development Program Agreement # MT-ICED-14-005, attached hereto and incorporated herein by reference, is hereby approved.**

**Section 2. That all written reports and any related information required to be produced to any State of Montana agency or subdivision pursuant to the ICED Agreement shall be copied and delivered to the Secretary of the Legislature at the same time any such report is produced to the State.**

**Section 3. That the approval granted herein is effective on the date of approval of this Resolution.**

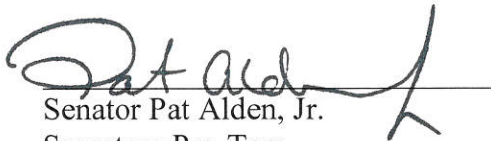
## CERTIFICATION

I hereby certify that this Joint Action Resolution entitled **“RESOLUTION APPROVING THE CROW TRIBE’S LIMITED WAIVER OF SOVEREIGN IMMUNITY IN THE 2014 MONTANA DEPARTMENT OF COMMERCE ICED PROGRAM AGREEMENT”** was duly enacted by the Crow Tribal Legislature with a vote of 14 in Favor 0 opposed, and 0 abstaining and that a quorum was present on this 5<sup>th</sup> day of June, 2014.



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

**ATTEST:**



Senator Pat Alden, Jr.  
Secretary Pro-Tem  
Crow Tribal Legislature




## EXECUTIVE ACTION

I hereby

\_\_\_\_\_ approve or

\_\_\_\_\_ veto.

This Joint Action Resolution entitled **“RESOLUTION APPROVING THE CROW TRIBE’S LIMITED WAIVER OF SOVEREIGN IMMUNITY IN THE 2014 MONTANA DEPARTMENT OF COMMERCE ICED PROGRAM AGREEMENT”** 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 26<sup>th</sup> day of June, 2014.



Darrin Old Coyote, Chairman  
Crow Tribal Executive Branch

JAR APPROVING THE CROW TRIBE'S LIMITED WAIVER OF SOVEREIGN IMMUNITY IN THE  
2014 MONTANA DEPARTMENT OF COMMERCE ICED PROGRAM AGREEMENT

**Bill or Resolution:** JAR14-12 **Introduced by:** Chairman Darrin Old Coyote **Date of Vote:** 6/5/2014  
**Number**

<u><b>Representative:</b></u>	<b>Yes</b>	<b>No</b>	<b>Abstained</b>
G. Three Irons	<u>  X  </u>	<u>          </u>	<u>          </u>
B. Rogers	<u>          </u>	<u>          </u>	<u>          </u>
C. J. Stewart	<u>          </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>  X  </u>	<u>          </u>	<u>          </u>
P. Alden, Jr.	<u>  X  </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>  X  </u>	<u>          </u>	<u>          </u>
B. Hugs	<u>          </u>	<u>          </u>	<u>          </u>
B. Good Luck	<u>  X  </u>	<u>          </u>	<u>          </u>
G. Stewart	<u>  X  </u>	<u>          </u>	<u>          </u>
G. Real Bird, Jr. <i>Secretary of the House</i>	<u>          </u>	<u>          </u>	<u>          </u>
R. Old Crow, Sr. <i>Speaker of the House</i>	<u>  X  </u>	<u>          </u>	<u>          </u>
<b>Totals:</b>	<u>  14  </u>	<u>    0    </u>	<u>    0    </u>

Result of Vote:

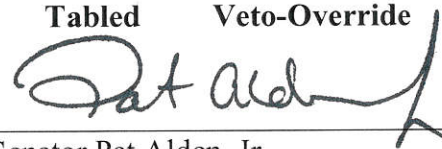
**Passed**

**Not Passed**

**Tabled**

**Veto-Override**

 6/5/14  
Senator R. Knute Old Crow, Sr.      Date  
Speaker of the House

  
Senator Pat Alden, Jr.      Date  
Secretary Pro-Tem





**MONTANA DEPARTMENT OF COMMERCE  
INDIAN COUNTRY ECONOMIC DEVELOPMENT PROGRAM  
AGREEMENT # MT-ICED-14-005**

**PREAMBLE**

Indian Tribes are sovereign nations and a unique government-to-government relationship exists between the **CROW TRIBE** and the State of Montana (the "Parties"). The best interests of the Indian Tribes and the State of Montana will be served by engaging in government-to-government relationships and respectfully recognizing the rights, duties and privileges of both Tribal and State citizenship. The State of Montana and Indian Tribes working together in government-to-government relationships and engaging in Agreements for the benefit of Indian and non-Indian residents promotes effective Tribal-State relations.

This agreement demonstrates a commitment by the Parties to implement this government-to-government partnership with respect to the economic development functions of the Montana Department of Commerce (§ 90-1-105, MCA). The State-Tribal Cooperative Agreements Act, § 18-11-101 et seq., MCA, promotes cooperation between State agencies and sovereign Tribal governments, and authorizes the ICED to enter into this Agreement with the **CROW TRIBE**.

The Parties agree to perform their respective duties and responsibilities under this Agreement in good faith and in a spirit of cooperation to accomplish the purpose of providing 2013 Montana General Appropriation Act (HB 2) funding to the **CROW TRIBE**.

**Section I. PARTIES**

This Agreement is entered into by the **CROW TRIBE PO Box 159 Crow Agency, MT 59022 (Tax ID# 81-0372588, DUNS# 063730261)**, (hereinafter the "Tribe"), and the State of Montana, by and through the Montana Indian Country Economic Development Program, Helena, Montana (hereinafter "ICED").

**THE PARTIES AGREE AS FOLLOWS:**

**Section 2. PURPOSE**

The purpose of this Agreement is to improve economic development opportunities for the **CROW TRIBE**. Grant funding for the seven federally recognized Indian reservations and the state-recognized Little Shell Tribe of Chippewa Indians of Montana was approved by the 63rd Montana Legislature in the General Appropriations Act (HB 2) and signed into law by Governor Bullock on May 3, 2013 (Chapter 380, Section 9, Montana Department of Commerce, Business Resources Division, Indian Country Economic Development) authorizing the Montana Indian Country Economic Development Program (ICED) to distribute funds to eligible tribal governments for business development projects, workforce training projects, entrepreneurial training, feasibility studies, and other business development projects.

### **Section 3. AUTHORITY**

This Agreement is issued under authority of § 90-1-105, MCA and the terms of Chapter 380, Section 9, Laws 2013.

### **Section 4. APPLICATION INCORPORATED BY REFERENCE**

The Tribe's application for Program assistance and all appendices thereto, including any written modifications resulting from the review of the application by the ICED (collectively, the "Project"), are specifically incorporated into this Agreement by this reference. **Exhibits A (Project Sources & Uses), and B (Implementation Schedule)** are also attached hereto and specifically incorporated into this Agreement by this reference.

### **Section 5. SCOPE OF WORK**

The Tribe agrees to engage in Project activities as set forth in the application. The major components of the Project include the following work for the Tribe:

- I. Apsaalooke Nation Revolving Loan Fund (ANRLF) activities which include:
  - a. Adding funds to loan capital
  - b. Business plan, financial literacy and loan application workshops
  - c. Salary and fringe for the ANRLF Loan Officer
  - d. Training for the loan officer
  - e. Outreach and marketing of the loan fund
2. Matching funds to be deposited into the State Tribal Economic Development Commission special revenue account (§ 90-1-135 MCA) for the 2017 State Tribal Economic Development Commission Indian Equity Fund.

### **Section 6. ACCEPTANCE OF PROGRAM REQUIREMENTS**

- (a) The Tribe will comply with all applicable local, state, tribal, and federal laws, regulations, ordinances, and resolutions, as now in effect or as may be amended during the term of this Agreement; and all administrative directives and procedures established by the ICED, including the Indian Country Economic Development Program Guidelines (July 2012).

- (b) The Tribe understands and agrees that the work to be performed under this project is funded by the State General Fund and that the Tribe must report information as required by applicable federal and state law for itself and all contractors, subcontractors, and subrecipient entities performing work under this Agreement.
- (d) The Tribe acknowledges it is subject to the conditions on grant award, disbursement of funds, and other Program policies set forth by the Montana Department of Commerce.
- (e) The Tribe expressly agrees to repay to the ICED Program any funds advanced under this Agreement that the Tribe, or its contractors, subcontractors, or subrecipient entities, or any public or private agent or agency to which they delegates authority to carry out portions of this Agreement, expends in violation of the terms of this Agreement, the statutes and regulations governing the Program, or any applicable local, state, tribal, or federal requirements.

## **Section 7. EFFECTIVE DATE AND TIME OF PERFORMANCE**

- (a) This Agreement shall take effect upon execution by the parties and will terminate upon approval of the Tribe's final Request for Payment by the State no later than **April 30, 2015**, whichever comes first, unless otherwise terminated in accordance with the terms of this Agreement.
- (b) The activities to be performed by the Tribe will be completed according to the implementation schedule set forth in Exhibit B. The Tribe may modify the implementation schedule set forth in Exhibit B only upon obtaining the prior written approval of the ICED.
- (c) Each party, after termination of this Agreement, remains subject to and obligated to comply with all legal and continuing contractual obligations arising in relation to its duties and responsibilities that may arise under the Agreement including, but not limited to, record retention, audits, and indemnification.

## **Section 8. BUDGET**

- (a) The total amount to be awarded to the Tribe under this Agreement will not exceed \$70,000.00. The Project budget is set forth in **Exhibit A: Project Sources & Uses**.
- (b) The ICED must approve budget adjustments to Exhibit A in advance. To obtain approval of a budget adjustment, the Tribe shall describe the rationale for a budget adjustment in writing to the ICED program staff.

## **Section 9. AMOUNT OF GRANT AND METHOD OF REIMBURSEMENT**

- (a) The ICED will use the funds appropriated in the General Appropriations Act (HB 2) of 2013 to fund grant awards to Tribes that have received a Notice of Award letter from the ICED. The Tribe acknowledges that its access to State General Funds is subject to

their availability.

- (b) The ICED Program agrees that, if and when the funds described in paragraph (a) of this Section are available, the ICED Program will authorize the Tribe to request payment from Program funding awarded for the Tribe's Project. In requesting reimbursement, the Tribe will follow the instructions supplied by the ICED Program.
- (c) Funds will be made available according to the following schedule:
  - 1. **\$57,200** will be available as the **initial installment** after both parties have signed the Contract, a Request for Funds has been received, and all banking forms are received for the program.
  - 2. The Program shall provide a **midterm payment** of **\$3,900** to the Tribe upon the **midterm** of the contract period with sufficient reporting evidence to verify that the scope of work is being completed as stated in the contract, receipt of required quarterly reports, and a Request for Funds.
  - 3. The Program shall provide a **final payment** of **\$3,900** to the Tribe upon receipt of the remaining quarterly reports, a Project Closeout Report and a Request for Funds.
  - 4. **\$5,000** will be set aside in the State Tribal Economic Development Commission special revenue account (§ 90-1-135 MCA) for the 2017 State Tribal Economic Development Commission Indian Equity Fund.
  - 5. Should the 2017 State Tribal Economic Development Commission Indian Equity Fund not accumulate by the 2017 maturity date, any funds committed by the tribal government and deposited into the special revenue account will become available for other eligible economic development activities by the tribal government.
- (d) As further set forth in Section 22 TERMINATION OF AGREEMENT, if the Tribe fails to or is unable to comply with any of the terms and conditions of this Agreement, any costs incurred will be the Tribe's sole responsibility.
- (e) The grant funds may not be used to cover any costs incurred by the Tribe prior to project approval, for any expenses not included in Exhibit A or an approved adjustment thereto, or for any expenses not clearly and adequately supported by the Contractor's records.
- (f) Unless otherwise stated herein, the ICED is allowed 30 working days to process a Request for Payment. The Tribe may be required to provide banking information at the time of Agreement execution in order to facilitate electronic funds transfer payments. The ICED may withhold payments to the Tribe if the Tribe has breached the terms of this Agreement.
- (g) If actual Project expenses are less than projected in the budget (Exhibit A), the ICED Program, at its discretion, may reduce the amount of grant funds to be provided to the Tribe accordingly.



- (h) If the ICED Program determines that the Tribe has failed to satisfactorily carry out its responsibilities under this Agreement, the ICED Program may withhold payment to the Tribe until such time as the parties agree on a plan to remedy the deficiency.
- (i) Any Requests for Payment for contracted or subcontracted services must attach appropriate documentation demonstrating compliance with applicable state procurement requirements.
- (j) The Tribe may not use monies provided through this Agreement as payment for Project costs that are reimbursed from other sources.

## **Section 10. REPORTING REQUIREMENTS**

- (a) Quarterly Progress Reports. During the term of this Agreement, the Tribe will submit Quarterly Reports to the State, due no later than the first Friday after each calendar quarter during the term of the contract agreement. The schedule for project reporting will be set forth in **Exhibit B: Project Implementation Schedule** and as follows: Quarterly Project Progress Report must be provided on or before **April 30th** to cover the January 1-March 31 reporting period, **July 31st** to cover the April 1-June 30 reporting period, **October 31st** to cover the July 1-September 30 reporting period, and **January 31st** to cover the October 1-December 31 reporting period. These reports will describe the status of the activities set forth in Section 5 SCOPE OF WORK, including, at a minimum, the percentage completed, costs incurred, funds remaining, and projected completion date. The report must also describe any significant problems encountered in carrying out the Project and the scope of any necessary modifications the Tribe is requesting in the SCOPE OF WORK, BUDGET, or Project implementation schedule. Timely quarterly reports are extremely important to the ICED's ability to report performance of the ICED program. The ICED, at its discretion, may decline to honor the final Request for Payment if the required quarterly progress report(s) has not been submitted to or approved by the ICED. If applicable, the Tribe must also report, at a minimum, for itself and all contractors, subcontractors, and subrecipient entities, the following information:
  - (1) The dollar amount of all contractor invoices;
  - (2) The supplies delivered and the services performed;
  - (3) A narrative assessment of the completion status of the work;
  - (4) An estimate of the number of job hours funded with General Appropriations Act funding. This reporting requirement consists of providing the total number of hours worked by employees in the most recent quarter (the quarter being reported). Recipients should be prepared to justify their estimates. Recipients must use reasonable judgment in determining how best to estimate the job impact, including the appropriate sources of information used to generate such an estimate. Where such evidence exists, it can be an important reference resource for validating the job estimates reported.
  - (5) Name and physical location of all contractors, subcontractors, and subrecipient entities engaged in any of the activities described in Section 5 SCOPE OF WORK.

- (b) Project Closeout Report & Certification. Upon completion of the final Project, the Tribe will submit a final Project Closeout Report & Certification Form to the ICED Program. The Project Closeout Report & Certification Form will describe the total costs incurred for the Project, identify the final completion date, summarize any significant problems encountered in carrying out the Project, and provide the final expenditure of funds information for each item set forth in paragraph (a) in this Section. Within 15 days of receiving the Project Closeout Report & Certification Form, the ICED will issue the Notice of Project Close-out.

## **Section 11. LIAISONS**

The contact persons for this Agreement are:

### **For the ICED Program:**

HEATHER SOBREPEÑA-GEORGE (or successor)  
PROGRAM MANAGER, INDIAN COUNTRY ECONOMIC DEVELOPMENT PROGRAM,  
MDOC  
301 S. Park Ave.  
P.O. Box 200505  
Helena, MT 59620-0505  
(406) 841-2775 phone  
(406) 841-2731 fax  
hsobrepena@mt.gov

### **For the Tribe:**

YOLANDA GOODVOICE (or successor)  
ADF LOAN MANAGER, CROW TRIBE  
PO Box 970  
Crow Agency MT 59022  
(406) 638-3733 phone  
Yolanda.goodvoice@crow-nsn.gov

## **Section 12. ACCESS TO AND RETENTION OF RECORDS**

The Tribe shall create and maintain records of the services covered by this Agreement, including but not limited to financial records, supporting documents, and such other records as are required by law or other authority, and to provide the ICED, Montana Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118). The Tribe agrees to create and retain records supporting the services rendered or supplies delivered for a period of three (3) years after either the completion date of the Agreement or the conclusion of any claim, litigation, or exception relating to the Agreement taken by the State of Montana or third party, whichever is later. These records will be kept in the Tribe's offices in Crow Agency, Montana.

## **Section 13. PROJECT MONITORING**

- (a) The ICED Program or any of its authorized agents may monitor and inspect all phases and aspects of the Tribe's performance to determine compliance with the SCOPE OF WORK, the proper use of State General Funds, and other technical and administrative requirements of this Agreement, including the adequacy of the Tribe's records and accounts. The ICED Program will advise the Tribe of any specific areas of concern and provide the Tribe opportunity to propose corrective actions acceptable to the ICED Program.
- (b) Failure by the Tribe to proceed with reasonable promptness to take necessary corrective actions shall be a default. If the Tribe's corrective actions remain unacceptable, the ICED Program may terminate this Agreement in whole or in part, or reduce the contract price or award to reflect the reduced value of services received.

#### **Section 14. COMPLIANCE WITH LAWS**

- (a) The Tribe must, in performance of work under this Agreement, fully comply with all applicable federal, state, and tribal laws, rules, policies, and regulations, concerning, but not limited to, human rights, civil rights, employment law, and labor law. Any subletting or subcontracting by the Tribe subjects subcontractors to the same provision.
- (b) The Tribe shall promptly refer to the ICED Program any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted any false claim or has committed any criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this Agreement.

#### **Section 15. ACCOUNTING, COST PRINCIPLES, AND AUDITING**

- (a) The parties, in accordance with Section 18-4-311, MCA and other authorities, must maintain for the purposes of this Agreement an accounting system of procedures and practices that conforms to Generally Accepted Accounting Principles (GAAP).
- (b) The parties or any other legally authorized governmental entity or their authorized agents may at any time during or after the term of this Agreement conduct, in accordance with Sections 5-13-304 and 18-1-118, MCA and other authorities, audits for the purposes of ensuring the appropriate administration and expenditure of the monies provided through this Agreement and to ensure the appropriate administration and delivery of services provided through this Agreement.
- (c) The parties, for purposes of audit and other administrative activities, in accordance with 18-1-118, MCA and other authorities, must provide each other and any other legally authorized governmental entity or their authorized agents access at any time to all of their respective records, materials and information, including any and all audit reports with supporting materials and work documents, pertinent to the services provided under this Agreement until the expiration of three (3) years from the completion date of this Agreement. The parties and any other legally authorized governmental entity or

their authorized agents may record any information and make copies of any materials necessary for the conduct of an audit or other necessary administrative activity.

#### **Section 16. AVOIDANCE OF CONFLICT OF INTEREST**

The Tribe will comply with all applicable laws regarding the avoidance of conflict of interest. In addition, the Tribe agrees that none of its officers, employees, or agents will solicit or accept gratuities, favors, or anything of monetary value from contractors, subcontractors, or potential contractors and subcontractors, who provide or propose to provide services relating to the project funded under this Agreement.

#### **Section 17. OWNERSHIP AND PUBLICATION OF MATERIALS**

All reports, information, data, and other materials prepared by the Tribe, or any of its contractors or subcontractors, in furtherance of this Agreement are the property of the Tribe and the ICED Program, which both have the royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, in whole or part, such property and any information relating thereto. No material produced in whole or part under this Agreement may be copyrighted or patented in the United States or in any other country without the prior written approval of the ICED and the Tribe.

#### **Section 18. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

- (a) The Tribe may not assign, transfer, delegate, or subcontract, in whole or part, this Agreement or any right or duty arising under this Agreement, unless the ICED Program in writing approves the assignment, transfer, delegation, or subcontract.
- (b) Any assignment, transfer, delegation, or subcontract entered into by the Tribe must be in writing, must indicate that the Agreement is being made under the General Appropriations Act of 2013 and must be subject to the terms and conditions of this Agreement, and must contain any further conditions as may be required by the ICED Program.
- (c) The ICED Program's approval of any assignment, transfer, delegation, or subcontract neither makes the ICED Program a party to that agreement nor creates any right, claim, or interest in favor of any party to that agreement against the ICED Program.
- (d) The Tribe must immediately notify the ICED Program of any litigation concerning any assignment, transfer, delegation, or subcontract.

#### **Section 19. HOLD HARMLESS AND INDEMNIFICATION**

- (a) The Tribe agrees to indemnify, defend, and hold harmless the State of Montana, its officials, agents, and employees from any breach of this Agreement by the Tribe, from any matters arising from the performance of this Agreement, or from the Grant's failure

to comply with any federal, tribal, state, or local laws, regulation, and ordinances applicable to the services or work to be provided under this Agreement.

- (b) The ICED Program agrees to indemnify, defend, and hold harmless the Tribe, its officials, agents, and employees from any breach of this Agreement by the ICED Program, from any matters arising from the performance of this Agreement, or from the ICED Program's failure to comply with any federal, tribal, state, or local laws, regulations, or ordinances applicable to the services or work to be provided under this Agreement.
- (c) This indemnification applies to all claims, obligations, liabilities, costs, attorney's fees, losses or suits resulting from any acts, errors, omissions, or negligence, whether willful or not, of the parties, their employees, agents, subcontractors, or assignees and any other person, firm, or corporation performing work, services, or providing materials under this Agreement.

## **Section 20. INSURANCE**

- (a) General Requirements. The Tribe must maintain, at its cost, primary standard liability insurance coverage. The general liability coverage must include claims for injuries to persons or damage to property, including contractual liability, arising out of the performance of the duties and obligations in the Agreement, the delivery of services, omissions in the delivery of services, injuries to persons, damages to property, the provision of goods or rights to intellectual property, or any other liabilities which may arise from the performance of the duties and obligations under this Agreement. The State, its officers, officials, employees, and volunteers are to be covered as additional insured's for all claims arising out of the use of grant proceeds provided by the State of Montana.
- (b) Primary Insurance. The Tribe's insurance coverage is the primary insurance with respect to the ICED Program, the State of Montana, their officers, officials, agents, employees, and volunteers. Any insurance or self-insurance maintained by the ICED Program, the State of Montana, their officers, officials, agents, employees, and volunteers is in excess of the Tribe's insurance coverage and does not contribute with it.
- (c) General Liability Insurance. The Tribe must provide general liability coverage inclusive of bodily injury, personal injury, and property damage. The general liability insurance coverage must be obtained with combined single limits of \$1,000,000 per occurrence and \$2,000,000 aggregate per year.
- (d) General Provisions. All insurance coverage shall be placed with a carrier licensed to do business in the State of Montana or by a domiciliary state and with a Best's rating of at least A-, or by a self-insured program either individually or on a pool basis. The Tribe shall notify the Department immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The Department reserves the right to request complete copies of the Tribe's insurance policy at any time, including endorsements.



## **Section 21. SCOPE, AMENDMENT, AND INTERPRETATION OF AGREEMENT**

- (a) This Agreement consists of sixteen (16) numbered pages including Exhibit A & B. This is the entire agreement between the parties.
- (b) No statements, promises, or inducements made by either party or their agents are valid or binding if not contained herein.
- (c) The headings to the sections of this Agreement are for convenience of reference and do not modify the terms and language of the provisions to which they are headings.
- (d) This Agreement, except as may be otherwise provided by the terms of this Agreement, may not be enlarged, modified, or altered except by written amendment signed by all parties to this Agreement.
- (e) If any provision of this Agreement is determined by a court of law to be invalid legally, all other provisions of this Agreement remain in effect and are valid and binding on the parties.

## **Section 22. TERMINATION OF AGREEMENT**

- (a) The ICED Program may immediately terminate the whole or any part of this Agreement for failure to perform the Agreement for failure to perform the Agreement in accordance with the terms of the Agreement and other governing authorities:
  - 1. If there is no exigency or risk of harm to persons from continued performance, the ICED Program, at its discretion, may provide notice to the Tribe of failure to perform and allow the Tribe 30 days during which to cure the failure;
  - 2. Failure to perform includes, but is not limited to, failure to:
    - (i) perform any of the requirements of this Agreement; or
    - (ii) comply with any applicable federal, tribal, state, or local law, rule, policy, or regulation.
- (b) This Agreement is automatically canceled if funds under the General Appropriations Act 2013, are not appropriated or otherwise made available to support the Agreement's commencement or continuation of performance.
- (c) Notice of termination must be given in writing.
- (d) Neither party may revoke a notice of termination once given, without the express consent of the other party.
- (e) In the event of termination due to the Tribe's, or its contractors', subcontractors', or subrecipient entities' failure to perform or comply with any of the services, duties, terms, or conditions of this Agreement, any costs incurred will be the responsibility of the Tribe.

However, at its sole discretion, the ICED Program may approve requests by the Tribe for reimbursement of expenses incurred. The ICED Program's decision to authorize payment of any costs incurred or to recover expended Program funds will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of the Tribe to comply with the any of those services, duties, terms, or conditions of this Agreement, and on whether the failure to comply with any of those services, duties, terms, or conditions resulted from circumstances beyond the Tribe's control.

### **Section 23. NOTICE**

All notices, reports, and other information required under the provisions of the Agreement to be exchanged between the parties must be in writing and delivered to the parties' liaisons identified herein either by first class mail or personal service.

### **Section 24. CHOICE OF LAW, REMEDIES, AND VENUE**

- (a) The parties agree that this Agreement shall be governed and interpreted according to applicable Federal laws and regulations, applicable State of Montana laws and regulations, and applicable Tribal laws and regulations.
- (b) The parties agree to first meet and confer for the purpose of resolving any disputes that may arise under this Agreement.
- (c) If resolution is not possible, the parties agree and stipulate that venue for enforcement of the terms hereof lies in a court of competent jurisdiction.
- (d) In the event of a dispute with regard to this Agreement, the Tribe agrees to continue performance under this Agreement unless the ICED Program explicitly waives performance in writing.
- (e) Any remedies provided by this Agreement are not exclusive and are in addition to any other remedies provided by law.

### **Section 25. MUTUAL LIMITED WAIVER OF SOVEREIGN IMMUNITY**

The State has waived its sovereign immunity from suit for contract actions arising under this Agreement. See Montana Code Annotated, Title 18, Chapter 1, part 4. For the purposes of this Agreement, the Tribe expressly grants a limited waiver of sovereign immunity from suit for the sole purpose of enforcement of the Agreement by the ICED Program and recovery of damages for breach of the terms of the Agreement. The parties to this Agreement agree that no word, phrase, sentence, paragraph, or section, in whole or in part, separate or together, contained in this Agreement may be interpreted, other than expressly provided in this provision, as an express or implied waiver generally of the sovereign immunity of the Tribe.

### **Section 26. NEGATIVE DECLARATION**

This Agreement has been entered into to set forth the terms, definitions, conditions, and responsibilities of the parties with regard to the provision of State of Montana General Appropriations Act (HB 2) funding to the Tribe. It is not intended to reflect or to be viewed as reflecting in any other context either party's position with respect to the jurisdictional authority of the other. Nothing in this Agreement or in any conduct undertaken thereto shall be deemed as enlarging or diminishing the jurisdictional authority of either party. Nothing in the Agreement shall be construed as reason or authority to substitute any Federal or State statute as a basis for any civil or administrative claim which names the State of Montana or any of its agencies as a named party, or which may involve the State of Montana or any of its agencies as a named, impleaded, or necessary third party. Neither this Agreement nor conduct pursuant thereto shall be offered as evidence, otherwise referred to in any present or future litigation unrelated to the subject matter of the Agreement, or used to further either parties' equitable or legal position in any litigation unrelated to the subject matter of the Agreement. Each party reserves all rights, arguments, and defenses that are available to it under the law, and nothing in this Agreement shall be interpreted or construed as an express or implicit waiver of any such right, argument or defense, except as provided above.

The parties through their authorized agents have executed this Agreement on the dates set out below.

**STATE OF MONTANA**

By: \_\_\_\_\_  
Meg O'Leary Date  
Director, Montana Department of Commerce

By: \_\_\_\_\_  
Tim Fox Date  
Attorney General, State of Montana

**CROW TRIBE**

By: \_\_\_\_\_  
Darrin Old Coyote Date  
Chairman

Indian Country Economic Development Program

Contract # MT-ICED-14-005

**EXHIBIT A: PROJECT SOURCES & USES**

Between the Montana Department of Commerce

And

**CROW TRIBE**

<b>CROW TRIBE :PROJECT SOURCES &amp; USES OF FUNDS</b>				
USES	SOURCE: ICED	SOURCE: Match (IEF)	SOURCE: NACA & 638 fn	TOTAL
GRANT ADMIN. (up to 5%)	\$1,400		\$10,623	\$12,023
Workforce Training Costs	1,000	3,000		4,000
Loan Fund Capital	10,000		111,343	121,343
ADF Loan Fund Mgr Salary	50,232			50,232
Loan Fund Mgr Training	1,400			1,400
Outreach/ Marketing	968			968
2017 STEDC IEF Match	5,000			5,000
<b>TOTAL ACTIVITY COSTS:</b>	<b>\$70,000</b>	<b>\$3,000</b>	<b>121,966</b>	<b>\$194,966</b>
<b>TOTAL PROJECT COSTS</b>	<b>70,000</b>	<b>\$3,000</b>	<b>\$121,966</b>	<b>\$194,966</b>

*Expense Assumptions: Below is a narrative describing each cost listed above. Including description of each activity that will need to be undertaken to complete the project, source of funding, the status of the funds, and the responsible entity. Costs estimates and/or quotes for any professional services or vendors to be utilized.*

COST CATEGORY	COST	NARRATIVE
GRANT ADMIN. (up to 5%)	\$650	2% of grant total
ACTIVITY COSTS:		
Workforce Training Costs	\$	Two Business Plan workshops = \$186 for venue and mileage (training materials in stock), two Financial Literacy workshops = \$150 for materials, 8 Business Loan workshops in 3 communities = \$665 for venues, material printing, and mileage.
Loan Fund Capital	\$10,000	\$10,000 will be added to the principal of the loan fund.
ADF Loan Fund Mgr Salary	\$50,232	Salary @ \$21/hour and 15% fringe
Loan Fund Mgr Training	\$1,400	Training for Loan Fund Manager
TOTAL PROJECT COSTS:	<u>\$129,650</u>	See additional match and in-kind sources from budget above.



Indian Country Economic Development Program

Contract # MT-ICED-14-005

**EXHIBIT B: PROJECT IMPLEMENTATION SCHEDULE**

Between the Montana Department of Commerce

And

**CROW TRIBE**

Crow Tribe: Project Implementation Schedule FY14 ICED Grant																		
TASK	Qtr 1		Quarter 2				Quarter 3				Quarter 4				Final			
	M	J	J	A	S	O	N	D	J	F	M	A	M					
Provide technical assistance to clients	X	X	X	X	X	X	X	X	X	X	X	X	X					
Two (2) business plan workshops (fall and spring)		X																
Two (2) financial literacy workshops							X											
Eight (8) business loan outreach workshops		X	X			X	X			X								
Service loan portfolio		X	X			X	X			X								
Market and perform outreach for loan fund	X	X	X	X	X	X	X	X	X	X	X	X	X					
Disperse five (5) business loans	X	X	X	X	X		X	X	X									
Provide technical assistance & entrepreneurship	X	X	X	X	X	X	X	X	X	X	X	X	X					
Work on CDFI	X	X	X	X	X	X	X	X	X	X	X	X	X					
Collaborate with partners & facilitate business-oriented workshops		X																
<b>GRANT ADMINISTRATION TASKS:</b>																		
Sign ICED contract	X																	
Submit quarterly report by the end of the first week of specified month		X			X			X										
Submit banking & drawdown forms	X																	
Account transfer to STEDC special revenue acct. for matching funds	X																	
Submit \$57,200 request																		
Submit \$3,900 request																		
Project closeout report submitted to ICED program																		
Submit \$3,900 final request																		