

**JULY 2014 CROW TRIBAL LEGISLATURE**

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

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 MEMORANDUM OF UNDERSTANDING FOR  
THE BATTLEFIELD REST AREA.”**

**WHEREAS**, the National Park Service, Federal Highway Administration, the Montana Department of Transportation and the Crow Tribe are entering into a Memorandum of Understanding regarding the development for the Battlefield Rest Area; and

**WHEREAS**, the Montana Department of Transportation has prepared the attached “Memorandum of Understanding, Battlefield Rest Area, IM 90-9(97)511” (the “MOU”) which establishes a formal relationship for coordination and collaboration by, between, and among NPS, FHWA, the Tribe and MDT; and

**WHEREAS**, the MDT proposes to construct a Rest Area on or near the junction of Highway 212 (N-37) and Interstate 90 on the Crow Reservation, through a Federal Aid project known as Battlefield Rest Area, IM 90-9(97)511, UPN 2012; and

**WHEREAS**, NPS, FWHA, the Tribe and MDT anticipate that the Project will include construction of a parking area large enough to accommodate a new Rest Area, NPS facility (visitor center and/or curatorial facility) and a Crow Tribe Museum; and

**WHEREAS**, a Rest Area Committee will be formed to collaborate on making decisions for the location, layout and aesthetics for the Rest Area and the parking lot. The Tribe, NPS and MDT will each have at least one member on the committee, which will meet as needed to assist in achieving the objectives of the MOU; 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 V.A.4 of the MOU, the limited waiver of sovereign immunity is necessary for the business purpose of establishing the formal relationship among the parties;

**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 Transportation “MOU, IM 90-9(97)511,” attached hereto and incorporated herein 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 Intentionally Left Blank)**

## CERTIFICATION

I hereby certify that this Joint Action Resolution entitled “**RESOLUTION APPROVING THE CROW TRIBE’S LIMITED WAIVER OF SOVEREIGN IMMUNITY IN THE MEMORANDUM OF UNDERSTANDING FOR THE BATTLEFIELD REST AREA**” 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 16<sup>th</sup> day of July, 2014.

  
\_\_\_\_\_  
Speaker of the House  
Crow Tribal Legislature

ATTEST:

  
\_\_\_\_\_  
Secretary  
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 MEMORANDUM OF UNDERSTANDING FOR THE BATTLEFIELD REST AREA**” 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 28 day of July, 2014.

  
\_\_\_\_\_  
Darrin Old Coyote, Chairman  
Crow Tribal Executive Branch

**JAR "RESOLUTION APPROVING THE CROW TRIBE'S LIMITED WAIVER OF SOVEREIGN IMMUNITY  
IN THE MEMORANDUM OF UNDERSTANDING FOR THE BATTLEFILED REST AREA."**

**Bill or Resolution:** JAR14-14 **Introduced by:** Chairman Darrin Old Coyote **Date of Vote:** 7/16/2014  
**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>  X  </u>	<u>          </u>	<u>          </u>
C. J. Stewart	<u>  X  </u>	<u>          </u>	<u>          </u>
P. Hill	<u>          </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>  X  </u>	<u>          </u>	<u>          </u>
B. Good Luck	<u>  X  </u>	<u>          </u>	<u>          </u>
G. Stewart	<u>          </u>	<u>          </u>	<u>          </u>
G. Real Bird, 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>
<b>Totals:</b>	<u>  16  </u>	<u>    0    </u>	<u>    0    </u>

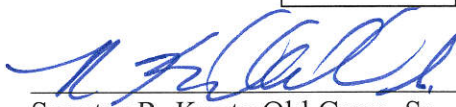
Result of Vote:

**Passed**

**Not Passed**

**Tabled**

**Veto-Override**

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

Date

  
\_\_\_\_\_  
Senator Gordon Real Bird, Jr.  
Secretary of the House

Date

# **MEMORANDUM OF UNDERSTANDING**

**Among**

**The United States Department of the Interior  
National Park Service,**

**Federal Highway Administration,**

**Crow Tribe, and**

**State of Montana Department of Transportation**

**[Battlefield Rest Area, IM 90-9(97)511]**

**THIS AGREEMENT** (Memorandum of Understanding; MOU) is entered into among the Department of the Interior, National Park Service - Little Big Horn Battlefield National Monument (“NPS”), the Federal Highway Administration (“FHWA”), Crow Tribe (“Tribe”), and the State of Montana Department of Transportation (“MDT”).

## **I. PURPOSE**

This MOU establishes a formal relationship for coordination and collaboration by, between, and among NPS, FHWA, the Tribe, and MDT, and relates to timelines and other issues regarding development of the Battlefield Rest Area.

This MOU is neither a fiscal document nor a funds-obligation document. This MOU does not authorize or compel NPS, FHWA, the Tribe, and MDT to exchange or transfer anything of value. Expenditures or contribution of funds by, between, or among NPS, FHWA, the Tribe, and MDT shall be made and effected in accordance with separate written agreements or contracts, which shall be independently authorized and controlled by appropriate statutory and regulatory authorities and applicable policies.

## **II. BACKGROUND**

MDT proposes to construct a Rest Area on or near the junction of Highway 212 (N-37) and Interstate 90 on the Crow Reservation, through a Federal Aid project known as Battlefield Rest Area, IM 90-9(97)511, UPN 2012;

NPS, FHWA, the Tribe, and MDT anticipate that the Project will include construction of a parking area large enough to accommodate a new Rest Area, NPS facility (visitor center and/or curatorial facility) and a Crow Tribe Museum. The parking area will include

landscaping and appendices normally associated with MDT rest area projects. The buildings from the various vested partners will be constructed independently;

The Tribe intends to provide a location on Tribal lands and may enter into an agreement with MDT and NPS for a long-term easement on the land for the location of the Rest Area, parking and new NPS facility;

A Rest Area committee will be formed to collaborate on making decisions for the location, layout and aesthetics for the Rest Area and the parking lot. The Tribe, NPS and MDT will each have at least one member on the committee, which will meet as needed to assist in achieving the objectives of this MOU.

### III. CONSTRUCTION PHASES AND TIMELINE

#### **A. Construction phases**

MDT will develop and construct the Rest Area in two phases. The first phase will be to hire a consultant to recommend the best location from among several locations initially provided by the Tribe. The first phase will include consultant services to design the water and wastewater system and obtain all necessary conditional permitting from DEQ, and/or EPA depending on jurisdictional rights on the Reservation. Consideration will be given to connecting to the Crow Agency community services. The consultant will coordinate with the Rest Area committee for completion of Phase I.

All State, Local, Tribal, and Federal laws and regulations for compliance and permitting will be followed as required for Federal-aid projects. A no-build decision for the Rest Area is possible if minimum requirements for Federal-aid projects are not met.

Phase II is the actual design/build contract for the rest area administered through MDT. The contractor will have various themes for the Rest Area building and the Rest Area committee will have final input on the chosen theme.

#### **B. Timeline**

Phase I for the Rest Area will have a timeline to enable a Phase II Federal Fiscal Year letting of 2016 for the Design/Build contract. Archeological or other findings, beyond the control of signatories can potentially change delivery dates and will not be a basis of nullifying this MOU.

#### **Phase I activities completed;**

- Formed a Rest Area Committee: Spring 2013
- MDT selected a consultant: Spring 2013
- Consultant worked with Committee to develop/administer survey about project to local residents and visitors: Crow Native Days, June 2013
- Consultant and Committee conducted public meetings: Fall 2013



- MDT consultant and Committee identified preferred location: Winter 2013 - 2014
- Committee identified preferred Rest Area location: Winter 2013 - 2014

**Phase I activities to be completed:**

- Complete formal selection of Rest Area site location: Summer 2014
- MDT's consultant provide conceptual 3D rendering overview and site plan: by Winter 2014 - 2015
- Rest Area Committee's consensus of 3D rendering for future Rest Area site: Winter 2014 - 2015
- Completed and signed MDT and Tribal agreement for long-term easement of the land for Rest Area and parking area: Summer/Fall 2015
- MDT and Consultant execute an environmental document and complete all permitting for the water and sewer spring-summer 2015
- MDT Design/Build Letting for Rest Area: Federal Fiscal Year 2016 (depending on completion of prior activities and availability of funding).

**IV. STATEMENTS OF WORK**

**A. MDT Responsibilities**

1. Participate in the Rest Area Committee;
2. Adhere to the time frames in this agreement;
3. Hire a consultant for Phase I of the Rest Area in the Summer 2013;
4. Develop preliminary concepts for the Rest Area and parking lot, including accommodation of a location for the NPS facility and the Tribal Museum;
5. Provide a conceptual site layout and 3D rendering for the Rest Area and parking lot by Winter 2014 - 2015;
6. Obtain a signed long-term easement agreement with the Tribe for the land that will be used for the Rest Area and parking lot by Summer/Fall 2015;
7. MDT's consultant executes an environmental document and complete all permitting for the water and sewer. Approximately a nine month long process, complete in spring-summer 2015
8. Contract Design/Build project for the Rest Area and parking lot in Federal Fiscal Year 2016, contingent upon the completion of all preconstruction activities by MDT and others, and availability of funding. MDT will notify

all parties in the event preconstruction cannot be completed or funding is not available to meet the Federal Fiscal Year 2016 date for contract let; and

9. Participate financially in the project with State and Federal Aid Funds, and administer the funds as per FHWA and State requirements. Nothing in this agreement shall be construed as binding any party to expend any sum in excess of allotted appropriations for any fiscal year.

#### **B. Tribe Responsibilities**

1. Participate in the Rest Area Committee;
2. Adhere to the time frames in this agreement;
3. Provide a long-term easement agreement with MDT for the Rest Area, Parking lot and NPS facility by Summer/Fall 2015; and
4. Zone the area adjacent to and surrounding the Rest Area complex as a buffer to preserve the aesthetical appeal of the site by Summer/Fall 2015.
5. If a museum is built; provide their own funding and construct Tribal Museum in the future to the planned theme agreed to during development of the site.

#### **C. NPS Responsibilities**

1. Participate in the Rest Area Committee;
2. Adhere to the time frames in this agreement; and
3. May enter into an agreement with the Tribe for a long-term easement for a new NPS facility (visitor center and/or curatorial facility).
4. May provide funding for construction of a new NPS facility, which may be built in the future consistent with the planned theme agreed to during development of the site.
5. Nothing in this document shall be construed to obligate the Department of the Interior (DOI) or the National Park Service (NPS) to make any current or future expenditure of resources in advance of, or in excess of, an existing appropriation from Congress. In addition, nothing in this document shall be construed to obligate DOI or NPS to spend funds on any particular project or purpose, even if funds are available.

#### **D. FHWA Responsibilities**



1. Participate in the Rest Area Committee;
2. Adhere to the time frames in this agreement and use best efforts to meet them;  
and
3. As allowed by law and procedure, provide Federal-aid funding for the design and construction of a new Rest Area and parking lot providing all the necessary conditions are met for federal funding, with funding to be administered by MDT. Nothing in this agreement shall be construed as binding any party to expend any sum in excess of allotted appropriations for any fiscal year.

V. OTHER TERMS AND CONDITIONS

**A. Liability**

**The State of Montana agrees:**

1. To indemnify, save and hold harmless, and defend the United States against all fines, claims, damages, losses, judgments, and expenses arising out of, or from, any act or omission of the State of Montana, its officers or employees relative to activities authorized pursuant to this Agreement. This obligation shall survive the termination of the Agreement.
2. To provide workers' compensation insurance protection to the State officers, employees and representatives.
3. To pay the United States the full value for all damage to the land or other property of the United States caused by the State, its officers, employees or representatives.

**The Crow Tribe agrees:**

1. To indemnify, save and hold harmless, and defend the State of Montana and the United States against all fines, claims, damages, losses, judgments, and expenses arising out of, or from, any act or omission of the Tribe, its officers or employees relative to activities authorized pursuant to this Agreement. This obligation shall survive the termination of the Agreement.
2. To provide workers' compensation insurance protection to Tribal officers, employees and representatives.
3. To pay the State of Montana and the United States the full value for all damage to the land or other property of the State of Montana or the United States caused by the Tribe, its officers, employees or representatives.

4. For the purposes of the Agreement, the Crow Tribe expressly grants a limited waiver of sovereign immunity from suit for the sole purpose of enforcement of this Agreement by the other parties and recovery of any damages for breach of any term of this Agreement. The parties 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 Crow Tribe.

#### **B. Choice of Law.**

The parties agree that this Agreement shall be governed by and interpreted according to applicable federal laws and regulations, applicable State of Montana laws and regulations, and applicable Crow tribal laws and regulations which are not in conflict with State of Montana or federal laws. The parties will adhere to the 2006 State and Crow Tribe Memorandum of Understanding on MDT construction contracts for tribal construction requirements.

#### **C. Dispute Resolution and Venue.**

The parties agree to first meet and confer for the purposes of resolving any disputes that may arise under this Agreement. If resolution is not possible, the parties agree that venue for enforcement of the terms shall be in United States District Court, or if jurisdiction does not lie in United States District Court, the Montana First Judicial District Court, Lewis and Clark County, Montana.

#### **D. Non-Discrimination**

MDT agrees not to discriminate in the fulfillment of this MOU on the basis of race, color, religion, creed, sex, age, marital status, national origin or actual or perceived sexual orientation, gender identity or disability. All MDT activities pursuant to this MOU shall be in compliance with the requirements of Executive Order 11246, as amended; Title VI of the Civil Rights Act of 1964, as amended; Title V, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975; and with all other federal laws and regulations prohibiting discrimination. MDT agrees this requirement shall apply to the hiring and treatment of employees, contractors, and sub-contractors.

#### **E. Access to Records**

The Tribe agrees to provide MDT, 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 years after either the completion date of the MOU, or

the conclusion of any claim, litigation or exception relating to the MOU taken by the State of Montana or third party.

#### **F. Assignment, Transfer, Subcontracting**

The Tribe shall not assign, transfer or subcontract any portion of this MOU without the express written consent of MDT (Mont. Code Ann. §18-4-141). FHWA may assign this Agreement to other U.S. agencies or bureaus.

#### **G. Termination**

The parties may mutually terminate this MOU by written agreement at any time.

MDT, at its sole discretion, may terminate or reduce the scope of this MOU or project in the event that any one of the signatories of this agreement fail to provide support and/or timely decisions within certain time frames or if funding is reduced for any reason.

#### **H. Modification and Amendment**

This MOU may be modified or amended, in writing, by agreement of the parties involved.

#### **I. Binding Effect**

The obligations set forth in this MOU shall be binding upon, and the benefit of this MOU shall inure to the benefit of each party's respective successors and assigns.

#### **J. Relationship of the Parties**

Nothing contained in this MOU shall be deemed or construed by any party hereto or by any third party to create the relationship of principal and agent or create any partnership, joint venture or any other association between MDT, the Tribe, NPS and FHWA.

#### **K. Survival**

Any and all provisions which, by themselves or their nature, are reasonably expected to be performed after the expiration or termination of this MOU shall survive and be enforceable after the expiration or termination of this MOU. Any and all liabilities, actual or contingent, which have arisen during the term of and in connection with this MOU, shall survive expiration or termination of this MOU.

#### **L. Partial Invalidity**

If any provision of this MOU or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of the MOU or the application of such provisions to the parties or circumstances others than those to which it is held invalid

or unenforceable, shall not be affected thereby, and each provision of this MOU shall be valid and be enforced to the fullest extent permitted by law.

#### **M. Debarment and Suspension**

All transactions shall be in compliance with subpart C of CFR part 180 "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," as supplemented by subpart C of 2 CFR part 1400 and participants shall also include a similar term or condition in lower-tier covered transactions. The following certification is required in accordance with this provision and made a part of this MOU:

DI-2010, U.S. Department of the Interior Certification Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirement and Lobbying.

#### **N. Final Agreement**

This agreement does not supersede, discharge, or extinguish any prior agreement between the parties, unless by specific reference and in clear terms.

This agreement shall become effective upon execution by the State (MDT), Tribe, NPS and FHWA and shall remain in effect until completion of the Battlefield Rest Area Project, IM 90-9(97)511, UPN 2012, unless terminated or amended under the terms set forth in Section G and Section H of V. Other Terms and Conditions of the MOU.

#### **STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Stefan Streeter  
MDT Billings District Administrator

Date: \_\_\_\_\_, 2014

APPROVED FOR LEGAL CONTENT:

\_\_\_\_\_  
MDT Legal Services

#### **Crow Nation**

By: \_\_\_\_\_  
Chairman  
Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_, 2014.

**Department of the Interior-National Park Service**

By: \_\_\_\_\_

Date: \_\_\_\_\_, 2014

Denice Swanke  
Superintendent

**Federal Highway Administration**

By: \_\_\_\_\_

Date: \_\_\_\_\_, 2014

Division Administrator

Printed Name: \_\_\_\_\_