

**CROW TRIBAL LEGISLATURE  
MARCH 28, 2017 SPECIAL SESSION**

**JOINT ACTION RESOLUTION NO. JAR17-07**

Introduced by Alvin Not Afraid, Jr., 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 CROW  
TRIBE WATER RESOURCES DEPARTMENT CIP WILLOW CREEK FEEDER  
CANAL IMPROVEMENTS PROJECT."**

**WHEREAS**, the Crow Tribe is prepared to begin the bid process for the Willow Creek Feeder Canal Phase III Improvements, Contract C13-1, in order to facilitate the rehabilitation and improvement of the Willow Creek Feeder Canal Phase III facilities within Crow Irrigation Project, to facilitate safer and more efficient and reliable delivery of irrigation water to benefit water users within the Crow Irrigation Project; and

**WHEREAS**, Exhibit A in the Supplementary Conditions to the General Conditions of the Construction Contract for construction of the Willow Creek Feeder Canal Phase III Improvements 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 contract; and

**WHEREAS**, the general Scope of Work for the project is set forth in Exhibit B attached hereto and incorporated by reference; 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 Crow Tribe, the community, and water users within the Crow Irrigation Project will greatly benefit from the rehabilitation and improvement of the Crow Irrigation Project from the Willow Creek Feeder Canal Phase III Improvements Project, and 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 Willow Creek Feeder Canal Phase III Improvements Project;

**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 in the Supplementary Conditions to the General Conditions of the Construction Contract for the Crow Tribe Water Resources Department (CTWRD) Rehabilitation and Improvement of the Crow Irrigation Project, Willow Creek Feeder Canal Phase III Improvements, Contract C13-1, attached hereto as Exhibit A 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 CROW TRIBE WATER RESOURCES DEPARTMENT CIP WILLOW CREEK FEEDER CANAL IMPROVEMENTS PROJECT**" was duly approved by the Crow Tribal Legislature with a vote of 17 in favor, 0 opposed, and 0 abstaining, and that a quorum was present on this 28<sup>th</sup> day of March, 2017.

  
Senator Eric Birdinground  
Speaker of the House  
Crow Tribal Legislature

ATTEST:  
  
Senator Gordon Real Bird, 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 CROW TRIBE WATER RESOURCES DEPARTMENT CIP WILLOW CREEK FEEDER CANAL IMPROVEMENTS 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 \_\_\_\_\_ day of \_\_\_\_\_, 2017.

  
Alvin Not Affraid, Jr., Chairman  
Crow Tribal Executive Branch

**JAR "Resolution Approving the Crow Tribe's Limited Waiver of Sovereign Immunity in the Construction Contract for the Crow Tribe Water Resources Department CIP Willow Creek Feeder Canal Improvements Project."**

**Bill or Resolution:** JAR17-07 **Introduced by:** Chairman Alvin Not Afraid, Jr. **Date of Vote:** 3/28/2017  
**Number**

<b>REPRESENTATIVE:</b>	<b>Yes</b>	<b>No</b>	<b>Abstained</b>
G. Three Irons			
B. Rogers	<b>X</b>		
F. White Clay	<b>X</b>		
P. Hill	<b>X</b>		
S. Real Bird	<b>X</b>		
V. Nomee	<b>X</b>		
T. Yellowtail	<b>X</b>		
T. Gros Ventre	<b>X</b>		
P. Alden, Jr.	<b>X</b>		
E. Deputee	<b>X</b>		
P. Spotted Horse, Sr.	<b>X</b>		
L. DeCrane	<b>X</b>		
J. Demontiney	<b>X</b>		
B. Hugs	<b>X</b>		
B. Good Luck	<b>X</b>		
H. Male Bear, Jr.	<b>X</b>		
G. Real Bird, Jr.	<b>X</b>		
Secretary of the House			
Eric Birdinground	<b>X</b>		
Speaker of the House			
<b>Total:</b>	<b>17</b>	<b>0</b>	<b>0</b>


Result of Vote:

**Passed**


**Not Passed**

**Tabled**

**Veto-Override**

  
 Senator Eric Birdinground  
 Speaker of the House  
 Crow Tribal Legislative Branch

Date

  
 Senator Gordon Real Bird, Jr.  
 Secretary of the House  
 Crow Tribal Legislative Branch

Date

**EXHIBIT A**  
**DISPUTE RESOLUTION**  
**AND**  
**LIMITED WAIVER OF SOVEREIGN IMMUNITY**

**1.1 Arbitration.** (a) Any Claim or other controversy arising under the Agreement shall be settled by binding arbitration in accordance with the Construction Industry 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 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 arbitrator(s) 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 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 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) 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) The parties waive any rights to pursue judicial proceedings related to the Agreement in any court except as provided in this Exhibit A.

**1.3 Limited Waiver of Owner'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 Owner'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 Exhibit A; provided, however, that:

(a) this limited waiver shall only extend to the Contractor, its successors 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 of this Exhibit A;

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

(d) the monetary relief available against the Crow Tribe of Indians 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 Exhibit A), 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.

## **EXHIBIT B**

### **GENERAL SCOPE OF WORK**

#### **Rehabilitation and Improvement of the Crow Irrigation Project Willow Creek Feeder Canal Phase III Improvements Project Contract C13-1**

The Scope of Work generally consists of improvements to Willow Creek Feeder Canal, comprised of the construction of a new terminal drop structure, as required by the Contract Documents and General Requirements. The project is located on the Crow Reservation in Big Horn County, Montana approximately 17 miles southwest of Lodge Grass, Montana.

This work involves rehabilitation and improvements to the Willow Creek Feeder Canal. The Willow Creek Feeder Canal serves to divert and convey water from Lodge Grass Creek to the Lodge Grass Storage Reservoir, which serves as a storage reservoir for the Crow Irrigation Project. Rehabilitation and improvements under Phase III will include construction of a new terminal drop structure and abandonment of the existing terminal drop structure. The work consists generally of earthwork; steel reinforced concrete construction; riprap placement; walkway, handrail, and chain link fence installation; safety cable and float installation; canal cleaning and reshaping work; canal excavation and compacted embankment construction; concrete demolition associated with abandonment of the existing terminal drop structure. The work under Phase III will encompass the Willow Creek Feeder Canal terminal drop.