

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

JOINT ACTION RESOLUTION NO. JAR17-08

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 MR&I MAIN TRANSMISSION
PIPELINE PROJECT."**

WHEREAS, the Crow Tribe Water Resources Department ("CTWRD") is prepared to begin the bid process for portions of the Municipal, Rural and Industrial ("MR&I") System Main Transmission Pipeline from the Water Treatment Plant ("WTP") to Crow Agency, MT construction, Contract M3-1B, in order to facilitate the delivery of adequate water to service the population of Crow Agency and the surrounding Bighorn Valley service area; and

WHEREAS, Exhibit A in the Supplementary Conditions to the General Conditions of the Construction Contract for construction of the MR&I Main Transmission Pipeline: WTP to Crow Agency 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 will benefit from the implementation and improvement to the drinking water facilities, 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 MR&I Main Transmission Pipeline: WTP to Crow Agency 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) MR&I Main Transmission Pipeline: WTP to Crow Agency Project, Contract M3-1B, 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 MR&I MAIN TRANSMISSION PIPELINE 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 28th 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 MR&I MAIN TRANSMISSION PIPELINE 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 Afraid, Jr., Chairman
Crow Tribal Executive Branch

March 28, 2017 Special Session

Resolution Approving the Crow Tribe's Limited Waiver of Sovereign Immunity in Construction Contract for the Crow Tribe Water Resources Department MR&I Main Transmission Pipeline Project

JAR "Resolution Approving the Crow Tribe's Limited Waiver of Sovereign Immunity in the Construction Contract for the Crow Tribe Water Resources Department MR&I Main Transmission Pipeline Project."

Bill or Resolution: JAR17-08 **Introduced by:** Chairman Alvin Not Afraid, Jr. **Date of Vote:** 3/28/2017
Number

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

Result of Vote:

Passed

Not Passed

Tabled

Veto-Override

Eric Birdinground

 Senator Eric Birdinground
 Speaker of the House
 Crow Tribal Legislative Branch

Date

Gordon Real Bird, Jr.

 Senator Gordon Real Bird, Jr.

Date

Secretary of the House
 Crow Tribal Legislative Branch

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

CTWRD MR&I Main Transmission Pipeline: WTP to Crow Agency Contract M3-1B

The Scope of Work generally includes; furnishing and installing all materials, equipment, and labor, for the construction of the Main Transmission Pipeline-Contract M3-1B, Pipeline, Pump Station and combined Fill Station, Crow Agency Master Meter Vault, and horizontal direction drilling of road and canal crossings for the Contract. Additional work associated with the Main Transmission Pipeline, Contract M3-1A, to be constructed by Crow Tribe Water Resource Department Construction Crew. The new pipeline would be utilized for community and rural supply as part of the Crow Municipal, Rural, and Industrial Water System.