

JULY 2017 CROW TRIBAL LEGISLATURE

JOINT ACTION RESOLUTION NO. JAR 17-17

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 MONTANA DEPARTMENT OF COMMERCE TSEP CONTRACT FOR AWWWA PHASE 3C.”

WHEREAS, Montana House Bill 11, passed by the 64TH Legislature and as signed into law by Governor Bullock on April 25, 2015 (Chapter 300, Laws 2015) provides grant funds to the Crow Tribe for infrastructure project activities approved by the Montana Department of Commerce under the Treasure State Endowment Program (“TSEP”); and

WHEREAS, the Montana Department of Commerce has prepared the attached preliminary Treasure State Endowment Program Contract # MT-TSEP-CG-17-848 for distributing funds to the Crow Tribe in the amount of \$750,000, is attached hereto and incorporated by reference, and which will be amended when the start-up conditions have been satisfied (the “TSEP Contract”); and

WHEREAS, the \$750,000 granted to the Crow Tribe will be used to finance the Apsaalooke Water and Wastewater (“AWWWA”) Phase 3c wastewater infrastructure improvement project in Crow Agency, including expenses associated with the replacement of approximately 6,700 feet of wastewater pipe and a new East Frontage Road Lift Station; 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 also provide a limited waiver of its sovereign immunity for the sole purpose of enforcement of the TSEP Contract, in the form set forth in Section 13 of the Preliminary Contract; 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 economic development 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 13 of the TSEP Contract, receiving the funding provided by the TSEP Contract is in the best interests of the Crow Tribe, and the limited waiver of sovereign immunity is necessary for the business purpose of effectuating the TSEP Contract;


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 preliminary Montana Department of Commerce Treasure State Endowment Program Contract # MT-TSEP-CG-17-848, attached hereto and incorporated herein by reference, and in any amended Contract after the start-up conditions have been satisfied, is hereby approved.

Section 2. 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 MONTANA DEPARTMENT OF COMMERCE TSEP CONTRACT FOR AWWWA PHASE 3C**” was duly enacted by the Crow Tribal Legislature with a vote of 11 in favor 1 opposed, and 3 abstaining and that a quorum was present on this 21st day of June, 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 or

_____ veto.

This Joint Action Resolution entitled “**RESOLUTION APPROVING THE CROW TRIBE’S LIMITED WAIVER OF SOVEREIGN IMMUNITY IN THE 2012 MONTANA DEPARTMENT OF COMMERCE TSEP CONTRACT FOR AWWWA PHASE 3C**” 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

JAR- Resolution Approving the Crow Tribe's Limited Wiver of Sovereign Immunity in the Montana Department of Commerce TSEP Contract for AWWWA Phase 3C.

Bill or Resolution: JAR17-17 **Introduced by:** Chairman AJ Not Afraid, Jr. **Date of Vote:** 7/21/2017
Number

REPRESENTATIVE:	Yes	No	Abstained
G. Three Irons	<u>X</u>	<u> </u>	<u> </u>
B. Rogers	<u> </u>	<u> </u>	<u> </u>
F. White Clay	<u>X</u>	<u> </u>	<u> </u>
P. Hill	<u> </u>	<u> </u>	<u>X</u>
S. Real Bird	<u>X</u>	<u> </u>	<u> </u>
V. Nomee	<u>X</u>	<u> </u>	<u> </u>
T. Yellowtail	<u> </u>	<u> </u>	<u> </u>
T. Gros Ventre	<u> </u>	<u>X</u>	<u> </u>
P. Alden, Jr.	<u> </u>	<u> </u>	<u>X</u>
E. Deputee	<u>X</u>	<u> </u>	<u> </u>
P. Spotted Horse, Sr.	<u> </u>	<u> </u>	<u>X</u>
L. DeCrane	<u>X</u>	<u> </u>	<u> </u>
J. Demontiney	<u> </u>	<u> </u>	<u> </u>
B. Hugs	<u>X</u>	<u> </u>	<u> </u>
B. Good Luck	<u>X</u>	<u> </u>	<u> </u>
H. Male Bear, Jr.	<u>X</u>	<u> </u>	<u> </u>
G. Real Bird, Jr.	<u>X</u>	<u> </u>	<u> </u>
Secretary of the House	<u> </u>	<u> </u>	<u> </u>
Eric Birdinground	<u>X</u>	<u> </u>	<u> </u>
Speaker of the House	<u> </u>	<u> </u>	<u> </u>
Total:	<u>11</u>	<u>1</u>	<u>3</u>

Result of Vote:

Passed

Not Passed

Tabled

Veto-Override

Eric Birdinground
 Speaker of the House

Date

Gordon Real Bird, Jr.
 Secretary of the House

Date

**MONTANA DEPARTMENT OF COMMERCE
TREASURE STATE ENDOWMENT PROGRAM
CONTRACT # MT-TSEP-CG-17-848**

This Preliminary Contract is entered into by the Crow Tribe of Indians (the Grantee) and the Montana Department of Commerce, Helena, Montana (the Department).

The Grantee and the Department hereby agree to the following terms:

Section 1. PURPOSE

The purpose of this Preliminary Contract is to obligate funding to the Grantee for infrastructure project activities approved by the Department under the Treasure State Endowment Program (hereinafter "TSEP" or "Program"), as authorized by HB 11, passed by the 64th Legislature and as signed into law by Governor Bullock on April 27, 2015 (Chapter 300, Laws 2015).

Section 2. AUTHORITY

This Preliminary Contract is issued under authority of Title 90, Chapter 6, Part 7 of the Montana Code Annotated; the Administrative Rules of Montana, Title 8, Chapter 94, Subchapter 38; and the terms of Chapter 300, Laws 2015.

Section 3. APPLICATION INCORPORATED BY REFERENCE

The Grantee's application for Program assistance, including any written modifications resulting from the review of the application by the Department (collectively, the "Project"), is specifically incorporated into this Preliminary Contract by this reference and the representations made therein are binding upon the Grantee.

Section 4. BUDGET

The total amount to be awarded to the Grantee under this Preliminary Contract will not exceed \$750,000. The Department will not disburse funds to the Grantee for Project activities until the Grantee has met all PROJECT START-UP REQUIREMENTS set forth in Section 6 and agreed to all Program terms and conditions.

Section 5. EFFECTIVE DATE AND TIME OF PERFORMANCE

- (a) This Preliminary Contract shall take effect upon execution by the parties and will terminate on September 30, 2018.
- (b) The Department will use the funds appropriated in Chapter 300, Laws 2015 to fund Project activities if Grantee meets all PROJECT START-UP REQUIREMENTS set forth in Section 6 by September 30, 2018. The Grantee acknowledges that its access to such funds is subject to their availability.

- (c) The Grantee agrees that if it does not meet all PROJECT START-UP REQUIREMENTS set forth in Section 6 by September 30, 2018, any obligation to the Grantee under this Preliminary Contract will cease.
- (d) As further set forth in Section 10 TERMINATION OF CONTRACT, if the Grantee fails to or is unable to comply with any of the terms and conditions of this Preliminary Contract, any costs incurred will be the Grantee's sole responsibility.
- (e) The Grantee understands and acknowledges that the Department will report to the Legislature and Legislative interim committees on the status of projects in accordance with Chapter 300, Laws 2015.

Section 6. PROJECT START-UP REQUIREMENTS

The Department will not reimburse the Grantee for any Project activities provided for by this Preliminary Contract until:

- (a) The Grantee submits to the Department evidence of the firm commitment of the other funds required for the completion of the Project within the preliminary Project budget.
- (b) The Grantee submits to the Department and the Department approves an acceptable Project Management Plan.
- (c) The Grantee submits to the Department and the Department approves an acceptable implementation schedule and preliminary Project budget.
- (d) The Department confirms that the Grantee:
 - (i) has established a financial accounting system that conforms to generally accepted accounting principles (GAAP), and
 - (ii) is in compliance with the auditing and reporting requirements provided for in Section 2-7-503, MCA.
- (e) The Grantee complies with any conditions described in the grantee's application for Program assistance and any written conditions that were imposed on the application by the Department during the application ranking process.
- (f) If the Project has been modified since the original application to the extent that additional environmental review is necessary, the Grantee complies with all MEPA requirements.
- (g) The Grantee must execute a full contract including a detailed scope of work via a contract amendment with the Department.

Section 7. LIAISONS

The liaisons for this Contract are:

For the Department:

Michele Cushman (or successor)
TSEP Program Specialist
Montana Department of Commerce
PO Box 200523
Helena, MT 59620-0505
(406) 841-2789
MCushman2@mt.gov

For the Grantee:

Lori Benner (or successor)
Grant Writer
Nittany Grantworks
PO Box 1821
Livingston MT 59047
(406) 222-6111
lori@nittanygrantworks.com

Section 8. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

- (a) The Grantee may subcontract any portion of this Contract in order to meet all PROJECT START-UP REQUIREMENTS set forth in Section 6 by September 30, 2018. The Grantee shall not otherwise assign or transfer any portion of this Contract without the express written consent of the Department.
- (b) The Grantee's assignment, transfer, or subcontract of this Contract or any portion thereof neither makes the Department a party to that agreement nor creates any right, claim, or interest in favor of any party to that agreement against the Department. No contractual relationships exist between any subcontractor, assignee, or transferee and the Department.
- (c) The Grantee must immediately notify the Department of any litigation concerning any assignment, transfer, or subcontract of this Contract or any portion thereof.

Section 9. CONTRACT AMENDMENT

This Preliminary Contract must be amended by September 30, 2018 to include a detailed scope of work and other terms and conditions or it will terminate on September 30, 2018. Except as otherwise set forth herein, this Contract may not be enlarged, modified, or altered except upon written agreement signed by all parties to the Contract.

Section 10. TERMINATION OF CONTRACT

This Contract may be terminated in whole or in part as follows:

- (a) Termination by Law. Pursuant to the terms of Chapter 300, Laws 2015, if Grantee does not meet all PROJECT START-UP REQUIREMENTS set forth in Section 6 by September 30, 2018, this Contract is terminated and any obligation to the Grantee under this Contract will cease.
- (b) Termination by Grantee. Grantee, at its sole discretion, may terminate this Contract at any time for any reason upon written notice to the Department.
- (b) Termination Due to Loss or Reduction of Funding. The Department, at its sole discretion, may terminate or reduce the scope of this Contract if any funding sources are eliminated or reduced for any reason. The Department will notify the Grantee of the effective date of the termination or modification of this Contract and, if a reduction in funding is required, will provide the Grantee with a modified Project budget.
- (c) Effect of Termination. In the event of termination of this Contract, any Project costs incurred will be the responsibility of the Grantee.

Section 11. NOTICE

All notices required under the provisions of the Contract must be in writing and delivered to the parties' liaisons identified herein either by first class mail or personal service.

Section 12. NO ARBITRATION

Unless otherwise agreed to in writing or provided for by law, arbitration is not available to the parties as a method of resolving disputes that would arise under the Contract.

Section 13. MUTUAL 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 Coal Board Program and recovery of damages for breach of the terms of the Agreement. The parties to this Agreement agree that no work, phrase, paragraph, or section in whole or 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.

IN WITNESS OF THE TERMS SET OUT ABOVE, the parties hereto have caused this Contract to be executed.

CROW TRIBE OF INDIANS:

Alvin Not Afraid Jr., Tribal Chairman

Date

ATTEST:

Miriam Smith, Comptroller

APPROVED AS TO FORM:

Bill Watt, Attorney

MONTANA DEPARTMENT OF COMMERCE:

Pam Haxby-Cote, Director

Date