

JANUARY 2006 CROW TRIBAL LEGISLATURE

JOINT ACTION RESOLUTION NO.

JAR06-01

INTRODUCED BY CARL E. VENNE, CHAIRMAN
CROW TRIBAL EXECUTIVE BRANCH

JOINT ACTION RESOLUTION OF THE CROW TRIBAL LEGISLATURE AND THE
CROW TRIBAL EXECUTIVE BRANCH ENTITLED:

“FINAL APPROVAL OF THE FRAMEWORK AGREEMENT BETWEEN THE CROW TRIBE OF INDIANS AND WESTMORELAND COAL COMPANY.”

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 in matters of economic development, in Section 3(f) to negotiate and approve or prevent any sale, disposition, lease or encumbrance of Tribal lands or other Tribal assets, including minerals, with final approval granted by the Legislative Branch, and in Section 3(k) to negotiate and approve limited waivers of sovereign immunity when such a waiver is necessary for business purposes, subject to final approval by the Legislative Branch; and

WHEREAS, Westmoreland Coal Company, a Delaware corporation (hereinafter, “Westmoreland”) has experience and expertise in the development of coal mines and coal-fired power plants, and owns an 80% interest in Westmoreland Resources, Inc., which has been operating the Absaloka Mine under lease from the Crow Tribe for more than 30 years; and

WHEREAS, the Chairman and the other elected Tribal Executive Branch Officials have been in discussions since early 2005 with Westmoreland Coal Company on the possible development of a Crow-owned electric power generating plant using Tribally-owned coal and other Tribal resources in the northern portion of the Reservation, including the Ceded Strip (referred to as the “Project”); and

WHEREAS, in order to further investigate this power plant development possibility, the Chairman and Westmoreland subsidiary Westmoreland Power, Inc., entered into a Project Evaluation and Confidentiality Agreement dated June 2, 2005 (the “Project Evaluation Agreement,” a copy of which is attached to and incorporated herein by reference), whereby the parties agreed to keep confidential all the confidential information provided or obtained in the course of their investigation for a period of two (2) years, and not to negotiate with others on a competing project within the “Project Area” for a period of one (1) year; and

WHEREAS, the Tribe provided a limited waiver of sovereign immunity for enforcement of the Project Evaluation Agreement by equitable or injunctive relief in the U.S. or State District Courts, with the Tribe's total monetary liability limited to One Dollar as previously authorized by the Legislature according to CLB02-17 (March 12, 2002), and which does not allow for the encumbrance of any Tribal assets; and

WHEREAS, the Tribal Executive Branch and Westmoreland have worked together under the Project Evaluation Agreement to, among other things: (a) identify markets for and discuss the Project with potential customers and participants; (b) assemble information on the Tribe's coal, wind, land and water resources that would be utilized for the Project; (c) complete preliminary conceptual studies on alternative power plant designs, transmission options and estimated costs; (d) consult with the Bureau of Indian Affairs on the Project and potential benefits available under the National Energy Policy Act of 2005, and to obtain extensions of other existing tax incentive programs; and (e) commission more detailed feasibility and cost studies in order to market and finance the Project, including a response to a Request for Proposals ("the "RFP") from a major potential customer that is due in early January 2006; and

WHEREAS, the parties' preliminary evaluation of the Project is positive, and further expenditure of money and effort is justified, the Chairman of the Executive Branch and Westmoreland have negotiated a "Framework Agreement" to further define the parties' relationship and their respective contributions, goals and objectives for the Project (a copy of which is attached to and incorporated herein by reference); and

WHEREAS, the Framework Agreement (a) continues the parties' obligations under the Project Evaluation Agreement; (b) limits the Tribe additional obligations to the reimbursing Westmoreland's costs from Project funds and to providing Westmoreland with a preferential opportunity to operate the coal mine if the Tribe's resources are later committed to a coal-fired power plant in the Project Area using a different developer; and (c) provides a limited waiver of the Tribe's sovereign immunity to allow Westmoreland to enforce of such obligations; and

WHEREAS, the Legislative Branch has authority and responsibility pursuant to its "powers and duties" in Article V, Section 2(c) of the Constitution to charter instrumentalities of the Crow Tribe for purposes of economic development, in Section 2(d) to "grant final approval or disapproval of items negotiated by the Executive Branch of Government pertinent to the sale, disposition, lease or encumbrance of Tribal lands, interests in lands or mineral assets," and in Section 2(f) 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, if the Tribe and Westmoreland determine that the Project is feasible, and prior to obtaining the financing for the Project, the Framework Agreement will be supplemented or replaced by more definitive agreements involving the encumbrance of Tribal resources, the chartering of Tribal instrumentalities, and limited waivers of the Tribe's sovereign immunity, and such definitive agreements will be subject to further approval of the Tribal Legislature and the Bureau of Indian Affairs; and

WHEREAS, although the current Framework does not commit or encumber the Tribe's land or mineral resources to the Project or require the chartering of any Tribal instrumentality at this time, the Executive Branch requests to the Legislature to express its overall support for the Project through this Resolution, based on the information currently available, and to approve the limited waiver of sovereign immunity contained in the Framework Agreement; and

WHEREAS, at the time this Joint Action Resolution was submitted to the Legislature in order to comply with Article V, Section 7 of the Constitution, the parties had reached substantial agreement on the draft Framework Agreement submitted with the Resolution, and were in the process of finalizing the remaining legal terms of the Agreement, and the final Framework Agreement attached hereto has been reviewed by the Legislature;

NOW THEREFORE, BE IT RESOLVED BY THE LEGISLATURE AND THE EXECUTIVE BRANCH OF THE CROW TRIBE:

Section 1. That the "Framework Agreement" between the Crow Tribe and Westmoreland Coal attached hereto and incorporated by this reference, and the limited waiver of sovereign immunity contained therein, is hereby granted final approval pursuant to Article V, Section 2(f) of the Constitution and Bylaws of the Crow Tribe.

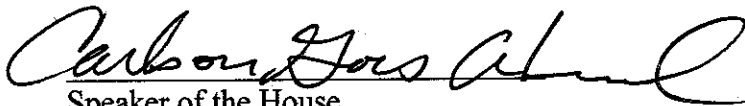
Section 2. That the authority of the Chairman of the Executive Branch to enter into the Project Evaluation and Confidentiality Agreement dated June 2, 2005, including the limited waiver of sovereign immunity contained therein, is hereby reaffirmed and ratified.

Section 3. That the Chairman of the Executive Branch is authorized to sign and execute the Framework Agreement on behalf of the Crow Tribe, and to take such further actions as are necessary to implement and administer the Agreements.

Section 4. That the final approval granted herein is effective on the date of approval of this Resolution.

CERTIFICATION

I hereby certify that this Joint Action Resolution granting final approval of the Framework Agreement between the Crow Tribe and Westmoreland Coal Company was duly approved by the Crow Tribal Legislature with a vote of 16 in favor, 1 opposed, and 0 abstained and that a quorum was present on this 10TH day of January, 2006.



Speaker of the House
Crow Tribal Legislature

Attest:



Secretary, Crow Tribal Legislature

EXECUTIVE ACTION

I hereby

approve,

veto

this Joint Action Resolution granting final approval of the Framework Agreement between the Crow Tribe and Westmoreland Coal Company pursuant to the authority vested in the Chairman of the Crow Tribe by Article V, Section 8 and Article IV, Sections 3(a) and 3(k) of the Constitution and Bylaws of the Crow Tribe of Indians on this 11 day of January, 2006.



Chairman, Executive Branch
Crow Tribe of Indians

Bill or Resolution Number JAR06-01 Introduced by: Executive Date of Vote: 01/10/2006

<u>Representative:</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
L. Plain Bull	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Goes Ahead	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
O. Costa	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
V. Crooked Arm	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
M. Not Afraid	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
R. Iron	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. House	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Fighter	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
L. Costa	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
L. Hogan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
S. Fitzpatrick	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
K. Real Bird	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
M. Covers Up	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
R. Old Crow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
L. Not Afraid	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Shane	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Wilson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Stone	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>16</u>	<u>1</u>	<u>0</u>

Result of Vote:

Passed

Not Passed

Tabled

Veto Override

Signature Officer: Carlton D. Smith Date: Jan. 10, 2006

FRAMEWORK AGREEMENT

**CONCERNING THE DEVELOPMENT OF
ELECTRIC GENERATING FACILITIES
USING NATURAL RESOURCES
UNDER THE OWNERSHIP OR CONTROL OF
THE CROW TRIBE OF INDIANS**

This FRAMEWORK AGREEMENT is entered into as of the 11 day of January, 2006 by and between the **Crow Tribe of Indians** (hereinafter, the "**Tribe**"), P.O. Box 159, Crow Agency, MT 59022, and **Westmoreland Coal Company** (hereinafter, "**Westmoreland**"), a company organized under the laws of the state of Delaware, with its principal office at 2 North Cascade Avenue, 14th Floor, Colorado Springs, CO 80903, together with its affiliates and subsidiaries.

WHEREAS, the **Tribe** wishes to develop natural resources owned or controlled by the **Tribe** on or near the Crow Indian Reservation, including the "ceded strip" (the "Reservation") for the purpose of generating and selling electric and thermal energy; and

WHEREAS, **Westmoreland** has expertise in the development of natural resources and the production of energy, including development and operation of coal mines and coal-fired power plants; and

WHEREAS, the **Tribe** and **Westmoreland** (the "**Parties**") wish to cooperate and collaborate to jointly pursue the Project as defined in this agreement; and

WHEREAS, the **Tribe** and **Westmoreland Power, Inc.**, have previously entered into a certain Project Evaluation and Confidentiality Agreement dated June 2, 2005 (the "Project Evaluation Agreement"), whereby they have, on a preliminary basis:

- (a) identified markets for and discussed the Project with potential customers and participants;
- (b) assembled additional information on the **Tribe's** resources that would be utilized for the Project; and
- (c) completed preliminary survey studies on the economics of alternative power plant sizes and designs, and transmission routes and estimated costs; and

WHEREAS, the **Parties'** preliminary evaluation of the Project is positive, and the **Parties** have determined that the Project's potential justifies the expenditure of substantial additional time and financial resources in order to bring the Project to the point of being able to obtain financing for the Project, including:

- (a) identifying specific sites for the Project's essential components;
- (b) completing detailed cost and environmental feasibility analyses; and
- (c) obtaining specific commitments from utility customers for the output of the Project; and

WHEREAS, recognizing that time is of the essence, the parties wish to set forth in further detail the terms of their joint efforts during the planning, organization and feasibility phase, which will be supplemented by more definitive agreements prior to finalizing the financing for the Project;

NOW, THEREFORE, the Tribe and Westmoreland agree as follows:

PART A. PARTIES' GENERAL OBJECTIVES AND RELATIONSHIP

1. The Project. (a) As used in this agreement, the "Project" consists of the development of and operation of a mine-mouth electric generating plant fueled by Tribally-owned coal (the "power plant") and located on or near the Crow Indian Reservation (including the "ceded strip") in the "Project Area" as defined in Section A.1 of the parties' Project Evaluation and Confidentiality Agreement dated June 2, 2005, together with related and ancillary facilities that the parties may determine to be necessary or desirable to enhance the overall economic return of the power plant, including but not limited to:

- (i) coal mine to supply Tribally-owned coal for the power plant;
- (ii) transmission lines to transport the power plant output to markets in Montana and the Pacific Northwest;
- (iii) water pipeline(s) to provide Tribally-controlled water for the power plant;
- (iv) co-generation and/or other facilities utilizing power, steam or heat generated by the power plant; and
- (v) pollution control materials and by-products of the power plant, including supply of limestone from the Reservation and utilization of carbon dioxide and ash by-products.

(b) The Parties recognize and agree that the development of power from wind energy, to which the Tribe has devoted a significant amount of time and effort, will likely be necessary or desirable to complement the Project, and that the total economic return to the Tribe may be enhanced if the power from wind energy on or near the Reservation is marketed as a component of the Project's output. The Tribe agrees that it will cooperate with Westmoreland to market the power from wind-energy facilities as part of the Project output, but if such marketing efforts show that power from wind energy is not important to the customers of the Project, or if it is

determined by the Parties that including wind power in the Project would cause unreasonable delay in the commercial availability of the wind power under review by the Tribe, the Tribe may commit its wind power project to another development partner, in which case the Tribe will take appropriate steps to closely coordinate its timing and marketing to take advantage of identified synergies with the Project.

(c) The Parties expressly agree that the Project will not include any conventional oil and gas or coalbed natural gas development, or development of the Tribe's coal resources outside the Project Area.

(d) In developing the Project, the Tribe and Westmoreland are both fully committed to maintaining a clean and healthful environment and protecting the land, air, water and the people of the Reservation and surrounding areas, including the use of best available pollution control technologies in all aspects of the Project design and operation, and provisions for implementing future control technologies as they become technically and economically feasible.

2. Tribe's Objectives. Westmoreland recognizes and agrees to assist the Tribe in achieving the Tribe's ultimate goals and objectives for the Project which include the following:

- (a) in conjunction with Westmoreland, retention of control over decisions concerning the development and operation of the Project;
- (b) majority equity ownership in the power plant, excluding the equity owned by the power purchasers, if any, as well as equity ownership in the coal mine and certain ancillary facilities, resulting in a steady stream of income to the Tribe representing a fair share of the value added by the Project to the resources contributed by the Tribe;
- (c) training, employment and contracting opportunities for Tribal members and their businesses so that:
 - (i) they will have a substantial role in the development and construction of the portions of the Project located on or near the Reservation; and
 - (ii) management and operation of the power plant and coal mine will be staffed primarily by Tribal members when and as qualified Tribal members are available for such management and operations with the support of effective, long-range technical education and job training programs;
- (d) enhance the value of the Tribe's other resources, including renewable energy resources by coordinating their development closely with the Project;

- (e) avoidance of risk to the overall financial viability of the Tribal Government, including protection of other Tribal assets and income other than the Tribal resources committed to the Project.

3. Westmoreland's Objectives. The Tribe recognizes and agrees to assist the Westmoreland in achieving the Westmoreland's ultimate goals and objectives for the Project which include the following:

- (a) a central role in the development of the Project and earning a customary development fee from the Project and/or the other Participants that fully compensates Westmoreland for its risk investment and opportunity cost of its resources dedicated to the Project;
- (b) a long-term mining contract to produce and deliver the coal needed by the power plant with customary compensation, subject to the employment objectives of the Tribe and subject to the right of the Tribe to acquire up to 50% of the equity ownership of the company that is formed to mine the coal at a price equal to a corresponding percentage of the capital invested by Westmoreland in such mining company, as described in section 4 (d) below;
- (c) an equity interest in the power plant equal to one-half of the Tribe's equity interest in the power plant;
- (d) a contract to operate and maintain the power plant with customary compensation, subject to the employment objectives of the Tribe and subject to the Tribe's ownership of 50% of the company that is formed to operate and maintain the power plant and the longer-term goal of transferring these contractual obligations and majority ownership of the power plant operating company to the Tribe when it is feasible to do so;
- (e) avoidance of financial risk beyond planned amounts committed to the Project in advance.

4. General Relationship of the Parties. (a) The parties intend by this agreement to work together as co-venturers to bring the Project to point where the Parties are able to mutually determine whether the Project can be marketed, financed and constructed on terms acceptable to both Parties, and, if so, to enter into further definitive agreements to develop the Project. The Parties acknowledge and affirm that their mutual interests in pursuing the Project are closely aligned, and that while this agreement is in effect, they will deal with each other openly and make reasonable efforts to protect each other's interests as well as their joint interests.

(b) The Parties recognize that in order to market or finance the Project, it will likely be necessary or desirable for other parties, particularly customers of the Project (the "other Participants"), to acquire equity interests in the Project, and that it may be necessary for the Parties to compromise some of their respective Objectives in order to obtain investments from such other Participants and/or to control the Parties' respective risks. The Parties agree that regardless of their respective equity interests in the Project, neither Party will make or support any significant decisions related to the Project over the objection of the other Party.

(c) The Parties anticipate that each may form one or more special purpose companies for the purpose of developing various portions of the Project, and such companies will become parties to this agreement or a supplemental agreement.

(d) The Parties plan to form a special company to mine the coal that will supply the coal to the Project. This special company will enter into a lease with Tribe and pay a market-based royalty to the Tribe for the coal that is produced on Tribal lands or Trust lands. This special company will also enter into a life-of-mine coal mining contract with Westmoreland or one of its subsidiaries to mine the coal at a market-based mining fee. As mining contractor, Westmoreland will be subject to the hiring preferences and other Tribal objectives expressed herein, and will be subject to the control of the Board of Directors of the special company. The Tribe shall have the right to own up to 50% of the special company, provided that the Tribe shall bear a portion of the capital expenditures and operating expenditures of the special company as they are incurred, and shall be entitled to a portion of the profits, in the same proportion as the Tribe's equity ownership in the special company.

(e) At the time of financial closing, any management and/or development fees payable to either of the Parties shall be aggregated and distributed as follows: First, to reimburse the Tribe for any of its direct and indirect costs incurred prior to financial closing which have not otherwise been reimbursed, second, to reimburse Westmoreland for any of its direct and indirect costs incurred prior to financial closing which have not otherwise been reimbursed, and third, the remaining amount, if any, will be distributed to Westmoreland and the Tribe in the ratio of 2 to 1, respectively.

(f) If either Party chooses to forego an opportunity to acquire a portion of the equity ownership in any company contemplated herein—for example, if a Party determines that the investment risk in a particular company is too great in light of the required capital—the other Party shall have the right to acquire the foregone equity interest before it is offered to any third party, and such equity interest may not be sold to a third party at a price that is better than the price at which it was offered to the other Party.

PART B. PARTIES' ROLES AND RESPONSIBILITIES.

1. The Project shall be developed jointly by the Tribe and Westmoreland, and neither party shall implement or develop such a Project without the involvement of the other party on the terms contemplated herein.

2. **Westmoreland** and the **Tribe** shall cooperate and assist each other in all matters of mutual interest with respect to a Project, such as all documents to be used in the financing of the project and other normal business activities required to achieve financial closure, employment of personnel, acquiring all equipment and supplies necessary for the conduct of business, maintenance of bank accounts, and making of necessary purchases.

3. **Westmoreland** will be responsible for the development of the business plan for the Project. A business plan, including a preliminary Project cost estimate, will be completed as soon as possible after the execution of this agreement. The projected cost of the Projects will be refined upon completion of the final Project documentation.

4. Each party acknowledges that it will receive from the other party information about Projects and proposed Projects, including technical and business information and financial projections relating to the Projects. Each party agrees to hold such information in strict confidence and use it solely and exclusively for the purpose of internal review.

5. Responsibilities of the parties shall be:

(a) **Westmoreland** shall be the lead in the development of all necessary documentation, including site-specific feasibility studies, that will allow the formation the Project and the subsequent borrowing of funds from agreed-upon lenders.

(i) **Westmoreland** shall be responsible for the daily operation and development of the Project, establishing necessary documentation, and setting up offices, as **Westmoreland** determines to be necessary, with the **Tribe's** agreement;

(ii) **Westmoreland** shall be responsible for the day-to-day management of the Project; and

(iii) **Westmoreland** shall be entitled to receive management fees or any other types of fees for management and/or operation as customarily occur in the normal course of business for such a Project. Management fees earned by **Westmoreland** prior to financial close for a Project shall be paid at financial close from Project funds provided by lenders and other Participants. **Westmoreland** shall be entitled to assign its interest in the development fee to a lender for the purpose of securing financing.

(iv) **Westmoreland** shall also be entitled to a significant equity interest in the Project from the **Tribe**, prior to and/or subsequent to financial closing of the Project. **Westmoreland** may assign such interest to a lender for the purpose of securing financing, but may not transfer such interest to another party until after the financial closing.

- (b) **The Tribe shall provide the following support and services:**
- (i) **Technical and service personnel as mutually determined to be necessary for the Project and to the Tribe's employment objectives, subject to availability of Tribal personnel and funds;**
 - (ii) **Representatives to assist Westmoreland in negotiation with the Project off-takers, equipment suppliers and other parties involved in Project activities. Westmoreland and the Tribe shall coordinate these activities in a manner that is convenient to both parties.**
 - (iii) **Provide access to permits and licenses, etc. for review to assist Westmoreland in any required modification of the same.**
 - (iv) **The Tribe shall cause the transfer of all necessary licenses, permits, approvals, etc., whether whole or partial, to the Projects for the purposes contemplated by this Framework Agreement, subject to approvals required by Federal law.**
 - (v) **Both on its own initiative in connection with other Tribal matters and together with Westmoreland, work with Federal, State, local and other Tribal Governments to facilitate and obtain approvals, consents and support for (or non-opposition to) the Project, the use of Tribal resources committed to the Project, and the benefits of government grants, federal tax and other energy development incentives (including amendments to existing legislation for application to the Project).**
 - (vi) **On or before the time that the Project has been financed, commit the Tribal resources necessary for the Project, including coal, water, and land, pursuant to further definitive agreements and subject to final approval according to the Tribal and Federal law, as applicable.**
 - (vii) **The Tribe shall be entitled to the entire equity interest in the Project, except as made available to Westmoreland as provided above and as otherwise necessary to market the Project's output, fully finance the Project, and/or to control the Tribe's risk.**
 - (viii) **The Tribe shall also be entitled to a portion of the management fees and/or development fees payable at financial closing of the project sufficient to reimburse the Tribe for its direct and indirect costs incurred prior to closing, and at least equal to Westmoreland's equity in the power plant expressed as a percentage of the Tribe's and Westmoreland's combined equity in the power plant immediately after closing, as described in section 4(e) of Part A above.**

6. **Westmoreland**, in consultation with the **Tribe**, shall establish policies, procedures, systems and specifications for the following:

- (a) Hiring and terms of employment for local personnel. Preference shall be given to hiring members of the **Tribe**.
- (b) Purchase of equipment and supplies.
- (c) Engineering, construction and operations and maintenance services relating to the Projects including engagement of one or more subcontractors as required.
- (d) Lending, banking and other financing arrangements.
- (e) Accounting and financial reporting.
- (f) Legal compliance and litigation.
- (g) Publicity, advertising and public relations.
- (h) Procuring other services that are necessary or desirable to develop and operate the Project.

7. The **Tribe**, assisted by **Westmoreland**, agrees to seek modifications to and/or obtain any and all licenses and permits for the Projects, as necessary, to upgrade, install, maintain and operate the Projects for not less than twenty-five years beginning at the Commercial Operation Date.

8. Upon completion of a business plan that establishes the economic viability of the Project, **Westmoreland** and the **Tribe** will commence negotiations on further definitive agreements and any other contracts necessary to successfully implement the project.

9. In all actions relating to any Project, **Westmoreland** agrees to respect the **Tribe's** aspiration to make this a predominantly Tribal Project, to preserve the integrity of Tribal lands, including protection of cultural and historic sites and artifacts, and to design and develop the Projects in a manner that recognizes the customs, rights, privileges, sovereignty and policies of the **Tribe**.

PART C. GENERAL TERMS.

1. Nothing in this agreement shall be construed as selling, alienating, transferring, or otherwise encumbering any Tribal property or assets, including but not limited to resources held in trust for the **Tribe** by the United States. Prior to irrevocably committing or encumbering any trust resources, the Parties will enter into a further definitive agreement subject to approval pursuant to Tribal and Federal law.

2 In the event of a dispute between the parties as declared in either party's written notice, the CEO of Westmoreland or his designated representative and the Chairman of the Tribe or his designated representative shall meet, and in good faith make every effort to resolve the dispute. If after 60 days of this notice, the dispute is not resolved, either party may declare the Agreement to be terminated and the parties shall proceed in accordance with Section C.7(b).

3. Each party hereto shall be responsible for its own expenses until such time as a further definitive agreement between the parties is prepared for the Project, and all or part of the Project financing is obtained. The parties shall avail themselves of grants, loan guarantees and loans offered by the state and federal government for the development of energy projects to the maximum extent desirable.

4. After execution of this Framework Agreement, each party pledges to use its best efforts to perform all further acts and execute any other documents required to allow for the development and implementation of Projects in a technically competent and commercially viable manner.

5. The parties confirm that each of them has the right, authority, power and ability to enter into this Framework Agreement; provided, however, that prior to approval of the limited waiver of sovereign immunity in Section C.8 of this agreement by the Crow Tribal Legislature, this agreement shall only be binding on the Executive Branch officials acting in their official capacities.

6. The terms and conditions of the Project Evaluation Agreement shall remain in full force and effect following execution of this Framework Agreement. Notwithstanding termination of this agreement or the Project Evaluation Agreement, Sections A.3 and B.6 of the Project Evaluation Agreement shall survive termination and remain in full force and effect for the periods stated therein.

7. **Term.** (a) The term of this Framework Agreement shall be one (1) year from its date, unless earlier terminated as provided in subsection (b) below, and from month to month thereafter until terminated upon thirty (30) days' notice.

(b) Either party may terminate this Framework Agreement during the initial term upon sixty (60) days' written notice to the other, provided, however, that prior to the effective date of termination, the parties shall meet and in good faith make every effort to resolve the reason for the termination as provided in Section C.2. In the event that the Parties have not determined to continue the agreement or satisfactorily resolved any dispute (or entered into a new or modified agreement) within 60 days following the notice, this Agreement shall be deemed terminated. The provisions of Subsection C.7(c) below shall survive the termination and remain in full force and effect for the periods stated therein.

(c) If this Framework Agreement is terminated by either party for any reason without being replaced by a further definitive agreement between the Parties, and the Tribe successfully obtains financing for development of a power plant in the Project Area within 5 years after the

termination date: (i) **Westmoreland** shall be entitled to reimbursement for the direct and indirect costs incurred by it the performance of its obligations under this Agreement prior to the date of Termination of this Agreement, provided that at the time of termination, Westmoreland has made the product of its work on the Project available to the Tribe and released the Tribe from any confidentiality restrictions regarding the use of the information; and (ii) if the power plant is coal-fired, **Westmoreland** shall be given the first opportunity to secure a long-term contract with the **Tribe** and the Project to operate the coal mine and supply the power plant. The right of first opportunity referred to in the foregoing sentence shall be implemented as follows: (1) Westmoreland and the company managing the power plant shall attempt to negotiate a long-term coal supply agreement that is acceptable to both parties, (2) if a negotiated agreement cannot be reached within 60 days, a mutually acceptable independent expert shall be appointed within 30 days to decide upon fair and reasonable terms for a long-term coal supply agreement, (3) the independent expert shall be provided with data and information from both parties within 60 days of appointment and shall make a proposal within 120 days of appointment, (4) Westmoreland shall either accept the terms proposed by the independent expert within 10 business days of receiving the proposal or, if it does not so accept, the project company shall be free to enter negotiations with another party, subject to the right of **Westmoreland** to obtain the contract by accepting the final terms negotiated with the other party within 30 days after written notice of such terms to **Westmoreland**, and (5) if the Tribe's coal resources are made available on terms other than a lease at market lease rates, Westmoreland shall have a first opportunity to obtain a mining agreement for the Tribal coal rights, to be implemented similarly to items (1), (2) and (4) above, but without any terms being set by an independent expert.

8. Arbitration and Limited Waiver of Sovereign Immunity

(a) The Parties agree that any dispute or claim as to the interpretation, application, quantification or administration of the provisions of Section C.7(c) of this Agreement shall be resolved exclusively by binding arbitration as provided for in this Section. The decision of the arbitrators shall be final and binding upon the parties.

(i) The Commercial Arbitration Rules of the American Arbitration Association (the "AAA") shall be applicable, except as modified herein, and provided that nothing in the AAA Rules shall be construed as effecting or enlarging any waiver of the **Tribe's** sovereign immunity beyond the limited waiver expressly provided in this Section.

(ii) In the event of arbitration, Westmoreland shall select one arbitrator, the **Tribe** shall select one arbitrator, and those two arbitrators shall select a mutually satisfactory third arbitrator. Westmoreland and the **Tribe** shall select their respective arbitrators within thirty (30) days of receipt of the arbitration demand. The two arbitrators shall select a third, or announce their inability to do so, within thirty (30) days of their selection. In the event the two arbitrators selected by the parties are unable to agree on a third arbitrator, the parties agree that they shall request the AAA to appoint a third arbitrator. The parties agree that none of the arbitrators shall be enrolled members of the

Tribe or employees, advisors, stockholders, or bondholders of Westmoreland or any organization affiliated with Westmoreland.

(iii) Unless otherwise agreed, arbitration hearing shall be held in Billings, Montana. The costs of arbitration proceedings shall initially be paid by the party requesting the arbitration, but ultimate responsibility for such costs shall be determined by the arbitrators in the course of their decision and/or award according to the extent to which each party prevailed on the issues subject to the arbitration. Each party shall be responsible for its own attorneys' fees.

(iv) If either party fails to comply with the arbitrators' decision, the other party may file an action to enforce the arbitration award in the U.S. District Court for the District of Montana (Billings Division), or if such court lacks jurisdiction, the Montana Twenty-Second Judicial District Court for Big Horn County, Montana.

(b) The **Tribe** specifically and unequivocally waives its sovereign immunity for the limited purpose of enforcing its obligations under Section C.7(c) of this Agreement, provided, however, that the waiver shall be limited as follows:

(i) The **Tribe's** waiver shall apply only to enforcement of the **Tribe's** obligations under Section C.7(c) of this Agreement, to compel the **Tribe** to arbitrate any dispute concerning those obligations pursuant to the procedures in this Section, and to enforcement of the result of any such arbitration. Any court action to compel arbitration or enforce the arbitrators' award shall be brought in the U.S. District Court for the District of Montana, or if such court lacks jurisdiction, in the Montana Twenty-Second Judicial District Court for Big Horn County, Montana.

(ii) The **Tribe's** waiver shall extend only to Westmoreland and to no other parties;

(iii) Nothing herein shall permit or authorize the sale or transfer of any property or assets held by the United States in trust for the **Crow Tribe**;

(iv) The **Tribe's** monetary liability shall be limited to reimbursement of Westmoreland's costs as described in Section C.7(c)(i), and the costs of the arbitration as awarded by the arbitrators, both as determined by the arbitrators, and shall not include any additional damages;

(v) The source of payment of any such monetary award against the **Tribe** shall be limited to the proceeds of financing obtained for the development of a power plant in the Project Area (if any); and

(vi) Other relief available pursuant to the **Tribe's** waiver shall be limited to injunctive relief providing for enforcement of Westmoreland's rights with respect to mining coal for any such power plant as described in Section 7(c)(ii).

Pursuant to the Crow Tribal Constitution and Bylaws, this limited waiver of the Tribe's sovereign immunity shall only be effective upon approval by the Crow Tribal Legislature. A true and correct copy of Joint Action Resolution JAR06-01, enacted by the Crow Tribal Legislature on January 10, 2006, approved by the Chairman of the Executive Branch on January 11, 2006, and approving the foregoing limited waiver of sovereign immunity is attached hereto as Exhibit "A".

9. **Notices.** Unless otherwise specified by prior written notice, all formal notices required under this Agreement shall be in writing and delivered to or sent by certified mail with return receipt requested, postage prepaid, to the address of the party as set out below, and shall be effective upon receipt:

(a) If to the Crow Tribe:

Chairperson
Crow Tribe of Indians
P.O. Box 159
Crow Agency, MT 59022

and

Crow Tribe Legal Department
P.O. Box 340
Crow Agency, MT 59022

(b) If to Westmoreland:

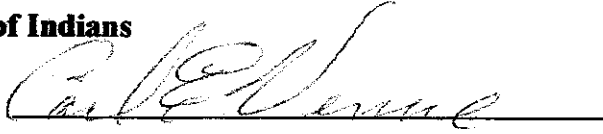
Senior Vice President, Power
Westmoreland Coal Company
2 North Cascade Ave., 14th Floor
Colorado Springs, CO 80903

10. This Framework Agreement may be executed in a number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. Any counterpart or other signature delivered via facsimile by any party shall be deemed for all purposes as being a good and valid execution and delivery of this Framework Agreement by that party.

This Framework Agreement has been executed on the date first above written by the duly authorized representatives of the parties hereto.

Crow Tribe of Indians

BY:
Signature



Carl E. Venne

Carl E. Venne
Chairman

Westmoreland Coal Company

BY:
Signature



Christopher K. Seglem
President and CEO

Crow Tribe of Indians

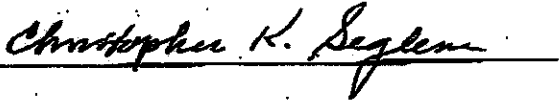
BY:
Signature



Carl E. Venne
Chairman

Westmoreland Coal Company

BY:
Signature



Christopher K. Seglem
President and CEO