

FUEL TAX COOPERATIVE AGREEMENT  
BETWEEN THE  
CROW TRIBE AND THE STATE OF MONTANA

THIS COOPERATIVE AGREEMENT is made and entered into this 10<sup>th</sup> day of

October, 1992, by and between the Crow Tribe of Indians, Crow Agency, Montana, hereinafter referred to as "Tribe" and the State of Montana, Department of Transportation, hereinafter referred to as "State."

The Crow Tribal Council is the duly authorized governing body and is empowered to enter into this Agreement by Article VI, Section 10, and Article VII, Section 2, of the Crow Tribal Constitution.

The State of Montana is authorized pursuant to Ch. 772, Laws of 1991, and the State-Tribal Cooperative Agreements Act, 18-11-101, M.C.A., et seq., to enter into agreements with Tribal governments with respect to taxes on gasoline motor fuels.

THE TRIBE AND THE STATE AGREE AS FOLLOWS:

1. Purpose. The purpose of this Agreement is to avoid undue legal controversy and possible litigation over the taxation of Indians purchasing gasoline motor fuels on the Crow Indian Reservation, hereinafter referred to as "Reservation," to avoid dual taxation by the Tribe and the State.

2. State Law. The State imposes a tax on gasoline motor fuels distributed within the State's jurisdiction under Part 2, Chapter 70, Title 15, Montana Code Annotated. The State shall notify the Tribe in writing of any changes or amendments to these statutes which the State believes may impact this Agreement.

3. Tribal Law. The Tribe shall keep in force a tax code imposing taxes equal to the State gasoline license tax, which tax shall apply to gasoline sold to all persons within the Tribe's jurisdiction in a manner similar to the Montana taxes. The Tribe agrees to provide the State with a current copy of the Tribal Tax Code as it may be amended from time to time.

4. Administration and Collection of Taxes. The Tribe and State agree that gasoline sold on the Reservation shall not be subject to both the State and Tribal tax but shall be subject to one tax. The State shall collect all gasoline taxes on the Reservation and shall remit to the Tribe the Tribal gasoline tax collected on gasoline sold as determined by the formulas described below.

a. The total amount of remittance distributed to the Tribe in each calendar quarter shall be as follows:

(1) Until the Montana Legislature and Crow Tribal Council both enact legislation requiring all service stations on the Reservation to report all sales of gasoline to the Department of Transportation, the Tribe shall receive the following amount:

(a) 89.8% of the average per capita gasoline license taxes paid after the average per capita agricultural refunds, both as last calculated by the Montana Department of Transportation on annual basis, multiplied by the number of enrolled tribal members residing on the Crow Indian Reservation as last certified by the Billings Area Office of the Bureau of Indian Affairs. Provided, however, this number shall be adjusted retroactively to the effective date of this agreement upon the completion of the survey or receipt of other legitimate evidence as set forth in subparagraph (c) herein.

(b) For the balance of Calendar year 1992, 89.8% of the average per capita gasoline license taxes paid after the average per capita agricultural refunds, both as last calculated by the Montana Department of Transportation on annual basis, shall be \$94.30, and the number of enrolled tribal members residing on the Crow Indian Reservation shall be 6313.

(c) The Tribe reserves the right to adjust the above percent (89.8%) upwards if it can establish by surveys from reputable firms or persons or by other legitimate evidence that the average per capita gasoline consumption by Crow Tribal members residing on the Crow Indian Reservation is more than 120% of the average per capita gasoline consumption in the State of Montana except that the State will accept \$107.00 as the minimum total dollars to be multiplied by the number of enrolled tribal members residing on the Reservation as a result of this survey no matter what the survey results or other evidence shall show. The adjustment resulting from this survey or other evidence including the \$107.00 floor shall be applied retroactively to the effective date of this agreement (October 1, 1992).

(2) The Tribe shall submit to the Crow Tribal Council for adoption, and the Tribe and the State shall support enactment by the Montana Legislature of, legislation to require all service stations on the Reservation to report all sales of gasoline to the Department of Transportation.

b. The State shall pay the monies due to the Tribe under this Agreement no later than thirty (30) days from the end of each calendar quarter. The state will include with each payment a statement showing how the distribution was determined for that quarter.

c. Payments will start within thirty (30) days from the end of the first whole or partial calendar quarter after the effective date of this Agreement and will continue until the expiration or the termination of this Agreement as provided in Paragraph 5 or as required by law. For the purposes of this Agreement, calendar quarter shall begin on the following dates: January 1, April 1, July, and October 1 of each year.

d. The amounts payable to the Tribe shall be in the form of a warrant issued by the State of Montana payable to the Tribe and mailed to the Chairman of the Tribe.

5. Term. This agreement shall be for a term of five years, subject to the renewal provision of Paragraph 8, unless terminated in writing by either party upon not less than thirty (30) days' written notice to the other. In the event of termination by the State prior to the end of the term, the State shall be obligated to remit the full amount payable to the Tribe provided for in this Agreement for that period of time up to and including the effective date of termination. This obligation of the State shall survive any termination of this Agreement.

6. Audits. Either party may examine or audit the records of the other party to determine the accuracy of the statements or representations called for in this Agreement. The right of examination or audit shall exist during the term of the Agreement and for a period of one year after the date of any termination or expiration of this Agreement.

7. Effective Date. Subject to approval by the Revenue Oversight Committee and the Attorney General, this Agreement shall be effective on the 1st day of October, 1992, so long as the Tribal Code described in Paragraph 3) is adopted by the Crow Tribal Council.

8. Amendments, Renegotiation and Renewal.

a. This Agreement may be amended only by written instrument signed by

the parties.

b. Six months prior to expiration of the initial terms of this Agreement, the parties shall meet to negotiate in good faith a renewal of the Agreement for an additional five-year term. During negotiations for renewal, the parties will seek to agree on a percentage for distribution of tax revenues on a similar basis as that provided for in Paragraph 4(a)(1), in light of the circumstances existing at the time, including: (1) the total

population and Indian population of the Reservation as determined by the latest decennial census, (2) the population of Indians residing on the Reservation who are enrolled in the Crow Tribe, (3) the portion of state tax revenues distributed to local governments, (4) the administrative costs to the State of collecting both taxes and distributing the Tribe's share to the Tribe, and (5) the average consumption of gasoline by Crow Indians living on the Reservation as a percent of the average per capita gasoline consumption in the State of Montana.

9. Reservation of Rights and Negative Declaration. The State and Tribe have entered into this Agreement in part to resolve a legal dispute and avoid litigation. The parties agree that by entering into this Agreement, neither the State nor the Tribe shall be deemed to have waived any rights, arguments or defenses available in litigation on any subject. This Agreement is specifically not intended to reflect or be viewed as reflecting in this or any context either party's position with respect to the jurisdictional authority of the other. Nothing in this Agreement or in any conduct undertaken pursuant thereto shall be deemed as enlarging or diminishing the jurisdictional authority of either party except to the extent necessary to implement and effectuate the Agreement's terms. This Agreement, conduct pursuant thereto or conduct in the negotiations or renegotiations of this Agreement, shall not be offered as evidence, otherwise referred to in any present or future litigation, or used in any way to further either party's equitable or legal position in any litigation. By entering into this Agreement, neither the State nor the Tribe forfeit any legal rights to apply their respective taxes except as specifically set forth in this Agreement. This Agreement does not apply to any state tax collected other than the motor fuels tax as provided in Sections 15-70-201 through 236, M.C.A., 1991. It does not apply to any other taxes or fees of any nature collected by the State. This Agreement does not apply to any other tax collected by any other agency or subdivision of the State of Montana.

10. Notices. All notices and other communications required to be given under this Agreement by the Tribe and the State shall be deemed to have been duly given when delivered in person or posted by United States certified mail, return receipt requested, with postage prepaid, addressed as follows:

a. If to the Tribe:

Chairman  
Crow Tribal Council  
P. O. Box 159  
Crow Agency, MT 59022

b. If to the State:

Director of Transportation  
2701 Prospect Avenue  
Helena, MT 59620

Attorney General  
State of Montana 215  
North Sanders Helena, MT  
59601-1401

Notices shall be considered given on the date of mailing.

APPROVED PURSUANT to Section 18-11-105, M.C.A. (1991).

DATED this 10<sup>th</sup> day of October, 1992.

CROW TRIBE OF INDIANS

By /s/ Clara Nomee  
CLARA NOME, Madam Chairman  
Crow Tribal Council

ATTEST:

By /s/ Blain Small

DATED this 22<sup>nd</sup> day of October, 1992.

STATE OF MONTANA

/s/ Marvin Dve  
Marvin Dve, Director  
Department of Transportation  
1/13/93  
Date of Director's Signature