

JULY 2017 CROW TRIBAL LEGISLATURE

JOINT ACTION RESOLUTION NO. JAR 17-16

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 COAL BOARD GRANT CONTRACT FOR THE APSAALOOKE WATER AND WASTEWATER AUTHORITY PHASE 3C.”

WHEREAS, the Crow Tribe, on behalf of the Apsaalooke Water and Wastewater Authority (“AWWWA”), has been awarded a grant from the Montana Coal Board pursuant to Montana Code Annotated § 90-6-201, *et seq.*, in the amount of \$200,000 for AWWWA Phase 3c wastewater infrastructure improvements in Crow Agency in Contract # MT-CB-17-0787, a copy of which is attached hereto and incorporated by reference (the “Coal Board AWWWA Grant Contract”); and

WHEREAS, pursuant to Mont. Code Ann. § 90-6-209(2)(a), the Coal Board may not approve a grant to an Indian Tribe unless the Tribe has agreed:

“(i) to waive its immunity from suit on any issue arising from the transaction of a grant obtained under this part; and

“(ii) to the adjudication of any dispute arising out of the grant transaction in the district court of the first judicial district of the state of Montana[.]” and

WHEREAS, the in order to receive the funding under the Coal Board AWWWA Grant Contract, the Crow Tribe’s limited waiver of sovereign immunity set forth in Sections 32 and 34 therein must be approved by the Crow Tribal Legislature; 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, receiving the funding provided by the Coal Board AWWWA Grant Contract is in the best interests of the Crow Tribe, and the limited waiver of sovereign immunity required by Montana law is necessary for the business purpose of effectuating the Coal Board AWWWA Grant Contract;

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


Section 1. That Crow Tribe’s limited waiver of sovereign immunity set forth in Sections 32 and 34 of the Coal Board AWWWA Grant Contract # MT-CB-17-0787, attached hereto 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 entitled “**RESOLUTION APPROVING THE CROW TRIBE’S LIMITED WAIVER OF SOVEREIGN IMMUNITY IN THE MONTANA COAL BOARD GRANT CONTRACT FOR THE APSAALOOKE WATER AND WASTEWATER AUTHORITY 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 July, 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 MONTANA COAL BOARD GRANT CONTRACT FOR THE APSAALOOKE WATER AND WASTEWATER AUTHORITY 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

"RESOLUTION APPROVING THE CROW TRIBE'S LIMITED WAIVER OF SOVEREIGN IMMUNITY IN THE MONTANA COAL BOARD GRANT CONTRACT FOR THE APSAALOOKE WATER AND WASTEWATER AUTHORITY PHASE 3C."

Bill or Resolution: JAR17-16 **Introduced by:** Chairman AJ Not Afriad, 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 7-21-17
 Senator Eric Birdinground Date
 Speaker of the House

Gordon Real Bird, Jr.
 Senator Gordon Real Bird, Jr. Date
 Secretary of the House

MONTANA COAL BOARD GRANT CONTRACT

CONTRACT #MT-CB-17-0787 CROW TRIBE OF INDIANS

This Contract is entered into by the Crow Tribe of Indians (the Grantee), and the Montana Coal Board (the Board).

PREAMBLE

Indian Tribes are sovereign nations and a unique government-to-government relationship exists between the Crow Tribe of Indians and the State of Montana (the "Parties"). The best interests of the Indian Tribes and the State of Montana will be served by engaging in government-to-government relationships and respectfully recognizing the rights, duties and privileges of both Tribal and State citizenship. The State of Montana and Indian Tribes working together in government-to-government relationships and engaging in Agreements for the benefit of Indian and non-Indian residents promotes effective Tribal-State relations.

This agreement demonstrates a commitment by the Parties to implement this government-to-government partnership with respect to the provision of services to assist the Tribes in the administration of a Montana Coal Board grant to Crow Tribe of Indians.

The Parties agree to perform their respective duties and responsibilities under this Agreement in good faith and in a spirit of cooperation to accomplish the purpose of completing phase 3c of their wastewater system improvement project.

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

Section 1. PURPOSE

The purpose of this Contract is to provide funding for project activities approved by the Board for which the Grantee has applied for grant funds pursuant to Sections 90-6-201 et seq., Montana Code Annotated (MCA).

Section 2. AUTHORITY

This Contract is issued under authority of Title 90, Chapter 6, Part 2, MCA, the State-Tribal Cooperative Agreements ACT, 18-11-101, et seq., MCA, and the Administrative Rules of Montana, Title 8, Chapter 101. The Board is attached to the Department of Commerce (the Department) for administrative purposes under Section 2-15-1821, MCA. The Department provides staff for the Board, and the Department and its staff are specifically authorized to direct and supervise the budgeting, recordkeeping, reporting, and related administrative and clerical functions of the Board with respect to this Contract. (Section 2-15-121, MCA.)

The Grantee warrants that it has requested and received approval of this transaction from the Secretary of the United States Department of Interior, or a finding by the Secretary that such approval is unnecessary.

Section 3. APPLICATION INCORPORATED BY REFERENCE

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

Section 4. ACCEPTANCE OF BOARD REQUIREMENTS

- (a) The Grantee shall comply with all applicable local, state, and federal laws, regulations, ordinances, and resolutions, and all administrative directives and procedures established by the Board and/or the Department, including all of the provisions, guidelines, and requirements set forth on the Board's website at: <http://comdev.mt.gov/Boards/Coal>.
- (b) The Grantee agrees that all contracts and subcontracts entered into for the completion of the activities described in Section 6 SCOPE OF WORK will require such contractors and subcontractors to also comply with all applicable local, state, and federal laws, regulations, ordinances, and resolutions; all administrative directives and procedures established by the Board and/or the Department; and all applicable design standards and generally accepted industry standards.
- (c) The Grantee agrees that the Project will adhere to all applicable design standards required by the Department of Environmental Quality (DEQ) and obtain all applicable federal, state, and local permits required for the Project. If no DEQ standards are applicable to the Project, the Grantee agrees that the Project will adhere to generally accepted industry standards, such as *Recommended Standards for Wastewater Facilities* or *Recommended Standards for Water Works*, published by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, latest edition.
- (d) The Grantee expressly agrees to repay to the Board any funds advanced under this Contract that the Grantee, its contractors or subcontractors, or any public or private agent or agency to which it delegates authority to carry out portions of this Contract, expends in violation of the terms of this Contract, the statutes and regulations governing the Board, or any applicable local, state, or federal requirements.

Section 5. EFFECTIVE DATE AND TIME OF PERFORMANCE

- (a) This Contract shall take effect upon execution by the parties and will terminate on March 31, 2019 or upon approval of Grantee's Project Completion Report by the Department, whichever is earlier, unless otherwise terminated in accordance with Section 23 of this Contract.

- (b) All authorized expenses to be reimbursed must be incurred by the Grantee between June 16, 2016 and prior to the date of termination of the Contract pursuant to Section 5(a). All Requests for Reimbursement must be submitted to the Department within 90 days after the Department's approval of the Grantee's Project Completion Report.
- (c) The activities to be performed by the Grantee will be completed according to the implementation schedule set forth in Exhibit A. The Grantee may modify the implementation schedule set forth in Exhibit A only upon obtaining the prior written approval of the Department.
- (d) The Department may grant a Contract extension upon request by the Grantee if the Department determines, in its sole discretion, that the Grantee has demonstrated progress toward completion of the Project; has engaged in a good faith effort to comply with the duties, terms, and conditions of this Contract, and that the failure to comply with any of those services, duties, terms, or conditions resulted from circumstances beyond the Grantee's control. A written request for an extension must be submitted at least 60 days prior to the termination date of the Contract.
- (e) This Contract will only take effect when the Crow Tribe's limited waiver of sovereign immunity herein has been approved by the Crow Tribal Legislature.

Section 6. SCOPE OF WORK

The Grantee shall engage in activities as set forth in the Grantee's application for Board assistance, including any written modifications resulting from the review of the applications by the Board and/or the Department. The Grantee will complete the Project and administer this Contract, using Coal Board funds for the major components of the Project:

- Replace approximately 6,700 feet of wastewater pipe with new PVC pipe
- Construct a new East Frontage Road lift station, and
- the administration of this Contract.

Section 7. BUDGET

- (a) The total amount to be awarded to the Grantee under this Contract will not exceed \$200,000.
- (b) A copy of the preliminary Project budget is attached hereto as Exhibit B and specifically incorporated herein by this reference. After construction bids are awarded or other major Project activity cost elements are determined, the Grantee shall provide the Department with a final Project budget, which, upon receipt by the Department and approval by the Board, will supersede the preliminary budget in Exhibit B and thereby be incorporated as part of this Contract.
- (c) For budget adjustments of ten percent (10%) or less between line items of the Board portion of Exhibit B, Project budget, Department approval of the Request for Reimbursement form

will constitute approval of the budget adjustment. The Grantee shall describe the rationale for a budget adjustment and note the adjustments in the Request for Reimbursement submitted to the Department. Budget adjustments in excess of 10% must be approved in advance by the Department.

- (d) Any authorized funds not expended under this grant by the completion date referenced in Section 5 or otherwise accounted for in accordance with the provisions of this Section will revert to the Department and will be used to finance other Board projects.

Section 8. METHOD OF REIMBURSEMENT

- (a) The Board and/or Department will not release any Coal Board funds to the Grantee until the Grantee has (1) obtained firm commitments for all other financial resources to be involved in the Project, as defined in Section 6 SCOPE OF WORK and Exhibit B, and (2) provided the Department with a copy of the Tribe's waiver of immunity from suit and venue in accordance with 90-6-209, MCA. The Grantee may not expend or obligate any Coal Board funds, other than for administrative purposes, until the Board and/or Department determine that these conditions have been satisfied.
- (b) The Board agrees to reimburse the Grantee on an actual cost basis for successfully completing the activities set forth in Section 6 SCOPE OF WORK as eligible Project costs are incurred on or after June 16, 2016 supported by adequate documentation submitted by the Grantee, including but not limited to all claims and vendor invoices, and upon approval by the Board and/or Department of the Grantee's Request of Reimbursement. In drawing against the reserved amount, the Grantee will follow the instructions supplied by the Department.
- (c) The Department agrees to reimburse the Grantee as set forth in this Section for successfully completing the activities set forth in Section 6 SCOPE OF WORK as eligible Project costs are incurred on or after June 16, 2016, supported by adequate documentation submitted by the Grantee, and upon the Department's approval of the Grantee's Request for Reimbursement. Unless previously agreed to in writing by the Department, the Department will not reimburse Grantee for any costs related to land acquisition, construction, construction inspection, or contingency line items in Exhibit B until Grantee demonstrates all applicable permits for the project have been obtained, as required in Section 4(c). In requesting reimbursement, the Grantee will follow the instructions supplied by the Department.
- (d) The Department will not reimburse the Grantee for any costs incurred prior to June 16, 2016; for any expenses not included in Exhibit B or an approved adjustment thereto; for any ineligible expenses as set forth in the Coal Board Program (the Program) application or guidelines; or for any expenses not clearly and adequately supported by the Grantee's records.
- (e) At the request of the Department, Requests for Reimbursement for contracted or subcontracted services must attach appropriate documentation demonstrating compliance with contract requirements.

- (f) As further set forth in Section 4 ACCEPTANCE OF BOARD REQUIREMENTS and Section 23 TERMINATION OF CONTRACT, if the Grantee fails to or is unable to comply with any of the terms and conditions of this Contract, any costs incurred will be the Grantee's sole responsibility and Grantee agrees to repay to the Board any funds advanced under the Contract.
- (g) Unless otherwise stated herein, the Department is allowed fifteen (15) working days to process a Request for Reimbursement once adequate supporting documentation has been received by the Department. The Grantee shall provide banking information at the time of Contract execution in order to facilitate electronic funds transfer payments.
- (h) If actual Project expenses are lower than projected by the Grantee in Exhibit B, or the Grantee obtains a greater amount of grant funds from other sources than as presented in the Project application, the Board, at its discretion, may reduce the amount of Coal Board grant funds to be provided to the Grantee under this Contract in proportion to the decrease in overall Project cost.
- (i) Department may, at its discretion, suspend the distribution of Program funds until the Grantee obtains a firm commitment of funds for the full Project budget.
- (j) If the Department determines that the Grantee has failed to satisfactorily carry out its responsibilities under this Contract or has breached the terms of this Contract, the Department may withhold reimbursement to the Grantee until such time as the Department and the Grantee agree on a plan to remedy the deficiency.
- (k) The Grantee may not use monies provided through this Contract as payment for Project costs that are reimbursed from other sources.

Section 9. REPORTING REQUIREMENTS

- (a) Project Progress Reports. During the term of this Contract, the Grantee will submit project progress reports to the Department in conjunction with each Request for Reimbursement. These reports will describe the status of the activities set forth in Section 6 SCOPE OF WORK, including, at a minimum, the percentage completed, costs incurred, funds remaining, and projected completion date. The report must also provide documentation supporting each claim for expenses to be reimbursed, describe any significant problems encountered in carrying out the Project and the scope of any necessary modifications the Grantee is requesting in the Project scope of work, budget, or implementation schedule. The Department, at its sole discretion, may decline to honor any Request for Reimbursement if the required project progress report has not been submitted to or approved by the Department.
- (b) Project Completion Report. Upon completion of the Project, the Grantee will submit a final Project Completion Report for approval by the Department. The Project Completion Report will describe the total costs incurred for the Project, identify the final completion date, and summarize any significant problems encountered in carrying out the Project. Upon receipt of the Project Completion Report, the Department will issue the Notice of Project Close-out.

Section 10. LIAISONS

All project management and coordination on behalf of the Department shall be through a single point of contact designated as the Department's liaison. Grantee shall designate a liaison that will provide the single point of contact for management and coordination of Grantee's work. All work performed pursuant to this Contract shall be coordinated between the State's liaison and the Grantee's liaison. The contact persons for this Contract are:

For the Board and the Department:

Anne Pichette (or successor)
Coal Board Administrative Officer, MDOC
301 S. Park Ave.
P.O. Box 200523
Helena, MT 59620-0523
406-841-2598
anpichette@mt.gov

For the Grantee:

Alvin Not Afraid, Jr. (or successor)
Tribal Chairman
Post Office Box 159
Crow Agency, MT 59022
406-702-0428
AJ.NotAfraid@crow-nsn.gov

Section 11. ACCESS TO AND RETENTION OF RECORDS

- (a) The Grantee agrees to provide the Board, Department, Montana Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance. (Section 18-1-118, MCA.)
- (b) The Grantee agrees to create and retain records supporting the services rendered or supplies delivered for a period of three (3) years after either the completion date of the Contract or the conclusion of any claim, litigation, or exception relating to the Contract taken by the State of Montana or third party, whichever is later. These records shall be kept in the Grantee's offices in Crow Agency, Montana.

Section 12. PROJECT MONITORING

- (a) The Board, the Department, or any of their authorized agents may monitor and inspect all phases and aspects of the Grantee's performance to determine compliance with the SCOPE OF WORK, proper use of funds, and other technical and administrative requirements of this Contract, including the adequacy of the Grantee's records and accounts. The Department will advise the Grantee of any specific areas of concern and provide the Grantee opportunity to propose corrective actions acceptable to the Board and/or Department.

- (b) Failure by the Grantee to proceed with reasonable promptness to take necessary corrective actions shall be a default. If the Grantee's corrective actions remain unacceptable, the Board may terminate this Contract in whole or in part, or reduce the contract price or award to reflect the reduced value of services received.

Section 13. COMPLIANCE WITH LAWS

- (a) The Grantee must, in performance of work under the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, the Patient Protection and Affordable Care Act ("Affordable Care Act"), and Executive Order No. 12-2015 Amending and Providing For Implementation of the Montana Sage Grouse Conservation Strategy. Any subletting or subcontracting by the Grantee will subject subcontractors to the same provisions.
- (b) In accordance with Section 49-3-207, MCA and Executive Order No. 04-2016, the Grantee agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, sex, pregnancy, childbirth or medical conditions related to childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status.
- (c) The Affordable Care Act requires a Grantee, if Grantee is an applicable large employer under the ACA, to provide healthcare coverage for its employees, who provide services for the State and work for 30 or more hours per week. This coverage must also cover the eligible employee's dependents under the age of 26. The coverage must (a) meet the minimum essential coverage, minimum value, and affordability requirements of the employer responsibility provisions under Section 4980H of the Code (ACA), and (b) otherwise satisfy the requirements of the Code § 4980 H (ACA) if provided by the State.

Section 14. ACCOUNTING, COST PRINCIPLES, AND AUDITING

- (a) The Grantee, in accordance with Section 2-7-503 and 18-4-311, MCA and other authorities, must maintain for the purposes of this Contract an accounting system of procedures and practices that conforms to Generally Accepted Accounting Principles (GAAP).
- (b) The Department or any other legally authorized governmental entity or their authorized agents may, at any time during or after the term of this Contract, conduct, in accordance with Sections 2-7-503, 5-13-304, and 18-1-118, MCA and other authorities, audits for the purposes of ensuring the appropriate administration, expenditure of the monies, and delivery of services provided through this Contract.

Section 15. AVOIDANCE OF CONFLICT OF INTEREST

- (a) The Grantee will comply with Sections 2-2-121, 2-2-201, 7-3-4256, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, and any other applicable local, state, or federal law regarding the avoidance of conflict of interest.
- (b) The Grantee agrees that none of its officers, employees, or agents will solicit or accept gratuities, favors, or anything of monetary value from contractors, subcontractors, or potential contractors and subcontractors, who provide or propose to provide services relating to the project funded under this Contract.
- (c) The Grantee shall promptly refer to the Department any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted any false claim or has committed any criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this Contract.

Section 16. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by the Grantee, or any of its contractors or subcontractors, in furtherance of this Contract are the property of the Grantee and the Board and/or the Department, which both have the royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, in whole or part, such property and any information relating thereto. No material produced in whole or in part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of the Grantee and the Board and/or the Department.

Section 17. PROPERTY MANAGEMENT AND EQUIPMENT

Title to real property or capital equipment acquired under a grant or subgrant will vest upon acquisition in the Grantee or subgrantee, respectively. The Grantee may not transfer title to any real property or capital equipment acquired in whole or in part with the funds provided under this Contract without first receiving the Board's written approval of the transfer. The Grantee is liable to the Board for the value of any real property or capital equipment disposed of in violation of this provision.

Section 18. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

- (a) The Grantee may subcontract any portion of this Contract to accomplish the completion of the Project. However, Grantee accepts responsibility for the adherence to the terms of this Contract by such contractors or subcontractors and by any public or private agents or agencies to which it delegates authority to carry out any portion(s) of this Contract. The Grantee shall not otherwise assign or transfer any portion of this Contract without the express written consent of the Board and/or 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 relationship exists 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 19. HOLD HARMLESS AND INDEMNIFICATION

The Grantee agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Grantee's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Grantee and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under the Contract.

Section 20. INSURANCE

- (a) General Requirements. Grantee shall maintain and shall assure that its representatives, assigns, and subcontractors maintain for the duration of the Contract, at their own cost and expense, primary liability insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the duties and obligations in the Contract by Grantee, its agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission. The State, its officers, officials, employees, and volunteers are to be covered as additional insured's for all claims arising out of the use of grant proceeds provided by the State of Montana.
- (b) Primary Insurance. Grantee's insurance coverage shall be primary insurance with respect to the State of Montana, its elected or appointed officers, officials, employees, or volunteers and shall not contribute with it.
- (c) General Liability Insurance. At its sole cost and expense, the Grantee shall purchase occurrence coverage with minimum combined single limits of \$1 million per occurrence and \$2 million aggregate per year, or as established by statutory Tort limits of \$750,000 per claim and \$1,500,000 per occurrence as provided by a self-insurance pool insuring counties, cities, or towns, as authorized under Section 2-9-211, MCA.
- (d) Professional Liability Insurance. Grantee shall assure that any representatives, assigns, and subcontractors performing professional services under this Contract purchase occurrence coverage with combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year. Note: if "occurrence" coverage is unavailable or cost prohibitive, the Contractor may provide "claims made" coverage provided the following conditions are met:

(1) the commencement date of the contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three (3) year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

- (e) Property Insurance. At its sole cost and expense, the Grantee shall maintain property and hazard insurance, including course of construction coverage, and earthquake insurance in areas where there is a shaking level above 10g (see map at <http://rmt.d.mt.gov/Portals/62/aboutus/publications/files/NEHRP.pdf>) for loss or damage for any building and all related improvements and contents therein on the premises on a replacement cost basis throughout the term of the contract.
- (f) General Provisions. All insurance coverage shall be placed with a carrier licensed to do business in the State of Montana or by a domiciliary state and with a Best's rating of at least A-, or by a public entity self-insured program either individually or on a pool basis as provided by Title 2, MCA. All certificates and endorsements are to be received by the Department prior to beginning any activity provided for under the Contract. Grantee shall notify the Department immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The Department reserves the right to request complete copies of Grantee's insurance policy at any time, including endorsements.

Section 21. DEBARMENT

The Grantee certifies and agrees to ensure during the term of this Contract that neither it nor its principals, contractors, or subcontractors are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or otherwise excluded from or ineligible for participation in this Contract by any governmental department or agency.

Section 22. CONTRACT AMENDMENT

Except as otherwise set forth herein, this Contract may not be enlarged, modified, or altered except upon written agreement by all parties to the Contract.

Section 23. TERMINATION OF CONTRACT

This Contract may only be terminated as follows:

- (a) Termination Due to Loss or Reduction of Funding. The Board, at its sole discretion, may terminate or reduce the scope of this Contract if available funding sources are eliminated or reduced for any reason. If a termination or modification is so required, the Board may, if sufficient Program funds are available, compensate the Grantee for eligible services rendered and actual, necessary, and eligible expenses incurred as of the revised termination date. The Board 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.

- (b) Termination for Cause with Notice to Cure Requirement. The Board may terminate this Contract for failure of the Grantee, its contractors, or subcontractors to perform or comply with any of the services, duties, terms or conditions contained in this Contract after giving the Grantee written notice of the stated failure. The written notice will demand performance of the stated failure within a specified period of time of not less than thirty (30) days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.
- (c) Effect of Termination. In the event of termination due to the Grantee's, its contractors', or subcontractors', or subrecipient entities' failure to perform or comply with any of the services, duties, terms, or conditions of this Contract, any costs incurred will be the responsibility of the Grantee. However, at its sole discretion, the Department may approve requests by the Grantee for reimbursement of expenses incurred. The Department's or Board's decision to authorize payment of any costs incurred or to recover expended Program funds will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of the Grantee to comply with the any of those services, duties, terms, or conditions of this Contract, and on whether the failure to comply with any of those services, duties, terms, or conditions resulted from circumstances beyond the Grantee's control.

Section 24. DEFAULT

Failure on the part of either party to perform the provisions of the Contract constitutes default. Default may result in the pursuit of remedies for breach of contract as set forth herein or as otherwise legally available, including but not limited to damages and specific performance.

Section 25. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Grantees are required to comply with all provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with Sections 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the Grantee nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the Contract. Proof of compliance and renewal documents must be sent to the Department.

Section 26. FORCE MAJEURE

Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

Section 27. SEPARABILITY

A declaration by any court, or any other binding legal forum, that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually dependent.

Section 28. 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 29. 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 30. REFERENCE TO CONTRACT

The Contract number must appear on all invoices, reports, and correspondence pertaining to the Contract.

Section 31. NO WAIVER OF BREACH

No failure by the Department to enforce any provisions hereof after any event of breach shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event of breach shall be deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of the Department to enforce each and all of the provisions hereof upon any further or other breach on the part of the Grantee.

Section 32. 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.

Section 33. NEGATIVE DECLARATION

This Agreement has been entered into to set forth the terms, definitions, conditions, and responsibilities of the parties with regard to the provision of administrative services to the Tribe. It is

not intended to reflect or to be viewed as reflecting in any other context either party's position with respect to the jurisdictional authority of the other. Nothing in this Agreement or in any conduct undertaken thereto shall be deemed as enlarging or diminishing the jurisdictional authority of either party. Neither this Agreement nor conduct pursuant thereto shall be offered as evidence, otherwise referred to in any present or future litigation unrelated to the subject matter of the Agreement, or used to further either parties' equitable or legal position in any litigation unrelated to the subject matter of the Agreement. Except as provided in this Agreement, each party reserves all rights, arguments, and defenses that are available to it under the law, and nothing in this Agreement shall be interpreted or construed as an express or implicit waiver of any such right, argument or defense.

Section 34. JURISDICTION AND VENUE

- (a) In the event that a dispute or claim arises under this Contract, the laws of the State of Montana will govern as to the interpretation and performance of this Contract, and any judicial proceeding concerning the terms of this Contract will be brought in the District Court of the First Judicial District of the State of Montana;
- (b) The Grantee's Tribal government waives the Tribe's immunity from suit in State court on any issue specifically arising from this Contract; and
- (c) The Grantee's Tribal government waives any right it may have with respect to this Contract to exhaust tribal remedies.

35. INTEGRATION

This Contract contains the entire agreement between the parties, and no statements, promises, or inducements of any kind made by either party, or the agents of either party, not contained herein or in a properly executed amendment hereto are valid or binding.

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

Alvin Not Afraid, Jr., Tribal Chairman
Crow Tribe of Indians

Date

John Williams, Chair
Montana Coal Board

Date

Tim Fox, Attorney General
Montana Department of Justice

Date

Exhibit A: Implementation Schedule
Crow Tribe of Indians Phase 3c Wastewater Project

TASK	QUARTERS 2017				QUARTERS 2018				QUARTERS 2019			
	1 ST	2 ND	3 RD	4 TH	1 ST	2 ND	3 RD	4 TH	1 ST	2 ND	3 RD	4 TH
<u>PROJECT START-UP</u>												
A. Sign contract with Coal Board		X										
B. Secure approval of other funding				X								
C. Submit progress reports and reimbursement requests (Progress reports quarterly if no requests submitted)				X								
<u>PROJECT CONSTRUCTION</u>												
A. Architectural Design					X							
B. Conduct pre-construction conference						X						
C. Construction and purchase and installation of equipment						X	X	X				
D. Monitor Progress						X	X	X				
E. Final Inspection								X				
<u>PROJECT CLOSE-OUT</u>												
A. Submit project completion report								X				
B. Project closeout								X				

Phase 3c Wastewater Improvement Project in Crow Agency

The Phase 3c project entails replacing approximately 6,720 linear feet of wastewater main, circa 1968, in the west sector and replacing and relocating the East Frontage Road lift station, circa 1994, in the south sector of Crow Agency. A picture of surfacing sewage, from a broken main, and one of the lift station, in the flood plain, are below.



The main is 48 years old, made of vitrified clay pipe (VCP), undersized, laid at less than minimum slope standards, and afflicted with sags, adverse grades, offset joints, root penetrations, service line protrusions, cracks, broken pipes, and holes. Due to these conditions, the system is plagued with frequent plugging problems and incidents of surfacing sewage. The East Frontage Road lift station serves the hospital, nursing home, daycare, police department, casino, four private businesses at the intersection of Highway 212 and Interstate 90, and approximately 18 residences. During the flood event in May 2011, the East Frontage Road lift station was inundated with flood water and was rendered inoperable and inaccessible for repairs. All facilities served by the East Frontage Road lift station were without sewer service for 10 days. Patients in the hospital and residents of the nursing home were evacuated due to a lack of potable water; had they not been evacuated due to the shortage of potable water, they would likely have been evacuated due to the East Frontage Road lift station being inoperable.

The total cost of the project is \$4,396,000 and proposed sources of (all grant) funding are as follows:

MT Treasure State Endowment Program Grant	\$750,000
MT Community Development Block Grant (Big Horn County sponsored for Tribe)	\$450,000
MT Renewable Resource Grant	\$125,000
MT Coal Board Grant	\$200,000
USDA Indian Set-aside and State Allocation Grants	<u>\$2,876,000</u>
TOTAL	\$4,401,000

