



SOUTH DAKOTA PUBLIC ASSURANCE ALLIANCE

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Ft. Pierre, SD 57532

SATELLITE OFFICE
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December 21, 2017

Dear SDPAA Members:

Thank you for your owner-membership in the South Dakota Public Assurance Alliance (SDPAA). This year marks the thirtieth anniversary of the SDPAA serving local governments throughout South Dakota.

Attached you will find a revised Intergovernmental Contract (IGC) which reflects the changes recently adopted by the SDPAA Board of Directors at its December 7, 2017 meeting. These changes will take effect on January 1, 2018 and primarily reflect the goal of allocating 100 percent ownership of the SDPAA's net position to SDPAA members.

When the SDPAA began its operations in 1987, the SDPAA's net position was divided into an Operating Fund (OF) and a Cumulative Reserve Fund (CRF). The CRF consists of "capitalization contributions" which were allocated from Members' casualty contributions during their first six years of membership. This type of arrangement is common when a risk-sharing pool is first established to ensure its financial solvency during its early years of operation. Thanks to our Members' high level of commitment and the high quality of the SDPAA's products and services, the SDPAA has been able to maintain strong fund balances in addition to the reserves set aside to fund estimated claims liabilities. Based on our strong financial position and on the recommendation of our actuary, the SDPAA Board of Directors adopted the revised IGC which eliminates the distinction between the OF and the CRF.

Another significant change to the IGC relates to the composition of the SDPAA Board of Directors. The Board is comprised of your fellow SDPAA Members. For the last several years, the Executive Directors of the South Dakota Municipal League and the South Dakota Association of County Commissioners have also served as ex-officio members of the Board. Now, the persons holding those positions will be standing members of the Board with full voting rights. We believe this enhanced membership on the Board for those two local government organizations will improve the SDPAA's ability to receive input from local governments in South Dakota and to be able to respond to their needs.

At your earliest convenience, please have the appropriate authorized person sign both of the signature pages of the revised IGC on behalf of your entity and return one of the signed pages to the SDPAA in the enclosed self-addressed postage paid envelope. The entire copy is for your file. We encourage you to review the document with your legal counsel and contact us with any questions.

We look forward to working with you to continue providing broad coverage and great services at stable, competitive rates.

Best Regards,

David A. Pfeifle, Executive Director
South Dakota Public Assurance Alliance

Endorsed by
SOUTH DAKOTA MUNICIPAL LEAGUE
SOUTH DAKOTA ASSOCIATION OF COUNTY COMMISSIONERS

**INTERGOVERNMENTAL CONTRACT
FOR THE
SOUTH DAKOTA PUBLIC ASSURANCE ALLIANCE**

This Contract is made and entered into by the undersigned who, upon execution of the Contract, will become contractually bound with all other signatories.

Whereas, the Acts of the State of South Dakota authorize and/or permit various Governmental Authorities to contract, and;

Whereas, the undersigned desires, along with other such entities, to form or join or reaffirm their membership in a local government risk pool to be known as the South Dakota Public Assurance Alliance, and;

Whereas, pursuant to the authority granted by SDCL ch. 1-24 and any acts amendatory thereto, the undersigned executes this document for purposes of joining or reaffirming membership, by virtue of an intergovernmental contract, the local government risk pool known as the South Dakota Public Assurance Alliance;

Now, therefore, the undersigned executes this Agreement in consideration for other Governmental Authorities executing this Agreement for the purpose of joining or reaffirming their membership in a local government risk pool known as the South Dakota Public Assurance Alliance. The undersigned agrees to abide by the terms and conditions of this Contract and all actions taken pursuant to this Contract. In consideration of the mutual covenants of all signatories to this Intergovernmental Contract it is agreed as follows:

ARTICLE I – NAME

The Pool created by this Contract shall be known as the South Dakota Public Assurance Alliance.

The signatories hereto, together with future signatories, establish a contractual local government risk pool for the purpose of effectuating this Agreement; which Pool shall have a perpetual duration and shall continue until terminated pursuant to the terms and conditions of the Agreement.

ARTICLE II – PURPOSE

The purpose of this Agreement is to enter into an Intergovernmental Contract to form a local government risk pool, to provide for joint or cooperative action by Members relative to their financial and administrative resources for the purpose of providing risk management services and risk sharing facilities to the Members and to the Member's employees, and to defend and protect, in accordance with this Agreement, any Member of the Alliance against liability as defined under Pool Retention and in the Member's Risk Sharing Certificate. This Contract and the activities hereunder shall not constitute doing an insurance business. This Agreement is intended to create a contractual relationship and agreement between the signatories.

This Agreement shall constitute a contract among those Governmental Authorities which shall now or at any time enter into this Agreement and become Members of the Alliance.

The liability of each Member is limited to the amount of financial contributions required to be made to the Alliance pursuant to the Agreement except in the event of termination of the Alliance as described in Article XI or in the event of a deficit in the Operating Fund as provided in Article VIII.

This Agreement shall not inure to the benefit of third parties nor does any party hereto waive such sovereign or governmental immunity as may be available to it individually.

In no event shall a Member be responsible, jointly or severally, for the liabilities of any other Member except in the event of termination of the Alliance as described in Article XI or in the event of a deficit in the Operating Fund as provided in Article VIII.

ARTICLE III – DEFINITIONS

In the interpretation of this Agreement the following definitions shall apply unless the context requires another interpretation:

1. Acts --“Acts” shall mean such Acts of the State of South Dakota, pursuant to which this Contract is executed, as the same may be amended from time to time.
2. Administrator -- “Administrator” shall mean the South Dakota Public Assurance Alliance.
3. Agreement --“Agreement” shall mean this Intergovernmental Contract for the South Dakota Public Assurance Alliance and all of the counterparts subsequently executed.
4. Alliance --“Alliance” shall be the sum of all the contracts or contractual obligations of the Members.
5. Annual Operating Contribution --“Annual Operating Contribution” shall mean those amounts necessary to fund the expenses of the Alliance.
6. Basis Rate --“Basis Rate” shall mean that amount annually promulgated by the Administrator deemed necessary to provide the Scope of Coverage afforded to a Member for the period of one year corresponding to the Risk Sharing Certificate effective date with due consideration to the Member’s individual characteristics.
7. Board --“Board” shall mean the Board of Directors of the South Dakota Public Assurance Alliance.
8. Casualty Coverage --“Casualty Coverage” shall mean the coverage afforded a Member for Casualty Risk, pursuant to the Member’s Risk Sharing Certificate and subsequent amendments and/or endorsements thereto.
9. Casualty Risk --“Casualty Risk” shall mean General Liability, Government Officials Liability, Law Enforcement Liability, Automobile Liability and other similar coverages usual to a Governmental Authority.
10. Claims Administrator --“Claims Administrator” shall mean any entity with whom the Administrator enters a contract for claims services.
11. Contract(s) --“Contract(s)” shall mean this Agreement and all of its counterparts.
12. Governmental Authority --“Governmental Authority” shall mean a public agency or any joint power agreement or separate entities consisting entirely of public agencies as defined in the Act.
13. Limits of Coverage --“Limits of Coverage” shall mean the limits of coverage established by any applicable coverage document, the Risk Sharing Certificate, and any other document or agreement that establishes and controls limits of various coverages provided to the Member.
14. Member --“Member” shall mean a Governmental Authority participating in the South Dakota Public Assurance Alliance by executing this Agreement.
15. Member’s Contribution --“Member’s Contribution” shall mean all amounts paid by Members and allocated to the Operating Fund.

16. Operating Fund --“Operating Fund” shall mean those amounts allocated to and designated as “Net Assets-Unrestricted” in the Alliance’s financial statements, as a result of increasing such amounts by the Annual Operating Contribution and investment income, and subtracting the expenses of the Alliance.
17. Pool --“Pool” shall mean the cumulative funds collected under this Contract and the contractual activities conducted hereunder, also sometimes referred to as the Alliance. The Pool is the sum of all Members’ funds and contractual duties, benefits and obligations.
18. Pool Retention --“Pool Retention” shall mean the amount that the Board may determine to retain as a designated retention from time-to-time.
19. Property Coverage --“Property Coverage” shall mean the coverage afforded a Member for Property Risk, pursuant to the Member’s Risk Sharing Certificate and subsequent amendments and/or endorsements thereto.
20. Property Risk --“Property Risk” shall mean Property, Vehicle Physical Damage, Inland Marine, Crime, Boiler and Machinery, and other similar coverages usual to a Governmental Authority.
21. Risk Sharing Certificate --“Risk Sharing Certificate” shall mean that document provided a Member evidencing the scope, nature, term, and limits of participation in the Alliance.
22. Scope of Coverage --“Scope of Coverage” shall mean the coverage, limits, and deductibles as established and defined in this agreement, any applicable separate coverage document, the Risk Sharing Certificate, and any other applicable document defining or establishing such terms, and subsequent amendments thereto.

ARTICLE IV – MEMBERSHIP

Contractual membership of the Alliance shall consist of Governmental Authorities who have entered into this Agreement or its counterpart by and through an individual duly authorized to execute this Agreement, and who have agreed to make the Member’s Contribution pursuant to the further provisions hereof. Members agree to the admission of future Members and acknowledge that they shall have no right to object to the addition of such Members provided they are admitted in accordance with the terms hereof. This Agreement shall be automatically renewed unless the provisions for withdrawal or termination are applied.

Each Member shall appoint an individual and an alternate to represent the Member with the Alliance. That individual or alternate shall act as a liaison between the Member and the Alliance for purposes of relating risk reduction and loss control information, and any other information or instructions concerning the obligations of the Member imposed by this Agreement and the rules and regulations established hereunder. The individual or alternate shall cast, on behalf of the Member, any vote which the Member is required or permitted to cast.

The obligations of Members of the Alliance shall include, but not necessarily be limited to, the following:

1. To promptly report to the Administrator or designated Claims Administrator any incident which could result in a claim being made by or against the Member within the Scope of Coverage.
2. To cooperate with and institute to the degree possible all loss prevention procedures established by the Administrator.
3. To provide to the Administrator such information as needed for rating purposes, including but not limited to, a completed renewal packet and any supplement questionnaires, as requested, and a budget approved by

Member's governing body of all revenues and expenditures for any fiscal year of the Member requested by the Administrator.

4. To provide representatives of the Administrator access to all records, including financial records and/or properties of the Member, provided the Administrator determines the information or access is necessary.
5. To cooperate with the Administrator and any employee, officer or independent contractor relating to the purpose and powers of the Alliance.
6. To allow attorneys and others employed by the Administrator to represent the Member in investigation, settlement, and all levels of litigation arising out of any claim made against the Member within the Scope of Coverage furnished by the Alliance.
7. To pay when due all annual contributions or other contributions, due or required, pursuant to this Agreement.

ARTICLE V – BOARD OF DIRECTORS

1. Administration of the Contract(s). The administration of this Contract(s) and management of the Alliance shall be governed by a Board of Directors of eleven (11) members comprised of six (6) municipal representatives, three (3) county representatives and the Executive Directors of the South Dakota Municipal League and the South Dakota Association of County Commissioners.
2. Qualifications of Members of the Board. Members of the Board shall be either:
 - a. Elected officials of an Alliance Member provided the governing board or the member in question has supported their appointment or candidacy by Resolution; or
 - b. Representatives, employees or appointed officials of an Alliance Member provided the governing board or the Member in question has supported their appointment or candidacy by Resolution; or
 - c. The Executive Directors of the South Dakota Municipal League and the South Dakota Association of County Commissioners are qualified by the nature of their respective positions and shall remain standing members of the Board.
3. Eligibility and Vacancies. Should the number of members of the Board become reduced due to disqualification, death, incompetence, resignation or other cause, the remaining members of the Board may appoint a person or persons to fill such a vacancy or vacancies until the time of the next annual meeting of the South Dakota Public Assurance Alliance so that the Board shall be maintained numerically during that time. At the next annual meeting of the South Dakota Public Assurance Alliance, the Nominating Committee of the Board of Directors shall recommend one candidate to fill each vacant position on the Board for the remainder of the term left open and Member entities of the South Dakota Public Assurance Alliance present at that annual meeting shall vote on the candidate recommended by the Nominating Committee in the manner described in paragraph 4 below. Any member of the Board may resign by sending notice of his/her resignation to the Chairman of the Board and the Administrator.
4. Election and Term of Members of the Board. An election shall be held at the annual meeting of the South Dakota Public Assurance Alliance to fill any Board position that is open, or will become open as the result of an expiring term or vacancy as described in paragraph 3 above. Applications for all open positions to be filled at such an election shall be submitted in writing to the Nominating Committee of the Board of Directors at least thirty (30) days prior to the date of the South Dakota Public Assurance Alliance annual meeting in question. The Nominating Committee will consider all applications received and recommend one candidate to fill each open Board position. The election held at the annual meeting of the South Dakota Public Assurance Alliance shall be determined by a majority of those Alliance Member entities present and voting at the annual meeting with each Member entity having one vote. A candidate recommended by the Nominating Committee and nominated at the annual meeting shall be deemed elected if he/she receives more than 50% of the votes cast by those Member entities present and voting at the election. If the candidate nominated fails to receive a majority of votes cast at the election then the Nominating Committee shall recommend a second person to stand at election at the same annual meeting. Board

members elected at such an election shall take office on the following January 1. All Board members shall be elected to a three (3) year term. A Board member may be removed for just cause by a majority vote of the Board of Directors. There shall be no prohibition on election to successive terms.

5. Meetings of the Board. The Board of Directors shall hold its annual meeting in conjunction with the annual meeting of the South Dakota Municipal League. The Board shall meet a minimum of four (4) times per year and at such other times as called by the Chairman. Any item of Alliance business may be considered at such meetings. Special meetings may be called by a majority of the Board of Directors. Meetings may be held by telephone or by written executed document.

Any member of the Board who has two (2) absences from the meetings of the full Board that have not been excused by the Chairman in any one (1) calendar year may be replaced by the Board.

6. Executive Committee. The Executive Committee shall be comprised of five (5) members including the three officers elected by the Board, one at-large Board Member selected by a majority vote of the Board and the Executive Director of the South Dakota Municipal League. The Committee shall be chaired by the Chairman of the Board. The Committee shall inform and direct the Executive Director of the South Dakota Public Assurance Alliance on Board policy and shall make recommendations to the Board as it deems necessary for the prudent operation and management of the Alliance.
7. Officers. By majority vote, the Board of Directors, at its December Board meeting, shall select from the members of the Board, a Chairman, Vice-Chairman, and Secretary/Treasurer.

ARTICLE VI – POWERS AND DUTIES

The Board of Directors shall be permitted and the undersigned authorizes it to perform and carry out, or delegate to others to perform and carry out, on behalf of the undersigned, each and every act necessary, convenient or desirable to, and for carrying out the purpose of this Contract and the Alliance, including but not limited to:

1. Administer the Alliance, receive Member's Contributions (contracted obligations) to the Alliance, and settle and pay claims and losses on behalf of its Members;
2. Make and enter into contracts to conduct and operate the Alliance;
3. Employ employees and agents on behalf of the undersigned;
4. Incur liabilities and charges against the common funds of the Alliance, but no charge, liability or obligation so incurred shall be the charge, liability or obligation of any individual party to this Agreement;
5. Sue or be sued in the Member's name or collective names, and defend such claims;
6. Acquire, or dispose of real and/or personal property;
7. Advise Members on loss control guidelines and procedures, and provide Members with risk management services, loss control, and risk reduction information;
8. Purchase for the Members reinsurance and/or excess insurance and/or enter into such excess risk sharing pools as may be available and deemed desirable for the protection of the Members and/or the Alliance itself;
9. Invest, on behalf of the Members, Alliance funds in securities and investments in a prudent and lawful manner;
10. Promulgate procedures and regulations for the general administration of this Contract(s);
11. Take such action as is necessary to terminate the participation/contract of any Member that fails to comply with the reasonable requirements of the Administrator concerning contractual obligations;

12. Provide surety and/or fidelity bonds, as may be available, for members of the Board, and all persons charged with the custody or investment of Alliance monies.

ARTICLE VII – LIABILITY OF THE BOARD OF DIRECTORS, ADMINISTRATOR, OR EMPLOYEES

The members of the Board of Directors, the Administrator, its directors, officers, and employees shall:

1. Use reasonable and ordinary care in the exercise of their duties hereunder;
2. Be afforded all of the privileges and immunities that may attach under any applicable law;
3. Not be liable for, and be held harmless and defended by the undersigned and from Alliance funds, for any act of negligence, any mistake of judgment or any other action made, taken or omitted in good faith;
4. Not be liable for any loss incurred through investment of funds or failure to invest such funds.

The Administrator may purchase, subject to availability and cost, insurance providing coverage for the Board of Directors, its officers and members, the Administrator, its directors, officers, and employees.

The undersigned shall and the funds of the Alliance shall be used to hold harmless and defend the Board of Directors, its officers and members, the Administrator, its directors, officers, and employees for any act or omission taken or omitted in good faith by the Board of Directors, its officers and members, the Administrator, its directors, officers, and employees. The hold harmless and indemnity provisions of the undersigned shall be joint and several with all signatories to this Contract; provided, however, this obligation shall be considered an expense of the Alliance and in no event shall any individual signator be liable for more than its pro rata annual contribution herein except in the event of termination of the Alliance as described in Article XI or in the event of a deficit in the Operating Fund as provided in Article VIII. Nothing contained herein shall be construed as to require the undersigned to hold harmless or defend any party from any act done in bad faith or any breach of a fiduciary duty.

No covenant or agreement contained herein shall be deemed to be the covenant or agreement of any member of the Board of Directors or the Administrator nor any of its employees and none of such persons shall be subject to any personal liability or accountability by reason of the acceptance of a position or the undertaking of the performance of any of the responsibilities, obligations or duties contemplated in the carrying out of this Agreement, whether by virtue of any construction, statute or rule of law.

ARTICLE VIII – ESTABLISHMENT OF OPERATING FUND

1. The Board shall establish a budget which shall consist of Member's Contributions in amounts not less than the Administrator deems sufficient to annually produce the sum of money reasonably necessary to fund the expenses and any deficiencies which may occur in the Alliance's Operating Fund regulatory authority; the sum of which shall be known as the Annual Budget.
2. Thirty (30) days prior to the Alliance's fiscal year end, or at such other time as directed by the Board, the Administrator shall prepare an Annual Budget for the succeeding fiscal year. The Annual Budget shall be used to assist in determining the annual rates for the Alliance. The rates determined by the approval of the Annual Budget by the Board of Directors are used to determine the contributions for each Member, based on their exposures. Members' Annual Operating Contributions will be determined on an individual basis, based on detailed analysis of exposures and for a one (1) year period from their Risk Sharing Certificate effective date of coverage.
3. In the event that the Operating Fund becomes deficient during any Alliance fiscal year, the Alliance shall liquidate any and all assets and continue to pay claims and losses incurred within the Scope of Coverage and pursuant to the Risk Sharing Certificate until all funds of the Alliance are exhausted. After such time, all coverages and payment of valid claims shall be the sole and separate obligation of each individual Member.

ARTICLE IX – MEMBER’S WITHDRAWAL, CANCELLATION, OR TERMINATION

1. Members agree to continue membership for a period of not less than one (1) full year. At the conclusion of such period, or anniversary thereof, a Member who has given sixty (60) days prior written notice to the Alliance may withdraw. Within 120 days following withdrawal, or as soon thereafter as the next Annual Budget is completed, the Alliance will advise the withdrawing Member their total calculated portion of contributions made to the Alliance that shall be refunded.

Refunds shall be calculated based on the pool’s total contributions, along with the Member’s total contributions, current losses, unpaid losses, and loss expenses, the Member’s loss ratio, and number of membership years.

Members who withdraw from the pool shall receive a calculated portion of their contributions refunded for unpaid casualty losses, based on the following schedule:

Years	Percentage
1	55%
2	50%
3	40%
4	35%
5	30%
6+	20%

All refunds shall be paid to the withdrawing Member over a five-year term.

Anything contained in this Agreement to the contrary notwithstanding, a Member’s election to cease participation in the Alliance for Property Coverage shall not constitute a withdrawal under any other terms and conditions of the Agreement. Property Coverage applies only to losses or claims which occur prior to the termination date. All rights for reimbursement or any right to claims against the Alliance shall terminate for Property losses which occur after the termination date.

Effective 12:01 a.m. on the date of the withdrawal and notwithstanding anything contained to the contrary within this Agreement or attachments hereto or the Risk Sharing Certificate issued pursuant to this Agreement, payments for all known and unknown Casualty Coverage claims or claims expense shall thereafter become the sole responsibility of the withdrawing Member without regard to whether a claim occurred or was reported prior to the withdrawal of the Member’s participation in the Alliance.

Effective 12:01 a.m. on the date of the withdrawal and notwithstanding anything contained to the contrary within this Agreement or attachments hereto or the Risk Sharing Certificate issued pursuant to this Agreement, payments for all Property claims and claim expense incurred thereafter shall become the sole responsibility of the withdrawing Member. Any Property claim reported in a timely manner not to exceed sixty (60) days after its occurrence shall be covered by the Alliance if the claim occurred during the period the Risk Sharing Certificate was in effect and if coverage is otherwise available under the Risk Sharing Certificate.

At the request of the withdrawing Member, the Alliance will continue to service all claims which have been reported to the Alliance during the withdrawing Member’s period of participation so long as the withdrawing Member shall promptly reimburse the Alliance for all claims expenses incurred. Payment of all claims so serviced by the Alliance for the withdrawing Member shall be the sole responsibility of the withdrawing Member and the Alliance shall incur no liability for payment of claims by virtue of servicing claims under the terms of this paragraph.

Anything contained in this Agreement to the contrary notwithstanding, a Member that has given notice of withdrawal may rescind said notice provided written notice of rescission is sent to the Alliance within the sixty (60) day period and provided further all contributions required from said Member are made in a timely fashion.

2. The Alliance may, by a two thirds (2/3) majority of the Board and by providing a Member sixty (60) days

prior written notice, cancel that Member's participation in the Alliance and terminate its Intergovernmental Contract effective at the end of any Risk Sharing Certificate year. Thereafter, it shall be the responsibility of the Alliance to defend, settle, and pay claims within the scope and limits set forth in the cancelled Member's Risk Sharing Certificate in effect on the date of the occurrence out of which such claim arose. This provision shall apply solely to claims which occurred during a Member's participation and evidenced by the Member's Risk Sharing Certificate. The cancelled Member shall have the right, prior to the actual date of cancellation, to withdraw from the Alliance by giving notice of such withdrawal. Electing to so withdraw, the Member shall be subject to the provisions of paragraph one (1) of this Article. Failing to elect to give notice of withdrawal, the cancelled Member forfeits all rights to a refund of any contributions made to the Alliance by said cancelled Member.

3. Any Member failing to make payments when due as required by this Agreement shall be terminated from the Alliance effective on the date the payment was due and upon that effective date of termination all coverages and benefits hereunder shall cease. All known and unknown claims and claims expenses thereafter shall become the sole responsibility of the terminated Member without regard to whether a claim occurred or was reported prior to the termination of the Member's participation in the Alliance. At the request of the terminated Member, the Alliance will continue to service all claims which have been reported to the Alliance during the terminated Member's period of participation so long as the terminated Member shall promptly reimburse the Alliance for all claims the terminated Member and the Alliance shall incur no liability for payment of claims by virtue of servicing claims under the terms of this paragraph. The terminated Member shall also forfeit all rights to any return of contributions and the Alliance shall apply any or all of the terminated Member's forfeited funds to the Operating Fund. If the Member shall subsequently submit its payment, the Administrator may, in its discretion, reinstate such membership.

ARTICLE X – SCOPE OF RISK SHARING PROTECTION

1. The Alliance provides risk sharing protection to each Member and will make or secure payment on behalf of each Member under criteria and procedures established for the payment of claims as provided in the Member's Risk Sharing Certificate. As long as a Member continues to renew its annual Risk Sharing Certificate, any claim that occurred during the period the Risk Sharing Certificate is in effect shall be considered for payment as provided in the Member's Risk Sharing Certificate.
2. The Alliance may obtain excess insurance, reinsurance, or join in excess risk sharing pools.
3. In the event that a claim or series of claims exceeds the amount of the risk sharing protection provided by the Member's Risk Sharing Certificate, or in the event that a claim or a series of claims should exhaust the Operating Fund and any reinsurance, then payment of valid claims shall be the sole and separate obligation of the individual Member or Members against whom the claim was made and perfected by litigation or settlement.
4. A Member may purchase, in its sole discretion, any insurance coverage in addition to those amounts purchased by the Alliance.
5. The Board may make changes in the Scope of Coverage, the amount of risk sharing protection or risk sharing retention by the Alliance upon consideration of the needs and requirements of Members, loss experience, and/or the kind and amounts of reinsurance or other excess coverage available. Where the Board takes such action, immediate notice after taking of such action shall be sent to all Members or their representatives.

ARTICLE XI – TERMINATION

The Alliance shall terminate at such time as two-thirds (2/3) of the municipal and county Members vote for such termination. After a vote to terminate, the Board shall commence with the orderly liquidation of the Alliance's business and shall complete the same as promptly as possible. During such period of liquidation the Alliance shall continue to pay claims and losses incurred within the Scope of Coverage and pursuant to the Risk Sharing Certificate until all funds of the Alliance are exhausted. After payment of all claims and losses, any remaining funds held by the Alliance shall be paid to all Members of the Alliance at the time of the vote of termination, on a pro rata basis determined by the Board.

To the extent of the existence of funds in the Operating Fund, no Member shall be responsible for any claim, claims, judgment or judgments against any other Member or Members. If upon termination of the Alliance the remaining assets of the Alliance are insufficient to satisfy indebtedness of the Alliance (excluding claims or judgments against the Members), such deficiency shall be made up by assessments against Members of the Alliance on a pro rata basis determined by the Board.

ARTICLE XII – MISCELLANEOUS PROVISIONS

1. The provisions of this Agreement shall be interpreted pursuant to the laws of the State of South Dakota.
2. The parties hereto consent that courts in the State of South Dakota shall have jurisdiction over any dispute arising under this Agreement. The terms of this Agreement may be enforced in a court of law in the State of South Dakota either by the Alliance or by any Member.
3. The consideration for the obligations imposed upon Members pursuant to and under this Agreement shall be based upon the mutual promises and agreements of all Members who now execute or who hereinafter execute this Agreement.
4. This Agreement may be executed in duplicate originals or counterparts now or at any time in the future. The individual executing this Agreement on behalf of the participating Member hereby represents and certifies that he/she is duly empowered to so execute this document.
5. No waiver of any breach of this Agreement or any provisions herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any of the other provisions herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligations or acts.
6. This Agreement shall be binding and shall inure to the benefit of all Members who shall have executed this Agreement and complied with the financial requirements hereunder and provided that the Members shall have been duly approved in accordance with the terms and provisions of this Agreement.
7. The provisions of this Agreement shall be deemed severable and if any provision or part thereof is held illegal, void or invalid under applicable law, such provision or part may be changed to the extent reasonably necessary to make the provision or part, as so changed, legal, valid or binding. If any provision of this Agreement is held illegal, void or invalid in its entirety, the remaining provisions of this Agreement shall not in any way be affected or impaired but shall remain binding in accordance with their terms and this Agreement shall be so interpreted.
8. This Agreement and the Risk Sharing Certificate contain the complete Agreement between the parties and no representations or oral statements made or heretofore given shall constitute a part of this Agreement. In the event that any provision of this Agreement is in conflict with or is incompatible with such, the terms and conditions of this Agreement shall prevail and take precedence.
9. This Agreement may be altered or amended only by amendments duly adopted in accordance with the terms and conditions of this Agreement; provided, however, that the Risk Sharing Certificate may be amended from time to time to reflect the exposures of each Member and such changes shall be exempted from the preceding terms of this paragraph.
10. The caption headings used in this Agreement are used merely for identification purposes and shall not be deemed a part of this Agreement.
11. Whenever in this Agreement words, including pronouns, are used in the singular or plural, or masculine or feminine, they may be read and construed in the plural or singular, or feminine or masculine, respectively, wherever they so apply.

- 12. This Agreement may be amended by the Board with the approval of two-thirds (2/3) of the members of the Board. All Members agree to properly execute and adopt amendments so approved.
- 13. The Board may, with the approval of two-thirds (2/3) of the members of the Board, elect to reform or reconstitute the Alliance to a stock, mutual, or reciprocal insurance company operating as a captive, Risk Retention Group, or other risk sharing entity.
- 14. The Alliance shall maintain a fiscal year ending December 31.

ARTICLE XIII – AGENT AND OFFICE

The agent of the Alliance for service of notice shall be the Administrator, 208 Island Drive, Ft. Pierre, SD 57532.

ARTICLE XIV – NOTICE

All notices required to be given under this Agreement pursuant to Article IX shall be in writing and sent by certified mail, return receipt requested, with postage prepaid. Notices by a Member to the Alliance shall be sent to the address in Article XIII to the attention of the Administrator. Notices to any Member shall be sent to the representative of the Member at the Member's last known address.

Notices to be given under this Agreement pursuant to Article X, 5. shall be sent to all Members or their representatives following Board action.

In the event that any party to this Agreement desires to change its address, notice of change of address shall be sent to the other party in accordance with the terms and provisions in this Article.

In Witness whereof, this Agreement was executed on the _____ day of _____, in the year _____, by the undersigned duly authorized officer of the Governmental Authority indicated below:

GOVERNMENTAL
 AUTHORITY: Fall River County

 Name of Entity

ACCEPTED FOR THE
 SOUTH DAKOTA PUBLIC ASSURANCE ALLIANCE

By: _____

By: *David L Pfeiffer*

PRINT NAME: _____

TITLE: Executive Director
 ADMINISTRATOR ON BEHALF OF ALL OTHER
 CURRENT AND FUTURE SIGNATORIES

TITLE: _____

- 12. This Agreement may be amended by the Board with the approval of two-thirds (2/3) of the members of the Board. All Members agree to properly execute and adopt amendments so approved.
- 13. The Board may, with the approval of two-thirds (2/3) of the members of the Board, elect to reform or reconstitute the Alliance to a stock, mutual, or reciprocal insurance company operating as a captive, Risk Retention Group, or other risk sharing entity.
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In Witness whereof, this Agreement was executed on the _____ day of _____, in the year _____, by the undersigned duly authorized officer of the Governmental Authority indicated below:

GOVERNMENTAL
 AUTHORITY: Fall River County

 Name of Entity

ACCEPTED FOR THE
 SOUTH DAKOTA PUBLIC ASSURANCE ALLIANCE

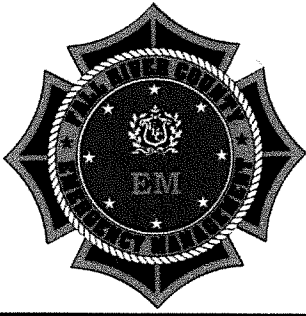
By: _____

By: *David L. Pfeiffer*

PRINT NAME: _____

TITLE: Executive Director
 ADMINISTRATOR ON BEHALF OF ALL OTHER
 CURRENT AND FUTURE SIGNATORIES

TITLE: _____



Fall River County

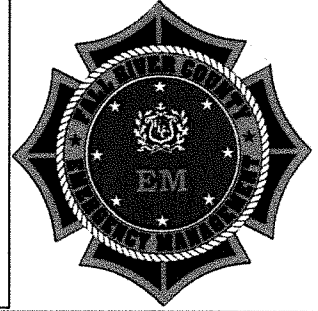
Office of Emergency Management
906 N. River Street
Hot Springs SD 57747

Franklin W. Maynard
frem@gwtc.net

605-745-7562

cell 890-7245


fax 605-745-6835



Date: January 11, 2018

Subj: Volunteers

1. The following is a list of known volunteers that may be utilized during events within Fall River County:
Norm Pudwill
Tracy Bastian
Kevin Fees
Les Madsen
Phil Knapp
Joy Falkenberg
Marc Lamphere
Jan Speirs
Sally Park Hageman
Loren Seegrist
Gary Crowley
Andy Timmins
2. The list is not inclusive, and may be expanded during an actual event. If additional individuals are needed, a sign in sheet will be provided to allow coverage under the county workers comp. insurance.


Franklin W. Maynard, CFM/CEM
Fall River County Emergency Manager
605 745-7562 (office)
605 890-7245 (cell)
frem@gwtc.net

Aaron Eberle

From: Lyle Jensen [frcmaintenance@goldenwest.net]
Sent: Wednesday, January 10, 2018 8:30 AM
To: 'Ganje, Sue'; 'Aaron Eberle'
Subject: FW: Internet Bandwidth - Courthouse Building
Attachments: Quote #57736 1.9.18.pdf; Enterprise Bandwidth Master Service Agreement 2018.docx

Please add to agenda

From: Eric Eisenbraun [<mailto:EricEisenbraun@goldenwest.com>]
Sent: Tuesday, January 09, 2018 2:23 PM
To: Lyle Jensen
Subject: GWT: Internet Bandwidth - Courthouse Building

Lyle,

Hope this message reaches you well. I wanted to send over a new quote and three year agreement for the internet bandwidth to the main Courthouse building. Currently you are at 15Mbps and paying \$1,277 per month.

With new bandwidth services being introduced, we can increase the bandwidth to 25Mbps and lower the cost to \$895 per month with a new three year service agreement. I expect additional service offerings to be available within the next three years that we can discuss when they are ready to roll out.

I imagine you won't need commissioner approval for an increase in service and decrease in cost, so please sign and date both the attached quote and new service agreement and we'll get the changes made.

Thanks!

Eric Eisenbraun
Senior Account Executive
Toll Free: 800.529.0111 | Direct: 605.719.3639 | Cell: 605.863.0890





2727 N Plaza Dr.
Rapid City, SD 57702

Phone 605-348-6529 Fax 605-342-1160

Quote
No.: **57736**
Date: 1/9/2018

Prepared for:

Lyle Jensen
Fall River Co Auditor
906 N River Street
Hot Springs, SD 57747 U.S.A.

Account No.: 1889
Phone: (605) 745-5145
Fax: (605) 745-3530

Qty	Description	UOM	Sell	Total
Enterprise Bandwidth				
1.00	Monthly Enterprise Internet Circuit - 25Mbps	EA	\$895.00	\$895.00

Your Price: **\$895.00**
Total: **\$895.00**

Prices are firm until 1/23/2018

Prepared by: Eric Eisenbraun, ericeisenbraun@goldenwest.com

Date: 1/9/2018

Increase circuit speed from 15Mbps to 25Mbps. New Price is \$895 per month.

Accepted by: _____

Date: _____

Disclaimer

Unless otherwise specified, all labor is charged on a time and materials basis. Any additional service charge or travel will apply.
Applicable taxes and/or additional freight charges may be added on to the invoice.
Terms: 30% down payment required for sales of \$ 5,000.00 or more, with the balance due Net 15 days of invoicing.



FALL RIVER COUNTY AUDITOR ENTERPRISE BANDWIDTH MASTER SERVICE AGREEMENT

This Enterprise Bandwidth Master Service Agreement, hereinafter referred to as the "Agreement," by and between Golden West Technologies, Inc. 2727 N. Plaza Dr., Rapid City, South Dakota 57702, hereinafter referred to as "GWT," and Fall River Co Auditor, 906 N River Street, Hot Springs, SD 57747; hereinafter referred to as the "Customer," sets forth the terms and conditions for the installation and operation by GWT of broadband Ethernet services:

1. Service Description:

a) Bandwidth and Connectivity. GWT shall provide one (1) useable-static IP addresses; and install the equipment and infrastructure necessary to furnish Broadband Internet and/or Point-to-Point Network Services between the following:

25 Megabit from Fall River Co Auditor, 906 N River Street, Hot Springs, SD 57747 to Internet

Optional: Static IP address

<input checked="" type="checkbox"/>	1	Included at no cost
<input type="checkbox"/>	5	Add \$50 monthly
<input type="checkbox"/>	13	Add \$150 monthly
<input type="checkbox"/>	See addendum for custom arrangement	

b) Power and Wiring. GWT shall provide all cabling and connectivity up to the Customer's premise at the DEMARC. Customer is responsible for all cabling and connectors from the GWT equipment to Customer equipment. Customer shall provide a dedicated 110/120 Volt circuit at the DEMARC that is not shared with any other equipment. Customer shall also provide a suitable controlled environment location for GWT equipment at all times. At Customer's request GWT agrees to permit Customer to collocate its equipment with GWT equipment, provided that the cabling connectivity from the DEMARC to the Customer equipment room is provided by customer.

c) Ownership of Equipment. All GWT equipment installed within the Customer location(s) shall remain the property of GWT. The Customer shall use reasonable care to insure that the GWT equipment remains safe and secure while installed within the Customer premises. The Customer agrees that authorized GWT technical staff shall have access to the equipment on the Customer's premises for service and maintenance during the Customer's normal business hours, and upon reasonable notice in the event of an emergency during non-business hours.

- 2. **Term:** The initial term of this Agreement is for 36 months. Service will begin when the necessary equipment is installed and is operational and ready to provide service, known as the "in-service" date.
- 3. **Renewal Terms:** Unless terminated by either party's written notice at least thirty (30) days before the end of the initial term, this Agreement will automatically renew on a month-to-month basis upon the same terms and conditions. Thereafter, this agreement may be terminated by either party giving at least thirty (30) days written notice of termination to the other party.
- 4. **Fees:**
 - a) After the installation of the equipment at the Customer's site(s), Customer will be charged for installation and construction charges in the amount of \$0.00. The monthly fee for the service is \$895.00 (plus Tax) for the initial term of this Agreement. Monthly fees for service shall be paid in advance. The fees for any partial beginning month and the first full month of service will be due beginning on the in-service date. Any partial month of services will be billed *pro rata* based on an assumed 30 day month.



- b) At any time after the initial term of this Agreement, GWT may increase charges or change the terms and conditions of this Agreement upon providing 90 days written notice to the Customer. Upon receipt of the notice of increased charges or change of terms and conditions, the customer may cancel this Agreement by providing notice in writing at least 30 days prior to the effective date of the increase or changes. Unless otherwise agreed, the Customer's right to use the Service is not transferable and is subject to any limits established by GWT.

5. Termination:

- a) If Customer fails to pay for the Service, GWT may, at its sole discretion and without notice to Customer, (i) suspend its performance under this Agreement and deny Customer access to and use of the Service until Customer is back in good standing, or (ii) terminate this Agreement and Customer's access to and the use of the Service. During the initial term GWT may also cancel the Service to Customer for cause upon thirty (30) days prior written notice of termination and the cause therefor. Upon termination by GWT under any of the provisions of this paragraph, Customer's access to the Service may be permanently terminated.
- b) GWT may immediately suspend service and/or terminate this Agreement without notice (i) in order to prevent damage to or degradation of its network which may be caused by the Customer or anyone using the Customer's access; (ii) to comply with any law, regulation, court order, or other governmental request or order which requires immediate action; (iii) for violation of Golden West Internet Solutions Acceptable Use Policy (AUP). Upon termination by GWT under any of the provisions of this paragraph or paragraph (a) above, GWT will not provide a refund for any unused portion of the Services paid in advance by Customer. Customer shall be responsible for payment of all Services up to the time of suspension or termination and for payment of a late charge of one and one half percent (1 1/2 %) per month on any unpaid balances. A fee of up to 35% of the outstanding balance may be added to any account that is sent to collections due to failure to pay.
- c) During the initial term Customer may terminate this Agreement for material breach of performance by GWT after having first provided written notice of such breach of performance to GWT. Following receipt of Customer's written notice of material breach GWT shall have thirty (30) days in which to cure the material breach. If within the thirty (30) day cure period GWT fails to cure the material breach, this Agreement will be deemed terminated. If Customer terminates this Agreement under the provisions of this paragraph, GWT will assist Customer in the orderly termination of services.
- d) Fees for the initial term are based on Customer's agreement to receive and pay for the Services for the full initial term. If this Agreement is terminated during the initial term either for cause by GWT or without cause by Customer, Customer agrees to pay monthly fees for the remainder of the initial term following such termination. Upon such termination any outstanding fees for the remainder of the initial term shall be accelerated and immediately due and owing to GWT.
- e) This Agreement may also be terminated by either party if payment for services is not funded by a tribal, city, county, state, school district or federal entity during the normal budgeting process
- f) In the event of termination by either party, Customer agrees that GWT shall have access to the GWT equipment located on the Customer's premises, during the Customer's normal business hours, for purposes of removing the GWT equipment.

- 6. Acceptable Use Policy:** The terms of this Master Service Agreement shall include the Golden West Internet Solutions Acceptable Use Policy ("AUP") posted at <https://www.goldenwest.com/support/policies-and-information/acceptable-use-policy/> and which is incorporated into this Master Agreement by reference. Customer agrees to use the Service in compliance with applicable law and the AUP. GWT retains the right to modify said policies from time to time, without notice to Customer. Any such modifications shall be automatically effective as to Customer upon posting by GWT at the stated website. GWT retains the right to determine, in its sole



discretion, whether any use by Customer is inconsistent with the purposes of the AUP, and to immediately terminate any uses determined to be inconsistent therewith.

- 7. Terms of Use:** The parties acknowledge this Agreement is for the exclusive benefit of Customer. Customer may not resell or allow any party to use any part of the Enterprise Bandwidth service provided by GWT, Golden West Telecommunications Cooperative Inc. or any of its subsidiaries, without written consent from GWT.
- 8. Service Warranties and Limitation of Liability:** **THE CUSTOMER EXPRESSLY AGREES THAT USE OF THE SERVICE IS AT CUSTOMER'S SOLE RISK. NEITHER GWT NOR ANY OF ITS LICENSORS, EMPLOYEES, OR AGENTS WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR FREE, OR FREE FROM UNAUTHORIZED ACCESS TO, ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER'S DATA. NEITHER GWT NOR ANY OF ITS LICENSORS, EMPLOYEES OR AGENTS MAKE ANY WARRANTY AS TO THE RESULTS TO BE OBTAINED FROM USE OF THE SERVICE. THE SERVICE IS MADE AVAILABLE ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. WHETHER SOUNDING IN TORT, CONTRACT OR ANY OTHER THEORY OF LIABILITY, GWT'S LIABILITY FOR DAMAGES (WHETHER DEEMED DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, ACTUAL, LOST PROFITS OR REVENUES, PUNITIVE OR OTHERWISE) NOT CAUSED BY THE WILLFUL, WANTON OR FRAUDULENT CONDUCT OF GWT OR ITS AGENTS, AND ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS IN SERVICE; OR ARISING OUT OF GWT'S FAILURE TO MAINTAIN PROPER STANDARDS OF MAINTENANCE AND OPERATION, OR TO EXERCISE REASONABLE SUPERVISION; OR OCCURRING IN THE COURSE OF FURNISHING SERVICE OR OTHER FACILITIES; SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THAT INVOICED FOR THE BILLING CYCLE IN WHICH THE CONDUCT GIVING RISE TO THE CLAIM TOOK PLACE. SUCH LIABILITY AS HEREIN SET FORTH IS FIXED AS LIQUIDATED DAMAGES AND NOT A PENALTY AND THIS LIABILITY SHALL BE COMPLETE AND EXCLUSIVE. CUSTOMER ACKNOWLEDGES THAT IT IS IMPRACTICAL AND EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES, IF ANY, WHICH MAY PROXIMATELY RESULT FROM A FAILURE OF GWT OR ITS AGENTS TO PERFORM ANY OF ITS OBLIGATIONS OR A FAILURE OF THE SYSTEM TO OPERATE BECAUSE OF, AMONG OTHER THINGS: THE UNCERTAIN AMOUNT OF VALUE OF CUSTOMERS PROPERTY OR THE PROPERTY OF OTHERS WHICH MAY BE LOST OR DAMAGED; THE INABILITY TO ASCERTAIN WHAT PORTION, IF ANY, OF ANY LOSS WOULD BE PROXIMATELY CAUSED BY GWT OR ITS AGENTS FAILURE TO PERFORM ANY OF ITS OBLIGATIONS. ANY ACTION AGAINST GWT IN CONNECTION WITH ITS SERVICE MUST BE COMMENCED WITHIN ONE YEAR AFTER THE ALLEGED CONDUCT GIVING RISE TO THE CLAIM OCCURRED.**
- 9. Security:** Golden West makes no warranties, expressed or implied, concerning the security of the customer's data or computer system(s) or network. The Customer is solely responsible for the physical and electronic security of its network.
- 10. Law Governing:** This Agreement shall be construed in accordance with, and all disputes hereunder shall be governed by, the laws of the State of South Dakota without regard to its choice of law provisions. Venue lies in the state and federal courts of Pennington County, South Dakota which shall have exclusive jurisdiction and venue over all controversies in connection herewith.
- 11. Notice.** Any notices to the Customer required by this Agreement shall be sent by E-mail to fallriverem@gmail.com . All notices to Golden West Technologies required by this Agreement shall be sent by E-mail to info@gwtis.com.



12. Non-Solicitation. The Customer agrees that for so long as Golden West Technologies is engaged by the Customer, and for a period of twenty-four months thereafter, the Customer shall not, directly or indirectly, call upon, solicit, recruit, or assist others in calling upon, recruiting or soliciting any person who is an employee of Golden West Technologies and whom the Customers has become aware of by virtue of this engagement for the purpose of having such a person work for the Customer, or for any other person firm corporation or entity.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed.

Golden West Technologies

Fall River Co Auditor

By: _____
(Authorized Signature)

By: _____
(Authorized Signature)

Print Name: Eric Eisenbraun

Print Name: _____

Title: Senior Account Executive

Title: _____

Date: _____

Date: _____



2727 N Plaza Dr.
Rapid City, SD 57702

Phone 605-348-6529 Fax 605-342-1160

Quote
No.: **57474**
Date: 11/27/2017

Prepared for:

Lyle Jensen
Fall River Co Auditor
906 N River Street
Hot Springs, SD 57747 U.S.A.

Account No.: 1889
Phone: (605) 745-5145
Fax: (605) 745-3530

Qty	Description	UOM	Sell	Total
1	Project Installation & Configuration	EA	\$2,100.00	\$2,100.00
1	Genetec E1A EDGE EVO EH400-K Standard Controller	EA	\$465.50	\$465.50
1	Genetec HID multiCLASS SE 13.56 MHz Readers with Standard Interpreter Licensing <i>RPK40 MULTICLASS SE REV E LF STD HF STD/SIO/SEOS WIEG BLK PIG STD-1 LED RED FLSH GRN BZR ON CSN 32-BIT MSB KPF</i>	EA	\$358.40	\$358.40
1	Door Hardware & Installation	EA	\$1,547.77	\$1,547.77

Your Price:
\$4,471.67

Total:
\$4,471.67

Prices are firm until 12/11/2017

Prepared by: Eric Eisenbraun, ericeisenbraun@goldenwest.com

Date: 11/27/2017

Golden West Technologies will work with NCS to install a lock on the outside door of the old ambulance shop. The door will be connected to the Genetec server at the courthouse for centralized management. Fall River county staff is going to pull cable from the network closet to the door. This quote does not include any POE switch ports or POE power supplies. It is assumed that the customer already has one in place with available ports.

Accepted by: _____ **Date:** _____

Disclaimer

Unless otherwise specified, all labor is charged on a time and materials basis. Any additional service charge or travel will apply. Applicable taxes and/or additional freight charges may be added on to the invoice. Terms: 30% down payment required for sales of \$ 5,000.00 or more, with the balance due Net 15 days of invoicing.

**Quote**

1/11/18

MAMMOTH SIGNS
 647 South 5th Street
 Hot Springs, South
 Dakota 57747
 United States
 (605) 890-1152

QUOTE #
 000060

**BILLED TO FALL RIVER COUNTY LYLE
 JENSEN**

PRODUCT	QUANTITY	TOTAL
Custom Sign <i>custom 4'x5' sign for the Director of Equalization</i>	1	\$465.00
Custom Sign 2 <i>replacement of veterans services to emergency management</i>	1	\$167.00
Custom Sign 3 <i>4"x20" number sign</i>	1	\$74.00
	TAX	\$45.89
	TOTAL	\$751.89

Hello All,

1/4/2018

I'm writing this to everyone to keep everyone in the loop. After our meeting with Doug and Laurie, I did have the opportunity to review the 1924&1925 Edgemont Herald papers on coverage of the Hot Springs to Edgemont road construction. In those, Eugene Meeker of Rapid City was listed as the resident engineer, 1/10/24, on the road construction at least from Edgemont east to Gull hill. Engineer Paul E. Skaggs of the Bridge Department for South Dakota was overseeing the bridge construction across the Cheyenne. The county was paying bills for surveying 6/19/24, no specific company was listed. I am hoping someone out there has a copy of the plat of highway 18 prior to the bridge installation in about 1933. While we have a copy of the land being purchased in 1924 by Fall River it references a plat that was never filed (or at least that we've found). We own the road but don't know where. I gave the above names in hopes that might give a tie-in for some of you to the original 1924 highway 18 plat.

My guess is that we may actually own the land under the at-grade crossing we are proposing. Rich may also have some post bridge highway plats that may better prove the following argument. Currently FR is taxing the Murdocks on 572.36 acres south of the highway and Jim Miller on 36.99 acres north of the highway in Section 26 T8S R3E. FR taxes to the section lines. The only other land or easement holders are FR (Including the federal project 209D lands) and the railroad. The section in the original survey is listed as a true 640 acres, so the FR and the rr own 640- (572.36+36.99) or 30.65 acres of the section.

The important part of the argument focuses on Miller's 36.99 acres. These 37 acres are, current road alignment, almost entirely in the NE1/4 NE1/4 of S26. If the road were 3 acres in area, (3 acres +37 acres= 40 acres), the road would necessarily have the outer, east and south road perimeters on the 1/16th section lines. This means the east and west running section of the original road is further south than the current alignment and about where we want the at-grade crossing.

The plat for the 2/20/33 realignment shows only 32.5 acres north of the road right of way. Note that this is before considering the rr easement on Miller's that according to this plat is an additional 4.6 acres north of the road right of way. Following this logic, Miller owns 37 acres, of which only 27.9 acres are north of the current highway. Shifting $\frac{1}{4}$ mile of (east-west running) road south by 9.1 acres amounts to moving the entire (east-west running) road south by 300 feet. It would be good if Laurie could obtain the plat of the rr right of way through section 26 that she referred to. This would firm up the area calculations.

Sue the Auditor was talking to States Attorney Sword regarding condemnation proceedings when I arrived back at the courthouse after our meeting. Sword stated, as he had before, that he had no interest in condemning land for the at-grade crossing and suggested we see if Attorney Mike Ortnier would be interesting in doing the condemnation proceedings for the county. I would ask if Doug or Laurie have contacts with attorneys who specialize in land acquisition and condemnation for the state. The state seemed to have no problem with the widening and straightening of highway 385 and seemed expert at quickly and inexpensively purchasing the necessary land. FR would likely save time and money by having an expert in this field of law address the issue.

Because it is unclear whether the Murdock's actually own the land on which we would construct an at-grade crossing, it appears we need the services of lawyer/title researcher/surveyor prior to entering into negotiations with Murdock for any land purchase. It might be worth asking the question of what would happen should we proceed under the good faith assumption that we own the land for the at-grade crossing and start construction. With FR owning sufficient land in that section for the road, having historically maintained a road through this section of the county, and the clear need for access, it would seem an expensive proposition for presumed land owners to fight to prevent a common sense solution to an expensive bridge replacement. If Doug and Laurie could suggest a lawyer/title researcher/surveyor?

Regards,

Paul Nabholz

PS Odds and Sorts: Doug, the 9/3/1925 Edgemont Herald noted that the State Highway Commission would complete the road from Edgemont to Hot Springs in 1926. My point would be that the construction would have been overseen at the state level and that you, the state, might have the plats somewhere in your files. Nudge.

Rich provided two files of the road btwn Edgemont and HS from perhaps the early 1930s. Page 13 of 40, an overview sketch of the entire road, of 24116pdf has notations of surveys performed as late as Dec 1927 with the notation at Chilson of "Proposed Overhead Crossing". That argues for an at-grade crossing on the C.B. and Q rr from 1924-1933(?) until the bridge was installed, likely near our desired location (because of the topography). I'll try to contact the SOS regarding some map defining the location of the crossing. Laurie, might your rr plat show the 1924 crossing location?