

Oglala Lakota - Fall River County Contract - 2021

THIS CONTRACT is made and to become effective the 1st day of January, 2021, by and between Oglala Lakota County, a political subdivision of the State of South Dakota, hereinafter referred to as "Oglala Lakota," and Fall River County, a political subdivision of the State of South Dakota, hereinafter referred to as "Fall River," and the Fall River County State's Attorney, Auditor, Register of Deeds and Treasurer, hereinafter referred to as "County Officials."

WHEREAS, prior to July 1, 1979, Oglala Lakota was an unorganized County pursuant to South Dakota law, but was attached to Fall River for the purposes of receiving governmental services; and

WHEREAS, a Consent Decree was executed which authorize the organization of Oglala Lakota County, South Dakota, pursuant to House Bill 1197; and

WHEREAS, the Unorganized Counties Act granted to the Oglala Lakota County Board of Commissioners, in addition to all other statutory powers, the power to contract for necessary governmental services with an adjoining County; and

WHEREAS, the Oglala Lakota County Board of Commissioners has assessed the needs, feelings, and views of its constituents to the extent possible, and it appears at this time to be in the best interests of Oglala Lakota County to contract for the provision of necessary governmental services to serve the residence of Oglala Lakota County; and

WHEREAS, Oglala Lakota is desirous of contracting with Fall River, an adjoining County to Oglala Lakota, for providing of necessary governmental services for Oglala Lakota inasmuch as such would best meet the needs of the residents of Oglala Lakota County; and

WHEREAS, Fall River, an adjoining County to Oglala Lakota, is desirous of contracting with Oglala Lakota for providing necessary governmental services for Oglala Lakota; and

WHEREAS, Oglala Lakota has amended its Home Rule Charter to allow Oglala Lakota to elect a full-time Sheriff; and

WHEREAS, the 2010 census determined that Oglala Lakota had approximately 13,586 residents and that Fall River had approximately 7,094 residents; and

WHEREAS, pursuant to SDCL 7-7-9.1, the minimum salary for the county treasurer, auditor and register of deeds for a county with a population of 13,586 is \$34,543; and

WHEREAS, pursuant to SDCL 7-7-12, the minimum salary for the State's Attorney for a county with a population of 13,586 is \$44,492; and

WHEREAS, pursuant to SDCL 7-7-12, where there is no elected State's Attorney, the Board of County Commissioners may contract for legal services and negotiate for the compensation to be paid and the terms and conditions upon which contracted;

NOW THEREFORE, based upon the hereinafter considerations given each party, one to the other, the parties hereby mutually agree that Fall River shall provide the necessary governmental services required by Oglala Lakota.

1.

The parties agree that the necessary governmental services to be provided by Fall River for the benefit of Oglala Lakota shall be for the officers of State's Attorney, Auditor, Director of Equalization, Register of Deeds, and Treasurer, as those offices in their respective duties are defined by South Dakota law. The parties further agree and understand that the above identified necessary governmental services to be provided shall be provided at the Fall River County Courthouse located at Hot Springs, South Dakota.

2.

Oglala Lakota agrees to appoint the Fall River County State's Attorney, Auditor, Director of Equalization, Register of Deeds, and Treasurer with all the powers, rights and responsibilities set forth under all applicable South Dakota statutes and regulations.

3.

Oglala Lakota shall not attempt to remove any County Official, unless the County Official has committed misconduct, malfeasance, nonfeasance, crimes in office, drunkenness, gross incompetency, corruption, theft, oppression or gross partiality. If said misconduct is suspected Oglala Lakota shall refer said matter to the proper authorities for investigation. Only after said investigation is completed shall Oglala Lakota County take action.

4.

The parties agree that Oglala Lakota shall, on the day before the last business day of each month, during the term of this contract beginning January 1, 2021, pay directly to the officers listed below one-twelfth (1/12) of the following annual amounts as payments of gross salaries for providing said services to Oglala Lakota during the year:

<u>OFFICE</u>	<u>2021 AMOUNT</u>
Auditor	\$17,175.25
State's Attorney	\$ 25,000
Deputy State's Attorney	\$ 10,000
Register of Deeds	\$17,175.25

Treasurer \$17,175.25

Oglala Lakota shall, at the regular monthly commission meeting of each month beginning January 1, 2021, for the year 2021, and subsequent years during the term of this contract pay the actual costs for supplies, expenses, office staff and travel for providing said necessary governmental service to Oglala Lakota. Said expenditures shall not exceed the following amounts:

<u>OFFICE</u>	<u>2021 AMOUNT</u>
Auditor	\$42,189.75
State's Attorney	\$11,800.00
Register of Deeds	\$16,585.75
Treasurer	\$48,084.75
Director of Equalization	\$24,892.00
Data Processing	\$6,500.00
Commissioners, Postage Meter	\$1,500.00
Emergency Management	\$3,755.00
GIS	\$1,500.00

6.

The County Officials and/or Fall River employees providing services pursuant to this contract are not required to travel to Oglala Lakota County for monthly meetings. The County Officials and/or employees may travel to Oglala Lakota County for an Oglala Lakota County Commission meeting if they are compensated for mileage at the rate of \$0.42 cents per mile, or paid per diem of \$26.00 and are given at least two weeks prior notice of the meeting in Oglala Lakota County, and the purpose of said meeting. In addition to the compensation provided herein, any County Official and Fall River employee shall receive \$100 for attendance of any Oglala Lakota meeting held in Oglala Lakota County.

7.

Oglala Lakota is familiar with the amount of work required by the State's Attorney, Auditor, Director of Equalization, Register of Deeds, and Treasurer to provide services for the residents of Oglala Lakota County and Oglala Lakota specifically acknowledges that the sums paid pursuant to this contract are appropriate and reasonable. The sums described herein are substantially less than Oglala Lakota would have to expand of Oglala Lakota had to staff and supply its own offices

of State's Attorney, Auditor, Director of Equalization, Register of Deeds, and Treasurer. Oglala Lakota acknowledges that it is not being required to pay for the office staff for the State's Attorney, but is specifically compensating for said deficiency by paying \$6000 towards the State's Attorney's Victim's Assistance Program.

8.

All files, records, documents, books and official minutes of Oglala Lakota shall be maintained at the Fall River County Courthouse, Hot Springs, South Dakota during the term of this contract at no additional cost to Oglala Lakota.

9.

Court proceedings shall be held at the Fall River County Courthouse, Hot Springs, South Dakota during the term of this contract at no additional cost to Oglala Lakota.

10.

Any request for office equipment or machinery of a capital nature made by said County Official providing said services to Oglala Lakota shall be made directly to the Oglala Lakota County Board of Commissioners, who shall have the full and exclusive authority to grant or disapprove same in accordance with performing their official function as County Commissioners according to South Dakota law.

11.

Oglala Lakota shall comply with all federal and state election laws and regulations and all orders and agreements entered in all courts having jurisdiction over voting/election issues. Oglala Lakota shall fully fund all voting/election operations so as to comply with all federal and state election laws and regulations and all orders and agreements entered in all courts having jurisdiction over voting/election issues. Oglala Lakota shall bear all expenses and costs associated with operating and maintaining a satellite office for early voting in Oglala Lakota County. At the end of each month, Oglala Lakota shall reimburse Fall River for any wages, overtime, benefits, meals, mileage or other expenses necessarily incurred for the staffing of a satellite office. Oglala Lakota's approval of a satellite office for early voting shall be at least three months prior to the start of early voting. The purpose of the three months notice is to allow the Auditor and Fall River to plan for the satellite office and to hire the necessary employees and adjust employee schedules accordingly.

12.

In the event of a vacancy in the office of Oglala Lakota Sheriff, Oglala Lakota must contract with a South Dakota certified law enforcement officer to provide Sheriff services to Oglala Lakota County.

13.

The period of this Contract shall be from January 1, 2021, until December 31, 2021, inclusive, and this Contract may be extended or renewed upon the mutual written consent of the parties hereto.

14.

Time is of the essence for this Contract.

15.

This Contract and all of its terms and conditions shall be binding upon all successors in interest of the parties hereto.

16.

All signed copies of this Contract shall be construed the same as the original hereof.

17.

Written notices required to be given hereunder, or any written notices required to be given under South Dakota law, shall be made by certified mail, return receipt requested, to the respective parties at the Auditor's Office, Fall River County Courthouse in Hot Springs, South Dakota.

18.

In the event that Oglala Lakota or Fall River determines that this Contract has been or will be breached, then and in that event, the non-offending party shall send written notice to the offending party, stating the grounds, facts and circumstances that the non-offending party believes led to the breach of this Contract.

The party receiving the notice of breach shall have sixty days from the date that notice was delivered to them, as indicated on the return receipt, to correct said breach, and in the event said breach is not corrected within said time period, the non-offending party may seek to enforce the remedies provided them under the provisions of this Contract and under South Dakota law.

19.

In the event that this contract is terminated, Fall River shall make available to Oglala Lakota all of the files, records, documents, books and official minutes of Oglala Lakota County at the Fall River County Courthouse, Hot Springs, South Dakota, for an immediate removal of the same by Oglala Lakota from said Fall River County Courthouse.

In the event of a breach of this Contract, the Fall River County State's Attorney and his authorized deputies, shall be removed from such dispute and each of the parties shall thereafter

be solely responsible for retaining independent counsel or attorneys for purposes of representation in said dispute. Regardless of fault or liability, Oglala Lakota shall reimburse Fall River County for all attorney fees, expenses and costs associated with any dispute arising between the parties. Regardless of fault or liability, Oglala Lakota shall reimburse any County Official and/or Fall River employee for all attorney fees, expenses or costs associated with any dispute arising between the County Official in Oglala Lakota, and/or a Fall River employee and Oglala Lakota. Regardless of fault or liability, Oglala Lakota shall reimburse any County official and or Fall River employee for all attorney fees, expenses or costs associated which may be incurred as a result of any action related to this Contract and/or the duties to be performed pursuant to this contract.

21.

The parties agree that even if a party does not enforce the other party's breach of a provision of this Contract, the failure to do so shall not be deemed a waiver of that party's right to enforce any subsequent breach or default of the same or similar nature. Any waiver by a party of a right provided for in this Contract must be in writing and signed by the parties to be effective.

22.

This Contract shall be construed in accordance with the substantive laws of the State of South Dakota.

23.

Any dispute arising between the parties shall be brought before the Seventh Judicial Circuit Court, State of South Dakota, and the parties hereto consent to the jurisdiction of said court. The parties specifically waive any jurisdiction that may vest in the Oglala Sioux Tribal Courts.

24.

This Contract may be modified only if said modification is in writing and signed by all the parties.

25.

Oglala Lakota agrees and hereby represents that in this Contract, it was and is acting solely on its own, and acting through its own knowledge, and it is not in any manner relying upon any representation either from the Fall River County State's Attorney or any one of his Deputy State's Attorneys. Oglala Lakota hereby warrants and represents that it understands and acknowledges that as to this Contract, Fall River County State's Attorney and any of his Deputy State's Attorneys, represents only the interests of Fall River. This Contract incorporates all the demands that Oglala Lakota has made in regard to determining and fully settling all the terms and conditions herein. Oglala Lakota hereby states and represents and warrants that it executes this Contract of its own free will, based upon its own independent judgment and without reliance upon any

representations of the Fall River County States Attorney, or any of his Deputy State's Attorneys. Oglala Lakota states that it has considered all of the necessary factors on its own accord, utilizing its own independent judgment, and without coercion by any party. ***Oglala Lakota acknowledges that as to settling the final terms and conditions of this Contract, Fall River County State's Attorney has advised Oglala Lakota to seek its own independent legal representation.***

Fall River, the County Officials and Oglala Lakota hereby give their informed consent to authorize Fall River County State's Attorney to draft this Contract and to negotiate the terms and conditions of the same. Fall River, the County Officials and Oglala Lakota represent that there is no dispute currently pending between the parties hereto and there is no claim by one against any of the others. Fall River, the County Officials and Oglala Lakota, knowingly and voluntarily, waive any conflict of interest there may be in the Fall River County State's Attorney and or his Deputy States Attorneys in the drafting of this Contract and the negotiation of the terms and conditions of the same.

26.

The foregoing Contract constitutes the entire agreement between the parties and there is no other oral or collateral agreement between the parties.

DATED this ____ day of _____, 2020.

JOE FALKENBERG
Chairman, Board of County Commissioners
Fall River County, South Dakota, a political
subdivision of the State of South Dakota

DATED this ____ day of _____, 2020.

ANNA TAKES THE SHIELD
Chairman, Board of County Commissioners
Oglala Lakota County, South Dakota, a political
subdivision of the State of South Dakota

DATED this ____ day of _____, 2020.

SUE GANJE
Auditor of Fall River County, South Dakota

DATED this ____ day of _____, 2021.

LANCE RUSSELL
State's Attorney of Fall River County,
South Dakota

DATED this ____ day of _____, 2020.

TERESA PULLEN
Treasurer of Fall River County, South Dakota

DATED this ____ day of _____, 2020.

MELODY ENGBRETSON
Register of Deeds of Fall River County,
South Dakota