

**AMENDMENT OF LEASE FOR 410 EAST MONROE STREET AND  
ACKNOWLEDGEMENT OF ASSIGNMENT OF LEASE TO YOUTH AND FAMILY  
SERVICES, INC.**

This amendment to the Lease for 410 East Monroe Street is made by and between the City of Rapid City, a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701, herein after referred to as the "City" or "Lessor," and Youth and Family Services, Inc., a South Dakota Corporation, located at 1920 Plaza Blvd., Rapid City, South Dakota 57702, herein after referred to as "YFS" or "Grantee."

WHEREAS, the City owns property at 410 East Monroe Street which is legally described as:

Lot A of Block 12, a portion of the vacated Adams Street and the West one-half of vacated Racine Street all of Wises Addition, located in NW ¼ of Section 31, Township 2 North, Range 8 East of the Black Hills Meridian, Pennington County, South Dakota; and

WHEREAS, since 1977 the City has leased the above property to organizations conducting child development programs directed towards pre-school children (Head Start); and

WHEREAS, YFS is currently operating the Head Start program being conducted at this site; and

WHEREAS, The Administration for Children and Families (ACF), a component of the United States Dept. of Health and Human Services (HHS) has approved an award of Head Start grant funds which will be used to complete a major renovation of the leased premises; and

WHEREAS, the conditions placed on the federal grant money require the Lease be amended to acknowledge the federal interest in the property and provide a sufficient lease term to protect the federal investment; and

WHEREAS, the City held a public hearing on the Lease amendment on December 21, 2009; and

WHEREAS, the City is willing to amend the current lease so that YFS may obtain the grant it has been awarded.

NOW THEREFORE, in consideration of the covenants contained herein, it is agreed that the parties shall amend the Lease as follows:

I.

This Agreement applies to the Lease for 410 East Monroe dated August 30, 1977 including all previous amendments thereto and the Consent to Assignment of Lease dated July 1, 1984.

## II.

The City acknowledges that YFS, which was formerly the Girls Club of Rapid City, currently operates the Head Start program being conducted at the site. The City specifically consents to assignment of the lease to YFS and YFS specifically agrees to be bound by the terms and conditions of the lease and its amendments.

## III.

The term of the Lease shall be for a period of twenty-five (25) years. Should YFS breach or be in default of any terms of the Lease the City may terminate the Lease upon providing notice as required in Section IV of this amendment. If YFS or ACF does not cure the breach and/or default within the time frames specified in Section IV, the City may proceed with any remedies it may have in law or equity to cure the breach or otherwise terminate the lease. Any actions taken by the City under this section will be subject to the provisions contained in Section IV. Any conflict between any other term of this Lease and Section IV will be resolved in favor of the language contained in Section IV.

## IV.

Based on the substantial grant funds being provided by ACF to renovate the leased premises, the parties acknowledge the Federal government, acting through ACF, has a vested interest in the leased premises. The following provisions are being specifically incorporated into the Lease agreement to protect the Federal government and ACF's interest in the leased premises:

1. Definitions: Under this Agreement, the following terms are defined as follows:
  - (a) Event of Default: The term "Event of Default" means an event of default under the Lease.
  - (b) Grantee: The term "Grantee" means Youth and Family Services, Inc. and/or an interim grantee and/or a replacement grantee and their heirs, assignees, and successors under this Agreement and the Lease.
  - (c) Lessor: The term "Lessor" means the City of Rapid City and/or their heirs, assignees, and successors under this Agreement and the Lease.
  - (d) Interim Grantee: The term "Interim Grantee" has the same meaning as it is defined in 45 CFR §1303.2.
  - (e) Replacement Grantee: The term "Replacement Grantee" refers to an entity designated by ACF to serve as the Head Start grantee subsequent to the end of the role of YFS in that function.

- (f) Parties: The term “Parties” shall refer to YFS and the City of Rapid City, and their respective heirs, successors, and assignees under this Agreement and the Lease.

2. Grantee’s Obligations

- (a) The Grantee agrees not to sublease, assign, or otherwise transfer the leased property, or use the property for any non-grant purpose, without the express written approval of the responsible HHS official.
- (b) The Grantee covenants and agrees to provide ACF with notice:
  - (1) Of any default by the Grantee under the Lease, on the date of the discovery of such default; and
  - (2) That the Lessor has notified the Grantee of its intent to exercise the remedy of cancellation, termination, and/or other remedies, on the day that the Grantee receives such notice from the Lessor.

3. Lessor’s Promise To Notify ACF

The Lessor covenants and agrees to provide ACF with notice:

- (a) Of any default by the Grantee under the Lease, as soon as practicable after the day that the Lessor first knows of such default; and
- (b) That the Lessor intends to exercise its remedy of cancellation, termination, and/or any other remedy, on the day that Lessor notifies the Grantee that it intends to exercise such remedy or remedies, or if the Lessor does not notify the Grantee, on the day that the Lessor decides to exercise any such remedy or remedies.
- (c) That the Lessor intends to mortgage the Leased Premises, or that a lien or other encumbrance affecting title has been attached to the Leased Premises.

4. Addresses For Notification To ACF

Whenever notice to ACF is required under this Agreement, the Lessor and the Grantee promise to provide both telephonic and written notification (by registered mail, return receipt requested) to the following ACF offices, or to their successors:

- (a) Regional Program Manager  
Office of Head Start, Region II  
Administration for Children and Families  
26 Federal Plaza Room 4114  
New York, New York 10278  
Telephone Number: (212) 264-2890
- (b) Director  
Office of Head Start, Administration for Children and Families  
1250 Maryland Avenue S.W.  
Washington D.C. 20042  
Telephone Number: (202) 205-8347
- (c) Office of the General Counsel  
United States Department of Health and Human Services  
722A Hubert H. Humphrey Building  
220 Independence Avenue, S.W., Washington, D.C. 20201  
Telephone Number: (202) 690-7741

In addition, if one or more of the offices listed above has a change of name, address, and/or telephone number, the Grantee and the Lessor further covenant and agree to take all reasonable action necessary to discover and notify the appropriate government offices.

5. Contents Of Notification To ACF

The Lessor and the Grantee covenant and agree to include the following information in the written notice to ACF whenever such notice is required under this Agreement:

- (a) The full names, addresses, and telephone numbers of the Lessor and the Grantee;
- (b) The following statement, prominently displayed at the top of the first page of the notice:

**“The Federal Interest in certain real property or equipment used for the Head Start Program may be at risk. Immediately give this notice to the appropriate government official.”**

- (c) The date and the nature of the default and the manner in which the default may be cured and/or an explanation of other circumstances that required the notice;

- (d) In the event that the Lessor will be exercising the remedy of cancellation, termination, and/or other remedies, the date or expected date of the cancellation and/or exercise of other remedies.

6. Grantee's Promise To Notify Lessor Of Changes In ACF's Address

The Grantee covenants and agrees to give the Lessor written and telephonic notice of any change of name, address, and/or telephone number of an ACF office listed in Paragraph 4. If one or more of the ACF offices listed in Paragraph 4 stops operating, the Grantee covenants and agrees to give the Lessor written and telephonic notice of the name, address, and telephone number of the succeeding Federal office(s) to which notice must be given.

7. ACF's Rights In Event Of The Grantee's Default

- (a) In the event a default occurs under the Lease, the parties agree that ACF may intervene when it deems a default to have occurred under the Lease, and which default requires ACF's intervention to avoid termination of the Lease by the Lessor, to ensure that the default is cured by the Grantee or another party designated by the responsible ACF official, and that the Lessor, or its assigns, shall accept the payment of money or performance of any obligation by ACF's designee for the Grantee, as if such payment of money or performance had been made by the Grantee.
- (b) Unless as otherwise specified in Paragraph 9 below, ACF shall have sixty (60) days from the date of receipt of notice of the default, that has been served in full compliance with Paragraphs 3 through 5 above, in which to intervene to attempt to cure the default.
- (c) In the event that the Grantee defaults, is terminated, withdraws from the Head Start grant, or vacates the Lease before the end of the Lease term, ACF shall have the right to designate a replacement for the Grantee for the balance of the Lease term, subject to approval by the Lessor, which will not be withheld except for good reason as provided for in 45 CFR §1309.21.

8. Substitution By ACF Shall Not Constitute An Event Of Default

Notwithstanding any other provisions of the Lease, the Parties agree that any substitution of grantees by ACF shall not constitute an event of default under the Lease. No substitution of an Interim or Replacement Grantee may be made until ACF has provided to Lessor the identity of the Interim or Replacement grantee, proof of its status to satisfy the standards of this Agreement, and such other information as required to permit Lessor to verify that the Interim or Replacement Grantee, and the programs to be conducted by it at the Leased Premises, conform to the standards required by this Agreement. Lessor shall not withhold consent to

the Interim or Replacement Grantee if such entity and the programs to be conducted by it conform to the standards of this Agreement. The Parties further expressly covenant and agree that any such substitution by ACF made in accordance with this Agreement shall not trigger termination of the Lease or any other remedy under it.

9. Special Period For Curing Certain Non-Monetary Defaults

With respect to non-monetary defaults that cannot with due diligence be cured within sixty (60) days from the date of receipt of notice of default that has been served in full compliance with Paragraphs 3 through 5 above, if ACF promptly acts to cure the default within the sixty (60) day period and thereafter continues to attempt to cure the default with due diligence, then ACF shall have the right to such additional time as may be reasonably necessary to finish curing the default.

10. Delay Of Exercise Of Remedies Pending Cure

In the event of a default under the Lease, Lessor agrees that it shall not commence cancellation or termination of the Lease or any other remedies that affect ownership or possession of the Leased Premises until after ACF has been properly served, in full compliance with Paragraphs 3 through 5 above, with notice of default and intent to exercise remedies, and one of the following events has occurred:

- (a) The responsible ACF official informs the Lessor in writing that ACF has decided not to cure the default; or
- (b) ACF fails to timely cure the default within the period of time set forth in this Agreement.

11. Federal Interest In the Property Leased

This Lease Amendment also serves to notify all potential sellers, purchasers, transferors, transferees, mortgagees, creditors, and any other persons or entities who have or may seek to obtain an interest of any kind in the real property described in this Lease Amendment (“the property”) of the Federal government’s beneficial ownership interest and other interests (“Federal Interest”) in said property, as defined in and/or regulated by the Head Start Act, 42 U.S.C. §9831 *et seq.*, 45 CFR Parts 74, 92, and 1309, and relevant decisions of the United States courts. The United States Department of Health and Human Services, Administration for Children and Families (“HHS”) has awarded grant funds to YFS (“grantee”), a South Dakota Corporation, including, but not limited to grant number 08SH0076-1 on 12/1/09, and expects to award further amounts in the future. The Federal Interest arises because YFS has used the grant funds to acquire, and/or construct, and/or improve said property and will have used such additional amounts awarded in the future for that purpose. The Head Start grant

incorporated conditions that include restrictions on the use of the property and provide for a Federal Interest in the property.

In accordance with the terms of the Federal grant, the Head Start Act, 42 U.S.C. §9831 et seq., 45 CFR Parts 74, 92, and 1309, and relevant decisions of the United States courts, the restrictions on the property include, among others, the following:

- The property may not be used for any purpose inconsistent with that authorized by the Head Start Act and applicable regulations.
- The property may not be encumbered, used as collateral, sold or otherwise transferred to another party without the written permission of the responsible HHS official.
- The grant conditions and requirements cannot be altered or nullified through a transfer of ownership.

Further information regarding the Federal Interest in the property described in this Notice can be obtained from the Administration for Children and Families Regional Office at the following location:

Adm. for Children and Families  
Denver Regional Office  
1961 Stout Street, Office 926  
Denver, Colorado 80294-3538  
1-866-204-4117

12. Binding On Heirs And Assigns

This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of each of the parties hereto, but does not otherwise create, and shall not be constructed as creating, any rights enforceable by any person not a party to this Agreement.

13. Assumption Agreement

Any Interim or Replacement Grantee must, as a precondition to its occupancy of the Leased Premises, execute an Assumption Agreement in the form annexed to this Agreement.

V.

Any terms of the original Lease or its subsequent amendments which have not been altered by this document or are not contradicted by it remain unchanged.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement pursuant to the authority duly given them.

YOUTH AND FAMILY SERVICES, INC.

CITY OF RAPID CITY

\_\_\_\_\_  
Terry Whiting  
President of the Board  
DATE:\_\_\_\_\_

\_\_\_\_\_  
Alan Hanks  
Mayor  
DATE:\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Jim Preston  
Finance Officer  
DATE:\_\_\_\_\_