

AGREEMENT BETWEEN THE CITY OF RAPID CITY AND YOUTH & FAMILY SERVICES, INC. FOR THE USE OF CITY VISION FUNDS TO CONSTRUCT AN EXPANSION OF THE FACILITY LOCATED ON EAST ADAMS STREET.

This Agreement is made and entered into this ___ day of May, 2019, by and between the CITY OF RAPID CITY (the “ City”), a municipal corporation, located at 300 Sixth Street, Rapid City, South Dakota 57701, and YOUTH & FAMILY SERVICES, INC. (“YFS”), a South Dakota non-profit corporation, located at 1920 Plaza Drive, Rapid City 57702.

RECITALS

WHEREAS, the City solicited potential community projects to receive funding from the City’s Vision Account; and

WHEREAS, YFS, a 501(c)(3) corporation, submitted a request to have the City’s Vision Account help fund an expansion of its existing facility on East Adams Street; and

WHEREAS, YFS provides educational and support programs in the community for children & families; and

WHEREAS, of all youth served by YFS programs 85% live in poverty and qualify for some sort of assistance, 75% live in single parent or foster homes, and within Rapid City 50% are racial minorities; and

WHEREAS, since 2003 when the East Adams facility was originally constructed, those served by YFS programs has grown from 8,500 people to over 14,000; and

WHEREAS, the expansion of the East Adams facility will allow YFS to not only accommodate the increased number of people served by its programs, but will also accommodate additional programs needed to fill identified gaps in service within the community; and

WHEREAS, the City formed a citizen committee to review and make funding recommendations regarding the proposed community projects which sought money from the Vision Account; and

WHEREAS, the citizen committee recommended the full \$1,950,000 in funding requested by YFS for the proposed project; and

WHEREAS, the City Council reviewed and ratified the citizen committee’s recommendations at its January 31, 2019 meeting; and

WHEREAS, the parties desire to memorialize under what terms and conditions the City funds will be made available to fund the YFS expansion project.

NOW THEREFORE, the parties hereby covenant and agree as follows:

1. The City will expend up to \$1,950,000 out of the City's Vision Account to help fund construction of the expansion of the YFS East Adams Street facility consistent with YFS's application and supporting materials which were submitted to, and reviewed by, the City. A copy of YFS's application and supporting materials are hereby incorporated into this Agreement. The City's contribution will be used primarily for construction of the expanded building and will not be used to reimburse YFS for any of the design costs. The Vision Account award is payable over three (3) years. The maximum amount to be reimbursed in each year is as follows: 2019 - \$1,300,000; 2020 - \$469,000; and 2021 - \$181,000. Any funds not reimbursed in the year identified may be carried over and reimbursed in the subsequent year in addition to the amount identified for the subsequent year. The total cost of completing the project exceeds the amount the City has awarded to YFS and the parties acknowledge and understand that if there is a shortfall in the funds needed to complete the project, the City has no further obligation to allocate any additional funds. In the event of a shortfall in the funds needed to complete the project, YFS will either need to make changes to the scope of the project that decrease the total project costs, or make up the difference in the total cost out of other funding sources.

2. YFS will be solely responsible for designing and constructing the project contemplated in this Agreement. YFS has indicated to the City it has obtained private financing in an amount sufficient to construct this project. Based on YFS's ability to pay the initial design and construction costs out of its own funds, the parties have agreed that YFS will invoice the City Finance Office for covered work once it has been completed. Since YFS has already begun construction on the project and anticipates the project will be completed early in 2020, the parties expect that the full amount allocated for each year will be reimbursed in a single lump sum payment in the year that it becomes due. The City will review the payment invoice and then reimburse YFS for those expenditures up to the amounts identified in Paragraph 1 of this Agreement. YFS agrees to provide to the City with any request for reimbursement sufficient documentation so that the City can insure the payment is for the project, is consistent with the proposal identified in YFS's application, and the contractors have already been paid for the invoices being submitted. If the City identifies an issue with a request for reimbursement, the City may withhold approval of such reimbursement until the issues which have been identified are resolved, or may proceed with processing the payment, but withhold any disputed amounts from future payments if the issue is not resolved in a reasonable time period. The City agrees to work diligently with the YFS and its contractors to resolve any disputes and the City further agrees that it will not unreasonably withhold any payments or reimbursements to YFS.

3. Due to the use of public funds in the construction of this project, YFS agrees that the selection of contractors for the construction of the improvements contemplated by this Agreement shall comply with all provisions of South Dakota law regarding the expenditure of public funds. These provisions are contained in Chapters 5-18A through 5-18D of the South Dakota Codified Laws. The City specifically acknowledges that YFS may engage a construction manager, a construction manager at risk, or engage in a design-build process consistent with state law. YFS agrees to provide the City with any and all documentation necessary to demonstrate to the City's satisfaction that it has complied with this provision.

4. If YFS substantially alters the project from the presentation it made to obtain funding, fails to meet any of the deadlines established in this Agreement, or suspends construction on the

project for more than four (4) months once construction has commenced, YFS shall be in material breach of this Agreement. If YFS is in material breach, the City may unilaterally terminate its remaining obligations under this Agreement. The City shall provide written notice to YFS of such breach and YFS shall have thirty (30) days to remedy or cure such breach. To the extent that YFS has incurred reimbursable expenses under this Agreement prior to its termination by the City, the City will reimburse YFS for those expenses pursuant to the terms of this Agreement.

5. YFS acknowledges that the City's commitment to provide \$1,950,000 towards the completion of this project is good and sufficient consideration for the promises it has made herein. YFS further acknowledges that absent the promises made herein, the City would not have agreed to provide these funds. The City acknowledges that YFS's commitment to construct an approximately \$14 million dollar expansion of a facility which provides educational and support services for low income families constitutes sufficient good and valuable consideration for the promises it has made herein. The City further acknowledges that absent the promises it has made in this Agreement, YFS would not have undertaken other financial obligations necessary to fund the project described herein.

7. If any provisions or terms of this Agreement are held to be unconstitutional, invalid, or otherwise unenforceable by any court or tribunal having jurisdiction over the parties the remainder of this Agreement shall remain in full force. Any such determination of invalidity shall not affect any other provision of this Agreement if the remaining sections or provisions can be given effect without the invalid section or provision.

8. This Agreement shall be deemed to be prepared jointly by the parties hereto and neither shall be deemed to be its sole author. In the event of any claim of ambiguity, no provision shall thereby be construed against either party.

9. This Agreement is intended solely for the benefit of the parties hereto and shall not be enforceable by, or create any claim of right or right of action, in favor of any other party. The terms and conditions of this Agreement may be modified only in a written amendment that is duly executed by the parties hereto. Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party. Subject to this restriction, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and legal representatives.

10. Failure of a party to insist upon adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon adherence to that term, or any other term, of this Agreement.

11. The validity, interpretation, construction, and performance of this Agreement shall be governed by the laws of the State of South Dakota. Any action to interpret or enforce this Agreement shall be venued in the Seventh Judicial Circuit in Pennington County, South Dakota.

12. This Agreement constitutes the entire agreement of the parties regarding this matter. No other promises or consideration form a part of this Agreement. All prior discussions and negotiations are merged into this document or have been intentionally omitted.

Dated this ___ day of May, 2019.

CITY OF RAPID CITY

Steve Allender, Mayor

ATTEST:

Pauline Sumption, Finance Officer

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YOUTH & FAMILY SERVICES, INC.

Margo Julius, President of the Board

Susan Fedell, Chief Executive Officer

State of South Dakota)
 ss.
County of Pennington)

On this the ____ day of _____, 2019 before me, the undersigned officer personally appeared Margo Julius, who acknowledged herself to be the President of the Youth & Family Services, Inc., Board of Directors, and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, _____

My Commission Expires:

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the ____ day of _____, 2019 before me, the undersigned officer personally appeared Susan Fedell, who acknowledged herself to be the Chief Executive Officer of Youth & Family Services, Inc., and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, _____

My Commission Expires:

(SEAL)