

AGENDA

**MONTROSE CITY COUNCIL SPECIAL MEETING**  
DECEMBER 29, 2021 6:00 PM COMMUNITY CENTER

PLEDGE OF ALLEGIANCE

CALL TO ORDER - Roll Call

RULES OF DECORUM

APPROVAL OF AGENDA

DAYCARE

EXECUTIVE SESSION

ADJOURN

NOTE: No changes will be made to the agenda within 24 hours of the Council meeting.

## LEASE CANCELLATION AND TERMINATION AGREEMENT

This LEASE CANCELLATION AND TERMINATION AGREEMENT (the "Agreement") is made by and between Montrose School District 43-2, Montrose, South Dakota (the "Landlord"), on its own behalf and on behalf of all other persons or entities having an interest as landlord under that certain Lease dated May 21, 2001, (the "Lease") (a copy of which is attached hereto) demising certain leased premises described therein (the "Premises"), on property located in the City of Montrose, McCook County, South Dakota (the "Building"), and City of Montrose, McCook County, South Dakota (the "Tenant"), for its own behalf and on behalf of all of its predecessors-in-interest in the Lease and all other persons or entities having an interest as tenant under the Lease.

Landlord and Tenant have mutually agreed that the Lease shall be cancelled and terminated in consideration of the mutual covenants set forth below and in accordance with the terms and conditions set forth herein.

1. Recitals Incorporated. The foregoing recitals are incorporated herein by reference into this Agreement as though set forth fully.
2. Lease Modification. The term of the Lease shall expire and shall be deemed terminated and cancelled effective on January 3, 2022, (the "Expiration Date"). Except as modified herein, the Lease is otherwise unmodified and in full force and effect.
3. Lease Termination. Notwithstanding the foregoing, if, on or before the Expiration Date, Tenant vacates the Premises and leaves such Premises in reasonably good condition and repair and otherwise in such condition as is required under Paragraph 5 below, as well as under the Lease with respect to surrender of the Premises at the end of the term of such Lease, then, in such event, as of the date that Tenant so vacates the Premises (such date being the "Termination Date"), (i) the Lease shall be deemed terminated and cancelled with the same effect as if such date were the normal expiration date of the Lease; and (ii) neither party shall have any claim against the other, and each party releases the other from any and all claims, liabilities, damages, or actions of any kind whatsoever arising out of or pursuant of the Lease or Tenant's use or occupancy of the Premises.
4. Compliance with Obligations. Tenant shall be responsible for all obligations of Tenant under the Lease through and including the Termination Date, including, without limitation, Tenant's obligation to pay utility charges through the Termination Date and all other amounts and/or charges owing under the Lease owed by Tenant, including insurance for the Premises.
5. Condition of Premises. On or before the Termination Date, Tenant shall (i) remove all Tenant's personal property; (ii) vacate the Premises by the Expiration Date; (iii) leave such Premises in reasonably good, broom-swept clean condition; (iv) repair and otherwise ensure such condition of the Premises as is required under the Lease with respect to the surrender of the Premises at the end of the term of the Lease; and (v) deliver the keys to the Premises to Landlord on or before the Expiration Date.

6. Mutual Release. By this Agreement, effective on the Termination Date and so long as neither party shall be in default under its obligations hereunder, each party hereto releases the other party hereto from all claims, demands, damages, rights, liabilities, and causes of action of any nature whatsoever, whether at law or equity, known or unknown, suspected or unsuspected, which are related or in any manner incidental to the Lease or the Premises and which first arise out of transactions and occurrences from and after the Termination Date. Each party waives and relinquishes any right or benefit which it has or may have under applicable law regarding waiver of unknown claims to the full extent that it may lawfully waive such rights and benefits. In connection with such waiver and relinquishment, each party acknowledges that it is aware that it or its attorneys or accountants may hereafter discover facts in addition to or different from those which it now knows or believes to exist with respect to the subject matter of this Agreement or the other party hereto, but that it is the intention of Landlord and Tenant hereby to fully, finally, and forever settle and release all of the claims, disputes, and differences, known or unknown, suspected or unsuspected, which now exist or may exist hereafter between each party with regard to the Lease or the Premises. This Agreement shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different facts. Notwithstanding the foregoing to the contrary, this Mutual Release is not intended to release or offset actions by either party for claims arising as a result of (i) a breach of the Lease and occurring on or before the Termination Date; (ii) a breach of this Agreement; or (iii) transactions and occurrences on or before the Termination Date.

7. Knowing Release. In executing this Agreement, each party hereto acknowledges that they have consulted with and received the advice of counsel and that the parties have executed this Agreement after independent investigation and without fraud, duress, or undue influence.

8. Authority of Tenant. Tenant represents and warrants that (i) it is the owner and holder of the Tenant's interest in the Lease and that it has the power, right, and authority to execute this Agreement and to carry out the intent hereof; (ii) the execution and delivery of this Agreement shall not violate or contravene any agreement, contract, security agreement, lease or indenture to which Tenant is a party or by which it is bound or requires the consent of any party to any of the foregoing; and (iii) the Premises, including all improvements and betterments thereto, are unencumbered, free of any security interests, liens, chattel mortgages, leases, lease purchase agreements or any other security or financing devices and, all such installations or obligations, if any, have been fully paid.

9. Attorney Fees. If any party initiates legal proceedings to enforce its rights under this Agreement, the substantially prevailing party shall be entitled to reimbursement of its reasonable attorney fees, costs, expenses, and disbursements from the other party.

10. Final and Complete Expression. This Agreement is the final and complete expression of the parties. This Agreement may not be modified, interpreted, amended, waived, or revoked orally, but only by a writing signed by the parties hereto.

11. Severability. If any provision in this Agreement is deemed invalid, then the remaining provisions thereof will continue in full force and effect and will be construed as if the invalid provision had not been a part of this Agreement.

12. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same document.

Dated this \_\_\_ day of \_\_\_\_\_, 202\_\_.

TENANT: City of Montrose, South Dakota

\_\_\_\_\_  
By its: Mayor

\_\_\_\_\_  
City Finance Officer

Dated this \_\_\_ day of \_\_\_\_\_, 202\_\_.

LANDLORD: Montrose School District 43-2

\_\_\_\_\_  
By its: School Board President

\_\_\_\_\_  
District Business Manager

**Statement of Values - Buildings & Contents**  
**City of Montrose**

| Loc. No. | Address GPS                                       | Value Building / Contents | Deductible | Valuation | Occupancy                                       | Sq Ft Yr Bit | Cnst NB | Sprnk E/WS | Stry Boiler?             |
|----------|---|---------------------------|------------|-----------|---|--------------|---------|------------|--------------------------|
| 6-9      | 113 Main St West<br>Montrose, SD                  | \$149,608                 | \$500      | RC        | City Bar  | 1,500        | 1       | N          | 1                        |
|          | 43-42.039N, 97-11.085W                            | \$14,685                  |            |           |   | 1995         | 8       |            | <input type="checkbox"/> |
| 8-10     | Block 3, Lots 11 & 12<br>Montrose, SD             | \$388,000                 | \$500      | RC        | Water Tower                                     |              | 3       | N          | 1                        |
|          | 43-42.083N, 97-11.290W                            | \$0                       |            |           |   | 2020         | 8       | WS         | <input type="checkbox"/> |
| 8-11     | Block 3, Lots 11 & 12<br>Montrose, SD             | \$31,922                  | \$500      | RC        | Pump house                                      | 120          | 3       | N          | 1                        |
|          | 43-42.080N, 97-11.790W                            | \$36,714                  |            |           |   |              | 8       | WS         | <input type="checkbox"/> |
| 8-23     | Block 3, Lots 11 & 12<br>Montrose, SD             | \$4,083                   | \$500      | RC        | Fencing around<br>Water Tower                   |              | 7       | N          |                          |
|          | 43-42.083N, 97-11.290W                            | \$0                       |            |           |   |              | 8       |            | <input type="checkbox"/> |
| 9-12     | 101 W Main<br>Block 6, Lots 17-20<br>Montrose, SD | \$594,928                 | \$500      | RC        | Fire Hall,<br>Community Center<br>& City office | 5,984        | 1       | N          | 1                        |
|          | 43-42.075N, 97-11.032W                            | \$10,081                  |            |           |   | 1996         | 8       |            | <input type="checkbox"/> |
| 10-13    | 300 E. Clark<br>Lot 1, of OLK<br>Montrose, SD     | \$70,806                  | \$500      | RC        | Bathhouse @<br>Campground                       | 560          | 2       | N          | 1                        |
|          | 43-42.202N, 97-10.922W                            | \$0                       |            |           |   | 1998         | 8       |            | <input type="checkbox"/> |
| 11-15    | 311 S. Church<br>Montrose, SD                     | \$169,918                 | \$500      | RC        | Day Care Center<br><i>Steel Roof</i>            | 1,368        | 1       | N          | 1                        |
|          | 43-41.859N, 97-11.199W                            | \$58,742                  |            |           |   | 2002         | 8       |            | <input type="checkbox"/> |
| 12-28    | 100 E Main St<br>Montrose, SD                     | \$25,676                  | \$500      | RC        | Emergency<br>Warning Siren                      |              | 7       | N          |                          |
|          | 43-42.095N, 97-11.050W                            | \$0                       |            |           |   |              | 8       |            | <input type="checkbox"/> |
| 4-34     | Ballpark<br>Montrose, SD                          | \$19,980                  | \$500      | RC        | Bleacher Shade<br>Shelter at Baseball<br>Field  |              | 1       |            |                          |
|          |   | \$0                       |            |           |   |              | 8       |            | <input type="checkbox"/> |
| 6-35     | 113 Main St. West<br>Montrose, SD                 | \$1,203                   | \$500      | RC        | Material Storage<br>Building at City Bar        |              | 1       |            |                          |
|          |   | \$0                       |            |           |   |              | 8       |            | <input type="checkbox"/> |
| 11-36    | 311 S. Church<br>Montrose, SD                     | \$3,923                   | \$500      | RC        | Material Storage<br>Building at Day<br>Care     |              | 1       |            |                          |
|          |   | \$0                       |            |           |   |              | 8       |            | <input type="checkbox"/> |

## LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into this 21 day of May, 2002, by and between Montrose School District of Montrose, South Dakota, hereinafter called Landlord, and City of Montrose, South Dakota, hereinafter called Tenant:

WHEREAS, the Tenant is desirous of establishing a daycare facility for the benefit of the community and surrounding area and Landlord is desirous of participating in the establishment of said daycare facility;

NOW, THEREFORE, the parties agree as follows:

1. Landlord hereby leases to Tenant, and Tenant takes from Landlord, the following described premises:

The Southeast One Hundred Eight Feet by Thirty-five Feet (SE108'X35') of the North Two Hundred Ninety-four Feet (N294') of Outlot C, Kluckholm Addition to City of Montrose, McCook County, South Dakota,

together with any and all easements, licenses, privileges, rights of ingress and egress, and all other appurtenances belonging to or in any way appertaining to said premises, for the purpose of conducting a daycare facility. Tenant shall acquire and move onto said property a structure suitable for the operation of said daycare facility.

2. The term of this lease shall commence on the 1 day of August, 2002, and shall continue thereafter for a period of twenty (20) years.

3. Tenant shall pay as rental for said premises the sum of One Dollar, payable herewith, receipt of which is hereby acknowledged by Landlord.

~~4.~~ Tenant shall have and is hereby granted the right to improve the described property as Tenant deems necessary for the operation of a daycare facility, and Tenant shall pay for all such improvements. Such improvements shall become the property of Landlord upon termination of this lease, unless otherwise agreed between the parties.

5. Tenant shall, at its own expense, make all repairs, replacements, and maintenance to or upon the leased premises which become necessary during Tenant's occupancy of said premises. Tenant shall also keep the leased premises in a reasonably clean condition, according to local ordinances and the direction of the proper public officers, during the term hereof.

6. Tenant shall pay, in addition to the rental above specified, for all utilities used by Tenant upon the leased premises.

7. Tenant shall pay for all premises liability insurance and business insurance for activities conducted upon the leased premises, and Tenant shall save harmless the Landlord from any and all legal action or damages which may be caused by reason of the occupancy of the leased premises by Tenant, due to the negligence of Tenant. Such insurance policies or a copy thereof shall be delivered to Landlord.

8. The Landlord and Tenant and all parties claiming under them hereby mutually release and discharge each other from all claims and liabilities arising from or caused by any hazard covered by insurance on the leased premises, or covered by insurance in connection with property on or activities conducted on the leased premises regardless of the cause of the damage or loss.

9. This lease shall not be assignable by Tenant without the written permission of Landlord, which written permission shall not be unreasonably withheld.

10. At the expiration of the term of this lease, or any sooner determination of this lease, the Tenant shall peaceably and quietly quit and surrender the premises to Landlord, its agent or attorney, and should any default be made by Tenant, the Landlord or its agent or attorney may re-enter and take possession of said premises, remove all persons therefrom, and at its option, terminate this lease.

11. Tenant agrees to keep all sidewalks and driveways located upon said premises clear of snow, ice or other obstruction and to comply with any and all city ordinances, state and federal laws.

12. Tenant shall have and be entitled to peaceful and quiet use of the property. Landlord or its designee shall have the right of ingress and egress on the property for limited purposes of inspection and preservation of property during business hours, provided that Landlord shall not interfere with Tenant's business operations, and shall provide reasonable notice of entry.

13. Tenant shall have the first option to purchase said real estate by meeting any bona fide offer which Landlord may obtain for the property in the event Landlord wishes to sell it.

14. The specified remedies to which the Landlord may resort under the terms of this lease are cumulative and are not intended to be exclusive of any of its remedies or means of redress to which the Landlord may be lawfully entitled in case of any breach or threatened breach by the Tenant of any provision or provisions of this lease.

15. The covenants or terms, conditions, provisions and undertakings in this lease shall extend to and be binding upon the successors and assigns of the respective parties hereto, as if they were in every case named and expressed, and shall be construed as covenants running with the land.

16. If any provision of this lease shall be declared invalid or unenforceable, the remainder of the lease shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year first above written.

MONTROSE SCHOOL DISTRICT

CITY OF MONTROSE, SOUTH DAKOTA

By: [Signature]  
Its President  
LANDLORD

By: [Signature]  
Its Mayor  
TENANT

## 2021 Daycare Inventory

### Kitchen

- 1 Microwave ✓
- 1 Refrigerator ✓
- 1 Range ✓
- 1 Toaster ✓
- 1 Set of Pots and Pans ✓
- Assorted Tupperware ✓
- Assorted Cutlery ✓
- Cups/Plates/Bowls ✓
- 1 Newer Dishwasher ✓
- 1 Coffee Pot ✓
- Kitchen Cabinets/Counters ✓

### Main Play Room

- 1 Wardrobe Storage containing various craft supplies ✓
- 1 Desk ✓
- 1 Large Book Shelf ✓
- 1 Office Copy Machine ✓
- 2 6ft Child Height Tables ✓
- 1 Infant Drop Down Table w/ 6 Seats ✓
- 14 (23 inch) chairs, new ✓
- 6 (12 inch) chairs ✓
- 3 Highchairs - 2? ✓
- 1 Smart TV ✓
- 2 White Board ✓
- Classroom Bulletin Board ✓
- 1 Kitchen Playset ✓
- Various Toys ✓
- Various Storage Containers ✓
- 3 Cork Boards ✓
- 2 Toy Shelves ✓
- Various Toys ✓
- 15 Nap Mats/Beds ✓
- Various Books ✓

### Infant Room

- 1 Rocking Chair ✓
- 5 Cribs ✓
- 3 Infant Bouncy Seats - 1? ✓
- 1 Swing ✓
- 1 Bumbo Seat ✓ - 2? ✓
- Various Toys ✓

- Air Purifier ✓
- 4 Infant Gates ✓

### Utility Room

- 1 Set Stacked Washer Dryer ✓
- 1 Water Softener ✓
- 1 Furnace ✓
- 1 Water Heater ✓
- 1 Chest Deep Freezer ✓

### Outdoors

- Large Wire Fence ✓
- 2 Swing Sets ✓
- 1 Toddler Slide ✓
- Jungle Gym ✓
- Various Outside Toys ✓
- 1 Shed full of various toys ✓
- 6 passenger stroller ✓

### Entry Way

- 3 Sets of Child Cubbies' ✓
- 1 Time Clock ✓
- 1 Laptop ✓
- 1 HP Home Printer ✓
- 1 Office Chair ✓
- 1 Desk ✓
- 1 File Cabinet ✓

### Bathroom

Clipboard full of  
movies for kids.

~~February air purifier~~  
Tape Player