

**SUBRECIPIENT CONTRACT FOR  
COMMUNITY DEVELOPMENT BLOCK GRANT – RECOVERY (CDBG-R) FUNDING  
ENTITLEMENT FUNDS CFDA# 14.253**

**SECTION I.  
AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of August 2009 by and between the **City of Rapid City** hereinafter referred to as "City", and **Behavior Management Systems, 350 Elk Street, Rapid City, SD** hereinafter referred to as "Subrecipient", Witnesseth:

WHEREAS, the City has, under date of **June 5, 2009** entered into an Agreement, attached hereto and incorporated herein, with the U.S. Department of Housing & Urban Development providing for financial aid to the City under Title I of the Housing and Community Development Act of 1974, as amended, (42 USC 5301 et seq.) (as modified by the Notice); and is made pursuant to the authority of Title XII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) (the Recovery Act). The Grant agreement is governed by and the Subrecipient shall comply with the requirements of the Recovery Act; the Notice of Program Requirements for Community Development Block Grant Program Funding Under the American Recovery and Reinvestment Act of 2009, 74 Fed. Reg. 21816 (May 11, 2009) available at <http://www.hud.gov/recovery/cdblock.cfm> (as now in effect and may be amended from time to time) (the Notice); and the HUD regulations at 24 CFR part 570 (as now in effect and as may be amended from time to time) as modified by the Notice (the Regulations); and as Public Law 93-383 for Community Development Block Grant Recovery (CDBG-R) entitlement funds CFDA # 14.253; and

WHEREAS, pursuant to such Agreement, the City is undertaking certain activities necessary for the execution of a project situated in the project area described in the Scope of Service; and

WHEREAS, the Common Council finds it in the City's best interest to disburse funds to the Subrecipient to execute certain projects in conjunction with such undertaking of the City.

NOW, THEREFORE, in consideration of the mutual covenants, conditions contained herein, the City and the Subrecipient hereby agree as follows:

**SECTION II.  
RESPONSIBILITY OF THE CITY**

City shall designate representatives of the City who will be authorized to make all necessary decisions required of the City on behalf of the City in connection with the execution of this Agreement and disbursing funds in connection with the program. Disbursements require prior City Council approval.

### **SECTION III. SCOPE OF SERVICE**

#### **A. Activities**

The Subrecipient will be responsible for administering a CDBG Fiscal Year 2008 Entitlement  Housing  Rehabilitation  Public Facility Improvement  Public Facility  Public Service or  Economic Development program activities in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds, and consistent with all provisions of this Agreement. Subrecipient warrants and represents it has the requisite authority and capacity to perform all terms and conditions on Subrecipient's part to be performed hereunder.

#### **Program Delivery**

**Behavior Management Systems** shall use **Twenty-Five Thousand One Hundred Sixty-one and no/100 Dollars (\$25,161.00)** of Community Development Block Grant Recovery funds for the following activities:

- a) **1<sup>st</sup> Street Apartments: improve insulation of the apartment building by adding roof insulation to meet a depth of at least 8",**
- b) **304-306 Anamosa Apartments: replace existing windows with energy efficient windows, and**
- c) **350 Elk Street: convert existing florescent light fixtures to new fixtures that use energy efficient bulbs and replacement of an air conditioner unit with a high efficiency unit.**

as submitted in the application for Community Development Block Grant (CDBG) funds date May 22, 2009.

#### **General Administration**

**Toward the goal of the completion of this project to improve energy efficiency for the facilities and the comfort of the low-to-moderate income inhabitants the major tasks that the Subrecipient will perform include, but are not necessarily limited to the following:**

- a) Solicit bids for materials and labor in accordance with applicable Davis Bacon rules and regulations;
- b) Select contractor(s) in accordance with applicable procurement regulations;
- c) Execute a contract with contractor(s) that includes all required language;
- d) per Davis Bacon and other applicable rules and regulations;
- e) Provide project oversight and site visits during course of rehabilitation;
- f) Ensure that all work is meeting expectations and guidelines as contracted;
- g) Executing lien waivers with contractors at completion of project;
- h) Submission of weekly payrolls for Davis Bacon projects, if applicable;
- i) Post signage reflecting funding received from the HUD through the American Recovery and Reinvestment Act of 2009;
- j) Submission of invoices for draw downs against grant;
- k) Submission of reports to Community Development; and
- l) Maintenance of all required documentation.

**B. National Objective Compliance**

All activities funded with CDBGR funds must meet one of the H.U.D. Community Development Block Grant Recovery Program National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208.

The Subrecipient certifies that the activity(s) carried out under this Agreement will meet the following H.U.D. National Objective:

- Benefit low- and/or moderate-income persons;**
- Aid in the elimination of slums or blight;
- Meet a community development need of particular urgency, as defined in 24 CFR 570.208

Failure by the Subrecipient to fulfill the national objective may result in grant funds being disallowed and required to be returned to the City.

**C. Level(s) of Performance & Accomplishment - Goals and Performance Measures**

**Goals**

Sub-Recipient will use funds to **improve energy efficiency and comfort for the residents at the Elk Street, 1<sup>st</sup> Street and Anamosa apartments.**

In addition to the normal administrative services required as part of this Agreement, the Subrecipient agrees to provide monthly reports on achievements and program impact to include the following information:

**Definition(s) of Units of Service include:**

- 1) **Windows replaced;**
- 2) **Insulation installed;**
- 3) **Light fixtures replaced with energy efficient fixtures;**
- 4) **Air conditioner replaced with high efficiency unit;** *> and/or*

Activity	% Completed	Date Completed
Replacement of windows		
Installation of additional insulation		
Light Fixtures replaced with energy efficient fixtures		
Air conditioner replaced with high efficiency unit		
	Dollars Saved/mo	Total Dollars Saved YTD
Monthly Improved energy savings Elk Street facility		
Monthly Improved energy savings at 1 <sup>st</sup> Street		

Apartments		
Monthly Improved energy savings at 304-306 Anamosa		
<b>Impact Results</b>	<b># People or \$ Saved</b>	<b>YTD # People or \$ Saved</b>
Number receiving decent, affordable housing		
Number experiencing improved existing housing		
Savings realized on utility bills		

**Program Impact:**

1) Residents will have improved comfort from better insulation, air conditioning and energy efficient windows.

2) Residents/agency will experience lower utility bills and increased cost savings.

**Narratives**

Narrative section may be used to explain goals, accomplishments, activities, issues or any other information pertinent to your agency's activities in meeting your program objectives.

**D. Personnel Assigned to Scope of Work**

**Personnel Assigned to Scope of Work**

Staff Member	Job Title	General Program Duties	Est. Time Allocation Per Week
Alan Solano	Executive Director		

Any changes to the program goals, scope of services, schedule or budget, unless otherwise noted, may only be made through a written amendment to this Agreement, executed by the Subrecipient and the City. Changes to key Personnel assigned or their general responsibilities under this project are subject to notification and approval from the City.

**E. Performance Monitoring**

The City reserves the right to monitor and evaluate the progress and performance of the Subrecipient to assure the terms of this Agreement are being satisfactorily met in

accordance with HUD, City and other applicable monitoring and evaluating criteria and standards. Subrecipient shall cooperate with the City relating to such monitoring and evaluation.

The City will monitor the performance of the Subrecipient against goals and performance standards as stated above. Substandard performance as determined by the City will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the City, Agreement suspension or termination procedures will be initiated.

#### **F. Project Schedule/Milestones**

The Sub-grantee is required to provide the City with a written project schedule prior to release of funding. Sub-grantee will also submit request for proposals public notice ads, *prior to publication*, for review by the Community Development Division for compliance with Davis Bacon and HUD guidelines.

#### **G. Time of Performance**

**Behavior Management Systems in Rapid City, SD** shall perform the services set out above, and shall expend the Community Development Block Grant Recovery funding provided for above **between June 5, 2009 and September 30, 2012**. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of CDBGR funds or other CDBGR assets, including program income.

#### **H. Budget**

Behavior Management shall use **Twenty-five Thousand One Hundred Sixty-one and no/100 Dollars (\$25,161)** of Community Development Block Grant Recovery funds provided for above as follows:

- 1) 1<sup>st</sup> Street Apts - Four Thousand Five Hundred and No/100 Dollars (\$4,500.00)**  
Add at least 2" Insulation
- 2) Elk Street Building – Seventeen Thousand and no/100 Dollars (\$17,000)**  
Convert florescent light fixtures to energy efficient new bulbs and/or replace AC to high efficiency unit.
- 3) 304 – 306 Anamosa Street – Three Thousand Six Hundred Sixty-one and no/100 Dollars (\$3,661.00)**  
Replace windows with energy efficient windows

Indirect costs: None.

Any Indirect costs charged must be consistent with the conditions of this Agreement. See Section XI., C, 2. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary

budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Subrecipient.

Any amendments to this budget must be approved in writing by the City and Subrecipient.

### **I. Compensation and Method of Payment**

If Subrecipient is not in default hereunder, and subject to City's receipt of the U.S. Department of Housing & Urban Development Community Development Block Grant Recovery funds, and provided the Agreement and Scope of Service are eligible expenditures of Community Development Block Grant Recovery funds, the City agrees to pay the Subrecipient an amount not to exceed **Twenty-five Thousand One Hundred Sixty-one and no/100 Dollars (\$25,161)**. Of that amount, eligible program delivery costs will not exceed **\$0.00**. Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 24 CFR 84.21.

Draw-downs for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III E herein and in accordance with performance. Expenses for general administration shall also be paid against the line item budgets specified in Paragraph III E and in accordance with performance.

1. **Draw-down requests may be submitted to the Community Development Specialist on a monthly basis.** Draw-down requests must be in writing and accompanied by acceptable documentation supporting the draw-down amount, per the Payment Procedures outlined in Section XI., C, 3.

**Documentation should include, at a minimum, the following information:**

- a) **Invoice itemizing amounts requested**
- b) **Supporting documentation for each item, i.e. materials list, payroll slips, etc.**

Additional documentation may be requested as needed for clarification.

Payment requests require City Council approval prior to disbursement.

2. **Special Conditions for Release of Funds**

Funding in the amount stipulated in Section III of this Agreement will not be released to the Sub-recipient by the City until the following special conditions for release of funds are met. The City reserves the right to cancel the Agreement if these special conditions are not met within ninety (90) days of the Agreement execution date.

- a) **Environmental Review**

**An Environmental Review must be completed prior to the Subrecipient committing or expending any Community Development Block Grant Recovery funds.** The City will conduct the Environmental Review and provide documentation of the findings to the Subrecipient upon its completion. **The**

**Subrecipient may not proceed with any services until receipt of written notification of the Environmental Review findings by the City.** Housing projects will require environmental reviews to be conducted on each property as it is identified. If the Environmental Review requires mitigation, no funds may be expended until mitigation has been accomplished and certified as completed and meeting HUD minimum standards by an acceptable source to the City. Documentation evidencing the Subrecipient's completion of its responsibilities and compliance with the National Environmental Policy Act of 1969 (NEPA), and other provisions of Federal law as specified in 24 C.F.R. Part 58 which furthers the purposes of NEPA.

- b) Procurement Standards and Code of Conduct  
Documentation evidencing adoption of Procurement Standards and Code of Conduct equivalent to those established in the Office of Management and Budget (OMB) Circular A-102, Attachment O and 24 C.F.R. Part 570.
- c) Fair Housing  
Documentation that the Subrecipient has specifically provided a description of the actions they will take during the course of the grant to fulfill the requirements to affirmatively further fair housing. (Applicable to housing projects)
- d) Implementation Schedule  
CDBGR Subrecipient to complete and submit to the City of Rapid City the Implementation Schedule form.
- e) Sources and Uses of Funds  
Listing of funding sources being utilized for the funded project
- f) Other Special Conditions - None

#### **J. Notices**

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this Agreement shall be directed to the following agreement representatives:

**City:**

City of Rapid City  
Community Development Division  
Attn: Barbara Garcia  
300 Sixth Street  
Rapid City, SD 57701  
Tel. Number (605) 394-4181  
Fax Number (605) 394-6636

**Subrecipient:**

Behavior Management  
Attn: Alan Solano  
350 Elk Street  
Rapid City, SD 57701  
Tel. Number (605) 342-7262  
Fax Number (605)

**SECTION IV.**  
**GENERAL CONDITIONS**

**A. General Compliance**

The Subrecipient hereby agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants Recovery (CDBG) including Subpart K of these regulations, except that (1) the Subrecipient does not assume the City's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the City's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient also agrees to comply with all other applicable Federal, state, and local laws, regulations, and policies governing the funds provided under this Agreement.

**The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.**

**B. Independence of Subrecipient**

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Worker's Compensation Insurance, as the Subrecipient is an independent contractor. Subrecipient shall be solely and entirely responsible for its acts and the acts of its agents, employees and subcontractors.

**C. Hold Harmless**

Subrecipient further agrees to indemnify, defend and hold harmless the City, its officers, agents and employees, from and against any and all claims, liabilities, costs, expenses, penalties or attorney fees, arising from such injuries to persons, or damages to property, or based upon or arising out of the performance or non-performance of this Agreement by Subrecipient, or out of any violation of Subrecipient of any statute, ordinance, rule or regulation.

**D. Worker's Compensation**

The Subrecipient shall provide Workers' Compensation Insurance coverage in an amount required by law, for all of its employees involved in the performance of this agreement.

**E. Insurance and Bonding**

The Subrecipient shall carry sufficient insurance coverage to protect Agreement assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the City. The Subrecipient shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.



#### **F. Grantee Recognition**

The Subrecipient shall ensure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to the funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

#### **G. Amendments**

The City or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the City's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the City or Subrecipient from its obligations under this Agreement.

The City may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both City and Subrecipient.

### **SECTION V. LIABILITY**

Subrecipient agrees to assume the risk of all personal injuries, including death resulting there from, to persons, and damage to and destruction of property, including loss of use there from, caused by or sustained, in whole or in part, in connection with or arising out of the performance or non-performance of this Agreement by Subrecipient, or by the conditions created thereby.

### **SECTION VI. SUSPENSION OR TERMINATION FOR CAUSE**

In accordance with 24 CFR 85.43, the Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement;
4. Submission by the Subrecipient to the Grantee reports that are incorrect or

incomplete in any material respect; or

5. Financial instability of the Subrecipient organization that will affect the abilities of the organization to carry out or complete the stated activities and scope of work.

In the event of agency financial instability, a default or violation of the terms of this Agreement by the Subrecipient, or failure to use the grant for only those purposes set forth, the City may take the following actions:

**A. Suspension for Cause**

After notice to the Subrecipient, the City may suspend the Agreement and withhold any further payment or prohibit the Subrecipient from incurring additional obligations of grant funds, pending corrective action by the Subrecipient or a decision to terminate.

**B. Termination for Cause**

This Agreement may be terminated, in accordance with 24 C.F.R. 85.43, if the Subrecipient materially fails to comply with any term of the Agreement or applicable federal regulations. The City may terminate the Agreement upon ten (10) days written notice, together with documentation of the reasons thereof, and after an opportunity for a hearing is afforded. The determination of the City as to the cause of termination and the appropriateness thereof shall be final and binding upon both City and Subrecipient. In the event projects are delayed, the Subrecipient shall notify the City of Rapid City in writing, informing the City of the issues surrounding the delay of the project. In cases where the project is not moving forward, the City shall notify the Subrecipient of termination of the funding, as per Section VIII.

In the event of termination, all finished or unfinished documents, data, studies and reports prepared by the Subrecipient under this Agreement shall, at the option of the City, become its property and the Subrecipient shall be entitled to receive just and equitable compensation for satisfactory work completed on such materials for which work compensation has not previously been paid.

**SECTION VII.  
TERMINATION FOR CONVENIENCE**

This Agreement may be terminated for convenience in accordance with 24 C.F.R. 85.44 by either the City or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the City determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the city may terminate the award in its entirety.

**SECTION VIII.**  
**TERMINATION OF CITY'S OBLIGATIONS**

The City's obligations under this Agreement will terminate in the event of suspension or non-receipt of Community Development Block Grant funds by the City.

**SECTION IX.**  
**ADMINISTRATIVE REQUIREMENTS**

**A. Financial Management**

Records of the Subrecipient and reimbursable expenses pertaining to the Scope of Services and records of accounts between the City and the Subrecipient shall be kept on a generally recognized accounting basis.

1. Accounting Standards

The Subrecipient agrees to comply with 24 CFR 84.21-28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

**B. Documentation & Record Keeping**

1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR Part 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include but are not limited to:

- a) Records providing a full description of each activity undertaken;
- b) A record demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program.
- c) Records required to determine the eligibility of activities;
- d) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e) Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f) Financial records as required by 24 CFR Part 570.502 and 24 CFR 84.21-28, OMB Circular A-110;
- g) Other records as necessary to document compliance with Subpart K of 24 CFR 570; and
- h) Real property inventory records which clearly identify properties purchased, improved or sold. Properties retained shall continue to

meet eligibility criteria and shall conform to the "changes in use" restrictions specified in 24 CFR Part 570.503(b) (8), as applicable.

2. Retention

The Subrecipient shall retain all records pertinent to expenditures incurred under this Agreement for a period of four (4) years. The retention period begins on the date of submission of the City's Consolidated Annual Performance and Evaluation Report (CAPER) to HUD in which the activities assisted under the Agreement are reported on for the final time. Records for non-expendable property acquired with funds under this Agreement shall be retained for four (4) years after final disposition of such property. Records for any displaced person must be kept for four (4) years after he/she has received final payment. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such information shall be made available to City monitors or their designees for review upon request. Such data shall include, but not be limited to:

- a) Client name,
- b) Client address,
- c) Client/Household income level or other basis for determining eligibility,
- d) Description of services provided,
- e) Dates services provided, and
- f) Beneficiary information (ethnicity, income, sex, female head of household, elderly, disabled, etc.).

Such information shall be made available to Grantee monitors or their designees for review upon request.

4. Disclosure

The Subrecipient understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City's or Subrecipient's responsibilities with respect to services provided under this Agreement, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/ guardian.

5. Close-outs

The Subrecipient's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets

(including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income. All financial records pertaining to this Agreement upon completion shall remain the property of the City of Rapid City.

#### 6. Audits & Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the City, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning Subrecipient audits and OMB Circular A-133.

### C. Reporting and Payment Procedures

#### 1. Program Income

The Subrecipient shall immediately report to the City all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this Agreement. Program income generally means gross income received by the Subrecipient, directly generated from the use of CDBG funds, with some exceptions which are detailed in 24 C.F.R. §570.500.

Program income includes, but is not limited to:

- a) payments of principal and interest on loans made using CDBG funds,
- b) proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds,
- c) proceeds from the disposition of equipment purchased with CDBG funds,
- d) interest earned on program income pending its disposition, and
- e) interest earned on CDBG funds held in a revolving loan fund's cash balance interest bearing account.

The use of program income by the Subrecipient must be approved by the City prior to such use and must comply with the requirements set forth at 24 CFR 570.504. The Subrecipient may retain and use program income funds only for the activity(s) approved under this Agreement. Program income funds should be held in a non-interest bearing account. **If program income funds are held in an interest bearing account, any interest earned on the program income funds must be returned to the City on a monthly basis.** Receipt and

expenditures of program income funds shall be reported, in writing, at time of receipt and expenditure, along with supporting documentation. Program income must be expended prior to drawing any remaining grant funds. In the event the Subrecipient desires to use the program income for some other activity, it must request and receive permission from the City of Rapid City before undertaking such a use. The City of Rapid City will determine whether the proposed use meets the eligibility criteria of the regulations established by the CDBG funds, and notify the Subrecipient of either approval or disapproval. At conclusion of the Agreement period, or in the case of disapproval, all program income will be returned to the City of Rapid City.

2. Indirect Costs

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to the City for approval, in a form specified by the City. In addition, the City may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the City.

3. Payment Procedures

Draw-downs for the payment of eligible expenses and general administration items shall be made against the line item budgets specified in the Scope of Service, Paragraph E, and in accordance with performance. Payments shall be made upon presentation of invoices that Subrecipient certifies are true and correct copies of payments due on behalf of the Subrecipient for an activity covered by this Agreement and made in accordance and compliance with the Scope of Service. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the City in accordance with advance fund and program income balances available in the Subrecipient account. In addition, the City reserves the right to liquidate funds available under this Agreement for costs incurred by the City on behalf of the Subrecipient. Subrecipient monthly or quarterly reports shall be submitted, as stated in Section XI.,C,4. Payment may be suspended by the City in the event of nonperformance by the Subrecipient.

Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 24 C.F.R. 84.21.

4. Progress Reports

**The Subrecipient shall submit monthly progress reports to the City in the form and content as required by the City. The Fiscal Year runs from April 1, 2009 to March 31, 2010. Monthly progress reports are due by the 5<sup>th</sup> of following month.**

Progress reports should include, but are not limited to: progress on goals to be achieved by program; total number of people assisted for the month; total number of people assisted year-to-date; and demographic information of people assisted by the program. A brief narrative should also be included to cover any additional information about your program, progress, issues and accomplishments not addressed on the progress report form. *Reporting Form attached hereto as Exhibit B and incorporated herein shall be used in conjunction with Logic Model reporting form submitted with application. Reporting forms submitted must be complete or they will be returned for completion and draws suspended until receipt of a complete report.*

Additional documentation may be requested as needed for clarification.

#### **D. Procurement**

##### **1. Compliance**

The Subrecipient shall comply with current City policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable property as defined by such policy as may be procured with funds provided herein. All program assets (unexplained program income, property, equipment, etc.) shall revert to the City upon termination of this Agreement.

##### **2. OMB Standards**

The Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40-48, OMB Circular A-110, Procurement Standards, and shall subsequently follow Property Management Standards as modified by 24 CFR 570.502(b)(6), covering utilization and disposal of property.

##### **3. Travel expenses**

Travel expenses outside the city limits of Rapid City shall not be paid with funds provided under this Agreement without written approval from the City.

#### **E. Use & Reversion of Assets**

Subrecipient hereby agrees to use all personal assets and all real property, acquired or improved, in whole or in part, with Community Development Block Grant Recovery funds, as set forth in the Scope of Service. In the event Subrecipient ceases to use a personal asset or real property acquired or improved with Community Development Block Grant Recovery funds, in accordance with the Scope of Service, the use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. The Subrecipient shall transfer to the City any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.

2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$15,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until thirty (30) years after expiration of this Agreement. Real property acquired or improved, in whole or in part, with funds under this Agreement between \$7,001 and \$15,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until ten (10) years after expiration of this Agreement.
3. Subrecipient hereby agrees to use all personal assets and all real property, acquired or improved, in whole or in part, with Community Development Block Grant Recovery (CDBG-R) funds, as set forth in the Scope of Service. In the event Subrecipient ceases to use a personal asset or real property acquired, or improved, with Community Development Block Grant Recovery funds, in accordance with the Scope of Service, the Subrecipient shall return the personal asset or real property to the City, or pay to the City, a sum equal to its fair market value, less any portion of the value attributable to expenditures of non-Community Development Block Grant Recovery funds for the acquisition of, or improvement to, the asset or property. The Subrecipient shall transfer to the City of Rapid City any Community Development Block Grant Recovery funds on hand at the time of expiration of this Agreement and any accounts receivable of Community Development Block Grant Recovery funds.

Subrecipient also hereby agrees to enter into an Indenture of Restrictive Covenants Agreement with the City of Rapid City at the time of real property purchase. In this Indenture, Subrecipient agrees to represent, warrant and covenant throughout the term of the Indenture that the land and/or facility purchased with CDBG funds will be used in accordance with Section 42 of the United States Code. Further, Subrecipient agrees that the use of such property may not change from that for which the acquisition was made unless the Owner provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either (1) the new use of such property qualifies as meeting one of the national objectives in Volume 24 of the Code of Federal Regulations, Section 570.208 (24 CFR, § 570.208), or (2) if the Owner determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under 24 CFR, Section 570.208, it may retain or dispose of the property for the changed use if the Subrecipient's CDBG R program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG R funds for acquisition of, and improvements to, the property.

- a. The Indenture of Restrictive Covenants shall begin on the first day of the compliance period specified in Section 42 of the United States Code and shall terminate in the year designated in the Restrictive Covenant according to the terms stated in item 2. above, based on dollar amount of the funds granted, after the first day of the Compliance Period (such period being herein referred



to as the "Compliance Period" of the "Extended Use Period"):

- b. Notwithstanding paragraph A above, Subrecipient shall comply with the requirement of Section 42 relating to the Compliance Period, provided, however, the Compliance period for any building that is part of the Project shall terminate on the date the Project is acquired by foreclosure or transferred by a deed or other instrument in lieu of foreclosure unless the Secretary of the Treasury determines that such acquisition is part of an arrangement with Subrecipient a purpose of which is to terminate such Compliance Period.
4. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be
    - a. transferred to the City for the CDBGR program, or
    - b. retained after compensating the City (an amount equal to the current fair market value of the equipment less the percentage of non-CDBGR funds used to acquire the equipment).

**SECTION X.**  
**RELOCATION, REAL PROPERTY ACQUISITION AND**  
**ONE-FOR-ONE HOUSING REPLACEMENT**

The Subrecipient agrees to comply with:

- A. **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b);
- B. The requirements of 24 CFR 570.606(c) governing the **Residential Anti-displacement and Relocation Assistance Plan** under section 104(d) of the HCD Act; and
- C. **The requirements in 24 CFR 570.606(d) governing optional relocation policies.** [The City may preempt the optional policies.] The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBGR-assisted project. The Subrecipient also agrees to comply with applicable City ordinances, resolutions, and policies concerning the displacement of persons from their residences.

**SECTION XI.  
ASSURANCES**

The Subrecipient hereby agrees to use Community Development Block Grant Recovery funds for the purposes authorized by the Rapid City Common Council. The Subrecipient further hereby agrees to comply with the assurances in Section XIV, XV, and Exhibit "A" attached hereto and incorporated herein which are required by the U.S. Department of Housing & Urban Development for all Community Development Block Grant Recovery projects. These include Federal Labor Standards requirements.

**SECTION XII.  
PERSONNEL & PARTICIPANT CONDITIONS**

**A. Civil Rights**

1. Compliance

The Subrecipient hereby agrees to comply with all applicable state, local and civil rights laws and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107, and 12086.

2. Nondiscrimination

The Subrecipient hereby agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. Land Covenants

This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The City shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

**B. Affirmative Action**

1. Approved Plan

The Subrecipient hereby agrees that it shall be committed to carry out pursuant to the Grantees specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The City shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

2. Women-and Minority-Owners Businesses (W/MBE)

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms, "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51%) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

The Subrecipient shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. **Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement**  
The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.
6. **Subcontract Provisions**  
The Subrecipient will include the provisions of Paragraphs, Z.A., Civil Rights, and B, Affirmative Action in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

### **C. Employment Restrictions**

1. **Prohibited Activity**  
The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, inherently religious activities, lobbying, political patronage, and nepotism activities.
2. **Labor Standards**  
The Subrecipient hereby agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000,000 for construction, renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with Federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29CFR Parts 1,3,5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. **"Section 3" Clause**
  - a. **Compliance**

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon the City, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and hereby agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located and to low- and very low-income participants in other HUD programs. The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

b. Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts

The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

**D. Conduct**

1. Assignability

This Agreement shall not be assigned or transferred by the Subrecipient without the prior written consent of the City thereto; provided however, that claims for money due or to become due to the Subrecipient from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

2. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of the City prior to the execution of the agreement.

b. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The Subrecipient shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the City along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient hereby agrees that no funds provided, nor personnel employed under this Agreement, shall in any way or to any extent engage in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. Conflict of Interest

The Subrecipient hereby agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

- a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds;
- b. No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved;
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, the Subrecipient, or any designated public agency; and
- d. The Subrecipient covenants that neither it nor any member of its Board of Directors, officers, or employees presently have any interest in any project to be financed under the Scope of Service, and shall not acquire any interest therein which would conflict with the performance of the Scope of Service required under this Agreement or applicable statute, rule or regulation. Such a conflict would arise when: the employee, officer or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm/household selected for award. The Sub-grantee's officers, employees or

agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements during office tenure or for one year after the closeout of the grant. This stipulation must be included in all other contracts and subcontracts to this grant.

5. Lobbying

The Subrecipient certifies, to the best of its knowledge and belief, that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Subrecipient shall require that the language of paragraph (d) of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and co-operative agreements) and that all Subrecipients shall certify and disclose accordingly.
- d. This certification is material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- e. Lobbying Certification  
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



6. Copyright

If this Agreement results in any copyrightable material or inventions, the Grantee and/or City reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

The Subrecipient hereby agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

**SECTION XIII.**  
**ENVIRONMENTAL CONDITIONS**

**A. Air and Water**

The Subrecipient hereby agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

1. Clean Air Act, 42 U.S.C., 7401, *et seq.*;
2. Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued there under;
3. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

**B. Flood Disaster Protection**

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Subrecipient shall assure that the activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

**C. Lead-Based Paint**

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under

seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

#### **D. Historic Preservation**

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

### **SECTION XIV. ADDITIONAL REQUIREMENTS OF AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 FOR FINANCIAL ASSISTANCE AWARDS**

#### **A. Reporting Requirements**

Subrecipients must report information including but not limited to,

1. Evaluation of the completion status of the activity;
2. An estimate of the number of jobs created and the number of jobs retained by the project or activity;
3. Detailed information on any subcontracts awarded by the Subrecipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, hereafter referred to as "the Transparency Act") to include:
  - a. Name of entity receiving the award;
  - b. The amount of the award;
  - c. The transaction type;
  - d. The funding agency;
  - e. The Catalog of Federal Domestic Assistance number;
  - f. The program source;
  - g. The location of the entity receiving the award, including four data elements for the city, State, Congressional district, and country;
  - h. A unique identifier of the Subrecipient;
  - i. A unique identifier of the parent entity of the recipient, should the recipient be owned by another entity; and
  - j. The names and total compensation of the five most highly compensated officers of the company if it received (1) 80% or more of its annual gross revenues in Federal awards; and (2) \$25M or more in annual gross revenue from Federal awards.
4. Section 1512(h) of the Recovery Act requires recipients of Recovery Act funds to register in the Central Contractor Registration (CCR) database at:

<http://www.ccr.gov>. A valid Data Universal Numbering System (DUNS) Number is required to register in the CCR database. Subrecipients must maintain current registrations in the Central Contractor Registration at all times during which they have active federal awards funding with Recovery Act funds.

5. Section 1605 of the Recovery Act requires that projects, funded by the Recovery Act, for the construction, alteration, maintenance, or repair of a public building or public work use American iron, steel, and manufactured goods in the project unless one of the specified exemptions applies. The Act provides that this requirement be applied in a manner consistent with U.W. Obligations under international agreements. Definitions of "manufactured good," "public building and public work," and other terms as they pertain to the Buy American guidance in 2CFR part 176 are found in Section 176.140 & Section 176.160. Exceptions to the Buy American regulations may be found in 2 CFR Section 176.80 and 176.90
6. Section 1606 of the Recovery Act requires the payment of Davis-Bacon Act (40 U.S.C. 31) wage rates to "laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government" pursuant to the Recovery Act.
  - a. Subrecipients shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).
  - b. Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

#### **SECTION XV. SEVERABILITY**

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

#### **SECTION XVI. SECTION HEADINGS AND SUBHEADINGS**

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

**SECTION XVII.**  
**WAIVER**

The Grantee's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

**SECTION XVIII.**  
**ENTIRE AGREEMENT**

The provisions set forth in Items I-XVII, and all attachments of this agreement constitute, the entire agreement between the parties hereto and no statement, promise, conditions, understanding, inducement or representation, oral or written, express or implied, which is not contained herein shall be binding or valid.

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Subrecipient and the City have executed this agreement as of the date first above written and under the laws of the State of South Dakota.

The City may undertake any legal or equitable action available to enforce the provisions of this Agreement. Subrecipient hereby agrees the City may recover from it the city's reasonable expenses, including attorney's fees incurred in respect to such actions.

The parties hereby agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota where applicable. In the event of any conflict of law, the law of the State of South Dakota shall be controlling. Any legal action arising out of or relating to this Agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

**CITY OF RAPID CITY**

**SUBRECIPIENT**

Behavior Management Systems


\_\_\_\_\_  
By: Alan Hanks  
Its: Mayor

  
\_\_\_\_\_  
By: Alan Solano  
Its: Executive Director

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
By: Jim Preston  
Its: City Finance Officer

*Finance*  
  
\_\_\_\_\_  
By: Linda Reidt Kilber  
Its: Finance Director

Federal I.D. #: 46-6000380

Federal I.D. # 46-0251185

**APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY**

**AFFIRMATIVE ACTION APPROVAL**

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By:  
Its: City Attorney

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Contract Compliance Supervisor

## EXHIBIT "A"

### I. CERTIFICATIONS

#### A. This contract will be conducted and administered in compliance with:

1. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and implementing regulations issued at 24 C.F.R. Part 1;
2. Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), as amended; and the grantee will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;
3. Section 109 of the Housing and Community Development Act of 1974, as amended, and the regulations issued pursuant thereto;
4. Section 3 of the Housing and Urban Development Act of 1968, as amended;
5. Executive Order 11246, as amended by Executive Order 11375 and 12086, and implementing regulations issued at 41 C.F.R. Chapter 60;
6. Executive Order 11063, as amended by Executive Order 12259, and implementing regulations issued at 24 C.F.R. Part 107;
7. Section 504 of the Rehabilitation Act of 1973, (Pub. L. 93-112), as amended and implementing regulations when published for effect;
8. The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended and implementing regulations when published for effect;

The Civil Rights and Equal Opportunity Provisions listed above promote fair housing practices throughout the United States, prohibit any person from discriminating in activities associated with housing because of race, color, national origin, religion, sex, handicap, or familial status. Sub-grantees must also administer programs and activities relating to housing and urban development in a manner that affirmatively promotes fair housing and furthers the purposes of Title VIII.

9. The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the implementing regulations at 24 C.F.R. Part 42;
10. Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution;

11. The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);
12. The Uniform Administrative Requirements, set forth in 24 C.F.R. Part 570.502, 24 C.F.R. 84 (as modified by 24 C.F.R. 570.502(b)), and 24 C.F.R. 85, and the requirements of OMB Circular Nos. A-87, A-128, A-122, A-133, A-21 and A-110 as they relate to the acceptance and use of Federal funds under this federally-assisted program, including but not limited to the regulations pertaining to inventions, reporting and patent rights, and copyrights;
13. The Clean Air Act (42 U.S.C. 7401 et. seq.);
14. HUD environmental standards [24 C.F.R. Part 51, Environmental Criteria and Standards (44 FR 40860-40866, July 12, 1979)];
15. The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et. seq., and 21 U.S.C. 349), as amended;
16. The Endangered Species Act of 1973 (16 U.S.C. 1531 et. seq.), as amended;
17. The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et. seq.), as amended;
18. The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et. seq.), as amended by the Archeological and Historical Preservation Act of 1974;
19. Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et. seq.), as amended;
20. Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et. seq.);
21. The lead-based paint requirements of 24 C.F.R. Part 35 issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et. seq.);
22. The National Historic Preservation Act of 1966 (16 U.S.C. 470 et. seq.), as amended;
23. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 F.R. 8921 et. seq.);
24. The Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented in the Department of Labor regulations (29 C.F.R., Part 3);
25. The Davis-Bacon Act [40 U.S.C. 276(a) to (a-7)], as supplemented by the Department of Labor regulations (29 C.F.R., Part 5); Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330), as



supplemented by the Department of Labor regulations (29 C.F.R., Part 5), and the attached Federal Labor Standards Provisions.

26. The State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 94-163).

**B. The Subrecipient certifies, to the best of his or her knowledge and belief, that:**

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Subrecipient shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly.

This certification is material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Exhibit "B"

MONTHLY REPORTS FOR CDBG-R

FY 2009

CONTACT: Alan Solano

AGENCY: Behavior Management Systems

PHONE #

343-7252

Activity #

	# for April	# for May	# for June	YTD Totals
Males				0
Females				0
<b>TOTAL PEOPLE ASSISTED</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Female Head of Household				0
Elderly (over 65)				0
Disabled				0
<b>RACE</b>	<b># of Each Race</b>	<b># Hispanic/Latino of each race</b>	<b># of Each Race</b>	<b># Hispanic/Latino of each race</b>
11) White				0
12) Black or African American				0
13) Asian				0
14) American Indian or Alaskan Native				0
15) Native Hawaiian or Other Pacific Islander				0
16) American Indian/Alaskan Native & White				0
17) Asian & White				0
18) Black/African American & White				0
19) Amer Indian/Alaskan Native & Black/African Amer				0
20) Other multiracial				0
<b>TOTAL BENEFITING FROM ACTIVITY</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Beneficiaries by Income (% of HUD Median Income for Household Size)	#
Extremely Low Income ( $\leq 30\%$ )	0
Low Income ( $\leq 50\%$ )	0
Moderate Income ( $\leq 80\%$ )	0
Non-Low/Moderate Income (greater than 80%)	0
<b>TOTAL ALL INCOMES</b>	<b>0</b>

HUD INCOMES EFFECTIVE 03/18/2009

HOUSEHOLD SIZE	30% MEDIAN	50% MEDIAN	80% MEDIAN
1	12,950	20,100	32,150
2	13,750	22,950	36,700
3	15,500	25,850	40,300
4	17,200	28,700	45,900
5	18,800	31,000	49,550
6	19,950	30,300	53,250
7	21,350	35,800	58,900
8	22,700	37,900	60,800

NOTE: Change shaded box totals must match

NOTE: Yellow shaded box totals must match

Exhibit "B"

MONTHLY REPORTS FOR CDBG-R  
FY 2009

AGENCY: Behavior Management Systems

CONTACT: Alan Solano

PHONE #: 343-7262

	# for Jul		# for Aug		# for Sept		YTD Totals	
	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race
Males								
Females								
<b>TOTAL PEOPLE ASSISTED</b>	<b>0</b>		<b>0</b>		<b>0</b>		<b>0</b>	
Female Head of Household								
Elderly (over 65)								
Disabled								
<b>RACE</b>								
11) White								
12) Black or African American								
13) Asian								
14) American Indian or Alaskan Native								
15) Native Hawaiian or Other Pacific Islander								
16) American Indian/Alaskan Native & White								
17) Asian & White								
18) Black/African American & White								
19) Amer Indian/Alaskan Native & Black/African Amer								
20) Other multi-racial								
<b>TOTAL BENEFITING FROM ACTIVITY</b>	<b>0</b>		<b>0</b>		<b>0</b>		<b>0</b>	

Beneficiaries by Income (% of HUD Median Income for Household Size)	# for Jul		# for Aug		# for Sept		YTD Totals	
	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race
Extremely Low Income ( $\leq 30\%$ )								
Low Income ( $\leq 50\%$ )								
Moderate Income ( $\leq 80\%$ )								
Non-Low/Moderate Income (greater than 80%)								
<b>TOTAL ALL INCOMES</b>	<b>0</b>		<b>0</b>		<b>0</b>		<b>0</b>	

**HUD INCOMES EFFECTIVE 03/19/2009**

HOUSEHOLD SIZE	30 % MEDIAN	60% MEDIAN	80% MEDIAN
1	12,050	20,100	32,150
2	13,750	22,950	36,700
3	15,500	25,850	40,300
4	17,200	28,700	45,900
5	18,900	31,000	49,550
6	19,950	33,300	53,250
7	21,350	35,600	56,900
8	22,700	37,900	60,500

NOTE:  
Yellow shaded box states must match

Exhibit "B"

MONTHLY REPORTS FOR CDBG-R  
FY 2009

AGENCY: Behavior Management Systems

CONTACT: Alan Solano

PHONE #: 343-7262

Activity #

	# for Oct		# for Nov		# for Dec		YTD Totals	
	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race
Males							0	0
Females							0	0
<b>TOTAL PEOPLE ASSISTED</b>		0		0		0	0	0
Female Head of Household							0	0
Elderly (over 65)							0	0
Disabled							0	0
<b>RACE</b>								
11) White							0	0
12) Black or African American							0	0
13) Asian							0	0
14) American Indian or Alaskan Native							0	0
15) Native Hawaiian or Other Pacific Islander							0	0
16) American Indian/Alaskan Native & White							0	0
17) Asian & White							0	0
18) Black/African American & White							0	0
19) Amer Indian/Alaskan Native & Black/African Amer							0	0
20) Other multi-racial							0	0
<b>TOTAL BENEFITING FROM ACTIVITY</b>	0	0	0	0	0	0	0	0

Beneficiaries by Income (% of HUD Median Income for Household Size)

	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race
Extremely Low Income (≤ 30%)						
Low Income (≤ 50%)						
Moderate Income (≤ 80%)						
Non-Low/Moderate Income (greater than 80%)						
<b>TOTAL ALL INCOMES</b>	0	0	0	0	0	0

HUD INCOMES EFFECTIVE 03/19/2009

HOUSEHOLD SIZE	30 % MEDIAN	60% MEDIAN	80% MEDIAN
1	12,050	20,100	32,150
2	13,750	22,950	36,700
3	15,500	25,850	40,300
4	17,200	28,700	45,900
5	18,800	31,000	49,550
6	19,950	33,300	53,250
7	21,350	35,600	56,900
8	22,700	37,900	60,600

NOTE:  
Yellow shaded box totals must match

**PROGRAM GOALS AND ACCOMPLISHMENTS**

**Behavior Managmeng Systems – FY 2008 CDBG-R**

**Activity # \_\_\_\_\_**

Activity	% Completed	Date Completed
Replacement of windows		
Installation of additional insulation		
Light Fixtures replaced with energy efficient fixtures		
Air conditioner replaced with high efficiency unit		
	Dollars Saved/mo	Total Dollars Saved YTD
Monthly Improved energy savings Elk Street facility		
Monthly Improved energy savings at 1 <sup>st</sup> Street Apartments		
Monthly Improved energy savings at 304-306 Anamosa		
Number of workers (construction) involved with rehabilitation		
Impact Results	# People or \$ Saved	YTD # People or \$ Saved
Number receiving decent, affordable housing		
Number experiencing improved existing housing		
Savings realized on utility bills		

**Narrative:**

Please give brief explanation of any special circumstances affecting results, reasons for delays, achievements of program(s), other organizational results, etc.

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Exhibit "B"

MONTHLY REPORTS FOR CDBG-R  
FY 2009

AGENCY: Behavior Management Systems

CONTACT: Alan Solano

PHONE #: 343-7262  
Activity #

	# for Jan		# for Feb		# for Mar		YTD Totals	
	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race
Males							0	0
Females					0		0	0
<b>TOTAL PEOPLE ASSISTED</b>			0				0	0
Female Head of Household							0	0
Elderly (over 65)							0	0
Disabled							0	0
<b>RACE</b>								
11) White							0	0
12) Black or African American							0	0
13) Asian							0	0
14) American Indian or Alaskan Native							0	0
15) Native Hawaiian or Other Pacific Islander							0	0
16) American Indian/Alaskan Native & White							0	0
17) Asian & White							0	0
18) Black/African American & White							0	0
19) Amer Indian/Alaskan Native & Black/African Amer							0	0
20) Other multi-racial							0	0
<b>TOTAL BENEFITING FROM ACTIVITY</b>	0	0	0	0	0	0	0	0

Beneficiaries by Income (% of HUD Median Income for Household Size)

	Extremely Low Income (≤ 30%)	Low Income (≤ 50%)	Moderate Income (≤ 80%)	Non-Low/Moderate Income (greater than 80%)	TOTAL ALL INCOMES
					0
					0
					0
					0
					0
					0

HUD INCOMES EFFECTIVE 03/19/2009

HOUSEHOLD SIZE	30 % MEDIAN	50% MEDIAN	80% MEDIAN
1	12,050	20,100	32,150
2	13,750	22,850	36,700
3	15,500	25,850	40,300
4	17,200	28,700	45,900
5	18,800	31,000	49,550
6	19,950	33,300	53,250
7	21,350	35,600	56,900
8	22,700	37,900	60,600

NOTE:  
Yellow shaded box totals must match