

JOINT POWERS AGREEMENT

This JOINT POWERS AGREEMENT (the “Agreement”) is dated as of _____ 1, 2003, by and between the CITY OF SPEARFISH, SOUTH DAKOTA, a South Dakota municipal corporation (the “Issuer”) and the CITY OF RAPID CITY, SOUTH DAKOTA, a South Dakota municipal corporation (the “Joint Powers Participant,” and, together with the Issuer, referred to together as “Participating Jurisdictions”).

RECITALS

WHEREAS, South Dakota Codified Laws, Chapter 1-24 (the “Joint Powers Act”), provides for the joint exercise of governmental powers by public agencies, as therein defined, by empowering any two or more of such public agencies to enter into agreements, when duly authorized by action of their governing bodies, for the purpose of jointly or cooperatively exercising powers common to the contracting parties through the exercise of such power or powers by one of the public agencies on behalf of the other public agency or agencies;

WHEREAS, “public agencies” are defined in the Joint Powers Act to include municipalities of the State of South Dakota;

WHEREAS, in connection with revenue bonds issued under South Dakota Codified Laws, Chapter 9-54, as amended (the “Act”), Section 9-54-11 provides for joint or cooperative action between municipalities, subject to the provisions of the Joint Powers Act;

WHEREAS, each of the projects described in Exhibit A (collectively referred to as the “Projects”) constitutes a “project,” within the meaning of the Act;

WHEREAS, it has been proposed by Behavior Management Systems, Inc., a South Dakota nonprofit corporation (the “Borrower”) that the Issuer issue its revenue bond (the “Bond”) on behalf of itself and the Joint Powers Participant, to provide financing and refinancing for the Projects, including the funding of capitalized interest and costs of issuance, as may be necessary or desirable, all pursuant to the Act and the Joint Powers Act;

WHEREAS, the Bond shall not constitute an indebtedness, pecuniary liability or general or moral obligation or pledge the full faith and credit, taxing powers or other assets of the Issuer, the Joint Powers Participant, the State of South Dakota, or any other agency or political subdivision thereof, but shall be payable solely from the revenues pledged and assigned thereto pursuant to the Loan Agreement and Loan Agreement Assignment (defined below); and

WHEREAS, the governing bodies of each of the Participating Jurisdictions have authorized the execution and delivery of this Agreement;

NOW, THEREFORE, the Participating Jurisdictions hereby agree as follows:

1. In order to finance and refinance the Projects, the Issuer shall issue on behalf of itself and the other Participating Jurisdiction its revenue bond (the “Bond”) in a principal amount of up to but not exceeding \$3,000,000, pursuant to the Joint Powers Act, the Act, and the terms of a Loan and Purchase Agreement (the “Loan Agreement”) to be entered into between the Issuer, the Borrower and Wells Fargo Brokerage Services, LLC, as purchaser of the Bond (the “Purchaser”). Pursuant to the Loan Agreement, the proceeds of the Bond shall be loaned to the Borrower and applied in accordance with the provisions thereof to payment of the costs of the Projects, and the Borrower shall agree to make payments thereunder at times and in amounts sufficient to pay all principal of, premium, if any, and interest on the Bond, when due. To secure payment of the Bond, the Issuer will assign its interests in the Loan Agreement (other than its rights to indemnity, payment of fees and repayment of advances and expenses) to the Purchaser, pursuant to a Loan Agreement Assignment (the “Loan Agreement Assignment”) from the Issuer to the Purchaser.

2. The portion of the Projects described in Exhibit A as the “Spearfish Project” is to be located in the City of Spearfish (the “Spearfish Project”).

3. The portion of the Projects described in Exhibit A as the “Rapid City Project” is to be located in the City of Rapid City (the “Rapid City Project”).

4. The liability of the Issuer and the other Participating Jurisdiction with respect to the Bond shall be limited as provided in the Act. Except to the extent specifically provided herein, the Issuer and the other Participating Jurisdiction shall not incur any obligations or liabilities to each other as a result of the financing or refinancing or use of the Projects by the Borrower. The Bond shall be special, limited obligations of the Issuer payable solely from proceeds, revenues and other amounts pledged thereto and more fully described in the Loan Agreement and the Loan Agreement Assignment. The Bond and the interest thereon shall neither constitute nor give rise to a pecuniary liability, general or moral obligation or a pledge of the full faith or loan of credit of the Issuer, the other Participating Jurisdiction, the State of South Dakota or any political subdivision of the above, within the meaning of any constitutional or statutory provisions.

5. Any surplus moneys remaining after the purpose of this Agreement has been completed shall belong to the Issuer and the other Participating Jurisdiction, pro rata.

6. This Agreement shall terminate upon the retirement or defeasance of the Bond, and the payment of all amounts required to be paid under the Loan Agreement (and any other document or instrument relating to the Bond). This Agreement may not be terminated by the parties so long as the Bond is outstanding.

7. This Agreement may be amended only by a written instrument duly authorized, executed and delivered by the Issuer and the other Participating Jurisdiction. No amendment may impair the rights of the purchaser or owner of the Bond, unless they have consented to such amendment in the manner provided for an amendment of the Loan Agreement.

8. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Agreement.

IN WITNESS WHEREOF, duly authorized officers of the Issuer and the other Participating Jurisdiction have executed this Agreement as of the date set forth above but actually on the ____ day of _____, 2003.

CITY OF SPEARFISH

By _____
Its _____

And by _____
Its _____

[Signature page to Joint Powers Agreement dated as of _____ 1, 2003, by and between the City of Spearfish and the City of Rapid City]

CITY OF RAPID CITY

By _____
Its _____

And by _____
Its _____

[Signature page to the Joint Powers Agreement dated as of _____ 1, 2003, by
and between the City of Spearfish and the City of Rapid City]

EXHIBIT A

(Spearfish Project)

The acquisition and construction of a new building to be approximately 4,000 square feet in size and related improvements to be located at 623 Dahl Road, Spearfish, South Dakota, together with equipment and furnishings therefor.

(Rapid City Project)

The acquisition and construction of a building addition approximately 14,000 square feet in size and related improvements with respect to an existing building (which existing building is approximately 14,000 square feet in size) located at 350 Elk Street, Rapid City, South Dakota; and the refinancing of existing indebtedness of the Corporation incurred in connection with the acquisition and construction of the Corporation's existing facilities located at the following addresses: (1) 515 North First Street, Rapid City, South Dakota (an approximately 16,000 square foot facility); (2) 111 North Street, Rapid City, South Dakota (an approximately 14,000 square foot facility); and (3) 121 North Street, Rapid City, South Dakota (an approximately 7,000 square foot facility).