



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

GROWTH MANAGEMENT

300 Sixth Street
Rapid City, SD 57701

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MEMORANDUM

TO: Legal & Finance Committee

FROM: Barbara Garcia, Community Development Specialist

DATE: December 21, 2004

RE: **Council Approval of Fiscal Year 2004 Mid-Year Reallocation of Community Development Block Grant Subrecipient Contracts and Authorization for Mayor and Finance Officer to sign contracts.**

Staff is seeking City Council approval of the attached FY 2004 Mid-Year Reallocation of Community Development Block Grant Funds contracts for Behavior Management Systems and the Rapid City Club for Boys, and the Indenture of Restrictive Covenants for Behavior Management Systems. Staff also requests authorization for the Mayor and Finance Officer to sign them. These grants were previously recommended for approval by the Subsidy Committee and approved by the City Council on December 6, 2004 (LF 120104-15).

The City of Rapid City reallocated \$38,385.69 of remaining Community Development Block Grant funds from 2001, 2002 and 2003 for additional 2004 grant projects. In order to establish accounts for the Sub-recipients, the City needs to execute two copies of the Sub-recipient CDBG grant contracts and the Indenture of Restrictive Covenants.

The FY 2004 CDBG reallocation of funds will be utilized by these non-profit organizations to accomplish needed rehabilitation to their public facilities, enabling them to continue to provide services to low income persons in a safe, comfortable environment.

Staff Recommendation: City Council approve and authorize the Mayor and Finance Officer to sign two copies of the Community Development Block Grant Sub-recipient Contracts for FY 2004 for the Rapid City Club for Boys and two copies of the Community Development Block Grant Sub-recipient Contracts for FY 2004 and the City of Rapid City Indenture of Restrictive Covenants for Behavior Management Systems.



EQUAL HOUSING
OPPORTUNITY

EQUAL OPPORTUNITY EMPLOYER

DEC 21 2004

**SUBRECIPIENT CONTRACT FOR
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDING**

Rapid City Growth
Management Department

**SECTION I.
AGREEMENT**

THIS AGREEMENT, made and entered into this **8th day of December, 2004** by and between the **CITY OF RAPID CITY** (hereinafter referred to as "City"), and **RAPID CITY CLUB FOR BOYS** (hereinafter referred to as "Subrecipient"), Witnesseth:

WHEREAS, the City has, under date of June 15, 2004 entered into a contract with the 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 to date; and

WHEREAS, pursuant to such contract, the City is undertaking certain activities necessary for the execution of a project situated in the project area described in the Statement of Work; and

WHEREAS, the City desires to disburse funds to the Subrecipient to execute certain projects in conjunction with such undertaking of the City;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

**SECTION II.
STATEMENT OF WORK**

The Statement of Work is attached as Exhibit "A" hereto and made a part of this contract. Subrecipient agrees to perform the work described in Exhibit "A" in compliance with all provisions of this contract. Subrecipient warrants and represents that it has the requisite authority and capacity to perform all terms and conditions on Subrecipient's part to be performed hereunder.

**SECTION III.
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 contract and disbursing funds in connection with the program.

**SECTION IV.
SUBRECIPIENT COMPENSATION AND METHOD OF PAYMENT**

If Subrecipient is not in default hereunder, and subject to City's receipt of the Department of Housing & Urban Development Community Development Block Grant funds, and provided that the Contract and Statement of Work are eligible expenditures of Community Development Block Grant funds, the City agrees to pay the Subrecipient **EIGHT THOUSAND TWO HUNDRED THIRTY-THREE AND NO/100 DOLLARS (\$8,233.00)**. Draw-downs for the payment of eligible expenses shall be made against the line item budgets specified in the Statement of Work, Paragraph E. Expenses for general

administration shall also be paid against the line item budgets specified in Exhibit "A" Statement of Work, 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 contract and made in accordance and compliance with the Statement of Work. 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 Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient. A Subrecipient report shall be submitted with all requests for reimbursement (*See Exhibit A – Statement of Work*). Payment may be suspended by the City in the event of nonperformance by Subrecipient.

SECTION V. TERM OF CONTRACT

Except as provided in Section VI below, this contract shall be in effect as long as the Subrecipient retains control over Community Development Block Grant funds, including income generated from the funds, or retains control over property purchased in whole or in part with Community Development Block Grant funds, or income generated from the property.

Subrecipient represents, warrants and covenants that the land or property purchased with Community Development Block Grant 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 for a term of ten (10) years, beginning on the first day of the sale of property purchased in whole or in part with Community Development Block Grant funds, unless the CDBG 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 funds for acquisition of, and improvements to, the property. Any funds recovered from such sale by the Subrecipient must be used for the same purpose(s) as for which the acquisition was made or returned to the City of Rapid City.

SECTION VI. TERMINATION OF CONTRACT

This contract may be terminated, in accordance with 24 C.F.R. 85.43, if the Subrecipient materially fails to comply with any term of the contract. The City may terminate the contract 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 VI.

In the event of termination, all finished or unfinished documents, data, studies and reports prepared by the Subrecipient under this contract 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 contract may be terminated for convenience in accordance with 24 C.F.R., 85.44.

SECTION VIII.
TERMINATION OF CITY'S OBLIGATIONS

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

SECTION IX.
ASSIGNABILITY

This contract shall not be assigned or transferred by the Subrecipient without the prior written consent of the City.

SECTION X.
SUBRECIPIENT

Records of the Subrecipient and reimbursable expenses pertaining to Statement of Work and records of accounts between the City and the Subrecipient shall be kept on a generally recognized accounting basis. The City, the U.S. Department of Housing & Urban Development, the Comptroller General of the U.S., or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Subrecipient which are directly pertinent to the contract for the purpose of making an audit, examination, excerpts and transcriptions. All financial records pertaining to this contract upon completion shall remain the property of the City of Rapid City.

SECTION XI.
MONITORING AND EVALUATION

The City reserves the right to monitor and evaluate the progress and performance of the Subrecipient to assure that the terms of this agreement are being satisfactorily met in accordance with City and other applicable monitoring and evaluating criteria and standards. Subrecipient shall cooperate with the City relating to such monitoring and evaluation.

SECTION XII.
SUBRECIPIENT RECORD-KEEPING, DOCUMENTATION, AND REPORTS

A. Documentation

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:

1. Records providing a full description of each activity undertaken;

2. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program.
3. Records required to determine the eligibility of activities;
4. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
5. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
6. Financial records as required by 24 CFR Part 570.502 and OMB Circular A-110; and
7. Other records as necessary to document compliance with Subpart K of 24 CFR 570.

B. Retention

The Subrecipient shall retain all records pertinent to expenditures incurred under this contract for a period of three (3) years after the termination of all activities funded under this Agreement. Records for non-expendable property acquired with funds under this contract shall be retained for three years after final disposition of such property. Records for any displaced person must be kept for three (3) 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 three (3) year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the three-year period, whichever occurs later.

C. Client Data

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

1. Client name
2. Client address
3. Client/Household income level or other basis for determining eligibility
4. Description of services provided
5. Dates services provided
6. Beneficiary information (ethnicity, income, sex, female head of household, elderly, disabled, etc.)

D. Property Records

The Subrecipient shall maintain 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 Parts 570.503(b)(8), as applicable. In addition, Subrecipient shall maintain a copy of signed mortgage or deed restriction on real estate acquired or developed using CDBG funds in excess of \$25,000, in whole or in part, requiring repayment of the funds should the recipient change the use or planned use of any such property from that for which the acquisition or improvement was made for a period of not less than ten years from the date of closing. Any funds recovered by the Subrecipient must be used for the same purpose as identified in this agreement or returned to the City of Rapid City.

E. Close-outs

The Subrecipient's obligation to the Grantee 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 Grantee), and determining the custodianship of records.

F. Progress Reports

The Subrecipient shall also submit quarterly progress reports to the City. The Fiscal Year runs from April 1, 2004 to March 31, 2005. Progress reports are due as follows:

<u>Quarter</u>	<u>Period Covered</u>	<u>Due Date (no later than)</u>
1 st quarter	April 1, 2004 – June 30, 2004	July 15, 2004
2 nd quarter	July 1, 2004 – Sept. 30, 2004	October 15, 2004
3 rd quarter	Oct. 1, 2004 – Dec. 31, 2004	January 15, 2005
4 th quarter	Jan. 1, 2005 – Mar. 31, 2005	April 15, 2005

The progress reports should include, but are not limited to: progress on goals to be achieved by program; total number of people assisted for the quarter; 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 - Exhibit C.*

Additional documentation may be requested as needed for clarification.

G. Procurement

1. Compliance

The Subrecipient shall comply with current Grantee 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 Grantee upon termination of this contract.

2. OMB Standards

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

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

H. Environmental Review

1. An environmental review shall be conducted by the Grantee in accordance with 24 CFR Part 570.604. Subrecipient may not proceed with any binding contractual agreement or activity receiving Community Development Block Grant funds prior to the completion of an acceptable environmental review and written notification from the Grantee.

SECTION XIII.
INDEPENDENCE OF SUBRECIPIENT

Nothing herein contained nor the relationship of Subrecipient to the other parties hereto, which relationship is specifically declared to be that of an independent contractor, shall make or be construed to make Subrecipient, or any of the Subrecipient's agents or employees, the agents or employees of the City. Subrecipient shall be solely and entirely responsible for its acts and the acts of its agents, employees and subcontractors.

SECTION XIV.
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 contract by Subrecipient, or by the conditions created thereby. Subrecipient further agrees to indemnify and save 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 contract by Subrecipient, or out of any violation of Subrecipient of any statute, ordinance, rule or regulation.

SECTION XV.
ASSURANCES

The Subrecipient agrees to use Community Development Block Grant funds for the purposes authorized by the Rapid City Common Council. The Subrecipient further agrees to comply with the assurances, (attached as Exhibit "B" hereto and made a part of this contract), which are required by the Department of Housing & Urban Development for all Community Development Block Grant projects. These include Federal Labor Standards requirements.

SECTION XVI.
PROGRAM INCOME

Should program income be generated from the use of Community Development Block Grant funds, the Subrecipient shall use that program income for the activity approved under this agreement. In the event the Subrecipient desires to use the program income for some other activity, they 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. In the case of disapproval, all program income will be returned to the City of Rapid City.

SECTION XVII.
PROPERTY ACQUIRED WITH PROGRAM FUNDS

Subrecipient agrees to use all personal assets and all real property, acquired or improved, in whole or in part, with Community Development Block Grant funds, as set forth in Exhibit "A".

In the event Subrecipient ceases to use a personal asset or real property acquired, or improved, with Community Development Block Grant funds, in accordance with Exhibit "A", 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 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 funds on hand at the time of expiration of this Contract and any accounts receivable of Community Development Block Grant funds.

**SECTION XVIII.
CONFLICT OF INTEREST**

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 Statement of Work, and shall not acquire any interest therein which would conflict with the performance of the Statement of Work required under this Contract or applicable statute, rule or regulation.

**SECTION XIX.
ENTIRE AGREEMENT**

The provisions set forth in Items I-XIX, 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.

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.

CITY OF RAPID CITY

By: Jim Shaw
Its: Mayor

ATTEST:

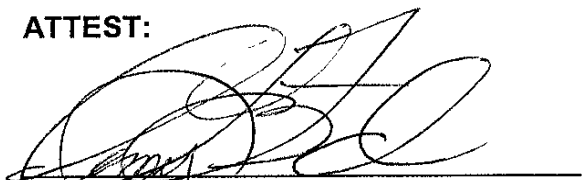
Jim Preston
City Finance Officer

SUBRECIPIENT

RAPID CITY CLUB FOR BOYS

By: David R. Oyster
Its: Executive Director

ATTEST:



Name: Amy L. Fischer

Title: Director of Administration

APPROVED BY:

City Attorney

EXHIBIT "A"

STATEMENT OF WORK

A. PURPOSE OF FUNDING AND DESCRIPTION OF WORK TO BE PERFORMED

RAPID CITY CLUB FOR BOYS shall use **EIGHT THOUSAND TWO HUNDRED THIRTY-THREE AND NO/100 DOLLARS (\$8,233.00)** of Community Development Block Grant funds to **INSTALL A NEW HEATING AND COOLING SYSTEM FOR THE THRIFT STORE BUILDING** in accordance with the proposal submitted in the application for Community Development Block Grant funds received in November 2003.

B. SCHEDULE FOR COMPLETION OF WORK

RAPID CITY CLUB FOR BOYS in Rapid City, SD shall perform the services set out above, and shall expend **EIGHT THOUSAND TWO HUNDRED THIRTY-THREE AND NO/100 DOLLARS (\$8,233.00)** of Community Development Block Grant funding provided for above, **by March 31, 2005.**

C. DOCUMENTATION REQUIRED WITH REQUEST FOR DRAWDOWN OF FUNDS

Drawdown requests may be submitted to the Growth Management Department/Community Development Specialist on a monthly or quarterly basis. Drawdown requests must be in writing and accompanied by acceptable documentation supporting the requested drawdown amount. Documentation should include, at a minimum, the following information:

- a) Invoices for rehabilitation work performed
- b) Time sheets for workers, per Davis Bacon requirements
- c) Materials sheets for draws, as applicable
- d) Certification of draw by approved Rapid City Club for Boys personnel

Documents shall be submitted to: City of Rapid City - Growth Management Dept.
Attn: Barbara Garcia
300 Sixth Street
Rapid City, SD 57701

D. Level(s) of Accomplishment

In addition to the normal administrative services required as part of this Agreement, the Subrecipient agrees to provide the following levels of program services:

Definition of Units of Service is:

- 1) Installation of new heating and cooling system

Activity

- 1) Installation of new heating and cooling system

Units per Month* N/A

Total Units/Year

1) Installation of new heating and cooling system

E. BUDGET

RAPID CITY CLUB FOR BOYS shall use **EIGHT THOUSAND TWO HUNDRED THIRTY-THREE AND NO/100 DOLLARS (\$8,233.00)** of Community Development Block Grant funds provided for above as follows:

Program/Administrative Costs:		\$ _____
Salaries	\$ _____	
Office Space (Program only)	\$ _____	
Utilities	\$ _____	
Communications	\$ _____	
Reproduction & Printing	\$ _____	
Supplies & Materials	\$ _____	
Mileage	\$ _____	
Other (Specify below)	\$ _____	
Indirect Costs (Specify below)	\$ _____	
Construction/Equipment:		<u>\$8,233.00</u>
Engineering Costs:	\$ _____	
Land Acquisition	\$ _____	
Total Grant		<u>\$8,233.00</u>

Other:
Indirect costs:

Any Indirect costs charged must be consistent with the conditions of this agreement. 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 Grantee for approval, in a form specified by the Grantee. 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 this budget must be approved in writing by the Grantee and Subrecipient.

EXHIBIT "B"

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;
 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, and 24 C.F.R. 85, and the requirements of OMB Circular Nos. A-87, A-128, A-122, 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.

**City Of Rapid City Community Development Block Grant (CDBG)
QUARTERLY REPORT FY 2004**

QUARTER ENDING: June 30 Sept 30 Dec. 31 Mar 31

AGENCY: Rapid City Club for Boys, Inc. CONTACT: _____ PHONE#: _____

FY 2004 GRANT ALLOCATION: **\$8,233** FUNDS DRAWN YTD: \$ _____

BENEFICIARIES SERVED					
	Quarter	YTD		Quarter	YTD
Female Head of Household	_____	_____	Male	_____	_____
Elderly (over 65)	_____	_____	Female	_____	_____
Dis-Abled	_____	_____			

RACE	#/QUARTER	#/YTD	ETHNICITY	
			HISPANIC/ LATINO	NON-HISPANIC/ LATINO
a) Total Beneficiaries Benefiting from Activity	_____	_____	_____	_____
b) White	_____	_____	_____	_____
c) Black or African American	_____	_____	_____	_____
d) Asian	_____	_____	_____	_____
e) American Indian or Alaskan Native	_____	_____	_____	_____
f) Native Hawaiian or Other Pacific Islander	_____	_____	_____	_____
g) American Indian/Alaskan Native & White	_____	_____	_____	_____
h) Asian & White	_____	_____	_____	_____
i) Black/African American & White	_____	_____	_____	_____
j) American Indian/Alaskan Native & Black/ African American	_____	_____	_____	_____
k) Balance of individuals reporting more than one race	_____	_____	_____	_____
Beneficiaries by income (% of HUD median income for household size):				
Low to Moderate income (less than <80%)	_____	_____		
Low income (less than <50%)	_____	_____		
Extremely Low income (less than <30%)	_____	_____		

HUD INCOMES EFFECTIVE 1/28/04

HOUSEHOLD SIZE
1
2
3
4
5
6
7
8

80% MEDIAN
29,000
33,150
37,300
41,450
44,750
48,050
51,400
54,700

50% MEDIAN
18,150
20,700
23,300
25,900
27,950
30,050
32,100
34,200

30% MEDIAN
10,900
12,450
14,000
15,550
16,800
18,050
19,250
20,500

**SUBRECIPIENT CONTRACT FOR
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDING**

**SECTION I.
AGREEMENT**

THIS AGREEMENT, made and entered into this **8th day of December, 2004** by and between the **CITY OF RAPID CITY** (hereinafter referred to as "City"), and **BEHAVIOR MANAGEMENT SYSTEMS** (hereinafter referred to as "Subrecipient"), Witnesseth:

WHEREAS, the City has, under date of June 15, 2004 entered into a contract with the 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 to date; and

WHEREAS, pursuant to such contract, the City is undertaking certain activities necessary for the execution of a project situated in the project area described in the Statement of Work; and

WHEREAS, the City desires to disburse funds to the Subrecipient to execute certain projects in conjunction with such undertaking of the City;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

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**SECTION IV.
SUBRECIPIENT COMPENSATION AND METHOD OF PAYMENT**

If Subrecipient is not in default hereunder, and subject to City's receipt of the Department of Housing & Urban Development Community Development Block Grant funds, and provided that the Contract and Statement of Work are eligible expenditures of Community Development Block Grant funds, the City agrees to pay the Subrecipient **FOURTEEN THOUSAND EIGHT HUNDRED NINETY-FIVE AND 69/100 DOLLARS (\$14,895.69)**. Draw-downs for the payment of eligible expenses shall be made against the line item budgets specified in the Statement of Work, Paragraph E. Expenses for general

administration shall also be paid against the line item budgets specified in Exhibit "A" Statement of Work, 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 contract and made in accordance and compliance with the Statement of Work. 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 Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient. A Subrecipient report shall be submitted with all requests for reimbursement (*See Exhibit A – Statement of Work*). Payment may be suspended by the City in the event of nonperformance by Subrecipient.

SECTION V. TERM OF CONTRACT

Except as provided in Section VI below, this contract shall be in effect as long as the Subrecipient retains control over Community Development Block Grant funds, including income generated from the funds, or retains control over property purchased in whole or in part with Community Development Block Grant funds, or income generated from the property.

Subrecipient represents, warrants and covenants that the land or property purchased with Community Development Block Grant 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 for a term of ten (10) years, beginning on the first day of the sale of property purchased in whole or in part with Community Development Block Grant funds, unless the CDBG 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 funds for acquisition of, and improvements to, the property. Any funds recovered from such sale by the Subrecipient must be used for the same purpose(s) as for which the acquisition was made or returned to the City of Rapid City.

SECTION VI. TERMINATION OF CONTRACT

This contract may be terminated, in accordance with 24 C.F.R., 85.43, if the Subrecipient materially fails to comply with any term of the contract. The City may terminate the contract 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 VI.

In the event of termination, all finished or unfinished documents, data, studies and reports prepared by the Subrecipient under this contract 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 contract may be terminated for convenience in accordance with 24 C.F.R. 85.44.

SECTION VIII.
TERMINATION OF CITY'S OBLIGATIONS

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

SECTION IX.
ASSIGNABILITY

This contract shall not be assigned or transferred by the Subrecipient without the prior written consent of the City.

SECTION X.
SUBRECIPIENT

Records of the Subrecipient and reimbursable expenses pertaining to Statement of Work and records of accounts between the City and the Subrecipient shall be kept on a generally recognized accounting basis. The City, the U.S. Department of Housing & Urban Development, the Comptroller General of the U.S., or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Subrecipient which are directly pertinent to the contract for the purpose of making an audit, examination, excerpts and transcriptions. All financial records pertaining to this contract upon completion shall remain the property of the City of Rapid City.

SECTION XI.
MONITORING AND EVALUATION

The City reserves the right to monitor and evaluate the progress and performance of the Subrecipient to assure that the terms of this agreement are being satisfactorily met in accordance with City and other applicable monitoring and evaluating criteria and standards. Subrecipient shall cooperate with the City relating to such monitoring and evaluation.

SECTION XII.
SUBRECIPIENT RECORD-KEEPING, DOCUMENTATION, AND REPORTS

A. Documentation

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:

1. Records providing a full description of each activity undertaken;

2. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program.
3. Records required to determine the eligibility of activities;
4. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
5. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
6. Financial records as required by 24 CFR Part 570.502 and OMB Circular A-110; and
7. Other records as necessary to document compliance with Subpart K of 24 CFR 570.

B. Retention

The Subrecipient shall retain all records pertinent to expenditures incurred under this contract for a period of three (3) years after the termination of all activities funded under this Agreement. Records for non-expendable property acquired with funds under this contract shall be retained for three years after final disposition of such property. Records for any displaced person must be kept for three (3) 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 three (3) year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the three-year period, whichever occurs later.

C. Client Data

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

1. Client name
2. Client address
3. Client/Household income level or other basis for determining eligibility
4. Description of services provided
5. Dates services provided
6. Beneficiary information (ethnicity, income, sex, female head of household, elderly, disabled, etc.)

D. Property Records

The Subrecipient shall maintain 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 Parts 570.503(b)(8), as applicable. In addition, Subrecipient shall maintain a copy of signed mortgage or deed restriction on real estate acquired or developed using CDBG funds in excess of \$25,000, in whole or in part, requiring repayment of the funds should the recipient change the use or planned use of any such property from that for which the acquisition or improvement was made for a period of not less than ten years from the date of closing. Any funds recovered by the Subrecipient must be used for the same purpose as identified in this agreement or returned to the City of Rapid City.

E. Close-outs

The Subrecipient's obligation to the Grantee 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 Grantee), and determining the custodianship of records.

F. Progress Reports

The Subrecipient shall also submit quarterly progress reports to the City. The Fiscal Year runs from April 1, 2004 to March 31, 2005. Progress reports are due as follows:

<u>Quarter</u>	<u>Period Covered</u>	<u>Due Date (no later than)</u>
1 st quarter	April 1, 2004 – June 30, 2004	July 15, 2004
2 nd quarter	July 1, 2004 – Sept. 30, 2004	October 15, 2004
3 rd quarter	Oct. 1, 2004 – Dec. 31, 2004	January 15, 2005
4 th quarter	Jan. 1, 2005 – Mar. 31, 2005	April 15, 2005

The progress reports should include, but are not limited to: progress on goals to be achieved by program; total number of people assisted for the quarter; 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 - Exhibit C.*

Additional documentation may be requested as needed for clarification.

G. Procurement

1. Compliance

The Subrecipient shall comply with current Grantee 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 Grantee upon termination of this contract.

2. OMB Standards

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

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

H. Environmental Review

1. An environmental review shall be conducted by the Grantee in accordance with 24 CFR Part 570.604. Subrecipient may not proceed with any binding contractual agreement or activity receiving Community Development Block Grant funds prior to the completion of an acceptable environmental review and written notification from the Grantee.

SECTION XIII.
INDEPENDENCE OF SUBRECIPIENT

Nothing herein contained nor the relationship of Subrecipient to the other parties hereto, which relationship is specifically declared to be that of an independent contractor, shall make or be construed to make Subrecipient, or any of the Subrecipient's agents or employees, the agents or employees of the City. Subrecipient shall be solely and entirely responsible for its acts and the acts of its agents, employees and subcontractors.

SECTION XIV.
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 contract by Subrecipient, or by the conditions created thereby. Subrecipient further agrees to indemnify and save 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 contract by Subrecipient, or out of any violation of Subrecipient of any statute, ordinance, rule or regulation.

SECTION XV.
ASSURANCES

The Subrecipient agrees to use Community Development Block Grant funds for the purposes authorized by the Rapid City Common Council. The Subrecipient further agrees to comply with the assurances, (attached as Exhibit "B" hereto and made a part of this contract), which are required by the Department of Housing & Urban Development for all Community Development Block Grant projects. These include Federal Labor Standards requirements.

SECTION XVI.
PROGRAM INCOME

Should program income be generated from the use of Community Development Block Grant funds, the Subrecipient shall use that program income for the activity approved under this agreement. In the event the Subrecipient desires to use the program income for some other activity, they 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. In the case of disapproval, all program income will be returned to the City of Rapid City.

SECTION XVII.
PROPERTY ACQUIRED WITH PROGRAM FUNDS

Subrecipient agrees to use all personal assets and all real property, acquired or improved, in whole or in part, with Community Development Block Grant funds, as set forth in Exhibit "A".

In the event Subrecipient ceases to use a personal asset or real property acquired, or improved, with Community Development Block Grant funds, in accordance with Exhibit "A", 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 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 funds on hand at the time of expiration of this Contract and any accounts receivable of Community Development Block Grant funds.

SECTION XVIII.
CONFLICT OF INTEREST

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 Statement of Work, and shall not acquire any interest therein which would conflict with the performance of the Statement of Work required under this Contract or applicable statute, rule or regulation.

SECTION XIX.
ENTIRE AGREEMENT

The provisions set forth in Items I-XIX, 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.

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.

CITY OF RAPID CITY

By: Jim Shaw
Its: Mayor

ATTEST:

Jim Preston
City Finance Officer

SUBRECIPIENT

BEHAVIOR MANAGEMENT SYSTEMS

By:

Dandra L. Diegel

Its:

CEO

ATTEST:

Name:

Shelley Adams

Title:

Executive Assistant

APPROVED BY:

City Attorney

EXHIBIT "A"

STATEMENT OF WORK

A. PURPOSE OF FUNDING AND DESCRIPTION OF WORK TO BE PERFORMED

BEHAVIOR MANAGEMENT SYSTEMS shall use **FOURTEEN THOUSAND EIGHT HUNDRED NINETY-FIVE AND 69/100 (\$14,895.69)** of Community Development Block Grant funds to **UPDATE FIRE ALARM SYSTEM; CONSTRUCT SEVEN OFFICES TO MEET HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT REQUIREMENTS FOR CLIENT PRIVACY** in accordance with the proposal submitted in the application for Community Development Block Grant funds received in November 2003.

B. SCHEDULE FOR COMPLETION OF WORK

BEHAVIOR MANAGEMENT SYSTEMS in Rapid City, SD shall perform the services set out above, and shall expend **FOURTEEN THOUSAND EIGHT HUNDRED NINETY-FIVE AND 69/100 DOLLARS (\$14,895.69)** of Community Development Block Grant funding provided for above, **by March 31, 2005.**

C. DOCUMENTATION REQUIRED WITH REQUEST FOR DRAWDOWN OF FUNDS

Drawdown requests may be submitted to the Growth Management Department/Community Development Specialist on a monthly or quarterly basis. Drawdown requests must be in writing and accompanied by acceptable documentation supporting the requested drawdown amount. Documentation should include, at a minimum, the following information:

- a) Invoices for rehabilitation work performed
- b) Time sheets for workers, per Davis Bacon requirements
- c) Materials sheets for draws, as applicable
- d) Certification of draw by approved BMS personnel

Documents shall be submitted to: City of Rapid City - Growth Management Dept.
Attn: Barbara Garcia
300 Sixth Street
Rapid City, SD 57701

D. Level(s) of Accomplishment

In addition to the normal administrative services required as part of this Agreement, the Subrecipient agrees to provide the following levels of program services:

Definition of Units of Service is:

- 1) Installation of fire alarm/sprinkler system
- 2) Number of office spaces completed
- 3) Number of persons served by new office spaces

Activity

- 1) Completion of fire alarm/sprinkler installation
- 2) Completion of private office spaces
- 3) People served by new office spaces

Units per Month* N/A

Total Units/Year

- 1) Completion of fire alarm/sprinkler installation
- 2) Completion of 3 private office cubicles
- 3) Number of persons served by new office spaces

E. BUDGET

BEHAVIOR MANAGEMENT SYSTEMS shall use **FOURTEEN THOUSAND EIGHT HUNDRED NINETY-FIVE AND 69/100 DOLLARS (\$14,895.69)** of Community Development Block Grant funds provided for above as follows:

Program/Administrative Costs:		\$ _____
Salaries	\$ _____	
Office Space (Program only)	\$ _____	
Utilities	\$ _____	
Communications	\$ _____	
Reproduction & Printing	\$ _____	
Supplies & Materials	\$ _____	
Mileage	\$ _____	
Other (Specify below)	\$ _____	
Indirect Costs (Specify below)	\$ _____	
Construction/Equipment:		<u>\$14,895.69</u>
Engineering Costs:		\$ _____
Land Acquisition		\$ _____
Total Grant		<u>\$14,895.69</u>

Other:
Indirect costs:

Any Indirect costs charged must be consistent with the conditions of this agreement. 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 Grantee for approval, in a form specified by the Grantee. 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 this budget must be approved in writing by the Grantee and Subrecipient.

EXHIBIT "B"

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;
 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, and 24 C.F.R. 85, and the requirements of OMB Circular Nos. A-87, A-128, A-122, 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.

**City Of Rapid City Community Development Block Grant (CDBG)
QUARTERLY REPORT FY 2004**

QUARTER ENDING: June 30 Sept 30 Dec. 31 Mar 31

AGENCY: Behavior Management Systems CONTACT: _____ PHONE#: _____

FY 2004 GRANT ALLOCATION: **\$14,895.69** FUNDS DRAWN YTD: \$ _____

BENEFICIARIES SERVED					
	Quarter	YTD		Quarter	YTD
Female Head of Household	_____	_____	Male	_____	_____
Elderly (over 65)	_____	_____	Female	_____	_____
Dis-Abled	_____	_____			

RACE	#/QUARTER	#/YTD	ETHNICITY	
			HISPANIC/ LATINO	NON-HISPANIC/ LATINO
a) Total Beneficiaries Benefiting from Activity	_____	_____	_____	_____
b) White	_____	_____	_____	_____
c) Black or African American	_____	_____	_____	_____
d) Asian	_____	_____	_____	_____
e) American Indian or Alaskan Native	_____	_____	_____	_____
f) Native Hawaiian or Other Pacific Islander	_____	_____	_____	_____
g) American Indian/Alaskan Native & White	_____	_____	_____	_____
h) Asian & White	_____	_____	_____	_____
i) Black/African American & White	_____	_____	_____	_____
j) American Indian/Alaskan Native & Black/ African American	_____	_____	_____	_____
k) Balance of individuals reporting more than one race	_____	_____	_____	_____
Beneficiaries by income (% of HUD median income for household size):				
Low to Moderate income (less than <80%)	_____	_____		
Low income (less than <50%)	_____	_____		
Extremely Low income (less than <30%)	_____	_____		

HUD INCOMES EFFECTIVE 1/28/04

HOUSEHOLD SIZE
1
2
3
4
5
6
7
8

80% MEDIAN
29,000
33,150
37,300
41,450
44,750
48,050
51,400
54,700

50% MEDIAN
18,150
20,700
23,300
25,900
27,950
30,050
32,100
34,200

30% MEDIAN
10,900
12,450
14,000
15,550
16,800
18,050
19,250
20,500

PREPARED BY: City Attorney's Office
300 Sixth Street
Rapid City, SD 57701
(605) 394-4140

STATE OF SOUTH DAKOTA)
) SS. **CITY OF RAPID CITY INDENTURE**
COUNTY OF PENNINGTON) **OF RESTRICTIVE COVENANTS**

THIS INDENTURE, dated this 8th day of December, 2004, by and between BEHAVIOR MANAGEMENT SYSTEMS ("Owner"),

AND

the CITY OF RAPID CITY, a municipal corporation of the State of South Dakota, with principal offices at 300 6th Street, Rapid City, South Dakota 57701 (the "City").

WITNESSETH:

WHEREAS, the Owner holds title to property located at 350 Elk Street, Rapid City, South Dakota, 57701, and legally described as:

Tract F(Ordinance #1785) Regional Hospital, T1N, R7E, Section 12, Rapid City, Pennington County, South Dakota, A.K.A. 350 Elk Street, Rapid City, South Dakota

WHEREAS, based on Owner's representations, Owner has received, pursuant to Section 42 of the Code, an allocation of Community Development Block Grant Funds in the amount of Fourteen Thousand Eight Hundred Ninety-five Thousand and 69/100 Dollars (\$14,895.69) from the City which allocation is subject to Owner executing, delivering and recording in the official land deed records of Pennington County this Indenture that creates certain covenants running with the land for the purpose of enforcing the requirements of Section 42 of the United States Code by regulating and restricting the use, occupancy and transfer of the Project as set forth herein; and

WHEREAS, Owner under this Indenture, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project for the term stated herein and binding upon all subsequent owners of the Project for such term.

NOW, THEREFORE, the parties hereto, intending to be legally bound, to hereby agree as follows:

ARTICLE I
DEFINITIONS

All words and phrases defined in Section 42 of the United States Code and in the Regulations (as such term is herein defined) pertaining thereto promulgated by the U.S. Department of Treasury of the U.S. Department of Housing and Urban Development shall have the same meanings in this Indenture.

ARTICLE II
OWNER'S REPRESENTATIONS AND WARRANTIES

- A. Owner is and shall continue to be duly organized under the laws of the State of South Dakota as the type of entity it represents itself to be and authorized to perform the activities contemplated by the Project Financing.
- B. All statements and representations made by Owner to the City in connection with the Community Block Grant Funding allocation or relating to the Project were true and correct in all material respects when made by the Owner.
- C. Owner has and shall continue to have good and marketable title to the Project.
- D. Owner acknowledges that the Project is and shall remain in accordance with Section 42 of the United States Code and the regulations (proposed, temporary and final), which shall include, but are not limited to compliance monitoring regulations, promulgated by the United States Treasury Department thereunder, as well as all public rulings, notices, procedures, announcements, and bulletins issued by the Internal Revenue Service (collectively, the "Regulations") for the term of this Indenture. Owner will not knowingly take or permit to be taken any action which would, either directly or indirectly, subject Owner or the Project to non-compliance with Section 42 of the United States Code or the Regulations.
- E. During the term of this Indenture, Owner agrees and warrants that Behavior Management System's facility is and will remain suitable for occupancy and the agreed upon use thereof. In addition, Owner agrees and warrants that the use of such facility will comply with Section 42 of the United States Code.
- F. Owner warrants that it has not and will not execute any other agreement with provision contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Indenture are paramount and controlling as to the rights and obligations set forth, and supersede any other requirements in conflict herewith.

ARTICLE III
USE RESTRICTIONS

Owner represents, warrants and covenants throughout the term of this Indenture that the land and facility purchased with CDBG funds will be used in accordance with Section 42 of the United States Code. Further, Owner 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 Owner's CDBG 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 funds for acquisition of, and improvements to, the property.

ARTICLE IV
TERM OF INDENTURE

- A. Except as otherwise provided herein, the term of this Indenture (consistent with Section 42(h)(5)(D) of the United States Code) shall begin on the first day of the compliance period specified in Section 42 of the United States Code and shall terminate ten (10) years 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, Owner 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 Owner a purpose of which is to terminate such Compliance Period.

ARTICLE V
OWNER'S COVENANTS

- A. Owner further acknowledges and agrees that this Indenture shall inure to the benefit of those individual who are victims of major mental illness, severe emotional or behavioral problems of children, recent crisis, contemplating suicide and/or substance abuse, and can benefit from the Behavior Management System's program.
- B. Owner shall not discriminate on the basis of race, creed, color, gender, age, handicap, marital status, national origin, family status or religion in the lease, sale, rental, use or occupancy of the Project or in connection with the employment or application for

employment of persons for the operation and management of the Project or in connection with any improvements to be erected thereon or in connection with maintenance of the Project.

- C. If Owner becomes aware of any situation, event or condition that would result in non-compliance with Section 42 of the United States Code or the Regulations, Owner shall promptly submit written notice thereof to the City.
- D. Owner, for itself, its successors and assigns, agrees that the terms, conditions and restrictions of this Indenture shall be covenants running with the land, and that in any deed of conveyance of the Project or any part thereof, said terms, conditions and restrictions shall be incorporated by reference to this Indenture and the record hereof as fully as the same are contained herein for the Compliance Period as defined herein.
- E. Subject to the requirements of Section 42 of the United States Code and this Indenture, Owner may sell, transfer or exchange the entire Project at any time, but, unless the Compliance Period has terminated in accordance with Article IV hereof, Owner (and its successors and assigns) shall notify in writing and obtain the agreement of any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject in the requirements of this Indenture and to the requirements of Section 42 of the United States Code and Regulations. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Project.
- F. Owner agrees to notify the City in writing of any sale, transfer or exchange of the Project.

ARTICLE VI ENFORCEMENT OF PROVISIONS

Owner acknowledges that the primary purpose for requiring compliance with the restrictions provided in this Indenture are to assure compliance of the Project and Owner (and its successors and assigns) with Section 42 of the United States Code and the Regulations. Owner, in consideration for receiving Fourteen Thousand Eight Hundred Ninety-five and 69/100 Dollars (\$14,895.69) of Community Block Grant Funding, hereby agrees and consents that the (i) City of Rapid City, and/or the United States of America shall be entitled to enforce specific performance by Owner, its successors and assigns, or Article III of this Indenture in addition to all other remedies provided by law or in equity with regard to any breach of said Article III.

ARTICLE VII MISCELLANEOUS

- A. This indenture shall not be amended without the prior written agreement of the parties hereto.

- B. The City of Rapid City or its agents shall have the right of entry and inspection for the Project and shall have access to inspection and reproduction of all records, books and accounts for the project during regular business hours.
- C. The invalidity of any clause, part or provision of this Indenture shall not affect the validity of the remaining portions thereof.
- D. This Indenture and all matters relating thereto shall be governed by and construed and interpreted in accordance with the laws of the State of South Dakota and, where applicable, the laws of the United States of America. Further, any litigation between the parties arising out of this Indenture and all matters relating thereto shall be heard in the Seventh Circuit Judicial Court for the State of South Dakota located in Rapid City, South Dakota.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be signed on the date first written above.

CITY OF RAPID CITY

By: _____
 Jim Shaw, Mayor

ATTEST:

 James F. Preston, Finance Officer

(SEAL)

BEHAVIOR MANAGEMENT SYSTEMS

By: Andrea K. Degeel
 Its: CEO

State of South Dakota)
 SS.
 County of Pennington)

On this the _____ day of _____, 2004, before me, the undersigned officer, personally appeared Jim Shaw and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and

that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)

State of South Dakota)
SS.
County of Pennington)

On this the 14 day of December, 2004, before me, the undersigned officer, personally appeared Sandy Diegel, who acknowledged himself/herself to be the CEO of Behavior Management System, a non-profit corporation, and that he/she as such CEO, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself as CEO.

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

Shelly G. Adams
Notary Public, South Dakota

My Commission Expires:

My Commission Expires
February 14, 2008

(SEAL)

