

**AGREEMENT TO PURCHASE**

1. **PARTIES**: The parties to this Agreement are Montana-Dakota Utilities Co., a Delaware corporation, 400 North Fourth Street, Bismarck, North Dakota, 58501, hereinafter called "Seller" and the City of Rapid City, a municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701, hereinafter called "Buyer".

2. **PURPOSE**: The purpose of this Agreement is to fix the terms and conditions under which the Seller agrees to sell and the Buyer agrees to buy the property described in Part 3 hereof.

3. **PROPERTY**: The property to be covered by this Agreement is described as follows:

Lots One, Two, Three, Four and Five in Block One Hundred Three (103) of the Original Townsite of the City of Rapid City, Pennington County, South Dakota, subject to easements, rights of way, covenants, restrictions and reservations of record.

4. **CONSIDERATION**: As consideration for the property described in Part 3 hereof, Buyer shall pay the sum of Five Hundred Thousand Dollars (\$500,000), which consideration shall be paid as follows:

- (a) The sum of Fifty Thousand Dollars (\$50,000), as earnest money shall be paid at the time of execution of this Agreement, receipt of which is hereby acknowledged by Seller;
- (b) The remaining balance of Four Hundred Fifty Thousand Dollars (\$450,000) shall be paid at closing.

5. **CLOSING**: The closing of this transaction shall take place on or before the 1<sup>st</sup> day of May, 2002, at such time and place as subsequently mutually agreed upon. Seller shall provide an estimated closing date by January 25, 2002. Seller shall provide a minimum thirty (30) day notice for closing to allow adequate time for Buyer to process the final payment.

6. **POSSESSION**: Buyer may assume possession of the property described in Part 3 hereof on the date of closing.

7. TITLE: Seller warrants that it has or will have prior to the date of possession designated herein good and merchantable title to all of the property described in Part 3 hereof according to the title standards adopted by the State of South Dakota, subject to easements, rights of way, covenants, restrictions and reservations of record.

The Seller warrants that upon complete performance of all of the terms, covenants and conditions of this Agreement to be performed by the Buyer, the Seller will convey such title to the Buyer at such time by a good and sufficient warranty deed. Seller shall pay the real estate transfer fee.

Buyer acknowledges receipt of a Commitment for Title Insurance No. ~~00044087~~ from First American Title Company, effective the 3rd day of July 2001. Buyer agrees to accept said property subject to exceptions stated in said Commitment.

Seller shall obtain a policy of title insurance in conformance with the title required herein in an amount equal to the purchase price agreed upon for the real property described in Part 3 hereof, and a copy of said policy shall be delivered to Buyer for examination within thirty (30) days from the date of closing. Buyer shall have fifteen (15) days thereafter to inform Seller in writing of any valid legal objections to title of said property.

8. TAXES: The property of Seller in the State of South Dakota is centrally assessed for real estate tax purposes. The Seller warrants that the property will be conveyed free of any taxes and assessments.

9. RISK OF LOSS: All risk of loss prior to the date of possession designated therein shall be with Seller, and Buyer shall assume all risk of loss thereafter.

10. PERSONAL PROPERTY: Seller shall have until the date of possession to remove its personal property and trade fixtures. All personal property remaining on the property on the date of possession shall be the property of Buyer.

11. EXAMINATION OF PROPERTY: The Buyer has examined the property conveyed hereby and the conditions thereof, and the same is acceptable as it shall be received on the date of possession designated herein. Seller has not warranted nor represented any portion or items thereof and Buyer has relied entirely on its examination of the property by its agents and employees.

12. BUYER'S DEFAULT: In the event Buyer defaults in the performance of any of the terms, covenants, conditions or obligations of this Agreement assumed by Buyer, Seller shall be entitled to retain the earnest money payment provided for herein. All other

remedies available to the Seller under the laws of this State shall accrue to the Seller, including the right to enforce specific performance of this Agreement.

13. SELLER'S DEFAULT: In the event that Seller shall, after due diligence, be unable to convey title in accordance with this Agreement, and in the further event that the Buyer is unwilling to accept such title as the Seller may be able to convey, the Seller's sole liability to the Buyer shall be to return the money paid hereunder whereupon this Agreement shall be cancelled, and neither party hereto shall have any further claim against the other.

14. WAIVER: The waiver of any breach of this Agreement by either party shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or another provision of this Agreement.

15. TIME: Time is of the essence of this Agreement.

16. BINDING UPON HEIRS, SUCCESSORS, ETC.: This Agreement is binding upon their parties, their heirs, successors, administrators, executors and assigns.

17. INTEGRATION: This writing represents the entire Agreement between the parties, and there are no other oral or collateral agreements or understandings of any kind or character except those contained herein. The provisions hereof may be modified only by agreement in writing between the parties.

18. CAPTIONS: The paragraph captions contained herein are inserted for convenience only and do not constitute a part of this Agreement.

Dated this \_\_\_\_ day of July 2001.

SELLER:

BUYER:

MONTANA-DAKOTA UTILITIES CO.,

CITY OF RAPID CITY

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Jerry Munson, Mayor

ATTEST:

\_\_\_\_\_  
FINANCE OFFICER

(SEAL)

State of South Dakota    )  
                                  ) ss.  
County of Pennington    )

On this the \_\_\_\_\_ day of July 2001, before me, the undersigned officer, personally appeared Jerry Munson, who acknowledged himself to be the Mayor of the City of Rapid City, a municipal corporation, and that he, as such Mayor, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the City of Rapid City by himself as Mayor.

In witness whereof, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, South Dakota

(SEAL)

My Commission Expires:\_\_\_\_\_

State of South Dakota    )  
                                  ) ss.  
County of Pennington    )

On this the \_\_\_\_\_ day of July 2001, before me, the undersigned officer, personally appeared James F. Preston, who acknowledged himself to be City Auditor/Finance Officer of the City of Rapid City, a municipal corporation, and that he, as such City Auditor/Finance Officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the City of Rapid City by himself as City Auditor/Finance Officer.

In witness whereof, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, South Dakota

(SEAL)

My Commission Expires: \_\_\_\_\_

State of North Dakota    )  
  ) ss.  
County of Burleigh        )

On this the \_\_\_\_\_ day of July 2001, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged him/herself to be \_\_\_\_\_ of Montana-Dakota Utilities Co., a corporation, and that he/she, as such \_\_\_\_\_, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of Montana-Dakota Utilities Co. by him/herself as \_\_\_\_\_.

In witness whereof, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, North Dakota

(SEAL)

My Commission Expires: \_\_\_\_\_