

**REAL ESTATE EXCHANGE AGREEMENT**

1. **Parties:** The parties to this agreement are **THE CITY OF RAPID CITY**, a municipal corporation, of 300 Sixth Street, Rapid City, South Dakota 57701 (hereafter called "City"), and **MONTANA-DAKOTA UTILITIES CO.**, a Division of MDU Resources Group, Inc., 400 N. Fourth St., Bismarck, North Dakota, 58501 (hereafter called "MDU").

2. **Purpose:** The purpose of this agreement is to fix the terms and conditions under which the parties agree to exchange certain real property of like kind within the meaning of Section 1031 of the Internal Revenue Code of 1986, or as hereafter amended. The failure of this agreement to qualify as an "exchange" within the meaning of Section 1031 will not affect the validity of this agreement.

3. **Transfer by City:** In consideration of the covenants and agreements hereafter mentioned on the part of MDU to be performed, City hereby agrees to grant and convey unto MDU all of City's right, title and interest in and to certain real property in, Rapid City, Pennington County, South Dakota, consisting of approximately 1.377 acres lying adjacent to Saint Joseph Street and Steele Avenue and as shown on the attached Exhibit A, which is described as follows:

Tract A of Tract One (1) of Section Twenty-three (23),  
Township One (1) North, Range Seven (7) East of the Black  
Hills Meridian, Rapid City, Pennington County, South Dakota.

A platted legal description of the subject property will be substituted for the foregoing description at closing.

Lot 1 of MDU Subdivision, as depicted on the Plat recorded  
at the Pennington County Register of Deeds Office at Plat  
Book \_\_\_\_\_, Page \_\_\_\_\_.

Such conveyance shall be in the form of a quitclaim deed in the form attached hereto as Exhibit C.

4. **Transfer by MDU:** In consideration of the covenants and agreements hereafter mentioned on the part of City to be performed, MDU hereby agrees to grant and convey unto City all of its right, title and interest in and to certain real property in Rapid City, Pennington County, South Dakota, consisting of approximately \_\_\_\_ acres, together with the improvements situated thereon, as shown on the attached Exhibit B and described as follows:

The northeast corner of Block Seventeen (17) of Brennan and Sweeny Addition consisting of approximately 16,000 square feet, more or less (platted as a portion of Lot B Revised); and

Lots Five (5) through Eight (8) and the South Ten Feet (S10') of the alley abutting Lot Five (5) of Block Sixteen (16) of the Brennan and Sweeny Addition, Rapid City, Pennington County, South Dakota.

A platted legal description of the subject property will be substituted for the foregoing description at closing.

Lots Five (5) through Eight (8) and the South Ten Feet (S10') of the alley abutting Lot Five (5) of Block Sixteen (16) of the Brennan and Sweeny Addition; and

Lot B Revised of Tract 32 of Rapid City Greenway Tracts As depicted on the Plat recorded at the Pennington County Register of Deeds Office at Plat Book \_\_\_\_\_, Page \_\_\_\_\_.

Such conveyance shall be in the form of a quitclaim deed in the form attached hereto as Exhibit D.

**5. Valuations:** The parties agree that for the purpose of this exchange, the value of the property transferred by City to MDU under paragraph 3 is Fifteen Thousand Dollars (\$15,000.00); the value of the property transferred by MDU to City under paragraph 4 is Fifteen Thousand Dollars (\$15,000.00).

**6. Title and Title Insurance:** Each party represents to the other that at closing, each party will exchange quitclaim deeds to the respective properties that each will convey to the other hereunder, subject only to permitted exceptions.

Upon the execution of this agreement, each party agrees to deliver to the other a commitment for an owner's policy of title insurance on the property to be conveyed by that party in the amount of the total consideration as set forth in paragraph 5 above. Each party agrees to cause such policy or policies to be examined on their behalf and to advise the other of any objections to the title within fifteen (15) days following receipt of the title commitment. A party's failure to object to the condition of title or any exceptions contained in the title commitment in writing within the time stated above shall be deemed an approval or waiver of that item which shall become a permitted exception to title; however, any

mortgage, judgment or statutory lien shall be considered an objection to title without the necessity of a written notification.

Each party must make a reasonable best efforts attempt to remove prior to closing any objections or exception to title to which the other party objects. Upon receipt of written notice from the other party of an objection or exception to the condition of title to the real estate being conveyed to that party, the party receiving such objection will notify the other in writing, within ten (10) days after the receipt of the notice of its intention to either (1) to cure the objection prior to the time of closing or (2) to take no action with respect to the objection or exception. Within ten (10) days following the receipt of such written notice of an election not to cure the objection or exception, the other party may either (1) terminate this agreement in which event neither party shall have any further obligation under this agreement, or (2) agree to accept such exception and/or condition and close the purchase of the property, subject to such a objection or exception without diminution in the purchase price.

City agrees to execute and deliver to MDU a quitclaim deed conveying its interest in and to the property described in paragraph 3 above. MDU agrees to execute and deliver to City a quitclaim deed conveying its interest in and to the property described in paragraph 4, above. At closing, each party will cause the title company to issue a title policy that containing only the permitted real estate exceptions and those other exception, which have been waived or accepted by agreement between the parties.

**7. Lease of Property:** At closing, City agrees to enter into a Lease Agreement of the property described in paragraph 4 above to MDU in the form and on the terms and conditions set forth in the Lease Agreement attached hereto as Exhibit E. The consideration for the exchange of the property herein shall be sufficient consideration for the Lease Agreement.

**8. Closing Date:** The closing shall take place on November \_\_\_\_, 2000, or at some other time mutually agreed upon by the parties, at the office of First American Title Company, Rapid City, South Dakota. The respective parties may each assume possession of the property to be conveyed to them hereunder on the date of closing, subject to the Lease Agreement referenced in paragraph 7 above.

**9. Environmental Matters:** With respect to the property each party is conveying to the other under this agreement, each party conveying the property (Transferor) represents to the party acquiring such property (Transferee) with respect to the property conveyed by Transferor to Transferee that the following are true statements of law and fact on the date hereof and will be on the closing date and shall be deemed continuing representations and warranties which shall survive the closing;

(a) **Compliance**: Except as set forth in the Disclosure Schedule attached hereto as Exhibit E and acknowledged in writing thereon by both parties hereto, Transferor is in compliance in all material respects with all applicable Environmental Laws relating to the ownership, use, occupancy, or operation of the property, and Transferor is not aware of any Environmental Activity that has occurred on the property in violation of any applicable Environmental Law;

(b) **No Investigations**: Except for those set forth in the Disclosure Statement, no investigations, inquiries, orders, hearings, actions, or other proceedings by or before any Governmental Authority are pending or are threatened in connection with any Environmental Activity or alleged Environmental Activity with respect to the ownership, use, occupancy, or operation of the property;

(c) **No Notice**: Except for those set forth in the Disclosure Statement, Transferor has not received any notice, order, directive, complaint, or other communication from or issued by any Governmental Authority alleging the occurrence of any Environmental Activity in violation of any Environmental Law with regard to the ownership, use, occupancy, or operation of property, and has not received any written or oral, notice or other indication from any third party of any proposed or threatened Environmental Activity on the property being conveyed hereunder.

(d) **No Hazardous Substances**: Except as set forth in the Disclosure Statement, Transferor is not aware of any Hazardous Substances that are constructed, deposited, stored, disposed, placed, or located on the property being conveyed hereunder that would cost more than \$1,000.00 to dispose of or fully remediate;

(e) **Underground Tanks**: Transferor is not aware of any underground tanks of any type on the property being conveyed.

As used above, the following terms shall have the meaning set forth:

“Environmental Activity”: Means any storage, holding, existence, release, emission, discharge, generation, processing, abatement, removal, disposition, handling, or transportation of any Hazardous Substance from, under, into, or on the Property, or otherwise relating to the Property or the use of the Property, or any other activity or occurrence that causes any such event to exist, including any such as may arise out of or may be connected with oil, gas, and mineral exploration, extraction, and mining operations.

“Environmental Laws”: Any applicable state or federal law relating to environmental protection including, without limitation, the following: Clean Air Act, 42 U.S.C. '7401 et seq.; Federal Water Pollution Control Act, 33 U.S. C. '1251 et seq.; Solid Waste Disposal Act, 42 U.S.C. '6901 et seq.; Comprehensive Environmental Response,

Compensation and Liability Act, 42 U.S.C. '9601 et seq.(CERCLA); National Environmental Policy Act, 42 U.S.C. '4321 et seq.; regulations of the Environmental Protection Agency; all applicable state environmental laws, and any applicable rule of common law and any judicial interpretation thereof relating primarily to the environment or Hazardous Substances.

“Governmental Authority”: The United States of America, any state thereof, and any political subdivision of the foregoing, including but not limited to any federal, state, or local legislature, court, department, agency, or bureau.

“Hazardous Substance”: Any substance that is now regulated or governed by any Environmental Laws, or the presence of which requires investigation under any Environmental Laws, or any flammable, explosive, corrosive, reactive, carcinogenic, or radioactive material, and any other substance or material defined or designated by any Environmental Law as a hazardous or toxic substance, material, or waste by any Environmental Laws, including without limitation:

- (i) Those substance included within the definitions of “hazardous substances,” “hazardous materials,” “toxic substances,” or “solid waste” in CERCLA, RCRA, and the Hazardous Materials Transportation Act, 43 U.S.C. Sections 1801 et seq., and in the regulations promulgated pursuant to said laws;
- (ii) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto);
- (iii) Any material, waste, or substances that is or contains (A) petroleum hydrocarbons, (B) asbestos, (C) polychlorinated biphenyls, (D) insecticides, fungicides, or rodenticides, except for those legally used by Transferor in the ordinary course of business; (E) heavy metals, mine tailings, or waste, or (F) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq., (33 U.S.C. '1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. '1317);
- (iv) Toxic substance, as defined in the Toxic Substances Control Act of 1976, or in any other applicable Environmental Laws; and
- (v) Any other hazardous waste, hazardous substance, hazardous material, toxic substance, or toxic pollutant, as those terms used or defined in the Hazardous Materials Transportation Act, the Clean Air Act, or the Clean Water Act.

**10. Representations and Warranties:** With respect to the property each party is conveying to the other under this agreement, each party conveying the property

(Transferor) represents and warrants to the party acquiring such property (Transferee) that the following are true statements of law and fact with respect to the property being conveyed by Transferor to Transferee on the date hereof and will be true on the closing date and shall be deemed continuing warranties and representation which shall survive the closing:

(a) **Compliance with Laws:** To the best of Transferor's knowledge, the ownership, use, occupancy, and operation of the property are in material compliance with all applicable laws. Except as set forth in the attached Disclosure Schedule, Transferor has not received any written notice of any violation of any law with respect to the ownership, use, occupancy, or operation of the property.

(b) **Organization and Authority:** Transferor has full power and authority to execute, deliver, and perform this agreement and consummate the transactions contemplated hereunder. There are no legal, contractual, or other restrictions upon the Transferor's right, power, and authority to sell, transfer, assign, and convey the property to Transferee other than in the case of the City, compliance with the provisions SDCL 9-27-34.1.

(c) **Execution:** This agreement has been duly executed and delivered by the Transferor, and constitutes a legal, valid, and binding obligation of the Transferor, enforceable against the Transferor in accordance with its terms.

(d) **No Breach or Violation:** The execution, delivery, and performance of this Agreement will not (a) conflict with or result in a breach or violation by the Transferor of, or (b) constitute a default by the Transferor under, or (c) create or impose any security interest or right of termination, cancellation, or acceleration with respect to any of the property pursuant to: (i) any mortgage, indenture, lease, license agreement, instrument, or order to which the Transferor is a party or by which the Transferor is bound; or (iii) any Law to which the Transferor is subject.

(e) **Ownership of Property:** Transferor holds good and marketable fee simple title to the property to be conveyed to the Transferee, free and clear of all liens, leases, claims, restrictions, easements, and encumbrances, except the permitted real estate exceptions. There are currently no disputes pending or to Transferor's knowledge threatened over the boundaries of the property. Except as set forth in a Disclosure Scheduled attached hereto and acknowledged in writing thereon by both parties, there are no oral, written, or other leases, licenses, prescriptive easements, or other third party rights to use or occupy any of the property, and there are no parties in adverse possession of any portion of the property. The property being transferred by MDU to City under paragraph 4 is mortgaged; MDU will provide City a recordable Partial Release of Mortgage at closing releasing the property from the mortgage;

(f) **Rights to Purchase the Property:** There are no rights to purchase the property being conveyed to the Transferee or any portion thereof that are held or, to Transferor's knowledge, claimed by any third party;

(g) **Mechanics' and Materialman's Liens:** There are no unpaid bills or claims in connection with any construction, repair, or other work on any portion of the property which will or might give rise to any mechanics, material, laborers or other lien upon the property being conveyed to the Transferee;

(h) **Litigation:** There is no litigation at law, in equity, or in any other proceeding pending or to the knowledge of Transferor threatened against the Transferor that may adversely affect the property being conveyed to be Transferee hereunder, or the operation of the property or that involves the possibility of any judgment, order, award, or any other decision that might impair the ability of the Transferor under this agreement.

**11. Indemnification:** With respect to the property each party is conveying to the other under this agreement, and with the exception of Environmental Activity and Hazardous Substances, each party shall indemnify and hold harmless the other party and its successors and assigns from and with respect to any and all claims, costs, expenses (including reasonable attorney's fees) liabilities, judgments or losses relating to or arising from, directly or indirectly, any breach by the other party to this agreement of any covenant or representation contained in this agreement.

Upon the occurrence of any event giving rise to a right to seek indemnification hereunder, the party seeking indemnification shall give the indemnifying party written notice of such claim, action or proceeding within thirty (30) days after it becomes known to such party, provided, however, that the failure to give such notice shall not relieve the indemnifying party of its obligations to indemnify unless such failure materially and adversely affects the defense of such action and materially increases the liability of the indemnifying party. Each party shall have the opportunity to defend, negotiate, and settle any third-party claims. The indemnifying party shall, within ten (10) days after receipt of such notice, notify the other party as to whether or not it intends to take over the defense of such action. Upon proper notification by the indemnifying party of its intention to defend the claim, the indemnifying party shall engage counsel reasonably satisfactory to the indemnified party to assume the investigation and defense of the claim, and shall keep the indemnified party and its counsel currently informed as to all material aspects of the claim and its investigation and defense. The indemnified party may, in such case, engage counsel to assist in the investigation and defense of the claim, or fails to make any election with the time period herein provided, or if in the reasonable opinion of counsel to the indemnified party, the indemnified party has available to it defenses which are contrary to the interests of the indemnifying party in any such action, then the indemnified party shall be

entitled to engage its own counsel for such investigation and defense, and shall be entitled to the full indemnification therefor.

With respect to indemnity for Environmental Activity and Hazardous Substances that may hereafter be found on the property, the parties shall only indemnify and hold harmless the other party and its successors and assigns from and with respect to only those claims, costs, expenses (including reasonable attorney's fees) liabilities, judgments or losses relating to or arising from, directly or indirectly, any Environmental Activity carried on by the party or any of its predecessors in interest. There shall be no indemnification by either of the parties for Environmental Activity or release of Hazardous Substances that were caused, directly or indirectly, by a party not subject to this agreement. Any notices for indemnification relative to Environmental Activity and Hazardous Substances shall be subject to the provisions of this paragraph 11.

Neither party shall be responsible or have any settlements made which are binding on the party without such party's prior written consent, which consent shall not be unreasonably withheld or delayed.

**12. Conditions Precedent to Closing:** The obligation of the City to convey to MDU the property described in paragraph 3 and the obligation to MDU to convey to the City the property described in paragraph 4 hereof, and the obligation of each party to otherwise comply with the terms and conditions of this agreement, are subject to the satisfaction as of the closing date of the following conditions precedent, unless waived by the other party:

(a) Each of the representation and warranties of the Transferor contained in paragraphs 9 and 10 shall be true in all material respects as of the closing date;

(b) Each of the parties shall have complied with fulfilled and performed in all material respects each of the covenants, terms, and conditions to be complied with fulfilled or performed by that party under this agreement;

(c) Each Transferor shall have executed all deeds, instruments, and other documents reasonably necessary to transfer and convey merchantable title to the real property to the other.

(d) Each Transferor shall have provided the Transferee with a commitment for an owners policy of the title insurance insuring the Transferee good and marketable fee simple title and ownership of the real property to be conveyed to each Transferee with only the permitted real estate exceptions.



(e) No law shall have been enacted or entered and no action, suit, claim, investigation or proceeding shall be pending or threatened, challenging the legality, validity or propriety of the exchanged transaction contemplated hereunder.

(f) All consents of any governmental authority or a third party required to allow the conveyance and exchange of each of the real property shall have been obtained.

**13. Default:** If either party to this agreement shall fail to comply with any conditions of this agreement at the time or in the manner provided for, the other party shall be released from all obligations pursuant hereto and, if such other party is not also in default, it may bring suit to compel specific performance of this agreement.

**14. Risk of Loss:** If all or a material part of either of the properties described in paragraphs 3 or 4 is destroyed or if all or a material part of each said properties is taken by eminent domain or the threat of eminent domain prior to the closing date, then this agreement shall, at the option of either party become immediately null and void.

**15. Further Acts:** Each party shall at the request of the other, execute, acknowledge and deliver whatever additional documents and instruments and do such other acts as may be reasonably required in order to accomplish the intent and purposes of this agreement.

**16. Time:** Time is expressly declared to be of the essence of this agreement.

**17. Survival:** The covenants, conditions and provisions of this agreement shall survive the closing provided for in this agreement and the consummation of the transactions contemplated hereunder, and the representation and warranties herein shall survive the closing and the breach of any representation, warranty, covenant, condition or provision of this agreement by one party, before or after such consummation, shall give the other party the rights and remedies set forth herein. Unless a written waiver of a particular representation, warranty, covenant, condition or provision is given, nothing that should have been discovered by either party but was not discovered, as part of their due diligence or otherwise, shall limit any of their rights or remedies upon the breach of a representation, warranty, covenant, condition or provision by the other party.

**18. Non-Waiver:** The failure by any party at any time to require performance of any provision hereof shall not affect its right later to require such performance. No waiver in any one or more instances shall (except as stated therein) be deemed to be a further or continuing waiver of any such condition or breach in other instances or a waiver of any condition or breach of any other term, covenant, representation, or warranty.

**19. Notices:** All notices, requests, demands, or other communications required or permitted by this agreement shall be in writing and effective when received, and delivery shall be made personally or by registered or certified mail, return receipt requested, postage prepaid, or by overnight courier or confirmed facsimile transmission, addressed as follows:

City:  
City Finance Office  
300 Sixth Street  
Rapid City, SD 57701

With copy to:  
City Attorney's Office  
300 Sixth Street  
Rapid City, SD 57701

MDU:  
President  
400 N. Fourth Street  
Bismarck, ND 58501

With copy to:  
General Counsel  
400 N. Fourth Street  
Bismarck, ND 58501

**20. Headings:** The headings of the Sections of this agreement are inserted for convenience only and shall not constitute a part hereof.

**21. Entire Agreement:** This agreement represents the entire agreement between the parties and no prior oral or written agreements shall be binding. This agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter. This agreement may be amended, modified, or supplemented only by mutual written consent of the parties hereto.

**22. Costs and Expenses:** Except as otherwise expressly provided in this agreement, each party shall pay all of its expenses, including attorney and other professional fees, in connection with the negotiation of this agreement, the performance of their respective obligations hereunder, and the consummation of the transactions contemplated under this agreement.

**23. Assignment:** This agreement and the obligations of the parties hereto shall not be assigned without the written consent of the other party. If such consent to assignment is granted, this agreement shall be binding upon the successors, assigns and Transferees of the parties hereto.

**24. Choice of Law:** This agreement shall be governed by and construed and enforced in accordance with the law of South Dakota.

**DATED:** \_\_\_\_\_, 2000.

**THE CITY OF RAPID CITY,**  
a municipal corporation

**MONTANA-DAKOTA UTILITIES**

By \_\_\_\_\_ By \_\_\_\_\_  
Jim Shaw, Mayor Its: \_\_\_\_\_

(SEAL)

Attest:

\_\_\_\_\_  
James F. Preston, City Auditor/Finance Officer

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

**ON THIS DAY**, \_\_\_\_\_, 2000, before me, the undersigned officer, personally appeared Jim Shaw, who acknowledged himself to be 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.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Comm. Expires: \_\_\_\_\_

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

**ON THIS DAY**, \_\_\_\_\_, 2000, 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.

(SEAL)

\_\_\_\_\_  
Notary Public

My Comm. Expires:\_\_\_\_\_

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

**ON THIS DAY**, \_\_\_\_\_, 2000, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged him/herself to be \_\_\_\_\_ of **MONTANA-DAKOTA UTILITIES Co.**, a Division of MDU Resources Group, Inc., 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.**, a Division of MDU Resources Group, Inc., by him/herself as \_\_\_\_\_.

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

(SEAL)

\_\_\_\_\_  
Notary Public

My Comm. Expires:\_\_\_\_\_