AGREEMENT BETWEEN MONTANA-DAKOTA UTILITIES CO. AND THE CITY OF RAPID CITY FOR WATER MAIN ENCROACHMENT IN UNDERGROUND PIPELINE EASEMENT

This Agreement is made by and between MONTANA-DAKOTA UTILITIES CO., a division of MDU Resources Group, Inc., a corporation, of 400 North Fourth Street, Bismarck, ND 58501 (hereinafter “MDU”), and the CITY OF RAPID CITY, a municipal corporation, of 300 Sixth Street, Rapid City, SD 57701 (hereinafter “City”).

WHEREAS, MDU has obtained that certain Underground Pipeline Easement dated September 14, 2006, which is recorded as document R06-22334 in Book 164, Pages 5745-5746 in the Office of the Register of Deeds, Pennington County, South Dakota (hereinafter the “Gas Easement”); and

WHEREAS, the Gas Easement provides that, inter alia, no engineering works or structures may be built within the easement area; and

WHEREAS, the City desires to use a portion of the easement area of the Gas Easement for purposes of constructing a water main; and

WHEREAS, MDU is willing to allow City to encroach in its easement area under the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual promises set forth, it is agreed by the parties as follows:

1. Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth as agreements of the parties.

2. Right of Encroachment. MDU agrees that the City shall have the ability to encroach into the Gas Easement for purposes of constructing a water main. MDU specifically authorizes the City to negotiate and obtain a permanent water main easement from the underlying landowner that overlaps the Gas Easement.
3. **Placement of Water Main.** City agrees to construct its water main at least 5 feet from the MDU gas line. The water main shall be located to the east of the gas line, toward the section line right-of-way (Radar Hill Road).

4. **Relocation of Water Main.** MDU’s Gas Easement shall have priority, and the City agrees to relocate its water main if required by MDU’s further or expanded use of the Gas Easement for reconstruction or new construction. In such case, the City agrees to relocate its water main to a mutually agreeable location. The City shall pay all expenses for its water main relocation.

5. **Authorization to Landowner.** By execution of this Agreement, MDU authorizes the property owner to grant to the City a water main easement consistent with the provisions of this Agreement.

6. **Integration.** This Agreement and the agreements and documents referred to herein (including any exhibits and schedules incorporated herein) contain the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, negotiations, and understandings, whether written or oral, relating to the subject matter hereof. This Agreement may only be amended by a written document duly executed by all parties.

7. **Counterparts.** This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

8. **Further Action.** The parties covenant and agree that each shall execute and deliver such further instruments or documents as shall be necessary or convenient to effectuate the purposes contemplated by this Agreement.

9. **Construction.** The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision. The parties agree that each party has reviewed this Agreement and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

10. **Choice of Law.** This Agreement shall be governed and construed in accordance with the laws of the state of South Dakota, without regard for its choice-of-law principles, and all claims relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the state of South Dakota, without regard for its choice-of-law principles.
11. **Jurisdiction and Venue.** The parties hereto explicitly agree to submit to the personal jurisdiction of South Dakota state courts, and any dispute relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall be decided solely and exclusively by the Circuit Court located in Rapid City, South Dakota.

**MONTANA-DAKOTA UTILITIES CO**

By __________________________

Its __________________________

State of ______________________ )

) ss.

County of ______________________ )

On this the ____ day of ____________, 2018, before me, the undersigned officer, personally appeared ________________, who acknowledged himself to be the ________________ of Montana-Dakotas Utilities Co., a corporation, and that he, as such ________________, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

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

(seal) Notary Public

My Commission Expires ________________
Dated this _____ day of _______________, 20__.

CITY OF RAPID CITY

Steve Allender, Mayor

Attest

__________________________________
Pauline Sumption, Finance Officer

(seal)

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

On this the _____ day of ________________, 2018, before me, the undersigned officer, personally appeared Steve Allender and Pauline Sumption, Mayor and Finance Officer, respectively, of the City of Rapid City, known to me or satisfactorily proven to be the persons described in the foregoing instrument, and acknowledged that they executed the same in the capacity therein stated and for the purposes therein contained.

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

(seal)  
Notary Public
My Commission Expires ______________________