AGREEMENT FOR THE MANAGEMENT AND USE OF THE JOINT ENERGY PLANT

This Agreement is entered into this _____ day of ____________, 2022, by and between the City of Rapid City, a municipal corporation organized under the laws of the State of South Dakota, located at 300 Sixth Street, Rapid City, SD 57701, hereinafter referred to as the “City,” and the Rapid City Area School District, of 625 Ninth Street, Rapid City, South Dakota 57701, hereinafter referred to as the “School District.” The parties agree to the following terms:

PURPOSE
1. The purpose of this Agreement for Management and Use is to provide for the operation and maintenance of the Energy Plant, located at 434 N Mount Rushmore Road in Rapid City.

TERM
2. The term of this Agreement shall be twenty (20) years, renewable for up to one twenty (20) year term. Any Party wishing to renew this Agreement shall give written notice to the other Party within ninety (90) days of the expiration of the current Agreement.

OWNERSHIP
3. The ownership of both the land and building shall continue to be in the City of Rapid City and School District jointly. The School District shall continue to have a permanent easement for the construction and maintenance of all necessary pipes running from the Energy Plant to Central High School.

COST SHARING
4. All maintenance, repair expenses, insurance, capital replacement expenses and costs shall be shared equally by the City and the School District unless the Parties mutually agree to some other division or arrangement by amendment to this Agreement. All capital replacements and repairs are subject to the prior approval of the Energy Plant Operating Board before they are incurred, unless such replacements and repairs must
be performed immediately due to an emergency. In an emergency, the Energy Plant Manager may proceed as he deems necessary, so long as any expenditure caused by an emergency does not exceed five thousand dollars ($5,000). In the event any building supplied by the Energy Plant is closed because of a natural catastrophe and/or fire, an equitable adjustment in the plant expense allocation will be made during such periods the building is closed as agreed to by the Parties.

MANAGER

5. (a). A Manager, who shall be a qualified mechanical engineer, or a person with equivalent experience in the areas of HVAC systems and controls, and plant management shall be hired by the Energy Plant Operating Board to manage the daily operations of the Energy Plant. Termination or resignation of the Manager shall be made by/to the Energy Plant Operating Board. For purposes of salary payment, the Manager shall be deemed an employee of the City of Rapid City and the School District agrees to reimburse the City for one-half (1/2) of the Manager’s entire salary including base salary, vacations, sick leave, retirement and other fringe benefits. Other maintenance and operation personnel deemed necessary for proper operation of the Energy Plant will be hired by the Manager and any such employees shall be governed and paid according to the above system established for the Manager.

(b). The Manager shall be responsible for and in charge of the Energy Plant and shall also have authority to enter into any of the City or School District buildings being served with energy or being provided Facility Management System (FMS) services from the Energy Plant as necessary for the proper and efficient service of those buildings and shall cooperate and coordinate with any maintenance personnel of the City and/or School District who may from time to time be employed by the Parties in those buildings.

(c). An Advisory Board, entitled the Energy Plant Operating Board, will consist of two (2) members. The members shall be the General Manager of The Rushmore Plaza Civic Center dba The Monument or designated Department Director and the School
District's Facilities Services Director, or designee designated by the Superintendent of Schools. The Advisory Board shall meet periodically with the Manager for the purpose of discussing the operation and maintenance of the Energy Plant, and capital improvement and replacement projects that require funding outside of the annual Energy Plant budget, and such members shall report periodically to their respective employers, The Monument Board and the School Board.

(d). The Manager shall prepare and submit to the Energy Plant Operating Board financial and other records from time to time as requested concerning the operation of the Energy Plant. This includes the purchase of new or replacement equipment, so that The Monument and School District may properly include such items in their budgets.

(e). The Manager shall submit all requests for repair of capital equipment, replacement of existing equipment, or purchase of new equipment to The Monument Board and the School District for approval and inclusion in their budgets.

(f). All bookkeeping and accounting shall be handled by the regular business offices of The Monument and available for verification by the School District.

(g). The City Human Resources Department shall maintain the personnel records including salary payments. Monthly charges to the School District and The Monument for Energy Plant operating, and utility costs shall be figured and billed by the City Finance Office.

SALE OF ENERGY PRODUCED

6. The energy produced by the Energy Plant for heating, cooling, electricity and/or water shall be sold to The Monument for The Monument-Arena Complex and to the School District for Central High School. Meters shall measure the amount of energy so furnished and charges shall be made to the City and the School District on the basis of the actual energy used by the respective unit involved.
INSURANCE

7. Liability insurance shall be procured to protect each Party from all claims for bodily injury, including death and property damage arising out of the use or operation of the Energy Plant. The School District and City of Rapid City shall be named insureds. In addition, fire and extended coverage insurance in an amount not less than replacement cost shall be obtained. Such insurance will insure the City and the School District in case of fire, catastrophe, or other damage to the building, fixtures, and/or the equipment contained in the Energy Plant. Flood insurance shall be purchased also in an amount not less than the maximum obtainable under the federally subsidized flood insurance program or in a greater amount as the parties may agree upon at a future time. Premiums for the above policies shall be divided equally between the City and the School District and each shall be billed separately. The School District shall procure the insurance described in this section. Charges to the City of Rapid City for one-half of the cost of the insurance premiums shall be calculated by the School District and billed to the City of Rapid City. Should either Party desire changes to the arrangement for procuring insurance as set forth in this section, alternatives may be presented to the Energy Plant Operating Board for consideration. Should the Energy Plant Operating Board support the alternative, an amendment to this section of this Agreement may be presented to the Board of Education for the Rapid City Area School District No. 51-4 and the Rapid City Common Council for consideration.

8. (a). All repair, maintenance, insurance, personnel and capital costs associated with the FMS system located at the Energy Plant shall be divided equally between the City and School District.

(b). Additional buildings may be added to the FMS system as deemed practical or necessary by the Energy Plant Operating Board.
(c). The owner/operator of any building added to the FMS system may be charged for the monitoring and control services provided by the Energy Plant. The types of services provided and the charges for those services will be detailed in an Agreement drawn up by the Energy Plant Operating Board and agreed upon by the building owner/operator. The Agreement will be approved by the School Board and The Monument Board and will go into effect before the building is added to the FMS system. The charges for Energy Plant services will be used to reduce the Energy Plant operating costs by a like amount. The reduction in operating costs will be shared equally and passed on to the School District and The Monument. This reduction in costs will be reflected in the monthly Energy Plant billings for utility and operating costs sent to the School District and The Monument.

TERMINATION AND SALE OF ASSETS

9. (a). This Agreement shall terminate at the end of the twenty (20) year term or any extension thereof as approved by the City and the School Board. Upon termination, all physical assets, including real property, personal property, and fixtures, shall be appraised.

(b). The City and the School District shall each select one certified appraiser. If the two (2) appraisers cannot agree, they shall select a third certified appraiser, who will make the final decision as to the appraised value of the assets. The cost of the appraisers shall be shared equally by the City and the School District.

(c). The party not seeking termination of this Agreement shall have first right of refusal to purchase the terminating party’s interest in the physical assets at the appraised value. If this party does not exercise its right to purchase the physical assets within sixty (60) days of the appraisal by entering into a purchase agreement, the terminating party shall have the option to purchase the non-terminating party’s interest in the assets at the appraised value.
(d). If neither party desires to purchase the physical assets, all real and personal property and fixtures shall be sold as provided for by state law and converted to cash. All debts and liabilities outstanding from the Energy Plant shall be paid from the cash so raised and the remaining proceeds distributed equally to the City and the School District.

RESOLUTIONS

10. The Rapid City Common Council and the Board of Education for the Rapid City Area School District No. 51-4 shall each pass a resolution, according to SDCL 1-24 and SDCL 6-3, authorizing this Agreement before it takes effect. The resolutions, together with a copy of this Agreement shall be filed with the City and with the School District and kept as a public record by the Finance Officer of the City and the Business Manager for the School District.

AMENDMENT

11. No amendment of this Agreement shall be made unless it is first approved by the City and the School District, reduced to writing, and filed with the recording officers as provided in paragraph 10 above.

Dated this ___ day of ____________, 2022.

CITY OF RAPID CITY

______________________________
Steve Allender, Mayor

______________________________
Kumar Veluswamy, Director, Facilities Services

ATTEST:

______________________________
Pauline Sumption, Finance Director

______________________________
Katharine Thomas, President, Board of Education

RAPID CITY AREA SCHOOLS