AGREEMENT BETWEEN THE CITY OF RAPID CITY, THE CITY OF BOX ELDERS, AND ATLANTIS, LLC FOR DEANNEXATION, ANNEXATION, AND DEVELOPMENT OF PROPERTY  
(SDCL 9-4-1.1)

This Agreement is made by and between the CITY OF RAPID CITY, a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, SD 57701 ("Rapid City"), the CITY OF BOX ELDERS, a South Dakota municipal corporation, of 420 Villa Drive, Box Elder, SD 57719 ("Box Elder"), and ATLANTIS, LLC, a South Dakota limited liability company of 927 Main Street, Rapid City, SD 57701 ("Atlantis").

WHEREAS, Atlantis owns certain property, described below, that it desires to subdivide and develop, such development to include expansion to the existing water park in two phases; and

WHEREAS, Atlantis’s property is currently located within the corporate limits of Rapid City; and

WHEREAS, Box Elder represents that it has the infrastructure necessary to serve the developments planned for the property; and

WHEREAS, the parties have agreed to remove a portion of the property from the corporate limits of Rapid City and annex such portion into Box Elder; and

WHEREAS, the parties wish to put their agreements and understandings in writing.

NOW THEREFORE, 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. Purpose. The purpose of this Agreement is to set forth the mutual agreements and understandings of the parties concerning the exclusion of the proposed Lot B, described below, from the corporate limits of the City of Rapid City and the annexation of proposed Lot B into the corporate limits of the City of Box Elder.
3. **Property.** The property that is the subject of this Agreement is legally described as follows:

   **Lot B of Lot 1 Revised of Atlantis Subdivision, located in the SW¼ of Section 27, T2N, R8E, B.H.M., Rapid City, Pennington County, South Dakota.**

4. **Petition to De-annex.** Atlantis has filed a petition to de-annex the Property from the City of Rapid City, and a stipulation of approval of such petition requires the parties enter this Agreement.

5. **Annexation to Box Elder.** Atlantis agrees that upon removal of the Property from the corporate limits of Rapid City, it will petition Box Elder for annexation of the Property pursuant to SDCL 9-4-1.

6. **Water Utilities.** Both Rapid City and Box Elder will individually maintain separate utilities as they currently exist unless mutually agreed upon by both municipalities.

7. **Sewer Utilities.** Upon annexation into Box Elder, Box Elder will provide water and sewer utility services to the Property.

8. **Inspections.** Rapid City staff will be allowed to inspect during and at 90% completion of the construction of the Phase 1 and Phase 2 water park expansions to ensure that there is no cross-connectivity of any Rapid City and Box Elder public utilities, ensuring the safety of each municipality’s infrastructure.

9. **Points of Sale.** Atlantis agrees to continue to remit sales taxes for all water park ticket points-of-sale as it does at the time of the execution of this Agreement. However, should the South Dakota Department of Revenue determine that sales tax must be remitted differently, the parties agree that Atlantis will abide by the decision of the South Dakota Department of Revenue regarding sales tax remittances. All parties to this Agreement reserve their rights to contest or challenge any decision of the Department of Revenue related to sales tax concerning the Property and the greater complex of hotels, restaurants, and waterparks, and no party waives any appeal rights it might have by virtue of execution of this Agreement. Atlantis will not intentionally relocate and/or target sales to direct sales tax to either Box Elder or Rapid City.

10. **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.

11. **Waivers.** No waiver of any term or provision of this Agreement shall be binding unless executed in writing by the party waiving such term or provision.
12. **Third Parties.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein shall give or be construed to give any person or entity, other than the parties hereto, their respective successors, and permitted assigns, any legal or equitable rights hereunder.

13. **Time of the Essence.** Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period provided for in this Agreement.

14. **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.

15. **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.

16. **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.

17. **Severability.** The invalidity of all or any part of any section of this Agreement shall not render invalid the remainder of this Agreement or the remainder of such section. If any provision of this Agreement is held to be unenforceable for any reason, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible.

18. **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.

19. **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.
Dated this ____ day of ____________________, 2021.

CITY OF RAPID CITY

By ________________________________

Steve Allender, Mayor

Attest

______________________________

Pauline Sumption, Finance Director

(seal)

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

On this the ____ day of ____________________, 2021, before me, the undersigned officer, personally appeared Steve Allender and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Director, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance Director, 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 Director.

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

(seal)

Notary Public - South Dakota
My Commission Expires ____________________
Dated this ____ day of ____________________, 2021.

CITY OF BOX ELDER

By ______________________________
Larry Larson, Mayor

Attest

Nicole Schneider, Chief Financial Officer

(seal)

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

On this the ____ day of ____________________, 2021, before me, the undersigned officer, personally appeared Larry Larson and Nicole Schneider, who acknowledged themselves to be the Mayor and Chief Finance Officer, respectively, of the City of Box Elder, a municipal corporation, and that they, as such Mayor and Chief Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Box Elder by themselves as Mayor and Chief Finance Officer.

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

(seal) Notary Public - South Dakota
My Commission Expires ________________
Dated this 21st day of December, 2020.

ATLANTIS, LLC

By
Paul Bradsky, Member

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

On this the 21st day of December, 2020, before me, the undersigned officer personally appeared Paul Bradsky who acknowledged himself to be the Member of ATLANTIS, LLC, and that as such Member, being duly authorized to do so, executed the foregoing for the purposes therein contained.

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

(seal)

Notary Public
My Commission Expires 9-22-2020

Agreement between the City of Rapid City, the City of Box Elder, and Atlantis, LLC for De-annexation, Annexation, and Development of Property