AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
THE CITY OF BOX ELDER FOR WATERPARK EXPANSION BUILDING PERMIT

This Agreement is made and entered into between the City of Rapid City, of 300 Sixth Street, Rapid City, SD 57701, herein after referred to as “Rapid City” and the City of Box Elder, of 420 Villa Drive, Box Elder, SD 57719, herein after referred to as “Box Elder.”

WHEREAS, Rapid City and Box Elder, along with Atlantis, LLC, entered into that certain agreement for deannexation, annexation, and development of property owned by Atlantis, LLC, in January of 2021; and

WHEREAS, the property subject to the agreement was platted for the purpose of development as an expansion of the waterpark complex owned by Atlantis, LLC; and

WHEREAS, the property owner is ready to obtain building permits and begin construction of the waterpark expansion; and

WHEREAS, the structure to be constructed pursuant to such building permits is not wholly within the City of Box Elder; and

WHEREAS, the portion of the project within the corporate limits of Rapid City is very small; and

WHEREAS, requiring the property owner to obtain permits and inspections from both municipalities would put an unnecessary burden on development; and

WHEREAS, it would not be an efficient use of public resources to issue two sets of permits with accompanying inspections; and

WHEREAS, the overwhelming majority of the project is within the City of Box Elder; and

WHEREAS, Rapid City and Box Elder desire to enter into this Agreement to reduce their mutual agreements to writing.

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions herein 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 herein as agreements of the parties.

2. **Purpose.** The purpose of this Agreement is to set forth the terms and conditions for the issuance of building permits for a waterpark expansion on the Property and to set forth the obligations of each party.

3. **Authority.** The parties agree that SDCL § 6-5-1 provides the authority for exchanges of work between municipalities as contemplated by this Agreement.
4. **Property.** The parties agree that the scope of this Agreement is limited to the Property described as follows:

   **Lot B of Lot 1 Revised of the Atlantis Subdivision, Box Elder, Pennington County South Dakota; and**

   **Lot A of Lot 1 Revised of the Atlantis Subdivision, Rapid City, Pennington County, South Dakota.**

5. **Project.** The waterpark expansion, as described above, is to be constructed predominantly on Lot B. It will overlap approximately 3 feet, more or less, onto Lot A, connecting to the existing waterpark structure.

6. **Building Permits.** The parties agree that Box Elder shall be the permitting authority for the Project as described in this Agreement. Box Elder agrees to provide the following work: permit application services, plans review, code compliance, and all other services related to the application and issuance of building permits for the Project.

7. **Consideration.** In exchange for Box Elder’s agreement to take on all work described above, the parties agree that all fees for permits and inspections shall be remitted to and retained by Box Elder.

8. **Other Rights Unaffected.** This Agreement is applicable only to the Project described herein on the Property listed above. No other rights are affected, nor any other obligations undertaken. Rapid City specifically retains all rights to utility inspections as provided in the agreement for deannexation, annexation, and development of property.

9. **Termination.** This Agreement may be terminated by either party for any reason upon thirty days’ notice to the other party prior to issuance of any permit.

10. **Notices.** All notices given hereunder shall be made by hand delivery or certified mail, return receipt requested, to the parties at the following addresses:

    - City of Rapid City
    - Attn: Building Official
    - 300 Sixth Street
    - Rapid City, SD 57701

    - City of Box Elder
    - Attn:
    - 420 Villa Drive
    - Box Elder, SD 57719

11. **Time of Essence.** Time is of the essence of this Agreement.

12. **Waivers.** The failure by one party to require performance of any provision herein shall not affect that party’s right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.
13. **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.

14. **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.

15. **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.

16. **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.

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. **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 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.

19. **Jurisdiction and Venue.** This Agreement shall be interpreted under the laws of the State of South Dakota without regard to any conflict of laws provision. Any litigation under this Agreement shall be resolved in the Circuit Court of Pennington County, State of South Dakota.

[Signature pages follow]
Dated this _____ day of ________________, 2021.

CITY OF RAPID CITY

By __________________________
Steve Allender, Mayor

Attest

__________________________
Pauline Sumption, Finance Director

(seal)
Dated this _____ day of _______________, 2021.

CITY OF BOX ELDER

By ______________________________
Larry Larson, Mayor

Attest

______________________________
Nicole Schneider, Chief Financial Officer

(seal)