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September 29, 2004

(Via Hand Delivery)

Jason Green
City Attorney's Office
City of Rapid City
300 6th Street
Rapid City, SD 57701



Re: Atlantis Water and Sewer Agreement

Dear Jason:

Enclosed is a proposed water and sewer agreement that my client, Atlantis, LLC, would like to have put on the Legal and Finance Committee's agenda for the October 13, 2004 meeting. I have previously submitted this proposed agreement to you for your review and comments.

As we had discussed, this agreement addresses the City providing water and sewer utilities to a small, 3-acre parcel adjacent to another parcel of land that is within Rapid City's municipal limits. If, after three years, the City of Box Elder fails to expand like utility services to the 3-acre parcel, the agreement provides that the parties contemplate the de-annexation of the 3-acre parcel from Box Elder's municipal limits and the annexation into Rapid City's municipal limits. With the use of the phrase "best efforts", I do not believe that either the City of Rapid City or the City of Box Elder will be contractually obligated to annex or de-annex this 3-acre parcel. Consequently, the language in this agreement pertaining to such governmental action will not invade the discretionary providence of either city; it only evidences the parties' desire for such action.

Please confirm in writing that this matter will be placed on the above-mentioned agenda. Thank you for your cooperation.

With warmest regards,

A handwritten signature in black ink, appearing to read "G. Nelson", written over the typed name "George J. Nelson".

George J. Nelson

/dw

enc.

cc. Atlantis, Inc.
c/o Paul Bradsky

AGREEMENT FOR WATER AND SEWER SERVICE

This agreement, made on this ___ day of _____, 2004, by and between Atlantis, LLC, a South Dakota limited liability company ("Atlantis"), the City of Rapid City, a municipal corporation of the State of South Dakota ("Rapid City"), and the City of Box Elder, a municipal corporation of the State of South Dakota ("Box Elder").

RECITALS:

A. Atlantis is in the process of developing a seven (7) acre tract (referred to herein as the "Subject Property") located at the intersection of I-90 and Exhit 61, in Pennington County, South Dakota, as more particularly described on Exhibit "A" attached hereto and made part hereof. Approximately four (4) acres of the Subject Property belonging to Atlantis are located within the Rapid City municipal limits (legally described as Lots 1 and 2 of Tract F of W-Y Addition in the City of Rapid City, Pennington County, South Dakota) and the remaining three (3) acres are located within the Box Elder municipal limits (legally described as Lots 1 and 2 of Davis Subdivision in the City of Box Elder, Pennington County, South Dakota, and referred to herein as the "3-Acre Parcel"). In order to facilitate the commercial development on the property, it is necessary that Atlantis has sewer and water service available, as development occurs;

B. The Subject Property is located in an area in which Rapid City is readily capable of providing water and sewer service and Box Elder is not;

C. Rapid City is under no obligation to furnish water and sewer services to the 3-Acre Parcel;

D. Atlantis wishes to obtain Utility Services (defined below) to the Subject Property without the necessity of waiting until Box Elder expands its Utility Services to make such available to the 3-Acre Parcel;

E. Atlantis requests Rapid City to furnish such Utility Services to the Subject Property, including that portion of the Subject Property that is referred to herein as the 3-Acre Parcel and which borders the City of Rapid City but which is actually in the City of Box Elder;

F. Box Elder will use its best efforts during the next three years to provide such Utility Services to the 3-Acre Parcel; and

G. The parties seek to facilitate the immediate development of the Subject Property even though Box Elder cannot immediately accommodate the Utility Service needs of Atlantis for that 3-Acre Parcel of the Subject Property located in the City of Box Elder.

NOW THEREFORE, in consideration of the foregoing and the promises, undertakings and mutual agreements contained herein, Atlantis, Rapid City, and Box Elder covenant and agree as follows:

1. **Recitals Incorporated.** The above recitals are hereby incorporated in and made a part of this Agreement as fully as if set forth verbatim herein. By signing this Agreement, Atlantis, Rapid City and Box Elder acknowledge reading, understanding and agreeing to all of these recitals.
2. **Use of the Subject Property.** Although subject to the sole discretion of Atlantis, Atlantis presently intends to build on the Subject Property two limited service lodging facilities, two restaurants, a lounge, and/or some other facilities suitable for commercial use.
3. **Utility Services.** As used in this Agreement, "Utility Services" means and refers to water and/or sewer services provided by Rapid City or Box Elder, including but not limited to: (i) ongoing water and/or sewer service; (ii) a service tap from existing water and/or sewer lines; and (iii) an extension of water and/or sewer mains.
4. **Covenants by Rapid City.** Rapid City makes the following covenants, warranties, agreements and representations, each of which shall be deemed material to this Agreement:
 - a. Rapid City will furnish Utility Services to the 3-Acre Parcel for a period of three years and upon the terms, conditions and covenants set forth herein.
 - b. Rapid City will furnish Utility Services to the 3-Acre Parcel beyond three years in the event Box Elder fails to provide such Utility Services within three years so long as Atlantis pursues with due diligence the deannexation from Box Elder and subsequent annexation into Rapid City of the 3-Acre Parcel.
 - c. Rapid City will furnish Utility Services to the rest of the Subject Property under its normal terms and conditions as said property is already within the municipal limits of Rapid City.
5. **Covenants by Box Elder.** Box Elder makes the following covenants, warranties, agreements and representations, each of which shall be deemed material to this Agreement:
 - a. Box Elder will use its best efforts to provide Utility Services to the 3-Acre Parcel within three (3) years of the date of this Agreement.
 - b. In the event it is unsuccessful, Box Elder agrees to use its best efforts to accommodate and will execute any documents required to facilitate the deannexation of the 3-Acre Parcel from Box Elder and the annexation of said 3-Acre Parcel into Rapid City.
6. **Covenants by Atlantis.** Atlantis makes the following covenants, warranties, agreements and representations, each of which shall be deemed material to this Agreement:
 - a. Atlantis covenants and agrees that in the event Box Elder has not provided Utility Services to the 3-Acre Parcel within 3 years from the date hereof, Atlantis has an obligation to execute the required deannexation petition from the City of Box Elder and to execute the subsequent annexation petition into the City of Rapid City of the 3-Acre Parcel. Atlantis acknowledges that a purpose of this Agreement is to ensure, as a material benefit and consideration to Rapid City, Atlantis' full and complete cooperation with any effort to deannex and subsequently annex the 3-Acre Parcel; and Atlantis agrees, that upon

request by Rapid City, Atlantis will do, execute, acknowledge and deliver, all such further acts, agreements, and assurances as may be requested and reasonably necessary for the full completion and consummation of the purposes contemplated herein. These further acts shall specifically include, but are not limited to, signing successive deannexation petitions and/or annexation petitions in the event prior deannexation/annexation efforts are unsuccessful.

- b. Atlantis agrees to pay Rapid City all charges, deposits, and rates for service and equipment in connection with water and sewer service outside the municipal limits of Rapid City applicable under Rapid City's ordinances and rate schedules which are now applicable or as may be changed from time to time.
 - c. Atlantis, at its sole cost and expense, will disconnect the water and sewer utility services provided by Rapid City to the 3-Acre Parcel pursuant to this Agreement and will connect to Box Elder's water and sewer utility services if Box Elder has in fact provided water and sewer utility services to the 3-Acre Parcel within 3 years from the date of this Agreement.
7. **Recording.** All parties hereby agree that this Agreement may be recorded in the Office of the Register of Deeds of Pennington County.
 8. **Default; Remedies.** Any party shall be deemed to be in default of its obligations under this Agreement upon any breach, failure or nonoccurrence of any material covenant, promise, or obligation contained in this Agreement. In the event of any default by any party of this Agreement, the non-breaching parties shall be entitled to recover from the breaching party the costs and attorneys' fees incurred by the non-breaching party as a result of or in response to the breaching party's default. In the event of any default by any party hereto, the non-breaching party may pursue, in addition to the remedies set forth herein, any and all available remedies in law or equity.
 9. **Entire Agreement.** The parties acknowledge that no representations or inducements have been made other than those expressed herein; that this Agreement supersedes any and all prior memoranda, correspondence, conversations, negotiations and agreements pertaining to the matters herein expressed; and that this Agreement constitutes the entire agreement between them.
 10. **Modification.** The terms of this Agreement may be modified in whole or in part only by a written instrument signed by all of the parties. Any oral agreement to modify this Agreement shall be void and of no force and effect.
 11. **Captions.** The captions and headings of the Paragraphs of this Agreement are for convenience only and may not be used to interpret or define the provisions of this Agreement.
 12. **No Waiver.** No waiver of a breach of any of the covenants or promises of this Agreement shall be construed as a waiver of any succeeding breach of the same or other covenant or promise.
 13. **Severability.** In the event that any provision or clause of this Agreement conflicts with any applicable law, the other provisions of this Agreement shall be given effect as fully as possible without the conflicting provision, and to this end the provisions of this Agreement are declared to be severable.

14. **Further Assurances.** The parties agree to take all steps and do everything reasonably required to give effect to any of the transactions contemplated by this Agreement.
15. **Successors and Assigns.** The covenants and agreements contained in this Agreement and the obligations created hereunder shall inure to the benefit of and be binding upon the respective heirs, successors and assigns of the parties.
16. **Governing Law and Forum.** The validity, construction and effect of this Agreement shall be governed by the laws of the State of South Dakota, and the parties hereby consent to the exclusive jurisdiction of the courts of the state of South Dakota for resolution of any dispute arising hereunder.
17. This Agreement shall be effective upon the date of the last party affixing its signature.

IN WITNESS WHEREOF, we have hereunto executed this Agreement this ____ day of _____, 2004, in triplicate of original.

ATLANTIS, L.L.C.

CITY OF RAPID CITY

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

CITY OF BOX ELDER

By: _____

Title: _____

Date: _____

STATE OF SOUTH DAKOTA)

)SS

County of PENNINGTON)

On this the ____ day of _____, 2004, before me, _____, the undersigned officer, personally appeared Paul J. Bradsky, who acknowledged himself to be the Managing Member of Atlantis, L.L.C., a limited liability company, and that he, as such Member being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the company by himself as Managing Member.

In witness whereof I herunto set my hand and official seal.

