

RESOLUTION NO. 23-50

A RESOLUTION PROVIDING FOR THE USE OF PROCEEDS FROM THE SPECIAL ASSESSMENT BONDS, SERIES 2021, IN EXCESS OF DEBT COVENANTS AND DEBT SERVICE RESERVE FUND, AND REQUIRING APPROVAL FROM THE BOND PURCHASER.

WHEREAS, the City of Box Elder, South Dakota (the "City") is authorized by SDCL Chapter 9-55 (the "Act") to issue Special Assessment Bonds which are not general obligations of the City but which are payable from payments of assessments levied by the City against properties benefited by the improvements paid for by the net proceeds of such bonds; and

WHEREAS, the City has authorized improvements designated the Box Elder Events Center, (the "Improvements"), let construction contracts for the Improvements and directed assessments to be levied against the properties benefited by the Improvements; and

WHEREAS, the City has established Business Improvement District #2, consisting of those businesses upon which the special assessments have been levied; and

WHEREAS, the City has issued its Special Assessment Bonds, Series 2021 (the "Bonds"), in the principal amount not to exceed \$23,000,000; and

WHEREAS, the payments of assessments for all properties benefited by the Improvements will be used to secure the Bonds; and

WHEREAS, the assessments levied against the properties benefitted by the Improvements paid for by the net proceeds of the Bonds will likely be sufficient to allow for additional improvements to the infrastructure necessary to support the Improvements; and

WHEREAS, Black Hills Community Bank ("Purchaser") has purchased the Bonds and, has agreed to the provisions contained within this Resolution; and

WHEREAS, the City has agreed to construct Hotel Way, which will provide additional access to the Improvements; and

WHEREAS, the costs associated with the construction of Hotel Way and other infrastructure improvements in BID #2 (the "Infrastructure") are authorized expenditures of business improvement district revenues pursuant to SDCL § 9-55-3; and

WHEREAS, the City has appointed BID #2 Board, for the purpose of making recommendations to the City Council for the establishment of plans for Improvements in Business Improvement District #2; and

WHEREAS, the City has entered into a Lease with Atlantis, LLC, for the purpose of operating the Improvements; and

WHEREAS, Atlantis, LLC has executed a guarantee guaranteeing payment of the City's obligations pursuant to the Bonds; and

WHEREAS, the City has borrowed money from the South Dakota Department of Transportation ("DOT") for the construction of Hotel Way; and

WHEREAS, Atlantis, LLC, has executed a guarantee guaranteeing payment of the funds borrowed from the DOT for the construction of Hotel Way; and

WHEREAS, the proceeds of the Special Assessments are deposited into a bond fund ("Bond Fund") established with Purchaser; and

WHEREAS, the current value in the Bond Fund is approximately \$1.3 million; and

WHEREAS, the City, BID #2 Board and Atlantis, LLC desire to maximize revenue from the special assessments on the businesses located within BID #2 to assist in the construction of the Infrastructure.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOX ELDER, PENNINGTON COUNTY, SOUTH DAKOTA:

Section 1. Acknowledgment of Debt Service Coverage. The City acknowledges its obligation consistent with the Bonds, to maintain a debt service coverage ratio, tested on an annual basis, of 1.03:1.

Section 2. Acknowledgement of Reserve Requirement. The City and BID #2 Board acknowledge the obligation consistent with the Bonds, to maintain a reserve fund of an amount equal to \$725,000.00 with the Registered Owner (the "Reserve Fund").

Section 3. Utilization of Excess Funds. On an annual basis, after the proceeds from the special assessments have satisfied the debt service coverage ratio (measured annually) and assuming the balance in the Reserve Fund is at or above \$725,000.00, additional funds available in the Bond Fund may be allocated as repayment to the DOT in conjunction with the DOT's loan to the City of Box Elder for the construction of Hotel Way. At such time as the debt service coverage ratio measured annually has been satisfied for the year and the debt service reserve account equals \$725,000.00 or more, the City will request a waiver from Purchaser for the release of the funds for the Hotel Way payment by the City to the DOT. Currently the estimated annual payment for the DOT loan is \$150,000.00.

Section 4. Additional Excess Revenue. Should additional revenue be available from the proceeds of the special assessments, on an annual basis, following satisfaction of the debt service ratio (measured annually), Should the Reserve Fund have a balance of at least \$725,000.00 and should repayment of the City's annual obligation to the DOT regarding Hotel Way be released by Purchaser, the BID #2 Board may recommend plans

for utilization of any remaining funds in the Bond Fund on expenditures authorized by SDCL § 9-55-3. Such plan may also include a recommendation to repay any principal on the Bonds.

Section 5. Parking Lot. Given the current balance of the Bond Fund, BID Board #2 will be requested to consider for recommendation, allocation of \$650,000.00 from the Bond Fund to assist in the paving of the parking lot, directly associated with the Improvements pursuant to SDCL § 9-55-3 (4). Should this amount be recommended by the BID #2 Board and approved by the City Council, the City will request a release from the Purchaser for that amount from the Bond Fund.

Section 6. Hotel Way Non-DOT Costs. Given the current balance of the Bond Fund, BID Board #2 will be requested to consider for recommendation, allocation of up to \$250,000.00 in the year 2024 for project costs associated with the construction of Hotel Way that are not costs that will be approved by the DOT. Such costs are necessary to the Improvements and the District pursuant to SDCL § 9-55-3 (7) (8). Should this amount be recommended by the BID #2 Board and approved by the City Council, the City will request a release from the Purchaser for that amount from the Bond Fund.

Section 7. The Bank fully understands and acknowledges that the City is a conduit for BID #2 Special Assessment funds and does not pledge any general taxing power of revenues towards repayment of the loan/bond. The Bank fully recognizes that the form of repayment for BID #2 debt is purely the BID #2 special assessment taxes and does not have a lien against the City's general taxing authority or revenues unless otherwise pledge specifically by resolution.

In the case of default, of any nature, the City recognizes its obligation per SDCL § 9-55-13, its duty to levy the special assessment until the debt obligation as has been paid in full.

Section 8. Atlantis, LLC's Guarantees. In the event that any release is requested from Purchaser, and Purchaser refuses to release the requested funds, Purchaser's release will not excuse Atlantis, LLC from performing consistent with its obligations under the guarantees for either the construction of Hotel Way or repayment of the Bonds.

Section 8. This resolution shall become effective immediately upon its passage.

PASSED, ADOPTED AND APPROVED this 19<sup>th</sup> day of December, 2023.

BOX ELDER COMMON COUNCIL

Larry Larson  
By: Larry Larson, Mayor

ATTEST:

Nicole Schneider  
Nicole Schneider, Finance Officer

(SEAL)



Adopted: 12/19/2023  
Published: 12/30/2023  
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