



August 3, 2017

Ms. Erica Hamilton
Commission Secretary
B.C. Utilities Commission
6th Floor – 900 Howe Street
Vancouver, B.C.
V6Z 2N3

Dear Ms. Hamilton,

Via email: commission_secretary@bcuc.com

Re: Application by Sun Peaks Utilities Co, Ltd. for approval to transfer its gas utility operations to Resort Gas Ltd. which is wholly owned by Sun Peaks Resort LLP

Please find attached documents regarding the request for the British Columbia Utility Commission (Commission) to approve the sale of gas utility by Sun Peaks Utilities Co., Ltd. to Resort Gas Ltd. which is wholly owned by Sun Peaks Resort LLP.

Should you have any questions concerning this information or wish to discuss any aspect of the Utility, please contact the undersigned at 250-578-5401.

Sincerely
Sun Peaks Utilities Co., Ltd.

A handwritten signature in blue ink, appearing to read "D. Alexander", is written over the typed name.

Darcy Alexander
General Manager

Attachments

- Schedule A - Application to the British Columbia Utilities Commission for approval for SPUCCL to transfer its gas utility to Resort Gas Ltd. including a Draft Commission Order
- Schedule B - Asset Purchase Agreement relating to gas utility
- Schedule C - Service Agreement for SPUCCL employees to continue to operate the gas utility
- Schedule D - SPUCCL newsletter to customers

Sun Peaks Utilities Co., Ltd.
1280 Alpine Road, Sun Peaks, British Columbia, V0E 5N0
T: 250-578-5490 / F: 250-578-5516 / E-mail: info@sunpeaksutilities.com
www.sunpeaksutilities.com

Schedule A Application

IN THE MATTER OF the Utilities Commission Act,
R.S.B.C. 1996, c. 473, as amended (the 'Act')

-and-

IN THE MATTER OF an Application by Sun Peaks Utilities Co., Ltd.
Pursuant to Section 52 of the Act.

To: British Columbia Utility Commission
Sixth Floor
900 Howe Street
Vancouver, British Columbia
V6Z 2N3

APPLICATION

Sun Peaks Utilities Co., Ltd. ("SPUCL") hereby applies pursuant to section 52 of the Act for an Order of the Commission approving the sale to Resort Gas Ltd. of all of the assets and liabilities relating to the gas utility currently operated by SPUCL.

A. Proposed Transaction

1. SPUCL is a corporation incorporated in British Columbia and is wholly owned by Sun Peaks Resort LLP which operates the four seasons resort called Sun Peaks Resort.
2. Resort Gas Ltd. is a newly incorporated corporation which is wholly owned by Sun Peaks Resort LLP.
3. SPUCL currently operates a regulated water distribution system , a wastewater system and a regulated propane gas distribution system.
4. The gas utility is operated by SPUCL pursuant to CPCN issued by Order No. C-11-98 on June 30, 1998.
5. SPUCL is proposing to transfer to Resort Gas Ltd. all of the assets and liabilities relating to the gas utility pursuant to the Asset Purchase Agreement attached as Schedule B. The purpose of the transfer is to have the gas utility to continue to be operated by a wholly

owned subsidiary of Sun Peaks Resort LLP with the same assets and liabilities that currently relate to the gas utility. The transfer is necessary as Sun Peaks Mountain Resort Municipality intends to take over the provision of water and wastewater services to its residents by acquiring all of the shares of SPUCL. Before the sale of the shares occurs, the gas assets and gas related liabilities have to be transferred to the newly created Resort Gas Ltd.

6. Resort Gas Ltd. is a shell company incorporated for the sole purpose of running the gas utility. It has no other assets or liabilities and will not operate any other business other than the gas utility.
7. The gas related assets have a net book value of \$35,650 and will be transferred to Resort Gas Ltd. at this value.
8. There is an existing debt of \$353,064 which relates to funding of gas infrastructure and upgrades. Resort Gas Ltd. will be assuming this debt.
9. Pursuant to a Service Agreement attached hereto as Schedule C, Resort Gas Ltd. will contract with SPUCL to operate the gas utility on its behalf. Prior to the transfer, the employees of SPUCL performed managerial services for the gas utility. After the transfer the employees of SPUCL will continue to perform managerial services for the gas utility. The cost of SPUCL employees and office charges have historically, for accounting purposes, been split equally between water, sewer and gas. Under the Services Agreement the same management and office charges for the gas utility will be charged to Resort Gas Ltd. at a fixed amount of \$12,000 per year which is much less than the current accounting allocation. All field work and additional services will continue to be charged to the gas utility on an hourly basis. The gas utility will therefore continue to have the same people managing it as before, just at a lesser cost to the gas utility.
10. On the completion of the sale of the gas utility, Resort Gas Ltd. will therefore have access to the same persons to manage the operation and delivery of the service, use the same assets at the same cost base and have the same liabilities as SPUCL in relation to the gas utility.

B. Stakeholder Consultation

Stakeholder consultation has occurred not only with respect to the transfer of the gas utility to Resort Gas Ltd. but also with respect to the acquisition of the water and sewer services by Sun Peaks Mountain Resort Municipality (the “**Municipality**”).

1. The Municipality sought approval of the electors by an Alternative Approval Process pursuant to section 86 of the Community Charter in order to acquire the water and sewer utilities and incur debt in relation to those utilities. The deadline for receiving elector responses was July 21, 2017. Electoral approval pursuant to section 86 was obtained. On July 25, 2017, the Municipality passed borrowing bylaws with respect to both the water and sewer utilities.
2. The gas utility serves commercial and residential customers. Following the announcement of the acquisition by the Municipality, SPUCL consulted with its customers. Many of the customers of the gas utility hold residences as investments or seasonal recreational facilities, and many customers do not reside in such residences at this time of year, so SPUCL notified these customers via a newsletter included in the monthly invoices (Schedule D).
3. As of time of filing this Application, SPUCL has not received any negative responses to the proposed transaction.

C. Legal Basis

1. In determining whether the public utility and the users of the service of the public utility will not be detrimentally affected by an acquisition of a reviewable interest, the Commission has articulated the following criteria:
 - a. the utility’s current and future ability to raise equity and debt financing will not be reduced or impaired;
 - b. there is no violation of existing covenants, the effect being detrimental to the customers;
 - c. the conduct of the utility’s business, including the level of service, either now or in the future, will be maintained or enhanced;
 - d. the application is in compliance with appropriate enactments and/or regulations;

- e. the structural integrity of the assets will be maintained in such a manner as to not impair utility service; and
 - f. the public interest is being preserved.
2. Section 86.2 of the Act provides that the Commission has jurisdiction to determine the process by which applications will be determined. Section 86.2 reads as follows:
- 86.2 (1) Despite any other provision of this Act, in any circumstance in which, under this Act, a hearing may or must be held, the commission may conduct a written hearing.*
- (2) The commission may make rules respecting the circumstances in which and the process by which written hearings may be conducted and specifying the form and content of materials to be provided for written hearings.*
3. SPUCL and Resort Gas Ltd. submit that this Application is appropriate for consideration and approval by the Commission through the review of written submissions.

D. Reasons for Approval

Based on the criteria applied by the Commission in other decisions under section 52 of the Act, SPUCL submits that:

- a. the utility's current and future ability to raise equity and debt financing will not be reduced or impaired as there will no change in the assets or liabilities that relate to the gas utility;
- b. there will be no violation of existing covenants that will be detrimental to the customers and Resort Gas Ltd. will honour all of the existing commitments to gas customers;
- c. the conduct of the utility's business, including the level of service will be maintained in that the same assets will be utilized and the management and operations will use the same personnel of SPUCL but at a lower allocation of cost;
- d. the application is in compliance with all applicable laws, regulations or orders;

e. all assets and services of the gas utility including the agreement with Fortis Alternative Energy Systems Inc. in relation to the propane tank farm are being transferred as a whole to Resort Gas Ltd. in order to maintain the structural integrity of the assets and operations so manner as to not impair utility service

f. the public interest is being preserved as there will be no change in service or cost to gas customers as a result of the transfer.

The proposed transfer is a reorganization with the ultimate ownership of the gas utility by Sun Peaks Resort LLP unchanged.

E. Order Sought

A draft of the form of the order sought by this Application is attached.

ALL OF WHICH is respectfully submitted.

DATED at Sun Peaks Mountain Resort Municipality, British Columbia this __ day of July, 2017.

Sun Peaks Utilities Co., Ltd.

All notices and communications in connection with this Application should be directed to:

Mr. Darcy Alexander
General Manager
Sun Peaks Utilities Co., Ltd.
1280 Alpine Road
Sun Peaks, BC
V0E 5N0

Copies to:

Brian MacKay, DLA Piper (Canada) LLP
(Lawyer for Sun Peaks Resort LLP)

Rob Bremner, Sun Peaks Mountain Resort Municipality

DRAFT

IN THE MATTER OF
The Utilities Commission Act, R.S.B.C, Chapter 473
And

An Application by Sun Peaks Utilities Co., Ltd (“SPUCL”) for Approval to transfer its gas related assets and liabilities to Resort Gas Ltd.

BEFORE: ● Commissioner July ____, 2017
 ● Commissioner

ORDER

WHEREAS:

- A. On July ____, 2017, SPUCL applied pursuant to Section 52 of the *Utilities Commission Act* (the “**Act**”) for an Order approving the transfer its gas related assets and liabilities to Resort Gas Ltd. (the "**Application**");
- B. SPUCL is a public utility regulated by the British Columbia Utilities Commission (the "**Commission**") under the Act;
- C. Section 52 (1) of the Act states:

“The commission may give its approval under this section subject to conditions and requirements considered necessary or desirable in the public interest.”
- D. Section 54 (9) of the Act states:

"The commission may give its approval under this section subject to conditions and requirements it considers necessary or desirable in the public interest, but the commission must not give its approval under this section unless it considers that the public utility and the users of the service of the public utility will not be detrimentally affected"
- E. The Commission has reviewed the Application and submissions received and considers that the operations of the gas utility and the services provided to customers of the gas utility will not be detrimentally affected and that approval is warranted.

NOW THEREFORE the Commission orders as follows:

1. The Application by SPUCL to transfer its gas related assets and liabilities to Resort Gas Ltd. is hereby approved pursuant to section 52 54 of the Act.

2. The Application by the Municipality to transfer the “Gas Utility” to Resort Gas Ltd. owned by Sun Peaks Resort.

DATED at the City of Vancouver, in the Province of British Columbia, this ____ day of July, 2017.

BY ORDER



Commissioner

Schedule B
Asset Agreement

ASSET PURCHASE AGREEMENT

THIS AGREEMENT dated July ____, 2017 is between:

SUN PEAKS UTILITIES CO., LTD.

(the "**Seller**")

AND

RESORT GAS LTD.

(the "**Buyer**")

BACKGROUND

- A. The Seller owns and operates the Business (as defined in paragraph 1.1 below) and owns the Assets (as defined in paragraph 1.1 below).
- B. The Seller has agreed to sell and the Buyer has agreed to buy the Assets and the Business as a going concern on the terms and conditions contained in this Agreement.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which each party acknowledges, the parties agree as follows:

PART 1

INTERPRETATION

1.1 **Defined Terms** In this Agreement the following terms shall have the following meanings:

- (a) "**Accounts Receivable**" means all accounts receivable, trade accounts, notes receivable and other debts owing to the Seller in connection with or arising out of the Business and the full benefit of all security held by the Seller for such accounts, notes and debts;
- (b) "**Act**" means the *Income Tax Act*, R.S.C. 1985, c.1 (5th supp.), as amended from time to time;
- (c) "**Assets**" has the meaning given in paragraph 2.1;
- (d) "**Books and Records**" means all books, records, files and documents relating to the Business and the Assets including, without limitation, books of account, ledgers, journals, sale and purchase records, lists of suppliers, credit information, cost and pricing information, business reports, customer lists, plans and projections and all other documentation in any format or media but excluding the corporate records of the Seller;
- (e) "**Business**" means the business of supplying and distributing propane gas for domestic use to customers within the Controlled Recreation Area of Sun Peaks Resort;

- (f) **“Business Day”** means any day which is not a Saturday, Sunday or a statutory holiday in the Province of British Columbia;
- (g) **“Closing”** has the meaning given in paragraph 5.1;
- (h) **“Closing Date”** has the meaning given in paragraph 5.1;
- (i) **“Corporate Loan”** means the loan owing by the Seller to Sun Peaks Resort LLP in the amount of \$353,000;
- (j) **“Effective Time”** means 10:00 a.m. on the Closing Date;
- (k) **“Employees”** means the employees of the Seller engaged in the Business;
- (l) **“Encumbrance”** means any lien, claim, charge, pledge, hypothecation, security interest, mortgage, title retention agreement, declaration of trust, right of set-off, option or other encumbrance of any kind;
- (m) **“Environmental Laws”** means any government laws, rules, ordinances, regulation, orders or other edicts having the force of law relating to the environment or any hazardous substance (including without limitation the use, manufacture, handling, transportation, production, disposal, discharge, storage or emission of hazardous substances);
- (n) **“Equipment”** means all equipment, machinery, furniture, parts, tools, accessories and other tangible personal property used in or relating to the Business;
- (o) **“ETA”** means the *Excise Tax Act* R.S.C. 1985, c. E-15;
- (p) **“Existing SPR Debt”** means the existing debt owing by Seller to Sun Peaks Resort LLP in the amount of THREE HUNDRED FIFTY THREE THOUSAND SIXTY FOUR (\$353,064) DOLLARS that was lent to the Seller for the purpose of funding infrastructure and costs in connection with the Business;
- (q) **“Goodwill”** means the goodwill attributable to the Business, including the exclusive right of the Buyer to represent itself as carrying on the Business in continuation of and as successor to the Seller;
- (r) **“Governmental Authority”** means any Canadian (whether federal, territorial, provincial, municipal or local), international or foreign government, governmental authority, quasi-governmental authority, court, self-regulatory organization, commission, tribunal or organization, or any agent, subdivision, department or branch of any of the foregoing;
- (s) **“Inventory”** means all gas available in the tank farm available for distribution and sale;
- (t) **“Licensed Premises”** means the sublease or license to use the portion of District Lot 6256 for the tank farm;
- (u) **“Licences”** means all licences, permits, registrations, consents and other rights entered into or obtained by the Seller from any Governmental Authority with respect to the Business or any of the Assets;
- (v) **“Purchase Price”** has the meaning given in paragraph 2.3;
- (w) **“Required Consent”** means the approval of the British Columbia Utilities Commission;

- (x) “**Systems**” means the computer, telecommunications and networking hardware and software and other information technology owned or otherwise held or used by the Seller in relation to the Business; and
- (y) “**Taxes**” means all taxes however denominated (including any interest, penalties or other additions that may become payable in respect of such taxes) imposed by any Governmental Authority including, without limitation, all income or profits taxes, capital taxes, payroll and employee withholdings, unemployment insurance, social insurance taxes (including Canada Pension Plan payments), sales and use taxes, ad valorem taxes, excise taxes, franchise taxes, gross receipt taxes, business licence taxes, occupation taxes, real and personal property taxes, stamp tax or duty, environmental taxes, and transfer taxes.

1.2 **Interpretation.** In this Agreement, except as otherwise expressly provided:

- (a) the headings to the parts, sections, paragraphs, and schedules of this Agreement are inserted for convenience only and shall not affect the interpretation of this Agreement;
- (b) any reference to a part, section, paragraph or schedule is to the relevant part, section, paragraph or schedule of this Agreement;
- (c) words of one gender include all genders, and words in the singular include the plural and vice versa; and
- (d) any reference to a statute includes and is a reference to such statute, and to the regulations made pursuant to it, as amended and in force from time to time, and to any statute or regulations that may be passed which have the effect of supplementing or superseding such statute or regulations.

PART 2

SALE AND PURCHASE

2.1 **Agreement to Sell and Purchase.** The Seller agrees to sell free and clear of all Encumbrances and the Buyer agrees to purchase, the Business as a going concern and the following assets effective as of the Effective Time:

- (a) the Seller’s interest in the Licenses and the Licensed Premises;
- (b) the Inventory;
- (c) the Equipment;
- (d) the Licenses;
- (e) the Systems;
- (f) the Goodwill;
- (g) the Accounts Receivable;
- (h) the Books and Records; and
- (i) all other properties, undertakings and assets of the Seller of any nature, whether real or personal, tangible or intangible, corporeal or incorporeal relating to the Business, but excluding the Excluded Assets;

(collectively the "**Assets**").

2.2 **Excluded Assets.** The following assets are excluded from the sale and purchase under this Agreement:

- (a) all employees;
- (b) all insurance policies of the Seller relating to the Business or the Assets; and
- (c) all income tax refunds and other tax refunds receivable by the Seller.

(collectively the "**Excluded Assets**").

2.3 **Purchase Price.** The total purchase price for the Business and the Assets (the "**Purchase Price**") shall be THIRTY FIVE THOUSAND SIX HUNDRED FIFTY (\$35,650) DOLLARS.

2.4 **Assumption of Debt.** The Buyer agrees to assume all liability to Sun Peaks Resort LLP in respect of the Existing SPR Debt in consideration of THIRTY FIVE THOUSAND SIX HUNDRED FIFTY (\$35,650) DOLLARS to be applied as payment in full for the Purchase Price and the balance of THREE HUNDRED SEVENTEEN THOUSAND (\$317,414) DOLLARS by way of promissory note to be given by the Seller to the Buyer.

2.5 **Taxes.** The Buyer shall be responsible for and shall pay when due all Taxes in respect of the sale and transfer of the Business and the Assets by the Seller to the Buyer. The Buyer and the Seller shall make a joint election under section 167(1) of the ETA regarding the sale and transfer of the Business and the Assets.

PART 3

SELLER'S REPRESENTATIONS AND WARRANTIES

3.1 **Representations and Warranties.** To induce the Buyer to enter into and consummate this Agreement, the Seller represents and warrants to the Buyer that the following statements set out in this Part 3 are true, accurate and not misleading.

- (a) **Organization and Good Standing of Seller.** The Seller is a corporation duly incorporated, validly existing and in good standing under the laws of the Province of British Columbia.
- (b) **Capacity of Seller.** The Seller has the right and authority to enter into this Agreement on the terms and conditions set out in it and to transfer the legal and beneficial title and ownership of the Assets to the Buyer. The Seller has duly passed all corporate resolutions necessary to authorize the transactions contemplated by this Agreement and this Agreement constitutes a valid and binding obligation of the Seller.
- (c) **Capacity to Carry on Business.** The Seller has all necessary corporate powers and qualifications to own the Assets and to carry on the Business in all jurisdictions in which it carries on the Business.
- (d) **Insolvency or Amalgamation.** No proceedings have been taken or authorized by any Person with respect to the bankruptcy, insolvency, liquidation, dissolution or winding-up of the Seller or with respect to any amalgamation, merger, consolidation, arrangement or reorganization relating to the Seller.
- (e) **Licences and Permits.** The Seller holds all authorizations, licences and permits from any Person, Governmental Authority or other body which are necessary or desirable for

carrying on the Business and for owning, leasing, using or operating the Assets. The Seller is not in breach of or in default under any of the terms or conditions of any such authorization, licence or permit and no party is or will be entitled to terminate or revoke any such authorization, licence or permit as a result of the transactions contemplated by this Agreement. Subject to obtaining the Required Consent, all such authorizations, licences and permits are freely assignable to the Buyer.

- (f) **No Breach of Laws.** The Seller is not, and has not at any time been, in breach of any laws, ordinances, statutes, regulations, by-laws, orders or decrees to which the Business or the Assets are subject or which apply to the Business or the Assets.
- (g) **Non-Contravention.** The performance of this Agreement will not:
 - (i) contravene or conflict with the articles of incorporation and by-laws of the Seller;
 - (ii) contravene or conflict with any laws or regulations or any Encumbrance, order, judgment or other restriction or obligation of any kind binding upon or applicable to the Seller, the Business or the Assets;
 - (iii) relieve any Person from any obligation (whether contractual or otherwise) currently owed to the Seller in relation to the Business or the Assets or enable any Person to terminate any such obligation or to exercise any right in respect of the Business or the Assets; or
 - (iv) result in the creation, imposition or enforcement of any Encumbrance on or over any of the Assets.
- (h) **Books and Records.** All material transactions of the Seller relating to the Business have been promptly and accurately recorded in the books and records of the Seller. The books and records of the Seller are up-to-date and fully and fairly present the financial position and the affairs of the Seller. Originals of the books and records of the Seller are in the Seller's possession or control.
- (i) **Environmental Laws.** The Seller is not the subject of federal, provincial, territorial, municipal or private action, suit, litigation, arbitration proceeding, governmental proceeding, investigation or claim involving a demand for damages or other potential liability with respect to violations of Environmental Laws;
- (j) **Canadian Residence.** The Seller is not a "non-resident" of Canada within the meaning of section 116 of the Act.

PART 4

BUYER'S REPRESENTATIONS AND WARRANTIES

- 4.1 **Representations and Warranties.** In order to induce the Seller to enter into and consummate this Agreement, the Buyer represents and warrants to the Seller that the following statements set out in this Part 4 are true, accurate and not misleading.
 - (a) **Organization and Good Standing.** The Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of Province of British Columbia.
 - (b) **Capacity.** The Buyer has the right and authority to enter into this Agreement on the terms and conditions set out in it and has duly passed all corporate resolutions necessary to authorize the transactions contemplated by this Agreement. This Agreement constitutes a valid and binding obligation of the Buyer.

- (c) **Governmental Authorization.** Except as expressly referred to in this Agreement, the execution, delivery and performance of this Agreement by the Buyer requires no action by, consent or approval of, or filing with, any Governmental Authority.

PART 5

CLOSING

- 5.1 **Closing.** The sale and purchase of the Business and the Assets and the other transactions contemplated by this Agreement shall be closed (the “**Closing**”) at the offices of DLA PIPER (Canada) LLP, Suite 2800, Park Place, 666 Burrard Street, Vancouver B.C., V6C 2Z7 at 9:00 a.m. on the fourth Business Day after the Required Consent is obtained (the “**Closing Date**”) provided that if the Required Consent is not obtained by September 29, 2017 this Agreement and all rights and obligations hereunder shall terminate and be at an end.
- 5.2 **Delivery by Seller.** On the Closing Date the Seller shall deliver, or cause to be delivered, the following to the Buyer:
- (a) all deeds, bills of sale, conveyances, transfers, assignments, instruments and other documents, which are necessary to assign, sell and transfer the Business and the Assets to the Buyer as contemplated by this Agreement;
 - (b) possession of the Assets;
 - (c) if not previously delivered to the Buyer, the original Contracts and Licences;
 - (d) a certified copy of resolutions of the directors and the shareholders of the Seller:
 - (i) approving and authorizing the transfer of the Business and the Assets from the Seller to the Buyer;
 - (ii) approving and authorizing the execution and delivery of this Agreement and all documents and instruments to be executed pursuant to this Agreement.
 - (e) joint election under section 167(1) of the ETA;
 - (f) all such other documents, instruments, records, conveyances, assignments, assurances, consents and certificates which, in the opinion of the Buyer acting reasonably, are necessary to effect and evidence the transfer of the Business and the Assets to the Buyer.
- 5.3 **Delivery by Buyer.** On the Closing Date, the Buyer shall deliver to the Seller an assignment and assumption agreement with respect to the Corporate Loan
- 5.4 **Risk.** The risk of loss, damage or destruction to the Assets shall remain with the Seller until Closing.

PART 6

GENERAL

- 6.1 **Time of Essence.** Time shall be of the essence of this Agreement.
- 6.2 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of Province of British Columbia.

- 6.3 **Entire Agreement.** This Agreement and the documents and instruments to be executed and delivered under it constitute the entire agreement between the parties and supersedes any previous agreement or arrangement, oral or written, between the parties. This Agreement and the documents and instruments to be executed and delivered under it, contain all the covenants, representations, and warranties of the respective parties. There are no oral representations or warranties between the parties of any kind. This Agreement may not be amended or modified in any respect except by written instrument signed by each of the parties.
- 6.4 **Counterparts.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts (which may be facsimile copies) but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original but all the counterparts together shall constitute a single agreement.

TO EVIDENCE THEIR AGREEMENT each of the parties has executed this Agreement as of the date appearing below.

SUN PEAKS UTILITIES CO., LTD.

By:

Authorized Signatory

RESORT GAS LTD.

By:

Authorized Signatory

Schedule C
Service Agreement

SERVICE AGREEMENT

THIS AGREEMENT dated as of August _____, 2017 is between:

SUN PEAKS UTILITIES CO., LTD., having a registered office at DLA Piper (Canada) LLP, 2800 Park Place - 666 Burrard Street, Vancouver, BC V6C 2Z7

(“**SPUCL**”)

AND:

RESORT GAS LTD., having its registered office at DLA Piper (Canada) LLP, 2800 Park Place - 666 Burrard Street, Vancouver, BC V6C 2Z7

(“**Resort Gas**”)

BACKGROUND

- A. Resort Gas has purchased from SPUCL the gas supply and distribution business within the Controlled Recreation Area of Sun Peaks Resort;
- B. Resort Gas wishes to use the Services of SPUCL to perform the Services..

AGREEMENTS

For good and valuable consideration, the receipt and sufficiency of which each party acknowledges, the parties agree as follows:

PART 1 INTERPRETATION

1.1 **Defined Terms.** In this Agreement,

- (a) “**Annual Payment**” has the meaning specified in section 3.2;
- (b) “**Business**” means the business of supplying and distributing propane and/or natural gas to customers within the Controlled Recreation Area of Sun Peaks Resort;
- (c) “**Business Day**” means any day which is not a Saturday, Sunday or a statutory holiday in the Province of British Columbia;
- (d) “**Chargeable Expenses**” means all direct and out of pocket expenses incurred by SPUCL in performing the Services and for independent consulting services including mileage on vehicles, reasonable depreciation on depreciable assets, hourly employee costs for field work but specifically excluding any labour costs of employees of SPUCL relating to managerial and administration services;
- (e) “**Fees**” is the amount (in addition to the Chargeable Expenses) that Resort Gas will pay SPUCL in respect of the Services, as outlined in Section 3.1. The parties will discuss the amount of the Fees in good faith, and will revise it in writing from time to time;

- (f) **"Fiscal Year"** means fiscal period of Resort Gas, currently being the period commencing April 1st of each calendar year and ending March 31st of the following calendar year; and
- (g) **"Services"** means the services and duties which SPUCCL is required to perform under this agreement as reasonably agreed to among the parties from time to time.

1.2 **Governing Law.** This Agreement and all matters arising under it will be governed by and construed in accordance with the laws of British Columbia, and the laws of Canada applicable in British Columbia, and all disputes and claims, whether for specific performance, injunction, declaration or otherwise both at law and in equity, arising out of or in any way connected with this Agreement will be referred to the courts of the Province of British Columbia exclusively, and each party irrevocably submits to such jurisdiction.

PART 2 ENGAGEMENT OF SPUCCL

2.1 **Engagement.** Resort Gas hereby engages SPUCCL to perform the Services in accordance with the terms and conditions of this Agreement.

2.2 **Term.** The engagement of SPUCCL hereunder will be commence on August ____, 2017 and will continue until termination in accordance with the provisions of Part 5.

PART 3 MANAGEMENT FEES AND EXPENSES

3.1 **Fees.** The fees will be for management, administration and financial advisory services rendered to Resort Gas as follows.

- (a) a fixed cost of \$12,000 per annum plus Chargeable Expenses.

Each month, SPUCCL will provide an invoice to Resort Gas setting out the amount of the Fees and Chargeable Expenses that are payable to SPUCCL in respect of Services that month. Resort Gas will pay the full amount of each invoice within 10 business days of its issue.

3.2 **Office Use.** SPUCCL currently uses two offices in the Burfield Administration owned by Sun Peaks Resort LLP including utilities, photocopier, telephone and IT support (the "Office Services") for which SPUCCL pays a monthly amount of \$3,000. This Agreement shall not affect the arrangement for provision of Office Services.

PART 4 DUTIES OF SPUCCL

4.1 **General Duties.** SPUCCL will perform the Services in accordance with and subject to the standards, methods, procedures, specifications, and policies reasonably determined by Resort Gas and in accordance with all laws, rules and regulations.

4.2 **Specific Duties.** SPUCCL will perform the following specific duties on behalf of Resort Gas:

- (a) Daily operating and independent consulting as necessary on the gas supply and distribution system;
- (b) Respond to emergencies (line breaks, gas odour calls etc.) with respect to the gas distribution system;
- (c) Ensure compliance with the gas tariff filed with the Utilities Commission;

- (d) At the request of Resort Gas, SPUCL will apply to the Utilities Commission to adjust gas rates;
- (e) Fortis BC Alternative Energy Services Inc. will maintain the Gas Cost Recovery Account and SPUCL will report monthly or quarterly as required by Resort Gas;
- (f) Provide accounting services for the gas operations;
- (g) Provide monthly income statement for gas operations to be received no later than the 26th of the following month;
- (h) Provide monthly GL detail for the gas operations to be received no later than the 26th of the following month;
- (i) Compilation of gas rate applications for submission to the appropriate regulatory agency in consultation with Resort Gas; and
- (j) Developer and provide customer updates via newsletters from time to time or as required by Resort Gas.

4.3 **Additional Services.** SPUCL will not be required to perform any services which are in addition to the Services unless SPUCL agrees to perform those additional services.

4.4 **Performance by Other Persons.** Nothing in this Agreement will prevent Resort Gas from having the Services performed by a person other than SPUCL.

PART 5 TERMINATION

5.1 **Termination without Notice.** Resort Gas will have the right to terminate this Agreement and the engagement of SPUCL at any time, without notice or payment of compensation in lieu of notice, upon the occurrence of any of the following events:

- (a) If SPUCL neglects or fails to perform or discharge its duties hereunder;
- (b) If SPUCL otherwise violates the terms of this Agreement;
- (c) If any circumstances occur amounting to cause for termination at common law, but which are previously included in this section; or

5.2 **Termination on Notice.** In addition to Resort Gas's rights under Section 5.1, Resort Gas may for any reason terminate this Agreement and engagement of SPUCL with 180 days' notice in writing.

5.3 **Termination on Notice** SPUCL may for any reason terminate this Agreement with 180 days' notice in writing.

PART 6 GENERAL

6.1 **Notices.** In this Agreement any notice or communication required or permitted to be given under the Agreement will be in writing and will be considered to have been given if delivered by hand, transmitted by email or mailed by prepaid registered post in Canada, to the address or email of each party set out below:

- (a) If to Resort Gas:

1280 Alpine Road
Sun Peaks, B.C. V0E 5N0

Attention: Darcy Alexander
Email: dla@sunpeaksresort.com

(b) if to SPUCL:

106 - 3270 Village Way
P.O. Box 1002
Sun Peaks, B.C. V0E 5N0

Attention: Chief Administrative Officer
Email: cao@sunpeaks municipality.ca

Or to such other address or email as a party may designate in the manner set out above;

Notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business on the next Business Day;
- (b) if sent by email during business hours on a Business Day, upon the sender sending the transmission, and if not transmitted during business hours, upon the commencement of business on the next Business Day; and
- (c) if mailed by prepaid registered post in Canada, upon the fifth Business Day following posting; except that, in the case of a disruption or an impending or threatened disruption in postal services every notice or communication will be delivered by hand or sent by email.

6.2 **Modifications, Approvals and Consents.** No renewal, extension, amendment, modification, supplement, terminations or waiver of any provision of this Agreement will be effective unless in writing signed by the parties.

6.3 **Assignment.** No party may assign this Agreement without the prior consent of the other parties.

6.4 **Time.** Time will be of the essence of this Agreement.

6.5 **Further Assurances.** The parties will execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary, to give full effect to this Agreement and to make this Agreement legally effective, binding, and enforceable as between them and as against third parties.

6.6 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and there are no representations or warranties, express or implied, statutory or otherwise and no agreements collateral to this Agreement other than as expressly set out or referred to in this Agreement.

6.7 **Binding Agreement.** This Agreement will bind and benefit each of the parties including their respective heirs, executors, administrators, successors, and permitted assigns.

6.8 **Counterpart.** This Agreement may be signed by original or by facsimile and executed in any number of counterparts, and each executed counterpart will be considered to be an original. All executed counterparts taken together will constitute one agreement.

TO EVIDENCE THEIR AGREEMENT each of the parties has executed this Agreement as of the date first appearing above.

RESORT GAS LTD.

By:

Authorized Signatory

SUN PEAKS UTILITIES CO., LTD

By:

Authorized Signatory

Schedule D
Customer Newsletter

Utility Newsletter

July 2017



GAS COMMODITY RATE INCREASE GRANTED - Effective June 1, 2017

As mentioned in our earlier newsletter, that given the increased gas prices are approximately double what they were at this time last year, SPUCL believed that it was prudent to apply to the BCUC for an increase in the Total Gas Commodity Charge from \$9.6750 to \$13.8474 per gigajoule.

These costs are outside of the control of SPUCL and are passed on to our gas customers at the same costs as SPUCL pays without markup. The gas commodity costs have fluctuated significantly over the last 10 years from a high of \$23.4050 per Gj in 2012 to a low of \$9.6750 per Gj starting 2016. We have created a graph showing the changes and have posted the information under the 'Gas Tab' on our website at www.sunpeaksutilities.com.

These rate changes will bring us back in line with the BC Utility's rate requirements by reducing the Total GCRA account balance to neutral by April 30, 2018. The following are examples of the effects of the rate change.

Customer Type	Total Commodity Charge per Gigajoule (Gj)		
	Rate Effective since Aug 1, 2016	Proposed Rates as of June 1, 2017	Average annual Cost Increase *
Residential Condo (18 Gj)	\$9.6750	\$13.8474	\$75.10
Single Family Home (85 Gj)	\$9.6750	\$13.8474	\$354.65
Small Commercial (354 Gj)	\$9.6750	\$13.8474	\$1,477.03
Medium Commercial (4,260 Gj)	\$9.6750	\$13.8474	\$17,774.42
Large Commercial (10,000 Gj)	\$9.6750	\$13.8474	\$41,724.00

* Annual Average Cost increase shown above includes commodity, delivery and basic charges.

You will see this June 1, 2017 price increase on your July 2017 invoice. We continue to monitor the price of propane on a regular basis and over the next year, if appropriate, will apply to the BCUC for a rate change.

A copy of the full revised application and price projections filed with the BCUC and the additional information that the Commission requested is posted under '**Gas Tariff & Rates**' tab on our website at www.sunpeaksutilities.com.

TRANSFER OF SUN PEAKS UTILITIES' OWNERSHIP TO SUN PEAKS MOUNTAIN RESORT MUNICIPALITY

Sun Peaks Municipality is planning to purchase Sun Peaks Utilities from Sun Peaks Resort LLP later this Summer. After the purchase, Sun Peaks Utilities' gas assets will be moved to a subsidiary of SPR LLP.

In order for these transactions to occur, the British Columbia Utilities Commission requires that Sun Peaks Utilities' gas customers be notified of the proposed changes in ownership of the gas utility and be granted an opportunity to comment.

For further information on these proposed changes to Sun Peaks Utilities, please contact SPUCL at info@sunpeaksutilities.com or by phone at 250-578-5490 (Press 1) or contact the Municipality at 250-578-2020 for information. Any formal comments should be sent to Sun Peaks Utilities and a copy sent to the BC Utilities Commission at commission.secretary@bcuc.com or by phone at 1-800-663-1385.

Utility Newsletter

July 2017



ANNUAL PROPANE PLANT EMERGENCY RESPONSE DRILL

On *Wednesday, July 26, 2017*, FortisBC will be conducting an emergency training exercise with Sun Peaks Utilities, Sun Peaks Mountain Resort Municipality, Sun Peaks Fire and Rescue, RCMP, & Superior Gas.

- The exercise will involve a simulated emergency and no significant interruptions to residents and the public are expected.
- Residents may see fire trucks, ambulance, and police vehicles at or around the Sun Peaks' Propane Plant on Industrial Way. Signs will be posted indicating that this emergency training exercise is in progress.
- This exercise is important to test emergency response procedures at the Propane Gas Storage Facility in the event they are required to protect public safety and property.
- Please obey all signage, emergency personnel and slow down as you travel past the gas plant to the TNRD Waste Transfer Site.



For more information about this exercise, call us at the Utilities office at 250-578-5490 and press 1 or via email at info@sunpeaksutilities.com.

THANK YOU! – We would like to thank all the volunteers who are attending this exercise including those that will be manning the Emergency Operations Centre (EOC). The more we practice, the better we will all be, if there is an emergency. If you would like to learn more or volunteer in the future, please contact the Sun Peaks Municipality at 250-578-2020 for more information.

WATER UTILITY UPDATE

HYDRANT FLUSHING – The Utility started Flushing hydrants and performing valve maintenance in early June and this maintenance work will continue throughout the summer and early fall.

Please slow down when you see Utility Crews working on the side of the Road. For more information on what the impact of hydrant flushing might have to your water, please visit the Utility's website at www.sunpeaksutilities.com.



2016 WATER QUALITY ANNUAL REPORT – Sun Peaks Utilities has filed the annual Water Quality Report for 2016 with Interior Health. A copy is available for viewing under the 'Water' and then 'Annual Reports' Tab on our website at www.sunpeaksutilities.com

SEWER FLUSHING – Our contractor will be in the resort starting in mid-July to provide annual sewer and storm water collection systems maintenance work to ensure our sewer mains continue to flow.

The crews will be flushing the main wastewater collection pipes and other sections of the resort. Please obey all road construction signs to ensure both yours and the workers' safety.



Should you have any questions on these or any other utility matters, please contact us at the Utilities office at 250-578-5490 and press 1 or via email at info@sunpeaksutilities.com. In an emergency, please contact the on-call field technicians at 250-319-0629 or call 9-1-1.