

THIS AGREEMENT dated for reference the 4 day of October, 2012.

BETWEEN:

REGIONAL DISTRICT OF EAST KOOTENAY, a Regional District pursuant to the *Local Government Act*, RSBC 1996, Chapter 323 and incorporated pursuant to the laws of the Province of British Columbia with a place of business at 19 – 24th Avenue South, Cranbrook, BC V1C 3H8 (facsimile 250-489-3498);
(the "RDEK")

AND:

OF THE FIRST PART

VILLAGE OF RADIUM HOT SPRINGS, a Municipality incorporated pursuant to the laws of the Province of British Columbia, and having a place of business at 4836A Radium Boulevard, Box 340, Radium Hot Springs, BC V0A 1M0 (facsimile 250-347-9068).
(“Radium”)

OF THE SECOND PART

WHEREAS:

- A. Pursuant to Regulation 204/2007, the Additional Tax Regulation (the "Regulation") for the RDEK, additional tax is imposed under the *Hotel Room Tax Act* for accommodation purchased in the Village of Radium Hot Springs and in a portion of Electoral Area G as established by Bylaw No. 1973 cited as "Regional District of East Kootenay - Additional Hotel Room Tax Bylaw No. 1973, 2007 (Radium Area)" (the "Service Area").
- B. The Regulation authorizes the RDEK to spend the revenue collected from additional tax on tourism marketing, programs and projects;
- C. Radium has agreed to provide for tourism marketing, programs and projects in the Service Area.

NOW THEREFORE, in consideration of the premises and the terms, conditions, consideration, warranties, and representations contained herein, the parties hereto covenant and agree with each other as follows:

1. TERM

- 1.1 This Agreement shall commence on August 1, 2012 and expire on February 28, 2018.

2. RESPONSIBILITIES

- 2.1 Radium agrees to receive the hotel room tax funds (the "Funds") from the Province of British Columbia (the "Province"), on behalf of the RDEK.

3. FUNDING CONDITIONS

- 3.1 Radium shall use the Funds provided by the Province for the purpose of providing tourism marketing, programs and projects in the Service Area as

outlined in the Business Plan approved by the Province (the "Business Plan") for the period August 1, 2012 to July 31, 2017.

3.2 Radium shall keep adequate accounting records each year of all Funds related expenditures and maintain those records for seven years. These records shall be made available to the RDEK upon request.

3.3 Radium shall expend all Funds by July 31, 2017 and shall have fully paid for such expenditures by January 31, 2018. Any Funds unspent at that time shall be remitted to the RDEK.

4. REPORTING

4.1 Radium shall provide to the RDEK an annual report on or before February 28th for the 12 month period ending December 31st in each year which includes details on the manner in which the Funds were spent in regards to tourism marketing, programs and projects in the Service Area, unaudited financial statements of such revenue and expenditures, and an update of the Business Plan detailing the manner in which the Funds will be spent for the following year.

4.2 The parties acknowledge and agree that the reporting requirements are determined by the Province and may change from those outlined in Section 4.1 of the Agreement.

5. ACCESS

5.1 A representative of the RDEK may, upon notice to Radium, inspect the books of account and records during normal business hours to review, copy or audit the same and such representative shall be provided with access to all accounts and records related to this Agreement.

6. INSURANCE AND INDEMNITY

6.1 Radium covenants to obtain and keep in force during the term of this Agreement at its sole expense, insurance satisfactory to the RDEK protecting the RDEK and Radium (without any rights of cross-claim or subrogation against the RDEK) against claims for personal injury, death, property damage or third party or public liability claims arising out of, in connection with, or in any way related to works undertaken pursuant to this Agreement, in an amount not less than \$5,000,000 and with the RDEK named as additional insured.

6.2 Radium hereby indemnifies, saves harmless, releases and forever discharges the RDEK and its officers, employees, agents and elected officials from and against any and all manner of actions, causes of action, debts, suits, losses, liabilities, costs, demands and expenses whatsoever, whether known or unknown, of any person in any way arising from, in connection or attributable to the negligence or other fault of Radium, its servants, agents and employees in connection with or in consequence of this Agreement. This indemnification provision shall survive the cancellation, termination or expiry of this Agreement.

7. DEFAULT AND TERMINATION

7.1 The parties hereto agree that either party may terminate this Agreement by giving the other party 90 days written notice of its intention to do so provided that in the event that Radium has incurred a contractual obligation or other liability pursuant to the Business Plan extending more than 90 days past the date that any such written notice is received by Radium from the RDEK, then in such an event, the RDEK shall continue to provide Funds for the purposes of such contractual obligation or other liability and the provisions of this Agreement shall continue to apply with respect to such contractual obligation or other liability.

- 7.2 The RDEK may terminate this Agreement unilaterally if at any time, in the opinion of the RDEK Board, acting reasonably, Radium has used or dispersed Funds in a manner contrary to the Regulation or Business Plan.
- 7.3 Upon termination of this Agreement, any unspent Funds received by Radium shall be returned to the Province.

8. DISPUTE RESOLUTION

- 8.1 The parties will endeavor to resolve any disputes by negotiations; however, if a dispute is not resolved by negotiation within 10 days of commencing negotiations, Radium and the RDEK will forthwith submit the dispute to a mediator who is acceptable to both parties and whose expenses will be shared equally by them. If they cannot agree on a mediator, a mediator will be appointed by the British Columbia International Arbitration Centre.
- 8.2 If mediation pursuant to Section 8.1 does not result in a resolution of the dispute within 10 days of the commencement of mediation, the parties will forthwith submit the dispute to arbitration by a single arbitrator who is acceptable to both parties and whose expenses will be shared equally by them. If they cannot agree on an arbitrator, an arbitrator will be appointed by the British Columbia International Arbitration Centre. The determination of the arbitrator will be conclusive and binding on the parties. The *Commercial Arbitration Act of British Columbia* or successor legislation will apply to the arbitration.

9. NOTICES

- 9.1 All notices under this Agreement shall be given in writing, and shall be delivered by pre-paid private courier or hand-delivered to the address indicated on the face page of this Agreement, or otherwise transmitted by fax or other means of electronic communication to the usual numbers or addresses of the respective party. Such addresses may be changed from time to time by either party giving notice to the other party.

10. ASSIGNMENT

- 10.1 This Agreement shall not be assigned by either party without the prior written approval of the other.

11. ENTIRE AGREEMENT

- 11.1 This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof and there are no terms, conditions, representations, or warranties, expressed or implied, statutory or otherwise, except for those expressly set forth herein.

12. SEVERANCE

- 12.1 If any portion of this Agreement is held to be illegal or invalid by a court of competent jurisdiction, the illegal or invalid portion must be severed and the decision that it is illegal or invalid does not affect the validity of the remainder of this Agreement.

13. INTERPRETATION

- 13.1 Headings are inserted in this Agreement for convenience only and shall not be construed as affecting the meaning of this Agreement.
- 13.2 Whenever the singular or masculine is used herein, the same shall be construed as meaning the plural or feminine or body politic or corporate where the context of the parties hereto so require.

13.3 This Agreement shall be governed by and construed in accordance with the laws of the Province.

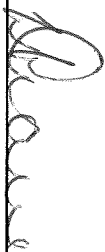
13.4 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their permitted successors and assigns.

The Corporate Seal of **REGIONAL DISTRICT OF EAST KOOTENAY** was hereunto affixed in the presence of:



Rob C. Gay, Chair

C/S



Lee-Ann Crane, Chief Administrative Officer

The Corporate Seal of **VILLAGE OF RADIUM HOT SPRINGS** was hereunto affixed in the presence of:



Dee Conklin, Mayor

C/S



Mark Read, Chief Administrative Officer