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REPORT TO FINANCE COMMITTEE MEETING OF WEDNESDAY, MARCH 02, 2022

SUBJECT Capital Region Emergency Service Telecommunications Inc. (CREST) Service Agreement Renewal

ISSUE SUMMARY

The service agreement between the Capital Regional District (CRD) and Capital Region Emergency Service Telecommunications Inc. (CREST) expired on Dec 31, 2021, and requires renewal.

BACKGROUND

At the December 8, 2021, CRD Board meeting, the Board approved a recommendation from the Planning and Protective Services Committee:

That the Chief Administrative Officer be authorized to enter into a new regional service agreement with CREST to provide general emergency radio communications services, with annual contributions limited to inflationary adjustments.

Subsequent to Board approval, staff have continued to negotiate with CREST on finalizing an agreement. Changes from the previous draft agreement are highlighted in the staff report below and appendix B. These changes include an upper limit on inflation impacts (3%), reporting on financial accountability, and an annual presentation or update to the CRD Board.

For additional reference, staff have included in appendix A the previous staff report detailing the history and formation of CREST in the member agreement bylaw, where the commitment to fund was capped to the Call Answer Levy (CAL) revenue received. The agreement in appendix B would fund CREST beyond the (CAL) and increase annual contributions by CPI with an upper limit of 3%.

ALTERNATIVES

Alternative 1

The Finance Committee recommends to the Capital Regional District Board:
That the Chief Administrative Officer be authorized to enter into a service agreement as attached to provide general emergency radio communications services.

Alternative 2

The Finance Committee recommends to the Capital Regional District Board:
That this report be referred back to staff for additional information.

IMPLICATIONS

The revised 2022 agreement with tracked changes is included in Appendix B. The following concordance table summarizes revisions since December.

Section	Draft (December 2021)	Final (March 2022)
3. Services	No change from the 2017-2021 agreement	Keeps 3.1, but adds new 3.2 and 3.3; old 3.2 becomes 3.4
<ul style="list-style-type: none"> • consistent with existing CRD governance requirements of other like services; annual reporting to the Board is now included • now includes the option for CRD to request financial information in alignment with the provisions of the <i>Financial Information Act</i> as if it applied to CREST; information to be provided upon request 		
4. Payment Matters	Adds sub-sections 4.1.(i), (ii), and (iii)	Adds text to 4.1.(ii) and revises a phrase in 4.1.(iii).
<p>Incorporates additional terminology to:</p> <ul style="list-style-type: none"> • actual increases of the annual contribution will be the actual measure of CPI from BC Stats versus an estimate • in the case of negative CPI, guarantees the base prior year fee, and in the case of excess inflation, the index used to calculate the increase is capped at 3%, in alignment with CREST’s targeted operational cost increase of 2.9% 		

Service Delivery Implications

The CRD has the authority within Bylaw No. 2891, “Capital Regional District Service of Emergency Communications Service Establishment Bylaw No. 1, 2001”, to provide an emergency communication service or to make a financial contribution towards the cost of an emergency communication service operated by another person or organization. CREST, under agreement with the CRD, and as a Not for Profit and primarily publically funded Corporation, is delivering this service to users within the regional district. However, the agreement expired on December 31, 2021.

Renewal of the service agreement (Appendix B) will result in continuance of CRD contributions to CREST and in turn, the required operations of an emergency communications service on behalf of the CRD. Service levels and operational oversight are provided by and approved by the CREST Board annually through their planning approval processes.

All other implications have already been included in the initial report to Board in December 2021.

CONCLUSION

The service agreement between the Capital Regional District (CRD) and Capital Region Emergency Service Telecommunications Inc. (CREST) was set to expire on Dec 31, 2021, and requires renewal. The CRD has the authority within Bylaw No. 2891, “Capital Regional District

Service of Emergency Communications Service Establishment Bylaw No. 1, 2001”, to provide an emergency communication service or to make a financial contribution towards the cost of an emergency communication service operated by another person or organization. CREST, under agreement with the CRD, is delivering this service to users within the regional district. Renewal of the service agreement will result in continuance of CRD contributions to CREST and in turn, the required operations of an emergency communications service on behalf of the CRD.

RECOMMENDATION

The Finance Committee recommends to the Capital Regional District Board:
That the Chief Administrative Officer be authorized to enter into a service agreement as attached to provide general emergency radio communications services.

Submitted by:	Nelson Chan, MBA, FCPA, FCMA, Chief Financial Officer
Concurrence:	Kristen Morley, J.D., General Manager, Corporate Services & Corporate Officer
Concurrence:	Robert Lapham, MCIP, RPP, Chief Administrative Officer

ATTACHMENT(S)

- Appendix A: November 2021 Staff Report 21-685
- Appendix B: Revised 2022 Service Agreement, with tracked changes

EMERGENCY COMMUNICATIONS SERVICE AGREEMENT

(the "Agreement")

THIS AGREEMENT dated for reference the _____ day of _____ 20__

BETWEEN:

CAPITAL REGIONAL EMERGENCY SERVICE TELECOMMUNICATIONS INC.
110 2944 W Shore Pkwy
Victoria, BC
V9B 0B2
("CREST")

OF THE FIRST PART

AND:

CAPITAL REGIONAL DISTRICT
625 Fisgard Street,
Victoria, BC
V8W 2S6
("CRD")

OF THE SECOND PART

WHEREAS the CRD Board has adopted Bylaw No. 2891, the Capital Regional District Emergency Communications Service Establishment Bylaw No. 01, 2001 to establish a service of emergency communications in the service area, including contributing to the cost of an emergency communications service operated by a third party;

AND WHEREAS CREST is a non-profit corporation established under the *Emergency Communications Corporations Act*, to provide a unified system of inter-municipal radio and electronic communication services;

AND WHEREAS the CRD Board has also adopted Bylaw No. 2893, the CREST Members' Agreement Bylaw No. 1, 2001 authorizing the CRD to hold three shares in CREST and appoint three Directors annually to the CREST Board;

NOW THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the CRD has requested CREST provide the Services defined herein and the CREST has agreed to provide those Services in accordance with the Agreement, as follows:

1. INTERPRETATION

In this Agreement, the following terms have the following meanings:

- (a) **"Service Payment"** means the net monies raised and collected as user fees by the CRD pursuant to Emergency Communications Charge Bylaw No. 01, 2001 (as

amended, re-enacted or replaced) available for disbursement to CREST, and additional payments as determined by the CRD Board.

- (b) **“Service Area”** means the Service Area established under Bylaw No. 2891 “Capital Regional District Emergency Communications Service Establishment Bylaw No. 01, 2001”.

2. TERM

- 2.1 The Term of this Agreement will be for a period of five (5) years commencing on January 1, 2022, and continuing until December 31, 2026, unless sooner terminated pursuant to section 5.

3. SERVICES

- 3.1 In consideration of the CRD making the payments required under this Agreement and performing its other obligations under this Agreement, CREST will provide and maintain a radio communications system to provide emergency communications and related services for municipalities and the CRD as members of CREST (the **“Services”**).

3.2 Each year, at least once annually on a date determined by the CRD, CREST will present to the CRD Board on CREST’s annual operational and financial plans, including on performance against strategic plan, project plans, and other organizational and financial matters requested by the CRD.

3.3 Upon request from the CRD, CREST will provide financial information in alignment with the provisions of the *Financial Information Act* as if the Act applied to CREST as a regional district service (e.g. schedules of remuneration for board directors and staff >\$75,000) in relation to the regional district service.

3-23.4 Inability to Provide Service

Despite any other provision of the Agreement, the CRD acknowledges that CREST is not obliged to provide these Services where its systems are not operational by reason of acts of God, strike, lockout, or other labour dispute, acts of war, terrorism, sabotage or any other causes beyond the reasonable control and not the result of the fault or neglect of CREST.

4. PAYMENT MATTERS

4.1 Payment Amounts

- (i) The CRD will make an annual contribution to CREST (the “Annual Contribution”) in monthly installments. In 2022 the annual contribution amount will be \$1,715,234 based on the 2021 Board approved contribution (One million, seven

hundred and fifteen thousand, two hundred and thirty-four dollars) (the "Base Year Fee") representing the service payment and an additional contribution.

- (ii) Commencing in 2022, and for each year of the Term thereafter, the Annual Contribution will be adjusted in accordance with the percentage change in the All Items Consumer Price Index for Victoria, British Columbia, published by Statistics Canada (the "CPI") in January each year and as calculated in accordance with this section. The Base Year Fee will be multiplied by the yearly percentage change in the CPI since 2021 (the "CPI Adjustment") and will be added to the Base Year Fee to determine the Annual Contribution for that year; however, if the CPI is more than 3%, the CPI will be capped at 3% for the purposes of the annual calculation. If the All Items Consumer Price Index for Victoria is discontinued, a comparable index will be selected by the CRD, acting reasonably.
- (iii) If the CPI Adjustment is a negative change for any year in the Term, the Annual Contribution for that year will be the Base Year Fee previous year's fee.
- (iv) Any monthly contribution due in the calendar year prior to the annual release of the CPI will be made in the amount of the previous year's monthly installment, and will be reconciled in the monthly payments due for the remainder of that year.

4.2 Taxes

Any sales, use or goods and services taxes arising with respect to the Services will be paid by the CRD.

4.3 Services as Exempt Supply

The parties have determined, acting in good faith, that the Services are an exempt supply under the Excise Tax Act (Canada).

5. TERMINATION

5.1 Termination Rights

- (i) This Agreement will terminate at the end of the term set out in section 2.1
- (ii) CREST will have the right to terminate this Agreement for cause if:
 - a. The CRD fails to pay any amount under the Agreement when due, or
 - b. The CRD commits any material breach of its obligations under this Agreement (other than pursuant to subsection 5.1(ii)(a) above) that is not cured to the satisfaction of CREST, acting reasonably, within 120 (one hundred twenty) days after written notice to the CRD describing the material breach in reasonable detail.

- (iii) The CRD will have the right to terminate this Agreement immediately for cause if CREST commits any material breach of its obligations under this Agreement that is not cured to the satisfaction of the CRD, acting reasonably, within 120 (one hundred twenty) days after written notice to CREST describing the breach in reasonable detail.

5.2 Obligation Upon Termination

Unless the parties enter into a new Agreement, the parties will cooperate fully with each other to provide for an orderly transition of the Services to a successor service provider. CREST will continue to provide Services and to be paid for such Services during the period of transition to a successor provider to a maximum of 120 (one hundred twenty) days after the effective date of termination.

6. PROTECTION OF PRIVACY

- 6.1 Each party will abide by applicable laws relating to the collection, use and disclosure of personal information or information to which the *Freedom of Information and Protection of Privacy Act* (British Columbia) applies.

7. DISPUTE RESOLUTION

7.1 Process

If there is any dispute arising out of or relating to this Agreement, then the parties will use reasonable good faith efforts to resolve such dispute, first by direct negotiation and then, if that is not successful, by mediation with a neutral third party mediator acceptable to both parties. Each party will bear its own costs and expenses in connection with any mediation and all costs and expenses of the mediator will be shared equally by the parties. Any dispute arising out of or relating to this Agreement that is not settled by agreement between the parties within a reasonable time will, on agreement of both parties, be settled by binding arbitration by a single arbitrator. The location of any arbitration proceeding will be in Victoria, British Columbia. The arbitration will be governed by the *Arbitration Act* (British Columbia). The arbitrator will be selected and the arbitration conducted in accordance with the British Columbia Domestic Arbitration Rules ("Rules"), except that the provisions of this Agreement will prevail over the Rules. The parties will share equally in the fees and expenses of the arbitrator and the cost of the facilities used for the arbitration hearing, but will otherwise each bear their respective costs incurred in connection with the arbitration including each parties own legal fees. The parties will use their best efforts to ensure that an arbitrator is selected promptly and that the arbitration hearing is conducted no later than two (2) months after the arbitrator is selected.

7.2 Award Final

The award of the arbitrator will be final and binding on each party. Judgment upon the award may be entered in any court of competent jurisdiction.

8. GENERAL PROVISIONS

8.1 No Third Party Beneficiaries

Nothing contained in this Agreement will create a duty or liability on the part of CREST, the CRD or their respective directors, officers, members, public officials, employees or agents to any member of the public. There are no third party beneficiaries to this Agreement.

8.2 Notices

Any notice required under the terms of this Agreement must be in writing. Any such notice will be deemed delivered:

- (a) on the day of delivery in person;
- (b) ten (10) days after date of deposit by prepaid registered mail, or upon confirmation receipt;
- (c) on confirmation of delivery by courier;
- (d) on the date sent by electronic mail if receipt is confirmed in writing by other party to whom it is directed, set forth below:

Capital Regional District
625 Fisgard Street
Victoria, BC V8W 2S6
Email:_____

-And-

CREST
110 2944 W Shore Parkway
Victoria, BC V9B 0B2
Email:_____

-Or- to such other address or contact person as that party may notify the other in accordance with this section.

8.3 Assignment

The CRD will not have the right to assign, transfer (whether directly or indirectly) or otherwise dispose of any of its interest in all or any part of this Agreement, whether gratuitously or for consideration, without the prior written consent of CREST and any attempt to do so will be void. CREST will have the right at any time to assign, transfer

or otherwise dispose of the whole of this Agreement to any subsidiary or affiliate company, provided that the CRD approves the assignment in writing, not to be unreasonably withheld, and the subsidiary or affiliate company assumes all of the obligations of CREST under this Agreement.

8.4 Benefit

This Agreement will enure to the benefit of and be binding upon the parties and their respective successors and assigns.

8.5 Entire Agreement

This Agreement constitutes the entire agreement of the parties relating to the Services and supersedes any previous agreement with respect to the Services whether written or verbal.

8.6 Severability

If any provision of this Agreement is held to be unenforceable then such provision will be severed from this Agreement and the remaining provisions will remain in full force and effect. The parties will in good faith negotiate a mutually acceptable and enforceable substitute for the unenforceable provision, which substitute will be as consistent as possible with the original intent of the parties.

8.7 Waiver

The failure of either party to require the performance of any obligation hereunder, or the waiver of any obligation in a specific instance, will not be interpreted as a general waiver of any of the obligations hereunder, which will remain in full force and effect.

8.8 Relationship of Parties

This Agreement will not create nor will it be interpreted as creating any association, partnership or any agency relationship between the parties.

8.9 Governing Law

This Agreement is governed by, and if interpreted and construed in accordance with the laws applicable in British Columbia.

8.10 Counterpart

This Agreement may be executed in any number of counterparts. Each executed counterpart shall be deemed to be an original. All executed counterparts taken together shall constitute one agreement.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement as of the date first written above.

CAPITAL REGIONAL DISTRICT by its)
authorized signatories:)

_____)
Name)

_____)
Name)

**CAPITAL REGION EMERGENCY)
SERVICE TELECOMMUNICATIONS INC.)**
by its authorized signatories:)

_____)
Name)

_____)
Name)