

RESORT MUNICIPALITY OF WHISTLER

“Fire Dispatch Service Agreement Bylaw No. 1578, 2002”

A Bylaw to authorize the Resort Municipality of Whistler to enter into an agreement with the City of Vancouver and the Squamish-Lillooet Regional District.

WHEREAS:

- A. Under Section 176 and Section 513 of the *Local Government Act*, R.S.B.C. 1996, c. 323, Council may contract for materials and services;
- B. The Council of the Resort Municipality of Whistler desires to enter into an agreement substantially in the form and with the content of that set out in Schedule “A” of this Bylaw;

NOW THEREFORE the Council of the Resort Municipality of Whistler, in open meeting assembled, ENACTS AS FOLLOWS:

1. This bylaw shall be cited for all purposes as the “Fire Dispatch Service Agreement Bylaw No. 1578, 2002”.
2. Council hereby authorizes the Resort Municipality of Whistler is to enter into and carry out the terms and conditions of an agreement with the Corporation of the City of Vancouver and the Squamish-Lillooet Regional District in the form set out and attached hereto and forming part of this Bylaw, such agreement to be called Schedule “A”, whereby the Corporation of the City of Vancouver agrees to provide to the Resort Municipality of Whistler and the Squamish-Lillooet Regional District a fire dispatch service for a ten year period.
3. The Mayor and Clerk are hereby authorized and empowered to execute the said agreement on behalf of the Resort Municipality of Whistler.
4. “Basic Fire Dispatch Service Agreement Bylaw No. 809, 1990” is hereby repealed.

GIVEN FIRST READING this 18th day of March, 2002.

GIVEN SECOND READING this 18th day of March, 2002.

GIVEN THIRD READING this 18th day of March, 2002.

ADOPTED by the Council this 2nd day of April, 2002.

Signed Original on File

Hugh O'Reilly,
Mayor

Signed Original on File

Brenda Sims,
Municipal Clerk

I HEREBY CERTIFY that this is
A true copy of "Fire Dispatch Service
Agreement Bylaw No. 1578,2002"

Brenda Sims
Municipal Clerk

DISPATCH AGREEMENT

THIS AGREEMENT dated for reference the 1st day of January 2000,

BETWEEN:

CITY OF VANCOUVER
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4

(the "City")

OF THE FIRST PART

AND:

RESORT MUNICIPALITY OF WHISTLER
Box 35
4325 Blackcomb Way
Whistler, British Columbia
V0N 1B0

("Whistler")

OF THE SECOND PART

AND:

SQUAMISH-LILLOOET REGIONAL DISTRICT
Aster Street
P.O. Box 219
Pemberton, British Columbia
V0N 2L0

(the "Regional District")

OF THE THIRD PART

WHEREAS:

1. The City is authorized,
 - (a) by Sections 145 and 310(e) of the Vancouver Charter to make agreements with other municipalities, and
 - (b) by Section 145 of the Vancouver Charter and the sections of the Local Government Act and Interpretation Act referred to in the recitals below, to make agreements with regional districts

for the use of the City's communication and dispatch system, upon such terms and conditions as may be agreed upon,

B. Whistler is authorized, by Section 176(1), 517(3) and other sections of the Local Government Act, by bylaw, to contract for materials and services and to make agreements with other municipalities, corporations or other properly constituted authorities in respect of fire protection, assistance response and the use of equipment and personnel,

C. The City and Whistler entered into a fire dispatch service agreement for a 10 year period (the "1990 Dispatch Agreement"), dated for reference July 16, 1990, for the City through its fire and rescue services group, to provide basic fire dispatch services to Whistler,

D. The Regional District is authorized, by Section 797(1) of the Local Government Act, to establish and operate a fire prevention and suppression service, and by Section 796(3) of the Local Government Act, to enter into mutual aid agreements respecting the use of equipment and personnel in fire suppression and assistance response inside or outside the service area,

E. Pursuant to Section 27(6) of the Interpretation Act, a power given in an enactment to a person to enter into an agreement includes the power for the person with whom the agreement is to be made to enter into the agreement and carry out its terms,

F. The City and Whistler agreed to replace the 1990 Dispatch Agreement with a new Agreement and the Regional District joined in with the City and Whistler and all three parties entered into a new Agreement dated for reference September 1, 1996 (the "1996 Dispatch Agreement"). Although never signed, all parties acted upon and implicitly agreed to be bound by the 1996 Dispatch Agreement.

G. The 1996 Dispatch Agreement expired on December 31, 1999 and the parties have agreed to enter into this Agreement.

NOW THEREFORE this Agreement witnesses that, in consideration of the premises, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties), the parties covenant and agree as follows:

Definitions

1. In this Agreement

(a) "CADS" means VFR's computer-aided dispatch system,

(b) "Telephone/Radio Circuitry" means:

(i) the two four-wire telephone circuits and associated radio control modules installed within the VFR Dispatch Centre and all repairs, replacements and maintenance deemed appropriate by VFR (excluding all telephone circuitry

past the demarcation point on the "punch block" in the equipment room (where such circuitry becomes the property and responsibility of BC Telephone Company and which is leased or otherwise made available by BC Tel to Whistler, the Regional District or their respective agents or contractors)), and

- (ii) the "911" trunk line between the GVRD's general dispatch centre currently located at E-COMM, 3301 East Pender Street, Vancouver and the VFR Dispatch Centre,

(items (i) and (ii) above, being collectively referred to as the "VFR Portion"), and

- (iii) that portion of the two four-wire telephone circuits which travels from the demarcation point referred to above and continues on to the radio transmitter/receiver station utilized by Whistler and the Regional District to send and receive by two-way radio, dispatch communications between the VFR and the fire halls within Whistler and the SLRD Lands, and,

- (iv) the emergency telephone number(s) published by Whistler and the Regional District as the emergency fire telephone number to be used by the public within Whistler or the SLRD Lands, as the case may be, whether or not part of the "911" telephone trunk line connecting with the 911 telephone trunk line maintained and operated by BC Tel for the Greater Vancouver Regional District and connected to the City's general dispatch centre currently located at 312 Main Street, Vancouver,

(items (iii) and (iv) above, being collectively referred to as the "Whistler/Regional District Portion"),

- (c) "Employees" means with respect to any designated party, the officials, officers, employees and agents of that party,
- (d) "Incident" means each telephone call received by the VFR Dispatch Centre from within the territorial boundary of Whistler or from the SLRD Lands which results in an emergency call dispatched from the VFR to Whistler or the Regional District, but does not include any non-dispatchable telephone call such as a wrong number,
- (e) "Service" means an emergency call dispatch service provided by the VFR Dispatch Centre and includes the following:
 - (i) answering all emergency fire and assistance response requests originating from within the territorial boundaries of Whistler and the SLRD Lands,

- (ii) responding to each such telephone request and obtaining the required information,
 - (iii) signalling by tone alert the Whistler Fire Rescue Service in the case of a call originating from Whistler, and in the case of a call originating from the SLRD Lands, signalling by tone alert both the Regional District's Garibaldi Fire Department and the Whistler Fire Rescue Service,
 - (iv) contacting other agencies to provide assistance as necessary,
 - (v) monitoring Whistler's fire repeater until the close of the incident,
 - (vi) logging incident details into the CADS and supplying to Whistler a daily CADS generated report for all dispatch incidents within both Whistler and the SLRD Lands,
- (f) "SLRD Lands" means those areas lying within the boundaries of Strata Plan VR559, commonly known as Pinecrest Estates, and Strata Plan VR1290, commonly known as Black Tusk Village,
- (g) "Term" means the period of time during which this Agreement is in effect as set out in Section 2 – *Term* below,
- (h) "VFR" means the City's Vancouver Fire and Rescue Services Group,
- (i) "VFR Dispatch Centre" means the VFR's dispatch centre located at 900 Heatley Street, Vancouver, B.C. V6A 3S7,
- (j) "1990 Dispatch Agreement" has the meaning set out in Recital C. above,
- (k) "1996 Dispatch Agreement" has the meaning set out in Recital F. above.

Term

2. This Agreement takes effect on January 1, 2000 and ends at midnight on December 31, 2010, unless sooner terminated pursuant to the other terms of this Agreement.

The Service

3. Subject to the other terms and conditions of this Agreement, the City (through the VFR) will supply the Service during the Term to Whistler and the Regional District.

Telephone/Radio Circuitry

4. In order for the City to provide the Service to Whistler and the Regional District, Whistler has, pursuant to the 1990 Dispatch Agreement, paid for the installation of the VFR's Portion of the Telephone/Radio Circuitry in the VFR Dispatch Centre and has installed the Whistler/Regional District's Portion. Despite any other term of this Agreement, Whistler and the Regional District now acknowledge that the City is not obligated to provide the Service during any period when the Telephone/Radio Circuitry is not working regardless of the reason or cause of such problems.

5. Whistler will, without any cost or expense to the City, continuously maintain and where necessary repair or replace, the Whistler/Regional District's Portion of the Telephone/Radio Circuitry. The City will continuously maintain and where necessary repair or replace, the VFR's Portion of the Telephone/Radio Circuitry. Whistler will pay and be responsible for all costs of maintaining, repairing and replacing the VFR's Portion, whether or not such expenses arise out of accidental loss or damage and no matter how caused. All payments to the City will be due and payable within 30 days of receipt of an invoice from the City.

6. Whistler and the Regional District will not modify the Whistler/Regional District's Portion of the Telephone/Radio Circuitry without the prior written consent of the City.

Annual Payments

7. Subject to any possible increase pursuant to Section 7(b), Whistler will pay to the City for the Service an annual payment (the "Annual Payment"), for the first 500 incidents per calendar year received by the VFR Dispatch Centre from either Whistler or the SLRD Lands, calculated and payable as follows:

- (a) the Annual Payment for the calendar year 2000 is \$12,732 (the "Base Rate"), and the City now acknowledges receipt of payment of the Base Rate for the calendar year 2000,
- (b) the Annual Payment for every year succeeding the year 2000 (the "Succeeding Year") under this Agreement shall be payable on the 1st day of January of every Succeeding Year during the Term of this Agreement (commencing January 1, 2001) and shall be calculated by adding:
 - (i) the Annual Payment for the year preceding the Succeeding Year (the "Base Year") plus
 - (ii) the product of:
 - (1) the Base Rate, and
 - (2) the percentage increase of the annual average Consumer Price Index for metropolitan Vancouver as published by Statistics Canada

(the "CPI") for the calendar year as compared to the CPI for the year immediately preceding the subject calendar year,

- (c) the parties covenant and agree each with the other that if the CPI ceases to be published by Statistics Canada or the then recognized statistics branch of the government of Canada or if the CPI is computed on a different basis from the basis on which it was computed on January 1, 2000, there shall be implied in the place of the CPI for the purposes of determining the Annual Payment payable by Whistler, such substitution for the CPI as the parties may agree upon and failing agreement by them, such substitution for the CPI as may be determined by arbitration to be the index most accurately measuring the CPI at the date such index is required to be determined hereunder weighted in a manner most closely approximating the CPI last published by Statistics Canada. Until the arbitrator shall have determined the substitution for the CPI, Whistler shall pay to the City pending such determination a sum equal to the Annual Payment payable by Whistler on January 1 in the year immediately preceding the year in which such substitution of the CPI is required to be determined and when the substitution is determined the Annual Payment payable by Whistler shall be adjusted accordingly.

Supplementary Payment

8. In addition to the Annual Payment, (and subject to any increase pursuant to Section 8(b)), Whistler shall pay an additional amount of \$20 (the "Supplementary Base Rate") for each incident received by the VFR Dispatch Centre from either Whistler or the SLRD Lands over and above the first 500 incidents in each calendar year plus an additional Supplementary Base Rate for each incident (whether or not part of the first 500 incidents in that year) received by the VFR Dispatch Centre from the SLRD Lands (collectively, the "Supplementary Payment") and such Supplementary Payment shall be calculated and payable as follows:

- (a) the Supplementary Payment will be paid on January 1 immediately following the preceding calendar year and will be calculated by adding the number of incidents originating from the SLRD Lands to the number of all incidents regardless of origin in excess of 500 for the immediately preceding calendar year and multiplying the total by the Supplementary Base Rate, and the City now acknowledges receipt of payment of the Supplementary Payment for calendar year 2000,
- (b) the Supplementary Payment for every Succeeding Year of the Term of this Agreement shall be payable on January 1 of the year immediately following the Succeeding Year and calculated in the same manner except that the Supplementary Base Rate to be used in the calculation will be:
 - (i) the Supplementary Base Rate for the year preceding the Succeeding Year (the "Base Year") plus
 - (ii) the product of:

- (1) the Supplementary Base Rate, and
 - (2) the percentage increase of the annual average Consumer Price Index for metropolitan Vancouver as published by Statistics Canada (the "CPI") for the calendar year as compared to the CPI for the year immediately preceding the subject calendar year,
- (c) the parties covenant and agree each with the other that if the CPI ceases to be published by Statistics Canada or the then recognized statistics branch of the government of Canada or if the CPI is computed on a different basis from the basis on which it was computed on January 1, 2000, there shall be implied in the place of the CPI for the purposes of determining the Supplementary Payment payable by Whistler, such substitution for the CPI as the parties may agree upon and failing agreement by them, such substitution for the CPI as may be determined by arbitration to be the index most accurately measuring the CPI at the date such index is required to be determined hereunder weighted in a manner most closely approximating the CPI last published by Statistics Canada. Until the arbitrator shall have determined the substitution for the CPI, Whistler shall pay to the City pending such determination a sum equal to the Supplementary Payment payable by Whistler on January 1 in the year immediately preceding the year in which such substitution of the CPI is required to be determined and when the substitution is determined, the Supplementary Payment payable by Whistler shall be adjusted accordingly.

Regional District Payment

9. The Regional District shall pay to Whistler \$2.50 per year for each improved unit within the SLRD Lands and the Regional District shall make the payment August 1 of each and every year that this Agreement is in effect, commencing January 1, 2001, and in addition the Regional District shall pay to Whistler the sum of \$500.00 per year as a contribution toward Whistler's costs of installation and maintenance of the equipment.

Prorated Payment

10. If this Agreement is terminated or expires in any year before the end of the calendar year, then the amount payable for that year by Whistler to the City and by the Regional District to Whistler shall be apportioned accordingly.

CADS Report

11. Whistler agrees to reimburse the City for all long distance and facsimile charges incurred by the City in providing daily CADS reports. The City will invoice Whistler for such charges on the first day of each month and Whistler agrees to pay the invoices forthwith upon receipt.

Terminology

12. Whistler and the Regional District agree that all of their Fire Department terminology and operating procedures will, throughout the Term, mirror those used by the VFR Dispatch Centre.

Termination of Agreement

13. In the event of default by any party of any of the provisions of this Agreement, any party may in its sole discretion forthwith terminate this Agreement (as amongst all parties and not simply the defaulting party).

14. Either the City or Whistler may terminate this Agreement upon giving the other party 12 months' prior written notice, and upon expiration of the time set out in such notice, this Agreement, save and except for any covenant to pay any monies due and owing to the City, any covenant to maintain insurance beyond the expiry date and any indemnity to or release of the City, shall be absolutely terminated and of no further force or effect.

If the Regional District wishes to terminate its arrangement with the City and Whistler, it may do so upon giving the other parties 12 months' prior notice, in which case this Agreement shall continue in force between the City and Whistler, and upon expiration of the time set out in the Regional District's notice, this Agreement, save and except for any covenant by the Regional District to pay any monies due and owing and any indemnity to or release of the City or Whistler shall be absolutely terminated and of no further force or effect in respect to the Regional District.

Arbitration

15. If the parties do not agree as to any of the matters under this Agreement, then such disagreement may, if the parties agree, be determined by 1 arbitrator pursuant to the Commercial Arbitration Act.

Indemnities

16. Whistler hereby agrees to indemnify and save harmless the City and its Employees, whether or not the City and its Employees have been negligent, from all costs, losses, damages and expenses made against or incurred, suffered or sustained by the City at any time or times (either before or after the expiration or sooner termination of this Agreement) where the same or any of them are based upon or arise out of or from anything done or omitted to be done by the City or its Employees, in connection with this Agreement, and without limiting the generality of the foregoing, providing the Service, provided however, that this indemnity shall not apply in any case where the emergency call arises from or the Service is provided to the SLRD Lands.

17. The Regional District hereby agrees to indemnify and save harmless the City and Whistler and their respective Employees, whether or not the City or Whistler or their respective Employees have been negligent, from all costs, losses, damages and expenses made against or incurred, suffered or sustained by the City or Whistler at any time or times (either before or after the expiration or sooner termination of this Agreement) where the same or any of them are based upon or arise

out of or from anything done or omitted to be done by the City or Whistler by their respective Employees, in connection with this Agreement and without limiting the generality of the foregoing, providing the Service and maintaining the Dedicated Telephone Lines, provided however, that this indemnity shall not apply in any case where the emergency call arises from or the Service is provided to any area other than the SLRD Lands.

Releases

18. Whistler, on its own behalf, and on behalf of all persons and corporations working by, through, or under Whistler, hereby releases the City and its Employees from all claims related to personal injury, property damage and death suffered or experienced in connection with or during the provision of the Service, whether or not the City and its Employees have been negligent in performance of this Agreement.

19. The Regional District, on its own behalf, and on behalf of all persons and corporations working by, through, or under the Regional District, hereby releases the City, Whistler and their respective Employees from all claims related to personal injury, property damage and death suffered or experienced in connection with or during the provision of the Service or the Dedicated Telephone Lines or any response by them, whether or not the City, Whistler or their respective Employees have been negligent in performance of this Agreement.

Insurance

20. Whistler agrees to maintain an ongoing public liability insurance policy in the amount of \$10,000,000 as additional security for its indemnity provided for in this Agreement. The said policy shall name the City as an added named insured with provision in the said policy that the policy is to cover any liabilities that result from this Agreement. Whistler agrees to maintain the said policy for 2 years after the date of expiry or sooner termination of this Agreement.

21. The Regional District agrees to maintain an ongoing public liability insurance policy in the amount of \$5,000,000 as additional security for its indemnity provided for in this Agreement. The said policy shall name the City and Whistler as added named insureds with provision in the said policy that the policy is to cover any liabilities that result from this Agreement. The Regional District agrees to maintain the said policy for 2 years after the date of expiry or sooner termination of this Agreement.

Notices

22. Any notice, approval or request under this Agreement may be well and adequately given if delivered to the City or to Whistler or to the Regional District, as the case may be, at the addresses set out below or to such other address as any party may from time to time give notice in writing referring to this Agreement and delivered to the appropriate address set out below:

to the City at:

453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4
Attention: General Manager of Fire and Rescue Services

to Whistler at:

4325 Blackcomb Way
Whistler, British Columbia
V0N 1B0
Attention: Fire Chief

to the Regional District at:

Aster Street
P.O. Box 219
Pemberton, British Columbia
V0N 2L0
Attention: Administrator

Governing Law

23. This Agreement shall be construed according to the laws of the Province of British Columbia.

Authorization

24. The Council or Board of the parties hereto have each passed a resolution or bylaw authorizing the respective parties to enter into this Agreement and empowering the authorized signatories to execute the Agreement on behalf of the respective parties.

Enurement

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

Emergency Communications for Southwest British Columbia (E-COMM)

26. The upgrading of Vancouver Fire and Rescue procedures and the implementation of the new CAD has been designed in co-operation with E-COMM. Whistler's E-COMM CAD charges relating to this agreement are the responsibility of the Whistler Fire Dept.

These changes were implemented to allow for a seamless transfer of VF&RS and all its dispatch clients to E-COMM when VF&RS is ready to complete the transfer of Fire Dispatching. In the event that a separate government authority or private legal authority such as E-COMM commences dispatch call services for the City, this agreement may be cancelled by either party on the

commencement date of operations for the new dispatch centre subject always to Section 28 – Survival of Covenants.

Survival of Covenants

28. For further certainty, all covenants in this Agreement which, by their nature require performance or fulfillment after the expiry or sooner termination of this Agreement, survive such expiry or sooner termination. Without limiting the general scope of this clause, and by way of example only, covenants requiring the payment of money (pro-rated to the date of expiry or termination), and the covenants in Sections 16/17 – *Indemnities*, 18/19 – *Releases*, and 20/21 - *Insurance*, all survive the expiry or sooner termination of this Agreement.

Service is a GST – Exempt Supply

29. The parties have all determined, acting in good faith, that the Service is a fire protection service and is therefore an exempt supply under the Excise Tax Act (Canada), Part IX (Goods and Services Tax). If the Act is changed or interpreted by the courts to make the Service taxable under the Act, Whistler and the Regional District will (pursuant to Sections 16/17 – *Indemnities*), indemnify and save the City harmless from and against all assessments, including any and all components comprised of interest, penalties or arrears of GST arising out of the City’s supply of the Service to Whistler or the Regional District, as the case may be.

Standard of Service

30. Despite any other term of this Agreement, the City is not obligated to provide the Service in any particular manner, to any particular standard or at all, provided that the City devotes the same degree of care and attention to the Service as it does to the dispatch of emergency calls arising within the City of Vancouver.

IN WITNESS WHEREOF the parties hereto have caused their respective seals to be affixed under the hand of their proper officers duly authorized in that behalf effective as of the 1st day of January, 2000.

The Common Seal of CITY OF)
VANCOUVER was hereunto affixed in)
the presence of:)
)
_____))
Fire Chief)
)
_____))
Director of Legal Services)

(C/S)

The Common Seal of RESORT)
MUNICIPALITY OF WHISTLER was)
hereunto affixed in the presence)
of:)

_____))
Mayor)

_____))
Clerk)

(C/S)

The Common Seal of SQUAMISH-)
LILLOOET REGIONAL DISTRICT was)
hereunto affixed in the presence)
of:)

_____))
Chairperson)

_____))
Secretary)

(C/S)