

CITY OF WHITEHORSE
REGULAR Council Meeting #2016-14

DATE: Monday, July 25, 2016
TIME: 5:30 p.m.

Mayor Dan Curtis
Deputy Mayor Betty Irwin
Reserve Deputy Mayor Roslyn Woodcock

AGENDA

CALL TO ORDER 5:30 p.m.

AGENDA: Adoption

PROCLAMATIONS: World Hepatitis Day – July 28

MINUTES: Regular Council Meeting #2016-13 dated July 11, 2016

DELEGATIONS:

PUBLIC HEARING: Bylaw 2016-25 – Zoning Amendment (Whistle Bend Phase 4)
Bylaw 2016-30 – O.C.P. Amendment (Cousins Airfield Road)

COMMITTEE REPORTS:

- Community Services Committee** – *Councillors Hartland & Curteanu*
- Public Health & Safety Committee** – *Councillors Curteanu & Fendrick*
- Development Services Committee** – *Councillors Irwin & Boyd*
- Corporate Services Committee** – *Councillors Boyd & Woodcock*
 - Contract Award – City Internet Service
- City Planning Committee** – *Councillors Fendrick & Hartland*
- City Operations Committee** – *Councillors Woodcock & Irwin*
 - Amend Infrastructure and Operations Capital Budget
 - Contract Award – McLean Lake Connector Road Base Construction

NEW & UNFINISHED BUSINESS: Review of the City's Arts Policy (*Notice of Motion, Councillor Boyd*)

BYLAWS: 2016-32 Land Agreements (Operations Building Access) 3rd Reading

ADJOURNMENT:



PROCLAMATION

WORLD HEPATITIS DAY

July 28, 2016

WHEREAS Hepatitis C is a life-threatening liver disease affecting a quarter of a million Canadians; and

WHEREAS Yukon has the highest rates of Hepatitis C Virus in Canada, more than twice the national average; and

WHEREAS World Hepatitis Day is a significant global platform for raising awareness about hepatitis; and

WHEREAS increased awareness can influence real change in disease prevention and access to testing, treatment and care; and

WHEREAS it is estimated that many people living with the disease do not know that they have it, and a key goal of this year's local World Hepatitis Day event is to encourage people to get tested; and

WHEREAS we have the potential to eliminate Hepatitis C from the Yukon within a lifetime;

NOW THEREFORE I, Mayor Dan Curtis, do hereby proclaim the July 28th, 2016 to be ***World Hepatitis Day*** in the City of Whitehorse.

Dan Curtis
Mayor

MINUTES of **REGULAR** Meeting #2016-13 of the council of the City of Whitehorse called for 5:30 p.m. on Monday, July 11, 2016, in Council Chambers, City Hall.

PRESENT: Mayor Dan Curtis
Councillors Dan Boyd
Jocelyn Curteanu
Robert Fendrick
Samson Hartland
Betty Irwin
Roslyn Woodcock

ALSO PRESENT: City Manager Christine Smith
Acting Director of Community Services Douglas Hnatiuk
Director of Development Services Mike Gau
Director of Infrastructure and Operations Peter O'Blenes
Chief Financial Officer Valerie Braga
Manager of Strategic Communications Jessica Apolloni
Acting Manager of Legislative Services Norma Felker

Mayor Curtis called the meeting to order at 5:30 p.m.

CALL TO ORDER

2016-13-01

It was duly moved and seconded
THAT the agenda be adopted as amended with the addition of Fraser
Lang of Whitehorse Blue Bins as a delegate speaking to the contract
award for curb-side recycling services.

AGENDA

Carried Unanimously

2016-13-02

It was duly moved and seconded
THAT the minutes of the regular council meeting dated June 27, 2016
be adopted as presented.

MINUTES

June 27, 2016

Carried Unanimously

DELEGATIONS

Fraser Lang, President of Whitehorse Blue Bins, addressed Council to advise that the current uncertainty regarding the City's plans for a curb-side recycling service are impacting his business. The extended length of the decision process has handicapped his company's ability to invest and try to expand. Mr. Lang suggested that the City should focus on solutions for the commercial sector and let Whitehorse Blue Bins concentrate on residential. This will allow the City to keep his company as a partner in waste diversion and recycling.

FRASER LANG
Whitehorse Blue Bins

COMMITTEE REPORTS

Community Services Committee

2016-13-03

It was duly moved and seconded
THAT the 2016 operating budget be amended by increasing the operating revenue and expenses for Parks Maintenance in the amount of \$6,106.04, funded by a contribution from the Yukon Foundation Jan Montgomery Fund.

AMEND PARKS
MAINTENANCE BUDGET
(Jan Montgomery Grant)

Carried Unanimously

Public Health and Safety Committee

2016-13-04

It was duly moved and seconded
THAT the revised Terms of Reference for the Persons with Disabilities Advisory Committee dated June 2016 be adopted as presented; and
THAT Christine Spencer be removed from membership on the Persons with Disabilities Advisory Committee; and
THAT advertising for potential new committee members be initiated.

ADOPT REVISED
TERMS OF REFERENCE
FOR P.D.A.C.

Carried Unanimously

Development Services Committee

2016-13-05

It was duly moved and seconded
THAT the Servicing Standards Policy dated June 2016 be adopted as presented; and
THAT the 2007 Servicing Standards Policy be repealed.

ADOPT NEW SERVICING
STANDARDS POLICY

Carried Unanimously

Corporate Services Committee

There was no report from the Corporate Services Committee.

No Report

City Planning Committee

2016-13-06

It was duly moved and seconded
THAT a development agreement with Da Daghay Development Corporation be approved with respect to a major development incentive for rental housing units at 35 Tarahne Way in Whistle Bend.

DEVELOPMENT
INCENTIVE AGREEMENT
(35 Tarahne Way)

Carried Unanimously

2016-13-07

It was duly moved and seconded
THAT Bylaw 2016-32, a bylaw to authorize three agreements with
NorthwesTel Inc. to facilitate access and servicing to the Municipal
Operations Building site, be brought for due consideration under the
bylaw process.

BRING FORWARD
LAND AGREEMENTS
(Access and Servicing to
Operations Building Site)

Carried (6 – 1)

IN FAVOUR: Mayor Curtis, Councillors Boyd, Curteanu, Fendrick,
Irwin and Woodcock

Recorded Vote

OPPOSED: Councillor Hartland

City Operations Committee

2016-13-08

It was duly moved and seconded
THAT the procurement for a residential curb-side recycling and
collection service be cancelled.

CANCEL CURB-SIDE
PROCUREMENT

2016-13-08

It was duly moved and seconded
THAT the motion be amended to read as follows:

“THAT administration be directed to negotiate with the successful
bidder to extend the time frame for a contract award for residential
curb-side collection and processing services; and

THAT a public consultation process be initiated to increase public
awareness of the issues and the associated costs and gather citizen
feedback; and

Amendment

THAT the contract award for curb-side recycling be referred back to
administration for further review following the public consultation
process; and

THAT the results of the consultation and review process, along with
a contract award recommendation, be brought back to council for
consideration.”

Defeated (2 - 5)

Council members discussed the impact that delaying a decision on this
matter would have on residents, processors and the company already
offering this service. It was noted that no meaningful consultation
could take place until the fall.

Discussion

IN FAVOUR: Mayor Curtis and Councillor Curteanu

OPPOSED: Councillors Boyd, Fendrick, Hartland, Irwin, Woodcock

Recorded Vote

Council members discussed the need to create a sustainable model that reflects the size of the community and addresses the City's targets for waste diversion and recycling. Discussion included concerns with impending changes due to the territorial election this fall and the recent changes to beverage container and designated materials regulations. Some concern was raised that other alternatives have not been explored.

Discussion on the
Main Motion

It was noted that recycling is an issue that impacts the whole territory, and the suggestion was made that the issue should first be addressed at the territorial level before the city puts a program in place.

The MAIN MOTION was then voted on and CARRIED (5 – 2)

Vote on Main Motion

IN FAVOUR: Councillors Boyd, Curteanu, Fendrick, Hartland, Irwin
OPPOSED: Mayor Curtis and Councillor Woodcock

Recorded Vote

2016-13-10

It was duly moved and seconded
THAT the construction contract for the Porter Creek Connector Path – Phase 2 project be awarded to Skookum Asphalt Ltd. for a net cost to the City of \$114,800.00.

CONTRACT AWARD
PORTER CREEK
CONNECTOR PATH

Carried Unanimously

BYLAWS

2016-13-11

It was duly moved and seconded
THAT Bylaw 2016-24, a bylaw to amend the Fees and Charges Bylaw with respect to second quarter changes, having been read a first and second time, now be given third reading.

BYLAW 2016-24
FEES AND CHARGES
AMENDMENT
THIRD READING

Carried Unanimously

2016-13-12

It was duly moved and seconded
THAT Bylaw 2016-32, a bylaw to authorize a Land Exchange Agreement, Sub-lease Agreement and Easement Agreement with NorthwesTel Inc. to facilitate access and services to the Municipal Operations Building site, be given first reading.

BYLAW 2016-32
LAND AGREEMENTS
(Access to Operations Site)
FIRST READING

Carried (6 – 1)

IN FAVOUR: Mayor Curtis, Councillors Boyd, Curteanu, Fendrick,
Irwin and Woodcock
OPPOSED: Councillor Hartland

Recorded Vote

2016-13-13

It was duly moved and seconded
THAT Bylaw 2016-32 be given second reading.

SECOND READING

Carried (6 – 1)

IN FAVOUR: Mayor Curtis, Councillors Boyd, Curteanu, Fendrick,
Irwin and Woodcock
OPPOSED: Councillor Hartland

Recorded Vote

There being no further business, the meeting adjourned at 6:47 p.m.

ADJOURNMENT

Mayor

City Clerk

ADOPTED by resolution at Meeting #2016-

MEMORANDUM

FILE #: Z-05-2016

TO: Mayor and Council
FROM: Administration
DATE: July 25, 2016
SUBJECT: Public Hearing at Regular Council Meeting July 25, 2016

Please be advised there will be a Public Hearing at the Regular Council Meeting of July 25, 2016, to hear from interested parties related to the following zoning amendment:

Bylaw 2016-25, a bylaw to amend the zoning of Phase 4 and future phases in Whistle Bend

The basic concept for Whistle Bend was developed in 2006, a master plan for the area was approved in 2009, and detailed planning and engineering pre-design for phases 1 to 7 was complete by 2012. This work allowed zoning for most of the neighbourhood to be adopted by 2012, but as the neighbourhood is built out, design changes have been made to reflect engineering requirements, better planning solutions and market conditions.

Further design revision for phase 3 was undertaken in 2014-15, which required new zoning. Changes to phase 3 have partially driven the need for changes to phase 4. Staff has revised the phase 4 design, and zoning changes are now being brought forward for Council consideration.

Bylaw 2015-07 received 1st Reading on June 27, 2016. Notices were published in the newspapers on July 8 and 15, 2015. A total of 235 letters were sent to property owners within the Whistle Bend neighbourhood. Yukon Government Lands Department, Kwanlin Dün First Nation, and Ta'an Kwäch'än Council were also notified by mail.

Kinden Kosick
Planner II

cc: Director of Development Services
Manager of Planning and Building Services

MEMORANDUM

FILE #: OCP-02-2016

TO: Mayor and Council

FROM: Administration

DATE: July 25, 2016

SUBJECT: Public Hearing at Regular Council Meeting July 25, 2016

Please be advised there will be a Public Hearing at the Regular Council Meeting of July 25, 2016, to hear from interested parties related to the following zoning amendment:

Bylaw 2016-30, a bylaw to change to OCP designation at 19 Cousins Airfield Road

Starr MacDonald has applied to amend the OCP designation of her 2.5 hectare property located near Cousins Airstrip. The property is currently designated "Commercial – Service" and the new proposed designation is "Residential – Country". The property is located approximately 100 metres from the Alaska Highway right of way, with two separately owned country residential properties, also accessed from Cousins Airfield Road, located between her property and the highway.

Ms. MacDonald was owner when the Forestview Area Development Scheme (ADS) was completed in 2002. The ADS suggested that an RV park would be a good use for this land, and although Ms. MacDonald did some work towards constructing this use, the project was discontinued. She has continued to reside at the property ever since. Since the ADS was completed, most Forestview land along the Highway was claimed by First Nations as part of the land selection process. Due to these changes, new policy direction discouraging country residential development and a general lack of pressing need or resources, the ADS has gone largely unimplemented.

Ms MacDonald is now interested in selling this land, and has determined that there is little interest in it as a commercial property, but there is strong interest as a residential property.

Bylaw 2015-07 received 1st Reading on June 27, 2016. Notices were published in the newspapers on July 8 and 15, 2015. A total of 5 letters were sent to property owners within a kilometre of the subject property. Yukon Government Lands Department, Kwanlin Dün First Nation, and Ta'an Kwäch'än Council were also notified by mail. As per the requirements of the Municipal Act, the Minister of Community Services was also notified to review the bylaw and newspaper advertisements.

Kinden Kosick
Planner II

cc: Director of Development Services
Manager of Planning and Building Services



Minutes of the meeting of the Community Services Committee

Date	July 18, 2016
Location	Council Chambers, City Hall
Committee Members Present	Councillor Samson Hartland – Chair Councillor Jocelyn Curteanu – Vice Chair Mayor Dan Curtis Councillor Dan Boyd Councillor Robert Fendrick Councillor Betty Irwin Councillor Roslyn Woodcock
Staff Present	Christine Smith, City Manager Dave Pruden, Acting Director of Community and Recreation Services Mike Gau, Director of Development Services Peter O’Blenes, Director of Infrastructure and Operations Valerie Braga, Chief Financial Officer Jeff O’Farrell, Manager of Legislative Services

Your Worship, there is no report from the Community Services Committee



Minutes of the meeting of the Public Health and Safety Committee

Date	July 18, 2016
Location	Council Chambers, City Hall
Committee Members Present	Councillor Jocelyn Curteanu – Chair Councillor Robert Fendrick – Vice-Chair Mayor Dan Curtis Councillor Dan Boyd Councillor Samson Hartland Councillor Betty Irwin Councillor Roslyn Woodcock
Staff Present	Christine Smith, City Manager Dave Pruden, Acting Director of Community and Recreation Services Mike Gau, Director of Development Services Peter O’Blenes, Director of Infrastructure and Operations Valerie Braga, Chief Financial Officer Jeff O’Farrell, Manager of Legislative Services

Your Worship, the Public Health and Safety Committee respectfully submits the following report:

1. Hepatitis Awareness – For Information Only

Alyssa Carpenter and Sarah Cloutier addressed the Committee on behalf of Blood Ties Four Directions to raise awareness about the issue of hepatitis. They advised that Yukon has the highest rates of Hepatitis C in Canada – more than twice the national average – and on July 28th they will be hosting events to provide information to the public. The intent is to increase awareness and influence real change in disease prevention and access to testing, treatment and care.



Minutes of the meeting of the Development Services Committee

Date	July 18, 2016
Location	Council Chambers, City Hall
Committee Members Present	Councillor Betty Irwin – Chair Councillor Dan Boyd – Vice-Chair Mayor Dan Curtis Councillor Jocelyn Curteanu Councillor Robert Fendrick Councillor Samson Hartland Councillor Roslyn Woodcock
Staff Present	Christine Smith, City Manager Dave Pruden, Acting Director of Community and Recreation Services Mike Gau, Director of Development Services Peter O’Blenes, Director of Infrastructure and Operations Valerie Braga, Chief Financial Officer Jeff O’Farrell, Manager of Legislative Services

Your Worship, the Development Services Committee respectfully submits the following report:

1. Convention Bureau Update – For Information Only

Alida Munro and Ed Peart provided an update on the activities of the Yukon Convention Bureau over the past year. Mr. Peart thanked the Committee for the ongoing support provided to the Bureau, including the City’s financial contribution.



Minutes of the meeting of the Corporate Services Committee

Date	July 18, 2016
Location	Council Chambers, City Hall
Committee Members Present	Councillor Dan Boyd – Chair Councillor Roslyn Woodcock – Vice-Chair Mayor Dan Curtis Councillor Jocelyn Curteanu Councillor Robert Fendrick Councillor Samson Hartland Councillor Betty Irwin
Staff Present	Christine Smith, City Manager Dave Pruden, Acting Director of Community and Recreation Services Mike Gau, Director of Development Services Peter O’Blenes, Director of Infrastructure and Operations Valerie Braga, Chief Financial Officer Jeff O’Farrell, Manager of Legislative Services Victor Hopkins-LeCheminant, Information Technology Security Specialist

Your Worship, the Corporate Services Committee respectfully submits the following report:

1. **Contract Award – City Internet Services**

The contract for the provision internet services for the City is due for renewal. The City’s current service has been identified as being below the level of functionality required to conduct city business, and a request for proposals was issued to provide an open and fair means of identifying the best service. Two proposals were received in response to the request for proposals issued. An evaluation committee identified NorthwesTel as the winning proponent.

Administration has recommended a three-year contract since it is likely that there will be improvements in internet service or other service provider options available prior to the end of a five-year contract term. The price quoted is above the funding provided in the current and provisional operating budgets.

The Business and Technology Systems Department will re-allocate funds within the departmental budget for this year, but a budget amendment will be required for 2017 and 2018.

Recommendation

THAT the contract for the provision of City Internet Services be awarded to NorthweSTel Inc. for a three year term for a total value of \$240,948.00; and

THAT the 2017 and 2018 provisional operating budgets be amended by increasing the operating revenue and operating expenses for Internet Services in the amount of \$15,316.00, provisionally funded from the General Reserve.

2. City Arts Policy– For Information Only

The Committee was advised that the City’s Arts Policy states that the City seeks to designate for art a minimum of one percent of a building’s capital construction budget for City-funded public buildings. Since the City is planning to build a new Operations Building with a capital construction cost in excess of 35 million dollars, this means that the existing policy will require a minimum of \$350,000 for art work.

Notice of Motion

Councillor Boyd gave notice that at the next regular meeting of Council on July 25th 2016 he would bring forward a motion that reads as follows:

“THAT the City Arts Policy be brought forward for council review prior to the City proceeding to tender for the construction of a new City Operations Building.”



Minutes of the meeting of the City Planning Committee

Date July 18, 2016

Location Council Chambers, City Hall

Committee Members Present
Councillor Robert Fendrick – Chair
Councillor Samson Hartland – Vice-Chair
Mayor Dan Curtis
Councillor Dan Boyd
Councillor Jocelyn Curteanu
Councillor Betty Irwin
Councillor Roslyn Woodcock

Staff Present
Christine Smith, City Manager
Dave Pruden, Acting Director of Community and Recreation Services
Mike Gau, Director of Development Services
Peter O’Blenes, Director of Infrastructure and Operations
Valerie Braga, Chief Financial Officer
Jeff O’Farrell, Manager of Legislative Services

Your Worship, there is no report from the City Planning Committee



Minutes of the meeting of the City Operations Committee

Date	July 18, 2016
Location	Council Chambers, City Hall
Committee Members Present	Councillor Roslyn Woodcock – Chair Councillor Betty Irwin – Vice Chair Mayor Dan Curtis Councillor Dan Boyd Councillor Jocelyn Curteanu Councillor Robert Fendrick Councillor Samson Hartland
Staff Present	Christine Smith, City Manager Dave Pruden, Acting Director of Community and Recreation Services Mike Gau, Director of Development Services Peter O’Blenes, Director of Infrastructure and Operations Valerie Braga, Chief Financial Officer Jeff O’Farrell, Manager of Legislative Services Taylor Eshpeter, Assistant City Engineer

Your Worship, the City Operations Committee respectfully submits the following report:

1. Amend Infrastructure and Operations Capital Budget

Over the past few years the City has embarked on a comprehensive asset management program. The 2016 capital budget includes funds for this project, and the City applied to Community Services for additional funding from the Yukon Asset Management Fund. Confirmation has now been received that a grant has been approved. The grant allows the City to increase the scope of the asset management project and therefore a budget amendment is required.

The Committee asked for details regarding the work already budgeted for, and also for information on planned enhancements related to the increased budget.

Recommendation

THAT the 2016 to 2019 capital budget be amended by increasing the Asset Management Project in the amount of \$40,000.00, funded by a grant from Yukon Government Department of Community Services.

2. Contract Award – McLean Lake Connector Road Base Construction

The construction of the Hamilton Boulevard Extension included a connector road to McLean Lake Road that has not yet been completed. The McLean Lake Road is currently only accessible by an entrance from the Alaska Highway that does not fit with the long term functional planning for the highway corridor. Completion of the McLean Lake Connector Road will divert traffic to the Hamilton Boulevard Extension which has signalized traffic control at the Alaska Highway. Diverting traffic to a signalised intersection and separating industrial and residential traffic will provide significant safety improvements. Upon completion of the project, McLean Lake Road will be truncated below the connector road.

Four bids were received in response to a tender issued for the construction of the road base and drainage ditches. The tender review committee agreed that the low bidder is familiar with the scope of the work and the project objectives, and has the skills and ability to conduct the work successfully.

The 2016 budget has sufficient funds for the contract award. A second contract will be issued next month for the paving portion of the project. 100% of the funding for this project is being provided through Build Canada's Small Community Fund.

Recommendation

THAT the construction contract for the McLean Lake Connector Road Base Construction Project be awarded to P.S. Sidhu Trucking Ltd. for a net cost to the City of \$178,339.75.

ADMINISTRATIVE REPORT

TO:	Mayor and Council
FROM:	Administration
DATE:	July 25, 2016
RE:	Motion to Review Arts Policy

ISSUE

On July 18, 2016 Councillor Boyd provided notice that he would bring forward at the next regular meeting of council a motion to review the existing Arts Policy. In accordance with the Procedures Bylaw, the motion is now being brought forward for council's consideration.

REFERENCE

Arts Policy adopted by Resolution #2000-01-12 on January 10, 2000

HISTORY

The development of an Arts Policy to guide Council in its participation, involvement and support of the arts in the community was prioritized in the 1999 Strategic Plan. The policy adopted by council in January 2000 applies to the City of Whitehorse and arts-related activities within municipal boundaries. The purpose of the policy is to guide City decisions on planning, programming and the allocation of resources, and to facilitate broad participation in the arts by residents and visitors.

ALTERNATIVES

1. Approve the review of the Arts Policy
2. Do not approve the review

ANALYSIS

The existing policy includes ten policy directions, one of which is that "The City seeks to designate for Art a minimum of one percent of a building's capital construction budget for city-funded public buildings". This capital construction budget excludes site servicing, landscaping, furniture, fixture and equipment costs, and consulting costs. Under this policy direction there are two desired outcomes:

- (1) Acquisition of public art will be mandated for installation in all City-owned public buildings such as recreation centers, city administrative offices and atriums.
- (2) All new public buildings will have an art component funded by the 1% for art.

The policy does not include a definition for public buildings beyond what is noted in the first desired outcome statement. It may therefore be interpreted to mean that all city-owned buildings are public buildings. However, it may also be interpreted to mean only

those buildings typically open for public access and use, such as those described. Typical examples would be City Hall, the Canada Games Centre, and the Frank Slim Building in Shipyards Park.

Any review of the policy should, among other things, clearly define what is meant by a city-owned public building.

If the latter interpretation is used, the new municipal operations building would not be subject to the art component requirement as it is not intended to be open to the public. In fact, the primary purposes of the building are required to be separate from the public.

The most recent example where the art component was applied is the Public Safety Building. This building is used primarily by staff and not normally by the public, but the administrative offices for Bylaw Services may be considered a public space. In addition, the “gateway” location of the building made it a logical place for outdoor artworks.

The tender for the design of the operations building does not include designing spaces for public art. That is typical for municipal building projects; for the Public Safety Building and the Canada Games Centre spaces for art were identified and requests for proposals were prepared after the buildings were completed.

With the recent addition of a Policy Analyst to City staff, all existing policies are being prioritized for review. If council approves the motion proposed, the Arts Policy would be moved up on the priority list.

MOTION TO BE CONSIDERED

THAT the City Arts Policy be brought forward for council review prior to the City proceeding to tender for the construction of a new City Operations Building.

CITY OF WHITEHORSE
BYLAW 2016-32

A bylaw to authorize a land exchange agreement

WHEREAS section 265 of the *Municipal Act* (2002) provides that council may pass bylaws for municipal purposes respecting the municipality's sale, management, mortgaging, construction, leasing, renting or any other dealings with any real or personal property, or any interest in land, buildings or other improvements on land or personal property; and

WHEREAS council deems it desirable to enter an agreement with Northwestel Inc. for the exchange of land parcels to facilitate the development of a municipal operations building;

NOW THEREFORE the council of the municipality of the City of Whitehorse, in open meeting assembled, hereby ENACTS AS FOLLOWS:

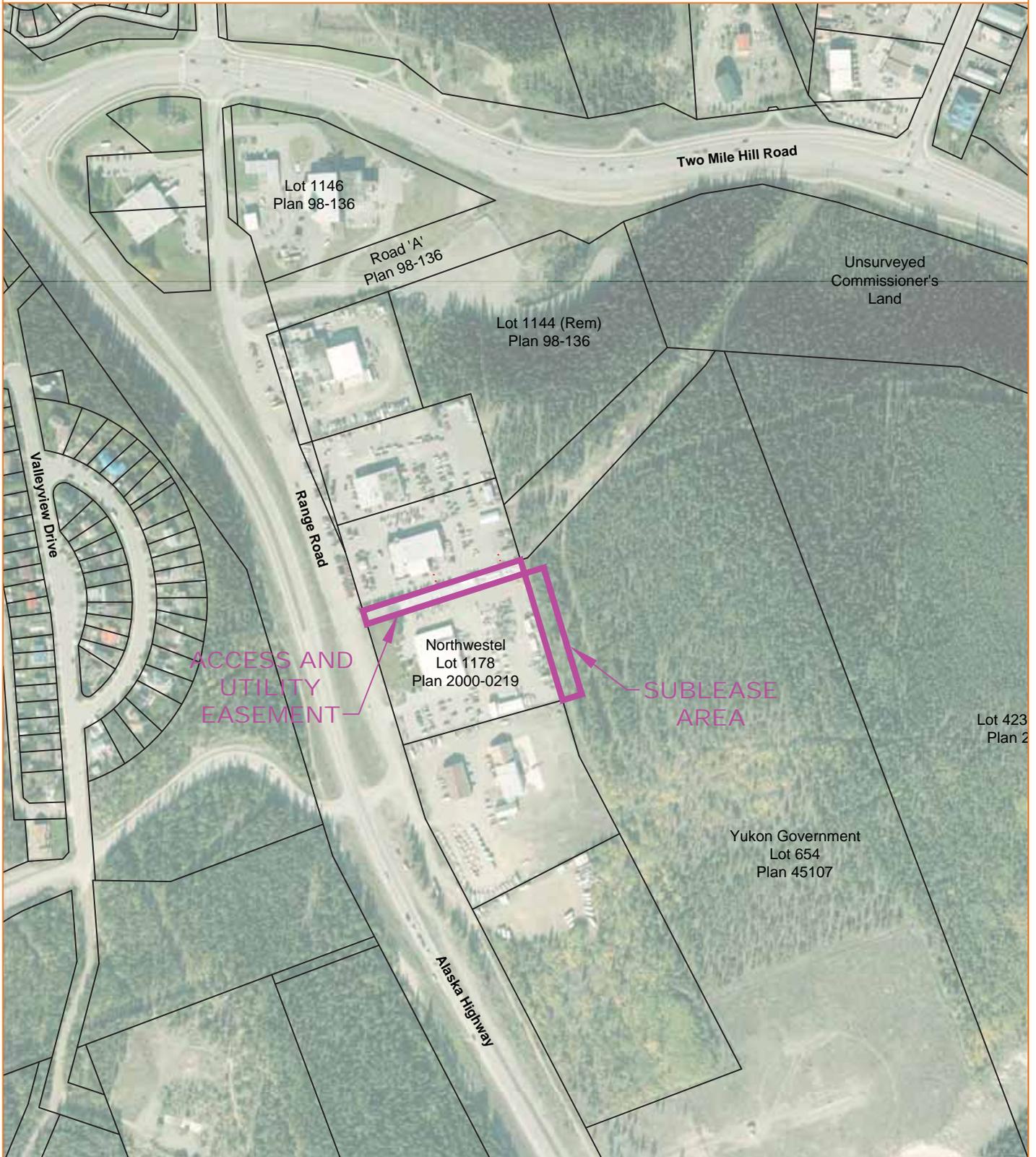
1. The City of Whitehorse is hereby authorized to enter into an agreement with NorthweSTel Inc. for the exchange of a portion of Lot 1178, Quad 105 D11, 84261 CLSR, Plan 2000-0219 LTO for a portion of Lot 654 (Rem), Group 804, Plan 60441 CLSR, 45107 LTO, as shown on the sketch attached hereto as Appendix "A" and forming part of this bylaw.
2. The Mayor and Assistant City Clerk are hereby authorized to execute on behalf of the City of Whitehorse the land exchange agreement attached hereto as Appendix "B" and forming part of this bylaw.
3. The Mayor and Assistant City Clerk are hereby authorized to execute on behalf of the City of Whitehorse all documentation necessary to complete in an expeditious manner the sub-lease and easement agreements included in the land exchange agreement attached hereto as Appendix "B".
4. The Mayor and Assistant Clerk are hereby authorized to execute on behalf of the City of Whitehorse all documentation necessary to complete in an expeditious manner the acquisition and transfer of titles for the lands contemplated in the land exchange agreement attached hereto as Appendix "B".
5. This bylaw shall come into full force and effect upon the final passing thereof.

FIRST and SECOND READING: July 11, 2016

THIRD READING and ADOPTION:

Mayor

Assistant City Clerk



Bylaw 2016-32

A bylaw to enter a land exchange agreement with Northwestel Inc.

LEGEND

 SUBJECT AREAS

LAND EXCHANGE AGREEMENT

THIS AGREEMENT DATED the ____ day of _____, 2016

BETWEEN:

The City of Whitehorse,
a municipal corporation constituted
under the Yukon *Municipal Act*

(the "City")

AND:

Northwestel Inc.,
a corporation registered as an extra-territorial corporation
under the Yukon *Business Corporations Act*

("Northwestel")

being collectively the parties (the "Parties") to this land exchange agreement (the "Agreement").

WHEREAS

A. Pursuant to a lease agreement dated the ____ day of _____, 2016 between the City and the Government of Yukon (the "Head Lease"), the City holds a leasehold interest in an approximately eight (8) hectare parcel of land, being a portion of those lands and premises legally described as:

Lot 654
Group 804
Plan 45107
Whitehorse, Yukon Territory

(the "City Lot").

B. Northwestel is the registered owner in fee simple of those lands and premises legally described as:

Lot 1178
Plan 2000-0219
Quad 105 D/11
Whitehorse, Yukon Territory

(the "Northwestel Lot").

C. The City proposes to build a facility on a portion of the City Lot.

- D. In order to access the City Lot, the City requires an access road (the “Road”) through a portion of the Northwestel Lot.
- E. Northwestel has agreed to grant an easement to the City over a portion of the Northwestel Lot to enable the City to build the Road.
- F. In return, the City has agreed to:
 - (i) sublease a portion of the City Lot to Northwestel; and
 - (ii) complete certain work on the Northwestel Lot and the City Lot.

THEREFORE, in consideration of these mutual promises, the Parties hereby covenant and agree as follows:

1. DEFINITIONS

1.1 In this Agreement:

“**Access Point**” has the meaning ascribed thereto in section 7.1 of this Agreement.

“**Access Road**” has the meaning ascribed thereto in section 7.1 of this Agreement.

“**Agreement**” means this land exchange agreement and any amendments thereto.

“**Area**” has the meaning ascribed thereto in section 6.3 of this Agreement.

“**Business Day**” means any day that is not a Saturday, Sunday or a statutory holiday in Whitehorse, Yukon Territory.

“**City**” has the meaning ascribed thereto in the preamble of this Agreement.

“**City Lot**” has the meaning ascribed thereto in the preamble of this Agreement.

“**City Portion**” means the approximately one thousand nine hundred and eighty-three (1,983) square meter portion of the Northwestel Lot set out as the City Portion R.O.W. in the Site Option Sketch.

“**City Portion Transfer**” has the meaning ascribed thereto in section 8.4 of this Agreement.

“**Easement**” has the meaning ascribed thereto in section 4.1 of this Agreement.

“**Easement Agreement**” has the meaning ascribed thereto in section 4.3 of this Agreement.

“**Existing Fencing**” has the meaning ascribed thereto in section 5.2 of this Agreement.

“**Existing Parking Lot Infrastructure**” has the meaning ascribed thereto in section 5.8 of this Agreement.

“**Future Development**” has the meaning ascribed thereto in section 9.1 of this Agreement.

“**Head Lease**” has the meaning ascribed thereto in the preamble of this Agreement.

“**Landscaping Irrigation**” has the meaning ascribed thereto in section 5.6(c) of this Agreement.

“**Northwestel**” has the meaning ascribed thereto in the preamble of this Agreement.

“**Northwestel Lot**” has the meaning ascribed thereto in the preamble of this Agreement.

“**Northwestel Portion**” means the approximately two thousand two hundred and twenty-three (2,223) square meter portion of the City Lot along the eastern boundary of the Northwestel Lot set out as the Northwestel Portion in the Site Option Sketch.

“**Northwestel Portion Transfer**” has the meaning ascribed thereto in section 8.1 of this Agreement.

“**Parties**” has the meaning ascribed thereto in the preamble of this Agreement, and “**Party**” means either one of the Parties.

“**Removed Pavement**” has the meaning ascribed thereto in section 6.1 of this Agreement.

“**Renewal Term**” has the meaning ascribed thereto in section 3.3 of this Agreement.

“**Road**” has the meaning ascribed thereto in the preamble of this Agreement.

“**Schedules**” has the meaning ascribed thereto in section 2.1 of this Agreement.

“**Secondary Access Location**” has the meaning ascribed thereto in section 6.2 of this Agreement.

“**Site Option Sketch**” means the City Operations Building Proposed Access Road Northwestel Site Option sketch dated October 30, 2015 attached as Schedule “A” to this Agreement.

“**Sublease**” has the meaning ascribed thereto in section 3.1 of this Agreement.

“**Sublease Agreement**” has the meaning ascribed thereto in section 3.4 of this Agreement.

“**Surfacing**” has the meaning ascribed thereto in section 6.3 of this Agreement.

2. SCHEDULES

2.1 The following schedules are attached to and incorporated into this Agreement by reference and are considered to be part of this Agreement:

- Schedule “A” - Site Option Sketch
- Schedule “B” - Sublease Agreement
- Schedule “C” - Easement Agreement

(collectively, the “Schedules”).

3. SUBLEASE

3.1 The City shall sublease to Northwestel the Northwestel Portion (the “Sublease”).

3.2 The term of the Sublease shall be the term of the Head Lease less one day.

3.3 If the Head Lease contains a renewal term (the "Renewal Term") and the Head Lease is renewed for such term, then Northwestel shall be entitled to renew the Sublease for the Renewal Term less one day.

3.4 The City shall execute and deliver to Northwestel a sublease agreement substantially in the form attached as Schedule "B" to this Agreement (the "Sublease Agreement") by the ____ day of _____, 2016.

4. EASEMENT

4.1 Northwestel shall grant to the City an access and utility easement over the City Portion (the "Easement") for the purposes of permitting the City to: (i) construct the Road; (ii) lay down, operate and maintain various utilities in the easement area; and (iii) use the easement area as an access corridor for vehicles, pedestrians, equipment and machinery to provide ingress to and egress from the City Lot by the City and all of the City's customers, clients, patrons, visitors, guests and invitees.

4.2 The term of the Easement shall be for the term of the Sublease, including any renewals.

4.3 Northwestel shall execute and deliver to the City an easement agreement substantially in the form attached as Schedule "C" to this Agreement (the "Easement Agreement") by the ____ day of _____, 2016.

4.4 The City shall pay:

- (a) all costs incurred by the City with respect to the Easement and the Easement Agreement, including all costs associated with the construction of the Road; and
- (b) all survey costs, land titles registration fees and reasonable legal costs incurred by Northwestel with respect to the Easement and the Easement Agreement.

5. WORK ON THE NORTHWESTEL PORTION AND THE CITY PORTION

5.1 The City shall relocate or arrange for the relocation of materials and equipment located on the City Portion to another location within Lot 1178 or the Northwestel Portion, as directed by Northwestel.

5.2 The City shall remove, or arrange for the removal of, all existing fencing along the eastern boundary of the Northwestel Lot (the "Existing Fencing"). Prior to this removal the City shall supply and install, or arrange for the installation of new fencing along the entire boundary separating the Northwestel Portion from the City Lot..

5.3 The City shall clear and strip organics from the Northwestel Portion.

5.4 The City shall surface the Northwestel Portion with one hundred and fifty (150) millimeters of twenty (20) millimeter crushed gravel, or other greater depth as recommended by the City's consulting geotechnical engineer.

5.5 The City shall supply and install, or arrange for the supply and installation of, new fencing along the entire southern boundary of the City Portion indicated by drawing note eight (8) on the Site Option Sketch. This new fencing shall be equivalent in all ways to the Existing Fencing.

5.6 For the construction of a new parking lot area for Northwestel to replace the Northwestel parking lot area to be lost due to the Road, the City shall:

- (a) clear the trees from;
- (b) strip sod and organics from;
- (c) remove any landscaping irrigation (the “Landscaping Irrigation”) from;
- (d) surface with one hundred and fifty (150) millimeters of twenty (20) millimeter crushed gravel, or other greater depth as required by the City’s consulting geotechnical engineer; and
- (e) surface with fifty (50) millimeters of asphalt pavement

the approximately five hundred and eighty (580) square meter area on the northwest corner of the Northwestel Lot indicated by drawing note one (1) on the Site Option Sketch.

5.7 The City shall re-install, or arrange for the re-installation of, the Landscaping Irrigation as necessary to provide irrigation of the remaining grassed areas.

5.8 The City shall remove all electrical cabinets, plug-in connections and timbered supports (the “Existing Parking Lot Infrastructure”) for 28 existing parking spaces from the existing Northwestel parking lot located on the City Portion and indicated by drawing note three (3) on the Site Option Sketch

5.9 The City shall re-install, or arrange for the re-installation of, the Existing Parking Lot Infrastructure on the Northwestel Lot with respect to thirty (30) parking spaces located south and southwest of the southern boundary of the City Portion indicated by drawing notes five (5) and six (6) on the Site Option Sketch. The re-installation of the Existing Parking Lot Infrastructure shall be in accordance with the parking lot design layout set out in, and indicated by drawing notes five (5) and six (6) on, the Site Option Sketch.

5.10 Unless otherwise agreed by the Parties, the City may install, or arrange for the installation of, a new pole and guy anchor wire on the Northwestel Portion as indicated by drawing note nine (9) on the Site Option Sketch.

5.11 Northwestel may install receptacles on the Northwestel Lot in the area indicated by drawing note seven (7) on the Site Option Sketch. Northwestel shall pay all costs associated with the installation of such receptacles.

5.12 Unless otherwise provided in section 5 of this Agreement, the City shall pay all costs associated with the work set out in section 5 of this Agreement.

6. SECONDARY ACCESS TO THE NORTHWESTEL LOT

6.1 In constructing the Road, the City may remove from the City Portion a section of asphalt pavement (the “Removed Pavement”).

6.2 Northwestel shall determine a location for a secondary access from Range Road to the Northwestel Lot (the “Secondary Access Location”).

6.3 Subject to section 6.5, when the City has been notified of the Secondary Access Location, the City shall surface an area determined by Northwestel (the “Area”) at the Secondary Access Location with one hundred and fifty (150) millimeters of twenty (20) millimeter crushed gravel or greater depth as recommended by the City’s consulting geotechnical engineer, and fifty (50) millimeters of asphalt pavement (the “Surfacing”). The Area shall be approximately the size of the Removed Pavement.

6.4 Northwestel may supply and install a gate when required at the Secondary Access Location for access to and ingress from the Northwestel Lot. Northwestel shall pay for all costs associated with the supply and installation of the gate.

6.5 At the City’s option, the City may coordinate the Surfacing with the supply and installation of the gate by Northwestel.

6.6 The City shall pay all reasonable costs associated with the Surfacing.

7. ACCESS ROAD ALONG EASTERN BOUNDARY OF THE NORTHWESTEL PORTION

7.1 If the City constructs an access road along the eastern boundary of the Northwestel Portion (the “Access Road”), then the City shall construct one approximately five (5) meter wide graveled access point (the “Access Point”) from the Access Road to the Northwestel Portion at a location to be determined by mutual agreement of the Parties.

7.2 The City shall have no obligation to construct the Access Road.

7.3 The City shall pay all reasonable costs associated with the construction of the Access Point.

8. LAND EXCHANGE

8.1 Subject to approval by the Council of the City of Whitehorse, if the City becomes the registered owner of an estate in fee simple of the Northwestel Portion, then the City shall transfer to Northwestel its interest in the Northwestel Portion, free and clear of all encumbrances other than restrictive covenants, reservations and exceptions in the original grant from the crown and easements in favour of utilities and public authorities, for the nominal sum of one (\$1.00) dollar (the “Northwestel Portion Transfer”).

8.2 The Northwestel Portion Transfer shall occur within one (1) year of the City becoming the registered owner of an estate in fee simple of the Northwestel Portion unless otherwise agreed by the Parties in writing.

8.3 The City shall have no obligation to become, or to endeavor to become, the registered owner of an estate in fee simple of the Northwestel Portion.

8.4 If the Northwestel Portion Transfer is complete, then Northwestel shall transfer to the City a fee simple interest in the City Portion, free and clear of all encumbrances other than encumbrances agreed by the Parties in writing, for the nominal sum of one (\$1.00) dollar (the “City Portion Transfer”).

8.5 The City Portion Transfer shall occur concurrently with the Northwestel Portion Transfer unless otherwise agreed by the Parties in writing.

8.6 The City shall pay:

- (a) all costs incurred by the City with respect to the Northwestel Portion Transfer and the City Portion Transfer; and
- (b) all survey costs, land titles registration fees and reasonable legal costs incurred by Northwestel with respect to the Northwestel Portion Transfer and the City Portion Transfer.

9. FURTHER DEVELOPMENT

9.1 The City acknowledges that Northwestel intends to further develop portions of the Northwestel Lot excluding the City Portion (the “Future Development”).

9.2 The City shall use its best efforts to accommodate any Future Development, subject to:

- (a) restrictions imposed by law;
- (b) restrictions imposed by applicable City of Whitehorse regulations, policies and by-laws, including zoning by-laws; and
- (c) final approval of the Council of the City of Whitehorse, if required.

10. FURTHER ASSURANCES

10.1 Each of the Parties shall at all times hereafter execute and deliver at the request of the other Party all such further documents, deeds and instruments, and shall do and perform all such further acts as may be reasonably necessary to give full effect to the intent and meaning of this Agreement.

10.2 Northwestel shall grant to the City sufficient access to the Northwestel Lot to enable the City to complete the obligations of the City set out in this Agreement in a timely manner. Access shall be at the sole discretion of Northwestel.

10.3 The City shall make all reasonable efforts to minimize the impact of the activities and work to be undertaken by the City as set out in this Agreement on the operations of Northwestel.

11. GENERAL

11.1 **Amendment.** Any amendments to this Agreement shall be made in writing and executed by both Parties.

11.2 **Entire Agreement.** This Agreement, including the executed Schedules, is the entire agreement between the Parties relating to the subject matter hereof and supersedes any prior agreement. Neither Party is bound by any representation, warranty or agreement not included in this Agreement or the executed Schedules and, in particular, no representation or warranty of a Party not expressed in this Agreement or the executed Schedules is to be implied.

11.3 **Number and Gender.** Wherever the singular or masculine is used in this Agreement the same shall be construed as meaning the plural or the feminine or body corporate or politic where the context or the Parties so require.

11.4 **Headings.** The paragraph headings used throughout this Agreement form no part hereof and are inserted for convenience and internal reference only and are not to be relied upon or considered by any person in the interpretation thereof.

11.5 **Enurement.** This Agreement is binding upon and enures to the benefit of the City and Northwestel and their heirs, executors, administrators, successors and permitted assigns.

11.6 **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the Yukon Territory and the laws of Canada applicable therein.

11.7 **Notice.** Any written communication or notice required pursuant to this Agreement shall be given by personal delivery to the undersigned or by prepaid mail to the address set out below. A notice shall be considered to be received if delivered personally, on the date of delivery, or if delivered by mail, three (3) Business Days after mailing.

If to the City:

City of Whitehorse
2121 Second Avenue
Whitehorse, Yukon Y1A 1C2
Attention: Peter O'Blenes, P. Eng.,
Director, Infrastructure & Operations

If to Northwestel:

Northwestel Inc.
Box 2727, 301 Lambert Street
Whitehorse, Yukon Y1A 4Y4
Attention: Stan Thompson,
CFO & VP Corporate Services

11.8 **Time.** Time is of the essence of this Agreement.

11.9 **Severability.** If any of the terms or provisions of this Agreement are found invalid or unenforceable in whole or in part, then the remaining terms and provisions shall continue in full force and effect.

11.10 **Assignment.** Neither Party shall assign this Agreement without the prior written consent of the other Party.

11.11 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which shall together constitute one and the same document.

IN WITNESS WHEREOF the Parties have duly executed this Agreement under seal at the City of Whitehorse, in the Yukon Territory as of the day and year first above written.

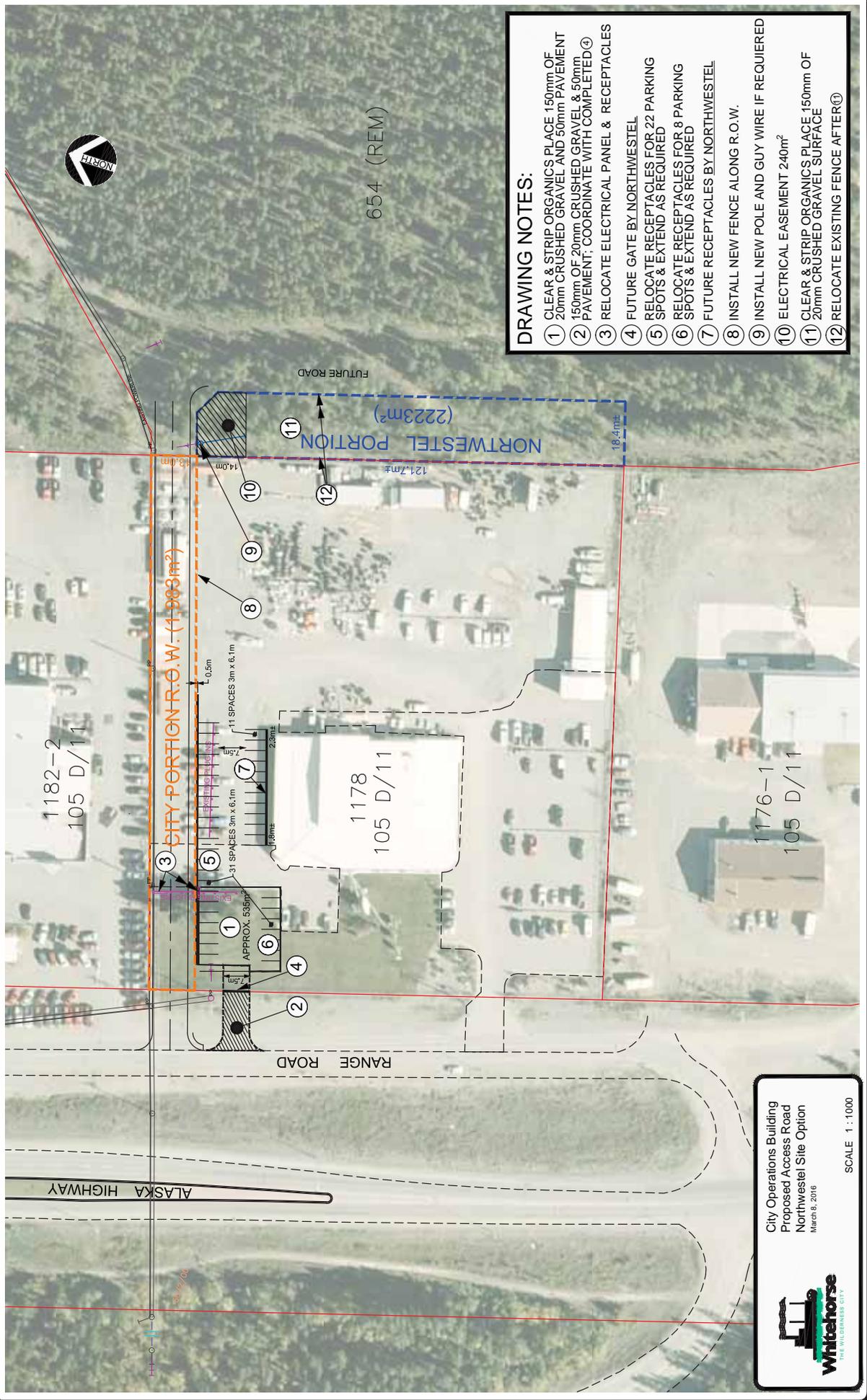
THE CORPORATE SEAL OF)
)
NORTHWESTEL INC.)
was hereunto affixed)
in the presence of:)
)
)
)
)
)
_____)
Ken Gibbons,)
Director of Finance)
)
)
)
)
)
_____)
Leslie McRae,)
Secretary)

c/s

THE CORPORATE SEAL OF)
)
THE CITY OF WHITEHORSE)
was hereunto affixed)
in the presence of:)
)
)
)
)
_____)
Dan Curtis, Mayor)
)
)
)
)
)
_____)
Norma Felker,)
Assistant City Clerk)
)

c/s

SCHEDULE "A" SITE OPTION SKETCH



- DRAWING NOTES:**
- ① CLEAR & STRIP ORGANICS PLACE 150mm OF 20mm CRUSHED GRAVEL AND 50mm PAVEMENT
 - ② 150mm OF 20mm CRUSHED GRAVEL & 50mm PAVEMENT, COORDINATE WITH COMPLETED ④
 - ③ RELOCATE ELECTRICAL PANEL & RECEPTACLES
 - ④ FUTURE GATE BY NORTHWESTEL
 - ⑤ RELOCATE RECEPTACLES FOR 22 PARKING SPOTS & EXTEND AS REQUIRED
 - ⑥ RELOCATE RECEPTACLES FOR 8 PARKING SPOTS & EXTEND AS REQUIRED
 - ⑦ FUTURE RECEPTACLES BY NORTHWESTEL
 - ⑧ INSTALL NEW FENCE ALONG R.O.W.
 - ⑨ INSTALL NEW POLE AND GUY WIRE IF REQUIRED
 - ⑩ ELECTRICAL EASEMENT 240m²
 - ⑪ CLEAR & STRIP ORGANICS PLACE 150mm OF 20mm CRUSHED GRAVEL SURFACE
 - ⑫ RELOCATE EXISTING FENCE AFTER ⑪



 City Operations Building
 Proposed Access Road
 Northwestel Site Option
 March 8, 2016
 SCALE 1 : 1000

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT dated the ____ day of _____, 2016.

BETWEEN

The City of Whitehorse,
a municipal corporation constituted
under the Yukon *Municipal Act*

(the “City”)

AND:

Northwestel Inc.,
a corporation registered as an extra-territorial corporation
under the Yukon *Business Corporations Act*

(“Northwestel”)

being collectively the parties (the “Parties”) to this sublease agreement (the “Agreement”).

WHEREAS:

A. By lease agreement dated the ____ day of _____, 2016 (the “Head Lease”) between the City and the Government of Yukon (the “Head Lessor”), the Head Lessor leased to the City the approximately eight (8) hectare parcel of land outlined in red in the Head Lessor’s Energy, Mines and Resources Land Management Branch City of Whitehorse Lease Mapsheet sketch dated January 29, 2016 attached as Schedule “A” to this Agreement, being a portion of those lands and premises legally described as:

Lot 654
Group 804
Plan 45107
Whitehorse, Yukon Territory
(the “Leased Lands”)

for a term of thirty (30) years commencing on the ____ day of _____, 2016 and ending on the ____ day of _____, 2046.

B. The City has agreed to sublease to Northwestel the approximately two thousand two hundred and twenty-three (2,223) square meter portion of the Leased Lands set out as the “Northwestel Portion” in the City Operations Building Proposed Access Road Northwestel Site Option sketch dated March 8, 2016 attached as Schedule “B” to this Agreement (the “Subleased Lands”) upon the terms and conditions set forth in this Agreement.

C. Northwestel desires to use the Subleased Lands for outdoor storage of equipment, materials and any other items required by Northwestel.

D. The consent of the Head Lessor to this Agreement is not required under the terms of the Head Lease.

THEREFORE, in consideration of these mutual promises, the Parties hereby covenant and agree as follows:

1. DEFINITIONS

1.1 In this Agreement:

“**Additional Costs**” has the meaning ascribed thereto in section 7.1 of this Agreement.

“**Additional Rent**” has the meaning ascribed thereto in section 7.4 of this Agreement.

“**Agreement**” means this sublease agreement and any amendments thereto.

“**Applicable Provisions**” has the meaning ascribed thereto in section 11.1 of this Agreement.

“**Basic Rent**” has the meaning ascribed thereto in section 6.1 of this Agreement.

“**Business Day**” means any day that is not a Saturday, Sunday or a statutory holiday in Whitehorse, Yukon Territory.

“**City**” has the meaning ascribed thereto in the preamble of this Agreement.

“**Commencement Date**” has the meaning ascribed thereto in section 4.1 of this Agreement.

“**Expiry Date**” has the meaning ascribed thereto in section 4.1 of this Agreement.

“**Head Lease**” has the meaning ascribed thereto in the preamble of this Agreement.

“**Head Lessor**” has the meaning ascribed thereto in the preamble of this Agreement.

“**Land Exchange Agreement**” means the land exchange agreement between the Parties dated the ____ day of _____, 2016.

“**Leased Lands**” has the meaning ascribed thereto in the preamble of this Agreement.

“**Northwestel**” has the meaning ascribed thereto in the preamble of this Agreement.

“**Northwestel’s Proportionate Share**” has the meaning ascribed thereto in section 7.2 of this Agreement.

“**Northwestel Request**” has the meaning ascribed thereto in section 14.1 of this Agreement.

“**Parties**” has the meaning ascribed thereto in the preamble of this Agreement, and “**Party**” means either one of the Parties.

“**person**” includes individuals, corporations, partnerships, associations, trusts, unincorporated organizations, governmental bodies and other legal or business entities.

“**Public Utilities**” has the meaning ascribed thereto in section 7.1(b) of this Agreement.

“**Renewal Term**” has the meaning ascribed thereto in the Head Lease.

“**Sales Tax**” has the meaning ascribed thereto in section 7.1(a) of this Agreement.

“**Schedules**” has the meaning ascribed thereto in section 2.1 of this Agreement.

“**Sublease Renewal Term**” has the meaning ascribed thereto in section 5.1 of this Agreement.

“**Subleased Lands**” has the meaning ascribed thereto in the preamble of this Agreement.

“**Term**” has the meaning ascribed thereto in section 4.1 of this Agreement.

“**Utilities**” means any and all usual and ordinary municipal utilities including gas pipelines, electrical power and telephone distribution and transmission systems, fibre optic communication systems, sanitary and storm sewer mains, water mains, surface drainage swales, roads, curbs, gutters, sidewalks, ditches, storm water outfalls, community antenna television systems and any other utility lines and systems or any one or more of them, together with the usual and ordinary appurtenances incidental thereto.

2. SCHEDULES

2.1 The following schedules are attached to and incorporated into this Agreement by reference and are considered to be part of this Agreement:

Schedule “A” - Lease Mapsheet Sketch
Schedule “B” - Site Option Sketch

(collectively, the “Schedules”).

3. SUBLEASE

3.1 The City hereby subleases the Subleased Lands to Northwestel on the terms and conditions contained in this Agreement.

3.2 Northwestel acknowledges that:

- (a) it has inspected the Subleased Lands prior to taking possession thereof;
- (b) except as specifically provided in this Agreement and in the Land Exchange Agreement:
 - (i) the Subleased Lands are being accepted in an “as is” condition;
 - (ii) the City is not responsible for performing any leasehold improvements or other work on the Subleased Lands; and
 - (iii) the City makes no representations or warranties as to the state of the Subleased Lands;
- (c) the taking of possession of the Subleased Lands is conclusive evidence as against Northwestel that, at the time of possession, the Subleased Lands were acceptable; and
- (d) it has received a copy of the Head Lease and agrees to abide by the terms of the Head Lease that are incorporated into this Agreement pursuant to this Agreement.

4. TERM

4.1 The term of this Agreement shall be for a period of thirty (30) years less one (1) day (the "Term") commencing on the ____ day of _____, 2016 (the "Commencement Date") and ending on the ____ day of _____, 2046 (the "Expiry Date").

5. RENEWAL

5.1 If:

- (a) Northwestel has performed and observed all of the covenants and conditions of Northwestel contained in this Agreement;
- (b) Northwestel has requested, in writing, a renewal of this Agreement at least ninety (90) days prior to the Expiry Date; and
- (c) the Head Lease is renewed,

then the City shall grant to Northwestel a renewal of this Agreement for the Renewal Term less one (1) day (the "Sublease Renewal Term") upon essentially the same terms and conditions as contained in this Agreement with the exception of the right of renewal unless otherwise agreed by the Parties in writing.

6. RENT

6.1 Northwestel shall to pay to the City without deduction, abatement or set-off the sum of thirty (\$30.00) dollars for the Term of this Agreement as basic rent (the "Basic Rent").

6.2 Basic Rent shall be payable on the Commencement Date.

7. ADDITIONAL RENT

7.1 During the Term of this Agreement, Northwestel shall pay to the City or as the City otherwise directs:

- (a) any multi-stage sales tax levied or imposed by the federal and territorial government, whether in the form of a harmonized sales tax, goods and services tax, a value-added tax, a national sales tax or business transfer tax (collectively, a "Sales Tax") to the extent that any such tax is imposed on any Basic Rent or any Additional Rent or any portion thereof payable by Northwestel under this Agreement;
- (b) all rates and charges for all public utilities supplied to the Subleased Lands (including works and services in connection therewith) as well as any municipal sewer charges or levies respecting the Subleased Lands (the "Public Utilities");
- (c) every tax, rate, duty, assessment and license fee in respect of any and every business conducted on or from the Subleased Lands and on account of the use or occupancy of the Subleased Lands by Northwestel including, without limitation, all business taxes, rates and licenses;
- (d) all premiums for insurance required to be effected by Northwestel under this Agreement;

- (e) all costs payable by the City under the terms of the Head Lease relating to the repair and maintenance of the Subleased Lands;
- (f) all costs associated with the construction, installation, maintenance and use of Utilities on the Subleased Lands that Northwestel requires for its use and enjoyment of the Subleased Lands pursuant to section 12.3 of this Agreement;
- (g) with the exception of money payable under section 4.2 of the Head Lease, Northwestel's Proportionate Share of any and all costs and amounts that the City is required to pay under the Head Lease including, without limiting the generality of the foregoing, any remediation costs and fees pursuant to section 8 of the Head Lease; and
- (h) any and all other costs and amounts that Northwestel is required to pay pursuant to this Agreement

(collectively, the "Additional Costs").

7.2 Unless otherwise agreed by the Parties, acting reasonably, or otherwise provided in this Agreement, "Northwestel's Proportionate Share" shall be the fraction, the numerator of which is the area of the Subleased Lands and the denominator of which is the area of the Leased Lands.

7.3 Provided that Northwestel's use of any Public Utilities or Utilities that are not separately metered for the Subleased Lands is consistent with the normal use for the Subleased Lands, Northwestel's share of such charges shall be Northwestel's Proportionate Share. If Northwestel has excessive use of any such Public Utility or Utility, the City may make such allocation as is reasonable in the circumstances.

7.4 With the exception of Sales Tax, all Additional Costs shall be additional rent (the "Additional Rent") for the purposes of this Agreement and shall be payable on the date and in the manner set out in the Head Lease or, if no provision is made for such payment under the Head Lease, as directed by the City in writing.

7.5 If and so often as Northwestel neglects or omits to pay all or any portion of the amounts payable as Additional Rent when the same become due and payable, the City shall be entitled to pay the same and collect the same from Northwestel as rent hereby reserved and in arrears. Notwithstanding that Sales Tax is not Additional Rent, the City shall have the same rights and remedies against Northwestel in the event of any failure by Northwestel to pay the same as it has for a failure by Northwestel to pay Additional Rent.

7.6 The City shall pay all property taxes levied or imposed on the City with respect to the Subleased Lands.

8. INSURANCE

8.1 Northwestel shall take out and maintain, at its expense, from and after the earlier of the date Northwestel takes occupancy of the Subleased Lands and the Commencement Date in the names of Northwestel, the City, the Head Lessor and every mortgagee of the Subleased Lands:

- (a) commercial liability insurance in an amount not less than three million dollars (\$3,000,000.00) against claims for personal injury liability, death or property damage occurring on, in or about the Subleased Lands;
- (b) insurance against loss or damage by fire in respect of all leasehold improvements on the Subleased Lands to the full insurable value thereof and containing the standard extended perils and endorsements;

- (c) insurance against loss or damage by fire in respect of all equipment, materials and other items stored on the Subleased Lands to the full insurable value thereof and containing the standard extended perils and endorsements; and
- (d) such other insurance as would be carried by a prudent tenant, and as the City or its mortgagees may from time to time reasonably require.

8.2 All policies required to be obtained by Northwestel shall contain a waiver of subrogation by the insurer in favour of the City and the Head Lessor and their respective employees, agents, servants, shareholders, officers and directors and shall contain an undertaking by the insurers to notify the City in writing not less than thirty (30) days prior to any cancellation or termination thereof.

8.3 Prior to taking occupancy of the Subleased Lands, Northwestel shall furnish to the City certificates of a policy or policies of an insurance company or companies acceptable to the City, acting reasonably, evidencing that the required insurance coverage has been obtained.

8.4 If the Head Lessor or the City incur any additional costs for fire, liability or rental income insurance as a result of Northwestel occupying the Subleased Lands, Northwestel shall reimburse the Head Lessor or the City, as the case may be, in full for such additional cost, including all expenses related thereto.

8.5 All policies required to be obtained by Northwestel shall be kept in good standing and in full force and effect at all times throughout the Term. If Northwestel fails to take out any of the insurance required by this Agreement or permits such insurance to lapse, the City may, if such default is not cured within five (5) Business Days after notice, place such insurance on Northwestel's behalf, and the premiums payable for such insurance shall be payable by Northwestel to the City forthwith together with an administration fee of fifteen percent (15%) of such premiums.

9. NORTHWESTEL'S COVENANTS

9.1 Northwestel covenants with the City as follows:

- (a) Northwestel shall pay the Basic Rent and Additional Rent and all Sales Tax imposed thereon, as provided for in this Agreement.
- (b) Northwestel shall perform and observe all covenants to be observed and performed by Northwestel under this Agreement.
- (c) Northwestel shall perform and observe all covenants to be observed and performed by the City under the provisions of the Head Lease incorporated into this Agreement pursuant to section 11 of this Agreement.
- (d) Northwestel shall maintain all leasehold improvements in good repair, reasonable wear and tear excepted.
- (e) Northwestel shall not do or cause to be done or suffer or permit any act to be done that would or might cause the Head Lease, or the rights of the City under the Head Lease to be endangered, cancelled, terminated, forfeited or surrendered or which would or might cause the City to be in default thereunder or liable for any damage, claim or penalty.
- (f) Northwestel shall at all times indemnify and save harmless the City against all actions, causes of action, claims, debts, liabilities, dues, sums of money and demands, damages, and costs, including all reasonable legal costs, whatsoever, that may be brought, made or sustained against

the City from or out of the occupancy or use by Northwestel of the Subleased Lands or occasioned wholly or in part by a default of Northwestel of its obligations under this Agreement, or by reason of anything done or omitted to be done by Northwestel, its invitees, employees, officers, contractors, members or agents or by any person permitted by Northwestel to be on the Subleased Lands, or due to or arising out of any breach by Northwestel of this Agreement. If the City shall, without fault on its part, be made a party to any litigation commenced by or against Northwestel, then Northwestel shall protect, indemnify and hold the City harmless in connection with such litigation. The City may at its option participate in any litigation or settlement discussions relating to the foregoing. For greater certainty, Northwestel's indemnification shall survive expiry or cancellation of this Agreement.

- (g) Northwestel shall comply with all obligations imposed on it with respect to insurance under this Agreement.
- (h) Northwestel shall pay any expense incurred by the City in enforcing the performance of Northwestel of its obligations under this Agreement.
- (i) Northwestel shall pay any expense incurred by the City in enforcing the performance of the Head Lessor of its obligations in relation to the Subleased Lands under the Head Lease.
- (j) Northwestel shall allow any City employees or agents entry to the Subleased Lands at any reasonable time for the purpose of inspection.

10. CITY'S COVENANTS

10.1 The City covenants with Northwestel as follows:

- (a) The City shall make all reasonable efforts to enforce performance by the Head Lessor of its obligations in relation to the Subleased Lands under the Head Lease.
- (b) Subject to this Agreement and the Head Lease, Northwestel, upon performing and observing the covenants and provisions required to be performed on its part under this Agreement, shall peaceably enjoy the Subleased Lands for the Term of this Agreement and any Sublease Renewal Term.
- (c) With the exception of any work to be undertaken by the City on the Subleased Lands under the Land Exchange Agreement, Northwestel shall have vacant possession of the Subleased Lands upon execution of this Agreement.
- (d) The City shall perform and observe the covenants on its part contained in the Head Lease with respect to the Subleased Lands so far as such covenants are not required to be performed and observed by Northwestel under this Agreement, and shall at all times to keep Northwestel indemnified against all actions, expenses, claims and demands on account of the non-performance of such covenants so far as such covenants are not required to be performed and observed by Northwestel.
- (e) The City covenants that the Head Lease is presently in full force and effect and that all payments required to be made thereunder have been made to the date of this Agreement.

11. APPLICATION OF HEAD LEASE

11.1 The Parties acknowledge and agree that sections 1, 3.1(b), 3.1(d), 4.3, 8.1(d), 8.2, 8.3, 13, and 20 of the Head Lease (the “Applicable Provisions”) form part of this Agreement and the obligations contained in the Applicable Provisions that are conferred and imposed on the City (as tenant therein) are hereby conferred and imposed upon Northwestel with the appropriate changes of reference being deemed to have been made (that is, every reference in the Head Lease to “Yukon” being changed on such incorporation to a reference to “the City”, every reference to “the Lessee” being changed on such incorporation to a reference to “Northwestel”, every reference to the “Leased Lands” being changed on such incorporation to a reference to the “Subleased Lands”, every reference to the “Lease” being changed on such incorporation to a reference to the “Agreement” and the reference in section 13.2 of the Head Lease to “herein contained” being changed on such incorporation to a reference to “contained in this Agreement”), with the intent that such provisions shall govern the relationship with respect to such matters as between the City and Northwestel.

11.2 The Parties acknowledge and agree that with the exception of:

- (a) the defined terms “Parties” and “Party”, which have the meanings ascribed thereto under this Agreement; and
- (b) the defined terms incorporated through the appropriate changes of reference set out in section 11.1 of this Agreement, which have the meanings ascribed thereto under this Agreement,

section 2 (Definitions) of the Head Lease applies to the defined terms set out in the Applicable Provisions.

11.3 Subject to sections 11.1 and 11.2 of this Agreement, the provisions of the Head Lease do not form part of this Agreement.

11.4 If there is any conflict between the provisions of this Agreement and the provisions of the Head Lease that would permit Northwestel to do or cause to be done or suffer or permit any act or thing to be done which is prohibited by the Head Lease, then the provisions of the Head Lease shall prevail.

11.5 Whenever, under any provision of the Head Lease so incorporated into this Agreement pursuant to sections 11.1 and 11.2 of this Agreement, the consent or authorization of the Head Lessor is required, Northwestel shall be required to obtain both the consent or authorization of the Head Lessor and the City.

11.6 Notwithstanding anything to the contrary in this Agreement, the rights that Northwestel may enjoy pursuant to the Head Lease shall exist only against the Head Lessor. The City shall have no duty to perform any obligations of the Head Lessor and shall under no circumstances be responsible or liable to Northwestel for any default, failure or delay on the part of the Head Lessor in the performance of any obligations under the Head Lease, nor shall such default of the Head Lessor affect this Agreement or waive or defer the performance of any of Northwestel’s obligations under this Agreement. However, in the event of any such default or failure of performance by the Head Lessor, the City shall upon notice from Northwestel make demand upon the Head Lessor to perform its obligations under the Head Lease.

12. UTILITIES AND SERVICES

12.1 The City shall, without the consent of Northwestel but on prior notice to it, have the exclusive right to construct, install and maintain on the Subleased Lands, and arrange for the construction, installation of and maintenance of on the Subleased Lands, any Utilities that:

- (a) the City requires for its use and enjoyment of the Leased Lands;
- (b) any sub-lessee of the City other than Northwestel requires for its use and enjoyment of the Leased Lands; and

(c) the City requires for the benefit of the public and the public interest.

12.2 Northwestel shall not be responsible for any costs associated with the construction, installation and maintenance of Utilities on the Subleased Lands undertaken pursuant to section 12.1 of this Agreement.

12.3 Northwestel shall have the exclusive right to construct, install and maintain on the Subleased Lands, and arrange for the construction, installation of and maintenance of on the Subleased Lands, any Utilities that Northwestel requires for its use and enjoyment of the Subleased Lands.

12.4 Except as provided in the Land Exchange Agreement the City assumes no liability, express or implied, to provide access or services to the Subleased Lands.

13. BREACH, CANCELLATION, WAIVER AND EXPIRATION

13.1 Where Northwestel breaches or fails to perform or observe any of the covenants, terms or agreements contained in this Agreement, the City shall so advise Northwestel by written notice. If Northwestel fails to remedy the breach or non-performance within the time granted in the said notice, which shall not be less than thirty (30) days, the City may, by notice in writing, cancel this Agreement and cancellation occurs on the day following the mailing of such notice.

13.2 The City shall not be deemed to have waived any breach by Northwestel of any of the covenants or agreements contained in this Agreement unless the City provides a written waiver, and any such waiver relates only to the specific breach to which it refers.

13.3 In the event of termination of this Agreement by the City as a result of any default by Northwestel of any of the covenants and obligations to be observed and performed by it hereunder:

- (a) Northwestel shall remain liable for all Basic Rent and Additional Rent and all other sums due under this Agreement for the remainder of what would have been the Term and for all damages arising out of its default including damages for the loss of the benefit of this Agreement for the unexpired balance of the Term;
- (b) the City shall have no duty or obligation to relet the Subleased Lands or any part thereof;
- (c) the City shall have the right to enter and take possession of the Subleased Lands; and
- (d) in addition to any and all remedies set forth herein, the City shall have all remedies available at law or equity and any and all remedies shall be cumulative and non-exclusive.

13.4 Expiration or cancellation of this Agreement shall not prejudice the City's right to Basic Rent, Additional Rent or any other right arising under this Agreement.

14. NON-DISTURBANCE AND TERMINATION

14.1 Upon the request of Northwestel, the City shall request that the Head Lessor permit Northwestel to remain in quiet and peaceful possession of the Subleased Lands pursuant to the terms of this Agreement notwithstanding any exercise by the Head Lessor of its rights to terminate the Head Lease or otherwise re-enter the Leased Lands (the "Northwestel Request").

14.2 If:

- (a) the Northwestel Request is made by the City to the Head Lessor pursuant to section 14.1 of this Agreement; and
- (b) the Head Lease is terminated

then, upon the request of the Head Lessor, Northwestel shall attorn to the Head Lessor as sublandlord under this Agreement.

14.3 If the Head Lease terminates for any reason whatsoever and:

- (a) Northwestel does not request that the City request that the Head Lessor permit Northwestel to remain in quiet and peaceful possession of the Subleased Lands pursuant to the terms of this Agreement notwithstanding any exercise by the Head Lessor of its rights to terminate the Head Lease or otherwise re-enter the Leased Lands; or
- (b) the Head Lessor does not request that Northwestel attorn to the Head Lessor as sublandlord under this Agreement,

then this Agreement shall also terminate and, unless otherwise agreed by the Parties in writing, the City shall not be liable for, and Northwestel shall not be entitled to receive, compensation for any loss, damage or inconvenience occasioned thereby.

15. ASSIGNMENT AND SUBLEASE

15.1 Notwithstanding anything to the contrary contained in the Head Lease, Northwestel shall not assign this Agreement or sublet the whole or any part of the Subleased Lands or permit the Subleased Lands or any part thereof to be used or occupied by others or enter into any other agreement or transaction which may be restricted by the Head Lease without the previous written consent of the Head Lessor and the City, which written consent shall not be unreasonably withheld by the City. Notwithstanding any assignment or subletting or other dealings by Northwestel permitted under this Agreement, Northwestel shall continue to be responsible for all of the obligations of Northwestel under this Agreement.

15.2 The City shall, without the consent of Northwestel, have the right to assign to any person any and all of the rights granted to the City in this Agreement in accordance with the terms and conditions of this Agreement.

16. COSTS

16.1 The City shall pay:

- (a) all costs incurred by the City with respect to the drafting of this Agreement;
- (b) any and all survey costs incurred with respect to this Agreement, whether incurred by the City or Northwestel;
- (c) any and all land titles registration fees incurred with respect to this Agreement, whether incurred by the City or Northwestel; and
- (d) all reasonable legal costs incurred by Northwestel with respect to the drafting of this Agreement.

- 16.2 Northwestel acknowledges and agrees that except for:
- (a) the City's obligations under this Agreement;
 - (b) the City's obligations under section 4.2 of the Head Lease; and
 - (c) the City's obligations under the Land Exchange Agreement,

the City shall not be responsible during the Term for any costs, charges, expenses or outlays of any nature whatsoever arising from or relating to the Subleased Lands or the use and occupancy thereof or the business carried on therein, and that Northwestel shall pay all charges, impositions, costs and expenses of every nature and kind relating to the Subleased Lands except as expressly set out in this Agreement and the Land Exchange Agreement.

17. GENERAL

- 17.1 Any amendments to this Agreement shall be made in writing and executed by both Parties.
- 17.2 Each of the Parties shall at all times hereafter execute and deliver at the request of the other Party all such further documents, deeds and instruments, and shall do and perform all such further acts as may be reasonably necessary to give full effect to the intent and meaning of this Agreement.
- 17.3 This Agreement and the Land Exchange Agreement constitute the entire agreement between the Parties relating to the subject matter hereof and supersede any prior agreement. Neither Party is bound by any representation, warranty or agreement not included in this Agreement or the Land Exchange Agreement and, in particular, no representation or warranty of a Party not expressed in this Agreement or the Land Exchange Agreement is to be implied.
- 17.4 Wherever the singular or masculine is used in this Agreement the same shall be construed as meaning the plural or the feminine or body corporate or politic where the context or the Parties so require.
- 17.5 The paragraph headings used throughout this Agreement form no part hereof and are inserted for convenience and internal reference only and are not to be relied upon or considered by any person in the interpretation thereof.
- 17.6 This Agreement shall be governed by and interpreted in accordance with the laws of the Yukon Territory and the laws of Canada applicable therein.
- 17.7 If any of the terms or provisions of this Agreement are found invalid or unenforceable in whole or in part, then the remaining terms and provisions shall continue in full force and effect.
- 17.8 All dollar amounts referred to in this Agreement are in Canadian funds.
- 17.9 Time shall be of the essence in this Agreement.
- 17.10 This Agreement is binding upon and enures to the benefit of the Parties and their heirs, executors, administrators, successors and permitted assigns.
- 17.11 Any written communication or notice required pursuant to this Agreement shall be given by personal delivery to the undersigned or by prepaid mail to the addresses set out below. A notice shall be considered to be received if delivered personally, on the date of delivery, or if delivered by mail, three

(3) Business Days after mailing.

If to the City:

City of Whitehorse
2121 Second Avenue
Whitehorse, Yukon Y1A 1C2
Attention: Peter O'Blenes, P. Eng.,
Director, Infrastructure & Operations

If to Northwestel:

Northwestel Inc.
Box 2727, 301 Lambert Street
Whitehorse, Yukon Y1A 4Y4
Attention: Property Management,

17.12 Northwestel shall not register this Agreement or notice thereof with the Land Titles Office for the Yukon Land Registration District.

17.13 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which shall together constitute one and the same document.

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT dated the ____ day of _____, 2016.

BETWEEN

The City of Whitehorse,
a municipal corporation constituted
under the *Yukon Municipal Act*

(the "City")

AND:

Northwestel Inc.,
a corporation registered as an extra-territorial corporation
under the *Yukon Business Corporations Act*

(the "Grantor")

being collectively the parties (the "Parties") to this easement agreement (the "Agreement").

WHEREAS:

A. The Grantor is the registered owner in fee simple of those lands and premises legally described as:

Lot 1178
Plan 2000-0219
Quad 105 D/11
Whitehorse, Yukon Territory
(the "Lands").

B. Pursuant to a lease agreement dated the ____ day of _____, 2016 between the City and the Government of Yukon, the City holds a leasehold interest in an approximately eight (8) hectare parcel of land, being a portion of those lands and premises legally described as:

Lot 654
Group 804
Plan 45107
Whitehorse, Yukon Territory
(the "Dominant Tenement").

C. A portion of the Lands have been set aside for access and utility easement purposes as outlined in red on Schedule "A" attached hereto (the "Easement Area").

D. The Parties have agreed to enter into this Agreement for the purposes of permitting the City to:

- (a) construct an access road across, on and through the Easement Area which is the servient tenement to the Dominant Tenement;

- (b) lay down, operate and maintain various utilities in the Easement Area; and
- (c) use the Easement Area as an access corridor for vehicles, pedestrians, equipment and machinery to provide ingress to and egress from the Dominant Tenement by the City and all of the City's customers, clients, patrons, visitors, guests and invitees.

E. The City is authorized to execute this Agreement pursuant to Easement Authority Bylaw #2009-17.

In consideration of the sum of ONE (\$1.00) DOLLAR paid to the Grantor and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

1. THE GRANTOR DOES HEREBY GIVE, GRANT, TRANSFER and MAKE OVER unto the City the exclusive right, privilege and easement to use the Easement Area:

- (a) for digging, laying down, putting down, taking up, relaying, connecting, disconnecting, constructing, repairing, replacing, maintaining, inspecting and operating usual and ordinary municipal utilities including gas pipelines, electrical power and telephone distribution and transmission systems, sanitary and storm sewer mains, water mains, surface drainage swales, roads, curbs, gutters, sidewalks, ditches, storm water outfalls, community antenna television systems and any other utility lines and systems or any one or more of them, together with the usual and ordinary appurtenances incidental thereto (all or any one or more of which are referred to in this Agreement as "Utilities") to be laid under, on or over the Easement Area; and
- (b) as an access corridor for vehicles, pedestrians, equipment and machinery to provide ingress to and egress from the Dominant Tenement by the City and all of the City's customers, clients, patrons, visitors, guests and invitees,

and a right of reasonable access to the Easement Area in relation to the above.

2. The right, privilege and easement hereby granted is subject to the following terms and conditions:

- (a) The term "City" wherever referred to in this Agreement shall include and shall be interpreted to mean the City of Whitehorse and its agents and includes servants, employees, workers, contractors, subcontractors, permittees, licensees, officials and all persons authorized by the City to install, maintain or operate any Utilities, including their servants, employees, workers, contractors, subcontractors, permittees, licensees and officials.
- (b) The Grantor acknowledges that the public shall have the right, subject to the terms of this Agreement, to use the road, including any sidewalks, curbs, gutters and ditches, built by the City in the Easement Area.
- (c) The right, privilege and easement of the Easement Area hereby granted shall be for the term of the sublease granted to Northwestel by the City dated the ____ day of _____, 2016, including any renewals.
- (d) The City shall have the full and free right and liberty to gain access to and remain on the Easement Area for the purposes aforesaid and the City may access the Easement Area either on foot or by means of vehicles or necessary equipment or machines whatsoever across the Lands.
- (e) Notwithstanding any rules at law or in equity to the contrary, the Utilities shall at all times remain the property of the City or the operator of the Utilities notwithstanding that the same may be annexed or affixed to the freehold and shall, with the exception of any road and associated sidewalks constructed on the Easement Area, at any time be removable in whole or in part by the City or the operator of the

Utilities.

- (f) The City shall be responsible for maintaining and repairing the Utilities on the Easement Area.
- (g) The City, in carrying out any work on the Easement Area or using the Easement Area, shall do so only in a proper manner and shall:
 - (i) cause or do as little damage to the Easement Area as reasonably possible; and
 - (ii) inconvenience the owner or occupier of the Lands as little as is reasonably possible.
- (h) Upon completion of the City's work, the City shall, with the exception of the construction of any road, including sidewalks, curbs, ditches, gutters and any other ordinary appurtenances incidental thereto, as far as is reasonably practical, restore the Easement Area to its former level land condition. However, no guarantees are implied that after levelling subsequent subsidence will not occur and the City shall not be liable for any damage resulting therefrom provided such subsidence does not occur as a result of negligence on the part of the City.
- (i) The Grantor covenants not to:
 - (i) build, erect or maintain, nor permit or suffer to be built, erected or maintained on the Easement Area any building or structure;
 - (ii) carry out any work on the Easement Area which would or could prevent or hinder the exercise by the City of any of the rights herein granted; and
 - (iii) allow changes to the design or existing surface grades of the Easement Areawithout the prior written consent of the City.
- (j) The Grantor, in carrying out any work on the Easement Area, shall do so only in a proper manner and shall:
 - (i) cause or do as little damage to the Utilities and Easement Area as is reasonably possible; and
 - (ii) inconvenience the City as little as is reasonably possible.
- (k) Upon completion of any work by the Grantor, the Easement Area shall be restored to its former condition at the expense of the Grantor and to the reasonable satisfaction of the City, provided that the City reserves the right in the event of unsatisfactory repair to repair any damage done to any Utilities or the Easement Area and the Grantor shall reimburse the City for its reasonable expenses.
- (l) The Grantor covenants not to plant or maintain on the Easement Area, nor allow or suffer to be planted or maintained on the Easement Area, any trees, shrubs or landscaping which would or could prevent or hinder the exercise by the City of any of the rights herein granted without the prior written consent of the City. In the event the Grantor fails to remove the same within thirty (30) days after receipt of notice in writing from the City requiring such removal, the City, in addition to any other right or remedy available to the City, shall have the right to do all things necessary to remove the same without any liability for damage and the Grantor shall forthwith pay to the City all costs, charges and expenses which the City may be put by reason of such removal, which costs, charges and expenses shall be and remain at all times a charge upon and against the Lands.
- (m) The Grantor shall not do or knowingly permit to be done any act or thing which will interfere with or injure the Utilities and, in particular, shall not carry out or permit to be carried out blasting, excavation, drilling or the erection of any foundation, landscaping, fencing, building or any structure

on or adjacent to the Easement Area without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

- (n) The Grantor shall not do or knowingly permit to be done any act or thing which will interfere with the use of the Easement Area as an access corridor for vehicles, pedestrians, equipment and machinery to provide ingress to and egress from the Dominant Tenement by the City and all of the City's customers, clients, patrons, visitors, guests and invitees.
- (o) The Grantor agrees that the City shall have the right, without the consent of the Grantor, to grant permits or assign licenses to operators of one or more of the Utilities to construct, maintain and operate the Utilities.
- (p) The Grantor shall allow the City and all of the City's customers, clients, patrons, visitors, guests and invitees to enter upon the Easement Area without notice and shall not interfere in any way with nor prevent any such person from coming on the Easement Area, provided at all times that access to and exit from the Lands shall not be unreasonably obstructed.
- (q) Subject to the City observing and performing the covenants, terms and conditions on its part herein, the City may and shall hold and enjoy the easement herein granted without hindrance, molestation or interference on the part of the Grantor, and the Grantor, its agents, servants and all others authorized by the Grantor shall have and continue to have free access to the Easement Area and full use and enjoyment thereof subject to this Agreement.
- (r) The City shall, at all times hereafter, indemnify and save harmless the Grantor against all actions, causes of action, claims, debts, liabilities, dues, sums of money and demands incurred by the Grantor or that may be brought or made against the Grantor arising by reason of any act, omission or negligence of the City in the exercise or purported exercise of the rights and privileges of the easement hereby granted with the exception of any actions, causes of action, claims, debts, liabilities, dues, sums of money and demands arising from or in relation to the negligence or intentional acts of the Grantor or its agents, servants, employees, workers, contractors, subcontractors, permittees, licensees and officials. This indemnity shall include all reasonable costs and expenses incurred in defending any action brought against the Grantor, including legal fees and expenses taxed as special costs.
- (s) The Grantor shall, at all times hereafter, indemnify and save harmless the City against all actions, causes of action, claims, debts, liabilities, dues, sums of money and demands incurred by the City or that may be brought or made against the City arising by reason of any act, omission or negligence of the Grantor or its agents, servants, employees, workers, contractors, subcontractors, permittees, licensees and officials in relation to or affecting the Easement Area with the exception of any actions, causes of action, claims, debts, liabilities, dues, sums of money and demands arising from or in relation to the negligence or intentional acts of the City. This indemnity shall include all reasonable costs and expenses incurred in defending any action brought against the City, including legal fees and expenses taxed as special costs.

3. This Agreement shall run with the Lands.

4. No part of the fee of the Lands shall pass to or be vested in the City under or by these presents.

5. This Agreement and the land exchange agreement dated the ____ day of _____, 2016 between the City and the Grantor (the "Land Exchange Agreement") together constitute the entire agreement between the Parties with respect to the subject matter hereof and no representations or warranties have been made by the City to the Grantor save those contained herein and in the Land Exchange Agreement.

6. The City shall, with the consent of the Grantor, which consent will not be unreasonably withheld, have the

right to:

- (i) assign or sub-grant in whole or in part the easement created by this Agreement;
- (ii) assign to any person the right to use the Easement Area, in whole or in part; and
- (iii) assign to any person any of the rights granted to the City in this Agreement,

in accordance with the terms and conditions of this Agreement.

7. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

8. Any notice or consent in writing required or authorized to be given under this Agreement shall be sufficiently given if delivered to the Party by registered mail, postage prepaid, addressed as follows:

City Engineer
c/o City Hall
2121 - 2nd Avenue
Whitehorse, Yukon
Y1A 2C6

Property Management
Northwestel Inc.
Box 2727, 301 Lambert Street
Whitehorse, Yukon
Y1A 4Y4

9. Whenever the singular or the masculine is used in this Agreement, the same shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or the Parties so require.

10. This Agreement shall enure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, successors and permitted assigns.

11. The preamble of this Agreement consisting of the recitals therein set forth shall be deemed to be part of this Agreement.

12. This Agreement shall be governed by and interpreted in accordance with the laws of the Yukon Territory and the laws of Canada applicable therein.

13. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which shall together constitute one and the same document.

IN WITNESS WHEREOF the Parties have duly executed this Agreement under seal at the City of Whitehorse, in the Yukon Territory as of the day and year first above written.

THE CORPORATE SEAL of)
)
NORTHWESTEL INC.)
was hereunto affixed)
in the presence of:)
)
)
)
)
_____)
Ken Gibbons,)
Director of Finance)
)
)
)
)
)
_____)
Leslie McRae,)
Secretary)
)

c/s

THE CORPORATE SEAL of)
)
THE CITY OF WHITEHORSE)
was hereunto affixed)
in the presence of:)
)
)
)
)
_____)
Dan Curtis, Mayor)
)
)
)
)
_____)
Norma Felker,)
Assistant City Clerk)
)

c/s

SCHEDULE "A"

ACCESS and UTILITY EASEMENT

WITHIN
LOT 1178, Quad 105 D/11
 (Plan 84261 CLSR, 2000-0219 LTO)

City of Whitehorse
YUKON



LEGEND:

- Bearings, distances and posts shown are derived from Plan 84261 CLSR, 2000-0219 LTO.
- Bearings are UTM Grid, UTM Zone 8.
- Distances are horizontal at general ground level and are expressed in metres.
- CL577 Posts shown thus
- Easements dealt with shown thus
- Area of Access and Utility Easement = 0.20 ha
- Width of Access and Utility Easement is 13.0 m unless shown otherwise.



Gabriel Arcoin
 Gabriel Arcoin, CLS

CERTIFIED CORRECT:
 March 17, 2016
 Date

UNDERHILL GEOMATICS LTD.
 PROFESSIONAL LAND SURVEYORS
 WHITEHORSE, YUKON
 Job: 16016

