CITY OF WHITEHORSE

BYLAW 2012-15

A bylaw to enable the City of Whitehorse to enter into development agreements with property owners, and to set conditions to regulate the development of land, buildings and structures in the City

WHEREAS section 309 of the *Municipal Act* provides that a development agreement means a binding agreement between the owner of the land that is the subject of an application for subdivision, and the approving authority with respect to the requirements or limitations of the conditional approval; and,

WHEREAS Bylaw 2000-54 provides that Council is the subdivision approving authority for the City of Whitehorse; and,

WHEREAS section 319(1) of the *Municipal Act* provides that, on receipt of a completed application for subdivision, the approving authority may approve it, refuse it, or approve it with conditions; and,

WHEREAS section 326 (1) of the *Municipal Act* provides that Council may pass bylaws providing for entering into development agreements; and,

WHEREAS section 326 (2) of the *Municipal Act* provides that development agreements may include any terms and conditions considered necessary by Council to carry out the intent of the development agreement; and,

WHEREAS section 326 (3) of the *Municipal Act* provides that Council may require any development agreement entered into to be registered in the Land Titles Office, and any agreement so registered shall have the force and effect of a restrictive covenant running with the land; and,

WHEREAS section 298(2) of the *Municipal Act* provides that if a person applies for a development or use permit and the application conforms to the zoning bylaw, the municipality must issue the development permit or use permit, and may only impose conditions that are authorized by bylaw; and,

WHEREAS section 4.13.1 of *City of Whitehorse Zoning Bylaw 2006-01* authorizes the Development Officer or Planning Committee as the case may be, to recommend to Council that a development agreement be required as a condition of approval for a development permit;

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

SHORT TITLE

1. This bylaw may be cited as the "**Development Agreement Regulations Bylaw**".

APPLICATION

2. This bylaw shall apply to all land within the municipal boundary of the City of Whitehorse. The said boundary shall be as defined in the *Municipal Act* of the Yukon Territory and may change from time to time, subject to amendment of the said *Act*.

DEFINITIONS

3. Except as is set forth in this section, the terms and definitions in the City Building and Plumbing Bylaw and the Zoning Bylaw shall apply to this bylaw.

"BUILDING" means a temporary or permanent structure having a roof supported by columns or walls for the shelter or enclosure of persons, animals, materials, chattels, and equipment.

"BUILDING PERMIT" means the document authorising the carrying out of any development, alteration or other work in accordance with the *City Zoning, Building and Plumbing Bylaws* and *Yukon Building Standards Act* or other applicable statute or regulation that requires confirmation of compliance.

“CITY” means the corporation of the City of Whitehorse.

“COUNCIL” means the Council of the City of Whitehorse.

“DEVELOPMENT” means the carrying out of any activity involving a material change to any use on, over or under the land or buildings on the land that results, or is likely to result, in a change of use or intensity of use and includes site clearing or excavation, dumping or filling, mining, remediation of contaminated material, construction, renovation or demolition.

“DEVELOPMENT OFFICER” means a City official appointed by Council to interpret, administer and enforce the provisions of the City Zoning Bylaw.

"DEVELOPMENT PERMIT" means a document authorising a development issued pursuant to the City Zoning Bylaw.

"MUNICIPAL UTILITIES” means a system or facility that is used to provide any of the following to the public: water, sewage treatment and disposal, public transportation, heat, waste heat, and waste management; and a service or product that is provided for public consumption, benefit, convenience, or use.

"OWNER" means the person, persons, or corporation who has by law, the management, control or custody of the lot or use.

GENERAL REGULATIONS

4. Except as specifically provided in sections 5 and 6, nothing in this bylaw shall restrict the right of any owner to develop his land in accordance with all of the provisions of other relevant City bylaws.

5. The Development Officer or Planning Committee as the case may be, may recommend to Council that a development agreement be required as a condition of subdivision approval. The development agreement so recommended may contain contractual arrangements as to any, or all, of the following:

   (1) the use of the land in relation to any existing or proposed building or structure, including the preservation of buildings, structures, and environmental setbacks;

   (2) the timing of the development;

   (3) the siting, design, drainage, height and dimensions, including exterior materials and signage, of any proposed building or structure;

   (4) the provision for parking space, traffic control, traffic control devices, directional signs and community signs;

   (5) the provision for the maintenance of open space, preservation of sun exposure to abutting properties, site grading and landscaping, including but not limited to, the planting or preservation of trees or other site features to mitigate development impacts, location of fencing and screening, choice of fencing and screening material and location of garbage receptacles and lights;

   (6) the replacement or construction, in whole or in part, of roads, sidewalks, street lighting, storm drainage, water supply, or sewage disposal facilities;

   (7) the provision of on-site recreational or other amenities to serve the development;

   (8) the levying of a fee in lieu of otherwise providing for any of the matters mentioned in subsections (1) to (7) of this section; and

   (9) such other conditions as Council may consider reasonable under the circumstances.

6. A development agreement between the owner and the City shall be required:

   (1) when in the opinion of Council such an agreement is necessary and in the public interest to maintain standards which have been adopted by bylaw, and which cover the external architectural appearance and facing materials of buildings, as those standards relate to

      (a) the erection or alteration of any building, or

      (b) the relocation within or into the City of any building or structure other than a new factory-built unit or component, and

   (2) in relation to any development, including the development of a subdivision of land resulting in any number of parcels or lots, when in the opinion of Council such an agreement is necessary and in the public interest in consideration of the impact of the proposed development on public costs related to municipal infrastructure.

ADMINISTRATIVE REVIEW

7. The Development Officer shall forward the development agreement and supporting information to the departments of the City which are deemed appropriate by the Development Officer, for review and comment.

8. The Development Officer shall forward the development agreement and supporting information to the Development Review Committee for review and comment.

9. The Development Officer may forward the development agreement and supporting information to any Government of Yukon or Government of Canada Departments or First Nations that may be interested in matters relative to the land for review and comment.

10. Once the reviews have been completed, all comments shall be forwarded to the Development Officer.

11. The Development Officer shall forward the development agreement, supporting information and referral comments to the Director of Operations and the City Manager for review and comment.

DEVELOPMENT AGREEMENT DECISION PROCESS

12. In making a decision on whether to proceed with a development agreement, the Director of Operations may consider any matter or factor which the Director of Operations deems relevant to the development agreement, including, but not limited to the following:

    (1) the referral comments submitted pursuant to this bylaw;

    (2) the Official Community Plan and the Zoning Bylaw; and

    (3) any additional information as may be considered necessary by the Development Officer.

APPROVING AUTHORITY

13. Authority to make a decision on whether to proceed with a development agreement is delegated to the Director of Operations. The Director of Operations may approve, approve with conditions, or refuse the development agreement.

14. In the event that the Director of Operations is unwilling or unable to make a decision on whether to proceed with a development agreement, he or she will refer the development agreement to Council, and Council may by resolution approve, approve with conditions, or refuse the development agreement.

APPEAL

15. Where there is an objection to a decision made by the Director of Operations, the owner may appeal to Council, and Council may approve, approve with conditions, or refuse the development agreement.

16. Once Council has made the decision, the decision is final.

PROCESS FOLLOWING APPROVAL

17. Once the development agreement is approved, three copies of the Agreement shall be signed by the property owner and the City's approving authority.

REGISTRATION

18. Once the development agreement has been signed it may be submitted by the Development Officer for registration at the Land Titles Office.

19. Where a development agreement is required to be registered, the registration of the agreement and the cost thereof shall be the responsibility of the owner; and no building permit or development permit shall be issued prior to registration of the development agreement in the Land Titles Office.

BYLAW SHALL PREVAIL

20. Where the provisions of this bylaw conflict with the provisions of any other bylaw of the City, the bylaw with the more stringent provisions shall prevail.

COMPLIANCE WITH OTHER LEGISLATION

21. No development agreement shall be made that is contrary to the Official Community Plan, or that is contrary to the City Zoning Bylaw in respect of permitted use or conditional use in any zoning classification.

CONTRAVENTION OF BYLAW

22. Any person who contravenes, causes, suffers or permits any contravention of this bylaw, or any provision in any development agreement made under this bylaw, commits an offence.

23. Any person who commits an offence under section 22 of this bylaw is, upon summary conviction, liable to a fine not exceeding five thousand dollars ($5,000.00) and, in addition thereto, to a fine not exceeding one thousand dollars ($1,000.00) for every day the offence continues.

SEVERABILITY

24. The invalidity of any section, clause, sentence or provision of this bylaw shall not affect the validity of any other part of this bylaw that can be given effect without such invalid part or parts.

EXECUTION OF AGREEMENT

25. The Mayor and Clerk are hereby authorized to execute on behalf of the City of Whitehorse any development agreements authorized by the Director of Operations or Council, whatever the case may be.

REPEAL OF EXISTING LEGISLATION

26. Bylaw 99-16, including all amendments thereto, is hereby repealed.

27. Bylaw 2001-17, including all amendments thereto, is hereby repealed.

COMING INTO FORCE

28. This bylaw shall came into full force and effect upon the final passing thereof.

FIRST and **SECOND READING**: February 27, 2012
THIRD READING and **ADOPTION**: March 12, 2012

ORIGINAL BYLAW SIGNED BY:

"Ranj Pillai"

Ranj Pillai, Deputy Mayor

"Robert I. Fendrick"

Robert I. Fendrick, FCGA, City Clerk