

CITY OF WHITEHORSE
REGULAR Council Meeting #2021-20

DATE: Tuesday, October 12, 2021
TIME: 5:30 p.m.

Mayor Dan Curtis
Deputy Mayor Jocelyn Curteanu
Reserve Deputy Mayor Stephen Roddick

AGENDA

CALL TO ORDER 5:30 p.m.

AGENDA Adoption

PROCLAMATIONS

MINUTES Regular Council meeting dated September 27, 2021

DELEGATIONS

PUBLIC HEARING

STANDING COMMITTEE REPORTS

Development Services Committee – *Councillors Curteanu and Roddick*

Corporate Services Committee – *Councillors Roddick and Curteanu*

City Planning Committee – *Councillors Hartland and Cabott*

Housing Development Incentive Approval – 61 Gleaner Avenue

City Operations Committee – *Councillors Cabott and Hartland*

Community Services Committee – *Councillors Boyd and Stick*

Public Health and Safety Committee – *Councillors Stick and Boyd*

NEW AND UNFINISHED BUSINESS

BYLAWS

2021-29 Lease Agreement – Frank Slim Building Concession

3rd Reading

2021-40 Urban Electrification Local Improvement

3rd Reading

ADJOURNMENT

MINUTES of **REGULAR** Meeting #2021-19 of the Council of the City of Whitehorse called for 5:30 p.m. on Monday, September 27, 2021, in Council Chambers, City Hall.

PRESENT: Mayor Dan Curtis
Councillors Dan Boyd
Laura Cabott
Jocelyn Curteanu
Samson Hartland
Stephen Roddick
Jan Stick

ALSO PRESENT: Acting City Manager Jeff O'Farrell
Acting Director of Community Services Doug Spencer
Director of Corporate Services Valerie Braga
Director of Development Services Mike Gau
Manager of Legislative Services Wendy Donnithorne
Assistant City Clerk Norma Felker

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

CALL TO ORDER

2021-19-01

It was duly moved and seconded
THAT the agenda be adopted as presented.

AGENDA

Carried Unanimously

Mayor Curtis proclaimed October 3 to 9 to be Fire Prevention Week in the City of Whitehorse.

PROCLAMATION

2021-19-02

It was duly moved and seconded
THAT the minutes of the regular Council meeting dated September 13, 2021 be adopted as presented.

MINUTES

September 13, 2021

Carried Unanimously

COMMITTEE REPORTS

Development Services Committee

There is no report from the Development Services Committee.

Corporate Services Committee

Financial Services reviewed capital budget projections submitted by department managers and provided a summary of completed capital projects.

As part of the City’s second quarter variance reporting, managers are required to review their planned capital spending. Some projects are experiencing delays due to staff vacancies, material shortages and contractor or consultant availability. However, many projects are proceeding as planned. Some projects are expected to come forward through the re-budget process or be resubmitted as part of the 2022 budgeting process.

SECOND QUARTER
CAPITAL VARIANCE
For Information Only

Financial Services reviewed operating expenditure projections submitted by department managers and provided a forecast of operating results to the end of the 2021 fiscal year.

The 2021 operating budget includes some financial considerations for impacts of the COVID-19 pandemic which were considered best estimates at the time the budget was approved. Adjustments include reduced revenue expectations at the Canada Games Centre for the first three months of the year and increased transit bus cleaning costs for the year. Additional losses to the City in the form of unrealized revenues are expected to be incurred.

SECOND QUARTER
OPERATING VARIANCE
For Information Only

The 2021 second quarter variance projection shows that total operating revenues are expected to be under budget by \$608,258 and expenses will be under budget by \$1,562,915. Therefore, projections to December 31, 2021 as compared to the revised budget indicate an operating surplus of \$954,657.

2021-19-03

It was duly moved and seconded
THAT the application for urban electrification at 7 Strawberry Place be accepted; and

THAT Bylaw 2021-40, a bylaw to authorize a local improvement charge for urban electrification at 7 Strawberry Place in the Hidden Valley Subdivision, be brought forward for consideration under the bylaw process.

BRING FORWARD
URBAN ELECTRIC
LIC BYLAW
(7 Strawberry Place)

Carried Unanimously

In response to questions raised, Administration confirmed that election planning is a significant undertaking and there will be additional challenges due to the pandemic. Plans are firmly in place, keeping in mind the public health measures that may arise between now and October 21st.

Administration also confirmed that the venues are in place and public safety measures would be included to ensure safety for all voters and staff. Details on the capacity of Council Chambers on election night are being finalized. Election results will be broadcast live on WHTV Community Channel 209 and live-streamed on the City's website.

ELECTION UPDATE
For Information Only

A Committee member encouraged citizens to engage in municipal government and put their names forward as candidates for Council.

City Planning Committee

2021-19-04

It was duly moved and seconded
THAT Bylaw 2021-26, a bylaw to amend the zoning at 105 Titanium Was in Marwell to allow for additional live/work caretaker suites, be brought forward for second and third reading under the bylaw process.

BRING FORWARD
ZONING AMENDMENT
(105 Titanium Way)

Carried Unanimously

2021-19-05

It was duly moved and seconded
THAT Bylaw 2021-29, a bylaw to authorize a lease agreement with Smoke and Sow Inc. to provide concession services at the Frank Slim Building in Shipyards Park, be brought forward for consideration under the bylaw process.

BRING FORWARD
LEASE AGREEMENT
Frank Slim Building
Concession Services

Carried Unanimously

City Operations Committee

In response to questions raised, Administration provided an update on the status of water service repairs in the Crestview Subdivision.

WATER SERVICE REPAIR
For Information Only

In response to concerns raised regarding the contract work completed on roads in the Mary Lake Subdivision, Administration provided an update regarding the BST process and noted that the conditions will improve over time as regular traffic continues to impact the road surface.

MARY LAKE ROAD WORK
For Information Only

Community Services Committee

There was no report from the Community Services Committee.

Public Health and Safety Committee

A Committee member thanked local drivers for their efforts to comply with the new downtown speed limits, making downtown streets safer.

DRIVERS THANKED
For Information Only

BYLAWS

2021-19-06

It was duly moved and seconded THAT Bylaw 2021-24, a bylaw to amend the zoning at 105 Titanium Way in the Marwell Industrial Subdivision to allow for additional live/work caretaker suites, be given second reading.

Carried Unanimously

BYLAW 2021-26

ZONING AMENDMENT
105 Titanium Way
SECOND READING

2021-19-07

It was duly moved and seconded THAT Bylaw 2021-24, a bylaw to amend the zoning at 105 Titanium Way in the Marwell Industrial Subdivision to allow for additional live/work caretaker suites, having been read a first time and second reading, now be given third reading.

Carried Unanimously

BYLAW 2021-26

ZONING AMENDMENT
105 Titanium Way
THIRD READING

2021-19-08

It was duly moved and seconded THAT Bylaw 2021-29, a bylaw to authorize a lease agreement with Smoke and Sow Inc. to provide food concession services at the Frank Slim Building in Shipyards Park, be given first reading.

Carried Unanimously

BYLAW 2021-29

LEASE AGREEMENT
Frank Slim Building
Concession Services
FIRST READING

2021-19-09

It was duly moved and seconded THAT Lease Agreement Bylaw 2021-29 be given second reading.

Carried Unanimously

SECOND READING

2021-19-10

It was duly moved and seconded THAT Bylaw 2021-40, a bylaw to authorize a local improvement charge for urban electrification at 7 Strawberry Place in the Hidden Valley Subdivision, be given first reading.

Carried Unanimously

BYLAW 2021-40

URBAN ELECTRIC LIC
7 Strawberry Lane
FIRST READING

2021-19-11

It was duly moved and seconded
THAT Local Improvement Charges Bylaw 2021-40 be given second
reading.

SECOND READING

Carried Unanimously

Mayor Curtis acknowledged that Thursday, September 30th is the
National Day of Truth and Reconciliation. The City, along with the
Government of Yukon, will be marking this day as a statutory holiday.

NATIONAL DAY
OF TRUTH AND
RECONCILIATION

On behalf of Council Mayor Curtis urged citizens to commemorate the
day in ways meaningful to them to reflect on our country's legacy with
residential schools, and to honour the victims, survivors, their families and
their community.

For Information Only

There being no further business, the meeting adjourned at 6:06 p.m.

ADJOURNMENT



Minutes of the meeting of the Development Services Committee

| | | |
|----------------------------------|---|---------|
| Date | October 04, 2021 | 2021-20 |
| Location | Council Chambers, City Hall | |
| Committee Members Present | Deputy Mayor Jocelyn Curteanu – Chair Councillor Stephen Roddick – Vice-Chair Mayor Dan Curtis Councillor Dan Boyd Councillor Laura Cabott Councillor Samson Hartland Councillor Jan Stick | |
| Staff Present | Jeff O'Farrell, Acting City Manager Doug Spencer, Acting Director of Community Services Valerie Braga, Director of Corporate Services Mike Gau, Director of Development Services Lindsay Schneider, Director of Human Resources Tracy Allen, Director of Infrastructure and Operations Norma Felker, Assistant City Clerk | |

Your Worship, there is no report from the Development Services Committee.



Minutes of the meeting of the Corporate Services Committee

| | | |
|----------------------------------|---|---------|
| Date | October 04, 2021 | 2021-20 |
| Location | Council Chambers, City Hall | |
| Committee Members Present | Councillor Stephen Roddick – Chair Deputy Mayor Jocelyn Curteanu – Vice-Chair Mayor Dan Curtis Councillor Dan Boyd Councillor Laura Cabott Councillor Samson Hartland Councillor Jan Stick | |
| Staff Present | Jeff O'Farrell, Acting City Manager Doug Spencer, Acting Director of Community Services Valerie Braga, Director of Corporate Services Mike Gau, Director of Development Services Lindsay Schneider, Director of Human Resources Tracy Allen, Director of Infrastructure and Operations Norma Felker, Assistant City Clerk | |

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

1. Yukon Government Better Build Program – For Information Only

A committee member noted that the Yukon government has announced the introduction of new legislation with respect to the *Better Build Program*. Committee members spoke in support of the proposed program, but expressed concerns about the timing of this introduction, since all Yukon municipalities are preparing to elect new councils, and both the out-going and in-coming councils will have little opportunity to provide input. Significant concerns were expressed that the administrative demand has not been clarified and municipalities may be over burdened with administrative duties.



Minutes of the meeting of the City Planning Committee

| | | |
|----------------------------------|---|---------|
| Date | October 04, 2021 | 2021-20 |
| Location | Council Chambers, City Hall | |
| Committee Members Present | Councillor Samson Hartland – Chair Councillor Laura Cabott – Vice Chair Mayor Dan Curtis Councillor Dan Boyd Deputy Mayor Jocelyn Curteanu Councillor Stephen Roddick Councillor Jan Stick | |
| Staff Present | Jeff O’Farrell, Acting City Manager Doug Spencer, Acting Director of Community Services Valerie Braga, Director of Corporate Services Mike Gau, Director of Development Services Lindsay Schneider, Director of Human Resources Tracy Allen, Director of Infrastructure and Operations Kinden Kosick, Subdivision and Lands Coordinator Norma Felker, Assistant City Clerk | |

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

1. Housing Development Incentive Approval – 61 Gleaner Way

The City has received an application for a housing development incentive for the construction of 48 apartment housing units at 61 Gleaner Avenue in the Whistle Bend subdivision. This development meets the criteria for the RCM2—Comprehensive Residential Multiple Family 2 Zone development incentive, which provides for a reduction of Development Cost Charges.

The proponent has provided appropriate site plans and construction drawings and has been issued a development permit for the project that includes three buildings comprised of mainly two-bedroom single bedroom units in a condominium development. The resulting density exceeds the requirements for eligibility for an RCM2 Zone development incentive and conforms to all City zoning and building regulations.

The recommendation of the City Planning Committee is

THAT an RCM2 Zone Housing Development Incentive with respect to the construction of 48 apartment housing units at 61 Gleaner Avenue in Whistle Bend be approved.



Minutes of the meeting of the City Operations Committee

| | | |
|----------------------------------|---|---------|
| Date | October 04, 2021 | 2021-20 |
| Location | Council Chambers, City Hall | |
| Committee Members Present | Councillor Laura Cabott – Chair Councillor Samson Hartland – Vice Chair Mayor Dan Curtis Councillor Dan Boyd Deputy Mayor Jocelyn Curteanu Councillor Stephen Roddick Councillor Jan Stick | |
| Staff Present | Jeff O'Farrell, Acting City Manager Doug Spencer, Acting Director of Community Services Valerie Braga, Director of Corporate Services Mike Gau, Director of Development Services Lindsay Schneider, Director of Human Resources Tracy Allen, Director of Infrastructure and Operations Norma Felker, Assistant City Clerk | |

Your Worship, there is no from the City Operations Committee.



Minutes of the meeting of the Community Services Committee

| | | |
|----------------------------------|---|---------|
| Date | October 04, 2021 | 2021-20 |
| Location | Council Chambers, City Hall | |
| Committee Members Present | Councillor Dan Boyd – Chair Mayor Dan Curtis Councillor Laura Cabott Deputy Mayor Jocelyn Curteanu Councillor Samson Hartland Councillor Stephen Roddick Councillor Jan Stick | |
| Staff Present | Jeff O'Farrell, Acting City Manager Doug Spencer, Acting Director of Community Services Valerie Braga, Director of Corporate Services Mike Gau, Director of Development Services Lindsay Schneider, Director of Human Resources Tracy Allen, Director of Infrastructure and Operations Norma Felker, Assistant City Clerk | |

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

1. Public Transportation for the Mobility Challenged – For Information Only

Mathew Lien addressed the Committee to express concerns about the lack of Handy Bus service on Sundays and issues regarding the availability of accessible taxi service. Mr. Lien expressed the opinion that there is an overall lack of service for the mobility challenged and suggested that Council should take a pro-active approach to address the problem.

In response to questions raised, Administration advised that current funding agreements constrain Handy Bus service on Sundays, but are currently under discussion with the Government of Yukon. The Vehicle for Hire Bylaw requires all vehicle for hire companies to have at least one accessible vehicle in their fleet, and also requires that requests for accessible service be given priority. Bylaw Services conducts regular reviews of existing companies and their fleets, and penalties are assessed for non-compliance.



Minutes of the meeting of the Public Health and Safety Committee

| | | |
|----------------------------------|---|---------|
| Date | October 04, 2021 | 2021-20 |
| Location | Council Chambers, City Hall | |
| Committee Members Present | Councillor Dan Boyd – chair Mayor Dan Curtis Councillor Laura Cabott Councillor Jocelyn Curteanu Councillor Samson Hartland Councillor Stephen Roddick Councillor Jan Stick | |
| Staff Present | Jeff O'Farrell, Acting City Manager Doug Spencer, Acting Director of Community Services Valerie Braga, Director of Corporate Services Mike Gau, Director of Development Services Lindsay Schneider, Director of Human Resources Tracy Allen, Director of Infrastructure and Operations Norma Felker, Assistant City Clerk | |

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

1. Increase in Property Crime – For Information Only

A committee member raised concerns with the rising rate of property crimes in the City and questioned whether there is a role the City can play in turning this around. Administration advised that Bylaw Services has no jurisdiction with respect to property crimes, but works closely with the RCMP in their efforts to reduce and prevent such incidents.

There being no further business, the meeting adjourned at 6:22 p.m.

CITY OF WHITEHORSE

BYLAW 2021-29

A bylaw to authorize a lease agreement.

WHEREAS section 265 of the *Municipal Act* (2002) provides that Council may pass bylaws for municipal purposes respecting the municipality’s leasing of any real or personal property; and

WHEREAS Council deems it desirable to enter into a lease agreement for the provision of food concession services at the Frank Slim Building in Shipyards Park for the period from November 1, 2021 to and including October 31, 2024;

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 a lease agreement with Smoke and Sow Inc. with respect to the provision of food concession services in the Frank Slim Building in Shipyards Park.
2. The Mayor and City Clerk are hereby authorized to execute on behalf of the City of Whitehorse the lease agreement attached hereto as Appendix “A” and forming part of this bylaw.
3. This bylaw shall come into full force and effect on the 1st day of November, 2021.

FIRST and SECOND READING: September 27, 2021

THIRD READING and ADOPTION:

Mayor

City Clerk

THIS LEASE AGREEMENT, made the 12th day of October 2021.

BETWEEN:

City of Whitehorse

(the "Landlord")

AND:

Smoke and Sow Inc.

(the "Tenant")

W H E R E A S:

- A. Landlord solicited responses to its RFP 2021-002 for Food Concession Services Shipyards Park (the "RFP") and selected the Tenant's proposal in response to the RFP;
- B. The Landlord has agreed to lease to the Tenant a portion of the Frank Slim Building located at 100 Ogilvie Street in Whitehorse, YT, Y1A 6L3, as shown in the sketch attached hereto as Schedule A (The "Premises") including the furnishings and equipment described in the list attached hereto as Schedule B (The "Equipment") on the understanding that the Tenant will provide concession services in accordance with the Tenant's proposal in response to the RFP;

In consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto agree each with the other as follows:

1. LEASE

1.1 The Landlord leases to the Tenant the Premises and Equipment (collectively, the "Assets") upon the terms and subject to the conditions hereof.

2. TERM

2.1 The term of this Lease shall be for three years commencing on the 1st day of November, 2021 and ending on the 31st day of October, 2024.

3. RENT AND OTHER PAYMENTS BY THE TENANT

3.1 Rent. The Tenant shall pay to the Landlord rent of \$36,000.00 for the term by equal monthly instalments of \$1,000.00 each in advance on the 1st day of each and every month beginning on the 1st day of November, 2021. Rent shall be paid to the Landlord at the address set out in paragraph 11.4 of this Lease or at such other place as the Landlord may direct in writing.

3.2 Post-dated Cheques. The Tenant shall provide the Landlord with a series of post-dated cheques for the monthly instalments of rent and additional rent if so requested at any time by the Landlord.

3.3 GST. The Tenant shall pay to the Landlord GST on all amounts required to be paid pursuant to this Lease.

4. COVENANTS OF TENANT

4.1 The Tenant covenants and agrees with the Landlord as follows:

(a) Rent. The Tenant shall during the term of this Lease or any renewal thereof pay to the Landlord the rent hereby reserved, and all other sums to be paid by the Tenant hereunder in the manner herein provided without any deduction whatsoever. The Tenant shall produce to the Landlord from time to time at the request of the Landlord satisfactory evidence of the due payment by the Tenant of all other payments required to be made by the Tenant under this Lease.

(b) Parking. There is no parking on the Premises. The Tenant and its employees and agents shall park in the public parking area of Shipyards Park. Service and delivery vehicles may park on or adjacent to the Premises only while loading or unloading.

(c) Repair. The Tenant shall well and sufficiently repair, maintain, amend and keep the Premises and the Equipment in good and substantial repair when, where and so often as need shall be, reasonable wear and tear, only excepted.

(d) Grease Traps. The Tenant shall maintain and clean the grease traps at least once every six months. The Tenant shall provide the Landlord with a minimum of twenty four hour's written notice of the date and time of such cleaning, so as to allow the Landlord to disconnect and reconnect the trap before and after cleaning by the Tenant.

(e) Notice to Repair. The Landlord and its agents may at all reasonable times enter the Premises to examine the condition of the Assets, and all want of repair that upon such

examination may be found and for the amendment of which notice in writing is left at the Premises, the Tenant shall well and sufficiently repair and make good according to such notice within 15 days from the date on which such notice is left at the Premises.

(f) Negligence or Wilful Act. The Tenant shall reimburse the Landlord for costs incurred by the Landlord in making good any damage caused to the Assets as a result of the negligence or wilful act of the Tenant, its employees, agents and invitees.

(g) Waste or Damage. The Tenant shall not do or permit to be done any waste or damage, disfiguration or injury to the Premises or the Equipment or permit any overloading of any floors of the Premises and shall not place in, on or about the Premises any fixtures, equipment, machinery, or materials of a weight beyond a capacity for which the Premises are designed, or to the extent that will cause damage to the Premises or cause excessive vibration.

(h) Care of Premises and Equipment. The Tenant shall take good care of the Premises and Equipment and keep the same in a tidy and healthy condition, and shall at its own expense pay for janitorial services and replace as is reasonably necessary during the term of this Lease all light fixtures, tubes, ballasts, starters, cutlery, glassware and other minor items of Equipment used in the Business.

(i) Security. The Tenant shall be responsible for the security of the Assets.

(j) Business Taxes. The Tenant shall pay when due all business taxes payable by the Tenant in respect of the Tenant's occupancy of the Premises.

(k) Assignment and Subleasing. The Tenant shall not assign, mortgage or encumber this Lease, or sublet, or suffer or permit the Assets or any part thereof to be used by others by license or otherwise, without the prior written consent of the Landlord, which consent may be arbitrarily and unreasonably withheld. If the Tenant is a private company, any change in the voting control of such company shall be deemed, for the purposes hereof, to be an assignment of this Lease. If the Tenant assigns or sublets the Assets with the prior written consent of the Landlord, the Tenant shall remain liable for their covenants and obligations hereunder.

(l) Use of Premises. The Tenant shall not use the Assets nor allow the Assets to be used for any purpose other than providing food concession services.

(m) Nuisance. The Tenant shall not at any time use, exercise, or carry on or permit to be used, exercised or carried on, in or upon the Premises or any part thereof any noxious, noisome, or offensive act, trade, business, occupation or calling and no act, matter or thing whatsoever shall at any time be done in or upon the Premises or any part thereof which is an unreasonable annoyance, nuisance or disturbance to the occupiers or owners or adjoining land and properties.

- (n) By-Laws. The Tenant shall comply with all statutes, regulations, and by-laws of any governmental authority relating in any way to the use of the Assets or occupation of the Premises.
- (o) Alterations. The Tenant shall not make any alterations, decorations, installations or changes of any kind in the Premises or Equipment without the prior written consent of the Landlord, and the Landlord may require that any or all work to be done or materials to be supplied hereunder, be done or supplied by contractors or workmen approved by the Landlord.
- (p) Fixtures. All alterations, additions, improvements and fixtures to, in or upon the Premises and Equipment including everything attached to any part thereof other than the Tenant's trade fixtures, machinery, plant and equipment shall become the property of the Landlord and shall remain on the Premises upon the expiration of this Lease subject to such exceptions that the Landlord may consent to in writing.
- (q) Trade Fixtures. The Tenant may install its usual trade fixtures in the usual manner, provided that such installation does not damage the structure of the Premises. All trade fixtures, machinery, plant and equipment installed by the Tenant shall remain the property of the Tenant and shall be removed at the expiration or earlier termination of the term provided the Tenant shall promptly repair any damage caused by such installation or removal.
- (r) Removal of Chattels. The Tenant shall not remove from the Premises any goods, chattels or fixtures moved into the Premises, except in the normal course of business, until all rent and other payments due or to become due during the term of this Lease are fully paid.
- (s) Builder's Liens. The Tenant shall promptly pay all charges incurred by the Tenant for any work, materials or services that may be done, supplied or performed in respect of the Premises and shall not cause or permit any builder's lien to be registered against the Premises and if any such lien should be so registered the Tenant shall pay off and discharge the same forthwith and, if he shall fail or neglect to do so within 10 days after written notice thereof from the Landlord, the Landlord may but shall not be obliged to, pay and discharge such lien and may add to the next ensuing instalment of rent the amount so paid including all costs to the Landlord together with interest thereon from the date of payment; provided that in the event of a bona fide dispute by the Tenant of the validity or correctness of any such claim of lien the Tenant shall be entitled to defend against the same and any proceedings brought in respect thereof after having first paid into Court the amount claimed and such costs as the Court may direct or having provided such other security as the Landlord may in writing approve to ensure payment thereof; provided further that upon determination of the validity of any such lien the Tenant shall immediately pay any judgment in respect thereof against the Landlord and the Tenant in connection with any such lien and shall cause a discharge thereof to be registered without cost or expense to the Landlord.
- (t) Operation of Concession. The Tenant shall provide concession services in accordance with the Tenant's proposal in response to the RFP, and in accordance with the Description of Services attached hereto as Schedule C.

(u) Hours of Operation. The Tenant shall operate the concession from 11:00 a.m. to 4:00 p.m. daily, including the following statutory holidays: Heritage Day, Victoria Day, Aboriginal Day, Canada Day, Discovery Day, Labour Day. Additional hours of operation shall be as approved in writing by the Manager, Parks Department of the City of Whitehorse.

(v) Adult Supervision. A person over the age of 19 shall be on site and in charge of the operation when the concession is open for business.

(w) Vacant Possession. The Tenant shall at the expiration or earlier terminations of this Lease, peaceably surrender and deliver up vacant possession of the Assets in a condition similar to that which they were in at the commencement of this Lease and deliver to the Landlord all keys to the Premises which the Tenant has in its possession.

5. GRANT OF RIGHTS BY TENANT

5.1 During the term or any renewal thereof, the Landlord shall have and the Tenant hereby grants to the Landlord the right at any time within 90 days prior to the expiration of the term hereby granted to enter upon the Premises at all reasonable hours for the purpose of offering the Assets for rent and exhibiting the same to prospective tenants.

6. COVENANTS OF THE LANDLORD

6.1 The Landlord covenants with the Tenant as follows:

(a) Quiet Enjoyment. The Tenant, paying the rent hereby reserved and performing the covenants herein on its part contained, shall and may peaceably possess and enjoy the Assets for the term of this Lease or any renewal thereof and may operate the Business without interruption or disturbance from the Landlord or any other person lawfully claiming by, from or under the Landlord;

(b) Taxes. The Landlord shall pay when due all real property taxes with respect to the Premises.

(c) Utilities. The Landlord shall supply water, sewer and electricity to the Premises without any liability on its part in the event of any interruption of such utility.

7. RIGHTS AND REMEDIES OF THE LANDLORD

7.1 Re-entry. If and whenever the rents hereby reserved or any part thereof are in arrears or unpaid for 10 days after any of the days in which the same ought to have been paid, although no formal or other demand shall have been made therefor, or in case there be default or breach or non-performance of any of the other covenants or agreements in this Lease contained on

the part of the Tenant and such default continues for 30 days after notice thereof to the Tenant, then and in any of such cases, it shall be lawful for the Landlord at any time thereafter without notice to re-enter the Premises and take possession of the Assets and the same to have again, repossess and enjoy as of its former estate, anything herein contained to the contrary notwithstanding; if the Landlord re-enters by reason of the default of the Tenant prior to the expiry of the term of this Lease, the Tenant will be liable to the Landlord for the amount of rent for the remainder of the term as if such re-entry had not been made, less the actual amount received by the Landlord after such re-entry from any subsequent leasing of the Assets during the remainder of the term after deducting his costs of reletting.

7.2 Right of Termination. Upon the Landlord becoming entitled to re-enter, the Landlord shall have the right in addition to all other rights, to determine forthwith this Lease by giving notice in writing to the Tenant and thereupon rent shall be apportioned and paid to the date of such determination and the Tenant shall forthwith deliver up possession of the Assets and the Landlord may re-enter and take possession of the same.

7.3 Bankruptcy. If the term hereof or any renewal thereof shall at any time be seized or taken in execution or attachment by any creditor of the Tenant or if the Tenant shall make any assignment for the benefit of creditors or shall become bankrupt or insolvent or shall take the benefit of any bankruptcy or insolvency legislation or in case the Premises shall become vacant or unoccupied for a period of 10 days, the then current month's rent together with the rent accruing for the balance of the term or the next three months, whichever is less, shall immediately become due and payable and the term hereof or any renewal thereof shall at the option of the Landlord become forfeited and void. Neither this Lease nor any interest therein nor any estate hereby created shall pass to or enure to the benefit of any trustee in bankruptcy or any receiver or any assignee for the benefit of creditors or otherwise by operation of law.

7.4 Distress. Whensoever the Landlord shall be entitled to levy distress against the goods and chattels of the Tenant it may use such force as it may deem necessary for that purpose and for gaining admittance to the Premises without being liable in any action in respect thereof, or for any loss or damage occasioned thereby and the Tenant hereby expressly releases the Landlord from all actions, proceedings, claims or demands whatsoever for or on account of or in respect of any such forceable entry or any loss or damage sustained by the Tenant in connection therewith.

7.5 Non-waiver. The waiver by the Landlord of any breach by the Tenant of any covenant or condition contained in this Lease shall not be construed as or constitute a waiver of any further or other breach of the same or any other covenant or condition, and the consent or approval of the Landlord to or of any act by the Tenant requiring the Landlord's consent or approval shall not be deemed to waive or render unnecessary the Landlord's consent or approval to any subsequent act, similar or otherwise, by the Tenant.

7.6 Landlord's Right to Perform. If the Tenant shall fail to perform any of the covenants or obligations of the Tenant under or in respect of this Lease the Landlord may from time to time at its discretion perform or cause to be performed any such covenants or obligations

or any part thereof and for such purpose may do such things as may be required and may enter upon the Premises to do such things and all expenses incurred and expenditures made by or on behalf of the Landlord shall be paid forthwith by the Tenant to the Landlord and if the Tenant fails to pay the same the Landlord may add the same to the rent and recover the same by all remedies available to the Landlord for the recovery of rent in arrears; provided that if the Landlord commences or completes either the performance or causing to be performed of any of such covenants or obligations or any part thereof, the Landlord shall not be obliged to complete such performance or causing to be performed or be later obliged to act in a like fashion.

7.7 Security Deposit. The Tenant shall pay to the Landlord upon execution of this Lease the sum of \$1,000.00 to be held by the Landlord and not applied on account of rent, as security for the due performance by the Tenant of its covenants hereunder. If the Landlord becomes entitled to terminate this Lease before the expiration of the term the Landlord may, in addition to the other rights and remedies the Landlord may have, apply the deposit to unpaid rent or any other amounts owing under this Lease. If the term of this Lease is not determined by the Landlord before its expiration, the Landlord shall return the deposit to the Tenant without interest within a reasonable time, subject however, to the right of the Landlord to apply any part of the deposit to:

- (a) the restoration of the Assets, if necessary, to their original condition, reasonable wear and tear excepted; and/or
- (b) the payment of any sum due to the Landlord upon the termination of this Lease.

7.8 Interest. The Tenant shall pay to the Landlord interest at the prime commercial lending rate of the Royal Bank of Canada plus 4% per annum on all payments of rent, and other sums required to be paid under this Lease from the date upon which the same were due until actual payment thereof.

8. LANDLORD'S PROTECTION AGAINST CLAIMS

8.1 Landlord's Protection Against Claims. The Landlord shall not be liable and the Tenant hereby covenants and agrees to indemnify and save harmless the Landlord of and from all claims and demands of any and every nature whatsoever by the Tenant its employees, agents and invitees arising out of the following:

- (a) Loss of or damage to any property of the Tenant, its employees, agents or invitees located in or about the Premises in any way occurring;
- (b) Damage or injury, including injury resulting in death, to the Tenant, its employees, agents or invitees in or about the Premises in any way occurring;

(c) Any business carried on in or about the Premises either by the Tenant, any sub-tenant, or otherwise;

(d) Latent defect in the Premises or Equipment;

and this indemnity shall survive the expiration or earlier determination of this Lease.

8.2 Landlord Unable to Perform. Whenever and to the extent that the Landlord shall be unable to fulfil or shall be delayed or restricted in the fulfillment of any obligation hereunder in respect of the supply or provision of any service or utility or the doing of any work or the making of any repairs by reason of being unable to obtain the material goods, equipment, service, utility or labour required to enable it to fulfil such obligation or by reason of any strike or lock-out or any statute, law, or order-in-council or any regulation or order passed or made pursuant thereto or by reason of the order or direction of any administration, controller or board or any governmental department or officer or other authority or by reason of any cause beyond its control either of the foregoing character or not the Landlord shall be relieved from the fulfillment of such obligation and the Tenant shall not be entitled to compensation for any loss, inconvenience, nuisance or discomfort thereby occasioned.

8.3 Liability Insurance. The Tenant shall provide and maintain in such form and to such extent (which shall be a minimum of \$3,000,000.00) and with such companies as the Landlord may require, public liability insurance for the protection against any claims in any way relating to the Assets, in which public liability insurance both the Landlord and the Tenant shall be designated as the insured, and which policy shall provide that the same cannot be cancelled without at least 15 days prior written notice to the Landlord. The Tenant shall deposit with the Landlord a certificate of such insurance at or prior to the commencement of the term and thereafter within 10 days prior to the expiration of any such policy.

8.4 Condition of Premises. The Tenant will examine the Assets before taking possession thereof under this Lease and unless the Tenant has furnished the Landlord with notice in writing specifying any defects in the construction or condition of the Assets, the Tenant shall conclusively be deemed to have examined the Assets and to have found them in good order and satisfactory condition. The Tenant acknowledges that there are no promises, representations or undertakings by the Landlord as to any alterations, remodeling or decorating of the Assets or installations of equipment or fixtures except such, if any, as are expressly set forth in this Lease.

8.5 Relief of Landlord on Sale. If the Landlord sells its interest in the Assets and the purchaser of such interest assumes the covenants and obligations of the Landlord hereunder, the Landlord shall, without further written agreement, be freed and relieved of all liability for such covenants and obligations.

9. OPTION TO RENEW

9.1 Option to Renew. If the Tenant duly and regularly pays the rent hereunder and performs all and every of the covenants and agreements herein contained on the part of the Tenant to be paid, observed and performed, the Landlord shall, upon the written request of the Tenant made not less than 90 days prior to the expiration of the term hereof, grant to the Tenant a renewal of this Lease for a further term of three years, at a rent determined pursuant to paragraphs 9.2 and 9.3 hereof.

9.2 Renewal Term Rent. The rent for such renewal lease may be the fair market rent for the Premises, as of September 1, 2024, having regard to the rate being charged for new leases of similar premises in the downtown area of the City of Whitehorse, but without reference to the leasehold improvements made by the Tenant, as agreed between the parties.

9.3 Arbitration. If the parties fail to agree upon the rent for the renewal lease, at least 60 days before the expiration of the original term hereof, then the determination of the rent shall be referred to a board of 3 arbitrators, one to be appointed by each of the Landlord and Tenant and the third to be appointed by the first two arbitrators named. If either party refuses or neglects to appoint an arbitrator within 10 days after the other has served a written notice upon the party so refusing or neglecting, the arbitrator first appointed shall, at the request of the party appointing him, proceed to determine such rent, as if he were a single arbitrator appointed by both the Landlord and Tenant. If two arbitrators are appointed within the time prescribed and they do not agree within 10 days from the date of appointment of the second arbitrator upon the appointment of the third arbitrator, then upon the application of either the Landlord or Tenant, the third arbitrator shall be appointed by a Judge of the Supreme Court of the Yukon Territory. The determination of the majority of the arbitrators or of the single arbitrator, as the case may be, shall be final and binding upon the Landlord and Tenant and their respective successors and assigns. The expense of the arbitration shall be borne equally by the Landlord and Tenant. The provisions of this paragraph 9.3 shall be deemed to be a submission to arbitration within the provisions of the *Arbitration Act* except that any limitation on the remuneration of the arbitrators imposed by such legislation shall not be applicable.

The renewal lease shall contain the same terms, provisos, covenants, and agreements herein contained except rental and the length of the term, and excluding an option to renew.

10. TERMINATION OF LEASE

10.1 Notice. This Lease may be terminated without cause by either party providing a minimum of three months written notice to the other.

11. GENERAL PROVISIONS

11.1 No Agency or Partnership. Nothing herein contained shall be construed as creating the relationship of principal and agent or of partners or of joint venturers between the parties hereto, their only relationship being that of landlord and tenant.

11.2 Overholding. If the Tenant continues in possession of the Assets with the consent of the Landlord after the expiration of this Lease or any renewal thereof without any further written agreement the Tenant shall remain as a monthly Tenant at the existing rental rate.

11.3 Effect of Headings. The headings or subheadings to the clauses in this Lease form no part thereof, and are inserted for convenience and internal reference only and are not to be relied upon or considered by any person in the interpretation hereof.

11.4 Notices. Any notice required to be given hereunder by any party shall be deemed to have been well and sufficiently given if mailed by prepaid, registered mail, or delivered or emailed at the address of the other party hereinafter set forth:

If to the Landlord: City of Whitehorse, Parks Department
Attention: Program Coordinator
139 Tlingit Street
Whitehorse, Yukon, Y1A 2Y6
By email: Parks@whitehorse.ca

If to the Tenant: Smoke and Sow Inc.
Attention: Raymond Magnuson or Steven Clapp
15 Juniper Drive
Whitehorse, YT Y1A 4W8
By email: chef@smokeandsow.com

A notice shall be deemed to have been received, if delivered or emailed, on the date of delivery and if mailed as aforesaid then on the fifth business day following the posting thereof, provided that in the event of disruption of postal or internet services a notice shall be given by one of the other methods of communication.

11.5 Solicitor and Client Costs. If the Tenant defaults in paying the rent hereunder or in performing any of the covenants and agreements herein contained on the part of the Tenant to be observed and performed the Landlord may recover from the Tenant all his reasonable costs in enforcing compliance with this Lease and without limitation costs as between solicitor and client.

11.6 Joint and Several Covenants. In the event that this Lease is executed by two or more persons as Tenant, the covenants and agreements on the part of the Tenant herein contained will be and will be deemed to be joint and several covenants.

11.7 Binding Agreement. This Lease shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns as the case may be.

11.8 Interpretation of Words. Wherever the singular or the masculine is used in this Lease, the same shall be deemed to include the plural or the feminine or the body politic or corporate where the context or the parties so require.

11.9 Time of Essence. Time shall be of the essence of this Lease.

11.10 Changes to Agreement. No provision of this Lease shall be deemed to have been changed unless made in writing signed by the Landlord and Tenant, and if any provision is unenforceable or invalid for any reason whatever, such unenforceability or invalidity shall not affect the remaining provisions of this Lease and such provisions shall be severable from the remainder of this Lease.

12. ACCEPTANCE BY TENANT

12.1 The Tenant does hereby accept this Lease of the above described land, to be held by it as tenant, and subject to the conditions, restrictions and covenants above set forth.

IN WITNESS WHEREOF the parties hereto have hereunto executed this Lease as of the day and year first above written.

City of Whitehorse

By:

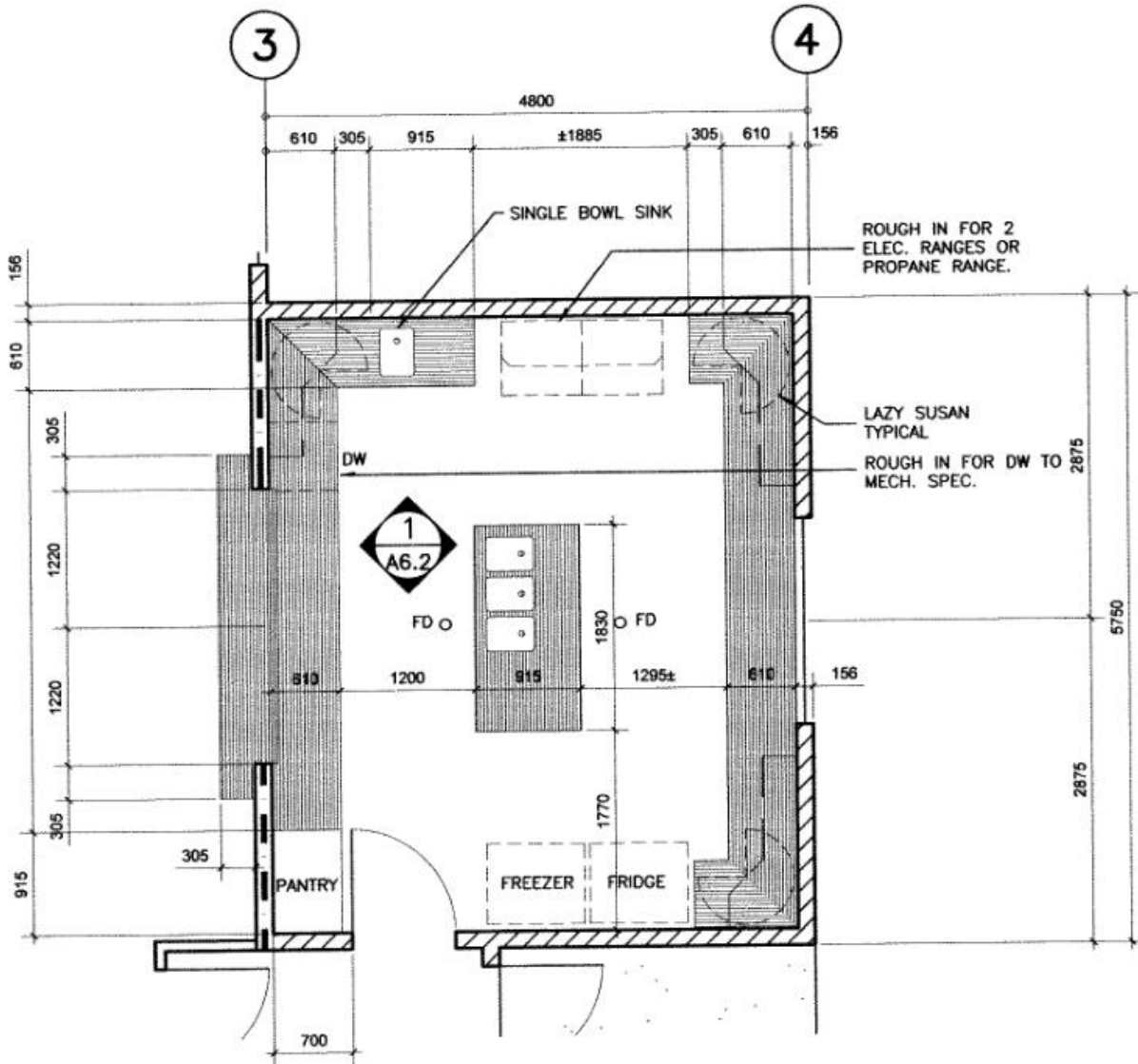
Authorized Signatory

Smoke and Sow Inc.

By:

Authorized Signatory

Schedule A: THE PREMISES



- NOTES:**
1. SINKS ARE INCLUDED, APPLIANCES ARE N.I.C., PROVIDE ROUGH IN FOR ALL APPLIANCES
 2. FLOOR IS FLAT, NO SLOPE TO FLOOR DRAINS (FD)
 3. ALL CABINETS ARE INCLUDED.

Schedule B: THE EQUIPMENT

The Frank Slim Building kitchen facility is a separate 297 square foot (15.75' x 18.86') facility. This facility is equipped with two take-away windows (interior and exterior) and the following City owned commercial grade kitchen equipment presently on the premises:

| ITEM | DESCRIPTION |
|------|------------------------------------|
| 1 | Four burner range |
| 2 | Commercial grade oven |
| 3 | Oven Hood |
| 4 | Dump Sink |
| 5 | Utility Sink |
| 6 | Hand Sink |
| 7 | Refrigerator |
| 8 | Hot and cold running water |
| 9 | Dry storage and shelving |
| 10 | Large central counter / prep table |
| 11 | Electrical service outlets |



Schedule C: DESCRIPTION OF SERVICES

A.1 Supply of Concession Services

The Lessee shall furnish and pay for all equipment, except as otherwise provided by the City, all goods, labour, transportation, supervision and services necessary to maintain a clean and orderly food concession facility and provide food and beverage services in accordance with this Agreement.

Services provided by the Lessee shall include the daily cleaning maintenance of the facility, to include but not be limited to: daily moping, sweeping, vacuuming, dusting of all fixtures, to insure and maintain proper appearance and meet cleanliness standards of facility. Services shall also include the maintenance of an adequate stock of food and beverage supplies, condiments, dishes, silverware, napkin dispensers, cups and glassware, and any kitchen utensils if necessary to serve the demand for such items required to complete the services.

The Lessee acknowledges the desire and obligation of the City to provide the public high quality food and beverages and a high level of public service. Therefore, the Lessee agrees to offer for sale from the Concession Space only good quality food and beverages at fair and competitive pricing, relative to comparable restaurant facilities in The City of Whitehorse. The City Representative shall meet and confer with Lessee regarding such matters. However, the Lessee acknowledges that the City's determination as to the same shall be conclusive. Failure of the Lessee to correct, rectify or modify its prices or quality within five (5) days of being advised in writing to do so shall be cause for default.

A.2 Lessee Personnel

The Lessee shall control the conduct and demeanour of its agents and employees. If the City so requests, the Lessee agrees to supply and require its employees to wear suitable attire, have hair tied back (and clean), wear gloves where appropriate and to wear or carry badges or other suitable means of identification, the form of which shall be subject to prior and continuing approval of the City.

A.3 Operation Cost

The City shall provide to the Lessee suitable water service, electricity, drainage, lighting, and heating of designated premises but without liability on the City's part arising from temporary interruption thereof on account of breakdown, power failure or like causes. The Lessee will immediately advise the City of Whitehorse if a piece of equipment is in need of repair. If it is determined that as a result of the Lessee's negligence that the equipment has been damaged, it will be the Lessee's obligation to repair the equipment due to the result of damage done by its own employees.

A.4 Permits and Fees

The Lessee shall obtain and pay for all applicable City of Whitehorse Business License, permits and food and health inspection fees required and shall comply with all laws, ordinances, regulations and building code requirements applicable to the services contemplated herein. Damages, penalties and/or fines imposed on the City or the Lessee for failure to obtain required permits, inspection fees, or inspections shall be borne by the Lessee.

A condition of this Contract is the ability for the Lessee to obtain the required Food Safety Certifications, insurance, Health Inspection and applicable license to carry out the Work as described.

CITY OF WHITEHORSE
BYLAW 2021-40

A bylaw to authorize a local improvement charge for urban electrification

WHEREAS in 1989 council approved the concept of assisting taxpayers to bring electrical service to their property via the imposition of a local improvement charge; and

WHEREAS the owners of the property located at Lot 1006-5 Group/Quad 105 D/14 in Hidden Valley Subdivision, Whitehorse YT, have applied under the Urban Electrification Program for a local improvement to assist them in providing power to the property; and

WHEREAS sections 267 to 271 of the *Municipal Act* require that a bylaw to provide for and authorize a local improvement will contain specific information pertaining to the local improvement and the procedures to be followed in passing the bylaw; and

WHEREAS the actual cost of the said construction is estimated to be \$6,510 of which \$6,510 will be raised by way of a special tax assessment, and

WHEREAS in order to construct and complete the project it will be necessary to fund up to the sum of \$6,510 from the City; and

WHEREAS the estimated life of the project exceeds ten years;

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

1. A work of local improvement, being the electrification of the property described as Lot 1006-5 Group/Quad 105 D/14, Hidden Valley Subdivision, Whitehorse YT Roll #3701410065, property class RSC, located at 7 Cranberry Place, is hereby authorized.
2. The parcel of land benefiting from this work of local improvement is as set out in section 1 of this bylaw.
3. The total cost of the local improvement has been determined by ATCO Electric Yukon.
4. The cost of the work is to be paid for by way of a special assessment to be levied on the parcel described in section 1 of this bylaw.
5. For the purposes aforesaid, the sum of up to \$6,510 is to be funded by the City.
6. The sum of \$6,510 is to be collected by way of a special assessment as provided in section 7 of this bylaw.

Local Improvement for Urban Electrification Bylaw 2021-40

7. There is hereby imposed on the land described in section 1 of this bylaw a special assessment under the *Assessment and Taxation Act*. This equates to an annual fee in the amount of \$741.90 for each of ten years. This sum is the amount necessary to pay the annual amount of interest and principal falling due in each year, computed at the prime business rate of 2.45% as at September 3, 2021. The said special assessment shall be in addition to all other rates and taxes.
- (1) The property owners have the option of paying the total property charge prior to its due date, or of paying the equal annual instalments each of ten years, commencing on July 2, 2022.
 - (2) The property owners may reduce the balance owing on the total property charge by making a lump sum payment in any year during the life of the bylaw. Such lump sum payments shall be accepted only in the month of January each year.
 - (3) The property owners may also pay off the balance owing at any point during the ten-year life of the bylaw.
8. The provisions of this bylaw shall come into full force and effect upon final passage thereof.

NOTICE GIVEN:

September 20, 2021

FIRST and SECOND READING:

September 27, 2021

THIRD READING and ADOPTION:

Mayor

City Clerk