

APPENDIX A

THIS AGREEMENT DATED THE ____ DAY OF _____, 2019

BETWEEN:

COWESSESS FIRST NATION
("Cowessess")

-and-

THE CITY OF REGINA
("Regina")

MUNICIPAL SERVICES AND COMPATIBILITY AGREEMENT

Introduction

1. Cowessess, through its holding company Cowessess Flood Claim Holdings Inc., has acquired the land located at 1246 Albert Street, Regina, Saskatchewan more particularly described as follows:

Lot 11 Blk 146 Plan OLD33 Extension 0
as described on Certificate of Title 93R24638
(Surface Parcel 109604112)

Lot 12 Blk 146 Plan OLD33 Extension 0
as described on Certificate of Title 93R24638
(Surface Parcel 109604033)

Lot 13 Blk 146 Plan OLD33 Extension 0
as described on Certificate of Title 93R24638
(Surface Parcel 109604044)

Lot 14 Blk 146 Plan OLD33 Extension 0
as described on Certificate of Title 93R24638
(Surface Parcel 109604055)

Lot 21 Blk 146 Plan 101205526 Extension 5
as described on Certificate of Title 93R24638, description 5
(Surface Parcel 111931523)

Lot 11 Blk 146 Plan OLD33 Extension 0
as described on Certificate of Title 93R24638
(Mineral Parcel 111931488)

Lot 12 Blk 146 Plan OLD33 Extension 0
as described on Certificate of Title 93R24638
(Mineral Parcel 111931499)

Lot 13 Blk 146 Plan OLD33 Extension 0
as described on Certificate of Title 93R24638
(Mineral Parcel 111931501)

Lot 14 Blk 146 Plan OLD33 Extension 0
as described on Certificate of Title 93R24638
(Mineral Parcel 111931512)

Lot 21 Blk 146 Plan 101205526 Extension 5
as described on Certificate of Title 93R24638, description 5
(Mineral Parcel 111931534)

(the "Land"). A map of the Land is attached to this Agreement as Schedule "A".

2. The Land is situated within the boundaries of the City of Regina, in the North Central area. Cowessess intends to have the Land set apart as reserve land pursuant to the terms of the Cowessess Flooding Claim Settlement Agreement as entered into between the Cowessess First Nation and Her Majesty the Queen in Right of Canada, dated November 9, 2011 (the "Cowessess Flooding Claim Settlement Agreement").

- 3.. Regina specifically agrees to the Land being set apart as reserve land on the condition that the terms of this Agreement, as amended from time to time, shall apply to the Land so long as it remains reserve land. For the purpose of this Agreement, "reserve land" means reserve land as defined by the *Indian Act*, R.S.C. 1985, c.I-5, and shall include designated land, conditionally surrendered land, and land of a similar status under any successor legislation replacing the *Indian Act*.
4. The parties wish to establish a long-term relationship of practical cooperation which respects the jurisdiction of Cowessess, but which also recognizes the need for ongoing compatibility and coordination between the parties, particularly as to land use, building and fire standards, public health and safety, and business regulation, because of the close proximity of the Land to other lands and businesses within the City of Regina.
5. The purpose of this Agreement is to set out the undertakings which each party has given to the other.

Council Authorizations

6. The Cowessess Band Council has approved this Agreement. It did so by a Band Council Resolution passed at a meeting of the Council held on the ____ day of _____, 2019. A copy of the resolution is attached to this Agreement as Schedule "B".
7. The Regina City Council has approved this Agreement. It did so by passing Bylaw No. _____ at its meeting held on _____, 2019. A copy of Bylaw No. _____ is attached to this Agreement as Schedule "C".

Authority to Tax

8. The parties acknowledge and agree that Cowessess shall be the sole taxing authority for the Land and the improvements, occupants and businesses located on the Land. Regina shall not tax the Land or any portion of the Land, any improvements on the Land, or any occupants on the Land pursuant to *The Cities Act* of the Province of Saskatchewan as amended from time to time, or pursuant to any other applicable tax legislation.

City Services

9. The parties agree that Regina shall provide all normal City services to the Land and the occupants of the Land (the "municipal services"). The type and level of municipal services supplied to the Land and the occupants of the Land shall be the same as Regina supplies to similarly zoned lands within the City of Regina, which are in a similar state of development and shall specifically include fire protection and policing services. The terms applicable to policing services shall be the subject of a separate agreement to be entered into by Cowessess and the Regina Board of Police Commissioners provided that Cowessess shall not be required to pay any additional amounts associated with the provision of such services outside of the payments associated with the municipal services. The municipal services shall not include services provided by the Boards of Education of the Regina School Division No. 4 or the Regina Catholic School Division.

Payment for City Services

10. (1) Cowessess agrees to pay Regina, in consideration for the provision of the municipal services, an annual amount which equals the municipal and library portion of the property tax levy for any given year that would have been levied on the Land, if the Land were not reserve land less any applicable vacancy adjustment. The school portion of the property tax levy shall be excluded from the annual cost of the municipal services.
- (2) If Cowessess receives grants in lieu of taxes from a corporation whose land, improvements or business is exempt from taxation or from the Government of Canada or the Government of Saskatchewan or any agency of those governments with respect to the Land or any portion of the Land, Cowessess shall, where applicable, pay to Regina in addition to the amount required to be paid under subsection 10(1), an annual amount equal to the municipal and library portion of any such grants in lieu, provided however that Regina shall not be entitled to receive a total payment greater than it would have received if the Land was not reserve land.
- (3) Cowessess agrees to annually pay, in addition to the amount required to be paid under subsection 10(1):
 - (a) any local improvements charged against the Land in an amount and in a manner as if the Land was not reserve land;
 - (b) any Business Improvement District levies charged against the Land in an amount and in a manner as if the Land was not reserve land; and
 - (c) any special charges levied against the Land which are of the same nature and amount as would be charged were the Land not reserve land.
- (4) Notwithstanding any other provision of this Agreement, it is understood and agreed that the annual amounts to be paid by Cowessess under subsections 10(1) and 10(2) shall not cover those services which are normally provided by Regina in consideration for a direct charge or user fee payable by the party to whom such services are provided. Such services include, without limitation, the supply of water and the provision of sanitary and storm sewage systems. The charges for these services shall be invoiced and paid by Cowessess or by the occupant of the Land to whom such services are provided, in the same manner as any other party to whom such services are provided. Such payment will include, if required by law, any tax imposed by Federal or Provincial legislation in relation to the provision of such services.
- (5) Cowessess acknowledges that a municipal surcharge or levy is invoiced and collected by SaskEnergy with regard to the sale and/or transportation of natural gas to consumers, and by SaskPower, with regard to the sale and/or transmission of electrical power to consumers. Cowessess agrees that Cowessess shall, where applicable, pay the municipal portions of these invoices, or such other similar surcharges or levies as may now or

hereafter be authorized by law, in accordance with invoicing and billing procedures utilized by SaskEnergy, SaskPower and any other Crown utilities until such time as a court shall make a determination that, as a First Nation or as an entity owned and controlled by a First Nation, the imposition of the surcharge or levy violates the law including the constitutional or treaty rights of Cowessess. For greater certainty, Cowessess' covenant to remit payments shall not be deemed to be an acknowledgment that Cowessess is subject to any tax or payment or grant in lieu of tax levied or imposed by the Province of Saskatchewan.

Invoicing

11. Regina shall invoice Cowessess for the municipal services as outlined in subsections 10(1), 10(2) and 10(3) at the same time that Regina sends out tax notices in each year. Subject to subsection 25(2), the invoice for the municipal services is payable in full on or before June 30 in each year or such other date as the Regina City Council may specify by bylaw of general application.

Discounts and Penalties

12. If the invoice for the municipal services is not paid in full by June 30, any unpaid amount shall be subject to the same additional percentage charges that Regina imposes on unpaid current property taxes and on property tax arrears respectively.
13. Cowessess shall have the right in any year to prepay all or part of the cost associated with the provision of the municipal services. The same discount rates allowed by Regina for prepayment of property taxes shall apply to any prepayment made by Cowessess.

Supplemental Invoice

14. If, before December 1 in any year, a sum representing an increase in value of any improvement on the Land is added to the assessment roll, Regina may send a supplemental invoice to Cowessess to reflect the resulting change in the cost of the municipal services. This supplemental invoice shall be paid by Cowessess on or before December 31 of that year. If any portion of the supplemental invoice remains unpaid after December 31, it shall be subject to the same additional percentage charges that Regina imposes on arrears of property taxes.

Remedies for Non-Payment

15. Subject to the application of the provisions of subsection 25(2) hereof, if any invoice for the municipal services has not been paid in full by December 31 of the year in which it was issued, Regina may, upon thirty (30) days' written notice, suspend or withdraw any or all of the municipal services which it provides to the Land and/or the occupants of the Land until the invoice plus penalties has been paid in full. Regina's right to suspend or withdraw the municipal services shall be without prejudice to any other remedy which may be available to Regina.

Assessment Information

16. Cowessess agrees to allow the assessor for the City of Regina to have access to the Land, upon reasonable notice, for the purpose of collecting the assessment

information necessary to prepare the invoice for the municipal services as set out in sections 11 and 14. Regina agrees to provide Cowessess, upon request, the assessment information and data collected along with, if available, any other information relating to the costs associated with the provision of the municipal services to the Land by Regina.

Liability for Disruption of Services

17. In the event that the municipal services are disrupted for reasons other than suspension or withdrawal pursuant to sections 15 and 18 of this Agreement, Regina shall have no greater liability for such disruption than it has to the owners and occupants of other lands within the City. All defences available to Regina under *The Cities Act* shall be available to Regina as if incorporated in this Agreement.

Land Use and Technical Standards

18. (1) Cowessess agrees that it will take all steps and do all things as may be necessary, including passing and enforcing compatible bylaws, to ensure that, at all times, the occupation, use, development and improvement of the Land is essentially the same as the occupation, use, development and improvement of the Land which would have been allowed as either permitted or discretionary uses if the Land were not reserve land. Cowessess agrees to particularly ensure such compatibility in regard to land use, building and fire standards, public health and safety, and business regulation.
- (2) The parties acknowledge that the City from time to time adopts technical, construction and site drainage standards for new developments and the parties agree that those standards shall apply to all new developments upon the Land.
- (3) Cowessess acknowledges that the City has the authority to approve driveway crossings (defined in City of Regina Zoning Bylaw No. 9250, as "that portion of a sidewalk, curb, or boulevard permanently improved or designed for the passage of vehicular traffic across the sidewalk, curb or boulevard"). Cowessess agrees to:
 - (a) co-ordinate vehicular access points shown on any site plan with driveway crossings approved by the City; and
 - (b) apply to the City and pay the City for any new driveway crossings required by any new development which driveways shall be designed and constructed to City of Regina standards and specifications and constructed by the City or by a contractor approved by the City. Cowessess shall contact the City's Development Engineering Department a minimum of two weeks prior to driveway installation to confirm all construction details; and
 - (c) pay to close any existing crossings no longer required.
- (4) Cowessess acknowledges that the existing lane that runs between the two properties comprising the Land on Albert Street and Angus Street would not be affected by the reserve creation. This lane would continue to be a

public right-of-way that is accessed by all property owners in that block and that is maintained by the City. Any annual lane maintenance charges that apply to other property owners would also apply to the reserve lands.

- (5) If, at any time, the occupation, use, development and/or improvement of the Land is not essentially the same as the occupation, use, development and/or improvement of the Land which would be allowed if the Land were not reserve land, and such condition of breach continues for a period of thirty (30) days following written notification by Regina to Cowessess of such breach, Regina may, at its option, and without prejudice to any other remedy which may be available, suspend or withdraw any or all of the municipal services which it provides to the Land, and/or the occupants of the Land, until the condition of breach has been remedied. If the matter is referred to arbitration pursuant to subsection 25(1), Regina's rights under this section shall be suspended pending the decision of the arbitrator.

Applicability of Laws

19. (1) The parties both acknowledge that, subject to Section 35 of the *Constitution Act 1992*, all provincial laws of general application, including municipal bylaws, which are not in conflict with the provisions of the *Indian Act*, any Band bylaw enacted thereunder, or any other laws or legislation enacted by Cowessess shall, where applicable, apply to the Land and may be enforced on the Land.
- (2) In the event of a dispute between the parties as to whether a provincial law or municipal bylaw is a law of general application which applies to the Land and may be enforced on the Land, the parties agree to meet to try to develop a practical solution which respects Cowessess' jurisdiction and Regina's need for compatibility of occupation, use, development and improvement.
- (3) If the parties fail to reach a practical solution which is satisfactory to both parties, and legal proceedings are commenced by either party to determine whether a provincial law or municipal bylaw is a law of general application which applies to and may be enforced upon the Land, the parties agree that nothing in this Agreement shall be construed to diminish, derogate from or prejudice the constitutional, treaty or other rights of either party, nor affect their legal position in the matter.

Fire Services

20. Cowessess agrees that where, in the opinion of the Fire Chief of Regina and/or his agents, a condition exists on the Land which is an imminent danger to the public safety, the Fire Chief, and/or his agents may enter upon the Land and take any reasonable emergency action to eliminate the danger in a manner and process that is essentially the same for non-reserve land. Whenever it is reasonably possible to do so, Cowessess shall be advised in advance of any actions to be taken.
21. Cowessess agrees that the Fire Chief and/or his agents may enter upon the Land to conduct periodic fire inspections in the same manner as would occur on

non-reserve land. Cowessess will be advised of such inspection in advance of the inspection date.

Joint Meeting of Councils

22. Cowessess and Regina agree that their respective Councils, and/or their representatives, will meet together at least once in each calendar year to discuss such matters as may have arisen between them, and to keep open the lines of communication.

Term of Agreement

23. Cowessess and Regina agree that the term of this Agreement shall be for the same duration as the Land remains reserve land. This Agreement shall become valid and effectual in respect of the Land as and when such Land is set aside as reserve land pursuant to the provisions of the *Indian Act* and the Cowessess Flooding Claim Settlement Agreement.

Amendments

24. If, at any time during the continuance of this Agreement, the parties shall deem it necessary or expedient to make any alteration or addition to this Agreement, they may do so by means of a written agreement between them which shall be supplemental and form part of this Agreement.

Arbitration

25. (1) Except for disputes involving any levy or charge sought to be collected by Regina, which are to be considered in the context of the provisions referenced in subsection 25(2) hereof, in the event of any dispute with regard to the interpretation or enforcement of this Agreement, the matter may, with the consent of both parties, be referred to binding arbitration to be conducted in accordance with the *Commercial Arbitration Act* (Canada), with such arbitration to take place in the City of Regina, in the Province of Saskatchewan. Each party shall bear its own legal costs and shall pay one-half of the cost of the arbitrator. The decision of any arbitrator conducting arbitration pursuant to this section shall be final and binding and have the same force and effect as a final judgment in a court of competent jurisdiction. If either party fails to abide by the decision or award of the arbitrator, then the opposing party shall have the right to apply to the appropriate court or courts to obtain an order compelling the enforcement of the decision or award of the arbitrator.
- (2) The parties agree that if Cowessess is not satisfied with any levy or charge sought to be collected by Regina under subsections 10(1), 10(2) and 10(3) of this Agreement the following shall be used to resolve the issue:
 - (a) Cowessess may, within thirty (30) days of receipt of a notice outlining the levy or charge, request a joint meeting of the Councils at which the levy or charge shall be discussed and an effort made to reach agreement on the issue;

- (b) If no agreement is reached, Cowessess may, within fifteen (15) days after the meeting referred to in subsection 25(2)(a) is held, serve a notice to arbitrate the issue;
- (c) If a notice to arbitrate the issue is served on Regina, the following shall apply:
 - (i) Unless the parties otherwise agree, the issue shall be determined by a panel of three arbitrators (the "arbitration board"), with one arbitrator appointed by Cowessess and one arbitrator appointed by Regina. Each party shall, within fifteen (15) days following the giving of notice for arbitration, advise the other in writing of the name, address and calling of their arbitrator selected. The two arbitrators as selected shall, within a reasonable period of time, but not exceeding a period of thirty (30) days, jointly appoint a third arbitrator, who shall act as chair of the arbitration board. In the event the two arbitrators selected by the parties fail to appoint a third arbitrator within the said thirty (30) days, then either party at any time thereafter may apply upon notice to the other to a Judge of the Court of Queen's Bench for Saskatchewan for an order appointing the third arbitrator to act as chair of the arbitration board;
 - (ii) The arbitration board shall hear and determine the issue of the amount of the levy or charge. In reaching its decision, the arbitration board may confirm the levy or charge, or it may substitute a levy or charge which the arbitration board considers, in the circumstances, to be fair and reasonable. In conducting the arbitration, the arbitration board shall proceed in accordance with the *Commercial Arbitration Act*, (Canada). The decision of the arbitration board shall be final and binding and shall have the same force and effect as a final judgment of a court of competent jurisdiction;
 - (iii) Pending a final determination by the arbitration board, Regina's rights under section 15 shall be suspended; and
 - (iv) If a matter has been submitted to arbitration and no final determination has been made by the arbitration board prior to December 31 of the year in which the submission to arbitration is made, Cowessess agrees to tender payment equal to the amount levied by the City of Regina together with interest calculated in accordance with the City's bylaw of general application. In the event that Cowessess shall be successful or partially successful in the arbitration, the arbitration board shall, in addition to any other remedies, award interest to Cowessess calculated on the same basis as that charged by the City under its bylaws from the date that payment is made to the City.

- (d) In conducting the arbitration, the arbitration board shall take into account the rules, principles and policies of assessment applied generally in the City of Regina, together with any other information as deemed relevant by the arbitration board.
- (3) If Cowessess is not satisfied with any levy or charge, other than those described in subsection 25(2), Cowessess shall have the same rights to challenge the levy or charge as are provided to other parties receiving similar services.

Notices

- 26. Any notice given or required to be given under this Agreement shall be in writing and shall be deemed to have been given when mailed by registered mail, postage prepaid, to the other party at the address stated below or at the latest changed address given, by the party to be notified as hereinafter specified.

Cowessess First Nation
PO Box 100
Cowessess SK S0G 5L0
Attention: Chief and Council

The City of Regina
PO Box 1790
Regina, SK S4P 3C8
Attention: City Clerk

Either party may, at any time, change its address for the above purpose by mailing, as aforesaid, a notice stating the change and setting forth a new address.

Non-Performance

- 27. The failure on the part of either party to exercise or enforce any right conferred upon it under this Agreement shall be deemed not to be a waiver of any such right or operate to bar the exercise or enforcement thereof at any time or times thereafter.

Invalidity of Particular Provision

- 28. It is intended that all provisions of this Agreement shall be fully binding and effective between the parties, but in the event that any particular provision or provisions or a part of one is found to be void, voidable or unenforceable for any reason whatsoever, then the particular provisions or provision or part of the provision shall be deemed severed from the remainder of this Agreement and all other provisions shall remain in full force.

Applicable Law

- 29. The application, interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the Province of Saskatchewan and the laws of the Dominion of Canada and Cowessess, as applicable herein. Further, the parties covenant and agree to attorn to the

jurisdiction of the courts of the Province of Saskatchewan in relation to any actions or proceedings as taken in relation hereto.

Reasonable Assurances

30. The parties hereto shall at all times and upon every reasonable request provide all further assurances and do such further things as are necessary for the purpose of giving full effect to the covenants and provisions contained in this Agreement.

Completion of Subdivision

31. Cowessess acknowledges that the Land currently includes a three-meter area intended to be subdivided from Lot 11 (at the corner of Albert Street and 7th Avenue, as shown on Schedule "A") and dedicated to Her Majesty the Queen as part of the road allowance. Cowessess further agrees that, as a condition of this Agreement and prior to the Land being set apart as reserve land, Cowessess shall be responsible for completion of all matters necessary to complete the required subdivision application.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement, effective the day and year first above written as attested to by the hands of their proper signing authorities on their behalf.

COWESSESS FIRST NATION

As executed by a quorum of the
Council of the Cowessess First Nation

SIGNED on behalf of the COWESSESS)
FIRST NATION by at least a quorum)
of the Council of the Cowessess)
First Nation in the presence of:)

Signature: _____)

Name of Witness: _____)

Address: _____)

_____)
as to all signatures unless otherwise indicated

Per: _____
Chief

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

(seal)

THE CITY OF REGINA

Mayor

City Clerk



CORNER CUTOFF IN THE NW OF ALBERT ST AND 7TH AVE
Coming from the Cowessess First Nations property at 1246 Albert Street