

THIS AGREEMENT DATED THE ___ DAY OF _____, 2022

BETWEEN:

COWESSESS FIRST NATION
(“Cowessess”)

- and -

THE CITY OF REGINA
(the “City”)

MUNICIPAL SERVICES AND COMPATIBILITY AGREEMENT

Introduction

1. Cowessess, through its holding company Cowessess TLE Holdings Ltd., has acquired the land located at 2626 7th Avenue and 1200 Albert Street, Regina, Saskatchewan more particularly described as follows:

Lot A, Blk/Par 146-Plan 89R04488 Ext 0,
As described on Certificate of Title 92R49513
(Surface Parcel 109572453)

Lot 19, Blk/Par 146-Plan OLD33 Ext 0,
As described on Certificate of Title 94R64501
(Surface Parcel 109604101)

Lot 20, Blk/Par 146-Plan OLD33 Ext 0,
As described on Certificate of Title 94R64501
(Surface Parcel 109604123)

Lot 19, Blk/Par 146-Plan OLD33 Ext 0,
As described on Certificate of Title 94R64501
(Mineral Parcel 111930128)

Lot 20, Blk/Par 146-Plan OLD33 Ext 0,
As described on Certificate of Title 94R64501
(Mineral Parcel 111930139)

(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. Cowessess intends to have the Land set apart as reserve land pursuant to the terms of the Cowessess Treaty Land Entitlement Settlement Agreement as entered into between the Cowessess First Nation and Her Majesty the Queen in Right of Canada and Her Majesty the Queen in Right of Saskatchewan, dated March 14, 1996 (the "Cowessess Treaty Land Entitlement Settlement Agreement").
3. The City 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 and the provision of Municipal Services to the Land.
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 Council Resolution passed at a meeting of the Council held on the ____ day of _____, 2022. A copy of the Council 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 _____, 2022. A copy of Bylaw No. _____ is attached to this Agreement as Schedule "C".

Authority to Tax

8. The parties acknowledge and agree that effective as of the date the Land is set apart as reserve:
 - (a) Cowessess shall be the sole taxing authority for the Land and any improvements, occupants and businesses located on the Land;
 - (b) the City shall not tax the Land or any portion of the Land, any improvements on the Land, or any occupants on the Land or any interest therein pursuant to *The Cities Act* S.S. 2002, c C-11.1 ("*The Cities Act*") as amended from time to time, or pursuant to any other applicable tax legislation.

City Services

9. The parties agree that the City 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 the City 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 to the City, 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 vacancy or other applicable adjustment. The school portion of the property tax levy shall be excluded from the annual cost of the Municipal Services.
- (2) Cowessess agrees to annually pay, where applicable, 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.
- (3) 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 the City 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 or any Cowessess laws or legislation in relation to the provision of such services.
- (4) 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. (1) The City shall invoice Cowessess for the Municipal Services as outlined in subsections 10(1) and 10(2) at the same time that the City sends out tax notices in each year. Subject to subsection 24(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.
- (2) The invoice shall include a detailed calculation for the specific year, which shall include the following:
- (a) the assessed value for any of the Land that remains vacant;
 - (b) the assessed value for each improvement or building located on the Land;

- (c) the City's mill rate for the municipal and library portion of the property tax levy for the applicable year which is to be applied to the assessed values; and
- (d) a separate calculation shall be provided for any vacant land and for each improvement or building situated on the Land, with a total amount due.

Discounts and Penalties

- 12. If the invoice for the Municipal Services is not paid in full by June 30 of the year in which was issued, any unpaid amount shall be subject to the same additional percentage charges that the City 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 the City 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, the City may send a supplemental invoice to Cowessess to reflect the resulting change associated with the Municipal Services. Any supplemental invoice shall provide the detailed calculation for the resulting change. In the case of an increase in the cost of the Municipal Services, the supplemental invoice shall be paid by Cowessess on or before December 31 of that year and if any portion of the supplemental invoice remains unpaid after December 31, it shall be subject to the same additional percentage charges that the City imposes on arrears of property taxes. In the case of a decrease in the cost of Municipal Services, the supplemental invoice shall detail the resulting credit in favor of Cowessess, such credit to be applied in accordance with the reasonable instructions of Cowessess.

Remedies for Non-Payment

- 15. Subject to the application of the provisions of subsection 24(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, the City 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, other than emergency response services by police and fire, until the invoice plus penalties has been paid in full. The City's right to suspend or withdraw the Municipal Services shall be without prejudice to any other remedy which may be available to the City.

Access to Land

- 16. Cowessess agrees to allow and accommodate the City, its officers, employees and agents to have access to the Land and the improvements thereon, upon reasonable notice to:
 - (a) collect assessment information necessary to prepare the invoice for the Municipal Services as set out in sections 11 and 14. The City agrees to

provide to 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 the City; and

- (b) carry out any work that is reasonably necessary to maintain repair or replace any utilities, works, equipment or other facilities needed to provide the Municipal Services to the Land.

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, the City shall have no greater liability for such disruption than it has to the owners and occupants of other lands within the City of Regina. All defences available to the City under *The Cities Act* shall be available to the City 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 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;
 - (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 Planning and Development Services 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) 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 the City to Cowessess of such breach, the City 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 24(1), the City's rights under this section shall be suspended pending the decision of the arbitrator.
- (5) Without limiting the generality of subsection (4), Cowessess also acknowledges that the Land is currently serviced to support the existing development and zoning of the Land prior to reserve creation. New development or redevelopment of the Land that requires capacity upgrades or other capital improvements to be made to the City's municipal infrastructure serving the Land may require the alteration, expansion or upgrading of infrastructure to serve the proposed development or the payment of development charges to the City as a condition of continuation of some or all of the Municipal Services. Cowessess agrees to be responsible for any such installation and for the payment to the City of any applicable development charges then in effect, in the same manner and to the same extent as would apply to any developer of similarly zoned and developed non-reserve land within the City, provided such development charges servicing agreement fees or development levies imposed by the City are applied *pro rata* to all other land owners or occupants located within the City of Regina who may also benefit from or utilize such capacity upgrades or capital improvements.

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 the City'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.

- (4) 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. Other than as provided for in section 24, 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.

Fire Services

20. (1) Cowessess agrees that where, in the opinion of the Fire Chief of the City and/or their 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. The Fire Chief of the City and/or their agents shall, whenever it is reasonably possible to do so, notify Cowessess and any occupants of the Land in advance of any actions to be taken.
- (2) Cowessess agrees that the Fire Chief and/or their agents may enter upon the Land to conduct periodic fire inspections in the same manner as would occur on non-reserve land. Cowessess and any occupants of the Land will be advised of such inspection in advance of the inspection date.
- (3) In order to provide the notices as referenced in this section, Cowessess shall provide the City with contact information for the occupants of the Land upon request.

Joint Meeting of Councils

21. Cowessess and the City 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

22. Cowessess and the City 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 Treaty Land Entitlement Settlement Agreement.

Amendments

23. 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

24. (1) Except for disputes involving any levy or charge or any invoice or supplemental invoice associated with the Municipal Services, which are to be dealt with in accordance with subsection 24(2), 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 disputes any levy or charge or any invoice or supplemental invoice associated with the Municipal Services, the following shall be used to resolve the issue:
- (a) Cowessess may, within thirty (30) days of receipt of the invoice or supplemental invoice, request a joint meeting of the Councils to discuss the dispute concerning the Municipal Services fees in good faith with a view to resolving such dispute;
 - (b) if no agreement is reached following the conclusion of the joint meeting and discussions referred to in clause (a), Cowessess may, within fifteen (15) days after the meeting, serve a notice to arbitrate the dispute;
 - (c) if Cowessess serves a notice to arbitrate the dispute on the City, 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 the City. 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 King'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 dispute. In reaching its decision, the arbitration board may confirm the charges associated with the Municipal Services, or it may substitute the charges associated with the Municipal Services with a reduced amount 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, the City'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 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 considered relevant by the arbitration board.

Notices

25. 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

26. 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

27. 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.

Reasonable Assurances

28. 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

29. (1) Cowessess and the City acknowledge that currently there is a dedicated right of way (the "Alley") dividing the Land that Cowessess may wish to acquire from the City. Should the parties come to agreement on the acquisition of the Alley then, subject to City Council approval and adoption of a bylaw allowing for the closure and sale of the Alley, the City agrees to have the Alley closed and consolidated with the Land prior to reserve creation.
- (2) Cowessess and the City acknowledge that currently the Land includes an approximate three-meter area intended to be subdivided from Lot 20 (southwest corner of Albert Street and 6th Avenue) and dedicated to His Majesty the King in Right of Saskatchewan as part of a road allowance. Cowessess agrees to have the three-meter area subdivided from the Land prior to reserve creation. Cowessess shall be responsible for completion of all matters necessary to complete the required subdivision applications contemplated by this subsection 29(2).

[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: _____
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Per: _____
Councillor

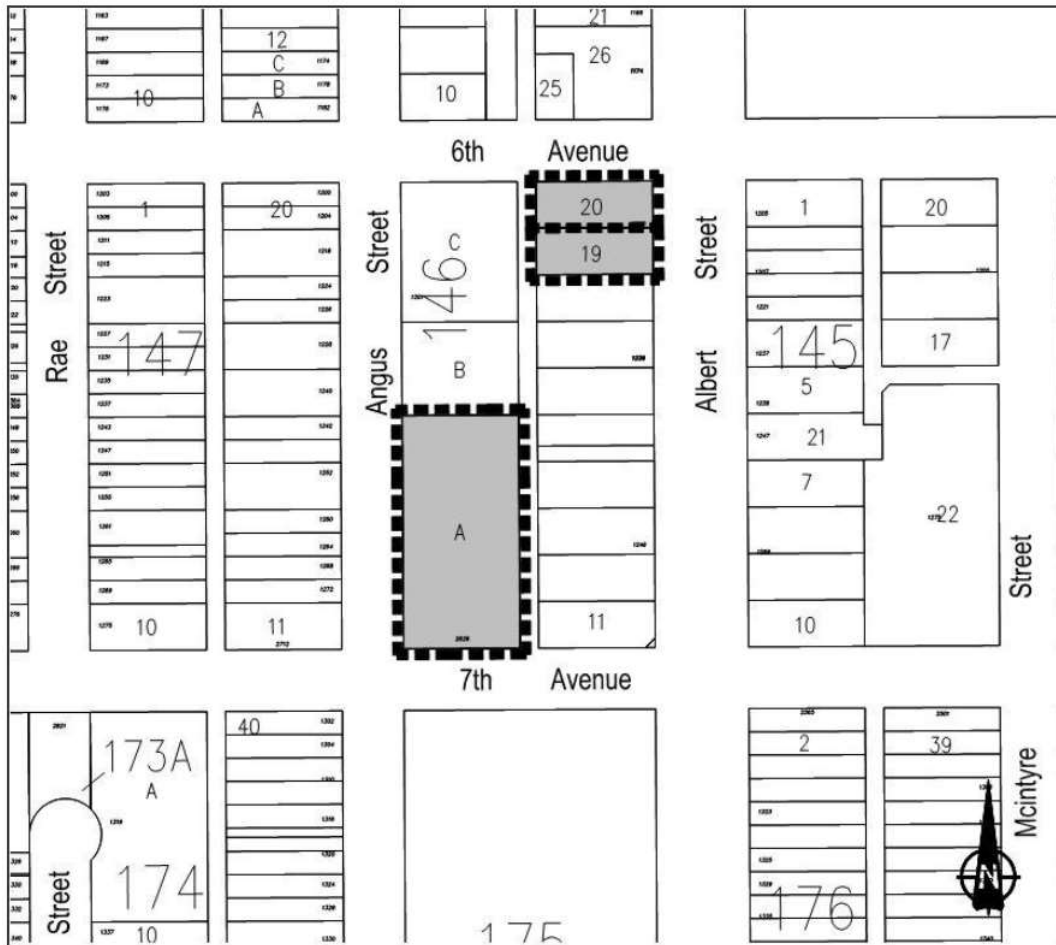
(seal)

THE CITY OF REGINA

City Clerk

SCHEDULE "A"

Schedule 'A'



SUBJECT PROPERTY 

2626 7th Avenue, Regina SK

Lot A, Blk/Par 146-Plan 89R04488 Ext 0 (Surface Parcel 109572453)

1200 Albert Street, Regina SK

Lot 19, Blk/Par 146-Plan OLD33 Ext 0 (Surface Parcel 109604101)

Lot 20, Blk/Par 146-Plan OLD33 Ext 0 (Surface Parcel 109604123)

SCHEDULE "B"
to be completed

SCHEDULE "C"
to be completed