

THIS AGREEMENT made effective this _____ day of _____, 2024.

BETWEEN:

ROCKY VIEW COUNTY

a municipal corporation in the Province of Alberta pursuant
to the *Municipal Government Act*, RSA 2000 c M-26
("County")

- and -

MACDONALD COMMUNITIES LIMITED

A corporation under the *Business Corporations Act*, RSA 2000, c B-9
("Developer A")

COCHRANE LAKE COST SHARE AGREEMENT

WHEREAS:

- A. Developer A (the "Developer") is a registered owner of the lands benefiting from the future improvements to Cochrane Lake and has agreed to cost share the development of a Cochrane Lake Improvement Plan.
- B. To accommodate the anticipated developments outlined in the Cochrane Lake Hamlet Plan and Cochrane North Area Structure Plan, and to address issues stemming from past residential developments, there is a need for investment in a higher-capacity stormwater management system for Cochrane Lake.
- C. Creating a comprehensive stormwater management plan and improved infrastructure is imperative to allow this area to grow as per the policy documents, while at the same time resolving historical issues of lake water quality and flooding that will continue to impact the existing communities around Cochrane Lake if improvements to the lake do not proceed.
- D. The County and the Developer wish to enter into certain commitments to, and obligations respecting, the funding of Work associated with developing the Cochrane Lake Improvement Plan.
- E. The Work will be performed by an independent 3rd Party Consultant. The consultant will be awarded the Work after the evaluation of a County issued Request for Proposals for the Work.

NOW THEREFORE, in consideration of the payments and mutual terms, conditions and covenants to be observed and performed by each of the parties hereto, the County and the Developer hereby covenant and agree as follows:

1. DEFINITIONS

- 1.1. "**Agreement**" means this Agreement including all Schedules annexed hereto.
- 1.2. "**Costs**" means any and all costs incurred or to be incurred in performing the Work and completing and commissioning the Cochrane Lake Improvement Plan including, without restriction, permits, crossing agreements, all related engineering costs and contingencies including soils investigation and materials testing costs, survey, GST, and any other cost and expense required to complete the Cochrane Lake Improvement Plan.
- 1.3. "**Cost Sharing Allocation**" means the parties' respective cost responsibility for funding of Costs of the Cochrane Lake Improvement Plan, as contemplated within **Schedule "B"**.
- 1.4. "**Council**" means the council of Rocky View County.

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- 1.5. "**Development**" means any development, as that term is defined within the County's Land Use Bylaw, and as contemplated within any permit or subdivision approval now or hereafter issued in respect of development lands owned by Developer A, as the context so requires, and accessing, using or benefited by the improvements constructed as part of the Cochrane Lake Improvement Plan.
- 1.6. "**Consultant**" means the County's awarded 3rd Party Consultant designated to perform the Work associated with developing the Cochrane Lake Improvement Plan.
- 1.7. "**Estimated Budgets**" means the proposed budgets for the Cochrane Lake Improvement Plan, to be prepared by the County.
- 1.8. "**Force Majeure**" means acts of God, strikes, lockouts or other industrial disturbances, acts of the Queen's enemies, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and people, civil disturbances, explosions, inability with reasonable diligence to obtain materials and any other cause not within the control of the party claiming a suspension, which, by the exercise of due diligence, such party shall not have been able to avoid or overcome; provided however, the term "force majeure" does not include a lack of financial resources or available funds or similar financial predicament or economic circumstances or any other event, the occurrence or existence of which is due to the financial inability of a party to pay any amount that a prudent and financially sound entity in similar circumstances would reasonably be expected to pay to avoid or discontinue such event.
- 1.9. "**Cochrane Lake Improvement Plan**" means the resulting documentation and recommendations pertaining to the desired outcomes as described within **Schedule "A"** attached to this Agreement.
- 1.10. Cochrane Lake Improvement Plan "**Parties**" means the County and Developer A, and "Party" means any one of them.
- 1.11. "**Work**" means the whole of the work, equipment, materials, labour, matters, and things required to be done, furnished, and performed under this Agreement in order to complete the Cochrane Lake Improvement Plan.
- 2. FUNDING**
- 2.1. The County and the Developer covenant and agree that this Agreement shall govern only those Costs of developing the Cochrane Lake Improvement Plan on a go forward basis as of the day and year first above written. For clarification, this Agreement shall not apply to any costs incurred by either party prior to the signing of this Agreement.
- 2.2. Subject to the terms of this Agreement, the Developer and the County are committed to and shall fund the Cochrane Lake Improvement Plan in accordance with the Cost Sharing Allocation contemplated within **Schedule "B."**
- 2.3. After signing this Agreement, if a change to the Scope of Work affecting the Cochrane Lake Improvement Plan is necessary due to necessity of law, code or good industry practice or is requested by the Consultant or the County such that the Costs increase from those set forth in the Estimated Budgets, then the Developer and the County shall share in any additional costs in the same proportions as contemplated by the Cost Sharing Allocation and according to this Agreement.
- 3. COST RECOVERY**
- 3.1. The Developer acknowledges and agrees that the County does not guarantee the collection of any portion of future Recoverable Costs and has no obligation to take legal action for their recovery related to any future improvements recommended in the Cochrane Lake Improvement Plan.
- 3.2. The Developer acknowledges and agree that the County is not responsible to market or in any way solicit or promote development of lands benefited by the Cochrane Lake Improvement Plan and surrounding areas. The County shall, however, co-operate with each Developer in the conduct of any such activities.

4. THE WORK

4.1. The Scope of Work is detailed in Schedule “A” Terms of Reference – Attached

5. FINAL REPORT

5.1. The final report will inform ultimately how the Cochrane Lake Improvement Plan will be implemented, including the terms of payment for the improvements, cost recoveries and construction timelines.

5.2. Notwithstanding anything contained within this Agreement, the County and the Developers acknowledge and agree that the County's obligation to contribute to the Cochrane Lake Improvement Plan and the final decision to proceed with the Cochrane Lake Improvement Plan will not occur unless and until:

- (a) Council has formally approved the recommendations and budget proposed within the Cochrane Lake Improvement Plan – tentatively planned to be presented to Council in Q4, 2024

6. NOTICES AND CONTACTS

6.1. It is agreed that the contacts for this project shall be:

for the County:

Byron Riemann, RET
Executive Director of Operations

for Developer A:

Matthew Jones
Vice President, Development

All communication in writing between the parties and the Consultant shall be deemed to have been received by the addressee, if delivered to the individual, or to a member of the firm, or to any officer of the corporation for whom they are intended, or if sent by mail, or Email, or by telegram, when addressed as follows:

the County at:

262075 Rocky View Point
Rocky View County, Alberta, T4A 0X2
Fax: (403) 277-5977
Attention: Byron Riemann, RET
Executive Director of Operations
Email: briemann@rockyview.ca

Developer A at:

2 Stonepointe Place, NW
Calgary, AB, T3L0C0
Fax: (403)-269-9109
Attention: Matthew Jones
Email: jones@macdevcorp.com

Where any notice or communication is mailed, it is deemed received seven (7) business days after mailing, provided that in the event that a notice is mailed at a time where there is an interruption of normal mail service affecting the delivery of such notice, then such notice shall be deemed to have been delivered one (1) week after the date that normal mail service has been restored. Where any notice, payment or communication is delivered to one of the above addresses, it shall be deemed received at the time of delivery. Where any notice or communication is emailed, it shall be deemed to have been received upon the date that the recipient e-mail server replies to the email confirming receipt thereof. Each Party's first attempt at communication hereunder shall be by email.

7. RELATIONSHIP BETWEEN DEVELOPERS

7.1. Except as expressly agreed, no Party shall be or be deemed to be an agent or representative of another Party, and nothing contained within this Agreement shall be construed so as to create a partnership relationship. Without

limiting the foregoing, no Party shall without the written approval of another Party, be entitled to make any contract, commitment, or expenditure binding on the others.

8. GENERAL

- 8.1. All amounts shown as payable within this Agreement shall be deemed to be exclusive of goods and services or similar tax which, if applicable, shall be the responsibility of the Developer.
- 8.2. The Parties to this Agreement shall execute and deliver all further documents and assurances necessary to give effect to this Agreement and to discharge the respective obligations of the parties.
- 8.3. A waiver by either party hereto of the strict performance by the other of any covenant or provision of this Agreement shall not, of itself, constitute a waiver of any subsequent breach of such covenant or provision or any other covenant or provision of this Agreement.
- 8.4. Time is of the essence in the completion of the Cochrane Lake Improvement Plan.
- 8.5. This Agreement does not constitute approval of any subdivision and is not a development permit, building permit or other permit granted by the County.
- 8.6. The laws of the Province of Alberta shall govern this Agreement.
- 8.7. The Developers and the County covenant and agree that in addition to the provisions contained in the text of this Agreement, the Developers and the County shall be bound by the additional provisions found in the Schedules of this Agreement as if the provisions of the Schedules were contained in the text of this Agreement. This Agreement shall not amend, vary, waive or in any way discharge the obligations of the Developers or the County under any separate development agreement respecting the Lands.
- 8.8. In the event that either Party is rendered unable wholly, or in part, by Force Majeure to carry out its obligations under this Agreement, other than its obligations to make payments of money due hereunder, such Party shall give written notice to the other Party stating full particulars of such Force Majeure. The obligation of the party giving such notice shall be suspended during the duration of the delay resulting from such Force Majeure.
- 8.9. This Agreement shall not be assignable by either Party without the express written approval of the other. Such approval may be subject to conditions imposed by the consenting Party, however the consent shall not be unreasonably withheld. This Agreement shall enure to the benefit of, and shall remain binding upon, the heirs, executors, administrators, attorney under a power of attorney, and other personal representatives of all individual parties and their respective estates, and shall enure to the benefit of, and shall remain binding upon, all successors and assigns (if and when assignment permitted herein) of all corporate parties. Developer A shall ensure that any purchaser or transferee of its respective Development, excluding individual lot purchasers, will agree in writing with the County to assume the respective obligations of each Developer prior to or concurrently with completion of any such transfer or sale.
- 8.10. The Developer and the County each hereby acknowledges that they are hereby executing this Agreement having been given the full opportunity to review the same and seek proper and independent legal advice and that each is executing this Agreement freely and voluntarily and of its own accord without any duress or coercion whatsoever and that each is fully aware of the terms, conditions and covenants contained herein and the legal effects thereof.
- 8.11. Notwithstanding anything contained within this Agreement, this Agreement may be executed by the parties in counterpart and conveyed by facsimile or by other electronic means (including, without restriction, electronic mail and by PDF format) with originals to follow by courier, such that upon the unconditional delivery of a counterpart copy of this Agreement by each party to the other the said counterparts shall form one and the same Agreement dated effective as of the date provided within this Agreement.

IN WITNESS WHEREOF, the Parties hereto have affixed their corporate seals, duly attested by the hands of their respective proper officers in that behalf, as of the day and year first above written.

ROCKY VIEW COUNTY

Per: _____

(corporate seal)

Per: _____

MACDONALD COMMUNITIES LIMITED

Per: _____

(corporate seal)

Per: _____

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SCHEDULE "A" – TERMS OF REFERENCE

Attached

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SCHEDULE "B" – COST SHARING ALLOCATION

The Costs of the Work shall be funded by Rocky View County and Developer A. The cost responsibilities contained within this **Schedule "B"** shall be adjusted proportionately.

The Cost Sharing Allocation of the estimated costs associated with developing the Cochrane Lake Improvement Plan is as follows:

Work to complete the Cochrane Lake Improvement Plan	Cost Proportions	Estimated Cost Responsibility
Cost Sharing Allocation		
• Rocky View County	50%	\$45,000
• Developer A	50%	\$45,000
TOTAL		\$90,000

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