



THIS AGREEMENT made effective this \_\_\_\_ day of \_\_\_\_\_, 2022.

**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 -

**HARMONY DEVELOPMENTS INC.**

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

- and -

**BINGHAM CROSSING PROPERTIES INC. AND TRILLIUM BINGHAM CROSSING INC.**

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

**INTERCHANGE COST SHARE**  
**MEMORANUDM OF UNDERSTANDING & INTERIM AGREEMENT**

**WHEREAS:**

- A.** Developer A and Developer B (collectively, the "Developers") are each the registered owner of the lands comprising their respective Development;
- B.** Pursuant to Section 648, 650, 655 and 651 of the *Municipal Government Act* RSA 2000, c. M-26 (the "MGA" ), the County may require as a condition of a subdivision or development approval that each Developer construct or pay for the construction of infrastructure necessary to service their respecting Development;
- C.** The County has direction, control and management of all roads connecting to the Interchange Site, and responsible for facilitating and managing a supportive transportation network for existing and future development;
- D.** Each Development is accessed from Highway 1 primarily through the Interchange;
- E.** In order to improve access to each Development, and in order to support continued regional growth for existing and future development accessed through the Interchange, the Interchange requires various upgrades and alterations comprising the Interchange Project;
- F.** The construction, installation and commissioning of the Interchange Project may result in benefits to existing and future development, and provide for transportation capacity, above and beyond what is required to service each Development;
- G.** The County and the Developers agree that upon execution of the Final Agreements, the Developers shall construct, install and commission the Interchange Project so as to service and benefit each Development, subject to the payment arrangement provided for within this Agreement and the terms and conditions of this Agreement;
- H.** The County and the Developer wish to enter into certain commitments to, and obligations respecting, the funding of the Interchange Project;

**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 each Developer hereby covenant and agree as follows:

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**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 by the Developers in performing the Work and completing and commissioning the Interchange Project 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 Interchange Project.
- 1.3.** "**Cost Sharing Allocation**" means the parties' respective cost responsibility for funding of Costs of the Interchange Project, as contemplated within **Schedule "C"**.
- 1.4.** "**Council**" means the council of Rocky View County.
- 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 or Developer B, as the context so requires, and accessing, using or benefited by the improvements constructed as part of the Interchange Project.
- 1.6.** "**Engineer**" means the County's engineer designated to oversee the Interchange Project.
- 1.7.** "**Estimated Budgets**" means the proposed budgets for the Interchange Project, to be prepared by the County.
- 1.8.** "**Final Agreements**" means all full and final agreements required in relation to a Development, which agreements may address the preparation of plans, estimated budgets, terms and conditions of payment of Costs of the Interchange Project, as well as construction, inspection and completion of the Interchange Project, in each case when and if applicable, which Final Agreements shall (subject always to agreement between the parties):
- (a)** replace this Agreement; and
  - (b)** subsume or otherwise address the Cost Sharing Allocation, the Work, the Costs and the cost recoveries contemplated within this Agreement.
- 1.9.** "**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.
- 1.10.** "**Interchange Project**" means the project as more particularly described within **Schedule "B"** attached to this Agreement.
- 1.11.** "**Interchange Site**" means the lands containing the Interchange Project, as more particularly shown within in **Schedule "A"**.
- 1.12.** "**Municipal Government Act**" means the *Municipal Government Act*, R.S.A. 2000 c. M-26, as amended or replaced from time to time.
- 1.13.** "**Parties**" means the County, Developer A and Developer B, and "Party" means any one of them.
- 1.14.** "**Recoverable Costs**" means those portions of Costs legally collectable by the County through the payment of a transportation off site levy or similar permitted cost recovery mechanism from future landowners of development



lands accessing, using or benefited by the improvements constructed as part of the Interchange Project, as contemplated within the applicable County bylaw(s) and Article 3 of this Agreement. with the maximum amount recoverable by each Developer being One Million (\$1,000,000.00) Dollars.

- 1.15. "**Substantial Completion Certificate**" means the certificate issued by the Developer's engineer certifying the completion of the Work as contemplated within this Agreement.
- 1.16. "**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 Interchange Project.

## 2. CONSTRUCTION AND FUNDING

- 2.1. The County and the Developers covenant and agree that this Agreement shall govern only those Costs of the Interchange Project 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 County's obligation contained below respecting contributions to the construction of the Interchange Project, and the execution of the Final Agreements, the Developers shall construct and install the Interchange Project in accordance with the terms, covenants and conditions contained within this Agreement and the Final Agreements.
- 2.3. The Developers and the County agree that the Developers shall pay all Costs of the Interchange Project and shall be reimbursed by the County for the County's proportionate share of the Costs, calculated in accordance with the Cost Sharing Allocation, upon monthly applications for payment as Work progresses and subject to the terms, covenants, conditions and procedures outlined within the Final Agreements.
- 2.4. Subject to the terms of this Agreement, each Developer and the County is committed to and shall fund the Interchange Project in accordance with the Cost Sharing Allocation contemplated within **Schedule "C"**.
- 2.5. After signing this Agreement, if a change to the scope of Work affecting the Interchange Project is necessary due to necessity of law, code or good industry practice or is requested by either the Alberta Transportation or the County such that the Costs increase from those set forth in the Estimated Budgets then each 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.
- 2.6. Each of Developer A and Developer B and the County covenant and agree that, unless otherwise agreed upon, any development agreements entered into between the County and each Developer in relation to their respective Development will reflect each Developer's respective funding of the Costs and the terms of this Agreement.
- 2.7. The Developer shall inform and consult with the County as to the design and planning for each stage of the Work. Upon completion of the same to a degree determined by the Developer to be sufficient for committing to the commencement and completion of the Work, sufficient to determine the Costs, the Developer shall provide Estimated Budgets for the County's records.

## 3. COST RECOVERY

- 3.1. The County and the Developers recognize that future developments in the area may require servicing through the Interchange Project and that the Developers shall be entitled to a recovery of their proportionate share of the Recoverable Costs only in accordance with the provisions of this Agreement.
- 3.2. The County agrees to use reasonable efforts to give such assistance to the Developers as it can legally give and endeavours to assist in the recovery of the Recoverable Costs pursuant to this Agreement from future developments that will connect to or benefit from the Interchange Site as expanded by the Interchange Project, by either imposing and collecting applicable transportation offsite levies or (if applicable and legally capable of being applied) or requiring that other benefited developers reimburse its proportional share of the Recoverable Costs. The County hereby covenants and agrees that it shall:



- (a) enter into a development agreement, cost contribution agreement or other agreement with the other developers in accordance with this Agreement, compelling payment of the appropriate share of the Costs by such other developers by offsite levy or otherwise, and where applicable in accordance with the applicable off site levy bylaw and operation thereof; and
- (b) upon receipt by the County of payment of the proportionate share of the Recoverable Costs from the other developers, or upon such payments being releasable in accordance with the foregoing agreements where received and subject to conditions before release, immediately pay the appropriate share of monies recovered to each Developer.

3.3. Such proportionate shares to be recovered for or by each Developer shall be based on:

- (a) the allocation of Cost responsibility to each Developer as contemplated within **Schedule "C"**; and
- (b) proportionate shares to be recovered from the respective other developers, calculated in accordance with the applicable offsite levy bylaw(s) (or, if applicable and legally capable of being applied in lieu of levies, the County's typical cost recovery policies and processes as determined by the County acting reasonably).

3.4. The Developers acknowledge and agree that this Agreement has a limited time frame for cost recovery of Twenty (20) years from the date of the Substantial Completion Certificate.

3.5. Each Developer acknowledges and agrees that the County does not guarantee the collection of any portion of such Recoverable Costs and has no obligation to take legal action for their recovery.

3.6. The Developers acknowledge and agree that the County is not responsible to market or in any way solicit or promote development of lands benefited by the Interchange Project and surrounding areas. The County shall, however, co-operate with each Developer in the conduct of any such activities.

3.7. Notwithstanding the foregoing, the County reserves the right and discretion to calculate cost recoveries of the other contributing parties in accordance with the applicable bylaw(s), in the case of offsite levies, or otherwise in accordance with good engineering practices and the County's cost recovery policies and processes, as amended from time to time.

3.8. The Developers shall provide the County with an accounting of all the Costs incurred with respect to construction of the Interchange Project, including an accounting of all funding received towards the Costs, within forty-five (45) days following issuance of the Substantial Completion Certificate for the Interchange Project and the same shall govern for the purpose of the County determining the proportionate cost recoveries and levy credits for each Developer in accordance with this Agreement.

#### 4. **LEVY CREDIT**

4.1. The Developers acknowledge and agree that any levy credit provided to each Developer by the County pursuant to Article 4.1 may only be applied towards off-site levies due and payable by each Developer for Springbank Special Area 4 under the Regional Transportation Off-Site Levy Bylaw that are imposed upon lands that are within the boundaries of the Springbank Special Area 4 within the Regional Transportation Off-Site Levy Bylaw. The off-site levy credit may not be applied towards off-site levies imposed on lands in any other areas under the Regional Transportation Off-Site Levy Bylaw and the Developers are eligible for proportional credit up to the full amount contributed under this Agreement.

4.2. The County and the Developers covenant and agree that upon and subject to a development permit or subdivision application by a respective Developer for a Development which triggers the requirement for payment of an off-site levy to the County in respect of the Interchange Project pursuant to the Regional Transportation Off-Site Levy Bylaw C-8007-2020 (the "Regional Transportation Off-Site Levy Bylaw"):



- (a) Payment – subject always to, and conditional upon, the payment and receipt (by set off or otherwise) of the levy as contemplated within paragraph (b) below, all that portion of the respective costs incurred by the Developer in constructing and installing the Interchange Project which is equal to the off-site levy payable by the Developer in respect of such development or subdivision shall become due and payable by the County to the Developer;
- (b) Levy –the amount payable by the County to the Developer pursuant paragraph (a) above shall be set off against, and therefore fully paid and accounted for by, the levy amount due and payable by the Developer to the County on a dollar for dollar basis;
- (c) Accounting – for the purposes of accounting for the payment of the levy, the parties covenant and agree that such set off shall be deemed to be:
  - (i) payment in full of the amounts due and payable by the County to the Developer pursuant to paragraph (a) above; and
  - (ii) payment in full of the applicable levy being due and payable by the Developer to the County pursuant to paragraph (b) above;

concurrently, and shall be accounted for on such basis.

Notwithstanding the forgoing, unless and until otherwise specifically provided for and required within the Final Agreements, the County shall not be responsible for any further or other portion of the Developer’s costs of constructing and installing the Interchange Project. Further, such arrangement is subject always to, and limited by, the extent to which the County may legally agree to or otherwise perform such obligations.

- 4.3. The application of this Article 4 shall be detailed in development agreements and/or the Final Agreements entered into between the County and each Developer in respect of the subdivision or development to which the off-site levies in question relate.
- 4.4. The method of calculating each Developer's proportionate credit under this Article 4 shall be determined by the County and the Developers in accordance with good engineering and construction practices, the provisions of any relevant bylaws of the County and in accordance with any agreements which the County has entered into, or may enter into, with contractors, other developers or other persons in respect to the construction of the Interchange Project.

**5. THE WORK**

- 5.1. Subject to the terms of this Agreement, each Developer agrees and acknowledges that the Interchange Project will be public infrastructure which is subject to the sole ownership, direction, control and management of the County or Alberta Transportation, as the case may be, and no interest, ownership or other right in or to the Interchange or the Interchange Project is conferred to either Developer nor capable of being claimed by either Developer.
- 5.2. All Work shall be required to be performed by the Developers in conformance with:
  - (a) sound engineering and construction practice and shall utilize industry standards, subject always to market conditions, prices; and
  - (b) Alberta Transportation’s and the County’s standards for infrastructure projects and associated works; and
  - (c) all approvals or permits issued by Alberta Transportation or other authority having jurisdiction for the Interchange Project;

as will be further detailed within the Final Agreements.



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**6. FINAL AGREEMENTS**

- 6.1.** The Final Agreements will determine ultimately how the Interchange Project will be constructed and completed, including the terms of payment for the Costs, cost recoveries and construction timelines.
- 6.2.** Notwithstanding anything contained within this Agreement, the County and the Developers acknowledge and agree that the County's obligation to contribute to the Interchange Project and the final decision to proceed with the Interchange Project will not occur unless and until:
- (a) the Final Agreements have been executed by the Developers; and
  - (b) Council has formally approved the Final Agreements, and has duly authorized the execution of the Final Agreements;

and it is accordingly agreed that the rights and obligations of the Parties to proceed with the activities reasonably required to complete the design, creation, and implementation of the Interchange Project shall, prior to the satisfaction of the above Conditions, be effective only to the extent reasonably required to satisfy the conditions precedent provided within this Article 6.2.

- 6.3.** If, within Twenty-four (24) months of the execution of this Agreement, the Conditions specified in Article 6.2 have not been met pursuant to an executed Final Agreement, this Agreement will be at an end.
- 6.4.** Each of the Parties shall use reasonable commercial efforts (subject always to such duties, obligations and limitations as may be imposed by law) to take steps and execute further documents to achieve successful completion of the Interchange Project.



7. NOTICES AND CONTACTS

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

for the County:

**Byron Riemann, RET**  
**Executive Director of Operations**

for Developer A:

\_\_\_\_\_

\_\_\_\_\_

for Developer B:

\_\_\_\_\_

\_\_\_\_\_

All communication in writing between the parties and the Engineer 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:

\_\_\_\_\_

**Calgary, Alberta, \_\_\_\_\_**

**Fax: (403)-\_\_ -\_\_**

**Attention: \_\_\_\_\_**

**Email: \_\_\_\_\_ @ \_\_\_\_\_**

Developer B at:

\_\_\_\_\_

**Calgary, Alberta, \_\_\_\_\_**

**Fax: (403)-\_\_ -\_\_**

**Attention: \_\_\_\_\_**

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.

8. RELATIONSHIP BETWEEN DEVELOPERS

8.1. 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.

9. GENERAL

9.1. 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.



- 9.2. The provisions of this Agreement shall apply in addition to any and all conditions or requirements as may be imposed upon the County and/or the Developers pursuant to any statutory plan, land use bylaw, or conditions of any applicable subdivision approval or development permit.
- 9.3. 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.
- 9.4. 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.
- 9.5. Time is of the essence in the completion of the Interchange Project.
- 9.6. This Agreement is without prejudice to the imposition of conditions and obligations to construct or pay for the construction of municipal improvements pursuant to Part 17 of the *Municipal Government Act*, as it may be amended from time to time, as conditions of any permit or approval including, but not limited to, requirements regarding payment of levies or charges including off-site levies or contributions towards roads or other infrastructure. For clarification, this Agreement is not a permit, approval, licence, or other planning and development consent pursuant to Part 17 of the *Municipal Government Act*.
- 9.7. This Agreement does not constitute approval of any subdivision and is not a development permit, building permit or other permit granted by the County.
- 9.8. The laws of the Province of Alberta shall govern this Agreement.
- 9.9. Subject to Article 9.3, this Agreement contains the entire agreement between the Parties hereto and no understandings or agreements, verbal or otherwise, exist between the parties except as herein expressly set out.
- 9.10. 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.
- 9.11. 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.
- 9.12. 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. Each of Developer A and Developer B 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.
- 9.13. The Developers 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.





9.14. 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: \_\_\_\_\_

**HARMONY DEVELOPMENTS INC.**

Per: \_\_\_\_\_

*(corporate seal)*

Per: \_\_\_\_\_

**BINGHAM CROSSING PROPERTIES INC. AND  
TRILLIUM BINGHAM CROSSING INC.**

Per: \_\_\_\_\_

*(corporate seal)*

Per: \_\_\_\_\_



SCHEDULE "A" - THE INTERCHANGE & INTERCHANGE SITE



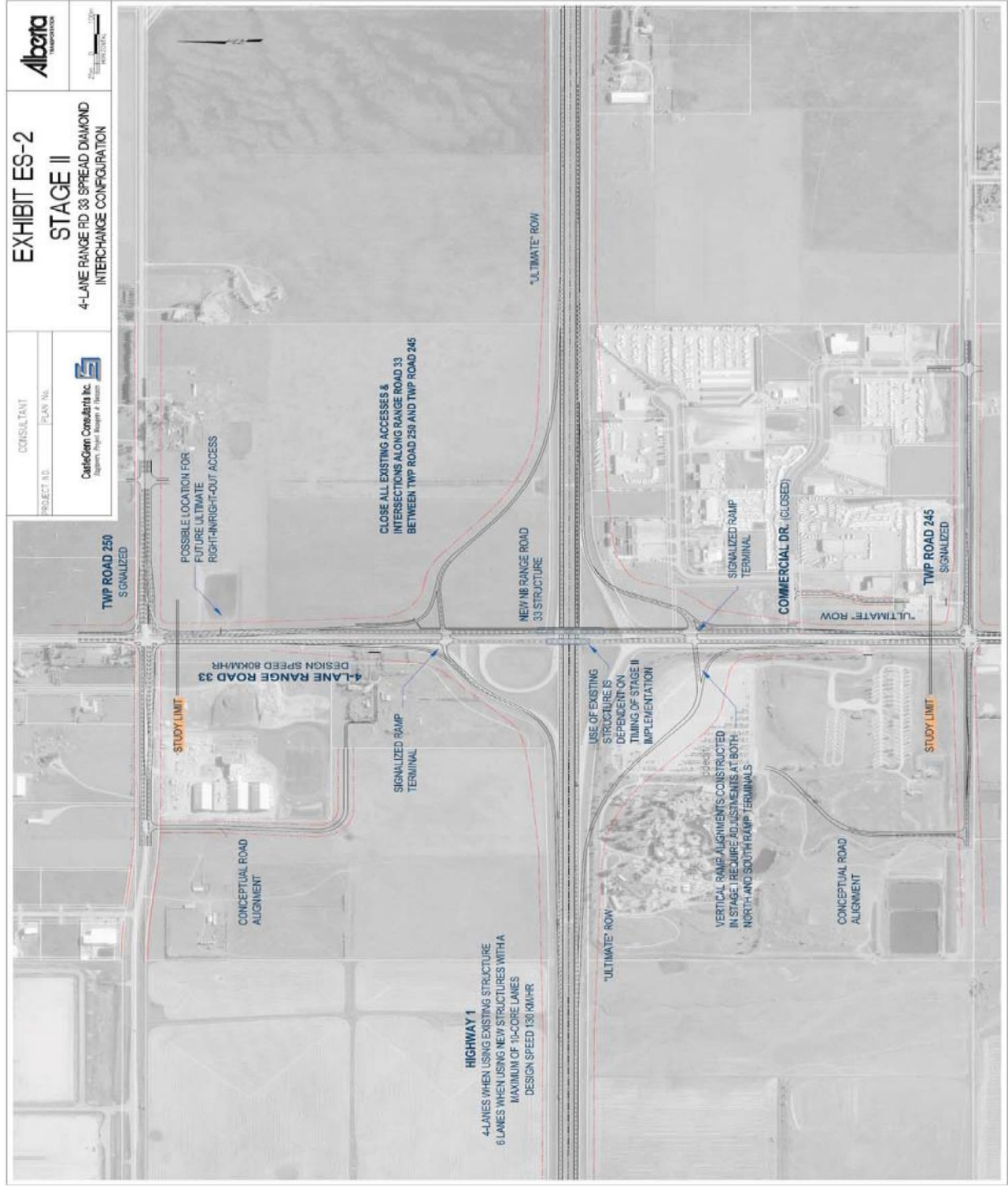
  
**ROCKY VIEW COUNTY**  
Cultivating Communities

Information as depicted is subject to change, therefore Rocky View County assumes no responsibility for discrepancies after date of printing.

  
Printed: Nov 24, 2022



SCHEDULE "B" - THE INTERCHANGE PROJECT





**SCHEDULE "C" – COST SHARING ALLOCATION**

The Costs of the Work shall be funded by Rocky View County, Developer A and Developer B and in the event of the receipt of a funding commitment of Alberta Transportation, the cost responsibilities contained within this **Schedule "C"** shall be adjusted proportionately. As the County’s offsite levy fund available for applicable portions of the Interchange Project are less than the proportionate cost responsibilities shown below, Harmony and Bingham Crossing shall fund the balance of the County cost responsibility as shown below, subject to the County's endeavor to assist in the receipt and payment of Recoverable Costs.

**Stage II – Modified 4 Lane RR 33 Spread Diamond Configuration:**

The Cost Sharing Allocation of the costs estimate detailed in the Opinion of Probable Cost for **Stage II – Modified 4 Lane RR 33 Spread Diamond Configuration** shall be shared as follows

<b>Stage II – Modified 4 Lane RR 33 Spread Diamond Configuration</b>	<b>Cost Proportions</b>	<b>Estimated Cost Responsibility</b>	<b>Estimated Contribution Payable</b>
<b>Cost Sharing Allocation</b>			
• <b>Rocky View County</b>	<b>33.3%</b>	<b>\$8 million</b>	<b>\$6 million</b>
• <b>Developer A</b>	<b>33.3%</b>	<b>\$8 million</b>	<b>\$9 million</b>
• <b>Developer B</b>	<b>33.3%</b>	<b>\$8 million</b>	<b>\$9 million</b>
<b>TOTAL</b>		<b>\$24 million</b>	<b>\$24 million</b>

Upon receipt of new contributions to the Interchange Project funding from Alberta Transportation or from other developers, the County shall recalculate the proportions of funding provided for the Interchange Project.