

This **COST SHARING AGREEMENT** made this **XX** day of **XX**, 2020

**B E T W E E N:**

**THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON**

(the “Municipality”)

- and -

**IGRACKI INVESTMENTS INCORPORATED,  
9417818 CANADA INC.,  
2537613 ONTARIO LIMITED,  
MARIA GRACIETE OLIVEIRA,  
JOSE OLIVEIRA,  
DAVY HOLDINGS INC.,  
1073933 ONTARIO LIMITED,  
AWC REALTY LTD., and  
765345 ONTARIO LIMITED**

(collectively the “Participating Owners”)

**WHEREAS** the Participating Owners are the registered owners of the Participating Lands depicted on Schedule “A”;

**AND WHEREAS** the Municipality intends to undertake the Works;

**AND WHEREAS** each Participating Owner is prepared to fund their Proportional Share of the Costs;

**THE PARTIES** agree as follows:

**DEFINITIONS AND INTERPRETATION**

1. In this Agreement, including in the Recitals and Definitions:

“Agreement” means this Agreement;

“Costs” means the total actual costs to complete the sanitary sewer and watermain components of the Works, including the costs of materials, labour, design, engineering, professional services, inspections, contract and administration, contingencies, maintenance, and all such other items as reasonably required;

“Project Area” means the area of Courtice Court and McKnight Road shown on Schedule “A”;

“Proportional Share” means the fraction of the Costs attributable to a specific Participating Owner in accordance with the tables included at Schedule “C” of this Agreement;

“Region” means the Regional Municipality of Durham; and

“Works” means the works described in the Courtice Court Watermain, Sanitary Sewer, and Road Reconstruction plans attached as Schedule “B” to this Agreement.

2. References in this Agreement to legislation, including by-laws, shall be deemed to include the words “as amended, revised, re-enacted and/or consolidated from time to time and any successor legislation thereto.

### **GENERAL MATTERS**

3. The statements contained in the Recitals, which are to be read as an integral part of this Agreement, are true and correct. Schedules, section, subsection or clause numbers referred to herein shall mean schedules, section or subsection or clause numbers contained in this Agreement unless otherwise specified.

### **WORKS**

4. The Municipality acknowledges and agrees it shall tender and construct the Works and shall enter into such arrangements as are required by the Region to activate the sanitary sewer and watermain components of the Works, and to maintain those components until such time as they are assumed by the Region.

### **CONTRIBUTION BY THE PARTICIPATING OWNERS**

5. Each Participating Owner individually acknowledges and agrees to pay the Municipality their Proportional Share of the Costs.
6. Prior to the issuance of a purchase order by the Municipality for the commencement of the Works, each Participating Owner agrees to advance to the Municipality their Proportional Share of the estimate of the Costs for the sanitary sewer and watermain components of the Works, as reflected in Schedule “C”.
7. If the Costs exceed the estimates reflected in Schedule “C”, the Participating Owners shall advance their Proportional Share of the revised Costs within 30 days of receipt of an invoice from the Municipality showing the revised amounts.
8. If upon completion of the Works, the Costs are less than the estimates reflected in Schedule “C”, the difference shall be refunded to the Participating owners according to their Proportional Share.

9. The Municipality agrees that it will use its best efforts to manage and mitigate the Costs.
10. The Participating Owners acknowledge and agree that the Municipality is only responsible for the construction or installation of the Works and this Agreement does not contemplate any additional servicing improvements that may be required by the Participating Owners.
11. The Participating Owners acknowledge and agree that they are solely responsible for any fees or charges that may be assessed by the Region as a condition of service connection with respect to the Works, and they are solely responsible for any and all sanitary sewer or water billing in relation to their lands.

#### **PERMISSION TO ENTER**

12. The Participating Owners each agree to permit the Municipality, its agents or contractors, to enter upon and have access to their lands as necessary for the purpose of construction, inspection, or maintenance of the Works.

#### **DEFAULT**

13. The Participating Owners acknowledge and agree that until every Participating Owner's Proportional Share has been advanced to the Municipality, no Participating Owner shall be permitted to connect to the Works.

#### **DISPUTE RESOLUTION**

14. The Parties shall use their best efforts to settle any disputes arising out of or in connection with this Agreement or its interpretation. If a Participating Owner shall choose to challenge any determination made by the Municipality or, if any claim or dispute shall arise with respect to any of the provisions herein, the Municipality may require that such claim, matter, or dispute be submitted to and settled by a single arbitrator pursuant to the provisions of the *Arbitration Act, 1991*, whose decision shall be conclusive and binding upon all the Parties, and judgement shall be rendered thereon, provided, however, that the Participating Owners shall continue their performance of the terms and conditions of this Agreement before and during any such arbitration proceeding, and provided further that all costs, charges, and expenses arising therefrom and in connection therewith shall be borne by the Party against whom the arbitrator shall decide to rule, or by every Party to the dispute in the case of a mixed result.

#### **WAIVER**

15. The failure of the Municipality at any time to require performance by any Participating Owner of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Municipality of the performance of any obligation hereunder be taken or be held to

be a waiver of the performance of the same or any other obligation hereunder at any later time. The Municipality shall specifically retain its rights at law to enforce this Agreement.

## **ADJUSTMENTS TO SCHEDULES**

16. Notwithstanding anything contained in this Agreement to the contrary, it is understood, acknowledged and agreed by the Participating Owners that the Schedules appended hereto that detail the Works and the Costs are approximations and they have been inserted only for the purpose of illustrating the methodology to be employed by the Municipality in determining each Proportional Share. The information contained in the Schedules is intended to be updated when more precise information becomes available.

## **ADMINISTRATION**

17. Any notice, demand, acceptance or request required to be given hereunder in writing, shall be deemed to be given if either personally delivered or mailed by E-mail, registered mail, postage prepaid, at any time other than during a general discontinuance of postal services due to a strike, lockout or otherwise, and addressed to the Municipality or the Participating Owners at the addresses set out below:

**The Corporation of the Municipality of Clarington**

40 Temperance Street

Bowmanville, Ontario

L1C 3A6

Attn: Director of Planning Services

Tel: 905-623-3379

Fax: 905-623-6020

Igracki Investments Incorporated

1 Progress St.

Courtice, ON

L1E 2T3

2537613 Ontario Limited

8611 Weston Rd.

Suite 21A

Vaughan, ON

L4L 9P1

Maria Graciete Oliveira

21 Courtice Ct.

Courtice, ON

L1E 2T4

Jose Oliveira  
21 Courtice Ct.  
Courtice, ON  
L1E 2T4

Davy Holdings Inc.  
1307 Wharf Rd.  
Pickering, ON  
L1W 1A5

107933 Ontario Limited  
701 Rossland Rd. E.  
Suite 370  
Whitby, ON  
L1N 9K3

AWC Realty Ltd.  
60 Courtice Ct.  
Courtice, ON  
L1E 2T3

765345 Ontario Limited  
93 Sunset Trail  
North York, ON  
M9M 1J7

or such change of address as the applicable Party has by written notification forwarded to the Municipality and the other Parties.

Any notice shall be deemed to have been given to and received by the Party to which it is addressed on the date it is personally delivered, or on the fifth (5<sup>th</sup>) business day after the mailing thereof, whichever is earlier.

18. This Agreement is binding upon and shall be enforceable by and against the Parties, their heirs, executors, administrators, successors and assigns.
19. If any provision of this Agreement is determined by a Court of competent jurisdiction to be illegal or beyond the power, jurisdiction, or capacity of any party bound hereby, such provision shall be severed from this Agreement and the remainder of this Agreement shall continue in full force and effect and in such case the parties shall negotiate in good faith to amend this Agreement in order to implement the intentions as set out herein. It is agreed and acknowledged by the parties that each is satisfied as to the jurisdiction of each party to enter into this Agreement. The parties agree that they shall not question the jurisdiction of any party to enter into this Agreement nor question the legality of any portion hereof, nor question the legality of any obligation created hereunder and the parties, their

successors and assigns are and shall be estopped from contending otherwise in any proceeding before a Court of competent jurisdiction or any administrative tribunal.

20. This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.
21. The Parties shall execute such further documents and cause the doing of such acts and cause the execution of such further documents as are within their power as the Parties may reasonably request be done or executed, in order to give full effect to the provisions of this Agreement.
22. Time shall be of the essence of this Agreement and each of its provisions.
23. This Agreement may be executed in counterparts, each of which when executed and delivered shall be deemed to be an original, and such counterparts together shall constitute one and the same Agreement. For the purposes of this Agreement, the delivery of a facsimile or e-mail copy of the shall be deemed to be a valid execution and delivery of this Agreement, but the party delivering a facsimile or e-mail copy shall deliver an original copy of this Agreement as soon as possible after delivering the facsimile or e-mail copy.
24. Any reference in this Agreement to a person, entity or object in the singular shall be deemed to include the plural; some apostrophes to indicate the possessive have been omitted.

#### **LIST OF SCHEDULES**

25. The following schedules are attached hereto and form part of this Agreement:

SCHEDULE "A"	Project Area Map
SCHEDULE "B"	Courtice Court Watermain, Sanitary Sewer, and Road Reconstruction Plans
SCHEDULE "C"	Costs

The Municipality has executed this Agreement by the signature of its duly authorized signing officer on this \_\_\_\_ day of \_\_\_\_\_, 2020.

**THE CORPORATION OF THE  
MUNICIPALITY OF CLARINGTON**

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

Name:  
Director of Planning Services

I have authority to bind the municipal corporation

Authorized by By-law No.2018-046

Igracki Investments Incorporated has executed this Agreement by the signature(s) of its duly authorized signing officers on this \_\_\_\_ day of \_\_\_\_\_, 2020.

**IGRACKI INVESTMENTS  
INCORPORATED**

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

Name:

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

Name:

I/we have authority to bind the corporation

9417818 Canada Inc. has executed this Agreement by the signature(s) of its duly authorized signing officers on this \_\_\_\_ day of \_\_\_\_\_, 2020.

**9417818 CANADA INC.**

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

Name: \_\_\_\_\_

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

Name: \_\_\_\_\_

I/we have authority to bind the corporation

2537613 Ontario Limited has executed this Agreement by the signature(s) of its duly authorized signing officers on this \_\_\_\_ day of \_\_\_\_\_, 2020.

**2537613 ONTARIO LIMITED**

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

Name: \_\_\_\_\_

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

Name: \_\_\_\_\_

I/we have authority to bind the corporation

Maria Graciete Oliveira has executed this Agreement on this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
**MARIA GRACIETE OLIVEIRA**



Jose Oliveira has executed this Agreement on this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
**JOSE OLIVEIRA**

Davy Holdings Inc. has executed this Agreement by the signature(s) of its duly authorized signing officers on this \_\_\_\_ day of \_\_\_\_\_, 2020.

**DAVY HOLDINGS INC.**

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

Name: \_\_\_\_\_

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

Name: \_\_\_\_\_

I/we have authority to bind the corporation

1073933 Ontario Limited has executed this Agreement by the signature(s) of its duly authorized signing officers on this \_\_\_\_ day of \_\_\_\_\_, 2020.

**1073933 ONTARIO LIMITED**

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

Name: \_\_\_\_\_

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

Name: \_\_\_\_\_

I/we have authority to bind the corporation

AWC Realty Ltd. has executed this Agreement by the signature(s) of its duly authorized signing officers on this \_\_\_\_ day of \_\_\_\_\_, 2020.

**AWC REALTY LTD.**

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

Name: \_\_\_\_\_

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

Name: \_\_\_\_\_

I/we have authority to bind the corporation

765345 Ontario Limited has executed this Agreement by the signature(s) of its duly authorized signing officers on this \_\_\_\_ day of \_\_\_\_\_, 2020.

**765345 ONTARIO LIMITED**

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

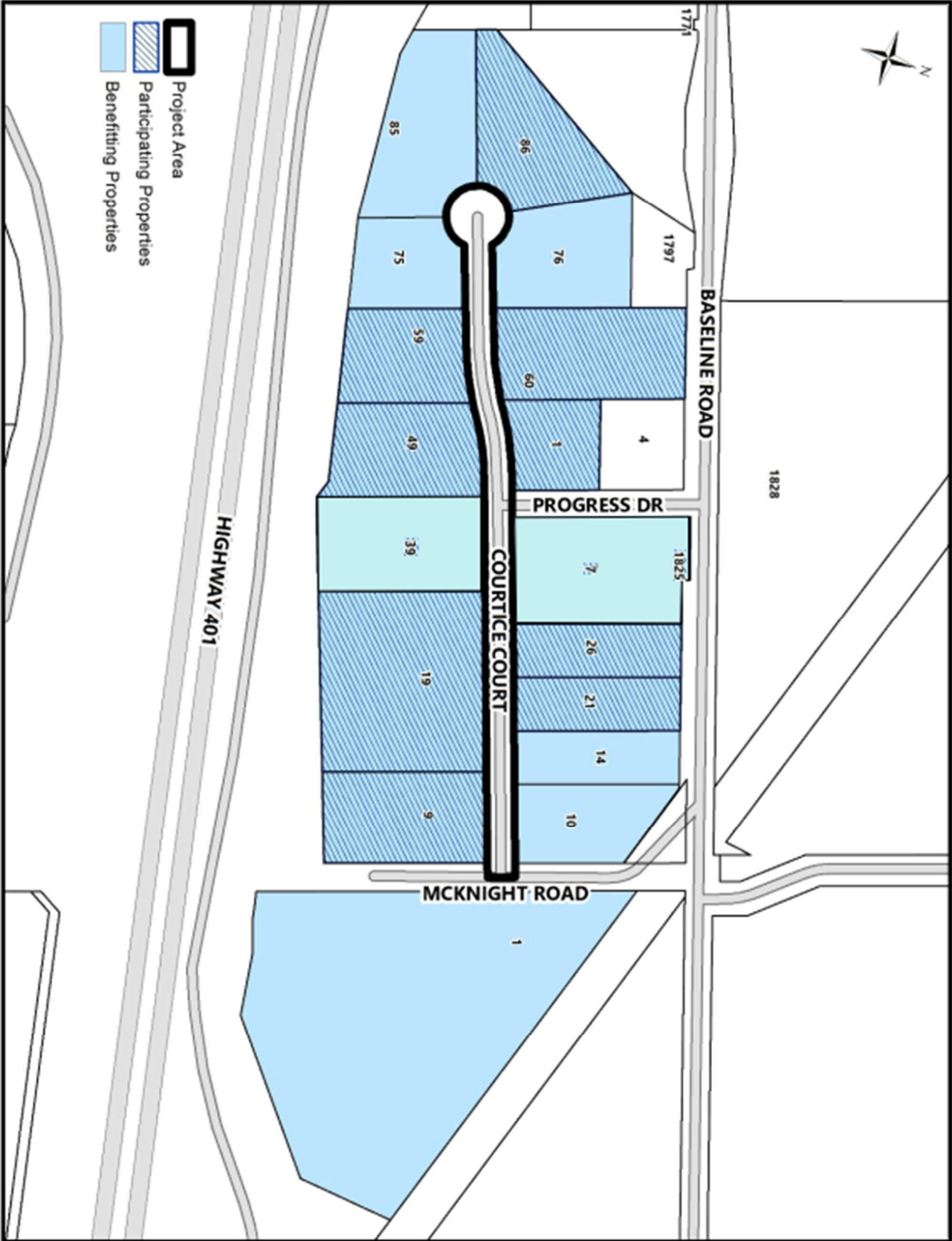
Name: \_\_\_\_\_

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

Name: \_\_\_\_\_

I/we have authority to bind the corporation

**SCHEDULE "A" – Project Area Map**



**SCHEDULE "B" – Work Plans**

**SEE ATTACHED**

**(NOTE DESIGN DRAWINGS NOT PROVIDED AS PART OF COUNCIL REPORT BUT  
WILL FORM PART OF AGREEMENT)**

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## SCHEDULE "C" - Costs

**Table 1 - Sanitary Sewer**

Registered Owner	PIN	Address	Ratable Property Frontage (m)	Proportional Share Sanitary Sewer Main Line	Sanitary Sewer Main Line Cost	Sanitary Sewer Service Connection Cost (Individualized)	Total Cost
Igracki Investments Incorporated	26605-0017	1 Progress Drive	66.955	0.058626363	\$40,054.39	\$10,959.04	\$41,032.52
9417818 Canada Inc.	26605-0024	9 Courtoice Court	66.523	0.058248100	\$39,795.96	\$10,823.13	\$50,619.09
2537613 Ontario Limited	26605-0025	19 Courtoice Court	131.07	0.114765998	\$78,409.81	\$10,823.13	\$89,232.95
Maria Graciete Oliveira	26605-0020	21 Courtoice Court	38.716	0.033900056	\$23,161.02	\$10,823.13	\$33,984.15
Jose Oliveira	26605-0019	26 Courtoice Court	38.713	0.033897429	\$23,159.22	\$10,823.13	\$33,982.36
Davy Holdings Inc.	26605-0093	49 Courtoice Court	69.369	0.060740082	\$41,498.51	\$10,768.77	\$52,267.29
1073933 Ontario Limited	26605-0095	59 Courtoice Court	69.068	0.060476524	\$41,318.45	\$10,795.95	\$52,114.40
AWC Realty Ltd.	26605-0015	60 Courtoice Court	66.663	0.058370685	\$39,879.71	\$10,632.87	\$50,512.57
765345 Ontario Limited	26605-0004	86 Courtoice Court	32.540	0.028492299	\$19,466.36	\$13,894.63	\$33,360.99
Non-Participating Owners			562.446	0.492482464	\$336,471.24	\$37,357.10	\$373,828.34
Non-Participating Owners (net HST)					\$303,114.95	\$33,641.23	\$336,756.18
<b>Total</b>			<b>1142.063</b>	<b>1.000000000</b>	<b>\$683,214.65</b>	<b>\$137,700.90</b>	<b>\$810,934.64</b>

\* Total Cost includes a partial credit for the Engineering Design Fee portion advance by the Owner (\$10,000 + HST). Owner still required to pay for design fee for representative frontage for sanitary sewer costs only.

**Table 2 - Watermain**

Registered Owner	PIN	Address	Ratable Property Frontage (m)	Proportional Share Watermain Main Line	Watermain Main Line Cost	Watermain Service Connection Cost (Individualized)	Total Cost
9417818 Canada Inc.	26605-0024	9 Courtoice Court	66.523	0.066673549	\$40,791.22	\$12,176.03	\$52,967.25
2537613 Ontario Limited	26605-0025	19 Courtoice Court	131.070	0.131366626	\$80,370.77	\$12,176.03	\$92,546.80
Maria Graciete Oliveira	26605-0020	21 Courtoice Court	38.716	0.038803619	\$23,740.25	\$21,771.78	\$45,512.03
Jose Oliveira	26605-0019	26 Courtoice Court	38.713	0.038800612	\$23,738.41	\$21,771.78	\$45,510.19
Davy Holdings Inc.	26605-0093	49 Courtoice Court	69.369	0.069525990	\$42,536.35	\$12,176.03	\$54,712.39
1073933 Ontario Limited	26605-0095	59 Courtoice Court	69.068	0.069224308	\$42,351.78	\$12,535.87	\$54,887.66
AWC Realty Ltd.	26605-0015	60 Courtoice Court	66.663	0.066813866	\$40,877.06	\$21,172.05	\$62,049.11
765345 Ontario Limited	26605-0004	86 Courtoice Court	32.540	0.032613642	\$19,953.19	\$32,076.88	\$52,030.07
Non-Participating Owners			485.080	0.486177789	\$297,446.04	\$116,305.72	\$413,751.76
Non-Participating Owners (net HST)					\$267,859.37	\$104,736.90	\$372,596.27
<b>Total</b>			<b>997.742</b>	<b>1.000000000</b>	<b>\$611,805.08</b>	<b>\$262,162.19</b>	<b>\$873,967.27</b>