

THIS COST SHARING AGREEMENT dated March 1, 2025 (the “**Effective Date**”)

BETWEEN:

THE REGIONAL MUNICIPALITY OF YORK

(the “**Region**”)

and

THE CORPORATION OF THE CITY OF MARKHAM

(the “**City**”)

RECITALS:

- A. Section 11 of the *Municipal Act, 2001* (the “**Act**”) provides that the Region and the City each have non-exclusive jurisdiction over water distribution and collection of sanitary sewage.
- B. The Region owns and operates a 450 mm diameter watermain along Church Street in the City of Markham, from Main Street Markham North to Ninth Line; as part of the Region’s replacement project this watermain will be decommissioned and a replacement 500 mm diameter watermain will be constructed along Hawkridge Avenue (from Bullock Drive to Highway 7), Highway 7 (Hawkridge Avenue to Ninth Line) and Ninth Line (from Highway 7 to Berczy Gate).
- C. The Region undertook a detailed investigation and determined that the City’s existing 150 mm diameter watermain on Church Street, from Rose Way to Ninth Line (the “**Watermain**”), needs to be upsized to 300 mm diameter to maintain reliable servicing in the City’s water distribution system (the “**Watermain Upgrade**”). The new 300 mm diameter watermain will be owned and operated by the City.
- D. The City is currently conducting a construction project in the area and the City has agreed to include the Watermain Upgrade as part of its construction project, in accordance with the terms and conditions set out in this Agreement.
- E. The Region has agreed to pay for the costs of the Watermain Upgrade in accordance with the terms and conditions set out in this Agreement.

The parties agree:

1. DEFINITIONS

1.1 For the purposes of this Agreement, the following definitions apply:

- (a) “**Agreement**” means this cost sharing agreement between the Region and the City, as amended from time to time;

- (b) **“City”** means The Corporation of the City of Markham as a municipal corporation and where the context requires, its geographic area;
- (c) **“Contractor”** means the contractor retained by the City for the Watermain Upgrade;
- (d) **“Tender Drawings”** means the Issued for Tender drawings for the Watermain Upgrade prepared by Accardi Engineering Group Ltd. (Consultant) for the Region, dated March 2025, attached as Schedule B to this Agreement;
- (e) **“Region”** means The Regional Municipality of York as a municipal corporation and where the context requires, its geographic area;
- (f) **“Watermain”** means that section of the City’s Church Street watermain, shown in Schedule A (The Watermain), located within the City’s right-of-way; and
- (g) **“Watermain Upgrade”** means all construction work procured by the City for the replacement of the Watermain.

2. OBLIGATIONS OF THE PARTIES

- 2.1 The City shall complete the Watermain Upgrade no later than December 31, 2025, subject to Council approval of overall project budget for the City project. If unforeseen site conditions cause delay of the Work, the City and the Region will agree on a new timeline for completion of the Work, to the satisfaction of both parties.
- 2.2 The City shall prepare the procurement documents for award of the City’s contract and shall manage all phases of the procurement and award process in accordance with the City’s procurement bylaws and protocols.
- 2.3 The Region will provide the City with the Tender Drawings, which the City shall use for the purposes of the Watermain Upgrade.
- 2.4 The City shall be responsible for and shall manage the construction of the Watermain in accordance with the Tender Drawings.
- 2.5 The Region shall provide the City with a copy of the Region’s Purchase Order based on the estimated costs in Section 2.6 following the execution of this Agreement and before the City issues the tender for the Work.
- 2.6 The parties acknowledge that the total estimated cost of the Watermain Upgrade is \$1,233,415.00 plus HST. The breakdown is as follows:
 - (a) Watermain construction and commissioning = \$905,575.00
 - (b) Water services = \$241,700.00
 - (c) Contract Administration and Site Inspection Services (consultant fees) = \$86,140.00
- 2.7 The above costs shall be shared between the parties as follows:

- (a) **The Region** will cover 100% of the watermain construction and commissioning costs (2.6a - \$905,575.00) and 50% of the contract administration and site inspection services costs (2.6c) (\$43,070.00) for a total of \$948,645.00 plus HST.
 - (b) **City of Markham** will cover 100% of the water services costs (2.6b - \$241,700.00) and 50% of the contract administration and site inspection services costs (2.6c - \$43,070.00) for a total of \$284,770.00 plus HST.
- 2.8 The City shall advance payment to the City's general contractor directly for the costs for the Watermain Upgrade and will submit invoices to the Region to be reimbursed by the Region at each of the following stages of the Watermain Upgrade: (i) at fifty percent (50%) completion of construction, and (ii) when construction is completed as determined in accordance with Section 3.1.
- 2.9 The Region shall reimburse the City by issuance of a cheque payable to the City of Markham within thirty (30) days of receipt of an invoice from the City.
- 2.10 The City shall submit final stamped as-built drawings to the Region the following completion of the Watermain Upgrade. As-built drawings must be stamped by a Professional Engineer licensed to practice in Ontario.
- 3. INSPECTION AND ACCEPTANCE**
- 3.1 For the purposes of this Agreement, the Region and the City agree that the Watermain Upgrade shall be deemed completed when the Watermain has been commissioned by the City and is in-service.
- 3.2 The Region and the City shall select a mutually agreeable date on which the parties will attend the Watermain for the purposes of inspecting the Watermain Upgrade and to note any deficiencies with the construction work of the Watermain, each acting reasonably, such date to be no later than thirty (30) days after the Watermain has been placed into service referred to in Section 3.1.
- 3.3 The City shall correct any deficiencies covered under the Contractor's warranty noted by the Region or the City during the first inspection or any subsequent inspection under Section 3.4 within thirty (30) days of the applicable inspection date.
- 3.4 Upon the City providing the Region with written notice that the applicable deficiencies have been rectified, the Region and the City shall select a mutually agreeable date on which the parties will attend the Watermain for the purpose of inspecting the work completed to rectify the deficiencies noted during the inspection under Section 3.2 or any subsequent inspection, such date to be no later than ten (10) days following the City's notice under this Section 3.4.
- 3.5 The Region shall provide to the City a written notice of acceptance when the Region, at its sole discretion, is satisfied that all deficiencies identified in accordance with this Section 3 have been rectified.
- 3.6 Notwithstanding anything else contained in this Agreement, the Region may inspect the Work periodically and from time to time, as the Region deems necessary.

4. TERM

- 4.1 This Agreement is effective from the Effective Date until the Region's acceptance of the Watermain Upgrade, which shall be deemed to have occurred when the Region delivers to the City the written notice of acceptance contemplated in Section 3.5.

5. COMPLIANCE

- 5.1 The City shall include in its tender documents a requirement that the general contractor performing the Watermain Upgrade is responsible to comply with all applicable legislation, regulations, policies, guidelines, by-laws, rules, orders or other requirements imposed by federal, provincial, municipal or other bodies, agencies, tribunals, or other authorities which may be applicable, including any health and safety measures required by the Region in the performance of the Watermain Upgrade.
6. The City shall include in its tender documents a requirement that the general contractor performing the Watermain Upgrade is responsible to meet all current Ministry of the Environment, Conservation and Parks standards and regulations on drinking water, including but not limited to O. Reg. 170/03 (Drinking Water Systems).

7. CONTACTS

- 7.1 The Region shall contact the following person at the City concerning any matters pertaining to this Agreement:

Paul Ahn P.Eng.

Actg. Senior Manager,
Infrastructure, Capital Delivery, Environmental Services
Community Services Commission, City of Markham
101 Town Centre Boulevard, Markham, ON L3R 9W3
T: 905.415.7000 Ext. 7000 email: pahn@markham.ca
With copy to:

Jawaid Khan, M. Eng, P.Eng.,

Actg. Manager,
Infrastructure, Capital Delivery, Environmental Services Department
Community Services Commission, City of Markham
101 Town Center Blvd., Markham, Ontario L3R 9W3
Phone 905-477-7000 Ext 2637 email: jkhan@markham.ca

Aaron Smith, P.Eng.

Project Engineer,
Infrastructure, Capital Delivery, Environmental Services,
Community Services Commission, City of Markham
101 Town Center Blvd., Markham, Ontario L3R 9W3
Office: 905.477.7000 Ext.2495 Email: aasmith@markham.ca

The City shall advise the Region immediately if there is any change to this contact information.

- 7.2 The City shall contact the following person at the Region concerning any matters pertaining to this Agreement:

Pina Accardi,

Director, Capital Delivery, Public Works

Email address: pina.accardi@york.ca

Telephone no. 905.830.4444 ext. 75355

The Region shall advise the City immediately if there is any change to this contact information.

8. DISPUTES

- 8.1 If either party has a dispute arising with respect to the interpretation, application, or administration, of this Agreement (a “**Dispute**”):
- (a) the party who wishes to resolve the Dispute shall give notice to the other party setting out the particulars of the Dispute (the “**Dispute Notice**”). The other party shall respond (the “**Response**”) to the Dispute Notice within fourteen (14) days from the date the Dispute Notice was received; and
 - (b) the City’s Director of Engineering and the Region’s Commissioner of Public Works, or their respective designates, shall consider the Dispute Notice and the Response, and attempt to resolve the Dispute to the satisfaction of both parties.
- 8.2 If the parties are not able to resolve the Dispute within sixty (60) days from the time the Response was received, or such other time frame that the parties agree to in writing after the Dispute Notice is sent, then the parties may proceed with any claim, action or application as either party deems necessary.

9. INDEMNIFICATION

- 9.1 The City shall indemnify and hold harmless the Region, its Chair, its Council members, its officers, and its employees, contractors, agents, successors and assigns (the “**Region Indemnified Parties**”), from and against all actions, claims, losses, costs (including all legal costs), damages, demands, suits, proceedings, orders, fines, expenses, and liabilities whatsoever which may be brought against the Region Indemnified Parties and against all losses, liabilities, judgments, claims, suits, demands or expenses which the Region Indemnified Parties may sustain, suffer or be put to that arise directly or indirectly out of or are attributable to the City’s omissions relating to its obligations under this Agreement, or failure to exercise reasonable care, skill or diligence in the performance or non-performance or rendering of any work or service required to be performed by the City, its agents and employees under this Agreement. This indemnification includes any legal costs incurred by the Region on a complete indemnity basis, including those incurred to defend any prosecutions against the Region Indemnified Parties resulting from the acts or omissions of the City.
- 9.2 The Region shall indemnify and hold harmless the City, its Mayor, its Council members, its

officers, and its employees, contractors, agents, successors and assigns (the “**City Indemnified Parties**”), from and against all actions, claims, losses, costs (including all legal costs), damages, demands, suits, proceedings, orders, fines, expenses, and liabilities whatsoever which may be brought against the City Indemnified Parties and against all losses, liabilities, judgments, claims, suits, demands or expenses which the City Indemnified Parties may sustain, suffer or be put to that arise directly or indirectly out of or are attributable to the Region’s omissions relating to its obligations under this Agreement, or failure to exercise reasonable care, skill or diligence in the performance or non performance or rendering of any work or service required to be performed by the Region, its agents and employees under this Agreement. This indemnification includes any legal costs incurred by the Indemnified Parties on a complete indemnity basis, including those incurred to defend any prosecutions against the City Indemnified Parties resulting from the acts or omissions of the Region.

9.3 This Section 10 shall survive the expiration or termination of this Agreement.

10. INSURANCE

10.1 During the term of this Agreement, both parties shall maintain comprehensive liability insurance in accordance with their respective risk management policies, and in an amount to cover their obligations under this Agreement and in any event in an amount not less than five million dollars (\$5,000,000.00) per occurrence. Each party shall provide evidence of such insurance upon written request from the other party.

10.2 The City shall ensure that anyone undertaking Watermain Upgrades in relation to this Agreement shall obtain and maintain the following insurance coverages:

Commercial General Liability Insurance

Commercial General Liability (“**CGL**”) insurance with limits of not less than \$5,000,000.00 inclusive per occurrence for bodily and personal injury, death, and damage to property including loss of use thereof. The CGL insurance shall include Cross Liability and Severability of Interest clauses, Products and Completed Operations coverage (minimum 24 months), Owner’s & Contractor’s Protective and a Standard Non-Owned Automobile endorsement including standard contractual liability coverage.

The following parties shall be included as Additional Insured parties on the CGL policy:

- the Owner
- the Region
- the Consultant

Automobile Liability Insurance

Automobile liability insurance in respect of licensed vehicles shall have limits of not less than \$5,000,000.00 inclusive per occurrence for bodily injury, death, and damage to property. Coverage shall be in the form of a standard owner's form automobile policy providing third party liability and accident benefits insurance and covering licensed vehicles owned and/or leased or operated by or on behalf of the Contractor.

Contractors’ Equipment Insurance

All Risks Contractors' Equipment coverage, insuring the full amount of the Contractor's equipment, including all owned, non-owned and mobile equipment.

Property Insurance

- (i) All Risks Builder's Risk insurance insuring not less than the sum of the amount of the Estimated Contract Price and the full value of Products that are specified to be provided by the Owner or the Region for incorporation into the Work. The Contractor, the Owner and the Region shall be Named Insureds on the policy. This policy shall be maintained from the commencement of the Work until Substantial Performance of the Contract has been attained, as set out in the Certificate of Substantial Performance.

The policies shall provide that, in the event of a loss or damage, payment shall be made to the Owner, the Region and the Contractor as their respective interests may appear. The Contractor shall act on behalf of the Owner, the Region and itself for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined the Contractor shall proceed to restore the Work. Loss or damage shall not affect the rights and obligations of either party under the Contract except that the Contractor shall be entitled to such reasonable extension of Contract Time relative to the extent of the loss or damage as the Owner may decide in accordance with the General Conditions of the Contract.

The Contractor shall be entitled to receive from the Owner, in addition to the amount due under the Contract in respect of Work performed prior to the date of the occurrence of the loss or damage, the amount at which the Owner's interest in restoration of the Work has been appraised to the extent paid by the insurer, such amount to be paid as the restoration of the Work proceeds and in accordance with the requirements of the General Conditions of the Contract.

Contractor's Pollution Liability Insurance

Contractor's Pollution Liability insurance is required with limits of not less than \$2,000,000.00 with the Owner and the Region added as an Additional Insured. This policy shall be maintained from the commencement of the Work until Substantial Performance of the Contract has been attained, as set out in the Certificate of Substantial Performance.

The form of Contractor's Pollution Liability may be an occurrence or claims-made form. Should the policy be on a claims-made form, the Contractor must provide a two-year extended reporting period.

- 10.3 The Region will accept in place of the above-mentioned insurance coverage, a combination of primary liability limits and umbrella insurance or excess liability limits which meet the CGL, General Aggregate and Automobile Liability limits noted above.

11. FORCE MAJEURE

- 11.1 In the event that performance of any or all of a party's obligations under this Agreement is made impossible by an occurrence, circumstance, or cause beyond the control of the party affected ("**Force Majeure**"), then such party shall immediately notify the other in writing. In such event, the parties may:

- (a) terminate this Agreement forthwith with the Region being liable to pay the City only for the Work completed prior to the termination,
 - (b) suspend or delay performance of the Work until the occurrence abates, or
 - (c) agree that the City may continue the performance of its obligations under this Agreement with such adjustments to the Work as may be required by the occurrence in question.
- 11.2 Delays in or failure of performance by either party under this Agreement shall not constitute default hereunder nor give rise to any claim for damages if such delay or failure is caused by Force Majeure occurrences beyond the control of the party affected, including, but not limited to, orders or other acts of Governments, acts of God, outbreaks of communicable disease resulting in government action, fires, floods, riots, war, rebellion, unusual delay by common carriers or unavoidable casualties, sabotage, and atomic or nuclear incidents, unless by exercise of reasonable effort or foresight they could have been avoided or mitigated.
- 11.3 Notwithstanding the foregoing, default or breach under a party's contract with others, lack of finances, adverse or inclement weather or climatic conditions short of a declared state of emergency, pandemics, strikes, lockouts, and other concerted acts by workers shall not be deemed to be causes beyond a party's control. For greater certainty, if a party is capable of performing its obligations under this Agreement notwithstanding the existence of any of the aforementioned events, such party will not be excused from the performance of its obligations. The parties expressly agree that COVID-19 virus and its variants are not to be considered a Force Majeure described in Sections 11.1 and 11.2.

12. AUDIT

- 12.1 The Region shall have the right to audit, and may audit, all books and records (in whatever form they may be kept) relating or pertaining to this Agreement (including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records) (collectively, the "**Records**"), kept by or under the control of the City, including, but not limited to, those kept by the City, its employees, agents, assigns, successors and subcontractors.
- 12.2 The City shall maintain and preserve all original books and records, together with such supporting or underlying documents and materials, for the term of this Agreement and for at least two (2) years following expiration or termination.
- 12.3 The City shall make the Records available to the Region upon request during business hours and may deliver the Records by electronic means.
- 12.4 This Section 12 shall not be construed to limit, revoke or abridge any other rights, powers or obligations relating to audit which the Region may have by Federal, Provincial, or Municipal statute, regulation, or agreement, whether those rights, powers, or obligations are express or implied.
- 12.5 This Section 12 shall survive the expiration or termination of this Agreement.

13. ASSIGNMENT

- 13.1 Neither party shall assign this Agreement, in whole or in part without the prior written approval of the other party, which approval may be withheld, or granted subject to such terms and conditions that the other party, at its sole opinion, deems advisable.

14. GOVERNING LAW

- 14.1 This Agreement is governed by the laws of the Province of Ontario and the applicable laws of Canada. The parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario, and all courts competent to hear appeals therefrom, with respect to all matters relating to or arising out of this Agreement.

15. SEVERABILITY

- 15.1 Any provision of this Agreement held to be invalid, void, illegal or unenforceable is ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality or enforceability of the remaining provisions of this Agreement.

16. ENTIRE AGREEMENT

- 16.1 This Agreement constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement and supersedes any and all agreements, undertakings, negotiations and discussions, whether oral or written, pertaining to its subject matter.

17. ADDRESS FOR NOTICE OF SERVICE

- 17.1 Any notice required to be given or served on either party under this Agreement must be in writing and delivered personally, electronically, or by prepaid registered mail, addressed to the Region or the City respectively as set out below. Service of notice is effective on the next business day following the date of personal delivery, electronic delivery or, in the case of a registered letter, on the third business day following the date of mailing.

To the Region at: The Regional Municipality of York
 17250 Yonge Street
 Newmarket, Ontario L3Y 6Z1
 Attention: Commissioner of Public Works
 Email address: Laura.McDowell@york.ca

With a copy to: Regional Clerk
 Regional.clerk@york.ca

To the City at: The Corporation of the City of Markham
 101 Town Centre Blvd.
 Markham, ON L3R 9W3

Paul Ahn P.Eng.
Actg. Senior Manager,
Infrastructure, Capital Delivery, Environmental Services
Community Services Commission, City of Markham
101 Town Centre Boulevard, Markham, ON L3R 9W3
T: 905.415.7000 Ext. 7000 email: pahn@markham.ca

With copy to:

Jawaid Khan, M. Eng, P.Eng.,
Actg. Manager,
Infrastructure, Capital Delivery, Environmental Services Department
Community Services Commission, City of Markham
101 Town Center Blvd., Markham, Ontario L3R 9W3
Phone 905-477-7000 Ext 2637 email: jkhan@markham.ca

Aaron Smith, P.Eng.
Project Engineer,
Infrastructure, Capital Delivery, Environmental Services,
Community Services Commission, City of Markham
101 Town Center Blvd., Markham, Ontario L3R 9W3
Office: 905.477.7000 Ext.2495 Email: aasmith@markham.ca

Or to such other addresses as either party may designate by written notice to the other party.

18. COUNTERPARTS AND ELECTRONIC SIGNATURES

- 18.1 This Agreement may be executed in any number of counterparts, and by electronic means, each of which shall be deemed to be an original and will be effective when one or more counterparts have been signed by each of the parties to this Agreement and delivered to each of the parties.

19. SCHEDULES

- 19.1 Schedule A (The Watermain) and Schedule B (Issued for Tender Drawings) form part of this Agreement.

20. GENERAL

- 20.1 The headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of any provision of this Agreement.
- 20.2 Where the context permits or requires, the singular includes the plural and the plural includes the singular.
- 20.3 "Include", "includes", "including", and similar formulations, denote that the subsequent list is non-exhaustive.

- 20.4 A reference to any legislation or to any provision of any legislation shall include any amendment to, and any modification, restatement, or re-enactment thereof, any legislative provision substituted therefor, and all regulations and statutory instruments issued thereunder or pursuant thereto.
- 20.5 Nothing contained in this Agreement shall be interpreted or deemed to fetter the legislative discretion of the Regional Council of the Region, its commissions, committees, boards, officers, officials, or employees, nor the City of Markham Council, its commissions, committees, boards, officers, officials, or employees.
- 20.6 Nothing contained in this Agreement shall be interpreted or deemed to fetter or limit the duties, rights, or responsibilities that the Region or the City may have as a municipal corporation in the Province of Ontario.
- 20.7 In cases where there is a discrepancy between the words and numerals, the words shall prevail.
- 20.8 In cases where there is a discrepancy between the Section number and Section name, the name shall prevail.

SIGNATURE PAGE FOLLOWS

This Agreement is effective on the date first stated above.

**THE CORPORATION OF THE CITY OF
MARKHAM**

Name: Frank Scarpitti
Title: Mayor

Name: Kimberley Kitteringham
Title: City Clerk

THE REGIONAL MUNICIPALITY OF YORK

Authorized by Bylaw 2023-31

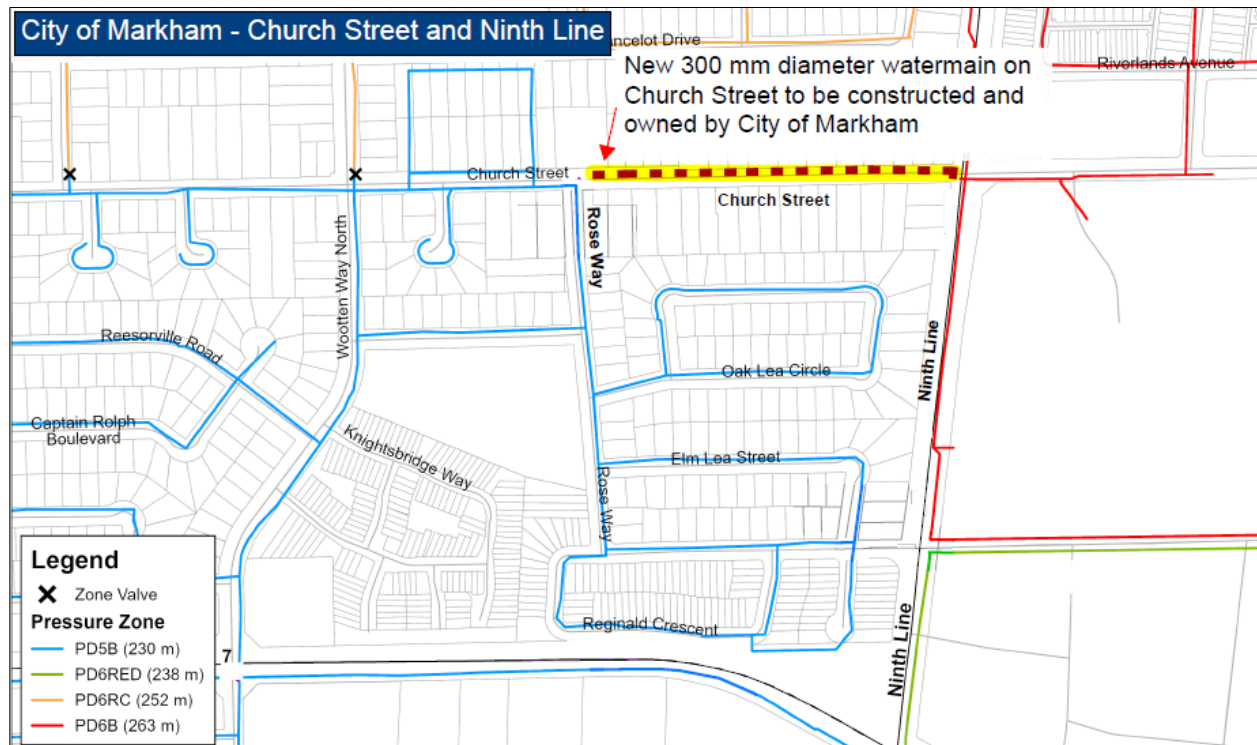
Approved as to form and legal content

Name:
Title:

Solicitor

SCHEDULE A

The Watermain



SCHEDULE B

Issued for Tender Drawings

(see attached)