THE METROPOLITAN TORONTO POLICE BENEFIT FUND

(REGISTRATION NO. 0351585)

SURPLUS SHARING AGREEMENT

THIS AGREEMENT made as of the 1st day of June, 2018.

BETWEEN:

CITY OF TORONTO, a municipal corporation existing under the laws of the Province of Ontario (the "**City**")

- and -

Those Members (as defined herein) who have retained Paliare Roland Rosenberg Rothstein LLP to execute this Agreement on their behalf (hereinafter called the "**Represented Participants**") (by their counsel, Paliare Roland Rosenberg Rothstein LLP, hereinafter "**Paliare Roland**")

- and -

Those Members who have not retained Paliare Roland to execute this Agreement but who have provided their individual consents to this Agreement, as undersigned (hereinafter called the "**Non-Represented Participants**")

- and –

The Toronto Police Association (the "**TPA**")

(collectively, the "Parties")

RECITALS:

A. The City is the sponsor of the Metropolitan Toronto Police Benefit Fund and the pension plan which it supports (the "**Plan**"). The Plan is registered in Ontario with the Financial Services Commission of Ontario.

B. The City has reached an agreement with the OMERS Sponsors Corporation and the OMERS Administration Corporation, sponsor and administrator respectively of the OMERS Primary Plan, regarding the proposed merger of the Plan into the OMERS Primary Plan (the "**Merger**"). If the Merger proceeds, all individuals in receipt of a pension from the Plan will be transferred into the OMERS Primary Plan and will become entitled to benefits under that plan.

C. If the Merger proceeds, surplus is expected to remain in the Plan following the transfer of all pension liabilities and related assets from the Plan into the OMERS Primary Plan (the "**Surplus**").

D. The TPA has agreed to represent the Plan retirees and surviving spouses regarding the distribution of the Surplus. The TPA has engaged counsel to negotiate an arrangement with the City whereby the Surplus, after the payment of all expenses relating to the sharing of Surplus, would be shared between the City and the Plan members. The law firm of Paliare Roland ("**TPA Counsel**") was retained by the TPA to conduct, as instructed by the TPA with the assistance of Paul Walter, discussions and negotiations with the City representatives.

E. As a result of negotiations between the TPA Counsel and the law firm specially engaged by the City for the purpose, Osler, Hoskin& Harcourt LLP, the principal terms of the proposal relating to the Surplus were agreed upon by the TPA and in principle by management staff of the City, as set out in a term sheet settled on by the TPA and such City staff (the "**Agreement in Principle**") on February 28, 2018 (the "**Agreement in Principle Date**").

F. The purpose of this Agreement is to document the formal terms that will govern the surplus sharing arrangement between the City and the eligible Plan members, based on the Agreement in Principle, subject to the regulatory approvals and other conditions contemplated herein.

The Parties agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

Whenever used in this Agreement the following words and terms shall have the meanings set out below:

"**Administration Expenses**" means all costs and expenses of the City or the Plan administrator relating to the Wind Up and all other administrative costs (including fund investment and administration costs) of the Plan, but excluding administration expenses required to be paid by the City under the terms of the Plan, and excluding Surplus Expenses;

"**Agreement in Principle**" has the meaning given in the Recitals;

"**Agreement in Principle Date**" means February 28, 2018;

"**Applicable Withholdings**" means any withholdings or source deductions required by law;

"**City**" has the meaning given in the Recitals;

"**City Actuary**" means Mercer (Canada) Limited or such other actuarial consulting firm as may be appointed from time to time by the City;

"**City Share**" has the meaning given in Article 4;

"**Communication and Confidentiality Agreement**" means the March 7, 2018 agreement related to information sharing and communications executed by the City and the TPA;

"**Consenting Members**" means the Represented Participants and the Non-Represented Participants;

"**Distribution Date**" means the effective date as of which the Member Share is distributed to the Members from the Plan pursuant to this Agreement, as determined by the City;

"**Individual Surplus Allocation**" means the share of the Member Share to which a Member is entitled pursuant to Article 4 and Article 6;

"**Member Share**" has the meaning given in Article 4;

"**Members**" means those persons alive and in receipt of a pension from the Plan (*i.e.*, retirees and survivors) on the Agreement in Principle Date;

"**Net Surplus**" means Surplus net of Administration Expenses;

"PBA" means the *Pension Benefits Act* (Ontario) and the regulations thereunder, as amended from time to time;

"Plan" has the meaning given in the Recitals;

"Regulator" means the Ontario Superintendent of Financial Services;

"Regulatory Approval" means approval by the Regulator of the City's application to distribute the Net Surplus as contemplated by this Agreement;

"Surplus" has the meaning given in the Recitals;

"Surplus Expenses" means all reasonable legal, actuarial or other out-of-pocket costs incurred by the City and the TPA in respect of the negotiation and implementation of the Agreement in Principle and this Agreement, the determination of Surplus and Net Surplus, and the distribution of Net Surplus;

"TPA" has the meaning given in the Recitals;

"TPA Counsel" has the meaning given in the Recitals; and

"Wind Up" means the termination of the Plan by the City, following the Merger.

1.2 Paragraphs and Headings for Convenience Only

The division of this Agreement into paragraphs and the inclusion of headings is for convenience of reference only and shall not affect the construction or interpretation hereof.

1.3 Governing Law

This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

1.4 Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof, and any such invalid or unenforceable provisions shall be deemed to be severable.

1.5 Entire Agreement

As of the date hereof, this Agreement and the Communication and Confidentiality Agreement constitute the entire agreement between the parties hereto pertaining to the subject matter hereof. There are no oral warranties or representations or other agreements between the parties in connection with the subject matter, except as specifically set forth or referred to herein. This Agreement supersedes the Agreement in Principle. No amendment, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.

1.6 Canadian Currency

All amounts stated herein are in Canadian currency.

ARTICLE 2

ADMINISTRATION EXPENSES

2.1 Payment of Administration Expenses

Administration Expenses shall be paid from the Surplus prior to the determination of the Net Surplus as contemplated in Section 3.1.

2.2 Estimate of Administration Expenses Prior to the Determination of the Net Surplus

Prior to the final calculation of the Net Surplus in accordance with Section 3.1 below, the City will cause its advisors to provide a reasonable estimate to the City of any remaining Administration Expenses expected to arise in order to complete the Wind Up of the Plan for its review and approval, which amount shall be deemed to be part of the Administration Expenses payable pursuant to this Agreement. The estimate of remaining Administration Expenses shall be provided to the TPA for its review and approval which shall not be unreasonably withheld.

ARTICLE 3

NET SURPLUS

3.1 Method for Determining Net Surplus

The Net Surplus is the amount of assets available for distribution to the City and the Members and is equal to the Surplus minus the Administration Expenses (including any estimated Administration Expenses as contemplated in Section 2.2) determined by the City Actuary as at the Distribution Date.

ARTICLE 4

SHARING OF THE NET SURPLUS

4.1 Surplus Split

The Net Surplus shall be divided between the Members and the City as follows, with the following amounts being paid only to the extent that sufficient Net Surplus exists, and in the order and priority set out below, subject to the payment of expenses as set out in Section 5.2:

(a) First, individual amounts of Net Surplus, to be calculated by the City, will be paid to those Members who, as active members of the Plan, were less than age 50 but had 30 or more years of credited service on the date when contribution refunds were made in 2002 to Plan members who had 30 or more years of credited service and were age 50 or over, with the amount being equal to the contribution refund they would have been entitled to had they met the eligibility requirements at the time, plus a cost of living adjustment;

(b) Second, individual amounts of Net Surplus, to be calculated by the City, will be paid to those Members who were within four months of completing 30 years of service as of the effective date in 2002 used for the purpose of the contribution refunds referenced in paragraph 4.1(a) above; each such individual will receive an amount of Net Surplus equal to the difference between what their contribution refund would have been in 2002 had they met the eligibility requirements therefor, less the amount they received in pension payments from the Plan from the date of their retirement to the date they would have attained 30 years of service had they not retired before such date, plus a cost of living adjustment;

(c) Third, $15.8 million, less the amounts paid pursuant to paragraphs 4.1(a) and (b) above, and less the expenses to be paid out of the Member Share as described below, will be paid to the Members.

(d) Fourth, should any Net Surplus remain following the distributions in 4.1(a), (b), and (c) above, it shall be paid to the City, up to a maximum of $15.8 million, after deducting the expenses to be paid out of the City Share as described below.

(e) Finally, should any Net Surplus remain following the distributions described above, it shall be split 50/50 between the City and the Members.

All amounts described above payable to Members shall be referred to herein as the **"Member Share"**, and all amounts described above payable to the City shall be referred to herein as the **"City Share"**. The Member Share described in paragraphs 4.1(c) and (e) above shall be allocated among the Members in accordance with Article 6 below.

ARTICLE 5

TIMING OF PAYMENT OF EXPENSES

5.1 Allocation of Administration Expenses

The Administration Expenses shall be paid from the Surplus before any distribution of Net Surplus to the Members and the City.

5.2 Payment of Surplus Expenses

All Surplus Expenses of the TPA, including the cost of any fiduciary insurance obtained by the TPA, subject to the City's satisfaction as to the reasonableness of such expenses which shall not be unreasonably withheld, shall be paid out of the Member Share as set out in Section 4.1 above, prior to the distribution of the remainder of the Member Share to the Members. All Surplus Expenses of the City shall be paid out of the City Share.

ARTICLE 6

ALLOCATION OF THE MEMBER SHARE

6.1 Allocation of the Member Share

In addition to any amount that may be payable to them pursuant to paragraphs 4.1(a) and 4.1(b), the portion of the Member Share described in paragraphs 4.1(c) and (e) (after payment of the Surplus Expenses described in Section 5.2) shall be allocated among the Members as follows: each retired Member shall receive one share, and each Member who is the surviving spouse of a Plan member shall receive 2/3 of a share. If a Member is in receipt of two separate pensions as a retiree and a surviving spouse, he or she shall receive one share plus 2/3 of a share; and if a Member is in receipt of two survivor pensions, he or she shall receive 4/3 of a share. Identification of a Member as a retiree or a surviving spouse (or both) for purposes of this Section 6.1 shall be done in accordance with his or her status as at the Agreement in Principle Date.

ARTICLE 7

SURPLUS DISTRIBUTION

7.1 Payment of Member Share

The City and the TPA will take appropriate steps to see that the Plan administrator pays the Member Share to the Members in accordance with this Article 7 as soon as practicable following receipt of Regulatory Approval, and in accordance with such approval.

7.2 Method of Distribution to Members

Subject to the requirements of the PBA and the *Income Tax Act* (Canada), and conditional upon receipt of Regulatory Approval, the Plan shall be amended to permit the distribution of the Member Share as contemplated in this Agreement.

Each Member shall receive his or her Individual Surplus Allocation as a cash payment, less Applicable Withholdings.

7.3 Deceased Members

If a Member dies before the Distribution Date (the "**Deceased**"), and whether or not the Deceased was a Consenting Member, then the estate of the Deceased shall be entitled to receive the Individual Surplus Allocation that would have been paid to the Deceased had the Deceased been living at the Distribution Date, as a lump such cash payment less Applicable Withholdings.

7.4 Payment in Respect of a Deceased Member Not Otherwise Contemplated

Notwithstanding the foregoing, should any situation arise involving a deceased Member or the death of any other person entitled to a payment pursuant to this Agreement that is not expressly contemplated in Section 7.3, then any Individual Surplus Allocation payable in respect of the deceased Member shall be paid to such person in such amount as is reasonably and in good faith determined by the City to be appropriate within the spirit and intent of this Agreement. If the personal representative of a deceased Member or any other person entitled to receive the deceased Member's Individual Surplus Allocation cannot be located despite good faith efforts, the deceased Member's Individual Surplus Allocation shall be dealt with in accordance with the procedures in Section 7.6.

7.5 Marriage breakdown

If a Member's pension under the Plan is being divided at source with a former spouse following a marriage breakdown, then the Member's Individual Surplus Allocation shall be divided with such spouse in the same proportion as the pension was being divided as at the Agreement in Principle Date. If the Individual Surplus Allocation of a Member is otherwise subject to an outstanding court order or separation agreement pursuant to a marriage breakdown but the Member's pension is not being divided at source, then subject to applicable law and the provisions of the court order or separation agreement, the former spouse of such Member may be entitled to receive a portion of the Individual Surplus Allocation which would otherwise have been paid to the Member under the terms of this Agreement, provided that the court order or separation agreement is delivered to the City prior to the Distribution Date. The onus shall be on the Member and/or his or her former spouse to establish, to the satisfaction of the City, that the former spouse is entitled to a share of the Individual Surplus Allocation and the amount of the former spouse's share. In the event of a dispute between the Member and his or her former spouse in respect of the treatment of the Member's Individual Surplus Allocation, the City shall not be obligated to make any distribution to the Member or his or her former spouse until evidence that the matter has been resolved has been delivered to the City. Until such time, any amounts payable to the Member shall be dealt with in accordance with the procedures in Section 7.6.

7.6 Unlocated Members

Should a Member (or any other person entitled to a payment hereunder) not be located, for any reason, despite good faith efforts by the City and the TPA to locate the person, then the City or the Plan administrator, as appropriate, shall file an application with the Ontario Superior Court of Justice for the payment of the value such person's Individual Surplus Allocation into Court, or shall otherwise deal with it in accordance with applicable law, subject to any applicable Regulatory Approval.

7.7 Information Exchange

(a) The Consenting Members consent to the sharing of their personal information with the City and the TPA, and their respective agents, for the purposes of implementing this Agreement.

(b) The TPA may require certain information pertaining to the Plan in order to participate in the surplus sharing discussions and formulate its position on the implementation of this Agreement. Such information shall be shared in accordance with the Communication and Confidentiality Agreement.

7.8 Payment of City Share

The TPA will take appropriate steps to co-operate with the City in seeing that the Plan administrator pays the City Share to the City as soon as practicable following receipt of Regulatory Approval, but no earlier than the date of the first distribution of Individual Surplus Allocations.

ARTICLE 8

APPLICATION FOR APPROVAL, MUTUAL CO-OPERATION

8.1 Application for Approval

The City intends to proceed expeditiously with an application for Regulatory Approval of the proposed refund to the City of the City Share, and the TPA shall fully co-operate with the City in that regard.

8.2 Mutual Co-operation

The parties acknowledge that they will fully co-operate and will proceed expeditiously with all steps necessary to achieve the sharing of Net Surplus in accordance with the terms of this Agreement.

Each party agrees not to commence any legal proceeding in respect of the Wind Up or the Surplus against any other party during the term of this Agreement, nor to commence any proceeding before the Regulator or the Financial Services Tribunal of Ontario, other than in the context of implementing this Agreement.

In the event that a Member commences or threatens to commence (i) adversarial court proceedings or (ii) adversarial proceedings before an administrative tribunal against the City in respect of the Wind Up or the Surplus during the term of this Agreement, the TPA agrees to support the City in opposing any such threatened or actual proceeding.

ARTICLE 9

GENERAL

9.1 Implementation and Termination of Agreement by the City

(a) Notwithstanding any other provision of this Agreement, it is expressly understood and agreed that the implementation of this Agreement is subject to, and conditional upon, the following:

(i) the completion of the Merger;

(ii) receipt of the necessary number of consents from Members, as determined by the Regulator in accordance with the PBA; and

(iii) receipt of Regulatory Approval.

(b) This Agreement may be terminated:

(i) by the City, on written notice to the TPA or TPA Counsel, if less than 70% of the Members execute this Agreement;

(ii) by either the City or the TPA if the other party is in material breach of this Agreement; or

(iii) by either the City or the TPA, on written notice to the other or their respective legal counsel, if, upon the completion of the process contemplated in Article 8, Regulatory Approval is refused.

9.2 Successors and Assigns

This Agreement shall be binding on and shall enure to the benefit of the City and its successors and the Members and their heirs, successors, executors, administrators, assigns and agents.

9.3 Release and Discharge

Subject to the City's compliance with the requirements of this Agreement, the Consenting Members hereby release and discharge the Plan, the TPA, the City, its predecessors and successors, and their respective directors, officers, employees, advisors and agents, from all demands, actions, causes of action, proceedings and claims whatsoever arising out of the Wind Up or the division and distribution of the Surplus.

9.4 Amendment

This Agreement may be amended by written agreement of the City on the one hand and TPA Counsel on instructions from the TPA on the other hand.

9.5 Counterparts

This Agreement may be executed in counterparts, and signed counterparts may be transmitted by facsimile and each such facsimile shall be deemed to be an original.

IN WITNESS OF WHICH the Parties have duly executed this Agreement as at the date first mentioned above.

TPA	**CITY OF TORONTO**
By: ______________________	By: ______________________
Name: MICHAEL McCORMACK	Name:
Title: PRESIDENT	Title:

REPRESENTED PARTICIPANTS

By: ______________________
Paliare Roland LLP

We act for 1506 Members of the Fund/Plan

IN WITNESS OF WHICH the Parties have duly executed this Agreement as at the date first mentioned above.

TPA

By: ______________________________

Name:
Title:

CITY OF TORONTO

By: ______________________________

Name: Mike St. Amant
Title: Treasurer

REPRESENTED PARTICIPANTS

By: ______________________________

Paliare Roland LLP

NON-REPRESENTED PARTICIPANT

____
Name (print)

____
Signature

____
Date signed

WITNESS

I, the undersigned, confirm that I have witnessed the execution of this document by the above signatory, and that the signatory is competent of mind and that this document was read personally by, or was read to, the signatory, and the signatory understands the nature and contents of this document.

Name of Witness: ______________________ **Signature of Witness:** ______________________
(please print)

Address of Witness: ______________________

____

____

Telephone Number of Witness: (   ) ______________________
(include area code)