METROPOLITAN TORONTO PENSION PLAN

(REGISTRATION NO. 0351577)

SURPLUS SHARING AGREEMENT

THIS AGREEMENT made as of the 11th day of May, 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 Koskie Minsky LLP to execute this Agreement on their behalf (hereinafter called the "**Represented Participants**") (by their counsel, Koskie Minsky LLP, hereinafter "**Koskie Minsky**")

\- and -

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

\- and –

Wes Rowe, Paul Enright, and John Walford in their capacity as members of **THE PENSION COMMITTEE FOR THE METROPOLITAN TORONTO PENSION PLAN SURPLUS DISTRIBUTION** (the "**Member Committee**") (by their counsel, Koskie Minsky)

(collectively, the "Parties")

RECITALS:

A. The City is the sponsor of the Metropolitan Toronto Pension Plan (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 (as well as any individuals/estates who are otherwise entitled to a payment from the Plan) will be transferred into the OMERS Primary Plan and will become entitled to benefits under that plan, and such benefits shall include guaranteed indexation of pension benefits in accordance with the provisions of the OMERS Primary 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 (including assets necessary to fund the cost of indexation in accordance with the provisions of the OMERS Primary Plan) into the OMERS Primary Plan (the "**Surplus**").

D. The Member Committee was established in September 2017 to engage 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 current members of the Member Committee are Wes Rowe, Paul Enright, and John Walford. The law firm of Koskie Minsky ("**Member Committee Counsel**") was retained by the Member Committee to conduct, as instructed by the Member Committee, discussions and negotiations with the City representatives.

E. As a result of negotiations between the Member Committee 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 Member Committee and in principle by management staff of the City, as set out in a term sheet settled on by the Member Committee and such City staff (the "**Agreement in Principle**") on January 31, 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 January 31, 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 January 12, 2018 agreement related to information sharing and communications executed by the City and the Member Committee;

"**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 6;

"**Member Committee**" has the meaning given in the Recitals;

"**Member Committee Counsel**" has the meaning given in the Recitals;

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

"**Members**" means those persons in receipt of a pension from the Plan (*i.e.*, retirees and survivors) on the Agreement in Principle Date (or who began receiving a pension from the Plan after such date which pension was retroactive to such date or earlier);

"**Minimum Surplus Allocation**" means $2,500;

"**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 Member Committee 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; 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 Member Committee 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, with 50% of the Net Surplus being paid to the Members (the "**Member Share**") and 50% of the Net Surplus being paid to the City (the "**City Share**"), subject to payment of expenses as set out in Section 5.2. The Member Share 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 Member Committee, including the cost of any fiduciary insurance obtained by the Member Committee, 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 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

Each Member will receive a *pro rata* share of the Member Share (after payment of the Surplus Expenses described in Section 5.2) based on the amount of the Member's pension payable on the Agreement in Principle Date (or the date the Member's pension commenced, if later), subject to each Member receiving the Minimum Surplus Allocation.

ARTICLE 7

SURPLUS DISTRIBUTION

7.1 Payment of Member Share

The City and the Member Committee will take appropriate steps to see that the Plan administrator pays the Member Share to the Members (or, where applicable, the estate of a Member) 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 the Individual Surplus Allocation of a Member is subject to an outstanding court order or separation agreement pursuant to a marriage breakdown, 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 Member Committee 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 Member Committee, and their respective agents, for the purposes of implementing this Agreement.

(b) The Member Committee 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 Member Committee 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 Member Committee 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 Member Committee 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 Member Committee or Member Committee Counsel, if less than 70% of the Members execute this Agreement;

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

(iii) by either the City or the Member Committee, 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 Member Committee, 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 Member Committee Counsel on instructions from the Member Committee 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.

MEMBER COMMITTEE	**CITY OF TORONTO**
By: ______________________	By: ______________________
Koskie Minsky LLP	Name:
	Title:

REPRESENTED PARTICIPANTS

By: ______________________

Koskie Minsky LLP

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.

MEMBER COMMITTEE

By: ______________________________
Koskie Minsky LLP

CITY OF TORONTO

By: ______________________________
Name: Mike St. Amant
Title: Treasurer

REPRESENTED PARTICIPANTS

By: ______________________________
Koskie Minsky 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)