



## CITY OF HAMILTON

### **CORPORATE SERVICES DEPARTMENT** **Financial Services Division**

<b>TO:</b> Chair and Members Audit, Finance and Administration Committee	<b>WARD(S) AFFECTED:</b> CITY WIDE
<b>COMMITTEE DATE:</b> December 9, 2013	
<b>SUBJECT/REPORT NO:</b> Hamilton Street Railway Pension Plan Text - Revised and Restated as of January 1, 2009 (FCS13085) (City Wide)	
<b>SUBMITTED BY:</b> Mike Zegarac Acting General Manager Finance & Corporate Services	<b>PREPARED BY:</b> Barb Howe (905) 546-2424 ext. 5599
<b>SIGNATURE:</b>	

### RECOMMENDATION

That the Treasurer be authorized to file the Hamilton Street Railway Pension Plan (1994), revised and restated as at January 1, 2009 (attached as Appendix 'B' to Report FSC13085), with the applicable authorities.

### EXECUTIVE SUMMARY

Following the Settlement Agreement reached between the Amalgamated Transit Union (ATU) and the City of Hamilton (COH), the Hamilton Street Pension Plan was closed to new members effective January 1, 2009, and the plan was restated accordingly, to incorporate the provisions of the Settlement.

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Appendix 'B' to Report FCS13085 represents the revised and restated plan text as at January 1, 2009.

***Alternatives for Consideration –Not Applicable.***

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS** (for Recommendation(s) only)

**Financial:** N/A.

**Staffing:** N/A.

**Legal:** The revised and restated plan text must be filed with Canada Revenue Agency and the Financial Services Commission of Ontario.

**HISTORICAL BACKGROUND** (Chronology of events)

In August 2005, the Amalgamated Transit Union initiated a law suit against the City of Hamilton alleging that the COH was the employer of the Hamilton Street Railway Company and, as such, should have enrolled its members in the OMERS plan since July 1, 1965. The law suit was settled and the settlement was approved by the Ontario Superior Court of Justice on December 22, 2008, (Court file #07-CL-7248).

Since 2009, the City and the Union, in consultation with their respective actuaries and legal counsel have been working together to implement the settlement. The implementation of the provisions within the settlement required the Plan Text to be revised and restated effective January 1, 2009.

**POLICY IMPLICATIONS/LEGISLATED REQUIREMENTS**

The revised and restated plan text must be filed with Canada Revenue Agency and the Financial Services Commission of Ontario.

**RELEVANT CONSULTATION**

The plan text was prepared by the plan's actuary, AON Hewitt with consultation from staff and the COH's legal counsel (Blakes, Cassels, Graydon LLP). The Union's legal

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counsel, (Koskie, Minsky LLP) and actuary (Goddard Pension Consulting Inc.) reviewed the Plan Text for those provisions specifically related to Settlement and confirmed such in the letter attached as Appendix 'A' to Report FSC13085.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

Effective January 1, 2009, the Plan text was restated to:

- (a) amend the Plan in accordance with the terms of the Settlement Agreement;
- (b) to reflect changes to Applicable Legislation;
- (c) to reflect changes made to the Plan on or after January 1, 2004, and prior to the Settlement Agreement; and
- (d) to make other changes, of a housekeeping nature, which includes naming the COH as an administrator and employer under the plan.

Among the changes required, as a result of the Settlement Agreement, include:

- a) The plan will be closed to new members and there is no further accrual of pension service for existing members after December 31, 2008;
- b) A maximum of an additional six months of credited service will be provided to each HSR plan member; which was the existing waiting period under the HSR plan;
- c) Eligible Service and Best Average Earnings will include periods of employment and earnings with the City after December 31, 2008;
- d) Enhanced indexing provisions, effective January 1 2009, equivalent to that provided under the OMERS plan;
- e) Future provision for indexing of deferred vested pensioners when the plan shows no unfunded liability;
- f) Future provision for 66-2/3% spousal benefit when the plan shows no unfunded liability.

**ALTERNATIVES FOR CONSIDERATION**

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

None.

**ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN:**

**Strategic Priority #2**

Valued & Sustainable Services

*WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.*

2.1 Implement processes to improve services, leverage technology and validate cost effectiveness and efficiencies across the Corporation.

**Strategic Priority #3**

Leadership & Governance

*WE work together to ensure we are a government that is respectful towards each other and that the community has confidence and trust in.*

3.4 Enhance opportunities for administrative and operational efficiencies.

**APPENDICES / SCHEDULES**

Appendix “A” to Report FCS13085 - Letter from Koskie Minsky LLB.

Appendix “B” to Report FCS13085 - Hamilton Street Railway Pension Plan (1994), revised and restated as at January 1, 2009.

**KOSKIE  
MINSKY** LLP  
BARRISTERS & SOLICITORS

October 30, 2013

**Ari N. Kaplan**  
Direct Dial: 416-595-2087  
Direct Fax: 416-204-2875  
akaplan@kmlaw.ca

**Via E-Mail**

Ms. Barbara Howe  
Manager of Payroll and Pensions  
City of Hamilton

Dear Ms. Howe:

**Re: Hamilton Street Railway – Pension Settlement Implementation**

Further to the s. 8 of the January 30, 2013 Implementation Agreement, I confirm that the attached marked-up draft reconsolidated HSR Plan text document which you provided us has been reviewed by the ATU's counsel and actuary and this may be affixed as Schedule "G" to the Agreement. The following proposed amended provisions of the Plan relate to the pension settlement and fall within our review:

1.01: Average YMPE, Best Average Earnings, Full-Time Employee, OMERS Credited Service, OMERS Service, OMERS Plan, Past Service, Post-Transition Pension Credits, Post-Transition Vested Status, Post-Transition Pension Credits, Service, Settlement Agreement; 5.02, 5.06, 5.07, 6.04, 7.03, 7.07, 8.10, 11.04, 11.11, 13.06, 15.02, 15.04, 15.06A, 15.07, 19.02, 21.03, 27.08, 30.08, 31.07, 32.08.

We make no representations with respect to the remainder of the Plan text.

Yours truly,

**KOSKIE MINSKY LLP**



Ari N. Kaplan

c: B. Dhillon  
c: G. Goddard

***Part A - Introduction***  
***Preamble***

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**HISTORY**

This Plan is the result of the merger of two registered pension plans, specifically, the Pension Plan for Employees of The Hamilton Street Railway Company and The Associated Pension Plan for Employees of the Hamilton Street Railway Company. The merger was effective 1 January 1994. The Plan was restated 1 January 2004 as The Hamilton Street Railway Pension Plan (1994). Pursuant to the Settlement Agreement, the Plan was closed to new members and amended effective 1 January 2009 as provided herein.

**CURRENT DOCUMENT**

This version of the Plan is a revision and restatement which includes amendments to the 1 January 2004 restatement up to and including those effective 1 January 2009.

The Benefits regarding Members who retired, died or otherwise terminated their employment prior to 1 January 2009 shall be determined and shall be payable in accordance with the terms of the Plan as it existed on the earliest of their date of Retirement, death or other Termination of employment, as applicable, with such modifications as may be required pursuant to Applicable Legislation.

Effective 1 January 2009, the Plan text was restated to

- (a) amend the Plan in accordance with the terms of the Settlement Agreement,
- (b) to reflect changes to Applicable Legislation,
- (c) to reflect changes to the Plan made on or after 1 January 2004; and
- (d) to make other changes of a housekeeping nature.

**Part A - Introduction**

**Article 1:**

**Definitions**

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1.01 In this Plan, unless the context clearly indicates otherwise,

"Actuarial Equivalent" means an amount of equal value according to the assumptions prescribed by the Actuary in conformity with Applicable Legislation without discrimination on the basis of sex.

"Actuary" means a Fellow of the Canadian Institute of Actuaries or a firm employing such a person, retained and appointed by the Company.

"Additional Benefit" means a benefit, of such an amount as determined by the Actuary, payable to a Member in addition to the regular Benefits under this Plan as a result of an Additional Voluntary Contribution made by the Member.

"Additional Voluntary Contribution" means a contribution to the Pension Fund by a Member in addition to any Required Member Contributions.

"Administrator" means the Company, acting in its capacity as an administrator of the Plan under Applicable Legislation and not in its personal capacity.

"Applicable Authorities" includes

- (a) the Superintendent, and
- (b) the CRA.

"Applicable Legislation" means

- (a) the Pension Benefits Act, and
- (b) the Income Tax Act.

"Appropriate Percentage" means the percentage in Column B corresponding to the number of years of membership in this Plan and the Predecessor Plans as set out in Column A of the following table:

**Part A - Introduction**

**Article 1:**

**Definitions**

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<u>Column A</u>	<u>Column B</u>
(a) Less than 10 years	(a) Nil
(b) 10 years but less than 11 years	(b) 50%
(c) 11 years but less than 12 years	(c) 60%
(d) 12 years but less than 13 years	(d) 70%
(e) 13 years but less than 14 years	(e) 80%
(f) 14 years but less than 15 years	(f) 90%
(g) 15 years or more	(g) 100%

"Average YMPE" for a Member, means 1/36 times the sum of each YMPE which applies on the last day of the month during the Member's last 36 complete months of Credited Service and OMERS Credited Service, if any.

"Beneficiary" means any person designated by a Member to receive a Pension upon the death of the Member, who, except in the case of a lump sum payment or in the case of a continuation of a guarantee period, is a

- (a) Spouse,
- (b) former Spouse,
- (c) a parent, grandparent, brother, sister, child or grandchild of the Member, who, at the time the Member dies, is both dependent on the Member for support and
  - (i) under 19 years of age and not able to attain 19 years of age in the calendar year that the Member dies,
  - (ii) in full-time attendance at an educational institution, or
  - (iii) dependent on the Member by reason of mental or physical infirmity.

"Benefit" means

- (a) a Pension, or



**Part A - Introduction**

**Article 1:**

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- (b) an amount or amounts payable under this Plan which are not payable on a periodic basis.

"Best Average Earnings" means the average of a Member's annual Earnings, as determined by the Company,

- (a) over the Member's 60 months of highest Earnings during the Member's Credited Service and OMERS Credited Service, if any, or
- (b) during the Member's period of Credited Service and OMERS Credited Service, if any, if less than five years.

"Canada Pension Plan" includes the Quebec Pension Plan for a Member employed in the province of Quebec or any other governmental pension plan in lieu of the Canada Pension Plan.

"City" means City of Hamilton, an employer under the Plan.

"Commutated Value" means a lump sum amount of equal value according to actuarial assumptions prescribed by the Actuary pursuant to a unisex mortality table and to Applicable Legislation.

"Company" means the Hamilton Street Railway Company, its affiliate, the City and their respective successors or assigns, provided that where there is any action to be taken, designation, approval or opinion to be given or discretion or decision to be made or exercised by the Company or any payment to be made by the Company, "Company" shall mean the board of directors of the Hamilton Street Railway Company or the governing body of any successor thereto acting in its personal capacity and interest.

"CRA" means the Canada Revenue Agency, or the equivalent body of any province of Canada, where applicable.

"Credited Service" means total Service as a Full-Time Employee, or Part-Time Credited Service, computed to the nearest one-twelfth year,

- (a) following a Member's enrolment in this Plan or the Predecessor Plans,
- (b) before commencement of Pension,

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- (c) in respect of which the Member is paid by the Company, or such period without pay as specifically permitted for earning credits by this Plan or as required by Law, and
- (d) accrued prior to 1 January 2009,

excluding Service outside Canada, except as permitted by Applicable Legislation and the Company, and excluding Service while the Member is earning credits under another registered pension plan maintained by the Company which does not specifically permit the simultaneous earning of Pension under this Plan and

includes Past Service.

"Disability" means the condition of being Disabled.

"Disabled" means, in respect of a Member, suffering from a physical or mental impairment that prevents the Member from performing the duties of the employment in which the Member was engaged before the commencement of the impairment, as certified by a medical doctor who is licensed to practice under the Law of a province or of the place where the Member resides.

"Early Retirement" means Retirement prior to the Normal Retirement Date.

"Early Retirement Date" means the first day of any month following the month in which a Member Retires after the Member elects Early Retirement.

"Earnings" means the annualized remuneration determined on January 1 of a given year (or, for a Member's first year of Credited Service, determined on the first day of Credited Service), including Part-Time Earnings, regularly paid by the Company to a Member for services rendered,

- (a) excluding
  - (i) overtime pay,
  - (ii) bonuses,
  - (iii) the cost of any group insurance, hospitalization, sickness or similar benefits,
  - (iv) Company contributions made on the Member's behalf to this Plan or the

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Predecessor Plans or the Prior Plans, or

- (v) any other payments not customarily considered to be regular remuneration, as determined by the Company,
- (b) not exceeding the amount included in computing the Member's income for the year for income tax purposes in respect of
  - (i) employment with the Company, or
  - (ii) an office in respect of which the Member is remunerated by the Company, and
- (c) excluding such portion, except as permitted by the Applicable Authorities, of the amount as
  - (i) may reasonably be considered to relate to a period throughout which the Member was not resident in Canada, and
  - (ii) not attributable to the performance of duties of the office of employment in Canada, or exempt from income tax in Canada by reason of a provision contained in a tax convention or agreement with another country that has the force of law in Canada.

"Effective Date" means 1 January 1994.

"Employee" means a Full-Time Employee or a Part-Time Employee of the Company hired prior to 1 January 2009.

"Fifty Percent Benefit" means the Benefit defined in Article 12.

"Fiscal Year" means, for the Plan and the Pension Fund, the period which commences January 1 and ends on December 31 of a given year.

"Full-Time Employee" means a person employed on a regular full-time basis by the Company on

- (a) a permanent salaried basis, or

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(b) an hourly-rated basis,

who is not participating in any other registered pension plan in respect of employment with the Company, including without limitation, the OMERS Plan.

"Inception Date" means the date from which the Predecessor Plans were officially established, being 1 July 1980.

"Income Tax Act" means the Income Tax Act of Canada, or of any province of Canada, where applicable, as amended from time to time and the regulations thereunder.

"Insurance Company" means a corporation authorized to undertake the business of life insurance in Canada.

"Interest" means, in respect of this Plan, the amount of money which is considered to have accrued from time to time on contributions made by Members to this Plan, the Predecessor Plans and the Prior Plans, calculated in accordance with Article 22.

"Joint and Survivor Pension" means a Pension payable during the joint lives of the Member and his Qualifying Spouse (or Beneficiary, if applicable) and thereafter during the life of the survivor of them.

"Law" includes

- (a) the common law,
- (b) a statute of Canada or of any province of Canada and any regulation made under such statute, and
- (c) any order or judgement of a court in Canada.

"Member" means, at any time, a person who

- (a) has been admitted to membership in this Plan, and
- (b) who is entitled to a payment under this Plan.

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"Normal Pension Benefit" means the Pension payable on the Normal Retirement Date.

"Normal Retirement Date" means the first day of the month immediately following the Member's 65th birthday.

"OMERS Credited Service" means periods of employment with the City after 31 December 2008 that is recognized for purposes of benefit accrual under the OMERS Plan.

"OMERS Service" means periods of employment with the City after 31 December 2008 that is recognized for purposes of eligibility or entitlement to benefits under the OMERS Plan.

"OMERS Plan" means the OMERS Primary Pension Plan that provides benefits for members and former members of the **Ontario Municipal Employees Retirement System**.

"Part-Time" Credited Service" means Service while a Member as a Part-Time Employee in any one calendar year, equal to that portion that such Employee's Service bears to Service of a Full-Time Employee in the calendar year, as determined by the Company.

"Part-Time Earnings" means the remuneration of a Part-Time Employee annualized for the calendar year, as determined by the Company.

"Part-Time Employee" means a person employed by the Company other than a Full-Time Employee.

"Partial Wind Up" means the discontinuance of part of the Plan and the distribution of the assets of the Pension Fund related to that part of the Plan.

"Past Service" means, with respect to a Member who is an Employee on 31 December 2008 who remains in employment to 30 June 2009, and who does not terminate or retire from employment in 2009 for any reason other than death, lay-off or involuntary termination of employment not for cause without first giving the Company six months' prior written notice of termination or retirement from employment, the period of Service accrued immediately prior to enrolment in this Plan or a Predecessor Plan, to a maximum of six months.

"Pension" means a Pension Benefit that is in payment.

"Pension Advisory Committee" means a committee established in accordance with Article 32.

**Part A - Introduction**

**Article 1:**

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"Pension Benefit" means the aggregate of monthly, annual or other periodic amounts payable to a Member during the lifetime of the Member, or for a fixed period, to which the Member is entitled under this Plan or to which any other person is entitled upon the death of the Member.

"Pension Benefits Act" means

- (a) the Pension Benefits Act, R.S.O., 1990 as amended or
- (b) such other pension standards legislation in Canada, or a province of Canada that has jurisdiction over a Member of this Plan, as may be appropriate in the circumstances, and
- (c) the regulations under the appropriate legislation in paragraph (a) or (b), as amended from time to time.

"Pension Credits" means the aggregate value at a particular time of a Member's Pension Benefits under the Plan, or, if the context specifically stipulates, under another plan.

"Pension Fund" means the fund maintained to provide benefits under or related to the Plan.

"Pensionable Date" of a Member means the earliest of the Member's

- (a) Retirement Date,
- (b) Termination Date, or
- (c) date of death.

"Pensionable Earnings" shall be determined by the Company and shall consist of

- (a) the basic earnings (for Employees paid on a salaried basis), inclusive of cost of living allowance (COLA), and
- (b) the hourly rate (for Employees paid on an hourly rated basis), inclusive of cost of living allowance (COLA), multiplied by 2,080 hours,

and any changes in Pensionable Earnings shall take effect from the first day of the Fiscal Year

**Part A - Introduction**

**Article 1:**

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coincident with or next following the date of change.

"Plan" means The Hamilton Street Railway Pension Plan (1994), as amended.

"Plan Document" means the provisions of this Plan as set out herein.

"Postponed Retirement Date" means, where a Member Retires after the age of sixty-five years, the earlier of

- (a) the first day of any month following the month in which a Member Retires, and
- (b) the end of the calendar year in which the individual attains 71 years of age, or such other time as is acceptable under the Income Tax Act.

"Post-Transition Pension Credits" means Pension Credits of a Member accruing on or after the Transition Date. For further certainty, Pension Credits with respect to Past Service are included in Post-Transition Pension Credits.

"Post-Transition Vested Status" means, in respect of employment on or after the Transition Date, completion of the aggregate of twenty-four months of Plan membership and OMERS Service.

"Predecessor Plans" means the Pension Plan for the Employees of The Hamilton Street Railway Company and The Associated Pension Plan For Employees of The Hamilton Street Railway Company, which were merged into a single ongoing plan, The Hamilton Street Railway Pension Plan (1994), effective 1 January 1994.

"Pre-Transition Pension Credits" means the Pension Credits of a Member accruing prior to the Transition Date. For further certainty, Pension Credits with respect to Past Service are not included in Pre-Transition Pension Credits.

"Pre-Transition Vested Status" means, in respect of Pre-Transition Pension Credits,

- (a) completion of ten continuous years of
  - (i) Service, or
  - (ii) plan membership, and

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- (b) attainment of age 45.

"Prior Plans" means The Hamilton Street Railway Company Pension Plan prior to the Inception Date and The Canada Coach Lines Limited Pension Plan prior to the Inception Date.

Originally, such plans were constituted by group pension policies No. 4873901 and 4880501 of the Prudential Assurance Company Limited.

"Qualifying Spouse" means, subject to Applicable Legislation, a Spouse who survives the Member and who, in respect of Pension otherwise payable to the person, has not filed with the Administrator (or Insurance Company, where applicable) a waiver of entitlement to that Pension Benefit as

- (a) a joint election made with the Member in accordance with Applicable Legislation, or
- (b) a certified copy of a domestic contract which, in respect of the Joint and Survivor Pension, has the equivalent status under Applicable Legislation as the joint election in paragraph (a) of this definition,

excluding any person living separate and apart from the Member at the earlier of the date of Retirement or the date the Member dies.

"Recipient" means a person to whom any Pension Benefit is payable under this Plan.

"Required Member Contributions" means in respect of a Member compulsory contributions to this Plan, the Predecessor Plans or Prior Plans, where applicable, by the Member through regular payroll deductions. Effective 1 January 2009, Members are neither required nor permitted to make Required Member Contributions.

"Retire" means the act of electing or attaining Retirement.

"Retirement" means cessation of a Member's employment with the Company under circumstances which entitle the Member to receive forthwith a Pension Benefit from this Plan.

"Retirement Date" means, where a Member Retires,



**Part A - Introduction**

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- (a) Early Retirement Date,
- (b) Normal Retirement Date, or
- (c) Postponed Retirement Date.

"Service" means a Member's last continuous period of unbroken employment as an Employee before 1 January 2009, subject to periods of interruption as mentioned in Article 7.

"Settlement Agreement" means the Minutes of Settlement dated November 26, 2008 as agreed to between the parties to the class proceeding approved by Order of Perrell J. made 22 December 2008 and as further amended by Perrell J., under Court File No. 07-CL-7248 and attached hereto as Schedule "A".

"Spouse" means, subject to the definition of "spouse" in Applicable Legislation or as otherwise required by Law, a person who is

- (a) married to the Member, including, where required by Applicable Legislation, a party to a void or voidable marriage with the Member, or
- (b) not married to the Member and living in a conjugal relationship with the Member
  - (i) continuously for a period of not less than three years, or
  - (ii) in a relationship of some permanence, if the person and the Member are natural or adoptive parents of a child, both as defined in the Family Law Act (Ontario).

"Superintendent" means the Superintendent as defined in the applicable Pension Benefits Act.

"Termination" means the cessation of a Member's employment with the Company before the Normal Retirement Date, where such cessation is not due to death or Retirement.

"Termination Date" means the last day of the month in which a Member's Termination occurs.

"Totally and Permanently Disabled" means, being Disabled with a physical or mental impairment that prevents a Member from engaging in any employment for which the Member is reasonably

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***Article 1:***

***Definitions***

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sued by virtue of the Member's education, training or experience and that can reasonably be expected to last for the remainder of the Member's lifetime, as certified in writing by a medical doctor who is licensed to practice under the Law where the Member resides.

"Transition Date" means 1 January 1987.

"Trustee" means RBC Dexia Investor Services, or any other funding agency subsequently appointed by the Administrator.

"Union" means the Amalgamated Transit Union, Local 107, or any successor collective bargaining agent thereto.

"Vested Status" means,

- (a) Post-Transition Vested Status, or
- (b) Pre-Transition Vested Status.

"Wind Up" means the discontinuance of the Plan and the distribution of the assets of the Pension Fund, and includes, in respect of the applicable Pension Credits, a Partial Wind Up.

"YMPE" means the Year's Maximum Pensionable Earnings as defined in the Canada Pension Plan.

***Part A - Introduction***

***Article 2:***

***Interpretation***

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- 2.01 In this Plan,
- (a) words of masculine gender shall be deemed to include the corresponding words of feminine gender, and vice versa, and
  - (b) words importing the singular number may be construed to include the plural number, and vice versa.
- 2.02 In this Plan, computations involving part of a year shall be computed to the nearest 1/12th of a year.
- 2.03 In this Plan, reference to the word "Part", "Article", "section", "subsection", "paragraph", "subparagraph", or such other term as may apply, shall refer to a Part, Article, section, subsection, paragraph, subparagraph, or such other term as may apply, respectively, of this Plan, unless otherwise stated.
- 2.04 All titles and headings contained in this document are for convenience only, and do not form part of this Plan.
- 2.05 In this Plan, the word "or" shall be deemed to include the word "and/or" unless the context clearly indicates otherwise.
- 2.06 All ages referred to in this Plan shall be computed in years.
- 2.07 Any reference in this Plan to a Member shall be deemed to include a reference to a Recipient to the extent required by Law or to the extent required for the proper administration of this Plan.
- 2.08 A term defined in section 1.01 shall have the meaning defined in that section wherever it appears in this Plan with the first letter of each word capitalized, subject to errors or omissions.

***Part A - Introduction***

***Article 3:***

***Application of The Plan***

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- 3.01 The primary purpose of this Plan is to provide periodic payments to individuals after Retirement and until death in respect of their Service as Employees.
- 3.02 This Plan is a successor plan resulting from the merger of Predecessor Plans which provided for the payment of Benefits following Retirement, death or Termination of employment to Employees of the Company.
- 3.03 The provisions of this Plan Document apply to persons who are Members on or after 1 January 2009.
- 3.04 The provisions of the Plan which existed prior to 1 January 2009 shall apply to Members and Employees whose Pensionable Dates occur before that date, Members and Employees who terminated service prior to that date, and the Spouses, Qualifying Spouses and Beneficiaries of Members who died prior to that date, unless this Plan Document or Applicable Legislation specifically provides otherwise.
- 3.05 The provisions of the Predecessor Plans which existed prior to 1 January 1994 shall apply to Members and Employees whose Pensionable Dates occur before that date, Members and Employees who terminated service prior to that date, and the Spouses, Qualifying Spouses and Beneficiaries of Members who died prior to that date, unless this Plan Document or Applicable Legislation specifically provides otherwise.

***Part A - Introduction***

***Article 4:***

***Predecessor Plans***

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- 4.01 The Predecessor Plans, which commenced on 1 July 1980, have been suspended and replaced in their entirety by this Plan as of the Effective Date.
- 4.02 The Benefits of Members under this Plan shall be in full satisfaction of their accrued benefits under the Predecessor Plans.
- 4.03 This Plan shall not reduce the accrued benefits of any member under the Predecessor Plans, nor change the terms and conditions applicable to the payment of such accrued benefits to the detriment of any such member.
- 4.04 The pension benefits provided under the Predecessor Plans in respect of all active members as at the Effective Date are provided under this Plan and funded by the assets held in the Pension Fund.

***Part B – Membership***

***Article 5:***

***Eligibility and Membership***

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- 5.01 Each Employee who was a member of the Predecessor Plans on the Effective Date became a Member of this Plan on the Effective Date.
- 5.02 Prior to 1 January 2009, each Full-Time Employee who was not a member of the Predecessor Plans on the Effective Date was required to become a Member of this Plan on the first day of the calendar month after completing six months of Service with the Company.
- 5.03 Prior to 1 January 2009, a Part-Time Employee was entitled to become a Member of this Plan after completion of no less than 24 months as an Employee, provided that in each of two consecutive calendar years immediately prior to membership the Part-Time Employee either
- (a) earned not less than 35% of the YMPE, or
  - (b) worked not less than 700 hours,
- with the Company.
- 5.04 Prior to 1 January 2009 the Company was entitled at its discretion, with the consent of an Employee, to waive any or all of the conditions for membership in this Plan to enable the Employee to become a Member of this Plan at a date earlier than that on which the Employee would otherwise become a Member.
- 5.05 Except as otherwise stated in this Plan, membership under this Plan includes membership under the Predecessor Plans.
- 5.06 Effective 1 January 2009, the Plan is closed to new Members. All Members of the Plan shall be entitled to Benefits accrued under the Plan in respect of Service to 31 December 2008. Except as provided in the definition of Past Service in Article 1, there shall be no further accrual of Benefits under the Plan in respect of employment with the Company or any affiliated entity or successor on or after 1 January 2009.
- 5.07 For greater certainty, pursuant to the Settlement Agreement, it is understood that,
- (a) an Employee who is a Member on December 31, 2008, shall become a member of the OMERS Plan effective January 1, 2009, and

***Part B – Membership***

***Article 5:***

***Eligibility and Membership***

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- (b) a full time Employee who was not a Member on December 31, 2008 pending completion of their six month eligibility period shall become a member of the OMERS Plan effective January 1, 2009. The full time Service of the Employee immediately prior to January 1, 2009 representing a period not exceeding six months shall be recognized as additional credited service under the OMERS Plan.

**Part B – Membership**  
**Article 6:**  
**Membership Transfers**

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- 6.01 Where a Member or Members of this Plan are transferred to the employment of another employer, the Administrator may direct that the value of the accrued Benefits under this Plan in respect of employees so transferred, be transferred to a pension plan sponsored by the other employer, provided that
- (a) the other plan is registered for purposes of the Income Tax Act,
  - (b) the transfer shall be in consideration of an undertaking under the pension plan to which the transfer is made to provide pension benefits for the member under that plan, which benefits shall be no less in value at the time of the said transfer than those provided under this Plan for the said Member,
  - (c) there shall be transferred to the other plan an amount of funds determined by the Administrator acting on the advice of the Actuary,
  - (d) any Benefits which were locked-in under this Plan because of any applicable government legislation shall continue to be similarly locked-in,
  - (e) any pension regulatory body having jurisdiction over the other plan or over this Plan shall have given prior approval of the transfer of funds,
  - (f) at the discretion of the Administrator, either the transfer is made with the consent of the Member or Members or alternatively the sponsor of the other plan agrees to indemnify and save harmless this Plan,
  - (g) the transfer shall be subject to such other conditions as the Administrator may deem fit.
- 6.02 The Administrator may agree that the value of the accrued benefits under the pension plan or plans of the other employer in respect of those employees who become eligible to become Members under this Plan be transferred to this Plan provided that
- (a) the other plan contains provisions permitting the transfer of the value of the accrued benefits,
  - (b) any benefits which were locked-in under the terms of the other plan will continue to be locked-in under this Plan,



***Part B – Membership***  
***Article 6:***  
***Membership Transfers***

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- (c) any pension regulatory body having jurisdiction over the other plan or over this Plan shall have given prior approval of the transfer of funds, and
  - (d) the transfer shall be subject to such other conditions as the Administrator may deem fit.
- 6.03 The Administrator may enter into a reciprocal agreement with an employer sponsoring another plan under which agreement this Plan may recognize any or all of
- (a) service credited under the other pension plan for purposes of satisfying the vesting and locking-in provisions of this Plan,
  - (b) service credited under the other pension plan for purposes of satisfying the Service requirements for early retirement or for the payment of any other Benefit under this Plan, and
  - (c) salary credited under the other pension plan for purposes of determining Best Average Earnings under this Plan.
- 6.04 The purpose of an agreement in section 6.03 will be to facilitate the transfer of employees between the Company and another employer. Any such agreement may make provision for a transfer of accrued benefits to or from this Plan on an individual or group basis.

The reciprocal transfer agreement dated 1 January 1994 between the Ontario Municipal Employees Retirement Board and the Hamilton Street Railway Company was terminated effective 1 January 2009 and, except as expressly permitted in the Settlement Agreement, no transfer of pension entitlement shall be made pursuant to that reciprocal transfer agreement on or after 1 January 2009.

***Part B – Membership***  
***Article 7:***  
***Interruptions in Service***

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- 7.01 Temporary suspension of employment or membership shall not be a discontinuance of employment for the purposes of this Plan.
- 7.02 Subject to Applicable Legislation, an interruption in Service shall not be a discontinuance of Service, if it is considered by the Company to be
- (a) a leave of absence as authorized by the Company, excluding any leave of absence without pay exceeding the total length of time permitted by Applicable Legislation in respect of an eligible period of temporary absence and a qualifying period of parenting,
  - (b) maternity, parental or emergency leave required to be included in Service by Law, or
  - (c) temporary lay-off.
- 7.03 Prior to 1 January 2009, notwithstanding sections 7.01 and 7.02, subject to Applicable Legislation and the Settlement Agreement,
- (a) Required Member Contributions, and
  - (b) Additional Voluntary Contributions
- ceased during any period for which the Member did not receive pay from the Company (hereinafter referred to in this section as the "Unpaid Period"), and in respect of such Unpaid Period
- (c) no Pension Credits will be granted, and
  - (d) no Credited Service will be granted,

unless the Member elected to reimburse the Pension Fund for contributions which would have been made to this Plan on the Member's behalf, pursuant to Applicable Legislation or with the consent of the Company.

The Company will determine the amount which the Member must reimburse the Pension Fund, in order to be granted Pension Credits and Credited Service for Unpaid Periods. Pension Credits for the Unpaid Period will be calculated based on the Member's Pensionable Earnings in effect

**Part B – Membership**

**Article 7:**

***Interruptions in Service***

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immediately prior to the commencement of the Unpaid Period. Also, in cases where the amount of reimbursement is related to Required Member Contributions for the Unpaid Period, such Required Member Contributions shall be determined in accordance with the sections of Article 9 that are applicable to the Unpaid Period based on the Member's Pensionable Earnings in effect immediately prior to the commencement of the Unpaid Period.

Notwithstanding the foregoing, in the case of a Member who is an Employee who is on a maternity, parental or emergency leave prior to 1 January 2009 that is required to be included in Service by Law, unless the Member has advised the Company otherwise, in writing, the Member shall reimburse the Pension Fund for the Required Member Contributions with respect to such Unpaid Period, if any. Such reimbursement of the Pension Fund shall occur

- (a) by the Member providing cheques to the Company on a monthly basis during the Unpaid Period, in accordance with rules established by the Company, such that the Member's Required Member Contributions with respect to a calendar month shall be paid by the Member no later than 30 days after the end of the calendar month, or
- (b) in accordance with another method of reimbursement to which the Company has agreed, in writing.

Required Member Contributions with respect to such Unpaid Period shall be determined in accordance with the sections of Article 9 that are applicable to the Unpaid Period based on the Member's Pensionable Earnings in effect immediately prior to the commencement of the Unpaid Period.

Notwithstanding the foregoing, Pension Credits and Credited Service in respect of Unpaid Periods relating to leaves of absence or layoff shall not exceed 5 years in the aggregate, and in addition, Unpaid Periods relating to pregnancy and/or parental leaves shall not exceed 36 months in the aggregate and any one Unpaid Period of pregnancy and/or parental leave shall not exceed 12 months in the aggregate.

7.04 Prior to 1 January 2009, notwithstanding section 7.03, if a Member

- (a) has ten years of Service,
- (b) is age 45, and

***Part B – Membership***  
***Article 7:***  
***Interruptions in Service***

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- 
- (c) has a total of
    - (i) Service, and
    - (ii) ageequal to no less than 65,

then, during any period of disability for which the Member receives insured compensation, the Member shall continue to accrue Service and the Company shall provide both current Service, Required Member Contributions and Company contributions for the Member under this Plan.

- 7.05 If for any reason a Member's Service is discontinued and the Member is later re-employed by the Company prior to 1 January 2009
  - (a) the Benefits, if any, to which the Member has become entitled under this Plan shall not be affected by reason of such re-employment, and
  - (b) the Member's subsequent Benefits, if any, shall accrue as if the Member were a new Member for all purposes of this Plan.
- 7.06 A Member, who would not otherwise have been considered to have terminated Service, shall be considered to have terminated Service when absent from employment without pay for 24 months or more.
- 7.07 Notwithstanding the foregoing, on and after 1 January 2009 an Employee who is not actively at work on and after 1 January 2009 shall become a member of the OMERS Plan in accordance with the terms of the OMERS Plan.

***Part C - Contributions***  
***Article 8:***  
***Company Contributions***

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- 8.01 The Company shall pay into the Pension Fund
- (a) such amounts as are certified by the Actuary as needed
    - (i) for systematic funding of the cost of the Benefits of Members under this Plan, and
    - (ii) to liquidate any unfunded liability, or solvency deficiency, as determined by the Actuary, which may arise under this Plan in accordance with the Applicable Legislation, and
  - (b) contributions received from Employees for Service prior to 1 January 2009, including money withheld from the Employee as Required Member Contributions to the Plan.
- 8.02 Should the assets of the Plan be found to be less than the liabilities of the Plan, the Company's liability shall be limited to making such minimum contributions, if any, as required by the Company under Applicable Legislation.
- 8.03 The Company shall not be obligated to make any contribution otherwise required under this Plan unless, and until, the Plan is, and continues to be, accepted for registration by Applicable Authorities in accordance with Applicable Legislation.
- 8.04 The Company shall have the right to withdraw from this Plan any contribution made by it in error together with interest thereon, subject to Applicable Legislation.
- 8.05 This Plan has been or shall be registered with the Applicable Authorities so that Company contributions shall be deductible in determining its taxable income, subject to the maximum amounts allowed by Applicable Legislation.
- 8.06 If this Plan is not registerable with, or is deregistered by, the Applicable Authorities, any contribution to this Plan for the period during which the Plan is not registered shall be deemed to be a contribution made in error.

***Part C - Contributions***

***Article 8:***

***Company Contributions***

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- 8.07 Subject to approval by the Applicable Authorities, any Contribution made by the Company may be returned to the Company where the return of the Contribution is made to avoid revocation of the registration of this Plan with the Applicable Authorities.
- 8.08 For Fiscal Years January 1, 1999 to December 31, 1999, January 1, 2000 to December 31, 2000, and January 1, 2001 to December 31, 2001, the Company shall make no contributions to the Plan. This absence of contributions is contingent upon the amount being within amounts required and permitted by Applicable Authorities, otherwise the Company shall contribute for this Fiscal Year amounts that are consistent with sections 8.01 to 8.07 inclusive.
- 8.09 Subject to Applicable Legislation, for each Fiscal Year after the Fiscal Year ending 31 December 2002, the Company shall contribute to the Plan in accordance with sections 8.01 to 8.07, inclusive, unless, subject to Applicable Legislation, the Company determines, based on a recommendation of the Actuary, that the Company shall either make no contributions or a reduced amount of contributions to the Plan for the Fiscal Year due to the application of surplus pursuant to paragraph (b) of section 23.02. In any event, subject to Applicable Legislation, the total current service contributions made by the Company with respect to a Fiscal Year shall be equal to the total Required Member Contributions made by all of the active Members in that Fiscal Year.
- 8.10 On and after 1 January 2009, subject to paragraph 17 of the Settlement Agreement, the Hamilton Street Railway Company and The Corporation of the City of Hamilton shall be jointly and severally liable for funding the Plan as employers in accordance with Applicable Law and this Plan Document.

***Part C - Contributions***

***Article 9:***

***Required Member Contributions***

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9.01 Prior to 1 January 2009, except as provided in Articles 6 and 7, each Member who was an Employee was required to make Required Member Contributions.

Effective 1 January 2009, Members are neither required nor permitted to make Required Member Contributions.

9.02 Each Member was required to contribute in each Fiscal Year with effect from 1 April 1990 but prior to 1 January 2009, 7.5 percent of the Member's Pensionable Earnings minus the Member's contributions to the Canada Pension Plan.

9.03 Required Member Contributions shall be proportionately reduced for partial years of Credited Service or membership in this Plan.

9.04 In respect of a calendar year after 1990, the amount of Contributions made to this Plan for current service by a Member shall not exceed the lesser of

- (a) nine percent of the Member's Earnings for the year, and
- (b) \$1,000 and 70 percent of the Member's Pension credit for the year, determined in accordance with Applicable Legislation,

subject to any waiver of this section by the Applicable Authorities.

9.05 Notwithstanding section 9.02, in each Fiscal Year in the period January 1, 1997 to December 31, 1998, each Member was required to contribute 3.5 percent of the Member's Pensionable Earnings minus the Member's contributions to the Canada Pension Plan.

9.06 Notwithstanding section 9.02, in each Fiscal Year in the period January 1, 1999 to December 31, 2008, Members were neither required nor permitted to make Required Member Contributions.

***Part C - Contributions***

***Article 10:***

***Additional Voluntary Contributions***

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10.01 To the extent permitted by Applicable Legislation, a Member was permitted to make Additional Voluntary Contributions prior to 1990 (or such later date as provided by Applicable Legislation) in respect of current Service with the Company provided the total of

- (a) Required Member Contributions, and
- (b) Additional Voluntary Contributions

in the calendar year do not exceed the maximum amount allowed to the Member as a deduction in computing taxable income under the Income Tax Act for contributions to a registered pension plan.

Effective 1 January 2009, Members are not permitted to make Additional Voluntary Contributions to the Plan.

10.02 A Member's Additional Voluntary Contributions with Interest shall be applied to provide Additional Benefits as set out in sections 10.03, 10.04 and 10.05.

10.03 On Retirement, a Member shall receive

- (a) an immediate life Pension of such amount as can be provided by the amount of Additional Voluntary Contributions with Interest, as determined by the Actuary in accordance with the terms of this Plan which would apply to Required Member Contributions, or
- (b) a lump sum cash refund of Additional Voluntary Contributions with Interest.

10.04 In the event of his Termination, a Member may elect to receive either

- (a) a lump sum cash refund of Additional Voluntary Contributions with Interest, or
- (b) a deferred life Pension of such amount as can be provided by the amount in subsection (a), as determined by the Actuary.

10.05 In the event of the death of the Member prior to the commencement of payment of Pension Benefits, a lump sum refund of Additional Voluntary Contributions shall be payable to



**Part C - Contributions**

**Article 10:**

**Additional Voluntary Contributions**

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- (a) the Member's Beneficiary, if living, or
- (b) to the estate of the Member if the Member does not have any Beneficiary then living.
- 10.06 If the Beneficiary under section 10.05 is the Qualifying Spouse of such Member, then the Administrator shall purchase from an Insurance Company, an immediate life pension; unless and to the extent that such Beneficiary elects to receive a deferred or immediate life Pension in such other form of such amount as can be provided by such lump sum refund, as determined by the Actuary.
- 10.07 The life Pension which the Member or the Qualifying Spouse may elect to receive under this Article shall be guaranteed for no more than 180 months, and in respect of an election by a Qualifying Spouse, shall not provide monthly Pension exceeding the amount that would have been payable if the Qualifying Spouse were the Member and living at the time of payment.
- 10.08 The immediate life Pension under this Article shall be paid in the same manner as the Normal Pension Benefit payable on Retirement, except to the extent that this Plan specifically provides otherwise.
- 10.09 The deferred life Pension under this Article shall be paid in the same manner as the Normal Pension Benefit, except to the extent that this Plan specifically provides otherwise.
- 10.10 Notwithstanding section 10.09, the Member may elect to receive the Actuarial Equivalent of the deferred life Pension on a date that is the Member's Early Retirement Date or would be the Member's Early Retirement Date, if not for Termination.
- 10.11 A Member who does not provide the Administrator with notice of his election within a reasonable time, as determined by the Company, before the date that payment of the first installment of a Pension is payable under this Article, shall be deemed to have elected to receive such Pension.
- 10.12 In lieu of a lump sum payment under this Article, a Member may elect that a direct transfer be made to a registered retirement savings plan or another registered pension plan as may be permitted by Applicable Legislation.
- 10.13 Provisions in this Plan which relate to Additional Voluntary Contributions or Additional Benefits are

***Part C - Contributions***

***Article 10:***

***Additional Voluntary Contributions***

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- (a) section 11.01 re maximum Pension Benefits, and
  
- (b) section 11.03 re minimum Pension Benefits.

**Part D – Pension Benefits**

**Article 11:**

**Maximum Pension**

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11.01 Subject to section 11.02, the annual amount of lifetime Pension of a Member, including any amount paid from this Plan to a Spouse or former Spouse as a result of marriage breakdown, shall not exceed the greater of:

- (a) the lesser of
  - (i) \$1,722.22 times Credited Service,
  - (ii) the product of
    - (A) two percent for each year of Credited Service, and
    - (B) the average 12 month compensation received by the Member from the Company during a 36 month period composed of three non-overlapping periods of 12 consecutive months during which the Member had the greatest compensation, and
  - (iii) such other amount as required by Applicable Legislation, and
- (b) such greater amount than provided by subsection (a) that is permitted by Applicable Legislation.

11.02 The maximum amount of lifetime Retirement Benefits as determined by sections 11.01 or 11.03 for a particular calendar year after the year in which the lifetime Retirement Benefits commence to be paid may be adjusted from the year in which the lifetime Retirement Benefits commence to reflect increases in the Consumer Price Index, or such similar index as permitted by Applicable Legislation.

11.03 For the purpose of paragraph 11.01 (a)(i), the amount \$1,722.22 shall be deemed to be \$1,150, or such greater amount as permitted by Applicable Legislation, in respect of Credited Service for a calendar year before 1990 granted after June 7, 1990, except in the case of a Disability or leave of absence as permitted by Applicable Legislation.

**Part D – Pension Benefits**

**Article 11:**

**Maximum Pension**

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- 11.04 In respect of Pension which accrues after 1 January 1992, a Member who elects Early Retirement shall not be permitted to receive an unreduced Pension before the earliest date on which the Member qualifies to do so under the other provisions of this Plan, but, in any event, no earlier than the date on which the Member
- (a) is age 60,
  - (b) has 30 years of Credited Service and OMERS Service, if any,
  - (c) has a total of age and years of Credited Service and OMERS Service, if any equal to 80, or
  - (d) becomes Totally and Permanently Disabled.
- 11.05 In respect of Pension which accrues after 1 January 1992, a Member, who is not Totally and Permanently Disabled, who Retires earlier than the earliest date specified in subsections 11.04(a) to 11.04(c) shall receive a lifetime Pension which
- (a) does not exceed the Pension which would otherwise be payable under this Plan as of that earliest date, and
  - (b) is reduced by at least 1/4 of one percent for each month that the date of commencement of Pension precedes that earliest date.
- 11.06 Additional lifetime Pension payable as a consequence of Actuarial Equivalent, or less favourable, increases in the Pension to accommodate a Postponed Retirement Date is excluded for the purpose of calculating the maximum pension rule contained in sections 11.01 and 11.03.
- 11.07 For the purposes of section 11.01,
- (a) additional lifetime Pension payable because a Member is Totally and Permanently Disabled is excluded in calculating the maximum Pension, and
  - (b) Pension shall, where required by Applicable Legislation, be deemed to include the similar benefits under another registered pension plan of the Company.

**Part D – Pension Benefits**

**Article 11:**

**Maximum Pension**

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- 11.08 After Retirement, the amount of Pension payable to each Beneficiary, other than a Spouse, for a particular month may not exceed 66 2/3 percent, and the total Pension payable to all Beneficiaries may not exceed 100 percent, of the Pension that would have been payable to the Member for the month had the Member been alive.
- 11.09 Where the Beneficiary designation of a Member would otherwise result in a violation of section 11.08,
- (a) the Commuted Value of total Pension Benefits shall be unchanged,
  - (b) any individual Beneficiary Pension entitlement shall be reduced to be no more than 66 2/3 percent of the Pension payable to the Member,
  - (c) after applying any reduction pursuant to paragraph (b), cumulative Beneficiary Pension entitlements shall be reduced proportionally to total no more than 100 percent of the Pension payable to the Member, and
  - (d) the Member's Pension payments shall be adjusted accordingly.
- 11.10 No term of this Plan for a Benefit shall be valid to the extent that the term would render inappropriate an amount that is determined in accordance with Applicable Legislation as a pension adjustment or past service pension adjustment in respect of this Plan, having regard to the appropriate provisions of Applicable Legislation being read as a whole and purposes for which the amount is determined.
- 11.11 A Member's bridging benefit shall not exceed the total public pension benefits under the Old Age Security Act and the Canada Pension Plan, based on the ratio of the average of the Member's best three years' Earnings, including Earnings while accruing benefits under the OMERS Plan for periods on or after 1 January 2009, to the average YMPE for those years, that could be payable to a Member in the month in which the bridging benefit commences if the Member were age 65, and
- (a) for a Member not Totally and Permanently Disabled at the commencement,
    - (i) reduced before the Member turns age 60, by 1/4 percent per month that commencement precedes the Member's sixtieth birthday, and

**Part D – Pension Benefits**

**Article 11:**

**Maximum Pension**

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- (ii) reduced before the Member has completed ten years of Credited Service and OMERS Service, if any, by ten percent for each year of the total of Credited Service and OMERS Service, if any, less than ten years, or
  - (b) for a Member Totally and Permanently Disabled at the commencement, without reduction.
- 11.12 The sum of the annualized lifetime Retirement Benefits and the annualized bridging benefit at the date such Benefits commence to be paid shall not exceed
  - (a) \$2,444.44 times Credited Service, or such other amount permitted by Applicable Legislation, plus
  - (b) 25 percent of the three year average of the YMPE, prorated, if the Member has less than 35 years of Credited Service, by multiplying by the number of years of Credited Service divided by 35.
- 11.13 The maximum amount of annualized lifetime Retirement Benefits and the annualized bridging benefit as determined under section 11.12 for a particular calendar year after the year in which such Benefits commence to be paid may be adjusted from the year in which such Benefits commence to reflect increases in the Consumer Price Index, or such similar index as permitted by Applicable Legislation.

**Part D – Pension Benefits**

**Article 12:**

**Fifty Percent Benefit**

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12.01 The Fifty Percent Benefit shall be payable to a Member, or if the Member is not living, the person entitled to receive the Pension Benefits under this Plan, in addition to any other Pension Benefit payable under the terms of this Plan upon the

- (a) Pensionable Date, or
- (b) Wind Up.

12.02 The Fifty Percent Benefit of a Member shall be the amount determined by the formula

$$A - B$$

where,

A is the Required Member Contributions, together with interest, made after the Transition Date, and

B is the lesser of

- (a) fifty percent of the Commuted Value of the Post-Transition Pension Credits, and
- (b) A.

12.03 The Fifty Percent Benefit shall be payable in a lump sum.

12.04 Unless prohibited by Applicable Legislation, as an alternative to the lump sum payment provided in section 12.04, a Member may elect to have the Fifty Percent Benefit

- (a) transferred to another pension plan, if and to the extent that plan permits the transfer,
- (b) transferred to a registered retirement savings plan under the Income Tax Act, or
- (c) transferred to an Insurance Company to purchase a deferred pension.

**Part D – Pension Benefits**

**Article 13:**

**Optional Pension Benefits**

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- 13.01 A Member may elect, by giving written notice to the Company at least two months in advance of his intended Retirement Date, to receive an Optional Pension Benefit under this Article in lieu of the Normal Pension Benefit otherwise payable to him under this Plan.
- 13.02 In each case the amount of the Optional Pension Benefit shall be the Actuarial Equivalent of the Normal Pension Benefit to which the Member would otherwise be entitled under this Plan.
- 13.03 A Member may elect one Optional Pension Benefit under this Plan which shall be
- (a) a Pension Benefit payable throughout the remaining lifetime of the Member with Pension payments guaranteed to be paid for a minimum period which shall not exceed fifteen years,
  - (b) a Pension Benefit adjusted so that the Member's combined Retirement income from
    - (i) this Plan,
    - (ii) any other registered pension plan of the Company, and
    - (iii) the pension payable under the Old Age Security Act (Canada),will form, as nearly as is practicable, a uniform series of Retirement income payments during the Member's lifetime following his Retirement from Service,
  - (c) a Joint and Survivor Pension payable in full throughout the remaining lifetime of the Beneficiary, subject to section 26.07,
  - (d) a Joint and Survivor Pension payable in full throughout the joint lifetime of the Member and his Beneficiary continuing, in part, during the remaining lifetime of the survivor of the Member and his Beneficiary, subject to section 26.07, or
  - (e) such other Pension Benefit permitted by Applicable Legislation and approved by the Company.



**Part D – Pension Benefits**  
**Article 13:**  
**Optional Pension Benefits**

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13.04 Where a Joint and Survivor Pension is elected as an Optional Pension Benefit,

- (a) if the death of the Member or the Member's named Beneficiary occurs prior to the
  - (i) commencement of Pension payments, such election of an Optional Pension Benefit shall be considered to be null and void, and
  - (ii) any Pension Benefits falling due thereafter shall be payable as though no such election had been made, and
- (b) there can be no guarantee of Pension payments on the second life other than for the unexpired term of the guarantee of the Pension payments on the first life.

13.05 In the event a Member has a Qualifying Spouse who does not complete a prescribed spousal waiver form prior to the Member's Retirement, the Member will receive an Optional Pension Benefit which provides for at least a 60% survivorship pension to the Qualifying Spouse. This requirement may be changed subject to completion of a prescribed spousal waiver form.

13.06

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- (a) Effective on the date of filing with the Financial Services Commission of Ontario an actuarial report in respect of the Plan which in the case of an ongoing report, shows no going concern unfunded liability or solvency deficiency, or in the case of a wind up report, shows no unfunded liability or other deficit or that no payment is required to be made by the Company to the Plan (the "Filing Date"), certain adjustments shall be made to Pensions of Recipients who on December 31, 2008 were,
  - (i) entitled to payment of a Pension from the Plan, and
  - (ii) an Employee and a Member of the Plan or the spouse of a person who was an Employee and a Member of the Plan,  
  
and who,
    - (iii) were not deceased prior to the Filing Date, or
    - (iv) did not exercise a portability option prior to the Filing Date.

**Part D – Pension Benefits**  
**Article 13:**  
**Optional Pension Benefits**

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- (b) The adjustment shall be to deem the normal form of Pension upon which the Recipient's entitlement is based to be the benefit described in Article 18, but with the reference to 50% in subsection 18.02 being deemed to be 66 2/3 %.
- ~~(c)~~ (c) In the case of a Spouse of a Recipient who has pre-deceased such Spouse since December 31, 2008, ~~the adjustment provided herein shall be effective on the Filing Date retroactive to the date of death of such Recipient, and adjusted payments shall commence payment on the first day of the month coincident with or following the Filing Date.~~
- ~~(d)~~ (d) For greater certainty, the Administrator shall re-determine the amount of the Pension payable to the Recipient on the basis that the revised Pension shall be adjusted ~~for the period on and after the Filing Date,~~ taking into account all benefits and entitlements provided under the Settlement Agreement (including without limitation recognition of earnings after 2008 and indexing as contemplated in subparagraphs 11(c)(i) and (ii) of the Settlement Agreement), and shall otherwise make such calculation as at the Member's Retirement Date in such manner in accordance with accepted actuarial practice as may be recommended by the Actuary.
- ~~(e)~~ (e) For greater certainty, no benefit adjustment shall be made if the Member and the Member's Spouse are deceased prior to the Filing Date, or if the Member entitled to the Pension exercised a portability option prior to the Filing Date.
- ~~(f)~~ (f) This provision is subject to, and shall be governed by subsection 11(d) of the Settlement Agreement.

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***Part E – Retirement Benefits***

***Article 14:***

***Normal Retirement Benefit***

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- 14.01 On the Member's Normal Retirement Date, a Member shall become entitled to Retire and receive his Normal Pension Benefit.
- 14.02 For each year of Credited Service to 31 December 2008, a Member shall receive at his Normal Retirement Date an annual pension equal to:
- (a) 1 ½% of the Member's Best Average Earnings up to the Average YMPE, and
  - (b) 2% of that part of the Member's Best Average Earnings in excess of the Average YMPE.
- 14.03 The percentage in 14.02(a) shall be subject to change in proportion to the change in ratio in
- (a) the amount of pension payable under the Canada Pension Plan, to
  - (b) the maximum pension benefits payable thereunder,
- such that the total benefits payable under this Plan and the Canada Pension Plan remain a constant percentage of his Best Average Earnings.
- 14.04 The normal form of Pension shall require payments for the Member's life with a guarantee of 60 months of payments, subject to Article 18.

***Part E – Retirement Benefits***

***Article 15:***

***Early Retirement***

*Page 39*

**PENSION BENEFITS**

15.01 A Member may terminate employment and elect Early Retirement on the Member's Early Retirement Date at any time on or after the age of 55.

15.02 If a Member

- (a) Retires on an Early Retirement Date, and
- (b) prior to the Member's total years of Service, including OMERS Service, plus age totalling 85,

the Pension payable shall be the Normal Pension Benefit accrued to the Early Retirement Date reduced by the Early Retirement Reduction, as defined in section 15.07.

15.03 A Member electing Early Retirement shall receive no less than the Actuarial Equivalent of the Normal Pension Benefit reduced for each complete month from the Early Retirement Date to the Normal Retirement Date.

15.04 A Member may Retire on the first day of any month and receive an unreduced Normal Pension Benefit commencing on that date if the Member has

- (a) attained age 55, and
- (b) total years of Service, including OMERS Service, plus age equal at least 85.

**BRIDGING BENEFIT**

15.05 A Member who is actively employed by the Company and who Retires on an Early Retirement Date is entitled to a monthly bridging benefit in the amount of

- (a) \$18.00 per month per year of Service to a maximum of 30 years

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- (b) the Early Retirement Reduction, as defined in section 15.07.

**Part E – Retirement Benefits**

**Article 15:**

**Early Retirement**

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15.06 The bridging benefit

- (a) is payable to an eligible Member from the Member's Early Retirement Date to the earlier of
  - (i) the Member's attainment of age 65, and
  - (ii) the Member's date of death; and
- (b) is not available to a Member who terminated Service prior to attaining age 55.

15.06A Subject to Section 15.06, a Member who Retires on an Early Retirement Date shall be entitled to the indexing of the bridging benefit provided under Section 15.05; provided that such increase shall be determined in accordance with and subject to payment on the same terms, at the same times and at the same rate provided under the OMERS Plan in respect of bridging benefits for pensions in payment to retirees on and after 1 January 2009.

**DEFINITION**

15.07 For purposes of this Article 15, the "Early Retirement Reduction" means

- (a) the lesser of
  - (i)  $\frac{1}{2}\%$  for each complete month up to 60 months by which a Member's age at Retirement precedes the Member's 65<sup>th</sup> birthday, and
  - (ii)  $\frac{1}{2}\%$  for each complete month up to 60 months by which the total of the Member's years of Service, including OMERS Service, plus age precedes 85,

PLUS

- (b) the lesser of
  - (i)  $\frac{1}{3}\%$  for each complete month in excess of 60 months but not in excess of 120 months, by which the Early Retirement Date precedes the Member's 65<sup>th</sup> birthday, and

***Part E – Retirement Benefits***

***Article 15:***

***Early Retirement***

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- (ii) 1/3% for each complete month by which the total of the Member's years of Service, including OMERS Service, plus age precedes 85, in excess of 60 months, but not in excess of 120 months.

***Part E – Retirement Benefits***

***Article 16:***

***Postponed Retirement***

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- 16.01 A Member may Retire at a later date than his Normal Retirement Date and commence receiving Pension on a Postponed Retirement Date.
- 16.02 Where a Member's employment with the Company continues after the Member's Normal Retirement Date, the Member's Service and Pension Credits shall continue to accrue in accordance with the provisions of this Plan until his Postponed Retirement Date.
- 16.03 Notwithstanding any other provision of the Plan, Pension Benefits to which an individual is entitled under the Plan will commence to be paid not later than the end of the calendar year in which the individual attains age 71 years of age, or such other time as is acceptable under the Income Tax Act.
- 16.04 On the Postponed Retirement Date the Member shall be entitled to receive the Normal Pension Benefit based on Service until the Postponed Retirement Date.
- 16.05 This Article shall not prevent the Company from requiring a Member's Retirement where permitted by Law.

**Part F – Non-Retirement Benefits**

**Article 17:**

**Pre-Retirement Death Benefits**

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- 17.01 If a Member dies before commencement of payment of the Pension Benefits, the Qualifying Spouse of the Member on the Member's date of death shall receive a death benefit equal to the sum of
- (a) either of
    - (i) the Required Member Contributions made on and after the Transition Date with Interest, if such Member had not attained Post-Transition Vested Status on or before the date of his death, or
    - (ii) the Commuted Value of the Post-Transition Pension Credits, if such Member attained Post-Transition Vested Status on or before the date of his death,
  - (b) the Fifty Percent Benefit in accordance with Article 12, if such Member attained Post-Transition Vested Status on or before the date of his death, and
  - (c) such additional death benefit as may be granted to the Member pursuant to section 30.01,
- subject to section 17.04.
- 17.02 Where a Member dies while an Employee after the Normal Retirement Date,
- (a) the Qualifying Spouse shall receive a Pension in respect of the Pre-Transition Pension Credits payable under the terms which the Member would have received had the Postponed Retirement Date occurred at the date of death, and
  - (b) section 17.03 shall not apply.
- 17.03 Subject to section 17.04, if the Member dies
- (a) while in the employment of the Company, or
  - (b) after having attained Pre-Transition Vested Status, and
- is survived by a Qualifying Spouse, the Qualifying Spouse may elect to receive either



**Part F – Non-Retirement Benefits**

**Article 17:**

**Pre-Retirement Death Benefits**

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- (c) an immediate Pension payable for the lifetime of the Qualifying Spouse which is half the Normal Pension Benefit, or
- (d) a lump sum payment with the same Commuted Value as the Pension computed under subsection (c).

17.04 If

- (a) A is greater than or equal to B, the death benefit under section 17.01 shall not be paid, or
- (b) A is less than B, the Pension payable under section 17.03 shall be reduced by the amount of Pension which would have been provided by A under that section,

where,

A is the Commuted Value of the Pension provided by section 17.03 minus the Pension which would have been provided under that section in respect of Service and Earnings to the Transition Date, and

B is the Commuted Value of the death benefit under section 17.01.

17.05 If there is an age difference of more than five years between the Member and the Qualifying Spouse, the Pension payable under section 17.02 or 17.03 shall be adjusted on an Actuarial Equivalent basis.

17.06 Where neither section 17.02 nor section 17.03 apply, in addition to the Pension Benefit provided under section 17.01 the Member's Beneficiary shall receive a cash payment equal to

- (a) in respect of a Member who was a member of the Prior Plan, the greater of
  - (i) the sum of the amounts shown in respect of such Member in columns (4) and (5) of the Table in Schedule 4, (if applicable), as provided under Group Pension Policy No. 4873901, without interest, or
  - (ii) the amount shown in respect of such Member in column (6) of the same Schedule without interest, and

**Part F – Non-Retirement Benefits**

**Article 17:**

**Pre-Retirement Death Benefits**

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- (b) in respect of membership under the Prior Plan from January 1, 1958 to the Inception Date
    - (i) the sum of the Required Member Contributions, and
    - (ii) the Company's contributions made on behalf of the Member, without Interest, and
  - (c) in respect of membership on and after the Inception Date and prior to the Transition Date, the sum of the Required Member Contributions together with Interest to the date of death.
- 17.07 A Member may at any time designate a Beneficiary to receive the death benefit provided by section 17.01 or the Commuted Value of the benefit provided by section 17.02 at the date of the Member's death in the event that the Member does not have a Qualifying Spouse at the date of his death.
- 17.08 Subject to Applicable Legislation, the Qualifying Spouse may elect to receive the death benefit provided by section 17.01 in one of the following ways:
- (a) a lump sum,
  - (b) transfer to a registered retirement savings plan under the Income Tax Act, or
  - (c) an immediate or deferred Pension (provided the Member dies before his Normal Retirement Date), which shall not have a guaranteed period in excess of one hundred and eighty months.
- 17.09 If a Member does not have a Qualifying Spouse on the Member's date of death and no Beneficiary has been designated pursuant to section 17.07 then the estate of the Member shall receive the death benefit provided by section 17.01.
- 17.10 In this Article, a person shall be deemed not to be a Qualifying Spouse if living separate and apart from the Member on the date of the Member's death.
- 17.11 Subject to Applicable Legislation, the Spouse's monthly Pension pursuant to this Article shall not exceed the amount that would have been payable if the Spouse were the Member and living at the time of payment.
- 17.12 Payment made pursuant to this Article shall constitute a final settlement under this Plan.

**Part F – Non-Retirement Benefits**

**Article 18:**

**Post-Retirement Death Benefits**

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18.01 The "Spouse" referred to in paragraph 18.02(a)(i) shall be such person who would have been the Qualifying Spouse, except that such person has filed such waiver and election in accordance with Applicable Legislation to be entitled to the Pension Benefit payable under section 18.02.

18.02 If

- (a) a Member dies following commencement of Pension payments, but before receiving the guaranteed number of Pension payments specified,
  - (i) the person who was the Member's Spouse, referred to in section 18.01, at the time the Pension payments commenced, or
  - (ii) where there is no person alive at the date of death who was the Member's Qualifying Spouse or Spouse as referred to in section 18.01 at the time the Pension payments commenced, the person who is the Member's Spouse, if any, at the date of death, and who is not living separate and apart on the date of death, notwithstanding sections 18.01 and 18.06, or
  - (iii) where the Member had elected an Optional Pension pursuant to section 18.04 and where there is no person alive at the date of death who was the Member's Qualifying Spouse or Spouse as referred to in section 18.01 at the time the Pension payments commenced, the person who is the Member's Spouse, if any, at the date of death, and who is not living separate and apart on the date of death, notwithstanding sections 18.01 and 18.06,

will be paid the balance of such guaranteed monthly payments as they fall due,

- (b) the Spouse is still living once all of the guaranteed payments in subsection (a) have been made, the Pension will reduce to 50% of the last guaranteed monthly payment which was being paid to such Spouse and will be paid to the Spouse for life, as the payments fall due,
- (c) a Member dies following commencement of Pension payments and after receiving the guaranteed number of pension payments,
  - (i) the person who was the Member's Spouse, referred to in section 18.01, at the time the Pension payments commenced, or

**Part F – Non-Retirement Benefits**

**Article 18:**

**Post-Retirement Death Benefits**

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- (ii) where there is no person alive at the date of death who was the Member's Qualifying Spouse or Spouse as referred to in section 18.01 at the time the Pension payments commenced, the person who is the Member's Spouse, if any, at the date of death, and who is not living separate and apart on the date of death, notwithstanding sections 18.01 and 18.06, or
- (iii) where the Member had elected an Optional Pension pursuant to section 18.04 and where there is no person alive at the date of death who was the Member's Qualifying Spouse or Spouse as referred to in section 18.01 at the time the Pension payments commenced, the person who is the Member's Spouse, if any, at the date of death, and who is not living separate and apart on the date of death, notwithstanding sections 18.01 and 18.06,

will receive a lifetime Pension of 50% of the Pension which was being paid to the Member, and

- (d) there is an age difference of more than 5 years between the Member and the Spouse, the Pension shall be actuarially reduced.

18.03 If section 18.02 does not apply and

- (a) a Member does not have a Qualifying Spouse on the date that payment of the first instalment of the Pension is due, and
- (b) the Member dies following commencement of the Member's Pension payments, but before the Member has received the guaranteed number of Pension payments specified in section 14.04, then

the balance of such guaranteed monthly Pension payments shall be paid to the Beneficiary designated by the Member as they fall due.

18.04 Subject to paragraphs 18.02(a)(iii) and 18.02(c)(iii), if the Member had elected before the date of his death an Optional Pension Benefit, sections 18.02 and 18.03 shall not apply and a Pension Benefit, if any, shall be provided for under the option elected by the Member.

***Part F – Non-Retirement Benefits***

***Article 18:***

***Post-Retirement Death Benefits***

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- 18.05 The Commuted Value of the Pension payable under this Article to the estate of a deceased Member or the estate of a Beneficiary who survives the Member may be paid in a lump sum at the discretion of the Administrator.
- 18.06 Where there is no valid waiver and election as specified in section 18.01, the Qualifying Spouse, if any, shall receive such Pension Benefit with a Commuted Value which is not greater than that set out in section 18.02 as required by Applicable Legislation.

**Part F – Non-Retirement Benefits**

**Article 19:**

**Termination Benefits**

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19.01 With respect to Service prior to the Transition Date, on Termination a Member who has

(a) not attained Pre-Transition Vested Status shall receive, at his option, either

(i) Benefit A and Benefit D and Benefit F, or

(ii) Benefit B and Benefit E and Benefit F, and

(b) attained Pre-Transition Vested Status shall receive Benefit C and Benefit F,

where

Benefit A is a deferred life Pension which is the Actuarial Equivalent of the Required Member Contributions,

Benefit B is a lump sum cash refund of Required Member Contributions made prior to the Transition Date together with Interest in respect of contributions made on or after the Inception Date,

Benefit C is a deferred life Pension which is the Actuarial Equivalent of the Normal Pension Benefit accrued prior to the Transition date,

Benefit D is the Appropriate Percentage of the difference of Benefit C minus Benefit A,

Benefit E is Benefit A plus Benefit D computed in respect of both Required Member Contributions and Pension Benefits based on Service prior to the Inception Date, and

Benefit F is any deferred Pension which may be provided pursuant to section 30.01 prior to the Transition Date.

19.02 With respect to Service, including OMERS Service, on or after the Transition Date, on Termination a Member who has

(a) not attained Post-Transition Vested Status shall receive Benefit G and Benefit I, or

(b) attained Post-Transition Vested Status shall receive

**Part F – Non-Retirement Benefits**

**Article 19:**

**Termination Benefits**

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- (i) Benefit H and Benefit I, and
- (ii) the Fifty Percent Benefit in accordance with Article 12,

where

Benefit G is a lump sum cash refund of Required Member Contributions made on or after the Transition Date with Interest,

Benefit H is a deferred life Pension which is the Actuarial Equivalent of the Normal Pension Benefit accrued on or after the Transition Date up to and including the Termination Date, and

Benefit I is any deferred Pension which may be provided pursuant to section 30.01 not included as part of Benefit F.

19.03 A deferred life Pension under this Article shall be paid in the same manner as the Normal Pension Benefit commencing on the Normal Retirement Date.

19.04 Notwithstanding any other provision of this Plan, after Termination a Member may elect at any time after age 55, in accordance with Applicable Legislation, that the Actuarial Equivalent of the deferred Pension payable under this Article commence on a date which would be the Member's Early Retirement Date.

19.05 Subject to the limitations prescribed by Applicable Legislation, prior to attaining age 55, a Member who has attained Vested Status may, as an alternative to receiving any other Pension Benefit under this Article, elect to have the Commuted Value of that Pension Benefit paid

- (a) to a pension fund related to another pension plan, if the administrator of the other pension plan agrees to accept the payment,
- (b) into a retirement savings plan prescribed by Applicable Legislation, or
- (c) for the purchase of a life Pension that will not commence before age 55 of the Member.

***Part F – Non-Retirement Benefits***

***Article 20:***

***Disability Benefits***

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20.01 If a Member, other than a retired Member, becomes physically or mentally disabled such that a qualified medical practitioner certifies that his life expectancy is likely to be considerably shortened then, in lieu of the Pension otherwise payable under this Plan, the Member may with the consent of the Company

- (a) vary the terms of payment of the Pension, provided the variation is permitted under the Income Tax Act, or
- (b) apply in accordance with Applicable Legislation to receive a cash payment of the Pension Credits accrued to the date of payment.



***Part G – Pension Fund***

***Article 21:***

***Pension Fund Administration***

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- 21.01 Contributions to this Plan shall be paid into the Pension Fund in the case of
- (a) a Required Member Contribution, within thirty days following the month in which the contribution was received or deducted from an Employee's pay,
  - (b) a Company contribution for current Service, within thirty days of the end of the month to which it relates, and
  - (c) a special Company contribution required to liquidate any unfunded liability by equal monthly instalments throughout the fiscal year of the Plan.
- 21.02 Investments of the Pension Fund shall comply with the investment requirements of Applicable Legislation.
- 21.03 Subject to the Settlement Agreement, Pension Benefits may be paid directly from the Pension Fund or provided by the purchase of an appropriate annuity from an Insurance Company.
- 21.04 The rights of Members, Recipients and all other persons entitled to receive any payment or Pension Benefit under this Plan shall be limited to the assets of the Pension Fund.
- 21.05 Expenses relating to the administration and operation of the Plan and Pension Fund may be paid from the Pension Fund, unless paid directly by the Company. The Company may seek reimbursement from the Pension Fund for any expenses paid by it that could have been paid from the Pension Fund.
- 21.06 The Pension Fund shall be administered by such parties chosen by the Administrator, which shall include one or more of
- (a) a trust in Canada governed by written trust agreement under which the trustees are either
    - (i) a trust corporation registered under the Loan and Trust Corporations Act, or
    - (ii) three or more individuals at least three of whom reside in Canada, at least one of whom is independent of the Company,

***Part G – Pension Fund***

***Article 21:***

***Pension Fund Administration***

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- (b) an Insurance Company,
  
- (c) such other party as permitted by Applicable Legislation.

**Part G – Pension Fund**

**Article 22:**

**Interest**

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- 22.01 Interest accruing on Member contributions shall be no less than the amount
- (a) calculated from the last day of the year in which each contribution was made, and
  - (b) compounded annually at the rate of 6% per annum up to the date of death or Termination Date, as the case may be.
- 22.02 Notwithstanding any other provision in this Plan, commencing with 1 January 1988, Interest shall
- (a) accrue not less frequently than annually,
  - (b) be calculated on the basis of the average of the yields
    - (i) (A) of five-year personal fixed term chartered bank deposit rates as determined from the Canadian Socio-Economic Information Management (CANSIM) series B 14045 published monthly in the Bank of Canada Review, prior to 18 April 2006,
    - (B) of five-year personal fixed term chartered bank deposit rates as determined from the Canadian Socio-Economic Information Management (CANSIM) series V122515 compiled by Statistics Canada, and available on the website maintained by the Bank of Canada, on or after 18 April 2006,
    - (ii) over a reasonably recent period, as determined by the Administrator,
- such that the averaging period does not exceed twelve months.
- 22.03 Interest shall accrue to contributions made on or after 1 January 1988 no later than the first of the month following the month in which the contribution was required to be paid into the Pension Fund.
- 22.04 The amount owing to a person entitled to a lump sum payment or transfer shall be credited with Interest to the month of payment.
- 22.05 Notwithstanding any other provision in this Plan, Interest accrued prior to the Inception Date shall

***Part G – Pension Fund***

***Article 22:***

***Interest***

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be determined in accordance with the provisions of the Prior Plans in effect prior to the Inception Date.

***Part G – Pension Fund***

***Article 23:***

***Treatment of Surplus***

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- 23.01 Any surplus, as determined by the Actuary, which may arise from the operation of this Plan which is not required to meet the liabilities of the Pension Fund shall accumulate as a reserve for contingencies.
- 23.02 If at any time, in the opinion of the Company with the advice of the Actuary, an adequate reserve for contingencies has been accumulated, any further surplus, as determined by the Actuary, accruing under this Plan may be applied
- (a) to finance the cost of improvements in the Benefits of Members created by amendments to this Plan, including by resolutions of the Board of Directors or such other form of authorization of the Company made pursuant to section 30.01,
  - (b) in reduction of subsequent contributions by the Company, or
  - (c) for such other purpose as the Company deems fit.
- 23.03 Treatment of surplus after the Wind Up of the Plan shall be made in accordance with Article 30.

**Part G – Pension Fund**

**Article 24:**

**Assignment**

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24.01 Subject to sections 24.03 and 24.04, any right or Pension payable under the terms of this Plan shall

- (a) be for the personal use of the Recipient,
- (b) except to the extent provided by Law, not be capable of
  - (i) being given as security,
  - (ii) anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, or
  - (iii) being subject to equitable execution or other similar legal process, whether for debts of the Recipient or otherwise, and
- (c) not be capable of being commuted, surrendered, assigned or otherwise alienated, except as permitted by Applicable Legislation and as provided by
  - (i) this Plan, or
  - (ii) the consent of the Administrator.

24.02 Money

- (a) payable under the Plan,
- (b) transferred from the Plan to a retirement savings arrangement prescribed under Applicable Legislation, or
- (c) payable from an arrangement in (b)

is exempt from execution, seizure, garnishment or attachment.

24.03 Sections 24.01 and 24.02 shall not apply

- (a) to the execution, seizure, garnishment or attachment of monies payable under this Plan in

**Part G – Pension Fund**

**Article 24:**

**Assignment**

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satisfaction of any order for support or maintenance under the Family Law Act (Ontario) or, if applicable, under such other legislation which may apply in its place,

- (b) to prevent an assignment pursuant to a decree, order or judgement of a competent tribunal or a written agreement in settlement of rights arising out of a marriage or other conjugal relationship between an individual and the individual's Spouse or former Spouse, on or after the breakdown of their marriage or other conjugal relationship,
- (c) in respect of an assignment by the legal representative of a deceased individual on the distribution of the individual's estate, or
- (d) in respect of a reduction in Benefits to avoid revocation of the registration of this Plan with the Applicable Authorities.

24.04 Notwithstanding anything in this Plan, upon the breakdown of the marriage of a Member

- (a) the Pension Credits of the Member shall be split between the Member and the Spouse or former Spouse in such manner as may be required by Law and permitted by Applicable Legislation,
- (b) those Pension Credits which become the property of the Spouse or former Spouse shall subsequently be excluded in computing the Pension Credits of the Member or any other Recipient,
- (c) the Benefits assigned to the Spouse or former Spouse shall be deemed to be Benefits provided and payable to the Member where required by Applicable Legislation, unless assigned Benefits
  - (i) commence at a different time than those of the Member, or
  - (ii) provide greater rights than those of the Member,
- (d) the Commuted Value of the Member's Benefits, including the Benefits provided with respect to the Spouse or former Spouse, shall not be increased as a consequence of the Spouse or former Spouse becoming entitled to Benefits, and

***Part G – Pension Fund***

***Article 24:***

***Assignment***

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- (e) the Member's Benefits shall not be adjusted at any time to replace, in whole or in part, the portion of the Member's Benefits which the Spouse or former Spouse has become entitled to receive.

24.05 Where permitted by Law, if Pension Credits are conveyed pursuant to a court order or domestic contract to a Spouse or former Spouse who is not a Member, the Employer may require such Pension Credits to be transferred to another pension plan, a retirement savings plan or an annuity for the benefit of the Spouse or former Spouse.



***Part H – Plan Administration***

***Article 25:***

***General Administration***

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- 25.01 Subject to the provisions of this Plan, the Administrator is empowered and shall be entitled to decide all matters and questions in respect of the operation, administration and interpretation of this Plan.
- 25.02 The Administrator may delegate any or all of its powers or authorities hereunder to one or more agents, including without limitation, the Treasurer of Finance for the City or the Acting Treasurer of Finance for the City.
- 25.03 For the purposes of this Plan, the records of the Administrator shall be presumed to be conclusive of the facts concerning the employment or non-employment of an Employee.
- 25.04 Participation as a Member of this Plan does not and shall not give to any Member the right to be retained in the employment of the Hamilton Street Railway Company or City of Hamilton, or the right to claim Retirement or other Benefits except in accordance with the specific terms of this Plan.
- 25.05 This Plan has been or will be registered with the Applicable Authorities so that Member and Company contributions shall be deductible in determining the taxable incomes, subject to the maximum amounts allowed by Applicable Legislation.
- 25.06 All payments under this Plan shall be made in the lawful currency of Canada.
- 25.07 The Company shall retain the Actuary to
- (a) advise and make computations concerning all matters pertaining to this Plan and the financing thereof,
  - (b) submit a report to the Company at least once during every three years concerning the financial position and experience of this Plan, and
  - (c) recommend any changes in Benefits, contributions or otherwise, which the Actuary may deem necessary or advisable.
- 25.08 This Plan shall be construed and enforced according to the Laws of the Province of Ontario, subject to the Law, and all provisions of this Plan shall be administered according to the Laws of that province.
- 25.09 The provisions of this Plan are subject to Applicable Legislation.

***Part H – Plan Administration***

***Article 26:***

***Beneficiary***

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- 26.01 A Pension Benefit to a Member's Beneficiary under this Plan shall be payable to the Beneficiary designated by the Member, provided that the designation is
- (a) in writing in prescribed form,
  - (b) delivered to the Administrator before any Pension payment has been made under this Plan,
  - (c) not revoked by the Member or by any operation of Law.
- 26.02 No Beneficiary designation shall be considered valid to the extent it would reduce Pension Benefits payable under this Plan to the Qualifying Spouse.
- 26.03 A Beneficiary designation in favour of a Spouse shall include the name of such Spouse and shall be revoked by a subsequently valid divorce.
- 26.04 A Beneficiary designation shall be revoked by the death of the Beneficiary if such death occurs before the death of the Member.
- 26.05 If no effective designation of a Beneficiary has been made by the date of a Member's death, then the Beneficiary shall be construed to be the estate of the Member.
- 26.06 The Commuted Value of the Pension payable under this Article to the estate of a deceased Member or the estate of a Beneficiary who survives the Member may be paid in a lump sum, at the option of the Administrator.
- 26.07 No periodic Pension, other than in respect of a guarantee period, shall be payable to a Beneficiary who is not a Spouse after,
- (a) where the Beneficiary is under 19 years of age throughout the calendar year that includes the day of death of the Member, the earlier of
    - (i) December 31 of the calendar year in which the Beneficiary attains 18 years of age, and
    - (ii) the day of death of the Beneficiary,

***Part H – Plan Administration***

***Article 26:***

***Beneficiary***

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- (b) where the Beneficiary is in full-time attendance at an educational institution on the later of the day of death of the Member and December 31 of the calendar year in which the Beneficiary attains 18 years of age, the day on which the Beneficiary ceases to be in full-time attendance at an educational institution, and
- (c) where the Beneficiary is dependent on the Member at the time of the Member's death by reason of mental or physical infirmity, the day on which the Beneficiary ceases to be infirm or, if no such day occurs, the day the Beneficiary dies.

26.08 Where the Beneficiary designation of a Member would otherwise result in a violation of section 26.07,

- (a) the Commuted Value of total Pension Benefits shall be unchanged, and
- (b) the Beneficiary's Pension and Member's Pension shall be adjusted accordingly, and
- (c) a lump sum payment may be made coincident with the last periodic payment to the Beneficiary, provided the aggregate amount paid at any time does not exceed the balance of the Member's net contributions to this Plan plus Interest.

***Part H – Plan Administration***

***Article 27:***

***Payments***

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- 27.01 The Pension, unless otherwise specified in this Plan shall be a Pension payable
- (a) on the first day of each month in monthly instalments each equal to one-twelfth of the annual amount of the Pension, and
  - (b) commencing on the first day of the month coincident with or next following the Pensionable Date, or commencing on the last day of the year if the Member's Postponed Retirement Date is the last day of the year in which the Member attains age 71.
- 27.02 The Pension shall be in equal periodic amounts with cost-of-living adjustments or reductions on the death of a Member, as permitted by Applicable Legislation and as provided by the other provisions of this Plan.
- 27.03 Each single amount that is payable after the death of a Member shall be paid as soon as is practicable after the Member's death, or, in the case of a refund of Member Contributions, after all other Benefits have been paid.
- 27.04 Where a Member ceases to be an Employee and the annual amount of Normal Pension is not greater than
- (a) two percent of the YMPE in the year in which the Member ceases to be an Employee, or
  - (b) such other amount as provided by Applicable Legislation,
- the Pension Credits may, at the discretion of the Administrator, be paid to the Member in a lump sum as a final settlement under this Plan.
- 27.05 Where a Member has received Pension to which the Member is not entitled,
- (a) the Member shall repay all such Pension to the Plan forthwith, and
  - (b) the Administrator may suspend or adjust the Pension as required to ensure that the Member receives no more than the Actuarial Equivalent Pension to which the Member would otherwise have been entitled under this Plan.

**Part H – Plan Administration**

**Article 27:**

**Payments**

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- 27.06 Where a Member's age has been misstated, the Member's Pension shall be adjusted by the Administrator acting on the advice of the Actuary to reflect the correct age and any payments made which should not have been paid.
- 27.07 Retirement Benefits of a Member under this Plan shall
- (a) commence to be paid not later than
    - (i) the end of the year in which the Member attains 71 years of age, or
    - (ii) such later time as is acceptable to the Applicable Authorities, but only if the amount of Benefits payable, expressed on an annualized basis, does not exceed the amount of Benefits that would be payable if payment of the Benefits commenced at the end of the year in which the Member attains 71 years of age.
  - (b) be payable not less frequently than annually.
- 27.08 Where entitlement to a Benefit depends on Vested Status and the Member has Vested Status for the Benefit in respect of Service, including OMERS Service on and after the Transition Date, but not in respect of Service before the Transition Date,
- (a) the entitlement to the Benefit shall apply to that portion of the Benefit which accrued on and after the Transition Date, and
  - (b) Vested Status shall not apply to that portion of the Benefit which accrued before the Transition Date.
- 27.09 All Benefits provided in respect of periods before 1991 must be acceptable to the Applicable Authorities.
- 27.10 Subject to Law, where a Recipient is a minor, or is physically or mentally incapable of giving a valid receipt, payments to the Recipient may instead
- (a) be made to the person or persons having the legal care or custody of the Recipient as a complete discharge of payment, and
  - (b) be deemed to be payments to the Recipient in respect of whom such payments are made,

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**Article 27:**

**Payments**

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and

- (c) no further claim may be made for such payments against the Pension Fund, the Administrator or the Company.

27.11 Effective on and after 3 March 2000, at the request of a Retired Member or a Terminated Member who had Vested Status at his Termination Date, the Administrator shall commute the Pension or deferred Pension of such Member provided

- (a) the Member has an illness or physical disability that is likely to shorten his life expectancy to less than two years, and
- (b) a physician who is licensed to practise medicine in a jurisdiction in Canada certifies in writing that, in the opinion of the physician, the Member has an illness or physical disability that is likely to shorten the Member's life expectancy to less than two years.

Notwithstanding the foregoing provisions of this section 27.11, the commutation of a Pension or deferred Pension under the above paragraph, is subject to

- (a) the Pension or deferred Pension not having been purchased from an Insurance Company,
- (b) the Member's Pension Credits not having been transferred out of the Plan, and
- (c) the Member having given the Administrator such required documents as may be prescribed under Applicable Legislation.

27.12 (a) In the absence of actual notice to the contrary, payment in accordance with the directions and information provided by the person entitled to payment replaces and discharges the entitlement of the person to payment hereunder.

- (b) The Administrator may enter into a contract with an Insurance Company to extinguish or discharge any entitlement accrued under the Plan.

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***Article 28:***  
***Information Provided To Members***

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- 28.01 Each Member shall receive from the Administrator
- (a) a written explanation of the provisions of this Plan and amendments thereto applicable to the Member,
  - (b) an explanation of the rights and obligations of the Member with reference to the Benefits available to him under the terms of this Plan, and
  - (c) any other information required by the Applicable Legislation.
- 28.02 Information under section 28.01 shall be provided to an Employee who becomes eligible to become a Member
- (a) within sixty days prior to the date on which the Employee becomes so eligible, or
  - (b) for an Employee who is eligible to become a Member upon commencing employment, within sixty days after the commencement of employment.
- 28.03 The Administrator shall, within sixty days of registration of an amendment, transmit notice and a written explanation of the amendment to each
- (a) Member, or
  - (b) other person entitled to payment from the Pension Fund
- who is, or will be, affected by the amendment, unless notice is otherwise waived or provided in accordance with Applicable Legislation.
- 28.04 Each Employee who, upon Retirement or Termination, becomes entitled to a Pension under this Plan shall receive from the Administrator a written statement showing the Pension Benefits to which
- (a) the Employee is entitled, or
  - (b) the Employee may become entitled under this Plan.

***Part H – Plan Administration***

***Article 28:***

***Information Provided To Members***

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28.05 The Administrator shall transmit annually to each Member within six months after the fiscal year-end of this Plan a written statement containing such information required by Applicable Legislation.

28.06 Upon Termination of a Member or where a Member of this Plan otherwise ceases to be a Member, the Administrator shall give

- (a) the Member, or
- (b) such other person who, as a result of such Termination or cessation, becomes entitled to a payment under the Plan,

a written statement setting out such information as required by Applicable Legislation in respect of the Pension Benefits, rights and obligations of the Member or other person.

28.07 On written request by

- (a) a Member,
- (b) the Spouse of a Member,
- (c) any other person entitled to benefits under this Plan, or
- (d) an agent, authorized in writing, of any of the persons mentioned in subsection (a), (b) or (c),

the Administrator shall make available for inspection, without charge, such information as required by Applicable Legislation.

28.08 The information referred to in section 28.07 shall be made available

- (a) to the Member at the premises of the Company, or
- (b) to any other person at such location as may be agreed upon by the person and the Administrator.



***Part H – Plan Administration***

***Article 28:***

***Information Provided To Members***

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- 28.09 Any person making an inspection under section 28.07 may make copies of any of the information and the Administrator may charge a reasonable fee for such copies.
- 28.10 No person shall be entitled to make more than one inspection under this Article in a calendar year.
- 28.11 The Administrator, at its discretion, need not comply with any provision of this Article, provided the Administrator complies with Applicable Legislation.

***Part H – Plan Administration***

***Article 29:***

***Information Required From Members***

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29.01 No Benefit shall be payable hereunder until the Administrator receives any information or proof requested by the Administrator and reasonably required to determine

(a) the applicant's eligibility for Pension Benefits, and

(b) the amount of the applicant's Pension Benefits,

including evidence of the date of the Member's birth and that of the Member's Spouse and Beneficiary, if any, and evidence of the Member's spousal status..

29.02 Each Member entitled to receive any Pension payment under this Plan shall, before receiving such payment, make written application therefor to the Administrator on forms provided by the Administrator and filed in such manner with such persons as the Administrator may specify.

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***Article 30:***

***Plan Modifications And Discontinuance***

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- 30.01 By resolution of the Company or such other form of authorization permitted by the Company, the Company may
- (a) improve the Benefits under this Plan of any Member to a level not exceeding the maxima permitted by Applicable Legislation, or
  - (b) exempt any Member from the requirement to make personal contributions to this Plan.
- 30.02 A certified copy of each resolution made pursuant to section 30.01 shall be submitted for registration and approval to the Applicable Authorities as an addendum to this Plan.
- 30.03 It is the intention and hope of the Company to maintain this Plan indefinitely.
- 30.04 The Company may in its sole discretion amend the Plan in any respect, provided that no amendment may be made effective on or after November 26, 2008 that is not permitted under applicable law, including without limitation, the provisions of Applicable Legislation or the Settlement Agreement.
- 30.05 The Company may in its sole discretion Wind Up the Plan at any time.
- 30.06 Accrued Pension Benefits under this Plan may not be reduced except upon Wind Up of the Plan when, due to insufficient funds, a reduction is authorized by the Applicable Authorities.
- 30.07 In the event of Wind Up of this Plan, the Company shall, with the advice of the Actuary, utilize the assets of the Pension Fund for the provision of Pension Benefits to Members and their Beneficiaries,
- (a) in an equitable manner,
  - (b) in accordance with Applicable Legislation, and
  - (c) as fully as possible in accordance with the provisions of this Plan.
- 30.08 Any surplus, as determined by the Actuary, remaining under this Plan after
- (a) a Wind Up, and

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**Article 30:**  
**Plan Modifications And Discontinuance**

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- (b) making provisions in accordance with section 30.07

shall, subject to Applicable Legislation, be distributed to the extent available in the following priority:

- (c) to provide pre-retirement indexing of Pension Benefits and ancillary benefits from 1 January 2009, to Members who are entitled to a deferred vested Pension at the effective date of the wind up, on the same terms, at the same times, and at the same rate provided under the OMERS Plan for deferred vested pensions on and after 1 January 2009, and for greater certainty if the assets are insufficient to provide for all Benefit improvements contemplated in this paragraph (c), the available assets shall be allocated to provide such pre-retirement indexing as may be possible by allocating the available assets pro rata to liabilities; then
- (d) to pay to the Company an amount equal to the contributions of the Company (or its predecessor), made pursuant to the Plan on and after 7 March 2008 plus the amount of any expenses paid by the Company (or its predecessor) hereunder or under the adjournment order that are not reimbursed from the Pension Fund, plus earnings at the fund rate of return for the Pension Fund over the relevant period from the date of payment of the expense by the Company (or its predecessor) to the date of payment to the Company (or its predecessor); and then
- (e) to pay the remainder, if any, to the Members of the Plan in such manner as may be directed by the Union.

Where the surplus assets exceed the amount required to provide the pre-retirement indexing provided in paragraph (c), above, and if any portion of the amounts provided under paragraphs (d) or (e), above, cannot be paid or received as contemplated herein, The Company and the Union shall negotiate in good faith to provide for the same payment, or failing that, a comparable scheme of distribution of any surplus with respect to distributions provided under paragraphs (d) and (e), above, as the case may be.

- 30.09 Notwithstanding section 30.06, this Plan may be amended at any time, subject to the approval of Applicable Authorities, to reduce the Benefits provided with respect to a Member to avoid revocation of the registration of this Plan with the Applicable Authorities.

***Part H – Plan Administration***

***Article 31:***

***Indexing Benefit***

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31.01 Following the Retirement of a Member, the Pension Benefit will be periodically increased as set out in this Article. Such increases will be granted during the continued lifetime of the Member or the joint annuitant, or until the expiry of the Guaranteed Period, if later.

31.02 For purposes of this Article, the following terms are defined. Each term is defined with reference to a particular calendar year, and is computed as of the end of such calendar year.

"Consumer Price Index" means the Consumer Price Index as published by Statistics Canada for the whole of Canada and for all items, or such other index as may from time to time replace this Consumer Price Index.

"Gross Increase" means the Rate of Increase in CPI for the previous calendar year.

"Indexing Rate" means 75% of the lesser of the Gross Increase and the Maximum Increase, such value then reduced by 1.5%.

"Maximum Increase" means 10.0%.

"Pro Rata Adjustment Factor" means the number of monthly Pension payments made, or which will be made, to the Member for the period May 1 of the previous calendar year to April 30 of the current calendar year, divided by twelve.

"Special Pro Rata Adjustment Factor" means the number of monthly Pension payments made January 1 to April 30, inclusive, of the previous calendar year, divided by twelve.

"Rate of Increase in CPI" means the annual rate of increase in the Consumer Price Index from the end of the penultimate calendar year to the end of the previous calendar year.

31.03 In respect of a death or Retirement which occurs on or after 1 April 1988, where a Pension payment is made in December of the previous calendar year, the periodic amount of the Pension shall be increased as of May 1 of the current calendar year by an amount equal to:

(a) the Indexing Rate, multiplied by

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**Article 31:**

**Indexing Benefit**

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- (b) the Pension payment made or due to be made in April of the current calendar year, further multiplied by
- (c) the Pro Rata Adjustment factor, plus

if the Pension first commenced during the period January 1 to April 30, inclusive of the previous calendar year:

- (a) the Indexing Rate utilized for calculating increases for May 1 of the previous calendar year, multiplied by
- (b) the Pension payment made or due to be made in April of the current calendar year, further multiplied by
- (c) the Special Pro Rata Adjustment Factor.

The increase will be effective with the payment to be made in May of the current calendar year.

However, if the periodic amount of the Pension was due to be reduced following the April payment, (for example, due to the death of the Member, and the Spouse thereby entitled to a survivor benefit), such reduction shall first occur and the reduced amount of Pension shall be utilized in the part (b)s of this section.

31.04 Notwithstanding the foregoing, for any Member who Retired during the period 1 April 1988 to 1 September 1988, inclusive, the periodic amount of Pension shall be increased, effective 1 October 1988, by an amount equal to:

- (a) 1.6125%, multiplied by
- (b) the Pension payment made, or due to be made, in September 1988, further multiplied by
- (c) the number of months during the period 1 April 1988 to 1 September 1988, for which the Member received, or is to receive, Pension payments, divided by 6.

31.05 For the purposes of this Article a Member whose Service terminated on or after April 1, 1988, and who elected a deferred life Pension,

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**Article 31:**

**Indexing Benefit**

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- (a) shall be deemed to have Retired on the date that such Pension Benefit commences, and
- (b) shall have such Pension Benefit periodically increased as set out in this Article.

31.06 Notwithstanding the foregoing sections of Article 31, Pensions in pay directly from the Plan to Retired Members and to the joint annuitants and Beneficiaries of deceased Retired Members, are to be increased effective May 1, 1999, May 1, 2000, May 1, 2001 and May 1, 2002 by the greater of

- (a) 1% of the Pension otherwise in pay as of the date the increase is due, and
- (b) the increase to the Pension that would otherwise be payable under the foregoing sections of Article 31.

For greater certainty, the Pension increases described in this section:

- (a) are subject to the limits imposed by Regulation 8503(2)(a)(iii) to the Income Tax Act; and
- (b) do not apply to Pensions purchased by the Plan from an Insurance Company regarding Retirements that occurred prior to 1987.

31.07 Effective 1 January 2009 pursuant to the Settlement Agreement, in lieu of the increases provided by the foregoing provisions of this Article 31, Pensions which are being paid directly from the Pension Fund to Retired Members and to the Spouses and Beneficiaries of deceased Retired Members, are to be increased at the same rate provided under the OMERS Plan for pensions in payment to pensioners on and after 1 January 2009:

For greater certainty, the Pension increases described in this section 31.07:

- (a) are subject to the limits imposed by Regulation 8503(2)(a)(iii) to the Income Tax Act;
- (b) do not apply to Pensions purchased by the Plan from an Insurance Company regarding Retirements that occurred prior to 1987; and
- (c) shall be included as a post retirement death benefit payable in respect of a Member whose death occurs on or after 7 March 2008 but prior to the satisfaction of the conditions set out in paragraph 30 of the Settlement Agreement if and when such conditions are satisfied.

***Part H – Plan Administration***

***Article 32:***

***Pension Advisory Committee***

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- 32.01 The Members, by the decision of a majority of them participating in a vote, may establish a Pension Advisory Committee.
- 32.02 Each class of Employees that is represented in the Plan is entitled to appoint at least one representative to the Pension Advisory Committee.
- 32.03 Members who are no longer active Members are entitled to appoint one representative to the Pension Advisory Committee.
- 32.04 The purposes of the Pension Advisory Committee are
- (a) to monitor the administration of the Plan,
  - (b) to make recommendations to the Administrator respecting the administration of the Plan, and
  - (c) to promote awareness and understanding of the Plan on the part of Members and other persons receiving Pension Benefits under the Plan.
- 32.05 The Pension Advisory Committee or its representative has the right to examine the records of the Administrator in respect of the administration of the Plan and the Pension Fund and to make extracts from and copies of the records.
- 32.06 Notwithstanding the foregoing section, information as to the Service, Earnings, Pension Benefits or other personal information related to any specific person *cannot be released or made available for inspection* without the person's prior consent.
- 32.07 The Administrator shall provide to the Pension Advisory Committee or its representative such information as is under the control of the Administrator and is required by the Pension Advisory Committee or its representative for the purposes of the committee.
- 32.08 Notwithstanding any other provision of the Plan to the contrary, the Administrator shall make such adjustments to the rights and entitlements of individuals if necessary to comply with the Settlement Agreement, or any order of a court of competent jurisdiction relating to implementation or interpretation of the Settlement Agreement.



***SCHEDULE A***  
***Settlement Agreement***

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*The Hamilton Street Railway*  
*Pension Plan (1994)*

*Revised And Restated*  
*As At January 1, 2009*

Canada Revenue Agency and  
Financial Services Commission of Ontario Registration No. 0253344

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