

THIS AGREEMENT renewed the 5th day of October, 2016.

BETWEEN:

THE HANOVER SCHOOL DIVISION

being a School Division duly constituted under The Public Schools Act of Manitoba, (hereinafter called the "Division"),

PARTY OF THE FIRST PART,

- and -

THE HANOVER TEACHERS ASSOCIATION,

being a local Society of the Manitoba Teachers' Society,(hereinafter called the "Association"),

PARTY OF THE SECOND PART.

WHEREAS the Division and the Association agree to establish a plan (the "Plan") whereby teachers employed by the Division have the opportunity of taking a leave of absence on a deferred compensation basis;

AND WHEREAS it is intended that the Plan operate as a trustee Employee Benefit Plan as defined in Section 248(1) of the Income Tax Act (Canada);

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises the parties agree to institute the Plan described herein, whereby an employee can take a leave of absence on a deferred compensation basis on the following terms and conditions;

1. **DEFINITIONS**

“Association” means the Party of the Second Part referred to in the Agreement.

“Collective Agreement” means the agreement between the Association and the Division pursuant to Section 97(1) (d) of The Public Schools Act.

“Current Compensation Amount” means the total compensation payable by the Division to the Participant for the school year, including one’s proper grid salary and all allowances, per the current Collective Agreement in force between the Association and the Division.

“Deferral Period” shall be the number of school years for which compensation is deferred in accordance with Clauses 3.1 and 4.1, including the years referred to in Clauses 4.4 and 4.5, if applicable.

“Deferred Compensation Amount” means the portion of the Current Compensation Amount which is paid to the Trustee by the Division for a Participant in each year in accordance with Clause 3.1.

“Division” means the Party of the First Part referred to in the Agreement and includes a school division, a school district, and an official trustee under the Public Schools Act, having the responsibility for providing public school education.

“Eligible Teacher” means a teacher as defined by agreement between the Association and the Division, provided that if no agreement exists, as determined by the Division.

“Eligible Investment” means:

- (a) an investment or savings account placed with any Canadian chartered bank or any trust company authorized to carry on business in the Province of Manitoba, which investment or savings account is eligible for insurance coverage under the Canadian Deposit Insurance Act of Canada; and
- (b) a bond or Treasury Bill issued by the Government of Canada or by the Government of the Province of British Columbia, Alberta, Saskatchewan, Manitoba or Ontario.

“Fund” means all assets held by the Trustee under the terms of the Plan and the Trust Agreement.

“Leave of Absence” means the period described in Clause 4.1.

“Memorandum of Agreement” means the Leave of Absence and Deferred Compensation Plan Memorandum of Agreement described in Schedule “A”.

“Participant” means an Eligible Teacher whose application for participation in the Plan has been approved and who has completed a Memorandum of Agreement.

“Participant’s Account” means the separate account established for each Participant pursuant to the provision of Clause 3.5 hereof.

“Plan” means the Plan set out in this agreement, and includes all amendments thereto.

“School Year” means the period from the first day of the fall term of one calendar year to and including the day prior to the first day of the fall term of the next calendar year.

“Trust Agreement” means the Trust Agreement entered into between the Division, the Association and the Trustee, as from time to time amended or substituted by agreement between the Division, the Association and the Trustee, to carry out the purposes of this Plan, which Trust Agreement shall form part of this Plan.

“Trustee” means a trust company registered to carry on business in the Province of Manitoba appointed to act as trustee under the Trust Agreement by agreement of the Division and the Association.

2. APPLICATION

2.1 APPLICATION AND FORM

In order to participate in the Plan, an Eligible Teacher must make written application to the Division on the Leave of Absence and Deferred Compensation Plan Memorandum of Agreement (Schedule “A”) on or before March 31, or such other date as is otherwise agreed to between the Division and the Association. In any event, the application to participate must be made prior to the School Year in which the deferral is to commence.

2.2 APPROVAL

The approval of such application made under Clause 2.1 shall be in the discretion of the Division. The Division shall by May 15 of that year advise each applicant of the approval or disapproval of the application.

2.3 PARTICIPANT

Upon acceptance of the application made under Clause 2.1 the Eligible Teacher becomes a Participant in the Plan.

3. FUNDING FOR LEAVE OF ABSENCE

3.1 COMPENSATION DEFERRED

During each school year prior to the Leave of Absence the Participant, for a maximum of six (6) school years, will receive his or her Current Compensation Amount, less the amount (the “Deferred Compensation Amount”) which the Participant has specified in the Memorandum of Agreement for the school year in question, which shall be paid by the Division to the Trustee in installments within twenty (20) days of the date of

each regular payment of salary. Monies so paid to the Trustee shall be invested in accordance with Clause 3.4.

3.2 MAXIMUM PERCENTAGE DEFERRED

The maximum percentage of the Current Compensation Amount deferred in any one calendar year may not exceed 33 1/3%.

3.3 NOTICE TO THE TRUSTEE

(a) At the time that the Division pays the monies to the Trustee in accordance with Clause 3.1, the Division shall advise the Trustee in writing as to the names of the Participants on whose behalf the monies are being paid and the amount of monies applicable to such Participants so names, and shall provide to the Trustee a copy of each Participant's application form under Clause 2.1.

(b) The Division shall advise the Trustee and Association in writing in the event of a Participant's withdrawal from the Plan under Clause 6 or suspension from the Plan under Clause 7.

3.4 INVESTMENT OF DEFERRED COMPENSATION AMOUNTS

(a) The Fund shall be established by the Trustee comprised of all the Deferred Compensation Amounts paid to the Trustee. All amounts paid into the Fund on behalf of Participants shall be held by the Trustee in trust as a commingled trust fund and shall be invested as soon as is reasonably possible, given the circumstances of the Plan.

(b) The Fund shall be invested and reinvested by the Trustee in Eligible Investments. All investments shall be made under the name of the Trustee in trust. Except where the investment is a bond or Treasury Bill referred to in paragraph (b) of the definition of Eligible Investments in Clause 1, the Trustee shall comply with Section 3 of the Schedule to the Canada Deposit Insurance Corporation Act of Canada, in that the Trustee shall disclose its trusteeship to each financial institution with whom assets of the Fund may from time to time be invested, and sufficient detail to enable the financial institution to take the interest of each Participant into account as a beneficiary for the purposes of Section 19 of the said Act.

(c) The Trustee shall have the authority to commingle the Fund with the assets of any other fund(s) created under any other identical plan(s) which may be established between a School Division in the Province of Manitoba and a local Association of the Manitoba Teachers' Society and which assets are similarly being held in trust by the Trustee on identical terms and conditions. Interest and investment earnings of the aggregated funds and expenses in connection therein shall be allocated among the funds for each completed year on a reasonable and consistent basis having regard to the amounts in each fun that may have accrued from time to time during the year then ended.

(d) The Division, the Association, The Manitoba Association of School Trustees and the Manitoba Teachers' Society shall not be liable to any Participant or Participants for the acts or defaults of each other or for any error in judgement or for any act of omission or commission in connection with the administration or management of the Fund, except for loss occasioned by their willful misconduct. The Division, the Association, The Manitoba Association of School Trustees and the Manitoba Teachers' Society shall not be liable to any Participant or Participants for any loss suffered in respect to any investment or investments of the Fund, whether direct loss or indirect loss.

3.5 PARTICIPANT'S ACCOUNT

The Trustee shall establish and maintain a separate account for each Participant and shall debit or credit, as the case may be, to the account of each Participant the following amounts:

- (i) Deferred Compensation Amounts paid on behalf of each Participant in accordance with Clause 3.1 and any contributions by a Participant to his or her Participant's Account;
- (ii) interest and investment earnings earned on the Deferred Compensation Amounts of each Participant in accordance with Clauses 3.4 and 3.6;
- (iii) interest and investment earnings paid to each Participant in accordance with Clause 3.6;
- (iv) salary paid to each Participant in accordance with Clause 4.3;
- (v) expenses of the Fund applied against interest and investment earnings on the Deferred Compensation Amounts of each Participant in accordance with the provision of Clause 3.7.

The Trustee shall hold the amount in each Participant's Account for the exclusive benefit of each Participant in accordance with the provisions of the Plan and Trust Agreement.

3.6 ALLOCATION AND PAYMENT OF INVESTMENT EARNINGS

As of December 31 of each year the Trustee shall allocate the interest income of the Fund and any other investment earnings (including net taxable capital gains) thereon for the calendar year completed (net of expenses as provided in Clause 3.7) among the Participants of the Plan on a reasonable and consistent basis having regard to the amounts in each Participant's Account that may have accrued from time to time during the year then ended. The interest and investment earnings so allocated to each Participant shall be treated as having been paid out to the Participant and recontributed by the Participant to his or her Participant's Accounts on December 31 each year as agreed to by the Participant in the Memorandum of Agreement. The Trustee shall

ensure that the said amount of interest and investment earnings is subsequently paid out in cash to each Participant no later than March 31 of the following year.

3.7 EXPENSES

Any taxes imposed upon or in respect of the Fund or administration fees or other expenses, sustained or assessed, as the case may be, in connection with the operation of the Plan, including the general fees of the Trustee, shall be charged against and paid out of the interest and investment earnings of the Fund. Any specific transaction fees charged by the Trustee in regard to a particular Participant shall be debited to that particular Participant's Account.

3.8 REPORTING TO PARTICIPANTS

Subject to any agreement to the contrary, the Trustee shall make an Annual Report to each Participant under this Plan as to the amount in his Participant's Account as of December 31 of each year, and the Annual Report shall be distributed to each Participant not later than three (3) months thereafter. The Trustee shall make such other reports during the course of the year as may be agreed to in the Trust Agreement.

3.9 DEFERRED COMPENSATION NOT TO BE PLEDGED

The Trustee shall not pledge or hypothecate any Deferred Compensation Amount invested by it pursuant to Clause 3.4 to or for the benefit of any Participant, or any person not dealing at arm's length with any Participant.

3.10 FUND FOR EXCLUSIVE BENEFIT OF PARTICIPANTS

The Fund shall not form any part of the assets of the Division, nor at any time shall any part of the Fund be used for, or diverted to any purposes other than for the exclusive benefit of the Participants as herein provided.

4. TAKING OF LEAVE OF ABSENCE

4.1 LEAVE OF ABSENCE

The Leave of Absence shall occur according to, and be governed by agreement between the Division and the Association. The Leave of Absence shall not be less than SIX (6) CONSECUTIVE MONTHS within one School Year and which Leave of Absence shall normally either commence at the start of a school year or at some other appropriate and reasonable point of time in the School Year. The Leave of Absence must commence after a period not exceeding SIX (6) YEARS after the date on which the deferrals for Leave of Absence commence.

4.2 MANNER OF PAYMENT DURING LEAVE

The time and manner of payment to the Participant during the Leave of Absence shall be in accordance with a plan determined by the Participant prior to the commencement of leave, and the Division shall provide the relevant information thereof to the Trustee in order that the Trustee may make such payments in a timely manner. In any event payments shall not be more frequently than that provided for the payment of salaries under the Collective Agreement, and the last payment shall in no event be made later than the end of the first calendar year that commences after the end of the Deferral Period.

4.3 PAYMENT DURING LEAVE

The salary to be paid to a Participant during the Leave of Absence shall be the amount in the Participant's Account augmented by interest and investment earnings earned thereon during the Leave of Absence, net of expenses as provided in Clause 3.7. The salary will be administered to the extent possible in accordance with the Collective Agreement. Deductions may be made by the Trustee under Clause 5.1 and as required by law to be paid by the Trustee for or on behalf of a Participant. The Division shall pay no other remuneration to the Participant during the Leave of Absence other than as aforesaid or fringe benefits as provided in Clause 5.1.

4.4 DIVISION'S RIGHT TO DEFER LEAVE

If the Division is unable to obtain a suitable replacement for a Participant for the period of a Leave of Absence specified by the Participant, then notwithstanding the date for the Leave of Absence in the Memorandum of Agreement, the Division may in its discretion defer the Leave of Absence for one school year provided that this will not result in the Deferral Period exceeding six (6) years from the date in which the deferrals for the leave of Absence commence. If the Division so defers the Leave of Absence, the Participant may choose to remain in the Plan, or may withdraw from the Plan, and be paid the amount in his or her Participant's Account in one lump sum within sixty (60) days of such withdrawal, and upon such payment being made the Division and Trustee shall have no further liability to the Participant hereunder.

4.5 PARTICIPANT'S RIGHT TO DEFER LEAVE

Notwithstanding the date for the Leave of Absence in the Memorandum of Agreement, a Participant may, on one occasion only, with the consent of the committee struck for such purpose between the Association and Division postpone such leave for one school year, provided that this will not result in the Deferral Period exceeding six (6) years from the date in which the deferrals for the Leave of Absence commence. Such application must be made to the committee prior to March 31 in the year of the scheduled commencement of the leave or prior to such other time as the committee may deem appropriate.

4.6 YEAR'S LEAVE OF ABSENCE

The Leave of Absence shall commence immediately after the end of the Deferral Period.

4.7 POSITION ON RETURN FROM LEAVE

After the Leave of Absence the Participant shall return to his or her employment with the Division, or with another School Division or School District constituted under The Public Schools Act of Manitoba which participates in a deferred salary leave plan for its teachers which is the same or similar to this Plan, for a period of not less than the period of the Leave of Absence. On return from the Leave of Absence to the Division, the teacher will be assigned to the same or comparable position with the Division.

4.8 SALARY AND BENEFITS AFTER LEAVE

After participation in the Plan, the Participant's salary and benefits will be as set out in the Collective Agreement then in force.

4.9 LIMITATION ON BENEFITS PAYABLE

No Participant shall be entitled to receive any amount in respect of the Plan except in accordance with the provisions of this Agreement.

4.10 BENEFITS

(a) No Participant shall be entitled to alienate, sell, pledge, hypothecate, encumber, charge, assign or transfer his rights under the Plan, and any attempt to do so shall not be recognized and shall be treated as void.

(b) The Participant shall not have any legal or equitable right or interest in the Fund under the Plan except as expressly provided in this Agreement.

5. FRINGE BENEFITS

5.1 PAYMENT OF PREMIUMS

During a Leave of Absence, the responsibility for payment of premiums for fringe benefits for a Participant shall be as set forth under the terms and conditions of benefit plans in which the Participant is enrolled. If a Participant is obligated to pay the cost of any fringe benefits during the Leave of Absence, the Division shall pay such cost on behalf of the Participant on request and notify the Trustee of same in writing and the Trustee shall deduct and reimburse the Division the monies so paid from the monies otherwise payable to the Participant during the Leave of Absence.

5.2 SICK LEAVE

There shall be no accumulation of sick leave during the Leave of Absence.

5.3 CANADA PENSION AND UNEMPLOYMENT

The Trustee will make such deductions and remittances as may be required under the Income Tax Act and the Canada Pension Plan in respect to payments made to a Participant in accordance with the Plan.

6. WITHDRAWAL

6.1 TERMINATION OF EMPLOYMENT

A Participant who ceases to be employed by the Division must withdraw from the Plan. For purposes of anyone subject to recall provisions in the event of a lay off the Participant will not be considered to have ceased employment.

6.2 WITHDRAWAL FROM THE PLAN

A Participant may apply to the Division to withdraw from the Plan any time prior to March 31 of the year in which the Leave of Absence is scheduled to commence. The Division shall approve a request to withdraw only if in the opinion of the committee struck for such purpose between the Division and Association there are extenuating circumstances, such as financial hardship, contributing to the Participant's request to withdraw from the Plan.

6.3 PAYMENT ON WITHDRAWAL

In the event of withdrawal from the Plan, the Division shall notify the Trustee and the Trustee shall pay to the Participant the amount in his or her Participant's Account in one lump sum payment within sixty (60) days of such withdrawal, provided that interest earned on the Deferred Compensation amounts of such Participant for the portion of the year to the time of withdrawal may be paid out in the Trustee's discretion either at the time of withdrawal or in accordance with Clause 3.6.

6.4 UPON DEATH

Should a Participant die, the Trustee shall within thirty (30) days of notification of such death to the Trustee pay the amount in his or her Participant's Account to the Participant's estate, subject to the Trustee receiving any necessary clearances and proofs normally required for payments to estates.

7. SUSPENSION FROM PARTICIPATION IN THE PLAN

7.1 SUSPENSION FOR ONE YEAR

A Participant may only suspend participation in the Plan for one school year, and may only suspend their participation once during the term of their participation in the Plan in accordance with Clause 7.2.

7.2 NOTICE TO SUSPEND

A Participant may give notice to the Division prior to June 30 stating that the Participant wishes to suspend participation in the Plan as at the start of a new School Year, next following such notice, provided that this will not result in the Deferral Period exceeding six (6) years from the date on which the deferrals for the Leave of Absence commence. Where such notice is given the Division shall pay the Current Compensation Amount to the Participant, but amounts in the Participant's Account (but less all interest paid to the Participant in accordance with Clause 3.6) shall continue to be held by the Trustee until the Participant withdraws from the Plan or takes a Leave of Absence.

8. AMENDMENT OR TERMINATION OF THE PLAN

8.1 AMENDMENT OR TERMINATION BY AGREEMENT

The Plan may be amended or terminated by agreement between the Division and Association on such terms and conditions as the parties may agree, provided that no such amendment or termination shall have the effect, so far as existing Participants are concerned, of reducing the amount in any Participant's Account or of diminishing the value thereof to any Participant at the time of the amendment or termination. No amendment shall be made to the Plan which will adversely affect any tax ruling which is applicable to the Plan prior to the Amendment. Any amendment(s) shall be binding upon all present and future Participants.

8.2 UNILATERAL TERMINATION ON NOTICE

The Plan may be terminated as to the entrance of new Participants by either the Division or the Association by written notice to the other party provided that:

(a) Any said termination as to the entrance of new Participants shall take effect with respect to the School Year commencing in the third calendar year following the calendar year in which the notice is given (said School Year hereinafter referred to as the "Term");

(b) The Plan shall continue in the normal course in all respects regarding Participants who have entered the Plan prior to the Term referred to in Paragraph 8.2(a).

9. GOVERNING LAW

This Plan shall be construed, regulated and administered according to the laws of Manitoba.

10. BINDING EFFECT

This Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

11. ADDENDUM

11.1 COMMITTEE

There shall be a committee of four (4) members, two (2) from the Division, and two (2) from the Association, appointed annually. This committee shall resolve all disputes regarding eligibility, suspensions, withdrawal, or other matters as they pertain.

11.2 PARTICIPATION

- (a) A first year teacher in the Division is not eligible to apply.
- (b) There shall be a maximum of 71/2% of teachers rounded to the nearest whole number in the Division on leave at any one time.
- (c) Each school is entitled to a minimum of one (1) teacher on leave at any one time, and a maximum of 10% (teacher equivalence), rounded to the nearest whole number.
- (d) If a school or the Division goes over this maximum number of applications for leave in any particular year, seniority within the Division shall rule. The application may, however, retroactive to before the application deadline, be changed to a leave for a different year.

Notwithstanding the above, a female teacher will receive priority, providing less than one-third of the teachers qualifying for leave in a particular year, are females.

- (e) A teacher requesting a Deferred Salary Leave for the first time has priority over one who has had a previous Deferred Salary Leave.
- (f) A teacher is ineligible to take a Deferred Salary Leave prior to having taught for six (6) years in Hanover School Division from the end of a pervious Deferred Salary Leave.

11.3 LENGTH OF LEAVE

The length of leave shall be a minimum of one (1) year. Leaves of shorter duration will, however, be considered by the Board on an individual basis. Such leaves to be defined as:

- (a) 1st day of fall term in September to December 31 (Fall Term)
- (b) January 1 to June 30 (Spring Term)
- (c) 1st day of fall semester in September to January 31 (Fall Semester)
- (d) February 1 to June 30 (Spring Semester)

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto as of the day and year first above written.

THE CORPORATE SEAL OF THE)
HANOVER SCHOOL DIVISION)
was hereto affixed in the presence of:)

_____)
Witness)
_____)
Witness)

_____)
Chairperson)
_____)
Secretary-Treasurer)

SIGNED, SEALED ON BEHALF OF)
THE HANOVER TEACHERS ASSOCIATION)
in the presence of:)

_____)
Witness)
_____)
Witness)

PER: _____)
President)
PER: _____)
Bargaining Chair)