

**FIRST AMENDMENT TO TRUST AGREEMENT FOR THE FORT WORTH  
PERMANENT FUND**

This **FIRST AMENDMENT TO TRUST AGREEMENT FOR THE FORT WORTH PERMANENT FUND** (“First Amendment”) is made and entered into by and between the **City of Fort Worth**, a home-rule municipal corporation of the State of Texas, as Grantor, and **Wells Fargo Bank, N.A.**, as the Trustee.

**WHEREAS**, effective June 10, 2013, Grantor and Trustee entered in to a Trust Agreement for the Fort Worth Permanent Fund (the “Trust Agreement”); and

**WHEREAS**, the Trust Agreement does not include a definition of the concept of “income” and instead looks to Texas trust law, which defines income solely as “current return from a principal asset;” and

**WHEREAS**, Article V, Section A of the Trust Agreement, entitled “Amendment,” allows the Fort Worth City Council to amend the Trust Agreement under certain conditions, all of which have been met; and

**WHEREAS**, the City wishes to amend the Trust Agreement to define income to also include net gains from the sale of principal assets in order to better align the operation of the Trust with Grantor’s intent in establishing it; and

**WHEREAS**, the parties also wish to amend the Trust Agreement to revise and clarify the process for making distributions from the Trust.

**NOW, THEREFORE**, the City of Fort Worth and Wells Fargo Bank, N.A., do mutually covenant and agree as follows:

1. That Article III, Section B of the Trust Agreement, entitled “Distributions,” is hereby deleted in its entirety and replaced with the following:

B. Distributions. The goals of the Trust are to produce income from investments and provide a long-term source of revenue for the designated purposes of the different Funds of the Trust for the benefit of not only the present citizens of the City but for future generations as well. Each year the Chief Financial Officer of the City (“Chief Financial Officer”) and the Trustee shall review the financial position of the Trust in light of the goals of the overall Trust and of each Fund and/or sub-account to determine the amount of income available to be distributed, and the Chief Financial Officer shall prepare a written recommendation for distribution of income (as defined in Article VI) for consideration by the City Council. The amount of income available to be distributed to the City each year from a particular Fund of the Trust shall be determined by the Chief Financial Officer and Trustee and the recommendation made by the Trustee to the City Council by July 1st of each year. The City Council shall consider the recommendation in connection with the City’s annual budget-adoption process and shall adopt a Trust distribution plan and schedule for the fiscal year. In distributing income to the City each year, the Trustee shall follow the Council-adopted written plan and schedule unless the Trustee determines that following such written direction would result in a breach of the Trustee’s fiduciary duty or would violate the terms of the Agreement, and Trustee shall not be held liable for following written directions that Trustee determines, in the exercise of its reasonable discretion, does not constitute a breach of the Trustee’s fiduciary duty or would violate the terms of the Agreement. The Trustee shall identify the Fund from which each disbursement is made. The amounts distributed may be expended as determined in the sole discretion of the Fort Worth City Council, and the Trustee shall have no obligation to monitor the uses and purposes of such expenditures, nor shall Trustee be liable for the manner in which such amounts are expended by the City following disbursement.

2. That Article VI of the Trust Agreement, entitled “Definitions,” is hereby amended to add a new Section C defining the concept of “Income.” Section C shall read as follows:

C. Income. In this Agreement, references to “income” shall mean current return generated by investments, including, but not limited to, interest payments, dividends, and coupon payments. In addition, for purposes of determining amounts available for distribution, the term “income” shall also include realized net gains from sale of Trust assets.

3. That all other terms and conditions of the Trust Agreement shall remain in full force and effect throughout the term of the Trust Agreement and any subsequent renewals.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment in Fort Worth, Tarrant County, Texas, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**GRANTOR:**

**TRUSTEE:**

**CITY OF FORT WORTH**

**WELLS FARGO BANK, N.A.**

\_\_\_\_\_  
Susan Alanis  
Assistant City Manager

\_\_\_\_\_  
Heidi Coombs  
Vice President

Approved as to Form and Legality:

By: \_\_\_\_\_  
Denis C. McElroy  
Assistant City Attorney

Attest:

By: \_\_\_\_\_  
City Secretary