

CIVIL CASE COVER SHEET

Check One: CIRCUIT COURT

CHANCERY COURT

DOCKET NO. _____

Date 05/08/18

Attorney of Record Gary Patrick and Jeremy Cothorn

I. Origin (Check One)

- Original Proceeding Case Reopened Counter-claim Cross-claim
 3rdParty Claim Intervening Claim Other (Specify) _____

II. TYPE OF SUIT (CHECK ONE)

DOMESTIC RELATIONS

- 361 Paternity 362 Legitimation 363 Adoption
 371 Divorce 381 Order Of Protection
 391 Reciprocal Support - Incoming 392 Reciprocal Support - Outgoing
 401 Other Domestic Relations (Specify) _____

GENERAL CIVIL

- 461 Contract/Debt 462 Specific Performance 512 General Sessions Appeal 513 Appeal From Admin. Hearing
 471 Damages/Torts 481 Real Estate Matter 572 Guardianship 573 Trust
 491 Workers Compensation 511 Juvenile Court appeal
 501 Probate 571 Conservatorship
 581 Miscellaneous General Civil (Specify) _____

Other 541 Judicial Hospitalization

PETITION FOR: (REOPENED CASES)

- 382 Contempt 383 Custody/Visitation/Child Support 387 Wage Assignment Hearing

Other 551 Other

III. Total amount sued for \$TBD
Specify type of damages or relief sought _____
Statutory authority for suit, if any _____

IV. Check one, Affidavit to Proceed in Forma Pauperis Cost Bond Surety _____

V. JURY DEMAND (Check Yes Only If Demanded In Complaint) Yes No

VI. RELATED CASES (If Any) Docket # _____ Judge _____
Date Filed _____ Status _____

VII. PLAINTIFF / PETITIONER INFORMATION (List Additional Parties On Supplemental Form)

1. Name _____ LAST FIRST MIDDLE

AKA DBA BNF _____

S.S. # _____ - - - - - DOB _____ Drivers License # _____

Chattanooga Fire & Police Pension Fund

COMPANY NAME

6009 John Douglas Drive

ADDRESS

Chattanooga TN 37421

CITY STATE ZIP CODE

EMPLOYER

ADDRESS

CITY STATE ZIP

VIII. DEFENDANT/ RESPONDENT INFORMATION (List Additional Parties On Supplemental Form)

1. Name _____ LAST FIRST MIDDLE

AKA DBA BNF _____

S.S. # _____ - - - - - DOB _____ Drivers License # _____

Wells Fargo Bank, National Association C/O Corporation Service

Company

COMPAY NAME

2908 Poston Avenue

ADDRESS

Nashville TN 37203-1312

CITY STATE ZIP

EMPLOYER

ADDRESS

CITY STATE ZIP

TYPE OF SERVICE REQUIRED (Check One)

- Out of County Sheriff Davidson County
 Local Sheriff
 Comm. Of Ins.

IX. ASSOCIATED PARTY (Uninsured Motorist Carrier) INFORMATION

1. Name _____

ADDRESS _____

CITY STATE ZIP

Type Of Service (specify) _____

Are additional plaintiffs or defendants listed on a separate sheet? YES NO

RECEIVED
5-8-18
Clerk & Master

RECEIVED
5-8-18
Clerk & Master

State of Tennessee
IN THE CHANCERY COURT FOR HAMILTON COUNTY

Chattanooga Fire and Police Pension Fund
PLAINTIFFS

vs.

DOCKET NO. _____

Wells Fargo Bank, National Association
DEFENDANTS

Serve through Davidson County Sherriff's Department
SUMMONS

TO DEFENDANT: Wells Fargo Bank, National Association, c/o registered agent: Corporation Service Company
WHOSE ADDRESS IS 2908 Poston Avenue, Nashville, Tennessee 37203-1312

OTHER SERVICE INFORMATION _____

You are summoned and required to Answer and make defense to a Complaint herewith served upon you. Your Answer to the Complaint must be filed and served upon plaintiff's attorney on or before thirty (30) days after service of this Summons and Complaint upon you, exclusive of the day of service. Your Answer must be filed in the OFFICE OF THE CLERK & MASTER, 625 Georgia Avenue, Room 300 Courthouse, Chattanooga, Tennessee 37402. You are also required to serve a copy of your Answer upon the plaintiff's attorney, or the *pro se* plaintiff as set out below. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

ISSUED & TESTED this _____ day of _____, 2018.

ROBIN L. MILLER, CLERK & MASTER

By: _____
DEPUTY CLERK & MASTER

Gary R. Patrick 001941
Plaintiff Attorney BPR#
or Plaintiff if no attorney (*pro se*)
537 Market Street, Suite 202
Address
Chattanooga, Tennessee 37401
(423) 756-7117 (423) 267-5032
Tel. No. Fax No.

NOTICE TO DEFENDANT(S)
Tennessee Code Annotated § 26-2-103 provides a \$4,000.00 personal property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the Clerk & Master. The list may be filed at any time and may be changed by you thereafter as necessary; however unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel (clothing) for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family Bible, and school books. Should any of these items be seized you, would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

5. It also has obligations to maintain documentation and provide information to the Fund related to its role as trustee.

6. The Fund has filed this Complaint for an Accounting as a last resort in order for this Court to order the Defendant, as the Fund's trustee, to provide an accounting with supporting documentation to fully disclose all sources of revenue that Defendant and all affiliated entities, subsidiary entities, and/or related entities of the Defendant has/have received, directly or indirectly, from third-parties related, directly or indirectly, to Defendant's services as the Fund's trustee when Defendant has repeatedly failed to do so voluntarily.

7. What has led to this lawsuit is, in the recent months, agents for the Fund have uncovered what appears to be systemic nondisclosures, or incomplete disclosures, of revenue paid by third-parties to Defendant and/or its affiliated entities, subsidiary entities, and/or related entities from Defendant's management of the Fund's assets.

8. Once this issue was uncovered, Defendant proceeded to provide inaccurate and/or incomplete information related to undisclosed, or incompletely disclosed, revenue sources from third-parties that conflict, or may conflict, with its fiduciary and contractual obligations to the Fund and its beneficiaries.

9. The Fund, thus, brings this lawsuit for this Court to compel Defendant to fulfill its contractual and fiduciary obligations to the Fund and its beneficiaries by fully accounting for and disclosing all revenue sources received by Defendant and/or its affiliated entities, subsidiary entities, and/or related entities directly or indirectly related to Defendant's role as trustee for the Fund.

Parties

10. The Fund was established by Chattanooga City Code, Part II, Chapter 2, Article III, Division 8 (“Plan”) by the City Council of the City of Chattanooga to accumulate funds for the payment of benefits as a result of retirement, death, or disability of members of the Fire and Police Departments of the City of Chattanooga.

11. Defendant is a national banking association and can be served by and through its registered agent, Corporation Service Company, at 2908 Poston Avenue, Nashville, Tennessee 37203-1312.

Venue and Jurisdiction

12. The Fund was created by the City of Chattanooga as identified above, is a freestanding government entity, and is located here in Hamilton County, Tennessee.

13. This Court has subject matter jurisdiction to adjudicate a lawsuit for an accounting.

14. This Court has personal jurisdiction over Defendant, which agreed to act as the trustee for the Fund and has been serving in this role since September 30, 2005.

15. This Court, therefore, constitutes proper venue and has subject matter and personal jurisdiction to adjudicate the disputes between the parties.

Facts

16. The Fund appointed Defendant to be the trustee of the Fund on, or around, September 30, 2005 by entering into the Chattanooga Fire and Police Pension Fund Trust Agreement (“Trust Agreement”), a copy of which is appended hereto as Exhibit 1.

17. Pursuant to the Agreement and governing law, Defendant is a fiduciary to the Fund and consequently owes the Fund and its beneficiaries a duty to act with utmost good faith and fair dealing in its administration of the Fund.

18. As part of this fiduciary duty, Sec. 3.2 makes it clear that Defendant “shall discharge its duties with respect to the Trust solely in the interests of the beneficiaries of the Trust and for the exclusive purpose of providing benefits to beneficiaries and defraying reasonable expenses of administering the Trust.”

19. Sec. 3.3 limits Defendant’s rights to receive compensation to the delineated circumstances therein as agreed by the parties.

20. Sec. 6.13 also permits additional compensation to be received by Defendant from third-party mutual funds but only if disclosed pursuant to the Trust Agreement and pursuant to its fiduciary obligations to the Fund and only from third-party mutual funds.

21. Defendant has not provided any disclosures as required by Sec. 6.13, but, upon information and belief, has received significant compensation from third-party mutual funds and potentially other third-parties.

22. The Fund, per the Agreement, also has rights to receive information and records related to administration.

23. Sec. 3.4 dictates that Defendant “shall keep accurate records and accounts of all investments, receipts, and disbursements, and other transactions hereunder, and all records, books, and accounts relating thereto shall be open to inspection by any person designated by the Board at all reasonable times.”

24. Sec. 6.5 provides that “[t]he Board shall have the right to cause the books, records, and accounts of the Trust Fund that relate to the Trustee to be examined and audited by independent auditors designated by the Board at such times as the Board may determine, and the Trustee shall make such books, records, and accounts available for such purposes at all reasonable times.”

25. Sec. 3.6 dictates that Defendant “shall retain its records relating to the Trust as long as necessary for the proper administration thereof and at least for any period required by applicable law.”

26. The Fund’s request for an accounting, therefore, corresponds directly with Defendant’s obligations to the Fund and its beneficiaries.

27. The Fund, by and through its agents, made multiple requests concerning whether Defendant and/or its affiliated entities, subsidiary entities, and/or related entities had/have received any compensation, revenue, or other form of consideration from any third-party related directly or indirectly to Defendant’s role as trustee for the Fund.

28. Defendant originally denied having received any such consideration.

29. Defendant also originally declined to provide any information to the Fund despite its fiduciary status

30. Defendant ultimately permitted the Fund’s agents to discuss compensation arrangements and multiple third-parties confirmed that each had such an arrangement with Defendant.

31. Defendant later retracted the denial that it did not receive any compensation from third-parties and then claimed it received only a few thousand dollars.

32. Defendant later retracted this second claim and then claimed it received only tens of thousands of dollars.

33. The Fund has made multiple requests for a complete accounting with the supporting documentation from Defendant.

34. Defendant has failed and/or refused to account despite its obligations to do so under the Trust Agreement and despite its obligations to do so under Tennessee law.

35. Defendant also claims not to have access to critical documents and/or be unaware of critical information related to the request for an accounting.

Cause of Action: Accounting

36. This Court has the inherent authority to order Defendant to perform a full and complete accounting under Tennessee's common law and under Tennessee's statutes cited herein.

37. The Fund has filed this Complaint for an Accounting as a last resort in order for this Court to order the Defendant, as the Fund's trustee, to provide an accounting with supporting documentation to fully disclose all sources of revenue that Defendant and/or its affiliated entities, subsidiary entities, and/or related entities has/have received, directly or indirectly, from third-parties related, directly or indirectly, to Defendant's services as the Fund's trustee.

38. The Fund, thus, requests for a full accounting and all supporting documentation for any fees, money, in-kind, exchanges, revenue, revenue-sharing, shareholder servicing fees, and/or other compensation of any kind ("Revenue") that Defendant and/or its affiliated entities, subsidiary entities, and/or related entities has/have received from any third-party (including, but not limited to, from each mutual fund and/or its affiliated entities and/or manager involved in any way, shape, or form with the Fund's assets) related in any way, directly or indirectly, to Defendant's actions as trustee for the Fund since September 30, 2005 to present date, including, without limiting the foregoing, all aggregate and/or omnibus payments.

39. The Fund requests for this accounting to include, without limitation, any revenue sharing (e.g., sub-transfer agency fees, shareholder servicing fees, and any corollary fees) Defendant received pursuant to a 12b-1 plan or otherwise from both proprietary and nonproprietary mutual funds and collective funds for the provision of any services by Defendant, sub-transfer agency fees, 12b-1 fees, shareholder and administrative fees, and distribution related fees.

40. The Fund requests for Defendant's accounting to also identify any Revenue of any kind Defendant has received from any third-party related in any way, shape, or form to Defendant's role as trustee for the Fund and not just those inhabiting the prior delineated categories.

41. The Fund requests for this accounting to include all of the information requested herein for all affiliated entities, subsidiary entities, and/or related entities of the Defendant.

42. The Fund requests for the accounting to be accompanied with all documents reflecting the information contained in the accounting sufficient so that Defendant's accounting can be audited for accuracy.

Prayer for Relief

Wherefore, the Fund requests for this Court to order the requested accounting pursuant to its inherent authority and/or pursuant to Tennessee Code Annotated § 35-15-1001(b)(4), to award the Fund its litigation costs (including, but not limited to, attorney's fees and discretionary and nondiscretionary costs) pursuant to the Trust Agreement, Tennessee Code Annotated §§ 35-15-1001(b)(10) and 35-15-1004, and/or equitable principles, and for any other general relief supported by the law and the facts.

Patrick, Beard, Schulman & Jacoway, P.C.

By: 

Gary R. Patrick, #001941
Jeremy M. Cothorn, #027166
Suite 202, Market Court
537 Market Street
Chattanooga, Tennessee 37402
Telephone: (423) 756-7117
Facsimile: (423) 267-5032
Email: gpatrick@pbsjlaw.com
jcothorn@pbsjlaw.com

*Attorneys for Chattanooga Fire and Police
Pension Fund*

CHATTANOOGA FIRE AND POLICE

PENSION FUND

TRUST AGREEMENT

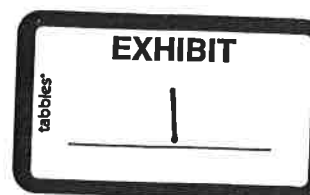


TABLE OF CONTENTS

ARTICLE I GENERAL		
Sec. 1.1	Acceptance of Trust	1
Sec. 1.2	Part of Plan	1
Sec. 1.3	Certification of Fiduciaries and Administrator	1
Sec. 1.4	Construction and Applicable Law	1
ARTICLE II TRUST FUND		
Sec. 2.1	Composition	2
Sec. 2.2	Contributions	2
ARTICLE III TRUSTEE		
Sec. 3.1	General Responsibility	2
Sec. 3.2	Duties and Liability of Trustee	2
Sec. 3.3	Compensation and Expenses	3
Sec. 3.4	Records and Accountings	3
Sec. 3.5	Monthly Statements	3
Sec. 3.6	Record Retention	3
ARTICLE IV INVESTMENTS		
Sec. 4.1	General Scope of Trustee Powers	3
Sec. 4.2	Appointment of Investment Adviser as Investment Manager	5
ARTICLE V CHANGE IN TRUSTEE		
Sec. 5.1	Resignation	6
Sec. 5.2	Removal	6
Sec. 5.3	Successor	6
Sec. 5.4	Duties on Succession	7
Sec. 5.5	Changes in Organization of Trustee	7
ARTICLE VI MISCELLANEOUS		
Sec. 6.1	Benefits May Not Be Assigned or Alienated	7
Sec. 6.2	Incompetent Payee	7
Sec. 6.3	Evidence	7
Sec. 6.4	Dealings of Others with Trustee	7
Sec. 6.5	Audits	8
Sec. 6.6	Trustee Warranty Against Conviction	8
Sec. 6.7	Successors and Assigns	8
Sec. 6.8	Waiver of Notice	8
Sec. 6.9	Headings	8
Sec. 6.10	Use of Compounds of Word "Here"	8
Sec. 6.11	Construed as a Whole	8
Sec. 6.12	Counterparts	8
Sec. 6.13	Compensation to Trustee and Affiliates from Mutual Funds	8
Sec. 6.14	Force Majeure	8
Sec. 6.15	Facsimile and Electronic Mail Instructions	8
ARTICLE VII AMENDMENT AND TERMINATION		
Sec. 7.1	No Diversion	9
Sec. 7.2	Amendment	9
Sec. 7.3	Termination of Plan	9

This Trust Agreement is made and entered into as of September 30, 2005 by and between the Board of Directors of the Fire and Police Pension Fund (the "Board") and Wells Fargo Bank, National Association, ("Trustee");

WITNESSETH:

WHEREAS, pursuant to the enabling provisions of the Chattanooga City Code, Part II, Chapter 2, Article III, Division 8 (the "Plan"), the City Council of the City of Chattanooga, Tennessee has established the Fire and Police Pension Fund (the "Fund") to accumulate funds for the payment of benefits as a result of retirement, death or disability of members of the Fire and Police Departments of the City of Chattanooga; and

WHEREAS, the Plan provides that the Fund shall be held by a trustee that is a national or state chartered bank, under a suitable bond; and

WHEREAS the Board hereby appoints Wells Fargo Bank, N.A., a national banking association, to serve as trustee of the Fund pursuant to the provisions hereof (the "Trust");

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties agree as follows:

ARTICLE I

GENERAL

Sec. 1.1 Acceptance of Trust. The Trustee accepts its appointment as such. Such trusteeship, and the terms hereof, are effective only after the later of the date the Trust Agreement is executed or the date the Trustee has received the assets constituting the Trust from any predecessor trustee. The Trustee shall have no duties or responsibilities over any assets it does not receive.

Sec. 1.2 Part of Plan. This Trust forms a part of the Plan, and is used to fund benefits thereunder. The Board warrants that it has furnished the Trustee with a true and correct copy of the Plan as currently in effect. The Board agrees that promptly upon the enactment of any amendment to the Plan it will furnish the Trustee with a copy of the amendment and with appropriate evidence of its due adoption. The Board further agrees that no amendment of the Plan shall have the effect of changing the rights, duties, and liabilities of the Trustee without its written consent. The Trustee may rely on the latest Plan documents furnished it as above provided without further inquiry or verification.

Sec. 1.3 Certification of Fiduciaries and Administrator. The Board, as Administrator, shall control and manage the operation of the Plan. The Board shall be responsible for determining benefit rights under the Plan, instructing the Trustee in the disbursement of benefits, investment management, directing the Trustee in voting proxies, and performing those plan administration functions specified in the Plan. The Trustee shall recognize the Board as the Administrator unless and until receipt from the Board of a certification evidencing the appointment of some other person or persons as Administrator. The Board will certify to the Trustee the name of the person(s) who have authority to act as investment managers, as well as the person or persons who have the authority on behalf of the Board to direct the Trustee as to disbursements from the Trust Fund, to communicate with the Trustee with respect to any other matter relating to the Trust Fund, and to direct the Trustee as to the investment, acquisitions, dispositions, and other similar transactions involving the Trust Fund. Such persons shall be referred to herein as the "Board" to the extent authorized by the Board to perform the particular function as indicated by context. The Board shall provide the Trustee with a specimen signature of each of the persons referred to above. The Trustee may rely on the latest relevant certification without further inquiry or verification.

Sec. 1.4 Construction and Applicable Law. This Trust Agreement shall be construed and administered according to the laws of the state of Tennessee.

ARTICLE II

TRUST FUND

Sec. 2.1 Composition. All sums of money and all securities and other property acceptable to the Trustee and received by it to be held in trust hereunder, as evidenced by its receipts, from whatever source received, together with all investments made therewith, the proceeds thereof, and all earnings and accumulations thereon, and the part thereof from time to time remaining, shall be held and administered by the Trustee, in trust, in a fund referred to herein as the "Trust Fund," in accordance with the terms and provisions hereof. The Trust Fund shall be held, administered, and disbursed by the Trustee without distinction between principal and income.

Sec. 2.2 Contributions. The Trustee shall have no duty to require any contributions to be made to it, to determine that the contributions received by it comply with the provisions of the Plan or with any law or ordinance providing therefor, or to collect any funds payable to it pursuant to the Plan. The responsibilities of the Trustee shall be limited solely to the sums of money, securities, and other property actually received by it.

ARTICLE III

TRUSTEE

Sec. 3.1 General Responsibility. The general responsibilities of the Trustee shall be as follows:

- (a) Except as expressly otherwise provided herein, the Trustee shall, at the direction of the Board, have the authority to manage and control the assets held in the Trust Fund. The Trustee shall have generally all of the powers of an owner with respect to securities or properties held in the Trust Fund except that the Trustee shall have no authority, discretion, or power to exercise its independent judgment and discretion as to the selection and retention of investments of the Trust Fund or the acquisition or disposition of any portion of the Trust Fund. Such discretion and authority shall rest solely with the Board or a duly appoint investment manager or agent acting on behalf of the Board. The Trustee shall not be liable for any losses incurred upon investments, provided the Trustee executes the Board's direction with respect to the assets or investments of the Trust Fund.
- (b) The Trustee shall hold, administer, invest and reinvest, and disburse the Trust Fund in accordance with the powers and subject to the restrictions stated herein; provided, however, nothing in this Trust Agreement shall require the Trustee to maintain custody of assets held through a broker-held securities account or to maintain physical custody of mutual fund shares.
- (c) The Trustee shall disburse monies and other properties from the Trust Fund on direction of the Board at the time or times to the payee or payees specified by the Board in directions to the Trustee in such form as the Trustee may reasonably require. The Board shall be responsible for, or shall direct the Trustee as to, federal, state and local tax reporting and withholding with respect to such payments. Unless directed otherwise by the Board, the Trustee shall not liquidate investments to fund distributions until immediately prior to the distribution as directed by the Board. The Trustee shall be under no liability for any distribution made by it pursuant to such directions and shall be under no duty to make inquiry as to whether any distribution made by it pursuant to any such direction is made pursuant to the provisions of the Plan. The receipt of the payee shall constitute a full acquittance to the Trustee. The Trustee shall have no responsibility or liability to find Beneficiaries who have not claimed benefits due to them; such responsibility shall belong to the Board.
- (d) The Trustee shall have no responsibility or authority with respect to the operation and administration of the Plan, and the rights, powers and duties of the Trustee shall be governed solely by the terms of this Trust Agreement without reference to the provisions of the Plan, except for Plan provisions specifically referred to by this Trust Agreement.

Sec. 3.2 Duties and Liability of Trustee. The Trustee shall discharge its duties with respect to the Trust solely in the interests of the beneficiaries of the Trust and for the exclusive purpose of providing benefits to beneficiaries and

defraying reasonable expenses of administering the Trust. The Trustee's exercise of discretion shall be limited as provided in Sec. 3.1. The Trustee shall not be liable for any consequences of following the directions of the Board, provided that the Trustee is not negligent in executing such directions.

Sec. 3.3 Compensation and Expenses. The Trustee shall be entitled to receive such reasonable compensation for its services as Trustee or otherwise as may be agreed upon between the Trustee and the Board. The Trustee shall be entitled to reimbursement for all reasonable and necessary costs, expenses, and disbursements incurred by it in the performance of such services. Such compensation and reimbursements shall be paid from the Trust Fund, and shall constitute a lien upon the Trust Fund until paid.

Sec. 3.4 Records and Accountings. The Trustee shall keep accurate records and accounts of all investments, receipts, and disbursements, and other transactions hereunder, and all records, books, and accounts relating thereto shall be open to inspection by any person designated by the Board at all reasonable times. As soon as reasonably practicable following the close of each annual accounting period of the Trust, and as soon as reasonably practicable after the transfer of assets to a successor trustee, the Trustee shall file with the Board a written account setting forth all investments, receipts, disbursements, and other transactions effected by it during such year, or during the part of the year to the date the resignation or removal is effective, as the case may be, and containing a description of all securities purchased and sold, the cost or net proceeds of sale, the securities and investments held at the end of such period, and the cost of each item thereof as carried on the books of the Trustee. If the fair market value of an asset in the Trust Fund is not readily available from a national securities exchange when necessary for accounting or reporting purposes, the Trustee, at its discretion, may determine the fair market value in good faith. If there is a disagreement between the Trustee and anyone as to any act or transaction reported in an accounting, the Trustee shall have the right to have its account settled by a court of competent jurisdiction.

Sec. 3.5 Monthly Statements. The Trustee shall furnish to the Board monthly statements of accounts showing the condition of the Fund and all investments, receipts, disbursements, and other transactions affected by the Trustee during the period covered by the statement and also stating the assets held at the end of the period.

Sec. 3.6 Record Retention. The Trustee shall retain its records relating to the Trust as long as necessary for the proper administration thereof and at least for any period required by applicable law.

ARTICLE IV

INVESTMENTS

Sec. 4.1 General Scope of Trustee Powers. The Trustee shall have all powers necessary for the performance of its duties, and subject to the limitations of Secs. 3.1(a) and 3.2 hereof, the Trust Fund may be invested in any securities and other property of whatsoever kind and nature. In extension, but not in limitation, of the rights and powers conferred upon the Trustee by virtue of any statute or rule of law but subject to the limitations contained in this Trust Agreement, the Trustee shall have and may exercise from time to time in the administration of the Trust and for the purpose of distribution after the termination thereof and for the purpose of distributing any matured beneficial interest after the maturity thereof, and without order or license of any court, any one or more of the following rights and powers:

(a) To Carry Securities in Nominee Form. To purchase, hold and carry investments for the Trust Fund in the name of the Trustee, or in the name of any nominee or nominees selected by the Trustee, without Trust designation in any such case.

(b) To Vote Securities. To execute and deliver, on behalf of the Trust, any vote or proxy relating to any securities held by the Trust, provided that such securities shall be voted only to the extent and as directed in writing by the Board. If no written voting directions from the Board are timely received by the Trustee such security shall not be voted. Notwithstanding the foregoing, the Trustee shall have discretionary authority to vote shares of mutual funds unless otherwise directed by the Board. Any discretion exercised by the Trustee pursuant to this paragraph shall be limited solely to the voting of such mutual fund shares.

- (c) **To Segregate Funds for Proper Purposes.** To segregate any portions, assets, or accounts of the Trust Fund for the purposes of administration thereof, or for the purposes of distribution, or for any other purpose as directed by the Board.
- (d) **To Sue and Defend and Be Indemnified on That Account.** To institute or defend any proceedings at law or in equity concerning the Trust Fund or the assets thereof at the sole cost and expense of the Trust Fund, and of the several beneficial interests involved or concerned therein, and except as provided below to compromise, settle and adjust any claims or liabilities assert by or against the Trust Fund or the Trustee on such terms and for such sums or amounts as the Trustee, as directed by the Board, shall deem proper; provided, however, that any action initiated by the Trustee arising out of the investment of Plan assets shall be commenced only upon written directions of the Board. The Trustee shall be under no duty or obligation to institute, maintain, or defend any suit, action or other legal proceedings except and unless the Trustee shall have been indemnified to the Trustee's satisfaction against all expenses and liabilities which the Trustee may sustain or anticipate by reason thereof. The Trustee shall not have the duty or obligation to sue or otherwise seek enforcement of contributions that are or may be due the Plan.
- (e) **To Sell or Otherwise Dispose of Assets as Directed.** To sell, exchange, or otherwise dispose of any investment of the Trust Fund, or of the several beneficial interests, for such price and on such terms as the Board may direct.
- (f) **To Employ Agents, Servants and Attorneys.** To select and employ or retain such agents, consultants, or attorneys as the Trustee from time to time may deem necessary or advisable in connection with the management and operation of the Trust herein created, and to pay fees, commissions, or salaries incurred on account thereof as an expense of administration of the Trust.
- (g) **To Value Assets and the Trust Fund.** To fix and determine, at the current fair market value thereof, the value of the Trust Fund annually as of the last day of the calendar year and at such additional valuation dates as designated by the Board or as may be necessary or advisable, in the Trustee's opinion, for any of the purposes of the Trust, including power to fix and determine, in a fair and nondiscriminatory way selected by the Trustee, the then fair market value of each and every item constituting the Trust. If the fair market value of an asset in the Trust Fund is not readily available from a national securities exchange or a generally recognized market, the fair market value of the asset shall be determined by the Board, based on a good faith appraisal by an independent appraiser selected by the Board. The Trustee may rely on valuations provided to it from a registered or unregistered investment fund without undertaking an independent valuation of such funds. Any such computation, determination, or action of the Trustee made in good faith shall be binding and conclusive upon all parties to the this Trust Agreement and upon all persons interested or who may become interested, directly, or indirectly, in the Trust Fund.
- (h) **To Distribute Beneficial Interests and Require Settlement Before Making Distribution.** To pay to beneficiaries of the Trust all or a portion of the beneficial interests in the Trust at the direction of the Board, and to withhold and pay any taxes due to the proper taxing authority as directed by the Board or required by law. In making distribution of any beneficial interest, to demand and receive a complete settlement of accounts from the beneficiary, or other person or persons otherwise so entitled, before the Trustee shall be obligated to pay, distribute, or make available any part thereof to such beneficiary or to such person or persons.
- (i) **To Select the Form and Method of Accounting.** To select and determine the appropriate forms, methods and books of account for use by the Trustee in the management and administration of the Trust herein created and for the purpose of accounting for the same.
- (j) **To Pay Trustees Fees and Expenses.** To pay from out of the Trust Fund to the Trustee all costs, fees, expenses, taxes, and other charges and expenses of administration and distribution of the Trust Fund, and the Trustee shall further be entitled to reimburse itself for or on account of any such item of disbursement from and out of the Trust Fund from time to time held by the Trustee.
- (k) **To Hold and Deposit Funds.** To hold uninvested such cash funds as may appear reasonably necessary to meet the anticipated cash requirements of the Trust from time to time, and to deposit such funds or any part thereof, either separately or together with other trust funds under the control of the Trustee, in its own deposits, for any

investment, distribution, or similar transaction, without incurring liability for payment of interest thereon, notwithstanding that the Trustee or a related entity may directly or indirectly benefit from any float that accrues on such deposits. The Board acknowledges that any such float shall constitute part of the Trustee's compensation for its services in addition to any other fees, expenses or revenue received by the Trustee and its affiliates in connection with its services or investments hereunder.

- (l) **To Provide Ancillary Services.** To provide ancillary services to the Trust for not more than reasonable compensation.
- (m) **To Use Collective Trust Funds as Directed.** Pursuant to directions under Sec. 3.1(a) and 3.2 hereof, to invest and reinvest all or any part of the principal and income of the Trust through any common or collective trust fund or pooled investment fund maintained by the Trustee for the collective investment of funds held by it in a fiduciary capacity. The provisions of the document governing any such common or collective trust fund as it may be amended from time to time shall govern any investment therein and are hereby made a part of this Trust Agreement.
- (n) **To Rely upon Instructions and Documents.** To in good faith rely upon written and oral instruction received from an Board, and any other person or entity that the Trustee reasonably believes to have the authority to act on behalf of an Board, without duty to inquire further as to the facts or other information provided it.
- (o) **To Pay Administrative Expenses of the Fund.** To pay Fund employees' salaries and other administrative expenses of the Fund as directed by the Board.

Sec. 4.2 Appointment of Investment Adviser as Investment Manager. The Board may appoint one or more parties that are registered as investment advisers under the Investment Advisers Act of 1940 to serve as an investment manager. The appointment of any such investment manager and investment of the Trust Fund pursuant to such appointment shall be subject to the following, notwithstanding any provisions of this Trust Agreement to the contrary:

- (a) Written notice of each such appointment shall be given to the Trustee a reasonable time in advance of the effective date of the appointment. Such notice shall state what portion of the Trust Fund is to be invested by the investment manager and shall direct the Trustee to segregate such portion of the Trust Fund into a separate account for such investment manager. Each such separate account is hereinafter in this section referred to as an "Investment Account."
- (b) The Trustee shall not act on any direction or instruction of the investment manager until the Trustee has been furnished with an acknowledgment in writing by the investment manager that it is a fiduciary with respect to the Trust.
- (c) There shall be a written agreement between the Board and each investment manager. The Trustee shall receive a copy of each such agreement and all amendments thereto and shall give written acknowledgment of receipt of same.
- (d) Among other matters, each such agreement with an investment manager shall provide that:
 - (1) all directions given by an investment manager to the Trustee shall be in writing, electronic or otherwise, signed by an officer or partner of the investment manager or by such other person as may be designated in writing by the investment manager; provided that the Trustee shall accept oral directions for the purchase or sale of securities, which shall be confirmed by such authorized personnel of the investment manager in writing;
 - (2) in all events the Trustee is to retain physical custody of or title to all assets included in an Investment Account; and
 - (3) the Board, by written notice to the investment manager and the Trustee, may modify or terminate the authority of the investment manager.

- (e) Payment of the cost of the acquisition, sale, or exchange of any security or other property for an Investment Account shall be charged to that Investment Account unless the agreement between the Board and investment manager provides otherwise.
- (f) So long as the appointment of an investment manager is in effect, the investment manager shall have full power and authority to act on behalf of the Board to direct the Trustee as to, and full responsibility for, investment of its Investment Account and for the retention and disposition of any assets at any time included in its Investment Account. Subject to any limitations in the agreement between the Board and the investment manager, the investment manager shall have the same investment powers described in Sec. 4.1 hereof.
- (g) The Investment Manager shall direct the Trustee with respect to the tendering and voting of all stocks and other securities in the Investment Account.
- (h) The Trustee shall make available to an investment manager copies of or extracts from such portions of its accounts, books, or records relating to the Investment Account of such investment manager as the Trustee may deem necessary or appropriate in connection with the exercise of the investment manager's function, or as the Board may direct.
- (i) All charges and costs to the Trust (other than those provided for in subsection (e) hereof) shall be made against each Investment Account in such proportions as the Board may direct from time to time.
- (j) If the authority of an investment manager is terminated and a successor investment manager is not appointed, the Board shall assume investment discretion and responsibility over the assets held in the Investment Account. Until receipt of written notice of the termination of the authority of an investment manager, the Trustee shall be fully protected in assuming the continuing authority of such investment manager.
- (k) Any direction by an investment manager shall be complete as to the terms with respect thereto, and the Trustee shall have no obligation whatsoever to invest or otherwise manage any asset of an Investment Account.
- (l) An investment manager shall be entitled to receive such reasonable compensation for its services as may be agreed upon with the Board. Such compensation shall be paid from the Trust Fund. The Trustee shall not be responsible for determining the reasonableness of any compensation to be paid to an investment manager.
- (m) The Board agrees to indemnify the Trustee for and to hold it harmless against any and all liabilities, losses, costs, or expenses (including legal fees and expenses) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against the Trustee at any time by reason of actions taken in accordance with directions of an investment manager or action omitted because no such directions are given. However, no indemnification shall be required in any case in which such liabilities, losses, costs, or expenses are incurred by the Trustee because it participated knowingly in, or knowingly undertook to conceal, an act or omission of an investment manager, knowing such act or omission was a breach of fiduciary duty by such investment manager.

ARTICLE V

CHANGE IN TRUSTEE

Sec. 5.1 **Resignation.** The Trustee may resign at any time by giving thirty days' advance written notice to the Board, or such shorter period of time as may be mutually agreed upon by the Board and the Trustee.

Sec. 5.2 **Removal.** The Board may remove any Trustee by giving thirty days' advance written notice to the Trustee, or such shorter period of time as may be mutually agreed upon by the Board and the Trustee.

Sec. 5.3 **Successor.** In the event of the resignation or removal of a Trustee, the Board shall promptly appoint a successor; if no appointment of a successor is made by the Board within a reasonable time after resignation or removal of the Trustee, any court of competent jurisdiction may appoint a successor, after such notice, if any, as such court may deem proper and suitable. The retiring sole Trustee shall be furnished with written notice from the

Board or the court, as the case may be, of the appointment of the successor, and shall also be furnished with written evidence of the successor's acceptance of the trusteeship.

Sec. 5.4 Duties on Succession. Every successor trustee accepting a trusteeship under this Trust Agreement shall have all the right, title, powers, duties, exemptions, and limitations of the Trustee hereunder. If a trustee is being replaced, such trustee shall, upon the appointment and acceptance of a successor trustee, transfer and deliver the assets of the Trust Fund to the successor, after reserving such reasonable amount as it shall deem necessary to provide for its fees and expenses and any sums chargeable against the Trust Fund for which it may be liable. Any predecessor trustee shall do all acts necessary to vest title of record in the successor trustee. A successor trustee, including the Trustee hereunder, shall not be in any way liable or responsible for anything done or omitted to be done by any predecessor trustee, nor shall a successor trustee have any duty to examine the administration of a predecessor trustee. A successor trustee, including the Trustee hereunder, may retain all existing securities and investments of the Trust Fund, including any securities of the Trustee which were held by the predecessor trustee, unless directed otherwise by the Board. The Board shall indemnify and hold the Trustee harmless for any liability arising out of the acts or omissions of any predecessor trustee.

Sec. 5.5 Changes in Organization of Trustee. If any corporate trustee acting hereunder is merged with another corporation or association, or is succeeded by another corporation or association, through consolidation or otherwise, the acquiring corporation or association shall thereupon become Trustee hereunder. If any corporate trustee acting hereunder sells and transfers substantially all of its assets and business to another corporation or association, the acquiring corporation or association shall thereupon become Trustee hereunder. When authorized by statute or court order any corporate trustee acting hereunder may permit itself to be succeeded as such corporate trustee by another corporation or association in which case the acquiring corporation or association shall thereupon become Trustee hereunder. In each case the acquiring corporation or association shall be Trustee of the Trust as though specifically so named herein. Notwithstanding the foregoing provisions of this section, an acquiring corporation or association shall become Trustee hereunder only if it has trust powers, is formed under the laws of the United States of America or any subdivision thereof, and meets the requirements of the Plan.

ARTICLE VI

MISCELLANEOUS

Sec. 6.1 Benefits May Not Be Assigned or Alienated. Except as otherwise expressly permitted by the Plan or required by law, the interests of persons entitled to benefits under the Plan or this Trust Agreement may not in any manner whatsoever be assigned or alienated, whether voluntarily or involuntarily, or directly or indirectly.

Sec. 6.2 Incompetent Payee. If in the opinion of the Board a person to whom the Trustee is directed to make one or more payments is disabled from caring for his or her affairs because of mental condition, physical condition, or age, the Board may direct that payment due such person made to such person's guardian, conservator, or other legal personal representative upon furnishing the Board with evidence satisfactory to the Board of such status. Prior to the furnishing of such evidence, the Trustee may be directed by the Board to make payments due the person under disability, for such person's use and benefit, to any person or institution then in the opinion of the Board caring for or maintaining the person under disability. The Trustee shall have no liability with respect to payments so made. The Trustee shall have no duty to make inquiry as to the competence of any person to whom it is directed to make payment.

Sec. 6.3 Evidence. Evidence required of anyone under this Trust Agreement may be by certificate, affidavit, document, or other instrument which the person acting in reliance thereon considers to be pertinent and reliable, and to be signed, made, or presented by the proper party.

Sec. 6.4 Dealings of Others with Trustee. No person (corporate or individual) dealing with the Trustee shall be required to see to the application of any money paid or property delivered to the Trustee or to determine whether the Trustee is acting pursuant to any authority granted to it under this Trust Agreement.

Sec. 6.5 Audits. The Board shall have the right to cause the books, records, and accounts of the Trust Fund that relate to the Trustee to be examined and audited by independent auditors designated by the Board at such times as the Board may determine, and the Trustee shall make such books, records, and accounts available for such purposes at all reasonable times.

Sec. 6.6 Trustee Warranty Against Conviction. A person accepting trusteeship hereunder warrants that such person has not been convicted of or imprisoned for a crime.

Sec. 6.7 Successors and Assigns. The provisions of this Trust Agreement shall be binding on the parties and their successors and assigns.

Sec. 6.8 Waiver of Notice. Any notice required under this Trust Agreement may be waived by the person entitled thereto.

Sec. 6.9 Headings. Headings at the beginning of articles and sections are for convenience of reference, shall not be considered a part of this Trust Agreement, and shall not influence its construction.

Sec. 6.10 Use of Compounds of Word "Here". Use of the words "hereof", "herein", "hereunder", or similar compounds of the word "here" shall mean and refer to the entire Trust Agreement unless the context clearly indicates otherwise.

Sec. 6.11 Construed as a Whole. The provisions of this Trust Agreement shall be construed as a whole in such manner as to carry out the provisions thereof and shall not be construed separately without relation to the context.

Sec. 6.12 Counterparts. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Such counterparts shall constitute but one and the same instrument, which may be sufficiently evidenced by any one counterpart.

Sec. 6.13 Compensation to Trustee and Affiliates from Mutual Funds. The Board, in its fiduciary capacity, acknowledges that the Trustee and its affiliates may receive, directly or indirectly, compensation from mutual funds in which the Trust Fund is invested for investment advisory, recordkeeping, and/or other services provided by the Trustee or its affiliates to such mutual funds. Such compensation is in addition to the fees received directly by the Trustee for its services hereunder. The Trustee shall provide the Board a prospectus or other disclosure of the compensation received by the Trustee and its affiliates for each such mutual fund.

Sec. 6.14 Force Majeure. Notwithstanding anything to the contrary contained herein, the Trustee shall not be responsible or liable for any losses to the Trust Fund resulting from any event beyond the reasonable control of the Trustee, including but not limited to nationalization, strikes, expropriation, devaluation, seizure, eminent domain or similar action by any governmental authority; or enactment, promulgation, imposition or enforcement by any such governmental authority of currency restrictions, exchange controls, levies or other charges affecting the Trust's property; or the breakdown, failure or malfunction of any utility, telecommunication, or computer systems; or any order or regulation of any banking or securities industry including changes in market rules and market conditions affecting the execution or settlement of transactions; or acts of war, terrorism, insurrection or revolution; or acts of God; or any other similar event.

Sec. 6.15 Facsimile and Electronic Mail Instructions. The Trustee may accept facsimile or electronically transmitted (e-mail) instructions from Board. Trustee may consider any e-mail communications received from the e-mail addresses provided to Trustee by the Board in writing, which may be an electronic writing, as authentic until the Board provides the Trustee written notice, which may be an electronic notice, to the contrary. The Board acknowledges that it shall not cause or permit facsimile or e-mail to be used for time-sensitive communications, for example, for directing the sale or purchase of securities. If the Board elects to communicate by facsimile or e-mail for time-sensitive matters, the Board acknowledges that the Trustee will act within a reasonable time after receipt of the facsimile or e-mail message. The Board agrees to indemnify and hold harmless Trustee, its agents, affiliates, successors and assigns for and against any liability, claim, loss, or expense it may incur as a result of its reasonable

reliance on facsimile or electronically transmitted (e-mail) instructions from Board. This indemnification shall survive the termination of this Agreement unless otherwise mutually agreed by the parties.

ARTICLE VII

AMENDMENT AND TERMINATION

Sec. 7.1 No Diversion. The Trust Fund shall be for the exclusive purpose of providing benefits to beneficiaries of the Trust and defraying reasonable expenses of administering the Trust. No part of the corpus or income of the Trust Fund may be used for, or diverted to, purposes other than for the exclusive benefit of the beneficiaries of the Trust or payment of Trust expenses, and no amendment shall be effective if it causes such diversion. Notwithstanding the foregoing:

Sec. 7.2 Amendment. Subject to the provisions of Sec. 8.1 hereof, this Trust Agreement may be amended at any time or from time to time and in any manner by a written agreement of the Trustee and the Board which specifically states that it is an amendment of this Trust Agreement. The provisions of any such amendment may be made applicable to the Trust Fund as constituted at the time of the amendment as well as to the part of the Trust Fund subsequently acquired.

Sec. 7.3 Termination of Plan. If the provisions of the Plan are repealed, revoked or terminated, this Trust shall nevertheless continue in effect until the Trust Fund has been distributed in accordance with the provisions of the Plan and this Trust Agreement.


IN WITNESS WHEREOF, the Board and the Trustee have caused this Trust Agreement to be executed by their duly authorized officials, as of the day and year first above written.

THE BOARD OF DIRECTORS OF THE FIRE AND POLICE PENSION FUND

By:  FRANK HAMILTON
Its President

By:  David Brask
Its Secretary

WELLS FARGO BANK, NATIONAL ASSOCIATION

By:  H. Jacob Vogelring
Its Vice President