

RESOLUTION 18-45

**TO APPROVE REVISIONS TO THE DUCK RIVER AGENCY TRUST
AGREEMENT WITH THE CITY OF SPRING HILL**

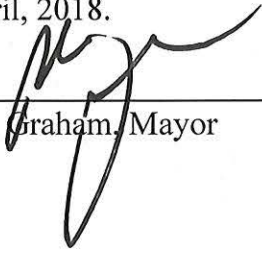
WHEREAS, the City of Spring Hill currently contributes to the Duck River Agency trust fund (also known as "The Nickel Fund") with funds collected through customer accounts; and

WHEREAS, the Duck River Agency has proposed the following changes to the trust agreement:

1. New name: Formerly known as Trust Fund B, the new agreement refers to the fund as the "Duck River Agency Operating and Project Fund".
2. Fees have been reduced: The former language regarding fees has been changed. The old trust B agreement, as modified in 2000, is attached so changes to the fee structure can be reviewed.
3. Approval process for disbursement of funds: For additional project payments, not included in the annual plan and in excess of \$50,000 per project, the old agreement required authorization in writing by the Duck River Agency and approval of a majority of the water systems. The new agreement requires a recommendation by DRATAC and approval by the DRA board for all project payments. This simplifies the language and makes clear the approval process.
4. Payments to water supply fund: The old agreement required payments into a water supply fund which no longer exists due to the requirements having been met to close the fund.

NOW THEREFORE, BE IT RESOLVED, that the City of Spring Hill, Board of Mayor and Aldermen approves revisions to the Duck River Agency trust agreement.

Passed and adopted this 16th day of April, 2018.



Rick Graham, Mayor

ATTEST:



April Goad, City Recorder

LEGAL FORM APPROVED:



Patrick Carter, City Attorney

MODIFICATION TO TRUST AGREEMENT

Between

TENNESSEE DUCK RIVER DEVELOPMENT AGENCY

and

FIRST FARMERS AND MERCHANTS NATIONAL BANK

This MODIFICATION to the original TRUST AGREEMENT dated 19 December 1988, by and between TENNESSEE UPPER DUCK RIVER DEVELOPMENT AGENCY, a corporation organized and existing by virtue of an Act of the General Assembly of the State of Tennessee (Public Acts of 1965, ch. 80) ("Agency"), and FIRST FARMERS AND MERCHANTS NATIONAL BANK OF COLUMBIA, a bank chartered by the State of Tennessee ("Trustee"), their successors and assigns, is entered into this 26th day of October, 2000.

WITNESSETH:

WHEREAS, Agency entered the original Trust Agreement with Trustee on December 19, 1988 in accordance with Agencies contract with the Tennessee Valley Authority ("TVA") dated July 1, 1971 (as supplemented, "Contract No. TV-35326A" attached as Exhibit A); and

WHEREAS, Agency transferred and assigned to Trustee, in trust and according to the terms and conditions set forth in the original Trust Agreement a sum of money, the Trust Fund, as required by both Contract No. TV-35326A and the Water Systems Agreement, which has been controlled, invested, managed, administered, and distributed in trust on behalf of TVA, the Agency and the Water Systems since that time; and

WHEREAS, Agency has entered into a new contract with TVA dated November 16, 1999

(Contract No. 99RE3-255721) which terminates and supersedes Contract No. TV-35326A; and

WHEREAS Contract No. 99RE3-255721 requires that this Trust continue to be maintained and requires the Agency to pay certain sums of money into a Water Supply Fund (Contract No. 99RE3-255721 is attached hereto as Exhibit C); and

WHEREAS, the Water Systems Agreement which the Agency entered into with the City of Manchester, Tennessee; the Tullahoma Utility Board; the Shelbyville Power, Water and Sewerage Board; the City of Lewisburg, Tennessee; and the Board of Public Utilities of the City of Columbia, Tennessee (collectively “Water Systems”), dated September 13, 1971 (as modified) has been further modified to support the continuing efforts of the Agency to secure the long term supply of clean water for the Duck River region (Water Systems Agreement is attached as Exhibit B); and

WHEREAS, those provisions of the original Trust Agreement remaining in effect with out change are incorporated below along with the modifying provisions required by Contract No. 99RE3-25721 (Exhibit C) and the fourth modification to the Water Systems Agreement (Exhibit B); and

WHEREAS, Agency and Trustee have signed this modification to the Trust Agreement.

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

ARTICLE I

TRANSFER TO TRUSTEE

Trustee shall continue, uninterrupted, to control, invest, manage, administer, and distribute in trust on behalf of TVA, the Agency, and the Water Systems the Trust Fund

transferred to Trustee under the original Trust Agreement as defined herein.

ARTICLE II

DUTIES OF TRUSTEE

1. Investment. Trustee shall devise and implement a prudent program for the investment of the Trust Fund; PROVIDED, however, that investment shall be limited to the following:

(a) securities, bonds and notes of the United States of America or any of its agencies or instrumentalities, including but not limited to the Federal National Mortgage Association, the Federal Home Loan Bank, the Federal Farm Credit Board, and the Student Loan Marketing Association;

(b) notes or bonds secured by real property and insured by the Federal Housing Administration, the Veterans Administration, or any other agency or instrumentality of the United States;

(c) cash accounts, certificates of deposit, savings certificates or similar accounts in national or state banks or savings and loan associations regulated by the Federal Government and/or the State of Tennessee, including First Farmers and Merchants National Bank of Columbia; PROVIDED, however, that any such deposit in a bank or savings and loan association shall be fully insured for the full amount of said deposit, or shall be protected by requiring the depository bank or savings and loan association to pledge and deliver to Trustee or his nominee negotiable securities, bonds, or notes of the type in which Trustee is authorized to invest under Article II paragraph 1, which pledged negotiable documents shall be equal in value to the amount of uninsured deposits Trustee has placed in pledgee's bank or savings and loan association; and

PROVIDED FURTHER:

- (1) no such pledge of negotiable documents shall be required of First Farmers and Merchants Bank of Columbia, except when deposits under this paragraph 1(C) in said Bank exceed \$100,000;
- (2) Trustee shall not have on deposit in investments under this paragraph 1(c) more than \$100,000 at any one time in First Farmers and Merchants National Bank of Columbia;
- (3) the limitation contained in subparagraph (2) above may from time to time be exceeded for periods not to exceed seven (7) days;
- (d) Interests in an open-end management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1, et seq., as amended from time to time), provided that the portfolio of said investment company is fully collateralized by and limited to the United States government obligations and repurchase agreements, as contemplated by Tenn. Code Ann. 35-3-103(b), as amended from time to time;
- (e) Prime commercial paper of corporations, the annual gross receipts of which exceed \$1,000,000, provided that said commercial paper is rated in the highest respective rating category, by no less than two independent commercial paper rating services which are generally recognized and accepted by the financial services industry;
- (f) Repurchase agreements with recognized primary government dealers, provided that all such repurchase agreements are continuously secured by collateral held by the Trustee or by a third party on behalf of the Trustee pursuant to a security agreement giving the Trustee a first priority and perfected security interest in obligations of the United States government, or an agency or instrumentality thereof, as described in section (a)

hereinabove.

In the event Trustee is unable to determine whether a particular investment is authorized hereunder, he shall obtain the written approval of Agency prior to making such investment.

2. Bonds and Insurance. Trustee shall assure protection of the Trust Fund from loss due to a breach of Trustee's fiduciary duty under this Trust Agreement. To do so, Trustee may rely on the bond provided by First Farmers and Merchants National Bank of Columbia to protect accounts for which said bank acts as trustee. To the extent that said bond does not fully protect the Trust Fund, Trustee shall, at the expense of the trust, secure an additional bond satisfactory to Agency which shall at any given time be sufficient to protect total trust assets.

No such bond or insurance shall be required with respect to funds, negotiable documents or property in the custody of a Federal Reserve Bank. Further, no such bond or insurance shall be required with respect to accounts held in banks or savings and loan associations to the extent the requirements of Article II, paragraph 1(c) are satisfied.

Trustee shall also assure protection of all negotiable instruments, certificates of stock, or other tangible, irreplaceable documents from loss due to fire, theft, flood, or any other form of loss. To do so, Trustee shall at all times maintain a bond, bonds, or a policy of casualty insurance fully insuring all such documents or property in its immediate possession and control, or in the possession and control of a bailee to the extent said bailee is not fully protected by similar bonds or insurance.

3. Payments to Water Supply Fund. Trustee shall pay into the Water Supply Fund twenty percent (20%) of the payments received annually from the Water Systems under the Water Systems Agreement, as amended. Trustee shall also pay into the Water Supply Fund such additional amounts as may be authorized from time to time by a majority of the Water Systems

and the Agency. Payments shall be made until a total amount of \$350,000 has been deposited into the Water Supply Fund.

4. Agency Operation Payments. Trustee shall pay to the Agency on an annual basis an amount not to exceed sixty percent (60%) of the total contributions to the trust fund from the participating water systems for the annual operating (administrative budget) of the Agency. The Agency annual work plan may provide for additional withdrawals from the Trust fund for specific projects approved by the Agency's Board of Directors and as set forth in the annual work plan not to exceed Fifty Thousand Dollars (\$50,000.00) per project. Trustee may reasonably rely on written requests signed by two (2) authorized Agency Board members stating the purpose of the withdraw. Payments under this Article shall not be permitted to reduce the fair market value of the assets in trust below One Million Dollars (\$1,000,000.00)

5. Other Payments. Trustee shall make other payments as authorized in writing by the Agency and a majority of the Water Systems. Payments under this Article shall not be permitted to reduce the assets of this trust to a value which is less than the remaining obligation to the Water Supply Fund.

6. Payment to Water Systems. In the event that Contract No. 99RE3-255721 is fully terminated and all Water Systems remaining parties to the Water Systems Agreement vote unanimously to terminate Trust Fund B, all money or assets remaining in trust shall be distributed to the remaining water Systems in an amount proportional to each system's payments into the fund.

7. Payment of Costs and Fees. Trustee shall pay itself an annual fee at the close of each fiscal year of the trust as follows: one-half of 1% of the first \$250,000 book value as of the last business day of the fiscal year ("Book Value"); one-third of 1% of the next \$750,000 Book

Value; one-sixth of 1% of the next \$4,000,000 Book Value; and one-twelfth of 1% of amounts over \$5,000,000. Said fee shall constitute trustee's entire compensation for acting as Trustee hereunder and shall cover all standard expenses including but not limited to indirect clerical, office, and overhead expenses incurred by the trust fund or the Trustee in the performance of trust obligations.

8. Annual Audit. Trustee shall, at the expense of the trust, obtain an annual audit of the trust fund by a certified public accountant, a copy of which shall be sent to Agency, TVA and each of the Water Systems. In addition, Trustee shall file monthly statements with each of the above summarizing all trust fund transactions for that month. Audit reports and monthly transaction reports shall be provided to TVA until such a time as the required transfers to the Water Supply Fund have been completed.

9. Other Duties and Powers. Trustee shall have all other duties and powers not specifically enumerated, which are not inconsistent with the express provisions of this Trust Agreement, and which may be necessary to fully protect and defend the Trust Fund, including the right to use the Trust Fund in conjunction with the defense and preservation of the Trust Fund and in the collection of debts owed to the fund; PROVIDED that Trustee shall, prior to instituting or defending any law suit, or if time is of the essence as soon thereafter as possible, notify Agency which shall, be entitled, if it so elects, to prosecute or defend said suit on Trustee's behalf at the expense of the trust fund.

10. Investment Limitation. The Trustee shall not maintain the indicia of ownership of any assets outside the jurisdiction of the District Courts of the United States.

11. Resignation or Termination. In the event Trustee resigns, or its rights as Trustee are

terminated, it shall immediately assign all trust funds, property, and records in its hands to a substitute trustee, to be appointed by Agency and approved by a majority of the Water Systems.

ARTICLE III

DURATION AND TERMINATION

1. Duration. Except as hereinafter provided, this trust shall continue until all Trust assets have been disbursed.

2. Bilateral Modification. This Trust Agreement may be modified at any time by the consent in writing of the Agency and all the Water Systems.

3. Termination. After all obligations to the Water Supply Fund have been met, this trust may be terminated at any time by the written consent of all Water Systems remaining parties to the Water Systems Agreement. All money or assets remaining in trust shall be distributed to the remaining Water Systems in an amount proportional to each system's payments into the fund.

4. Resignation. Trustee may resign upon sixty (60) days written notice to both Agency and the Water Systems. Upon the termination or resignation of Trustee, Agency shall appoint a substitute trustee when required by this Trust Agreement, subject to the prior written consent of a majority of the Water Systems.

ARTICLE IV

MISCELLANEOUS PROVISIONS

1. Enforcement. It is expressly agreed that this trust may be specifically enforced by the Agency or any of the Water Systems.

2. Conflict. This Trust Agreement shall be subject to the contracts attached hereto as Exhibits B. and C., which shall control in case of conflict with this Agreement.

3. Inspection of Trustee Records. At all reasonable times, Trustee's books and records relating to this trust shall be open to inspection by Agency, the Water Systems and TVA and their respective agents. TVA shall have access until all required transfers to the Water Supply Fund have been completed.

4. Governing Law. This Trust Agreement shall be construed, regulated and administered pursuant to the laws of the State of Tennessee.

5. Prudent Man Rule. In discharging its duties, the Trustee shall act with the skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims by diversifying the investments of the trust to the extent the Trustee has the discretionary authority and responsibility for such investments, so as to minimize the risk of loss, unless under the circumstances it is clearly prudent not to do so.

6. Conflict of Interest. The Trustee shall not:

- (a) deal with the assets of the Trust Fund in its own interest or for its own account;
- (b) in its individual or in any other capacity, act in any transaction involving the Trust or in behalf of a party (or represent a party) where interests are adverse to the interest of the trust or the interest of Agency or the Water Systems; or
- (c) receive any consideration for its own account from any party dealing with the Trust Fund in connection with a transaction involving the assets of the Trust; provided, however, that nothing in this section shall be construed to preclude the Trustee from receiving reasonable compensation for services rendered, or for

reimbursement of expenses properly and actually incurred in the performance of its duties as permitted by this Trust Agreement.

7. Notice. To the extent Agency notice and approval is necessary, it shall be valid if given or received by the Chairman at the Agency office at 210 E. Depot Street, Shelbyville, Tennessee 37160. To the extent that notice or approval of a Water System is necessary it shall be valid if given or received by the General Manager at the systems main business office. To the extent TVA notice and approval is necessary, it shall be valid if given or received by the Project Manager, Navigation and Structures Engineering, River Operations, TVA, at 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

8. Water Systems Approval This Agreement shall not be effective unless and until approved by the Water Systems which are parties to the Water Systems Agreement.

9. TVA Approval. This Agreement shall not be effective unless and until approved by TVA in the space provided.

Attest: Margaret A. Lasa

Tennessee Duck River Development Agency

By: Spide L. Warrick

Chairman of the Board of Directors

Attest: William L. Massey, Jr.

First Farmers & Merchants National Bank

By: A. Houston Parks

Senior Trust Officer

APPROVED:

Attest: AB Miller

CITY OF MANCHESTER, TENNESSEE

By: Coyce Hobbitt
Title: Mayor

TULLAHOMA UTILITY BOARD

Attest: August A Miller

By: James C. Murray
Title: _____

THE SHELBYVILLE POWER, WATER AND SEWERAGE BOARD

Attest: James R. Wilson

By: Robert A. Brown
Title: _____

CITY OF LEWISBURG, TENNESSEE

Attest: Maria DeLoach

By: Robert Philip
Title: Mayor, City of Lewisburg

THE BOARD OF PUBLIC UTILITIES OF CITY OF COLUMBIA

Attest: James O. Clark

By: John J. Cooley
Title: _____

BEDFORD COUNTY UTILITY DISTRICT

Attest: Wendell R. Smith Sr.

By: John E. Long
Title: _____

APPROVED:

Attest: Lerose D. Harris

TENNESSEE VALLEY AUTHORITY

By: Ernest C. Johnson
Title: Senior Vice President