

CARLTON GERRELL, MAYOR
KIM FOSTER, CITY MANAGER
FRED MCLEAN, ATTORNEY



JACKIE JONES, VICE MAYOR
TERRY FULLER, COMMISSIONER
GAYLE GRIFFITH, COMMISSIONER
SAM THARPE, COMMISSIONER

**CITY OF PARIS, TENNESSEE
BOARD OF COMMISSIONERS SPECIAL CALLED MEETING AGENDA**

**CITY HALL COURTROOM
May 14, 2020
5:00 P.M.**

PUBLIC HEARING

- 1) Resolution Authorizing the Formation of the Paris Utility Authority**

SPECIAL CALLED MEETING

Call to Order: Carlton Gerrell, Mayor

Roll Call: Traci Pillow, Finance Director

Pledge of Allegiance and Prayer

Board Will Hear Comments from Citizens

Board Will Hear Comments from the Commission

OLD Business

- 1) Resolution Authorizing the Formation of the Paris Utility Authority**

OLD BUSINESS
AGENDA ITEM NO. 1
Resolution Authorizing the Formation of the Paris Utility Authority

Terry Wimberley, General Manager of the Paris Board of Public Utilities presented a Resolution and two exhibits during the regular scheduled City Commission Board Meeting on May 7, 2020 with regard to the formation of the Paris Utility Authority for consideration.

For several months now Terry Wimberley and the Paris BPU Board of Commissioners has been investigating the feasibility of forming a Utility Authority. The benefits for the BPU as well as the City of Paris have been found to be well worth the effort to move forward with this formation. On Tuesday, April 28, the Paris BPU Board passed a resolution to recommend to the Paris City Commission they form the Paris Utility Authority.

Attached is the Resolution, the revised Certificate of Incorporation (Exhibit A) and Assignment and Assumption Agreement (Exhibit B). City Attorney Fred McLean made the revisions based on the City Commissioner's direction at last week's commission meeting, and then the BPU's transition attorneys reviewed and agreed on the content.

RESOLUTION NO. 1643

A RESOLUTION AUTHORIZING THE FORMATION OF THE PARIS UTILITY AUTHORITY PURSUANT TO THE MUNICIPAL ENERGY AUTHORITY ACT, APPROVING THE FORM OF THE CERTIFICATE OF INCORPORATION FOR SUCH AUTHORITY, AND AUTHORIZING THE TRANSFER OF THE WATER, WASTEWATER, AND ELECTRIC SYSTEMS OWNED BY THE CITY AND OPERATED ON BEHALF OF THE CITY BY THE BOARD OF PUBLIC UTILITIES TO THE AUTHORITY

WHEREAS, the Municipal Energy Authority Act, Tennessee Code Annotated Section 7-36-101 *et seq.* (the "Act"), authorizes a city to create a utility authority and to transfer to such authority the assets and liabilities of its electric, water and wastewater systems; and

WHEREAS, the Board of Commissioners of the City of Paris, Tennessee (the "City") desire to form Paris Utility Authority (the "Authority") pursuant to the Act; and

WHEREAS, pursuant to the Act, the City is authorized to transfer all of the City's right, title and interest in and all of the assets of City's electric, water and wastewater systems, which do business as the Paris Board of Public Utilities ("Paris BPU"), to the Authority; and

WHEREAS, as a condition of the transfer of the City's rights, title and interest in and all of the assets of Paris BPU to the Authority, the Authority must assume and agree to pay or otherwise satisfy all liabilities associated with Paris BPU.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Paris, Tennessee by a two-thirds (2/3) or greater vote that:

1. The Board of Commissioners finds and determines that it is wise, expedient, necessary and advisable that an authority be formed;
2. The Mayor of the City is authorized to take all necessary or appropriate steps to form an authority pursuant to the Act;
3. The certificate of incorporation for the Authority is approved in substantially the form attached hereto as Exhibit A, with such changes as the Mayor shall approve, as evidenced by the Mayor's execution of the certificate of incorporation;
4. The Mayor and the Mayor's designees are each individually authorized to take all necessary or appropriate steps to transfer all of the City's rights, title and interest in and all of the electric, water and wastewater system assets of Paris BPU to the Authority, provided that as a condition to such transfer, the Authority must assume all liabilities of the electric, water and wastewater systems of Paris BPU, with all such assumptions to become effective with the transfer of all such assets from the City to the Authority;
5. The Mayor and the Mayor's designees are each individually authorized to take such actions from time to time as are appropriate or necessary to transfer the electric, water and wastewater system assets of Paris BPU to and to cause the assumption of all electric, water and wastewater system liabilities of Paris BPU by the Authority;
6. The Mayor and the Mayor's designees are each individually authorized to take such further actions and to execute such agreements, documents or other agreements from time to time as may be necessary or appropriate to carry out the intent of this resolution, including, without limitation, an Assignment and Assumption Agreement in substantially the form attached hereto as Exhibit B with such changes as the Mayor shall approve, as evidenced by the Mayor's execution of the Assignment and Assumption Agreement; and
7. Upon transfer of the electric, water and wastewater system assets of Paris BPU to the Authority and the Authority's assumption or satisfaction of all obligations of the electric, water and wastewater systems of Paris BPU, the jurisdiction and control over such system shall be transferred from the City to the Authority.

This the 14th day of May, 2020.

Mayor

Finance Director

CERTIFICATE OF INCORPORATION
OF THE
PARIS UTILITY AUTHORITY

1. Name. The name of the corporation is PARIS UTILITY AUTHORITY (the "Authority"). The legal name of the Authority may only be amended by an amendment to this Certificate of Incorporation. The Authority may adopt assumed corporate names from time to time by following the process outlined in Tennessee Code Annotated § 7-36-105(d).

2. Approval of Formation. Permission to organize the Authority has been granted by a resolution of the Board of Commissioners of the City of Paris, Tennessee that was duly adopted on May 14, 2020, a copy of which is attached as Appendix A hereto and which resolution remains in full force and effect.

3. Principal Office. The location of the principal office of the Authority shall be 117 E. Washington Street, Paris, Tennessee 38242.

4. Purpose. The Authority shall be for the purpose of planning, acquiring, constructing, improving, furnishing, equipping, financing, owning, operating, and maintaining electric, water, or wastewater utility and telecommunications systems within or outside the corporate limits of the City of Paris, Tennessee (the "City of Paris") or outside this state, and to exercise all powers granted to utility authorities by the Municipal Energy Authority Act as enacted by Public Chapter No. 995 of the 2016 Public Acts of the State of Tennessee (the "Act"), as amended, with respect to electric, water, wastewater, and telecommunications services.

5. Board of Directors.

(a) Number of Directors. The Board of Directors of the Authority shall have five (5) members.

(b) Initial Directors and Terms of Office. The names and initial terms of the initial Board of Directors are:

Name	Term of Office
Ralph Anderson	Expires June 30, 2020
Terry Fuller	Expires June 30, 2021
Butch Powers	Expires June 30, 2021
David Flowers	Expires June 30, 2022
Michael Murphey	Expires June 30, 2023

Except as otherwise provided in the Act or this section, Directors shall serve until their successor(s) are duly appointed.

(c) Subsequent Directors. All subsequent appointments of Directors shall be for four-year terms commencing on July 1 and ending on June 30, and such Directors shall continue to serve following expiration of their respective four-year terms until reappointment or until their successors are duly appointed by the Board of Directors of the Authority and approved by the Board of Commissioners of the City of Paris, Tennessee. Not later than May 1 prior to the expiration of the term of office of any Director, the Board of Directors of the Authority shall appoint a person, subject to the right of the Board of Commissioners to affirmatively approve or reject such appointment, to fill the vacancy created by an expiring term. Such appointment shall become effective immediately upon the expiration of the then-current term upon either the affirmative approval by the Board of Commissioners or the failure to reject such appointment within sixty (60) days of the appointment by the Board of Directors. If the person appointed by the Board of Directors of the Authority is rejected by the Board of Commissioners within sixty (60) days of the appointment, the Board of Directors of the Authority shall appoint another person, subject again to the right of the Board of Commissioners to reject such appointment within sixty (60) days in accordance with the provisions of this subsection.

(d) Vacancies. Vacancies on the Board of Directors of the Authority due to death, resignation, or removal shall be filled in the same manner as provided under subsection (c), immediately above, and shall be effective immediately for the remainder of the unexpired term upon either the affirmative approval by the Board of Commissioners or the failure to reject such appointment within sixty (60) days as provided above. If the person appointed by the Board of Directors of the Authority to fill a vacancy is rejected by the Board of Commissioners within sixty (60) days of the appointment, the Board of Directors of the Authority shall appoint another person, subject again to the right of the Board of Mayor and Aldermen to reject such appointment within sixty (60) days in accordance with the provisions of this subsection.

6. Duration. The duration of the Authority shall be perpetual.

7. Corporate Form. The Authority shall be a public corporation, a political subdivision of the State, and a body politic and corporate.

8. Powers; Regulatory Authority. The Authority shall have all the privileges, powers and authority granted and provided for a utility authority by the Act with respect to electric, water, wastewater, and telecommunications services, as the Act presently exists or may be hereafter amended from time to time. Without limitation of the foregoing, the Authority shall further have the authority to establish policies, rules and regulations with respect to electric, water, and wastewater services in the same manner and to the

same extent as the Paris Board of Public Utilities exercises such authority as of the date of this Certificate of Incorporation.

9. In Lieu of Tax Payments. The Authority shall make in lieu of tax payments in accordance with the provisions of the Act, as set forth at Tennessee Code Annotated § 7-36-122.

10. Restrictions on Disposition of Plant. The Authority shall not have any power to dispose of all or substantially all of the electric, water, or wastewater plant of the Authority, except upon the concurrence and consent of the Board of Commissioners of the City of Paris and, in the case of a disposition of all or substantially all of the electric plant of the Authority, upon approval of a majority of those voting in a referendum called by the Board of Commissioners of the City of Paris in accordance with Tennessee Code Annotated § 7-52-132 and the provisions of the Act.

11. Amendment. This Certificate of Incorporation may only be amended as provided in Tennessee Code Annotated § 7-36-106 and a resolution of Board of Commissioners of the City of Paris that approves the amendment by at least a two-thirds (2/3) majority vote.

IN WITNESS WHEREOF, this Certificate of Incorporation has been subscribed and acknowledged by the Mayor of the City of Paris, Tennessee before an officer authorized by the State of Tennessee to take acknowledgments of deeds on this the 14th day of May, 2020.

Carlton Gerrell, Mayor
City of Paris, Tennessee

STATE OF TENNESSEE :
: COUNTY OF HENRY :

Personally appeared before me, _____, a Notary Public, Carlton Gerrell, with whom I am personally acquainted, who acknowledged that he is the duly elected Mayor of the City of Paris, Tennessee and that he executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this _____ day of _____, 2020.

Notary Public

My Commission Expires: _____

Exhibit B
ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (“Agreement”), is made and delivered on this ____ day of _____, 2020 by and between the City of Paris, Tennessee (the “City”), the Board of Public Utilities of the City of Paris, Tennessee (the “BPU”) and the Paris Utility Authority (the “Authority”), a Tennessee governmental utility authority created pursuant to the Municipal Energy Authority Act, codified at Title 7, Chapter 36 of the Tennessee Code (the “Authority Act”).

WHEREAS, pursuant to the provisions of the Authority Act and its Resolution No. _____, dated _____, 2020, the City desires to transfer to the Authority all of the City’s right, title and interest in all of the electric, water and wastewater systems and related assets currently owned by the City or the BPU and operated by the BPU for the benefit of the City, including all real and personal property, tangible or intangible, and all appurtenances, contracts, leases, franchises, rights and other intangibles (collectively, the “Assets”), and any right or interest of the City or the BPU in any such Assets, whether or not subject to mortgages, liens, charges or other encumbrances; and

WHEREAS, in consideration of the transfer of the Assets and pursuant to the provisions of the Authority Act, the Authority will either assume or provide the City sufficient funds to redeem, defease or otherwise satisfy all outstanding bonds and other obligations that City has issued for the benefit of the BPU (the “City Indebtedness”), as more fully described herein; and

WHEREAS, in further consideration of the transfer of Assets and pursuant to the provisions of the Authority Act, the Authority will assume all other liabilities and obligations of the BPU that were in effect as of the transfer of the Assets to the Authority; and

WHEREAS, the City and the Authority desire to set forth the terms and conditions of the transfer of the Assets from the City to the Authority.

NOW, THEREFORE, for the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each of the parties, the City, the BPU and the Authority agree as follows:

1. **Assignment of Assets.** Subject to the terms and conditions of this Agreement, as of the date and time that the Authority has fully provided for the assumption, redemption, defeasance or other satisfaction of the City Indebtedness, and provides for the payment of all administrative costs associated therewith (the "Effective Time"), the City and the BPU hereby transfer, assign and convey to the Authority, its successors and assigns forever, all of the City's and all of the BPU's right, title and interest, legal or equitable, in and to the Assets, at which point, the BPU shall cease to exist.

2. **City Indebtedness.** The Authority shall assume and/or provide for the payment of all indebtedness heretofore incurred by the City for the benefit of the utility systems heretofore operated by the BPU, as more specifically described below:

(a) At closing, the Authority shall pay to the City an amount sufficient to fully discharge the City's (i) Electric System Revenue Improvement Bonds, Series 2013, dated August 9, 2013; (ii) Electric System Revenue Refunding Bonds, Series 2015, dated July 30, 2015; and (iii) Electric System Revenue Refunding Bond, Series 2018, dated April 18, 2018 (the "Electric Bonds"). The costs to discharge the Electric Bonds shall include all administrative costs (such as escrow agent, escrow investment and verification costs, if applicable) related thereto. The City shall take all steps and execute all documents and agreements reasonably requested by the Authority to provide for the discharge of the Electric Bonds at the earliest possible date, including without limitation, providing refunding and redemption notices, entering into a defeasance escrow agreement and procuring escrow investments.

(b) At closing, the Authority shall pay to the City an amount sufficient to fully discharge the City's capital outlay notes issued to Commercial Bank and Trust Company, Foundation Bank and Security Bank and Trust Company for the benefit of the City's water and wastewater systems (the "Water and Sewer Notes"). The costs to discharge the Water and Sewer Notes shall include all administrative costs (such as escrow agent, escrow investment and verification costs, if applicable) related thereto. The City shall take all steps and execute all documents and agreements reasonably requested by the Authority to provide for the discharge of the Water and Sewer Notes at the earliest possible date, including without limitation, providing refunding and redemption notices, entering into a defeasance escrow agreement and procuring escrow investments, if necessary.

(c) The Authority shall have arranged for each of the City's outstanding State Revolving Fund Loans to be fully assigned by the City and the BPU, and assumed by the Authority.

(d) Notwithstanding anything herein to the contrary, with respect to (i) that certain Letter of Conditions from the United States Department of Agriculture (the "USDA") dated July 31, 2018, relating to a \$7,200,000 loan and \$1,000,000 grant to the City for Water Treatment Plant Renovation and Expansion (the "2018 Letter of Conditions"); and (ii) that certain Letter of Conditions from the United States Department of Agriculture (the "USDA") dated May 16, 2019, relating to a \$11,914,000 loan and \$2,216,000 grant to the City for Sewer System Rehab (the "2019 Letter of Conditions" and together with the 2018 Letter of Conditions, the "Letters of Conditions"):

(i) Any bonds or notes outstanding under the Letters of Conditions shall not be assigned by the City to the Authority but shall instead be administered and ultimately assigned to the Authority in the manner described below.

(ii) The City shall continue to act in its current capacity as the recipient of the grants and loans contemplated by the Letters of Conditions, including without limitation by retaining and/or issuing its water and/or sewer bonds and bond anticipation notes for the benefit of the Authority to fund the costs of the projects contemplated by the Letters of Conditions;

(iii) The Authority shall act as agent for the City in all administrative matters related to the Letters of Conditions and all bonds and notes issued thereunder, and shall promptly pay or reimburse any and all costs incurred by the City in connection therewith;

(iv) The Authority shall act as agent for the City in all administrative matters related to the Letters of Conditions, and shall promptly pay or reimburse any and all costs incurred by the City in connection therewith;

(v) The Authority shall be responsible for the timely payment of all debt service on any bonds or notes issued by the City pursuant to the Letters of Conditions and shall promptly pay or reimburse any and all costs incurred by the City in connection therewith;

(vi) The Authority and the City shall cooperate to formally assign from the City to the Authority any bonds issued by the City pursuant to the Letters of Conditions, as soon as reasonably practicable and as approved by the USDA, provided that, following such assignment, any such bonds will constitute the sole liability of the Authority and the City shall bear no responsibility therefor.

3. **Assumption of Liabilities; Indemnification.** Upon the assignment of the Assets, the Authority assumes all obligations and liabilities associated with the BPU's use of the Assets prior to the Effective Time and all obligations and liabilities associated with the Assets from and after the Effective Time (the "Assumed Liabilities"). To the fullest extent permitted by law, the Authority shall indemnify and save harmless the City and the BPU from all claims, actions, causes of action, proceedings, losses, damages, costs, liabilities and expenses (including reasonable attorneys' fees), incurred, suffered or sustained arising from the Assumed Liabilities. Nothing in this Agreement shall operate to or be interpreted to waive or in any way limit the limitations of liability, immunities and other provisions of the Tennessee Governmental Tort Liability Act, as amended from time to time, or to waive or in any way limit such other limitations of liability, immunities and other provisions of any local, state or federal law or regulation limiting the liability of the City, the BPU and/or the Authority.

4. **No Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN ONE OR MORE TRANSFER OR CONVEYANCE DOCUMENTS, THE CITY AND THE BPU ARE TRANSFERRING AND ASSIGNING, AND THE AUTHORITY IS ACCEPTING AND ASSUMING, THE ASSETS "AS IS, WHERE IS" AND "WITH ALL FAULTS", AND THE CITY EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

5. **Further Assurances.** The City will do, execute, acknowledge and deliver all such further acts, deeds, instruments, transfers, powers of attorney or assurances as may be reasonably requested by the Authority from time to time for the purpose of confirming the transfer and assignment of the Assets, and the Authority will do, execute, acknowledge and deliver all such further acts, deeds, instruments, transfers, powers of attorney or assurances as may be reasonably requested by the City from time to time for the purpose of confirming the transfer and assumption by the Authority of the Assets and the Assumed Liabilities.

6. **Entire Agreement and Modification.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all other oral or written agreements pertaining thereto, and no amendment thereof or modifications hereof, or additions hereto shall be valid or effective unless the same shall be in writing and signed by each of the parties hereto.

7. **Binding Agreement; Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties named herein and to their respective successors and permitted assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by either party without the prior written consent of the other party.

8. **No Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement.

9. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by telecopier or other facsimile transmission all with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. **Headings.** The headings contained in this Agreement have been inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

11. **Waiver.** Any failure of any party hereto to comply with any of the obligations or agreements set forth in this Agreement or to fulfill any condition set forth may be waived only by written instrument signed by all of the parties. No failure by any party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any right hereunder by any party preclude any other or future exercise of that right or any other right hereunder by that party.

12. **Governing Law.** This Agreement shall be construed under the laws of the State of Tennessee, without giving effect to any of its laws that would render such choice of law ineffective.

IN WITNESS WHEREOF, the City, the BPU and the Authority have caused this Agreement to be executed and delivered as of the date first above written.

CITY OF PARIS, TENNESSEE

By: _____
Mayor

**THE BOARD OF PUBLIC UTILITIES OF THE CITY
OF PARIS, TENNESSEE**

By: _____
Chairman

PARIS UTILITY AUTHORITY

By: _____
Chairman