

WATER SERVICES TRUST FUND



TRUST DEED

THIS TRUST DEED IS MADE ON THE 26TH DAY OF APRIL 2004 FOR THE PURPOSE OF ESTABLISHING A TRUST, IN ACCORDANCE WITH SECTION 83(1) OF THE WATER ACT 2002.

1. NAME

The Trust hereby established shall be known as “THE WATER SERVICES TRUST FUND” (WSTF).

The Trust is a body corporate established under the water Act 2002 and all the relevant laws of the Republic of Kenya, which shall apply to its activities and operations.

The Minister for Water Resource Management and Development (hereinafter referred to as ‘The Minister’) has appointed the Trustees of this Trust Fund and whose names and signatures are appended in this Deed.

2. FUNDING

- i) The initial capital of the fund shall be transferred to the fund by the Government of Kenya, and further monies and investments shall be paid out of the Consolidated Fund;
- ii) All receipts earnings and accruals of the fund and the balance of the fund at the close of each financial year shall be invested by the Fund for the purposes for which the Fund is established;
- iii) Any surplus realized in any financial year from the operations of the fund shall be retained in a Reserve Fund and shall be used by the Fund and any deficiency realized in any financial year shall be offset against the realized surplus held in the reserve account of the fund ;
- iv) All donations, grants, funds paid by donor agencies shall be invested and paid out in accordance with the Memorandum of Understanding entered into between the Trustees and the Donors.

3. TRUST FUND

- i) The Trustees shall hold the Trust Fund upon Trust to apply or pay the monies of the Trust Fund or portions thereof in such manner as the Trustees in their discretion shall determine from time to time in furtherance of the objects and purposes of the Trust declared in this Deed but always in accordance with the laws of Kenya, the Rules of the Trust as set from time to time by the Trustees and the Rules, Principles, and Memoranda of Understanding entered into from time to time between the Trustees and donors of the Trust.
- ii) The Rules shall provide, inter alia, criteria for the selection of projects to be funded by the Trust and may impose different requirements for different kinds of projects.

4. OBJECTIVES OF THE TRUST

The objectives for which the Trust is formed are:

- i) Providing finance and other support towards :
 - a) The capital investment costs of providing water services to communities without adequate water services;
 - b) Activities in the area of water services based on the priorities of the Government of Kenya as outlined in the water services strategic plan developed under the Water Act, 2002;
 - c) Capacity building activities and initiatives which enable communities to plan ,implement, manage, operate and sustain water services;
 - d) The creation of awareness and dissemination of information regarding community management of water services ;and
 - e) Active community participation in the implementation and management of water services.
- ii) Providing a mechanism for managing funding systems whose objective is to fund activities within the water sector generally as may from time to time be assigned to it to manage.

5. POWERS AND FUNCTIONS OF TRUSTEES

In furtherance of the above objectives *but no further or otherwise* the Trustees shall have the powers and function to:

- i) Conduct the affairs and activities of the Trust in accordance with the Trustees discretion to exercise their powers;
- ii) Ensure that the rules for Funding Water Services and any Memorandum of Understanding for donor funding are compiled with;
- iii) Fundraise and develop strategies for capital mobilization for the objectives of the Trust and establish investment strategy plans which shall include marketing and advertising;
- iv) Ensure that in the selection of projects for financing and of beneficiaries of the Fund all areas in the country receive equitable treatment;
- v) Set the policies of the Trust and its activities, operations, and modalities including ,to the extent permitted by the rules ,the criteria for the selection of the eligible projects and the conditions for financing;
- vi) Supervise, control ,manage all the assets of the Fund and make regulations for such management;
- vii) Employ such persons (who shall not be Trustees) to perform such duties as the Trustees consider necessary for the proper administration of the Trust on such terms and conditions of services they deem fit;

- viii) Establish links with the Water Services Board in all parts of Kenya to facilitate the efficient administration and management of the activities and operations of the Trust;
- ix) Arrange for financial audits of the trust funds;
- x) Represent the Trust in dealings with external persons and in legal matters;
- xi) Carry out such activities and operations as are necessary and incidental to the achievement of the objectives of the Trust;
- xii) Ensure to obtain advice and consider the advice as to suitability, appropriateness and the circumstances in carrying out their duties.

6. MEETINGS AND MINUTE BOOK

- i) The quorum for meetings shall not be less than five Trustees;
- ii) The Trustees shall meet in intervals of not more than three(3) calendar months provided that the chairperson or in his absence the Vice Chairperson may convene meetings of the Trustees as and when he considers the same necessary or desirable for the proper conduct of their business;
- iii) Every meeting of the Trustees shall be convened by a written notice sent to the Trustees at least 7 days before the meeting ;
- iv) Decisions shall be made by consensus and in case of a split by a majority vote;
- v) The Trustees shall keep a Minute Book and regulate its own procedure including procedure for taking votes necessary;
- vi) The Minute Book shall contain records of minutes of all meetings, deliberations and resolutions of the Trustees.

3. ACCOUNTS

- i) The Trustees shall keep proper books of account and shall prepare annual statement s of accounts consisting of an income and expenditure account relating to a period of not more than 12 months and of a balance sheet relating to the end of such period;
- ii) The accounts of the Trust Fund shall be audited in accordance with the provisions of the Exchequer and Audit Act, Cap 412.
- iii) Donor funds shall be accounted for separately in accordance with the Memorandum of Understanding (MoU).

8. BANKING

- i) The Trustees shall maintain such banking accounts for the Trust with banks as approved by the minister for the time being responsible for finance;
- ii) All Accounts and Investments shall be held for and on behalf of the Fund in the name of the Board of Trustees;

- iii) Except the Monies paid by Donors in the form of grants shall be banked in accordance with the Memorandum of Understanding entered into by the parties.

9. TRUSTEES' INTEREST IN THE TRUST FUND

- i) Trustees shall not take or hold any interest in any property belonging to the Trust fund otherwise than as Trustees for the purposes of the Trust. Further, no Trustee shall receive remuneration or be interested in the supply of work or goods at the expense of the Trust and no Trustee shall take loans, advances or Imprests:
- ii) Provided nevertheless that:
 - a) Trustees may be paid reasonable honoraria and allowances for their services of an amount to be determined by the Trustees in consultation with the minister; and
 - b) A Trustee may be reimbursed any reasonable and proper expenses incurred by him in carrying out his duties including traveling or any other expenses incurred by him as a Trustee.

10. TRUSTEES' ADMINISTRATIVE ARRANGEMENTS

For the efficient conduct of the affairs of the Trust the Trustees shall:

- i) Appoint, on such terms and conditions of service as appropriate, a qualified Chief Executive of the Trust who shall oversee, *inter alia*, the following functions:-
 - a) Administer the offices of the Trust;
 - b) Appraise applications for financing of projects;
 - c) Prepare agreements with beneficiaries;
 - d) Liaise with the Water Services Boards of the area where the project is based;
 - e) Ensure disbursement of Funds;
 - f) Monitor the implementation of projects;
 - g) Carry out technical and financial audits of projects;
 - h) Facilitate the provision of technical and advisory support to, and capacity building of communities; and
 - i) Give administrative and technical support to the Trustees;
 - j) Give advice to the trustees and consider the suitability and appropriateness in the circumstances;
- ii) Seek and procure such technical and administrative support either within or outside the country as may be necessary for the establishment and operation of the Trust;
- iii) Set rules for the conduct of the Trustees and for the action to be taken against Trustees for misconduct;

- iv) Keep minutes of all meetings and the exercise of all powers and discretion vested in them and the passing of resolutions;
- v) From time to time make arrangements to delegate any of the Trustees functions, powers or any business relating to the Trust to anyone or more of their number such as sub-committees;

11. APPOINTMENT OFF TRUSTEES

- i) The Trustees pt this Deed shall be nine (9) in number but the Trustees shall have power to act notwithstanding a vacancy in their number;
- ii) Each Trustee (with the exception of Trustees appointed in their official capacity)shall hold office for a period of three years from the date of appointment, which may be renewed once by a new appointment;
- iii) The power of appointing and replacing Trustees hereof shall be vested in the Minister;
- iv) Three of the Trustees shall represent the Minister in charge of water affairs, the Ttreasury and contributors to the Trust Fund respectively;
- v) The Minister shall designate one of the Trustees to be the chairperson of the Trust;
- vi) The Minister may, on recommendation of the other Trustees. Terminate the appointment of any Trustee whose conduct undermines the objectives of the Trust;
- vii) Every Trustee shall before acting in the Trusts of this Deed sign in a Minute Book, a declaration of acceptance and of willingness to act in the Trusts hereof;
- viii) The Minister hereby appoints the Trustees mentioned herein to be the first Trustee of the Trust.

12. TRUSTEES' INDEMNITY

In the execution of the Trust duties and powers of this Deed, the Trustees shall be indemnified against all debts, liabilities, claims, and damages incurred or made against them in their capacity as Trustees other than willful and individual fraud, wrongdoing or wrongful omission on the part of the Trustees or any one of them.

13. AMENDMENT

The Trustees may amend either by deletion, addition or otherwise any of the provisions of this Deed subject to the consent in writing first obtained of the Minister and no amendment shall be made which shall make the Trust to cease to be a Trust for the primary objective set out in the water Act 2002.

14. TRUST PERIOD

The Trust shall continue indefinitely unless terminated by the Minister in consultation with Donors to the fund or unless it fails.

(SIGNED)

**HON. MARTHA KARUA, MP
MINISTER FOR WATER RESOURCES MANAGEMENT AND
DEVELOPMENT**

**IN WITNESS the said Trustees have each signed this Deed the day and year
hereinbefore written.**

<u>NAMES OF TRUSTEES</u>	<u>DESIGNATION</u>	<u>SIGNATURE</u>
1. Dr. Eddah W. Gachukia	Chairperson	
2. Prof. Jacob T. Kaimenyi	Trustee	
3. Mrs. Margaret Mwangola	Trustee	
4. Mr. Gunnar schultzberg	Trustee	
5. Mr. Peter Okeyo Arunga	Trustee	
6. Permanent Secretary Ministry of Finance.	Trustee	
7. Permanent Secretary Ministry of Water Resources Management & Development	Trustee	