

**OFFICIAL MINUTES
COMMISSION OF THE CITY OF BRUNSWICK
SPECIAL CALLED MEETING
FRIDAY, JULY 6, 2007 AT 6:30 P. M.
OLD CITY HALL
1229 NEWCASTLE STREET, 2ND FLOOR**

PRESENT: His Honor Mayor Bryan Thompson, Commissioners Jonathan Williams, Cornell Harvey, Mark Spaulding and James H. Brooks, Sr.

CALL TO ORDER: Mayor Bryan Thompson called the meeting to order.

INVOCATION: Commissioner Mark Spaulding gave the invocation.

PLEDGE OF ALLEGIANCE: Everyone in attendance recited the Pledge of Allegiance in unison.

DISCUSSION

Joint Water and Sewer Commission

Mayor Thompson discussed the Joint Water and Sewer Commission operational agreement and the changes the City Commission requested on the lease period and the operations agreement.

Following a lengthy discussion, Commissioner Spaulding made a motion and Commissioner Williams seconded the motion unanimously adopting the following Addendum to the Operational Agreement:

**ADDENDUM TO
OPERATIONAL AGREEMENT
By and Between
CITY OF BRUNSWICK
and
GLYNN COUNTY
and
BRUNSWICK-GLYNN COUNTY JOINT WATER
AND SEWER COMMISSION**

THIS ADDENDUM TO THE JOINT WATER AND SEWER OPERATIONAL AGREEMENT is made and entered by and among the **CITY OF BRUNSWICK**, a municipal corporation, created and existing under the laws of the State of Georgia, acting by and through its Mayor and Commissioners (hereinafter referred to as the "City") and **GLYNN COUNTY**, a political subdivision of the State of Georgia, acting by and through its Board of Commissioners (hereinafter referred to as the "County"), and the **BRUNSWICK-GLYNN COUNTY JOINT WATER AND SEWER COMMISSION**, a public corporation created by Local Act of the General Assembly of the State of Georgia, acting by and through its Commissioners (hereinafter referred to as the "JWSC").

WHEREAS, the City, County and JWSC have each executed or shall contemporaneously with execution of this Addendum approve and execute an operational agreement, as contemplated in the Local Act of the Georgia General Assembly, detailing the power of the JWSC to operate the unified system and which sets forth the rights of the City and County for the duration of the agreement; and

WHEREAS, the Brunswick City Commission at its _____, 2007 meeting authorized the Mayor to execute this Addendum on behalf of the City, but approved the Operational Agreement only on the condition that the Addendum be accepted by the County Commission and JWSC as an amendment to and part of the Operational Agreement; and

WHEREAS, the County at its July 5, 2007 meeting authorized the Chairperson of its Board of Commissioners to execute this Addendum on behalf of the County; and

WHEREAS, the JWSC at its JUNE 29th, 2007 meeting authorized the Chairperson of its Commission to execute this Addendum on behalf of the JWSC.

NOW THEREFORE, in consideration of the mutual promises and undertakings as hereinafter contained and other good and valuable consideration, the parties hereto,

each acting by and through its duly authorized officers, do hereby covenant and expressly agree to supplement the Operational Agreement as set forth in the following Addendum.

SECTION 1. PHASES

Operations under the Operational Agreement shall be undertaken in two distinct phases, Phase One being the initial stage of full JWSC operations under a Lease of assets as described in this Addendum to the Operational Agreement, which consideration for said Lease shall be in the amount of ten dollars (\$10.00) per annum, and Phase Two being the following stage of full JWSC ownership and operation of the unified water and sewer system, which is provided for in the Operational Agreement. Use of the term "transfer" or its equivalent in the Operational Agreement shall connote transfer of legal title and ownership upon the commencement of Phase Two, but shall only mean use, possession and control under the lease arrangement described below during Phase One.

SECTION 2. PHASE ONE ACTIVITIES

Commencing on the start-up date of January 1, 2008, the JWSC shall begin full operation of the water and sewer systems of the City and County under the terms of leases of the systems from the City and County.

SECTION 3. RETENTION OF LEGAL TITLE OF ASSETS AND LIABILITIES

During Phase One the City and County shall retain legal title and ownership, and the JWSC shall have complete and sole use, possession and control of the City and County systems and enterprise funds, receivables, cash accounts, deposit accounts and cash equivalents, including infrastructure, equipment, rolling stock, real property, City and County permits and permitting authority, and liabilities, including contractual liabilities, revenue bonds and other debt, accounts payable and contingent liabilities as exist on the Lease/Phase One start date. The City and County hereby agree and authorize the JWSC, upon completion of the benchmarks, to re-finance existing revenue bonds, i.e. defease existing bonds and engage in a new bond issue that may include re-financing the debt represented by said existing bonds, at a time when the JWSC determines it is in the best interests of the rate payers to refund such bonds.

SECTION 4. JWSC BENCHMARK ACTIVITIES DURING PHASE ONE

During Phase One the JWSC shall direct operations of the City and County systems so as to carry out the applicable specified tasks in the Operational Agreement and the benchmark activities, which are as follows:

- (a) develop a water/sewer master plan for the entire County for submission to the City and County governing authorities in accordance with

Paragraph 19(a) of the Operational Agreement, which plan shall include, but is not limited to, the following components:

- (1) Projections for population growth and density changes;
 - (2) Limits of service delivery;
 - (3) Land-use categories;
 - (4) Projections for future demands;
 - (5) Projections and recommendations for system expansion to include water distribution and production and sewer collection and treatment;
 - (6) Current state assessment of water and sewer systems;
 - (7) Recommendations for remediation of current systems and the accommodation of growth;
 - (8) Alternatives for water resources and sewer collection and treatment;
 - (9) Cost estimates and financing options, including potential grants, for proposed water and sewer system expansions;
 - (10) Identification and recommended remediation for infiltration and inflow of stormwater and groundwater to the sewer systems;
 - (11) Identification and recommended remediation for manholes and lift station wetwells in need of re-lining; and
 - (12) Recommendations as to appropriate staffing levels for operation of the unified system.
- (b) assist the City and County in preparation of the water/sewer components of the updated Comprehensive Plans required of the City and County by the State in accordance with Paragraph 19(b) of the Operational Agreement;
- (c) prepare a proposed JWSC budget each year for presentation to the City and County for review and comment on a timely basis in accordance with Paragraph 14(a) of the Operational Agreement;
- (d) develop a set of standard water and sewer ordinances for submission to the City and County governing authorities to consider for approval in accordance with Paragraph 2(e) of the Operational Agreement;

- (e) develop and implement water conservation, purple pipe sewer line, and other programs in accordance with the requirements of State policy and regulations in accordance with Paragraph 19(b) of the Operational Agreement;
- (f) carry out all billing, collection, rate setting and other financial activities as agent for the City and for the County with respect to the revenues and expenditures relating to their respective leased systems in such a manner as to keep the City and County in compliance with their revenue bond covenants as to such systems, all in accordance with Section 11 and Paragraphs 13(a) and 13(b) of the Operational Agreement;
- (g) conduct all necessary rate studies and tap fee studies as may be appropriate and report the results of same to the City and County prior to adoption of any change in rates, fees or other charges made to users of the systems;
- (h) present proposed rate schedules for user fees, connections and other charges for review and comment by the City and County prior to adoption by the JWSC;
- (i) review and act upon new service, account establishment and service extension applications as agent for the permit holder (i.e. the City or County as the case may be); provided, that any application for service which can be expected to result in an increase in average daily wastewater flow to any treatment facility that would exceed eighty percent (80%) of the then currently permitted average daily flow would require submittal to and express approval by the permitting authority; and
- (j) report a least quarterly on status of current operations and progress toward meeting the benchmarks to County and City Commissions by having Director and Chairperson of JWSC attend next regular meeting of each governing authority following each April 1, July 1, October 1 and January 1 during Phase One lease operations.

SECTION 5. LEASES NECESSARY FOR PHASE ONE OPERATIONS

The parties agree to cooperate in preparation of Lease agreements to include all physical assets of the City and County systems, including all interests in improved or unimproved real property held by the respective system enterprise funds at the commencement of the lease and all rolling stock, heavy equipment, machinery, pipes (in ground and held in inventory), parts, supplies and other personalty. The Leases may extend for fifty years, and shall be subject to termination by any party to such Lease only for good cause. Good cause, for purposes of this Section Five of the Addendum, means a breach by one or more parties to the Lease, Operational

Agreement or of revenue bond covenants with respect to the leased systems, or violation by one or more parties to this Operational Agreement of the Local Act establishing the JWSC, or of general law pertinent to joint water and sewer operations. Determination of good cause shall be subject to the dispute resolution procedures set forth in Section 22 of the Operational Agreement. The JWSC shall have the authority to sign on deposit accounts and to be the sole manager of said funds.

SECTION 6. BENCHMARK ACTIVITIES PREREQUISITE TO PHASE TWO

- (a) Completion of all listed benchmark activities on a reasonably timely basis and in a reasonable manner is a prerequisite to commencement of Phase Two of operations, wherein legal title and ownership of all the leased assets of the City and County systems, along with all associated liabilities, and all State and Federal permits and licenses pertinent to operation of the unified system, will be transferred to the JWSC. By mutual agreement of all parties to this Addendum, the transition to Phase Two may take place at a date earlier than the normal expiration of the Lease, and such transition shall occur automatically when the JWSC determines that all benchmark activities have occurred and provided notice to the City and County of such completion. Unless the transition occurs earlier on the basis as set forth herein, the transition to Phase Two operations will occur at the normal expiration of the Lease, provided all Phase One benchmark activities have been accomplished and the Lease has not been terminated for cause as provided for in Section 5, above.

- (b) When the JWSC provides written notice to the City and County that it has determined all benchmarks have been met, the following process shall apply to disputes arising from such determination:
 - (1) The JWSC notice shall state the basis for its determination, including the date each benchmark was met and a reference to any documentation thereof previously provided (copies of documentation not previously provided should accompany the notice).
 - (2) The notice shall be effective upon the date of its actual delivery to the County Administrator and the City Manager.
 - (3) The City and County shall each have 30 days (all periods in this subsection (b) are to be determined in calendar days) from the date of the JWSC notice in which to respond in writing - failure to timely respond shall be deemed an approval of the JWSC determination. The response shall identify any benchmark deemed unmet and summarize the basis for disapproval/objection, as well as the correction, remedy or result sought.

- (4) The three parties' chief administrative officers (Director of the JWSC, County Administrator and City Manager) shall meet at least twice within 10 days of such disapproval/objection in an effort to resolve any disputed issues and may be accompanied or assisted by elected or appointed officials, staff or counsel as they choose. The CAOs may utilize the services of a mediator if they all agree; costs, including mediation fees, if any, shall be apportioned and paid equally by the three parties. The dispute resolution may remain at this voluntary negotiation stage so long as the parties choose to continue working toward a settlement, but any party may move the disputed issues to binding arbitration at any time after the 10 day period referred to immediately above.
- (5) After the passage of 10 days following submittal of the disapproval/objection notice, any party may give notice of intent to arbitrate in accordance with American Arbitration Association Commercial Arbitration rules. The parties shall then follow the procedures set forth in said Rules as for non-monetary disputes. The arbitrators shall have authority to determine whether a given benchmark has been met as well as to issue the decision/award with provisions to direct revision or modification of benchmark activity performance or work product (for example, to direct revision of the terms, findings and recommended plans set forth in a water/sewer master plan).
- (6) Results of arbitration shall be binding and shall be subject to court review only to the limited extent such results are reviewable under Georgia law.
- (7) The fact that a party or parties has resorted to negotiation, mediation, arbitration, or court procedures for resolution of any dispute as to benchmark adequacy or completion shall not terminate operations under the lease provisions, shall not terminate the leases, and shall not terminate the Operational Agreement. To the extent relief sought by any party to such a dispute is for a determination that one or more benchmarks remain unmet, then the determination of whether it is appropriate to move ahead into Phase Two full ownership operations (and potential bond refunding at the discretion of the JWSC) shall be an issue for resolution under the processes provided for in this paragraph.

SECTION 7. PROVISIONS APPLICABLE TO PHASE ONE OPERATIONS

The provisions of the Operational Agreement shall apply to Phase One operations conducted under this Addendum (except that references to "transfer" of

assets shall mean transfer of possession, use and control under lease as opposed to any transfer of legal title and ownership). Daily operation of the systems by the JWSC as agent for the current permit holders is authorized by this Addendum.

SECTION 8. SELECTION OF SUCCESSORS TO FIFTH MEMBER

Section 3 of the Operational Agreement "Voting Procedures" is hereby amended by this Addendum by adding a new Paragraph (c), which shall read as follows:

"(c) Selection of a successor to the position of the fifth member of the JWSC, i.e., the member who is not an elected official of the City or the County. In the event the fifth member is declared by vote to have vacated his office due to three consecutive unexcused absences, has been removed or has resigned, and at the next meeting after such declaration if a tie vote occurs during the process of selecting the fifth member, a binding mediation panel of three persons (one selected by the City Commission and one by the County Commission, those two together picking the third panel member) shall be authorized to select a new fifth member. City and County selections for the panel shall be made no later than thirty days following declaration of vacancy."

SECTION 9. AMENDMENTS TO OPERATIONAL AGREEMENT

Section 1, captioned "Definitions" is hereby amended by this Addendum by deleting the Paragraph (u) in its entirety and replacing in lieu thereof the following:

"(u) Start date means January 1, 2008, at 12:01 o'clock a.m., the date on which the JWSC begins operating the unified system."

Section 10, captioned "Employees; Professional Services" is hereby amended by this Addendum by deleting the first (un-numbered) paragraph in Paragraph (b), by deleting the first clause in the first sentence of Paragraph (c), by deleting the second sentence of Paragraph (d), and replacing in lieu thereof the following:

"(b) The JWSC will hire each person listed on Exhibit "F." The position offered to such persons and the terms of compensation will be equal to the employee's former job and pay classification. If any person listed on Exhibit "F" decides not to become an employee of the JWSC, then notification will be given to the JWSC within ten (10) business days from the time the job has been made available to such person. Each person listed on Exhibit "F" will be required to undergo a drug screening test, a criminal background records check, and a job-related motor vehicle background records check based on the criteria as set forth below. Any such person who fails a drug screening test will remain an employee of the City or County, as applicable, until he or she has attended an

employee assistance program (outpatient counseling at the current employer's expense) with the respective employer (City or County), complying with the program's guidelines for any subsequent drug screening tests until successful completion of such program or a clean drug screening test, which ever occurs first. At that time, the employee will be hired by the JWSC. Adverse results on the criminal or driving records check will be considered in determining the position for which the person will be hired by the JWSC."

"(c) For a period of four (4) years the employees listed on Exhibit "F" may be separated from employment only for cause;"

"(d) New employees hired by the JWSC and who are not listed on Exhibit "F" shall be "at will" employees. They will not be subject to the four (4) year rule in Paragraph (c), above, and may be separated from employment in accord with the personnel policy of the JWSC, as amended from time to time."

SIGNATURES ON PAGE 9

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed in three (3) original counterparts by their duly authorized officers under its respective seals affixed hereto, all as of the date last shown below.

CITY OF BRUNSWICK

By: 
BRYAN THOMPSON, Mayor

Attest to: Georgia E. Marion 07-06-07
GEORGIA MARION, Clerk Date

SEAL

GLYNN COUNTY BOARD OF COMMISSIONERS

By: 
TONY THAW, Chairman

Attest to: Cindee Overstreet 7-5-07
CINDEE OVERSTREET, Clerk Date

SEAL

BRUNSWICK-GLYNN COUNTY JOINT WATER AND SEWER COMMISSION

By: 
TONY SAMMONS, Chairman

Attest to: Keith P. Morgan 6/29/2007
KEITH P. MORGAN, Director Date

SEAL

MEETING ADJOURNED

/s/ Bryan Thompson
Bryan Thompson, Mayor

Attest: /s/ Georgia Marion
Georgia Marion, City Clerk