

OFFICIAL MINUTES
COMMISSION OF THE CITY OF BRUNSWICK, GEORGIA
WEDNESDAY, OCTOBER 17, 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 Spaulding gave the invocation.

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

ITEM(S) TO CONSIDER FOR APPROVAL

1. Minutes of the October 3, 2007 meetings. (G. Marion)

Commissioner Spaulding made a motion to approve the minutes with the following corrections:

Appointment to the Brunswick-Glynn County Joint Water/Sewer Committee. Commissioner Harvey made a motion to designate commissioner Brooks for one of the seats for the Brunswick-Glynn County Joint Water/Sewer Committee and the City will appoint him the second meeting in January 2008. Commissioner Harvey seconded the motion. The motion was approved by a 5 to 0 vote.

2. Accrual of Vacation Leave for part-time employees. (B. Roberts)

The Human Resources Director recommended to change the standard providing for vacation leaved accrual for part time regular employees (non seasonal) who are regularly scheduled to work at least 10 hours per week.

Following a discussion, commissioner Spaulding made a motion and Commissioner Harvey seconded the motion approving the change to provide vacation leave accrual to part time employees working ten hours per week or more. The motion passed by vote of 5 to 0.

3. Revisions to the Pay Plan Standards of Practice for reclassifications and pay grade changes. (B. Roberts)

The Human Resources Director recommended that changes be made in the Standards of Practice so that pay increases with upgrades and reclassifications are not mandated at 5% and remove the language that requires downgraded employees to take a pay reduction.

Following a discussion, Commissioner Williams made a motion and Commissioner Brooks seconded the motion approving the changes to the Standard of Practice changing the language as recommended by staff. The motion passed by a vote of 5 to 0.

4. Accept donation of a multi-purpose canine for the Brunswick Drug Squad from Robert Putnam.(E.Johnson)

Members of the Brunswick Police Department Drug Squad requested permission to receive a donated canine from Robert Putnam and reimburse him for his travel cost at \$300.00.

Following a discussion, Commissioner Spaulding made a motion and commissioner Brooks seconded the motion authorizing the Brunswick Police Department to accept the donated canine and reimburse Robert Putnam the travel cost of \$300.00. The motion passed by a vote of 5 to 0.

5. Joint Water Sewer Agreement.

The City Attorney discussed the terms of the lease and transfer agreement between the City of Brunswick and the Brunswick-Glynn County Joint Water and Sewer Commission.

Following a discussion, Commissioner Spaulding made a motion and Commissioner Williams seconded the motion unanimously adopting the following agreement:



BRUNSWICK-GLYNN COUNTY
JOINT WATER AND SEWER COMMISSION
700 Gloucester Street
Brunswick, Georgia
(912) 279-2650

October 3, 2007

Honorable City of Brunswick Commissioners
601 Gloucester Street
Brunswick, Georgia 31520

Honorable Glynn County Board of Commissioners
701 "G" Street – First Floor
Brunswick, Georgia 31520

RE: Lease and Transfer of Assets Agreement; Request for Adoption

Dear Commissioners:

The JWSC is hereby presenting to each Commissioner for your consideration a Lease and Transfer of Assets Agreement, pursuant to the Operational Agreement and Addendum thereto. The Lease was reviewed by a committee consisting of legal counsel of the City of Brunswick, Glynn County and the JWSC. The Lease before you for consideration reflects the comments and recommendations made by the reviewing committee, and approved this date by the JWSC and signed by the Chairman. The Lease presented to the City and County are identical except for the change in name to reflect either the City or the County as a party to the Lease. The transfer of assets under the Lease is effective January 1, 2008. However, the Lease allows for transfer of some assets and funds to the JWSC for start-up purposes.

We look forward to a positive response from the City and County and moving forward with all parties adopting and executing their respective Lease with the JWSC at your next available meeting in October 2007. In the interim, if you have any questions or comments, please do not hesitate to contact me at 267-5195, or Keith Morgan, JWSC Director, at 279-2650.

Sincerely,

Tony Sammons
Chairman

TS/ki

Enclosures

c: Roosevelt Harris, Jr., City Manager (w/encl.)
Charles T. Stewart, County Administrator (w/encl.)
Lynn Frey, City Attorney (w/encl.)
Aaron Mumford, County Attorney (w/encl.)

LEASE AND TRANSFER AGREEMENT
By and Between
CITY OF BRUNSWICK
and
BRUNSWICK-GLYNN COUNTY JOINT WATER
AND SEWER COMMISSION

THIS LEASE AND TRANSFER AGREEMENT (hereinafter referred to as this "Lease") is made and entered into by and between 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" or "Lessor") 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" or "Lessee").

WITNESSETH

WHEREAS, the City owns and operates water and wastewater facilities, projects and assets located inside and outside the City limits which are collectively hereinafter referred to as the "System"; and

WHEREAS, the General Assembly of Georgia adopted House Bill 1585 (hereinafter referred to as "the Act"), signed into law by the Governor on April 19, 2006, approved by referendum on July 18, 2006, creating the Brunswick-Glynn County Joint Water and Sewer Commission as a separate legal entity from the City; and

WHEREAS, the Act entrusts the JWSC with the operation and maintenance of a unified system, and with extending and/or expanding and improving facilities and services for the existing and future users within the City and Glynn County; and

WHEREAS, the City, pursuant to the Act, entered into an Operational Agreement, and Addendum thereto, with the JWSC and Glynn County for the purposes of entrusting the JWSC with the operation and maintenance of a unified system; and

WHEREAS, the City and the JWSC believe that the continuation of the water and sewer services currently rendered by the City can best be accomplished by transferring operations and maintenance, assets and liabilities of the System, as well as all other authority pursuant to the Operational Agreement, and Addendum thereto, to the JWSC; and

WHEREAS, to accomplish this end, the City will lease the assets of the System, and other facilities and assets of the City, and transfer the operations and maintenance

and liabilities of the System to the JWSC, and the JWSC will assume the operation and maintenance and assets and liabilities of the System and other facilities as contemplated in the Operational Agreement, and Addendum thereto, all on the terms and conditions hereinafter set forth; and

WHEREAS, the City at its _____, 2007 meeting authorized the Mayor of its Board of Commissioners to execute this Lease on behalf of the City; and

WHEREAS, the JWSC at its _____, 2007 meeting authorized the Chairperson of its Commission members to execute this Lease 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 as follows:

SECTION 1. DEFINITIONS

- (a) Assets means real and personal property, tangible and intangible resources utilized to provide water and sewer services to users of the System, as same exist as of the Commencement Date.
- (b) Commencement Date means January 1, 2008, at 12:01 o'clock a.m., the date on which the JWSC begins operating the System, sometimes referred to as the "Phase One Start Date".
- (c) Leased Facilities means the real property, infrastructure, and improvements thereto, and all Assets (as defined herein), as same exist as of the Commencement Date.
- (d) System means the water and sewer facilities, projects and assets of the County.

SECTION 2. LEASING OF LEASED FACILITIES; QUIET ENJOYMENT

- (a) The parties hereby agree and acknowledge that the purpose of this Lease is to effect, as of the Commencement Date, the transfer of the possession and control, but not legal title, over all of the Leased Facilities to the Lessee for purposes of operating and maintaining the System, and that consideration thereof shall consist solely of the rental payment of TEN DOLLARS (\$10.00) per annum for the duration of the Lease and any extensions thereof, all in accord with the Operational Agreement, and Addendum thereto, due and owing the first business day of January of each year.

- (b) Effective as of the Commencement Date, the City leases to Lessee, and Lessee takes and accepts from the City, subject to the terms, covenants, conditions and provisions herein, to have and to hold for the term of this Lease, the Leased Facilities and all Assets owned or hereinafter acquired by the City; provided, however that at all times under this Lease the City shall retain legal title to the Leased Facilities.
- (c) Effective as of the Commencement Date, the City leases and grants to Lessee the right to operate and maintain the Leased Facilities, and the City hereby agrees that so long as Lessee shall operate and maintain the Leased Facilities consistent with all obligations under the Act, the Operational Agreement, the Addendum thereto, and the City's Revenue Bonds applicable to the Leased Facilities, then Lessee shall have, hold and enjoy, during the term thereof, peaceful, quiet and undisputed use, possession and control of the Leased Facilities, without interference to such possessory rights by anyone claiming by, through or under the City, subject, however, to the provisions of the Lease.

SECTION 3. TERM

- (a) This Lease shall be effective as of the date last written below, unless earlier terminated as provided in this Lease, and it shall continue for a period of fifty (50) years from the Commencement Date. The parties hereto may extend this Lease at any time, provided that any extension shall not cause the full term of this Lease to extend beyond fifty (50) years in accordance with the Act and Article IX, Section III, Paragraph I(a) of the Constitution of the State of Georgia authorizing such period.
- (b) The parties hereto agree this Lease will be extended for such periods as the Operational Agreement, and Addendum thereto, may be extended by the parties thereto, unless earlier terminated as provided in this Lease, the Operational Agreement, or the Addendum thereto, incorporated by reference as if fully set forth herein.
- (c) The rights, authorizations, interest and obligations under this Lease and Transfer Agreement shall be subject to the following condition precedent: execution by the JWSC and Glynn County, prior to the Commencement Date, of a binding Lease and Transfer Agreement as contemplated in the Addendum to the Operational Agreement heretofore executed by the JWSC, City and County.

SECTION 4. TRANSFER OF OPERATING ASSETS AND EXISTING OPERATIONS

- (a) The City, for and in consideration of the performance by Lessee, assigns and transfers to Lessee the complete and sole use, possession and control, but not legal title, of the following:

- (1) All of the City's Assets utilized in connection with the operations of the Leased Facilities including, without limitation, all Assets reflected in the most recent Audited Financial Statements of the City relating to water and sewer operations, with such changes as may have occurred after the date of such financial statements, and as set forth in the Exhibits to the Operational Agreement, which Exhibits the City hereby expressly agrees to update by the Commencement Date for purposes of this Lease, all of which are incorporated herein by reference as if fully set forth herein as the Leased Facilities without the necessity of attaching such financial statements and Exhibits hereto.
 - (2) All enterprise funds, including all cash and cash equivalents, revenues, and reserves which were acquired by the County in connection with the Leased Facilities using enterprise fund monies, as exist as of the Commencement Date. Nothing in this Section shall prevent the County from withholding such funds as set forth in the Operational Agreement as to construction projects and claims of potential liability.
 - (3) All accounts receivable and other amounts owed to the City in connection with the Leased Facilities, including the right to bill for and receive all customer charges and similar accounts accrued but unbilled as of the Commencement Date.
 - (4) All enforceable agreements of the City which were entered into in connection with the Lease Facilities; provided, however, that in the event any agreement may not, by its terms, be assigned by the City without the consent of the other parties thereto, the City shall use its best efforts to obtain such consent, and if such consent is not given, then the City shall delegate to Lessee the responsibilities and obligations of the City under such agreements and shall enforce on Lessee's behalf the obligations of the other parties.
 - (5) All books, records, and other information collected and maintained in connection with the Leased Facilities including, without limitation, customer records and employee records.
 - (6) All assets of the City not listed above and not otherwise classified as Leased Facilities, and utilized in the water and sewer System.
- (b) The County recognizes and acknowledges that the JWSC cannot fully perform its obligations under this Lease without direct authority from the County to operate the System under the County's current permits. The

County, therefore, expressly agrees and authorizes the JWSC, as an agent of the County, to conduct its daily operations under the current, and any future, permits held by the County for such purposes. The JWSC agrees to indemnify and hold the City harmless for any losses, claims, damages, penalties, costs, fees (including reasonable and necessary attorney fees and related expenses), arising from the JWSC's operation of the Leased Facilities.

- (c) The City recognizes and acknowledges that the JWSC, pursuant to the Operational Agreement, and Addendum thereto, is engaging in certain activities and tasks which accompany and are necessitated by the preparatory work the JWSC must accomplish to become fully operational by January 1, 2008. Nothing in this Lease, therefore, prevents or hinders the City from transferring enterprise funds and Assets to the JWSC to facilitate its start up work prior to the Commencement Date. Such assets may include desks, chairs, tables, filing cabinets, printers, copiers, fax machines, telephones, and including such cash as necessary for start-up operations.

SECTION 5. TRANSFER AND ASSUMPTION OF LIABILITIES

- (a) Effective as of the Commencement Date, Lessee assumes, and agrees to perform, all enforceable liabilities and obligations of the City which were incurred or arose in connection with the Leased Facilities.
- (b) Lessee agrees to perform all obligations of the City and to pay all amounts when due under the following:
 - (1) The City's Revenue Bonds pursuant to the terms of the Bond Resolutions for as long as such bonds are outstanding; and
 - (2) Any federal, state or other governmental agency to which the City is obligated.

SECTION 6. USE OF REVENUES BY LESSEE

- (a) All revenues derived from operating the System shall be collected from the customers by the Lessee as the agent of, and on behalf of, the City and deposited in accordance with the terms of the City's Bond Resolutions relating to the System and Leased Facilities in effect as of the Commencement Date.
- (b) Lessee will pay over to the bond trustee or paying agent of the City such sums as is necessary to satisfy the City's revenue bond debt obligations in accordance with the terms, covenants and conditions set forth in the Bond

Resolutions in effect as of the Commencement Date relating to the System and Leased Facilities. Nothing in this Lease is intended to conflict with the City's Bond Resolutions or the obligations, covenants or responsibilities contained therein. In the event of a conflict between any term or condition in this Lease and any term or condition in said Bond Resolutions, the Bond Resolutions control.

- (c) Lessee will pay over to the City such sums as is necessary to satisfy any judgments, orders, decrees, or other liabilities and/or obligations incurred prior to the Commencement Date, and as otherwise set forth in the Operational Agreement, and Addendum thereto.
- (d) Notwithstanding any provisions herein, Lessee will otherwise maintain all banking, savings, and financial accounts of the Leased Facilities in such banks and accounts, interest-bearing or non-interest bearing, all subject to the provisions of the aforesaid Bond Resolutions. Lessee will make all decisions regarding the investment and reinvestment of such funds, and to use such funds and income therefrom in the manner and for the purposes provided in this Lease or in the documents or instruments creating such funds.

SECTION 7. MAINTENANCE; FUTURE USE; DISPOSITION OF PROPERTY

- (a) Lessee at all times during the term of the Lease shall keep and maintain the Leased Facilities in accordance with the requirements of the City's Bond Resolutions relating to the System and the Leased Facilities in effect as of the Commencement Date.
- (b) Lessee will operate and maintain the Leased Facilities in compliance with all federal, state, and local laws, ordinances, orders, rules, regulations and requirements applicable to the Leased Facilities, or to the repair and alteration thereof, or to the use or manner of use of the Leased Facilities.
- (c) Lessee will pay all expenses incurred in the operation and maintenance of the System, including the purchase of fixtures, equipment, and other personal property deemed by Lessee to be necessary or desirable for the proper operation and maintenance of the Leased Facilities.
- (d) Lessee shall plan and provide for the needs of the community served by the System, and may use any method which it determines may best accomplish this objective including, without limitation, the acquisition, operation, construction, improvement or repair of projects as contemplated in the Act, the Operational Agreement, and Addendum thereto.

- (e) Lessee shall not dispose of any asset covered by this Lease. Lessee may recommend to the City that certain leased property be deemed surplus and either sold, with proceeds transferred to the JWSC, or returned to the City for its use. Lessee may dispose of any property in a reasonable manner for which it has title.

SECTION 8. INSURANCE

- (a) Lessee covenants and agrees that it shall, during the term of this Lease, keep and maintain such insurance (in no less amounts as required by the aforesaid City Bond Resolutions) with respect to the Leased Facilities.
- (b) The City shall be named as an additional insured on all insurance policies for the duration of this Lease.

SECTION 9. DISPUTE RESOLUTION; TERMINATION

- (a) The dispute resolution procedures set forth in Section 22 of the Operational Agreement shall be utilized by the parties hereto to settle any disagreements which may arise under this Lease, which Section is incorporated herein by reference as if fully set forth herein. The fact that any party hereto resorts to negotiation, mediation, arbitration, or court procedures for resolution of any dispute shall not terminate operations under this Lease.
- (b) This Lease is subject to termination by either party hereto only for good cause as defined in Section 5 of the Addendum to the Operational Agreement, which definitions are incorporated herein by reference as if fully set forth herein. The parties hereto shall follow the termination procedures set forth in Section 23 of the Operational Agreement, which Section is incorporated herein by reference as if fully set forth herein.
- (c) Upon expiration or termination of this Lease, the procedures for redistribution of assets and liabilities from the JWSC to the City shall be accomplished pursuant to Section 23 of the Operational Agreement, which Section is incorporated herein by reference as if fully set forth herein.
- (d) On the effective date of the expiration or termination of this Lease during Phase One as set forth in the Addendum to the Operational Agreement, the County shall assume and agree to pay, perform and discharge, as and when due, all obligations of the aforesaid Bond Resolutions and any and all other obligations which were assumed or incurred by Lessee under this Lease. In the event the parties enter into Phase Two, then the said bonds will continue in the name of the County until such time as they are defeased by the JWSC.

- (e) This Lease will terminate upon transfer of the legal title to all Assets, the Leased Facilities, and the System to the JWSC. The parties will agree upon and provide notice to the other party of the effective date of such termination.

SECTION 10. MISCELLANEOUS PROVISIONS

- (a) Amendment. This Lease may be amended from time to time but no modification or amendment to this Lease shall be effective unless it is in writing and signed by the authorized officers of the parties hereto.
- (b) Assignment. The City or JWSC shall not assign or transfer any interest in this Lease, whether by assignment or novation, without the prior written consent of the other party hereto. Any assignee of the City or JWSC shall have all rights of the assignor herein unless otherwise limited by the Assignment Agreement subject to compliance with the terms and conditions of the aforesaid Bond Resolutions.
- (c) Authorization. Each party hereto has full power and authority to enter into and perform this Lease, and the person signing this Lease on behalf of each party has been duly authorized and empowered to enter this Lease and to sign all necessary transactions contemplated by this Lease.
- (d) Entire Agreement. This Lease constitutes the entire agreement between the parties hereto; no prior written promises, or contemporaneous or subsequent oral promises or representations, shall be binding, excepting the Operational Agreement, and Addendum thereto.
- (e) Notice. It shall be sufficient service of any notice, approval, consent, request, complaint, demand or other communication of the same nature shall be hand delivered or mailed by first class registered or certified mail, return receipt requested, postage prepaid and addressed as follows:
 - (1) If to City: City Manager, City of Brunswick
601 Gloucester Street
Brunswick, Georgia 31520
 - (2) If to JWSC: Director, JWSC
700 Gloucester Street
Brunswick, Georgia 31520

The parties hereto, by notice given hereunder, may designate any different address to which subsequent notices, approvals, consents, requests, complaints, demands or other communication shall be sent or person to whose attention the same shall be directed.

- (f) No Third Party Beneficiaries. No person or entity shall be deemed to be a third party beneficiary with respect to the obligations of the City or of the Lessee under this Lease.
- (g) Governing Law. The effect and meaning of this Lease and the rights of the parties hereto shall be governed, interpreted and construed according to the laws of the State of Georgia.
- (h) Severability. If any of the provisions of this Lease shall be determined finally to be invalid or unenforceable, in whole or in part, the remaining provisions shall continue in full force and effect, and be binding upon the parties hereto.
- (i) Captions. Section captions herein are for convenience of reference only and neither limit nor amplify the provisions of this Lease.
- (j) Multiple Counterparts. This Lease may be executed in two (2) counterparts, each of which shall without proof or accounting for the other counterpart, be deemed an original but all of which together shall constitute one and the same Lease.
- (k) Whereas Clauses. The foregoing whereas clauses are hereby incorporated into this Lease and made a part thereof.
- (l) Bond Resolutions: All provisions of this Lease notwithstanding, the parties hereto shall not violate any Bond Resolutions, covenants and obligations of the City relating to the System and Leased Facilities in effect as of the Commencement Date.
- (m) Time is of the essence. Time is of the essence in the performance by each party of its obligations hereunder.
- (n) Force Majeure. Neither party hereto shall be deemed to be in violation of this Lease if it is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control including, without limitation, natural disaster, act of war, strike, or statute or regulation or rule of the federal, state or local government or agency thereof (including the inability to obtain governmental approvals necessary for the performance of transactions contemplated hereby).

Signatures on Next Page

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in two (2) 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: _____ Date
GEORGIA MARION, Clerk

SEAL

**BRUNSWICK-GLYNN COUNTY JOINT
WATER AND SEWER COMMISSION**

By: Tony Sammons
TONY SAMMONS, Chairman

Attest to: Keith P. Morgan 10/3/2007
KEITH P. MORGAN, Director Date

SEAL

CITY MANAGER'S ITEM(S)

6. Awnings for City Hall.

The City Manager requested that the purchase of awnings for City Hall be discussed at a Work Session on November 7, 2007.

7. Outdoor Christmas decorations.

The Commission received a quote for Christmas Decorations from Dixie Decorations \$24,962.50 and Universal Concepts \$24,390.

Following a discussion, Commissioner Spaulding made a motion and commissioner Williams seconded the motion to accept the quote for Christmas decorations from Dixie Decorations for \$24,962.50. The motion passed by a vote of 5 to 0.

CITY ATTORNEY’S ITEM(S)

8. Quitclaim to Brumby Homes, LLC, for unopened alley in water lots 36-40, Old Town.

Commissioner Brooks made a motion and Commissioner Spaulding seconded the motion authorizing the Mayor to execute the quitclaim deed. The motion passed by a vote of 4 to 1. Commissioner Harvey voted Against.

COMMISSIONER BROOKS’ ITEM(S)

9. Baggy Pants Ordinance/State’s Indecent Exposure Ordinance.

Commissioner Brooks led a discussion on the State Indecent Exposure Ordinance and discussed the proposed creation of a new ordinance pertaining to the exposure of one’s private areas in a public setting.

Following a lengthy discussion the City Attorney was instructed to revise the Ordinance and advertise for discussion or adoption at the next Commission meeting.

10. Queen Quet to speak on creating a Gullah Geechee Historical Preservation.

Queen Quet spoke about the Gullah/Geechee Cultural Heritage Act and the progress of the the Gullah/ Geechee Nation. She next discussed the adoption of a Gullah/Geechee Cultural Preservation Ordinance to establish a Cultural Preservation District in the City of Brunswick-discussion only.

Commissioner Spaulding made a motion and Commissioner Williams seconded the motion to adjourn the meeting. The motion passed by a vote of 5 to 0.

MEETING ADJOURNED.

/s/ Bryan Thompson
Bryan Thompson, Mayor

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