

OPERATIONAL AGREEMENT WITH ADDENDUMS

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1 OPERATIONAL AGREEMENT
2 By and Between
3 CITY OF BRUNSWICK
4 and
5 GLYNN COUNTY
6 and
7 BRUNSWICK-GLYNN COUNTY JOINT WATER
8 AND SEWER COMMISSION
9

10
11 **SECTION 1. DEFINITIONS**
12

13 (a) Act means and refers to Local Act No. 485 (House Bill No. 1585), as amended by Local
14 Act No. 540 (House Bill No. 1271), and as may be amended from time to time by the General
15 Assembly of the State of Georgia.

16
17 (b) Administrative costs means the overhead costs associated with the management and
18 operations of the unified system, including such functions as accounting, purchasing, legal
19 services and human resources.

20
21 (c) Assets means real and personal property, tangible and intangible resources utilized to
22 provide water and sewer services to users of the unified system.

23
24 (d) Bonds mean revenue bonds, certificates and other obligations of the City, County, or
25 JWSC, as defined and provided for in Article 3 of Chapter 82 of Title 36 of the Official Code of
26 Georgia, the "Revenue Bond Law."

27
28 (e) Bond sinking fund means a fund of money set aside to retire existing bonded
29 indebtedness of the City and County as they mature.

30
31 (f) Criminal background records check means an investigation to determine a final
32 conviction, plea of nolo contendere or guilty, or sentence in a court for a misdemeanor or felony
33 in the State of Georgia, or any other state of the United States.

34
35 (g) Debt service means the cost of periodic payments of principal and interest to retire debt
36 incurred including, but not limited to, GEFA loans, revenue bonds and capital leases for the
37 construction and improvement of infrastructure.

38
39 (h) Drug screening test means a urinalysis screening for the use of illegal drugs including,
40 but not limited to, marijuana/cannabinoids (THC), cocaine, amphetamines/methamphetamine,
41 opiates or phencyclidine (PCP), barbiturates, benzodiazepine and the improper use of alcohol
42 and other drugs.

43
44 (i) EPA means the United States Environmental Protection Agency.

45
46 (j) EPD means the Environmental Protection Division of the Department of Natural
47 Resources, State of Georgia.

- 1 (k) Enterprise fund means an accounting method used to deposit and report any activity for
2 which a fee or assessment is charged to users for water and/or sewer services.
3
- 4 (l) For cause means separation of employment of a former City or County employee by
5 JWSC based on unsatisfactory job performance, disciplinary -actions, failure to maintain
6 required licenses and accreditations in accord with JWSC personnel policy.
7
- 8 (m) GEFA means the Georgia Environmental Facilities Authority, an agency of the State of
9 Georgia, created by an act of the Georgia General Assembly in 1983.
10
- 11 (n) Independent auditor means a certified public accountant, or firm thereof, who or which is
12 "independent" as the term is defined in Rule 101 and related interpretations of the Code of
13 Professional Ethics of the American Institute of Certified Public Accountants, or recognized
14 standing, who or which does not devote his or its full time to the City, County or JWSC, but who
15 or which may be regularly retained by a party to this Agreement.
16
- 17 (o) Liabilities means obligations to pay monies, including GEFA loans and capital leases,
18 perform services, complete contracts or otherwise satisfy commitments of the City, County or
19 JWSC.
20
- 21 (p) Motor vehicle records check means a job-related investigation into the driving record of a
22 person.
23
- 24 (q) NPDES Permit means the National Pollutant Discharge Elimination System Permit
25 issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. Section 1342, as amended.
26
- 27 (r) Operations and maintenance means the routine and periodic costs associated with
28 providing water and wastewater service on an ongoing basis including, but not limited to,
29 personnel costs.
30
- 31 (s) Reserve fund means an accounting method used to report monies set aside and held (i) to
32 facilitate future capital improvements (capital reserve fund), (ii) to rehabilitate or replace existing
33 infrastructure (depreciation reserve fund), and (iii) to provide for extraordinary expenditures
34 required to operate and maintain a system under unforeseen circumstances (operation and
35 maintenance reserve fund).
36
- 37 (t) Service District means an area delineated by functional separation of infrastructure.
38
- 39 (u) SPLOST means Special Purpose Local Option Sales Tax.
40
- 41 (v) Start date means January 1, 2008, at 12:01 o'clock a.m., the date on which the JWSC
42 begins operating the unified system
43
- 44 (w) System means any water or sewer system or combined water and sewer system.
45
- 46 (x) Tap fees (commonly referred to as "tap-fees" or "tapping fees") means the following:

1 (a) Connection/capital tap fee: A fee imposed upon new and existing development
2 prior to connection to the Utility, or change of use of property already connected to the Utility, to
3 pay for a proportionate share of the cost of capital system improvements needed to serve new
4 growth and development and based on REUs.

5
6 (b) Installation/operational tap fee: A fee charged for labor and materials for
7 connecting to the mains of the Utility which are adjacent to the property or near the property line
8 to be served.

9
10 (y) Unified system means the combined water and sewer systems of the City and County and
11 any additions and extensions thereto.

12
13 (z) User (customer) means residential, commercial or industrial customer of the unified
14 system.

15
16 (aa) Water and Sewer Ordinance means the legislative rules and regulations with the force
17 and effect of law duly adopted by the City of Brunswick Commissioners and the Glynn County
18 Board of Commissioners relating to the operation, maintenance, and extension and/or expansion
19 of the unified system by the JWSC.

20
21
22 **SECTION 2. LEGAL OPERATION; PERMITS; LICENSES; ORDINANCES**

23
24 (a) The JWSC shall comply with all City, County, State and Federal laws, statutes,
25 ordinances, rules, regulations, and orders applicable to the operation and maintenance of the
26 unified system, including operating and maintaining the unified system in the best interests of the
27 users.

28
29 (b) The City and County recognize that the JWSC is required to comply with all applicable
30 laws, including rules and regulations as may be promulgated by the EPD and EPA or such other
31 agencies as may from time to time be authorized to promulgate rules and regulations regarding
32 the operation and maintenance of the unified system. The City and County, therefore, agree to
33 take such action, adopt such ordinance, and provide reasonable rules and regulations as may be
34 required in keeping with such requirements.

35
36 (c) The City and County will prepare a list of all existing permits and licenses issued by
37 federal and state agencies to the respective governing bodies providing for water withdrawal and
38 wastewater treatment including, but not limited to, any NPDES Permit. The City and County
39 also will include on the exhibit list current permits issued by the City and County to customers,
40 such as industrial users, showing the name, address, phone number, date issued, reason for the
41 permit or license, and expiration date. The list of permits and licenses is attached hereto as
42 Exhibit "A."

43
44 (d) The City and County will transfer or assign to the JWSC by the start date all existing
45 federal and state permits and licenses for water withdrawals and wastewater treatment, and
46 current permits or licenses issued by the respective governments. In the event any water
47 withdrawal or wastewater treatment permit or license cannot be transferred or assigned by law or
48 by the terms and conditions contained therein, then the City and County, in cooperation with the

1 JWSC, will seek express written approval from the issuing agency for authority for JWSC to
2 operate under any state or federal permit or license issued to the City or County and which is
3 necessary for the operation and maintenance of the unified system. Further, the City and County
4 will transfer to JWSC the water and sewer permits and licenses issued by the City and County.
5

6 (e) The JWSC will submit to the City and County for review and adoption a Water and
7 Sewer Ordinance which standardizes the City and County water and sewer ordinances. Future
8 amendments to the Water and Sewer Ordinance shall be submitted by the JWSC to the City and
9 County for adoption, as needed. If the City and County do not agree on the amendment
10 provisions, then the parties hereto shall negotiate until such an amendment is acceptable to the
11 parties and subsequently adopted by the respective governing bodies. Nothing in this Paragraph
12 (e) shall prevent the City and County from adopting the same ordinance amendment regarding
13 water and sewer matters if any such amendment is necessary to comply with applicable
14 governmental statute, law, rule or regulation, or with any judicial determination which is in
15 conflict with any provision of the Water and Sewer Ordinance. The City, the County and the
16 JWSC agree that no amendments shall be made to the Water and Sewer Ordinance of the City
17 and County which would adversely affect the ability of the JWSC to establish rates, fees and
18 charges pursuant to Section 22-75(b) and Section 22-16-75(b) of the City and County Water and
19 Sewer Ordinance, respectively, in order for the JWSC to comply with all of its covenants and
20 obligations undertaken in connection with its outstanding bonds or other obligations.
21
22

23 **SECTION 3. VOTING PROCEDURES**

24

25 A decision by the JWSC as to any of the following matters shall require a motion approved by an
26 affirmative vote of a majority of members present including one City-appointed member and one
27 County-appointed member:
28

29 (a) Establishing or modifying service district boundaries; and
30

31 (b) Outsourcing (i.e., contracting with persons or firms who are not employees of the JWSC
32 for performance of) labor or personnel services other than professional services, construction
33 projects or administrative services such as billing, payroll, risk management, or insurance.
34
35

36 **SECTION 4. TERM**

37

38 (a) The parties hereto recognize that safeguarding public health and safety requires supplying
39 clean drinking water, providing environmentally responsible wastewater treatment, ensuring
40 stability of financial and human resources, and planning for capital improvements. Further,
41 fulfilling such a responsibility is best facilitated by a long term commitment. The parties agree,
42 therefore, the term of this Agreement shall be for fifty (50) years commencing on the date last
43 shown below.
44

45 (b) From time to time, the City, County or JWSC may deem it in the best interests of the
46 respective parties to continue under the full term of this Agreement. To this end, a party shall
47 give at least thirty (30) calendar days written notice to the other two parties of its desire to
48 extend this Agreement to the full term. The City, County and JWSC may, if they agree, by

1 resolution, adopt the same extension period and authorize its Mayor or Chairperson to execute
2 the term extension, which may include further amendments to this Agreement. Under no
3 circumstances, however, shall the full term of this Agreement be extended beyond fifty (50)
4 years in accordance with the Act and Georgia Constitution, Art. 9, Sec. 3, Para. 1.
5
6

7 **SECTION 5. TRANSFER POSSESSION OF ASSETS**

8

9 (a) The City and County staff will prepare a list of existing assets purchased with water and
10 sewer enterprise funds utilized in the operation and maintenance of its respective water and
11 wastewater systems including, but not limited to, all facilities, land, easements, maps and as-built
12 drawings. Further, the asset list shall include any other such assets that were not purchased with
13 enterprise funds but are an integral part of the operation and maintenance of the unified system.
14 Assets which may be considered obsolete, nonfunctional, or in need of major repair will be
15 annotated as such on the list. The asset list is attached hereto as Exhibit "B."
16

17 (b) Possession of the assets in Exhibit "B" will be transferred to the JWSC no later than the
18 start date.
19

20 (c) The JWSC will have access to City and County documents from which their staffs
21 prepared the asset list in Exhibit "B," as well as documents in support of the City and County
22 auditors' findings, including documents prepared by auditors in support of such findings,
23 regarding water and sewer enterprise fund activities for fiscal year 2006-2007. The City and
24 County will authorize their respective auditors to communicate directly with the JWSC or its
25 representative regarding water and sewer enterprise funds.
26

27 (d) The City and County will transfer any asset discovered after the start date which qualified
28 for, but was not included, in the list of assets attached hereto as Exhibit "B."
29

30 (e) Any water and/or sewer system, or improvement to same, completed after the start date
31 pursuant to an existing development agreement with the County, as listed on Exhibit "D" below,
32 will be transferred to the JWSC upon completion of such system.
33
34

35 **SECTION 6. OWNERSHIP OF ASSETS**

36

37 (a) Assets associated with the revenue bonds of the City and County will be transferred to
38 the JWSC if the bonds held by the City and County are refunded by the JWSC by the start date.
39 If the bonds are not so refunded by the start date, the said assets held by the respective governing
40 bodies will be leased by the JWSC. As each bond is refunded, title to the asset(s) connected
41 therewith shall be transferred to the JWSC.
42

43 (b) The JWSC is prohibited from disposing of any City or County asset covered by lease as
44 stated in Paragraph (a), above. The JWSC may recommend to the City or County that certain
45 leased property be deemed surplus and either sold, with the proceeds going to the JWSC, or
46 returned to the respective governing body for its use. The JWSC may dispose of property for
47 which it has title. In either case, property shall be disposed of in a reasonable manner so as to
48 realize the maximum return to the JWSC.

1 (c) Notwithstanding any provisions to the contrary, any leases or other agreements involving
2 transfer of assets to the JWSC will be subject to the bond resolutions, covenants and obligations
3 of the City or County, respectively.
4
5

6 **SECTION 7. TRANSFER AND ASSUMPTION OF LIABILITIES**

7

8 (a) The City and County staff will prepare a list of liabilities connected to the operation and
9 maintenance of their respective water and wastewater systems to be transferred to the JWSC by
10 the start date. The list will include all water and sewer enterprise funds retained by the City and
11 County to complete construction projects begun prior to the start date. A list of liabilities is
12 attached hereto as Exhibit "C." The JWSC agrees to assume and pay all liabilities so transferred
13 in accordance with their terms.
14

15 (b) The City and County will transfer any liability discovered after the start date which
16 qualified for, but was not included, in the list of liabilities attached hereto as Exhibit "C." The
17 JWSC agrees to assume and pay all liabilities so transferred in accordance with their terms. The
18 JWSC has the right to contest any liability transferred after the start date against persons or
19 entities not a party to this Agreement to the same extent and upon the same grounds as the
20 transferor.
21

22 **SECTION 8. TRANSFER AND ASSUMPTION OF EXISTING AGREEMENTS**

23

24
25 (a) The City and County staff will prepare a list of existing contracts, agreements,
26 memorandums of understanding, and other such agreements (collectively "agreements")
27 connected to the operation and maintenance of their respective water and wastewater systems in
28 existence as of the start date, noting those which have pending litigation. The list of agreements
29 is attached hereto as Exhibit "D."
30

31 (b) The agreements listed on Exhibit "D" shall be assigned or transferred to the JWSC by the
32 start date; however, agreements with pending litigation shall not be assigned or transferred to the
33 JWSC until the matters in controversy are resolved by the City or County, as applicable. The
34 City or County may withhold funds necessary to resolve the matters in controversy. Upon final
35 determination by a court of law or upon settlement of the litigation, any excess funds withheld by
36 the City or County shall be transferred to the JWSC. The City and County will use their best
37 efforts to obtain third party consent to any assignments in accord with the terms and conditions
38 of the agreements. Copies of the listed agreements will be provided to JWSC by the start date,
39 along with any documents evidencing an assignment of an agreement.
40

41 (c) The JWSC agrees to assume all obligations in the agreements transferred to it by the City
42 and County, and to discharge those obligations pursuant to the terms and conditions of the
43 agreements. If an agreement contains a term or condition the JWSC does not have the legal
44 authority under the Act or this Agreement to fulfill, then the City or County shall be responsible
45 for fulfilling such obligation under the agreement.

1 (d) The JWSC shall honor the terms and conditions of the agreements assigned and
2 transferred to it by the City and County. The JWSC will not cause a breach in the terms or
3 conditions of any agreements assigned or transferred to it by the City or County relating to the
4 operation and maintenance of the unified system. The City and County shall inform the JWSC,
5 in writing and in a timely manner, when they become aware of a dispute or conflict effecting the
6 operation and maintenance of the unified system. Further, the City and County agree to
7 cooperate with the JWSC to determine the best resolution of the dispute or conflict.
8

9 (e) The City and County shall amend, by the start date, the Joint Service Delivery Strategy
10 Agreement, dated May 1999, to reflect the applicable provisions of this Agreement.
11
12

13 **SECTION 9. TRANSFER AND ASSUMPTION OF CONSENT ORDERS**

14

15 (a) The City and County staff will prepare a list of Consent Orders and decrees still in effect
16 as of the start date, including fines and penalties assessed but unpaid, and all unresolved incident
17 reports sent to the EPD. Copies of the listed documents, including all correspondence between
18 the City or County and the EPD associated with each incident report, will be provided to JWSC
19 by the start date. The EPD list is attached hereto as Exhibit "E."
20

21 (b) The City and County shall transfer to the JWSC the Consent Orders and decrees by the
22 start date. The JWSC agrees to assume all obligations in the orders and decrees entered into by or
23 against the City or County and to discharge those obligations pursuant to the terms contained
24 therein. The JWSC will not cause a violation of the terms or conditions of any such Consent
25 Order or decree relating to the operation and maintenance of the unified system. If an order or
26 decree contains a term or condition the JWSC does not have the legal authority under the Act or
27 this Agreement to fulfill, then the City or County shall be responsible for fulfilling such
28 obligation under the order or decree.
29
30

31 **SECTION 10. EMPLOYEES; PROFESSIONAL SERVICES**

32

33 (a) The City and the County shall prepare a list of existing water and sewer employees,
34 including former employees of the County who are employees of the company operating the
35 county's water and sewer system, along with each employee's original date of hire. The list of
36 employees is attached hereto as Exhibit "F."
37

38 (b) The JWSC will hire each person listed on Exhibit "F." The position offered to such
39 persons and the terms of compensation will be equal to the employee's former job and pay
40 classification. If any person listed on Exhibit "F" decides not to become an employee of the
41 JWSC, then notification will be given to the JWSC within ten (10) business days from the time
42 the job has been made available to such person.
43

44 (c) For a period of four (4) years the employees listed on Exhibit "F" may be separated from
45 employment only for cause; nonetheless, continued employment will be based on satisfactory job
46 performance, attendance and behavior consistent with such performance, and maintenance of
47 required licenses and accreditations in accord with JWSC personnel policy. JWSC will use its
48 best efforts to maintain the employee's current level of utilization with the City or County and to

1 cross-train and educate employees whose positions may be redefined due to, for example,
2 advancing technology.

3
4 (d) The JWSC will accept the original date of hire for employees on Exhibit "F." Further,
5 the JWSC will accept the transfer of vacation time and sick leave up to the accrual limits allowed
6 under the personnel policy of the employee's former employer. The JWSC will not accept the
7 transfer of accrued compensatory or holiday time.

8
9 (e) The JWSC will offer health insurance coverage to its employees and eligible dependents
10 and a retirement plan as set forth in JWSC's Human Resources Standards of Practice as amended
11 from time to time. Employees on Exhibit "F" upon employment with the JWSC will retain their
12 retirement vesting status from their respective City or County retirement plan as their beginning
13 status in JWSC's pension benefits plan.

14
15 (1) If a former City or County employee is not fully vested upon employment with
16 the JWSC, then the percentage of vesting attained from the original date of hire with the City or
17 County will be retained upon employment with the JWSC as a minimum percentage in the
18 JWSC vesting schedule.

19
20 (2) The original date of hire of employees on Exhibit "F" is for JWSC pension plan
21 vesting purposes under this Section. Employees will be eligible for payout of pension benefits to
22 be paid by the JWSC for years of service with the JWSC. Former City and County employees
23 will receive credit for the unvested portion of their previous service when calculating any payout
24 of pension benefits from the JWSC. Payout of any pension benefits attained while employed
25 with the City and County will remain the responsibility of the City and County, respectively.

26
27 (f) The JWSC shall employ and compensate accountants, auditors, attorneys, consulting
28 engineers and other professionals to assist in the operation, maintenance and growth of the
29 unified system.

30
31
32 **SECTION 11. RATES**

33
34 (a) JWSC will operate separate service districts. The rates in each district reflecting the cost
35 of supplying water and sewer to customers in that district including, but not limited to, bond
36 debt, GEFA loans and such other applicable debts, for infrastructure used in that district. The
37 initial service districts are shown on Exhibit "G."

38
39 (b) The method of rate calculation and cost components utilized will be uniformly applied in
40 each service district. Cost components of the rate may include the following elements:

- 41
42 (1) administrative costs;
43
44 (2) debt service;
45
46 (3) operation and maintenance; and

1 (4) reserve fund based on long-term capital planning requirements.
2

3 (c) The Rate Resolution for each year shall provide for the components to be utilized by the
4 JWSC in composing its base rates and consumption rates, if applicable, and may provide for
5 tiered, flat-fee rates for water and/or sewer service. Every customer shall pay the base rate each
6 month regardless of usage or connection to the system.
7

8 (d) In the event the City or County revenue bonds are refunded by the JWSC, the same debt
9 service will be calculated into the rate in the same service district and applied to the same system
10 for which the original bonds were utilized to make improvements. GEFA loans, capital leases
11 and other debt service also will be calculated into the rate in the same service district and system
12 for which the original debt was utilized to make improvements.
13

14 **SECTION 12. TAP FEE STUDY**

15
16 The JWSC will prepare a study of tapping fees and utilize such study as a basis for setting
17 tapping fees set forth in its standardization of City and County Water and sewer Ordinances.
18 Such fees are presently referred to in the City's Water and Sewer Ordinance as connection fees
19 and installation fees, and in the County's Water and Sewer Ordinance as capital tap fees and
20 operational tap fees. Notwithstanding, the JWSC in its discretion, and at any time, may suspend
21 the imposition and collection of capital tap fees for a certain period to facilitate review of its
22 capital tap fees and to determine whether to revise its capital fee structure, maintain the status
23 quo, or abolish capital fees in their entirety.
24
25

26 **SECTION 13. BILLING**

27
28 (a) The JWSC is responsible for customer billing, collection, and deposit of revenues.
29 Customers of the unified system will be billed on a regular monthly basis in accordance with the
30 rates established in Section 11, above. The JWSC will establish a progressive system of penalties
31 for non-payment, and provide for discontinuance of service and collection of the sums due
32 consistent with the Water and Sewer Ordinances and JWSC policies.
33
34

35 (b) If the JWSC does not refund the City and County revenue bonds by the start date, then
36 the JWSC will act as the agent of the City and County in collecting revenues from the customers
37 of the unified system. The JWSC will pay over to the City and County such sums as is necessary
38 to satisfy the City's and County's respective bond debt obligations.
39

40 (c) Existing customers as of the start date who do not have a deposit with the City or County
41 for water and sewer service will not be required to submit a deposit to the JWSC, except that the
42 JWSC, or its designee, may require a deposit dependent upon a customer's inadequate payment
43 history for water and/or sewer service. Customers making application for water or sewer service,
44 or both, after the start date will be required to submit a deposit to the JWSC .for such service.
45

46 (d) Billing disputes will be resolved pursuant to the procedures set forth in the Water and
47 Sewer Ordinances. The decision of the JWSC, or its designee, shall be a final decision on the
48 matter presented.

1 **SECTION 14. FISCAL**

2
3 (a) Fiscal year for JWSC will be July 1 to June 30. JWSC will prepare a budget prior to the
4 beginning of the fiscal year and, upon adoption, it will be made available for viewing on the
5 JWSC web site.

6
7 (b) The JWSC will have an independent auditor perform an annual audit. The adopted audit
8 will be made available for viewing on the JWSC web site.

9
10 (c) Upon written request, particular financial reports will be copied to the City and County in
11 a timely manner after such reports have been presented to the Commission.

12
13 (d) Any applicant requesting connection to the unified system shall pay to the JWSC such
14 sum as the Director, or his designee, shall calculate from the applicable rate resolution for tap
15 fees. (Notwithstanding, no connection/capital tap fees shall be due and owing when the
16 imposition and collection thereof has been suspended or abolished by the JWSC.) The JWSC
17 will provide the applicant with a written receipt upon payment of tap fees. An adjustment (refund
18 or additional sum due) for any miscalculation will be made after the completion of the
19 connection if the amount paid is inconsistent with the actual costs to the JWSC. The JWSC may
20 enter into an agreement with a developer in which the developer agrees to pay its proportionate
21 share of the project capital tap fees and JWSC agrees to repay the developer capital tap fees
22 collected and due them under the development agreement (less the developer's proportionate
23 share).

24
25 (e) All City and County water and sewer enterprise monies will be transferred to the JWSC
26 by the start date, except as otherwise specified in this Agreement. Such funds, including reserve
27 funds, will be used in the district from where they were collected for the benefit of the customers
28 served in that district. If bonds are not refunded by the start date, then the City and County shall
29 retain all bond related funds as identified and specified in the bond indentures.

30
31
32 **SECTION 15. USER CHARGE SYSTEM.**

33
34 The JWSC may establish a user charge system pursuant to the standardized Water and Sewer
35 Ordinance of the City and County for the purposes of providing amounts sufficient to fund its
36 operations, reserves, capital improvements, depreciations repayments of bonds and other debt
37 obligations and in order to comply with all covenants which may be contained in its bond
38 resolutions or other debt instruments relating to establishing and maintaining rates, tolls, fees and
39 charges for the services facilities and commodities furnished by the unified system.

40
41
42 **SECTION 16. INSURANCE; CLAIMS**

43
44 (a) Insurance: The JWSC will at all times during the term of this Agreement, commencing
45 with the start date, provide insurance as follows:

- 46
47 (1) Workers' Compensation coverage for all employees of the JWSC.

1 (2) Comprehensive General Liability Insurance, Comprehensive Property and
2 Casualty Insurance, and Flood Insurance, to protect the assets owned by the JWSC or leased
3 from the City and County from claims for damages for Bodily Injury, including accidental death,
4 as, well as from claims of property damages, which may arise from the operation or maintenance
5 of the unified water and sewer system. The JWSC will furnish the City and County with a
6 Certificate of Insurance naming the City and County, its officers and employees, as additional
7 named insured on the liability policies, and as additional loss payee on comprehensive property,
8 casualty and flood policies in force during the lease period, if any. The Certificate shall state that
9 the policy(ies) shall not be cancelled by the insurance company without thirty (30) days written
10 notice to the JWSC, City and County.

11
12 (b) Claims:

13
14 (1) All claims against the City and County water and sewer operations incurred
15 before the start date will continue to be handled by the City and County which continue to own
16 any insurance proceeds or subrogation rights. The City and County may withhold monies from
17 the funds to be transferred to the JWSC, as stated in this Agreement, for the amount of the
18 potential liability, including the costs and expenses of defending a claim. In the event the City or
19 County do not withhold sufficient funds to cover such liability and/or expenses, the JWSC agrees
20 to provide the City or County with the deficit amount(s). When a claim is settled or when
21 insurance proceeds are received by the City or County after the start date relating to any asset or
22 liability transferred to the JWSC, then the balance of such monies withheld and such insurance
23 proceeds will be transferred, together with an accounting, to the JWSC in a timely manner.

24
25 (2) All claims related to water and sewer operations against the City, County, or
26 JWSC after the start date are the responsibility of the JWSC, including the costs, expenses and
27 defense of any litigation.

28
29 (3) The JWSC will hold harmless the City and County for claims related to water and
30 sewer operations that are conducted, directed and under the control of the JWSC, and which are
31 made against either or both those two governmental bodies arising on or after the start date. The
32 JWSC shall not indemnify the City or County for the City's or County's own sole negligence.

33
34
35 **SECTION 17. EMERGENCY RESPONSE PLAN**

36
37 The JWSC will submit a water and sewer emergency response plan to the City and County for
38 comment within ninety (90) calendar days after the start date. The plan should focus on actions
39 needed to reduce impacts and restore service in a time and effect manner. In the interim and until
40 the JWSC plan is completed, the JWSC will operate under existing City and County emergency
41 plans, and cooperate with the two governing bodies in the performance of their respective plans.

42
43
44 **SECTION 18. REGULATORY BODIES**

45
46 The JWSC will provide to the City and County, upon request, correspondence or reports received
47 or sent to the EPD and any other regulatory agency relating to reportable incidents.

1 **SECTION 19. GROWTH AND DEVELOPMENT**

2
3 (a) The JWSC will be responsible for providing the City and County with a master plan of
4 the unified system relevant to each governing body. The City and County may adopt the
5 applicable master plan as presented by the JWSC. The parties hereto, as applicable, shall
6 negotiate to resolve any disputed elements in the master plan.
7

8 (b) The JWSC will provide the water and sewer component of the State mandated
9 Comprehensive Plans of the City and County as requested to meet State submission deadlines.
10 The parties hereto, as applicable, shall negotiate to resolve any disputed elements in the
11 Comprehensive Plans mandated by the State of Georgia or the federal government or agencies
12 thereof.
13

14 (c) A JWSC representative will attend all City and County planning activities and meetings
15 relating to the unified system, including public hearings and development review team meetings.
16

17 (d) The JWSC will respond in a timely manner when receiving any request for new service.
18 If insufficient information is provided, the response will clarify the information needed to make a
19 decision regarding the request. If the information required to make an informed decision is held
20 by the City or County, then the City or County shall respond in a timely manner to facilitate the
21 process for the applicant to obtain service.
22

23 (e) All requests for information from the City or County to the JWSC, or from the JWSC to
24 the City or County shall be responded to, generally, within ten (10) working days. Written
25 justification for any inability to meet this time frame may be required.
26
27

28 **SECTION 20. CONSTRUCTION PROJECTS**

29
30 (a) SPLOST Projects: Except as set forth in Section 20(c) below, the JWSC is not entitled to
31 receive any direct disbursement of SPLOST proceeds; therefore, except as set forth Section 20(c)
32 below, all present and future water and sewer SPLOST projects will be completed by the City
33 and County. Upon completion, any water or sewer infrastructure or asset developed or acquired
34 with SPLOST funds will be transferred to the JWSC consistent with Paragraph 6(a), above. The
35 list of SPLOST projects and funds to complete these projects is attached hereto as Exhibit "H".
36

37 (1) SPLOST Projects Begun Prior to Start Date: The City and County will be
38 responsible solely for all aspects of completing projects begun prior to the start date.
39

40 (2) SPLOST Projects Begun After the Start Date: The JWSC will be responsible for
41 providing timely design consultation and specification review of all water and sewer projects
42 prior to the project or its design being let out to bid and any subsequent design changes to such
43 projects.
44

45 (3) Future SPLOST allocations for water and sewer projects may be requested by the
46 JWSC in accordance with its master plan, including the JWSC capital plan. The decision as to
47 the inclusion, level of funding, priority and letting of the bid on any SPLOST project rests solely
48 with the City or the County.

1 (b) Non-SPLOST Projects:
2

3 (1) Non-SPLOST Projects Begun Prior to Start Date: The City and County will be
4 responsible solely for all aspects of completing water and sewer projects begun by them prior to
5 the start date, including payment of project overages and settlement of disputes, as applicable.
6 Upon completion, the infrastructure or asset will be transferred consistent with Paragraph 6(a),
7 above, to the JWSC. If completion of the project costs less than the funds withheld under
8 Paragraph 7(a), above, then such remaining funds shall be transferred to the JWSC. A list of
9 Non-SPLOST projects is attached here as Exhibit "I".
10

11 (2) Non-SPLOST Projects Begun After the Start Date: The JWSC will be responsible
12 solely for all aspects of completing projects begun after the start date including overages and
13 settlement of disputes.
14

15 (c) SPLOST Intergovernmental Agreement: Notwithstanding anything to the contrary in this
16 Operational Agreement, including specifically section 20(a) above, the JWSC may, if
17 specifically authorized by the City and/or County (as applicable) in a separate Intergovernmental
18 Agreement with the JWSC, receive direct disbursements of eligible SPLOST proceeds from the
19 City and/or County for approved water and sewer SPLOST projects and may complete such
20 SPLOST projects on its own. Any such direct disbursements and project completion by JWSC
21 shall be under such terms and conditions as may be mutually agreed upon in writing with the
22 JWSC by the City and/or County, whichever may be applicable, in such Intergovernmental
23 Agreement. SPLOST allocations for water and sewer projects in any future SPLOST may be
24 requested by the JWSC in accordance with its master plan, including the JWSC capital plan, but
25 the decision as to the inclusion, level of funding, and priority of water and sewer projects in any
26 SPLOST rests solely with the City and/or County.
27
28
29
30

31 **SECTION 21. USE OF CITY, COUNTY, JWSC SERVICES** 32

33 The JWSC agrees to enter into a formal agreement to contract and pay for City and County
34 services used by the JWSC after the start date, including, but not limited to, services performed
35 by the departments of Engineering, Information Technology, Finance and Human Resources.
36 Likewise, the City and County may contract with the JWSC for services after the start date. The
37 City, County and JWSC may refuse or condition such contracts.
38
39

40 **SECTION 22. DISPUTE RESOLUTION** 41

42 (a) Any dispute, controversy, or other matter in question between the parties hereto arising
43 out of, or relating to, this Agreement or the Act, or the breach or violation thereof, shall be
44 noticed in writing to the offending party and copied to the other party who did not receive notice.
45 The notice shall specify the issue(s) in controversy. Any documentation in support of the issue(s)
46 raised in the notice shall be attached thereto. The notice shall provide a minimum of thirty (30)
47 calendar days to investigate and remedy any failure or breach or violation or state any offsetting

1 claims. Additional response time may be requested and granted, in writing, depending upon the
2 complexity and nature of the matter.

3
4 (b) If the matter noticed in Paragraph (a), above, remains in dispute after the response to the
5 said notice is supplied by the noticed party, then a three (3) member committee shall be formed
6 for a specified period of time, to be determined by the committee, and consisting of the City
7 Manager, County Administrator, and JWSC Director or their designees. The committee shall be
8 responsible for investigating the dispute. The committee will provide a written report to the
9 parties herein setting forth its findings and suggest a resolution to the dispute or the reasons the
10 dispute cannot be resolved.

11
12 (c) If the matter in dispute is not resolved following the procedures set forth in Paragraphs
13 (a) and (b), then the parties may submit the unresolved issue(s) to mediation. The parties will
14 mutually agree on one mediator. The said mediation will transpire in the City or County.

15
16 (d) If within sixty (60) calendar days after service of a written demand for mediation, the
17 mediation does not result in settlement of the dispute, then any unresolved controversy or claim
18 arising from or relating to this Agreement or the Act, or breach or violation thereof, may be
19 submitted to binding arbitration or resolved in a court of law having jurisdiction of such matters
20 at the election of the complaining party(ies).

21
22 (e) The parties hereto expressly acknowledge that they are subject to the jurisdiction and
23 process of the courts of Glynn County, Georgia as to all matters and disputes arising or to arise
24 under this Agreement or the Act. This shall not be construed to waive subject matter jurisdiction.
25 Each party shall promptly provide, upon written request, the name of its agent for service of
26 process purposes. Further, the parties expressly and irrevocably waive any claim or defense in
27 any said action or proceeding based on any alleged lack of jurisdiction, improper venue or forum
28 non conveniens or any similar basis.

29
30 (f) No provision set forth in this Section 22 is to have the effect to abridge the right of any
31 party to proceed in a court of law or equity.

32
33
34 **SECTION 23. TERMINATION**

35
36 (a) Joint Termination: The City and County, by resolution of their respective governing
37 bodies, may jointly terminate this Agreement upon a determination the JWSC has breached its
38 duty under this Agreement or violated the Act, provided such determination is based, at least in
39 part, on the evidence and findings provided in the procedures set forth in Section 22, Paragraphs
40 (a) through (c), above. Further, the resolution shall stipulate that the City and County shall enter
41 into a Separation Agreement intended, in part, to provide uninterrupted water and sewer service
42 to customers of the unified system, and state that the Separation Agreement will include an
43 effective date of termination of this Agreement.

44
45 (b) Separation Agreement: The City and County recognize that termination of this
46 Agreement will require a period of time to negotiate the redistribution of assets and liabilities of
47 the JWSC, to secure financial stability, to provide for adequate and continuous water and sewer
48 service to customers, to decide issues related to human resources, and to ensure regulatory

1 compliance. The City and County may determine and may so stipulate that it would be beneficial
2 to the citizens and their respective governments to maintain certain operation and maintenance
3 functions and thereby set a future date for terminating this Agreement. Under no circumstances
4 shall the future termination date exceed the term date of this Agreement as set forth in Section 4,
5 above.

6
7 (c) Prior to termination of this Agreement, the JWSC shall reconvey its assets and liabilities
8 to the City and County without compensation, it being expressly acknowledged that all assets
9 have been paid for by, and owned by, the people served regardless of which of the parties holds
10 legal title. Assets and liabilities conveyed by the City and County under this Agreement to the
11 JWSC will be reconveyed to either the City or County based upon which governing authority
12 made the original transfer to the JWSC. Assets and liabilities acquired by the JWSC after the
13 start date, excepting those transferred under Paragraphs 5(d) and 7(b), above, will be conveyed to
14 the City and County on a jurisdictional basis unless the majority of the users are located in
15 another jurisdiction, in which case the asset(s) or liability(ies) will be conveyed to and as
16 assumed by the governing authority in which the subject matter of the transfer is allocated or
17 located.

18
19 (d) Prior to termination of this Agreement and in accord with the distribution of assets and
20 liabilities in Paragraph (b) and (c), above, the City and County expressly agree to refund or
21 defease any outstanding revenue bonds, certificates and other obligations of the JWSC, and to
22 pay off or assume any loans or other debts of the JWSC then outstanding. In addition, prior to or
23 simultaneously with the termination of this Agreement all such bonds, certificates, obligations,
24 loans and debts of the JWSC (the "Obligations") shall be refunded or defeased, and the JWSC
25 shall have received an opinion of nationally recognized bond counsel that such refunding or
26 defeasance and distribution of assets to the City and the County will not adversely affect the
27 exclusion of interest from federal income taxation (or cause the loss of any interest rate subsidy
28 in the case of a defeasance of Build America Bonds or similar interest rate subsidy obligations)
29 on the Obligations or on the City of Brunswick Water and Sewerage Revenue Refunding and
30 Improvement Bonds, Series 1992, City of Brunswick Water and Sewerage Revenue Refunding
31 Bonds, Series 2001 and Glynn County Water and Sewer Revenue Refunding and Improvement
32 Bonds, Series 2003, which are being defeased simultaneously with the issuance and delivery of
33 the Series 2010C Bonds by the JWSC.

34
35 (e) Notwithstanding any other provision to the contrary herein above in this Section 23, the
36 parties acknowledge and expressly agree that the City and County, absent legislative authority
37 and referendum, cannot jointly terminate this Agreement by joint resolution in contravention of
38 O.C.G.A. § 1-3-11, titled No office to be abolished nor term shortened or lengthened by local
39 Act during term to which person has been elected, as amended from time to time.

40
41
42 **SECTION 24. EMINENT DOMAIN**

43
44 (a) The parties hereto recognize that it may be necessary to exercise the power of eminent
45 domain to facilitate the operation, maintenance and growth of the unified system. Further, the
46 Act expressly prohibits the JWSC from exercising such power; therefore, the City or the County
47 may act on behalf of the JWSC in exercising such power.

1 (b) The JWSC, by resolution, shall determine the necessity to acquire property for utilization
2 in the unified system by eminent domain and present a JWSC request to either the City or
3 County, as appropriate, to act on JWSC's behalf in acquiring such property. The City or County
4 may, in their sole discretion, place conditions on the request or reject it in its entirety.
5

6 (c) All costs associated with acquiring property by eminent domain shall be borne by the
7 JWSC including, but not limited to, litigation costs and the amount of the judgment in favor of
8 the condemnee, plus interest, if any.
9

10 (d) In the event the Act is amended to provide the JWSC with the authority to exercise the
11 power of eminent domain, then upon the effective date thereof, Paragraphs (a) through (c) of this
12 Section 24 shall be void and nonbinding on the parties hereto.
13

14 **SECTION 25. CUSTOMER RELATIONS**

15
16
17 The JWSC will establish and maintain a system for documenting and resolving customer
18 complaints.
19

20 **SECTION 26. NOTICE**

21
22
23 (a) It shall be sufficient service of any notice, approval, consent, request, complaint, demand
24 or other communication of the same shall be hand delivered or mailed by first class registered or
25 certified mail, return receipt requested, postage prepaid and addressed as follows:
26

27 (1) If to City: City Manager, City of Brunswick
28 601 Gloucester Street
29 Brunswick, Georgia 31520
30

31 (2) If to County: County Administrator, Glynn County
32 701 "G" Street- Historic Courthouse
33 Brunswick, Georgia 31520
34

35 (3) If to JWSC: Director, JWSC
36 700 Gloucester Street
37 Brunswick, Georgia 31520
38

39 (b) The parties hereto may, by notice given hereunder to all parties, designate any different
40 address to which subsequent notices, approvals, consents, requests, complaints, demands or other
41 communication shall be sent or person to whose attention the same shall be directed.
42
43

44 **SECTION 27. ENTIRE AGREEMENT: BENEFIT TO PARTIES**

45
46 (a) This Agreement and any attached exhibit(s) constitute the entire agreement between the
47 parties hereto; no prior written promises, or contemporaneous or subsequent oral promises or
48 representations, shall be binding.

1 (b) With the exception of rights expressly conferred herein, nothing expressed or mentioned
2 in or to be implied herefrom is intended or shall be construed to give to any person other than the
3 parties hereto, any legal or equitable right, remedy or claim under or in respect hereto or any
4 agreement condition or provision herein contained and no provision shall be construed as
5 creating any debt as against the City, County or JWSC in favor of any such person; this
6 Agreement and the covenants, conditions and provisions hereof being intended to be used for the
7 sole and exclusive benefits of the parties hereto.
8
9

10 **SECTION 28. AMENDMENT**

11
12 This Agreement may be amended from time to time but no modification or amendment to this
13 Agreement shall be effective unless it is in writing and signed by the authorized officers of all
14 parties hereto.
15

16 **SECTION 29. ASSIGNMENT**

17
18
19 (a) The City, County or JWSC shall not assign any interest in this Agreement, and shall not
20 transfer any interest in this Agreement, whether by assignment or novation, without the prior
21 written consent of the other two parties hereto. Any assignee of the City, County or JWSC shall
22 have all rights of the assignor herein unless otherwise limited by the Assignment Agreement.
23

24 (b) In the event any services stated herein are to be performed by the assignee or
25 subcontracted to others, assignee shall protect the assignor's interests to the extent that the same
26 terms and conditions herein shall be binding on the subcontractor.
27

28 **SECTION 30. AUTHORIZATION**

29
30
31 Each party hereto has full power and authority to enter into and perform this Agreement, and the
32 person signing this Agreement on behalf of each party has been duly authorized and empowered
33 to enter this Agreement and to sign all necessary transactions contemplated by this Agreement.
34

35 **SECTION 31. GOVERNING LAW**

36
37
38 The effect and meaning of this Agreement and the rights of the parties hereto shall be governed,
39 interpreted and construed according to the laws of the State of Georgia.
40

41 **SECTION 32. SEVERABILITY**

42
43
44 If any of the provisions of this Agreement shall be determined finally to be invalid or
45 unenforceable, in whole or in part, the remaining provisions shall continue in full force and
46 effect, and be binding upon the parties hereto.

1 **SECTION 33. MISCELLANEOUS PROVISIONS**

2
3 (a) Section captions herein are for convenience of reference only and neither limit nor
4 amplify the provisions of this Agreement.

5
6 (b) This Agreement may be executed in three (3) counterparts, each of which shall without
7 proof or accounting for the other counterparts, be deemed an original but all of which together
8 shall constitute one and the same Agreement.

9
10 (c) The foregoing whereas clauses are hereby incorporated into this Agreement and made a
11 part thereof.

12
13 (d) All provisions of this Agreement notwithstanding, the parties hereto shall not violate any
14 bond resolutions, covenants and obligations of the City or County, respectively.

15
16
17 FIRST ADDENDUM ADDS:

18
19 **SECTION 1. PHASES**

20
21 Operations under the Operational Agreement shall be undertaken in two distinct phases, Phase
22 One being the initial stage of full JWSC operations under a Lease of assets as described in this
23 Addendum to the Operational Agreement, which consideration for said Lease shall be in the
24 amount of ten dollars (\$1 0.00) per annum, and Phase Two being the following stage of full
25 JWSC ownership and operation of the unified water and sewer system, which is provided for in
26 the Operational Agreement. Use of the term "transfer" or its equivalent in the Operational
27 Agreement shall connote transfer of legal title and ownership upon the commencement of Phase
28 Two, but shall only mean use, possession and control under the lease arrangement described
29 below during Phase One.

30
31 **SECTION 2. PHASE ONE ACTIVITIES**

32
33 Commencing on the start-up date of January 1, 2008, the JWSC shall begin full operation of the
34 water and sewer systems of the City and County under the terms of leases of the systems from
35 the City and County.

36
37 **SECTION 3. RETENTION OF LEGAL TITLE OF ASSETS AND LIABILITIES**

38
39 During Phase One the City and County shall retain legal title and ownership, and the JWSC shall
40 have complete and sole use, possession and control of the City and County systems and
41 enterprise funds, receivables, cash accounts, deposit accounts and .cash equivalents, including
42 infrastructure, equipment, rolling stock, real property, City and County permits and permitting
43 authority, and liabilities, including contractual liabilities, revenue bonds and other debt, accounts
44 payable and contingent liabilities as exist on the Lease/Phase One start date. The City and
45 County hereby agree and authorize the JWSC, upon completion of the benchmarks, to re-finance
46 existing revenue bonds, i.e. defease existing bonds and engage in a new bond issue that may
47 include re-financing the debt represented by said existing bonds, at a time when the JWSC
48 determines it is in the best interests of the rate payers to refund such bonds.

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