

**COLUMBUS COUNTY BOARD OF COMMISSIONERS****October 04, 2006****8:00 A.M.**

The Honorable Columbus County Commissioners met on the above stated date and at the above stated time in the Dempsey B. Herring Courthouse Annex Building located at 112 West Smith Street, Whiteville, North Carolina, to reconvene a regularly scheduled meeting that was held on October 02, 2006.

**COMMISSIONERS PRESENT:**

Kipling Godwin, **Chairman**  
 David L. Dutton, Jr., **Vice Chairman**  
 Amon E. McKenzie  
 James E. Prevatte  
 Sammie Jacobs  
 Bill Memory  
 Lynwood Norris

**APPOINTEES PRESENT:**

Steven W. Fowler, **County Attorney**  
 June B. Hall, **Clerk to Board**

**APPOINTEES ABSENT:**

Jimmy Varner, **County Manager**  
 Leo Hunt, **Interim Finance Officer**

**MEETING CALLED to ORDER:**

At 8:00 A.M., Chairman Godwin called the reconvened meeting to order.

**RECESS REGULAR SESSION and enter into CLOSED SESSION in ACCORDANCE with N.C.G.S. § 143-318.11 (3) ATTORNEY-CLIENT PRIVILEGE:**

At 8:01 A.M., Commissioner Jacobs made a motion to recess Regular Session and enter into Closed Session in accordance with N.C.G.S. § 143-318.11 (3) Attorney-Client Privilege, seconded by Commissioner Norris. The motion unanimously carried.

No official action taken.

**ADJOURN CLOSED SESSION and resume REGULAR SESSION:**

At 8:09 A.M., Vice Chairman Dutton made a motion to adjourn Closed Session and resume Regular Session, seconded by Commissioner Norris. The motion unanimously carried.

**AGREEMENT- APPROVAL of AGREEMENT FOR SERVICE AND OPERATION:**

Commissioner Norris stated the following:

1. I have working diligently with the Grand Strand Water and Sewer Authority to get sewer in the southern end of Columbus County;
2. This service will be beneficial for the housing developments that are coming to this area in the near future, and will, also, help draw industry to Columbus County;
3. This will be at no cost to the County;
4. There will be no mandatory hookups;
5. These lines will not entail water; **and**
6. I would like for the Board to approve the following Agreement for Service and Operation.

**AGREEMENT FOR SERVICE AND OPERATION**

THIS AGREEMENT of Service and Operation (the "Agreement") is entered into by and between GRAND STRAND WATER AND SEWER AUTHORITY, A BODY CORPORATE AND POLITIC and a consolidated special purpose district of the State of South Carolina ("GSWSA") and COLUMBUS COUNTY, a political subdivision of the State of North Carolina ("Columbus").

WHEREAS, Grand Strand Water and Sewer Authority, a Body Corporate and Politic and a special purpose district of the State of South Carolina ("GSWSA") was created under Act No. 337 of the Acts and Joint Resolutions of the General Assembly of the State of South Carolina for the year 1971 (the "GSWSA Act") and has as its service area all of Horry County excluding areas located within an incorporated municipality which owns and operates a municipal waterworks and/or sewer system and excluding the service areas of Little River Water and Sewerage Company, Inc., and, with

respect to water service only, the service area of Bucksport Water System, Inc., pursuant to Ordinance 3-86 duly adopted by the County Council of Horry County, South Carolina (the "County") on April 1, 1986 (the "Ordinance"); and

WHEREAS, under the terms of the GSWSA Act and the Ordinance (collectively the "GSWSA Charter"), GSWSA is duly authorized and empowered to acquire, construct, operate, maintain, improve and extend facilities which enable it to obtain fresh water in large volume and to distribute and sell such water and to acquire, operate and maintain sewage collection systems and to enlarge and improve sewer lines and facilities for the treatment and disposal of sewage and other waste, and, subject to the official consent of a municipality may sell water or sewer service within the corporate limits thereof and its service area; and

WHEREAS, Article VIII, § 13, of the S.C. Constitution makes provision for cooperation and joint efforts by and between municipalities and special purpose districts; and

WHEREAS, Section 6-15-10 of the South Carolina Code of Laws provides that governmental entities are empowered to enter into contracts with other governmental entities to construct, operate, maintain, improve and enlarge sewer facilities for use by the parties to the contract; and

WHEREAS, Columbus County desires to enter into a contractual relationship with GSWSA whereby GSWSA will provide sewer services to the Franchise Area described hereinafter; and; and

WHEREAS, North Carolina General Statute 160A-461 provides that any unit of local government may enter into agreements with other units of local governments; and

WHEREAS, GSWSA has agreed to cooperate with Columbus County and to sell sewer service under the terms and conditions contained herein.

NOW THEREFORE, for and in consideration of the premises and the mutual covenants and obligations contained herein, GSWSA and Columbus County do hereby agree as follows:

## **ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION**

**SECTION 1.1 DEFINITIONS.** The terms defined below are used in this Agreement with meanings ascribed thereto unless another or different meaning is plainly intended.

"Agreement" means this Agreement of Service and Operation dated \_\_\_\_\_, 2006, by and between Columbus County and GSWSA.

"Franchise" means the exclusive right granted to GSWSA by Columbus County under the terms hereof to operate a sewer system to supply wastewater collection and disposal services within the areas of Columbus County.

"Franchise Area" means the area defined on the attached Exhibit "A".

"GSWSA" means Grand Strand Water and Sewer Authority, a public body corporate and politic and a consolidated special purpose district of the State of South Carolina.

"GSWSA Charter" means the ordinance and the GSWSA Act as such terms are defined in the premises hereto.

"GSWSA System" means the sewer system of GSWSA.

"Columbus County" means the County of Columbus, North Carolina, a political subdivision of the State of North Carolina.

"Effective Date" means the date this Agreement is signed by the party last to sign.

**SECTION 1.2 RULES OF CONSTRUCTION.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and, unless the context shall otherwise indicate, words in the singular shall also include the plural and vice versa. The intent of this Agreement is to provide for the operation and management of the system described

in Section 2.1 hereof. To that end, in the event any one or more provisions hereof are determined to be void, invalid or unenforceable, so long as the remainder of this Agreement is sufficient to accomplish its primary purpose, such void, invalid or unenforceable provisions shall be severed herefrom and the balance hereof shall constitute the agreement of the parties hereto. Certain representations, warranties and covenants are not verifiable or to be performed until after the Effective Date; therefore, the provisions hereof shall survive the Effective Date and the transfers herein contemplated.

## ARTICLE II AGREEMENT TO OPERATE COLUMBUS COUNTY SYSTEM

### SECTION 2.1 GRANT OF FRANCHISE.

(a) Agreement. GSWSA and Columbus agree that certain residents of Columbus will obtain more economical and efficient wastewater collection and disposal services if the GSWSA constructs, operates and manages the sewer systems. The intent of this Agreement is to establish the terms and conditions of governing GSWSA's construction, operation and management of a wastewater system to serve the areas of Columbus County defined on the attached Exhibit "A".

(b) Exclusive Franchise. From and after the Effective Date, GSWSA shall have the exclusive franchise for furnishing wastewater collection and disposal services within the service area of Columbus County defined as the Franchise Area in Exhibit A for an initial period of Thirty (30) years and which exclusive Franchise shall be renewed for successive Ten (10) year periods unless terminated by Columbus County. Not later than one (1) year prior to the end of any franchise period, Columbus County shall notify GSWSA whether the Franchise granted hereby shall be terminated at the end of the then current period. If no such notice is given by Columbus County, the Franchise shall be automatically renewed for an additional term of Ten (10) years.

© Method for Determining Rates. Rates for the services provided by GSWSA within the Franchise Area shall be determined by the governing body of GSWSA following its standard procedures for establishing rates. The rates applicable to customers within Columbus County and Columbus County's service area will be the same as the rates charged to other retail customers of GSWSA, plus an additional sum that is fifty (50%) percent of the existing rates charged to other retail customers of GSWSA as the cost of providing sewer service to the Franchise Area will be greater as a result of the greater distance from GSWSA's base of operation and sewer treatment plants.

**SECTION 2.2 SYSTEM TO BE ESTABLISHED AND OPERATED BY GSWSA.** GSWSA will service and operate any sewer system installed by GSWSA in Columbus County. GSWSA will also service and operate any portion of the sewer system in the Franchise Area that is installed by a developer and subsequently dedicated to GSWSA.

**SECTION 2.3 CONSIDERATION.** In consideration of this Agreement and the grant of the Franchise, GSWSA agrees to provide wastewater collection and disposal services to Columbus County in the Franchise Area on the basis described herein and perform the other covenants and agreements for which it is responsible hereunder. As part of the consideration contained herein, GSWSA will operate and maintain, at its expense, the sewer collection systems to the Franchise Area of Columbus County.

## ARTICLE III REPRESENTATIONS AND WARRANTIES

### SECTION 3.1 REPRESENTATIONS AND WARRANTIES OF COLUMBUS COUNTY.

Columbus County hereby represents and warrants to GSWSA as follows:

(a) Due Authorization, Execution and Delivery. Columbus County has full right, power and authority (i) to enter into this Agreement, (ii) to grant to GSWSA the Franchise, and (iii) to perform all its obligations hereunder. Columbus County has taken all action necessary to authorize the execution and delivery of this Agreement and all other documents, instruments or agreements necessary to effectuate the intent hereof. No further action, consent or approval is required by Columbus County or by any governmental body to approve, consent to or permit the performance by Columbus County of its obligations hereunder or to effect the transfers contemplated hereby. In addition, Columbus County represents and warrants that this Agreement complies with all statutory requirements of North Carolina General Statute 160A-460, et seq.

(b) No Conflict, Breach or Default. The execution and delivery of this Agreement and the performance by Columbus County of its obligations hereunder will not conflict with or constitute a breach of or default under (I) any contract or agreement to which Columbus County is a party or by which Columbus County is bound, (ii) any law, regulation, administrative or judicial order or any judgment or decree to which Columbus County or the Columbus County is subject, or (iii) the charter or any ordinances of Columbus County.

© Contracts. Columbus County represents and warrants that it is not party to any contracts for the provision of wastewater collection and disposal for the Franchise Area.

(d) No Joint Venture. Columbus County represents and warrants that this Agreement does not create a joint venture between the parties and is to be strictly construed as a Franchise and Service Agreement.

**SECTION 3.2 REPRESENTATIONS AND WARRANTIES OF GSWSA.** GSWSA hereby represents and warrants to Columbus County as follows:

(a) Due Authorization, Execution and Delivery. GSWSA has full right, power and authority (I) to enter into this Agreement, (ii) to operate the water and wastewater system within the Franchise Area, and (iii) to perform all its obligations hereunder. GSWSA has taken all action necessary to authorize the execution and delivery of this Agreement and all other documents, instruments or agreements necessary to effectuate the intent hereof. No further action, consent or approval is required by GSWSA or by any governmental body to approve, consent to or permit the performance by GSWSA of its obligations hereunder.

(b) No Conflict, Breach or Default. The execution and delivery of this Agreement and the performance by GSWSA of its obligations hereunder will not conflict with or constitute a breach of or default under (I) any contract or agreement to which GSWSA is a party or by which GSWSA is bound or to which the assets of the GSWSA System are subject, (ii) any law, regulation, administrative or judicial order or any judgment or decree to which GSWSA or the GSWSA System is subject, or (iii) the GSWSA Charter or any resolutions or bylaws of GSWSA.

© Service. GSWSA shall provide service to the Franchise Area according to its standard policies, procedures and guidelines in existence from time to time. GSWSA shall not be in violation of this Agreement if it is unable to perform, in whole or in part, due to causes beyond its control, including, but not limited to, governmental regulations or controls, fire or other casualties, inability to obtain materials or services, technical failure and acts of God.

#### **ARTICLE IV OPERATIONAL COVENANTS**

**SECTION 4.1 OPERATION AND MAINTENANCE OF SYSTEM.** Upon the Effective Date and throughout the term of this Agreement, GSWSA covenants that the wastewater system installed in the Franchise Area will be operated along with the remaining utility system of GSWSA as a public utility for the collection, treatment and disposal of wastewater to the general public including persons within the Franchise Area. GSWSA will operate the wastewater system in a sound and efficient manner to provide the wastewater treatment at rates that are as low as practicable to provide for the payment of the costs of operation and maintenance of the wastewater system, its growth and the replacement and upgrading of such parts as may be required.

**SECTION 4.2 SPECIFIC COVENANTS FOR COLUMBUS COUNTY.** GSWSA makes the following additional covenants for the sole benefit of Columbus County.

(a) Deposits for Columbus County Customers. The deposits required by GSWSA shall be the same as those charged by GSWSA to its existing customers.

(b) Facility for Payment/Application. All service applications and bills shall be paid at one of the existing GSWSA offices or other facilities authorized to accept payment located in Horry County. GSWSA shall not be required to establish an office in Columbus County as a result of this Agreement.

© Work in Streets and Rights-of-Way. GSWSA will notify Columbus County whenever its construction or maintenance activities require the interruption of normal traffic, either by

construction that requires pavement to be cut or where work in rights-of-way is expected to interfere with traffic. In the case of scheduled work and maintenance, GSWSA will obtain an encroachment permit from Columbus County; provided that no permit need be obtained for emergency work. Upon completion of any such work, GSWSA will restore the pavement to its condition prior to any cutting or other interference. GSWSA will be responsible for any damages to persons or property resulting from its activities in the streets and rights-of-way of Columbus County. To the extent allowed by law, GSWSA agrees to indemnify and hold harmless Columbus County from any and all liability resulting from GSWSA's activities in streets or rights-of-way.

(d) Columbus County shall provide water service to the Franchise Area. The system installed by Columbus County must be installed such that it will support the fire flow and potential developments within the Franchise Area. The water system provided by Columbus County shall have metered connections which shall be read monthly and all meter readings shall be provided to GSWSA at no cost. GSWSA shall only be required to install their wastewater system along state or county owned roads where Columbus County has installed their water system.

**SECTION 4.3 CONDEMNATION.** Columbus County and GSWSA acknowledge that it may become necessary from time to time to exercise the power of condemnation to provide for the continuation or improvement of the waterworks and sewer system. In such event, Columbus County agrees to cooperate with GSWSA to pursue condemnation, including, upon request, being the moving party in pursuit thereof; provided, however, that all costs and expenses of any such proceeding shall be borne by GSWSA.

## **ARTICLE V TERMINATION AND DEFAULT**

**SECTION 5.1 TERMINATION OF FRANCHISE.** Upon the termination of the franchise rights provided herein, Columbus County shall purchase all of the assets of GSWSA then being used to provide distribution of water and collection and disposal of wastewater for the residents of Columbus County. The purchase price for such purchase shall be determined by subsequent agreement of the parties. If the parties are unable to agree on a purchase price, then the purchase price shall be established as the average of the appraisals made by three (3) different appraisers, one (1) appointed by each of the parties and the third by the two (2) so appointed. This provision does not govern any purchase or acquisition by Columbus County from GSWSA of capacity in any treatment plants or disposal capacity.

**SECTION 5.2 DEFAULT.** In the event either party discovers that any representation is untrue in any material respect or any warranty is breached in any material respect, the cost of correcting any problem resulting therefrom or estimate based thereon shall be borne by the party whose representation is untrue or whose warranty is breached.

In the event either party fails to timely perform its obligations hereunder, or any conflict arises during the term of this Agreement, the parties agree that all disputes relating to the Agreement shall first be submitted to non-binding mediation unless the parties mutually agree otherwise. If no agreement is reached in mediation, either party may compel action or seek relief before the appropriate court of law in the State of South Carolina. If, however, the relief sought by a party is for injunctive relief or other emergency relief where time constraints make mediation impractical, then the obligation for mediation is waived. The costs and reasonable attorney's fees of such action shall be recoverable from the prevailing party.

## **ARTICLE VI MISCELLANEOUS**

**SECTION 6.1 PRIOR AGREEMENTS.** GSWSA and Columbus County agree and covenant that, upon the Effective Date herein, any prior agreements between Columbus County and GSWSA shall be deemed to be null, void and having no further force or effect.

**SECTION 6.2 COUNTERPARTS.** This Agreement may be executed in counterparts, which when assembled shall constitute but one (1) original Agreement.

**SECTION 6.3 SEVERABILITY.** The provisions hereof are severable and in the event any one (1) or more of such provisions is void or unenforceable, the remainder of this Agreement shall constitute the agreement among the parties as to the subject matter hereof.

**SECTION 6.4 EFFECT OF DISSOLUTION OF A PARTY.** In the event either GSWSA or

Columbus County for any reason shall be dissolved or its legal existence shall otherwise be terminated, all of the covenants, stipulations, obligations and agreements contained in this Agreement by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successor or successors thereof from time to time and any officer, board, commission, authority, agency or instrumentality to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law, and the term GSWSA or Columbus County, as the case may be, when used in this Agreement shall include such successor or successors.

**SECTION 6.5 LEGAL HOLIDAY.** In any case where the date of any action required hereunder shall be on a day on which is a legal holiday, performance shall be deemed timely if made on the next succeeding day which is not such a legal holiday with the same force and effect as if such act were performed on the date otherwise provided for herein.

**SECTION 6.6 MANNER OF GIVING NOTICE.** All notices, demands and requests to be given to or made hereunder by GSWSA or Columbus County shall be given or made in writing and shall be deemed to be properly given or made if sent by United States registered mail, return receipt requested postage prepaid, addressed as follows:

(a) As to GSWSA:

Grand Strand Water and Sewer Authority  
Post Office Box 2368  
Conway, South Carolina 29528  
Attention: Fred Richardson, Chief Executive Director

(b) As to Columbus County:

Columbus County  
Office of County Attorney  
111 Washington Street  
Whiteville, NC 28472

Any such notice, demand or request may also be transmitted to the appropriate above-mentioned party by telegram, telecopy or telephone and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above.

Any of such addresses may be changed at any time upon written notice of such change sent by United States registered mail, postage prepaid, to the other parties by the party effecting the change.

**SECTION 6.7 PARTIES ALONE HAVE RIGHTS UNDER AGREEMENT.** Except as herein otherwise expressly provided, nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than GSWSA and Columbus County any right, remedy or claim, legal or equitable, under or by reason of this Agreement or any provision hereof. This Agreement and each provision herein is intended to be and is for the sole and exclusive benefit of GSWSA and Columbus County.

**SECTION 6.8 HEADINGS.** Any heading preceding the text of the several articles hereof, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

**SECTION 6.9 FURTHER AUTHORITY.** The officers of GSWSA and Columbus County, their attorneys, engineers and other agents or employees are hereby authorized to do all acts and things required of them by this Agreement for the full, punctual and complete performance of all of the terms, covenants and agreements contained herein.

**SECTION 6.10 ENTIRE AGREEMENT.** This Agreement supersedes any and all understanding and agreements between the parties and constitutes the sole and entire agreement between the parties. No oral statements or representations whatsoever shall be considered a part hereof. Any modifications must be in writing and signed by the parties hereto.

**SECTION 6.11 APPLICABLE LAW.** This Agreement shall be governed by, construed under and enforced in accordance with the laws of the State of South Carolina. The parties hereto expressly consent to the jurisdiction of the Fifteenth Judicial Circuit for the State of South Carolina.

**SECTION 6.12 INDEMNIFICATION.** In the event Columbus County fails to meet its obligations as required herein, to the fullest extent allowable by law, it agrees to indemnify and hold GSWSA harmless from and against any and all claims, damages, disputes or losses arising out of or in any way connected with the claim or claims which may arise, if any, regarding its failure to comply. This shall include payment of all costs and reasonable attorney's fees incurred by GSWSA in enforcing this indemnification.

In the event GSWSA fails to meet its obligations as required herein, to the fullest extent allowable by law, it agrees to indemnify and hold Columbus County harmless from and against any and all claims, damages, disputes or losses arising out of or in any way connected with the claim or claims which may arise, if any, regarding its failure to comply. This shall include payment of all costs and reasonable attorney's fees incurred by Columbus County in enforcing this indemnification.

**SECTION 6.13 BINDING EFFECT.** This Agreement is binding on the parties hereto and on their several successors, heirs, executors and administrators, as the case may be.

**SECTION 6.14 ASSIGNMENT.** The parties hereto understand and agree that this Agreement may not be assigned without the express written consent of the other, unless mandated by statute or Court Order.

**SECTION 6.15 TIME IS OF THE ESSENCE.** Anywhere a day certain is stated for payment or performance of any obligation, the day certain so stated enters into and becomes a part of the consideration of this Agreement.

IN WITNESS WHEREOF, the undersigned parties have executed this Service and Operation Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

Signed, Sealed and Delivered  
in the Presence of:

\_\_\_\_\_

\_\_\_\_\_

GRAND STRAND WATER AND SEWER AUTHORITY

By: \_\_\_\_\_

Fred W. Richardson

Its: Chief Executive Officer

ATTEST:

By: \_\_\_\_\_

Its: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned parties have executed this Service and Operation Agreement this 4th day of October, 2006.

Signed, Sealed and Delivered  
in the Presence of:

COLUMBUS COUNTY BOARD of COMMISSIONERS

/s/ **KIPLING GODWIN**, Chairman

/s/ **DAVID L. DUTTON, JR.**, Vice Chairman

/s/ **LYNWOOD NORRIS**

/s/ **BILL MEMORY**

/s/ **AMON E. McKENZIE**

/s/ **SAMMIE JACOBS**

/s/ **JAMES E. PREVATTE**

(SEAL)

ATTEST:

By: /s/ **JUNE B. HALL**

Its: Clerk to the Board

This instrument has been preaudited in the manner required by the North Carolina Local

# 651

Government Budget and Fiscal Control Act.

/s/ **LEO HUNT**

Columbus County Finance Officer

**EXHIBIT A** - Can be located in Minute Book Attachments, Book #2.

Commissioner Norris made a motion to approve the Agreement for Service and Operation with the Grand Strand Water and Sewer Authority in Columbus County, seconded by Vice Chairman Dutton. The motion unanimously carried.

Vice Chairman Dutton stated he wished to thank Commissioner Norris for working closely with the Commissioners on this project, and with Grand Strand Water and Sewer Authority, and this will have a tremendous impact on the development in that part of the County.

## **ADJOURNMENT:**

At 8:17 P.M., Commissioner Memory made a motion to adjourn, seconded by Commissioner Prevatte. The motion unanimously carried.

**APPROVED:**

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**JUNE B. HALL, Clerk to Board**

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**KIPLING GODWIN, Chairman**