

**BE IT ORDAINED BY THE MAYOR AND MEMBERS OF COUNCIL OF THE CITY OF SUMTER, IN
COUNCIL ASSEMBLED:**

ARTICLE I

FINDINGS OF FACT

As an incident to the adoption of this Ordinance, the City Council of the City of Sumter (the "City Council"), the governing body of the City of Sumter, South Carolina (the "City"), finds that the facts set forth in this Article exist and the following statements are in all respects true and correct.

Section 1.1. The City is a municipal corporation located in Sumter County, South Carolina (the "County").

Section 1.2. The City owns and operates a water and sewer system that supplies water service and sewage collection and treatment service in and around the City.

Section 1.3. Officials of the City and the County have held discussions regarding the operation and management of a joint water system (the "Joint System") in designated service areas. Those discussions resulted in the preparation, as of March 13, 2002, of a Memorandum of Understanding (the "MOU") between the City and the County with respect to the operation of the Joint System. A copy of the MOU is attached hereto as Exhibit A.

Section 1.4. The City and the County have now determined to enter into a Joint System Agreement (the "Agreement"), in substantially the form attached hereto as Exhibit B.

ARTICLE II

AUTHORIZATION AND RATIFICATION

Section 2.1. Subject to the terms and conditions of this Ordinance and the Agreement, the MOU is hereby ratified and affirmed in all respects, and the creation and operation of the Joint System is hereby approved. The terms and conditions upon which the Joint System is to be operated shall be memorialized in the Agreement, which shall be executed and delivered with reasonable promptness after the enactment of this Ordinance. The Agreement shall be executed on behalf of the City by the Mayor of the City, shall be attested by the City Clerk, and shall be imprinted with the City's corporate seal. The City Council shall be authorized to approve such changes or modifications to the Agreement as it shall deem necessary or advisable, such approval to be evidenced by adoption of the final Agreement by resolution.

Section 2.2. The Mayor, the City Manager, and other appropriate officials of the City are hereby authorized to take whatever further actions, including without limitation to negotiate, execute, approve, and deliver such additional agreements, certificates, instruments, and showings, as may be necessary and desirable to consummate the creation of the Joint System and to conclude this transaction.

DONE IN MEETING DULY ASSEMBLED, THIS ___ DAY OF _____, 2004.

CITY OF SUMTER, SOUTH CAROLINA

ATTEST:

EXHIBIT A

MEMORANDUM OF UNDERSTANDING
SUMTER UTILITY COMPANY

1. The City of Sumter and Sumter County find that a cooperative *Memorandum of Understanding* to facilitate the Operation and Management of a jointly owned Utility Company, in designated areas of Sumter County, is in the best interest of both governments and the people of Sumter County.
2. The oversight authority for the joint Utility Company will be a Board that consists of the Mayor and two appointed City Council Members and the Chairman of County Council and two appointed County Council Members (The Liaison Committee). The City Manager and County Administrator will advise the Board and provide management of the System as outlined in this document. In the event of tie votes by this Board, the issues will be presented to mediation, and if no resolution is then obtained, differences will be resolved by binding arbitration.
3. The service area for the jointly owned system is defined as the non incorporated areas of Sumter County, outside the hatched area on the attached map dated _____ 2001, and included as Attachment A to this document, to include the Rembert and Mayesville Systems.
4. The initial system as defined by Attachment A and any acquisitions of existing systems will be classified as the Sumter Utility Company with separate accounting from the City System.
5. Rates charged will be directed and approved by the Sumter Utility Company Board.
6. Acquisition of existing systems will be negotiated on a case-by-case basis with financial terms and conditions approved by the Sumter Utility Company Board in consultation with City and County Councils. Obligations for the acquisition of existing systems will be recorded as a liability to the Joint System.
7. Operational costs charged to each system will be only direct cost and maintenance requirements. These costs include such items as supplies, postage, direct labor, permit fees, etc. Capital costs will be assigned to each system as approved by the Sumter Utility Company Board. Indirect cost for hardware and software systems already in service at the time of this agreement will not be assigned to the joint system.
8. The Operation and Maintenance of the System will be the responsibility of the City of Sumter. This includes meter reading, billing, collecting and accounting in addition to the routine maintenance of the System. The City will provide monthly financial statements to the County Administrator.
9. The City Manager and the County Administrator will be jointly authorized to make decisions on the operation, maintenance and routine extension and improvements to the System. Major expansions or improvements to the System will be recommended to the Sumter Utility Company Board for approval. Major capital costs, as defined by the Liaison Committee, will be forwarded to the City and County Councils for formal approval.

10. An annual accounting will be provided to both Councils, with any subsequent distribution of surplus divided equally to both units of government. Any distribution will be with the approval of both units of government, through the Sumter Utility Company Board, with the recommendation of the City Manager and County Administrator. Initially and until otherwise agreed upon, all surplus will be reinvested into the system in accordance with a Maintenance and Construction Plan prepared by the City Manager and County Administrator.
11. Improvements to any system acquired or to the expansion of the jointly owned system will take into consideration provision for fire protection.
12. Upon ratification of this M.O.U. by both City and County Councils, the February 21, 1995 M.O.U. is rescinded.

Revised March 13, 2002

EXHIBIT B

FORM OF JOINT SYSTEM AGREEMENT
SUMTER UTILITY SYSTEM

This **JOINT SYSTEM AGREEMENT** (this “Agreement”) is made and entered into this ____ day of _____, 2004, by and between **SUMTER COUNTY, SOUTH CAROLINA** (hereinafter the “County”), and the **CITY OF SUMTER, SOUTH CAROLINA** (hereinafter the “City”). It is hereby contracted and agreed by and between the foregoing as follows.

Section 1. Factual Findings; Representations. As a means of setting forth the matters of mutual inducement that have resulted in the making of this Agreement, the parties hereto acknowledge and agree that it has been found and determined as follows:

(a) The County is a body politic and political subdivision of the State, and is authorized pursuant to Art. VIII, §16 of the South Carolina Constitution to provide water and sewer services. The County’s provision of such services was approved in a duly noticed and conducted referendum on November 4, 1980.

(b) The City is a municipality and political subdivision of the State, and is authorized pursuant to Art. VIII, §16 of the South Carolina Constitution to provide water and sewer services. The City currently owns and operates a Waterworks and Sewer System (the “City System”).

(c) The City and the County have determined that the formation of a Joint Utility System (the “Joint System”) to provide water and sewer service to certain unincorporated areas of the County (as hereinafter more particularly described) will result in long-term savings and other tangible and intangible benefits to the residents of the County. The Joint System will be known as the “Sumter Utility System.”

(d) The City and the County have previously, as of March 13, 2002, entered into a Memorandum of Understanding (the “MOU”) concerning the operations of the Joint System. The MOU is hereby ratified and confirmed in all respects and, to the extent not inconsistent with the terms of this Agreement, is incorporated herein. Subject to the terms and conditions herein described, all water and sewer systems that are included within the Joint System will be collectively classified as the Sumter Utility System.

Section 2. Joint System Service Area. The crosshatched area on the map attached hereto as **Exhibit A** indicates the City’s current service area. The Joint System’s service area will comprise the unincorporated areas of the County that are outside the limits of such crosshatched area. By mutual written agreement, the City and the County may (but shall not be obligated to) change the service area of the Joint System at any time following the execution and delivery hereof.

Section 3. Accounting. The Joint System shall be treated as a separate entity for accounting purposes (further subject to Section 5 hereof, with respect to the formation of Joint System Sub-Units), and to that end, separate financial statements for the Joint System shall be prepared. The City shall operate and maintain the System, includes meter reading, billing, collecting, and accounting, in addition to the routine maintenance of the Joint System. The City will provide monthly financial statements to the County Administrator. The City shall charge only direct costs and maintenance requirements to the Joint System. Such direct costs and maintenance requirements may include, without limitation, such items as supplies, postage, direct labor, permit fees, etc.

Section 4. Liaison Committee. The MOU designated the City-County Liaison Committee (the

“Liaison Committee”) as having oversight of the Joint System. Said Liaison Committee is hereby continued in effect as described in the MOU. A quorum of the Liaison Committee for purposes of taking action shall consist of four members. The Liaison Committee shall be responsible for determining the appropriate method and party or parties to finance the costs of improving or expanding the Joint System. Notwithstanding the approval of the Liaison Committee, however, the governing bodies of the City and the County must separately approve any expenditure of their respective public funds other than revenues derived from the Joint System. In addition to those responsibilities specifically described in the MOU or herein, the City and the County may jointly determine other responsibilities of the Liaison Committee.

Section 5. Sub-Units within the Joint System. The Liaison Committee may (but shall not be obligated to) determine that individual areas within the Joint System’s service area will constitute separate sub-units for accounting purposes (“Joint System Sub-Units”). In such event, the Joint System shall maintain separate financial records for each Joint System Sub-Unit. Notwithstanding the foregoing, the Liaison Committee may determine at any time to consolidate one or more previously formed Joint System Sub-Units for the purpose of financial record keeping.

Section 6. Upgrades and Improvements. Any major upgrades or capital improvements to the Joint System shall be subject to the prior approval of the City and the County, acting through their respective Councils. For purposes of this Section 5, an upgrade or improvement will be deemed “major” if it is projected to cost more than \$50,000 to complete. In the event that the Liaison Committee, together with the City and County Councils, determines that the costs of improvements constructed within the Joint System must be financed with proceeds of waterworks and sewer system revenue bonds issued by the City, then the improvements so constructed shall be owned by the Joint System (to the extent permitted by applicable law) but shall constitute part of the City’s combined System. Notwithstanding the previous sentence, all provisions herein that concern accounting and operational and maintenance matters affecting the area served by such improvements shall continue in effect.

Section 7. Existing Rural Water Companies. The City and the County acknowledge that there are several existing rural water companies within the Joint System’s service area, and that it may be beneficial for one or more of such rural water companies to be acquired or to be operated as a part of the Joint System. To that end, the City and the County agree that the respective councils of the City and the County may approve such acquisition or operation by resolution.

Section 8. Rates. The Liaison Committee shall be entitled to determine the rates to be charged within the Joint System or within individual Joint System Sub-Units. The City Council shall approve such rates in accordance with the City’s ordinary rate-setting procedures. The parties hereto agree that the City’s prevailing rates will apply within the Joint System unless such Joint System rates are specifically altered by the Liaison Committee.

Section 9. Revenues of the Joint System. All revenues attributable to the Joint System shall be used for the operation, maintenance, improvement, and expansion of the Joint System. At the discretion of the Liaison Committee, Surplus Revenues (as hereinafter defined) not used for such purposes may be held in a contingency fund. The Liaison Committee may also determine, by official action, to distribute Surplus Revenues from the Joint System to the City and the County. In such event, the City and the County shall share the distribution equally. For purposes of this Section 9, “Surplus Revenues” means revenues of the Joint System that remain after making provision for operation and maintenance of the Joint System, for required capital upgrades, for payment of all debt service attributable to the Joint System, for making adequate security for all bonded indebtedness relating to the Joint System, and for funding and maintaining adequate depreciation and contingency funds.

Section 10. Notices. All notices, certificates, or other communications hereunder shall be

sufficiently given and shall be deemed given when mailed by certified or registered mail, postage prepaid, or given by facsimile transmission and addressed as follows:

If to the County:

If to the City:

Either party hereto may, by notice given to the other party to this Agreement, designate any further or different addresses to which subsequent notice, certificates or other communications shall be sent.

Section 11. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12. Amendments. This Agreement may not be amended, changed, modified, or terminated without in each instance the prior written consent of the parties hereto.

[signatures appear on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Joint System Agreement to be signed in their names by their duly authorized officers as of the date first hereinabove written.

SUMTER COUNTY, SOUTH CAROLINA

(SEAL)

Name:
Title:

Attest:

Name:
Title:

CITY OF SUMTER, SOUTH CAROLINA

(SEAL)

Name:
Title:

Attest:

Name:
Title: