



ORDINANCE NO. 751

AN ORDINANCE APPROVING THE AGREEMENT TO SHARE COSTS AND A FIRST SUPPLEMENT THERETO BY AND BETWEEN FAIRFIELD COUNTY, THE FAIRFIELD JOINT WATER AND SEWER SYSTEM, AND THE TOWN OF WINNSBORO; AND OTHER MATTERS RELATED THERETO.

The County Council of Fairfield (the "**County Council**"), the governing body of Fairfield County, South Carolina ("**Fairfield County**"), hereby makes the following findings of fact in connection with the adoption of this ordinance (this "**Ordinance**"):

(A) Fairfield County is a political subdivision of the State of South Carolina (the "**State**") possessing all general powers granted by the Constitution and statutes of the State to such public entities, and an "Authority" pursuant to the Joint Authority Water and Sewer Systems Act, codified at Title 6, Chapter 25 of the Code of Laws of South Carolina 1976, as amended (the "**Act**").

(B) Fairfield County and the Town of Winnsboro, South Carolina ("**Winnsboro**") together with Fairfield County the "**Members**" and each a "**Member**") are Members of the Fairfield Joint Water and Sewer System (the "**Fairfield Joint System**").

(C) Pursuant to Article IX Section 2 of the Bylaws of the Fairfield Joint Water and Sewer System, the ("**Bylaws**") and in accordance with the Act, "[u]ntil such time as the Fairfield Joint System shall generate sufficient funds to pay its administrative costs, each Member will be required to pay its pro-rata share of the administrative costs of the Fairfield Joint System as determined by the County Council unless some alternative arrangement is provided for by agreement by the Members."

(D) Pursuant to and in accordance with the foregoing, the Fairfield Joint System, Fairfield County and Winnsboro desire to enter into an (i) Agreement to Share Costs and (ii) a First Supplement to Agreement to Share Costs with respect to certain engineering and legal services (together the "**Agreement**").

(E) Pursuant to this Ordinance the County Council hereby approves the execution of the Agreement and ratifies any prior actions of the County Council undertaken in connection with the Agreement.

NOW THEREFORE, be it ordained by the County Council of Fairfield County in a meeting duly assembled as follows:

Section 1. The County Council has reviewed the Agreement, the form of which is attached as **Exhibit A** to this Ordinance. The Agreement is approved, and all of the terms,

provisions and conditions thereof are hereby incorporated herein by reference as if the Agreement were set out in this Ordinance in its entirety. The Agreement is to be in substantially the form attached to this Ordinance at Exhibit A and hereby approved, or with such non-substantive changes therein as shall be approved by the Chairman. The execution thereof by the Chairman and the Clerk constitutes conclusive evidence of approval of any and all changes or revisions therein from the form of the Agreement attached to this Ordinance at Exhibit A.

Section 2. The Chairman is hereby authorized, empowered, and directed to execute and deliver, and the Clerk is hereby authorized, empowered, and directed to attest, as necessary, any and all certificates, consents, instruments, or other documents deemed necessary and desirable, upon the advice of legal counsel, to carry out the transactions and arrangements contemplated in this Ordinance and the Agreement, and the actions of the Chairman, and the Clerk in executing and delivering any such documentation is hereby fully authorized.

Section 3. If any one or more of the provisions of this Ordinance or the Agreement shall be found by a court of competent jurisdiction to be contrary to law, then such provision shall be deemed severable from the remaining provisions of this Ordinance or the Agreement, as applicable.

Section 4. All ordinances, resolutions or parts of any resolutions inconsistent or in conflict with the provisions of this Ordinance are hereby repealed to the extent of the conflict or inconsistency. Nothing in this Ordinance or the Agreement shall be construed to affect any suit or proceeding impending in any court, or any rights acquired or liability incurred, or any cause of action acquired or existing, under any act or resolution hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

Section 5. This Ordinance shall become effective upon its enactment.


DONE, RATIFIED, AND ENACTED AT A MEETING OF THE COUNTY COUNCIL OF FAIRFIELD COUNTY DULY ASSEMBLED THIS 10th DAY OF Aug. 2020.



Cornelius Robinson, Chairman
Fairfield County Council

[SEAL]

Attest:



Patti L. Davis, Clerk to County Council

First Reading: July 13, 2020
Second Reading: July 27, 2020
Third Reading: August 10, 2020

Exhibit A

Agreement to Share Costs and First Supplement to Agreement to Share Costs

Fairfield Joint Water and Sewer System

AGREEMENT TO SHARE COSTS

This Agreement to Share Costs (this “*Agreement*”) is entered into this ___ day of _____ 2020 by and among the Fairfield Joint Water and Sewer System, South Carolina (the “*Fairfield Joint System*”), a joint system of the State of South Carolina (the “*State*”) created pursuant to Title 6, Chapter 25 of the Code of Laws of South Carolina 1976, as amended (the “*Joint Systems Act*”), Fairfield County, South Carolina (“*Fairfield County*”), a political subdivision of the State and an authority pursuant to the provisions of the Joint Systems Act (an “*Authority*”), and the Town of Winnsboro, South Carolina (“*Winnsboro*”), a municipality of the State and an Authority, each a “*Party*” and collectively, the “*Parties*.”

RECITALS

Fairfield County and Winnsboro (each a “*Member*” and collectively, the “*Members*”) are each Members of the Fairfield Joint System. Pursuant to Article IX, Section 2 of the Bylaws of the Fairfield Joint Water and Sewer System, dated _____ (the “*Bylaws*”), “[u]ntil such time as the Fairfield Joint System shall generate sufficient funds to pay its administrative costs, each Member will be required to pay its pro-rata share of the administrative costs of the Fairfield Joint System as determined by the Commission unless some alternative arrangement is provided for by agreement by the Members.”

The Fairfield Joint System has incurred certain Administrative Costs (as defined herein) in connection with certain agreements and engagements with professionals that have been approved by the Fairfield Joint Water and Sewer Commission (the “*Commission*”) anticipated incurring additional Administrative Costs in connection with present and future professional engagements and other administrative needs of the Fairfield Joint System. The Commission anticipates that the Administrative Costs of the Fairfield Joint System will exceed the revenues of the Fairfield Joint System for the foreseeable future and must, therefore, be met through contributions by the Members.

Pursuant to Section 6-25-128 of the Joint Systems Act, any Authority may enter into contracts respecting the responsibilities of ownership of a Project (as defined by the Joint Systems Act). The responsibilities of the Members with respect to the ownership of a Project include the payment of the Administrative Costs that must be incurred prior to the acquisition, construction, or installation of the Project, which are considered to be “costs of a project” pursuant to Section 6-25-20(4) of the Joint Systems Act. Pursuant to Section 6-25-128 of the Joint Systems Act, and in accordance with the provisions of Article IX, Section 2 of the Bylaws, the Members desire to enter into this written agreement to provide an alternative arrangement for the payment of certain Administrative Costs of the Fairfield Joint System that are incurred in furtherance of the Projects which the Fairfield Joint System is authorized to undertake.

NOW THEREFORE, for and in consideration of the mutual promises and obligations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties do hereby agree as follows:

Section 1 Administrative Costs; Sharing.

(a) The Administrative Costs of the Fairfield Joint System, to include without limitation, the costs of studies, plans, specifications, surveys, and estimates of costs and revenues relating to any Project; fees, permits, approvals, licenses, certificates, and the preparation of applications for and security for them; administrative, legal, professional, engineering, and inspection expenses; and all other administrative expenditures of the Fairfield Joint System incidental, necessary, or convenient to the acquisition, construction, reconstruction, improvement, enlargement, or extension of any Project and the placing of the Project in operation (collectively, "***Administrative Costs***"), shall be met as follows:

(i) First from the funds derived from grants, earmarked contributions from a Member, or funds derived from any other source with respect to any Administrative Cost for which such funds were given and earmarked to be used for a specific purpose, regardless of whether such grant or other contribution was made to the Fairfield Joint System or to any Member;

(ii) Second, from the general funds of the Fairfield Joint System if, in the sole discretion of the Commission, the Fairfield Joint System has sufficient funds on hand to meet the other costs and financial obligations of the Fairfield Joint System after the payment of such Administrative Cost; and

(iii) Third, from contributions of the Members ("***Contributions***") to be apportioned with respect to any Administrative Cost in the percentages set forth in **Exhibit A** of this Agreement. The Treasurer of the Fairfield Joint System (the "***Treasurer***") shall promptly notify Members of any required Contribution, which notice shall include an explanation of the Administrative Cost, the total amount due, and the amount due from each Member (a "***Notice of Contribution***").

(b) Any Contribution due from any Member shall be due within 15 days of receipt of a Notice of Contribution, which may be given to members by personal delivery, first class U.S. mail, or email, and which shall be deemed received the day following the delivery thereof, except if given by first class U.S. mail, in which case a Notice of Contribution shall be deemed received on the third day after having been properly mailed.

(c) Members may make a lump-sum payment to the Fairfield Joint System at any time, which funds shall be separately accounted for apart from the general funds of the Fairfield Joint System and applied by the Treasurer to meet Administrative Costs that must be met pursuant to subsection (a)(iii) of this Section.

(d) The Contributions of Members required pursuant to subsection (a)(iii) of this Section are contractual obligations of each Member and responsibilities of such Member in connection with the ownership of any Project of the Fairfield Joint System, as contemplated under Section 6-25-128 of the Joint Systems Act. In the event that any Member fails to make a Contribution when due, without waiving any remedy of the performing Members may seek against the non-performing Member pursuant to Section 5 of this Agreement, the performing Members

shall pay the Contribution due from the non-performing Member in proportion to each performing Member's pro-rata apportioned share set forth in **Exhibit A**, recalculated as a percentage of 100% notwithstanding the pro-rata apportioned share of the non-performing Member.

(e) The Parties may, from time to time, by written supplement to this Agreement approved by resolution of the Commission and the governing bodies of each Member, agree to alternative apportionments of any specific Administrative Cost.

(f) The Contributions due from the Members pursuant to this Agreement shall be payable solely revenues derived the ownership and operation of the Member's waterworks and sewer system, if any, or from amounts received as payments in lieu of taxes, if any. The obligations of the Members contained in this Agreement shall not be construed as a pledge of any Member's full faith, credit, and taxing power.

Section 2 Term. The term of this Agreement shall commence on October 1, 2020, and shall extend for a term of five years therefrom, and upon its expiration, shall automatically renew for successive terms of five years for a maximum total term of 15 years.

Section 3 Withdrawal. In accordance with Section 6-25-70 of the Joint Systems Act, any Member may withdraw from the Fairfield Joint System at any time, and notwithstanding the provisions of Section 6-25-70(C), upon withdrawal such Member shall have no further obligation to make Contributions towards Administrative Costs.

Section 4 Capital and O&M Costs Excluded. This Agreement is intended to provide for the payment of the Administrative Costs of the Fairfield Joint System prior to the acquisition, construction, or installation of any Project, and shall not be construed to apply to the payment of any capital costs of the Fairfield Joint System or the operating and maintenance costs of any Project. The Parties anticipate that the payment of capital costs, the allocation of capacity in any Project, and the payment of operation and maintenance costs of any Project shall be provided for in a future agreement by and among the Parties, which shall replace and supplant this Agreement.

Section 5 Remedies. In the event that a Member fails to make any Contribution when due hereunder, any other Party may, after having given 30-days' notice to the non-performing Member, bring an action against the non-performing Member for specific performance of such obligation. In the event that the performing Members have made additional Contributions to pay the unpaid Contribution of the non-performing Member pursuant to Section 1(d) of this Agreement, specific performance shall include the reimbursement of the performing Members of the amount of any additional Contribution made by such performing Member and the payment of interest on additional Contributions so made at a rate of 5% per annum, which interest shall accrue from the time such additional Contribution is made by the performing Member to the time that reimbursement is made by the non-performing Member.

(b) Upon the event of a default under this Agreement other than the non-payment of a Contribution when due, any Party may seek enforcement of any obligation or any legal or equitable remedy afforded by the laws of the State.

Section 6 **Amendment.** This Agreement may only be amended or supplemented by written agreement of the Parties, authorized by their respective governing bodies, and executed by their duly authorized officers.

Section 7 **Counterparts.** This Agreement may be executed in counterparts, which when assembled shall constitute but one original Agreement.

Section 8 **Severability.** The provisions of this Agreement are severable, and in the event any one or more of such provisions is void or unenforceable, the remainder of this Agreement shall constitute the agreement between the Parties as to the subject matter hereof.

Section 9 **Manner of Giving Notice.** Notwithstanding Notices of Contributions which shall be given pursuant to Section 1(d) of this Agreement, all notices, demands, and requests to be given to or made hereunder by either Party shall be given or made as indicated below or in writing and shall be deemed to be properly given or made if sent by United States certified mail, return receipt requested, postage prepaid, addressed as follows:

As to the Fairfield Joint System:

Fairfield Joint Water and Sewer System
c/o Fairfield County
Attn: County Administrator
P. O. Drawer 60
Winnsboro, SC 29180

As to Fairfield County:

Fairfield County
Attn: County Administrator
P. O. Drawer 60
Winnsboro, SC 29180

As to Winnsboro:

Town of Winnsboro
Attn: Town Manager
PO Box 209
Winnsboro SC 29180

Any such notice, demand, or request may also be transmitted to the appropriate above-mentioned Party by email 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 U.S. certified mail, return receipt requested, postage prepaid, to the other Parties by the Party effecting the change.

Section 10 **Parties Alone Have Rights under Agreement.** No provision, covenant, or obligation of this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm, corporation, or organization other than the Parties any right, remedy or claim, legal or equitable, under or by reason of this Agreement. This Agreement and each provision herein are intended to be and are for the sole and exclusive benefit of the Parties.

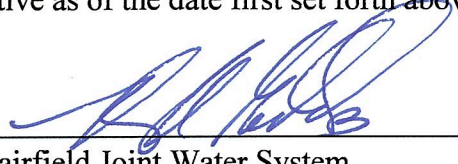
Section 11 **Waiver.** The failure by any Party to require compliance with any provision of this Agreement, including the provisions of Section 1 of this Agreement, shall not constitute a waiver by such Party of any right, power, or remedy under this Agreement.

Section 12 **Headings.** Any heading preceding the text of the several articles hereof, 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 13 **Further Authority.** The officers of the Parties, their staff, attorneys, 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.

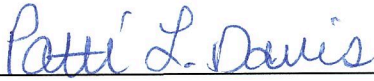
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IN WITNESS WHEREOF, the Fairfield Joint System has caused this Agreement to be executed in its name by its duly authorized officers, effective as of the date first set forth above.



Chairman, Fairfield Joint Water System
Commission

Attest:



Secretary, Fairfield Joint Water System

IN WITNESS WHEREOF, Fairfield County has caused this Agreement to be executed in its name by its duly authorized officers, effective as of the date first set forth above.



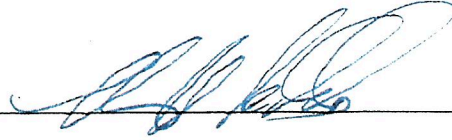
Chairman, Fairfield County Council

Attest:



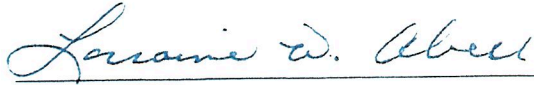
Clerk to Fairfield County Council

IN WITNESS WHEREOF, Winnsboro has caused this Supplement to be executed in its name by its duly authorized officers, effective as of the date first set forth above.



Mayor, Town of Winnsboro

Attest:



Clerk to Winnsboro Town Council

Exhibit A

**Percentages of Apportionment of
Administrative Costs**

Fairfield County:	75.0%
Winnsboro:	25%

**FIRST SUPPLEMENT TO
AGREEMENT TO SHARE COSTS**

This First Supplement to Agreement to Share Costs (this “*Supplement*”) is entered into this ____ day of ____, 2020, by and among by and among the Fairfield Joint Water and Sewer System, South Carolina (the “*Fairfield Joint System*”), a joint system of the State of South Carolina (the “*State*”) created pursuant to Title 6, Chapter 25 of the Code of Laws of South Carolina 1976, as amended (the “*Joint Systems Act*”), Fairfield County, South Carolina (“*Fairfield County*”), a political subdivision of the State and an authority pursuant to the provisions of the Joint Systems Act (an “*Authority*”), and the Town of Winnsboro, South Carolina (“*Winnsboro*”), a municipality of the State and an Authority, each a “*Party*” and collectively, the “*Parties*,” as a supplement to an Agreement to Share Costs by and among the Parties, dated ____, 2020 (the “*Agreement*”). All capitalized terms contained in this Supplement and not defined herein shall be given the definition given to such term in the Agreement.

RECITALS

The Parties have previously entered into the Agreement pursuant to which they have agreed that the Members shall make certain contributions to the Fairfield Joint System in order to pay the Administrative Costs of the Fairfield Joint System based upon a pro-rata apportionment of such Administrative Costs between the Members. Pursuant to Section 1(e) of the Agreement, “[t]he Parties may, from time to time, by written supplement to this Agreement approved by resolution of the Commission and the governing bodies of each Member, agree to alternative apportionments of any specific Administrative Cost.”

The Fairfield Joint System Commission (the “*Commission*”), the governing body of the Fairfield Joint System, has determined that it is necessary to retain certain legal and engineering services in connection with the proposed amendment of the 208 Water Quality Management Plan for the Central Midlands (the “*208 Plan Amendments*”). Pursuant to the Section I(E) of the Fairfield Joint System’s Purchasing and Procurement Policy, the Commission has, by resolution, approved the engagement of the law firm of Willoughby & Hoefler, P.A., and the engineering firm of American Engineering Consultants (together, the “*Professionals*”) to provide professional services concerning the 208 Plan Amendments.

Notwithstanding the pro-rata apportionment of the Administrative Costs set forth at **Exhibit A** of the Agreement, Fairfield County has determined that it is in the best interest of Fairfield County and the Fairfield Joint System for Fairfield County to pay the full amount of the Fairfield Joint System’s Administrative Costs with respect to the Professionals.

NOW THEREFORE, for and in consideration of the mutual promises and obligations set forth herein and in the Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties do hereby agree as follows:

Section 1 **Payment of Certain Administrative Costs.** Notwithstanding the pro-rata apportioned share of the Administrative Costs of the Fairfield Joint System set forth at **Exhibit A** of the Agreement, Fairfield County shall be responsible for 100% of the Administrative Costs of

the Fairfield Joint System consisting of the fees, expenses, and other costs of the Professionals incurred with respect to the amendment of the 208 Plan.

Section 2 **Withdrawal by Fairfield County.** Fairfield County may, by written notice to all Parties and the Professionals, withdraw its commitment to pay the Administrative Costs contemplated under this Supplement; provided, however, the any such withdrawal by Fairfield County shall be effective as to Administrative Costs incurred after receipt of such notice by the Parties and the Professionals.

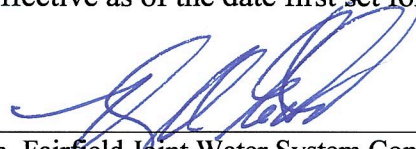
Section 3 **Effect of Supplement on Agreement.** Except as supplemented by this Supplement, all provisions of the Agreement remain in full force and effect.

Section 4 **Counterparts.** This Supplement may be executed in counterparts, which when assembled shall constitute but one original Agreement.

Section 5 **Severability.** The provisions of this Supplement are severable, and in the event any one or more of such provisions is void or unenforceable, the remainder of this Supplement and the Agreement shall constitute the agreement between the Parties as to the subject matter hereof.

[Remainder of Page Left Blank]

IN WITNESS WHEREOF, the Fairfield Joint System has caused this Supplement to be executed in its name by its duly authorized officers, effective as of the date first set forth above.



Chairman, Fairfield Joint Water System Commission

Attest:



Secretary,
Fairfield Joint Water System Commission

IN WITNESS WHEREOF, Fairfield County has caused this Supplement to be executed in its name by its duly authorized officers, effective as of the date first set forth above.



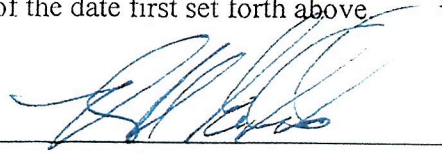
Chairman, Fairfield County Council

Attest:



Clerk to Fairfield County Council

IN WITNESS WHEREOF, Winnsboro has caused this Agreement to be executed in its name by its duly authorized officers, effective as of the date first set forth above.



Mayor, Town of Winnsboro

Attest:



Clerk to Winnsboro Town Council