

RESOLUTION 2020-12

A RESOLUTION OF THE TOWN OF YEMASSEE, SOUTH CAROLINA, TOWN COUNCIL  
TO APPROVE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF  
YEMASSEE AND BEAUFORT COUNTY FOR THE COLLECTION OF ROAD IMPACT  
FEES ON NEW DEVELOPMENTS WITHIN THE BEAUFORT COUNTY PORTION OF  
THE TOWN OF YEMASSEE

WHEREAS, the South Carolina Legislature has adopted the South Carolina Development Impact Fee Act (hereinafter the "Act") which enables local governments to enact and impose parks and recreation, road and library facility development impact fees in accordance with its provisions, procedures and requirements; and

WHEREAS, in accordance with the Act, the County prepared and adopted a development impact fee procedures ordinance (Ordinance No. 1999/26 as amended by Ordinance No. 2006/24, "Impact Fee Procedures Ordinance"); and

WHEREAS, in accordance with the Act, the County has prepared and adopted a Parks & Recreation Facilities Ordinance (No. 1999/31 as amended 2006/24), a Road Facilities Ordinance (No. 1999/32 as amended by Ordinance No. 2006/24), and a Library Facilities Ordinance (No. 1999/33 as amended by Ordinance 2006/24); and

WHEREAS, pursuant to the Act, the County developed capital improvement plans for each of the above-mentioned public facilities, identifying the specific system improvements needed to meet the projected demand from anticipated new growth and development; and

WHEREAS, pursuant to the Act, the County has prepared technical support studies (the (1) Library Facilities Impact Fee Support Study and CIP dated August 2006; the (2) Parks and Recreation Facilities Impact Fee Support Study and CIP; (3) Bluffton-Okatie and Hilton Head Island Service Areas dated August 2006; and the (4) Road Facilities Impact Fee Support Study and CIP; South Beaufort County Service Area dated September 2006) for each of the above referenced public facilities; and

WHEREAS, it is essential that the public facilities development impact fees be imposed, calculated and collected uniformly within each service area throughout the County, including on properties which are annexed into the Town but which are in the County; and

WHEREAS, the Parties acknowledge that subsequent to enacting the ordinances referred to above, and with actual or constructive notice of the same, the Town annexed into the Town certain properties which, at the time, were in the unincorporated area of the County and to which these impact fees applied; and

WHEREAS, pursuant to S.C. Code Ann. Sec. 6-1-910, et seq. such properties are annexed subject to existing impact fees; and

WHEREAS, S.C. Code Ann. §6-1-20 (Supp. 1994) authorizes the Parties to enter into Intergovernmental Agreements including agreements such as this one for the collection and

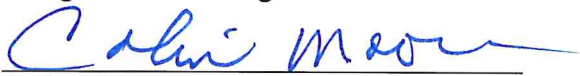
distribution of impact fees; and

WHEREAS, the Parties agree that all public facilities development impact fees shall be collected by the County for the purpose of funding public facilities and improvements, as set forth in the applicable Public Facilities Capital Improvement Plans, to meet the public facilities demands resulting from projected new population, residential and non-residential development, as applicable; and

WHEREAS, this Agreement is not intended to, and does not, alter or change the responsibilities of each of the Parties hereto, nor does it relieve any party of any function, duty or obligation otherwise imposed by law; and

WHEREAS, this Agreement, upon its execution by the Parties hereto, shall be filed with the Clerk to Council of Beaufort County and the Town Clerk of the Town of Yemassee; and  
WHEREAS, the foregoing recitals are hereby incorporated into and made a part of this Agreement.

NOW, THEREFORE, in consideration for the above premises and the mutual covenants contained herein, the Parties to this Agreement do agree as follows in the attached Intergovernmental Agreement listed as "Exhibit A":



Colin J Moore, Mayor



ATTEST: Matthew E Garnes, Town Clerk

(Seal)

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
BEAUFORT COUNTY, SOUTH CAROLINA,  
AND THE TOWN OF YEMASSEE**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between Beaufort County, South Carolina (“County”) and the Town of Yemassee (“Town”). It provides through Ordinance 2020/ [REDACTED] and the impact fee procedures of Section 82-21 *et seq.* of the Beaufort County Code for the following:

- (1) The imposition and collection, at the time of issuance of a building permit, of Road development impact fees on all new residential and non-residential development within those portions of the County which have been annexed into the Town;
- (2) The transfer of the Road development impact fees from the Town to the County; and
- (3) If fees are not spent by the County within the time limits established by state law and the impact fee procedures in Section 82-21 *et seq.* of the Beaufort County Code, the return of fees collected by the Town so they can be refunded to the appropriate fee payers.

**RECITALS**

**WHEREAS**, the South Carolina Legislature has adopted the South Carolina Development Impact Fee Act, S.C. Code §§ 6-1-910 *et seq.* (hereinafter the “Act”) which enables local governments to enact and impose development impact fees for public facilities including road and transportation facilities, in accordance with the Act’s provisions, procedures, and requirements; and

**WHEREAS**, pursuant to the Act, the County has directed the preparation of a technical support study entitled the *Capital Improvement Plan and Development Impact Fee Study* prepared by TischlerBise, dated July 27, 2020 (hereinafter “Road development impact fee study and CIP”); and

**WHEREAS**, the County provides Road services throughout the North Beaufort County Road Facilities Service Area (“Service Area”), defined in the study as those parts of the County north of the Broad River; and

**WHEREAS**, the Road development impact fee and study demonstrate that population and growth estimates over the next 10 years for the North Beaufort County Road Facilities Service Area, which includes portions of the County which have been annexed into the Town, create a need for additional Roads to support the projected growth in the County; and

**WHEREAS**, the Road development impact fee study and CIP establish a reasonable level of service standard, land use assumptions, methodologies, service units, system improvement costs, and formulas for determining the impacts of new development in the North Beaufort County Road Facilities Service Area, and a proportionate Road development impact fee for new development; and

**WHEREAS**, pursuant to the Road development impact fee study and CIP, Road facility system improvement needs have been identified in the North Beaufort County Road Facilities Service Area, and a capital improvements plan (CIP) prepared; and

**WHEREAS**, those portions of the County which have been annexed into the Town are wholly located within the North Beaufort County Road Facilities Service Area, as are all or part of the City of Beaufort and the Town of Port Royal; and

**WHEREAS**, pursuant to the Act, the County has adopted the Impact Fee Procedures Ordinance, codified at Section 82-21 *et seq.* of the County Code; and

**WHEREAS**, the County has prepared and adopted the Road Development Impact Fee Ordinance (Ordinance No. 2020/ ); and

**WHEREAS**, pursuant to the Act, and to ensure the Road development impact fees established in Ordinance 2020/ are imposed and collected uniformly within the Service Area, the Town (with respect to the annexed portions of the County), along with the City of Beaufort and the Town of Port Royal have all opted into Ordinance 2020/ , and will impose Road development impact fees within their corporate limits; and

**WHEREAS**, pursuant to S. C. Code § 6-1-20, the County and Town (collectively, the “parties”) are authorized to enter into this Intergovernmental Agreement; and

**WHEREAS**, the Town has the power and authority, pursuant to the Act, to collect the Road development impact fees and transfer those fees to the County for expenditure on Road facility system improvements in the CIP; and

**WHEREAS**, the County has the power and authority, pursuant to the Act, to enact, impose, and collect Road development impact fees, including receiving, administering, and spending the Road development impact fees imposed and collected by Town, as specified in this Intergovernmental Agreement; and

**WHEREAS**, the County and the Town agree that all Road impact fees collected by the Town in accordance with this Agreement shall be transferred to the County for the purpose of funding Road facility system improvements in the CIP, or if necessary be refunded to the appropriate fee payers; and

**WHEREAS**, the City of Beaufort and the Town of Port Royal have entered into similar intergovernmental agreements with the County for the collection and transfer of fee funds to the County, and for fee refunds to the appropriate fee payers, if necessary; and

**WHEREAS**, the County states that this Agreement is authorized by and is in accordance with S.C. Code §§ 4-9-40 and 4-9-41; and

**WHEREAS**, the Agreement, upon its execution by the parties, shall be on file with the Clerk to the County Council of Beaufort County and the Town Manager of the Town of Yemassee.

**NOW, THEREFORE**, the parties to this Agreement agree as follows:



### **SECTION 1. Title**

This Intergovernmental Agreement shall hereafter be referred to as the “Agreement.”

### **SECTION 2. Purpose and Intent**

The purpose of this Agreement is to ensure:

- (1) Road development impact fees are imposed on all new residential and non-residential development uniformly within the North Beaufort County Road Facilities Service Area (“Service Area”) including annexed portions of the County which are within the Town.
- (2) The Town collects Road development impact fees at time of building permit, places them in a segregated, interest bearing trust fund, then transfers them to the County for Road facility system improvements in accordance with Ordinance No. 2020/ [REDACTED] and the impact fee procedures in Section 82-21 *et seq.* of the County Code.
- (3) If the County fails to expend the fees within the time limits established by state law and the impact fee procedures in Section 82-21 *et seq.* of the County Code, the unspent fees are then returned to the Town so they can be refunded to the appropriate feepayers.

### **SECTION 3. References to County Ordinances**

This Agreement expressly incorporates by reference Beaufort County Ordinance No. 2020/ [REDACTED], and the impact fee procedures in Section 82-21 *et seq.* of the County Code. Any substantive amendments to these ordinances related to Ordinance No. 2020/ [REDACTED] shall have the express prior agreement of the City.

### **SECTION 4. Duration, Extension, and Termination of Agreement**

#### **(1) Duration and Extension of Agreement**

The Agreement shall remain effective from the date of its execution by the parties for a period of not less than 10 years unless it is terminated by mutual agreement of the parties. If not terminated prior to or at the end of the 10-year period, it shall continue in effect.

#### **(2) Termination of Agreement**

- (a) The Agreement may be terminated prior to the expiration of the 10-year period set forth in 4(1) above only by the mutual agreement of the parties.
- (b) The Agreement may be terminated after the expiration of the 10-year period set forth in 4(1) above by the unilateral action of either party to the Agreement, provided that such termination action may only occur after the party seeking termination provides notice to the other party to the Agreement at least 90 days prior to taking such action and notices, schedules, and holds at least one hearing at which the other party is given notice and has an opportunity to be heard.

- (c) Following notice and an opportunity to be heard as set forth in 4(2)(b) above, the party seeking termination may, by appropriate action, terminate the Agreement.

#### **SECTION 5. Amendments to the Agreement**

The Agreement may be amended only by the mutual consent of the parties and in the same manner as its original adoption; provided, however, that the County may adjust the amount of any Road development impact fees as set forth in the Ordinance No. 2020/ [REDACTED], without the prior agreement of the Town if the County:

- (1) Prepares a new or updated technical support study and capital improvement plan (CIP);
- (2) Adopts an amendment to Ordinance No. 2020/ [REDACTED]; and
- (3) The amount of the adjustment does not change the Road development impact fees by more than 50 percent from the fee amounts set forth in Ordinance No. 2020/ [REDACTED].

#### **SECTION 6. Responsibilities of the Town**

- (1) The Town shall be responsible for the calculation and collection of the Road development impact fee within its corporate limits from all new development, in accordance with the Act, Ordinance No. 2020/ [REDACTED], and the impact fee procedures in Section 82-21 *et seq.* of the County Code.
- (2) The amount of the Road development impact fee shall be based upon the fee in effect at the time of building permit issuance, as established in Section 5 of Ordinance No. 2020/ [REDACTED].
- (3) No building permit for new residential and non-residential development in the annexed portions of the County shall be issued until the Road development impact fees are paid in full by the applicant, unless the developer has properly asserted one or more Developer Rights pursuant to the impact fee procedures in Section 82-21 *et seq.* of the County Code.
- (4) The Town shall forward any request made for an exemption or waiver of the development impact fees to the County Director of Planning who shall forward the request to the County Council for approval or denial. The Town shall then collect or exempt or waive the fee based on the direction of the County Council.
- (5) Upon the collection of a Road development impact fee, the Town shall deposit such fees in a segregated, interest-bearing trust fund account which is subject to appropriate accounting controls. All interest earned and accruing to the account shall become funds of the account, subject to the same limitations and restrictions on use and expenditure of funds that are applicable to Road development impact fee funds.
- (6) The Town shall transfer to the County the Road development impact fee funds that have been collected by November 1 of each year.

- (7) Annually or, if deemed advisable, more frequently, the Town shall prepare an annual report in accordance with the impact fee procedures in Section 82-21 *et seq.* of the County Code.
- (8) All Road development impact fee funds collected by the Town shall be restricted in their appropriation and use in accordance with the Act, Ordinance No. 2020/[REDACTED], the impact fee procedures in Section 82-21 *et seq.* of the County Code, and this Agreement.
- (9) All Road development impact fee funds returned to the Town from the County due to the County's failure to expend the fees within the time limits established by state law and the impact fee procedures in Section 82-21 *et seq.* of the County Code, shall be refunded to the appropriate fee payers.
- (10) To compensate the Town for the collection and administration of the Road development impact fees, the Town shall be authorized to withhold an amount equal to one percent of the Road development impact fee funds collected.

#### **SECTION 7. Responsibilities of the County**

- (1) The County shall be responsible for receipt of Road development impact fee funds transferred by the Town to the County, and shall deposit such funds into a segregated interest-bearing trust fund account subject to appropriate accounting controls.
- (2) Upon receipt of a request for an exemption or waiver of the development impact fees from the Town, the County Director of Planning shall forward the request to the County Council for approval or denial. If approved, the County shall notify the Town of the extent of the waiver or exemption granted. If a full waiver is granted, no development impact fees are due. If a partial waiver is granted, the remaining amount must be paid prior to the issuance of a building permit. If denied, the fees shall be paid in full.
- (3) Road development impact fee funds collected by the Town and transferred to the County shall only be used by the County in accordance with Ordinance No. 2020/[REDACTED] and the impact fee procedures in Section 82-21 *et seq.* of the County Code.
- (4) The County shall be responsible for interpretation of Beaufort County Ordinance No. 2020/[REDACTED], and the impact fee procedures in Section 82-21 *et seq.* of the County Code.

#### **SECTION 8. Governing Law**

This Agreement, and its interpretation and performance, shall be governed and construed by the applicable laws of the state of South Carolina.



**SECTION 9. Conflict**

To the extent of any conflict between other County ordinances and this Agreement, this Agreement shall be deemed to be controlling. This Agreement is not intended to amend or repeal any existing County or Town ordinances.

**SECTION 10. Cooperation Between and Among the Parties**

The County and Town agree to cooperate with each other in all respects regarding the matters addressed in this Agreement.

**SECTION 11. Severability**

If any section, subsection, sentence, clause, phrase, or portion of this Agreement is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase, or portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this Agreement.

**SECTION 12. Effective Date**

This Agreement shall become effective immediately on the date of approval by both parties; provided, however, that collection of the Road development impact fees for new residential and non-residential development on annexed portions of the County that are within the Town shall begin on the date that the County and all municipalities in the North Beaufort County Road Facilities Service Area (City of Beaufort and Town of Port Royal) have entered into the intergovernmental agreements required by Ordinance No. 2020/\_\_\_\_.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

COUNTY COUNCIL OF BEAUFORT COUNTY

By: \_\_\_\_\_  
Joseph F. Passiment, Chairman

ATTEST:

\_\_\_\_\_  
Sarah Brock, Clerk to Council

APPROVED this 8<sup>th</sup> day of December, 2020

TOWN OF YEMASSEE

By: Colin Moore  
Colin Moore, Mayor

ATTEST:  
Matthew 2 8  
Matthew Garnes, Town Manager