

RESOLUTION 2020-02

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 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":

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Colin J Moore, Mayor

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ATTEST: Matthew E Garnes, Town Clerk

(Seal)

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

**THIS INTERGOVERNMENTAL AGREEMENT** made and entered this 12<sup>th</sup> day of February 2020 (“Effective Date”), by and between Beaufort County, South Carolina (“County”) and the Town of Yemassee, South Carolina (“Town”), collectively hereinafter the “Parties”, provides for the Town or, as may be applicable, the County, to collect parks and recreation, road, and library facilities development impact fees as applicable, from all new development on Beaufort County properties which are annexed into the Town pursuant to: (1) Beaufort County Impact Fee Procedures Ordinance No.1999/26 as amended by Ordinance No. 2006/24, (2) Parks & Recreation Facilities Ordinance No. 1999/31 as amended 2006/24, (3) Road Facilities Ordinance No. 1999/32 as amended by Ordinance No. 2006/24, (4) Library Facilities Ordinance No. 1999/33 as amended by Ordinance 2006/24, and (5) Beaufort County Community Development Code (“CDC”).

**RECITALS**

**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:

## **SECTION 1. TITLE.**

This Intergovernmental Agreement between the County and the Town provides for the collection, transfer and expenditure of Public Facility Development Impact Fees. It shall hereinafter be referred to as the “Agreement.”

## **SECTION 2. PURPOSE.**

The purpose of this Agreement is to ensure that public facilities development impact fees which are intended to be imposed on new development County-wide, including on County properties which have, heretofore been, and which might, subsequently be, annexed into the

Town, are imposed upon and collected from new growth and, paid to the County for placement in a segregated, interest-bearing trust fund account and, are appropriated and expended in accordance with the applicable public facility capital improvement plan, subject to the conditions, restrictions and limitations of the Act, the Beaufort County Impact Fee Procedures Ordinance, the individual Public Facilities Impact Fee Ordinances and this Agreement.

### **SECTION 3. REFERENCES TO COUNTY ORDINANCES.**

This Agreement hereby expressly incorporates herein by reference the relevant portions of the CDC and the following Beaufort County Ordinances: (1) Beaufort County Impact Fee Procedures Ordinance No.1999/26 as amended by Ordinance No. 2006/24; (2) Beaufort County Parks & Recreation Facilities Ordinance No. 1999/31 as amended 2006/24; (3) Beaufort County Road Facilities Ordinance No. 1999/32 as amended by Ordinance No. 2006/24; (4) Beaufort County Library Facilities Ordinance No 1999/33 as amended by Ordinance 2006/24 and any amendments thereto; provided, however, that prior to the adoption of any such amendments, the County shall first notify the Town of the proposed nature of the amendment and the reason thereof. The Town shall be given adequate opportunity to review the proposed amendment and to submit comments to the County prior to final County action.

### **SECTION 4. DURATION/EXTENSION/TERMINATION OF AGREEMENT.**

(1) *Duration.* This Agreement shall remain in effect from the date of its execution by the Parties hereto until the completion and conclusion of current public facilities capital improvements plans.

(2) *Extension.* This Agreement may be extended provided the County has prepared and adopted a subsequent capital improvements plan, the County has prepared an updated public

facilities development impact fee support study and the County has revised and updated the applicable public facilities development impact fee ordinance.

(3) *Termination.* This Agreement shall only be terminated prior to the period of time set forth herein by mutual agreement by the Parties in writing.

## **SECTION 5. RESPONSIBILITIES OF THE COUNTY.**

(1) *Collection of Fees.* The County shall be responsible for the administration (including administration of Individual Assessments of Development Impacts), calculation, and collection of the public facilities development impact fees from all new development (past, present and future), in accordance with the Act, the applicable Public Facilities Development Impact Fee Ordinance the Beaufort County Impact Fee Procedures Ordinance and the CDC. The Parties expressly agree that the Town assumes no responsibility or liability for the assessment of the impact fees.

Upon the collection of public facilities development impact fees, the County shall place the collected funds in a segregated, interest-bearing account that is subject to appropriate accounting controls.

(2) *Calculation of Fees.* The applicant shall provide the County with a building permit executed by the Town. The amount of the impacts fees collected from new development shall be based upon the fees in effect at the time the building permit or development permit is issued as may be applicable.

(3) *Payments to Town.* The County shall, on a quarterly basis following the County's fiscal year, transfer 1.5% of the public facilities development impact fee funds to the Town

(4) *Use of Impact Fees.* The County shall be responsible for the implementation and administration of all public facilities development impact fees in accordance with the Act, the



Impact Fee Procedures Ordinance No. 1999/26, as amended by Ordinance. No. 2006/24, the applicable impact fee support study, the applicable public facility development impact fee ordinances, and this Agreement.

(5) *Interpretation.* The County shall be responsible for the interpretation of all of the above-referenced laws, ordinances and studies, as well as any other documents or information relevant to the public facility development impact fee ordinances.

## **SECTION 6. RESPONSIBILITIES OF THE TOWN.**

(1) *Issuing of Certificate of Occupancy.* No Certificate of Occupancy for new development shall be issued by the Town unless the applicant provides the Town with a receipt of payment issued by the County. This receipt shall be the only acceptable proof of payment for the impact fees. The applicable public facilities development impact fees must be paid in full by the applicant, unless the developer has properly asserted one or more Development Rights pursuant to the applicable Public Facilities Development Impact Fee Ordinance and the County has not asserted one or more County Remedies pursuant to the applicable Public Facilities Development Impact Fee Ordinance. In the event that at the time this Agreement is entered into, the Town has issued Certificates of Occupancy without collecting the necessary and applicable impact fees, the Town agrees it shall immediately collect the applicable fees.

(2) *Proof of Payment.* The Parties agree the applicant is solely responsible for providing the Town with receipt of payment. If the applicant cannot provide the Town with receipt of payment, it is the sole responsibility of the applicant to request and obtain a copy of a receipt of payment. In no circumstance is the County responsible for providing the Town with proof of payment.

(3) *Quarterly Reports.* The Town shall prepare quarterly reports, and provide said reports to the County, verifying the Certificates of Occupancy issued in the developments whereby the impact fees apply.

(4) *Use of Impact Fee Funds.* All public facilities development impact fee funds received by the Town shall be restricted in their appropriation, expenditure and use in accordance with the Act, the Impact Fee Procedures Ordinance, the applicable Public Facilities Development Impact Fee Ordinance, the applicable impact fee support study, and this Agreement.

## **SECTION 7. SOUTH CAROLINA DEVELOPMENT IMPACT FEE REQUIREMENTS.**

(1) *Improvements.* The Parties agree that the system improvements specified in the support studies and Public Facilities Capital Improvements Plans are not joint improvements, but consist solely of improvements to be provided by the County and to be funded by the County, in whole or in part with development impact fees collected on behalf of the County, by the Town.

(2) *Funding and Responsibilities.* The Town shall not participate or share in the funding of the system improvements specified in the Applicable Public Facilities Capital Improvements Plans. The Town's financial responsibility shall be limited to transferring collected public facilities development impact fee revenues to the County at appropriate times, for expenditure on system improvements included in the Applicable Public Facilities Capital Improvements Plan. No other unit of government shall be responsible for, nor may assume, any share of the funding for the system improvements.

## **SECTION 8. REVIEW and AMENDMENTS.**

(1) *Review of Process.* This Agreement shall remain in effect following the conditions set forth within. The Parties reserve the ability to review the processes for the collection of impact

fees at the end of one (1) year from the Effective Date of this Agreement. This section does not apply to any other terms or conditions of this Agreement.

(2) *Amendments.* This Agreement shall only be amended by the mutual consent of the Parties and in the same manner as its original adoption.

#### **SECTION 9. 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 10. CONFLICT.**

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

#### **SECTION 13. COOPERATION BETWEEN AND AMONG THE PARTIES.**

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

#### **SECTION 14. 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 15. EFFECTIVE DATE.**

This Agreement shall be signed by both Parties and immediately commence upon the Effective Date.

IN WITNESS WHEREOF, the Parties hereto have hereby set their hands and seals as of the date first hereinabove written.

COUNTY COUNCIL OF BEAUFORT COUNTY,  
SOUTH CAROLINA

By: \_\_\_\_\_  
Honorable Stewart H. Rodman  
Chairman, Beaufort County Council

APPROVED AS TO FORM:

\_\_\_\_\_  
County Attorney

ATTEST:

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

TOWN OF YEMASSEE,  
SOUTH CAROLINA

By: \_\_\_\_\_  
Honorable Colin Moore,  
Mayor, Town of Yemassee

REVIEWED BY:

\_\_\_\_\_  
Town Attorney

ATTEST:

\_\_\_\_\_  
Matthew Garnes, Town Clerk