

INTERGOVERNMENTAL AGREEMENT BETWEEN BEAUFORT COUNTY AND THE TOWN OF BLUFFTON

THIS AGREEMENT is made and entered into this ____ day of _____, 2021, by and between Beaufort County, South Carolina (“County”), a political subdivision, and the Town of _____

(“Town”), It provides through Ordinance No. 2021/ [REDACTED], the impact fee procedures of Section 82-21 *et seq.* of the Beaufort County Code, and an intergovernmental agreement between the County and the Beaufort County Board of Education (“School Board”), for the following:

- (1) The imposition and collection, at the time of issuance of a building permit, of school development impact fees on all new residential development within the Town; and
- (2) The transfer of the school development impact fees from the Town to the County, and then the transfer of the fees from the County to the School Board; and
- (3) If fees are not spent by the School Board 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 impact fees for public facilities including for public school facilities for grades K-12, in accordance with the Act’s provisions, procedures, and requirements; and

WHEREAS, pursuant to the Act, the School Board has directed the preparation of a technical support study entitled the *School Impact Fee Study and Capital Improvement Plan*, prepared by TischlerBise, dated July 27, 2020 (hereafter, the “school support study and CIP”), which is expressly incorporated herein by reference; and

WHEREAS, the support study and CIP demonstrates that as a result of population and growth estimates over the next 10 years for the area south of the Broad River (“South Beaufort County School Service Area”), which includes the Town, there will be a need for additional classrooms and other school facilities to accommodate the continued population growth in the South Beaufort County School Service Area; and

WHEREAS, the school support study and CIP establishes reasonable level of service standards, land use assumptions, methodologies, service units, system improvement costs, and formulas for determining the impacts of new residential development in the South Beaufort County School Service Area, and a proportionate school development impact fee for new residential development; and

WHEREAS, pursuant to the school support study and CIP, school facility system improvement needs have been identified in the South Beaufort County School Service Area, and a capital improvements plan prepared; and

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WHEREAS, the Town is wholly located within the South Beaufort County School Service Area, as are the Town of _____ and portions of the County which have been annexed into the City of Hardeeville; 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 School Development Impact Fee Ordinance (Ordinance No. 2020/____); and

WHEREAS, pursuant to the Act, and to ensure the school development impact fees established in Ordinance No. 2020/____, are imposed and collected uniformly within the South Beaufort County School Service Area, the Towns of _____ and _____ and the City of Hardeeville have all opted into Ordinance No. 2020/____, and will impose school 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 County has the power and authority, pursuant to the Act, to enact, impose, and collect school development impact fees, including collecting school development impact fees from the Town as specified in this Intergovernmental Agreement; and

WHEREAS, the County and the Town agree that all school development impact fees collected in accordance with this Agreement shall ultimately be transferred to the School Board for the purpose of funding new school facility system improvements needed in the South Beaufort County School Service Area as a result of new residential development, or if necessary be refunded to the appropriate fee payers; and

WHEREAS, the Town of _____ and the City of Hardeeville (with respect to annexed portions of the County) have entered into similar intergovernmental agreements with the County for the collection and transfer of fees to the School Board 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 Council of Beaufort County and the Clerk of the Town of _____.

NOW, THEREFORE, the parties to this Agreement do 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) School development impact fees are imposed on new residential development uniformly within the South Beaufort County School Service Area, including new residential development within the Town; and
- (2) The Town collects school development impact fees at time of building permit, places them in a segregated, interest-bearing trust account, then transfers them to the County before they are then transferred to the School Board for school facility system improvements in accordance with Ordinance No. 2021/___ and the impact fee procedures in Section 82-21 *et seq.* of the County Code; and
- (3) If the School Board 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 by the School Board so they can be refunded to the appropriate fee payers.

SECTION 3. References to County Ordinances

This Agreement expressly incorporates by reference Beaufort County Ordinance No. 2021/___ 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. 2021/___ shall have the express prior agreement of the Town.

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 (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 (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 (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 school development

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impact fees as set forth in the Ordinance No. 2021/____, without the prior agreement of the Town if the County:

- (1) Prepares a new or updated technical support study and capital improvement plan;
- (2) Adopts an amendment to Ordinance No. 2021/____; and
- (3) The amount of the impact fee adjustment does not change the school development impact fees by more than 50 percent from the fee amounts set forth in Ordinance No. 2021/____.

SECTION 6. Responsibilities of the Town

- (1) The Town shall be responsible for the calculation and collection of the school development impact fee within its jurisdiction from all new residential development, in accordance with the Act, Ordinance No. 2021/____, and the impact fee procedures in Section 82-21 *et seq.* of the County Code.
- (2) The amount of the school development impact fee shall be based upon the fee in effect at the time of building permit issuance, as established in Ordinance No. 2021/____.
- (3) No building permit for new residential development shall be issued unless the school development impact fees are paid in full by the applicant, unless the developer has properly asserted and received 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 County Council for approval or denial. The Town shall then collect or exempt or waive the fee based on the direction of County Council.
- (5) Upon the collection of a school development impact fee, the Town shall deposit such fees in a segregated, interest-bearing trust 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 school development impact fee funds.
- (6) The Town shall transfer to the County the school development impact fees 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 school development impact fee funds collected by the Town shall be restricted in their appropriation and use in accordance with the Act, Ordinance No. 2021/____, the impact fee

procedures in Section 82-21 *et seq.* of the County Code, the intergovernmental agreement between the County and School Board dated _____, 2021, and this Agreement.

- (9) All school development impact fee funds returned to the Town from the School Board due to the School Board'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 school development impact fees, the Town shall be authorized to withhold an amount equal to one percent of the school development impact fee revenues collected.

SECTION 7. Responsibilities of the County

- (1) The County shall be responsible for receipt of school development impact fee funds transferred by the Town to the County and shall deposit such funds into a segregated interest-bearing trust 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 County Council for approval or denial. If approved, the County shall notify the Town of the extent of the waiver granted. If a full waiver is granted, no 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) School development impact fee funds collected by the Town and transferred to the County shall only be transferred by the County to the School Board in accordance with Ordinance No. 2021/_____, the intergovernmental agreement between the County and School Board dated _____, 2021, 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. 2021/_____, 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 school development impact fees for new development within the Town shall begin on the date that all municipalities in the service area and the County have entered into the intergovernmental agreements required by Ordinance No. 2021/___, and the County and School Board have entered into the intergovernmental agreement required by Ordinance No. 2021/___.

DRAFT

Attachment 1

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APPROVED this _____ day of _____, 20____

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____
Joseph F. Passiment, Chairman

ATTEST:

Sarah Brock, Clerk to Council

APPROVED this _____ day of _____, 20____

TOWN OF _____,

By: _____
_____, Mayor

ATTEST:

_____, Town Manager

