

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF SUMTER COUNTY, FLORIDA, AMENDING ARTICLE III, CHAPTER 20, OF THE SUMTER COUNTY CODE, AMENDING THE ROAD IMPACT FEE ORDINANCE TO PROVIDE FOR NEW FEES AND OTHER REVISED PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Sumter County (the Board) has prepared a transportation impact fee update study, which calculated the impact of additional vehicular trips on the county and state road network, which study is titled the “Sumter County Transportation Impact Fee Update Study,” dated December 17, 2008, prepared by Tindale-Oliver & Associates, Inc (the “impact fee study”), which is attached hereto as Appendix A; and

WHEREAS, the Board has reviewed the impact fee study and has determined that the fees established by said study reflect the proportionate share impact of land uses on the county road system, including the state highway system; and

WHEREAS, the impact fee study and fees calculated therein are based on the most recent and localized data; and

WHEREAS, the County includes in its annual audits an affidavit of the County’s chief financial officer as required by sec. 163.31801(4), Fla. Stat.; and

WHEREAS, the Board has determined that the road construction district set forth as Appendix C to this Ordinance is appropriate, based on the impact fee study; and

WHEREAS, the Board has determined that changes to the County’s Transportation Impact Fee Ordinance (the “Ordinance”) are necessary to reflect changes in the actual costs to provide new transportation capacity to new residential and nonresidential growth and to administer the County impact fee program; and

WHEREAS, the Board has determined that the public benefit provided by properly organized and active nonprofit corporations provides a rational basis for the exemption of such entities from the payment of impact fees, such fees to be supplied by from the general fund, and;

WHEREAS, the Board hereby adopts the findings expressly set forth in section 20-33 of amended Article III as provided herein; and

NOW THEREFORE, BE IT ORDAINED BY the Board of Commissioners of Sumter County as follows:

SECTION 1. That the following sections of Chapter 20, Article III of the Sumter County Code be stricken in their entirety and restated as follows and that the Chapter be renumbered

and organized as provided herein:**ARTICLE III. ROAD IMPACT FEES DIVISION 1. GENERALLY**

Sec. 20-31. Definitions.

When used in this article, the following terms shall have the following meanings, unless the context otherwise clearly requires:

Access improvements shall mean improvements designed and constructed to provide safe and adequate ingress and egress from a road impact construction, which include, but are not limited to, rights-of-way, easements, paving of adjacent or connecting roadways, turn lanes, deceleration and acceleration lanes, traffic control devices, signage and markings, and drainage and utilities.

Accessory building or structure shall mean a detached, subordinate building, meeting all property development regulations, the use of which is clearly incidental and related to the use of the principal building or incidental to the previous use to which the vacant land is devoted, and which is located on the same lot as that of the principal building or vacant land use.

Alternative road impact fee shall mean any alternative fee calculated by an applicant and approved by the planning director pursuant to section 20-38.

Applicant shall mean the person who applies for a building permit.

Arterial road shall mean a route providing service which is relatively continuous and of relatively high traffic volume and long average trip length, as more particularly described in F.S. § 334.03(1), or its statutory successor in function.

Building shall mean any structure, either temporary or permanent, designed or built for the support, shelter or enclosure of persons, chattels or property of any kind. This term shall include tents, trailers, mobile homes or any vehicles serving in any way the function of a building. The term shall not include temporary construction sheds or trailers erected to assist in construction and maintained during the term of a construction and shall not include a mobile home installed on a parcel of land on which there currently is located a dwelling unit if said mobile home is placed there pursuant to a temporary hardship variance approved by the county zoning and adjustment board.

Building permit shall mean an official document or certificate issued by the county, under the authority of ordinance or law, authorizing the construction or siting of any building. "Building permit" shall also include tie-down permits, site plan approvals, or other development orders for those activities, structures, or buildings, such as a mobile home, that do not require a building permit in order to be undertaken.

City street system shall mean the street system of any municipality within the county as defined in F.S. § 334.03(3), or its statutory successor in function.

Collector road shall mean a route providing service which is of relatively moderate average traffic volume and moderately average trip length, as more particularly described in F.S. §334.03(4), or its statutory successor in function.

Commission shall mean the board of county commissioners of Sumter County, Florida.

Comprehensive plan shall mean the comprehensive plan of the county adopted and amended pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act as contained in F.S. pt. II, ch. 163, or its statutory successor in function.

County shall mean Sumter County, Florida, a political subdivision of the State of Florida.

County attorney shall mean the persons, or law firm appointed by the commission to serve as its attorney or the designee of such person.

County engineer shall mean the person appointed by the commission to serve as its engineer or the designee of such person.

County road system shall mean the road system of the county as defined in F.S. § 334.03(8), or its statutory successor in function, including arterial, collector roads, and local roads, including roads within the state highway system, but shall not include any roads within the city street system.

Designated county road shall mean a road within the county or state highway road system that will add new capacity to the county or state highway road system and which is listed for improvement in the County's adopted capital improvement plan or which the commission resolves to include in the adopted capital improvement plan during the immediately subsequent amendment thereto.

Dwelling unit shall mean a building, or a portion thereof, which is designed for residential occupancy, consisting of one (1) or more rooms which are arranged, designed or used as living quarters for one (1) or more persons. The term shall not include a mobile home installed on a parcel of land on which there currently is located a dwelling unit if said mobile home is placed there pursuant to a temporary hardship variance approved by the county zoning and adjustment board.

Encumbered shall mean monies committed by contract or purchase order in a manner that obligates the county to expend the encumbered amount for the delivery of goods, the completion of services, the conveyance of right-of-way by a vendor, supplier, contractor or owner.

External trip shall mean any trip which either has its origins from or its destination to the road impact construction and which impacts the county road system.

Governmental buildings or facilities shall mean property owned by the United States of America or any agency thereof, a sovereign state or nation, the state or any agency thereof, a county, a special district, a school district (including charter schools), or a municipal corporation.

Impact fee land use category shall mean those categories of land use incorporated in the road impact fee rate schedule adopted and set forth in section 20-36(a).

Impact fee study shall mean the study adopted pursuant to section 20-34, as amended and supplemented pursuant to section 20-48.

Local road shall mean a route providing service which is of relatively low average traffic volume and short average trip length, as more particularly described in F.S. § 334.03(14), or its statutory successor in function.

Mixed use road impact construction shall mean a road impact construction in which more than one (1) impact fee land use category is contemplated with each category constituting a separate and identifiable enterprise not subordinate to or dependent on other enterprises within the road impact construction.

New net trip shall mean the average daily external trips, as adjusted by the impact fee study.

Nonprofit Corporation: Any entity which meets the definition of a private foundation or public charity under Section 26 U.S.C. 509 of the Internal Revenue Code of the United States and has filed the appropriate forms for tax exemption with the Internal Revenue Service and subsequently received written notice of approval of nonprofit status under Section 26 U.S.C. 5019(c)(3) of the Internal Revenue Code of the United States.

Off-site improvements shall mean road improvements located outside of the boundaries of a road impact construction which are required by the county in order to serve external trips, but not including access improvements.

Ordinance shall mean this road impact fee ordinance.

Owner shall mean the person holding legal title to the real property containing the road impact construction.

Person shall mean any individual, corporation, governmental agency, business trust, estate, trust, partnership, association, property owners' association, two (2) or more persons having a joint or common interest, governmental agency, or other legal entity.

Planning director shall mean the person appointed by the commission to serve as its director of planning and development within the county or the designee of such person.

Road construction district shall mean the district, as shown in appendix C to the ordinance from which this section derives, that is established by the county in section 20-36(c) for the purposes of collection and expenditure of the road impact fees.

Road impact construction shall mean land construction designed or intended to permit a use of the land which will contain more dwelling units, buildings or floor space than the existing use of land, or otherwise to change the use of the land in a manner that increases the generation of vehicular traffic or the number of external trips.

Road impact fee shall mean the road impact fee imposed by the county pursuant to section 20-36, 20-37, or 20-38.

Road impact fee rate shall mean a road impact fee imposed for a particular road impact construction under the applicable impact fee land use category established in the schedules listed in section 20-36(a).

Square footage shall mean the gross area measured in feet from the exterior faces of exterior walls or other exterior boundaries of the building, excluding areas within the interior of the building which are utilized for parking.

State highway system shall mean the road system of the state that lies within the county, as defined in F.S. § 334.03(25), or its statutory successor in function.

Trip shall mean a one-way movement of vehicular travel from an origin (one trip end) to a destination (the other trip end). The word trip shall have the meaning which it has in commonly accepted traffic engineering practice.

Trip generation or *trip generator rate* shall mean the maximum average daily trip generation rates for the applicable trip generation land use category, as adjusted by the impact fee study.

Trip generation land use category shall mean the trip generation land use categories established in Trip Generation, 6th edition, published by the Institute of Transportation Engineers.

Sec. 20-32. Rules of construction.

For the purposes of administration and enforcement of this article, unless otherwise stated in this section, the following rules of construction shall apply:

- (1) The word "shall" is always mandatory and not discretionary; the word "may" is discretionary.
- (2) Words used in the present tense shall include the future and words in the singular shall include the plural and the plural the singular, unless the context clearly indicates the contrary.
- (3) Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions, or events connected by the conjunction "and," "or" or "either . . . or" the conjunction shall be interpreted as follows:
 - a. *And* indicates that all the connected terms, conditions, provisions or events shall apply.
 - b. *Or* indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
 - c. *Either . . . or* indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.
- (4) The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.

Sec. 20-33. Findings.

It is hereby ascertained, determined and declared:

- (1) Pursuant to Article VIII, section 1(g), Florida Constitution, F.S. §§ 125.01 and 125.66, the commission has all powers of local self-government to perform county functions, except when prohibited by law, and such power may be exercised by the enactment of legislation in the form of county ordinances.

- (2) This article complies with the requirements of F.S. §163.31801.
- (3) The commission specifically finds that the county and state highway road system, including designated county roads, benefits all residents of the county and, therefore, the road impact fee shall be imposed in all incorporated and unincorporated areas of the county not otherwise governed by an impact fee agreement that predates the effective date of this ordinance.
- (4) Development necessitated by the growth contemplated in the comprehensive plan and impact fee study will require improvements and additions to the county and state highway road system to accommodate the traffic generated by such growth and maintain the level of service standards adopted by the county.
- (5) Future growth, as represented by road impact construction, should contribute its fair share to the cost of improvements and additions to the county and state highway road system.
- (6) The required maintenance improvements and additions to the county and state highway road system needed to eliminate any deficiencies within the existing county and state highway road system shall be financed by revenue sources of the county and state other than road impact fees.
- (7) Implementation of a road impact fee to require road impact construction to contribute its fair share to the cost of required transportation and additions is an integral and vital element of the regulatory plan of growth management incorporated in the comprehensive plan of the county.
- (8) The imposition of a road impact fee is to provide a source of revenue to fund the construction or improvement of the county and state highway road system necessitated by growth.
- (9) The county has the statutory responsibility to provide and maintain roads in the county road system and has the ability to cost share or advance funding for improvements to the state highway system in cooperation with the Florida Department of Transportation. Road impact construction occurring within the county impacts upon the county and state highway road system; therefore, road impact construction should pay its fair share of the cost of providing the improvements and additions to the county and state highway road system. In recognition of these findings, it is the intent of the commission that, upon approval and adoption of this article and the impact fee study by the commission, the county shall impose a road impact fee to pay for the cost of growth-required improvements and additions to the county and state highway road system throughout the county.
- (10) The cost of road impact construction on the county and state highway road system as presented in the study entitled "Sumter County Transportation Impact Fee Update Study," dated December 17, 2008, prepared by Tindale-Oliver & Associates, Inc., is hereby approved and adopted by the county and is hereby found to be in conformity with the comprehensive plan.
- (11) Transportation planning is an evolving process and the cost and credit assumptions and road impact construction characteristics are based upon present knowledge and judgment. Therefore, in recognition of changing cost and credit assumption and the dynamic nature of

road impact construction characteristics, it is the intent of the commission that the cost and credit assumptions and road impact construction characteristics be reviewed and adjusted periodically, pursuant to section 20-48 and 20-49, to ensure that road impact fees are imposed equitably and lawfully and are utilized effectively based upon actual and anticipated traffic conditions at the time of their imposition.

(12) The purpose of this article is to regulate the development of land within the county by requiring payment of road impact fees by road impact construction and to provide for the cost of capital improvements to the county road system which are required to accommodate such growth.

Sec. 20-34. Adoption of impact fee study.

The commission hereby adopts and incorporates by reference, the revised study entitled "Sumter County Transportation Impact Fee Update Study," dated December 17, 2008, prepared by Tindale-Oliver & Associates, Inc., and the assumptions, conclusions and findings in such study. The impact fee study is attached to this ordinance as Appendix A. Appendix A is not set out herein, but is on file and available for inspection in the office of the county clerk.

Sec. 20-35. Municipal participation.

The provisions of this article shall apply to road impact construction occurring in both the unincorporated and incorporated areas of the county, except for areas governed by an impact fee agreement which predates the effective date of this ordinance.

DIVISION 2. ROAD IMPACT FEES

Sec. 20-36. Imposition.

(1) The commission hereby adopts the schedule of road impact fees, in Appendix B, which are imposed upon all road impact construction occurring within the incorporated and unincorporated areas of the county at the rate established under the applicable impact fee land use category. This schedule shall not apply to areas governed by an impact fee agreement which predates the effective date of this ordinance. The schedule of road impact fees is adopted at 50% of the road impact fee rate calculated within the road impact fee study adopted by section 20-34 .

(2) The commission hereby establishes one (1) road construction district, as shown in Appendix C , for purposes of collection and expenditure of the road impact fees.

(3) The road impact fee shall be paid directly to the county prior to the issuance of a building permit.

Sec. 20-37. Individual calculation of road impact fees.

(1) In the event a road impact construction involves a land use not contemplated under the impact fee land use categories set forth in section 20-36(1), the planning director shall calculate the road impact fee based on the impact fee land use category most similar to the land use. The planning director may also calculate a road impact fee for a land use not contemplated under the impact fee land use categories set forth in section 20-36(1) utilizing the methodology contained in the impact fee study adopted by section 20-34. The planning

director shall utilize as a standard in this determination a n y generally accepted standard source of transportation engineering or planning.

(2) In the event a road impact construction involves a mixed use road impact construction, the planning director shall calculate the road impact fee based upon each separate impact fee land use category included in the proposed mixed use road impact construction.

Sec. 20-38. Alternative road impact fee calculation.

(1) As an alternative to paying the fees required by section 20-36, an applicant may, prior to issuance of a building permit for such road impact construction, file with the planning director an alternative road impact fee. The planning director shall review the alternative and make a determination within thirty (30) days of submittal as to whether such calculation complies with the requirements of this section.

(2) For purposes of any alternative road impact fee calculation, the road impact construction shall be presumed to have the maximum impact on the county and state highway road system for the land use category contemplated under the road impact fee rate.

(3) The alternative road impact fee calculation shall be based on data, information or assumptions contained in this article and the impact fee study or an independent source, provided that:

(a) The independent source is a generally accepted standard source of transportation engineering or planning information, or

(b) The independent source is a local study supported by data adequate for the conclusions contained in such study performed by a professional engineer pursuant to a generally accepted methodology of transportation planning or engineering.

(c) If a previously approved road impact construction project submitted, during its approval process, a traffic impact study substantially consistent with the criteria required by this section, and if such study is determined by the planning director to be current, the traffic impacts of such previously approved road impact construction shall be presumed to be as described in the prior study. In such circumstances, an alternative road impact fee shall be established reflecting the traffic impact described in the prior study. There shall be a rebuttable presumption that a traffic impact study conducted more than two (2) years earlier is invalid.

(4) For alternative road impact fee calculations, the following criteria shall apply:

(a). The alternative road impact fee shall be determined by the individual assessment of the fiscal impact of road impact construction on the county and state highway road system if:

1. Any person commencing road impact construction chooses to have the fee determined by the alternative road impact fee calculation and pays to the county an alternative road impact fee calculations review fee as established by the board of county commissioners by ordinance or resolution; or

2. The proposed road impact construction requires a development of regional impact or building permit and the planning director determines the

nature, timing or location of the proposed development makes it likely to generate impacts costing substantially more to accommodate than the amount of the fee that would be generated by the use of the fee schedule.

(5) The alternative road impact fee calculations shall be undertaken through the submission of a traffic impact analysis, which shall include the following information:

(a) The projected trip generation rates for the proposed road impact construction based on the average daily traffic of the proposed road impact construction. Trip generation rates shall be assessed on an average annual basis, and on a peak hour, peak season, peak direction basis. The trip generation rates shall be based upon local empirical surveys of trip generation rates for the same or similar land use types that meet methodological standards acceptable to the transportation engineering profession. If local empirical surveys are not available, state and/or national trip generation rate information may be used, if it is based on methodological standards acceptable to the transportation engineering profession.

(b) The projected trip length and percent new trips for the proposed road impact construction based on surveys of similar land use types. Trip length and percent new trips information shall be based upon local empirical surveys of similar land use types or data compiled by the planning director for average trip lengths and percent new trips for similar land use types. If local empirical surveys are not available, state and/or national trip length and present new trips information may be used, if it is based on methodological standards acceptable to the transportation engineering profession.

(6) The resulting impact fee for the proposed road impact construction will be calculated using the trip generation rate, trip rate, trip length, and percent new trips developed in the preceding sections, along with the current impact fee equation construction cost and credit equation factors.

(7) If the planning director determines that the data, information and assumptions utilized by the applicant comply with the requirements of this section and that the calculation of the alternative road impact fee was by a generally accepted methodology, then the alternative road impact fee shall be paid in lieu of the fee adopted in section 20-36 or 20-37, as applicable.

(8) If the planning director determines that the data, information and assumptions utilized by the applicant to compute an alternative road impact fee do not comply with the requirements of this section, then the planning director shall provide to the applicant by certified mail, return receipt requested, written notification of the rejection of the alternative road impact fee and the reasons therefore. The applicant shall have thirty (30) days from the receipt of the written notification of rejection to request a hearing pursuant to section 20-47.

Sec. 20-39. Use of road impact fee proceeds.

(1) The commission hereby establishes one (1) trust account for the road impact fee, to correspond with the one (1) road construction district established in section 20-36(2). The trust account is designated as the "Sumter County Road Construction District Impact Fee Trust Account", which account shall be maintained separate and apart from all other accounts of the county.

(2) All road impact fees shall be deposited into the trust account immediately upon receipt. All road impact fees and all interest accruing thereto shall be used solely for the road construction district from which such fees were collected. Within thirty (30) days of the effective date of this ordinance, monies currently being held in previously created impact fee trust accounts will be transferred to the impact fee trust account created and governed by this ordinance.

(3) The monies deposited into the road impact fee trust account shall be used solely for the purpose of constructing or improving designated county roads, including, but not limited to:

- (a) Design and construction plan preparation;
- (b) Permitting;
- (c) Right-of-way acquisition, including any costs of acquisition or condemnation;
- (d) Construction of new through lanes;
- (e) Construction of new turn lanes;
- (f) Construction of new bridges;
- (g) Construction of new drainage facilities in conjunction with new roadway construction;
- (h) Purchase and installation of traffic signals;
- (i) Construction of new curbs, medians and shoulders;
- (j) Relocating utilities to accommodate new roadway construction;
- (k) Construction management and inspection;
- (l) Surveying and soils and material testing;
- (m) Repayment of monies transferred or borrowed from any budgetary fund of the county which were used to fund any growth impacted construction or improvements as herein defined;
- (n) Payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the county to provide funds to construct or acquire growth impacted capital transportation improvements on the county road system; and
- (o) Transportation planning, development and engineering; and
- (p) The County may retain road impact fee monies to cover the actual cost of administration of the road impact fee program.

(4) Funds on deposit in the road impact fee trust accounts shall not be used for any expenditure that would be classified as a maintenance or repair expense.

(5) Any monies on deposit which are not immediately necessary for expenditure shall be invested by the county. All income derived from such investments shall be deposited in the road impact fee trust account and used as provided herein.

(6) The road impact fees collected pursuant to this article may be, at the sole discretion of the Board of County Commissioners, returned to the then current owner of the property on behalf of which such fee was paid if such fees have not been expended or encumbered prior to the end of the fiscal year immediately following the sixth anniversary of the date upon which such fees were paid. Refunds shall be made only in accordance with the following procedure:

(a) The then current owner shall petition the commission for the refund within one hundred eighty (180) days following the sixth anniversary date on which the road impact fee was paid.

(b) The petition for refund shall be submitted to the planning director and shall contain:

1. A notarized sworn statement that the petitioner is the current owner of the property on behalf of which the road impact fee was paid;
2. A copy of the dated receipt issued for payment of such fee or such other record as would indicate payment of such fee;
3. A certified copy of the latest recorded deed; and,
4. A copy of the most recent ad valorem tax bill.

(c) Within three (3) months from the date of receipt of a petition for refund, the planning director will advise the owner of the status of the road impact fee requested for refund, and if such road impact fee has not been spent or encumbered within the applicable time period, then it shall be returned to the petitioner. The county shall retain a fee, not in excess of two (2) percent of the road impact fee, to offset the actual costs of administering the refund. For the purposes of this section, fees collected shall be deemed to be spent or encumbered on the basis of the first fee in shall be the first fee out.

DIVISION 3. MISCELLANEOUS PROVISIONS

Sec. 20-40. Exemptions.

The following shall be exempted from payment of the road impact fee instituted by this Chapter and included sections:

- (1) Alterations, expansion or replacement of an existing dwelling unit which does not increase the number of families for which such dwelling unit is arranged, designed or intended to accommodate for the purpose of providing living quarters.
- (2) The alteration or expansion of a building if the building use upon completion does not generate greater external trips under the applicable road impact fee rate.
- (3) The replacement of a building or the construction of an accessory building or structure if the replacement building or accessory building or structure does not result in a land use generating greater external trips under the applicable road impact fee rate.
- (4) The issuance of a tie-down permit on a mobile home on which applicable road impact fees have previously been paid.
- (5) The construction of governmental buildings or facilities.
- (6) Projects and areas governed by an impact fee agreement which predates the effective date of this ordinance.

(7) The existing dwelling unit or building replaced must not have been removed prior to February 15, 2002. Evidence proving the dwelling unit or building was not removed prior to February 15, 2002, may include tax roll records, electric utility service statements, building permits, homeowner insurance records, or other similar records. A statement from an individual verifying the dwelling unit or building existed on February 15, 2002, is not acceptable.

Sec. 20-41. Changes of size and use.

A road impact fee shall be imposed and calculated for the alteration, expansion or replacement of a building or dwelling unit or the construction of an accessory building or structure if the alteration, expansion or replacement of the building or dwelling unit or the construction of an accessory building or structure results in a land use determined to generate greater external trips than the present use under the applicable road impact fee rate. The road impact fee imposed under the applicable road impact fee rate shall be calculated as follows:

- (1) If the road impact fee is calculated on land use and not square footage, the road impact fee imposed shall be the road impact fee due under the applicable road impact fee rate for the impact fee land use category resulting from the alteration, expansion or replacement, less the road impact fee that would be imposed under the applicable road impact fee rate for the impact fee land use category prior to the alteration, expansion or replacement.
- (2) In the event the square footage of a building is increased, the road impact fee rate for the increased square footage represented by the road impact construction shall be at the road impact fee rate applicable to road impact construction with square footage resulting from the alteration, expansion or replacement, less the road impact fee that would be imposed under the applicable square footage prior to the alteration, expansion or replacement.
- (3) The road impact fee imposed for any accessory building or structure shall be that applicable under the road impact fee rate for the land use for the primary building.

Sec. 20-42. Payment.

- (1) Except as otherwise provided in this article, prior to the issuance of a building permit for a road impact construction, an applicant shall pay the road impact fee. The applicable road impact fee shall be paid directly to the county.
- (2) The amount of impact fees due shall be reduced pursuant to any proportionate fair-share or impact fee credit or reimbursement agreement that provides for the provision of improvements to a designated county road. If the proportionate fair-share or credit or reimbursement obligation is less than the development anticipated road impact fee due, then the applicant or its successor must pay the remaining impact fee amount pursuant to this article.
- (3) The obligation for payment of the road impact fee shall run with the land.
- (4) In the event that a building permit issued for a road impact construction expires or is cancelled prior to completion of the road impact construction for which it was issued,

the applicant may, within ninety (90) days of the expiration or cancellation of the building permit, apply for a refund of the road impact fee. Failure to timely apply for a refund of the road impact fee shall waive any right to a refund.

(5) The application for refund shall be filed with the planning director and contain the following:

- (a) The name and address of the applicant;
- (b) The location of the property which was the subject of the building permit;
- (c) The date the road impact fee was paid;
- (d) A copy of the receipt of payment for the road impact fee; and
- (e) The date the building permit was issued and the date of expiration or cancellation.

(6) After verifying that the building permit has expired or was cancelled and that the road impact construction has not been completed, the planning director shall refund the road impact fee paid for such road impact construction. The county shall retain two (2) percent of the road impact fee to offset the costs of administering the refund.

(7) A building permit which is subsequently issued for a road impact construction on the same property which was the subject of a refund shall pay the road impact fee in effect at the time of reapplication.

(8) The payment of the road impact fee shall be in addition to any other fees, charges or assessments of the county due for the issuance of a building permit.

Sec. 20-43. Applicability.

This article and the obligations herein for the payment of the road impact fee shall apply to all road impact construction that receives a building permit on or after the effective date of this article.

Sec. 20-44. Alternative collection method.

In the event the road impact fee is not paid prior to the issuance of a building permit for the affected road impact construction, the county may elect to collect the road impact fee by any other method which is authorized by law.

Sec. 20-45. Developer contribution credit or reimbursement.

(1) Except for credits or reimbursements issued pursuant to a proportionate fair-share agreement, a credit or reimbursement may be granted against the road impact fee for the construction of any off-site improvements to designated county roads required pursuant to a development order of the county or voluntarily made in connection with road impact construction. Such construction and improvement shall be subject to approval by the commission and the following standards:

(a) The off-site improvements to be constructed shall be an integral part of and a necessary accommodation of the contemplated off-site improvements to designated county roads and shall exclude access improvements.

(b) The amount of developer contribution credit to be applied to the road impact fee or reimbursement shall be determined according to the following standard of valuation:

1. The actual cost of construction of off-site improvements to a designated county road shall be based upon cost certified by a professional engineer. However, in no event shall any credit be granted for construction of off-site improvements in excess of the estimated construction costs approved by the county unless the construction project is competitively bid, in which case the credit shall be limited to the actual costs or one hundred twenty (120) percent of the bid amounts, whichever is less; and

(c) Prior to issuance of a building permit the applicant shall submit to the planning director a proposed plan for the construction or donation of off-site improvements to a designated county road. The proposed plan shall include:

1. A description of the road impact construction for which the plan is being submitted;
2. A list of the contemplated off-site improvements to a designated county road;
3. An estimate of proposed construction costs certified by a professional engineer; and
4. A proposed time schedule for completion of the proposed plan.

(d) Upon receipt of the proposed plan, the planning director shall determine if the proposed plan meets all the requirements of this section. If all requirements are met, the planning director shall schedule the proposed plan as an agenda item for the commission. In addition, the county attorney shall prepare a credit or reimbursement agreement for consideration by the commission. The planning director shall provide the applicant or owner written notice of the time and place of said commission meeting. The proposed plan and credit or reimbursement agreement shall be heard by the commission within sixty (60) days of the date the proposed plan, which meets all the requirements of this section, was submitted.

(e) The commission shall determine:

1. If such proposed plan of construction or donation is in conformity with contemplated off-site improvements to a designated county road;
2. If the proposed donation is consistent with the public interest;
3. If the proposed construction and donation time schedule is consistent with the county transportation work schedule; and

4. If eligible for credit or reimbursement, the amount of developer contribution or reimbursement credit based upon the above standard of valuation.

(f) If the commission makes the findings delineated above, then the commission shall approve the credit or reimbursement agreement.

(g) All construction cost estimates shall be based upon and all construction plans and specifications shall be in conformity with the road construction standards of the county. All plans and specifications shall be approved by the county engineer prior to commencement of construction.

(h) Any applicant who submits a proposed plan pursuant to this section and desires the immediate issuance of a building permit shall pay the applicable road impact fee prior to or at the time the request for hearing is filed. Said payment shall be deemed paid "under protest" and shall not be construed as a waiver of any review rights. Any difference shall be refunded to the applicant or owner.

(i) Nothing contained herein shall be construed to qualify the donation of land which is required as right-of-way or the construction of access improvements for a developer contribution credit.

(2) Any road impact fee credit or reimbursement agreement in effect at the date of adoption of this ordinance shall remain in full force and effect. If any provision of this ordinance is in conflict with any provision of an existing road impact fee credit or reimbursement agreement, then the existing road impact fee credit or reimbursement agreement shall control.

Sec. 20-46. Assignment of developer contribution credits.

(1) Developer contribution credits granted pursuant to section 20-45 herein may be assigned within the same road construction district or to an area directly impacted by the development and resulting construction.

(2) Prior to the issuance of a building permit, the owner of the developer contribution credit must file an application to must be assign the credits with the planning director.

(3) Such assignment must meet the following requirements to be accepted by the planning director:

(a) Developer contribution credits can only be assigned once, not including any collateral assignment in favor of a bank, a community development district created pursuant to F.S. ch. 190, or other local unit of special purpose government; and

(b) To an area impacted by the development and resulting construction.

(4) Upon acceptance of the assignment, the planning director will debit the owner assignor's developer contribution credit account and credit the assignee's account.

Sec. 20-47. Review hearings.

(1) An applicant or owner who is required to pay a road impact fee shall have the right to request a review hearing.

- (2) Such hearing shall be limited to the review of the following:
 - (a) The application or calculation of the road impact fee; or
 - (b) The rejection of the alternative road impact fee calculation.
- (3) Such hearing shall be requested by the applicant or owner within thirty (30) days of the date of first receipt of the following:
 - (a) Notice that the road impact fee is due; or
 - (b) Negative determination on a proposed alternative road impact fee.
- (4) Failure to request a hearing within the time provided shall be deemed a waiver of such right.
- (5) The request for hearing shall be filed with the planning director and shall contain the following:
 - (a) The name and address of the applicant or owner;
 - (b) The legal description of the property in question;
 - (c) If issued, the date the building permit was issued;
 - (d) A brief description of the nature of the construction being undertaken pursuant to the building permit;
 - (e) If paid, the date the road impact fee was paid; and
 - (f) A statement of the reasons why the applicant or owner is requesting the hearing.
- (6) Upon receipt of such request, the planning director shall schedule a hearing before the commission at a regularly scheduled meeting or a special meeting called for the purpose of conducting the hearing and shall provide the applicant and owner written notice of the time and place of the hearing. Such hearing shall be held within sixty (60) days of the date the request for hearing was filed.
- (7) Such hearing shall be before the commission and shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedure and evidence shall not be applicable; however, the hearing shall be conducted in a fair and impartial manner with each party having an opportunity to be heard and to present information and evidence.
- (8) Any applicant or owner who requests a hearing pursuant to this section and desires the immediate issuance of a building permit, or if a building permit has been issued without the payment of the road impact fee, shall pay prior to or at the time the request for hearing is filed, the applicable road impact fee. Said payment shall be deemed paid "under protest" and shall not be construed as a waiver of any review rights.

(9) An applicant or owner may request a hearing under this section without paying the applicable road impact fee, but no building permit shall be issued until such road impact fee is paid in the amount initially calculated or the amount approved upon completion of the review provided in this section.

Sec. 20-48. Review requirement.

This article and the impact fee study shall be reviewed by the commission at least every five (5) years. The initial and each review thereafter shall consider new estimates of population and other socioeconomic data, changes in construction, land acquisition and related costs, and adjustments to the assumptions, conclusions or findings set forth in the study adopted by section 20-34. Each review shall additionally consider changes in right-of-way acquisition and related costs and changes in trip generation, trip length, and percent new trips. The purpose of this review is to evaluate and revise, if necessary, the road impact fee to ensure that they do not exceed the reasonably anticipated costs associated with the improvements and additions necessary to offset the demand generated by the road impact construction on the county road system. In the event the review of this article required by this section alters or changes the assumptions, conclusions and findings of the studies adopted by reference in section 20-34, revises or changes the designated county roads, or alters or changes the amount or classification of the road impact fee, the study adopted by reference in section 20-34 shall be amended and updated to reflect the assumptions, conclusions and findings of such reviews and section 20-34 shall be amended to adopt by reference such updated studies.

Sec. 20-49. Indexing.

Each year during which no update occurs pursuant to section 20-48, the commission may by ordinance adjust the impact fees set forth in section 20-36 in order to reflect inflation or deflation related to the costs to the County to provide designated county road improvements. Cost adjustments should be made for land and construction costs in accordance with the methodology set forth in the impact fee study and the requirements for notice set forth in F.S. § 163.31801.

Sec. 20-50. Declaration of exclusion from Administrative Procedures Act.

Nothing contained in this article shall be construed or interpreted to include the county in the definition of "agency" as contained in F.S. § 120.52, or to otherwise subject the county to the application of the Administrative Procedure Act, F.S. ch. 120. This declaration of intent and exclusion shall apply to all proceedings taken as a result of or pursuant to this article, including specifically, but not limited to, determination of alternative fee calculation pursuant to section 20-38 and review hearings under section 20-47.

Sec. 20-51. Conflict.

If any provision of this ordinance is deemed to be in conflict with the Villages Impact Fee Agreement dated February 10, 2009, (the "Villages' Agreement") or any effective amendments thereto, the Villages Agreement and said effective provisions shall prevail.

Sec. 20-52. Nonprofit Corporations

Nonprofit Corporations, as defined herein, shall, upon submission to the County of sufficient written proof of active, current nonprofit corporation status with the Florida Secretary of State and proper nonprofit status acquisition with the Internal Revenue Service, be exempt from payment of the Impact Fees applied by this ordinance. Entities claiming nonprofit status which are exempt from the filing and application requirements of Section 26 U.S.C. 501 of the Internal Revenue Code must provide sufficient proof of exemption from such requirements. The County shall pay the Impact Fee amount that would normally be due from the applying entity if it did not qualify for nonprofit status through monies drawn from the County's general fund, in order to prevent a shortfall in the balance of Impact Fees due.n. Nonprofit Corporations, as defined herein, provide public support, service and contributions to the people of Sumter County which provide a rational basis for the exemption provided herein.

SECTION 2. If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion thereof shall be deemed separate, distinct, and independent of all other provisions and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 3. This Ordinance shall become effective upon adoption as dated below.

PASSED AND ADOPTED at a duly called session of the Sumter County Board of County Commissioners, this _____ day of _____, 2009.

BOARD OF COUNTY COMMISSIONERS SUMTER COUNTY, FLORIDA

BY: _____
Garry Breeden, Chairman

ATTEST:

CLERK

APPROVED AS TO FORM FOR THE RELIANCE OF SUMTER COUNTY ONLY:

COUNTY ATTORNEY

Appendix A Impact Fee Study

**On File with the
Sumter County Clerk of Courts**

Appendix B Road Impact Fee Schedule

Appendix C
Road Impact
Fee District