

AMENDED AND RESTATED

**INTERLOCAL AGREEMENT FOR COORDINATION OF PLANNING ACTIVITIES TO
INCLUDE A SCHOOL CONCURRENCY MANAGEMENT PROGRAM AMONG PASCO
COUNTY, FLORIDA, THE MUNICIPALITIES OF DADE CITY, PORT RICHEY, SAN
ANTONIO, TOWN OF ST. LEO AND ZEPHYRHILLS, AND THE DISTRICT SCHOOL BOARD
OF PASCO COUNTY**

The final negotiations regarding certain sections and provisions of the proposed Restated and Amended Interlocal Agreement are continuing as of the due date for the Agenda Memorandum. Attached hereto is a draft Agreement that is current as of February 1, 2008. The final document shall be distributed as soon as practicable in hard copy format.

DRAFT

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OF PASCO COUNTY**

THIS INTERLOCAL AGREEMENT (hereinafter referred to as “**Agreement**”) is entered into by and among the Pasco County Board of County Commissioners, (hereinafter referred to as the “County”), the Municipalities of Dade City, Port Richey, San Antonio, Town of St. Leo and Zephyrhills, (hereinafter referred to as “Municipalities”) and the District School Board of Pasco County (hereinafter referred to as the “School Board”) (hereinafter collectively referred to as the “Parties”).

WHEREAS, the Parties entered into an Interlocal Agreement in 2003 to provide for cooperation and communication in planning for school location and services; and

WHEREAS, the Parties are required to amend that Interlocal Agreement pursuant to sections 163.01, 163.31777, 163.3180, and 1013.33, *Florida Statutes*; and

WHEREAS, sections 163.3177(6)(h) 1. and 2., *Florida Statutes*, requires each Municipalities and the County to adopt an Intergovernmental Coordination Element as part of their Comprehensive Plan that states principles and guidelines to be used in the accomplishment of coordination of their adopted Comprehensive Plans with the District Facilities Work Program of the School Board, and describes the processes for collaborative planning and decision making on population projections and public school siting; and

WHEREAS, pursuant to sections 163.31777, 163.3180(13), and 1013.33, *Florida Statutes*, the Parties must update the 2003 Interlocal Agreement to establish school concurrency requirements consistent with the 2005 amendments to Chapter 163, Part II, *Florida Statutes* (the “Local Government Comprehensive Planning Act”); and

WHEREAS, section 163.3180(13), *Florida Statutes*, requires the County, the Municipalities and the School Board to adopt a school concurrency program; and

WHEREAS, section 1013.33, *Florida Statutes*, requires coordination of planning between the School Board and the Local Governments to ensure that new or expanded public educational facilities are facilitated and coordinated in time and place with plans for residential development concurrently with other services; and

WHEREAS, the Town of St. Leo is currently exempt from the requirements to implement the School Concurrency Management System. Therefore, the Town of St. Leo is not subject to the School Concurrency provisions of this Agreement until such time as the exemption is waived or no longer applicable; and

WHEREAS, the Parties recognize the benefits that will flow to the residents and students of their communities by more closely coordinating their comprehensive land use and educational facilities planning programs. These benefits include, but are not limited to: (1)

effective coordination of new schools in time and place with land development; (2) efficiency for the Parties through the reduction of student travel times and the placement of schools to take advantage of existing and planned roads, water lines, sewer lines and parks; (3) student access and safety by coordinating the construction of new and expanded schools by the School Board with the road and sidewalk construction programs of the Municipalities and County; (4) location and design of schools so that they serve as community focal points; (5) location and design of schools with parks, ball fields, libraries, and other community facilities to take advantage of joint use opportunities; (6) location of new schools and expansion and remodeling of existing schools in order to reduce pressures contributing to urban sprawl; and (7) better planning for schools to accommodate the impacts of new residential development; and

WHEREAS, the Pasco County Comprehensive Plan amendments, effective January 26, 2007, include provisions for coordinating public educational facility planning with the School Board.

NOW THEREFORE, be it mutually agreed among the Parties that the following requirements, definitions, criteria, standards and procedures shall be utilized in coordination of public educational facility planning activities and the implementation of school concurrency in Pasco County.

SECTION 1. COMMITTEES ESTABLISHED

The Parties hereby establish the following committees with the functions set out herein:

- 1.1 **Staff Working Group (SWG):** The purpose of the SWG is to provide a means for the Staff from the County, School Board, and Municipalities to meet to consider issues regarding school sites. The SWG will meet on a regular basis. The School Board and the County shall, and each Municipality at its option may, appoint one member to the SWG as necessary. When desired, any member of the SWG may invite representatives from other segments of the community or individual(s) with specific knowledge or skill to attend a SWG meeting. The SWG may (1) exchange information; (2) discuss issues of mutual concern; (3) coordinate planning activities related to the construction and opening, significant renovation or closing of public educational facilities with existing or projected residential development; (4) provide informal reviews of proposed school sites; (5) consider the feasibility of collocation of new schools with parks, libraries, or other public facilities; (6) coordinate plans for school; and (7) make reports as necessary to the Elected Officials Oversight Committee. No decision of the SWG will be binding on an affected jurisdiction without the consent of the jurisdiction. Authority to consent may be delegated to that jurisdiction's member of the SWG. It is the intent of the Parties that the SWG perform primary staff functions and engage in the necessary fact finding to perform their duties. It is not the intent or direction of the School Board, the County or each Municipality to delegate any of their respective decision-making power to the SWG so as to subject the SWG to the provisions of Chapter 286, *Florida Statutes*.
- 1.2 **Site Selection Advisory Committee (SSAC):** The School Board will establish a Site Selection Advisory Committee consisting of at least five individuals for the purpose of evaluating potential sites for new schools and making recommendations to the Superintendent or designee. The SSAC will meet on an as needed basis as determined by the Superintendent. The SSAC is only an advisory body. Final school siting decisions will be made by the School Board in accordance with section 1013.36, *Florida*

Statutes, and in accordance with the processes and standards set forth in this Agreement. In addition to members appointed by the School Board, the SSAC will include at least one staff member of the County's Metropolitan Planning Organization and at least one County planner appointed by the County Administrator and, at the option of the Municipalities, a representative selected by the Municipalities. The committee membership may be expanded as needed to include additional staff from any individual Municipality in or near where a school is proposed at the option of the affected Municipality. When a new school site is to be acquired, the SSAC will be activated by the Superintendent to evaluate a list of potential sites in the area of need as identified in the District Facilities Work Program. The SSAC is subject to the requirements of Chapter 286, *Florida Statutes*.

- 1.3 **Elected Officials Oversight Committee (EOOC):** One or more members each of the County Commission, the governing board of each Municipality, and the School Board will meet no less than annually in a joint workshop session, sitting as the Elected Officials Oversight Committee. The joint workshop sessions shall provide opportunities for the County Commission, the Municipality Governing Boards, and the School Board to discuss the following: (1) policy direction; (2) coordination of land use and school facilities planning; (3) population and student growth; (4) development trends; (5) school needs and access improvements; (6) review of school impact fees to ensure that impact fee schedules reflect the most recently available school cost, credits, and revenue data; (7) joint use opportunities; and (8) conduct oversight of the school concurrency program as required. The County Administrator and Superintendent will be jointly responsible for setting the time and place for the workshops and providing notice to the Parties and to the public. Meetings of the EOOC shall be noticed to the public and the public will have the opportunity to comment. The meetings shall alternate between the headquarters of the School Board and the headquarters of the County. The EOOC is subject to the provisions of Chapter 286, *Florida Statutes*.

SECTION 2. COORDINATION AND SHARING OF INFORMATION

A. Student Enrollment

- 2.1 The School Board shall use the student enrollment projections produced by the demographic, revenue, and education estimating conferences pursuant to section 216.136, *Florida Statutes*, or the COHORT Projection Waiver ("Waiver") as the alternative student enrollment measurement accepted by the Department of Education ("DOE"), as modified by the School Board based on development data and agreement with the Parties and the Office of Educational Facilities and SMART Schools Clearinghouse, as authorized by section 1013.35(2)1., *Florida Statutes*. The School Board may request that the DOE projections be adjusted to reflect the development trends and enrollment as measured by the Waiver. The School Board will inform the County and Municipalities of any such request and action taken by DOE on any such request.
- 2.2 The School Board's allocation of projected student enrollment into School Concurrency Service Areas must be provided to each Local Governments' Growth Management Administrator or functional successor.

2.3 The projected school enrollment and its allocation to School Concurrency Service Areas will be included in the District Facilities Work Program provided to the County and Municipalities each year.

B. Population Projections and Growth Information

2.4 By June 1st of each year, the County and each Municipality shall provide to the School Board its population projections within their respective jurisdictions.

2.5 Growth Information. On a regular basis, and at a minimum annually, the County and Municipalities shall provide to the School Board information on growth and development trends within their respective jurisdictions. The information shall be in tabular, graphic, or textual formats, and shall include at least:

- (a) The type, number, and location of residential units that have received zoning or preliminary site plan approval;
- (b) Information, to the extent available, regarding the conversion or redevelopment of housing or other structures into residential units which are likely to generate new students;
- (c) Information regarding future land use map amendments which may have an impact on the locations of school facilities;
- (d) The number of residential building permits and certificates of occupancy issued for the preceding year by unit type; and
- (e) Updated population projections apportioned geographically.

SECTION 3. SCHOOL SITE AND SCHOOL DEVELOPMENT PLAN CONSISTENCY REVIEW

A. Proposed Sites

3.1 When the need for a new school is identified in the District Facilities Work Program or by the School Board staff in coordination with the County or the applicable Municipal staff, or when an opportunity to acquire a site in a desirable location becomes available to the School Board, the School Board shall notify the Staff Working Group (SWG). The School Board shall submit to the SWG one or more potential school sites. The SWG shall review the potential school site or sites and make a preliminary determination as to the suitability of such site or sites for a new school. The preliminary determination is non-binding but is designed to identify open and obvious issues that would render a site unsuitable for a school. The potential school site may or may not be on property already owned by the School Board.

3.2 Each potential school site or sites deemed suitable by the SWG shall be referred to the School Site Advisory Committee (SSAC) for evaluation; provided that the School Board may conduct its own evaluation consistent with Section 3.4 of this Agreement. The SSAC shall evaluate potential school sites under the criteria of Section 3.4 of this Agreement and rank the sites, if multiple sites are proposed. When the SSAC has

completed its review, it shall report in writing its findings and rankings for each site or sites to the Superintendent. The rankings by the SSAC are not binding upon the School Board.

- 3.3 **School Site Consistency.** Individual Municipalities may, at their option create School Site Consistency review procedures that differ from these, however those review procedures shall comply with *Florida Statutes*. As provided in section 1013.33(11), *Florida Statutes*, to assure coordination relative to school site selection, the School Board at least 60 days prior to acquiring or leasing property that may be used for a new public educational facility, and not required as a condition of approval for a rezoning or comprehensive plan amendment, shall submit a completed application for consistency determination to the applicable Local Government. The Local Government shall have 15 days to assess whether the application is complete.
- 3.4 The affected Local Government(s) when evaluating a potential school site for consistency shall consider:
- (a) whether the proposed school site is located within a Future Land Use category that allows for schools or if a comprehensive plan amendment is required; and
 - (b) whether the proposed site is consistent, or can be conditioned in order to be consistent, with the school siting standards of the applicable Comprehensive Plan.
- 3.5 The County and/or applicable Municipality, upon receipt and completeness determination of the School Board's completed application for a determination of consistency, shall schedule the matter to be heard by the Development Review Committee and the Board of County Commissioners (for the County), or other appropriate planning agency (for the Municipalities) and a determination rendered within 45 days. The School Board and the County or Municipality may mutually agree to expand the time for such review. The determination of the Development Review Committee shall be a recommendation to the Board of County Commissioners. A duly noticed public hearing shall be held before the Board of County Commissioners.
- (a) Consistent. If the Local Government determines that the proposed school site is consistent, or is conditioned in order to be consistent, with the applicable Comprehensive Plan the site may be acquired. The Dispute Resolution Process in Section 18.2 of this Agreement shall be followed as necessary for determining conditions required for consistency.
 - (b) Inconsistent. If the Local Government determines that the proposed site is inconsistent with the applicable Comprehensive Plan, the determination of inconsistent shall list all inconsistencies. The Dispute Resolution Process in Section 18.2 of this Agreement may be followed in an attempt to resolve the inconsistencies.
- 3.6 **School Development Plan Consistency.** Individual Municipalities may, at their option create School Development Plan Consistency review procedures that differ from these, however those review procedures shall comply with and be subject to *Florida Statutes*. All disputes regarding transportation infrastructure capacity, access management and conditional consistencies shall be resolved prior to submittal of a school development

plan using, as necessary, the process as described in Section 18.2 of this Agreement. As provided in section 1013.33(12), *Florida Statutes*, at least 90 days prior to initiating construction, the School Board shall submit a complete school development plan application, and an Access Management Application to the County's Growth Management and Development Review Departments, or the designated department of an individual Municipality for each proposed site regardless of whether a site consistency determination was required. Within 3 days of receipt, the County or the designated representative of an individual Municipality shall determine if the application is complete and within 45 days after receiving the complete application, the County or Municipality shall schedule the matter to be heard by the Development Review Committee (for the County or other appropriate planning agency for the Municipalities). The School Board and the County or Municipality may mutually agree to expand the time for such review. The school development plan shall be reviewed against the school siting and development standards of the applicable Comprehensive Plan and the applicable Land Development Regulations including the requirements of Section 4 of this Agreement. The determination of the Development Review Committee shall be a recommendation to the Board of County Commissioners, who shall hold a public hearing. The public hearing shall be duly noticed and the property posted as required by the Pasco County Land Development Code or the applicable land development regulations of the other Local Governments. Failure of the Local Government to make a determination in writing within 90 days of receiving a completed school development plan shall be considered an approval of the school development plan.

- (a) Consistent. If the Local Government determines that the proposed school development plan is consistent with the applicable school siting and development standards of the applicable Comprehensive Plan and the applicable Land Development Regulations including the requirements of Section 4 of this Agreement, is consistent with all conditions of consistency imposed by Section 3.5 of this Agreement, and that all disputes are resolved regarding transportation infrastructure capacity and access management, and a Final Certificate of Capacity for Transportation Concurrency is obtained, the school construction may commence. The Dispute Resolution Process in Section 18.2 of this Agreement shall be followed as necessary.
- (b) Inconsistent. If the Local Government determines that the proposed school development plan is inconsistent with the applicable school siting and development standards of the applicable Comprehensive Plan and the applicable Land Development Regulations including the requirements of Sections 4 of this Agreement the school may not be built until all inconsistencies are resolved. The determination of inconsistent shall list all inconsistencies. The Dispute Resolution Process in Section 18.2 of this Agreement shall be followed in an attempt to resolve inconsistencies.

3.7 **Minimum Standards.** School site development plans shall be consistent with the school siting and site development standards of the applicable Comprehensive Plan and the applicable Land Development Regulations. If a site is consistent with the applicable Comprehensive Plan's land use policies and categories in which public schools are identified as allowable uses, the Local Government may not deny the application but it may impose reasonable development standards and conditions in accordance with Florida Statutes and consider the site development plan and its adequacy as it relates to environmental concerns, health, safety and welfare, and effects on adjacent property.

Standards and conditions may not be imposed which conflict with Florida Statutes Chapter 1013 or the Florida Building Code except as agreed to in this Agreement. Where applicable school siting and site development standards have not been adopted by a Local Government, school site development plans shall address at a minimum the following to ensure compatibility with adjacent uses:

- (a) Location, size, height and use of all proposed structures;
- (b) Proposed or existing location of fire hydrants and distance to structures;
- (c) Location and method of buffering from adjacent residential zoning districts;
- (d) Location and method of stormwater retention;
- (e) Location, size, and total amount of recreation areas;
- (f) Location and dimensions of proposed parking and service areas;
- (g) Proposed means of vehicular and pedestrian access from the site to adjacent streets and/or alleys; and
- (h) Lighting plan that proposes directional lighting.

The review process of Section 3.6 of this Agreement shall apply.

- 3.8 **Right of Way Use Permits.** The School Board shall obtain a right of way use permit where connecting to a public roadway. The School District shall require all contractors working on behalf of the School Board to post a maintenance bond for a minimum of 2 years for all work done within the County's or a Municipality's right of ways. Said bond shall be provided prior to approval of the right of way use permit. The fee for the right of way use permit shall be waived. All improvements made within the right of ways shall be dedicated to the County, or as applicable, a Municipality, upon completion and final inspection.

B. Existing Sites

- 3.9 **Expansions.** If the School Board desires to expand an existing school site, the County and/or Municipality may impose reasonable development standards and conditions on the expansion only, and in a manner consistent with sections 1013.33 (15) and 1013.51, *Florida Statutes* and consistent with the applicable Comprehensive Plan and applicable Land Development Regulations including the requirements of Section 4 of this Agreement. Standards and conditions may not be imposed which conflict with the Florida Building Code. A new school collocated or adjacent to an existing school shall not be deemed an expansion, rather, all the other provisions of Sections 3 and 4 of this Agreement shall apply.
- 3.10 **Significant Renovations.** When considering a significant renovation of a school facility, the School Board shall notify in writing the appropriate Municipality in which the school is located or the County if the subject school is in the unincorporated part of the County prior to any significant renovation activities. Significant renovations are proposed

renovations or construction on existing school sites with the exception of construction that changes the primary use of a facility, includes stadiums, or results in a greater than 5 percent increase in student capacity. a school's student population by 5% or more, increase a school's total building square footage by 5% or more, or that change traffic circulation, traffic generation, reduce building setbacks or buffers, or increase existing building heights by 10% or more. The review of proposed Significant Renovations shall be pursuant to the requirements of Sections 3.6 and 3.7 of this Agreement.

- 3.11 **Closures.** When considering a closure of a school, the School Board shall notify in writing the Parties to this Agreement. The notice shall provide the proposed closing date of the school, provide for proposed modifications to the School Concurrency Services Areas that might be necessary to accommodate students, and propose a collaborative process between the School Board and the affected Local Government to consider reuse of the subject school site.
- 3.12 All new construction including relocatables, additions, remodeling of existing facilities or renovation of existing facilities shall conform to and comply with the Florida Building Code, including, but not limited to, Chapter 423, and the Florida Fire Prevention Code pursuant to section 1013.37, *Florida Statutes*, and shall be consistent with applicable provisions of the State Requirements for Educational Facilities, Vol. 1.

SECTION 4. SCHOOL SITE TRANSPORTATION AND UTILITY INFRASTRUCTURE OBLIGATIONS OF THE SCHOOL BOARD

4.1 RECOGNITION OF DISPUTED ISSUES The School Board and County acknowledge that there are conflicting and undefined requirements in Sections 1013.371(1)(a), 1013.51(1)(a), 1013.51(1)(b), 1013.51(3), 163.3180(4)(a), 163.3180(2)(a), 163.3180(2)(c), and 163.3180(16), *Florida Statutes*, with regard to the School Board's responsibility to comply with the County's generally applicable transportation and utility infrastructure requirements. In an effort to reconcile these conflicting and undefined statutory provisions, and avoid litigation of any disputed issues arising under these statutory provisions and the County's generally applicable transportation and utility infrastructure requirements, the School Board and County have agreed that the School Board's compliance with the County's generally applicable transportation and utility infrastructure requirements shall be as set forth in this Section 4. The County and School Board agree to reevaluate the obligations in this Section 4 within (1) year of any legislative change to the statutory sections referenced above that materially affects any of the obligations in this Section 4, or within (1) year of any judicial interpretation of the statutory sections referenced above by the Florida Second District Court of Appeals or Florida Supreme Court that materially affects the obligations in this Section 4. If, after the reevaluation, the School Board and County are unable to agree on the required modifications to Section 4, any disputed issues shall be resolved in accordance with Section 18.2 of this Agreement. In such event, the obligations of the School Board and County in this Section 4 shall continue to apply until there is a final resolution of the disputed issues.

Individual Municipalities or private utility providers, at their option, may create transportation or utility infrastructure requirements for the School Board that differ from those in this Section 4; however, those requirements must comply with the statutory requirements referenced herein. The County's and School Board's resolution of the disputed statutory requirements referenced herein are only binding on the School Board and County with regard to the County's transportation and utility infrastructure requirements, and are not

binding on the School Board or any Individual Municipality or private utility provider for purposes of complying with the transportation or utility infrastructure requirements of any Individual Municipality or private utility provider.

4.2 OBLIGATIONS AT SCHOOL SITE CONSISTENCY AND SCHOOL DEVELOPMENT PLAN CONSISTENCY

As of the statutorily required deadline for executing this Agreement, the School Board and County have not reached a definitive agreement with regard to when, and to what extent, the School Board should be subject to the following County requirements: (a) transportation concurrency, (b) access management, (c) substandard roads, (d) traffic impact study, (e) traffic calming, (f) vehicular storage, (g) transportation corridor management, (h) sidewalk construction, (i) impact fees, and (j) utility infrastructure and capacity. The County and School Board have requested that one or more transportation planning/engineering consultants study some of the disputed issues relating to some of these requirements, and provide recommendations on such issues. The School Board and County agree to revise Sections 3 and 4 of this Agreement to address the foregoing requirements after their receipt of the recommendations from the planning/engineering consultants. Until such time that this Section 4 has been revised, all disputes relating to the foregoing requirements that cannot be resolved by the County and School Board staff shall be resolved in accordance with Section 18.2 of this Agreement.

SECTION 5. COORDINATED REVIEW OF COMPREHENSIVE PLAN AMENDMENTS, REZONINGS, AND DEVELOPMENT APPLICATIONS

- 5.1 **Local Planning Agencies.** The County and each of the Municipalities will include as a member of their respective Local Planning Agency (LPA) a representative of the School Board as necessary to fulfill the requirements of Section 163.3174, *Florida Statutes*. As to the County's LPA, the School Board will appoint such member, who must be an elected member of the School Board and who shall serve for a term concurrent with the member's term of elective office. The School Board member of the County's LPA shall attend and vote at those meetings of the LPA at which the LPA: a) considers proposed Comprehensive Plan Amendments that would, if approved, increase residential density on the property that is the subject of the Amendment; and/or b) adopts or modifies Comprehensive Plan goals, objectives or policies that pertain to school concurrency, siting or development standards. The School Board member will be provided with notice, the agenda and back-up materials for meetings in the same manner as other members of the County's LPA.
- 5.2 **Planning Commissions.** The County and each of the Municipalities will include as a member of their respective Planning Commissions (PC) a representative of the School Board as necessary to fulfill the requirements of Section 163.3174, *Florida Statutes*. As to the County, the PC will include a representative of the School Board. The School Board will appoint such representative, who shall serve until replaced or resignation occurs. The School Board representative of the County's PC shall attend those meetings of the PC at which the PC considers proposed rezonings that would, if approved, increase residential density on the property that is the subject of the application. The School Board representative of the County's PC shall be a voting member of the PC only as to those proposed rezonings that would increase residential

density on the property that is the subject of the application. The School Board representative will be provided with notice, the agenda and back-up materials for said meetings in the same manner as other members of the County's PC.

5.3 **Development Review Committees.** At the option of each Municipality, a School Board representative may be appointed to the Municipal Development Review Committees. The County will include a representative of the School Board to vote on (1) all matters (including procedural votes and votes on individual conditions) relating to rezonings or land use changes that would allow 1 or more residential units (regardless of what the existing zoning or land use allows), (2) all matters related directly to a proposed school site (e.g. whether a site is required, impact fee credit value for a school site, collocation with a proposed school site), and (3) issues related to roads, sidewalks, bike paths or roadway crossings that will be used to access an existing or future school site. In all other matters, the School Board representative shall not vote or be required to vote. The School Board will appoint such representative, who shall serve until replaced or resignation occurs. The School Board representative will be provided with notice, the agenda and back-up materials for said meetings in the same manner as other members of the County's DRC.

5.4 **Local Government Development Application Review.** In reviewing development applications, the County and Municipalities shall consider applicable provisions of their Comprehensive Plans that pertain to collocation and/or, joint use opportunities, connectivity of and accessibility to school sites, compatibility with school sites, and bus stops. Where applicable provisions have not been adopted, the review shall address at a minimum the following:

- (a) The compatibility of uses proposed adjacent to existing schools and reserved school sites.
- (b) The co-location of parks, recreation and community facilities in conjunction with school sites.
- (c) The linking and connectivity of schools, parks, libraries and other public facilities with bikeways, trails, and sidewalks.
- (d) The development of traffic circulation plans to serve schools and the surrounding neighborhood, including any needed access improvements, sidewalks to schools, off-site signalization or safety-related signage.
- (e) The location of school bus stops and turnarounds to serve the proposed development.
- (f) The consideration of private sector action to identify and implement creative solutions to developing adequate school facilities in residential developments.
- (g) The consideration of School Board comments on development applications.

5.5 In addition to the review opportunities and procedures set forth above, informal staff meetings, including the Staff Working Group meetings, for the review of comprehensive plan amendment applications, rezoning petitions and development applications that may impact the School Board are expected to continue to occur on an as needed basis and

the provisions of this Interlocal Agreement do not in way affect the ability of such meetings to be held. The County and the Municipalities shall continue to provide to the School Board copies of all Comprehensive Plan Amendment applications, rezoning petitions and development applications that pertain to residential development.

SECTION 6. CO-LOCATION AND SHARED USE

- 6.1 The County and each Municipality may require, where feasible, the location of neighborhood, community, district or regional parks, recreation and community facilities in new and existing communities in conjunction with existing or proposed school sites.
- 6.2 For the purpose of facilitating a meeting to discuss co-location of government facilities and school sites, the School Board shall notice the County Administrator or Municipal equivalent as early as possible when considering contracting for a school site. The County or a Municipality, as applicable, shall notice the Superintendent as early as possible when considering contracting for a public facility site.
- 6.3 The County, the Municipalities, and the School Board may, where feasible, enter into agreements for joint-use facilities, including but limited to, schools, community centers, libraries and parks. Maintenance responsibilities shall be shared and agreed to by both parties of the co-located or shared facility.

SECTION 7. SCHOOL CONCURRENCY MANAGEMENT SYSTEM

- 7.1 This Agreement provides for a School Concurrency Management System consistent with the requirements of sections 163.3177 and 163.3180, *Florida Statutes* and other applicable provisions of the Local Government Comprehensive Planning Act.
 - (a) The Parties agree that the timely delivery of adequate public school facilities at the adopted Levels of Service (LOS) requires close coordination among the Parties in land use planning, development approval, and school facility planning. Further, the Parties agree that new school facilities should be planned for and provided in proximity to those areas planned for residential development or redevelopment. Further, the School Board shall review and provide a determination on all applications for development orders which will have an impact on school capacity in the District Facilities Work Plan (DFWP), the School Board's Five-Year Capital Facilities Plan and the applicable Local Governments' Public School Facilities Element.
 - (b) Pursuant to Section 163.3180(13)(e), the Parties agree that, within the County's jurisdiction and each Municipality's jurisdiction, residential development orders shall be approved where school capacity will be in place or under actual construction within 3 years after issuance of the site plan approval or the functional equivalent. A determination of whether school capacity is or will be available shall be made by the School Board, consistent with the adopted LOS standards. However, the County and each Municipality reserves the right to determine whether adequate mitigation for the residential impacts to the school system has been proposed. This determination shall be based upon the criteria

established in the DFWP and the applicable Local Government's Public School Facilities Element and Capital Improvements Element.

7.2 By entering into this Agreement, the County and Municipalities agree to undertake the following activities:

- (a) Adopt required Comprehensive Plan amendments necessary for the implementation of the School Concurrency Management System.
- (b) Adopt required Land Development Regulations (LDRS) necessary for the implementation of the School Concurrency Management System. In the event that any Municipality does not comply with the above by adopting LDRs consistent with this Agreement within ninety (90) days of the effective date of its Comprehensive Plan amendments, that Municipality may "opt in" to the County's ordinance and agrees to be bound by the terms and provisions therein until it adopts its own ordinance.
- (c) Share information with the School Board regarding population projections, growth information and trends, projections of development and redevelopment for the coming year, infrastructure required to support public school facilities, and amendments to Future Land Use Plan Elements, as provided by this Agreement.
- (d) So as to efficiently administer the School Concurrency Management System, said System shall be integrated, to the furthest extent possible, with any other adopted Concurrency Management Programs.

7.3 By entering into this Agreement, the School Board agrees to undertake the following activities:

- (a) Annually prepare and update a financially feasible District Facilities Work Program (DFWP) containing a five year capital improvement schedule consistent with the requirements of this Agreement and *Florida Statutes*.
- (b) Maximize the utilization of capacity (as such term is defined herein) in order to ensure that each School Concurrency Service Area achieves and maintains the adopted LOS. Maximized utilization shall be demonstrated through the continued reduction in the number of portables in use by the School Board over time.
- (c) Construct the capacity enhancing and modernization projects proposed in the DFWP necessary to achieve and maintain the adopted LOS.
- (d) Provide the County and Municipalities with School Board data and analysis relating to the School Concurrency Management System necessary to amend or annually update their Comprehensive Plans.
- (e) Adopt a ten and twenty year work program to the extent required by section 1013.35(2)(a), *Florida Statutes*.
- (f) Review all applications for residential development orders as required by the School Concurrency Management System.

- (g) In conjunction with the County or applicable Municipality propose and negotiate Proportionate Share Mitigation options as required by the School Concurrency Management System.
- (h) Provide information to the County and Municipalities regarding enrollment projections, school siting, and infrastructure required to support public school facilities consistent with the requirements of this Agreement.
- (i) Provide necessary staff and material support for meetings of the SWG as required by this Agreement.

SECTION 8. REQUIRED COMPREHENSIVE PLAN ELEMENTS

8.1 The County and the Municipalities agree to adopt the following Comprehensive Plan amendments no later than February 1, 2008:

- (a) **Public School Facilities Element.** So as to ensure compliance with the constitutional requirements for a uniform system of public education on a county-wide basis, all Local Government Parties to this Agreement agree to adopt a Public School Facilities Element (PSFE) as part of their respective Comprehensive Plans that will be the same or consistent with each others' PSFE. The PSFE must also be consistent with this Agreement, Sections 163.3177(12) and 163.3180, *Florida Statutes*, and Rule 9J-5.025, Florida Administrative Code. The County and the Municipalities shall notify the School Board and each other when this Element is adopted and when the Element becomes effective.
 - 1. In the event that it becomes necessary to amend its PSFE, the County or Municipality wishing to initiate an amendment shall request review through the SWG prior to transmitting the amendment to the Department of Community Affairs pursuant to section 163.3184, *Florida Statutes*. The SWG shall be responsible for distributing the amendment to all Parties to this Agreement for review and comment.
 - 2. If any Local Government objects to the amendment and the dispute cannot be resolved between or among the Parties, the dispute shall be resolved in accordance with the provisions set forth in Section 18 of this Agreement. The proposed amendment may be transmitted to the Department of Community Affairs but not adopted until the dispute has been resolved.
- (b) **Capital Improvements Element.**
 - 1. The annual update of the District Facilities Work Program (DFWP), once adopted by the School Board per Section 10 of this Agreement, shall be transmitted to the County and the Municipalities. The County and the Municipalities shall incorporate the School Board's five or ten year capital improvement schedule from the DFWP into the Capital Improvements Element of their Comprehensive Plans to the extent required by law and

as agreed to between the applicable Local Government and the School Board no later than December 1st of each year.

2. Any amendment, correction or modification to the School Board's capital improvements schedule in the DFWP concerning expenditures, revenue sources, or acceptance of facilities pursuant to dedications, once adopted by the School Board, shall be transmitted to the County and Municipalities. Within ninety (90) days, the County and Municipalities shall amend their Capital Improvements Elements to reflect the changes. Such amendments may be accomplished by ordinance submitted to the Department of Community Affairs, and shall not be deemed amendments to the Comprehensive Plan.
3. The County and the Municipalities, by adopting the School Board's capital improvement schedule of the DFWP into their Capital Improvements Elements, shall have neither obligation nor responsibility for funding the DFWP.

- (c) **Intergovernmental Coordination Element.** The process for the development, adoption, and amendment of the Intergovernmental Coordination Element shall be as set forth in section 163.3184, *Florida Statutes*.

SECTION 9. LEVELS OF SERVICE

- 9.1 The Parties agree and establish the School Concurrency Service Area (SCSA) Levels of Service standards for elementary, middle and high schools:
- (a) Elementary schools: 115 % of FISH permanent capacity.
 - (b) Middle schools: 115 % of FISH permanent capacity.
 - (c) High schools: 105 % of FISH permanent capacity.
- 9.2 The Parties agree and establish a long term School Concurrency Management Systems, as provided in Section 163.3180(9)(a), *Florida Statutes*, for Elementary SCSA 2. Within this SCSA there is a backlogged need for school facilities such that the School Board cannot within five years achieve the adopted LOS within this SCSA. However, the School Board has developed, and included within its DFWP, a financially feasible plan to achieve the adopted LOS within ten years through the construction of additional school facilities sufficient to accommodate the demand for such capacity within this SCSA. The County and the Municipalities agree to amend the Capital Improvement Elements of their respective Comprehensive Plan to reflect the ten-year School Concurrency Management System and the interim LOS.
- 9.3 Where school concurrency is applied on a less than district wide basis, the Parties have the burden to demonstrate that the utilization of school capacity is maximized. Utilization of school capacity shall be considered maximized where the student capacity at each school is used to the greatest extent possible, based on the adopted levels of service and the total number of student stations according to the FISH inventory, taking

into account special considerations such as, core capacity, special programs, transportation costs, geographic impediments, court ordered desegregation, and class size reduction requirements to prevent disparate enrollment levels between schools of the same type (elementary, middle, high) and provide an equitable distribution of student enrollment district wide. The term maximized utilization shall not include or be interpreted or construed to require the use or implementation of double sessions or a 12 month ("year round") school year by the School Board, or transporting students more than thirty minutes from their home to a school site. Maximized utilization shall be demonstrated through the continued reduction in the number of portables in use by the School Board over time.

- 9.4 The LOS for each SCSA shall be incorporated in the Comprehensive Plan of the County and each Municipality. The Capital Improvement Elements shall incorporate by reference the capital improvement schedule included in the DFWP, adopted pursuant to Section 10 of this Agreement, which demonstrates that the adopted LOS standards established in this Section 9 are financially feasible within each SCSA for the planning period utilized in the Element.
- 9.5 The Parties shall observe the following process for modifying the adopted LOS:
1. At such time as the School Board determines that a change to the LOS is appropriate, the School Board shall transmit the proposed LOS and the data and analysis to support the modifications to the County and the Municipalities.
 2. The County and the Municipalities shall review the proposed modification to the LOS and send their comments to the School Board within forty-five (45) days of receipt.
 3. Modifications to the LOS shall be mutually agreed to among the County, the Municipalities and the School Board.
 4. Upon final agreement by the Parties, the modifications to the LOS shall be incorporated into the County's and each Municipality's Comprehensive Plan.

SECTION 10. DISTRICT FACILITIES WORK PROGRAM

- 10.1 On or before the adoption of the School Board's annual budget, the School Board shall update and adopt the District Facilities Work Program (DFWP) in accordance with sections 1013.35(1)(b), 1013.35(2)(a)2., and 1013.35(2)(b), *Florida Statutes*. As part of the DFWP update the School Board shall provide a written summary of the infrastructure improvements that will be necessary to support the DFWP.
- 10.2 The DFWP shall contain a five or ten year capital improvement schedule demonstrating that the LOS standards adopted in Section 9 of this Agreement within each School Concurrency Service Area (SCSA) can be achieved and maintained at the end of the planning period adopted for each SCSA. To meet the financial feasibility test of section 163.3164(32), *Florida Statutes*, the five or ten year capital improvement schedule in the

DFWP shall identify all construction, remodeling or renovation projects and committed and planned revenue sources within each SCSA.

- 10.3 As a part of the DFWP and as specified in section 1013.35(2)(a), the School Board shall annually adopt a ten year and a twenty year tentative work plan based upon revenue projections, enrollment projections and facility needs for the ten year and twenty year period. It is recognized that the projections in the ten and twenty year time frames are tentative and should be used only for general planning purposes with the exception of the ten year planning period for the long term school concurrency management system in use for those SCSAs identified in Section 9 of this Agreement.
- 10.4 On or before September 1st of each year the School Board shall transmit copies of the proposed DFWP to the County and the Municipalities for review and comment as to the DFWP's consistency with the adopted Comprehensive Plans, including whether a plan amendment will be necessary for any proposed school facility.
- 10.5 The School Board shall adopt the DFWP no later than September 30th and it shall become effective October 1st of each year. Within 10 days of receipt of DOE approval, a copy of the approved DFWP shall be submitted to the County and each Municipality.
- 10.6 The School Board shall not amend the DFWP so as to modify, delay or delete any project in the first three (3) years of the Program unless the School Board, by a majority vote of its Board members, provides written confirmation that:
 - (a) The modification, delay or deletion of the project is required in order to meet the School Board's constitutional obligation to provide a County-wide uniform system of free public schools or other legal obligations imposed by state or federal law; or
 - (b) The modification, delay or deletion of the project is occasioned by unanticipated changes in population projections or growth patterns or is required in order to provide needed capacity in a location that currently has a greater priority than an originally planned project and does not cause the adopted LOS to be exceeded in the SCSA from which the originally planned project is modified, delayed or deleted; or
 - (c) The project schedule or scope has been modified to address concerns of the County or Municipalities, and the modification does not cause the adopted LOS to be exceeded in the SCSA from which the originally planned project is modified, delayed or deleted.
- 10.7 The School Board may amend the DFWP to add necessary capacity projects to satisfy the requirements of the School Concurrency Management System or the provisions of this Agreement. For additions to the DFWP, the School Board must demonstrate its ability to maintain the financial feasibility of the DFWP.

SECTION 11. SCHOOL CONCURRENCY SERVICE AREAS

- 11.1 The Parties agree that school concurrency shall be applied on a less than county-wide basis and by school type. The initial School Concurrency Service Areas (SCSAs) shall be as follows:
- (a) Elementary schools. The SCSAs shall correspond to the areas as determined and depicted in the map series Appendix A, as attached to this Agreement.
 - (b) Middle schools. The SCSAs shall correspond to the areas as determined and depicted in the map series Appendix B, as attached to this Agreement.
 - (c) High schools. The SCSAs shall correspond to the areas as determined and depicted in the map series Appendix C, as attached to this Agreement.
- 11.2 The County and each Municipality shall incorporate into their Technical Support Documents supporting the Public School Facilities Element of their Comprehensive Plans as follows:
- (a) the map series establishing the SCSAs provided in this Section 11.
 - (b) the process for the modification of SCSAs provided in this Section 11.
- 11.3 Any Party to this Agreement may propose a modification to the SCSAs. Prior to adopting any change, the School Board must verify that as a result of the modification:
- (a) The adopted levels of service standards will be achieved and maintained by the end of the five-year planning period or, for those SCSAs subject to a long term School Concurrency Management System as proposed in Section 9 of this Agreement, by the end of the ten-year planning period; and
 - (b) The utilization of school capacity will be maximized to the greatest extent possible, taking into account transportation costs, court approved desegregation plans and other relevant factors.
- 11.4 The Parties shall observe the following process for modifying SCSAs:
- (a) At such time as the School Board determines that a SCSA modification is appropriate considering the above standards, it shall transmit the proposed SCSA with data and analysis to support the modifications to County and the Municipalities.
 - (b) The County and the Municipalities shall review the proposed SCSA and send their comments to the School Board within forty-five (45) days of receipt.
 - (c) The new SCSA shall become effective upon final approval of the School Board.

SECTION 12. UNIFORM SCHOOL CONCURRENCY PROCEDURES

12.1 The County, the Municipalities and the School Board to the extent authorized by law shall ensure that the minimum Levels of Service standards established for each school type is maintained within the scope of this Agreement.

A. Exemptions.

12.2 The following residential uses shall be exempt from the requirements of the School Concurrency Management System.

- (a) All single family lots of record at the time the School Concurrency Ordinance becomes effective not requiring County subdivision, or the equivalent in a Municipality, prior to construction of residential unit(s).
- (b) Any building or structure that has received a Certificate of Occupancy as of the effective date of the School Concurrency Ordinance and that does not increase its student generation rate.
- (c) Any residential units proposed on a preliminary plan/ preliminary site plan, final subdivision approval or functional equivalent approved prior to the effective date of the School Concurrency Ordinance. After the effective date of such Ordinance, any proposed amendments that increase residential impacts are not exempt. Further, this exemption shall expire upon the expiration of the preliminary plan/ preliminary site plan, final subdivision approval or functional equivalent unless such project, or portions of such project, remains exempt pursuant to another exemption provision.
- (d) Unexpired County Planned Unit Developments (PUD), or the functional equivalent within the Municipalities, where the approval was granted prior to the effective date of the School Concurrency Ordinance. After the effective date of such Ordinance, any proposed amendments that increase residential impacts are not exempt. Further, this exemption shall expire upon the expiration of the PUD and/or the associated preliminary plan/ preliminary site plan unless such project, or portions of such project, remains exempt pursuant to another exemption provision.
- (e) Any age restricted community intended to provide housing for person who are 55 years of age or older that prohibits the permanent residency of individuals under the age of 22 by deed restrictions meeting the requirements of the School Impact Fee Ordinance. Said deed restrictions are required to be executed and recorded prior to granting this exemption from School Concurrency. This exemption shall expire if said deed restriction are repealed, superseded or amended to remove the age restriction, or when the restrictions expire due to operation of law.
- (f) Residential subdivisions with more than one dwelling unit per lot that have received a building permit for a residential building as of the effective date of the School Concurrency Ordinance; however, such exemption shall expire upon expiration of the building permit if the building subject to the building permit has not received at least one inspection prior to the effective date of the School

Concurrency Ordinance, unless such project, or portions of such project, remains exempt pursuant to another exemption provision.

- (g) Developments of Regional Impact (DRI) that have filed a complete Application for Development Approval on or before May 1, 2005; however such exemption shall apply only to the DRI as initially approved and any amendments increasing the residential impacts shall waive the concurrency exemption for the increased density. Further, the exemption shall expire upon withdrawal, denial, or expiration of the Application for Development Approval. If such Development of Regional Impact has been approved, or is approved, through a development order, such exemption shall expire for any phase of the development order upon expiration of the development order build-out date for such phase, or for the entire development order upon expiration of the development order, or upon any material default of the educational facilities mitigation conditions of the development order or a related development agreement, unless such project, or portions of such project, remains exempt pursuant to another exemption provision.
- (h) The portion of any project that is the subject of a binding and enforceable development agreement that specifically provides for mitigation of school impacts caused by such project; however, such exemption shall expire upon expiration of the development agreement, or upon any material default of the school impact mitigation conditions of such development agreement, unless such project, or portions of such project, remains exempt pursuant to another exemption provision.
- (i) Non residential development.
- (j) Projects considered “de minimus.” Such projects shall not exceed 50 single family residential dwelling units or the equivalent impact.
- (k) Group quarters that do not generate students, including residential facilities such as local jails, prisons, hospitals, bed and breakfasts, motels and hotels, temporary emergency shelters for the homeless, adult halfway houses, firehouse dorms, college dorms and religious non-youth facilities.

12.3 An Applicant submitting an application for a development order and claiming to be exempt from complying with the concurrency provisions herein must submit to the applicable Local Government, along with a completed application for a development order, a separate document identifying the exemption that the Applicant claims removes the application from review under the School Concurrency Management System and providing substantial competent evidence that the Applicant’s project complies with the terms of the claimed exemption. The applicable Local Government shall determine, within thirty days from receipt of a completed application for a development order, whether the Applicant has satisfied the criteria for the claimed exemption and shall notify the Applicant in writing.

B. School Board review for school concurrency.

12.4 An Applicant submitting application for a development order determined not to be exempt from school concurrency review pursuant to Section 12.3 must also submit

School Impact Analysis to the applicable Local Government for review by the School Board. Upon receipt, the Local Government shall immediately forward said analysis to School Board.

12.5 The School Impact Analysis must include:

- (a) The location of the development;
- (b) The number of dwelling units and unit types (single-family, multi-family, apartments, etc.);
- (c) The project phasing schedule (if applicable);
- (d) A vicinity map showing, as applicable, existing and proposed zoning classifications and existing and proposed future land use categories for areas subject to and adjacent to the parcel for which the Concurrency Determination is sought;
- (e) Aerial photographs of the proposed site;
- (f) Whether the School Board requests a school site within the parcel;
- (g) Whether the applicant proposes a school site;
- (h) Whether and how the applicant's proposed school site is consistent with the applicable school siting standards;
- (i) For an Applicant proposed school site, to the extent such information is reasonably available, the estimated dates of completion of construction access road (for construction equipment); completion of construction of access road(s) and whether the County, Municipality or the State of Florida have accepted such road for maintenance (for use by the public); completion of sidewalks/bike ways; completion of turn lanes, traffic signals and other access-related facilities to the extent such requirements are known.

12.6 The County or applicable Municipality shall transmit the School Impact Analysis to the School Board for review. The School Board's review process shall be as follows and shall be completed within 90 days:

- (a) The School Board may charge the Applicant a non-refundable application fee payable to the School Board to meet the cost of review.
- (b) The School Board shall review the School Impact Analysis for completeness and may require additional information from the applicant.
- (c) The School Board shall review each School Impact Analysis in the order in which it is received and determine whether capacity at the adopted Level of Service for each type of schools is available in the SCSAs to support the development's projected students.

1. To determine a proposed development's projected students, the proposed development's projected number and type of residential units shall be converted into projected students using the School Board Student Generation Multiplier.
 2. The proposed development's projected student population shall be reviewed against the capacity at the adopted LOS available at each of the school types within the SCSAs serving the proposed project.
 3. School capacity at the adopted levels of service within a SCSA which is in place or under actual construction in the first three years of the School Board's District Facilities Work Plan (DFWP) will be counted as available capacity within that SCSA.
 4. If capacity is identified, the School Board shall issue a Concurrency Determination Letter indicating that capacity is available.
 5. In the event that a Concurrency Determination Letter is issued, the capital improvement schedule in the DFWP shall be revised in the next update to accommodate the proposed development's projected student population.
- (d) **Adjacency.** If capacity at the adopted LOS is not available for some or all of the school types within the SCSAs serving the proposed development's projected student population, an adjacent SCSA will be reviewed for available capacity.
1. In conducting the adjacency review, the School Board shall consider Adjacent SCSA capacity at the adopted LOS in the same manner as described above. If necessary, the School Board shall review each Adjacent SCSA until all Adjacent SCSAs have been evaluated for available capacity at the adopted LOS. If capacity is identified, the School Board shall issue a Concurrency Determination Letter indicating that capacity is available and in which Adjacent SCSA(s).
 2. In the event that a Concurrency Determination Letter based upon Adjacent SCSA(s) is issued, the capital improvement schedule in the DFWP shall be revised in the next update to accommodate the proposed development's projected student population through boundary changes or assigning the impact of the projected enrollment of the development to the Adjacent SCSA.
- (e) In the event that there is not capacity available at the adopted LOS in the SCSA in which the proposed development is located or in an adjacent SCSA, the School Board shall issue a Preliminary Concurrency Deficiency Letter explaining the lack of available capacity and offering the Applicant the opportunity to enter into a negotiation period to allow time for the Applicant and the School Board to consider Proportionate Share Mitigation options as described in Section 13 of this Agreement. The Preliminary Concurrency Deficiency Letter must be delivered to the Applicant by such means as will require a delivery receipt to be executed by the Applicant.

- (f) If an Applicant disagrees with the Preliminary Concurrency Deficiency Letter, the applicant may request a hearing before the School Board. Such request must be submitted within ten days of the date of the delivery receipt. The School Board must hold such hearing within thirty days of the receipt of the request for the hearing. A Preliminary Concurrency Deficiency Letter shall not be considered final agency action until same has been upheld by the School Board after the hearing described in this Section, or until the time to request such a hearing has expired. If the School Board, after the hearing, agrees with the Preliminary Concurrency Deficiency Letter, the School Board shall issue a Final Concurrency Deficiency Letter. If no request for a hearing before the School Board is made within the time prescribed in this Section, the Preliminary Concurrency Deficiency Letter shall automatically become a Final Concurrency Deficiency Letter. A Final Concurrency Deficiency Letter shall constitute final agency action by the School Board for purposes of Chapter 120, *Florida Statutes*.

12.7 The County or the applicable Municipality shall receive a copy of all Concurrency Determination Letters and Concurrency Deficiency Letters.

12.8 The School Board shall create and maintain a Development Review Table (DRT) for each SCSA and will use the DRT to compare the projected student populations from residential developments to the SCSAs available capacity programmed within the first three years of the current five-year capital planning period. Student enrollment projections shall be based on the most recently adopted DFWP and the DRT shall be updated to reflect these projections. Available capacity shall be derived using the following formula:

$$\text{Available Capacity} = \text{School Capacity}^1 - (\text{Enrollment}^2 + \text{Vested}^3)$$

Where

¹ School Capacity = The adopted Levels of Service for the applicable SCSAs (as programmed in the first three (3) years of the School District's Facilities Work Program (DFWP))

² Enrollment = Student enrollment as counted at the Fall FTE

³ Vested = Students generated from residential developments approved after the implementation of school concurrency

Using the Fall FTE, the vested number of students on the DRT will be reduced by the number of students represented by the residential units that received certificates of occupancy within the previous twelve (12) month period.

SECTION 13. PROPORTIONATE SHARE MITIGATION

13.1 In the event that there is not capacity available at the adopted Levels of Service (LOS) to serve projected student populations of a proposed development, the School Board shall offer Proportionate Share Mitigation options to the Applicant and the School Board and County, or applicable Municipality, may enter into an enforceable and binding agreement with the Applicant to provide said Mitigation. Upon issuance of a Preliminary Concurrency Deficiency Letter, the Applicant may elect to enter into a forty-five (45) day negotiation period with the School Board in an effort to mitigate the impact from the development through the creation of additional school capacity. The negotiation period

commences on the date of the delivery receipt required in Section 12 of this Agreement. The 45 day negotiation period includes the ten day period specified in Section 12.6 of this Agreement and tolls the conclusion of the ten day period to request such a hearing until the conclusion of the negotiation period.

13.2 The Applicant's Proportionate Share Mitigation shall be based on the number of additional Permanent Student Stations plus the portion of Core and ancillary facilities necessary to provide capacity at the adopted Levels of Service for the proposed development's projected student population where said capacity is not available in the SCSA or adjacent SCSAs.

13.3 The methodology used to calculate School Concurrency Proportionate Share Mitigation shall be as follows:

$$\text{Proportionate Share} = (\text{Development students}^a - \text{Available FISH Permanent Capacity}^b) \times \text{Total Cost}^c \text{ per student station}$$

Where:

^aDevelopment students = Students that will be generated by the proposed development that are assigned to that particular SCSA.

^bAvailable FISH Capacity = Capacity available or if no FISH Capacity is available zero.

^cTotal Cost = the cost per Permanent Student Station as determined using the actual construction cost per the School Impact Fee Study as implemented by the School Impact Fee Ordinance, as amended, at the time when Proportionate Share Mitigation is accepted.

13.4 Any Proportionate Share Mitigation must be directed by the School Board to a school capacity improvement identified in the capital improvement schedule in the DFWP and in the Capital Improvement Elements in the Comprehensive Plans of the County and each Municipality to maintain financial feasibility based upon the adopted LOS. If a capacity project does not exist in the DFWP, the School Board may, in its sole discretion, add a capacity project to satisfy the impacts from a proposed residential development as long as financial feasibility of the DFWP can be maintained.

13.5 Mitigation options available to an Applicant include, but are not limited to, the following:

- (a) Contribution of land for an entire school site meeting the applicable School Siting Standards or adjacent to an existing school site; or
- (b) Provision of additional Permanent Student Stations through the donation of permanent buildings for use as a primary or alternative public school facility, provided that such building meet SREF standards; or
- (c) Provision of additional Permanent Student Stations through the renovation of existing buildings for use as public school facilities; or
- (d) Construction of Permanent Student Stations or Core Facilities; or

- (e) Construction of a school in advance of the time set forth in the DFWP; or
 - (f) Creation of mitigation banking based on the construction of a public school facility in exchange for the right to sell capacity created; or
 - (g) Construction of a charter school designed in accordance with School Board standards, providing Permanent Student Stations. Use of a charter school for mitigation must include provisions for its continued existence, including but not limited to the transfer of ownership of the charter school property and/or operation of the school to the School Board; or
 - (h) The contribution of funds or other financial or financing initiatives acceptable to the School Board to ensure that the financial feasibility of the DFWP can be maintained by the implementation of the mitigation options; or
 - (i) The contribution of funds or other financial or financing initiatives acceptable to the School Board to ensure that infrastructure improvements to support a public school facility that are the obligation of the School Board will be in place when necessary.
- 13.6 Pursuant to section 163.3180(13)(e)2, *Florida Statutes*, as to a contribution of land; the construction, expansion or payment for land acquisition; or the construction or expansion of a public school facility, or a portion thereof, as Proportionate Share Mitigation, the County or applicable Municipality shall credit such contribution, construction, expansion, or payment toward any other impact fee or exaction imposed for the same need, on a dollar-for-dollar basis at fair market value prior to the development approval.
- 13.7 If the cost of the Proportionate Share Mitigation is greater than the applicable school impact fee credits, the difference between the Mitigation costs and the school impact fee credit is the responsibility of the Developer.
- 13.8 Upon conclusion of the negotiation period, if Proportionate Share Mitigation has been identified and agreed to in an enforceable and binding agreement with the Local Government, the School Board and the Applicant, consistent with the applicable Land Development Regulations governing development agreements, if any, the School Board shall issue a Concurrency Determination Letter indicating that adequate capacity is or will be available for the proposed development. The Proportionate Share Mitigation Agreement shall specifically detail mitigation provisions, identify the capacity project, indicate the financial contribution to be paid by the Applicant, provide a method of surety in form of a bond or letter of credit in the amount of the contribution, and include any relevant terms and conditions. If Proportionate Share Mitigation is not agreed to, a Final Concurrency Deficiency Letter shall be issued by the School Board to the Applicant and the Local Government detailing any Proportionate Share Mitigation proposals rejected and explaining the lack of available capacity.

SECTION 14. APPEAL PROCESS

- 14.1 A person substantially affected by a School Board's Concurrency Determination made pursuant to this Agreement may appeal such determination through the process provided in Chapter 120, *Florida Statutes*.

- 14.2 A person substantially affected by a Local Government decision made as a part of the School Concurrency Management System process may appeal such decision using the process identified in the Local Government's Regulations for appeal of development orders. This shall not apply to any decision subject to Sections 12 or 13 of this Agreement.
- 14.3 A person substantially affected by the application of any portion of the school concurrency management system of this Agreement shall be the Developer/Applicant or the land owner.

SECTION 15. OVERSIGHT

- 15.1 Oversight and evaluation of the School Concurrency Management System is required pursuant to sections 163.3180(13)(g)(6)(c), *Florida Statutes*. By March 1st of each year, beginning in 2009 the EIOC shall be responsible for preparing an annual assessment report on the effectiveness of School Concurrency. The report shall be made available to the public and transmitted to the Parties.
- (a) The SWG shall be invited to attend all meetings shall receive copies of all reports and documents produced pursuant to this Agreement.
- (b) By September 1st of each year, the EIOC shall receive the proposed School Board's District Facilities Work Program (DFWP). The EIOC shall report to the School Board, the County, and the Municipalities on whether or not the proposed DFWP is based upon the best available student projections and generation rates; is maintaining the adopted levels of service by providing Permanent Student Stations for the projected growth in student population over each of the five (5) years covered by the DFWP; and whether the DFWP is financially feasible by reviewing the adequacy of funding.

SECTION 16. SPECIAL PROVISIONS

- 16.1 **School Board Requirements.** The Parties acknowledge and agree that the School Board is or may be subject to the requirements of the Florida and United States Constitutions and other state or federal statutes regarding the operation of the public school system. Accordingly, the County, the Municipalities and the School Board agree that this Agreement is not intended, and will not be construed, to interfere with, hinder, or obstruct in any manner, the School Board's constitutional and statutory obligation to provide a uniform system of free public schools on a Countywide basis or to require the School Board to confer with, or obtain the consent of, the County or the Municipalities, as to whether that obligation has been satisfied. Further, the County, the Municipalities and the School Board agree that this Agreement is not intended and will not be construed to impose any duty or obligation on the County or Municipality for the School Board's constitutional or statutory obligation. The County and the Municipalities also acknowledge that the School Board's obligations under this Agreement may be superseded by state or federal court orders or other state or federal legal mandates.

- 16.2 **Land Use Authority.** The Parties specifically acknowledge that each Local Government has the authority to regulate land use, including the authority to approve or deny Comprehensive Plan amendments and development orders within its own jurisdiction. Nothing herein represents or authorizes a transfer of this authority to any other party. The School Board acknowledges that the County and the Municipalities' obligations under this Agreement may be superseded by state or federal court orders or other state or federal legal mandates.
- 16.3 **Acts of God and other exigent circumstances beyond the control of the School Board.** The County and the Municipalities acknowledge that the School Board, in its operation of the public school system, is subject to events, circumstances, and external forces and authorities beyond its control. Examples are hurricanes, or other natural disasters which destroy school facilities, other emergency situations affecting the operation of the public school system, state court judgments, concerning the School Board's State Constitutional or Statutory obligation to provide a uniform system of free public schools, and school desegregation orders, or compliance agreements involving Federal Courts or the Office of Civil Rights, United States Department of Education. Such events or actions may prevent the School Board from complying with the provisions of this Agreement and may require the School Board to deviate from or modify the School Board's Five Year Facilities Work Program agreed to and approved by the County, the Municipalities and the School Board, the County and the Municipalities hereby agree that such noncompliance, deviations, or modifications will not be deemed a violation of this Agreement and that the provisions of suspension will pertain to those occurrences.
- 16.4 **Third Party Beneficiary Rights.** The Parties hereby acknowledge and agree that it is not the intent of any Party to this Agreement to confer any rights on any persons or entities other than the Parties to this Agreement. No person or entity not a party to this Agreement shall have any claim or cause of action against either the County, a Municipality, or the School Board for the failure of any party to perform in accordance with the provisions of this Agreement except as may be provided by law. The County and each Municipality that is a Party to this Agreement agrees to notify the School Board in the event of this party claim, liability, lawsuit, and damage award arising out of the performance of this Agreement for any acts, failure to act, or decisions of that Party that are totally within the purview of that Party or are the responsibility of that Party under this Agreement. Acts or decisions of the County or a Municipality include, but are not limited to, the denial of an application for a development order based on school impacts after the School Board has informed that Party that adequate school capacity exists for the proposed development. The Parties to this Agreement are not responsible and in no way assume the responsibility of any other Party's obligations under this Agreement.
- 16.5 **Vested Rights.** To the extent that enforcement of the provision of this Agreement and/or provisions of a Party's Comprehensive Plan and/or Land Development Regulations adopted pursuant hereto, infringe upon or violate a vested right, as determined by applicable law, the County or a Municipalities may waive or grant an exception to such enforcement to the extent necessary to avoid the violation of such vested right, and only to such extent, without being in breach or default of this Agreement.
- 16.6 **Town of St. Leo.** The Town of St. Leo has sought an exemption pursuant to section 163.3180(13)(f), *Florida Statutes*, and is currently exempt from the requirement to

implement the School Concurrency Management System. Therefore, the Town of St. Leo is not required to implement a school concurrency management system at this time. In the event that said exemption is waived, revoked, or the School Board proposes in its five-year District Facilities Work Program a new school within the Town's jurisdiction, the Town of St. Leo shall be required to comply with all Sections of this Agreement. However, the Town of St. Leo is a Party to the remainder of this Agreement as to Sections 1, 2, 5, 10, and 15-22.

SECTION 17. AMENDMENT OF THIS AGREEMENT

- 17.1 This Agreement may only be amended or repealed by written agreement of all the Parties using a process identical to the adoption of this Agreement. This Agreement shall be reviewed by the Parties not less than every five years. However, should sections 163.31777, 163.3180 and/or 1013.33, *Florida Statutes*, be repealed and the statutory requirements that this Agreement be adopted by the Parties hereto is no longer a requirement of law, the parties shall convene at a reasonable time thereafter for the purpose of terminating this Agreement unless there is a mutual agreement to continue on with this Agreement for a term of years.
- 17.2 **Controlling Law.** This Agreement shall be construed in a manner that shall render it consistent with the Local Government Comprehensive Planning Act (Act), including any subsequent amendments thereto. If the Act is amended in a manner that results in an inconsistency between the Act and the terms of this Agreement, the parties, shall, within a reasonable time after the effective date of such amendment (but in no event less than one year) amend this Agreement pursuant to this Section 17, and, to the extent necessary to comply with the Act, such amendment shall provide for the amendment of their respective Comprehensive Plans and Land Development Regulations.

SECTION 18. RESOLUTION OF DISPUTES

- 18.1 If the Parties to this Agreement are unable to resolve any issue in which they may be in disagreement covered in this Agreement, such dispute will be resolved in accordance with governmental conflict resolution procedures specified in Chapter 164, *Florida Statutes*. The parties may, by mutual consent, waive any of the procedural requirements in Chapter 164, or any other requirement that is a condition precedent to a joint meeting of the School Board and the Governing Board of the County or a Municipality.
- 18.2 **Disputes arising pursuant to Sections 3 and/or 4 of this Agreement.** The Superintendent of Schools, or designee, the Chairman of the District School Board, the County Administrator, or designee, and the Chairman of the Board of County Commissioners, or the representative of the affected Municipality shall resolve, through meetings and negotiations, the identified disputes. In the event the Superintendent and the County Administrator, or applicable Municipal representative are unable to resolve the matter within 15 days of the dispute becoming known to the Superintendent and Administrator or Representative, the matter shall be heard before a joint meeting of the School Board and the County Commission or governing body of the affected Municipality, as appropriate. The joint meeting must be held within 30 days following the 15th day after the dispute becoming known. If the matter cannot be resolved at that level, the dispute resolution process described in Chapter 164 shall be followed.

SECTION 19. NOTICE

19.1 All notices, comments, consents, objectives, approvals, waivers, and elections which any Party shall be required or requested or may desire to make or give under this Agreement shall be in writing and shall be given only by hand delivery for which a receipt is obtained, or certified mail, prepaid with conformation of delivery receipt, or facsimile transmission. All such communications shall be addressed to the applicable addressees as set forth below or as any party may otherwise designate in the manner prescribed herein.

If to the School Board:

Superintendent
Pasco County School District
7227 Land O'Lakes Boulevard
Land O' Lakes, Florida 34638
Tel.: 813-794-2000
Fax: 813-794-2171

If to the County:

County Administrator
Pasco County
7530 Little Road, Suite 340
, Florida 34654
Tel.: 727-847-8115
Fax: 727-815-7010

If to a Municipality or Municipalities:

City of Dade City
City Manager
Post Office Box 1355
Dade City , Florida 33526
Tel.: 352-523-5050
Fax: 352-521-1422

City Port Richey
City Manager
6333 Ridge Road
Port Richey, Florida 34668-6747
Tel.: 727-816-1900
Fax: 727-816-1916

City of San Antonio
City Clerk
Post Office Box 75
San Antonio, Florida 33576-0075
Tel.: 352-588-2127
Fax: 352-588-2135

Town of St. Leo
Town Clerk
St. Leo Town Hall
34544 State Road 52
St. Leo, Florida 33574
Tel.: 352-588-2622 or 352-588-3118

Fax: 352-588-3010

City of Zephyrhills
City Manager
5335 8th Street
Zephyrhills, Florida 33542-4312
Tel.: 813-780-0000
Fax: 813- 780-0005

SECTION 20. DEFINITIONS

20.1 For the purposes of this Agreement the following words shall have the meanings as follows:

Adjacent School Concurrency Service Areas (Adjacent SCSAs): School Concurrency Service Areas which touch along at least one side of their outside boundaries.

Applicant: Any individual, corporation, business trust, estate trust, partnership, association, two or more persons having a joint or common interest, governmental agency, or any other legal entity which has submitted an application to a Local Government for a development order.

Attendance Boundary: The geographic area served by an individual public school.

Class Size Reduction: A provision to ensure that by the beginning of the 2010 school year, there are a sufficient number of classrooms in a public school so that:

1. The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for pre-kindergarten through grade 3 does not exceed 18 students; and
2. The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 4 through 8 does not exceed 22 students; and
3. The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 9 through 12 does not exceed 25 students.

Comprehensive Plan: A plan that meets the requirements of sections 163.3177 and 163.3178, *Florida Statutes*.

Core Facilities: The media center, cafeteria, gymnasium, toilet facilities and circulation space of an educational facility.

District Facilities Work Program (DFWP): The School Board's annual comprehensive capital planning document, that includes the District Facilities Work Program specified in section 1013.35, *Florida Statutes*, and the Tentative District Educational Facilities Plan which is annually submitted for review and comment to the Governing Bodies of the County and Municipalities pursuant to section 1013.35(3), *Florida Statutes*.

Educational or School Facility: The public buildings and equipment, structures and special educational use areas that are built, installed or established to serve educational purposes only.

Financial Feasibility: An assurance that sufficient revenues are currently available or will be available from committed funding sources for the first 3 years, or will be available from committed or planned funding sources for years 4 and 5, of a 5-year capital improvement schedule.

Florida Inventory of School Houses (FISH) Capacity: FISH capacity is determined by the Florida Department of Education guidelines and represents a measure of the physical capacity of existing school facilities. The FISH capacity is the number of students that may be housed in a school facility at any given time based on a percentage of the total number of existing student stations and a designated size for each program.

Fall FTE: A fall semester count of all “full-time equivalent” students, pursuant to Chapter 1011.62, *Florida Statutes*.

Levels of Service (LOS): A standard established to indicate the maximized utilization of a public school facility, expressed as a percentage of FISH capacity for a School Concurrency Service Area.

Land Development Code (LDC) or Land Development Regulations (LDR): Ordinances enacted by a local governing body for the regulation of any aspect of land development as provided in section 163.3213(2)(b), *Florida Statutes*.

Permanent Classroom: An area within a school that provides instructional space for the maximum number of students in core-curricula courses assigned to a teacher, based on the constitutional amendment for Class Size Reduction and is not a Relocatable Classroom.

Proportionate Share Mitigation: An Applicant-funded improvement or financial contribution identified in a binding and enforceable agreement among the Applicant, the School Board and the Local Government with jurisdiction over the approval of the development order, as set forth in section 163.3180(13)(e), *Florida Statutes*.

Relocatable Classroom: A pre-manufactured classroom building assembled off-site and installed at a specified school location, which is intended to be temporary and relocated after a period of time and replaced with a Permanent Classroom.

Residential Development: Any development that is comprised of dwelling units, in whole or in part, for permanent human habitation.

School Board: As used in this Agreement, and per the context, School Board shall mean employees, including but not limited to School Board members, administrators, attorneys, planners and other staff of the District School Board of Pasco County.

School Concurrency Service Area (SCSA): A geographic area in which the level of service is measured when an application for residential development is reviewed for school concurrency purposes.

School Concurrency Service Area Levels of Service: The maximum acceptable percentage of school utilization within a School Concurrency Service Area as adopted by the Parties and as modified from time to time per the requirements of this Agreement.

Type of School: Schools providing the same level of education, i.e. elementary, middle or high school.

Utility Public Facilities: Major capital improvements including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, parks and recreation facilities.

20.2 Acronyms used in this Agreement:

DFWP	District Facilities Work Plan
DOE	Department of Education
DRI	Development of Regional Impact
DRT	Development Review Table
EOOC	Elected Officials Oversight Committee
FISH	Florida Inventory of School Houses
LDR	Land Development Regulations
LOS	Levels of Service
PSFE	Public School Facilities Element
SCSA	School Concurrency Service Area
SCSAs	School Concurrency Service Areas
SREF	State Requirement for Educational Facilities
SSAC	Site Selection Advisory Committee
SWG	Staff Working Group

SECTION 21. SEVERABILITY

21.1 The provisions of this Agreement are declared by the Parties hereto to be severable.

SECTION 22. EXECUTION IN COUNTERPARTS

22.1 This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be original, but all such counterparts shall, together, constitute but one in the same instrument.

IN WITNESS WHEREOF, this Interlocal Agreement has been executed by and on behalf of the Pasco County Board of County Commissioners, the Municipalities of Dade City, , Port Richey, San Antonio, Town of St. Leo and Zephyrhills, and the District School Board of Pasco County on the dates indicated below and shall take effect upon the date of the recording of a fully executed original in the official records of the County pursuant to Section 13.6, hereof, in accordance with Section 163.01(11), *Florida Statutes*.

PASCO COUNTY, FLORIDA,

ATTEST:

(S E A L)

THEODORE J. SCHRADER, CHAIRMAN

Jed Pittman, Clerk

APPROVED AS TO LEGAL FORM AND SUFFICIENCY

ATTORNEY FOR PASCO COUNTY

**DISTRICT SCHOOL BOARD OF PASCO
COUNTY**

ATTEST:

(S E A L)

Clerk

Date

APPROVED AS TO LEGAL FORM AND SUFFICIENCY

ATTORNEY FOR DISTRICT SCHOOL BOARD

CITY OF DADE CITY

ATTEST:

(S E A L)

Mayor

Clerk

Date

APPROVED AS TO LEGAL FORM AND SUFFICIENCY

ATTORNEY FOR CITY OF DADE CITY

CITY OF PORT RICHEY

ATTEST:

(S E A L)

Mayor

Clerk

Date

APPROVED AS TO LEGAL FORM AND SUFFICIENCY

ATTORNEY FOR CITY OF PORT RICHEY

CITY OF SAN ANTONIO

ATTEST:

(S E A L)

Mayor

Clerk

Date

APPROVED AS TO LEGAL FORM AND SUFFICIENCY

ATTORNEY FOR CITY OF SAN ANTONIO

TOWN OF ST. LEO

ATTEST:
(S E A L)

Mayor

Clerk

Date

APPROVED AS TO LEGAL FORM AND SUFFICIENCY

ATTORNEY FOR TOWN OF ST. LEO

CITY OF ZEPHYRHILLS

ATTEST:
(S E A L)

Mayor

Clerk

Date

APPROVED AS TO LEGAL FORM AND SUFFICIENCY

ATTORNEY FOR CITY OF ZEPHYRHILLS