

Meeting Date
September 16, 2014



AGENDA	
Section	Public Hearings
Item No.	III.C.

**AGENDA REPORT**  
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	PUBLIC HEARING RE: ADOPTION OF PUBLIC SCHOOL INTER-LOCAL AGREEMENT (DISTRICTS 1 – 5)
DEPT/OFFICE:	PLANNING & DEVELOPMENT DEPARTMENT

Requested Action:

It is requested that the Board approve and authorize the Chairman to execute the revised Public School Inter-local Agreement.

Summary Explanation & Background:

Recognizing the importance of public schools as an essential component of community viability, the Florida Legislature previously amended Ch. 163, Florida Statutes to require that local governments implement concurrency for public schools and include a public schools facilities element within the Comprehensive Plan.

In 2008, the Brevard County School Board, Brevard County, and the municipalities jointly participated in the development of the proposed Comprehensive Plan Element and Inter-local Agreement. The adopted Public Schools Facilities Element in our Comprehensive Plan is a result of that coordination and effort.

The major provisions of the Element are:

- Concurrency management system for public schools
- Concurrency evaluation by the School Board for proposed residential developments and ensures that school capacity will be available
- Coordination and compatibility with Brevard County Future Land Use Map for new school facilities
- Annual updates of the Capital Improvements Element to include the School Board's five-year capital improvements program.

Over the past year, local government agencies worked on a revised Inter-local Agreement to help address the recent school closure policies and the process of local government participation. The Board of County Commissioners directed the County Attorney to dismiss the previous lawsuit against the School Board and conclude the conflict resolution related to the Inter-local Agreement on April 3, 2014, predicated upon making revisions to the ILA to modify procedures for inter-local review. The revised Inter-local Agreement was approved by the School District on July 22, 2014. The Local Planning Agency held a public hearing on August 25, 2014 and unanimously recommended that the inter-local agreement be approved.

For convenience, the 14 signature pages of the municipalities were not printed to be included in your packets.

Staff Contact: Stuart Buchanan, Planner III/Grants Administrator, Planning & Development Dept.

Tel: 633-2069 e-mail: [stuart.buchanan@brevardcounty.us](mailto:stuart.buchanan@brevardcounty.us)

Clerk to the Board instruction: Interlocal Agreement for Execution – Return Two executed copies to Stuart Buchanan, Planning & Development

Exhibits Attached: School Board Interlocal Agreement

Contract /Agreement (If attached): Reviewed by County Attorney Yes  No  PR

County Manager

Stockton Whitten

Assistant County Manager

Mel Scott

Department Director / Extension

Robin M. Sobrino, AICP  
 Planning & Development Department  
 Ext. 5-2069



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972

September 17, 2014

MEMORANDUM

TO: Robin Sobrino, Planning and Development Director Attn: Stuart Buchanan

RE: Item III.C., Public School Interlocal Agreement for Facility Planning and School Concurrency

The Board of County Commissioners, in regular session on September 16, 2014, executed Public School Interlocal Agreement with School Board of Brevard County and the Cities or Towns of Cape Canaveral, Cocoa, Cocoa Beach, Grant-Valkaria, Indialantic, Indian Harbour Beach, Malabar, Melbourne, Melbourne Beach, Palm Bay, Rockledge, Satellite Beach, Titusville, and West Melbourne, for facility planning and school concurrency. Enclosed is the original Interlocal Agreement.

**Upon execution by all parties and recordation, please return a fully-executed copy of the Interlocal Agreement to this office for inclusion in the official minutes.**

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

Encl. (1)

cc: Contracts Administration



c-Agenda

**07-22-2014 Regular School Board Meeting**  
Agenda Item #22

**Board Approved**  
**Date** 7-22-14

*Consent*

**Title**

June 2014 Revision to Interlocal Agreement for Public School Facility Planning and School Concurrency

**Discussion**

On October 9, 2007 the School Board approved the September 2007 *Interlocal Agreement for Public School Facility Planning and School Concurrency (ILA)*. That document was revised to incorporate comments from the local governments and the Department of Community Affairs, and reissued as the June 2008 ILA. That revised document was approved by the School Board on July 15, 2008 and subsequently approved by all 15 (non-exempt) local governments in Brevard County.

This June 2014 ILA has been revised to incorporate the following:

1. Legislative changes
2. Comments from the local governments
3. Agreements during a dispute resolution process between the School Board and several local governments
4. An update of the Student Generation Multiplier

This document has been reviewed and approved by the Capital Outlay Committee and the School Board Attorney.

Both a clean version of the revised document and a comparison to the June 2008 document with tracked changes are attached.

**Recommendation**

Approve the June 2014 *Interlocal Agreement for Public School Facility Planning and School Concurrency*.

**Meeting Date(s)**

Information - 6/10/2014

Consent after Information 7/22/2014

**Authority for Action**

163.31777 F.S.; 1001.42 F.S.; 1013.33 F.S.

**Involves Expenditure of Funds Directly in the Classroom**

No

**Source of Funding**

**INTERLOCAL AGREEMENT FOR PUBLIC SCHOOL  
FACILITY PLANNING AND SCHOOL CONCURRENCY**

**Brevard County, Florida**

**Entered into by:**

**Brevard County Board of County Commissioners,  
School Board of Brevard County, and  
the Cities or Towns of Cape Canaveral, Cocoa, Cocoa Beach, Grant-Valkaria,  
Indialantic, Indian Harbour Beach, Malabar, Melbourne, Melbourne Beach, Palm  
Bay, Rockledge, Satellite Beach, Titusville, and West Melbourne**

**JUNE 2014**

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**INTERLOCAL AGREEMENT FOR PUBLIC SCHOOL  
FACILITY PLANNING AND SCHOOL CONCURRENCY**

**Brevard County, Florida**

**THIS AGREEMENT** is entered into with the Brevard County Board of County Commissioners (hereinafter referred to as the "County"), the Commission or Council of the Cities or Towns of Cape Canaveral, Cocoa, Cocoa Beach, Grant-Valkaria, Indialantic, Indian Harbour Beach, Malabar, Melbourne, Melbourne Beach, Palm Bay, Rockledge, Satellite Beach, Titusville and West Melbourne (hereinafter referred to as the "Cities"), and the School Board of Brevard County (hereinafter referred to as the "School Board"), collectively referred to as the "Parties".

**WHEREAS**, the County, Cities and the School Board recognize their mutual obligation and responsibility for the education, nurturing and general well-being of the children within their community; and

**WHEREAS**, the County, Cities and the School Board are required to enter into this Agreement pursuant to Section 163.01, Section 163.31777(1) and Section 1013.33, Florida Statutes (F. S.); and

**WHEREAS**, the Towns of Melbourne Village and Palm Shores are exempt; and

**WHEREAS**, the County, Cities, and School Board recognize the benefits that will flow to the citizens and students of their communities by more closely coordinating their comprehensive land use and school facilities planning programs: namely (1) better coordination of new schools in time and place with land development, (2) greater efficiency for the school board and local governments by placing schools to take advantage of existing and planned roads, water, sewer, and parks, (3) improved student access and safety by coordinating the construction of new and expanded schools with the road and sidewalk construction programs of the local governments, (4) better defined urban form by locating and designing schools to serve as community focal points, (5) greater efficiency and convenience by co-locating schools with parks, ball fields, libraries, and other community facilities to take advantage of joint use opportunities, and (6) reduction of pressures contributing to urban sprawl and support of existing neighborhoods by appropriately locating new schools and expanding and renovating existing schools; and

**WHEREAS**, the County, Cities and School Board have determined that it is necessary and appropriate for the entities to cooperate with each other to provide adequate public school facilities in a timely manner and at appropriate locations, to eliminate any deficit of permanent student stations, and to provide FISH Capacity for projected new growth; and

**WHEREAS**, Section 1013.33, F.S., requires that the location of public educational facilities must be consistent with the comprehensive plan and implementing land development regulations of the appropriate local governing body; and

**WHEREAS**, Sections 163.3177(6)(h) 1 and 2, F.S., require each local government 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 the adopted comprehensive plan with the plans of the school boards, and describes the processes for collaborative planning and decision making on population projections and public school siting; and

**WHEREAS**, Sections 163.3177(6)(h) 2 and 1013.33, F.S., require the County, Cities and School Board to establish jointly the specific ways in which the plans and processes of the School Board and the local governments are to be coordinated; and

**WHEREAS**, Section 163.3180(6), F.S., authorize the County, Cities and School Board to establish school concurrency and

**WHEREAS**, The Agreement acknowledges both the school board's constitutional and statutory obligations to provide a uniform system of free public schools on a countywide basis, and the land use authority of local governments, including their authority to approve or deny comprehensive plan amendments and development orders; and

**WHEREAS**, the County and Cities are entering into this Agreement in reliance on the School Board's obligation to prepare, adopt and implement a Financially Feasible Plan to achieve public schools operating at the adopted level of service consistent with the timing specified in the Five Year District Facilities Work Program, and the School Board's further commitment to update the plan annually to add enough FISH Capacity to the Plan in each succeeding fifth year to address projected growth in order to maintain the adopted level of service and to demonstrate that the utilization of FISH Capacity is maximized to the greatest extent possible pursuant to Section 163.3180 (6)(f)2.a, F.S. and 163.3180(6)(i)3. F.S.;

**WHEREAS**, Section 163.3177(2)(c), F.S., requires that the public schools interlocal agreement shall address participation by affected local governments with the School Board in the process of evaluating potential school closures, significant renovations to existing schools, and new school site selection before land acquisition. In addition, local governments shall advise the School Board as to the consistency of the proposed closure, renovation, or new site with the local comprehensive plan, including appropriate circumstances and criteria under which a School Board may request an amendment to the comprehensive plan for school siting.

**WHEREAS**, Section 1001.42,(4) F.S., establishes the powers and duties of the school board to adopt and provide for the execution of plans for the establishment, organization, and operation of the schools of the district to include, but not limited to, the establishment of schools, the elimination of school centers, and the consolidation of schools.

**WHEREAS**, the School Board, entered into this Agreement in reliance on the County and Cities' adopting amendments to their local comprehensive plans to implement School Concurrency as provided in Florida Statutes and

**WHEREAS**, Section 1002.33(1), F.S., states that charter schools shall be part of the state's program of public education and that all charter schools are public schools. A charter school may be formed by creating a new school or converting an existing public school to charter status.

**NOW THEREFORE**, be it mutually agreed among the School Board, the County and the Cities (hereinafter referred to collectively as the "Parties") that the following definitions and procedures will be followed in coordinating land use, public school facilities planning, and school concurrency.

## SECTION 1. DEFINITIONS

**Adjacent Concurrency Service Area:** A Concurrency Service Area which is contiguous to the boundary of another Concurrency Service Area along one side to the extent practicable, taking into account water bodies, limited access interstate corridors, and similar geographic limits. Concurrency Service Areas based on spot zoning that do not include a school within shall not be utilized in concurrency reviews for adjacency purposes.

**Adopted Level of Service:** Public school concurrency standard established at one-hundred percent (100%) of FISH Capacity (utilization) to be the maximum level of service of a school owned and operated by the Brevard County School Board.

**Attendance Zone:** The geographic area which identifies the public school assignment for students.

### Capacity Elements:

**Permanent Student Stations:** The number of student stations in permanent structures (buildings) identified as being satisfactory in the FDOE FISH Inventory.

**Relocatable Student Stations:** The number of student stations in relocatable structures identified as being satisfactory in the FDOE FISH Inventory.

**Florida Inventory of School Houses (FISH) Capacity:** The Florida Inventory of School Houses (FISH) is the database used by the Florida Department of Education for all spaces in Florida public education facilities. FISH Capacity is calculated on the Department of Education's measure of satisfactory student stations in both permanent and relocatable structures multiplied by a utilization factor. Brevard County School Board's utilization factors are 100% for elementary, 90% for middle, 90% for junior/senior high schools, and 95% for high schools. The utilization factors may be amended by the Florida Department of Education. By definition the FISH Capacity is a Factored Capacity and the terms may be used interchangeably in this Agreement and in supporting documentation.

**Factored Capacity:** By definition the Factored Capacity is the FISH Capacity and the terms may be used interchangeably in this Agreement and in supporting documentation.

**Capacity Determination Letter (CDL):** A letter prepared by the School Board resulting from a School Impact Analysis (SIA) identifying if existing FISH Capacity is available to serve a residential project. This letter is the School Board response to a School Capacity Determination application and establishes availability at that present time only and neither vests nor reserves FISH Capacity for the developer and is non-binding in nature.

**Capital Outlay Full-Time Equivalent (COFTE):** The basis for student allocation for the Florida Education Finance Program for kindergarten through grade 12 in facilities operated by the School Board, provided annually by the Florida Department of Education.

**Cities:** All municipalities in Brevard County, except any of those that are exempt from the requirements of school concurrency, pursuant to Section 163.31777(3), F.S.

**Charter School:** Public schools of choice which operate under a performance contract, or a "charter," in accordance with Section 1002.33, F.S.

**Class Size Reduction:** Florida Constitutional amendment creating class size limits for teacher to pupil ratios for core educational instruction, as implemented by the Florida legislature.

**Comprehensive Plan:** A plan that meets the requirements of Section 163.3177 F.S.

**Concurrency Service Area (CSA):** A geographic unit adopted by the School Board and local governments within which the level-of-service standard is measured when a School Impact Analysis (SIA) is undertaken by the School Board for a residential development. Within Brevard County the CSA's are coincident with the school attendance boundaries at each school level (elementary, middle, high school).

**Concurrency Evaluation and Finding of Nondeficiency (CEFoN) or equivalent:** Once the School Board has issued a School Capacity Determination Letter (SCADL) confirming the existence of FISH Capacity, the local government may issue a CEFoN, or equivalent, and the FISH Capacity for the development is reserved or vested for that development for the life of the CEFoN.

**Consistency:** Compatible with and furthering the goals, objectives and policies of the Comprehensive Plan Elements and this Agreement.

**De Minimis Impact:** The impact from a development proposal upon the School Board in regards to additional students is minimal in nature per the criteria set in Section 13.1 of this Agreement and allows the proposed residential development to be exempt from one or both elements of the School Impact Analysis.

**Developer:** Any person or governmental agency undertaking any residential construction.

**Development Order:** Any order granting, or granting with conditions, an application for a development permit.

**Development Permit:** Any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

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

**Educational Facilities Impact Fee:** A fee designated to assist in the funding for acquisition and development of school facilities, owned and operated by the School Board, needed to serve new growth and development.

**Educational Plant Survey:** A systematic study of present educational and ancillary plants and the determination of future needs to provide an appropriate educational program and services for each student based on projected capital outlay FTE's approved by the Department of Education. The Educational Plant Survey remains valid for five full years and is amended by Spot Surveys generated by the School Board and approved by FDOE during that period.

**Enclave:** A school attendance boundary area that is not contiguous with the boundary area that contains the school. These areas are also known as "spot zones" and the boundaries of enclaves are not considered when determining CSA's for concurrency evaluation.

**Exempt Local Government:** A municipality which is not required to participate in the public schools interlocal agreement requirements, per Section 163.31777 (3) F.S.

**Final Development Request:** A Final Development Request is the last procedure in the local government planning process that is required before a development proposal with a residential component applies for building permits. Final Development Requests may include Final Plat Applications, Site Plan Applications, Conditional Use Applications, Engineering Review Applications as well as other development requests that are functionally equivalent.

**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 for financing capital improvements. The funding sources include, but are not limited to, ad valorem taxes, bonds, state and federal funds, tax revenues, impact fees, and developer contributions. Financial Feasibility is achieved when these sources are adequate to fund the projected costs of the capital improvements identified in the Five Year District Facilities Work Program necessary to ensure that adopted level-of-service standards are achieved and maintained within the period covered by the 5-year schedule of capital improvements. The requirement that level-of-service standards be achieved and maintained shall not apply if the proportionate-share process set forth in Section 163.3180(6), F.S., is used.

**Financially Feasible Plan:** A plan issued annually by the School Board showing projected student enrollment, which includes development input by the local governments, sufficient FISH Capacity to maintain the adopted level-of-service for each of the five years, attendance boundary changes and school closures. The most recently published Financially Feasible Plan shall be utilized by the School Board in performing the School Impact Analysis (SIA) for concurrency.

**Five Year District Facilities Work Program:** The School Board's annually adopted five year list of capital improvements, as authorized by Section 1013.35, F.S. The Program provides for FISH Capacity to achieve and maintain the adopted level-of-service and includes long-range planning for facilities needs over 10-year and 20-year periods.

**Full-Time Equivalent (FTE) Student Count:** The fall semester count of all "full-time equivalent" students, pursuant to Section 1011.62, F.S.

**Level of Service (LOS):** A standard or condition established to measure FISH Capacity utilization within a Concurrency Service Area (CSA) boundary.

**Local Governments:** Brevard County and its Cities.

**Local Planning Agency:** Any agency established by a governing body under the provisions of Chapter 163 Florida Statutes that first review rezoning and comprehensive plan amendments.

**Permanent Classroom:** An area within a school that provides instructional space for students assigned to a teacher which the School Board considers not temporary and the structure cannot be relocated.

**Preliminary Development Request:** A Preliminary Development Request is the initial application for land use, zoning, and/or development code compliance that begins the local government planning process for any development proposal with a residential component.

Preliminary Development Requests may include Rezoning Applications, Comprehensive Plan Amendments, transmittal of Large Scale Comprehensive Plan Amendments to the State of Florida, Preliminary Plat Applications, Site Plan requests, PUD applications, DRI applications, as well as other development requests that are functionally equivalent.

**Proportionate Share Mitigation:** A developer improvement or contribution identified in a binding and enforceable agreement between the Developer, the School Board and the local government with jurisdiction over the approval of the development order to provide compensation for the additional demand on public school facilities created through the residential development of the property, as set forth in Section 163.3180(6), F.S.

**Proposed New Residential Development:** Any application for new residential development or any amendment to a previously approved residential development, which results in an increase in the total number of housing units.

**Public Facilities:** Civic capital assets including, but not limited to, transit, sanitary sewer, solid waste, potable water, schools, parks, libraries and community buildings.

**Reserved Capacity:** FISH Capacity held in reserve (vested) by the School Board for a specific residential development when the local government has issued a CEFoN or equivalent. The reserved capacity is held by the School Board as long as the local government's CEFoN or equivalent has not expired.

**Relocatable Classroom:** A movable classroom facility containing non-permanent satisfactory student stations in FISH, purchased after 1998 and meeting the standards for long-term use pursuant to 1013.20, F.S.

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

**School Board:** The governing body established Article IX, Section 4, of the Florida Constitution, which shall operate, control and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed.

**School Capacity Availability Determination Letter (SCADL):** A letter prepared by the School Board resulting from an SIA identifying if FISH Capacity is available to serve a residential project. This letter is the School Board response to a Concurrency Determination application and if FISH Capacity exists, and the local government issues a CEFoN or equivalent, the proposed development's FISH Capacity is reserved or vested.

**School Impact Analysis (SIA):** A formal description of a residential project subject to school concurrency review submitted by a developer through a School Facility Planning and Concurrency Application for School Board review in accordance with Section 13.2 of this Agreement.

**School of Choice:** A school that a student may attend in lieu of their zoned school. Schools of Choice do not have a geographic attendance boundary or a Concurrency Service Area (CSA) and are therefore not considered in concurrency determinations.

**School Facility Planning and Concurrency Application:** An application for a School Impact Analysis (SIA) to be undertaken by the School Board submitted by a developer for either a School Capacity Determination (non-binding) or a Concurrency Determination commitment (binding) which reserves or vests space for students generated by a specific development.

**Spot Zone:** A school attendance boundary area considered part of, but geographically detached from, the boundary area that includes the school facility. The boundaries of Spot Zones are not considered when establishing CSA's for concurrency evaluation.

**Student Generation Multiplier (SGM):** The Student Generation Multiplier is the ratio of students per residential unit based on the Type of School and the type of residential unit as described in Appendix "A".

**Type of School:** An educational facility providing a specific level of education, i.e. elementary, middle, junior/senior, or high school or special purpose school such as magnet school.

**Utilization:** The ratio of the total number of students enrolled at a school at the time of the fall FTE student count divided by the FISH Capacity at that school. The FISH Capacity shall be derived from the School Board's most recently published Financially Feasible Plan

## **SECTION 2. JOINT MEETINGS**

**2.1 Meetings of Elected Officials.** One or more elected representatives of the County, each City and the School Board may meet, if requested by any of the parties to this Agreement, in a joint workshop session. A representative of the Regional Planning Council will also be invited to attend. The joint workshop sessions will provide the opportunity for the County, the Cities, and the School Board to discuss the School Board's Five Year District Facilities Work Program, hear reports, discuss policy, set direction, and reach understandings concerning issues of mutual concern regarding coordination of land use and school facilities planning, including population and student growth, development trends, school needs, off-site improvements, and joint use opportunities. The Parties can discuss opportunities to co-locate schools with other public facilities such as parks, libraries, and community centers to the extent possible. A designee of the School Board shall be responsible for coordinating and convening the meeting upon such request.

**2.2 Capital Outlay Committee (COC).** The Parties hereby establish a Capital Outlay Committee (COC) for the purpose of reviewing potential sites for new schools, proposals for significant renovation, potential closure of existing schools and opportunities to co-locate schools with other public facilities such as parks, libraries, and community centers to the extent possible. In addition, the Committee will discuss issues and formulate recommendations regarding coordination of land use and school facilities planning, including such issues as population and student projections, development trends, school needs, joint use opportunities, and ancillary infrastructure improvements needed to support the school and ensure safe student access. Based on information gathered during the review, the COC will submit recommendations to the Superintendent or designee. Additionally, the COC will be a standing committee to review the School Board's annual Five Year District Facilities Work Program in accordance with Section 4.1 and 10 of this Agreement, and serve as the required oversight committee for school concurrency as detailed in Section 14 of this Agreement.

In addition to a representative of the School Board, the Committee will include a staff member from the County and a representative from each of the participating Cities. A quorum shall be established when representatives of the School Board and fifty-percent of the non-exempt County and Cities are present. The committee shall appoint a chairperson, meet semi-annually in accordance with the laws of Florida governing public meetings, and report to participating local governments, the School Board and the general public on the effectiveness with which this Agreement is being implemented. A designee of the School Board shall be responsible for coordinating and convening the semi-annual meetings.

### **SECTION 3. STUDENT ENROLLMENT AND POPULATION PROJECTIONS**

**3.1 Population And Student Enrollment Projections Distributed Annually.** In fulfillment of their respective planning duties, the County, Cities, and School Board agree to coordinate and base their plans upon consistent projections of the amount, type, and distribution of population growth and student enrollment. The County and Cities will provide the School Board with a listing of their potentially useful surplus properties by August 15. At this time, a potentially useful property is a minimum of 10 acres for Elementary Schools, 20 acres for Middle Schools, and 40 acres for High Schools. The standards for potentially useful properties may be changed by the School Board at any time and the COC will be notified. The County and Cities shall provide updated five year population projections from the Local Government Comprehensive Plans or other Local Government adopted documents and development data by October 15 as required by Section 9.1 of this Agreement and the School Board will supply the annually updated Financially Feasible Plan by December 31st as described in Section 9.2 of this Agreement.

**3.2 Student Projections.** The School Board shall use student population projections based on information produced by demographic data, where available, as modified by the School Board based on development data and agreement with the Cities and the County.

### **SECTION 4. COORDINATING AND SHARING OF INFORMATION**

**4.1 Five Year District Facilities Work Program.** By September 1<sup>st</sup> of each year, the School Board shall submit to the County, each City and the Capital Outlay Committee (COC) the Five Year District Facilities Work Program prior to adoption by the Board. The School Board will make available the preliminary Five Year District Facilities Work Program if available.

- (a) The plan will be consistent with the requirements of Section 1013.35, F.S., and include projected student populations based on Florida Department of Education (FDOE) Capital Outlay Full-Time Equivalent (COFTE) projections data, , an inventory of existing school facilities, projections of facility space needs, information on relocatables, general locations of new schools for the 5, 10, 20-year time periods, options to reduce the need for additional permanent student stations, and general locations of potential school closures if available.
- (b) The Cities and County shall review the plan and provide written comments to the School Board prior to September 15th.
- (c) If the local government does not support the plan, the matter shall be resolved pursuant to Section 17 of this Agreement.

**4.2 Educational Plant Survey.** Educational Plant Survey updates are undertaken by the School Board at least every five years. Three months prior to preparation of the Educational Plant Survey update, the Capital Outlay Committee established in subsection 2.2 will assist the School Board in an advisory capacity in the preparation of the update. The Educational Plant Survey shall be consistent with the requirements of Section 1013.31, F.S., and include at least an inventory of existing educational facilities, recommendations for new and existing facilities, and the general location of each in coordination with the land use plan. Upon receipt of the Educational Plant Survey update, the Capital Outlay Committee will have fifteen (15) calendar days to evaluate and make recommendations regarding the location and need for new schools, significant renovation or expansion, and closures of educational facilities, and the consistency of such plans with the local government comprehensive plan and relevant issues listed in Sections 5.2, 5.3, 6.1, 7.4 and 8.1 of this Agreement.

## **SECTION 5. SCHOOL SITE SELECTION, RENOVATIONS, AND SCHOOL CLOSURES**

**5.1 New School Sites.** When the need for a new school is identified in the Five Year District Facilities Work Program local governments within the subject area shall provide the School Board with a list of potentially useful (as defined in Section 3.1) surplus property for evaluation. The School Board will submit to members of the COC for review a list of potential sites under consideration in the area of need. The list of potential sites for new schools will be submitted to the local government with jurisdiction for an assessment regarding consistency with the local government comprehensive plan. The coordination process shall be in accordance with Chapter 1013.33 F.S. as follows:

- (a) To improve coordination relative to potential educational facility sites, the School Board shall provide written notice to the local government that has regulatory authority over the use at least 90 days prior to acquiring property, or 45 days prior to leasing property, that may be used for a new public educational facility. The local governments shall have 45 days after receiving the School Board's written notice to provide a determination if the lease or acquisition is consistent with zoning, land use categories and the policies of the Comprehensive Plan. The review period would allow for public comment from the people affected and local governments may put forward alternative sites which could save the School Board additional funding.
- (b) If the determination is affirmative, school construction may commence and further local government approvals are not required, except as provided in Section 5.2.
- (c) Failure of the local governing body to make a determination in writing within 90 days after a School Board's request for a determination of consistency shall be considered an approval of the School Board's application. Campus master plans and development agreements must comply with the provisions of Section 1013.30 F.S.
- (d) If a determination is made that a proposed school site is not consistent with the comprehensive plan, the local government shall identify whether it will support necessary amendments to the comprehensive plan required to make the school site consistent. Based on the information gathered during this review for new schools, the COC will make a recommendation to the Superintendent or designee if one or more sites have been identified, in the order of preference.
- (e) If the local government does not support the proposed School Board's choice for a

school site, the matter shall be resolved pursuant to Section 17 of this Agreement.

**5.2 School Site Plan Review.** Once a school site has been selected and site design has begun, the School Board shall provide the local government the opportunity to review and comment on the proposed site plan as early in the design phase of the new public educational facilities as feasible.

A local governing body may not deny the site applicant based on adequacy of the site plan as it relates solely to the needs of the school. If the site is consistent with the 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 s.1013.51(1) and consider the site 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 those established in Chapter 1013 F.S. or the Florida Building Code, unless mutually agreed to as a part of this Agreement.

**5.3 Major Renovations and Closures.** When the need for a major renovation that changes the primary use of a facility, including stadiums, resulting in a greater than 10 percent increase or decrease in permanent capacity, or requires an expansion of the existing site the COC will review the proposed change to determine the impact the renovation will have on the adopted level of service for schools and provide a recommendation to the school board regarding the proposed change. The School Board shall provide the local government having jurisdiction the opportunity to review and comment on a proposed major renovation at least 60 days prior to School Board approval of any school status change and as early in the design phase as feasible. Terms as described in Section 5.2(a) of this Agreement shall apply to the review by the local government.

When the need for potential closures of existing schools is identified in the Five Year District Facilities Work Program, or by the School Board subsequent to the annual approval of the Five Year District Facilities Work Program, the School Board will convene a meeting of the COC for the purpose of reviewing potential school closures a minimum of 30 days prior to the meeting at which an Action Item to consider school closures is heard by the School Board. Such closure analysis shall be based on objective criteria adopted by the School Board. Based on information gathered during the review, the COC will submit consensus recommendations to the Superintendent or designee a minimum of 10 days prior to the meeting at which the Action Item is heard by the School Board. A representative of the COC shall have the opportunity to present the recommendations at the meeting at which the Action Item is heard by the School Board.

## **SECTION 6. SUPPORTING INFRASTRUCTURE**

**6.1 Joint Consideration of On-Site and Off-Site Improvements.** In conjunction with the land use consistency determination described in subsection 5.1 of this Agreement, the School Board and affected local government will jointly determine the need for and timing of on-site and off-site improvements necessary to support each new school or the proposed major renovation of an existing school. The School Board and the affected local government will enter into a written agreement identifying the timing, location, and the party or parties responsible for financing constructing, operating and maintaining the required improvements.

## **SECTION 7. LOCAL PLANNING AGENCIES (LPA), COMPREHENSIVE PLAN AMENDMENTS, REZONINGS, AND DEVELOPMENT APPROVALS**

**7.1 Appointed LPA Members.** The County and Cities will include a nonvoting representative appointed by the School Board on the local planning agencies, or equivalent agencies, to attend those meetings at which the agendas consider comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application. The Cities and County may at their discretion grant voting status to the appointed School Board member.

**7.2 County and City Development Applications Shared with the School Board.** The County and the Cities shall give the School Board Superintendent notification of land use applications and development proposals pending before them that may affect student enrollment, enrollment projections, or school facilities in accordance with Section 13 of this Agreement. Such notice will be provided in a timely manner prior to development order or development permit approval. This notice requirement applies to amendments to the comprehensive plan future land use map, rezonings, developments of regional impact, and/or major residential or mixed-use development projects.

**7.3 Criteria for Evaluating Residential Development Applications.** In addition to the regulatory review process for school concurrency described in Section 13 of this Agreement, reviewing and approving Comprehensive Plan amendments, rezonings, for residential development proposals, the County and Cities will also consider the following issues, as applicable:

- (a) The consideration of School Board comments on residential development proposals;
- (b) The provision of school sites and facilities within neighborhoods;
- (c) The compatibility of land uses adjacent to existing schools and reserved school sites;
- (d) The co-location of parks, recreation and neighborhood facilities with school sites;
- (e) The linkage of schools, parks, libraries and other public facilities with bikeways, trails, and sidewalks for safe access;
- (f) The existing traffic circulation pattern serving schools and their surrounding neighborhood;
- (g) The provision of off-site signalization, signage, access improvements, and sidewalks to serve schools;
- (h) The location / inclusion of school bus stops and turnarounds, and
- (i) The impact of development proposals on the public school facilities capital plan.

**7.4 Formulating City and County Plans and Programs.** In formulating community development plans and programs, the County and Cities will consider the following issues:

- (a) Scheduling of capital improvements that are coordinated with and meet the capital

needs identified in the School Board's Five-Year District Facilities Work Program;

- (b) Providing incentives to the private sector to identify and implement creative solutions to developing adequate school facilities in residential developments;
- (c) Targeting community development improvements in older and distressed neighborhoods near schools; and
- (d) Working to address and resolve multi-jurisdictional public school issues.

## **SECTION 8. CO-LOCATION AND SHARED USE**

**8.1 Co-location and Shared Use.** The co-location and shared use of facilities are important to both the School Board and local governments. The School Board will look for opportunities to co-locate and share use of educational facilities and public facilities when preparing the Five Year District Facilities Work Program. Likewise, co-location and shared use opportunities will be considered by the local governments when preparing the annual update to the comprehensive plan's schedule of capital improvements and when planning and designing new, or renovating existing, community facilities. Opportunities for co-location and shared use with public schools will be considered for the following:

- (a) Libraries;
- (b) Parks and recreation facilities;
- (c) Community centers;
- (d) Auditoriums;
- (e) Learning centers;
- (f) Museums;
- (g) Performing arts centers, and
- (h) Stadiums.

In addition to the above, co-location and shared use of school and governmental facilities for health care and social services will be considered.

**8.2 Mutual Use Agreement.** For each instance of co-location and shared use, the School Board and local government shall enter into a separate agreement which addresses liability, operating and maintenance costs, scheduling of use, and facility supervision or any other issues that may arise from co-location and shared use.

## **SECTION 9. SPECIFIC RESPONSIBILITIES OF THE PARTIES**

**9.1 Specific Responsibilities of the County and Cities.** The County and Cities shall undertake the following activities:

- (a) Maintain the school concurrency provisions in their Land Development Regulations (LDR) consistent with the requirements of this Agreement.
- (b) Withhold the approval of any Preliminary Development Request, or functional equivalent for new residential units not exempted under Section 13.1(d) of this Agreement, until the School Board has issued a CDL verifying that FISH Capacity is currently available to accommodate a residential project.
- (c) Withhold the approval of any Final Development Request, or functional equivalent for new residential units not exempted under Section 13.1(d) of this Agreement, until the School Board has issued a SCADL verifying that FISH Capacity is available and has been reserved to accommodate a residential project.
- (d) Share information with the School Board regarding population projections, projections of development and redevelopment for the next 10 years, infrastructure required to support public school facilities, and amendments to the Comprehensive Plan consistent with the requirements of this Agreement by October 15<sup>th</sup> of each year.
- (e) Maintain data for approved new residential development. The data shall be provided to the School Board annually by October 15<sup>th</sup>, for the prior fiscal year (October 1 to September 30). and include at a minimum, the following:
  - 1. Development name and location
  - 2. Total number of dwelling units by unit type (single-family, multi-family, etc.) and any planned phasing information.
  - 3. Impact fee calculation, from the jurisdiction collecting the fees.
  - 4. Total number of dwelling units with certificates of occupancy (CO) by development or by remaining vacant lots per development.
  - 5. A list of all Preliminary and Final Development Requests determined to be exempt based on de minimis impact.
  - 6. A list of all expired projects and completed projects.
  - 7. A list of any changes to the Comprehensive Plan in the Public School Facilities Element (if applicable), Intergovernmental Coordination Element, Capital Improvements Element, or any other element related to Public Schools.
- (f) Transmit School Facility Planning and Concurrency Applications to the School Board to undertake the School Impact Analysis (SIA) for all residential Preliminary and Final Development Requests unless exempt under Section 13.1 (d) of this Agreement.

**9.2 Specific Responsibilities of the School Board.** By entering into this Agreement, the School Board agrees to undertake the following activities:

- (a) Annually prepare and update a Five Year District Facilities Work Program and a Financially Feasible Plan containing adequate FISH Capacity each year to meet the

projected COFTE in the Five Year District Facilities Work Program and the projected students, including the local government development projections, in the Financially Feasible Plan so that no schools exceed the adopted Level-of-Service. The School Board shall transmit to the County, the Cities and the COC copies of the proposed Financially Feasible Plan by December 31<sup>st</sup> of each year.

- (b) Institute program and/or school attendance boundary adjustments as necessary, based upon adopted School Board Policy, to maximize the utilization of FISH Capacity in order to ensure that all schools of each type (elementary, middle, junior/senior high, and high) in each Concurrency Service Area and each individual school operate at or below the adopted Level-of-Service, consistent with the requirements of this Agreement.
- (c) Construct the FISH Capacity enhancing projects necessary to maintain the adopted Level-of-Service specified in this Agreement.
- (d) Consider utilizing charter schools built in conformance with School Board standards to expand the FISH Capacity of the public school system and mitigate the educational impact created by the development of new residential dwelling units.
- (e) Provide the County and Cities with the required data and analysis updated annually to support the comprehensive plan elements and any amendments relating to school concurrency.
- (f) Adopt a ten- and twenty-year work program consistent with the requirements of this Agreement.
- (g) Review and undertake School Impact Analysis for proposed new residential developments for compliance with concurrency standards, consistent with the requirements of this Agreement.
- (h) Review proportionate share mitigation options for new residential development consistent with the requirements of this Agreement.
- (i) Prepare annual reports on enrollment and FISH Capacity, consistent with the requirements of this Agreement. Provide annual concurrency report with a list of developments and the number of units.
- (j) Provide necessary staff and material support for meetings of the COC as required by this Agreement.
- (k) Provide information to the County and Cities regarding enrollment projections, school siting, and infrastructure necessary to support public school facilities consistent with the requirements of this Agreement.
- (l) Provide notice to local governments and convene a meeting of the COC whenever the School board intends to deviate from the Five Year District Facilities Work Program.

## **SECTION 10. SCHOOL BOARD'S 5 YEAR DISTRICT FACILITIES WORK PROGRAM**

**10.1 School Board's Five Year District Facilities Work Program.** In preparation of the Five-Year District Facilities Work Program and each annual update, the School Board shall undertake the following:

- (a) Update and adopt the Five-Year District Facilities Work Program for public schools in Brevard County on or before September 30<sup>th</sup> of each year, adding a new financially feasible fifth year that will achieve and maintain the Adopted LOS for the five year period.
- (b) Specify all new construction, remodeling or renovation projects which will add permanent capacity or modernize existing facilities.
- (c) Identify any potential school closures
- (d) Prepare the Five-Year District Facilities Work Program and each annual update to provide a program of school construction for a five (5) year period.
- (e) Include school construction projects which, when completed, will add sufficient FISH Capacity to achieve and maintain the adopted LOS standard for all schools based on the projected enrollment; provide for required modernizations; and satisfy the School Board's constitutional obligation to provide a uniform system of free public schools on a county-wide basis.
- (f) Include a description of each school project, a listing of funds to be spent in each fiscal year for the planning, preparation, land acquisition, and actual construction and renovation of each school project which adds FISH Capacity or modernizes existing facilities; the amount of FISH Capacity added, if any; and a generalized location map for proposed schools included in the Five Year District Facilities Work Program.
- (g) Maximize utilization of existing schools so that proposed projects add the necessary FISH Capacity to maintain the adopted Level of Service standard.
- (h) The Five Year District Facilities Program and each annual update shall identify the projected enrollment, FISH Capacity and utilization percentage of all schools.

**10.2 Long Range Educational Facilities Plan.** As part of the adopted Five Year District Facilities Work Program, the School Board shall annually adopt a tentative ten-year and a twenty-year work plan based upon revenue projections, COFTE projections and facility needs for the ten-year and twenty-year periods. 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.

**10.3 Transmittal.** The School Board shall transmit to the County, the Cities and the COC copies of the proposed Five Year District Facilities Work Program, which includes the Long-Range Educational Facilities Plan, for review and comment per Section 4.1 of this Agreement.

**10.4 Adoption.** Unless the adoption is delayed by mediation or a lawful challenge, the School Board shall adopt the Five Year District Facilities Work Program no later than September 30<sup>th</sup>, and it shall become effective no later than October 1<sup>st</sup> of each year.

**10.5 Amendments to the Five Year District Facilities Work Program.** The School Board shall not amend the Five Year District Facilities Work Program so as to modify, delay or delete any project in the first three (3) years of the Program unless the School Board provides written confirmation to the COC that:

- (a) The modification, delay or deletion of a 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 a project is occasioned by unanticipated change in funding, COFTE projections or growth patterns or is required in order to provide needed FISH Capacity in a location that has a current greater need than the originally planned location and does not cause the adopted LOS to be exceeded in the Concurrency Service Area from which the originally planned project is modified, delayed or deleted; or
- (c) The project schedule or scope has been modified to address local government concerns, and the modification does not cause the adopted LOS standard to be exceeded in the Concurrency Service Area from which the originally planned project is modified, delayed or deleted; and
- (d) The COC, as the required oversight committee for school concurrency as detailed in Section 14 of this Agreement, has had the opportunity to review the proposed amendment and has submitted its recommendation to the Superintendent or designee.
- (e) The School Board may amend at any time the Five Year District Facilities Work Program to add necessary FISH Capacity projects to satisfy the provisions of this Agreement. For additions to the Five Year District Facilities Work Program, the School Board must demonstrate its ability to maintain the financial feasibility of the Program.

## **SECTION 11. COMPREHENSIVE PLAN ELEMENTS**

**11.1 Required Comprehensive Plan Amendments.** The County and the Cities agree to adopt and maintain those requirements found in Community Planning Act " Chapter 2011-139, Laws of Florida", until and unless the laws are changed and this Agreement is subsequently amended. Said principles, standards, and guidelines, including Adopted Level of Service requirements stated in Chapter 2011-139 must be found in a Public School Facilities Element or in the Intergovernmental Coordination Element of the Comprehensive Plans adopted by the County and Cities.

**11.2 Capital Improvements Element.** The County and Cities shall amend the Capital Improvements Element of their Comprehensive Plan to include the School Board's Five Year District Facilities Work Program which shall be adopted and updated consistent with the School Board's adoption and Section 163.3177 (3), F.S.

**11.3 Intergovernmental Coordination Element (ICE).** Related to school concurrency purposes, the process for the development, adoption, and amendment of the Intergovernmental Coordination Element, shall be that process set forth below and pursuant to Section 163.3184, F.S.

(a) In the event that it becomes necessary to amend the ICE, the local government wishing to initiate an amendment shall request review through the COC prior to transmitting the amendment to the State of Florida land planning agency pursuant to Section 163.3184, F.S. The COC shall be responsible for distributing the amendment to all Parties to this Agreement for review and comment.

1. To achieve required consistency, all local governments shall adopt the amendment in accordance with the statutory procedures for amending comprehensive plans.
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 this Agreement. In such a case, the Parties agree not to adopt the amendment until the dispute has been resolved.

## **SECTION 12. SCHOOL CONCURRENCY PROGRAM**

**12.1 Commencement of School Concurrency.** The School Concurrency Program described in this Agreement shall be implemented no later than the effective date of this Interlocal Agreement

**12.2 Concurrency Service Area (CSA) Boundaries.** The Parties hereby agree that School Concurrency shall be measured and applied using a geographic area known as a Concurrency Service Area (CSA) which shall coincide with the school attendance boundaries, as adopted by the School Board. The mapping of the CSAs (school attendance boundaries) shall be included in the data and analysis support as required in 163.3180(1)(b) and is optional if placed in the Comprehensive Plan.

(a) The County and Cities shall adopt by reference the standards for modification of the Concurrency Service Area boundary maps as defined here into the Comprehensive Plan.

1. The School Board and local governments shall apply school concurrency on a less than district-wide basis, using the school attendance boundaries, in which the school is located, as the CSA. Use of this method will create a separate concurrency service area for each elementary, middle, high and any combination school. Each school attendance zone will become its own CSA.
2. Charter schools and Schools of Choice will not have their own CSA. Charter and Schools of Choice are open to all students residing within the district; and students are generally accepted through application approval. These special public schools vary in size, and may target a specific type of student and can limit the age groups or grade levels.

(b) As future school boundary changes are required for schools programmed in the Five Year District Facilities Work Program, the CSAs (school attendance boundaries) shall be modified to the greatest extent possible to provide maximum utilization. The School Board will perform as lead agency for coordination and review of proposed changes to the CSAs (school attendance boundaries).

(c) The Parties shall observe the following process for the timing of the review for modifying CSAs (school attendance boundaries).

1. Objective criteria shall be adopted by the School Board to implement school attendance boundary, and subsequently CSA boundary, changes. When the need for potential attendance boundary changes is identified in the Five Year District Facilities Work Program, or by the School Board subsequent to the annual approval of the Five Year District Facilities Work Program, the School Board will convene a meeting of the COC for the purpose of reviewing potential attendance boundary changes a minimum of 30 days prior to the meeting at which an Action Item to consider attendance boundary changes is heard by the School Board.
2. The COC shall review the proposed boundary changes. Based on information gathered during the review, the COC will submit consensus recommendations to the Superintendent or designee a minimum of 10 days prior to the meeting at which the Action Item is heard by the School Board. A representative of the COC shall have the opportunity to present the recommendations at the meeting at which the Action Item is heard by the School Board.
3. The change to a CSA boundary shall become effective upon final adoption of the new school boundaries by the School Board.

(d) The Parties hereby agree that the "Spot Zoned" geographic areas of a school attendance boundary do not constitute additional adjacencies.

**12.3 Level of Service (LOS).** To ensure the FISH Capacity of schools is sufficient to support projected student growth, the County, Cities and School Board shall adopt a LOS for all schools of the same type. The Parties hereby agree that the desired LOS standard shall be 100% of the FISH Capacity for each elementary, middle, and high school, and any combination school.

**12.4 School Concurrency Regulations.** Each Local Government that is party to this Agreement shall adopt school concurrency provisions into its Land Development Regulations (LDR) consistent with the requirements of this Agreement.

(a) The County and the Cities shall amend their LDRs to adopt school concurrency provisions for the undertaking by the School Board of a School Impact Analysis for Preliminary and Final Development Requests.

1. In the event that any participating City does not adopt LDRs, that government shall be deemed to have "opted in" to the County regulations and agrees to be bound by the terms and provisions therein until it adopts its own ordinance.
2. At any time, any Local Government may opt out of the County's implementing ordinance through implementing its own ordinance consistent with this Agreement.

## **SECTION 13. UNIFORM SCHOOL CONCURRENCY PROCESS**

**13.1 General Provisions.** The County, the Cities and the School Board shall ensure that the Adopted Level of Service Standard established for each school type is maintained.

- (a) No Preliminary Development Request for new residential development may be approved by the County or Cities governing body and/or Local Planning Agency, unless the residential development is exempt from these requirements as provided in Section 13.1 (d) of this Agreement, or until a School Impact Analysis (SIA) has been undertaken resulting in a Capacity Determination Letter issued by the School Board to the local government indicating that adequate school facilities exist.
- (b) No Final Development Request for new residential development may be approved by the County or Cities governing body and/or Local Planning Agency unless the residential development is exempt from these requirements as provided in Section 13.1 (d) of this Agreement, or until a School Impact Analysis (SIA) has been undertaken resulting in a School Capacity Availability Determination Letter (SCADL) issued by the School Board to the local government indicating that adequate school facilities have been reserved to accommodate the impacts of the development.
- (c) A local government may condition the approval of the residential development to ensure that the necessary FISH Capacity is in place to meet the adopted LOS at the time of residential impacts, in order to validate or render effective the approval. This shall not limit the authority of a local government to deny a development permit or its functional equivalent, pursuant to its home rule regulatory powers.
- (d) The following residential uses shall be considered exempt from the requirements of school concurrency:
  - 1. All single family lots of record at the time the School Concurrency implementing ordinance became effective.
  - 2. Any new residential development that has an unexpired preliminary plat or site plan approval or the functional equivalent for a site specific development order prior to the commencement date of the School Concurrency Program.
  - 3. Any amendment to any previously approved residential development, which does not increase the number of dwelling units or change the type of dwelling units (single-family to multi-family, etc.).
  - 4. Any age restricted community with no permanent residents under the age of eighteen (18). Exemption of an age restricted community will be subject to a restrictive covenant limiting the age of permanent residents to 18 years and older.
  - 5. The replacement of an existing residential dwelling unit, including those partially or entirely damaged, destroyed or demolished, with a new unit of the same type and use provided that the existing unit has been occupied at some time during the five year period immediately preceding the construction of the new unit.

6. De minimis Impact for School Capacity Determination (non-binding):
    - a. Small Scale Comprehensive Plan Amendment requests which will not increase the maximum allowable residential units by 50 units or more.
    - b. Preliminary Development Requests (not including Large Scale Comprehensive Plan Amendments) which will not increase the maximum allowable residential units by 50 units or more.
  7. De minimis Impact for Concurrency Determination (binding) – Any residential development request, which based on the Student Generation Rate (SGM) established in this Agreement will not exceed one (1) student for any type of school.
- (e) Upon request by a developer submitting a Preliminary Development Request or Final Development Request with a residential component, the local government may contact the School Board for a determination as to whether or not the request is exempt from the requirements of school concurrency.

### **13.2 School Concurrency Application Review**

- (a) Any developer submitting a Preliminary Development Request with a residential component that is not exempt under Section 13.1(d) of this Agreement is subject to school concurrency and must prepare and submit to the local government a School Facility Planning and Concurrency Application to have a School Impact Analysis (SIA) undertaken by the School Board. The application shall designate that the developer requests to have a School Capacity Determination (non-binding) undertaken by the School Board.
- (b) Any developer submitting a Final Development Request with a residential component that is not exempt under Section 13.1(d) of this Agreement is subject to school concurrency and must prepare and submit to the local government a School Facility Planning and Concurrency Application to have a School Impact Analysis (SIA) undertaken by the School Board. The application shall designate that the developer requests to have a Concurrency Determination (binding) undertaken by the School Board.
- (c) Any developer that is submitting a Preliminary Development Request simultaneously with a Final Development Request with a residential component that is not exempt under Section 13.1(d) of this Agreement is subject to school concurrency and must prepare and submit to the local government a School Facility Planning and Concurrency Application to have a School Impact Analysis (SIA) undertaken by the School Board. In this case the application shall designate that the developer requests to have a Concurrency Determination (binding) undertaken by the School Board.
- (d) The School Facility Planning and Concurrency Application must indicate the location of the development, number of dwelling units and unit types (single-family, multi-family, or manufactured housing), a phasing schedule (if applicable), and age restrictions for occupancy (if any). The local government shall initiate the review by determining that the application is sufficient for processing. Upon determination of application sufficiency, the local government shall transmit the application to the School Board representative for review. The process is as follows:

1. A Preliminary Development Request may be exempt from a School Impact Analysis under Section 13.1(d) of this Agreement. A Final Development Request may be exempt from a School Impact Analysis under Section 13.1(d) of this Agreement.
  2. A School Facility Planning and Concurrency Application for residential development is submitted to the local government initiating a sufficiency review. Once deemed sufficient, the local government transmits the School Facility Planning and Concurrency Application to the School Board to undertake a School Impact Analysis. The School Board may charge the applicant a non-refundable application fee payable to the School Board to meet the cost of review.
  3. The School Board representative shall undertake the School Impact Analysis for a residential development which has been submitted and deemed sufficient for processing by the applicable local government. The application will be processed based upon whether the application is for a School Capacity Determination (non-binding) or a Concurrency Determination (binding).
  4. The School Board representative shall undertake the School Impact Analysis in the order in which it is received and verify whether sufficient FISH Capacity for each type of school is available or not available in the proposed development's CSA.
    - a. 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 for the school of each type within the specific CSA using the Student Generation Multiplier (SGM), as established by the method described in Appendix "A." The School Board will review the established SGM at least every five years and will amend that multiplier to reflect the current district wide student generation rates.
    - b. New FISH Capacity within a CSA which is in place or under actual construction in the first three years of the Five Year District Facilities Work Program will be added to the FISH Capacity shown in the CSA, and is counted as available FISH Capacity for the residential development under review.
- (e) If the projected student growth from a residential development causes the adopted LOS to be exceeded in the CSA, adjacent CSAs will be reviewed for available FISH Capacity.
1. In conducting the adjacency review, the School Board shall first use the adjacent CSA with the most available FISH Capacity to evaluate projected enrollment and, if necessary, shall continue to the CSA with the next most available FISH Capacity until all adjacent CSAs have been evaluated or the available FISH Capacity has been identified to allow a SCADL approving school concurrency to be issued.
  2. If a proposed new development causes the LOS in the CSA in which it is located to exceed the adopted LOS standard and there is available FISH Capacity in an adjacent CSA, actual development impacts shall be shifted to the contiguous CSA(s) having available FISH Capacity. This shift shall be accomplished

through boundary changes or by assigning future students from the development to an adjacent CSA. Section 12.2(d) of this Agreement shall be observed when considering adjacent FISH Capacity.

- (f) In the event that there is not adequate FISH Capacity available in the CSA in which the proposed development is located or in the adjacent CSAs to support the development, the School Board representative will issue either a CDL (non-binding) or a SCADL (binding) within ten (10) working days detailing why the development is not in compliance. If the developer has submitted for a Concurrency Determination (binding) the applicant will be offered the opportunity to enter into a negotiation period to allow time for the mitigation process described below in Section 13.5 of this Agreement. If the proposed mitigation is accepted, the School Board shall enter into an enforceable and binding agreement with the affected local government and the developer pursuant to Section 13.5 of this Agreement.
- (g) When FISH Capacity has been determined to be available, the School Board representative shall issue a CDL (non-binding) or a SCADL (binding) verifying available FISH Capacity to the applicant and the affected local government within ten (10) working days of receipt of the application.
- (h) The local government shall be responsible for notifying the School Board representative when a residential development which was submitted as a binding Concurrency Determination has received a Concurrency Evaluation Finding of Nondeficiency, or functional equivalent, by the local government and when the development order for the residential development expires or is revoked...

**13.3 School Concurrency Approval.** Issuance of a SCADL by the School Board identifying that adequate FISH Capacity exists indicates only that school facilities are currently available. FISH Capacity will not be reserved until the local government issues a Concurrency Evaluation Finding of Nondeficiency, or the functional equivalent.

- (a) A local government shall not issue a Concurrency Evaluation Finding of Nondeficiency or functional equivalent for a residential development until receiving confirmation of available FISH Capacity in the form of a SCADL from the School Board. Once the local government has issued a Concurrency Evaluation Finding of Nondeficiency or functional equivalent school concurrency for the residential development shall be valid for the life of the Concurrency Evaluation Finding of Nondeficiency or functional equivalent. Expiration, extension or modification of a Concurrency Evaluation Finding of Nondeficiency or functional equivalent for a residential development shall require a new review for adequate FISH Capacity to be performed by the School Board.
- (b) Local governments shall notify the School Board within ten (10) working days of any official change in the validity (status) of a Concurrency Evaluation Finding of Nondeficiency or functional equivalent for a residential development.
- (c) The Local Government shall not issue a building permit or its functional equivalent for a non-exempt residential development until receiving confirmation of available FISH Capacity from the School Board in the form of a SCADL. Once the local government has issued a Concurrency Evaluation Finding of Nondeficiency or functional equivalent, school concurrency for the residential development shall be valid for the life of the Concurrency Evaluation Finding of Nondeficiency or functional equivalent.

**13.4 Development Review Table.** The School Board shall create and maintain a Development Review Table (DRT) for each CSA, and will use the DRT to compare the projected students from proposed residential developments to the CSAs available FISH Capacity programmed within the first three years of the current five year district planning period.

- (a) Student enrollment projections shall be based on the most recently adopted Five Year District Facilities Work Program, and the DRT shall be updated to reflect these projections. Available FISH Capacity shall be derived using the following formula:

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

Where

<sup>1</sup> FISH Capacity = Factored Capacity (As programmed in the first three (3) years of the Five Year District Facilities Work Program

<sup>2</sup> Enrollment = Student enrollment as counted at the Fall FTE.

<sup>3</sup> Vested = Students generated from residential developments approved and receiving a SCADL after the implementation of school concurrency

- (b) 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 from the vested development within the previous twelve (12) month period.

**13.5 Proportionate Share Mitigation.** In the event there is not sufficient FISH Capacity available to support the students generated from the proposed residential development under review, based on the student generation multiplier (SGM) calculation of students as described in Section 13.2(d)4.a, the School Board shall entertain proportionate share mitigation options and, if accepted, shall enter into an enforceable and binding agreement with the local government and developer to mitigate the impact from the development through the creation of additional FISH Capacity.

- (a) When the student impacts from a proposed development cause the adopted LOS to fail, the developer's proportionate share will be based on the number of additional student stations necessary to meet the established LOS. The amount to be paid will be calculated by the cost per student station for elementary, middle, and high school as determined and published by the State of Florida, plus a share of the land acquisition and infrastructure expenditures for school sites as determined and published annually in the Five Year District Facilities Work Program.

- (b) The methodology used to calculate a developer's proportionate share mitigation shall be as follows:

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

Where

<sup>1</sup>Development students = Students generated by residential development that are assigned to that school

<sup>a</sup>Total Cost = the cost per student station as determined and published by the State of Florida, plus a share of the land acquisition and infrastructure expenditures for school sites as determined and published annually in the Five Year District Facilities Work Program.

- (c) The applicant shall be allowed to enter a negotiation period with the School Board in an effort to mitigate the impact from the development through the creation of additional FISH Capacity. Upon identification and acceptance of a mitigation option deemed financially feasible by the School Board, the developer shall enter into a binding and enforceable agreement with the School Board and the local government with jurisdiction over the approval of the development order.
1. A mitigation contribution provided by a developer to offset the impact of a residential development must be directed by the School Board toward a FISH Capacity project identified in the Five Year District Facilities Work Program. FISH Capacity projects identified within the first three (3) years of the Five Year District Facilities Work Program shall be considered as committed in accordance with Section 10.5 of this Agreement.
  2. If FISH Capacity projects are planned in years four (4) or five (5) of the Five Year District Facilities Work Program within the same CSA as the proposed residential development, the developer may pay his proportionate share to mitigate the proposed development in accordance with the formula provided in Section 13.5 (b) of this Agreement. This may not change the timing of the Five Year District Facilities Work Program.
  3. If a FISH Capacity project does not exist in the Five Year District Facilities Work Program, the School Board may add a FISH Capacity project to satisfy the impacts from a proposed residential development, if it is funded through the developer's proportionate share mitigation contributions in the next update of the Program. Mitigation options may include, but are not limited to:
    - a. Contribution of land or payment for land acquisition in conjunction with the provision of additional FISH Capacity; or
    - b. Mitigation banking based on the construction of a public school facility in exchange for the right to sell FISH Capacity credits; or
    - c. Provision of additional student stations through the donation of buildings for use as a primary or alternative learning facility; or
    - d. Provision of additional student stations through the renovation of existing buildings for use as learning facilities; or
    - e. Construction or expansion of permanent student stations; or
    - f. Construction of a public school facility in advance of the time set forth in the Five Year District Facilities Work Program.
    - g. Construction of a charter school designed in accordance with School Board standards, providing sufficient permanent capacity to the District's inventory of 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.

- (d) For mitigation measures (a) thru (g) above, the estimated cost to construct the mitigating permanent capacity will reflect the estimated future construction costs at the time of the anticipated construction. Improvements contributed by the developer shall receive Educational Facilities impact fee credit.
- (e) Developer shall receive an impact fee credit for that portion of the developer's educational impact used to fund the improvements on which the proportionate share mitigation is calculated.
- (f) If the proportionate share mitigation required is greater than the impact fees generated by the development, the difference between the developer's proportionate share and the impact fee credit shall be the responsibility of the developer.
- (g) Any proportionate share mitigation must directed by the School Board toward a FISH Capacity improvement identified in the Five Year District Facilities Work Program.
- (h) Upon conclusion of the negotiation period, a second Determination Letter shall be issued. If mitigation is agreed to, the School Board shall issue a new Determination Letter approving the development subject to those mitigation measures agreed to by the local government, developer and the School Board. Prior to preliminary plat, site plan approval or the functional equivalent, the mitigation measures shall be memorialized in an enforceable and binding agreement with the local government, the School Board and the Developer that specifically details mitigation provisions to be paid for by the developer and the relevant terms and conditions. In accordance with 163.3180(6)(h) F.S., having executed a legally binding commitment, school concurrency is satisfied and the development may proceed.

If mitigation is not agreed to, the Determination Letter shall detail why any mitigation proposals were rejected and why the development is not in compliance with school concurrency requirements. A School Capacity Determination Letter indicating either that adequate FISH Capacity is available, or that there is no available FISH Capacity following the ninety (90) day negotiation period as described in Section 13.5 of this Agreement, constitutes final agency action by the School Board for purposes of Chapter 120, F.S.

**13.6 Appeal Process.** A person may appeal a determination made as a part of the School Concurrency Process.

- (a) A person substantially affected by a School Board's adequate FISH Capacity determination made as a part of the School Concurrency Process may appeal such determination through the process provided in Chapter 120, F.S.
- (b) A person substantially affected by a local government decision made as a part of the School Concurrency 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 section (a) above.

## **SECTION 14. OVERSIGHT**

**14.1 Oversight.** The COC will serve as the required oversight committee for school concurrency to monitor and annually evaluate the school concurrency program relative to the County and City adopted Comprehensive Plans.

- (a) The monitoring and evaluation of the school concurrency process is required pursuant to Section 163.3180(6)(i)4.c., F.S., and Section 2 of this Agreement. The COC shall be responsible for preparing an annual assessment report on the effectiveness of the School Concurrency System. The report will be made available to the public and presented at the first semi-annual COC meeting.
- (b) The COC members shall be invited to attend all meetings referenced in Section 2 and shall receive copies of all reports and documents produced pursuant to this Agreement. The COC shall evaluate the effectiveness of the CSAs for measuring the LOS and consider making recommendations to amend the CSA Map.
- (c) By September 1st of each year, the COC shall receive the proposed Five Year District Facilities Work Program. The COC will report to the School Board, the County, and the Cities on whether or not the proposed Five Year District Facilities Work Program maintains the adopted Level of Service in each CSA by adding enough projects to increase the FISH Capacity. The COC will examine the need to eliminate any permanent student station shortfalls by including required modernization of existing facilities, and by providing permanent student stations for the projected growth in enrollment over each of the five (5) years covered by the program.

## **SECTION 15. SPECIAL PROVISIONS**

**15.1 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 Cities 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 Cities, as to whether that obligation has been satisfied. Further, the County, the Cities 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 City for the School Board's constitutional or statutory obligation. The County and the Cities 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.

**15.2 Land Use Authority.** The Parties specifically acknowledge that each Local Government is responsible for approving or denying comprehensive plan amendments and development orders within its own jurisdiction. Nothing herein represents or authorizes a transfer of this authority to any other party.

## **SECTION 16. AMENDMENT PROCESS, NOTICE, AND TERM OF AGREEMENT**

- 16.1 Amendment of the Agreement.** This Agreement may be amended by written consent of all parties to this Agreement after a COC review. The Agreement will remain in effect until amended in accordance with Florida Statutes.
- 16.2 Notice Requirements.** County, City or Town Manager/Administrator, School Board Superintendent, or as designated by the individual jurisdiction. Notices to the COC shall be delivered to all COC representatives.
- 16.3 Repeal of the Agreement.** If the Florida Statute as it pertains to school planning coordination and school concurrency is repealed, the Agreement is terminated. Parties desiring to continue the Agreement may do so by written consent.
- 16.4 Termination of the Agreement.** No party to this Agreement may terminate its participation in the agreement except through the exemption process in which a municipality may not be required to participate in school concurrency when demonstrating that all the requirements are no longer having a significant impact on school attendance, per Section 163.31777(3), F.S., at the time of a local government Evaluation and Appraisal Report, by providing a sixty (60) day written notice to the other Parties to this Agreement.
- 16.5 Withdrawal.** Withdrawal from the Agreement by any party shall not alter the terms of the Agreement with respect to the remaining signatories.
- 16.6 Violations.** No provisions of this Agreement shall be in violation of Florida Statutes.

## **SECTION 17. RESOLUTION OF DISPUTES**

- 17.1 Dispute Resolution.** 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, F.S.

## **SECTION 18. EXECUTION IN COUNTERPARTS**

- 18.1 Agreement Execution.** 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.

## **SECTION 19. SUPERSESSION OF PREVIOUS AGREEMENTS**

- 19.1 Supersession.** This Agreement supersedes any and all previous Interlocal Agreements for Public School Facility Planning and/or School Concurrency between any of the Parties to this Agreement. Any such Agreements are hereby null and void.

**IN WITNESS WHEREOF**, this Interlocal Agreement has been executed by and on behalf of Brevard County Board of County Commissioners, the Cities and Towns of Cape Canaveral, Cocoa, Cocoa Beach, Grant-Valkaria, Indialantic, Indian Harbour Beach, Malabar, Melbourne, Melbourne Beach, Palm Bay, Rockledge, Satellite Beach, Titusville, West Melbourne and the School Board of Brevard County on this 16 day of September, 2014.

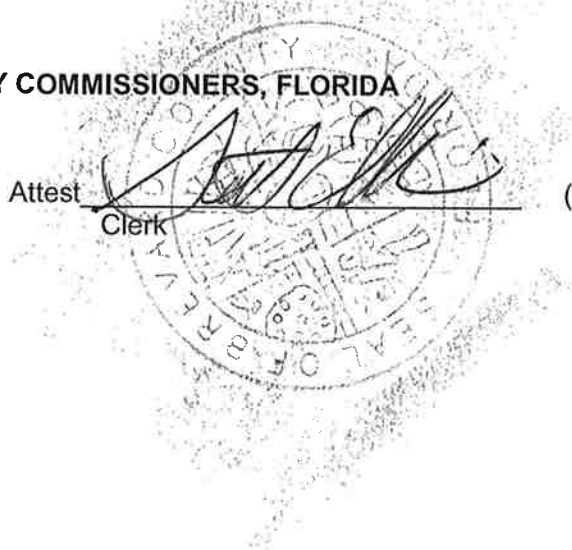
**BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS, FLORIDA**

  
\_\_\_\_\_  
Chairperson, Brevard County  
Board of County Commissioners

Attest

  
\_\_\_\_\_  
Clerk

(Seal)



DULY PASSED AND ADOPTED BY THE SCHOOL BOARD OF BREVARD COUNTY,  
THIS \_\_\_\_\_ Day of \_\_\_\_\_, 201\_\_.

**SCHOOL BOARD OF BREVARD COUNTY, FLORIDA**

\_\_\_\_\_  
Chairman, School Board Brevard County

Attest \_\_\_\_\_ (Seal)  
Superintendent