

TAB 5

SCHOOL CONCURRENCY INTERLOCAL AGREEMENT

**7PM
February 18, 2008**

Background:

The City of Palmetto Planning Department has been participating in a countywide initiative to create a new School Concurrency Interlocal Agreement (“ILA”). Representatives from the municipalities, school board, and the county have routinely met as a Staff Working Group (“SWG”) to address issues such as school locations, service areas, and the coordination of school facility planning efforts. On February 4, 2008, the City Commission approved a final draft of the ILA by a unanimous vote.

Issue:

Although City Commission has already voted on and approved the draft final ILA, formal approval in the form of a resolution is now required. There have been no substantive changes made to the ILA since Commission authorized the Mayor to enter into the agreement. Each signatory to the ILA will be asked to adopt a similar resolution.

- Alternatives:**
1. Adopt Resolution 08- 05
 2. Reject Resolution 08- 05 at this time

Recommendation: City staff recommends adoption of said resolution consistent with Commission’s prior approval of the ILA.

Budget Impact: There is no Budget Impact associated with this item.

**CITY OF PALMETTO, FLORIDA
RESOLUTION 08- 05**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA; REGARDING SCHOOL FACILITY PLANNING; APPROVING THE FORM OF AN AMENDED AND RESTATED INTERLOCAL AGREEMENT FOR PUBLIC SCHOOL FACILITY PLANNING; AUTHORIZING THE EXECUTION, DELIVERY, ACCEPTANCE AND RECORDATION OF SUCH INTERLOCAL AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 163.31777, *Florida Statutes*, requires each county, all non-exempt municipalities within that county, and the district school board to establish by interlocal agreement the joint processes to be used to coordinate the adopted comprehensive plan with the plans of the school board, and the processes for collaborative planning and decision making on population projections and public school siting; and

WHEREAS, in order to provide a means for such coordination, and to comply with the requirements of Section 163.31777, *Florida Statutes*, the School Board of Manatee County (the "School Board"), the City of Palmetto and each other non-exempt municipality within the County (collectively, the "Cities"), and Manatee County (the "County"), in 2003, entered into an Interlocal Agreement for Public School Facility Planning (the "Prior Interlocal Agreement"), which provided for cooperation between the Cities, the County and the School Board, to coordinate the planning and construction of public schools; and

WHEREAS, Section 163.01, *Florida Statutes*, the "Interlocal Cooperation Act", authorizes the Cities, the County and the School Board to enter into interlocal agreements to jointly exercise common powers to carry out the purposes and requirements of Part II, Chapter 163, *Florida Statutes*, the "Growth Management Act"; and

WHEREAS, in 2005, the Florida Legislature enacted comprehensive amendments to the Growth Management Act to require cities, counties and school boards to jointly establish standards and procedures for school concurrency by, among other things, amending their existing interlocal agreements established pursuant to Section 163.31777, *Florida Statutes*; and

WHEREAS, in order to carry out the purposes and requirements of the Growth Management Act, as amended in 2005, the Cities, the County and the School Board wish to enter into an Amended and Restated Interlocal Agreement for Public School Facility Planning to jointly amend and restate the Prior Interlocal Agreement in its entirety, in order to establish standards and procedures for school concurrency pursuant to Section 163.31777, *Florida Statutes*, and to refine and revise the

mutually agreed upon processes for collaborative planning and decision making on population projections and public school siting.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, AS FOLLOWS:

SECTION 1. APPROVAL OF INTERLOCAL AGREEMENT. The City Commission of the City of Palmetto hereby approves the Amended and Restated Interlocal Agreement for Public School Facility Planning substantially in the form attached hereto and incorporated herein as **Exhibit A** (the "Interlocal Agreement").

SECTION 2. AUTHORIZATION TO EXECUTE, ACCEPT AND RECORD. The Mayor of Palmetto is hereby authorized and directed to execute and deliver the Interlocal Agreement, substantially in the form attached hereto as **Exhibit A**, with such insubstantial changes, insertions and omissions, and with the exhibits called for therein, as may be approved by the City Commission consistent with this Resolution, the execution thereof being conclusive evidence of such approval.

SECTION 3. RESOLUTIONS IN CONFLICT. This Resolution hereby supersedes all resolutions, or parts thereof, in conflict herewith to the extent of such conflict.

SECTION 4. SEVERABILITY. It is the intent of this Resolution to comply with the requirements of all applicable law and constitutional requirements. If any provision or portion of this Resolution is declared by any court of competent jurisdiction to be void, unconstitutional or unenforceable, then such provision or portion shall be deemed null and void but all remaining provision and portions of this Resolution shall remain in full force and effect.

SECTION 5. EFFECTIVE DATE. This Resolution shall take effect as provided by law.

PASSED AND DULY ADOPTED, in regular session, by the City Commission of the City of Palmetto, with a quorum present and voting, this 18th day of February, 2008.

CITY OF PALMETTO, FLORIDA, BY
AND THROUGH THE CITY COMMISSION
OF THE CITY OF PALMETTO

By: _____
LAWRENCE E. BUSTLE, JR., MAYOR

ATTEST: James R. Freeman
City Clerk

By: _____
City Clerk/Deputy Clerk

EXHIBIT A

FORM OF

**AMENDED AND RESTATED
INTERLOCAL AGREEMENT**

for

PUBLIC SCHOOL FACILITY PLANNING

Final for Execution
02/01/08

**AMENDED AND RESTATED
INTERLOCAL AGREEMENT
for
PUBLIC SCHOOL FACILITY PLANNING**

City of Bradenton
City of Holmes Beach
City of Palmetto
Manatee County
School Board of Manatee County
Town of Longboat Key

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**AMENDED AND RESTATED
INTERLOCAL AGREEMENT
for
PUBLIC SCHOOL FACILITY PLANNING**

This Interlocal Agreement is made and entered into as of the 1st day of March, 2008, by and among the **City of Bradenton, Florida**, a municipal corporation created and existing under the laws of the State of Florida (“Bradenton”), the **City of Holmes Beach, Florida**, a municipal corporation created and existing under the laws of the State of Florida (“Holmes Beach”), the **City of Palmetto, Florida**, a municipal corporation created and existing under the laws of the State of Florida (“Palmetto”), **Manatee County, Florida**, a political subdivision of the State of Florida (the “County”), the **Town of Longboat Key, Florida**, a municipal corporation created and existing under the laws of the State of Florida (“Longboat Key”, and, collectively with Bradenton, Holmes Beach and Palmetto, the “Cities”), and the **School Board of Manatee County, Florida**, a body corporate created and existing under the laws of the State of Florida (the “School Board”).

RECITALS

WHEREAS, Section 163.3180(13)(g), *Florida Statutes*, provides that each of the Cities and the County has jurisdiction for land use and growth management decisions within its unincorporated boundaries including authority to approve or deny comprehensive plan amendments and development orders;

WHEREAS, Section 163.3180(13)(g), *Florida Statutes*, establishes the School Board’s constitutional and statutory obligations to provide a uniform system of free public schools on a countywide basis to the residents of Manatee County;

WHEREAS, Section 1013.33, *Florida Statutes*, requires that the location of public educational facilities (defined as facilities which house students for instructional purposes) must be consistent with the comprehensive plan of the appropriate local government;

WHEREAS, Sections 163.3177(6)(h)1 and 2, *Florida Statutes*, require each local government to adopt an intergovernmental coordination element as part of its 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 board, and describe the processes for collaborative planning and decision making on population projections and public school siting;

WHEREAS, Section 163.3177(6)(h)2, *Florida Statutes*, further requires each county, all non-exempt municipalities within that county, and the district school board to establish by interlocal or other formal agreement executed by all affected entities, the joint processes described above consistent with their adopted intergovernmental coordination element;

WHEREAS, Section 163.31777, *Florida Statutes*, further requires that each county and non-exempt municipality within that county enter into an interlocal agreement with the district

school board to establish jointly the specific ways in which plans and processes of the district school board and the local governments are to be coordinated;

WHEREAS, in order to provide a means for such coordination, and to comply with the requirements of Section 163.31777, *Florida Statutes*, the County, the School Board and the Cities, in 2003, entered into an Interlocal Agreement for Public School Facility Planning (the "Prior Interlocal Agreement"), which provided for cooperation between the County, the Cities and the School Board, to coordinate the planning and construction of public schools;

WHEREAS, Section 163.01, *Florida Statutes*, the "Interlocal Cooperation Act", authorizes the Cities, the County and the School Board to enter into interlocal agreements to jointly exercise common powers to carry out the purposes and requirements of Part II, Chapter 163, *Florida Statutes*, the "Growth Management Act";

WHEREAS, in 2005, the Florida Legislature enacted comprehensive amendments to the Growth Management Act to require cities, counties and school boards to jointly establish standards and procedures for school concurrency by, among other things, amending their existing interlocal agreements established pursuant to Section 163.31777, *Florida Statutes*;

WHEREAS, in order to carry out the purposes and requirements of the Growth Management Act, as amended in 2005, the Cities, the County and the School Board wish to enter into this Agreement to jointly amend and restate the Prior Interlocal Agreement in its entirety, in order to establish standards and procedures for school concurrency pursuant to Section 163.31777, *Florida Statutes*.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto agree as follows:

I. AUTHORITY

This Interlocal Agreement is entered into pursuant to the powers and authority granted to the parties under the Constitution and laws of the State of Florida, including expressly (but not limited to) Sections 1 and 2 of Article VIII of the Constitution of the State of Florida, Chapters 125 and 166 of Florida Statutes, Part II of Chapter 163 of Florida Statutes, Part II of Chapter 1001 of Florida Statutes, and Section 163.01 of Florida Statutes.

II. AMENDMENT AND RESTATEMENT

This Agreement constitutes the amendment and restatement of the Prior Interlocal Agreement in its entirety, such that only those terms of the Prior Interlocal Agreement that are expressly restated herein shall continue to remain in full force and effect after the effective date of this Agreement, and then only in the manner restated herein. Upon the effective date hereof, all matters addressed herein shall be governed solely by the terms and provisions of this Agreement, and no term, condition, or obligation of any party set forth in this Agreement shall be conditioned upon or subject to any term, condition, or obligation of the Prior Interlocal Agreement.

III. DEFINITIONS

Unless defined otherwise herein, the following words and phrases shall have the following meanings:

3.1 “Act” means Section 163.01 and Part II of Chapter 163, *Florida Statutes*.

3.2 “Affected Local Government” means, (a) in the case of a proposed School Facility or school site, any party hereto who has land development jurisdiction, pursuant to the Act, over the proposed Facility or site, or provides water or wastewater utility service to the service area encompassing the Facility or site, (b) in the case of Residential Development, any party hereto who has land development jurisdiction, pursuant to the Act, over the property upon which the Residential Development is proposed, or (c) in the case of any proposed modification of a School Service Area, any party hereto who has land development jurisdiction, pursuant to the Act, over all or a portion of the School Service Area or an adjacent School Service Area.

3.3 “Comprehensive Plan” or “Comp Plan” means the comprehensive plan of any City or the County, as the case may be, adopted pursuant to the Act.

3.4 “Concurrency Determination” means a certificate of level of service or other level of service determination that constitutes the final concurrency determination of an Affected Local Government pursuant to a concurrency management system established and maintained pursuant to the Act and Article VII, hereof.

3.5 “Contiguous Service Area” means a service area sharing a boundary with another service area without crossing the Manatee River. School service area 1 is contiguous with only school service area 2. School service area 2 is contiguous with school service areas 1 and 3. School service area 3 is contiguous with school service areas 2 and 4. School service area 4 is contiguous with only school service area 3.

3.6 “Development” shall have the meaning set forth in Section 380.04, *Florida Statutes*.

3.7 “Development Agreement” means a local development agreement authorized pursuant to Section 163.3220 et seq., of the Act, a participation agreement or reimbursement agreement, or other legally enforceable agreement to be entered into among the School Board, an Affected Local Government and a developer pursuant to Article VII, hereof.

3.8 “Development Plan” means any site plan, subdivision approval or other instrument which, pursuant to the Comprehensive Plan or LDC of an Affected Local Government, operates as a development order as defined in the Act.

3.9 “Educational Facility” or “Educational Facilities” shall have the meaning set forth in Section 1013, *Florida Statutes*.

3.10 “Financially Feasible” shall have the meaning set forth in the Act.

3.11 “Horizontal Construction” shall be that construction or excavation for infrastructure, including, that relative to streets, sewer, water, stormwater, earthmoving, intended to serve or for the benefit of residential development. Such construction or excavation may include ancillary facilities which may be dedicated, granted or otherwise conveyed to and accepted by, a public agency related to the subject residential development.

3.12 “Impact Fee” means any fee levied for new Development in order to fund School Facilities needed to serve such Development.

3.13 “Land Development Code” or “LDC” means the code of land development regulations of any City or the County, as the case may be, adopted pursuant to the Act.

3.14 “Level-of-Service Standards” shall mean the standards for level-of-service for school facilities required pursuant to the Act and established pursuant to Section 7.3, hereof.

3.15 “Proportionate-Share Mitigation” means the process authorized pursuant to Section 163.3180(13)(e) of the Act, and established pursuant to Section 7.7, hereof, or its successor provision, to provide developer contributions to resolve deficiencies in school capacity.

3.16 “Residential Development” means Development of residential units, which shall not include the development of age-restricted residential units pursuant to Section 760.29(4), *Florida Statutes*, and in accordance with the Federal Fair Housing Amendments, but shall include the conversion of such age-restricted units to residential units that are no longer subject to such age restrictions.

3.17 “School Capacity Program” means a public school capital facilities program that is consistent with the capacity components of the Work Program and that is maintained and jointly approved by the parties hereto in accordance with Section 5.5, hereof.

3.18 “School Capacity Tracking System” or “System” means the electronic records system established pursuant to Section 7.4, hereof, for the purpose of tracking the available school capacity within the boundaries of the School Service Areas.

3.19 “School Facility” or “School Facilities” means a facility or facilities of the School Board which house students for instructional purposes, and which are provided to the residents of Manatee County, including the Cities, pursuant to Section 1 of Article IX of the Constitution of the State of Florida.

3.20 “School Service Area” or “School Service Areas” means the service area or areas, as the case may be, established pursuant to Section 7.2, hereof, for tracking and measuring school concurrency in accordance with Section 163.3180(13)(g)(5), *Florida Statutes*. For the purpose of this interlocal agreement and for determining capacity for a particular school service area, all of the capacity of a school shall be assigned to the school service area within which it is

physically located, and such capacity may be shifted in analyzing the capacity of the contiguous service area pursuant to Section 7.3 of this agreement.

3.21 “Staff Working Group” means the working group established pursuant to Section 4.1.B, hereof.

3.22 “Superintendent” means the Superintendent of Schools of the School Board or his designee.

3.23 “Vertical Construction” shall be that construction authorized by a building permit for residential development. Such construction may include ancillary facilities which may be dedicated, granted, or otherwise conveyed to and accepted by a public agency related to the subject residential development.

3.24 “Work Program” means the District Facilities Work Program, as defined in Section 1013.35(1)(b), *Florida Statutes*.

IV. COORDINATION AND IMPLEMENTATION

4.1 Coordination.

A. Elected Officials, Joint Work Session. The elected officials of the County, the Cities and the School Board, or designated representatives of each, shall meet at least annually for a joint meeting or work session. The joint meeting or work session shall provide opportunities for the County, the Cities, and the School Board to discuss issues of mutual concern regarding coordination of land use and School Facility planning, including such issues as population and student projections, development trends, school needs including renovations and closures that impact school capacity, collocation and joint use opportunities, and off-site improvements. The Superintendent shall be responsible for making meeting arrangements and providing notification. Meetings conducted pursuant to this Section may be incorporated into joint meetings of the elected officials of the School Board, Cities and County in which matters other than school planning issues are considered.

B. Staff Working Group, Periodic Meetings. A Staff Working Group consisting of planning and other staff designated by the County, School Board, and Cities shall meet as needed, and at least annually, to discuss issues regarding coordination of land use and School Facility planning, including such issues as population and student projections, development trends, school needs including renovations and closures that impact school capacity, collocation and joint use opportunities, and off-site improvements. The Superintendent shall be responsible for making meeting arrangements and providing notification to members of the semiannual meetings. Any member of the Staff Working Group may schedule a meeting when necessary, in which case such member shall be responsible for making the meeting arrangements and providing the notifications.

C. Meetings, Notice. The meetings referenced in Section 4.1.A shall be noticed to the public to the extent required by, and in accordance with, applicable law to allow for public participation in the implementation of this Agreement.

4.2 Implementation and Overview of the ILA. The Staff Working Group shall review and shall make an Annual Assessment Report on the effectiveness of this Agreement. Such report may be made in the form of a written document or an oral presentation. The report shall be presented at the meeting scheduled pursuant to Section 4.1.A, hereof. The parties hereto shall make reasonable efforts to implement this Agreement in a timely and efficient manner, and shall utilize the meetings conducted pursuant to Section 4.1, hereof to address and resolve issues that inhibit the implementation of this Agreement.

V. SCHOOL FACILITIES PLANNING

5.1 Existing Development Commitments. By June 1, 2008, the local governments shall provide the School Board with a written report of the following information:

- a. Type, number, and location by project name and School Service Area for all residential developments with over ten (10) units approved by the municipalities or county within the past five years or for active developments of regional impact; and
- b. Type, number, and location by project name and School Service Area of all residential certificates of occupancy issued by the municipalities or county for all residential developments with over ten (10) units approved by the municipalities or county within the past five years or for active developments of regional impact during the life of the Development of Regional Impact (DRI).

5.2 Growth and Development Trends. By March 1 of each year, the Cities and County shall provide the School Board with a written report of the following information for the previous calendar year:

- a. Type, number and location by project name and School Service Area of residential units approved for Development by such City or County;
- b. Type, number and location by project name and School Service Area of all residential certificates of occupancy issued by such City or County;
- c. A summary of Development approvals (including without limitation any approved Development Agreement) and issuances of certificates of level of service, including and conditions for the provision of mitigation of school capacity deficits pursuant to Article VI or VII, hereof; and
- d. A draft Capital Improvements Plan (CIP) with updates and the final version to be submitted after official adoption.

The Cities and County shall make reasonable efforts to submit such information in a format that can be incorporated into a geographic information system database. The School Board and Staff Working Group shall use the information provided pursuant to this Section to assist in producing the enrollment projections and School Capacity Program required pursuant to this Article V.

5.3 Growth and Enrollment Projections.

A. DOE Projections. To the extent required by law, the School Board shall utilize the Department of Education (“DOE”) County-wide student enrollment projections. The School Board may submit a request to DOE that the projections be adjusted to reflect actual enrollment and development trends not anticipated by the DOE projections. In formulating such a request, the School Board shall consider the information provided by the Cities and County regarding future population projections and growth.

B. Population Projections. By March 1 of each year, the County and Cities shall provide the School Board with reasonable population projections, on an annual basis for a five-year period, on a jurisdiction-wide basis and by School Service Areas. Such estimates shall be based upon criteria agreed upon by the County and Cities, including without limitation the School Capacity Tracking System, U.S. Census Data, and DOE enrollment projections. The County and Cities may utilize population projections prepared by the U.S. Census, the University of Florida Bureau of Economic and Business Research, or other generally accepted sources in preparing these projections. The School Board shall use these projections to determine the rate of growth by School Service Area and allocate the student projections on an annual basis for a five-year period.

5.4 Work Program & Educational Plant Survey. The Staff Working Group, at the annual meeting, shall evaluate and make recommendations regarding the need for new school capacity, the location of Educational Facilities, or capacity related improvements to existing Educational Facilities, in terms of consistency with the Comprehensive Plans and this Agreement. Such recommendations shall be taken into consideration by the School Board in the preparation of the Work Program and Educational Plant Survey pursuant to Section 1013.33(3)(f) of the Florida Statutes.

5.5 School Capacity Program. The School Board, the Cities, and the County shall participate in the following process for preparation, amendment and approval of a public school capital facilities program related to increases or decreases in student stations, herein referred to as School Capacity Program pursuant to Section 163.3180(13)(g)(4), *Florida Statutes*.

A. Preparation. By July 1 of each year, the School Board shall provide the proposed annual update of the School Capacity Program to the Staff Working Group for review and comment for consistency with the Comprehensive Plan with respect to:

- a. Projected enrollment and projected capacity;
- b. Level-of-Service Standards; and

c. Financial Feasibility.

Within 30 days of submission of the School Capacity Program to the Staff Working Group, the Staff Working Group shall provide written comments to the School Board for its consideration. The School Board shall amend the School Capacity Program to reflect such comments, or provide written reasons why any such comments were not included in the School Capacity Program, prior to submitting the School Capacity Program for joint approval.

B. Approval. By September 15 of each year, the School Capacity Program shall be submitted to the governing boards of the School Board, the County and each of the Cities either separately or in joint meeting or meetings, for approval. In no event shall a City or the County attempt to modify the School Capacity Program.

C. Incorporation into Comprehensive Plan. By December 31 of each year, each local government shall incorporate the School Capacity Program into their Capital Improvements Element Plan and Public School Facilities Element.

D. Financial Feasibility. The School Capacity Program shall ensure the achievement and maintenance of the adopted Level-of-Service Standards in the established School Service Areas by the end of the planning period and thereafter by adding a new fifth year during the annual update pursuant to the Level-of-Service Standards and School Service Areas in Article VII of this agreement.

VI. PLANNING AND DEVELOPMENT REVIEW

6.1 Local Planning Agency Representation. The School Board shall appoint a representative to serve as a non-voting member of the local planning agencies of the County and Cities. The School Board representative shall be noticed, provided an agenda, and invited to attend and/or provide comments to the County and Cities and their respective planning agencies. With respect to any application that is subject to review by a local planning agency and that is subject to Superintendent review pursuant to Section 6.3, hereof, the Superintendent shall provide the staff of the respective County or City with a copy of the School Report generated pursuant to Section 6.4, which shall be entered into the record of the proceeding of the local planning agency.

6.2 Application Transmittal.

A. Application Submission. Within ten (10) days after the submission of a complete application for a Comprehensive Plan amendment, rezone, special permit, special exception, or other site plan approval for Development (including, without limitation, Residential Development), the County and Cities shall submit a notice and copy of proposed applications and supporting documents to the Superintendent. The application information shall be entered

into the tracking system pursuant to Section 7.4 of this agreement prior to delivery to the Superintendent. The Superintendent shall base capacity reservations upon the order in which the local governments enter the application information into the tracking system. Such notice shall be provided in writing to the Superintendent, and the Superintendent shall receive information packets in the same manner as other departments of the County or City assigned to review the application.

B. Notice of Public Hearings. Each of the Cities and the County shall provide the Superintendent with specific written notice in accordance with applicable law before any public hearing is held by a governing body, local planning agency, or hearing officer to consider any application described above in Section 6.2.A. If, in the judgment of the staff or legal counsel of the City or County, the attendance of the Superintendent is needed in order for the Superintendent to provide testimony, such staff or legal counsel shall request the Superintendent's attendance as far in advance as is reasonably possible, but no fewer than ten (10) days in advance of the public hearing.

6.3 Applications Subject to Review. The following types of applications for Residential Development shall be reviewed by the Superintendent:

- a. Comprehensive Plan Amendments. Comprehensive Plan Amendments providing for any increase in residential density;
- b. Zoning Changes. Zoning map amendments regarding permissible Residential Development; and
- c. Development Plan Approvals. Approvals of or amendments to Development Plans for Residential Development that authorize the new construction of ten (10) or more residential units.

The Superintendent may, in his discretion, review and comment upon any other application submitted pursuant to Section 6.2, hereof.

6.4 Superintendent Review. Within thirty (30) days (or fewer when required by general law or requested, with reasonable notice to the Superintendent, by the Affected Local Government) of the receipt of a complete application for Residential Development from an Affected Local Government pursuant to Section 6.3, the Superintendent shall review the application and provide to the Affected Local Government a written School Report that includes the following items, as applicable pursuant to the foregoing matrix:

School Report Matrix				
Issue to be Reviewed	Comprehensive Plan Amendment	Rezone	Development Plan	Concurrency Determination

School Report Matrix				
Issue to be Reviewed	Comprehensive Plan Amendment	Rezone	Development Plan	Concurrency Determination
A statement of the available and projected school capacity by elementary, middle, and high school within the School Service Area in which the subject property is located, and within any contiguous School Service Area, based upon the School Facilities that will be in place or under actual construction within one to three (1-3) years after the approval of the application.	N/A	N/A	N/A	✓
A preliminary statement of available and projected school capacity by elementary, middle, and high school within the School Service Area in which the subject property is located, and within any contiguous School Service Area, based upon the Five Year Capital Improvements Plan. The preliminary statement does not ensure that capacity will be available when performing the concurrency determination.	✓	✓	✓	N/A
The projected or potential number of students generated from the Development based on student generation rates established pursuant to Section 7.4.D, hereof, and on the number and type of proposed or potential dwelling units.	✓	✓	✓	✓
A narrative of the extent to which the proposed application will potentially create a deficit in capacity or result in a failure to achieve and maintain a Level-of-Service established pursuant to Section 7.3, hereof.	N/A	N/A	✓	✓
An analysis of compatibility with School Facilities.	✓	✓	✓	N/A
An analysis of whether the proposed Development provides for traffic circulation plans to serve School Facilities and the surrounding neighborhood, including any needed access improvements, sidewalks, off-site signalization, or safety-related signage.	N/A	N/A	✓	N/A

School Report Matrix				
Issue to be Reviewed	Comprehensive Plan Amendment	Rezone	Development Plan	Concurrency Determination
An analysis of the location of existing or proposed school bus stops and turnarounds in or adjacent to the Development.	N/A	N/A	✓	N/A
Any other relevant items that affect School Facilities.	✓	✓	✓	N/A

6.5 Development Consideration and Approval.

A. Consideration of Report. An Affected Local Government shall not approve any application that is subject to review pursuant to Section 6.3, hereof, unless and until it has received a School Report pursuant to Section 6.4, hereof. The Affected Local Government shall enter such report into its record for the subject application, and shall take into consideration the statements and analysis set forth in the report in determining whether the application satisfies the requirements of the Act and the Affected Local Government’s Comprehensive Plan and LDC. In such case, such Affected Local Government, the School Board or the applicant, may propose measures to mitigate any deficits or anticipated Level-of-Service failures pursuant to a Development Agreement authorized pursuant to Section 7.8, hereof. Notwithstanding the foregoing, this Section 6.5.A shall not be construed to require an Affected Local Government to deny or reject an application for Residential Development, nor shall it be construed to require the School Board to consent to or approve any Development Agreement pursuant to Section 7.8, hereof.

B. Requirements for School Capacity. In accordance with applicable law, any Affected Local Government may, at its option, establish in its Comprehensive Plan and/or LDC, standards to require that school capacity deficits or anticipated Level-of-Service failures be addressed during the consideration of some or all of the categories of applications described in Section 6.3, hereof. In such case, such Affected Local Government may require that the applicant take appropriate steps to mitigate such deficits or anticipated Level-of-Service failures pursuant to a Development Agreement authorized pursuant to Section 7.8, hereof, or to undertake other legally available measures to address the issue. This Section 6.5.B. shall not be construed to require any Affected Local Government to establish such requirements, nor shall it be construed to require the School Board to consent to or approve any Development Agreement pursuant to Section 7.8, hereof.

VII. SCHOOL CONCURRENCY

7.1 School Concurrency. Each City and the County shall establish, maintain and implement a concurrency management system for school concurrency in accordance with the requirements of the Act and this Article VII.

7.2 School Service Areas.

A. School Service Areas. In accordance with the criteria and standards set forth in Section 7.2.B, hereof, the School Service Areas shall be established substantially as depicted in Exhibits "A" and "B" hereto. Such School Service Areas shall be included in the supporting data for the incorporation of the Public School Facilities Elements into the Comprehensive Plans of the Cities and County pursuant to Section 8.1.B.b, hereof.

B. Criteria & Standards for Establishing & Modification. When establishing or modifying new or existing School Service Areas, the parties shall consider the following criteria and standards:

- a. Achievement and maintenance of the Level-of-Service Standards established pursuant to Section 7.3, hereof;
- b. Maximizing utilization of school capacity;
- c. Transportation costs;
- d. Court-approved desegregation plans;
- e. Relationship to school attendance zones;
- f. Anticipated demand and student generation based upon proposed or approved Residential Development;
- g. Patterns of Development pursuant to the Comprehensive Plans of Affected Local Governments;
- h. Capital projects included in the School Capacity Program and any affected Public School Facilities Element;
- i. Neighborhoods;
- j. Natural and manmade boundaries, including water ways, arterial roadways, and political boundaries; and
- k. Such other relevant matters as are mutually agreed to by the parties hereto.

C. Modification of School Service Areas. To assure ongoing compliance with the criteria and standards set forth in Section 7.3.B, hereof, the School Service Areas shall be reviewed annually at a joint meeting of the parties, held pursuant to Section 4.1.A, hereof, to determine if a need to modify one or more School Service Areas exists. Subject to the prior approval by resolution of the governing board of each Affected Local Government, the Superintendent may approve changes to such School Service Area. The Superintendent shall

provide written notice to all parties hereto once any such change has been approved. In the event any City or County objects to a modification of a School Service Area, any party may avail itself of the dispute resolution procedures authorized pursuant to Article X, hereof.

7.3 Level-of-Service Standards

A. Establishment. Level-of-Service standards shall be incorporated into the Local Governments Comprehensive Plans pursuant to Section 8.1. The Level-of-Service standards shall be applied consistently within each local government in Manatee County for purposes of implementing school concurrency, determining if sufficient school capacity exists to accommodate a particular development application, and determining financial feasibility. Each school type (elementary, middle, and high school) may have a different level-of-service. The level-of-service shall be applied individually within each school service area for elementary and middle schools and district-wide for high schools.

B. Contiguous School Service Area. If the adopted Level-of-Service Standard cannot be met in a particular service area where school capacity is available in a contiguous area, development impacts shall be shifted to the contiguous service areas with available capacity until the contiguous area reaches the level-of-service standards pursuant to Section 163.3180(13)(c)(3), *Florida Statutes*.

C. Student Projections. Student projections shall be based upon the five-year Department of Education Capital Outlay Full-Time Equivalent (COFTE) student projections for Manatee County allocated by school service area based on the growth and development trends provided by the Local Governments pursuant to Section 5.2.

D. Capacity. The School Board hereby selects Florida Inventory of School Houses (FISH) permanent capacity as the uniform methodology to determine the capacity of each school. The capacity shall include all capital improvements approved in the School Capacity Program. The School Board may use relocatable classrooms to provide temporary capacity while funded schools or school expansions are being constructed. The temporary facilities are not included in permanent FISH capacity for the school concurrency determination.

E. Level-of-Service Standards. The Level-of-Service Standards allow for a service area to warrant a need for additional capacity that can be economically operated by the School District. The following are the level-of-service standards for each school type:

- a. Elementary School – 110% of permanent FISH capacity based on the School Service Areas (SSA);
- b. Middle School – 105% of permanent FISH capacity based on the School Service Areas (SSA); and
- c. High School – 100% of permanent FISH capacity district-wide.

F. Modification. The Level-of-Service Standards shall be reviewed annually at a joint meeting of the parties, held pursuant to Section 4.1.A, hereof, to determine if a need to modify such Standards exists. No party to this Agreement shall amend its Comprehensive Plan to modify a Level-of-Service Standard unless all parties hereto have agreed to such modification by Amendment of this Agreement as provided in Section 12.3, hereof, which amendment shall include a schedule of adoption of the modification into the Comprehensive Plans of the Cities and County. Any Party may propose such a modification. Once this Agreement has been so amended, the Cities and the County shall adopt the revised Level-of-Service Standards into the Public School Facilities Element and Capital Improvements Element of their Comprehensive Plans pursuant to the procedures in Part II of Chapter 163, *Florida Statutes*.

7.4 School Capacity Tracking System.

A. Establishment & Technological Maintenance. Manatee County shall establish and perform technological maintenance for an electronic records system of existing and planned Residential Development for purposes of tracking available school capacity, to be known as the Manatee County School Capacity Tracking System.

B. Access & Data Maintenance. All parties hereto shall have access to the System to view existing student capacity for any School Service Area. Additionally, each Affected Local Government shall have access to the System and shall be obligated to update all data related to Residential Development within the boundaries of its respective jurisdiction. The information required to be entered into the database pursuant to Section 7.4.C, hereof, shall be entered by the Affected Local Government for the following matters:

- a. Allocations for school capacity for Residential Development described in Section 7.9 or which have received approval pursuant to Section 13.2; and
- b. Reservation for school capacity for residential development described in Section 7.10.

C. Information. For each of the above matters, the following information shall be entered into the System by the local government for completed applications prior to delivery of the application and supporting documents to the Superintendent for review pursuant to Section 6.4 of this Agreement and for all subsequent updates to the application that affect school concurrency:

- a. Date and time application deemed complete;
- b. Project name;
- c. Project number;
- d. Project address, school service area, and jurisdiction;

- e. Name of property owner and contact information;
- f. Type of approval;
- g. Number of units by type and proposed build out dates; and
- h. Projected students generated by the development and phasing/timing of development consistent with Section 7.4.D.

As the following information becomes available, it shall be promptly entered by the local government into the database:

- i. Date of issuance for the Certificate of Level-of-Service;
- j. Expiration date of the Certificate of Level-of-Service;
- k. Local government contact (planner); and
- l. Reservation of school capacity.

D. Student Generation Rates. On or about June 1 of each year, commencing June 1, 2009, the School Board shall promulgate student generation rates by type of Residential Development and school type, to be used uniformly by the County, Cities and School Board to determine school capacity needs for Residential Development. Such student generation rates shall be based upon empirical data and studies.

E. Operational Procedures. The parties hereto may, from time to time, by joint resolution, mutually agree to and establish procedures for the operation and maintenance of the School Capacity Tracking System, consistent with the Act and this Agreement.

7.5 Uniform School Concurrency Procedures. Pursuant to Section 8.2, hereof, each of the Cities and the County shall amend their LDCs to establish uniform school concurrency procedures to provide the following:

A. Term of Concurrency Determination. A Concurrency Determination shall last a maximum of five years, unless an extended term is granted pursuant to a Development Agreement in accordance with Section 7.8, hereof, or a DRI development order. If the related authorization for Horizontal Construction or Vertical Construction expires, or is otherwise terminated, then the Concurrency Determination shall be terminated.

B. Eligibility. Except in the case of a DRI development order or a local development agreement, proposed Residential Development shall not be eligible to receive a Concurrency Determination until it has authorization for commencement of Horizontal Construction or Vertical Construction, whichever occurs first.

7.6 Final Approval; Concurrency Determination. Any application for Horizontal Construction or Vertical Construction shall be submitted by the Affected Local Government to the School Board for review. The Superintendent shall review the application to determine whether the proposed Development will result in a failure to achieve and maintain the Level-of-Service Standard set forth in Section 7.3, hereof, based upon the capacity demand minus the capacity availability.

A. The capacity demand shall be determined by adding the number of enrolled students that reside within a service area, projected students from vested development pursuant to Section 7.9 and 13.2 of this Agreement, projected students from developments with reservations, projected students from development applications that have received a Certificate of Level-of-Service for public school facilities, and the projected students from the applicant.

B. The capacity availability shall be determined by adding the capacity within a School Service Area plus capacity improvements in the School Board Approved Five Year Capital Improvements Plan that will be in place or under actual construction within three years after the issuance of final subdivision or site plan approval, or the functional equivalent multiplied by the Level-of-Service (decimal equivalent of the percentage).

C. If the difference between capacity availability and capacity demand is positive, such that there is sufficient capacity to serve the proposed Development, then the local government shall issue the Concurrency Determination and allocate capacity for the Residential Development.

D. If the difference between capacity availability and capacity demand results in an insufficiency, then the Superintendent shall determine whether there is available capacity in a contiguous School Service Area adequate to handle the insufficiency in capacity.

- a. If so, then the local government shall grant a Concurrency Determination allocating capacity for the residential development; and
- b. If not, then the local government shall not grant a Concurrency Determination unless a Development Agreement is entered into pursuant to Section 7.8.

7.7 Proportionate-Share Mitigation. As required and/or authorized pursuant to the Act, an applicant, the School Board and an Affected Local Government shall or may, as the case may be, enter into a Development Agreement pursuant to Section 7.8, hereof, to satisfy school concurrency for Residential Development through proportionate share mitigation.

A. Options for Proportionate-Share Mitigation. An applicant may propose one or more forms of mitigation as are authorized pursuant to the Act.

B. Negotiation. In the case of mitigation required pursuant to the Act, once an applicant has proposed mitigation, the Affected Local Government and the Superintendent

shall enter into negotiations with the applicant to determine what form of mitigation will be acceptable to the Affected Local Government and School Board, in their respective reasonable discretion. In the case of mitigation authorized but not required pursuant to the Act, the Affected Local Government and the Superintendent may agree to enter into such negotiations in their respective reasonable discretion.

C. Mitigation Calculation. The Proportionate-Share Mitigation shall be in an amount equal to the cost of developing permanent school capacity to meet the needs of the proposed Development while achieving and maintaining the adopted Level-of-Service Standards. The calculation shall equal the cumulative number of students from the proposed development expected to attend the school type at which an insufficiency exists, divided by the capacity for that same school type, multiplied by the estimated cost of construction of that improvement.

D. Valuation of Mitigation, Impact Fee Credits. The value of in-kind contributions accepted by the Affected Local Government and the School Board for mitigation purposes shall equal the actual cost incurred by the Applicant in obtaining or constructing the land or facilities contributed. The value of such contribution may be applied only to any proportionate share mitigation for a specific type of school for which the contribution may benefit. The Applicant shall receive credit on a dollar-for-dollar basis equal to the value of the mitigation toward the Educational Facilities Impact Fees due for the proposed Development for the amount of Proportionate-Share Mitigation contributed to the School Board. The credit shall be applied against only that portion of the Applicant's impact fee that is a *pro rata* equivalent of the specific school type in relation to the aggregate school facilities for which impact fees are assessed. The applicant shall still be responsible for paying the remaining impact fee obligation that corresponds to the school facilities for which no mitigation has been made, notwithstanding that the value of the mitigation may exceed the component of impact fees that correspond to the mitigated school type. This Section shall not be construed to prohibit an Affected Local Government from awarding additional impact fee credits for contributions over and above the amount of proportionate share mitigation required hereunder.

E. Development Agreement. When Proportionate-Share Mitigation is used to satisfy the requirements of school concurrency, the Applicant, the School Board, and the Local Government shall enter into a legally binding Development Agreement, pursuant to and in accordance with Section 7.8, hereof, which records and incorporates the mitigation to be contributed by the Applicant and accepted by the School Board.

F. Form of Mitigation, Discretion of School Board and Affected Local Government. The form of mitigation to be accepted by the School Board and the Affected Local Government shall be subject to approval by the School Board and the Affected Local Government in accordance with applicable law. This Section 7.7 shall not be construed to require the School Board or the Affected Local Government to accept a specific form of mitigation (cash, land donations, in-kind improvements, etc.) offered by an applicant.

7.8 Development Agreements.

A. Required Provisions. A Development Agreement entered into pursuant to Sections 6.5 or 7.7, hereof, shall set forth, at a minimum:

- a. The maximum number of residential units by type to be permitted on the subject property;
- b. A schedule for the Development of the property (which may include phasing in conjunction with the construction of School Facilities) and corresponding deadlines for applicant contributions pursuant to item C., below;
- c. The contributions from the applicant necessary to resolve the deficit in school capacity; and
- d. The amount of capacity reserved by School Service Area and the length of the reservation for the proposed development or extended Concurrency Determination.

B. Requirements related to Development Agreements. In order to enter into a Development Agreement, the School Board and an Affected Local Government each must:

- a. Make a finding that the development agreement will not be detrimental to the school system;
- b. Make a finding that the reservation and/or extension, in light of the anticipated timing of the development, will not result in undue stockpiling of school capacity, or otherwise prevent efficient use of school capacity for Residential Development; and
- c. Prior to approval of such Development Agreement, provide thirty (30) days advance notice to any other Affected Local Government that is located within the affected School Service Area or any contiguous School Service Area.

C. Discretion of School Board and Affected Local Government. Any Development Agreement shall be subject to approval by the Affected Local Government and the School Board in accordance with applicable law. This Section 7.8 shall not be construed to:

- a. Require the School Board to enter into a Development Agreement for any specific application, accept any particular form of mitigation, or consent to the reservation of school capacity, unless the School Board, in its sole and absolute discretion, concludes that to do so would be in the best interest of the School Board and its public school system; or

- b. Require an Affected Local Government to enter into a Development Agreement for any specific application, accept any particular form of mitigation, or consent to the reservation of school capacity, unless the Affected Local Government, in its sole and absolute discretion, concludes that to do so would be consistent with its Comprehensive Plan and serve the public health, safety and welfare.

D. Consistency. In recommending conditions and requirements to be imposed upon applicants to resolve school capacity deficits, and in entering into Development Agreements for the same pursuant to this Section 7.8, the County, the Cities and the School Board shall maintain consistent practices with respect to such conditions and contributions imposed in the various jurisdictions of the County and the Cities. The School Board shall provide the County and Cities with an annual report of the contributions and conditions required of applicants pursuant to this Section 7.8, including a statistical breakdown of the corresponding type and number of residential units, resulting school capacity needs, deficits in school capacity, and location by School Service Area.

7.9 Applicability for Concurrency Determination. The following residential uses shall be considered to have obtained a Concurrency Determination and shall have capacity allocated:

- a. Residential Development having received final authorization to commence Horizontal Construction or Vertical Construction, whichever occurs first, on or before June 30, 2007, for the number and type of units which were approved by the local government; and
- b. Dwelling units for older persons that are exempt from the Manatee County Education Facilities Impact Fee pursuant to Section 2-29-90(a)(5) of the Manatee County Code of Ordinances.

7.10 Reservations. Until the concurrency reservation system is effective for all Affected Local Governments, completed applications for residential development which have not yet received authorization to commence Horizontal Construction or Vertical Construction on or before June 30, 2007, but have been deemed complete shall have capacity reserved for the number and types of units requested in the order the application was deemed complete. Once the development application has received a Concurrency Determination and is approved by the local government, then the appropriate number of reservations will become allocations of school capacity.

7.11 Fees. The School Board may charge a service fee of one-sixth (1/6) of the County Administrative Review Fee assessed and imposed to developers for review of applications of Development Orders and Educational facility Impact Fees. Such fees shall be collected by the Affected Local Government and remitted to the School Board on a regular time frame, which shall not be less than quarterly for Development Agreements. The School Board review fee shall be established by resolution of the School Board.

VIII. CODIFICATION

8.1 Comprehensive Plan Provisions. Each of the Cities and the County shall adopt Comprehensive Plan amendments to implement this Agreement.

A. Development. Prior to the adoption by any of the Cities or the County of any Public School Facilities Element or any Capital Improvements Element respecting School Facilities, the Staff Working Group shall prepare model provisions that meet all requirements of this Agreement, the Act, and other applicable law. The parties shall (a) jointly approve at a joint meeting the model provisions prepared by the Staff Working Group, and (b) cooperate to prepare their respective elements.

B. Adoption. Pursuant to Sections 163.3177 and 163.3187, *Florida Statutes*, by April 1, 2008, each of the Cities and the County shall adopt Comprehensive Plan provisions that:

- a. Establish or update the Public School Facilities Element and Capital Improvements Element of the Comprehensive Plan of the City or County, as the case may be;
- b. Establish the criteria and standards for modification of School Service Areas set forth in Section 7.2, hereof, in the Public School Facilities Element and Capital Improvements Element;
- c. Establish the initial Level-of-Service Standards set forth in Section 7.3.E, hereof, in the Public School Facilities Element and Capital Improvements Element;
- d. Establish the requirements and procedures for Proportionate-Share Mitigation set forth in Section 7.7, hereof, in the Public School Facilities Element and Capital Improvements Element; and
- e. Incorporate into the Capital Improvements Element the most recent School Capacity Program prepared, amended, and jointly approved by the parties pursuant to Section 5.5, hereof.

C. Amendment. By December 31 of each year, each of the Cities and the County shall incorporate into the Capital Improvements Element of its respective Comprehensive Plan the most recent School Capacity Program prepared, amended, and jointly approved by the parties pursuant to Section 5.5, hereof. Any Amendment of this Agreement executed pursuant to Section 12.3, hereof, shall include the process and schedule by which the provisions of such Amendment shall be codified and incorporated by each Affected Local Government. Notwithstanding the foregoing, by December 31 of each year following the initial adoption of Comprehensive Plan provisions implementing this Agreement pursuant to Section 8.1.B, hereof, each of the Cities and the County shall review and, if necessary, amend its

Comprehensive Plan to ensure ongoing compliance with this Agreement, the Act, and all other applicable law.

D. Consistency of Comprehensive Plans; Applicable Law. The Public School Facilities Elements and, with respect to School Facilities, the Capital Improvements Elements adopted by the Cities and County pursuant to this Section 8.1 shall be the same or consistent with those adopted by the other parties as well as with the capital facilities plans of the School Board. The policies and provisions shall be consistent with all provisions of this Agreement, Section 163.3177(12), *Florida Statutes*, Rule 9J-5.025, *Florida Administrative Code*, and all other applicable law.

8.2 Adoption and Consistency of LDC Provisions. Each of the Cities and the County shall adopt LDC amendments to implement this Agreement. Such amendments shall be consistent with this Agreement, the Comprehensive Plan provisions of the City or County, as the case may be, adopted pursuant to Section 8.1, hereof, the Act, and all applicable law.

8.3 Notice to Parties; Public Hearing. At least ten (10) days prior to any public hearing at which the governing body of a City or the County is scheduled to consider the adoption of any Comprehensive Plan or LDC provision which implements or codifies the requirements of this Agreement pursuant to this Article VIII, notice shall be provided by the party considering such provision to all other parties. Such notice shall include the full text of the Comprehensive Plan or LDC provision, including all language being added and deleted. Following any final action taken by the governing body of the City or County with respect to such a proposed Comprehensive Plan or LDC provision, notice shall be provided by the party taking such action to all other parties.

8.4 Implementation and Applicability. Each City and the County shall implement and apply the land development regulations required pursuant to this Agreement in accordance with this Section.

A. Implementation of School Concurrency. Each City and the County shall make the necessary amendments to its Comprehensive Plan pursuant to Sections 8.1 and 8.2, hereof, to implement school concurrency pursuant to Article VII, to take effect no later than April 1, 2008, and shall make the necessary amendments to its LDC to implement such Comprehensive Plan amendments.

B. Implementation of Development Requirements. Each City and the County may make the necessary amendments to its LDC to implement the Development requirements authorized pursuant to Section 6.5 hereof.

C. Applicability. Each City and the County shall include in any Comprehensive Plan or LDC amendment made pursuant to this Section 8.4, provisions for the applicability of such amendments to existing and pending Development applications that:

- a. Ensure compliance with Section 13.2 and 7.9, hereof; and

- b. Comply with applicable law.

IX. SCHOOL PLANNING, COLLOCATION AND SURPLUS PROPERTY

9.1 School Site Selection. The procedures set forth in Sections 9.1, 9.2 and 9.3 of this Agreement are hereby established for the School Board, Cities and County to plan Educational Facilities. Such procedures constitute an alternative process for reviewing a proposed educational facility and site plan, and offsite impacts, pursuant to this Agreement, as authorized by Section 1013.33(14), *Florida Statutes*.

A. Site Selection. When the need for a new school site is identified, the Superintendent has the option of notifying any Affected Local Government in writing that the School Board is looking for a school site in a particular area. The Superintendent may request a meeting with the Staff representative(s) of the Affected Local Government(s) to identify possible locations for a new school site, and to determine whether collocation opportunities are present. If requested by the Superintendent, the Affected Local Government(s) shall provide written information pertaining to levels of service, utilities, zoning and nearby development approvals to School Board staff within fifteen (15) working days of receipt of a written notice of the need for a new school site.

B. Selection Criteria. The Superintendent shall consider appropriate site selection criteria, including, but not limited to, the following:

- a. The location and availability of adequate sites;
- b. The projected cost of a site in comparison with other available sites;
- c. The compatibility of land uses adjacent to the proposed site;
- d. The opportunities for collocation of parks, recreation, and community facilities in conjunction with school sites;
- e. The linkage of School Facilities, parks, libraries, and other public facilities with bikeways, trails, and sidewalks;
- f. The extent to which the proposed site provides a logical focal point for community activities and serves as the cornerstone for innovative urban design standards, including opportunities for shared use and collocation of community facilities;
- g. The extent to which the proposed site is served by adequate public infrastructure, facilities and services, or the extent to which adequate public infrastructure, facilities and services will be available, concurrent with the impacts of the proposed School Facilities;

- h. Whether the proposed School Facility is inconsistent with an approved Development Plan;
- i. The availability and cost of traffic circulation needs to serve School Facilities and surrounding neighborhoods, including any needed access improvements, sidewalks, off-site signalization or safety-related signage, and the appropriate provider for such improvements; and
- j. All requirements of the State Requirements for Educational Facilities.

9.2 Planning of Educational Facilities. This Section 9.2 shall be construed and implemented in a manner consistent with the specific statutory provisions referenced herein, subject to only those conditions expressly set forth in Sections 9.2.C and 9.2.E, hereof. This Section 9.2 shall not be construed to apply to charter schools.

A. Consistency with Comprehensive Plan and LDC. Planning of Educational Facilities shall adhere to the requirements of Section 1013.33(10), *Florida Statutes*.

B. Preliminary Notice of Consistency. With respect to each proposed Educational Facility, the School Board and the Affected Local Government shall follow the procedures and requirements set forth in Section 1013.33(11), *Florida Statutes*, for the issuance of a preliminary notice of consistency with the Affected Local Government's Comprehensive Plan. Within the boundaries of (a) the City of Bradenton, (b) the City of Palmetto and (c) unincorporated Manatee County, Public Educational Facilities shall be allowable uses in all comprehensive plan future land use categories and corresponding zoning districts, except heavy industrial, conservation, and preservation categories subject to compliance with applicable development standards. Public Educational Facilities may be allowed in heavy industrial, conservation and preservation future land use categories at the discretion of the Affected Local Government. If the Affected Local Government does not find the proposed site to be consistent with the comprehensive plan, they shall advise the School Board as to the appropriate circumstances and criteria under which a School Board may request an amendment to bring the requested site into compliance with the comprehensive plan.

C. Determination of Consistency. With respect to each proposed Educational Facility and except as expressly set forth in Sections 9.2.C and 9.2.D, hereof, the School Board and the Affected Local Government shall follow the procedures and requirements set forth in Section 1013.33(12), *Florida Statutes*, for the issuance of a determination of consistency with the Affected Local Government's Comprehensive Plan (including, without limitation, the requirement that a complete request be deemed approved if the Affected Local Government fails to act upon it within ninety (90) days), subject to the following conditions:

- a. In order to be deemed "complete", a request for determination of consistency must include the following items:

- (i) School Site Plan Application;
- (ii) All applicable information required by the School Site Plan Standards checklist provided in Exhibit "C" hereto; and
- (iii) Pedestrian Plan for new educational facilities illustrating sidewalks which exist or are proposed on thoroughfare roads for a two mile radius of the school site.

Other items may be requested of the School Board and considered by the Affected Local Government, but are not required in order for the request to be deemed "complete";

- b. The time periods set forth in Section 1013.33(12), Florida Statutes, shall begin to run from the date that the Affected Local Government acknowledges in writing that it has received a complete request for determination of consistency. If the Affected Local Government does not issue either (a) a written acknowledgement that the request is complete, or (b) a written determination that the request is incomplete with a list of the specific items from the School Site Plan Standards checklist that should be provided in order to complete the request, then, within ten (10) business days from the initial date of submittal and within five (5) business days of subsequent submittals, the request shall be deemed to have been determined to be complete;
- c. A request for determination of consistency for a public school facility shall be decided by the governing board of the Affected Local Government. The governing body shall review for consistency with the Comprehensive Plan in regard to impacts on natural resources, surrounding land uses and public facilities;
- d. If the site is consistent with the Affected Local Government's comprehensive plan's land use policies and categories in which public school facilities are allowable uses and the applicable provisions of the local government's LDC, the Affected Local Government shall not deny the request for determination of consistency but shall issue a determination of consistency;
- e. The issues to be considered by the Affected Local Government in deciding whether to grant a determination of consistency request shall be limited to those specified in Section 1013.33(13), Florida Statutes. No party shall be deemed to have waived any requirement of any statutory provision referenced herein unless

such waiver is made by written instrument expressly stating such party's intent to waive such provision;

- f. The Affected Local Government may, at its sole option, hold a properly noticed public hearing in connection with a determination of consistency; and
- g. It is mutually agreed that the School Board will not act in a manner that is contrary to an Affected Local Government's determination of consistency. In the event the School Board does not agree with a determination of consistency, the School Board may initiate dispute resolution procedures in accordance with Article X of this Agreement.

D. Conditions of Approval. With respect to each proposed Educational Facility, the Affected Local Government may place reasonable development standards and conditions upon the approval of a determination of consistency relating to environmental concerns, health, safety and welfare, and effects on surrounding property so long as such standards and conditions are not inconsistent with Section 1013.51, *Florida Statutes*.

E. Existing Schools. With respect to the expansion of any proposed Educational Facility, the Affected Local Government shall adhere to the requirements of Sections 1013.33(3) and (15), *Florida Statutes*. Existing Educational Facilities shall be considered consistent with the Comprehensive Plan of the Affected Local Government. When the need for closure of a School Facility is identified, the Superintendent shall notify any Affected Local Government in writing and shall give due consideration to any concerns and alternatives set forth by the Affected Local Government. Any expansion of an existing Educational Facility shall only be subject to the informational requirements, procedures, timeframes, and review process requirements of Sections 9.2.B and 9.2.C, and only if the proposed expansion constitutes a major renovation or construction in that the expansion:

- a. Increases school permanent FISH capacity by more than ten percent (10%);
- b. Provides for a change to the primary use of the educational facility (with respect to change in type of school from elementary, middle or high school to a different type of school); or
- c. Provides for the construction of a stadium.

Review of any such expansion shall be limited to those aspects of the Educational Facility affected by the expansion.

F. Codification; Amendments to LDC. Pursuant to Article VIII, hereof, the Cities and County shall amend their respective Comprehensive Plans and LDCs to provide for the planning of Educational Facilities consistent with this Section 9.2. Neither any City nor the

County shall amend its Comprehensive Plan or LDC to impose requirements or procedures upon the planning of Educational Facilities that are inconsistent with, or are not authorized by, this Section 9.2.

G. Monitoring & Reporting; Additional LDC Amendments. This Section 9.2 shall be reexamined by the Staff Working Group during the initial two years (more or less) after execution of this Agreement to determine the effectiveness of the provisions and processes provided herein, and the Staff Working Group shall provide a report of its findings to the Council of Governments on or before December 31, 2009. During such two-year period, the County and each of the Cities shall also work in conjunction with the School Board to establish in their LDCs (a) specific criteria for the consideration and approval of schools, and (b) if the County or a City imposes requirements for tree preservation and replacement in its LDC, specific standards for tree preservation and replacement for schools.

9.3 Site Improvements.

A. Determination of, Agreement for, On-Site and Off-Site Improvements. In conjunction with a determination of consistency provided pursuant to Section 9.2.C, hereof, the School Board and the Affected Local Government shall determine the need for and timing of on-site and off-site improvements necessary to support a proposed Educational Facility construction or renovation and the needs and/or opportunities for construction of additional area improvements on a cooperative basis. Any improvements by the School Board required or agreed to in order to fulfill the requirements of this Section shall be subject to the limitations established by Section 1013.51, *Florida Statutes*. A written agreement between the School Board and the Affected Local Government may be entered into concerning the timing, location, and the party or parties responsible for constructing, operating, and maintaining such improvements.

B. School Site Plan Review. At least 90 days prior to initiating construction for a project which requires School Site Plan approval, the School Board shall submit a School Site Plan to the Affected Local Government. Any improvements by the School Board required or agreed to in order to comply with local land development regulations shall be subject to the limitations established by Section 1013.51, *Florida Statutes*.

9.4 Collocation and Surplus Property. Collocation and shared use of facilities are important to both the School Board and local governments. The School Board, Cities and County shall seek opportunities to collocate and share use of school facilities and civic facilities. For example, opportunities for collocation and shared use shall be considered for libraries, parks, recreation facilities, community centers, hurricane shelters, auditoriums, learning centers, museums, performing arts centers, and stadiums.

A. Agreements for Operations and Maintenance. A separate agreement shall be developed for each instance of collocation and shared use that addresses operating and maintenance costs, scheduling of use, and facility supervision or any other issues that may arise from collocation.

B. Surplus Property. Should the School Board determine that real property equal to or in excess of four (4) acres in area is surplus property to the School Board, the School Board agrees to offer the property for purchase to the County or City for reuse as a public facility before disposing of the property. Further, should any County or City determine that real property equal to or in excess of four (4) acres in area is surplus property to that County or City, the County or City agrees to offer that property to the School Board, then to the County (if municipal property located within a City) or to the respective City (if County property within that City), for purchase for reuse as a public facility, before disposing of the property.

X. ROLE OF PARTIES, DISPUTE RESOLUTION

10.1 Roles of the Parties. This Agreement sets forth the standards and requirements agreed to by the parties in order to exercise their common powers in accordance with the requirements of the Act. The parties hereto expressly acknowledge and agree that:

- a. The School Board has the authority and obligation to exercise its powers to provide a uniform system of free public schools on a countywide basis in accordance with the Constitution of the State of Florida and general law; and
- b. Each of the Cities and the County has the authority and obligation to exercise its police power to regulate Development in a manner consistent with the Constitution of the State of Florida and general law.

This Agreement shall be construed, whenever possible, in favor of the exercise of the foregoing powers by the foregoing parties, in the manner deemed by each of them to be in interest of the public health, safety and welfare of their respective constituents, so long as it does not expressly conflict with this Agreement.

10.2 Dispute Resolution.

A. Procedures. In the event a dispute arises between or among two or more parties to this Agreement, any party may initiate dispute resolution procedures. Once such procedures have been initiated, each party that is subject to the dispute shall participate in good faith in an effort to resolve such dispute in a fair and equitable manner. Dispute resolution procedures may include, at the mutual agreement of the parties subject to the dispute, one or more of the following:

- a. Non-binding mediation or arbitration;
- b. A meeting or meetings of the staffs, attorneys and/or elected officials of the parties; and/or
- c. A joint meeting or meetings of the governing boards of the parties.

The parties subject to the dispute shall establish mutually agreeable procedures and timelines for the dispute resolution procedure. The parties shall share equally the cost of conducting the dispute resolution procedure.

B. Preservation of Rights. Notwithstanding any other provision of this Agreement, any party may file suit or initiate an adversarial administrative proceeding against any other party where necessary in order to preserve the status quo or that party's legal rights or protect its legal interests.

XI. DEFAULT; ENFORCEMENT AND REMEDIES

11.1 Default. A party hereto shall be deemed in default if it fails to perform or satisfy any material condition hereof, including without limitation the following specific defaults:

- a. A party required to adopt an ordinance or resolution necessary to implement this Agreement pursuant to Sections 8.1 and 8.2, hereof, fails to adopt such ordinance or resolution;
- b. A party described in the foregoing Section 11.1.a adopts any ordinance or resolution that amends, repeals, or otherwise revises any ordinance or resolution implementing this Agreement pursuant to Sections 8.1 and 8.2, hereof, in a manner inconsistent with this Agreement;
- c. A party described in the foregoing Section 11.1.a fails to enforce or abide by the provisions of an ordinance or resolution implementing any provision of this Agreement pursuant to Sections 8.1 and 8.2, hereof; or
- d. A party fails to carry out any act required pursuant to Articles IV, VI, VII, or VIII, hereof.

11.2 Enforcement; Remedies. In the event a party is in default of this Agreement pursuant to Section 11.1, hereof, any other party to this Agreement may bring an action to enforce the terms of this Agreement. In any such action, the remedies of all parties shall be limited to:

- a. Specific performance;
- b. Permanent and/or temporary injunctive relief; and
- c. Declaratory relief.

Each party hereto, to the extent permitted by law, waives the right to require another party to prove imminent and extraordinary harm in order to obtain any such remedy.

11.3 Other Rights Unaffected; Standing. This Agreement shall not be construed to limit or eliminate the right of any party hereto, under applicable law, to participate in, raise

objections in or to, or file available legal challenges to any proceeding or action by any party hereto that is inconsistent with this Agreement. Each party hereto, to the extent permitted by law, hereby waives any defense or objection in any such challenge that the challenging party lacks standing to bring such challenge or that this Agreement is not relevant to the matter or action in question.

11.4 No Financial Liability; Attorney's Fees and Costs. This Agreement shall not be construed to provide any party hereto with a right to monetary damages or to otherwise impose any financial liability upon any party hereto. In any action to enforce this Agreement, any dispute resolution proceeding conducted pursuant to Section 10.2, hereof, or any other dispute arising under this Agreement, each party shall bear its own attorney's fees and costs.

11.5 Dispute Resolution; Condition Precedent. Any action to seek legal remedies pursuant to Section 11.1, hereof, and any legal challenge described in Section 11.3, hereof, shall be prosecuted subject to and in accordance with Section 10.2, hereof, which requires the affected parties to initiate and participate in dispute resolution proceedings.

XII. TERM; TERMINATION; AMENDMENT

12.1 Term. This Agreement shall remain in effect in accordance with Florida Statutes.

12.2 Termination. This Agreement may be terminated upon a minimum of sixty (60) days written notice to the other parties herein, provided that the parties shall promptly enter into negotiations for a new interlocal agreement. Termination of a party to the Agreement shall not affect the applicability or enforceability of the Agreement to the remaining parties hereto.

12.3 Amendment of the ILA. This Agreement may be amended by written consent of all parties hereto.

XIII. MISCELLANEOUS PROVISIONS

13.1 Controlling Law. This Agreement shall be construed in a manner that shall render it consistent with the 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 Section 12.3, hereof, 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 Codes.

13.2 Vested Rights. To the extent that enforcement of the provisions hereof, or the Comprehensive Plan or LDC provisions adopted pursuant hereto, infringe upon or violate a vested right, as determined by applicable law, a City or the County 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.

13.3 Catastrophic Events. In the event of a catastrophic event (specifically, any catastrophe, civil commotion, act of God – including but not limited to hurricane, earthquake, fire, flood, tornado or other abnormal weather conditions outbreak of hostilities, any national or international calamity or crisis – including a financial crisis – or any event or incident of terrorism or attack by a foreign power or terrorist group or individual), determined by the School Board to have a materially adverse affect on the School District’s abilities to house a substantial number of students, then the School Board may request that the Affected Local Government place a temporary moratorium, countywide or in a particular area, on the issuance of permits for new residential development until the School Board determines the extent of the emergency situation has been resolved and, if necessary, until adequate school facilities to house such students may be planned and constructed.

13.4 Notices. All notices, comments, consents, objections, 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 confirmation of delivery requested, or facsimile transmission. All such communications shall be addressed to the applicable addressees set forth below or as any party may otherwise designate in the manner prescribed herein.

If to Bradenton: Mayor
City of Bradenton
101 Old Main Street
Bradenton, FL 34205
941- - (Phone)
941- - (fax)

With a copy to: City Administrator
City of Bradenton
101 Old Main Street
Bradenton, FL 34205
941- - (Phone)
941- - (Fax)

With a copy to: City Attorney
City of Bradenton
519 13th Street West
Bradenton, FL 34205
941-747-6658 (Phone)
941-748-6588 (Fax)

* * * *

If to the County: Chairman of Board of County Commissioners
1112 Manatee Avenue West
Bradenton, FL 34206
941-745-3713 (Phone)

941-745-3790 (Fax)

With a copy to: County Administrator
1112 Manatee Avenue West
Bradenton, FL 34206
941-745-3721 (Phone)
941-745-3790 (Fax)

With a copy to: Director
Manatee County Planning Department
1112 Manatee Avenue West
Bradenton, FL 34206
941-749-3070 (Phone)
941-708-6156 (Fax)

With a copy to: County Attorney
1112 Manatee Avenue West
Bradenton, FL 34206
941-745-3750 (Phone)
941-749-3089 (Fax)

* * * *

If to Palmetto: Mayor
City of Palmetto
516 8th Avenue West
Palmetto, FL 34221
941-723-4570 (Phone)
941-723-4576 (Fax)

With a copy to: City Administrator
City of Palmetto

With a copy to: City Attorney
City of Palmetto

* * * *

If to Holmes Beach: Mayor
City of Holmes Beach
5801 Marina Drive
Holmes Beach, FL 34217
941-708-5800 (Phone)
941-708-5812 (Fax)

With a copy to: City Administrator

City of Holmes Beach

With a copy to: City Attorney
City of Holmes Beach

* * * *

If to School Board: Superintendent of Schools
School Board of Manatee County
215 Manatee Avenue West
Bradenton, FL 34205
941-708-8770 (Phone)

With a copy to: School Board Attorney
School Board of Manatee County, Florida

* * * *

If to Longboat Key: Mayor
Town of Longboat Key
501 Bay Isles Road
Longboat Key, FL 34228
941-316-1999 (Phone)
941- - (Fax)

With a copy to: City Administrator
Town of Longboat Key

With a copy to: City Attorney
Town of Longboat Key

Notices, comments, consents, objections, approvals, waivers, and election shall be deemed given when received by the party for whom such communication is intended at such party's address herein specified, or such other address, phone, or fax number as such party may have substituted therefore by notice to the other.

13.5 Disclaimer of Third-Party Beneficiaries. This Agreement is solely for the benefit of the Cities, the School Board, and the County, and no right, privilege, or cause of action shall by reason hereof accrue upon, to, or for the benefit of any third party, including without limitation any other municipality, county, state agency, or special district. Nothing in this Agreement is intended or shall be construed to confer upon or give any person, corporation, partnership, trust, private entity, agency, or other governmental entity any right, privilege, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof. This Agreement is not intended nor shall it be construed to be a development agreement within the meaning contemplated in Sections 163.3220 - 163.3243, *Florida Statutes*.

13.6 Construction.

A. Entire Agreement. This Agreement embodies and constitutes the entire understanding of the parties with respect to the subject matter addressed herein, and all prior agreements, understandings, representations, and statements, whether oral or written, are replaced and superseded by this Agreement. This Agreement, however, shall not be construed or interpreted as amending, modifying, superseding, or terminating any other agreements between or among any City, the School Board, or the County, except to the extent any other such agreement may expressly conflict or be inconsistent with this Agreement.

B. Equal Construction. Each of the parties hereto has had the benefit of representation by counsel and equal input into drafting of this Agreement such that no provision of this Agreement shall be strictly construed against one party as the drafter thereof.

C. Headings and Captions. The headings and captions of articles, sections, and paragraphs used in this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or be taken into consideration in interpreting this Agreement.

D. Singular, Masculine as the Case May be Feminine. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine and neuter, singular or plural, as the identities of the party or parties, personal representatives, subcontractors, successors or assigns may require.

E. Legal References. All references to statutory sections or chapters, and to the Act, shall be construed to include subsequent amendments to such provisions, and to refer to the successor provision of any such provision. References to "applicable law" and "general law" shall be construed to include provisions of local, state and federal law, whether established by legislative action, administrative rule or regulation, or judicial decision.

13.7 Counterpart Signature Pages and Recording. This Agreement shall be executed by the parties by separate counterpart signature pages, with one fully executed original and its exhibits to be recorded in the official records of the County maintained by the Clerk of the Circuit Court in and for Manatee County, and recorded copies to be retained by each of (i) the office of the City Clerk for each City, (ii) the office of Superintendent of the School Board, and (iii) the office of the Clerk of the Board of County Commissioners.

13.8 Validity. Each City, the School Board, and the County represents and warrants to the other parties hereto its respective authority to enter into this Agreement and that this Agreement was approved by its governing board at a public hearing as required under Section 163.3171(3), *Florida Statutes*.

13.9 Covenant To Defend. Neither the validity of this Agreement nor the validity of any portion hereof may be challenged by any party hereto, and each party hereto hereby waives any right to initiate any such challenge. Furthermore, if this Agreement or any portion hereof is

challenged by a third party in any judicial, administrative, or appellate proceeding (each party hereby covenanting with the other party not to initiate, encourage, foster, promote, cooperate with, or acquiesce to such challenge), the parties hereto collectively and individually agree, at their individual sole cost and expense, to defend in good faith its validity through a final judicial determination or other resolution, unless all parties mutually agree in writing not to defend such challenge or not to appeal any decision invalidating this Agreement or any portion thereof.

13.10 Severability. The provisions of this Agreement are declared by the parties hereto to be severable. In the event any term or provision of this Agreement shall be held invalid by a Court of competent jurisdiction, such invalid term or provision should not affect the validity of any term or provision hereof; and all such terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid term or provision had never been part of this Agreement; provided, however, if any term or provision of this Agreement is held to be invalid due to the scope or extent here thereof, then, to the extent permitted by law, such term or provision shall be automatically deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.

13.11 Governing Law; Venue. This Agreement shall be governed by the laws of the State of Florida. Venue for any action to enforce any of the provisions of this Agreement shall be in the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida.

13.12 Effective Date; Condition Precedent. This Agreement shall take effect upon the date of the recording of a fully executed original in the official records of the County pursuant to Section 13.7, hereof, in accordance with Section 163.01(11), *Florida Statutes*.

WHEREFORE, the parties hereto have executed this Interlocal Agreement as of the date and year first above written.

[Counterpart Signature Pages to Follow]

CITY OF BRADENTON, FLORIDA

ATTEST:

By: _____
Mayor / Pro Tem

By: _____
City Clerk

Date: _____

**CITY OF HOLMES BEACH,
FLORIDA**

ATTEST:

By: _____
Mayor / Pro Tem

By: _____
City Clerk

Date: _____

CITY OF PALMETTO, FLORIDA

ATTEST:

By: _____
Mayor / Pro Tem

By: _____
City Clerk

Date: _____

MANATEE COUNTY, FLORIDA

**ATTEST: R.B. SHORE,
Clerk of the Circuit Court**

By: Board of County Commissioners

By: _____
Chairman

By: _____
Deputy Clerk

Date: _____

**SCHOOL BOARD OF MANATEE
COUNTY, FLORIDA**

ATTEST:

By: _____
Secretary

By: _____
Chairman

Date: _____

**TOWN OF LONGBOAT KEY,
FLORIDA**

ATTEST:

By: _____
Mayor / Pro Tem

By: _____
Town Clerk

Date: _____