INTERLOCAL AGREEMENT FOR PUBLIC SCHOOL FACILITY PLANNING

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into between the School District of Flagler County, an agency of the Florida State government, acting through its School Board ("School Board"); Flagler County, a political subdivision of the State of Florida, acting through the Flagler County Board of County Commissioners ("County"); the City of Palm Coast, a Florida municipal corporation, acting through the Council of the City of Palm Coast ("Palm Coast); the City of Flagler Beach, a Florida municipal corporation, acting through the Commission of the City of Flagler Beach ("Flagler Beach"); and the City of Bunnell, a Florida municipal corporation, acting through the Commission of the City of Bunnell ("Bunnell"), all collectively referred to as "Parties" and individually referred to as "Party". The County, Palm Coast, Flagler Beach, and Bunnell are sometimes referred to herein singularly as "Local Government" or collectively as "Local Governments."

WHEREAS, the Parties entered that certain Interlocal Agreement for Public School Facility Planning, dated July 7, 2008, (the "2008 Interlocal") in compliance with the then governing statutes and the Parties desire enter this new interlocal agreement consistent with the terms as set forth herein; and

WHEREAS, for the avoidance of doubt, all Proportionate Share Mitigation Agreements and Capacity Reservation Letters issued prior to the Effective Date of this Agreement shall be governed by the 2008 Interlocal; and

WHEREAS, as set forth in Section 1013.33, Florida Statutes, "it is the policy of this state to require the coordination of planning between boards and local governing bodies to ensure that plans for the construction and opening of public educational facilities are facilitated and coordinated in time and place with plans for residential development, concurrently with other necessary services;" and

WHEREAS, the School Board and Local Governments recognize their mutual obligation and responsibility for the education, nurture, and general well-being of the children within Flagler County; and

WHEREAS, the Local Governments and School Board recognize the benefits that will flow to the citizens and students of Flagler County by more closely coordinating their comprehensive land use and school facilities planning programs; namely (i) better coordination of new schools in time and place with land development, (ii) greater efficiency for the School Board and Local Governments by locating schools to take advantage of existing and planned roads, water and sewer utilities, and parks, (iii) improved student access and safety by coordinating the construction of new and expanded schools with the road and sidewalk construction programs of the Local Governments, (iv) better defined urban form by locating and designing schools to serve as community focal points, (v) greater efficiency and convenience by co-locating schools with

parks, libraries, and other community facilities, and (vi) reduction of pressures contributing to urban sprawl and support of existing neighborhoods by appropriately locating new schools and expanding and renovating existing schools; and

WHEREAS, the School Board and Local Governments are required to enter into this Agreement pursuant to Sections 163.31777, 1013.33, 163.3177(6)(h)3. and 163.3180(6), Florida Statutes, to jointly establish the specific ways in which the plans and processes of the School Board and Local Governments are to be coordinated; and

WHEREAS, Section 163.3180(6)(a), Florida Statutes, requires local governments that apply concurrency to public education facilities to include principles, guidelines, standards, and strategies, including adopted levels of service, in their comprehensive plans and interlocal agreements; and

WHEREAS, the School Board and Local Governments wish to provide for agreed upon procedures by which the Local Governments will collect, account for, and remit educational facilities impact fees on behalf of the School Board in accordance with Section 163.31801, Florida Statutes, the "Florida Impact Fee Act;" and

WHEREAS, it is the intent of the School Board and Local Governments that this Agreement shall supersede and replace the 2008 Interlocal, except to the extent it controls Proportionate Share Mitigation Agreements and Capacity Reservation Letters issued prior to the Effective Date of this Agreement.

NOW THEREFORE, the Parties enter into the following Agreement:

SECTION 1. RECITALS AND DEFINITIONS

1.1 Incorporation of Findings. The above recitals form the basis of the parties' understanding with respect to this Agreement and are incorporated as if fully set forth herein.

1.2 Definitions. The following terms and definitions will apply for purposes of this Agreement.

Annual Report. A written report issued annually by the Working Group to the Oversight Committee, which addresses the coordination of land use and school facilities planning.

COFTE or Capital Outlay Full-Time Equivalent. The basis for student allocation for the Florida Education Finance Program for K-12 grades in facilities operated by the School Board, provided annually by the Florida Department of Education.

Certificate of School Concurrency. A written determination by the School Board that all school concurrency review requirements have been satisfied for a proposed development and that the Available Capacity, with mitigation if required, is sufficient to accommodate students generated

by the proposed residential development. A Certificate of School Concurrency vests a residential development for school concurrency, and reserves school capacity for the proposed residential development, subject to (1) any conditions set forth in the Certificate of School Concurrency, (2) the requirements of this Agreement, (3) any ordinances or policies implementing this Agreement, and (4) any conditions imposed as part of or as an inducement to, the issuance of the Certificate of School Concurrency.

District Facilities Work Program or Work Program. The work plan constitutes the five-year listing of capital outlay projects adopted by the School Board pursuant to section 1013.35, Florida Statutes, in order to properly maintain the educational plants and ancillary facilities of the district and to provide an adequate number of satisfactory student stations for the projected Student Enrollment of the district in grades kindergarten through K-12 programs

Educational Plant Survey. An educational plant survey is a systematic study of existing educational and ancillary plants and the determination of future needs, for the purpose of providing an appropriate educational program and services for each student, created in accordance with Section 1013.31, Florida Statutes, and made a part of the Educational Facilities Plan.

FISH Manual. The documents entitled "Florida Inventory of School Houses (FISH)," current edition, and that is published by the Florida Department of Education, Office of Educational Facilities.

Level-of-Service or LOS. Ratio of Student Enrollment to Permanent FISH Capacity plus Reserved Capacity, expressed as a percentage, and jointly adopted by the School Board and the Local Governments as identified in Section 7.1(a) below.

Local Planning Agency or LPA. The governing body of the respective Local Governments and a non-voting representative of the School Board whose purpose is to monitor and oversee the effectiveness of the respective comprehensive plans of the Local Governments with respect to school facilities and to evaluate the impact of proposed residential density increases on school facilities.

Oversight Committee. A committee consisting of representatives from governing bodies of the Parties whose purpose is to monitor the implementation of this Agreement, review the Annual Report of the Working Group, and make policy and technical recommendations to their respective governing bodies regarding the implementation of this Agreement.

Permanent FISH Capacity. The number of students that can be served in a permanent public-school facility as provided in the Florida Inventory of School Houses.

Reserved Capacity. The number of student stations for which the School Board has issued Certificates of Concurrency together with the number of student stations to be generated by residential development which are already vested for purposes of school concurrency.

Student Enrollment or *Enrollment*. Sum of actual student enrollment as of the most recent October, countywide total student count. Enrollment does not factor in utilization rates and, as a tally of the number of actual students, is distinguished from the School Board's COFTE, as defined herein, figure.

Utilization. A ratio equal to Student Enrollment divided by Permanent FISH Capacity.

Tentative Educational Facilities Plan. A tentative district educational facilities plan that includes long-range planning for facilities needs over 5-year, 10-year, and 20-year periods, as set forth in Section 1013.35(2), Florida Statutes.

Working Group. Staff of the School Board and Local Governments whose purpose is to facilitate the planning of educational facilities on behalf of the governing bodies of the Parties to this Agreement and to make recommendations to the Oversight Committee.

SECTION 2. COORDINATING AND SHARING INFORMATION

2.1 The Working Group. There is hereby established a working group consisting of staff of the School Board and the Local Governments whose purpose is to facilitate the planning of educational facilities on behalf of the governing bodies of the Parties to this Agreement and to make recommendations to the Oversight Committee, as defined below (the "Working Group"). The Working Group will meet on the first Thursday of March each year. The Working Group will also meet on the first Thursday of September or October each year, depending on the timing of the Tentative Educational Facilities Plan, as described below, and as many other times, as necessary. The Working Group is a staff level, fact-finding body not subject to the Sunshine Law. However, staff of the School Board will publish notice and take minutes of all meetings of the full Working Group, which shall be open to the public. All efforts shall be made to include meaningful public participation in these meetings; however public participants shall not be considered members of the Working Group and shall not vote or provide consensus as members of the Working Group.

2.2 Population Projections. In fulfillment of their respective planning duties, the Local Governments and School Board agree to coordinate and base their plans upon consistent projections of the amount, type, and distribution of population growth and Student Enrollment. Prior to February 28 each year, the Local Governments will provide the School Board with population projections, development trends and data, and any amendments to their comprehensive plans that will increase allowable residential density, or which may affect Student Enrollment. The purpose of the information is to allow the School Board to understand the amount, type, and geographic distribution of residential development. As such, the information furnished to the School Board shall include the number, type, and location of residential building permit applications. The information will be discussed at the March meeting of the Working Group.

2.3 Student Population Projections. At the March meeting of the Working Group, the School Board shall provide a snapshot of the number of students in seats as of October of the then current

school year, or Enrollment, to be used by the Parties for evaluating capacity and impact fee adjustments. The School Board shall also provide the Local Governments with projected Student Enrollment based on actual Student Enrollment. The projections must be apportioned geographically and by grade level.

2.4 The Annual Report. By April 1st of each year, the Working Group will produce a report (the "Annual Report") to the Oversight Committee, identified in Section 3 below, which will address the coordination of land use and school facilities phasing, including population projections and Student Enrollment projections, development trends, school needs, and any other relevant matter pertaining to school facility planning. The Annual Report shall include a narrative describing planning issues for each school, including charter schools, which specifically address the following:

(a) Permanent FISH Capacity, as defined in Section 7.2(b) below;
(b) increases or decreases in Student Enrollment;
(c) summary of impact fees and Proportionate Share Mitigation collected for the prior year;
(d) summary of existing Reserved Capacity, as defined herein;
(e) utilization level, i.e., current Student Enrollment divided by Permanent FISH Capacity; and
(f) any rezoning, program additions, or capital upgrades which would impact the Enrollment, capacity, or utilization at the school.

The Annual Report shall also include a brief narrative summary of approved residential projects. For each such project, the Annual Report shall include the following:

(a) type and number of residential units;
(b) potential students to be generated by school level;
(c) anticipated build out year; and
(d) whether the project has Reserved Capacity in accordance with the terms of this Agreement.

2.5 Educational Facilities Plan. When preparing the Educational Facilities Plan pursuant to Section 1013.35, Florida Statutes, the School Board shall use information produced by the demographic, revenue, and education estimating conferences pursuant to Section 216.136, Florida Statutes, in consideration of the population projections of the County to ensure that the Educational Facilities Plan reflects Student Enrollment projections taking into account development projections within the unincorporated County and the municipalities. The Educational Facilities Plan will include projected Student Enrollment based on an inventory of existing school facilities, projections of facility space needs, information on concreteables and relocatables, potential locations of new schools, options to reduce the need for additional permanent student stations, and locations of potential school closures.

Subject to the Department of Education making the work plan for the district available, the School Board will endeavor to provide the Local Governments with the Tentative Educational Facilities Plan on or before September 30, of each year, including the five-year District Facilities Work

Program and Educational Plant Survey required by Section 1013.31, Florida. Statutes, for review and comment. The Working Group will convene one (1) week after the Tentative Educational Facilities Plan is delivered to discuss the same. The final adopted plan shall be provided to the Local Governments within fifteen (15) days after adoption by the School Board.

SECTION 3. OVERSIGHT PROCESS

3.1 Oversight Committee. A committee consisting of representatives from the School Board and the governing bodies of the Local Governments shall monitor the implementation of this Agreement (the "Oversight Committee"). The Oversight Committee shall be comprised of eleven members: three delegates of the School Board and two delegates from each of the governing bodies of the Local Governments. The Oversight Committee will review the Annual Report of the Working Group and may present the Annual Report to their respective Local Governments for review and comment and will make policy and technical recommendations to their respective governing bodies regarding the implementation of this Agreement, including recommendations to amend or supplement this Agreement.

3.2 Meetings of the Oversight Committee. The Oversight Committee shall meet annually on the second Thursday of May or June and may meet in as many specially called meetings, as necessary. Any member of the Oversight Committee may call a special meeting by requesting the School Board to publicly notice the special meeting and providing the School Board the topic of said special meeting. The Oversight Committee shall be subject to the Sunshine Law and shall encourage public participation in its meetings. The Superintendent of Schools shall assign a staff member to publish notice and prepare minutes of the Oversight Committee's meetings, which shall be retained by the School Board.

SECTION 4. SCHOOL SITE SELECTION

4.1 Determination of Consistency of Proposed School Site with the Comprehensive Plan. The location of each educational facility shall be consistent with the comprehensive plans and land development regulations of the Local Government in which the facility is located. The School Board shall notify the applicable Local Government in writing at least sixty (60) days prior to acquiring or leasing property that may be used for a new public educational facility. Within forty-five (45) days of receipt of the notice, the Local Government shall provide the School Board with a preliminary determination as to whether the proposed acquisition or lease is consistent with the land use categories and policies of the Local Government's comprehensive plan. The Parties must also consider the effects of the location of public education facilities to encourage the efficient use of infrastructure and to discourage uncontrolled urban sprawl.

4.2 Determination of Consistency of Site Plan with the Comprehensive Plan and Land Development Regulations. Once a school site has been selected, as early in the design phase as feasible, but no later than ninety (90) days prior to commencing construction of a new educational facility, the School Board shall request a determination from the applicable Local Government as

to whether the proposed site plan is consistent with the Local Government's comprehensive plan and land development regulations, to the extent said land development regulations are not preempted by Florida law. The request will include as much information as is possible to assist in making the determination. Within forty-five (45) days of receipt of the request, the governing body of the Local Government shall determine in writing whether the proposed school site plan is consistent with the Local Government's comprehensive plan and land development regulations. The Local Government may not deny the consistency determination based solely on the needs of the school, as this concern is more properly within the purview of the School Board. If the proposed site plan is consistent with the Local Government's land use policies within its comprehensive plan, the Local Government may not deny the application but may impose reasonable development standards and conditions pertaining to environmental, health, safety, and welfare concerns, as well as the effects on adjacent property. If the School Board requests a consistency determination for the expansion of an existing facility, the Local Government may only impose reasonable development standards and conditions pertaining to the environmental, health, safety, and welfare concerns, as well as effects on adjacent property resulting from the expansion as existing schools shall be considered consistent with the Local Government's comprehensive plan. Provided however, that any reasonable development standards and conditions imposed pursuant to this section shall be consistent with Chapter 1013, Florida Statutes, and the Florida Building Code unless mutually agreed to otherwise.

Failure of the Local Government to provide a determination within ninety (90) days of receipt of the request shall be considered an approval of the School Board's application. Once the Local Government determines the proposed facility is consistent with its comprehensive plan and land development regulations, including through the imposition of reasonable standards and conditions, the School Board may commence construction without any further approval of the Local Government. If a potential school site plan is not consistent with the applicable comprehensive plan or land development regulations, the Local Government will advise the School Board as to the appropriateness and the criteria under which the School Board may request an amendment to the comprehensive plan to allow for the school siting.

4.3 Exemption from Determination of Consistency with the Comprehensive Plan and Land Development Regulations. In accordance with Section 1013.33(9), Florida Statutes, or its successor, Local Government review and approval is not required for the placement of temporary or portable classroom facilities or the proposed renovation or construction on existing school sites with the exception of construction that changes the primary use of a facility or that results in a greater than five percent increase in student capacity.

4.4 Supporting Infrastructure. In conjunction with the initial land use consistency determination described in Section 4.1 above, and pursuant to Section 1013.51(1), Florida Statutes, or its successor, the School Board and affected Local Government will jointly determine the need for and timing of on-site and off-site improvements necessary to support each new school or major renovation to an existing school. The School Board and the affected Local Government will enter

into a written agreement identifying the timing, location, and the party/ies responsible for financing, constructing, operating, and maintaining the required improvements.

4.5 Safe Paths to School. In accordance with Section 1013.33(1), Florida Statutes, when conducting the comprehensive plan and land development regulation consistency determination for school site plans, required by Section 4.2 above, and at the time of review of development orders or plats by the Local Governments, the Parties to the planning process must consult with the state and local road departments to assist in implementing the Safe Paths to School program administered by the Florida Department of Transportation.

SECTION 5. LOCAL PLANNING AGENCIES, COMPREHENSIVE PLAN AMENDMENTS, REZONINGS, AND DEVELOPMENT APPROVALS

5.1 Local Planning Agency. Each Local Government shall include a non-voting representative of the School Board on the respective Local Planning Agencies, or the Local Government's equivalent ("LPA"), pursuant to Section 163.3174, Florida Statutes. The Local Government will provide the School Board notification and an opportunity to participate in public meetings in which Local Governments consider Future Land Use Map (FLUM) amendments, Comprehensive Plan Amendments, Development of Regional Impact (DRI) development orders, and rezoning applications that will increase residential density or which may affect Enrollment. Such notice will be provided as soon as practicable after receipt of a completed application for such changes.

5.2 Capacity Reporting. The purpose of the School Board's representative on the respective LPAs is to advise the applicable Local Government of the effect of proposed developments on Available Capacity and the Level of Service, as defined below. School Board staff may provide verbal or written comments concerning Enrollment impacts anticipated to result from the proposed development and whether Available Capacity exists to accommodate the proposed impacts. The School Board's capacity reporting must be based on Permanent FISH Capacity, the student demand portion of which shall be calculated by multiplying the number of proposed residential units by the student generation rate derived annually, on or prior to July 1, from data provided by the School Board and Flagler County Property Appraiser.

The School Board staff may also provide verbal or written comments and requests to the Local Government regarding other impacts of the proposed development, such as and without limitation, the need for school bus stop pads or the need for pedestrian connections. In considering the development application, the Local Governments will give great weight to School Board's comments. In cases where the approval of a new development would cause school capacity to exceed the adopted Level of Service, the Local Government having jurisdiction over the development shall either deny the application or condition the approval on the applicant entering into a Proportionate Share Mitigation Agreement with the School Board and obtaining a Certificate of Concurrency in accordance with this Agreement.

SECTION 6. SHARED USE OF FACILITIES

The Parties recognize that the co-location and shared use of facilities result in efficient use of public resources and benefit the users of those facilities. In accordance with Section 163.31777(2)(g), Florida Statutes, the Local Governments will consider where feasible the co-location and shared use of facilities with the School Board when preparing their respective capital improvement plans, and the School Board will likewise consider the co-location and shared use of facilities when preparing its Educational Facilities Plan. A separate agreement will be developed for each instance of co-location and shared use of facilities which addresses at a minimum operating and maintenance costs, scheduling use of the facilities, and legal liability.

SECTION 7. SCHOOL CONCURRENCY

7.1 The Level-of-Service. The Parties shall exercise authority in conjunction with each other to jointly establish adequate level-of-service standards for public educational facilities ("LOS" or "Level of Service"), mindful of the School Board's constitutional and statutory obligations to provide a uniform system of free public schools on a countywide basis as well as the land use authority of Local Governments including their authority to approve or deny comprehensive plan amendments and development orders.

(a) *LOS Established.* The LOS shall be 100% of permanent capacity for all school levels, where permanent capacity equals a Permanent FISH Capacity plus permanent capacity in place or under actual construction within three (3) years of approval of a final subdivision or site plan, or its functional equivalent.

(b) *LOS in Comprehensive Plans.* The LOS identified herein shall be consistent with the LOS adopted by rule by the School Board pursuant to Chapter 120, Florida Statutes, and shall likewise be consistent with the capital improvements elements of the respective comprehensive plans of the Local Governments in accordance with Section 163.3180(6)(c), Florida Statutes, or its successor. The Local Governments shall also identify within the capital improvement elements of their respective comprehensive plans the facilities necessary to meet the LOS during a five-year period consistent with the School Board's Educational Facilities Plan and Five-Year District Facilities Work Program in accordance with Sections 163.3177(3) and 163.3180(6)(g), Florida Statutes, or their successors. In addition, each Local Government shall adopt land development regulations consistent with the requirements of this Agreement.

(c) *Review of the LOS.* For purposes of this Agreement, the LOS shall be reviewed at least annually by the Oversight Committee as part of the policy and technical recommendations to be provided to their respective governing bodies. LOS shall be established such that it can be reasonably met. For such purposes, the LOS may be established in excess of available permanent student stations. However, such condition shall not be construed as optimal and may only continue for limited duration until additional capacity is constructed to correct the deficiency. In addition, the School Board may utilize relocatables to maintain the LOS for a

period not to exceed five years or twenty percent of Permanent FISH Capacity while capital projects to increase capacity are planned and constructed.

7.2 Certificate of School Concurrency. Unless exempted from school concurrency as provided in subsection 7.5 below, the Local Governments shall not approve a final plat or multi-family residential site plan, or the functional equivalent, until after the applicant has obtained a Certificate of School Concurrency from the School Board.

(a) *School Concurrency Application.* The School Board shall provide the Local Governments with a fee schedule and a school concurrency application for use by applicants with projects that include over ten (10) units of residential development. The School Board may in its discretion determine what information is required to be contained within an application and may establish and collect a fee to cover the actual costs of evaluating the applications. From time to time, the School Board may provide the Local Governments with an updated application and fee schedule. For all non-exempt applicants for residential development, the Local Government will receive the application form and payment, review the application to confirm it is consistent with the number and types of units being applied for, and, within twelve (12) business days of receipt of the application, transmit the application and payment to the School Board. Within thirty days of submission of a completed school concurrency application and fee, the School Board shall either (i) issue a Certificate of School Concurrency finding sufficient capacity exists to accommodate the students to be generated by the proposed residential development, or (ii) advise the applicant that insufficient capacity exists, the number of student stations that must be mitigated before obtaining the Certificate of Concurrency, and the grade level/s and cost thereof. The applicant shall execute the PMSA, defined below, within sixty (60) days of the notice of insufficient capacity ("PMSA Execution Deadline"). Failure to execute the PMSA within the PMSA Execution Deadline will require the applicant to submit a new application and fee.

(b) *Determining Available Capacity.* Available capacity shall be derived using the following formula:

Available Capacity = (Permanent FISH Capacity *x* Adopted Level of Service) – (Enrollment + Reserved Capacity)

Where Reserved Capacity is the number of student stations held in reserve by the School Board for specific developments for which a Certificate of Concurrency has been issued or student stations held in reserve for vested developments that are exempted from concurrency requirements as set forth in Section 7.5. And where Permanent FISH Capacity includes school facilities that will be in place or under actual construction within three years of the approval of the final subdivision or site plan, or its functional equivalent.

(c) *Expiration of Certificates.* Certificates of School Concurrency obtained through Proportionate Share Mitigation shall not expire. Certificates of School Concurrency obtained without the

need for mitigation shall expire three (3) years after issuance. If the applicant has not obtained final plat or multi-family residential site plan approval from the Local Government having jurisdiction within three (3) years of the date the certificate is issued (or prior to expiration of the Certificate of School Concurrency), the applicant will need to apply for and obtain a new certificate before proceeding to final plat or site plan approval, which may require Proportionate Share Mitigation.

7.3 Proportionate Share Mitigation.

(a) *LOS Triggers Mitigation.* In order to balance competing interests, preserve the constitutional concept of uniformity, and avoid disruption of existing educational and growth management processes, the Parties will apply school concurrency to development on a countywide basis so that a concurrency determination for a specific development will be based upon the availability of school capacity districtwide. When the LOS exceeds 100% of Permanent FISH Capacity at any school level, the Local Governments shall require applicants for residential development not exempt from school concurrency to obtain a Certificate of School Concurrency by entering into a proportionate share mitigation agreement with the School Board ("Proportionate Share Mitigation Agreement" or "PSMA") and paying proportionate share mitigation to the School Board ("Proportionate Share Mitigation").

(b) *Calculating Proportionate Share Mitigation.* An applicant's Proportionate Share Mitigation obligation to resolve a capacity deficiency shall be based on the following formula, for each school level requiring mitigation: Multiply the number of new student stations required to serve the proposed development for which there is no Available Capacity by the average cost per student station as established by the Florida Department of Education plus the land costs necessary for the school site to serve the proposed development. Notwithstanding the foregoing, the total Proportionate Share Mitigation shall in no case exceed the total educational facilities impact fees to be paid for the proposed development based on the impact fee amount in effect as of the effective date of the PSMA.

The number of student stations required to serve the proposed development shall be determined by multiplying the number of residential units applied for by the student generation rate for the applicable type of housing, i.e., single family residential, multi-family residential, and/or mobile home. The student generation rate to be utilized shall be established by the School Board annually on or before July 1 by utilizing information from the Flagler County Property Appraiser and the School Board (the "Student Generation Rate"). Specifically, the Student Generation Rate shall be calculated separately for single family residences, multifamily residences, and mobile homes by dividing the total number of each of these housing types by the number of students living in each housing type.

Annually by July 1, the School Board shall calculate the land costs of an entire school site by multiplying the average cost per acre of land, based on transactions of similar sized properties within the area of the proposed school site during the prior year in Flagler County, by the

required acreage for each school type. The School Board shall then divide the average cost of land for an entire school site by the average number of student stations proposed for the new school type. This calculation gives the average cost of land per student station for each school type and shall be added to the average cost per student station, determined by the Florida Department of Education, when determining an applicant's proportionate share mitigation obligation.

(c) *Timing of Mitigation Payments.* The Parties recognize the advantages of utilizing a standardized PSMA structure. Accordingly, each PSMA shall adhere to the following mitigation payment protocol. For cash payments of Proportionate Share Mitigation, the applicant shall pay the School Board thirty percent of the total Proportionate Share Mitigation within sixty days of final plat approval, final site plan approval, or the functional equivalent as applicable. No later than twenty-one (21) months after the initial payment, the applicant shall pay the School Board another thirty percent of the Proportionate Share Mitigation. No later than forty-two (42) months after the initial payment, the applicant will pay another thirty percent of the Proportionate Share Mitigation. It is understood and agreed by the Parties hereto that the remaining ten percent of the Proportionate Share Mitigation shall be paid as educational facilities impact fees at the time of building permit application. In addition, nothing herein shall prevent an applicant from prepayment of Proportionate Share Mitigation sooner than the timelines outlined above.

(d) *Mitigation Alternatives.* The School Board may accept non-cash forms of mitigation including contributions of land; the donation, construction, or funding of school facilities; the expansion of existing facilities; and the construction of a charter school that complies with the requirements of Section 1002.33(18), Florida Statutes, or its successor.

(e) *Programming Mitigation Payments.* The School Board shall direct the Proportionate Share Mitigation payments toward school capacity improvement identified in the School Board's 5-year Educational Facilities Work Program or must be set aside and not spent until an improvement has been identified that satisfies the demands created by the development in accordance with the PSMA.

7.4 Credits. Any Proportionate Share Mitigation paid will entitle the applicant to a dollar-for-dollar credit toward educational facilities impact fees based on the impact fee rate at the time the Proportionate Share Mitigation is actually paid. Any non-cash exaction that is provided will entitle the applicant to credit toward educational facilities impact fees on a dollar-for-dollar basis at fair market value of the exaction calculated at the time the exaction is transferred to the School Board. The School Board shall issue the credit within ten (10) days of actual payment or transfer of the fee or other exaction. If educational facilities impact fee rates are increased, the holder of any credits will be entitled to the full benefit of the residential density prepaid by the exaction without the need to pay any additional amount.

By way of illustration, if an applicant proposes a one hundred fifty (150) unit single family residential unit development when the School Board only has Available Capacity for fifty (50)

units, the applicant would pay $545,000 in proportionate share mitigation when the impact fee rate is $5,450. In this situation, the applicant would be entitled to a credit for one hundred (100) residential units. If subsequently the rate of educational facilities impact fees were to increase to $5,950.00 per single family residence, the applicant's credits for 100 units would still cover the cost of educational facilities impact fees for 100 single family residences without having to make up the difference between the old rate and the new rate for those 100 residences, but would pay the then-current impact fee rate for the fifty units not vested.

In the event a binding ruling is issued by a court of competent jurisdiction or a statutory amendment that contradicts the above-described credit system, the Parties agree to meet and agree upon an alternative formula within one hundred twenty (120) days of said ruling or statutory amendment.

7.5 Exemptions. The following residential uses shall be exempt from the requirements of school concurrency:

(a) Age restricted community (55 years and older) with no individual under the age of eighteen residing within the development during the school term (currently August through June). To be eligible for this exemption, a binding restrictive covenant or other instrument limiting the age of residents must be recorded in the Official Records of the County and contain within it provisions for the requirement to pay to the School Board the applicable proportionate share mitigation that would have been due at the time of application to the School Board in the event of a breach of the covenant.

(b) Developments which result in ten (10) or fewer residential units, which impact shall be considered *de minimus*. Such developments are not otherwise exempt from the approval processes of the applicable Local Government.

(c) Any residential development provided for within a DRI development order adopted prior to July 1, 2005.

(d) Single family lots of record having received final plat or site plan approval, or the functional equivalent, prior to July 7, 2008.

SECTION 8. IMPACT FEES

8.1 Impact Fees Established. The County has adopted the Flagler County Educational Facilities Impact Ordinance (the "Impact Fee Ordinance"), codified at Chapter 17, Article V, of the Flagler County Code, as requested by the School Board, to assure that new development which creates a need for educational facilities bears a proportionate share of the cost of capital expenditures necessary to provide the educational facilities necessitated by such development ("Impact Fee"). The Impact Fee amount is established pursuant to the Impact Fee Ordinance and is due and payable upon the issuance of a building permit by the respective Local Governments except as otherwise provided in the Impact Fee Ordinance.

8.2 Collection of Impact Fees. Each Local Government shall collect the Impact Fee for each building permit resulting in a new impact generating use. For purposes of this section, a new impact generating use shall include: a new single-family, multi-family, or mobile home dwelling unit on a previously vacant lot or parcel; and the replacement of a mobile home dwelling unit with a single-family dwelling unit. In instances where a dwelling unit with a higher Impact Fee replaces a dwelling unit with a lower Impact Fee, as is the case for a single-family dwelling replacing a mobile home, only the net positive increase in the difference between the two Impact Fees shall be payable at the time of building permit issuance, provided that the original dwelling unit was legally established as evidenced through building permit records, tax bills, utility bills, and such other records as to provide documentation that the dwelling unit was legally authorized on the lot or parcel by the respective Local Government. Similarly, a "like-for-like" replacement shall be assumed to have been legally established as evidenced through building permit records, tax bills, utility bills, and such other records as to provide documentation that the dwelling unit was legally authorized on the lot or parcel by the respective Local Government. For purposes of calculation of the Impact Fee, a "like-for-like" replacement shall not be considered a new impact generating use and no Impact Fee shall be collected. The ultimate calculation of the Impact Fee amount shall be based on the timing of the submittal of a complete building permit application, with the Impact Fee payable at the time of building permit issuance. The permitting Local Government shall be solely responsible for determining the amount of any Impact Fee due at the time of building permit issuance.

8.3 Administrative Costs. In accordance with the Florida Impact Fee Act, it is agreed by the Parties that the Local Governments may retain the actual costs incurred in collecting the Impact Fee, as an administrative charge to defray the costs of collecting and administering the Impact Fee. Each Local Government is responsible for maintaining records reflecting the actual costs incurred as the basis of the administrative fee retained by the Local Government and to provide same to the School Board on an annual basis.

8.4 Remittance of Impact Fees. The Local Governments shall remit the collected Impact Fees minus the administrative fee to the School Board on a quarterly basis, with the transfer of funds to occur on or before the twenty-fifth (25th) day of the month immediately following the end of the quarter, i.e., by April 25th for the First Quarter, by July 25th for the Second Quarter, by October 25th for the Third Quarter, and by January 25th for the Fourth Quarter. Remittance may be through wire transfer to the School Board, through check payable to the Flagler County School Board, or through other method mutually agreed to between the Local Government as payor and the School Board as payee.

Each Local Government shall, in addition to the quarterly transfer of the Impact Fees, remit to the School Board a report accounting for the total Impact Fees collected for the quarter and the administrative fees retained by the Local Government. The reports shall specify the dates the fees were paid, the location of the properties for which the building permits were issued, the names and addresses of the applicants, the type/use of structures for which the building permits were issued,

and the amount of the Impact Fee paid. Should no Impact Fees be collected for the quarter, the Local Government shall report to the School Board that no Impact Fees are to be remitted because no Impact Fees were collected by the Local Government.

SECTION 9. MISCELLANEOUS PROVISIONS

9.1 Force *Majeure.* No Party shall be in default in the performance of its obligations hereunder to the extent that performance of such obligations, or any of them singularly, is delayed or prevented by a bona fide *force majeure*. For purposes of this Agreement, a bona fide *force majeure* is defined in accordance with the common law of the State of Florida as being an event or circumstance beyond the control and authority and without the fault or negligence of the Party seeking relief under this Section. The maximum relief granted to any Party under this Section shall be the tolling of time for the duration of the *force majeure*. A *force majeure* may be deemed to excuse performance pursuant to this Agreement only to the extent such performance is actually prevented or precluded by such *force majeure*.

9.2 Time is of the Essence. Time is of the essence for the lawful performance of the duties and obligations contained in this Agreement. The Parties covenant and agree that they shall diligently and expeditiously pursue their respective obligations set forth in this Agreement.

9.3 Effective Date, Term and Termination. In accordance with Section 163.01(11), Florida Statutes, this Agreement shall take effect upon its execution by the last Party and filing with the Clerk of the Circuit Court. This Agreement shall remain in full force and effect for a period of one year and shall automatically renew for successive one-year periods. Any Party may terminate its rights and obligations under this Agreement by providing written notice to other Parties at least one hundred twenty (120) days prior to the termination. Termination by a Local Government/s shall not terminate the Agreement as to the other Local Governments and School Board.

9.4 Notices. Any notice required by this Agreement shall be made in writing and shall be deemed delivered when personally hand delivered, sent by reputable overnight courier, or transmitted via the U.S. Post certified, postage prepaid, to the Parties at the addresses listed below.

(a) School Board of Flagler County
Attn: Superintendent of Schools
1769 E. Moody Blvd., Bldg. 2
Bunnell, FL 32110

(b) City Council of Palm Coast
Attn: City Manager
160 Lake Avenue
Palm Coast, FL 32164

(c) Flagler County Board of County Commissioners

Attn: County Administrator
1769 E. Moody Blvd., Bldg. 2
Bunnell, FL 32110

(d) City Commission of Flagler Beach
Attn: City Manager
105 South 2nd Street
Flagler Beach, FL 32136

(e) City Commission of Bunnell
Attn: City Manager
604 E. Moody Blvd., Unit 6
Bunnell, FL 32110

Any Party may change the address or recipient of notices hereunder by providing written notice to the other Parties of such change in accordance herewith.

9.5 Interpretation. This Agreement is the result of bona fide arm's length negotiations between and among the parties and, as such, shall not be construed more strictly against any Party than against any other Party.

9.6 Integration and Modification. This Agreement constitutes the complete, integrated understanding and agreement among the Parties with respect to the subject matter hereof and supersedes any prior agreements or arrangements between the Parties whether oral written. This Agreement may only be amended or modified by a written instrument executed by duly authorized representatives of the Parties hereto.

9.7 Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties hereto, and no right or cause of action shall accrue by reason hereof to or for the benefit of any other third party. Nothing herein shall be construed as a consent to be sued or as a waiver of the sovereign immunity of the respective Parties.

9.8 Waiver. No single or partial exercise by any Party of any right, power, or remedy hereunder shall preclude such Party from demanding performance in accordance with the terms hereof. Waiver of a default shall not be deemed a waiver of any subsequent defaults.

9.9 Dispute Resolution. If the Parties to this Agreement are unable to resolve any issue(s) or disagreements pertaining to this Agreement, such dispute will be resolved in accordance with the procedures specified in the Florida Governmental Conflict Resolution Act, Chapter 164, Florida Statutes.

9.10 Venue. The exclusive venue to litigate any disputes arising hereunder shall be in the Seventh Judicial Circuit Court in and for Flagler County, Florida.

9.11 Indemnification, Duty to Defend, and Sovereign Immunity. Each Party shall be liable for all damages or injury to persons or property caused solely by its action, errors, or omissions, including that of its officers, agents, and employees, while engaged in the operations herein authorized and for any actions or proceedings brought as a result of this Agreement. Should any Party be sued therefor, the Party being sued shall notify the other Parties and, thereupon, the party/ies taking the action giving rise to the litigation shall have the duty to defend the suit.

Each Party hereby indemnifies and saves harmless the other Parties, its agents, officers, and employees from any and all judgments recovered by anyone by reason of the indemnifying Party's activities under this Agreement. The obligation to indemnify hereunder is subject to the scope and monetary limitations set forth in Section 768.28, Florida Statutes.

Nothing in this Agreement shall be deemed or construed as a waiver of sovereign immunity by any of the Parties and the Parties shall have and maintain at all times and for all purposes any and all rights, immunities, and protections available under controlling legal precedent and as provided under Section 768.28, Florida Statutes.

9.12 Attorneys Fees and Costs. In the event of any action to enforce the terms of this Agreement by any of the Parties hereto or several of them collectively, the prevailing Party/ies shall be entitled to recover reasonable attorneys' fees and costs incurred, whether at trial level or upon appeal.

9.13 Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be contrary to law, such provision will be struck from the Agreement as void and the remaining provisions of the Agreement shall remain in full force and effect to the maximum extent possible in accordance with the original intent of the Parties.

9.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

9.15 Superseding Previous Interlocal Agreement. Upon the Effective Date identified in Section 9.3 above, this Agreement shall supersede and replace the Interlocal Agreement for Public School Facility Planning entered into on July 7 2008, except as to Proportionate Share Mitigation Agreements and Capacity Reservation Letters issue or entered into prior the Effective Date of this Agreement.

[SIGNATURE PAGES TO FOLLOW.]

IN WITNESS WHEREOF, this Interlocal Agreement for Public School Facility Planning has been executed by the Parties hereto on the dates indicated below.

SCHOOL DISTRICT OF FLAGLER COUNTY

Trevor Tucker, Chairman

10/18/2022
Date

ATTEST:

By: _____
Cathy Mittelstadt
Superintendent of Schools

Approved as to form and legality.

_____
Kristy Gavin
School Board Attorney

[SIGNATURE PAGES TO FOLLOW.]

CITY OF PALM COAST

David Alfin, Mayor

10/4/2022
Date

ATTEST:

By: _____
Virginia Smith
City Clerk

Approved as to form and legality.

_____
Neysa Borkert
City Attorney

[SIGNATURE PAGES TO FOLLOW.]

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS

Joseph F. Mullins, Chair

9-19-22
Date

ATTEST:

By: Lisa Tunicello, DC
Tom Bexley
Clerk of the Circuit Court
and Comptroller

Approved as to form and legality.

Sean S. Moylan Digitally signed by Sean S. Moylan Date: 2022.09.13 12:11:24 -04'00'

Sean S. Moylan
Deputy County Attorney

[SIGNATURE PAGES TO FOLLOW.]

CITY OF FLAGLER BEACH

Suzie Johnston, Mayor

9-22-22
Date

ATTEST:

By: _____
Penny Overstreet
City Clerk

Approved as to form and legality.

_____
Drew Smith
City Attorney

[SIGNATURE PAGES TO FOLLOW.]

CITY OF BUNNELL

Catherine Robinson

Catherine Robinson, Mayor

ATTEST:

9/26/2022

Date

By: K Bates

Kristen Bates, CMC
City Clerk

Approved as to form and legality.

~~Wade C.~~ Vose Law Firm
City Attorney