INTERLOCAL AGREEMENT
FOR PUBLIC SCHOOL FACILITY PLANNING

THIS INTERLOCAL AGREEMENT is entered into between the School District of Flagler County, an agency of Florida State government, acting through its School Board (hereinafter the "School Board"); Flagler County, a political subdivision of the State of Florida, acting through the Flagler County Board of County Commissioners (hereinafter the "County"); the City of Bunnell, Florida, a municipal corporation of the State of Florida, acting through the City Commission of the City of Bunnell (hereinafter "Bunnell"); the Town of Marineland, a Florida municipal corporation, acting through the Town Commission of the Town of Marineland (hereinafter "Marineland"); and the City of Palm Coast, a Florida municipal corporation, acting through the Council of the City of Palm Coast (hereinafter "Palm Coast").

WHEREAS, the County, Bunnell, Marineland, Palm Coast, (collectively referred to as "local governments"), and the School Board 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 the 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 (1) better coordination of new schools in time and place with land development, (2) 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, (3) improved student access and safety by coordinating the construction of new and expanded schools with the road and sidewalk construction programs of the local governments, (4) better defined urban form by locating and designing schools to serve as community focal points,

(5) greater efficiency and convenience by co-locating schools with parks, libraries, and other community facilities to take advantage of shared use opportunities, and (6) reduction of pressures contributing to urban sprawl and support of existing neighborhoods by appropriately locating new schools and expanding and renovating existing schools; and

WHEREAS, Section 1013.33(15), *Florida Statutes*, states that existing public education facilities shall be considered compliant with the comprehensive plan of the appropriate local government body; and

WHEREAS, The School Board is an important resource to Flagler County by providing places of education, places of shelter and as essential building blocks of neighborhood and community; and

WHEREAS, the School Board and the local governments support school impact fees in an amount appropriate to fund the impacts of new development upon school facilities; and

WHEREAS, Section 1013.33(10), Florida Statutes, requires that the location of future public education facilities shall be consistent with the comprehensive plan of the appropriate local governing bodies and any applicable implementing land development regulations; and

WHEREAS, the local governments recognize the primacy of Section 1013.37, *Florida Statutes*, and the *State Uniform Building Code* relating to the planning of public educational and ancillary facilities, unless mutually agreed by the local governments and the School Board; and

WHEREAS, the local governments and the School Board are mandated to enter into this Interlocal Agreement pursuant to Chapters 163 and 1013, *Florida Statutes*; and

WHEREAS, Sections 163.31777 and 1013.33, *Florida Statutes*, further require each county

and the non-exempt municipalities within each county to enter into an interlocal agreement with the governing school board to establish jointly the specific ways in which the plans and processes of the district school board and counties and cities are to be coordinated; and

WHEREAS, the local governments and the School Board enter into this Interlocal Agreement in fulfillment of that statutory requirement and in recognition of the benefits accruing to their citizens and students described above; and

WHEREAS, the local governments and the School Board acknowledge that each local government is responsible for approving or denying comprehensive plan amendments and development orders within its own jurisdiction and nothing herein represents or authorizes a transfer of authority to any other party or parties; and

WHEREAS, the local governments and School Board acknowledge and agree that the School Board is, or may be, subject to the requirements of the Florida and United States Constitution and other State or Federal laws, rules or regulations regarding the operation of the public school system and, accordingly, the local governments and the School Board agree that this Interlocal Agreement is not intended, and will not be construed, to interfere with, hinder, or obstruct in any manner, the School Board's constitutional and statutory obligation to provide a uniform system of free, efficient, safe, secure, and high quality public schools within Flagler County or to require the School Board to confer with, or obtain the consent of the local governments as to whether that obligation has been satisfied; and

WHEREAS, the local governments and School Board agree that this Interlocal Agreement is not intended and will not be construed to impose any duty or obligation on the local governments for

the School Board's constitutional or statutory obligations and the local governments acknowledge that the School Board's obligations under this Interlocal Agreement may be superseded by State or Federal court orders or other State or Federal legal mandates; and

WHEREAS, the School Board acknowledges that the local governments have the statutory and constitutional obligation to balance growth management and protect private property rights through their comprehensive planning and land development regulatory powers and responsibilities; and

WHEREAS, the local governments and the School Board recognize that the cities of Beverly Beach and Flagler Beach have claimed an exemption under Section 163.3177(12)(b), *Florida Statutes*, from the requirements to enter into this Interlocal Agreement and adopt comprehensive plan amendments related to coordinated land use and public schools facilities planning, but that this exemption may change to require those cities to become a party to this Interlocal Agreement in accordance with the amendment provisions provided below; and

WHEREAS, the local governments and the School Board previously executed an "Interlocal Agreement for Public School Facility Planning" in November, 2003 and the execution of this Interlocal Agreement is intended to supersede and replace the prior agreement, and

WHEREAS, the Florida Legislature, during the 2005 Legislative Session, enacted Chapter 2005-290, Laws of Florida (Senate Bill 360), which is codified in Sections 163.3177 and 163.3180, *Florida Statutes*, and which, in relevant part, required that all school facility interlocal agreements be updated to reflect a new statutory mandate to implement school concurrency (hereinafter "Concurrency"); and

WHEREAS, the School Board has the statutory and constitutional responsibility to provide a uniform system of efficient, safe, secure, high quality, free and adequate public schools throughout Flagler County; and

WHEREAS, the local governments have jurisdiction for land use and growth management decisions within their jurisdictional boundaries including, but not limited to, the authority to approve or deny comprehensive plan amendments, rezonings and development orders and permits that generate students and impact the school system; and

WHEREAS, the local governments and the School Board agree that this Interlocal Agreement complies with the provisions of Rule 9J-11.022, *Florida Administrative Code*,

NOW, THEREFORE, be it mutually agreed between the local governments and the School Board that the following procedures shall be followed in coordinating land use and public school facilities planning and in implementing concurrency;

SECTION 1 - Recitals.

The above recitals (whereas clauses) are true and correct and represent a material part of the Interlocal Agreement upon which the local governments and the School Board have relied.

SECTION 2 - Oversight and Public Participation Process; Requirements for Meetings.

(a) The School Board and local governments shall monitor the implementation of this Interlocal Agreement and, as part of the Annual Report required herein make recommendations to amend the Interlocal Agreement, as necessary.

(b) An Oversight Committee consisting of representatives of the School Board and the local governments is hereby created.

(c) The School Board shall appoint three (3) Board Members and local governments shall appoint two (2) of its elected officials to sit on the Oversight Committee for a two (2) year term. Any member of the Oversight Committee may call a special meeting, as appropriate and pursuant to Section 286.011(1), *Florida Statutes*.

(d) The Oversight Committee shall meet annually on the second Thursday of May in a joint workshop session with governing bodies of the local governments and the School Board invited to attend and observe. The annual joint workshop will provide an opportunity for the representatives to hear reports, discuss policy and provide technical review and recommendations regarding any need for change to the provisions of this Interlocal Agreement.

(e) All workshops and meetings occurring pursuant to the Interlocal Agreement shall be open to the public and public participation shall be encouraged to the maximum practical extent, shall be publicly noticed in accordance with the requirements of State law and the public shall be provided the opportunity to participate in each stage of the decision-making process. The School Board shall have the obligation for providing notices and ensuring that minutes are made and maintained.

SECTION 3 - Joint Meetings: Processes Relating to the Coordination and Sharing of Information; Key Annual Events.

(a) The local governments will each meet with the School Board on an annual basis in a workshop context, as the meeting parties may agree; provided, however, that any local government may determine that, for a particular year, it does not require an annual meeting and, in such cases, an annual meeting shall not be held.

(b) The joint workshop sessions shall be opportunities for the local governments and the School Board, and their respective staffs to discuss issues of mutual concern including, but not limited to, hearing reports, discussing policy, setting direction, and reaching understandings concerning issues of mutual concern regarding coordination of land use and school facilities planning, including population and student growth,

development trends, school needs, off-site improvements and joint use opportunities, as well as reuse and conversion of school facilities to other uses, including other public uses.

(c) Staff of the local governments and the School Board (hereinafter referred to as the "Working Group") shall meet on or about April 16th and September 1st of each year to discuss issues regarding coordination of land use and school facilities planning, including such issues as population and student projections, student generation rates, development trends, school needs, co-location and joint use opportunities, the implementation of concurrency, and ancillary infrastructure improvements needed to support and ensure safe student access. The School Board staff shall be responsible for making meeting arrangements and providing public notification. Any member of the Working Group may call a special meeting, as appropriate and pursuant to Section 286.011(1), *Florida Statutes*.

(d) On an annual basis, the Working Group shall produce and present a report (the "Annual Report") to Oversight Committee; the members of the Oversight Committee shall present the Annual Report to their respective governing bodies. The Annual Report shall address, at a minimum, issues regarding coordination of land use and school facilities phasing, including population, student growth, development trends, school needs, off-site improvements and shared use opportunities, and implementation of this Interlocal Agreement.

(e) The Calendar of key annual deadlines for actions to be taken under this Interlocal Agreement is as follows:

CALENDAR OF KEY ANNUAL DEADLINES*

February 1	Local Governments Growth Reports Provided to School Board
April 16	Working Group meeting re enrollment projections and any proposed amendments to the school-related elements of the comprehensive plan provisions
August 31	School Board provides Tentative District Educational Facilities Plan to local governments for review
September 21	Local governments provide School Board with comments, if any, on Tentative District Educational Facilities Plan
October 1	School Board's adoption of Tentative District Educational Facilities Plan, including the School Board Work Program
October 1	School District contacts local governments to confirm exempt status.
December 1	Update of Five-Year Capital Facilities Plan adopted into local governments' comprehensive plans

*Should the date listed in the Calendar fall on a Saturday, Sunday, or legal holiday, the deadline shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

SECTION 4 - Student Enrollment, Population Projections, Growth and Development Trends.

(a) In fulfillment of their respective planning duties, the local governments and the School Board agree to coordinate and base their plans upon consistent projections of the amount, type, and distribution of population growth and student enrollment.

(b) The School Board shall utilize the Flagler District Capital Outlay FTE Forecast, as issued annually by the Office of Demographic Research of the Florida Legislature, for district-wide enrollment projections. In the local analysis, the School Board shall coordinate enrollment at each school, by grade, with the local governments information regarding development trends and future population projections.

(c) No later than February 1 of each year each local government shall provide the School Board with a report on growth and development trends within its jurisdiction. This textual report may include, where necessary, tabular and graphic formats and shall include the following;

(1) The type (single family, single family attached, multi-family, condominium, townhouse, apartment and/or mobile home and/or manufactured home), number, location relative to traffic analysis zone (hereinafter"TAZ"), which have received zoning approval, site plan approval, an approval development order, a final or preliminary plat approval, a planned unit development (hereinafter "PUD") approval, or a development of regional impact (hereinafter "DRI") development order approval;

(2) Information regarding future land use map (hereinafter "FLUM") amendments that may have an impact on school facilities through changes in density and land use changes likely to affect enrollment patterns;

(3) Building permits issued for the preceding year by TAZ;

(4) Information regarding the conversion or redevelopment of housing or other structures into residential units;

(5) The identification of any development orders issued which contain a requirement for the provision of a school site as a condition of development approval; and

(6) Update and changes of proposed development schedules for developments in excess of one hundred (100) units.

SECTION 5 - Local Planning Agency, Comprehensive Plan Amendments, Rezoning, and Development Approvals.

(a) Each local government shall, if not already accomplished, include a voting or non-voting representative appointed by the School Board on the local planning agency (hereinafter "LPA"), pursuant to Section 163.3174(1), *Florida Statutes*. The School Board representative shall attend those meetings in which the LPA considers FLUM amendments, and DRI development orders, and rezoning applications that would, if approved, increase residential density on the property that is the subject of the application, and provide comments as appropriate.

(b) For proposed residential developments, the planning director, or equivalent, of the local government with jurisdiction may invite a School Board representative to

participate in a pre-application conference with the developer. The meeting shall be disclosed as an *ex parte* communication if that School Board representative is a voting member of the LPA. The purpose of the School Board representative's participation in the pre-application conference is to advise the developer of potential alternatives on how to address the potential impact of the development on school facilities and capacity in accordance with this section.

(c) The local governments agree to provide the School Board notification of FLUM amendment, DRI development orders and rezoning applications pending before them that may affect student enrollment, enrollment projections, or school facilities. Such notice shall be provided at least ten (10) days from receipt of the completed application.

(d) Within fourteen (14) days after notification, the School Board and local government shall coordinate a time for the School Board to provide the estimated school enrollment impacts anticipated to result from a FLUM amendment, DRI development order, and rezoning applications as well as whether sufficient capacity exists or is planned to accommodate the impacts.

(e) In reviewing and approving FLUM amendments, DRI development orders, rezoning applications and other development orders, the local governments shall consider, at a minimum, the following issues:

(1) School Board findings as to Concurrency, if made, and School Board comments, if not;

(2) Available school capacity or planned improvements to increase school capacity;

(3) The provision of school sites and facilities within planned neighborhoods;

(4) Compatibility of land uses adjacent to existing schools and school property;

(5) The co-location of parks, recreation and neighborhood facilities with school sites;

(6) The linkage of parks, recreation and neighborhood facilities with bikeways, trails, and sidewalks for safe access;

(7) Traffic circulation plans, which serve schools and the surrounding neighborhood;

(8) The provision of off-site signalization, signage, access improvements, and sidewalks to serve schools;

(9) The inclusion of school bus stops and turnarounds; and

(10) The use of Public Schools as emergency shelters.

SECTION 6 - Co-location and Shared Use.

(a) Co-location and shared use of facilities are important to both the School Board and the local governments. The local governments shall pursue opportunities to co-locate and share use of the local governments' facilities when preparing the annual update to the comprehensive plan's capital improvements element (hereinafter "CIE") and when planning and designing new or renovating existing community facilities. Likewise, the School Board shall pursue opportunities to co-locate and share use of school facilities when preparing the Tentative District Educational Facilities Plan (hereinafter the "TDEFP"). In addition, when the School Board acquires property for a school site, the local governments shall be given an opportunity to consider simultaneously acquiring property for adjoining neighborhood parks. In designing the arrangement and layout of buildings, parking facilities and recreational areas for schools, consideration shall be given to the effective utilization of any adjacent neighborhood park.

(b) A separate agreement may be developed for each instance of co-location and shared use which addresses legal liability, operating and maintenance costs, scheduling use of the facilities, security, and facility supervision or any other issues that may arise from co-location and shared use.

SECTION 7 - Planning Process.

(a) Annually, the School Board shall submit to the local governments the TDEFP inclusive of the education plant survey of approved projects, for review and comment twenty (20) days prior to the public hearing for adoption by the School Board. The Plan shall be consistent with the requirements of Section 1013.35, *Florida Statutes*, and include projected student populations apportioned geographically, an inventory of existing school facilities, projections of facility space needs, information on relocatables, options to reduce the need for additional permanent student stations, and as an attachment general locations of new schools for the five (5), ten (10) and twenty (20) year time periods.

(b) Amendments to the five (5) year work program and/or the Educational Plant survey shall be submitted to working group for comment.

(c) The financially feasible School Board Work Program (hereinafter the "SBWP") shall use the first five (5) years of the Tentative District Educational Facilities Work Program.

(d) Within ten (10) days of submittal, the Working Group shall review the SBWP program and provide a written report to the School Board regarding:

(1) Infrastructure and service needs associated with the proposed education facilities and other applicable information; and

(2) Whether a comprehensive plan amendment will be necessary for any proposed educational facility.

(e) Based on the written report, the School Board shall consider changes and make same as needed to the SBWP where appropriate.

(f) Amendments to the SBWP and/or the TDEFP shall be submitted to the Working Group for comment.

SECTION 8 - Public School Facilities Element Development and Update.

(a) The local governments and the School board shall cooperate to develop a common Public Schools Facilities Element (hereinafter "PSFE"), pursuant to Sections 163.3177(12) and 163.3180, *Florida Statutes* Rule 9J-5.025, *Florida Administrative Code,* and other applicable laws and rules.

(b) After an agreed upon PSFE has been developed, the local governments shall adopt a PSFE consistent with the requirements of Chapter 163, *Florida Statutes*, in accordance with the Florida Department of Community Affairs (hereinafter the "FDCA") schedule of adoption. The adoption of the PSFE is exempt from the provisions of Section 163.3187(1), *Florida Statutes*. Local governments shall make all other necessary changes to their comprehensive plans related to the PSFE and this Interlocal Agreement.

(c) In the event that a local government wishes to amend the agreed upon PSFE, except for minor non-substantive amendments, the following process shall be followed:

(1) Any amendment shall be submitted to the remaining parties for comment prior to transmittal of a comprehensive plan amendment to the FDCA. The submitting party or parties shall provide a summary of the requested amendments and the impact of the amendments on the comprehensive plans and school concurrency systems of the remaining parties.

(2) Within sixty (60) days of its receipt of the proposed amendment(s) from the submitting party or parties, the reviewing parties shall provide written comments regarding the proposed amendment(s) and whether it consents or objects to the proposed amendment(s). If it objects, the reviewing party or parties shall provide reasons for its objections, and conditions that may result in the reviewing party or parties consenting to the proposed amendments. Failure of any party to respond within the sixty (60) day period shall constitute consent to the proposed amendment(s).

(3) If the reviewing party or parties are unable to consent to the proposed amendment(s), the matter will be resolved pursuant to the dispute resolution process set forth in this Interlocal Agreement.

(4) The local governments and School Board agree that once the proposed amendment(s) has/have the consent of all other parties, or is determined to be appropriate through the dispute resolution process, each party will initiate SBWP, comprehensive plan, and regulatory changes necessary to effectuate the amendment(s). The parties agree that necessary amendments to the respective local government comprehensive plans shall be transmitted and adopted in timeframes that allow concurrent review by the FDCA.

(5) Nothing herein precludes a local government from transmitting its amendment(s) to the FDCA to secure a consistency finding.

(c) Following the amendment of a local government's comprehensive plan, as provided herein, the local government shall amend its land development regulations to implement school concurrency consistent with the comprehensive plan, State law (Sections 163.3180 and 163.3202, *Florida Statutes*), and the terms of this Interlocal Agreement not later than December 1, 2008.

SECTION 9 - Annual Updates to Comprehensive Plan Capital Improvement Elements.

Annually, following adoption of this Interlocal Agreement, but no later than December 1st, of each year, the local governments shall amend and transmit to the FDCA their CIE in order to incorporate the adopted SBWP. Following a SBWP update or amendment, made in

accordance with this Interlocal Agreement, local governments shall consider further amendments to their CIE to incorporate such updates or amendments to their comprehensive plan consistent with the State law.

SECTION 10 - School Board Facility Siting Considerations and Procedures.

(a) When the need for a new school is identified in the TDEFP, the School Board shall develop a list of potential sites in the area of need. The list of potential sites for new schools and the list of schools identified in the TDEFP for potential closure and significant renovation shall be submitted to the local government with jurisdiction over the site for an informal assessment regarding consistency with the local government's comprehensive plan, including, as applicable: environmental suitability, transportation and pedestrian access, availability of infrastructure and services, safety concerns, land use compatibility, and other relevant issues. In addition, both the local governments and the School Board shall consider the issues identified in this Interlocal Agreement as each school site is evaluated.

(b) Regardless of whether a new school is identified in the TDEFP, the local governments and School Board shall participate in the process of evaluating potential school closures, significant renovations to existing schools, and new school site selection before land acquisition. The local governments shall advise the School Board as to the consistency of the proposed closure, renovation, or new site with the local comprehensive plan.

(c) The following issues shall, at minimum, be considered by the School Board, and local governments when evaluating new school sites, potential closures and significant renovations:

(1) The location of schools proximate to existing and planned residential development and the potential to co-locate elementary and middle school facilities which provide, when possible, logical focal points for community activities; serve as the cornerstone for innovative urban design, including opportunities for shared use and co-location with other community facilities such as parks, libraries and community centers as provided in this Interlocal Agreement.

(2) The location of elementary schools proximate to and within walking distance of the residential neighborhoods served;

(3) The location of high schools on the periphery of residential neighborhoods, with access to major roads;

(4) Compatibility of the school site with present and projected uses of adjacent property;

(5) Site acquisition and development costs;

(6) Safe access to and from the school site by pedestrians and vehicles;

(7) Existing or planned availability of adequate public facilities and services to support the school;

(8) Environmental constraints that would either preclude or render cost infeasible the development or significant renovation of a public school on the site;

(9) Adverse impacts on archaeological or historic sites listed in the Florida Master Site File, State Historic Preservation Office or designated by the affected local government as a locally significant historic or archaeological resource;

(10) Whether the site is well drained and the soils are suitable for development or are adaptable for development and outdoor educational purposes with drainage improvements;

(11) Whether the proposed location is in conflict with the local government's comprehensive plan, storm water management plans, watershed management plans; or long-range transportation plans;

(12) Whether the proposed location is within a Coastal High Hazard Area, as determined by the Northeast Florida Regional Council's Storm Surge Atlas, or the one hundred (100) year floodplain, as determined by Federal Emergency Management Agency criteria and as delineated in the applicable comprehensive plan;

(13) The proposed site can accommodate the required parking, circulation and queuing of vehicles; and

(14) The proposed location lies outside the area regulated by Sections 333.03 and 1013.33, *Florida Statutes*, regarding the construction of public education facilities in the vicinity of an airport.

(d) At least sixty (60) days prior to acquiring or leasing property or the date it expresses its intent to lease or purchase the subject property that may be used for a new public

educational facility, whichever is earlier, the School Board shall provide written notice to the manager or administrator of the local government with jurisdiction over the use of the land. The local government, upon receipt of this notice, shall notify the School Board within forty-five (45) days of receipt of the notice if the proposed new school site is consistent with the land use categories and policies of the local government's comprehensive plan. If the School Board does not receive a written response from the local government of jurisdiction within the forty-five (45) day time frame, then the School Board shall presume that the proposed site is consistent with the Comprehensive Plan of that local government. This preliminary notice does not constitute the local government's Determination of Consistency pursuant to Section 1013.33(11) and (12), *Florida Statutes*.

(e) At least sixty (60) days prior to reopening a closed school that may be used as a new public educational facility, the School Board shall provide written notice to the local government with jurisdiction over the use of the land. The local government, upon receipt of this notice, shall notify the School Board within forty-five (45) days of receipt of the notice if the proposed reopened school is consistent with the land use categories and policies of the local government's comprehensive plan. If the School Board does not receive a written response from the local government of jurisdiction within the forty-five (45) day frame, then the School Board shall presume that the proposed reopened school is consistent with the comprehensive plan of that local government. This notice does not constitute the local government's determination of consistency pursuant to Section 1013.33(11) and (12), *Florida Statutes*. In the event the School Board appoints a committee to make a recommendation, the local government with jurisdiction shall be invited to participate in the process.

(f) In the event the School Board recommends to re-open a closed school for non-educational purposes, the School Board shall invite the local government with jurisdiction to participate in the process.

(g) Local governments shall review and make necessary changes to their comprehensive plan and land development regulations to ensure that schools are allowed in all residential land use and zoning categories.

(g) In conjunction with the preliminary comprehensive plan consistency determination described herein, the School Board and affected local governments will jointly determine the need for and timing of on-site and off-site emergency management, utility, storm water and transportation improvements necessary to support each new school or the proposed significant renovation of an existing school, and will enter into a written agreement as to the timing, location, and the party or parties responsible for constructing, operating, and maintaining the required improvements.

SECTION 11 - Site Design/Development Plan Review.

(a) As early in the design phase of the site plan as feasible, but prior to the solicitation of bids and at least ninety (90) days before commencing construction, the School Board shall request a formal determination of consistency from the local government with jurisdiction over the use of land. The local government shall determine in writing within forty-five (45) days after receiving a request and the necessary information from the School Board, whether a proposed public educational facility is consistent with the local comprehensive plan and land development regulations.

(b) If a school site plan is consistent with the FLUM and comprehensive plan goals, objectives and policies that allow public schools, the local government may not deny the site plan application, but may impose reasonable development standards and conditions in accordance with Section 1013.33(13), *Florida Statutes*. The local government may consider the adequacy of the site plan as it relates to environmental concerns, health, safety and welfare, and effects on adjacent property, pursuant to Section 1013.33(13), *Florida Statutes*.

(c) If the school site plan is inadequate with regard to stormwater management, water and wastewater, electric or traffic design, the local government shall communicate the identified problems and the School Board shall correct the plans. Upon correction of such issues all permits, connections, and authorizations shall be rendered to the School Board.

(d) The School Board shall provide all necessary permitting for onsite construction, except as relates to water and wastewater utilities, stormwater management, fire hydrant and Florida Department of Transportation connections, driveway connections and off-site improvements.

SECTION 12 - School Concurrency Implementation.

(a) Pursuant to Section 163.3180(13)(b), *Florida Statutes*, the level of service (hereinafter "LOS") standards set forth herein shall be applied consistently within each local government for the purposes of implementing Concurrency, including determining whether sufficient school capacity exists to accommodate a particular development proposal, and determining the financial feasibility of the SBWP. The School Board and the local governments have considered and specifically reject, at this time, the alternative of tiered LOS standards.

(b) LOS standards set forth herein shall be adopted by rule by the School Board pursuant to the provisions of Chapter 120, *Florida Statutes*, and included in the CIE of the local governments' Comprehensive Plan and shall be applied consistently by the local governments and the School Board.

(c) LOS standards may be amended as an amendment to the PSFE or rule amendment adopted by the School Board pursuant to the provisions of Chapter 120, *Florida Statutes*.

(d) LOS standards which shall be used by the local governments and the School Board to implement Concurrency are as follows:

(1) Elementary: one hundred percent (100%) of permanent Florida Inventory of School Houses (hereinafter "FISH") capacity with State Requirements for Educational Facilities (hereinafter "SREF") utilization factor;

(2) Middle: one hundred percent (100%) of permanent FISH capacity with SREF utilization factor;

(3) K-8: one hundred percent (100%) of permanent FISH capacity with SREF utilization factor; and

(4) High: one hundred percent (100%) of permanent FISH capacity with SREF utilization factor; and

(5) Special Purpose: one hundred percent (100%) of permanent FISH capacity with SREF utilization factor

(e) Relocatables shall be utilized to maintain the LOS on a temporary basis when construction to increase capacity is planned and in process. The temporary capacity provided by relocatables shall not exceed twenty percent (20%) of the permanent FISH capacity and shall be used for a period not to exceed five (5) years. Relocatables may also be used to accommodate any additional education programs as required by law.

(f) If LOS cannot be met with the funding available and if LOS cannot be amended to a standard agreeable to the School Board and local governments, then the School Board and the local governments shall consider other capacity options such as a tiered LOS to meet sudden growth spurts, double sessions, year-long school, dual enrollment and virtual school.

SECTION 13 - School Concurrency Service Areas.

(a) The initial Concurrency Service Areas (CSAs) shall be those depicted on Map 1, attached hereto and incorporated herein by this reference.

(b) CSAs shall be established and subsequently modified by the School Board to maximize available school capacity and make efficient use of new and existing public school facilities in accordance with the LOS standards set forth in this Interlocal Agreement, taking into account school policies to:

(1) minimize transportation costs,

(2) limit maximum student travel times,

(3) effect desegregation plans,

(4) achieve socio-economic, racial and cultural diversity objectives, and

(5) recognize capacity commitments resulting from local governments' development approvals for the CSA and contiguous CSAs.

(c) CSAs shall be described geographically in the local governments' Comprehensive Plan pursuant to Section 163.3180(13)(g)(5), *Florida Statutes*. Maps of the CSA boundaries shall be included as "support documents" as defined in Rule 9J-5.003 *Florida Administrative Code*, and updated from time-to-time by the School Board pursuant to the provisions of Chapter 120, *Florida Statutes*.

(d) Modification of CSA's shall be considered by the Working Group and recommended to the Oversight Committee, and then presented to the School Board for adoption. Modification of the CSA map shall be distributed to each local government thirty (30) days prior to the School Board's adoption hearing and the final map shall be transmitted within ten (10) days of the School Board's action.

(e) The School Board is not required to conform the CSA's to the school attendance zones.

(f) The actions of the School Board shall be accomplished pursuant to the provisions of Chapter 120, *Florida Statutes*.

SECTION 14 - Applicability and Capacity Determination.

(a) Except as provided in this Section**,** Concurrency applies only to residential uses that generate demands for public school facilities and are proposed or established after December 1, 2008.

(b) The following residential uses shall be exempt from the requirements of Concurrency.

1. In conformity with Chapter 177, *Florida Statutes*, any subdivision of land which subdivides a parcel of forty (40) acres or more into three (3) lots or less.

2. Single family lots of record having received final plat approval prior to December 1, 2008.

3. Multi-family residential development having received final site plan approval prior to December 1, 2008.

4. Amendments to residential development approvals issued prior to December 1, 2008, which do not increase the number of residential units or change the type of residential units proposed.

5. Any age restricted community with no permanent residents under the age of eighteen (18). To be eligible for the exemption as an age restricted community, a binding restrictive covenant limiting the age of permanent residents to eighteen (18) years and older must be recorded in the Official Records of the County.

6. Any residential development within a DRI development order adopted prior to July 1, 2005 or within a DRI application which was filed prior to May 1, 2005.

SECTION 15 - Process for Determining Concurrency; Capacity Determinations; Period of Validity/Expiration.

(a) Local governments may accept and process final plats and residential site plans, only after the applicant has complied with the terms of the local government's land use regulations.

(b) Upon the receipt of a Concurrency application, the local government shall transmit the application to the School Board for a determination of whether there is adequate school capacity in accordance with the rules of the School Board, for each level of school, to accommodate the proposed development, based on the LOS standards, CSA's, and other standards set forth herein and in the local government's land development regulations. The local government will advise the School Board when the application for the proposed development is deemed complete and shall provide the School Board with any supplements to the application. The School Board will log in the date and time it receives each application. Each application shall be acted upon in the order in which it has been received regardless of the application origin. The School Board shall be responsible to determine completeness of the concurrency application. The local government shall be responsible to determine completeness of the proposed development application.

(c) A fee may be charged by the School Board to cover the costs of the Concurrency review process. The fee charged by the School Board shall be determined by the School Board and adopted into local governments' fee resolutions (and shall not exceed the cost of the review process). Local governments shall hold said fees as a fiduciary to the School Board and promptly transmit the fees to the School Board and the School Board shall, thereupon, be solely responsible for the accounting and usage of the fees.

(d) Within thirty (30) days of the initial transmittal from the local government, the School Board shall review the Concurrency application and, based on the standards set forth in this Interlocal Agreement and the rules of the School Board adopted pursuant to the provisions of Chapter 120, *Florida Statutes*, report in writing to the local government whether adequate school capacity exists for each level of school, based on the standards set forth in this Interlocal Agreement. The School Board's determination of capacity shall be valid for thirty (30) days. On or before the 30th day a reservation fee must be paid or the capacity determination is null and void.

(e) If adequate capacity does not exist, School Board agrees to consider any and all mitigation proposals submitted by the applicant consistent with this Interlocal Agreement.

(f) If the School Board determines that adequate capacity does not exist, the development application may remain active pending the conclusion of the mitigation negotiation period described in this Interlocal Agreement.

(g) A local government may only approve a final plat or residential site plan after meeting all applicable land development regulations and conditioned upon a Concurrency determination of available school capacity by the School Board, the

School Board's written determination that adequate school capacity will be in place or under actual construction within three (3) years after the issuance of final subdivision or site plan approval for each level of school without mitigation and payment of Concurrency reservation fees as outlined in this Interlocal Agreement, or the execution of a legally binding mitigation agreement between the applicant and the School Board and the local government as provided by this Interlocal Agreement.

(h) The local government shall notify the School Board when the Concurrency reservation fees have been paid and when the final plat or residential site plan is approved.

(i) The School Board Concurrency determination shall expire three (3) years after the date of issuance. The School Board may extend the expiration of a Concurrency determination only through a legally binding mitigation agreement and upon executing a waiver of rights for the refund of Concurrency reservation fees. Local governments shall make appropriate changes to their land development regulations and the School Board shall adopt rules to ensure that the issuance of certificates of Concurrency, development orders, or their functional equivalent is condition upon the School Board Concurrency determination three (3) year expiration, or the extended expiration through a legally binding mitigation agreement.

(j) Local governments may approve or deny development applications consistent with their land development regulatory authority after the thirty (30) day capacity determination period has expired and may grant conditional approvals which are subject to School Board Concurrency determinations.

(k) Consistent with Sections 125.022 and 166.033, *Florida Statutes*, the local governments shall issue denials of development permits stating the legal authority upon which the denial is based.

(l) Local governments shall process, evaluate and act upon DRIs in accordance with the provisions of Section 380.06, *Florida Statutes*, and other controlling provisions of law.

(m) The School Board will monitor and evaluate the implementation of Concurrency consistent with Section 163.3180 (13) (9) 6 C *Florida Statutes*.

SECTION 16 - Concurrency Reservation Fees.

(a) Concurrency reservation fees shall, at a minimum, be equal to the school impact fees unless a legally binding mitigation agreement states otherwise.

(b) Concurrency reservation fees shall be collected by the local government and held to reserve school capacity.

(c) If an unextended **C**oncurrency determination expires, or a development approval is timely surrendered, the local government shall refund the Concurrency reservation fees to the applicant.

(d) All school impact fees shall be required to be assessed and paid as a condition of receiving a building permit pursuant to the impact fee rate schedules in effect at the time a building permit is issued. However, the Concurrency reservation fees previously paid, shall be credited towards the corresponding impact fee as a per unit fixed-dollar deduction from the applicable impact fees at the time of building permit issuance.

(e) The local governments shall notify the School Board any time concurrency reservation fees are collected, refunded, or credited towards corresponding impact fees. Local governments shall hold Concurrency reservation fees as a fiduciary to the School Board.

(f) If the Concurrency determination is extended, the concurrency reservation fees shall be non-refundable to the applicant and, upon expiration, shall be forthwith paid by the local government to the School Board, The non-refundable nature of the concurrency reservation fees in such circumstances shall not be deemed forfeiture, but shall represent the cost of reserving the available school capacity.

(g) The School Board agrees to hold the local governments harmless relative to any decision by the School Board relating to concurrency reservation fees.

SECTION 17 - Concurrency Determination Definitions; Standards and Calculations.

(a) The terms used in this Interlocal Agreement shall have the following meanings:

1. Available school capacity - the circumstance where there is sufficient school capacity, based on adopted LOS standards, to accommodate the demand created by a proposed development.

2. Capacity - the number of students that may be housed in a facility at any given time based on a utilization percentage of the total number of existing satisfactory student stations.

3. Existing school facilities - school facilities constructed and operational at the time a School Concurrency Application is submitted to the local government.

4. Florida Inventory of School Houses (FISH) - an official inventory, based on design, of all school district owned facilities.

5. FISH Manual - the document entitled "Florida Inventory of School Houses (FISH)," 2006 edition, and that is published by the Florida Department of Education, Office of Educational Facilities.

6. Permanent FISH Capacity - capacity that is added by "permanent buildings," as defined in the FISH Manual.

7. Planned school facilities - school facility capacity that will be in place or under actual construction within three (3) years after the issuance of final subdivision or site plan approval, pursuant to the SBWP.

8. Reserved Capacity - School facility capacity set aside for a development or use other than those set aside pursuant to Concurrency application, including development that impacts schools but that is exempt from the terms of the local government's concurrency management system.

9. SBWP - the financially feasible five (5) year school district facilities work program adopted pursuant to Section 1013.35, *Florida Statutes*. Financial feasibility shall be determined using professionally accepted methodologies.

10. Total school facilities - Existing school facilities and planned school facilities.

11. Used capacity - School facility capacity consumed by enrollment as stated by the October Student enrollment rolls.

(b) The School Board shall determine whether adequate school capacity exists for a proposed development, based on the LOS standards, CSAs, and other standards set forth in this Interlocal Agreement and the rules and decisions of the School Board, as follows:

1. Calculate total school facilities by adding the capacity provided by existing school facilities to the capacity of any planned school facilities.

2. Calculate available school capacity by subtracting from the total school facilities the sum of:

    a. Used capacity;

    b. The portion of reserved capacity projected to be developed within three (3) years;

    c. The portion of previously approved development projected to be developed within three (3) years; and

    d. The demand on schools created by the proposed development.

(c) In determining whether there is sufficient school capacity to accommodate a proposed development, the School Board shall:

1. Consider whether the school serving the CSA in which the proposed development is situated has available school capacity, based on the formula above.

2. In the event that the school serving the CSA in which the proposed development is situated does not have available school capacity, the School Board shall determine whether a school serving a contiguous CSA has available school capacity by:

    a. Identifying the school serving a contiguous CSA which contain sufficient school capacity for the particular type of school and assigning the demand from the proposed development accordingly; and

    b. Restructuring school attendance zones, or other operational components, such that the impacts of the proposed development will not cause the LOS standard in the CSA within which it is located to exceed the LOS standards set forth in this Interlocal Agreement.

SECTION 18 - Mitigation Alternatives and Procedures.

(a) In the event that the School Board reports that mitigation may be accepted in order to offset the impacts of a proposed development, where the LOS standards set forth in this Interlocal Agreement otherwise would be exceeded, the applicant shall initiate in writing a mitigation negotiation period with the School Board and local government with jurisdiction in order to establish an acceptable form of mitigation, pursuant to Section 163.3180(13)(e), *Florida Statutes*, the local government's land development regulations, the rules of the School Board and this Interlocal Agreement.

(b) The preferred forms of mitigation include:

1. Contribution of land;

2. The donation, construction, or funding of school facilities sufficient to offset the demand for public school facilities to be created by the proposed development;

3. Expansion of existing permanent school facilities subject to the expansion being less than or equal to the LOS set for a new school of the same category;

4. Payment for construction and/or land acquisition; or

5. Cost of financing.

(c) Other potentially acceptable forms of mitigation may include:

1. Establishment of a charter school with facilities constructed in accordance with the Construction Standards of the School Board in addition to the SREF and subject to guarantees that the facility will be conveyed to the School Board at no cost to the School Board if the charter school ceases to operate.

2. The creation of mitigation banking within designated areas based on the construction of a public school facility in exchange for the right to sell capacity credits. Capacity credits shall be sold only to developments within the same CSA or an adjacent CSA.

3. Establishment of an educational benefit district.

(d) The following standards apply to any mitigation accepted by the School Board:

1. Proposed mitigation must be directed toward a permanent school capacity improvement identified in the School Board's financially feasible Work Program, which satisfies the demands created by the proposed development; and

2. If a proposed mitigation is not shown in the work program it shall be considered by the School Board on a case by case basis; and

3. Relocatable classrooms will not be accepted as mitigation.

(e) In accordance with Section 163.3180(13)(e), *Florida Statutes*, the applicant's total proportionate share mitigation obligation to resolve a capacity deficiency shall be based on the following formula, for each school level: multiply the number of new student stations required to serve the new development by the average cost per student station. The average cost per student station shall include school facility development costs and land costs. Pursuant to Section 163.3180(13(e)(2), *Florida Statutes*, the applicant's proportionate-share mitigation obligation will be credited toward any other impact fee or exaction imposed by local ordinance for the same need, on a dollar-for-dollar basis, at fair market value.

(f) If within ninety (90) days of the date the applicant initiates the mitigation negotiation period, the applicant and the School Board are able to agree to an acceptable form of mitigation, a legally binding mitigation agreement shall be executed, which sets forth the terms of the mitigation, including such issues as the amount, nature, and timing of donations, construction, or funding to be provided by the developer, and any other matters necessary to effectuate mitigation in accordance with this Interlocal Agreement. The mitigation agreement shall specify the amount of the Concurrency reservation fee and the amount and timing of any impact fee credits or reimbursements that will be provided by the local government as required by State law.

(g) If, after ninety (90) days, the applicant and the School Board are unable to agree to an acceptable form of mitigation, an impasse shall be declared in writing and the local government may proceed to final disposition of the development order for the proposed development if it has not already acted on the matter.

(h) The School Board and local government may, at the request of the applicant, grant two (2) ninety (90) day extensions to the mitigation negotiation period.

(i) Mitigation shall be proportionate to the demand for public school facilities to be created by actual development of the property.

SECTION 19 – Implementation.

(a) It is understood that the School Superintendent, the County Administrator and any of the city managers or administrators may, in the implementation and administration of this Interlocal Agreement, act on behalf of their respective boards, councils, or commissions in any manner that is customarily delegated in accordance with controlling law.

(b) It is also understood that references to the School Superintendent, County Administrator or city managers or administrators shall include their duly appointed representatives.

(c) To the extent that the procedures and requirements referenced from the land development regulations require interpretation and adjustment to meet the intent of this Interlocal Agreement, the County Administrator or a city manager or administrator may exercise discretion or apply criteria for decisions as prescribed by the land development regulations and the Superintendent of Schools make act likewise for the School Board.

SECTION 20 - Effective Date and Termination.

Pursuant to Section 1013.33, *Florida Statutes*, this Interlocal Agreement is effective upon the date of its execution and shall continue in full force and effect; provided however, that this Interlocal Agreement shall automatically be renewed for successive one (1) year periods unless any of the local governments or the School Board signifies in writing to the others its intent to terminate this Interlocal Agreement at least one hundred and twenty (120) days prior to the renewal date. It is further provided that either of the aforementioned parties may terminate this Interlocal Agreement by giving at least one hundred and twenty (120) days written notice of its intent.

SECTION 21 - Resolution of Disputes.

(a) If the parties to this Interlocal Agreement are unable to resolve any issue(s) in which they may be in disagreement that are covered in this Interlocal Agreement, such dispute will be resolved in accordance with governmental conflict resolution procedures specified in Chapters 164 or 186, *Florida Statutes*, or through the Northeast Florida Regional Council's Regional Dispute Resolution Process. Each party shall bear its own attorney's fees.

(d) Disputes involving developers or property owners with regard to applications for development approvals School Board Concurrency may be resolved through any alternative dispute resolution process in which the local government determines to participate or the provisions of Section 70.51, *Florida Statutes*, if invoked. In any event, the School Board shall be invited to participate as a full party.

SECTION 22 – Remedies.

Each party shall have any and all remedies as permitted by law; provided, however, that the parties agree to provide for conflict resolution as set forth in this Interlocal Agreement and for positive dialogue and communications if disputes or disagreements arise as to the interpretation or implementation of this Interlocal Agreement.

SECTION 23 – Headings.

All sections and descriptive headings in this Interlocal Agreement are inserted for convenience only, and shall not affect the construction or interpretation hereof.

SECTION 24 - *Force Majeure.*

No party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, is delayed or prevented by force majeure. Force Majeure shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, terrorism, hurricane, explosion, any law, proclamation, regulation, or ordinance or other act of government, to include, but not be limited to, judicial act, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

SECTION 25 - Binding Effect.

(a) This Interlocal Agreement shall be binding upon and inure to the benefit of the successors in interest, transferees and assigns of the parties.

(b) Each party hereto represents to the other that it has undertaken all necessary actions to execute this Interlocal Agreement, and that it has the legal authority to enter into this Interlocal Agreement and to undertake all obligations imposed on it.

SECTION 26 - Public Records.

The parties shall allow public access to all documents, papers, letters or other materials subject to the provisions of Chapter 119, *Florida Statutes*, and the Constitution of the State of Florida and which have been made or received by a party in conjunction with this Interlocal Agreement.

SECTION 27 - Records And Audits.

(a) The parties shall maintain in their place of business all books, documents, papers and other evidences pertaining to work performed under this Interlocal Agreement.

(b) Such records shall be available to the other party(s) at any reasonable time that the other party may request inspection and copying of the said records.

SECTION 28 - Conflict Of Interest.

The parties agree that they will not commit any act that would cause or create a conflict of interest as defined by Chapter 112, *Florida Statutes*, to exist or occur in the performance of their obligations under this Interlocal Agreement.

SECTION 29 - Compliance with Laws and Regulations.

In performing their obligations pursuant to this Interlocal Agreement, the parties shall abide by all laws, statutes, ordinances, rules, and regulations pertaining to, regulating the acts contemplated to be performed herein including, but not limited to, those now in effect and hereafter adopted.

SECTION 30 – Notices.

(a) All notices or other communications provided for by this Interlocal Agreement shall be made in writing and shall be deemed properly delivered when delivered (i) personally, (ii) by the facsimile transmission of such notice to the party entitled thereto, provided the sending party receives electronic confirmation thereof, or (iii) by the mailing of such notice to the parties entitled thereto, registered or certified mail, postage prepaid to the parties at the following addresses (or to such address designated in writing by a party to the other parties):

(1). For the School Board:

Mr. Bill Delbrugge
Superintendent of Schools
1769 East Moody Drive
Post Office Box 755
Bunnell, Florida 32110

(2). For the County:

Mr. Craig Coffey
County Administrator
1769 E. Moody Blvd. # 1
Bunnell, Florida 32110

(3). For Palm Coast:

Mr. Jim Landon
City Manager
City Hall
2 Commerce Boulevard
Palm Coast, Florida 32164

(4). For Bunnell:

Mr. Richard Diamond
City Manager
200 South Church Street
Bunnell, Florida 32110

(5). For Marineland:

Mayor Jim Netherton
Town of Marineland
9507 Ocean Shore Boulevard
Marineland, Florida, 32086-9602

(b) Electronic notice, such as by e-mail, is not sufficient to service as notice under this Interlocal Agreement.

(c) A party may change, by written notice as provided herein, the address or person for receipt of notices.

SECTION 31 - Interpretation/Applicable Law/Venue.

(a) The laws of the State of Florida shall govern this Interlocal Agreement.

(b) Any legal action necessary arising out of the Interlocal Agreement will have its venue in Flagler County and this Interlocal Agreement will be interpreted according to the laws of Florida.

(c) No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other further exercise thereof. Waiver of a default shall not be deemed a waiver of any subsequent defaults. In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs. The specific provisions of this Interlocal Agreement shall prevail over the generality of the foregoing.

(d) In any action or proceeding required to enforce or interpret the terms of this Interlocal Agreement, venue shall be in the Seventh Judicial Circuit Court in and for Flagler County, Florida.

SECTION 32 - Damages/Indemnification.

(a) Each party shall be liable for all damages or injury to persons or property caused solely by its actions, errors, omissions, neglect or mismanagement, or by the actions of any of its officers, agents and employees while engaged in the operations herein authorized, and for any actions or proceedings brought as a result of the this Interlocal Agreement, to specifically include, but not be limited to, anti-trust actions or proceedings. Should any party be sued therefore, the other parties shall be notified of such suit and, thereupon, the party taking the action giving rise to the litigation shall have the duty to defend the suit.

(b) Should judgment be awarded against a party or parties in any such case, the party causing the damages which were asserted in the litigation shall forthwith pay the same and relieve the other parties of any obligations relating thereto. Each party

hereby indemnifies and saves harmless the other parties, their agents, officers and employees from any and all judgments recovered by anyone for personal injury, death or property damage, or any other theory of liability sustained by reason of any of the indemnifying party's activities or for any actions of proceedings brought as a result of this Interlocal Agreement.

(c) Nothing set forth in this Interlocal 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*, and other applicable law.

SECTION 33 - Construction or Interpretation of the Interlocal Agreement.

This Interlocal Agreement is the result of bona fide arms length negotiations between the parties and all parties have contributed substantially and materially to the preparation of this Interlocal Agreement. Accordingly, this Interlocal Agreement shall not be construed or interpreted more strictly against any party than against any other party. All parties have participated in the drafting of this Interlocal Agreement.

SECTION 34 - Entire Agreement/Modification.

(a) This Interlocal Agreement constitutes the complete, integrated and entire agreement between the parties with respect to the subject matter hereof, and supersedes any and all prior agreements, arrangements, contracts or understandings, whether oral or written, between the parties.

(b) This Interlocal Agreement may not be amended, changed, or modified and material provisions hereunder may not be waived, except by a written document, of equal dignity herewith and signed by all parties to this Interlocal Agreement.

(**c**) This Interlocal Agreement does not supersede or replace existing joint use agreements and similar agreements by and between the parties.

SECTION 35 - Third Party Beneficiaries.

(a) This Interlocal Agreement is solely for the benefit of the formal parties to this Interlocal Agreement, and no right or cause of action shall accrue by reason hereof to or for the benefit of any other third party not a formal party hereto.

(b) Nothing in this Interlocal Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity any right, remedy or claim under or by reason of this Interlocal Agreement or any provisions or conditions hereof, other than the parties hereto and their respective representatives, successors and assigns as set forth herein.

SECTION 36 - Funding Obligations.

Notwithstanding anything to the contrary stated elsewhere in this Interlocal Agreement, no party shall have any obligation to fund any part or parts of the matters provided for herein by means of a pledge of revenues contrary to the provisions of the Constitution of the State of Florida. There are no implied funding obligations arising to any party by virtue of this Interlocal Agreement. It is understood that the School District is under no obligation to proceed with the projected work program if sufficient funds are not available through the School District's approved budget, or from applicable Federal, state, or other sources, to permit the School District to appropriately fund the projected work program.

SECTION 37 - Effect of Change in Laws.

If State or Federal laws are enacted after execution of this Interlocal Agreement that are applicable to and preclude the parties' compliance with the terms of this Interlocal Agreement, this Interlocal Agreement shall be modified or revoked as is necessary to comply with the relevant State or Federal laws.

SECTION 38 - Attorneys Fees and Costs.

In the event of any action to enforce the terms of this Interlocal Agreement, brought by the local government(s) and/or School Board the prevailing party shall be entitled to recover reasonable attorneys' fees, paralegals' fees, and costs incurred, whether the same be incurred in pre-litigation negotiation, litigation at the trial level, or upon appeal.

SECTION 39 – Severability.

If any one (1) or more of the covenants or provisions of this Interlocal Agreement shall be held to be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall, for any reason whatsoever, be held invalid, then such covenants or provisions shall be null and void, shall be deemed

separable form the remaining covenants or provisions of this Interlocal Agreement, and shall, in no way, affect the validity of the remaining covenants or provisions of this Interlocal Agreement; provided, however, that the public interest in the terms set forth herein is not substantially adversely impacted.

SECTION 40 – Counterparts.

This Interlocal 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 document.

SECTION 41 - Superseding Previous Interlocal Agreement.

This Interlocal Agreement supersedes and replaces the "Interlocal Agreement for Public School Facility Planning" between the School Board and local governments that was executed in November, 2003.

IN WITNESS WHEREOF, this Interlocal Agreement has been executed by and on behalf of the School Board of Flagler County and the local governments on this _____ day of _____, 2007.

ATTEST:

By: _____
Bill Delbrugge
Superintendent of Schools

SCHOOL DISTRICT OF FLAGLER COUNTY

By: _____
Colleen Conklin
Chairman, School Board of Flagler County

For use and reliance of the
Board of County Commissioners of
Flagler County only. Approved as to
form and legality.

_____
Kristy Gavin
School Board Attorney

Revised 10/18/07

ATTEST:

By:_____
Gail Wadsworth
Ex Officio Clerk
to Board of County Commissioners

For use and reliance of the
Board of County Commissioners of
Flagler County only. Approved as to
form and legality.

_____
Al Hadeed
County Attorney

FLAGLER COUNTY, FLORIDA

By: _____
James M. O'Connell
Chairman
Board of County Commissioners

ATTEST:

By:_____
Clare Hoeni
City Clerk

For use and reliance of Palm Coast
City Council only.
Approved as to form and legality.

_____
Lonnie N. Groot
City Attorney

CITY OF PALM COAST, FLORIDA

By:_____
Jon Netts
Mayor

ATTEST:

CITY OF BUNNELL

By: _____
Richard Diamond
City Manager

By: _____
Joanne King
Mayor

For use and reliance of Bunnell
City Commission only.
Approved as to form and legality.

_____
Sid Nowell
City Attorney

ATTEST:

TOWN OF MARINELAND, FLORIDA

By:_____
Suzanne Dixon, City Manager
Date: _____

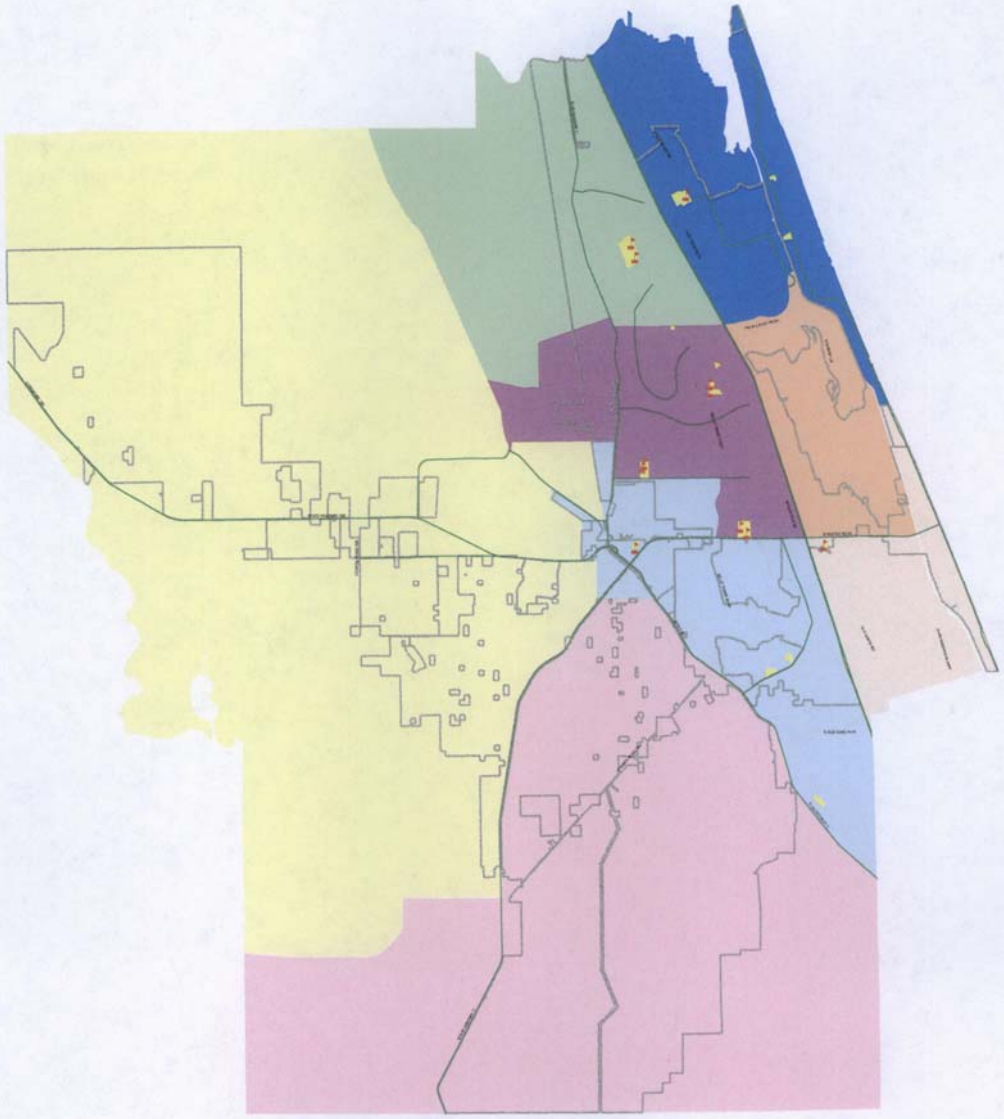
By:_____
Jim Netherton, Mayor

For use and reliance of Marineland
Town Commission only.
Approved as to form and legality.

_____
Dennis Bayer
City Attorney

Flagler County Schools
Concurrency Service Area (CSA) Map

Provided by the GIS Division



LEGEND

- Current Schools
- School Properties
- City Boundaries

CSA Number
1
2
3
4
5
6
7
8

MAP 1

10/15/07