

JUN 10 2008 NP/TA/LK

**AMENDED INTERLOCAL AGREEMENT FOR PUBLIC SCHOOL FACILITY
PLANNING AND IMPLEMENTATION OF CONCURRENCY**

This Interlocal Agreement for Public School Facility Planning (the "Agreement") is entered into among the School Board of Orange County (hereinafter referred to as "School Board"), Orange County (hereinafter referred to as "County"), and the following cities and towns: City of Apopka, City of Belle Isle, Town of Eatonville, City of Edgewood, City of Maitland, Town of Oakland, City of Ocoee, City of Orlando, Town of Windermere, City of Winter Garden and City of Winter Park (collectively, "Municipalities") (together with the County, hereinafter sometimes referred to jointly as "Local Governments").

RECITALS

WHEREAS, the School Board, County, and Municipalities recognize their respective obligations and responsibilities for the education, nurture and general well-being of the children within their communities; and

WHEREAS, the School Board, County, and Municipalities recognize the benefits that will flow to the citizens and students of their communities by more closely coordinating their land development programs with the School Board's facilities planning process: namely (1) better coordination of the establishment of new schools in time and place with Residential Development, (2) greater efficiency for the School Board and Local Governments by locating schools to take advantage of existing and planned roads, water, sewer, and parks, (3) improved student access and safety by coordinating the construction of new and expanded schools with the road and sidewalk construction programs of the Local Governments, (4) better defined urban form by locating and designing schools to serve as community focal points, (5) greater efficiency and convenience by co-locating schools with parks, ballfields, libraries, and other community facilities to take advantage of joint use opportunities, and (6) reduction of pressures on schools that result from urban sprawl and support of existing neighborhoods by appropriately locating new schools and expanding and renovating existing schools; and

WHEREAS, sections 1013.33 and 163.31777, Florida Statutes, require the coordination of planning between School Board and the Local Governments to ensure that plans for construction and opening of schools are facilitated and coordinated in time and place with plans for Residential Development, concurrently with other necessary services. Such planning requires, in part and without limitation, that the location of schools must be consistent with the Comprehensive Plan and implementing Land Development Regulations of the Applicable Local Government; and

WHEREAS, sections 163.31777(1)(a) and 1013.33(2)(a), Florida Statutes, further require each county and the non-exempt municipalities within that county to enter into an interlocal agreement with the School Board to jointly establish the specific ways in

which the plans and processes of the School Board and the local governments are to be coordinated; and

WHEREAS, local governments must review proposed amendments to an adopted future land use element for availability of necessary facilities and services so that proposed Comprehensive Plan amendments will maintain consistency with the requirements of section 163.3177(6)(a) when applied to the future land use element proposed to be amended; and

WHEREAS, section 163.3180(13)(g), Florida Statutes, requires that the School Board and the Applicable Local Governments enter into an interlocal agreement to implement statutory school concurrency requirements; and

WHEREAS, sections 163.31777(2)(e) and 163.3180(13)(g)6.b., Florida Statutes, require that the Interlocal Agreement implementing school concurrency provide an opportunity for the School Board to review and comment on the effect of Comprehensive Plan amendments and Rezonings on the public school facilities plan; and

WHEREAS, Section 8 of this Agreement is intended to satisfy the requirement of section 163.3180(13)(g)6.b. by providing an opportunity for the School Board to review and comment on the effect of proposed Comprehensive Plan amendments and Rezonings on public schools and to provide an opportunity for local governments to consider the availability of School Capacity when reviewing proposed Comprehensive Plan amendments and proposed Rezonings; and

WHEREAS, to avoid confusion, Section 8 of this Agreement will have its own definitions applicable only to Section 8; and

WHEREAS, the School Board, County, and Municipalities enter into this Agreement in fulfillment of the foregoing statutory requirements and in recognition of the benefits accruing to their citizens and students described above; and

WHEREAS, the County, Municipalities and School Board have mutually agreed that coordination of school facility planning and comprehensive land use planning is in the best interests of the citizens of said County and Municipalities; and

WHEREAS, the County has jurisdiction for land use and growth management decisions within its unincorporated boundaries and the Municipalities have similar jurisdiction within their respective municipal boundaries; and

WHEREAS, the School Board has the responsibility to provide school facilities to ensure a free and adequate public education to the residents of the County and Municipalities; and

WHEREAS, the County, Municipalities and School Board agree that they can better fulfill their respective responsibilities by working in close cooperation to ensure that adequate public school facilities are available for the residents of the County and Municipalities; and

WHEREAS, Interlocal Agreements previously entered into by and among the Municipalities, County, and School Board must be updated or in some instances superseded.

NOW THEREFORE, be it mutually agreed by and among the School Board, Orange County, and the City of Apopka, City of Belle Isle, Town of Eatonville, City of Edgewood, City of Maitland, Town of Oakland, City of Ocoee, City of Orlando, Town of Windermere, City of Winter Garden and City of Winter Park that the procedures set forth below will be followed in coordinating land use and public school facilities planning:

Section 1. Definitions

Except as otherwise specified in Section 8 of this Agreement, the following words and terms shall have the following meanings in the interpretation of this Agreement:

Adjusted FISH Capacity: the number of students who can be served in a permanent public school facility as provided in the Florida Inventory of School Houses adjusted to account for the design capacity of Modular or In-Slot Classrooms on the campuses designed as Modular or In-Slot schools, but not to exceed Core Capacity.

Adjacency Review: the review as provided in Section 16.6 of this Agreement of School Concurrency Service Areas adjacent to the School Concurrency Service Area in which the proposed Residential Development is located.

Applicant: the person or entity submitting a Development Application (as defined in Section 8.1 hereof) or School Concurrency Determination Application, including its principals, agents, successors, and assigns.

Applicable Local Government: either the Local Government with land use jurisdiction over a proposed Residential Development, or the Local Government with land use jurisdiction over a proposed school site.

Available School Capacity: the ability of a School Concurrency Service Area to accommodate the students generated by a proposed development at the adopted Level of Service standards. Available School Capacity shall be derived using the following formula for each School Type:

$$\text{Available School Capacity} = (\text{School Capacity} \times \text{Adopted Level of Service}^1) - (\text{Enrollment}^{2+} + \text{Reserved Capacity})$$

Where:

¹Adopted Level of Service = the ratio, expressed as a percentage, of Enrollment to School Capacity as jointly adopted by the School Board and Local Governments.

²Enrollment = Student enrollment as counted in the most recent official October count.

Capacity Commitment Agreement: an executed Capacity Enhancement Agreement, whether individually or as part of a consortium of Capacity Enhancement Agreements, containing commitments to fund wholly or partially the construction of public school facilities to provide School Capacity at identified public schools required to serve the affected Residential Developments, as more fully set out in a Resolution of the School Board to be adopted within thirty (30) days from the date the School Board executes this Agreement.

Capacity Encumbrance Letter: a written determination from an Applicable Local Government temporarily reserving Available School Capacity during the pendency of a Site Plan application approval process and temporarily reserving the Available School Capacity needed to accommodate the impacts of the Applicant's proposed Residential Development upon completion of the requirements in Section 16.7(a) of this Agreement.

Capacity Reservation Fee: a fee to reserve capacity, in an amount equivalent to the value of the impact fees calculated to be due from a proposed Residential Development as of the date of the reservation of capacity.

Certificate of School Concurrency: a written determination by an Applicable Local Government that all school concurrency review requirements have been satisfied for the proposed development and that the School Board has issued a School Concurrency Recommendation indicating that Available School Capacity 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 School Concurrency Recommendation. A Certificate of School Concurrency may be included as part of a consolidated concurrency approval including other concurrency requirements by an Applicable Local Government and is not required to be a separate document.

Comprehensive Plan: a County or Municipality's plan that meets the requirements of section 163.3177, Florida Statutes.

Core Capacity: the maximum number of students that can be effectively served in a school dining facility.

Development Analysis: the document required to be prepared and submitted under Section 16.4 of this Agreement as a requirement for the review of a School Concurrency Determination Application.

Development Impact: projected students from a Residential Development as a result of approval of a Development Application or School Concurrency Determination Application, calculated by multiplying the proposed number of dwelling units by the student generation rates by School Type as set forth in Table 12 of the Data, Inventory, and Analysis to the County's adopted Public Schools Facilities Element.

Development of Regional Impact: a development within the definition of section 380.06, Florida Statutes.

District Facilities Work Program: the financially feasible District Facilities Work Program adopted by the School Board pursuant to section 1013.35(2)(a)2. and 1013.35(2)(b), Florida Statutes.

Educational Facilities Plan: the planning document adopted by the School Board pursuant to and consistent with sections 1013.35(2) and 1013.35(4), Florida Statutes that includes the District Facilities Work Program.

Educational Plant Survey: the survey of public school facilities, along with ancillary and supporting facilities, conducted by the School Board pursuant to and consistent with section 1013.31, Florida Statutes.

Encumbered Capacity: the School Capacity temporarily allocated to a Residential Development for one hundred eighty (180) days after the issuance of a Capacity Encumbrance Letter.

Final School Concurrency Recommendation: a written communication from the School Board informing the Applicable Local Government and Applicant that the School Board has: (i) calculated that there is sufficient Available School Capacity to accommodate the impacts of the Applicant's proposed Residential Development, or (ii) has calculated that there is insufficient Available School Capacity to accommodate the impacts of the Applicant's proposed Residential Development, but the School Board and the Applicant have negotiated and agreed upon a Proportionate Share Mitigation Agreement to address the impacts of the Applicant's proposed Residential Development, or (iii) has calculated that there is insufficient Available School Capacity to accommodate the impacts of the Applicant's proposed Residential Development and that the School Board and the Applicant were unable to agree upon a Proportionate Share Mitigation Agreement.

In-Slot Classrooms: relocatable classrooms that conceptually 'slide' into the spaces along a common walkway, as part of a modular campus which is characterized by a campus with brick and mortar core facilities and covered concrete walkways leading to the relocatable classrooms, and which are located at the following elementary schools:

Clay Springs, Cypress Springs, Frangus, Hidden Oaks, Hunter's Creek, John Young, Little River, Meadow Woods, MetroWest, Palm Lake, Rock Springs, Shingle Creek, Ventura, Waterbridge, and Waterford, and also including the Arbor Ridge K-8 center.

Land Development Regulations: ordinances enacted by an Applicable Local Government pursuant to section 163.3213(2)(b), Florida Statutes.

Level of Service: percentage of Enrollment to School Capacity jointly adopted by the School Board and Applicable Local Governments and documented in Section 13 of this Agreement.

Permanent Student Station: space and capital resources considered to be satisfactory to accommodate an individual student within a non-relocatable educational facility as determined by the State of Florida Department of Education, as more specifically set forth in the State Requirements for Educational Facilities and including In-Slot Classrooms.

Preliminary School Concurrency Recommendation: a written communication from the School Board to the Applicable Local Government and the Applicant informing the Applicable Local Government of the School Board's preliminary calculation of the effect of the Applicant's proposed Residential Development on Available School Capacity for the applicable School Concurrency Service Areas. If the School Board calculates that an Applicant's proposed Residential Development will not cause the affected School Concurrency Service Areas to exceed capacity at the adopted Level of Service standards, then the Preliminary School Concurrency Recommendation shall become a Final School Concurrency Recommendation, upon which an Applicable Local Government may rely in encumbering and/or reserving the requisite Available School Capacity needed to accommodate the impacts of the Applicant's proposed Residential Development consistent with the requirements in Section 16.7(a) of this Agreement.

Proportionate Share Mitigation: an improvement or contribution made by an Applicant pursuant to a binding and enforceable agreement between the Applicant, School Board and Applicable Local Government to provide monetary compensation or other mitigation for the additional demand on deficient public school facilities created by a proposed Residential Development, as mandated in section 163.3180(13)(e), Florida Statutes, and as set forth in Section 17 of this Agreement.

Public School Facilities Element: the section of the County or a Municipality's Comprehensive Plan addressing the provision of educational facilities as required by sections 163.3177(12) and 163.3180(13)(a), Florida Statutes.

Reserved Capacity: School Capacity allocated to a particular Residential Development for a period of time specified in a Certificate of School Concurrency or a Capacity Commitment Agreement. For purposes of calculating Available School Capacity, Reserved Capacity also means the total amount of School Capacity reserved for all Residential Developments within a School Concurrency Service Area.

Residential Development: any development that is comprised of Residential Units, in whole or in part, for non-transient human habitation, and includes single-family housing and multi-family housing, regardless of whether the Applicable Local Government's approval procedure for such development is considered commercial or residential.

Residential Unit: any occupied structure or part thereof, which is designed exclusively for human habitation and meets all applicable government requirements for residential use on a continuous basis; i.e., having hot and cold running water and adequate facilities for heating, cooking, sleeping, and the sanitary elimination of wastes. Hotels, motels, and temporary lodging facilities are specifically excluded.

Rezoning: a change in zoning classification that will result in a net increase of Residential Units on the property that is the subject of the Rezoning. For purposes of Section 8 of this Agreement, the term "Rezoning" shall also mean any land use change not necessarily denoted or characterized as a Rezoning (such as a change to a land use plan, master plan or development plan in a mixed use development, Development of Regional Impact, planned unit development, etc.) that will result in a net increase of ten (10) or more Residential Units on the property.

School Attendance Zone: a geographic area where students who reside within such area must attend a single designated school.

School Capacity: Adjusted FISH Capacity for the applicable School Concurrency Service Area as programmed in the first three (3) years of the District Facilities Work Program.

School Concurrency Determination Application: the written submittals for the determination of Available School Capacity for a Residential Development or a phase of a Residential Development, which is included as part of an application for Site Plan approval.

School Concurrency Recommendation: a written communication from the School Board informing the Applicable Local Government and Applicant that the School Board has (i) calculated that there is sufficient Available School Capacity to accommodate the impacts of the Applicant's proposed development, (ii) has calculated that there is no Available School Capacity, or an insufficient amount of Available School Capacity to accommodate the impacts of the Applicant's proposed development and recommends a Proportionate Share Mitigation agreement to address the impacts of an Applicant's proposed Residential Development, or (iii) has calculated that an Applicant's proposed residential development does not meet the requirements necessary to satisfy school concurrency and that the School Board and the Applicant were unable to agree on a proportionate share mitigation.

School Concurrency Service Area: a geographic area in which the Level of Service standards are measured by the School Board as designated in Section 13 of this Agreement.

School Impact Fee: the amounts due under the School Impact Fee Ordinance in connection with the construction of new School Capacity needed to accommodate Residential Development.

School Impact Fee Ordinance: Article V, Chapter 23, Orange County Code of Ordinances.

School Impact Fee Study: the study used by the County to update its School Impact Fee Ordinance, which shall mean, as of the date of this Interlocal Agreement, that study prepared by Tindale-Oliver & Associates, Inc., as of July 16, 2007.

School Type: a category of school based on instruction level, whether elementary school grades, middle school grades, or high school grades; ninth-grade centers shall be included with high schools and K-8 centers shall be included with elementary schools.

Site Plan Approval: a subdivision approval or its functional equivalent under the Land Development Regulations of the Applicable Local Government, for any Residential Development or any phase of a Residential Development, whether single-family or multi-family. The Parties acknowledge that the County and the Municipalities may each have different terms within their individual Land Development Regulations describing this process.

State Requirements for Educational Facilities: the construction standards and requirements for the construction of schools, established pursuant to Rule 6A-2.0010, Florida Administrative Code.

Section 2. Interlocal School Planning Meetings

Representatives appointed by the chief executive of the School Board, County, and each Municipality shall meet on a quarterly basis or as called by any of the parties hereto to review proposed ordinances of the Municipalities and the County that might effect school concurrency, and formulate recommendations regarding coordination of land use and school facilities planning, and needed supporting infrastructure including such issues as population and student projections, development trends, school needs, co-location and joint use opportunities, and ancillary infrastructure improvements needed to support the school facilities and ensure safe student access as well as the implementation of this Agreement. Representatives from the East Central Florida Regional Planning Council will also be invited to attend. The School Board shall be responsible for making meeting arrangements, providing notification and maintaining a written summary of meeting actions. The group so convened shall be referred to as the "Technical Advisory Committee."

Section 3. Student Enrollment and Population Projections

In fulfillment of their respective planning duties, the School Board, County, and Municipalities agree to coordinate and base their plans upon consistent projections of the amount, type, and geographic distribution of population growth and student enrollment. Countywide five (5) and ten (10) year population and student enrollment projections shall be revised annually by the School Board and provided at the first opportunity to the Technical Advisory Committee. In addition, the School Board shall work with the County or the County's designated consultant to calculate a Student Generation Rate by School Type. In preparing said population and student enrollment projections, the School Board shall coordinate with the Municipalities and the County to ensure, inter alia, that new Residential Development and redevelopment information as provided by the Municipalities and County is reflected in updated projections to be provided pursuant to Section 4 below.

Section 4. Coordinating and Sharing of Information

4.1 Tentative District Educational Facilities Plan. Annually, the School Board shall submit to the County and each Municipality the tentative district Educational Facilities Plan at least ninety (90) days prior to its adoption by the School Board. The tentative plan must be consistent with the requirements of section 1013.35, Florida Statutes, prior to its submittal to the County and Municipalities. The Municipalities and County shall review the tentative plan and comment to the School Board within sixty (60) days of receiving the tentative plan regarding the consistency of the plan with the Comprehensive Plan of the Local Government.

4.2 Mutual Reports.

(a) By March 1 of each year, the County and the Municipalities will provide the School Board with a report on growth and development trends within their jurisdiction for the prior year. Each report to the School Board must include the following information:

1. Type, number (estimated for land use and zoning approvals) and location of Residential Units that have received land use, zoning, subdivision plats or Site Plan Approvals.
2. Building permits and certificates of occupancy data for Residential Units issued for the preceding year and their location.
3. Summary of vested rights determinations or other actions that affect demands for public school facilities.
4. Information regarding conversion or redevelopment of housing or other structures into Residential Units that are likely to generate new students.

5. The identification of any development orders issued which contain a requirement for the provision of school sites as a condition of development approvals.

6. School Capacity encumbered during the previous calendar year.

7. School Capacity reserved during the previous calendar years.

(b) By March 1 of each year, the School Board will report to the County and the Municipalities.

1. School Capacity for each school and Level of Service for each School Concurrency Service Area and whether it is appropriate to reduce or increase the adopted Level of Service standards for particular School Types.

2. Available School Capacity and enrollment for each School Concurrency Service Area and each School, including a reconciliation of the encumbered and Reserved Capacity with Available School Capacity.

3. Proposed new capital needs, including identification of proposed new school sites, significant renovations, and closures as provided in Section 5 of this Agreement.

4. Whether ways to measure School Capacity other than Adjusted FISH Capacity are available and are better suited to measuring the ability of a school to address the curriculum needs of each school's student population, and whether such a method of measuring capacity should be adopted in lieu of Adjusted FISH Capacity and included in the County's and Municipalities' Public School Facilities Element.

4.3 Coordinated Calendar.

Information shall be shared through the following, which shall be delivered or performed no later than:

March 1 or prior to the first meeting of the Technical Advisory Committee in a new calendar year, whichever comes first: Growth reports to the School Board from local governments, and from School Board to local governments, as set out in section 4.2(a) and 4.2(b) of this Agreement.

Quarterly (by mutual agreement): School Planning Meetings.

July 1: Approval and submittal to the County and Municipalities of tentative Educational Facilities Plan, including District Facilities Work Program.

September 1: Local Government comment on tentative Educational Facilities Plan.

October 1: Adoption of by the School Board of the Educational Facilities Plan, including the District Facilities Work Program.

Section 5. School Site Selection, Significant Renovations, and Potential School Closures

5.1 Joint Participation. As provided in this Section, the Local Governments shall jointly participate with the School Board in the process of evaluating potential school closures, significant renovations to existing schools, and new school site selection.

5.2 Pre-Acquisition Procedures. Pursuant to section 1013.33(11), Florida Statutes, at least sixty (60) days prior to acquiring or leasing property that may be used for a new school, the School Board shall provide written notice to the Applicable Local Government requesting a determination of consistency with the Applicable Local Government's Comprehensive Plan. The Applicable Local Government shall notify the School Board within forty-five (45) days after receiving the necessary information and the School Board's request for determination, if the proposed new school site is consistent with the land use categories and policies of the Applicable Local Government's Comprehensive Plan. This preliminary notice does not constitute the local government's determination of consistency pursuant to section 1013.33(12), Florida Statutes.

5.3 Pre-Construction Procedures. As provided in section 1013.33(12), Florida Statutes, at least ninety (90) days prior to initiating construction, the School Board shall submit a site design/development plan to the County Administrator or the designated representative of an individual Municipality, and within forty-five (45) days after receiving the submittal, the County or Municipality shall certify, in writing, whether the proposed Educational Facility is consistent with the Comprehensive Plan and land development regulations of the Applicable Local Government. Failure of the local governing body to make a determination in writing within ninety (90) days after the School Board's request for a determination of consistency shall be considered an approval of the School Board's application.

5.4 Significant Renovations and Closures. Pursuant to Sections 163.31777(2)(b) and 1013.33(15)(b), Florida Statutes, when considering a significant renovation or a closure of a school facility, the School Board shall notify the appropriate municipality in which the school is located or the County's Growth Management Department if the subject school is in the unincorporated part of the County, prior to any significant renovation or closure activities. Significant renovations encompass projects that increase or decrease a school's student population by five percent (5%) or more, or increase a school's total building square footage by five percent (5%) or more.