

Office of School Facilities  
Jaime G. Torrens, Chief Facilities Officer

**SUBJECT: THAT THE SCHOOL BOARD OF MIAMI-DADE COUNTY,  
FLORIDA:**

1. NOT APPROVE THE COUNTY REVISED INTERLOCAL ON SCHOOL CONCURRENCY FOR THE REASONS NOTED HEREIN AND IN THE LEGAL MEMORANDA PREVIOUSLY DISTRIBUTED TO THE BOARD ON JULY 1 AND JULY 9, 2008, AND NOTIFY THE COUNTY ACCORDINGLY; AND
2. AUTHORIZE THE SUPERINTENDENT TO SUBMIT TO THE DEPARTMENT OF COMMUNITY AFFAIRS (DCA), IN ACCORDANCE WITH APPLICABLE STATUTES, COMMENTS AS TO WHY THE COUNTY REVISED INTERLOCAL AND RELATED COMPREHENSIVE DEVELOPMENT MASTER PLAN AMENDMENTS SHOULD NOT BE FOUND IN COMPLIANCE; AND
3. AUTHORIZE THE SUPERINTENDENT TO PROVIDE AN UPDATE TO ALL NON-EXEMPT MUNICIPALITIES

**COMMITTEE: FACILITIES AND CONSTRUCTION REFORM**

**LINK TO STRATEGIC PLAN: IMPROVE CONSTRUCTION SERVICES**

Background

As noted in memoranda distributed to the Board on July 1, 2008 and July 9, 2008, the Miami-Dade County Board of County Commissioners (BCC), adopted at a public hearing held July 1, 2008 a revised Interlocal Agreement (County Revised Interlocal), which differs from the Interlocal Agreement approved by the Board at its May 21, 2008 meeting in a number of substantive ways, namely:

1. deleting city participation from the assessment of the effect of the geographic areas on the public school concurrency system, which is a requirement inherent in statute, i.e. all parties are to participate in this process;
2. changing the language that would have required County adoption of the District's five-year capital plan into the County's capital improvement element, to a lesser standard requiring only that the County consider the plan for adoption, thus introducing a level of discretion not envisioned in the governing statutes;

3. requiring that the County also approve any changes to the School Board's five-year capital plan, which goes beyond the County's regulatory purview and infringes upon a decision-making process that falls solely under the purview of the Board;
4. re-introducing the clause that relates to possible claims of taking of property, emanating from the implementation of school concurrency, which has already been rejected by the School Board as legally objectionable;
5. changing the effective date of the County Revised Interlocal to the later of three possible events, which is inconsistent with the governing statutes since they provide that an Interlocal Agreement is in effect once the Department of Community Affairs issues/publishes a notice to find an Interlocal Agreement is in compliance with statutes and once the statutory 21-day appeal period expires (unless challenged); and
6. allowing future amendments to the County Revised Interlocal to be adopted potentially without the School Board's participation and approval, by introducing as one of the options, approval by the County and 2/3 of the municipalities only, which has already been rejected once before by the School Board, is not in keeping with the governing statutes, and fails to recognize the Board as an indispensable party.

#### Additional Information

Over the objections of District representatives present at the meeting, the BCC approved all of the above summarized changes and added two other substantive changes:

- A. included a "maintenance of effort" provision in the County Revised Interlocal, that would not allow any reduction of available or planned student stations. This runs counter to governing school concurrency statutes by: 1) removing the Board's authority and sole governance over its adoption of the five-year capital plan; 2) redefining the meaning of concurrency intended in statute, which requires only that school districts achieve a pre-specified and agreed Level of Service standard over a 5-year period, and 3) potentially mandating that the School District maintain or build capacity that is no longer needed as a result of changing enrollment or other relevant conditions, unless the County agrees to the reduction in capacity; and
- B. included generic language that would leave open the door for additional mitigation options to be considered by the County in the County Revised Interlocal, which is of particular concern since this could potentially be done without the School Board's input and approval (see comment 6 above).

Given the substantive nature of the proposed additional changes approved by the BCC, some of which would infringe upon the School Board's jurisdiction, staff is recommending that the School Board not approve the County Revised Interlocal and file the appropriate objections with the DCA. A copy of the County Revised Interlocal is attached.

**RECOMMENDED:** That the School Board of Miami-Dade County, Florida:

1. not approve the County Revised Interlocal on school concurrency for the reasons noted above and in the legal memoranda previously distributed to the Board on July 1 and July 9, 2008, and notify the County accordingly; and
2. authorize the Superintendent to submit to DCA, in accordance with applicable statutes, comments as to why the County Revised Interlocal and related Comprehensive Development Master Plan amendments should not be found in compliance; and
3. authorize the Superintendent to provide an update to all non-exempt municipalities.

JGT:ARC

**INTERLOCAL AGREEMENT FOR  
PUBLIC SCHOOL FACILITY PLANNING  
BETWEEN MIAMI-DADE COUNTY AND  
MIAMI-DADE COUNTY PUBLIC SCHOOLS**

This Agreement is entered into between Miami-Dade County, a political subdivision of the State of Florida (hereinafter referred to as "County") and The School Board of Miami-Dade County, Florida, a political subdivision of the State of Florida (hereinafter referred to as "School Board").

**RECITALS**

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

WHEREAS, the School Board has the statutory and constitutional responsibility to provide a uniform system of free and adequate public schools on a countywide basis; and,

WHEREAS, the County and School Board recognize the benefits that will flow to the citizens and students of their communities by more closely coordinating their comprehensive land use and school facilities planning programs namely: (1) better coordination of new schools in time and place with land development, (2) greater efficiency for the school board and local governments by placing schools to take advantage of existing and planned roads, water, sewer, and parks, (3) improved student access and safety by coordinating the construction of new and expanded schools with the road and sidewalk construction programs of the local governments, (4) better defined urban form by locating and designing schools to serve as community focal points, (5) greater efficiency and convenience by co-locating schools with parks, ball fields, libraries, and other community facilities to take advantage of joint use opportunities, (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 (7) improving the quality of education in existing, renovated and proposed schools; and,

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

WHEREAS, the County has jurisdiction over land use and growth management decisions within its unincorporated boundaries, including the authority to approve or deny comprehensive plan amendments and rezonings, or other development orders that generate students and impact the school system; and,

WHEREAS, Sections 163.3177(6)(h) 1 and 2, Florida Statutes, require each local government to adopt an intergovernmental coordination element as part of their comprehensive plan that states principles and guidelines to be used in the accomplishment of coordination of the adopted comprehensive plan with the plans of the school boards, and describes the processes for collaborative planning and decision-making on population projections and public school siting; and,

WHEREAS, Sections 163.31777 and 1013.33, Florida Statutes, further require each county and the non-exempt municipalities within that county to enter into an interlocal agreement with the district school board to establish jointly the specific ways in which the plans and processes of the district school board and the local governments are to be coordinated; and,

WHEREAS, the 2005 Florida Legislature adopted Chapter 2005-98, Laws of Florida, codified at Sections 163.31777, 163.3180(13) and 1013.33, Florida Statutes, which, in relevant part, required that all school interlocal agreements be updated to reflect a new statutory mandate to implement public school concurrency; and

WHEREAS, the Municipalities of City of Aventura, Town of Bay Harbor Islands, City of Coral Gables, Town of Cutler Bay, City of Doral, Village of El Portal, City of Florida City, City of Hialeah, City of Hialeah Gardens, City of Homestead, Village of Key Biscayne, City of Miami, City of Miami Beach, Town of Miami Lakes, Village of Miami Shores, City of Miami Springs, City of North Bay Village, City of North Miami, City of North Miami Beach, City of Miami Gardens, City of Opa-Locka, Village of Palmetto Bay, Village of Pinecrest, City of South Miami, City of Sunny Isles Beach, Town of Surfside, City of Sweetwater, and the City of West Miami (hereinafter collectively referred to as "Cities") and the School Board have entered into the Amended and Restated Interlocal Agreement for Public School Facility Planning in Miami-Dade County (referred to herein as the "Amended and Restated Agreement"); and,

WHEREAS, the County and the School Board desire to enter into a separate form of agreement as provided herein (referred to herein as the "Agreement"); and,

WHEREAS, the School Board and the County have further determined that it is necessary and appropriate to cooperate with each other to coordinate the approval of residential development with the provision of adequate public school facilities in a timely manner and at appropriate locations, to eliminate any deficit of capacity and provide capacity for projected new growth, as further specified herein; and

WHEREAS, the County is entering into this Agreement in reliance on the School Board's ~~maintenances of better number of elementary, middle and senior high school student students, expand in each curriculum services area, USA, Florida, and other states in the following part of the agreement, except as agreed to by the County and the School Board in the future, and on the~~ obligation to prepare, adopt and implement a financially feasible capital facilities program that will result in public schools operating at the adopted Level of Service Standard consistent with the timing specified in the School Board's adopted five-year district educational facilities plan (hereinafter referred to as the "District Facilities Work Program"); and

WHEREAS, the School Board has further committed to update and adopt the District Facilities Work Program yearly to add enough capacity in the new fifth year to address projected growth and to adjust the District Facilities Work Program in order to maintain the adopted Level of Service Standard and to demonstrate that the utilization of school capacity is maximized to the greatest extent possible pursuant to Sections 163.3180(13)(d)2 and 1013.35, Florida Statutes; and

WHEREAS, by entering into this Agreement, the School Board and the County are fulfilling their statutory obligations and requirements recognizing the benefits that will accrue to their citizens and students described above.

### AGREEMENT

NOW THEREFORE, be it mutually agreed between the School Board and the County that the following procedures will be followed in coordinating land use and public school facilities planning:

#### Section 1. Joint Meetings

1.1 Staff Working Group: A Staff Working Group comprised of the Chair of the Board of County Commissioners and/or designee, the School Board Superintendent and/or designee, and City Mayor/Manager and/or their designees will meet at least on a semi-annual basis to discuss issues and formulate recommendations regarding public education in the School District, and coordination of land use and school facilities planning, including such issues as population and student projections, development trends, a work program for five (5), ten (10) and twenty (20) year intervals and its relationship to the local government comprehensive plans, particularly as it relates to identification of potential school sites in the comprehensive plan's future land use map series, school needs (school capacity and school funding), the implementation of public school concurrency, collocation and joint use opportunities, and ancillary infrastructure improvements needed to support the school and ensure safe student access. Representatives from the South Florida Regional Planning Council, the Latin Builders Association and the Builders Association of South Florida will also be invited to attend and participate. Meetings of the working group shall be held upon at least thirty (30) days written advance notice, and shall be coordinated by the School Board Superintendent, or designee. The Staff Working Group shall meet no later than March 31 each year to address student enrollment projections, and by April 30 and October 31 of each year to address the public school concurrency management system, and any proposed amendments to the school-related comprehensive plan provisions. The April 30 deadline shall apply where changes are proposed for the County's first comprehensive plan amendment cycle of the following year, and the October 31 deadline shall apply for changes proposed in the second cycle of the following year.

1.2 Elected Officials Forum: The School Board Superintendent and/or designee shall coordinate a joint workshop session at least annually and invite one or more representatives of the County Commission or their designee(s), the governing body of each City or their designee(s), and the School Board or their designee(s). A representative of the South Florida Regional Planning Council will also be invited to attend. The School Board shall provide the meeting invitations with at least thirty (30) days advance written notice of such meeting to the person designated as a contact in this Agreement. Modifications and amendments shall be considered by each party to this Agreement in accordance with Section 216.136, and may be discussed at the joint workshop sessions. The joint workshop sessions provide opportunities for the County Commission, the City Commissions or Councils, and the School Board to hear reports, discuss policy, set direction, and reach understandings concerning issues of mutual concern regarding public education, and coordination of land use and school facilities planning, including population and student growth, development trends, school needs, off-site improvements, public school concurrency, school capacity, school funding, options to reduce the need for additional permanent student stations, and joint use opportunities.

## **Section 2. Student Enrollment and Population Projections**

2.1 In fulfillment of their respective planning duties, the County, [REDACTED] and School Board agree to coordinate their plans upon consistent projections of the amount, type, and distribution of population growth and student enrollment. Countywide five (5)-year population projections shall be updated at least once every two (2) years by the County. The School Board may enter into a separate agreement with the County for the preparation of student enrollment projections. Updated County and School District data shall be provided at least once every two (2) years for review at the Staff Working Group meeting described at Subsection 1.1.

2.2 The School Board shall utilize student population projections based on information produced by the demographic, revenue, and education estimating conferences pursuant to Section 216.136, Florida Statutes, where available, as modified by the School Board based on development data and agreement with the [REDACTED] and the Office of Educational Facilities and SMART Schools Clearinghouse. The School Board may request adjustment to the estimating conferences' projections to reflect actual enrollment and development trends using the COHORT Projection Waiver available on the Florida Department of Education website. In formulating such a request, the School Board will coordinate with the Cities and County regarding development trends and future population projections.

2.3 The School Board, working with the County and Cities via the Staff Working Group, will use the information described in subsection 3.4 and any other relevant information provided as part of the requirements of this Agreement, to allocate projected student enrollment by Minor Statistical Areas.

### **Section 3. Coordinating and Sharing of Information**

3.1 *Tentative District Educational Facilities Work Plan:* By May 31 of each year, the School Board shall submit to the County the tentative district educational facilities [REDACTED] prior to adoption by the Board. The tentative plan will be consistent with the requirements of Section 1013.35, Florida Statutes, and include projected student populations geographically, an inventory of existing school facilities, projections of facility space needs, information on relocatables, general locations of new schools for the five (5), ten (10), and twenty (20) year time periods, and options to reduce the need for additional permanent student stations. The tentative plan will also include a financially feasible district facilities work program for a five (5) year period. The County shall review and evaluate the tentative plan and comment to the School Board by June 30 on the consistency of the tentative plan with the local comprehensive plan, including its compatibility with the comprehensive plan's future land use map series, and whether a comprehensive plan amendment will be necessary for any proposed educational facility. The School Board shall provide the District's adopted Facilities Work Program to the County no later than October 20, and it shall be adopted into the County's comprehensive plan each year no later than December 1.

3.2 *Educational Plant Survey:* The School Board will remain responsible for reporting and submission of updates. The Educational Plant Survey shall be consistent with the requirements of Section 1013.31, Florida Statutes, and include at least an inventory of existing educational facilities, recommendations for new and existing facilities, and the general location of each in coordination with existing land use plans. The Staff Working Group, in accordance with the procedure outlined in Section 3.5, will evaluate and make recommendations regarding the location and need for new, significant renovation or expansion, closures of educational facilities, and the consistency of such plans with the local government comprehensive plans and relevant issues including, but not limited to, those listed in subsections 4.3, 7.6, 7.7 and 8.1 of this Agreement.

3.3 *Educational Facilities Impact Fee Ordinance:* The County and the School Board shall perform a review at least every three (3) years of the Educational Facilities Impact Fee Ordinance, its formula, and the Educational Facilities Impact Fee Methodology and Technical Report, and if appropriate, make recommendations for revisions to the Board of County Commissioners. The first review shall be performed within three (3) years after the effective date of the impact fee ordinance, as amended. Among the goals of this review will be the adjustment of impact fee structure to ensure the full eligible capital costs, as allowed by the governing ordinances, associated with development of public school capacity is included. In reviewing the Educational Facilities Impact Fee Ordinance, the County and School Board shall employ their best efforts to evaluate a more equitable distribution of impact fee assessments. The School Board and County will provide for local government, industry and citizen participation and input, prior to submitting recommendations to the Board of



County Commissioners for substantive revisions to the Educational Facilities Impact Fee Ordinance, its formula, and/or the Educational Facilities Impact Fee Methodology and Technical Report, including the adjustment of impact fee structure or benefit district boundaries.

3.4 *Growth and Development Trends*: By September 30 of each year, the County will provide the School Board with a report on growth and development trends within its jurisdiction, based on the most current available data. This report will be in tabular, graphic, and/or textual formats and will include the following:

- (a) The type, number, and location of residential units, which have received zoning approval, plat approval or site plan approval;
- (b) Information regarding adopted future land use map amendments which may have an impact on school facilities;
- (c) The County shall report to the School Board the school impact fees collected annually on building permit applications. This report shall include the amount of the fee collected and location of the proposed residential development. The School Board shall report to the County how the impact fee revenue and all other school contributions have been spent within the Benefit District in which it was collected. All data shall include source information for verification and be provided in a format consistent with other capital expenditures;
- (d) Information, if available, regarding the conversion or redevelopment of non-residential structures into residential units that are likely to generate new students and, conversely, information on the number of residential units converted to non-residential uses; and
- (e) The identification of any development orders issued that contain a requirement for the provision of a public school site as a condition of development approval.

If at all possible, data required to be submitted in this section should also be sent in a format that can be loaded into the Geographic Information Systems (GIS) database maintained by the School Board.

3.5 *New, Expanded and Renovated School Facilities*: The Staff Working Group shall provide recommendations on the planning of new facilities, additions or renovations for consideration by School Board staff and the School Site Planning and Construction Committee ("SSPCC") in formulating the tentative district educational facilities plan. Likewise, the Staff Working Group shall also provide input and comments, recommendations on the update of the Five-Year Educational Plant Survey and any revisions thereto.

### 3.6 *Public School Facilities Element:*

(a) *Initial comprehensive plan amendments related to the Public Schools Facilities Element to satisfy the requirements of Chapter 2005-98, Laws of Florida:* The amendments to the Public School Facilities Element and related amendments to the Capital Improvements Element and the Intergovernmental Coordination Element in the County's comprehensive plans ("school-related element amendments" or "school-related element provisions") required to satisfy Chapter 2005-98, Laws of Florida are being adopted into the comprehensive plans of the County concurrently with the execution of this Agreement by the County. Some provisions relevant to public schools may remain in the Future Land Use Element or other elements as may be appropriate.

(b) *Subsequent school-related element amendments:* Thereafter, the experience with implementing the revised comprehensive plans and the School Board's District Facilities Work Program shall be reviewed by the County and Cities each year, at a Staff Working Group meeting to be held no later than April 30 (County's first comprehensive plan amendment cycle) or October 31 (County's second comprehensive plan amendment cycle), to determine whether updates to the comprehensive plans are required. At a minimum, the District Facilities Work Program shall be updated annually by the addition of a new fifth year as provided in Section 9.3. Any other amendments to the comprehensive plans shall be transmitted in time to allow their adoption concurrently with the update to the District Facilities Work Program, where feasible. Amendments to the comprehensive plans shall be considered in accordance with the County's comprehensive planning cycle.

(c) *School Board review of school-related element amendments:* All school-related element amendments shall be provided to the School Board at least ninety (90) days prior to transmittal (or adoption if no transmittal is required). The School Board shall review the school-related element amendments and provide comments, if any, to the relevant local government either (i) in writing at least thirty (30) days prior to the local planning agency meeting on the school-related element amendment, or (ii) by attending and providing comments at the local planning agency meeting.

(d) *Countywide consistency of school-related element amendments:* The County's [REDACTED] school-related element provisions must be consistent with the uniform district-wide public school concurrency system, with [REDACTED] and with the School Board's facilities, plans and policies. Each City may choose to adopt all or a portion of the County's school-related element provisions into its comprehensive plan by reference, or it may adopt its own school-related element provisions. If a City adopts its own school-related element provisions, any goal, objective, policy or other provision relevant to the establishment and maintenance of a uniform district-wide public school concurrency system shall be substantially the same as its counterpart in the County comprehensive plan and other Cities' comprehensive plans. If any

school-related element amendment is proposed that deviates from the uniform district-wide public school concurrency system, it shall become effective. Such proposals shall be forwarded to the Staff Working Group for review, and the adoption of any such changes shall be timed to coincide with the County's comprehensive plan amendment cycle. Once these amendments have all become effective, then the new requirement shall apply countywide. The County may adopt the District Facilities Work Program into its comprehensive plan either by reference or by restatement of the relevant portions of that Facilities Work Program, but in no event shall the County attempt to modify that Facilities Work Program. The County agree to coordinate the timing of approval of school-related element amendments, to the extent that it is feasible to do so.

(e) *Evaluation and Appraisal Report:* In addition to the other coordination procedures provided for in this Agreement, at the time of the Evaluation and Appraisal Report, the County shall schedule at least one Staff Working Group meeting with the School Board to address needed updates to the school-related comprehensive plan provisions.

**Section 4. School Site Selection, Significant Renovations, and Potential School Closures**

4.1 The School Board staff will seek to amend Rule 6Gx13-2C-1.083, Section II.D. Membership, to expand the membership of its standing School Site Planning and Construction Committee (SSPCC) by additional voting members as follows:

- a. if the agenda item related to an incorporated area of Miami-Dade County, "two floating members," one designated by the City Manager of the most impacted municipality, and one designated by the geographically nearest Community Council, or
- b. if it concerns an unincorporated area, two "floating members," one designated from the most impacted Community Council and one from the geographically nearest municipality most impacted by the agenda item;

along with the representative selected by the Miami-Dade County League of Cities, the Miami-Dade County representative selected by the County Manager or designee, the member of the residential construction industry, and other members of the committee.

For purposes of this Section, a floating member from the most impacted

municipality shall be defined as the local government jurisdiction in which the proposed project is located, and a floating member from the most impacted Community Council shall be defined as the Community Council jurisdiction in which the proposed project is located.

The SSPCC shall review potential sites for new schools and proposals for significant renovation, the location of relocatables or additions to existing buildings, and potential closure of existing schools, and make recommendations on these and all other issues within its purview under the Rule for consideration by School Board staff. The SSPCC shall also:

(a) Host a planning forum, by May 31, as a joint meeting of the Staff Working Group and School Site Planning and Construction Committee on an annual basis or more often as may be needed. For purposes of this forum, the SSPCC shall invite a representative from each of the impacted units of government to participate in the proceedings and to provide input and comments, for consideration by the SSPCC in its deliberations. The forum will review the School Board's acquisition schedule and all other relevant issues addressed in this Agreement and required by statute, and will include appropriate staff members of the School Board, at least one staff member of the County and a representative from each of the affected Cities. Based on information gathered during the review, the SSPCC will submit recommendations to the Superintendent or designee for the upcoming year.

(b) Invite a staff representative from each unit of local government affected by an agenda item at any SSPCC meeting throughout the year to attend that meeting. It shall provide a full opportunity for such local government representatives to provide comments, and shall consider those comments in its deliberations. Based on information gathered during the review, the SSPCC will submit recommendations to the Superintendent or designee on these items.

For purposes of this Sub Section, an affected local government shall be defined as follows:

- a. Any jurisdiction within fifteen hundred (1,500) feet of the property or improvement; and
- b. Any jurisdiction whose utilities are utilized by the School Board property or improvement.

The School Board Superintendent and/or designee shall provide the invitations referenced in this Section 4.1, with at least thirty (30) days advance written notice of such meeting to the person designated as a contact in this Agreement. The Superintendent or designee shall forward the SSPCC recommendations referenced in this Agreement to the School Board so that they may be considered by the Board at the time that it deals with the issues to which the recommendations relate.

4.2 When the need for a new school is identified and funded in the District

Facilities Work Program, the SSPCC will review a list of potential sites in the area of need. The list of potential sites for new schools and the list of schools identified and funded in the District Facilities Work Program for significant renovation, the location of relocatables, or additions to existing buildings and potential closure and opportunities for collocation will be submitted to the local government with jurisdiction over the use of the land for an informal assessment regarding consistency with the local government comprehensive plan.

4.3 The evaluation of new school sites or significant expansion of student stations at existing schools shall be in accordance with School Board Rule 6Gx13-2C-1.083, as may be amended from time to time and attached hereto as Exhibit 1. Any proposed amendments to this rule, which may impact upon the terms of this Agreement, shall be submitted to the affected ~~local~~ units of ~~local~~ government prior to submission to the SSPCC and to the School Board.

4.4 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 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 if the proposed new school site is consistent with the land use categories as depicted in the future land use map series, as well as the policies of the local government's comprehensive plan. If the site is not consistent, it shall not be used as a school site until and unless otherwise approved by the local government. This preliminary notice does not constitute the local government's determination of consistency pursuant to Section 1013.33(12), Florida Statutes.

## **Section 5. Supporting Infrastructure**

5.1 In conjunction with the preliminary consistency determination described at subsection 4.4 of this Agreement, the School Board and ~~affected local government~~ ~~will~~ will jointly determine the need for, and timing of, on-site and off-site improvements necessary to support each new school or the proposed significant expansion of an existing school, in those instances where capacity is being added to accommodate new student populations. Significant expansion shall include construction improvements that result in a greater than five (5) percent increase in student capacity, the location of relocatables, or additions to existing buildings for high schools with a capacity of more than 2,000 students. For significant expansions to high schools with a capacity of less than 2,000 and for middle schools, the applicable percentage shall be ten (10) percent, and for significant expansions to elementary schools (including K-8 centers), the applicable percentage shall be fifteen (15) percent. The School Board and affected local government will enter into a letter of agreement as to the timing, location, and the party or parties responsible for constructing, operating and maintaining the required on-site and off-site improvements related to the expansions and new schools referenced above, respectively.

This section shall not be construed to require the affected local unit of

government to bear any costs of infrastructure improvements related to school improvements.

#### **Section 6. Public Education Facilities Site Plan Review**

6.1 The School Board and the County will continue to coordinate any and all proposed construction or expansion of public educational facilities, including the general location of new schools in unincorporated Miami-Dade County, with the County's Comprehensive Development Master Plan (CDMP) and local land development regulations in accordance with applicable review procedures and statutes.

6.2 The School Board will coordinate any and all proposed construction or expansion of public educational facilities, including the location of new schools or relocatables, within any City's jurisdiction with that City's adopted comprehensive plan and land development regulations. This coordination shall be accomplished in accordance with the provisions of Section 1013.33(12) through (15), Florida Statutes. The affected City shall provide all of its comments to the School Board as expeditiously as feasible, and not later than sixty (60) days after receipt of the complete site plan.

#### **Section 7. Local Planning Agency, Comprehensive Plan Amendments, Rezonings, and Developments of Regional Impact**

7.1 In accordance with the requirements of and to the extent required by Section 163.3174(1), Florida Statutes, the County will invite a staff representative appointed by the School Board to attend meetings, on an as needed basis, of their local planning agencies or equivalent agencies that first consider comprehensive plan amendments and rezonings at which comprehensive plan amendments, rezonings, or Development of Regional Impact proposals or amendments are considered that would, if approved, increase residential density. The County may appoint such School Board representative to the planning agency, and, at its sole discretion, may grant voting status to the School Board representative.

7.2 The School Board will designate a staff representative to serve in an advisory support capacity on the County's staff development review committee, or equivalent body. It shall be the responsibility of School Board staff to be prepared to comment in writing to the local staff development review committees at least five (5) days prior to the meeting or development review committee review, for their consideration. These comments shall include a statement that the application will be subject to public school concurrency review at the plat, site plan or functional equivalent stage, consistent with Section 9 of this Agreement. A copy of the application shall be delivered to the School Board representative at least fifteen (15) working days prior to the proposed meeting date, or on the date the agenda is distributed. The School Board's review shall be conducted in accordance with agreed upon procedures to be developed through a collaborative process with the Staff Working Group.

7.3 The County agrees to transmit to the School Board copies of proposed comprehensive plan amendments, rezonings, and Development of Regional Impact proposals or amendments that may affect student enrollment, enrollment projections, or school facilities

7.4 Within thirty (30) days after receipt of notification by the County, which notification shall include development plans, the School Board will advise the County of the school enrollment impacts anticipated to result from the proposed comprehensive plan amendment, rezoning, or Development of Regional Impact proposals or amendments. The School Board will also include capacity information on approved charter schools that provide relief in the area of impact. The School Board may charge a non-refundable application fee payable to the School Board to reimburse the cost to review comprehensive plans, rezonings and Development of Regional Impact proposals or amendments pursuant to this Section. In that event, payment may be required prior to the commencement of review.

7.5 The review by the School Board staff regarding comprehensive plan amendments, rezonings and Development of Regional Impact proposals or amendments containing residential units shall be classified as "Public Schools Planning Level Review (Schools Planning Level Review)". The Schools Planning Level Review does not constitute public school concurrency review. This Section shall not be construed to obligate the County to deny or approve (or to preclude the County from approving or denying) an application.

7.6 In the review and consideration of comprehensive plan amendments, rezonings, and Development of Regional Impact proposals or amendments, and their respective potential school impacts, the County should consider the following issues:

- a. School Board comments, which may include available school capacity or planned improvements to increase school capacity, including School Board approved charter schools and operational constraints (e.g., establishment of or modifications to attendance boundaries and controlled choice zones), if any, that may impact school capacity within an area, including public-private partnerships. Failure of the School Board to provide comments to the County within thirty (30) days as specified in Section 7.4 may be considered by the parties as a response of "no comment." In such a scenario, the County shall not be obligated to delay final action by the County Commission;
- b. The provision of school sites and facilities within planned neighborhoods;
- c. Compatibility of land uses adjacent to existing schools and reserved or proposed school sites;
- d. The potential for collocation of parks, recreation and neighborhood

facilities with school sites;

e. The potential for linkage of schools, parks, libraries and other public facilities with bikeways, trails, and sidewalks for safe access;

f. Traffic circulation plans that serve schools and the surrounding neighborhood, including off-site signalization, signage, and access improvements; and

g. The general location of public schools proposed in the District Facilities Work Program as well as other available information over a ten (10) and twenty (20) year time frame.

7.7 In formulating community development plans and programs, the County should consider the following issues:

a. Giving priority to scheduling capital improvements that are coordinated with and meet the capital needs identified in the District Facilities Work Program;

b. Providing incentives that promote collaborative efforts between the School Board and the private sector to develop adequate school facilities in residential developments;

c. Targeting community development improvements in older and distressed neighborhoods near existing or proposed School Board owned and operated public schools and School Board approved charter schools;

d. Coordination with neighboring jurisdictions to address public school issues of mutual concern; and

e. Approval and funding of community development districts (CDD) and other available funding mechanisms created by state law.

## **Section 8. Collocation and Shared Use**

8.1 Collocation and shared use of facilities are important to both the School Board and local governments. The School Board and County will work together, via the Staff Working Group, the SSPCC, and the Citizens Oversight Committee to look for opportunities to collocate and share use of school facilities and civic facilities when preparing the District Facilities Work Program. Likewise, collocation and shared use opportunities will be considered by the local governments when preparing the annual update to the comprehensive plan's schedule of capital improvements and when planning and designing new, or renovating existing, community facilities. For example, potential opportunities for collocation and shared use with public schools will be considered where compatible for existing or planned libraries, parks, recreation facilities, community centers, auditoriums, learning centers, museums, performing arts centers, and stadiums. In addition, the potential for collocation and shared use of school and



governmental facilities for joint use by the community will also be considered.

8.2 A separate agreement or an amendment to a master agreement between the School Board and the [REDACTED] will be developed for each instance of collocation and shared use, which addresses legal liability, operating and maintenance costs, scheduling of use, and facility supervision or any other issues that may arise from collocation and shared use.

8.3 Collocation and shared use as provided for in this Agreement may include the sharing of [REDACTED] county and municipal facilities for student use, such as use of a park for park purposes by students from a neighboring public school, and similarly may include the use of public school facilities by the community.

8.4 In order to maximize the efficient utilization of public funding and to further the collocation and shared use of [REDACTED] county and municipal facilities with School Board-owned and operated public schools, local governments are strongly encouraged not to require the provision or enhancement of charter school facilities as a condition of local development approval.

## **Section 9. Implementation of Public School Concurrency**

9.1 This section establishes the mechanisms for coordinating the development, adoption, and amendment of the District Facilities Work Program, as well as the Public School Facilities Elements and the Intergovernmental Coordination and Capital Improvements Elements of the County and Cities' comprehensive plans, in order to implement a uniform districtwide public school concurrency system as required by law.

9.2 The School Board [REDACTED] and County [REDACTED] agree to the following principles for public school concurrency in Miami-Dade County:

(a) *Capacity Methodology and Formula for Availability:* The uniform methodology for determining if a particular school is overcapacity shall be adopted into the County's [REDACTED] comprehensive plan. The parties hereby select Florida Inventory of School Houses (FISH) capacity as the uniform methodology to determine the capacity of each school. The capacity and enrollment numbers for each school shall be determined once a year, in October.

The School Board shall issue an evaluation report determining whether adequate school capacity exists for a proposed development, based on the adopted Level of Service Standards, concurrency service areas, and other standards set forth in this Agreement, as follows:

1. Calculate **total school facility capacity** by adding the capacity provided by an existing school facility to the capacity of any planned school facilities programmed to provide relief to that school facility, listed in the first three (3) years of the District Facilities Work Program.

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

- a. Current student enrollment (school facility capacity consumed by preexisting development);
- b. The portion of reserved capacity having a valid unexpired certificate of concurrency from the School Board; and
- c. The portion of previously approved development (vested from concurrency) projected to be developed within three (3) years.

3. Calculate the **proposed development's demand for school facility capacity** by:

- a. Applying the student generation multiplier to the proposed development to determine its total demand; and
- b. Subtracting a credit for the total district-wide enrollment of magnet and charter school facilities as a percentage of the total district enrollment.

4. Subtract the **proposed development's demand for school facility capacity** from the **available school facility capacity** to determine if there is a deficit. If so, repeat the process to determine if school facility capacity is available in any contiguous Concurrency Service Area ("CSA") in the same Geographic Area (Northwest, Northeast, Southwest, or Southeast), which map is attached hereto as Exhibit 2.

The School Board may charge a non-refundable application fee payable to the School Board to reimburse the cost to review matters related to public school concurrency. In that event, payment may be required prior to the commencement of review.

In evaluating a final subdivision, site plan, or functional equivalent for concurrency, any relevant programmed improvements in the current year, or Years 2 or 3 of the District Facilities Work Program shall be considered available capacity for the project and factored into the Level of Service analysis. Any relevant programmed improvements in Years 4 or 5 of the District Facilities Work Program shall not be considered available capacity for the project unless funding to accelerate the improvement is assured through the School Board, through proportionate share mitigation or some other means of assuring adequate capacity will be available within three (3) years. Relocatable classrooms may be used by the Miami-Dade County Public School System as an operational solution during replacement, renovation, remodeling or expansion of a public school

facility; and in the event of a disaster or emergency which prevents the School Board from using a portion of the affected school facility.

Within one year following the effective date of this Agreement, the County ~~\_\_\_\_\_~~ and School Board staffs shall meet to assess the effect of the Geographic Areas (Northwest, Northeast, Southwest, Southeast) on the public school concurrency system. If any party feels that there are issues with the Geographic Areas, that party may propose ~~\_\_\_\_\_~~ to include an additional review step, as follows:

"Where the Geographic Areas result in an application being found not to ~~\_\_\_\_\_~~, the staffs shall evaluate whether the following factors exist:

1. The concurrency service area serving the development is bisected by the Geographic Area boundary line;
2. The adjacent concurrency service area, across the Geographic Area boundary line, has the capacity to absorb all of the impacts of the development;
3. The shifting does not result in the adjacent concurrency service area exceeding 95% of its capacity; and
4. The travel distance to the adjacent concurrency service area school is no greater than the travel distance to any adjacent concurrency service area located on the same side of the Geographic Area boundary line as the development.

If all of these factors exist, then proportionate share mitigation shall not be required, and the shifting of impacts across the Geographic Area boundary line shall be automatically allowed."

Both this Agreement and the Amended and Restated Agreement must be revised, and the public school facilities elements revised if deemed necessary, before this review step can become effective. The parties have agreed to start with the above concept, but may choose to adopt different language or procedures on this topic, if properly approved by all parties.

(b) *Level of Service Standards:* Public school concurrency shall be applied on a less than district-wide basis, to concurrency service areas as described in subsection (c), except for Magnet Schools where public school concurrency shall be applied on a district wide basis. Level of Service standards for public school facilities apply to those traditional educational facilities, owned and operated by Miami-Dade County Public Schools, that are required to serve the residential development within their established concurrency service area. Level of Service standards do not apply to charter schools. However, the actual enrollment (October Full Time Equivalent (FTE)) of both magnet and charter

schools as a percentage of the total district enrollment shall be credited against the impact of development.

The uniform, district-wide Level of Service Standards for Public School Facilities are initially set as follows, and shall be adopted in the County's and Cities' Public School Facilities Elements and Capital Improvements Elements:

1. The adopted Level of Service (LOS) Standard for all Miami-Dade County Public School facilities is 100% FISH Capacity (With Relocatable Classrooms). This LOS Standard, except for Magnet Schools, shall be applicable in each public school concurrency service area (CSA), defined as the public school attendance boundary established by the Miami-Dade County Public Schools.

2. The adopted LOS standard for Magnet Schools is 100% of FISH (With Relocatable Classrooms) which shall be calculated on a district-wide basis.

3. It is the goal of Miami-Dade County Public Schools and Miami-Dade County for all public school facilities to achieve 100% utilization of Permanent FISH (No Relocatable Classrooms) by January 1, 2018. To help achieve the desired 100% of permanent FISH utilization by 2018, Miami-Dade County Public Schools should continue to decrease the number of relocatable classrooms over time. Public school facilities that achieve 100% utilization of Permanent FISH capacity (No Relocatable Classrooms) should, to the extent possible, no longer utilize relocatable classrooms, except as an operational solution. Beginning January 1, 2013, the Miami-Dade County Public Schools will implement a schedule to eliminate all remaining relocatable classrooms by January 1, 2018.

By December 2010, Miami-Dade County in cooperation with Miami-Dade County Public Schools will assess the viability of modifying the adopted LOS standard to 100% utilization of Permanent FISH (No Relocatable Classrooms) for all CSAs.

4. Relocatable classrooms may be used by the Miami-Dade County Public School System as an operational solution during replacement, renovation, remodeling or expansion of a public school facility; and in the event of a disaster or emergency which prevents the School Board from using a portion of the affected school facility.

The School Board shall provide to the County and cities: (1) an annual report of all schools that exceed the adopted LOS Standard; and (2) an annual report of the status of all capital projects related to school capacity that were due to be completed by the date of the report. Both reports shall be provided to the local governments no later than September 30 of each year.

Potential amendments to these LOS Standards shall be considered at least annually at the Staff Working Group meeting to take place no later than April 30 (for the County's first comprehensive plan amendment cycle) or October 31 (for the County's second comprehensive plan amendment cycle) of each year.

Amendment to the LOS standard shall be accomplished only in accordance with the provisions of Section 13 of this agreement. If a district is requested to amend its LOS Standard, it shall be accomplished only if the conditions of any amendment to this Agreement and the Administrative and Financial Agreement are fully satisfied. The district shall have a minimum of five years to amend its LOS Standard. No amendment shall be considered until the staff working group has reviewed the proposed amendment to the LOS Standard and has approved it. All amendments shall be made to the Appendix of the Agreement and shall be subject to the approval of the County Office. No LOS Standard shall be amended without a showing that the amended LOS Standard is financially feasible and can be achieved and maintained over the five years of the District Facilities Work Program.

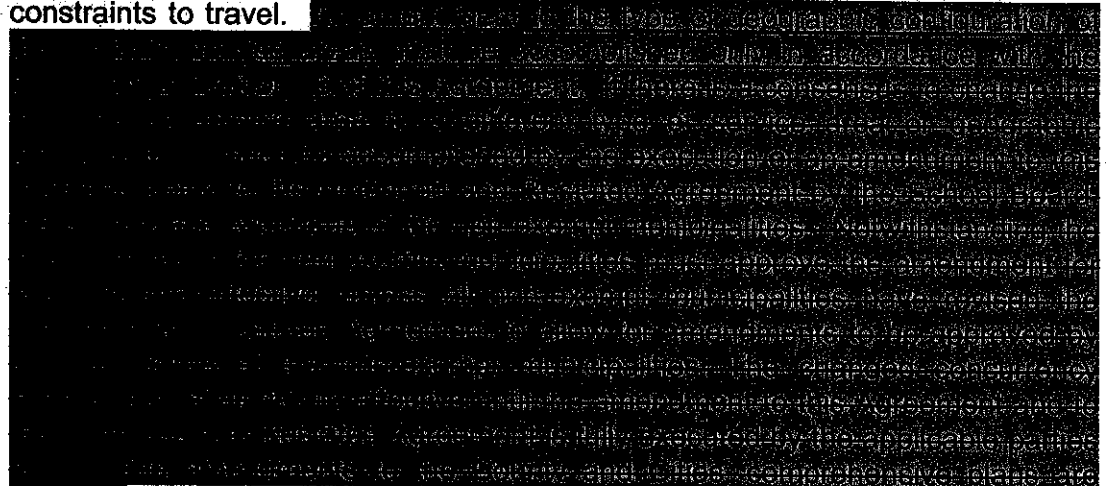
After adoption of the District's first Facilities Work Program which was relied on for public school concurrency requirements, capacity shall be maintained within each year of the District's subsequent Facilities Work Program. If the impact of the project will not be felt until Years 2 or 3 of the District Facilities Work Program, then any relevant programmed improvements in those years shall be considered available capacity for the project and factored into the Level of Service analysis. If the impact of the project will not be felt until Years 4 or 5 of the District Facilities Work Program, then any relevant programmed improvements shall not be considered available capacity for the project unless funding of the improvement is assured, through School Board funding, the proportionate share mitigation process, or some other means, and the project is accelerated into the first three (3) years of the District Facilities Work Program.

(c) *Concurrency Service Areas*: The Concurrency Service Area (CSA) shall be the student attendance boundaries for elementary, middle and high schools. The concurrency service area boundaries shall be part of the data and analysis in support of the County's ~~and City's~~ comprehensive plan. Concurrency service areas shall maximize capacity utilization, taking into account transportation costs, limiting maximum student travel times, the effect of court-approved desegregation plans, achieving socio-economic, racial, cultural and diversity objectives, and other relevant factors as determined by the School Board's policy on maximization of capacity.

The School Board shall address how capacity has been maximized in the

affected concurrency service area. For purposes of this Agreement, maximization of capacity shall mean any operational or physical adjustment that increases the available capacity of a school or a concurrency service area. Maximization may take into account several factors, including transportation costs, student travel times, socio-economic objectives, and recognition of the timing of capacity commitments. These adjustments may include, but are not limited to, physical changes to the school facility such as expansions or renovations, and operational changes such as staggered schedules, floating teachers, or reassignment of students. The types of physical and operational adjustments to school capacity that will be used in Miami-Dade County, and the circumstances under which they are appropriate, will be determined by the School Board's policy on maximization of capacity, as set forth in the Public School Facilities Element.

Potential amendments to the concurrency service areas, other than periodic adjustments to student attendance boundaries, or to redefine the concurrency service area as a different type of boundary or area shall be considered annually at the Staff Working Group meeting to take place each year no later than April 30 for the County's first comprehensive plan amendment cycle) or October 31 (for the County's second comprehensive plan amendment cycle), and shall take into account the issue of maximization of capacity. Other considerations for amending the concurrency service areas may include safe access (including factors such as the presence of sidewalks, bicycle paths, turn lanes and signalization, general walkability), diversity, and geographic or manmade constraints to travel.



Proposed amendments to the concurrency service areas shall be presented to the Staff Working Group and incorporated as updated data and analysis in support of the County's comprehensive plan. No concurrency service area shall be amended or redefined without a showing that the amended boundaries are financially feasible and can be achieved and that the adopted LOS Standard can be maintained over the five years of the District Facilities Work Program.

If maximization of capacity has not resulted in sufficient capacity, so that the adoption of the development proposal would result in a failure to meet the Level of Service Standard, and if capacity is available in one or more contiguous concurrency service areas within the first three years of the District Facilities Work Program in the same Geographic Area (Northwest, Northeast, Southwest, Southeast) as the development, the School Board, at its discretion, shall determine the contiguous concurrency service area to which the development impacts will be shifted. If there is still not enough capacity to absorb the impacts of the development proposal after maximization of capacity and shifting of impacts, then the School Board shall notify the local government in writing of the finding, and the local government shall then notify the applicant of the finding.

(d) *Student Generation Multipliers*: The School Board staff, working with the County staff and Cities' staffs, have developed and applied student generation multipliers for residential units by type and Minor Statistical Area for schools of each type, considering past trends in student enrollment in order to project school enrollment. **Future** The student generation rates shall be developed by the County with the School Board in a joint, collaborative process, in accordance with professionally accepted methodologies, and shall be reviewed at least every three (3) years and updated as necessary.

**The data professionally accepted methodologies shall take student addresses by school type (elementary, middle and senior) as provided by School Board staff and determine each address to the primary address file to identify the type of unit with the goal of obtaining an accurate student generation multiplier for all of the Minor Statistical Areas (MSAs) based on a 10% sampling. The multipliers and calculations hereunder shall be updated as necessary.**

The formula to be utilized when determining the number of students generated by a development shall be based on student generation rates calculated as follows:

*Total Number of Students Generated =*

*Number of Residential Units Generated By Development Proposal X*

*Student Generation Multiplier*

(e) *Concurrency Management System*: The County **shall** amend the concurrency management systems in its land development regulations to require that all non-exempt new residential units be reviewed for public school concurrency at the time of final plat or site plan (or functional equivalent), using the coordination processes specified in Section 7 above, within one hundred and twenty (120) days of the effective date of the Comprehensive Plan amendment(s) implementing public school concurrency. In the event that the Comprehensive Plan amendment(s) or amendment(s) to this Agreement, which are necessary to implement public school concurrency are challenged, the

land development regulations shall be adopted within one hundred and twenty (120) days after the resolution of such challenge. The County or any City may choose to request from the School Board's staff and provide an informational assessment of public school concurrency at the time of preliminary plat or subdivision, but the test of concurrency shall be at final subdivision, site plan (or functional equivalent). The assessment of available capacity by the School Board shall consider maximization of capacity and shifting of impacts as further detailed above. The County [REDACTED] shall not deny a final subdivision or site plan (or functional equivalent) for the failure to achieve and maintain the adopted Level of Service Standard for public school capacity where:

- (i) adequate school facilities will be in place or under actual construction within three (3) years after the issuance of the final subdivision or site plan (or functional equivalent); or
- (ii) the developer executes a legally binding commitment to provide mitigation proportionate to the demand for public school facilities to be created by the actual development of the property subject to the final plat or site plan (or functional equivalent) as provided in Section 9.2(g) below.

However, this Agreement shall not be construed to limit the authority of [REDACTED] the County to deny the final plat or site plan (or functional equivalent) for reasons other than failure to achieve and maintain the adopted Level of Service Standard for public school capacity. The County [REDACTED], in consultation with the School Board, shall also amend [REDACTED] concurrency management systems in the [REDACTED] land development regulations to address public school facilities, so that the annual monitoring reports provided to their governing bodies shall cover schools as well as the other concurrency facilities within one hundred and twenty (120) days of the effective date of this Agreement.

Upon final action by the County [REDACTED] regarding the application for final plat, site plan or functional equivalent, the County [REDACTED] shall send written notice to the School Board indicating that the application was granted final approval or denied. If the application received final approval, the school concurrency approval for the development and anticipated students shall be valid for up to two (2) years, beginning from the date the application received final approval from the County [REDACTED], except as may be provided by federal law and as further specified in the applicable concurrency management system regulations, unless otherwise released by the appropriate governing body in which case, within ten (10) business days of the release the appropriate governing body shall notify the School Board of such and request the capacity reservation be cancelled. An extension of the reservation period may be granted when the applicant demonstrates that development has commenced on a timely basis and is continuing in good faith, provided that the total reservation period does not exceed six (6) years, as further specified in the applicable concurrency



management system regulations. If the application was denied, the School Board's staff shall deduct from its database the students associated with the application.

(f) *Proportionate Share Mitigation:* The School Board shall establish within the District Facilities Work Program the following standards for the application of proportionate share mitigation:

1. *Student Generation Multipliers* for single family, multi family and mobile home housing types for elementary, middle and high schools. Student Generation Multipliers shall be developed as provided in subsection 9.2(d) above;

2. *Cost per Student Station calculations* for elementary, middle and high schools. These calculations shall be based on the most recent Cost Per Student Station factors published by the Florida Department of Education (see <http://edr.state.fl.us/conferences/peco/station.htm>) for the year that the project is planned. The cost of ancillary facilities that generally support the School Board and the capital costs associated with the transportation of students shall not be included in the Cost per Student Station calculation used for proportionate share mitigation;

3. The *capacity* of each school; and

4. The current and reserved *enrollment* of each school.

The above factors shall be reviewed annually and certified for application for proportionate share mitigation purposes during the period that the District Facilities Work Program is in effect.

In the event that there is not sufficient capacity in the affected or contiguous concurrency service area to address the impacts of a proposed development, the following steps shall apply. Either (i) the project must provide capacity enhancement sufficient to meet its impacts through proportionate share mitigation; or (ii) a condition of approval of the site plan or final plat (or functional equivalent) shall be that the project's impacts shall be phased and building permits shall be delayed to a date when capacity enhancement and Level of Service can be assured; or (iii) the project must not be approved. The school board and the **COUNTY** shall coordinate on the possibility of mitigation.

Options for providing proportionate share mitigation for any approval of additional residential dwelling units that triggers a failure to meet the Level of Service Standard for public school capacity will be specified in the County's **Public School Facilities Element**. Proportionate-share mitigation must be acceptable to the School Board. Options shall include the following:

1. Money – Contribute full capital cost of a planned project, or project proposed to be added to the first three (3) years of the District Facilities Work Program, in the affected concurrency service areas, providing sufficient capacity to absorb the excess impacts of the development, on land owned by the School Board or donated by another development.
2. Land - Donate land to and/or capital dollars equal to the cost of impact to the School Board needed for construction of a planned project, or project proposed to be added to the first three (3) years of the District Facilities Work Program in the affected concurrency service areas, and the School Board or some other entity funds the construction of or constructs the project.
3. Construction - Build a planned project, or project proposed to be added to the first three (3) years of the District Facilities Work Program, on land owned by the School Board or donated by another development, with sufficient capacity to absorb the excess impact of the development in the affected concurrency service area. (Usually, projects are more than one classroom).
4. Mix and Match - Combine two or more of these options to provide sufficient capacity to mitigate the estimated impact of the residential development on the affected concurrency service areas.
5. Mitigation banking - 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 only be transferred to developments within the same concurrency service area or a contiguous concurrency service area. Mitigation banking shall be administered by the School Board in accordance with the requirements of the concurrency mitigation system.

If there is a lack of agreement among the applicant, the [REDACTED] and the School Board on the option to be used for mitigation as set forth in options 1-5 above, the [REDACTED] may accept mitigation in the form of money (option 1 above) only in accordance with the following procedures:

(a) The [REDACTED] shall inform the School Board of an impasse in writing, which shall trigger a thirty (30) day period for final negotiations.

(b) Upon receipt of the written notice of an impasse, the School Board shall schedule a negotiation session with the applicant and the [REDACTED].

(c) If agreement on a mitigation option is not reached within thirty (30) days of the School Board's receipt of the notice of impasse, then the **County Board of Supervisors** may request that the mitigation requirement be satisfied with the money option (option 1 above).

(d) In this event, the School Board shall accept the money option (involving mitigation banking under option 5 above, if appropriate) if the following requirements are met:

(i) the money option must include payment of the full capital cost of a planned project to be expanded or a new project to be added to the District Facilities Work Program, located in the first three (3) years of the program; and

(ii) the money option must provide sufficient capacity to absorb the excess impacts of the development.

The amount of mitigation required shall be calculated based on the cost per student station, as defined above, and for each school type (elementary, middle and high) for which there is not sufficient capacity. The Proportionate Share for a development shall be determined by the following formulas:

*Number Of New Student Stations Required For Mitigation (By School Type) =*  
*[Number Of Dwelling Units Generated By Development Proposal, By Housing*  
*Type x*  
*Student Generation Multiplier (By Housing Type And School Type)] -*  
*Credit for Districtwide Capacity of Magnet Schools and Charter Schools -*  
*Number of Available Student Stations*

*Cost of Proportionate Share Mitigation =*  
*Number Of New Student Stations Required For Mitigation (By School Type) x*  
*Cost Per Student Station (By School Type).*

The full cost of proportionate share mitigation shall be required from the proposed development.

The **County Board of Supervisors** and the School Board shall consider the evaluation report and the options that may be available for proportionate share mitigation including the amendment of the District Facilities Work Program. If the **County Board of Supervisors** and the School Board find that options exist for proportionate share mitigation, they shall authorize the preparation of a development agreement and other documentation appropriate to implement the proportionate share mitigation option(s). A legally binding development agreement shall be entered into between the School Board, the **County Board of Supervisors**, and the applicant and executed prior to issuance of the final plat, site plan or functional equivalent. In that agreement, if the School Board accepts the

mitigation, the School Board must commit to place the improvement required for mitigation on the first three (3) years of the Five Year Plan. This development agreement shall include the landowner's commitment to continuing renewal of the development agreement until the mitigation is completed as determined by the School Board. This agreement shall also address the amount of the impact fee credit that may be due for the mitigation, and the manner in which it will be credited.

Upon execution of a development agreement among the applicant, the [redacted] and the School Board, the [redacted] may issue a development order for the development. The development order shall condition approval upon compliance with the development agreement.

**9.3 Updates to Public School Concurrency:** The School Board and the County [redacted] shall use the processes and information sharing mechanisms outlined in this Agreement to ensure that the uniform district-wide public school concurrency system is updated, the District Facilities Work Program remains financially feasible in the future, and any desired modifications are made. The [redacted] updated Five-Year Plan will be [redacted] for adopt[redacted] into the County's [redacted] capital improvement element no later than December 1 of each year.

The School Board shall not amend the District Facilities Work Program as to modify, delay or delete any project that affects student capacity in the first three (3) years of the Five Year Plan unless the School [redacted] provides written confirmation that:

1. The modification, delay or deletion of a project is required in order to meet the School Board's constitutional obligation to provide a [redacted]-wide uniform system of free public schools or [redacted] other legal obligations imposed by state or federal law; or
2. The modification, delay or deletion of a project is occasioned by unanticipated change in population projections or growth patterns or is required in order to provide needed capacity in a location that has a current greater need than the originally planned location and does not cause the adopted LOS standard to be exceeded in the Concurrency Service Area from which the originally planned project is modified, delayed or deleted; or
3. The project schedule or scope has been modified to address [redacted] concerns, and the modification does not cause the adopted LOS standard to be exceeded in the Concurrency Service Area from which the originally planned project is modified, delayed or deleted; and [redacted].

4. The Staff Working Group has had the opportunity to review the proposed amendment and has submitted its recommendation to the [REDACTED].

The School Board may amend the District Facilities Work Program at any time to add necessary capacity projects to satisfy the provisions of this Agreement. For additions to the District Facilities Work Program, the School Board must demonstrate its ability to maintain its financial feasibility.

[REDACTED]

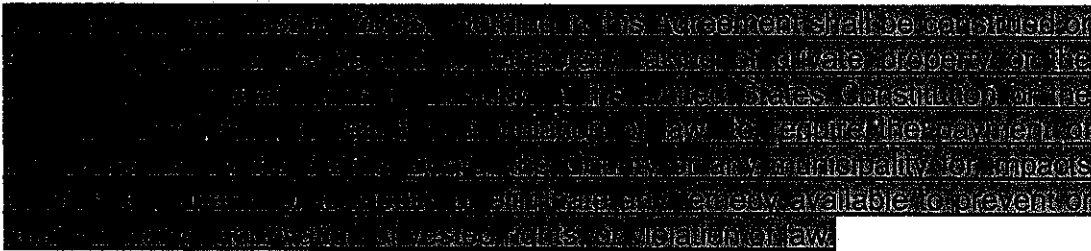
**9.4 Exemptions and Vested Development:** The following types of developments shall be exempt from the requirements of public school concurrency:

- a. Developments that result in a total impact of less than one (1) student in any level or type of school; and
- b. Development with covenants restricting occupancy to exclude school age children (e.g., 55 and over).

The following types of developments shall be considered vested from the requirements of public school concurrency:

- a. Developments with a valid, unexpired final plat or functional equivalent, as of the effective date of this Agreement;
- b. Developments that have executed and recorded covenants or have provided monetary mitigation payments, as of the effective date of this Agreement, under the School Board's current voluntary mitigation procedures;
- c. Any Development of Regional Impact for which a development order was issued, pursuant to Chapter 380, Florida Statutes, prior to July 1,

2005. Also, any Development of Regional Impact for which an application was submitted prior to May 1, 2005.



**Section 10. Resolution of Disputes**

10.1 If the parties to this Agreement are unable to resolve any issue in which they may be in disagreement covered in this Agreement, the applicable parties to the dispute will employ dispute resolution procedures pursuant to Chapter 164 or Chapter 186, Florida Statutes, as amended from time to time, or any other mutually acceptable means of alternative dispute resolution. Each party shall bear their own attorney's fees and costs.

**Section 11. Oversight Process**

11.1 The School Board shall appoint up to nine (9) citizen members, the County and the Miami-Dade County League of Cities shall each appoint up to five (5) citizen members to serve on a committee to monitor implementation of this Agreement and the Amended and Restated Agreement. The School Board shall organize and staff the meetings of this Citizens Oversight Committee, calling on the Staff Working Group for assistance as needed. It shall provide no less than seven (7) days written notice of any meeting to the members of the Citizens Oversight Committee, the Staff Working Group, the SSPCC, County, Cities and to the public. Citizens Oversight Committee members shall be invited by the School Board to attend all meetings referenced in Sections 1 and 4 and shall receive copies of all reports and documents produced pursuant to this Agreement and the Amended and Restated Agreement. The Citizens Oversight Committee shall appoint a chairperson, meet at least annually, and report to participating local governments, the School Board and the general public on the effectiveness with which the interlocal agreement is being implemented. At least sixty (60) days prior to the annual meeting of the Citizens Oversight Committee, the Staff Working Group and the SSPCC shall each submit an annual report regarding the status of the implementation and effectiveness of this Agreement and the Amended and Restated Agreement. These annual reports shall additionally be distributed to all parties to this Agreement and to the Amended and Restated Agreement. Meetings of the Citizens Oversight Committee shall be conducted as public meetings, and provide opportunities for public participation. The Citizens Oversight Committee shall adopt bylaws that shall govern its operation.

**Section 12. Effective Date and Term**

This Agreement shall take effect upon the [redacted] date of publication of a Notice of Intent to find [redacted] consistent with the requirements of Section 163.31777(2), Florida Statutes, [redacted]

This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument and be the agreement between the parties. [redacted]

[redacted] In [redacted] may be subject to sanctions [redacted] the Administration Commission and the Florida Department of Education, unless [redacted] enters into a separate agreement within 30 days that satisfies all of the relevant requirements of Florida Statutes. Any separate agreement must be consistent with the uniform district-wide public school concurrency system. [redacted]

**Section 13. Severability**

If any item or provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement shall not be affected and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

**Section 14. Notice and General Conditions**

A. All notices which may be given pursuant to this Agreement, except notices for meetings provided for elsewhere herein, shall be in writing and shall be delivered by personal service or by certified mail return receipt requested addressed to the parties at their respective addresses indicated below or as the same may be changed in writing from time to time. Such notice shall be deemed given on the day on which personally served, or if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

Miami-Dade County  
Director, Department of Planning & Zoning  
111 N.W. First Street  
Miami, Florida 33128

Superintendent  
The School Board of Miami-Dade County, Florida  
1450 N. E. 2 Avenue, Room 912  
Miami, Florida 33132

B. Title and Paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the parties to this Agreement.

**Section 15. Merger Clause**

This Agreement, together with the Exhibits hereto, sets forth the entire agreement between the parties and there are no promises or understandings other than those stated therein. It is further agreed that no modification, amendment or alteration of this Agreement shall be effective unless contained in a written document executed with the same formality and of equal dignity herein. The Exhibits to this Agreement will be deemed to be incorporated by reference as though set forth in full herein. In the event of a conflict or inconsistency between this Agreement and the provisions in the incorporated Exhibits, the Agreement will prevail.



**Section 16. Amendments.**

Amendments to this Agreement shall be accomplished by adoption of an amendment to this Agreement and, where required for consistency with this Agreement amendments to the County's comprehensive plan. Amendments to this Agreement shall take effect upon the favorable vote of either the School Board and the County and a majority of the Cities or the School Board and two-thirds of the Cities or the County and two-thirds of the Cities. It is provided, however, that if a proposed amendment would modify (1) the level of service standard, (2) the types of candidacy service areas or their geographic configuration, or (3) the requirement for review of all applications for franchise and residential development for conformity, the amendment shall require, in addition to the foregoing approval requirements, the approval of the School Board.

Any amendment to this Agreement requested by the County will be placed on a School Board Agenda for consideration within sixty (60) days of the School Board's receipt of such request. Likewise, any amendments to this Agreement requested by the School Board will be placed on the agenda of the County Commission for consideration, within sixty (60) days of receipt of the request.

**Section 17. Counterparts Clause**

This Agreement may be executed in counterparts and facsimiles shall constitute best evidence for all purposes.

**Section 18. Supplementary Agreements**

All parties to this Agreement stipulate that the School Board may enter into Supplementary Agreements with individual municipalities to address individual

circumstances. Any such Supplementary Agreement shall be consistent with the statutes governing this Agreement.

**Section 19. Favored Nations**

Should the School Board enter into an agreement with another municipality or County, separate or otherwise, which provides more beneficial terms than those agreed to herein, the School Board shall offer the same terms to the County.

**Section 20. Exempt or Waived Municipalities**

20.1 In cases where a municipality or other unit of local government (that is not a party to this Agreement or the Amended and Restated Agreement by virtue of statutory exemption or waiver) and whose decisions and/or actions with respect to development within the municipality's or unit of local government's jurisdiction, may impact on municipalities or units of local government which are parties to this Agreement or the Amended and Restated Agreement, the School Board agrees to contact, through its representatives or appropriate designees, these non-parties and invite them to become signatories to this Agreement or the Amended and Restated Agreement. Failure to secure a response or to have non-signatories become signatories to this Agreement or the Amended and Restated Agreement shall neither constitute, nor be considered, a breach of this Agreement or the Amended and Restated Agreement.

20.2 This section shall not be interpreted to prevent exempt or waived municipalities from participating in the processes under this Agreement or the Amended and Restated Agreement as they may relate to any public school facilities located in unincorporated Miami-Dade County.

**Section 21. No Third Party Beneficiaries.**

The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement, and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

IN WITNESS WHEREOF, this Amended and Restated Interlocal Agreement has been executed by and on behalf of Miami-Dade County and the School Board of Miami-Dade County, Florida, on this 23rd day of May, 2008.

The School Board of Miami Dade County, Florida

Attest: \_\_\_\_\_ (print)

By: \_\_\_\_\_, Chair  
Augustin J. Barrera, Chair

Attest: \_\_\_\_\_ (print)

By: \_\_\_\_\_, Secretary  
Dr. Rudolph F. Crew, Superintendent

Approved as to form:

\_\_\_\_\_  
School Board Attorney

**MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS**

**HARVEY RUVIN, CLERK**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Bruno A. Barreiro, Chairperson  
Board of County Commissioners

Date: \_\_\_\_\_

## GLOSSARY

**Contiguous Concurrency Service Areas:** Concurrency Service Areas which are contiguous and touch along one side of their outside geographic boundary.

**Affected Local Government:** Any jurisdiction within 1,500 feet of, or whose utilities are utilized by the property or improvement under consideration by the School Board.

**Ancillary Facilities:** The building, site and site improvements necessary to provide support services to the School Board's educational program including, but not limited to vehicle storage and maintenance, warehouses or administrative buildings.

**Applicant:** For the purposes of school concurrency, any person or entity undertaking a residential development.

**Attendance Boundary:** The geographic area which is established to identify the public school assignment of students residing within that area.

**Available Capacity:** Existing school capacity which is available within a Concurrency Service Area including any new school capacity that will be in place or under actual construction, as identified in the first three years of the School District's Five Year Capital Plan.

**Cities:** The municipalities within Miami-Dade County, except those that are exempt from the Public School Facilities Element, pursuant to Section 163.3177(12), F.S.

**Comprehensive Plan:** As provided by Section 163.3164(4), F.S., as amended, a plan that meets the requirements of 163.3177 and 163.3178, F.S.

**Concurrency:** As provided for in Florida Administrative Code Rule 9J-5.003, the necessary public facilities and services to maintain the adopted level of service standards are available when the impacts of development occur.

**Concurrency Service Area (CSA):** A geographic area in which the level of service for schools is measured when an application for residential development is reviewed for school concurrency purposes.

**Consistency:** See Section 163.3194, F.S.

**Development Order:** As provided by Section 163.3164(7), F.S., as amended, any order granting, or granting with conditions, an application for a development permit.

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

**Educational Plant Survey:** a systematic study of schools conducted at least every five years and submitted to the DOE for review and validation. The survey includes an inventory of existing educational and ancillary plants, and recommendations for future needs.

**Evaluation Report:** A report prepared by the School District, identifying if school capacity is available to serve a residential project, and if capacity exists, whether the proposed development is conceptually approved or vested.

**Exempt Local Government:** A municipality which is not required to participate in school concurrency when meeting all the requirements for having no significant impact on school enrollment, per Section 163.3177(12)(b), F.S., or because it has received a waiver from the Department of Community Affairs per Section 163.31777(1)(c), F.S.

**Financial Feasibility:** As provided in Section 163.3164(32), F.S., as amended, sufficient revenues are currently available or will be available from committed funding sources for the first 3 years, or will be available from committed or planned funding sources for years 4 and 5, of a 5-year capital improvement schedule for financing capital improvements, such as ad valorem taxes, bonds, state and federal funds, tax revenues, impact fees, and Applicant contributions, which are adequate to fund the projected costs of the capital improvements identified in the comprehensive plan necessary to ensure that adopted level of service standards are achieved and maintained within the period covered by the 5-year schedule of capital improvements.

**Five Year Plan:** School District's annual comprehensive capital planning document, that includes long range planning for facility needs over a five-year, ten-year and twenty-year planning horizon. The adopted School District's Five-Year Work Program and Capital Budget as authorized by Section 1013.35, F.S.

**Florida Inventory of School Houses (FISH) – Permanent Capacity:** The report of the permanent capacity of existing public school facilities. The FISH capacity is the number of students that may be housed in a facility (school) at any given time based on a percentage of the total number of existing student stations and a designated size for each program.

**Geographic Area:** One of four quadrants (Northwest, Northeast, Southwest, Southeast) of Miami-Dade County as depicted in Exhibit 2 (attached).

**Level of Service (LOS) Standard:** As provided for in the Florida Administrative Code Rule 9J-5.003, an indicator of the extent or degree of service provided by, or proposed to be provided by, a facility based on and related to the operational characteristics of the facility.

**Local Governments:** Miami-Dade County and/or the Cities located within its boundary.

**Maximize Capacity Utilization:** The use of student capacity in each CSA to the greatest extent possible, based on the adopted level of service and the total number of permanent student stations according to the FISH inventory, taking into account special considerations such as, core capacity, special programs, transportation costs, geographic impediments, court-ordered desegregation, and class size reduction requirements to prevent disparate enrollment levels between schools of the same type (elementary, middle, high) and provide an equitable distribution of student enrollment district-wide.

**Permanent School District Facilities:** An area within a school that provides instructional space for the maximum number of students in core-curricula courses which are assigned to a teacher based on the constitutional amendment for class size reduction and is not moveable.

**Permanent Student Station:** The floor area in a permanent classroom required to house a student in an instructional program, as determined by the FDOE.

**Proportionate Share Mitigation:** An Applicant improvement or contribution identified in a binding and enforceable agreement between the Applicant, the School Board and the Local Government with jurisdiction over the approval of the plat, site plan or functional equivalent provide compensation for the additional demand on public school facilities caused by the residential development of the property, as set forth in Section 163.3180(13)(e), F.S.

**Public School Facilities:** Facilities for the education of children from pre-kindergarten through twelfth grade operated by the School District.

**School Board:** The governing body of the School District, a political subdivision of the State of Florida and a body corporate pursuant to Section 1001.40, F.S.

**School District of Miami-Dade County:** The School District created and existing pursuant to Section 4, Article IX of the State of Florida Constitution.

**Student Generation Multiplier (SGM):** A rate used to calculate the number of students by school type (elementary, middle, high) and housing type (single-family, multifamily, etc.) that can be anticipated from a new residential development.

**Type of School:** Schools providing the same level of education, i.e. elementary, middle, high school, or other combination of grade levels.

**Utilization:** A ratio showing the comparison of the total number of students enrolled to the overall capacity of a public school facility within a Concurrency Service Area (CSA).

**Exhibit 1**

**Miami-Dade County School Board Rule 6Gx13- 2C-1.083**



**Exhibit 2**

**Map of Geographic Areas**