



**York County, South Carolina
School Adequacy Program**

**Outline of Interlocal Agreement
for
School Facilities Planning and Siting**

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Statutory Basis and Intent

This is an interlocal agreement for public educational facility planning and siting in unincorporated York County. This agreement is made and entered into this _____ day of _____, 2006, by and between the **County Council of York County, a political subdivision of the State of South Carolina ("County")** [replace with City reference for City/School Board Agreements], and the _____ School Board, a public body corporate ("School Board").

WHEREAS, the **County/City** and the School Board recognize their mutual obligation and responsibility for the education, nurturance and general well-being of the children of York County; and

WHEREAS, it is mutually beneficial for the **County/City** and School Board to support efforts that facilitate coordination of planning for the location and development of public educational facilities to serve the children of York County and to ensure that the impacts of new development occur only in accordance with the ability of the **County/City** and School Board to maintain adequate level of service standards; and

WHEREAS, public schools should be provided in proximity to the actual and projected population of school age children to be served by such schools; and

WHEREAS, the **County/City** has determined that schools define urban form and create a sense of place in a community and are the cornerstones of effective neighborhood design and a focal point for development of neighborhood plans and improvements including, but not limited to, parks, recreation, libraries, children's services and other related uses; and

WHEREAS, the School Board has determined that the location of schools, as part of stable and well designed neighborhoods enhances, educational programs, encourages community support and supports safe, secure and effective educational environments for the children that utilize these facilities; and

WHEREAS, the County is responsible for planning for and providing other essential public facilities and will provide facilities in support of public school facilities and programs; and

WHEREAS, the School Board and the **County/City** have mutually agreed that coordination of School Board facility planning and planning for the County and its municipalities is in the best interests of the citizens of York County; and

WHEREAS, section (insert statutory reference for adequacy), enables the **County/City** and School Board to implement an adequate public facilities program for school facilities; and

WHEREAS, the **County/City** and the School Board are permitted to enter into this Interlocal Agreement pursuant to Section (insert statutory reference for interlocal agreements); and

WHEREAS, the **County/City** and the School Board and other local governments, have met and coordinated with respect to the statutory responsibilities for a countywide, school adequacy program; and

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WHEREAS, the **County/City** is required to amend its comprehensive plan and land development regulations, as appropriate and necessary, to effect its obligations under this Agreement and state statute; and

WHEREAS, the School Board has a constitutional and statutory obligation to provide a system of free public schools on a district-wide basis; and

WHEREAS, the **County/City** has the sole authority to undertake land use planning and to implement necessary land development regulations within its jurisdiction; and

WHEREAS, this Agreement neither is intended to nor does it delegate or transfer any land use planning or regulatory authority to the School Board.

NOW THEREFORE, be it mutually agreed between the School Board and **County/City** that the following requirements and procedures shall be utilized in coordinating land use and the siting of public school facilities:

Section 1 Coordination and Sharing of Information

Section 1.1 Joint Meetings

County, City and the School Board staff shall meet at least quarterly to discuss issues regarding coordination of land use and school facilities planning, including such issues as population and student projections, development trends, school needs, co-location and joint use opportunities, and ancillary infrastructure improvements needed to support schools and ensure safe student access. The School Board staff shall be responsible for making meeting arrangements.

***Comment:** these staff meetings will be used in the first year to reconcile inconsistencies in the population projections in addition to other matters referenced in this section.*

Section 1.2 Oversight Process

The effectiveness with which the Interlocal Agreement is being implemented shall be considered at an annual joint workshop between the elected officials of the County, the **cities of** and the School Board. The staff representatives of each local government and the School Board as described in Section 1.1, shall provide technical review and recommendations regarding any need for change to the provisions of the agreement. The workshop shall be publicly noticed and the agenda shall provide an opportunity for public input and comment. The representatives of each of the local governments and School Board will report back to their respective bodies with recommendations for any needed changes to this Agreement.

Section 1.3 Student Enrollment, Population Projections, Growth and Development Trends

- 1.3.1 In fulfillment of their respective planning duties, the County and the School Board agree to coordinate and base their plans upon consistent projections of the amount, type, and distribution of population growth and student enrollment.
- 1.3.2 Until discrepancies between City, County and School Board projections are resolved, the School Board projections shall be used to project future demands.
- 1.3.3 Annually, the County shall provide the School Board with a report on growth and development trends, as provided in Section 5 of this Agreement. This report will be in

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tabular, graphic, and textual formats. The County, in coordination with City staff's shall provide the following:

- a) the type, number, and location of residential units which have received zoning approval or site plan approval;
- b) information, to the extent available, regarding the conversion or redevelopment of housing or other structures into residential units which are likely to generate new students;
- c) an inventory of potential dwelling units that have received preliminary plat or site development plan approval but have not yet received certificate of occupancy approval and a projection of the amount of the number of these units that are anticipated to receive certificate of occupancy approval in the next three years;
- d) the identification of any development orders issued which contain a requirement for the provision of a school site as a condition of development approval.
- e) information regarding future land use map amendments which may have an impact on school facilities;
- f) building permits issued for the preceding year and their location; and
- g) updated population projections apportioned geographically.

1.3.4 The School Board will use the information described in Section 1.3.3 to apportion projected student enrollment geographically to make the most efficient use of public school facilities. The distribution of projected student enrollment will be presented at staff meetings described in subsection 1.1.

Section 1.4 Comprehensive Plan Amendments, Rezonings, and Development Approvals

1.4.1 The **County/City** shall provide the School Board notification of land use applications and development proposals filed with the **County/City** that may affect student enrollment, enrollment projections, or school facilities including preliminary plats, rezonings, and other major residential or mixed-use development projects. If a public hearing is required, the notification must be provided at least days prior to the first public hearing for consideration of the development application. If no public hearing is required, the notification must be provided at least days prior to any action or decision to approve or deny the application. The **Zoning Administrator** shall refer any rezoning application that includes residential uses to the School Board, and shall include the School Board's comments in the **County/City** reports.

***Comment:** The County should serve as the clearinghouse for development approval information. Cities should provide **monthly** reports on residential development activity to the County, including plat and residential site plan approvals.*

1.4.2 The Planning Commission shall provide the School Board notice of proposed amendments to the comprehensive plan future land use map that may affect student enrollment,

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enrollment projections, or school facilities. Such notice will be provided at least 15 days prior to the first Planning Commission public hearing for consideration of the plan amendment.

- 1.4.3 Within [] days after notification, as described in Section 1.4.1 and 1.4.2, the School Board shall provide the estimated school enrollment impacts anticipated to result from the proposed land use application or development proposal, as well as whether sufficient capacity exists or is planned to accommodate the impacts.

Section 1.5 Collocation and Shared Use

Comment: *the intent of this section is to establish the regular practice of the County/City/School Board entering into confidential discussions before land acquisition to evaluate opportunities for joint acquisition and to establish the practice of evaluating joint development and/or use of sites prior to design and development. This process is not intended to limit the parties; it is intended to benefit taxpayers by making the best use of public funds.*

- 1.5.1 Collocation and shared use of facilities are important to both the School Board and the **County/City**. The **County/City** will look for opportunities to collocate and share use of **County/City** facilities when preparing the annual update to the Comprehensive Plan's schedule of capital improvements and when planning, acquiring and designing new, or renovating existing, community facilities. Likewise, the School Board will look for opportunities to collocate and share use of school facilities when preparing the District Educational Facilities Plan. In addition, when the School District acquires property for a school site, the County will be given an opportunity to consider simultaneously acquiring property for adjoining facilities that are compatible with the proposed school site use. In designing the arrangement and layout of buildings, and parking facilities, consideration shall be given to the effective use of the adjacent facility.
- 1.5.2 A separate agreement may be developed for each instance of collocation and shared use which addresses legal liability, operating and maintenance costs, scheduling use of the facilities, and facility supervision or any other issues that may arise from collocation and shared use.

Section 2 Planning Process

Section 2.1 School Facilities Survey

The School Board shall maintain and provide annual updates to the school facilities survey, which shall be reviewed at a Joint Meeting as described in Section 1.1 of this agreement prior to acceptance by the School Board. The School Facilities Survey shall include:

- an inventory of existing educational facilities,
- existing and projected enrollment of existing school facilities,
- recommendations for planned and existing facilities, and
- the general location of each existing and planned facility.

Comment: *the school facilities plan designation of the locations for planned facilities should be general enough prior to land acquisition to provide the School Board sufficient flexibility to negotiate reasonable real estate transactions.*

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Section 2.2 Tentative District Educational Facilities Plan

***Comment:** The intent of this section is to provide local governments with documentation of the School Board's plans for capacity that will be used as a basis for implementing the Adequate School Facilities Ordinance. The Educational Facilities Plan is intended to provide a good faith description of existing and future conditions relevant to application of adequate school facilities requirements. The provisions of this section do not limit the autonomy of the school district to plan for or provide school facilities and services. It is understood by all parties that the School Board may alter the distribution of students within schools, the timing of provision of school facilities and operations of individual schools as it deems necessary to execute its responsibilities.*

- 2.2.1 Annually, the School Board shall submit a draft Tentative District Educational Facilities Plan to the **County/City** for review and comment 45 days prior to the public hearing for adoption by the School Board. The Tentative Educational Facilities Plan is the comprehensive planning document prepared annually by the district school board. The plan shall include the projected student population apportioned within the district, an inventory of existing school facilities, projections of facility space needs, information on leased, loaned, and donated space and relocatables, general locations of new schools and anticipated closures of existing schools for the next five years.
- 2.2.2 The plan also shall include the district facilities work program ("Work Program") for the subsequent 5-year period, each year adding an additional "fifth year." The Work Program shall include:
- (a) all planned school facility projects, which include new construction, expansions, remodeling, and renovations that will create additional capacity;
 - (b) existing and projected enrollment of existing and planned school facilities;
 - (c) the year in which each planned school facility is planned to be undertaken;
 - (d) the capacity created by each planned school facility; and
 - (f) necessary data and analysis supporting the proposed Work Program.
- 2.2.3 Within **30 days** of submittal the **County/City** shall review the plan and provide a report to the School Board regarding infrastructure and service needs associated with the proposed educational facilities and other applicable information. The School Board shall consider written comments of the **County/City** prior to adopting the Work Program.

Section 2.3 Public School Facilities Element Development and Updates (optional)

- 2.3.1 The **County/City** will cooperate with the School Board and other local governments within York County to develop a common Public Schools Facilities Element to the Comprehensive Plan that is consistent with the School Boards' 5-year facilities work programs.
- 2.3.2 In the event that the **County/City** wishes to amend the agreed upon Public School Facilities Element, it will follow the procedures set forth in Section 5.1.1 of this Agreement.

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Comment: *This section would document the need for and intent of Adequate School Facilities requirements and enhance legal support for actions implementing this agreement and the related ordinance.*

Section 3 School Siting Considerations and Procedures

The School Board and the **County/City** agree to the following procedures to coordinate the siting of educational facilities.

Section 3.1 School Siting Considerations

3.1.1 Location of Facilities Outside the Urban Growth Boundary

Comment [mj11]: Not applicable to City agreements

Public schools are community facilities which are necessary to serve residential development in York County. As community facilities, the preferred locations for public schools, whether elementary, middle or high schools are within the Urban Growth Boundary. However, residential development does exist and new residential development will continue to occur at approved levels outside the Urban Growth Boundary and public schools will be necessary and appropriate under the following circumstances:

1. The school site is compatible with present and projected uses of adjacent property.
2. Adequate public facilities are, or will be, available concurrent to support the proposed school.
3. There are no significant environmental constraints that would preclude a public school on the site.
4. There are no adverse impacts on archaeological or historic sites listed in the National Register of Historic Places or designated by York County as a locally significant historic or archaeological resource.
5. The proposed school building area is not within a flood zone or floodway.
6. The school site is not located either:
 - a. Immediately adjacent to a power plant, water treatment plant or wastewater treatment plant. This provision is not intended to preclude the joint use of public property where adequate separation between facilities can be achieved; or
 - b. Within one-quarter mile of an active landfill.
7. The location of a proposed elementary school is proximate to and within walking distance, where possible, of the residential neighborhoods served.
8. The proposed site is sufficiently sized to accommodate the required parking and circulation of vehicles.

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9. The School Board has demonstrated that the location and design of the proposed school is intended to predominantly accommodate the student population living within a rural service area and that approval of such school outside the UGB will not create the need for extension of centralized water or wastewater facilities outside the UGB other than service lines designed to accommodate solely the service demands of the school or the need for roadway improvements not already contemplated in the County's Capital Improvement Program.

Comment [mj12]: Relationship to Carolina Water Company service area?

3.1.2 Long Range Facility Plans

The School Board is encouraged to develop more comprehensive long range facility plans to supplant the need for the application of the above items on an individual site basis. Schools may be permitted within the Rural Area provided the site is in conformance with conditions and criteria determined to be appropriate for the location of a school as prescribed by a plan or plans developed by the School Board or York County, and found consistent with the Comprehensive Plan and accepted by the **County/City** Council.

3.1.3 Zoning Categories in Which Schools are Allowed

Public schools shall be permitted in all zoning districts, with the exception of **[Industrial]** Zoning Districts, provided that they meet any applicable site development standards.

Section 3.2 School Siting Procedures

Prior to acquiring a school site, School District representatives shall confer with designated **County/City** representatives to discuss potential school site development issues, including but not limited to, land use compatibility, access and transportation needs, utility issues, public improvement costs and funding, drainage needs and opportunities for collocation or joint use of proposed sites. The intent of this coordination is to identify potential site constraints, hidden costs, public policy concerns (e.g., comprehensive plan directives) and opportunities for more efficient use of public sector funds.

***Comment:** This informal approach was recommended as an alternative to a formal site approval process. This process is intended to alert school districts to potential costs of site development that County/City representatives know of before the school district invests in a piece of property.*

Section 4 Site Design/Development Plan Review

Prior to submitting school site plans to applicable State agencies, the School Board will submit proposed plans to **County/City** Staff, which shall review and comment on:

- Location, size, height and use of proposed structures;
- Proposed or existing location of fire hydrants and distance to structures;
- Location and method of buffering from adjacent residential zoning districts;
- Location and method of stormwater retention;
- Location, size, and total amount of recreation areas;
- Location and dimensions of proposed parking and service areas; and
- Proposed means of vehicular and pedestrian access from the site to adjacent streets and/or alleys.

Comment [mj13]: Discussion Item: school district representatives have suggested concurrent state and local review.

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The purpose of this section is to identify potential design opportunities to resolve site specific challenges and support School Board flexibility to resolve unique challenges associated with each site.

Section 5 School Adequacy Implementation

Section 5.1 Procedure

5.1.1 Amendments to Key Adequacy Components

Comment: *the following provisions are intended to establish a process by which local governments and school districts have the opportunity to review suggested changes to the standards established in this agreement and the Adequate School Facilities Ordinance. The provisions do not affect the School District's ability to make operational adjustments, including but not limited to exceeding level of service standards on a temporary basis, or shifting students between adequacy service areas.*

- (a) The procedures set forth in paragraph (b) shall apply in the event that the **County/City** or School Board wishes to amend any of the following:
1. level of service (LOS) standards;
 2. adequacy service areas (ASA);
 3. procedures for monitoring school demand and capacity;
 4. procedures and methodology for making adequacy determinations for development approvals;
 5. mitigation options and processes;
 6. the 5-Year Work Program for facilities; and
 7. those aspects of the Public Schools Facilities Element of the Comprehensive Plan that are common to the County and municipalities in the County.
- (b) Procedures:
1. The party wishing to amend one of the above-listed items, shall be the "Initiating Party." The Initiating Party may be the **County/City**, the School Board, or other local government within York County subject to the requirements of school adequacy.
 2. The party reviewing and commenting on a proposed amendment shall be the "Reviewing Party." The Reviewing Party shall include the **County/City**, the School Board, or other local government within York County subject to the requirements of school adequacy. The Planning Commission shall review the proposed amendment and advise the **County/City** on whether the proposed amendment is consistent with the Comprehensive Plan.
 3. Before officially considering an amendment to one of the above-listed standards, the Initiating Party shall transmit to the Reviewing Parties a memorandum outlining the proposed amendment, including a narrative describing the purpose of the proposed amendment and a statement regarding the impact of the proposed amendment on the **County/City** Comprehensive Plan and other elements of school adequacy addressed by

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this Agreement. The memorandum also must include all data and analysis supporting the proposed amendment.

4. Within days of its receipt of a proposed amendment from the Initiating Party, the Reviewing Party shall provide any written comments or objections to the Initiating Party and other local governments within York County. The Reviewing Party shall indicate whether it consents to the proposed amendment or, if it does not, the reasons for withholding its consent. Designees of the parties may meet and confer prior to the Reviewing Party's submission of written comments to resolve any objections to the proposed amendment.
5. If the Reviewing Party is unable to consent to the proposed amendment, the matter will be resolved pursuant to the dispute resolution process set forth in Section 8 of this Agreement.
6. The parties agree that no proposed amendment will be implemented without the consent of the Reviewing Parties or, where the consent of all Reviewing Parties is not obtained, that no proposed amendment will be implemented unless it is determined to be appropriate through the dispute resolution process set forth in Section 8 of this Agreement.
7. The parties agree that, once a proposed amendment has the consent of each of the Reviewing Parties, or is determined to be appropriate through dispute resolution, each party will undertake changes necessary to implement the amendment.

5.1.2 Land Development Regulations

The **County/City** will consider the adoption of a "School Adequacy Ordinance" and will make other necessary changes to the land development regulations to implement school adequacy consistent with the Comprehensive Plan, state law and the terms of this Agreement.

Section 5.2 Level-of-Service Standards

***Comment:** The School District is responsible for establishing the level of service standards and determining capacity of its schools on an annual basis. This section does not limit the District's ability to make programmatic adjustments or to exceed level of service standards on a temporary basis. This section is intended to document the level of service standards and school capacities that will serve as the basis of assessing the adequacy of school facilities to serve proposed developments subject to the Adequate School Facilities Ordinance.*

- 5.2.1 The level of service (LOS) standards set forth herein shall be applied consistently within each local government in York County for purposes of implementing school adequacy, including determining whether sufficient school capacity exists to accommodate a particular development proposal, and determining the financial feasibility of the School Board's Work Program.

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- 5.2.2 The LOS standards set forth herein shall be applied consistently by the County and the School Board district-wide to all schools of the same type.
- 5.2.3 The LOS standards may be amended only pursuant to the procedure set forth in Section 5.1.1 of this Agreement.
- 5.2.4 The LOS standard to be used by the **County/City** and the School Board to implement school adequacy shall be as follows:
- (a) Elementary: **100%** of permanent capacity as adjusted by the school board annually to account for measurable programmatic changes.
 - (b) Middle: **100%** of permanent capacity as adjusted by the school board annually to account for measurable programmatic changes.
 - (c) High: **100%** of permanent capacity as adjusted by the school board annually to account for measurable programmatic changes.

For purposes of this subsection, a "measurable programmatic change" means a change to the operation of a school that has consistent and measurable capacity impacts including, but not limited to: double sessions, floating teachers, year-long schools and special educational programs.

Section 5.3 School Adequacy Service Areas

***Comment:** This section does not limit the School District's ability to change Adequacy Service Areas or to make temporary adjustments to the schools assigned to students living within the County that are required to make efficient use of school facilities. This section is intended to provide local governments with sufficient documentation to ensure that Adequate School Facilities requirements are reasonable and defensible.*

- 5.3.1 The initial School Adequacy Service Areas (ASAs) shall be coterminous with the attendance zones for elementary, middle, and high schools, as shown on Map 1, attached hereto and incorporated herein by this reference.
- 5.3.2 Future amendments to the ASAs, other than periodic adjustments to school attendance zone boundaries, may be accomplished by the School Board only after review and comment the **County/City** and other local governments within York County as provided in Section 5.1.1 of this Agreement. ASAs shall be established and subsequently modified to maximize available school capacity and make efficient use of new and existing public school facilities in accordance with the LOS standards set forth in this agreement, taking into account school policies to:
- (a) minimize transportation costs,
 - (b) limit student travel times,
 - (c) effect desegregation objectives,
 - (d) achieve socio-economic, racial and cultural diversity objectives,
 - (e) recognize capacity commitments resulting from local governments' development approvals for the ASA and
 - (f) recognize capacity commitments resulting from local governments' development approvals for contiguous ASAs.

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5.3.3 ASAs are described geographically in **Exhibit __** of this Agreement and may be updated from time to time by the School Board.

Section 5.4 Demand Monitoring and Evaluation

***Comment:** The County and its municipalities shall continually refine currently available data to provide the School District with the best available information.*

The County shall provide the following information to the School Board at least two weeks prior to the quarterly meetings required by Section 1.1.1 of this agreement to facilitate demand projection and student generation rate trends:

- 5.4.1 Geo-referenced building permit and certificate of occupancy data;
- 5.4.2 Summary of actions on preliminary and final plats;
- 5.4.3 Summary of site development plan approvals for multi-family projects; and
- 5.4.4 Summary of actions that affect demands for public school facilities.

Section 5.5 Applicability and Capacity Determination

5.5.1 Applicability

- (a) Except as provided in subsection (b) below, school adequacy applies only to residential uses that generate demands for public school facilities and are proposed or established after the effective date of the School Adequacy Ordinance.
- (b) The following residential uses shall be considered exempt from the requirements of school adequacy.
 - 1. Single family lots of record having received final plat approval prior to the effective date of the School Adequacy Ordinance.
 - 2. Multi-family residential development having received final site plan approval prior to the effective date of the School Adequacy Ordinance.
 - 3. Amendments to residential development approvals issued prior to the effective date of the School Adequacy Ordinance, which do not increase the number of residential units or change the type of residential units proposed.
 - 4. Other uses as provided for the in the School Adequacy Ordinance.

5.5.2 Process for Determining School Facilities Adequacy

- (a) The **County/City** will accept and process final plats and residential site plans, only after the applicant has complied with the terms of the School Adequacy Ordinance. The **County/City** may approve a School Adequacy Application earlier in the approval process, if requested by the applicant, if the School Board reviews and

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approves the determination, allocations of capacity, and proportionate share mitigation commitments, as provided in this subsection.

- (b) Upon the receipt of a complete School Adequacy Application, the **County/City** will transmit the application to the School Board for a determination of whether there is adequate school capacity, for each level of school, to accommodate the proposed development, based on the LOS standards, ASAs, and other standards set forth herein and in the LDC.
- (c) Within thirty (30) days of the initial transmittal from the **County/City**, the School Board will review the School Adequacy Application and, based on the standards set forth in this Agreement, report in writing to the **County/City**:
 - 1. whether adequate school capacity exists for each level of school, based on the standards set forth in this Agreement; or
 - 2. if adequate capacity does not exist, whether appropriate mitigation can be accepted, and if so, acceptable options for mitigation, consistent with this Agreement.
- (d) If the School Board determines that adequate capacity will not be in place or under actual construction within **two (2)** years after the issuance of preliminary plat approval for single family development or site plan approval for multi-family development, and mitigation is not an acceptable alternative, the **County/City** will not issue a School Adequacy Determination and will not accept or process a development application.
- (e) If the School Board determines that adequate capacity does not exist but that mitigation is an acceptable alternative, the development application will remain active pending the conclusion of the mitigation negotiation period described below.
- (f) The County will issue a School Adequacy Determination only upon:
 - 1. the School Board's written determination that adequate school capacity will be in place or under actual construction within **two (2)** years after the issuance of final subdivision or site plan approval for each level of school without mitigation; or
 - 2. the execution of a legally binding mitigation agreement between the applicant and the School Board, as provided by this Agreement.

5.5.3 Adequacy Determination Standards

- (a) Definitions. The terms used in this subsection shall be defined as follows:
 - 1. Available school capacity - the circumstance where there is sufficient school capacity, based on adopted LOS standards, to accommodate the demand created by a proposed development after considering existing enrollment and demands from previously approved development

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2. Capacity – the number of students that may be accommodated in permanent classrooms after making programmatic adjustments.
 3. Existing school facilities – school facilities constructed and operational at the time a School Adequacy Application is submitted to the County.
 4. Planned school facilities – school facility capacity that will be in place or under actual construction within two (2) years after the issuance of final subdivision or site plan approval, pursuant to the School Board's adopted 5-Year Work Program.
 5. Previously Approved Development – development approved as follows:
 - a. Single family lots of record having received preliminary plat approval prior to the effective date of the School Adequacy Ordinance.
 - b. Multi-family residential development having received final site plan approval prior to the effective date of the School Adequacy Ordinance.
 6. Programmatic adjustments – adjustments to school capacity based on measurable operational changes, including, but not limited to, special programs, split sessions, classroom utilization rates, floating teachers and school year changes.
 7. Reserved capacity – school facility capacity set aside for a development or use other than those set aside pursuant to a School Adequacy Application, including development that impacts schools but that is exempt from the terms of the School Adequacy Ordinance.
 8. Total school facilities – existing school facilities and planned school facilities.
 10. Used capacity – School facility capacity consumed by or reserved for development.
 11. Work Program - the 5-year school district facilities work program.
- (b) **School Capacity Calculations.** The School Board will determine whether adequate school capacity exists for a proposed development, based on the LOS standards, ASAs, and other standards set forth in this Agreement, as follows:
1. Calculate total school facilities by adding the capacity provided by existing school facilities to the capacity of any planned school facilities.
 2. Calculate available school capacity by subtracting from the total school facilities the sum of:
 - a. Used capacity;

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- b. The portion of reserved capacity projected to be developed within two (2) years;
 - c. The portion of previously approved development projected to be developed within two (2) years; and
 - d. the demand on schools created by the proposed development.
- (c) **Adequacy Service Areas.** In determining whether there is sufficient school capacity to accommodate a proposed development, the School Board will:
- 1. Consider whether the ASA in which the proposed development is situated has available school capacity, based on the formula above.
 - 2. In the event that the ASA in which the proposed development is situated does not have available school capacity, the School Board will determine whether a contiguous ASA has available school capacity by identifying whether a contiguous ASA has available school capacity for the particular type of school that is sufficient to meet demands from the proposed development. When considering whether capacity is available, the School Board shall consider accessibility from the proposed development to the subject school facilities in the abutting ASA.

Section 5.6 Mitigation Alternatives

In the event that the School Board reports that mitigation may be accepted to offset the impacts of a proposed development, where the LOS standards set forth in this Agreement otherwise would be exceeded, the following procedure shall be used.

- (a) The applicant shall initiate in writing a mitigation negotiation period with the School Board in order to establish an acceptable form of mitigation, the School Adequacy Ordinance, and this Agreement.
- (b) Acceptable forms of mitigation may include:
 - 1. The donation, construction, or funding of school facilities sufficient to offset the demand for public school facilities to be created by the proposed development; and
 - 2. The creation of mitigation banking within designated areas based on the construction of a public school facility in exchange for the right to sell capacity credits. Capacity credits shall be sold only to developments within the same adequacy service area or an adjacent adequacy service area.
- (c) The following standards apply to any mitigation accepted by the School Board:
 - 1. Proposed mitigation must be directed toward a permanent school capacity improvement identified in the School Board's Work Program that satisfies the demands created by the proposed development; and

Comment [mj14]: Mitigation banking provides an applicant with the ability to provide surplus capacity and shift that capacity to other developments within the facility's Adequacy Service Area.

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2. Relocatable classrooms will not be accepted as mitigation.
- (d) The applicant's total mitigation obligation to resolve a capacity deficiency shall be based on the following formula, for each school level: multiply the number of new student stations required to serve the new development by the average cost per student station. The average cost per student station shall include school facility development costs and land costs. The applicant's mitigation obligation will be credited toward any other impact fee or exaction imposed by local ordinance for the same need, on a dollar-for-dollar basis, at fair market value.

Summary of the Adequacy Evaluation and Proportionate Share Mitigation

<p>Step 1: Determine the number of students to be generated by the development</p> <p style="text-align: center;">Number of dwelling units in the proposed development (by unit type) MULTIPLIED BY Student generation rate (by type of DU and by school type) EQUALS Number students stations needed to serve the proposed development</p> <p>Step 2: Comparing the available capacity to the number of student stations calculated in Step 1 to assess the need for mitigation</p> <p style="text-align: center;">Available capacity (see §5.5.3 (b) of this agreement) MINUS The number of new student stations needed to accommodate the proposed development EQUALS The shortfall (negative number) or surplus (positive number) of capacity to serve the development</p> <p>Step 3: Evaluating the available capacity in contiguous service areas If Step 2 results in a negative number, repeat that step for any contiguous service area. If this step results in a negative number, then proceed to step 4 to calculate the proportionate share mitigation.</p> <p>Step 4: Calculating mitigation</p> <p style="text-align: center;">Needed additional student stations from Step 3 MULTIPLIED BY Average cost per student station EQUALS Mitigation Obligation</p>
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- (e) If within [redacted] days of the date the applicant initiates the mitigation negotiation period, the applicant and the School Board are able to agree to an acceptable form of mitigation, a legally binding mitigation agreement shall be executed, which sets forth the terms of the mitigation, including such issues as the amount, nature, and timing of donations, construction, or funding to be provided by the developer, and any other matters necessary to effectuate mitigation in accordance with this Agreement. The mitigation agreement shall specify the amount and timing of any impact fee credits or reimbursements that will be provided by the **County/City** as required by state law.
- (f) If, after [redacted] days, the applicant and the School Board are unable to agree to an acceptable form of mitigation, the School Board will report an impasse to the **County/City** in writing and the County/City will not issue a school adequacy determination for the proposed development unless the County/City Council finds that mitigation required is grossly disproportionate to the cost of providing public school facilities required to serve the proposed development and no provisions have been made to reimburse the applicant for excess capacity provided by mitigation volunteered by the applicant.
- (g) The School Board may grant two (2) 90-day extensions to the mitigation negotiation period.
- (h) Mitigation must be proportionate to the demand for public school facilities to be created by actual development of the property. An applicant may voluntarily provide more than a proportionate share contribution to adequately mitigate demands from a proposed development.
- (i) If the applicant chooses to wait for available capacity rather than to mitigate the lack of capacity to serve the proposed development, the applicant shall:
- Submit a notice of intent to wait for capacity along with the completed site plan for multi-family development, preliminary plat for single family lots, or Planned Development application that would otherwise be approved but for the lack of school capacity.
 - The **County/City** shall forward the notice of intent to the School Board within 30 days of finding that the application is complete.
 - Not less than five years nor more than five and one-half years subsequent to filing the notice of intent, the applicant may file an intent to proceed with the applicable development application, which shall not be subject to school adequacy tests, but may be subject to other regulations adopted prior to filing the intent to proceed.

Comment [mj15]: Local governments must retain the right to overturn unreasonable requirements.

Section 6 Implementation and Amendments

It is understood that the School Superintendent and the **County/City** Administrator may, in the implementation and administration of this agreement, act on behalf of their respective Boards in

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any manner that is customarily delegated. It is also understood that references to the School Superintendent or **County/City** Administrator shall include their duly appointed representatives.

To the extent that the procedures and requirements referenced from the land development regulations require interpretation and adjustment to meet the intent of this agreement, the County Administrator may exercise discretion as prescribed by the land development regulations.

This Agreement may be amended only by the written consent of the **County/City** and the School Board.

Section 7 Termination

This Agreement is effective upon the date of its execution and shall continue in full force and effect; provided however, that the Agreement shall automatically be renewed for one (1) year periods unless the County or the School Board signifies in writing to the other its intent to terminate the Agreement at least 120 days prior to the renewal date. It is further provided that either of the two aforementioned parties may terminate this agreement by giving at least 120 days written notice of its intent. Pursuant to Section 5 herein this Agreement shall be renewed annually.

Section 8 Resolution of Disputes

If the parties to this agreement are unable to resolve any issue(s) in which they may be in disagreement that are covered in this agreement, such dispute will be resolved through non-binding arbitration.

Section 9 Applicability

9.1 Existing educational facilities shall be considered consistent with the applicable local government Comprehensive Plan. School sites owned prior to effective date of this Agreement are exempt from the requirements of Section 3.2 herein.

9.2 **County/City** review is not required for:

a). Relocatables as follows:

- 1) The placement of temporary (two years or less) classrooms (relocatables) for the purpose of renovation or construction;
- 2) The placement of relocatables intended to expand the capacity of permanent school facilities which results in a 15 percent increase or less in the square footage of the permanent school facility.

b) Renovation or construction on existing school sites (with the exception of construction that changes the primary use of a facility, including stadiums) resulting in a 15 percent increase or less in the square footage of the permanent school facility.

c) School sites that have been and/or will be specifically designated within development plans approved by the **County/City**. Such sites shall be subject to the conditions, standards and procedures established for such development plans.

9.3 If the School Board submits an application to expand an existing school site, when required, the review shall be conducted in accordance with the procedures in Section 3

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herein. The **County/City** may impose development standards and conditions on the expansion in a manner consistent this agreement and the land development regulations.

9.4 Construction on all other sites shall be subject to the provisions contained herein.

IN WITNESS WHEREOF, this Interlocal Agreement has been executed by and on behalf of the **County/City** by its **Chairman of the County/City Council** and the seal of the **County/City** affixed hereto and attested by the County Administrator and the School Board of _____, South Carolina by its Chairman and its corporate seal affixed hereto and attested by the Superintendent of Schools on this _____ day of _____, 2008.

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