

**INTERMUNICIPAL AGREEMENT BETWEEN  
THE TOWN OF EASTCHESTER  
AND  
THE TUCKAHOE UNION FREE SCHOOL DISTRICT**

AGREEMENT made this 18<sup>th</sup> day of December, 2018 by and between the TOWN OF EASTCHESTER, a municipal corporation, being a town in the County of Westchester and State of New York, with offices at 40 Mill Road, Eastchester, New York, 10709 ("TOWN"), and TUCKAHOE UNION FREE SCHOOL DISTRICT, having its offices at 65 Siwanoy Boulevard, Tuckahoe, New York, 10707 ("SCHOOL DISTRICT").

WHEREAS, the TOWN and the SCHOOL DISTRICT wish to cooperate with respect to the TOWN's use of the SCHOOL DISTRICT's facilities; and

WHEREAS, the SCHOOL DISTRICT has expressed interest in accepting title from the TOWN to a portion of the street known as Siwanoy Boulevard between Crawford Street and the property line that the residential property known as 47 Siwanoy Boulevard, Eastchester, New York 10709 shares with the vacant parcel of property owned by the School District ("Portion of Siwanoy Boulevard"), in order to close down this Portion of Siwanoy Boulevard to provide a safer location for the residents and school children of Tuckahoe; and

WHEREAS, the Portion of Siwanoy Boulevard, which is located in the Town of Eastchester, County of Westchester and State of New York, will be more particularly described in a document to be mutually agreed upon by the Town Attorney of the TOWN and Keane & Beane, P.C. as attorneys for the SCHOOL DISTRICT, which document when finalized will be attached and made a part hereof as "Schedule A" to this INTERMUNICIPAL AGREEMENT; and

WHEREAS, the TOWN is willing to transfer title to the SCHOOL DISTRICT of said Portion of Siwanoy Boulevard;

NOW, THEREFORE, IT IS MUTUALLY AGREED by and between the TOWN and the SCHOOL DISTRICT (hereinafter collectively sometimes referred to as the “parties”) as follows:

1. Pursuant to Section 119-o of General Municipal Law, the duration of this INTERMUNICIPAL AGREEMENT shall be for five (5) years from the date hereof. This INTERMUNICIPAL AGREEMENT will automatically renew for up to three (3) additional successive five (5) year terms unless (a) the TOWN provides written notice that it elects not to renew this INTERMUNICIPAL AGREEMENT sixty (60) days prior to the expiration date of the then current term or (b) this INTERMUNICIPAL AGREEMENT has been terminated by the TOWN pursuant to paragraphs 5, 6, 8, 9 or 19 herein.

2. When not needed for SCHOOL DISTRICT programs, activities or events and when not unavailable or inaccessible due to (a) renovation or maintenance activities of the SCHOOL DISTRICT; (b) adoption of a contingency budget for the SCHOOL DISTRICT or (c) inclement weather conditions, the SCHOOL DISTRICT shall use its best efforts to make available to the TOWN before any other non-SCHOOL DISTRICT entities the use of the following facilities (the “SCHOOL DISTRICT FACILITIES”) during the seasons designated below subject to such reasonable rules and conditions of use as the SCHOOL DISTRICT may impose:

a. During the winter sports season for the Eastchester Instructional Basketball League (also known as “EIBL”), which season is from late November through mid-March:

i. Cottle School Gym

1. From 7:45 p.m. to 9:45 p.m. on two (2) weeknights (Monday through Friday) for EIBL practices and games;

2. for two and one-half (2½) hours each Saturday for EIBL practices and games; and
  - ii. Tuckahoe High School Gym
    1. for six (6) hours each Saturday for EIBL practices and games, provided the SCHOOL DISTRICT is able to arrange for its custodial staff to cover all hours of use on each such Saturday.
- b. For the TOWN's summer camp program, which is known as Camp Rainbow and runs for six (6) weeks from the first Monday following the conclusion of the ten-month school year in June on each weekday (Monday through Friday) that is not a legal holiday use of the following facilities in one of the SCHOOL DISTRICT's school buildings will be provided from 8:45 a.m. to 12:30 p.m. for TOWN staff and 9:00 a.m. to noon for camp attendees:
- i. 5 classrooms during the scheduled hours on the scheduled days of the camp program;
  - ii. Auditorium on ten (10) days during the six (6) weeks of the camp program during the scheduled hours on the scheduled days of the camp program;
  - iii. Gym for one hour daily during the scheduled hours on the scheduled days of the camp program;
  - iv. Field for two hours daily during the scheduled hours on the scheduled days of the camp program;
  - v. Nurse's Office during the scheduled hours on the scheduled days of the camp program; and
  - vi. Bathrooms during the scheduled hours on the scheduled days of the camp program.
- c. During the fall sports season, which is from late August through mid-November:
- i. Tuckahoe High School Turf Field for the Eastchester Youth Soccer (also known as "EYSA") programs:
    1. for five and one-half (5.5) hours each Saturday for practices and games following the conclusion of the SCHOOL DISTRICT's programs, activities and/or events on this field, including but not limited practices and games of SCHOOL DISTRICT teams; and
    2. for six (6) hours each Sunday for EYSA practices and games.
  - ii. Cottle Elementary School field for the Tuckahoe Youth Association (also known as "TYA"):

1. weekdays (Monday through Friday) for TYA practices and games commencing at 6:00 p.m. and concluding at dusk;
2. for seven and one-half (7.5) hours each Saturday for TYA practices and games; and
3. for seven and one-half (7.5) hours each Sunday for TYA practices and games.

d. During the spring sports season, which is from late March to late June:

i. Tuckahoe High School Turf Field for the EYSA programs:

1. each Saturday commencing at 1:30 p.m. until dusk for EYSA practices and games following the conclusion of the DISTRICT's programs, activities and/or events on this field, including but not limited practices and games of SCHOOL DISTRICT teams; and
2. for six (6) hours each Sunday for EYSA practices and games.

ii. Cottle Elementary School field for the TYA:

1. weekdays (Monday through Friday) for TYA practices and games commencing at 6:00 p.m. and concluding at dusk;
2. for seven and one-half (7.5) each Saturday for TYA practices and games; and
3. for seven and one-half (7.5) each Sunday for TYA practices and games.

3. For the uses of the SCHOOL DISTRICT FACILITIES, the TOWN will be responsible for payment of the SCHOOL DISTRICT's applicable use fee when the SCHOOL DISTRICT incurs costs for the TOWN's use that are in addition to or not otherwise required for the use of the SCHOOL DISTRICT FACILITIES by the SCHOOL DISTRICT or by another third-party entity.

4. Noting in this INTERMUNICIPAL AGREEMENT shall preclude the parties from agreeing to allow each other additional uses of their respective properties or facilities.

5. Based upon the SCHOOL DISTRICT permitting the TOWN the above-described access and use of the SCHOOL DISTRICT FACILITIES, the TOWN hereby agrees to donate and transfer by deed to the SCHOOL DISTRICT the Portion of Siwanoy Boulevard, which will be more particularly described in "Schedule A", together with all its improvements including below grade sanitary and sewer systems, fire hydrants and any other utilities located within said Portion of Siwanoy Boulevard. The TOWN will execute and deliver to the SCHOOL DISTRICT the deed transferring the Portion of Siwanoy Boulevard within ten (10) business days of the attorneys for the TOWN and SCHOOL DISTRICT agreeing on the description to be contained in Schedule A and the SCHOOL DISTRICT having arranged title insurance for the transfer. The parties agree such deed shall contain the following condition:

"This deed is delivered upon the condition that in the event the TUCKAHOE UNION FREE SCHOOL DISTRICT has an Event of Default under the INTERMUNICIPAL AGREEMENT dated December 18, 2018, at any time during the initial term or any renewal term of such INTERMUNICIPAL AGREEMENT that is within twenty (20) years from the date of this deed, said premises shall revert in fee simple absolute from the TUCKAHOE UNION FREE SCHOOL DISTRICT back to the Town of Eastchester."

If the TOWN fails to comply with the terms of this paragraph, the SCHOOL DISTRICT shall have the right to terminate this INTERMUNICIPAL AGREEMENT upon written notice to the TOWN, which termination shall be effective when such written notice is received, refused, or unclaimed by the TOWN.

6. Prior to transferring to the SCHOOL DISTRICT the above-referenced Portion of Siwanoy Boulevard the TOWN shall take all actions necessary under the laws of the State of New York, including but not limited to the General Municipal Law, the Town Law, and the Highway Law, to be able to transfer the above-referenced Portion of Siwanoy Boulevard to the

SCHOOL DISTRICT. In addition, prior to transferring to the SCHOOL DISTRICT the above-referenced Portion of Siwanoy Boulevard, the TOWN shall undertake the environmental review required for the roadway transfer under the State Environmental Quality Review Act ("SEQRA"), including but not limited to serving as Lead Agency for a coordinated review provided no interested or involved agency objects to the TOWN serving as Lead Agency. If the TOWN fails to comply with the terms of this paragraph, the SCHOOL DISTRICT shall have the right to terminate this INTERMUNICIPAL AGREEMENT upon five (5) business days prior written notice to the TOWN and the TOWN shall indemnify, defend and hold the SCHOOL DISTRICT harmless as a result of any costs or losses incurred due to the failure of the TOWN to comply with the terms of this paragraph.

7. Within ten (10) business days of the attorneys for the TOWN and SCHOOL DISTRICT agreeing on the description to be contained in Schedule A and the SCHOOL DISTRICT having arranged title insurance for the transfer, the TOWN shall prepare and deliver to the SCHOOL DISTRICT the necessary transfer documents to effectuate the transfer to the SCHOOL DISTRICT of the above-referenced Portion of Siwanoy Boulevard. The School District shall pay to record the deed. The TOWN shall indemnify, defend and hold the SCHOOL DISTRICT harmless as a result of any costs or losses incurred due to the failure of the TOWN to comply with the terms of this paragraph.

8. If in the TOWN'S judgment, reasonably exercised, the failure by the SCHOOL DISTRICT to provide the use of the SCHOOL DISTRICT FACILITIES as outlined in this INTERMUNICIPAL AGREEMENT is deemed to be in violation of this INTERMUNICIPAL AGREEMENT within the term of the INTERMUNICIPAL AGREEMENT, then, and in such event, the TOWN shall serve the SCHOOL DISTRICT with written notice of said violation, and

the SCHOOL DISTRICT shall thereafter have a period of sixty (60) days to cure by making the SCHOOL DISTRICT FACILITIES available for use by the TOWN on the date(s) and time(s) referenced in the written notice of the violation or at an alternative time on the date(s) referenced in the written notice of the violation or on an alternative date(s). Upon the failure of the SCHOOL DISTRICT to so cure within said sixty (60) day period, the TOWN may provide five (5) business days prior written notice to the SCHOOL DISTRICT that it deems such uncured violation an EVENT OF DEFAULT that causes the transferred Portion of Siwanoy Boulevard to revert back to the TOWN and, in the same or separate prior written notice to the SCHOOL DISTRICT, the TOWN also may elect to terminate this INTERMUNICIPAL AGREEMENT, which termination and reversion shall be effective five (5) business days after such written notice is received, refused, or unclaimed by the SCHOOL DISTRICT.

9. The SCHOOL DISTRICT shall have the opportunity to cure the first two (2) violations of this INTERMUNICIPAL AGREEMENT during any five (5) year term. Upon a third violation by the SCHOOL DISTRICT within a five (5) year term, the TOWN at its option may provide five (5) business days prior written notice to the SCHOOL DISTRICT that it deems such third violation an EVENT OF DEFAULT that causes the transferred Portion of Siwanoy Boulevard to revert back to the TOWN and, in the same or separate prior written notice to the SCHOOL DISTRICT, the TOWN may elect to terminate this INTERMUNICIPAL AGREEMENT, which termination and/or reversion shall be effective five (5) business days after such written notice is received, refused, or unclaimed by the SCHOOL DISTRICT.

10. If not invoked or voided pursuant to another paragraph of this INTERMUNICIPAL AGREEMENT, the TOWN hereby agrees that the reverter clause shall expire and no longer be binding on either party on the early of (a) passage of twenty years from

the commencement of this INTERMUNICIPAL AGREEMENT or (b) the expiration of the initial term plus any renewal terms of this INTERMUNICIPAL AGREEMENT if the TOWN elects not to renew this INTERMUNICIPAL AGREEMENT.

11. The TOWN agrees that, on a date(s) mutually agreed to by the TOWN and the SCHOOL DISTRICT that is no later than October 1, 2019 to the SCHOOL DISTRICT, the TOWN at its sole cost and expense will pave the Portion of Siwanoy Boulevard and will raise any curb stones so located upon said street provided the Portion of Siwanoy Boulevard is made accessible to the TOWN on such mutually agreed upon date(s). The TOWN shall indemnify, defend and hold the SCHOOL DISTRICT harmless as a result of any costs or losses incurred due to the failure of the TOWN to comply with the terms of this paragraph.

12. The TOWN agrees that subsequent to the transfer of the above-described Portion of Siwanoy Boulevard throughout the term of this INTERMUNICIPAL AGREEMENT and throughout the term of any renewals of this INTERMUNICIPAL AGREEMENT, the TOWN will remove snow from the transferred Portion of Siwanoy Boulevard whenever the TOWN is removing snow from the streets owned and/or maintained by the TOWN provided the above-described Portion of Siwanoy Boulevard is accessible to the TOWN for the removal of such snow.

13. This INTERMUNICIPAL AGREEMENT contains the entire understanding of the parties, who acknowledge that there has been and are no representations, warranties, covenants, agreements or understandings other than those expressly set forth herein. No oral statement or prior written matter shall have any force or effect. No waiver of any provision of this INTERMUNICIPAL AGREEMENT shall be effective unless in writing, signed by the waiver party. This INTERMUNICIPAL AGREEMENT shall not be modified except by a writing



subscribed by all parties. The covenants, conditions and agreements contained in this INTERMUNICIPAL AGREEMENT shall bind and inure to the benefit of the parties and their successors and assigns.

14. This INTERMUNICIPAL AGREEMENT is made and delivered by the TOWN pursuant to a resolution of its Town Board adopted at a meeting held on December 18, 2018. Further, this INTERMUNICIPAL AGREEMENT is made and delivered by the SCHOOL DISTRICT pursuant to a RESOLUTION of its School Board adopted at a meeting held on December 17, 2018.

15. REPRESENTATIONS AND WARRANTIES.

- a. This INTERMUNICIPAL AGREEMENT contains the entire agreement between the parties and all prior negotiations and agreements are merged into this INTERMUNICIPAL AGREEMENT. This INTERMUNICIPAL AGREEMENT may not be changed, modified, terminated or discharged, in whole or in part, nor any of its provisions waived except by a written instrument which (i) expressly refers to this INTERMUNICIPAL AGREEMENT and (ii) is executed by the party against whom enforcement of the change, modification, termination, discharge or waiver is sought.
- b. The SCHOOL DISTRICT expressly acknowledges that neither the TOWN nor the TOWN'S agents has made or is making, and the SCHOOL DISTRICT, in executing and delivering this INTERMUNICIPAL AGREEMENT, is not relying upon, any warranties, representations, promises or statements with respect to the physical condition of the Portion of Siwanoy Boulevard to be transferred, except to the extent that the same are expressly set forth in this INTERMUNICIPAL AGREEMENT, and no rights, easements or licenses are or shall be acquired by the SCHOOL DISTRICT by implication or otherwise unless expressly set forth in this INTERMUNICIPAL AGREEMENT.
- c. This INTERMUNICIPAL AGREEMENT shall be governed in all respects by the laws of the State of New York. The parties hereby specifically consent to jurisdiction in the State of New York, Westchester County in any action or proceeding arising out of this INTERMUNICIPAL AGREEMENT.

- d. The TOWN has undertaken the environmental review required for the transfer of the above-described Portion of Siwanoy Boulevard to the SCHOOL DISTRICT.
- e. The TOWN has taken all actions necessary under the laws of the State of New York to be able to transfer the above-described Portion of Siwanoy Boulevard to the SCHOOL DISTRICT.

16. It is hereby agreed that no waiver of any condition or covenant in this INTERMUNICIPAL AGREEMENT or any breach thereof, shall be taken to constitute waiver of any subsequent breach.

17. Each party (the "Indemnifying Party") agrees to indemnify, defend and hold the other party (the "Indemnified Party") harmless as provided herein to the maximum extent possible under law. Accordingly, the Indemnifying Party agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless the Indemnified Party, its appointed and elected officials, directors, agents and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof, for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to the terms of this INTERMUNICIPAL AGREEMENT, except to the extent of the other party's negligence or willful misconduct. The Indemnifying Party's obligations under this section shall include:

- a. The duty to promptly accept tender of defense and provide defense to the Indemnified Party at the Indemnifying Party's own expense;
- b. Indemnification of claims made by the Indemnifying Party's own employees or agents.

In the event it is necessary for the Indemnified Party to incur attorney's fees, legal expenses or other costs to enforce the provisions of this paragraph, all such reasonable fees, expenses and costs shall be recoverable from the Indemnifying Party.

18. Following transfer of the above-described Portion of Siwanoy Boulevard, the SCHOOL DISTRICT is obligated to remove any snow and/or ice from the sidewalks immediately adjacent to and in front of the transferred Portion of Siwanoy Boulevard within a reasonable time, and shall indemnify, defend and hold the TOWN harmless as a result of any loss due to the failure of the SCHOOL DISTRICT to comply with the terms of this paragraph.

19. EVENTS OF DEFAULT AND TERMINATION. In addition to those events described above in separate paragraphs of this INTERMUNICIPAL AGREEMENT, the occurrence of any one or more of the following events shall constitute an Event of Default:

- a. if the SCHOOL DISTRICT shall fail to comply with or perform any term, covenant or condition of this INTERMUNICIPAL AGREEMENT, and such failure shall continue for more than sixty (60) days after the SCHOOL DISTRICT receives written notice of such failure from the TOWN, and the SCHOOL DISTRICT within said period, subject to Unavoidable Delays (as hereinafter defined), shall not commence with due diligence and dispatch the curing of such default, or, having so commenced, thereafter shall fail or neglect to prosecute or complete with due diligence and dispatch the curing of such default; or
- b. if the TOWN shall fail to comply with or perform any term, covenant or condition of this INTERMUNICIPAL AGREEMENT, and such failure shall continue for more than sixty (60) days after the TOWN receives written notice of such failure from the SCHOOL DISTRICT, and the TOWN within said period, subject to Unavoidable Delays (as hereinafter defined), shall not commence with due diligence and dispatch the curing of such default, or, having so commenced, thereafter shall fail or neglect to prosecute or complete with due diligence and dispatch the curing of such default; or
- c. if the SCHOOL DISTRICT transfers any or all of the property which has been deeded to it by the TOWN pursuant to this INTERMUNICIPAL AGREEMENT; or
- d. if the SCHOOL DISTRICT shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt or

insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulations, or shall file an answer admitting, or shall fail to contest, the material allegations of a petition filed against such party in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of such party or any material part of such party's properties; or

- e. if, within ninety (90) days after the commencement of any proceeding against the SCHOOL DISTRICT seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulations, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment without the consent or acquiescence of one of the parties to this INTERMUNICIPAL AGREEMENT, of any trustee, receiver or liquidator of said party or of any material part of said party's properties, such appointment shall not have been vacated.

If any one or more of the above Events of Default shall occur, then the non-defaulting party shall have the right to terminate this INTERMUNICIPAL AGREEMENT upon five (5) business days prior written notice to the defaulting party and (a) if the non-defaulting party is the SCHOOL DISTRICT, then upon five (5) business days prior written notice in the same or a separate notice to the TOWN from the SCHOOL DISTRICT, the reverter clause in the above-referenced deed that would cause the transferred Portion of Siwanoy Boulevard to revert back to the TOWN shall be void or (b) if the non-defaulting party is the TOWN, then then upon five (5) business days prior written notice to the SCHOOL DISTRICT from the TOWN the transferred Portion of Siwanoy Boulevard shall revert back to the TOWN. As used in this paragraph and its subparts, "Unavoidable Delays" shall mean delays due to fire, casualty, any strike, lock-out or other labor trouble, governmental preemption of priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom, or any other cause, whether similar or dissimilar, beyond a party's control.

20. No failure by the parties to insist upon strict performance or compliance with any term, covenant or condition hereof or to exercise or enforce any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any such term, covenant or condition.

21. No waiver of any breach of any term, covenant or condition of this INTERMUNICIPAL AGREEMENT shall be binding unless stated in writing and signed by the party waiving said breach. No waiver of any breach of any term, covenant or condition of this INTERMUNICIPAL AGREEMENT shall in any way affect or alter any other term or condition of this INTERMUNICIPAL AGREEMENT, or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same or effect the respective rights, powers or remedies of the parties with respect to any other then existing breach.

22. All of the rights, powers and remedies of the parties provided for in this INTERMUNICIPAL AGREEMENT or now or hereafter existing at law or in equity, or by statute or otherwise, shall be deemed to be separate, distinct, cumulative and concurrent. No one or more of such rights, powers or remedies, nor any mention or reference to any one or more of them in this INTERMUNICIPAL AGREEMENT, shall be deemed to be in the exclusion of, or a waiver of, any other rights, powers or remedies provided for in this INTERMUNICIPAL AGREEMENT, or now or hereafter existing at law or in equity, or by statute or otherwise. The exercise or enforcement by a party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise or enforcement by such party of any or all of such other rights, powers or remedies.

23. It is mutually agreed by and between the TOWN and the SCHOOL DISTRICT that the respective parties hereto shall and they hereby do waive trial by jury in any action

proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matters whatsoever arising out of or in any way connected with this INTERMUNICIPAL AGREEMENT.

24. The respective representatives of each party who executed this INTERMUNICIPAL AGREEMENT on behalf of their respective party are duly authorized and empowered to execute this INTERMUNICIPAL AGREEMENT.

25. All matters affecting the interpretation of this INTERMUNICIPAL AGREEMENT and the rights of the parties hereto shall be governed by the laws of the State of New York.

26. Any and all notices and payments required hereunder shall be provided in writing addressed as follows, or to such other address as may hereafter be designated in writing by either party hereto:

TO THE TOWN:  
TOWN OF EASCHESTER  
40 Mill Road  
Eastchester, New York 10709  
Attention: SUPERVISOR, ANTHONY S. COLAVITA

TO THE SCHOOL DISTRICT:  
TUCKAHOE UNION FREE SCHOOL DISTRICT:  
65 Siwanoy Boulevard  
Eastchester, New York 10709  
Attention: Superintendent of Schools

Notices shall be deemed served when received, refused, or unclaimed by the party to whom it is addressed.

IN WITNESS WHEREOF the parties hereto have executed this INTERMUNICIPAL AGREEMENT, the day and year first above written.

**TOWN OF EASTCHESTER**

Date: 12/18/18

By: \_\_\_\_\_

  
ANTHONY S. COLAVITA, SUPERVISOR

**TUCKAHOE UNION FREE SCHOOL DISTRICT**

Date: 12/17/18

By: \_\_\_\_\_

  
MICHELLE LISCIO, PRESIDENT  
BOARD OF EDUCATION

