

## INTERMUNICIPAL AGREEMENT

THIS AGREEMENT (this "Agreement") dated this 10 day of May, 2016, is by and between the TOWN OF PREBLE, a New York municipal corporation with an address of 1968 Preble Road, Preble NY 13141 (the "Town"), and the HOMER CENTRAL SCHOOL DISTRICT, a New York municipal corporation with an address at Homer School District of PO Box 500, Homer, NY 13077 (the "District").

WHEREAS, this Agreement is made pursuant to General Municipal Law, Article 244-b; and

WHEREAS, the Town owns and maintains recreational facilities including but not limited to baseball fields (the "Baseball Facilities") located at Rte 281, Preble, NY; and

WHEREAS, the District needs baseball fields to facilitate its interscholastic baseball program; and

WHEREAS, the Town and the District desire to enter into an agreement whereby the Town will permit the District to utilize the Baseball Facilities during specific dates and times for its interscholastic baseball program; and

WHEREAS, it is in the interest of the taxpayers of the District and the Town to share resources in operating the Baseball Facilities; and

WHEREAS, it is determined that while liability risks are inherent when operating public parks and other similar projects, no substantial additional risk is occasioned on the part of either party by entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and intending to be legally bound hereby, the parties agree as follows:

1. Term. This Agreement shall begin on March 1, 2016 and end on July 1, 2020 (the "Term").

2. District Use of Baseball Facilities. The Town shall permit the District to have use of the baseball facilities for its baseball team practices, games, and tournaments during the months of March, April, May, and June of each year. The particular dates and times shall coincide with the practice and games schedule for the District baseball team and shall be as mutually agreed upon by the parties prior to the start of each season. During the season the Town may use the baseball facilities so long as the same does not interfere with the District's use as aforesaid. Each party shall leave the facilities in broom swept condition after each use and the playing field shall likewise be left in the same general condition as it was at the start of each use. Each party will repair any item damaged during the respective use.

3. Consideration. In consideration for the use of the Baseball Facilities owned by the Town, the District shall pay the Town on an annual basis during the Term of this Agreement Ten and 00/100 Dollars (\$10.00) per annum.

4. Responsibility for Maintenance, Repair and Operations. During each season the District shall maintain all baseball facilities in a safe and operable condition and during each District baseball activity, the District shall be solely responsible for the safe condition of the facilities and the safety of all those in attendance. Except as stated in paragraph 2 above the Town shall have no obligation to maintain or repair said facilities.

5. Insurance. Each party agrees to protect, defend, indemnify and hold the other party harmless from any and all claims for damage or injury arising from, or in any way related to their respective use of the baseball facilities, including but not limited to the negligence of respective employees. Each party agrees that it will carry at all time the following: (a) Commercial General Liability Insurance of \$1,000,000 per occurrence/ \$2,000,000 aggregate, with coverage for athletic participants; and (b) an umbrella policy with a minimum in an amount of \$5,000,000 in a form acceptable to each party. Each commercial general liability policy shall apply to all use of the baseball facilities under this agreement. Each party shall supply the other with proof of said coverage on an annual basis. The District agrees to indemnify the Municipality for any applicable deductibles and self-insured retentions.

6. Notices. All notices given in connection with this or the Contract shall be made by personal service, certified mail, return receipt requested or via nationally recognized overnight courier, as follows:

To Town:

Town of Preble  
Preble Town Hall  
PO Box 234, Preble Rd.  
Preble, New York 13141  
Attn: Jim Doring

To District:

Homer Central School District  
80 South West Road  
Homer, New York 13077  
Attn: Nancy S. Ruscio, Superintendent

7. Legal Compliance. In performing under the terms of this Agreement, the Town and the District and each of their agents shall comply with all applicable federal, state, and local laws, resolutions, ordinances, codes, rules, and regulations. The District shall comply with the terms of the General Municipal Law in procuring any equipment or contracting for any services in connection with the equipping, installation, maintenance, repairs, and/or improvements of the Softball Facilities.

8. Prohibition Against Assignment. Neither party to this Agreement shall assign, transfer, convey, sublet, or otherwise dispose of this Agreement, or of its right, title, or interest in this Agreement, to any other person without the previous written consent of the other party.

9. Non-Waiver of Breach. No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause of excuse for a repetition of such or any other breach, unless the waiver shall include the same.

10. Entire Agreement. This Agreement constitutes the entire and integrated Agreement between the parties and supersedes any and all prior proposals, negotiations, and agreements, whether written or oral. Any modification or amendment to this Agreement shall be void unless it is in writing and signed by both parties.

11. Applicable Law. This Agreement is governed by the laws of the State of New York.
12. Dispute Resolution. In the event that a dispute arises between the parties, venue for the resolution of such dispute shall be the County of Cortland, State of New York.
13. Severability. If any provision of this Agreement is held invalid by a court of law, the remainder of this Agreement shall be valid and enforceable.
14. Periodic Review of Agreement. This Agreement, including its terms relating to its duration, termination, and renewal, will be reviewed periodically and as necessary by the parties.
15. Authorization/Execution of Agreement. Each party represents, warrants and covenants to the other that each party has obtained all requisite consents necessary to enter into this Agreement and to consummate the transactions contemplated hereby and that the undersigned has been duly authorized to execute and deliver any and all documents necessary to effectuate the terms and conditions hereof.
16. Counterparts. This Agreement may be executed in counterparts, each of which shall be construed as an original, and all of which together shall be deemed but a single document. Signatures on counterparts of this agreement that are delivered via fax, email or by other electronic means are authorized and shall be acknowledged as if such signatures were an original execution.

*[Remainder of page intentionally left blank. Signature page immediately follows.]*

IN WITNESS WHEREOF, each of the parties hereto has caused its duly authorized representative to execute this Agreement as of the date first above set forth.

TOWN OF PREBLE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

HOMER CENTRAL SCHOOL DISTRICT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NEW YORK    )  
                                  ) ss:  
COUNTY OF            )

On the \_\_\_ day of \_\_\_\_\_, in the year 2016 before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK    )  
                                  ) ss:  
COUNTY OF            )

On the \_\_\_ day of \_\_\_\_\_, in the year 2016 before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.

\_\_\_\_\_  
Notary Public

## **SAMPLE INSURANCE AGREEMENT - USE OF FACILITIES**

1. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the permittee hereby agrees to effectuate the naming of the Municipality as an additional insured on the permittee's insurance policies.
2. The policy naming the Municipality as an additional insured shall:
  - a. Be an insurance policy from an A.M. Best rated "Secure" or better insurer, licensed in New York State.
  - b. State that the organization's coverage shall be primary and non-contributory coverage for the Municipality its Board, employees and volunteers.
  - c. The Municipality shall be listed as an additional insured by using endorsement CG 2026 or equivalent. A completed copy of the endorsement must be attached to the certificate of insurance.
  - d. At the Municipality's request, the organization shall provide a copy of the declaration page of the liability and umbrella policies with a list of endorsements and forms. If so requested, the organization will provide a copy of the policy endorsements and forms.
3. The permittee agrees to indemnify the Municipality for any applicable deductibles and self-insured retentions.
4. The insurance producer must indicate whether or not they are an agent for the companies providing the coverage.
5. Required Insurance:
  - a. **Commercial General Liability Insurance**  
\$1,000,000 per occurrence/ \$2,000,000 aggregate, with coverage for athletic participants.
  - b. **Excess Insurance**  
\$\_\_\_\_\_ each Occurrence and Aggregate. Excess coverage shall be on a follow-form basis.
6. Permittee acknowledges that failure to obtain such insurance on behalf of the Municipality constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the Municipality. The permittee is to provide the Municipality with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities.
7. The Municipality is a member/owner of the NY Municipal Insurance Reciprocal (NYMIR). The user further acknowledges that the procurement of such insurance as required herein is intended to benefit not only the Municipality but also the NYMIR, as the Municipality's insurer.