

**INTER-MUNICIPAL AGREEMENT TO DEVELOP AND
CONSTRUCT RECREATION FACILITIES ON THE LANDS
OF UPPER SAUCON TOWNSHIP AND THE SOUTHERN
LEHIGH SCHOOL DISTRICT**

THIS AGREEMENT, is made this ____ day of _____, 2017, by and between **UPPER SAUCON TOWNSHIP**, a Township of the second class organized and existing under the Second Class Township Code, as amended, with an office situate at 5500 Camp Meeting Road, Center Valley, Lehigh County, PA 18034 (hereinafter, “Township”); and the **SOUTHERN LEHIGH SCHOOL DISTRICT**, a School District of the third class organized and existing under the Public School Code of 1949, as amended, with an office situate at 5775 Main Street, Center Valley, PA 18034 (hereinafter, “School District”). Both the Township and the School District are sometimes referred to hereafter as the “Parties.”

RECITALS:

WHEREAS, the Township and the School District are owners of abutting parcels of land along West Hopewell Road in the Township; and

WHEREAS, both the Township and School District acknowledge the mutual benefits arising out of cooperation in the planning, design and construction of park and recreation facilities; and

WHEREAS, the parties hereto desire to construct a park and recreation facility for their mutual benefit utilizing portions of the above-referenced parcels; and

WHEREAS, the School District owns, operates and maintains 27.26 acres of certain improved, real property in the Township known as the “Hopewell Elementary School,” located at 4625 W. Hopewell Road, Center Valley, PA 18034 and having PIN Number 641447304975 1 (hereinafter, “School Property”); and

WHEREAS, the School Property is the subject of an approved Land Development Plan providing for the demolition of the existing Hopewell Elementary School and the construction of a new Elementary School, all as approved by Resolution No. 2015-16, dated March 23, 2015; and

WHEREAS, the Township owns and maintains 61.2939 acres of unimproved real property having an address commonly referred to as 4865 W. Hopewell Road, Center Valley, PA 18034 and designated by PIN Numbers 641436563627 1, 641446271051 1, 641437641010 1 and 641437049990 1 (hereinafter, “Township Property”); and

WHEREAS, the School District’s Land Development Plan for the new Hopewell Elementary School includes a lot line adjustment plan which effectuates a land swap between the School District and Township for their respective properties, all as approved by Resolution No. 2015-13, dated February 23, 2015; and

WHEREAS, on October 24, 2006, the Township Board of Supervisors (hereinafter, “Supervisors”) approved a park and recreation plan for the Township, titled “Comprehensive Recreation and Open Space Plan” (hereinafter, “Recreation Plan”); and

WHEREAS, the Recreation Plan provides for a park and recreation facility in the general vicinity of W. Hopewell Road and the School Property; and

WHEREAS, both the Township and the School District recognize the need for additional park and recreation facilities, and both find that recent acquisitions of land by the Township forming the Township Property as well as the School District's construction of the new Hopewell Elementary School present a unique opportunity to develop and construct such facilities; and

WHEREAS, the Township and the School District contemplate the use of the Township Property and a portion of the School Property for development of park and recreational facilities to be known as Hopewell Road Park (hereinafter, "Park"); and

WHEREAS, the parties have agreed to a plan, prepared by the Township Engineer and identified as "HOPEWELL ROAD PARK," dated March 15, 2017, a copy of which is attached hereto as **Exhibit "A"** (hereinafter, "Park Plan") and

WHEREAS, the parties desire to enter into this INTER-MUNICIPAL AGREEMENT TO DEVELOP AND CONSTRUCT RECREATION FACILITIES ON THE LANDS OF UPPER SAUCON TOWNSHIP AND THE SOUTHERN LEHIGH SCHOOL DISTRICT (hereinafter, "Agreement") to establish their respective obligations concerning the planning, construction, operation, maintenance and repair of the proposed, park and recreation facilities.

NOW, THEREFORE, for and in consideration of the sum of One Dollar (\$1.00) paid by the Township to the School District and for additional, valuable consideration, the receipt of which is hereby acknowledged by the School District and the Township, and intending to be legally bound hereby, the Parties agree as follows:

A. Purpose and Goals.

1. The Parties enter into this Agreement for the purpose of planning, constructing, operating, maintaining, repairing and expanding the park and recreation facilities depicted on the Park Plan. It is the goal of the Parties to provide opportunities for students and members of the public at large to utilize the facilities for sporting and recreational activities in accordance with the Parties' respective policies, rules and procedures for the use of such lands. Additionally, it is a goal of the Parties to promote the safe use of the facilities at reasonable hours and at the same time to maintain appropriate levels of security for the Hopewell Elementary School and provide for the safety of students.

2. The Parties agree that the Park Plan is a concept plan, and that the land development for, and construction of, the facilities will be substantially in accordance therewith. The Parties acknowledge and agree that minor deviations and changes to the Park Plan may be required for planning and construction reasons, and that substantial deviation or change will not be made without the agreement of the Parties. The Parties acknowledge and agree further that in the course of planning, construction, operation, maintenance

and expansion of the facilities, additional written agreements or modifications to existing agreements may be required, and the Parties agree to exercise good faith to enter into reasonable agreements or modifications necessary to accomplish the purpose and goals of this Agreement.

B. Planning Phase.

1. The Park Plan represents a logical layout of proposed athletic fields and related facilities considering the size of the Parties' respective properties, environmental constraints, factors relating to the use and improvements to the School Property as contemplated by Resolution No. 2015-16, liability concerns, security issues and parking requirements.

2. The Township shall hold harmless and indemnify the School District with respect to any disputes, complaints, and legal proceedings that may be instituted by any persons or agencies against the Township and/or School District, including reasonable legal fees and expenses of the School District in defending any such disputes, complaints, claims, and/or legal proceedings, which arise out of or relate to the legal or statutory authority of the Parties to enter into this Agreement, including but not limited to land development, storm water management and zoning challenges.

C. Construction Phase.

1. The park and recreational facilities, including construction of all playing fields, walking paths, parking areas and other improvements relating to the playing fields, to be developed on the School Property, shall be constructed substantially in accordance with the Park Plan, reasonable field

changes and modifications excepted, and, except as hereinafter provided, at Township expense. ~~Any spectator stands, whether temporary or permanent, associated with playing fields located on School Property shall be approved by the School District.~~ **The Township shall seek prior written approval from the School District to erect temporary or permanent spectator stands and the Township shall be solely responsible and liable for the cost, care and maintenance of such spectator stands.** Any restroom facilities required with respect to the use of playing fields located upon School Property shall be located upon Township Property and shall be the responsibility of the Township, including compliance with any handicap access requirements and/or variances required to use the playing fields without access to restrooms. No changes or modification of a substantial nature shall be made without the approval of the School District.

2. The Township shall prepare all documents necessary to solicit bids for the construction of the facilities, prepare all contracts and prepare all contract-related designs, plans, specifications, bonds and other documents. All such documents shall be submitted to the School District for review and approval prior to publication. Such documents shall address and require, among other things, that contractors and subcontractors provide appropriate bonds to secure the performance of the work and insurance in forms and amounts necessary to protect the Township and School District. In addition, the Township shall require that contractors and sub-contractors provide appropriate indemnity and defense agreements benefitting the Township and

the School District. **To the extent that work may be conducted at times when school is in session, mandated clearances for all workers, shall be provided to the School District.**

3. (a). The Township Engineer shall observe the work of the contractor(s) and report regularly to the Parties concerning the progress of the work. The School District authorizes the Township to exercise its sole discretion in the administration of the construction contract(s) and, in addition, to accept (and as necessary approve) work which in the opinion of the Township is in compliance with the contractors' obligations or to reject work which is not.

(b). Notwithstanding the foregoing, with respect to the construction of any facilities on School Property, the School District reserves the right to participate with the Township and its agents in the observation, inspection and acceptance of work as construction proceeds and, in any case, the Township shall not approve final completion of any work on the School Property by a contractor and/or subcontractor without the review and approval of the School District, it being understood that any expenses incurred by the School District with respect to any such inspections, acceptance, and approval shall be borne by the School District. With respect to the School District's final approval, the Township shall notify the School District in writing when the work on School Property is substantially complete, and thereafter, within 30 days of the date that such notice is received by the School District, the Township and the

School District shall inspect the work and either reject or approve the same. In this regard, the School District's approval shall not be unreasonably withheld.

4. The School District grants to the Township and its agents, employees, consultants and contractors a right of entry and temporary construction and access easement for the purpose of entering upon the School Property (as adjusted by the LLA Plan) and constructing the recreational facilities depicted on the Park Plan. The right of entry and easement granted hereunder shall be exercised at reasonable times and shall continue until the construction of the recreational facilities is completed and approved by the Township and the School District in accordance with Section 3(b), above. The Township shall make reasonable efforts to minimize inconvenience to the School District and to minimize any disruption of activities at the Hopewell Elementary School.

5. Except as otherwise provided in this Agreement, all costs of design, construction, contract administration, review and approval of the work shall be borne by the Township. The Parties shall bear their own legal fees. Nothing contained herein shall be interpreted to preclude observation and input (to the Township Engineer) by School District engineers or employees during the construction phase, however the same shall be at School District expense.

6. The District shall have the right to participate in the development and approval of the Township storm water management program to the extent that Township plans directly impact District property.

7. All contractors' or manufacturers' warranties for work or materials in connection with facilities located on the School Property shall be transferred to the School District. [~~The School District acknowledges and agrees that by this Agreement the Township does not and will not warrant the work performed on School Property and that nothing contained herein shall be construed or interpreted as a warranty, either express or implied, from the Township to the School District concerning such work.~~]

D. Administration, Operation, Maintenance, Repair and Replacement of Facilities.

1. Upon final completion and approval of the work, the Parties shall be solely responsible for the administration, operation, maintenance repair and replacement of the park and recreation facilities, **except for spectator stands**, located on their respective Properties, and no Party shall incur liability with respect to the other relating thereto. Notwithstanding the foregoing, the School District shall not be required to clear any walking paths or parking areas located on School Property of snow and ice during the winter season.

2. The Parties agree that their respective constituents shall have priority in the use of the recreation facilities located upon their respective Properties, however, in the absence of conflicts, their respective constituents shall be permitted to use the facilities of the other in accordance with applicable policies, rules, and procedures adopted by the Parties' with respect to the use of any recreational facilities controlled by the Parties at the Park and at any other location within the political boundaries of the Parties; provided

that the users agree to abide by, as necessary, the Parties' policies, rules and procedures then in effect.

3. The Parties agree to maintain the park and recreation facilities to similar, if not equal, standards as constructed at the time of final acceptance of the work.

4. Neither Party shall erect or cause to be erected any physical barriers to use of the park and recreation facilities located on their respective Properties.

5. The School District retains the right to construct additions to the Hopewell Elementary School, and for that reason it shall be permitted to modify or eliminate playing fields constructed on School Property to the extent reasonably necessary to construct such additions. The above notwithstanding, the School District shall not exercise its right to modify or eliminate playing fields for a period of **five (5)** years following the date of this Agreement.

E. Expansion of Park Facilities

1. The Parties acknowledge that an adjacent land owner, David Karr has expressed an interest in selling to the Township approximately 20.025 acres of land adjacent to proposed park and having an address of 5225 West Hopewell Road (hereinafter, "Karr Property").

2. The Township has not determined at this time whether purchase of the Karr Property is feasible, however if the Karr Property is acquired, the Township would use such property to expand the park.

3. Accordingly the Parties acknowledge and agree that the Park Plan will change to reflect the construction of new facilities and the modification of existing facilities to accommodate the expansion. All new construction and modification to existing improvements, or modification to improvements depicted on the Park Plan if improvements are not yet constructed, shall be made solely on the Township Property.

F. Indemnification.

1. During the Construction Phase, the Parties shall be indemnified, defended and held harmless from claims by third parties (including but not limited to contractors' employees) for personal injury, death or property damage arising out of or relating to the work contemplated by this Agreement by the contractor(s) through the applicable construction documents. In addition, the Township shall require that the Township and the School District be named as additional insureds on the contractors' policies of insurance.

2. Following the conclusion of construction activities, the Parties shall indemnify, defend and hold harmless the other and their respective Boards, Commissions, elected and appointed officers, employees, agents and consultants of and from all claims, demands, suits, actions, causes of action and the like, for personal injury, death or property damage which arise out of or relate to, either in whole or in part, a Parties' breach of this Agreement or any other agreement contemplated herein or entered into as a result hereof. The duties to indemnify, defend and hold harmless required by this sub-

section shall not extend to the negligence or liability producing conduct of the party seeking indemnification.

G. Grants.

1. The Parties acknowledge and agree that the Township may, at its option, apply to DCNR or other appropriate agencies for grants or assistance in funding the development and construction of the Park Plan. The School District agrees to cooperate with the Township in the preparation and submission of applications for funding or the fulfillment of the requirements of, or procedures imposed in connection with, the award of funds. Prior to the submission of any funding applications, the Township shall meet with the School District and provide all information concerning grant/award requirements and procedures.

H. Schedule and Contingencies.

1. The Township shall proceed with the development and construction of the recreation facilities at such time as necessary funding is in place; however the School District's obligations hereunder shall terminate, at the School District's option, if construction of the park and recreation facilities contemplated by the Park Plan are not commenced within seven (7) years from the date of this Agreement. Nothing stated herein shall be construed to prohibit the Township from constructing the Park in phases.

I. Miscellaneous.

1. Nothing contained herein shall be interpreted as, or otherwise construed to be, a waiver or limitation of any of the rights, privileges,

immunities and limitations of damages conferred by law and inuring to the benefit of the Parties and their agent's, servants, employees and elected and appointed officials.

2. This Agreement shall be interpreted and construed under the laws of the Commonwealth of Pennsylvania without reference to incidents of negotiation or authorship hereof.

3. If any term or provision of this Agreement, or any application thereof, shall be held as invalid or unenforceable, the remaining terms and provisions of this Agreement, or the application of such terms or provisions which have not been held invalid or unenforceable, shall not be affected thereby.

4. Unless otherwise expressly set forth herein, the parties shall bear their own attorneys and engineering fees.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

ATTEST:

UPPER SAUCON TOWNSHIP

By: _____

ATTEST:

**SOUTHERN LEHIGH
SCHOOL DISTRICT**

By: _____