

This Inter-Municipal Agreement (the “Agreement”) is entered into pursuant to M.G.L. c. 40, § 4A, on the last day of execution below, by, between and among the **TOWN OF ACTON**, a municipal corporation, having its principal office at Town Hall, 472 Main Street, Acton MA 01720 (the “Town”) and the **ACTON-BOXBOROUGH REGIONAL SCHOOL DISTRICT**, a regional school district created under M.G.L. c. 71, §§ 15, *et seq.*, having its principal office at 16 Charter Road, Acton MA 01720 (the “District”).

This Agreement is with respect to the financing and use of new athletic field lighting to be installed on land that is owned by the District and is located on the District’s Central Campus, adjacent to the Acton-Boxborough Regional High School. The new athletic field lighting will be used to illuminate the varsity baseball field, the adjacent tennis courts and the so-called practice football field. Because these facilities are not currently lighted, their use is limited to daytime only and the District is seldom able to offer them to the Town for recreational and community use. The Town has a critical need for additional community recreational resources to serve its youth and adult populations. By lighting these facilities, the District and the Town will greatly expanded the resources available to provide these recreational opportunities to the community.

The new athletic field lighting will consist of galvanized poles attached to concrete bases, which will hold approximately 80 light fixtures. These fixtures will be used to illuminate the varsity baseball field and adjacent tennis courts and so-called practice football field. Protective netting will be hung between two poles to protect tennis players from batted baseballs that now fall into those courts unimpeded.

The District proposes to create new and expanded multi-use, recreation space at the varsity baseball field, including without limitation the following elements (the “Field Lighting Project”):

1. Excavate existing land and then install up to eight concrete foundations
2. Install onto the concrete foundations, four (4) - 80 foot high, two (2) - 70 foot high and two (2) -50 foot high galvanized poles and affix lighting fixtures
3. Install a transformer and requisite underground wiring to provide electricity to the fixtures
4. Attach protective netting to two of the poles to help protect tennis players from being hit by foul balls
5. Significantly expand the amount and range of users and hours of usage.

The District proposes to finance the ATHLETIC FIELD LIGHTING Project with funding from three sources: Privately Raised Funds (approximately 37%); District Funds (approximately 6%); and Town Community Preservation Act Funds (“CPA Funds”) (approximately 58%). Under G.L. c. 44B, § 5, CPA Funds can be used for “the acquisition, creation and preservation of open space,” where “open space is defined under G.L. c. 44B, § 2, to include, “land for recreational use,” and “recreational use” is defined under G.L. c. 44B, § 2, to include “noncommercial youth and adult sports, and the use of

land as a park, playground or athletic field.” This agreement will ensure a policy and procedure by which the District will provide shared access to the new ATHLETIC FIELD LIGHTING.

NOW THEREFORE, for adequate consideration the receipt and sufficiency of which are hereby acknowledged, the Town and the District agree as follows:

1. CONSTRUCTION OF THE ATHLETIC FIELD LIGHTING PROJECT

Subject to the terms and conditions of this Agreement, on or before July 31, 2007, the District shall perform all work necessary and appropriate for the design, bidding, permitting, construction, landscaping and other related activities for the completion of the ATHLETIC FIELD LIGHTING Project (the “Work”). The “Work” is defined as lighting of the existing baseball diamond, tennis courts and adjacent soccer/football practice field. Once the Work is completed on the ATHLETIC FIELD LIGHTING Project, ATHLETIC FIELD LIGHTING, for purposes of this Agreement, shall be referred to herein as the “New ATHLETIC FIELD LIGHTING.”

2. FUNDING OF THE ATHLETIC FIELD LIGHTING PROJECT

The estimated cost of the Work is \$285,000 (the “Estimated Project Cost”). The District agrees to accept private funds, totaling not less than one-third of the Estimated Project Cost, and expend these funds toward the Work. Upon (a) commitment to pay and/or payment to and acceptance by the District of Private Funds, inclusive of any in-kind contributions, totaling not less than one-third of the Estimated Project Cost, (b) completion of the design, bidding, and (if required) permitting of the ATHLETIC FIELD LIGHTING Project, and (c) issuance by the District of the contracts for the construction of the ATHLETIC FIELD LIGHTING Project, the Town shall pay to the District, CPA Funds not to exceed \$175,000 towards the cost of permitting, design and construction of the Work. The District shall accept and expend said CPA Funds solely for the purpose of performing the Work on the ATHLETIC FIELD LIGHTING Project

The District shall complete the Work using the Private Funds, the CPA Funds, and additional District Funds raised and appropriated and/or borrowed by the District for that purpose. The District shall pay, or Private Funds shall be raised to cover, all costs over and above the CPA Funds necessary to complete the Work, including without limitation, any cost overruns relating to the ATHLETIC FIELD LIGHTING Project.

3. USE OF ATHLETIC FIELD LIGHTING

In return for its contribution of CPA Funds to the ATHLETIC FIELD LIGHTING Project, this Agreement provides throughout its Term, and subject to the terms hereof, for guaranteed access for the Town and Town-approved community groups to use the New ATHLETIC FIELD LIGHTING, free of charge (except for ministerial charges as provided herein), for sports practices, sports events and other recreational activities such

as Town sports leagues (baseball, tennis, football, soccer, lacrosse, field hockey, ultimate frisbee, etc.), adult sports leagues, instructional sports clinics, summer sports camps, tournaments, other recreational activities and events, and the like. This Agreement also permits the District to expand its use of the New ATHLETIC FIELD LIGHTING for sports practices and events and other recreational extracurricular activities.

To minimize potential conflicts over the use of the New ATHLETIC FIELD LIGHTING and to maximize the efficient and appropriate allocation of time slots (including prime afternoon, evening and weekend time slots), the Town and the District agree that both initially and throughout the remaining Term of this Agreement, the Rules of Priority, attached as Exhibit 1, shall be used to allocate shared use of the New ATHLETIC FIELD LIGHTING between the Town and the District. The Rules of Priority may be altered or amended from time to time by agreement of the School Superintendent and the Town Manager or their respective designees.

Throughout the Term of this Agreement, the Field Reservation Rules and Regulations, attached as Exhibit 2, shall govern the use of the New ATHLETIC FIELD LIGHTING. Groups from outside of the Town and the District may be allowed to use the New ATHLETIC FIELD LIGHTING, on a space available basis. The Field Reservation Rules and Regulations may be altered or amended from time to time by agreement of the School Superintendent and the Town Manager or their respective designees.

The Town and the District agree that, upon completion of construction of the ATHLETIC FIELD LIGHTING Project in accordance with this Agreement, and during the Term of this Agreement, the New ATHLETIC FIELD LIGHTING as provided herein will remain accessible and used in conjunction with the lighted playing fields and recreation facilities. Any further construction or reconstruction of the bleachers and surrounding structures or spaces may be conducted to enhance the use and accessibility to ATHLETIC FIELD LIGHTING.

As evidence of these undertakings, the parties shall execute and either party may record the Memorandum of Inter-Municipal Agreement attached as Exhibit 3.

4. TERM

The term of this Agreement shall be for the useful life of the lighting or twenty-five years, whichever is sooner.

Upon payment by the Town of the CPA Funds hereunder, this Agreement shall guarantee the Town's irrevocable right to use the New ATHLETIC FIELD LIGHTING in accordance with this Agreement during its Term subject to interruptions in such use as provided herein.

5. MAINTENANCE OF ATHLETIC FIELD LIGHTING

During the Term of this Agreement and subject to appropriation of funds for such purpose, the District shall perform all actions necessary to operate, maintain, patrol, inspect, and repair New ATHLETIC FIELD LIGHTING, reasonable wear and tear excepted. Without limitation but subject to appropriations, the District shall perform all necessary maintenance activities and other actions to permit the safe and efficient use of the field for the purposes of this Agreement. It is understood that such repair, maintenance and replacement of the field surfaces and other improvements may interrupt or disrupt, during the period of time while such activities occur, the use of the New ATHLETIC FIELD LIGHTING.

6. MAXIMUM FINANCIAL LIABILITY

The maximum financial liability of the Town and the District under this Agreement shall be as specified in the respective votes of the Acton Town Meeting and the District School Committee to authorize this Agreement. To satisfy their respective obligations under this Agreement, the Town and the District, when duly authorized to do so in accordance with the provisions of applicable law, may raise money by any lawful means.

7. FINANCIAL SAFEGUARDS

The Town and the District agree that the following financial safeguards shall apply to this Agreement and shall be sufficient for all purposes.

Until the completion of construction of the ATHLETIC FIELD LIGHTING Project, acceptance of the Work by the District, and payment of all contractors and subcontractors with respect thereto:

- The District shall maintain accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions made and received in connection with this Agreement; shall require that all bills and payrolls submitted for work done under this Agreement shall be plainly marked to indicate that the work was done under authority hereof; shall provide an annual financial report with respect thereto to the Town if required by law; and shall cause such records to be audited as part of the regular audits of the District's such records; and
- The Town shall maintain accurate and comprehensive records of all CPA Funds appropriated and expended pursuant to this Agreement; and shall cause such records to be audited as part of the regular audits of the Town's records.

Thereafter, during the Term of this Agreement, the Town and the District shall maintain accurate financial records of any revenues and expenses associated with this Agreement; and shall cause these records to be audited as part of the regular audits of their respective financial accounts.

The amount of CPA Funds and other contribution received by the District and/or any reimbursement made by the District under this Agreement shall be accounted for on its books pursuant to General Laws Chapter 40, Section 4A, and /or Chapter 44, Section 53A, as applicable.

All records kept by the Town in regard to the expenditure of CPA funds related to this project, and all records kept by the District in regard to the expenditure of said funds, shall be available for inspection upon request.

8. INSURANCE.

During the Term of this Agreement, the District will list ATHLETIC FIELD LIGHTING on the District's schedule of insured properties for its property and liability policies. The District shall cause the Town to be named as an additional insured on the District's liability insurance arising out of its interest in the ATHLETIC FIELD LIGHTING property under this Agreement. During the Term of this Agreement, the Town will list ATHLETIC FIELD LIGHTING on the Town's schedule of insured properties for its property and liability policies. The Town shall cause the District to be named as an additional insured on the Town's liability insurance with respect to ATHLETIC FIELD LIGHTING.

9. CERTAIN OPERATIONAL MATTERS.

Any necessary permits or licenses needed to use the New ATHLETIC FIELD LIGHTING by any person or entity shall be obtained by the persons or entities intending to use the field and copies shall be provided to the Town and the District. The Town and any person or entity using New ATHLETIC FIELD LIGHTING shall not make any alterations to such field. To the extent any large scale or unusual use (as reasonably determined by either the Town or the District) of the New ATHLETIC FIELD LIGHTING is contemplated by any person or entity, the District and/or the Town shall have the right to require a police presence and/or that custodial or other similar services be provided and in each case paid for by such users with respect to such use. Payment of the cost of the police detail and custodial services shall not be considered a fee for the use of the field but rather shall be a cost incidental to the individual's event.

Deleted: ,
Deleted: , and/or night lighting

10. SOVEREIGN IMMUNITY.

It is expressly understood and agreed, and all users of the New ATHLETIC FIELD LIGHTING shall be advised, that the use of such field by any persons or entities other

than District activities are undertaken by and pursuant to the Town's authority to promote and allow recreational use of public facilities and further that each of the District and the Town have sovereign immunity and statutory immunity as provided under Massachusetts law with respect to any use of the New ATHLETIC FIELD LIGHTING and ancillary District property such as access ways, the parking areas and the like.

11. MISCELLANEOUS.

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the District and an authorized agent of the Town. No provision may be waived except in a writing signed by both parties.

(b) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the ATHLETIC FIELD LIGHTING Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(c) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

(d) **Governing Law.** This Agreement will be governed by the laws of the Commonwealth of Massachusetts.

(e) **No Transfers.** Neither the Regional School District nor the Town may transfer or assign this Agreement or its rights hereunder.

IN WITNESS WHEREOF, the parties have executed this Inter-Municipal Agreement as of the day and year first above written.

TOWN OF ACTON, MASSACHUSETTS,

By its Board of Selectmen,

Walter M. Foster, Chairman

Peter K. Ashton

F. Dore' Hunter

Andrew Magee

Lauren Rosenzweig

7

ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this ___ day of _____, 2007, before me, the undersigned Notary Public, personally appeared each of the foregoing named members of the Board of Selectmen of the Town of Acton, each of whom proved to me through satisfactory evidence of identification, namely my personal knowledge of each, to be the person whose name is signed on the preceding document, and acknowledged to me that each signed it voluntarily for its stated purpose as the foregoing named member of the Board of Selectmen of the Town of Acton, a municipal corporation.

_____(official signature and seal of notary)

My commission expires _____

Acton Town Manager

Don P. Johnson

7

ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this ____ day of _____, 2007 before me, the undersigned Notary Public, personally appeared Don P. Johnson, Town Manager of the Town of Acton, proved to me through satisfactory evidence of identification, namely my personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as the foregoing Town Manager of the Town of Acton, a municipal corporation.

_____ (official signature and seal of notary)

My commission expires _____

ACTON-BOXBOROUGH REGIONAL SCHOOL DISTRICT

By its Regional District School Committee,

Michael Copolino, Chairperson

Brigid Bieber

Jonathan Chinitz

Terry Lindgren

Sharon Smith McManus

Rebecca Neville

John Ryder

Bruce Sabot

ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this ___ day of _____, 72007, before me, the undersigned Notary Public, personally appeared each of the foregoing named members of the Acton-Boxborough Regional School District Committee, each of whom proved to me through satisfactory evidence of identification, namely my personal knowledge of each, to be the person whose name is signed on the preceding document, and acknowledged to me that each signed it voluntarily for its stated purpose as the foregoing named member of the Acton-Boxborough Regional School District Committee.

_____(official signature and seal of notary)

My commission expires _____

Acton-Boxborough Regional School District Superintendent

William Ryan

ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this ___ day of _____, 2007, before me, the undersigned Notary Public, personally appeared William Ryan, Superintendent of the Acton-Boxborough Regional School District, proved to me through satisfactory evidence of identification, namely my personal knowledge to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as the foregoing Superintendent of the Acton-Boxborough Regional School District, a regional school district.

_____(official signature and seal of notary)

My commission expires _____

LIST OF EXHIBITS

Exhibit 1 – ATHLETIC FIELD LIGHTING - Rules of Priority

Exhibit 2 – ATHLETIC FIELD LIGHTING - Reservations: Rules and Regulations

Exhibit 3 – Memorandum of Inter-Municipal Agreement

EXHIBIT 1

ATHLETIC FIELD LIGHTING RULES OF PRIORITY

Unless altered or amended by agreement of the Acton Boxborough Regional School Committee (School Committee) and the Board of Selectmen (Selectmen) or their respective designees, the following Rules of Priority shall be used to allocate shared use of ATHLETIC FIELD LIGHTING between the Town and the District throughout the term of this Agreement:

• In allocating time slots between and among the District and the Town, the Town and the District shall be guided by the principle that ATHLETIC FIELD LIGHTING shall be a shared recreational resource designed to promote and sustain a vibrant and diverse array of intra-scholastic, inter-scholastic, Town and community sporting and recreational events to promote the health and well-being of the Town's and the District's students, youth, adults, and families. Accordingly, the Selectmen and the School Committee (or their respective designees) shall agree upon a balanced allocation schedule between the District and the Town that takes into account seasonal sports' needs, increased summer flexibility and hours when school is out and days are longer, and other considerations appropriate to reaching an annual equitable balance between the District and the Town.

• Each December for spring sports and each May for fall sports, the Town and the District (through their respective designees) will distribute a single field request form to youth and adult sports associations. A joint scheduling meeting for the Town and District-controlled facilities (including the New ATHLETIC FIELD LIGHTING) shall be held between the Town and the District (or their respective designees) in January for spring and June for fall sports. At that time any conflicts in the use of the New ATHLETIC FIELD LIGHTING will be resolved by consensus.

FALL, SPRING AND SUMMER USE:

- The District shall have use of the facilities during the daytime, until 6:00 PM or the conclusion of a game in progress
- The Town shall have use of the facilities from 6:00 PM until 10:30 PM,

• District-sponsored activities as well as Town-sponsored activities, including but not exclusively youth and adult sports leagues, will have free access to the New ATHLETIC FIELD LIGHTING.

• Groups from outside of Acton and the District would be able to use the New ATHLETIC FIELD LIGHTING, on a space available basis, pursuant to the Field Reservation Rules and Regulations, and sample Field Request Form.

Formatted: Bullets and Numbering

Deleted: receive priority for use of the facilities; during the day on school days, until 6:00 PM; from 3:00 PM to 5:00 PM on Sundays between August 15 and November 15; until noon on Saturdays between April 1 and the close of the school year; until 6:00 PM during the day in the two (2) week period prior to the start of the school year.

With the exception of the times and dates noted for the District in the preceding paragraph, the Town shall receive priority for use of the New ATHLETIC FIELD LIGHTING as follows:
from 6:00 pm until the lights are shut off (or 10:30 PM, whichever comes first) during the week;
from 3:00 pm on Saturday until the lights are shut off (or 10:30 PM, whichever comes first);
all day on Sundays;
throughout the day for five (5) weekdays per week during eight (8) weeks of the District's summer vacation;
throughout the weekday during Spring vacation

Deleted:

- For any of the time specifically reserved for the use of the Town/District, the Town/District reserves its right to waive all or a portion of its time in any year without waiving future years' rights to the same time.

EXHIBIT 2

ATHLETIC FIELD LIGHTING RESERVATIONS: RULES AND REGULATIONS

The Acton-Boxborough Regional School District and the Town of Acton are proud of our capability to offer our community a shared recreational resource in ATHLETIC FIELD LIGHTING. This resource is designed to promote and sustain a vibrant and diverse array of intra-scholastic, inter-scholastic, Town and community sporting and recreational events to promote the health and well being of the Town's and the District's students, youth, adults, and families. We welcome community use of ATHLETIC FIELD LIGHTING through the procedure laid out below.

Field Reservations

Reservations for ATHLETIC FIELD LIGHTING will be made by the District or Town (according to whichever entity has priority use of the time requested as noted in Exhibit 1) on the following priority classification:

Class 1 – District activities or Town activities

Class 2 – Youth and adult sports leagues

Class 3 – Acton-Boxborough residents and businesses

Class 4 – Non-Acton-Boxborough non-profit organizations,

Deleted: , and commercial uses (e.g., sports camps sponsored by for-profit organizations)

Reservation Procedures

Twice a year there will be a scheduling meeting with representatives of Class 1-3 users interested in obtaining season permits. This meeting will be held in conjunction with the Acton Recreation Department. Class 2-3 users will be notified as to the time and place of this meeting. At that meeting, all scheduling concerns for the upcoming season will be addressed and the schedule of field use formalized.

Revocation of Field Permits

The Acton-Boxborough Regional School District and the Town of Acton reserve the right to revoke a field reservation permit under the following conditions:

1. Use of alcohol at field site or parking lots.
2. Use of other controlled substances at field site or parking lots.
3. Excessive litter.
4. Cars parked on the field or other grass areas.
5. Use of foul or abusive language.
6. Other misuses as determined by the Town or District.

Additional field requests made by any individual/team whose permit has been revoked will be denied for the balance of the season. Teams/individuals will be held responsible for any field damage caused by misuse.

EXHIBIT 3

Memorandum of Inter-Municipal Agreement
MEMORANDUM OF AGREEMENT

This Memorandum of Inter-Municipal Agreement is entered into on this ____ day of _____, 72007, by and between the ACTON-BOXBOROUGH REGIONAL SCHOOL DISTRICT, a regional school district created under M.G.L. c. 71, §§ 15, et seq., having its principal office at 16 Charter Road, Acton MA 01720 (the "District") and the TOWN OF ACTON, a municipal corporation, having its principal office at Town Hall, 472 Main Street, Acton MA 01720 (the "Town").

1. The District and the Town have entered into a certain Inter-Municipal Agreement ("Agreement") on the ____ day of _____, 72007, with respect to the use of a portion of the Acton-Boxborough Regional School District Central Campus which is owned by the District by Deed(s) dated _____, recorded in the Middlesex South Registry of Deeds at Book(s) _____, Page(s) _____, as set forth in the Agreement.
2. The maximum term of the Agreement is twenty-five (25) years.

3. The facilities subject to the Town's right to use under the Agreement are the varsity baseball field, the adjacent tennis courts and the so-called practice football field that are lighted by the New ATHLETIC FIELD LIGHTING.

4. This Memorandum of Agreement is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Agreement and the provisions of the Agreement itself, the provisions of the Agreement shall control.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement of the day and year first above written.

Acton-Boxborough Regional School District

William Ryan, Superintendent

ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this ____ day of _____, 72007, before me, the undersigned Notary Public, personally appeared William Ryan, Superintendent of the Acton-Boxborough Regional School District proved to me through satisfactory evidence of identification, namely my personal knowledge to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as the foregoing Superintendent of the Acton-Boxborough Regional School District, a regional school district.

(official signature and seal of notary)

My commission expires _____

Town of Acton

Don P. Johnson, Town Manager

ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this ____ day of _____, 72007, before me, the undersigned Notary Public, personally appeared Don P. Johnson, Town Manager of the Town of Acton, proved to me through satisfactory evidence of identification, namely my personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as the foregoing Town Manager of the Town of Acton, a municipal corporation.

_____(official signature and seal of notary)

My commission expires _____