AGREEMENT PURSUANT TO TOWN LAW §§ 176, 184 AND GENERAL MUNICIPAL LAW ART. 5-G - BETWEEN - THE TOWN OF GREENBURGH - AND - THE VILLAGE OF IRVINGTON TO PROVIDE FIRE PROTECTION SERVICES TO THE EAST IRVINGTON FIRE PROTECTION DISTRICT

THIS AGREEMENT is made this _____ day of ________________, 2012, by and between the Town of Greenburgh ("Town"), a municipal corporation organized and existing under the laws of the State of New York, located at 177 Hillside Avenue, Greenburgh, New York, acting on behalf of the East Irvington Fire Protection District of the Town ("East Irvington Fire Protection District"), and the Village of Irvington ("Village"), a municipal corporation organized and existing under the laws of the State of New York, located at 85 Main Street, Irvington, New York 10533;

W I T N E S S E T H:

WHEREAS, the Town Board of the Town of Greenburgh (Town) has established certain fire protection districts in the Town, including the East Irvington Fire Protection District, to protect residents' property and personal safety from damage or injury by fire; and

WHEREAS, the Village, through its Fire Department (the “Irvington Fire Department”), which is staffed by the Irvington Fire Company (the “Irvington Fire Company”), has provided residents of the East Irvington Fire Protection District exemplary fire safety services; and

WHEREAS, it is in the mutual interests of both the Town and the Village to continue furnishing fire protection to residents of the East Irvington Fire Protection District; and

WHEREAS, a public hearing was held at Greenburgh Town Hall on May 09, 2012, after notice, for the purpose of considering whether the parties should enter a contract to continue providing residents of the East Irvington Fire Protection District fire protection services in 2012; and
WHEREAS, after such hearing the Town Board adopted a resolution, copy attached, authorizing the Town Supervisor to enter into a contract with the Village to provide fire safety services to residents of the East Irvington Fire Protection District in 2012;

NOW, THEREFORE, BE IT AGREED by and between the Town, its successors and assigns, and the Village, its successors and assigns, for the consideration named herein as follows:

1. **SCOPE of SERVICES**

1.1 The Town does hereby engage the Village to provide fire protection services to residents of the East Irvington Fire Protection District upon the following terms and conditions:

1.1.1 The Village hereby agrees to maintain and furnish suitable personnel and equipment in the Irvington Fire Department to render adequate fire protection within the boundaries of the East Irvington Fire Protection District.

1.1.2 When notified by alarm, telephone, or any other manner of a fire within the fire district, the Village, through the Irvington Fire Department, agrees to respond without delay and diligently extinguish any fire within the district preventing injury and property damage to the greatest extent practicable.

2. **CONSIDERATION**

2.1 In consideration of providing the services outlined in Section 1 above, the Town agrees to pay the Village for the calendar year 2012, the sum of \$94,783; such amount to be paid by May 25, 2012. Such figure has been calculated applying the following formula: A divided by B (expressed as a percentage), divided by one hundred (100), plus C (expressed as a percentage), multiplied by D (expressed as dollars). The resulting dollar amount from the preceding formula is then divided by 65% to arrive at the total payment due the Village.

For purposes of the formula:

“A” is defined as the quotient of the total number of acres of open space (defined as vacant tax parcels) in the East Irvington Fire Protection District divided by the total number of acres in the East Irvington Fire Protection District.

“B” is defined as the quotient of the total number of acres of open space (defined as vacant tax parcels) in the Village divided by the total number of acres in the Village.

“C” is defined as the quotient of the total assessed value of all acres (including real property situated thereon) in the East Irvington Fire Protection District divided by the total assessed
value of all acres (including real property situated thereon) in the Village and the East Irvington Fire Protection District.

“D” is defined for 2012 as the estimated dollar amount of all categories of the Village Fire Protection Budget for the upcoming Village fiscal year 2012/2013.

2.2 The Town and the Village agree to use the Chart of Accounts – Fire Protection Districts as set forth on Schedule A, attached, for determining applicable categories of expenses in the immediately preceding subsection “D.”

In accordance with General Municipal Law Section 209-d, the Village agrees to pay the Irvington Fire Company up to thirty-five percent (35%) of the amount paid by the Town to the Village for fire protection services. The Irvington Fire Company agrees that in the event the Village is obligated to refund any payments it has received from the Town pursuant to Section 2.1 above, the Irvington Fire Company will contribute its pro rata share of such amount within 30 days after receiving a request from the Village. The Town agrees to use its best efforts to make the annual payment to the Village pursuant to this Agreement on or prior to May 25, 2012.

All determinations of acreage and assessed value in the formula are to be performed using the latest filed assessment roll prepared in the calendar year prior to that for which the calculation is being made.

3. TERM

The term of this agreement shall be one (1) year, commencing January 1, 2012 and terminating on December 31, 2012.

4. INSURANCE

4.1 The Village agrees to maintain insurance as required under this paragraph.

4.1.1 Workers' Compensation Insurance. The Village shall take out and maintain during the term of this contract Workers' Compensation Insurance for all employees assigned to the work or to perform services hereunder.

4.1.2 General Liability and Property Damage Insurance. The Village shall take out and maintain during the term of this contract general liability and property damage insurance in an amount sufficient to protect from claims for damages for personal injury, including accidental death, as well as from claims for property damage which may arise from operations under this contract. The amounts of such insurance shall be as follows:

4.1.2.1 General Liability Insurance in an amount not less than $1,000,000 for injuries, including wrongful death, to any one person and subject to the same limit for each person, in an amount not less than $3,000,000 for any occurrence.
4.1.2.2 Property Damage Insurance in an amount not less than $1,000,000 for damage on account of all occurrences.

4.2 The Village agrees to furnish proof of compliance with the above insurance requirements to the Town and further agrees to name the Town as an additional insured in said policies.

4.3 Any claim for damage or injury for services performed under this Agreement to residents of the East Irvington Fire Protection district shall be reported to the offices of the Town Attorney and Comptroller as soon as possible and not later than twenty-four hours from the time of such accident or claim. A detailed written report must be submitted to the Town as soon thereafter as possible and not later than three (3) days after the date of such accident.

5. INDEMNIFICATION and SAVE HARMLESS

5.1 The Village hereby agrees to indemnify and hold the Town, its officials, officers, agents, employees, and volunteers performing authorized tasks on behalf of the Town, harmless from and against all liability, including all expenses, reasonable attorney's fees, losses and claims, demands, payments, suits, actions, recoveries and judgements of any nature and description whatsoever resulting from any claim or claims arising out of this contract, or the procedures leading thereto, for any act or omission of the Village, the Irvington Fire Department, its agents or employees, representatives, or sub-contractors, during or in furtherance of the performance of this Agreement.

6. REQUIRED PROVISIONS of LAW

6.1 This Agreement shall be governed by the laws of New York State. Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party, this contract shall be physically amended forthwith to make such insertion.

7. PERMITS and REGULATIONS

7.1 The Village agrees to secure and pay for all licenses and permits necessary to perform and render the services set forth above.

8. STATEMENT of NONDISCRIMINATION

8.1 The Village shall prominently post in the Irvington Fire Station, 90 Main Street, Irvington, NY, a statement regarding non-discrimination, which statement shall be similar in form to the following:
In compliance with Section 504 of the Rehabilitation Act of 1975 and title VI of the 1964 Civil Rights Act and New York State Executive Orders, no persons will be denied service or access to service based upon race, marital status, sexual orientation or handicapping condition.

9. **NO ASSIGNMENT**

9.1 In accordance with the provisions of Section 109 of the General Municipal Law, the Village is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of any right, title or interest in this Agreement, or the power to execute this Agreement, to any other person or corporation without the prior written consent of the Town.

10. **REPRESENTATIONS of the VILLAGE**

10.1 The Village makes the following representations:

10.1.1 The Irvington Fire Department is qualified to perform the fire protection services outlined herein.

10.1.2 The Irvington Fire Department agrees to participate in the New York State Fire Incident Reporting System and further agrees to forward one copy of each and every report made regarding any fire occurring within the East Irvington Fire Protection District to the Town Fire Marshal.

10.1.3 The Irvington Fire Department agrees to ensure that all members performing fire protection services are adequately trained, qualified to perform the tasks assigned and, moreover, that each member of the Irvington Fire Department successfully completes a training program sponsored by New York State, entitled New York State Essentials of Firemanship and/or Firefighters I.

10.1.4 The Village agrees to assume liability for any and all loss or damage caused by or to its fire apparatus sustained in answering any call, unless attributable to the acts or omissions of the Town.

10.1.5 Unless attributable to the acts or omissions of the Town, the Village agrees to assume responsibility for the payment of all claims for injury or death of all persons, including fire personnel, occurring in connection with services rendered under this agreement.

10.1.6 The Village, through the Irvington Fire Department, agrees to respond to any fire involving a structure, regardless of whether it is commercial or residential, occupied or unoccupied, with a minimum of at least two (2) fire engines, including one aerial apparatus.

10.1.7 The Irvington Fire Department is fully familiar with all federal, state, and local laws, ordinances and regulations which may in any way affect the services to be provided.
10.1.8 The Irvington Fire Department is fully licensed by all governing regulatory agencies.

10.2 The Village agrees to obtain the written consent of the Irvington Fire Company to the applicable terms and conditions set forth herein.

10.3 The Village, through the Irvington Fire Department, has a duty to provide services under this Agreement to the public in the East Irvington Fire Protection District and there is no such duty to any other specific group, individual or property owner. The methods, means and decisions as to how service shall be rendered in the East Irvington Fire Protection District are within the sole discretion of the officers or members, as the case may be, of the Irvington Fire Department on the scene of an emergency.

11. NOTICES

11.1 Any and all notices, communications, payments and demands required under this Agreement shall be in writing, addressed as follows, or to such other address as may hereafter be designated, in writing, by either party hereto:

11.1.1 To the Town: Town of Greenburgh 177 Hillside Avenue Greenburgh, NY 10607 Attn: Bart Talamini, Comptroller

11.1.2 w/ copy to: John Lucido, Fire Marshal Town of Greenburgh 177 Hillside Avenue Greenburgh, NY 10607

11.1.3 To the Village: Village of Irvington 85 Main Street Irvington, New York 10533 Attn: Brenda Jeselnik, Clerk-Treasurer

11.1.4 To the Fire Company: Irvington Fire Company 90 Main Street Irvington, New York 10533 Attn: Fire Chief

12. WAIVER, MODIFICATION and SEVERABILITY

12.1 No waiver of any breach or of any condition of this Agreement shall be binding unless executed in writing and signed by the party waiving such breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.
12.2 This Agreement constitutes the complete understanding of the parties. No other understandings or agreements, oral or written, are valid and no modification of any provisions of the Agreement shall be valid unless in writing and signed by both parties in accordance with the provisions of Town Law §184.

12.3 If for any reason any provision of this Agreement or part thereof shall be held invalid, such invalidity shall not affect any other provisions and/or partial provisions of this Agreement not so held invalid, and all other provisions and/or partial provisions shall to the full extent consistent with law continue in full force and effect.

13. ETHICAL DISCLOSURE

13.1 The Village, including the Irvington Fire Department, acknowledges the necessity for the highest ethical standards in all public contracts and accordingly agrees to abide by the provisions of the Greenburgh Ethics Code, Town Code Chapter 570, attached. Nothing herein shall, however, be interpreted or construed to require employees of the Village or members of the Irvington Fire Department to file a financial disclosure statement.

14. AUDIT and INSPECTION

14.1 The Village and the Fire Department agree to provide the Town with copies of their annual audited financial statements which, pursuant to General Municipal Law Section 209-z, are required for entities with revenues of at least $200,000 entering into contracts with the Town. Such audits require an examination of the revenues and expenditures by all entities entering into contracts with municipalities. Section 209-z of the General Municipal Law also requires that such audits indicate whether the entity has filed the Internal Revenue Service Form 990 and any report pursuant to Section 33-a of the General Municipal Law. If such filings are required and have not been made, the audits shall include an examination of all revenues, expenditures and resources from any source. A copy of the audit report in the form prescribed by the state comptroller and certified by the accountant for the entity shall be furnished to the Town within 180 days following the end of the fiscal year audited.

14.2 The Village will provide the Town with 2012’s annual New York state Office of Fire Protection Call Report broken down by East Irvington vs. non-East Irvington Fire Protection District calls.

15. DISPUTES

15.1 It is mutually agreed by and between the parties hereto, that in any dispute between the Town and the Village the disputed matter shall be resolved in the first instance, by mediation, or if that fails, in the Supreme Court of the State of New York, Westchester County.
IN WITNESS WHEREOF, the parties hereto have each agreed to the terms and conditions as set forth herein.

TOWN OF GREENBURGH

By: ____________________________
    Paul J. Feiner, Supervisor

SEAL

VILLAGE OF IRVINGTON

By: ____________________________
    Brian C. Smith, Mayor

SEAL

In accordance with General Municipal Law §209-d, the Irvington Fire Company consents (i) to this Agreement and all the terms and conditions expressed herein, (ii) to perform the obligations imposed upon the staff of the Irvington Fire Department herein, (iii) to receive any payment required to be made to the Irvington Fire Company by the Village and (iv) to make any payment to be made to the Town by the Irvington Fire Company PURSUANT TO section 2.2 herein.

IRVINGTON FIRE COMPANY

By: ____________________________, Chief
    (sign and print name below)
CERTIFICATE OF AUTHORITY/ IRVINGTON FIRE COMPANY

STATE OF NEW YORK

COUNTY OF WESTCHESTER

On the _____ day of ____________, in the year 2012, 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 he executed the same in his capacity as Chief of the Irvington Fire Company, and that by his signature on the instrument, the Irvington Fire Company executed the instrument.

________________________________________
Notary Public, Westchester County
MUNICIPAL ACKNOWLEDGMENT/ GREENBURGH

STATE OF NEW YORK       
) )ss.: 
COUNTY OF WESTCHESTER    
) 

On the ___ day of ____________ in the year 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared PAUL J. FEINER, 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 he executed the same in his capacity as Supervisor of the Town of Greenburgh, New York, and that by his signature on the instrument, the Town of Greenburgh, New York executed the instrument.

________________________________
Notary Public, Westchester County

MUNICIPAL ACKNOWLEDGMENT/IRVINGTON

STATE OF NEW YORK       
) )ss.: 
COUNTY OF WESTCHESTER    
) 

On the _____ day of __________, in the year 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared BRIAN C. SMITH, 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 he executed the same in his capacity as Mayor of the Village of Irvington, New York, and that by his signature on the instrument, the Village of Irvington, New York executed the instrument.

________________________________
Notary Public, Westchester County
Schedule A

Chart of Accounts - E. Irvington Fire Protection District

Personal Services
Chiefs
Fire prevention officers
Training officers
Clerical

Equipment and Supplies
Apparatus
Boots, coats, helmets
Uniforms, badges
Signal equipment
Hose, ladders etc.
General operating
Gas & oil

Various Contractual Expenditures
Alarm maintenance/repairs
Radio maintenance/repairs
Apparatus maintenance/repairs
Apparatus testing
Other
Building rental

Building Maintenance
Utilities (heat, electricity, water)
 Improvements/repairs
Shared allocation
   (i.e., Fire Co. in Village Hall)

Administrative Expenditures
Office supplies/printing
Telephone
Postage
Miscellaneous
Travel/training/conferences
Insurance
Workers compensation
Medical (exams, inoculations)

Service Award Program

Annual Inspection
Engine Company Fee

Shared Allocations
Auto mechanic
Administrative/dispatching

Debt Service
Principal payments
Interest payments