NASSAU COUNTY BOARD OF ELECTIONS

MEMORANDUM OF AGREEMENT

ELECTION SERVICES AGREEMENT BETWEEN THE NASSAU COUNTY BOARD OF ELECTIONS AND THE INCORPORATED VILLAGE OF _____ CONCERNING THE ELECTION TO BE HELD ON _____

THIS MEMORANDUM OF AGREEMENT, is entered into between the Nassau County Board of Elections, with offices at 240 Old Country Road, Mineola, NY 11501 (hereinafter referred to as the "Board of Elections") and the Incorporated Village of _____ with offices at: _____ hereinafter referred to as the ("**VILLAGE").**

WHEREAS, the **VILLAGE** will be conducting and administrating an election on _____**,** and is seeking the assistance of the Board of Elections, in providing election services consisting of the provision and usage of voting machines, equipment and supplies necessary to conduct voting operations (hereafter collectively referred to as "voting systems"); as well as training and assistance concerning voting machine operations;

WHEREAS, pursuant to Section 3-224 of the New York State Election Law, the Board of Elections may permit **VILLAGES** within the county to use its voting machines and other equipment, for the conduct of elections, upon such terms and conditions as shall be fixed by the Board of Elections and agreed to by both the Board of Elections and the **VILLAGE**; and

NOW THEREFORE, the parties named above hereby enter into this Agreement applicable to the **VILLAGE ELECTION being held on _____, and any subsequent runoff election(s) related thereto** (hereinafter referred to as the "Election"):

I. BOARD OF ELECTIONS

1. The Board of Elections shall:

    a. Provide optical scan voting systems to the **VILLAGE** in a number deemed adequate upon mutual agreement between the parties as per the Annexed Schedule "A".

    b. The Board of Elections shall provide annual training on the use and operation of DS200 Scanners and Tabulators as well as AutoMark Ballot Marking Devices to any Village, School District, or Special Improvement District Clerk and one other employee of the jurisdiction. Trainings shall be at a date(s) and time(s) determined by the Board of Elections. The Board of Elections shall not be required to provide additional training beyond the date(s) and time(s) determined by the Board. Any Village, School District, or Special Improvement District that does not have the Clerk and/or an additional employee attend training shall waive any right or

claim the Village, School District, or Special Improvement District may have against the Board of Elections and hold harmless the Board of Elections from any such legal action that may be initiated in relation to the election included but not limited to the proper operation of the DS200 Scanner and Tabulator and the AutoMark Ballot Marking Device.

c. The Clerk of the Village, School District, or Special District shall be provided with a list of all election inspectors and poll coordinators who worked within the previous general election cycle and have successfully completed training in the operation of the DS200 Scanner and Tabulator and the AutoMark Ballot Marking Device. Should the Village, School District, or Special Improvement District not be required to hire election inspectors in the manner set forth by Title Four (4), Article Three (3) of the New York State Election Law or §15-116 of the New York State Election Law, and wishes to appoint individuals in a manner of their own choosing, the Village, School District, or Special Improvement District shall have the election inspectors attend a training class on the operation of the DS200 Scanner and Tabulator and the AutoMark Ballot Marking Device as provided by the Board of Elections at a date(s) and time(s) to be determined at the Board of Elections discretion and at a cost to be paid by the district as set forth in this document. Should the District Clerk and/or the other employee trained by the Board of Elections elect to train the individuals themselves using the documents provided by the Board of Elections, they may do so, provided that the names of the individuals trained who will be operating or interacting with the DS200 Scanner and Tabulator and AutoMark Ballot Marking Device, as well as the date of the training is forwarded to the Board of Elections no later than five (5) business days prior to the Village, School District, or Special Improvement District's election.

d. Subject to the **VILLAGE** review and approval, define the ballot's format and language. Said ballot will be provided in a PDF form for the **VILLAGE's** review and approval.

e. Program all voting machines after receiving PDF approval for the definition of said ballot for which there will be a charge of three hundred dollars ($300.00) for the creation of each ballot.

f. Provide the services of Board of Elections staff that shall create ballot definition and corresponding PDFs for delivery to the **VILLAGE**, conduct pre-election testing of the voting machines and provide technical assistance as needed. The Board of Elections will not be conducting post-election proceedings (since the Board of Elections is acting solely as the vendor and not as the administrator of the subject election) UNLESS required to do a recanvass in a **VILLAGE** election upon written request from the Village Clerk pursuant to N.Y. Election Law 15-126(3) in a village election OR required to do so pursuant to an Order of a court of competent jurisdiction.

g. Said Board of Elections staff will be available from one hour prior to the opening of polls until one hour after the closing of polls. Board of Elections staff shall respond promptly to **VILLAGE** poll site(s) should there be a problem with a particular voting machine which the **VILLAGE** Inspectors are unable to resolve.

II. **VILLAGE**

1. The **VILLAGE** and/or its representative shall

a. The Village, School District, and/or Special Improvement District shall provide an executed copy of this

Memorandum of Agreement to the Board of Elections no later than seventy-five (75) days prior to the scheduled date of election. The memorandum shall be deemed to have been received by the Board of Elections having been delivered to the Board of Elections by email, in person by an employee of the Village, School District, or Special Improvement District, or by the United States Postal Service. Additionally, the Board of Elections shall deem the agreement received when a digital copy of the executed Memorandum of Agreement sent via e-mail on or before the seventy-five (75) day deadline and the original copy subsequently delivered to the Board of Elections under the conditions set forth above. Should a Village, School District, or Special Improvement District choose to no longer utilize the Board of Elections Services in the creation of their ballot and/or the rental of DS200 Scanners and Tabulators and AutoMark Ballot Marking Devices, the Village, School District, and Special Improvement District shall notify the Board of Elections forthwith.

b. Within five (5) business days of the publishing of the notice designating the office or offices to be elected for the subsequent election, the Village or District Clerk or their designee shall submit a provisional ballot creation file to the Board of Elections for the purpose of creating a "first draft" ballot. This "first draft" shall be created for the purpose of designing the ballot with all information including but not limited to offices to be elected, term of office, instructions, and other required information that is set forth by statute. The Clerk may submit "placeholder information" for any independent body making a nomination as permitted under law, as well as for candidate names, and/or information as set forth in any proposition or referendum for design and formatting purposes. This information shall be used determine any stylistic changes that may be requested or necessary to comply with the Voter Friendly Ballot Act. All wording, instructions, and other requirements as set forth in the Voter Friendly Ballot Act shall govern the production of any ballot created by the Board of Elections. The Village, School District, or Special Improvement District shall be able to make one (1) revision after the initial creation of their ballot as to the form of said ballot and three (3) subsequent revisions pertaining but not limited to things such as grammar, spelling, and punctuation for a total of four (4) revisions of their ballot. Replacement and/or removal of these names and any other associated "placeholder information" as well as the forwarding of all pertinent information being placed in its stead shall be done no later than two (2) days from the last day to submit nominating petitions and/or other ballot access documents for the public office for which the Village or District is conducting its election. Upon final approval of the ballot by the Clerk of the Village, School District, or Special Improvement District, the Clerk shall return a 'Ballot Approval Form' stating that the ballot has been reviewed by the Election Officer of the Village, School District, or Special Improvement District as well as one other authorized individual such as, but not limited, to Counsel, Deputy Clerk, Board Chair or President, Superintendent, Deputy Superintendent, etc. and that the Ballot is approved for final creation. No ballot shall be finalized nor released without an executed Ballot Approval Form first being returned to the Board of Elections.

c. Work with the Board of Elections to determine the number of machines needed for the election no later than 30 days prior to the **VILLAGE'S** election.

d. Provide the Board of Elections with its written approval of the ballot definition PDF no later than no later than 11 days prior to the **VILLAGE'S** election.

e. Not make any changes to the ballot definition PDF after final approval, unless there is a substitution of candidates as permitted by law.

f. Forward said approved ballot definition in PDF format to the printer as identified by the **VILLAGE** for the purpose of test ballot printing and ballot printing. **VILLAGE** shall order test decks in a timely manner so that the Board of Elections receives the test decks no later than 8 days prior to the

election. **VILLAGE** shall be responsible for all printing costs and the determination of the quantity of election day ballots to order.

g. **VILLAGE** may use either a printer certified by New York State or a printer of its own choosing provided it is able to demonstrate the printer's ability to properly print and create a ballot that can be read by the voting machines programmed by the Board of Elections.

h. Arrange for delivery to and from the polling site to and from the Board of Elections where the machines are stored using the Board certified trucking company. The **VILLAGE** shall only use trucking companies certified by the Board of Elections. The voting systems will be available for pick-up at the Board of Elections no earlier than three (3) business days prior to the election and it is agreed that the voting systems must be returned to the Board of Elections within forty-eight (48) hours after the conclusion of the election. The **VILLAGE** shall provide sufficient advance notice of the name of the trucking company, the date and time of the scheduled delivery from and to the Board of Elections. The **VILLAGE** shall be solely responsible for all such trucking costs, including but not limited to, the cost of transportation, mileage and fuel costs. The **VILLAGE** shall promptly pay all costs in full upon receipt of an invoice from the Board of Elections or the trucking company for such costs.

i. **VILLAGE** will inspect the voting machines and related equipment upon delivery from the Board of elections. **VILLAGE** shall notify the Board of Elections in writing upon delivery, of any defects or other objections to such voting machines and related equipment. If Board of Elections receives no such written notice within that period, **VILLAGE** will be conclusively presumed to have accepted the voting machines and related equipment in good condition and repair.

j. Upon request to the Board of Elections, the **VILLAGE** may inspect the voting systems two (2) hours prior to the scheduled delivery of the voting systems to the polling places at a time and date agreed to by the Board of Elections.

k. **VILLAGE** shall use the voting systems in a careful manner. **VILLAGE** agrees to comply with any and all reasonable instructions given by the Board of Elections and the Manufacturer's manual as to the use and operation of said voting machines, as well as any laws, ordinances, or regulations relating to the possession, use, and maintenance of the voting machines and equipment, and shall limit its use only for the purposes of holding the election described herein.

l. **VILLAGE** shall request for staff to remain available beyond one (1) hour after the scheduled close of polls must be made by the District Clerk and/or their duly authorized designee via telephone to the Board of Elections within the initial one (1) hour period after the scheduled closing of the polls. Failure to contact the Board of Elections shall serve as sufficient notice that all machines operated properly, results tapes and other associated reports were produced by the DS200 scanner and tabulator, and all machines successfully powered down without incident. Any time beyond the initial one (1) hour period after the final scheduled close of polls in which Board of Elections Staff remains available without a request from a village, school district, and or special improvement district shall be solely at the Board of Elections discretion.

m. **VILLAGE** acknowledges that the voting systems are technical and that **VILLAGE** shall make no alterations, nor attempt to make alterations to the equipment without obtaining prior written permission of the Board of Elections.

n. Liability for injury, disability, and death of workers and other persons caused by the operation,

handling, or transportation of the Voting machines or systems during the rental period shall be assumed by the **VILLAGE** and said **VILLAGE** shall indemnify the Board of Elections and the County of Nassau against all such liability.

o. **VILLAGE** agrees to hold and save the Board of Elections and the County of Nassau harmless from any and all claims, costs, expenses, damages, and liabilities, including reasonable attorney's fees, resulting from the use or operation of the voting machines and related equipment during the term of this lease.

II. **FEES**

Please see attached fee chart (Schedule B) which details the costs associated with utilizing the Board of Elections as a vendor.

III. **GENERAL**

1. It is understood and agreed that the Board of Elections does not and will not conduct the subject **VILLAGE** Elections. The elections are administered locally by the **VILLAGE.**

2. It is understood and agreed that the Board of Elections is not responsible for any errors, including but not limited to, spelling, dollar amounts or other information provided by the **VILLAGE** for creation of their ballot. Nor is the Board of Elections required to verify any information provided by the VILLAGE for ballot creation. The Board of Elections shall merely create a ballot based on written instructions and information provided by the **VILLAGE** for the creation of their ballot. The **VILLAGE** assumes all responsibility for the content of the ballot and for the verification of the content information provided by the **VILLAGE** for the creation of the ballot and the **VILLAGE** agrees that the Board of Elections shall not be responsible for the content or verification or proofreading of the information provided by the **VILLAGE**.

3. The **VILLAGE** shall be responsible and liable for the care and custody of the voting machines, other equipment and supplies, while they are in its possession; and as such the **VILLAGE** shall take all steps necessary to ensure the security of voting equipment to be used in their election in the same manner as they do voting systems delivered to schools used as poll sites in municipal elections, and further, agrees to pay for (or reimburse) the Board of Elections for any repair or replacement costs incurred as a result of damage to the voting machines, other equipment and/or supplies while having possession thereof.

4. The Board of Elections and/or County of Nassau shall NOT be liable for any voting machine and/or equipment failure during the Election; nor shall it be liable for any costs incurred by the **VILLAGE** as a result of such failures.

5. Board of Elections is not responsible for the operation of the machines or the failure to operate the machines in a proper and accurate manner. The **VILLAGE** agrees to defend, indemnify, and hold harmless the Board of Elections against any and all claims made by any party regarding the accuracy, operation or use of the voting machines and systems in recording or failing to record votes or for any purpose whatsoever.

6. In the event the voting machines and systems leased hereunder is stolen, lost, damaged, vandalized, destroyed or rendered inoperable, whether intentional or not, aforementioned **VILLAGE** shall pay the Board of Elections for the replacement or repair of such equipment. The repair costs shall be determined by the equipment service vendor. The aforementioned **VILLAGE** payment for the repair or replacement costs for damaged or lost equipment, or service cost resulting from same shall be remitted to the Board of Election by **VILLAGE** within thirty (30) days of written request by the Board of Elections.

7. The **VILLAGE** assumes full liability for safekeeping of the voting machines, equipment and all inventory and supplies furnished by the Board of Elections. The Board of Elections will notify the **VILLAGE** in writing of any missing and unaccounted for machines or associated items and **VILLAGE** shall have up to thirty (30) days to research and rectify any discrepancies before payment is made and **VILLAGE** agrees to pay for any destroyed, damaged, or missing machines or associated items to the Board of Elections.

8. If the voting machine and equipment does not operate as represented or warranted by the supplier or manufacturer, or is unsatisfactory for any reason, regardless of cause or consequence, **VILLAGE'S** only remedy, if any, shall be against the supplier or manufacturer of the voting machine and not against the Board of Elections or the County of Nassau.

9. Unless **VILLAGE** gives the Board of Elections written notice specifying any defect in or other valid objection to the voting machines and equipment within eight (8) hours after receiving the equipment, it shall be conclusively presumed that the equipment was in good operating condition when received, and that **VILLAGE** accepted and approved the equipment. **VILLAGE** further agrees that the Board of Elections shall in no event be liable for any damages arising directly or indirectly from the operation, failure, or defective condition of the equipment for any reason.

10. The expense of all repairs made during the during the rental period, including labor, material, parts and other items shall be paid by the **VILLAGE**.

11. It is acknowledged that regarding all aspects of the Election, the aforementioned **VILLAGE** Inspectors shall be the agents and/or employees of the **VILLAGE**; and NOT the Board of Elections or County of Nassau. **VILLAGE** assigned poll workers, shall be solely responsible for the operation of the voting machines and any resulting liability incurred as a result thereof.

12. The **VILLAGE** represents and warrants that it will obtain general liability insurance with coverage of at least $1,000,000 per occurrence, $1,000,000 general, and $1,000,000 products/complete; and shall name the Nassau County Board of Elections and the County of Nassau as a named insured on the said policies, and provide proof thereof upon execution of this agreement.

13. To the extent time limits are not already provided for in this Memorandum, the **VILLAGE** shall comply with all of its pre-Election obligations within 15 days of the Election or any subsequent revote; and further acknowledges that no changes shall be permissible beyond that date.
14. This Agreement may not be assigned, or otherwise transferred, without prior written consent of the Board of Elections. Ownership of voting machines and related equipment and supplies shall at all times remain the sole property of the Board of Elections and **VILLAGE** shall have no right, title, or interest other than its use under the strict conditions of this Agreement.

15. **THE BOARD OF ELECTIONS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE VOTING EQUIPMENT LEASED, AND ASSUMES NO RESPONSIBILITY FOR ITS CONDITION, INCLUDING, BUT NOT LIMITED TO, THE CONDITION OR USE OF THE EQUIPMENT, ITS MERCHANTABILITY, AND/OR ITS FITNESS FOR ANY PARTICULAR USE OR PURPOSE.**

16. **VILLAGE SHALL HAVE NO REMEDY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES AGAINST THE BOARD OF ELECTIONS OR THE COUNTY OF NASSAU**.

17. All remedies of the Board of Elections hereunder are cumulative and may, to the extent permitted by law, be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed a waiver of any other remedy. If any provision of this agreement is deemed invalid, it shall not affect the validity of remaining terms.

18. This instrument constitutes the entire agreement between the parties; and it shall not be amended, altered, or changed except by a written agreement signed by the parties hereto. This instrument shall not be effective until signed by all parties.

19. This Memorandum shall be subject to the approval of the **VILLAGE GOVERNING BODY OR REPRESENTATIVE** as well as the Nassau County Board of Elections. If a RESOLUTION is required by the governing body of the **VILLAGE** for the execution of this agreement**,** a copy of that Resolution shall be annexed hereto by the **VILLAGE** at the time of execution of this agreement.

IN WITNESS WHEROF, the undersigned parties hereto have executed this Memorandum on the date(s) set forth below.

NASSAU COUNTY BOARD OF ELECTIONS
By:

_____
James V. Moriarty, Commissioner

_____
DATED

_____
James P. Scheuerman, Commissioner

_____
DATED

DISTRICT GOVERNING BODY OR REPRESENTATIVE
By:

_____
DISTRICT GOVERNING BODY OR REPRESENTATIVE SIGNATURE

_____
TITLE

_____
PRINTED NAME

_____
DATED

SCHEDULE A

RECOMMENDATIONS FOR DETERMINING THE TOTAL NUMBER OF DS200 SCANNERS & AUTOMARK BALLOT MARKING DEVICES FOR USE AT ELECTIONS

The Nassau County Board of Elections currently recommends that Villages, School Districts, and Special Districts rent one (1) DS200 for every two thousand five hundred (2,500) voters per polling place/location that they believe will be casting ballots in their election. This number is recommended due to the capacity of the ballot tote bins currently used by the Nassau County Board of Elections as well as the speed with which ballots are scanned, tabulated, and cast by the DS200. The Board of Elections recommends that the Village, School District, or Special District review voter turnout by polling place/location and by year to properly anticipate and estimate what the voter turnout will be for the election in question to determine the total number of machines necessary to be rented. Additionally, the Board recommends that, whenever possible and where machines are not specific to particular voter districts within a polling place, multiple machines be made available at each polling place/location to prevent the need to utilize the emergency ballot bin for casting votes in the event of a ballot jam or machine breakdown.

The Nassau County Board of Elections currently recommends that Villages, School Districts, and Special Districts rent one (1) AutoMark ballot marking device for every polling place/location that is utilized in their election.

The recommendations above do not preclude Villages, School Districts, or Special Districts from renting more or less DS200 scanners or AutoMark ballot marking devices, and the Board of Elections will make as many machines available to each Village, School, or Special District as possible, barring the Board's inability to do so due to its requirements in administering elections under the Constitution of the United States of America, the New York State Constitution and the Election Law of the State of New York.

TOTAL NUMBER OF DS200 SCANNERS TO BE RENTED: _____

TOTAL NUMBER OF AUTOMARK BALLOT MARKING DEVICES TO BE RENTED: _____

SCHEDULE B

FEES ASSOCIATED WITH BOARD OF ELECTIONS SERVICES AND USE OF ELECTRONIC VOTING MACHINES

ITEM	COST	ACCESSORIES/NOTES
DS200 Scanner & Tabulator	**$350**	**PER MACHINE (2 memory sticks, programming & testing included)***
AutoMark Ballot Marking Device	**$350**	**PER MACHINE (1 compact flash card, programming & testing included)***
PDF Ballot Files	**$300**	**1 machine ballot & 1 absentee ballot**
Inspector Training	**$25**	**Per inspector per class not certified by the Board of Elections who will be interacting with the machine**
DS200 Keys	**N/A**	**1 set per DS200***
AutoMark Keys	**N/A**	**1 set per polling place***

***If any materials are not returned to the Board of Elections, you will be charged the full cost of replacing the missing items – ($250 PER MEMORY STICK NOT RETURNED IN THE DS200 & $25 PER SET OF KEYS NOT RETURNED TO THE NASSAU COUNTY BOARD OF ELECTIONS WITHIN ONE WEEK AFTER YOUR ELECTION).**