

NASSAU COUNTY BOARD OF ELECTIONS

MEMORANDUM OF AGREEMENT

ELECTION SERVICES AGREEMENT BETWEEN THE NASSAU COUNTY BOARD OF ELECTIONS AND THE Malverne VFS SCHOOL DISTRICT CONCERNING DISTRICT BUDGET AND/OR TRUSTEE VOTE AND/OR SPECIAL ELECTION/REFERENDUM TO BE HELD ON MAY 17, 2022

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 Malverne VFS SCHOOL DISTRICT, with offices at: 301 Wicks Lane hereinafter referred to as the ("DISTRICT").

WHEREAS, the DISTRICT will be conducting and administrating an election on May 17, 2022 and is seeking the assistance of the Board of Elections, in providing election services consisting of the provision and usage of voting machines, all 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 DISTRICT 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 DISTRICT; and

WHEREAS, pursuant to Education Law §2035(1), the DISTRICT is authorized, if the County Board of Elections shall consent thereto, to use voting machines belonging to the County Board of Elections.

NOW THEREFORE, the parties named above hereby enter into this Agreement applicable to the DISTRICT BUDGET AND/OR TRUSTEE VOTE AND/OR SPECIAL ELECTION/REFERENDUM being held MAY 17, 2022 and any subsequent revote(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 DISTRICT in a number deemed adequate upon mutual agreement between the parties as per the Annexed Schedule "A".
- b. Provide training free of charge to the DISTRICT and one (1) other employee. The Board of Elections shall provide the Clerks with a list of certified election inspectors who have worked

for Nassau County. In the event, the **DISTRICT** opts to use individuals not certified by the Board of Elections and either conduct training class, notifying the Board of Elections of the date, time and location of the class should the **DISTRICT** decide to have the Board of Election observe the training, OR request the Board of Elections conduct the training of the individuals at a cost of twenty-five dollars (\$25.00) per person per session which shall be charged to and paid by the **DISTRICT**.

- c. Subject to the **DISTRICT** review and approval, define the ballot in terms of format and language. Said ballot will be provided in a PDF form for the **DISTRICT**'s review and approval.
- d. Program all voting machines after receiving PDF approval for the definition of said ballot for which there will be a charge of fifty-dollars (\$50.00) for the creation of each ballot.
- e. Provide the services of Board of Election staff that shall create ballot definition and corresponding PDFs for delivery to the **DISTRICT**, conduct pre-election testing of the voting machines and provide technical assistance as needed. The Board of Elections will not be conducting a post-election audit (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.
- f. Said Board of Elections staff shall respond promptly to **DISTRICT** poll site(s) should there be a problem with a particular voting machine which the **DISTRICT** Inspectors are unable to resolve.

II. **DISTRICT**

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

- a. Provide the Board of Elections with the ballot layout and content no later than 10 days prior to the **DISTRICT**'S election.
- b. Work with the Board of Elections to determine the number of machines needed for the election no later than 10 days prior to the **DISTRICT**'S election
- c. Provide the Board of Elections of its review and written approval of the ballot definition PDF no later than no later than 10 days prior to the **DISTRICT**'S election.
- d. Forward said approved ballot definition in PDF format to the printer as indentified by the **DISTRICT** for the purpose of test ballot printing and ballot printing. **DISTRICT** shall be responsible for all printing costs.
- e. **DISTRICT** 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 the voting machines programmed by the Board of Elections.

[paragraph f intentionally omitted]

- g. 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 **DISTRICT** 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 of the conclusion of the election. The **DISTRICT** 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 **DISTRICT** shall be solely responsible for all such trucking costs, including but not limited to, the cost of transportation, mileage and fuel costs. The **DISTRICT** shall promptly pay in full upon receipt of invoice from the Board of Elections or the trucking company for such costs.
- h. **DISTRICT** will inspect the voting machines and related equipment upon delivery from the Board of elections. **DISTRICT** 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, **DISTRICT** will be conclusively presumed to have accepted the voting machines and related equipment in good condition and repair.
- i. Upon request to the Board of Elections, the **DISTRICT** may inspect the voting systems two (2) 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.
- j. **DISTRICT** shall use the voting systems in a careful manner. **DISTRICT** 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.
- k. **DISTRICT** acknowledges that the voting systems are technical and that **DISTRICT** shall make no alterations, nor attempt to make alterations to the equipment without obtaining prior written permission of the Board of Elections.
- l. 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 **DISTRICT** and said **DISTRICT** shall indemnify the Board of Elections and the County of Nassau against all such liability.
- m. **DISTRICT** 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 **DISTRICT** Elections. The elections are administered locally by the **DISTRICT**.
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 **DISTRICT** for creation of their ballot. Nor is the Board of Elections required to verify any information provided by the District for ballot creation. The Board of Elections shall merely create a ballot based on written instructions and information provided by the **DISTRICT** for the creation of their ballot. The **DISTRICT** assumes all responsibility for the content of the ballot and for the verification of the content information provided by the **DISTRICT** for the creation of the ballot and the **DISTRICT** agrees that the Board of Elections shall not be responsible for the content or verification or proofreading of the information provided by the **DISTRICT**.
3. The **DISTRICT** 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 **DISTRICT** 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) 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 **DISTRICT** 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 **DISTRICT** 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 intention or not, aforementioned **DISTRICT** 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 **DISTRICT** 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 **DISTRICT** within thirty (30) days of written request by the Board of Elections.

7. The **DISTRICT** 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 **DISTRICT** in writing of any missing and unaccounted for machines or associated items and **DISTRICT** shall have up to thirty (30) days to research and rectify any discrepancies before payment is made and **DISTRICT** agrees to pay for any destroyed, damaged, or missing machines or associated items.
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, **DISTRICT'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 **DISTRICT** 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, that **DISTRICT** accepted and approved the equipment. **DISTRICT** further agrees that 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 **DISTRICT**
11. It is acknowledged that regarding all aspects of the Election, the aforementioned **DISTRICT** Inspectors shall be the agents and/or employees of the **DISTRICT**; and NOT the Board of Elections or County of Nassau. **DISTRICT** 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 **DISTRICT** 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 additional 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 **DISTRICT** 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 **DISTRICT** 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, ITS FITNESS FOR ANY PARTICULAR USE.
16. **DISTRICT** 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.
19. This Memorandum shall be subject to the approval of the **DISTRICT GOVERNING BODY OR REPRESENTATIVE** as well as the Nassau County Board of Elections. If a RESOLUTION is required by the governing body of the **DISTRICT** for the execution of this agreement, a copy of that Resolution shall be annexed hereto by the **DISTRICT** at the time of execution of this agreement.

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

NASSAU COUNTY BOARD OF ELECTIONS

By:

Joseph J. Kearney, Commisisoner
Dated: _____

James P. Scheuerman, Commissioner
Dated: _____

DISTRICT GOVERNING BODY OR REPRESENTATIVE

By:

DISTRICT GOVERNING BODY OR REPRESENTATIVE, & TITLE
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:	<u>3</u>
TOTAL NUMBER OF AUTOMARK BALLOT MARKING DEVICES TO BE RENTED:	<u>1</u>

SCHEDULE B

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

ITEM	COST	ACCESSORIES/NOTES
DS200 Scanner & Tabulator	\$300	PER MACHINE (2 memory sticks, programming & testing included)*
AutoMark Ballot Marking Device	\$150	PER MACHINE (1 compact flash card, programming & testing included)*
PDF Ballot Files	\$50	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**