

THIS AGREEMENT made the ____ day of _____, 20 ____ by and between

THE COUNTY OF WESTCHESTER, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601 (hereinafter the “County”)

and

VILLAGE OF BUCHANAN, a municipal corporation of the State of New York, having an office and place of business at 236 Tate Avenue, Buchanan, New York 10511 (hereinafter the “Village”)

WITNESSETH:

WHEREAS, the Village desires the use of County-owned electronic voting machines and related services, in connection with upcoming Village elections; and

WHEREAS, the County desires to provide such goods and services for the Village for the compensation and on the terms herein provided; and

NOW, THEREFORE, the parties hereto agree as follows:

FIRST: The County shall provide the Village with goods and services consisting of electronic voting machines and privacy booths approved by the New York State Board of Elections (the “voting systems”) and related services, including the technicians(s) necessary to operate and maintain the voting systems for the Village’s elections that will be conducted by the Village on **March 16, 2021** (the “Work”). This Work to be performed by the County is more particularly described in Schedule “A”, which is attached hereto and made a part hereof.

In consideration of the Work, the Village shall, at its sole cost and expense, transport the voting systems from the County’s storage facility to the Village’s polling locations and subsequently return them to the County’s storage facility, as well as provide all goods and services necessary for the Village to conduct its elections, including staff for polling locations and printed ballots. The Village’s method of transportation of the voting systems, including the use of any third party contractor(s), must be approved by both Commissioners of the County’s Board of Elections.

Any third-party contractor providing transportation for the Village shall name the County of Westchester as an additional insured on its commercial general liability and property damage policies. The Village shall utilize the following to provide transportation of voting machines pursuant to this Agreement:

Name and Address of Transportation Company:

The Village shall also fulfill its role as described in Schedule "A" in maintaining the chain of custody of the voting systems, so as to insure the security of the voting systems, both before, during and after the election, from the time the voting systems leave the County's loading dock to the time they are returned to such loading dock. It is recognized and understood by the parties that maintaining such security of the voting systems is critical to this Agreement, as the New York State Board of Elections has advised the County that it can only lend out its voting systems to the Village so long as measures are taken to ensure that the voting systems cannot be hacked, their code accessed or their integrity compromised in any other way, for so long as the machines are outside of the County's custody and control.

In addition, the Village's printed ballots, which shall be prepared at the Village's sole cost and expense, must meet all mechanical and technical requirements of the voting systems. Accordingly, the Village's printed ballots, including the use of any third party contractor(s) in preparing such ballots, must be approved by both Commissioners of the County's Board of Elections.

Furthermore, the Village shall, at its sole cost and expense, ensure the safety, security, and integrity of the voting systems at all times before, during, and after the Village's elections while the voting systems remain in the possession of the Village or the possession of a third party contractor transporting the voting systems pursuant to an agreement with the Village.

SECOND: The term of this Agreement shall commence on **March 12, 2021** and shall continue through **March 28, 2021** unless terminated earlier pursuant to the provisions of this Agreement.

THIRD: The Village agrees to either procure and maintain insurance naming the County as additional insured, as provided and described in Schedule “B”, entitled “Standard Insurance Provisions”, which is attached hereto and made a part hereof. Notwithstanding the foregoing, the Village shall have the right to satisfy the liability insurance requirements outlined in Schedule “B” through a commercially reasonable or legally approved program of self-insurance and shall provide the County with written proof of such self-insurance from its risk management office.

The Village shall ensure that any contract it has with any contractor, subcontractor and/or independent contractor (collectively, “contractor”) to carry out the Work hereunder, shall include the requirement that the contractor procure and maintain insurance naming the County of Westchester and the Village, as their interest may apply, as additional insureds, as provided for and described in Schedule “B”, entitled "Standard Insurance Provisions", which is attached hereto and made a part hereof. The Village shall cause each of its contractors to provide the County with a copy of the insurance certificate evidencing compliance with these requirements.

In addition to, and not in limitation of, the insurance provisions contained in Schedule “B”, the Village agrees:

(a) that except for the amount, if any, of damage contributed to, caused by, or resulting from the negligence of the County, the Village shall indemnify and hold harmless the County, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney’s fees or loss arising directly or indirectly out of the County’s performance hereunder or third parties under the direction or control of the County; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all

other costs and expenses related thereto; and

In the event the Village does not provide the above defense and indemnification to the County, and such refusal or denial to provide the above defense and indemnification is found to be in breach of this provision, then the Village shall reimburse the County's reasonable attorney's fees incurred in connection with the defense of any action, and in connection with enforcing this provision of the Agreement.

FOURTH: The Village shall comply, at its own expense, with the provisions of all applicable local, state and federal laws, rules and regulations, including, but not limited to, those applicable to the Village's elections.

FIFTH: The Village shall not delegate any duties or assign any of its rights under this Agreement without the prior express written consent of the County. Any purported delegation of duties or assignment of rights under this Agreement without the prior express written consent of the both Commissioners of the County's Board of Elections is void.

All subcontracts that have received such prior written consent shall provide that subcontractors are subject to all terms and conditions set forth in this Agreement. It is recognized and understood by the Village that for the purposes of this Agreement, all Work performed by a County-approved subcontractor shall be deemed Work performed by the Village and the Village shall ensure that such subcontracted work is subject to the material terms and conditions of this Agreement.

SIXTH: Failure of the County to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment of such term or condition, but the same shall remain in full force and effect. Acceptance by the County of any payment of any fee or reimbursement due hereunder with knowledge of a breach of any term or condition hereof, shall not be deemed a waiver of any such breach and no waiver by the County of any provision hereof shall be implied.

SEVENTH: All notices of any nature referred to in this Agreement shall be in

writing and either sent by registered or certified mail postage pre-paid, or delivered by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by registered or certified mail postage pre-paid), to the addresses as set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt. Notices shall be sent to the following:

To the County:

Commissioners of Elections
Westchester County Board of Elections
25 Quarropas Street
White Plains, New York 10601

with a copy to:

County Attorney
Michaelian Office Building
148 Martine Avenue Room 600
White Plains, New York 10601

To the Village:

Village of Buchanan
236 Tate Avenue
Buchanan, NY 10511

EIGHTH: This Agreement and its attachments constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

In the event of any conflict between the terms of this Agreement and the terms of any schedule or attachment hereto, it is understood that the terms of this Agreement shall be controlling with respect to any interpretation of the meaning and intent of the parties.

NINTH: Nothing herein is intended or shall be construed to confer upon or give to any third party or its successors and assigns any rights, remedies or basis for reliance upon, under or by reason of this Agreement, except in the event that specific third party rights are expressly

granted herein.

TENTH: The Village recognizes that this Agreement does not grant the Village the exclusive right to have the County perform such Work and that the County may enter into similar agreements with other Village's on an "as needed" basis.

ELEVENTH: This Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that any cause of action arising out of this Agreement shall be brought in the County of Westchester.

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the parties prior to the determination of such invalidity or unenforceability.

TWELFTH: This Agreement shall not be enforceable until signed by both parties and approved by the Office of the County Attorney.

IN WITNESS WHEREOF, the County of Westchester and the Village have caused this Agreement to be executed.

THE COUNTY OF WESTCHESTER

By: _____
Name:
Title: Commissioner, Board of Elections

By: _____
Name:
Title: Commissioner, Board of Elections

VILLAGE OF BUCHANAN

By: _____
Name:
Title:

Approved as to form
and manner of execution

Assistant County Attorney
County of Westchester

c:/BOE/Village.Voting.Machine.Trans.10.17.18

ACKNOWLEDGMENT

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

On the _____ day of _____ in the year 2021 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Date: _____

Notary Public

CERTIFICATE OF AUTHORITY
(MUNICIPALITY)

I, _____,
(Officer other than officer signing contract)

certify that I am the _____ of
(Title)

the _____ a corporation duly
(Name of Corporation)

organized and in good standing under the _____
(Law under which organized, e.g., the New York Business Corporation Law)

named in the foregoing agreement; that _____
(Person executing agreement)

who signed said agreement on behalf of the _____
(Name of Corporation)

was, at the time of execution _____
(Title of such person)

of the Corporation and that said agreement was duly signed for and on behalf of said Corporation by authority of its Board of Directors, thereunto duly authorized and that such authority is in full force and effect at the date hereof.

(Signature)

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

On the _____ day of _____ in the year 20__ 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 officer described in and who executed the above certificate, who being by me duly sworn did depose and say that he/she resides at

_____, and he/she is an officer of said corporation; that he/she is duly authorized to execute said certificate on behalf of said corporation, and that he/she signed his/her name thereto pursuant to such authority.

Notary Public
Date: _____

SCHEDULE "A"

SCOPE OF SERVICES

Pick-Up of the Voting Systems

No later than March 15, 2021, the County shall make available to the Village for pick-up all of the goods to be provided to the Village for its elections to be held on March 16, 2021 (the "voting systems"). The voting systems shall consist of the following:

<u>Quantity</u>	<u>Item</u>
<u>2</u>	Dominion Voting System Corp. Image Cast Voting Machine Systems (ICP)
<u>1</u>	Dominion Voting Systems Corp. Image Cast Ballot Marking Device
<u>2</u>	Privacy booths

The voting systems shall, where applicable, be sealed and bar-coded by the County's Board of Elections.

Attached hereto and forming a part hereof are the "Village Seal Recording Sheet", as Attachment "1", and the "Voting Machine Transportation Chain of Custody Log", as Attachment "2". The County's Board of Elections shall make available to the Village, on or before March 10, 2021, any additional documentation that may be necessary to adequately inform and educate the Village, its employees, contractors, and agents about procedures related to the safety, security, and integrity of the voting systems, including chain of custody procedures, that the Village will be obligated to follow.

No later than March 15, 2021 the Village shall take possession of the voting systems from the County at the County's storage facility located at 450 Saw Mill River Rd, Ardsley, New York 10502. The County's storage facility's loading dock has only four loading bays and the County will be servicing multiple elections, so the Village shall be responsible for coordinating with the County's Board of Elections the precise pick-up time at the County's storage facility.

The Village shall, pursuant to Paragraph "FIRST" of this Agreement, at its sole cost and expense, transport the voting systems from the County's storage facility to the Village's polling locations by a method of transportation that has been approved by both Commissioners of the County's Board of Elections. The Village shall utilize the company detailed in Paragraph "First" to transport voting systems. The Village shall, at its sole cost and expense, ensure the safety, security, and integrity of the voting systems at all times after it takes possession of the voting systems, including ensuring the security and integrity of all seals and bar-codes affixed by the County's Board of Elections. In addition to, and not in limitation of, the foregoing, the Village shall, at its sole cost and expense, ensure that all chain of custody procedures for the transportation and delivery of the voting systems, as prescribed by the County's Board of Elections, are followed and all necessary documentation is completed.

Use of the Voting Systems

On March 16, 2021, prior to the start of voting for the Village's elections, the Village's polling workers at each polling location shall break the seals on the voting systems as previously instructed by the staff of the County's Board of Elections.

The County shall assign to each polling location at which the voting systems will be utilized at least one County-employed voting machine technician ("technician"). Each technician will have

the duties and responsibilities described in the "Examples of Work" portion of the job description for a technician, which is attached hereto and made a part hereof as Attachment "3". Notwithstanding the limits of the content of Attachment "3", each technician shall have the duty and responsibility to do anything necessary to ensure the safety, security, integrity, and proper operation of the voting systems in the polling location to which he is assigned. The Village, its employees, contractors, and/or agents thereof shall not interfere with the technician in the performance and discharge of any of his duties or responsibilities.

At the conclusion of voting for the Village's elections, the technician shall assist the Village's polling workers and other election personnel in operating the voting systems for the purpose of providing vote totals.

Once all vote totals and any other necessary information is retrieved from the voting systems, the technician shall affix to the voting systems such new seals as may be necessary.

Return of the Voting Systems

On March 17, 2021, the Village shall return the voting systems to the County's storage facility. The Village shall be responsible for coordinating with the County's Board of Elections the precise drop-off time at the County's storage facility in accordance with the terms hereof.

Seal Recording Sheet

DATE OF ELECTION: _____, **2021**

VILLAGE _____	Election District _____
POLL SITE & LOCATION _____	
SCANNER SERIAL NUMBER _____	MACHINE NUMBER _____

BEFORE THE POLLS OPEN

To be completed and signed by all Election Inspectors at this Machine prior to opening of the polls.

1) SEAL RECORDING SECTION: MARK the box to show whether the following Seals were found to be **properly secured (sealed)** when you arrived at the poll site and then **RECORD the Numbers** found on the **Seals**.

OPTICAL SCAN				BALLOT MARKING DEVICE		
MACHINE SEALS	SECURE?	SEAL NUMBER		MACHINE SEALS	SECURE?	SEAL NUMBER
BALLOT BOX DOOR Red SEAL	YES [] NO []		-DO NOT REMOVE-	BALLOT BOX DOOR Red SEAL	YES [] NO []	
SCANNER COVER White Plastic SEAL	YES [] NO []			BALLOT BOX DOOR REPLACEMENT Red Seal	YES [] NO []	
COMPACT FLASH DOOR Blue/Wire SEALS	Left [] Right [] None []	L - R -	-DO NOT REMOVE-	COMPACT FLASH DOOR Blue/Wire SEALS	Left [] Right [] None []	L - R - -DO NOT REMOVE-
PORT SEAL (right side of scanner) Blue/Wire SEAL	YES [] NO []		-DO NOT REMOVE-	THERMAL PRINTER (Results Tape) Red SEAL	YES [] NO []	
THERMAL PRINTER (Results Tape) Red SEAL	YES [] NO []		(Remove ONLY IF you need to install a new roll)	ATI PORT Red SEAL (Remove before voting begins)	YES [] NO []	
				PRINTER Red SEAL - DO NOT REMOVE -	YES [] NO []	
				PRINTER CF CARD Red SEAL - DO NOT REMOVE -	YES [] NO []	

YOU MUST CALL YOUR VILLAGE CLERK IMMEDIATELY IF ANY SEALS ARE BROKEN OR HAVE BEEN REMOVED PRIOR TO YOUR ARRIVAL.

WESTCHESTER COUNTY CHAIN OF CUSTODY LOG

PLAN A / PLAN B								
SYSTEM MODEL	DELIVERING MACHINES TO POLLING PLACES							
PURPOSE OF MOVE	DATE: _____ TIME: _____ AM / PM							
NAME (DEM)	LOCATION BEING LOGGED OUT FROM: <u>450 Saw Mill River Rd, Ardsley NY 10502</u>							
LOGGING OUT MACHINE	PRINTED: _____ SIGNATURE: _____							
LOGGING OUT MACHINE	PRINTED: _____ SIGNATURE: _____							
NAMES OF PERSONS TRANSPORTING MACHINES:								
PRINTED: _____	PRINTED: _____							
SIGNATURE: _____	SIGNATURE: _____							
NAMES OF PERSONS ACCEPTING MACHINES RETURN:								
MUNICIPALITY	POLLING PLACE NAME	STREET	TOWN / CITY	MACH#	SCANNER#	NAME	SIGNATURE	CONTACT#

DATE: _____ TIME: _____

LOCATION BEING RETURNED TO: 450 Saw Mill River Rd, Ardsley NY 10502

NAME OF PERSON TRANSPORTING MACHINES:

NAME _____ PRINTED: _____

LOGGING IN MACHINE SIGNATURE: _____

NAMES OF PERSONS ACCEPTING MACHINES RETURN:

NAME (DEM) _____ PRINTED: _____

TRANSPORTING MACHINE SIGNATURE: _____

NAME (REP) _____ PRINTED: _____

TRANSPORTING MACHINE SIGNATURE: _____

VOTING MACHINE TECHNICIAN

DISTINGUISHING FEATURES OF THE CLASS: Under general supervision, incumbents of this class perform a variety of technical activities related to the proper maintenance, repair, upkeep and testing of electronic voting machines or other voting equipment. Work is performed in accordance with all laws, regulations, policies and procedures related to the elections process. Does related work as required.

EXAMPLES OF WORK: (Illustrative only)

Prepares voting machines for use in elections by performing required set up and testing procedures and verifying correct results;

Repairs and maintains voting machines;

Troubleshoots and identifies voting machine problems;

Replaces damaged or malfunctioning parts using a variety of tools and equipment;

Demonstrates voting machine operation to elections officials;

Responds to polling sites to resolve issues with voting machines;

Inspects voting machines returned after election and records any sign of damage or malfunction;

Disassembles and prepares machines for storage after required time periods have passed;

Attends and satisfactorily completes trainings, as required;

Uses computer applications or other automated systems such as spreadsheets, word processing, calendar, e-mail and database software in performing work assignments;

May direct and assign work to temporary workers engaged in voting machine preparation work;

May perform other incidental tasks, as needed.

REQUIRED KNOWLEDGE, SKILLS, ABILITIES AND ATTRIBUTES: Good knowledge of the tools, procedures and techniques of electronic and mechanical voting machine maintenance and repair; good knowledge of the policies and procedures related to the use and operation of voting machines; ability to perform the set-up and testing procedures required for the operation and use of voting machines; ability to understand and follow simple oral and written instructions; ability to get along well with others; ability to communicate effectively, both orally and in writing; ability to effectively use computer applications such as spreadsheets, word processing, e-mail and database software in performing work assignments; ability to read, write, speak, understand and communicate in English sufficiently to perform the essential tasks of the position; mechanical aptitude; dependability; physical condition commensurate with the demands of the position.

VOTING MACHINE TECHNICIAN

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SUGGESTED MINIMUM ACCEPTABLE TRAINING AND EXPERIENCE: High school or equivalency diploma and six months experience which included performing electronic voting machine service set-up, maintenance, or repair.

*SPECIAL NOTE: Education beyond the secondary level must be from an institution recognized or accredited by the Board of Regents of the New York State Department of Education as a post-secondary, degree-granting institution.

West. Co.
J.C.: Unclassified†
PQS1
1

Job Class Code: C3222
Job Group: C10

SCHEDULE "B"

**STANDARD INSURANCE
PROVISIONS
(Village)**

1. Prior to commencing work, and throughout the term of the Agreement, the Village shall obtain at its own cost and expense the required insurance as delineated below from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better. The Village shall provide evidence of such insurance to the County of Westchester ("County"), either by providing a copy of policies and/or certificates as may be required and approved by the Director of Risk Management of the County ("Director"). The policies or certificates thereof shall provide that ten (10) days prior to cancellation or material change in the policy, notices of same shall be given to the Director either by overnight mail or personal delivery for all of the following stated insurance policies. All notices shall name the Village and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the Director, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Director, the Village shall upon notice to that effect from the County, promptly obtain a new policy, and submit the policy or the certificate as requested by the Director to the Office of Risk Management of the County for approval by the Director. Upon failure of the Village to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated.

Failure of the Village to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Village from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Village concerning indemnification.

All property losses shall be made payable to the "County of Westchester" and adjusted with the appropriate County personnel.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of Village's negligent acts or omissions under the Agreement or by virtue of the provisions of the labor law or other statute or any other reason, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Village until such time as the Village shall furnish such additional security covering such claims in form satisfactory to the Director.

In the event of any loss, if the Village maintains broader coverage and/or higher limits than the minimums identified herein, the County shall be entitled to the broader coverage and/or higher limits maintained by the Village. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County

2. The Village shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the Agreement):

- a) Workers' Compensation and Employer's Liability. Certificate form C-105.2 or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law. State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, the employer must complete NYS form CE- 200, available to download at: <http://www.wcb.ny.gov>.

If the employer is self-insured for Workers' Compensation, he/she should present a certificate from the New York State Worker's Compensation Board evidencing that fact (Either SI-12, Certificate of Workers' Compensation Self-Insurance, or GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance).

- b) Commercial General Liability Insurance with a combined single limit of \$1,000,000 (c.s.1) per occurrence and a \$2,000,000 aggregate limit naming the "County of Westchester" as an additional insured on a primary and non-contributory basis. This insurance shall include the following coverages:
 - i. Premises - Operations.
 - ii. Broad Form Contractual.
 - iii. Independent Contractor and Sub-Contractor.
 - iv. Products and Completed Operations.
- c) Commercial Umbrella/Excess Insurance: \$2,000,000 each Occurrence and Aggregate naming the "County of Westchester" as additional insured, written on a "follow the form" basis.

NOTE: Additional insured status shall be provided by standard or other endorsement that extends coverage to the County of Westchester for both on-going and completed operations.

- d) Automobile Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages and name the "County of Westchester" as additional insured:
 - (i) Owned automobiles.
 - (ii) Hired automobiles.
 - (iii) Non-owned automobiles.

- e) Cargo coverage with a minimum limit of \$150,000 to cover items/property being transported naming the County of Westchester as Loss Payee.

3. All policies of the Village shall be endorsed to contain the following clauses:

- (a) Insurers shall have no right to recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

- (b) The clause "other insurance provisions" in a policy in which the County is named as an insured, shall not apply to the County.

- (c) The insurance companies issuing the policy or policies shall have no recourse against the County (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

- (d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Village.