

MEMORANDUM OF AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND
THE UNION COUNTY, NEW JERSEY BOARD OF ELECTIONS
REGARDING ACCESSIBILITY COMPLIANCE REVIEW
OF POLLING PLACE LOCATIONS
DJ #204-48-300

This Memorandum of Agreement ("MOA") is entered into between the United States and the Union County Board of Elections ("Board") in order to resolve issues arising under Title II of the Americans with Disabilities Act of 1990 ("Title II" of the "ADA"), as amended, 42 U.S.C. §§ 12131-12134, and Title II's implementing regulation, 28 C.F.R. pt. 35, with respect to Board polling place locations.

A. SCOPE OF THE INVESTIGATION

In 2015, the United States Department of Justice, through the U.S. Attorney's Office for the District of New Jersey ("Department"), initiated a compliance review of the Board under Title II of the Americans with Disabilities Act of 1990 ("Title II" of the "ADA"), as amended, 42 U.S.C. §§ 12131 - 12134, and Title II's implementing regulation, 28 C.F.R. pt. 35, to determine the physical accessibility of the Board's polling place locations to people with mobility and vision disabilities. During the November 3, 2015 election, the Department surveyed 41 polling place locations used in that election. The Department surveyed 17 additional polling place locations during the November 8, 2016 election, and 12 additional polling places during the June 5, 2018 election. In letters dated May 31, 2016, June 6, 2017, and August 8, 2018, the Department informed the Board that many of the surveyed polling place locations did not comply with ADA standards and, according to the Department, presented barriers to access for persons with disabilities. The Department also advised the Board of its conclusion that the Board had violated Title II by failing to use polling place locations on Election Day that are accessible to persons with disabilities.

The Board responded to the Department's letters regarding the November 2015 and November 2016 elections by conducting its own assessments of the polling place locations that the Department identified as non-compliant and reporting the results of those assessments to the Department. Thereafter, the Board advised the Department that the Board believed it had taken or would take all appropriate remedial actions necessary to comply with Title II. The Board's response to the Department's letter regarding the June 2018 election also included conducting its own assessments of all

Board polling place locations and reporting the assessment results and any remedial actions taken or planned by the Board to the Department.

During the November 6, 2018 election, the Department surveyed 15 polling place locations used in that election. In a letter dated March 8, 2019, the Department informed the Board that many of the surveyed polling place locations did not comply with the ADA Standards and, according to the Department, presented barriers to access for persons with disabilities.

The parties to this Memorandum of Agreement are the United States and the Board. In order to avoid the burdens and expenses of further investigation and possible litigation, and with a shared goal of the Board achieving Title II compliance with respect to its polling place locations, the parties hereby agree as follows:

B. JURISDICTION

Title II of the ADA prohibits public entities from excluding individuals with disabilities from participation in or denying them the benefits of the voting program, or subjecting them to discrimination, on the basis of disability. 42 U.S.C. § 12132; 28 C.F.R. §§ 35.130(a), 35.149. Title II also prohibits public entities from selecting facilities to be used as polling place locations that have the effect of excluding individuals with disabilities from or denying them the benefits of the voting program, or otherwise subjecting them to discrimination. 28 C.F.R. § 35.130(b)(4). Title II further requires public entities to administer their services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. 28 C.F.R. § 35.130(d).

The Board is a "public entity" within the meaning of the ADA, 42 U.S.C. § 12131(1), and 28 C.F.R. § 35.104, and is, therefore, subject to Title II of the ADA, 42 U.S.C. §§ 12131 - 12134, and its implementing regulation, 28 C.F.R. pt. 35.

The Department is authorized under the ADA to determine the Board's compliance with Title II of the ADA and Title II's implementing regulation, and to resolve the matter by informal resolution. If informal resolution is not achieved, the Department is authorized to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. 28 C.F.R. pt. 35, subpt. F.

The Board is responsible for reviewing the accessibility of each polling place location and selecting each polling place location.

C. AGREEMENT

1. The purpose of this MOA is to memorialize the Board's commitment to ensure its compliance with Title II of the ADA in ensuring that Board polling place locations are accessible on Election Days.

2. The "Effective Date" of this MOA is the date on which the last signature is entered below.

Accessible Voting Program

3. The Board has acknowledged its obligation to ensure no individual with disabilities is denied participation in or the benefits of voting at a polling place location, and that no person be subject to discrimination on the basis of disability. 42 U.S.C. § 12132; 28 C.F.R. §§ 35.130(a), 35.149. The Board has also recognized its statutory obligation to select polling place locations that do not exclude individuals with disabilities from or deny them the benefits of those polling place locations, or otherwise subject them to discrimination. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(4). The Board shall continue to administer its voting program in the most integrated setting appropriate to the needs of persons with disabilities. 28 C.F.R. § 35.130(d).

4. For all elections, the Board will take the following steps to ensure that polling place locations are brought into compliance with Title II of the ADA.

- a. The Board will continue to remediate any Title II non-compliance at any polling place location of which the Board knows or should know from its assessments or from any other source, including, but not limited to, any outstanding issues previously identified by the Department.
- b. The Board will provide accessible polling place locations on Election Day. If, prior to a given Election Day, the Board and the Department agree that the Board can neither remediate one or more identified barriers to access for a particular polling place location nor identify any other accessible facility where it could relocate the polling place location before that Election Day, then the Board will propose the means by which individuals with disabilities will be able to vote on Election Day. The proposal will be provided to the Department for its review.

5. The Board shall maintain in operable working condition on Election Day those temporary features of facilities and equipment (see paragraph 7 herein for a non-exhaustive list of temporary features and equipment) that are required to make polling place locations accessible to and usable by persons with disabilities. 28 C.F.R. § 35.133(a). If circumstances arise on Election Day such that a polling place location that was previously accessible is no longer accessible because a permanent or temporary feature of the facility or equipment is no longer operable, then the Board shall take action to restore the feature to operable condition. If the Board cannot restore the feature to operable condition, then the Board will implement other modifications to ensure that individuals with disabilities will be able to vote at that location for the remainder of the day's election. If, prior to a given Election Day, a particular polling place location is no longer accessible, and the Board can neither make it accessible for Election Day nor identify any other accessible facility where it could relocate the polling place location for that Election Day, then the Board will propose the means by which individuals with disabilities will be able to vote on Election Day. The proposal will be subject to the Department's review.

6. The Board will cooperate fully with the Department's efforts to monitor ADA compliance at polling place locations, including but not limited to, providing the Department with timely access to polling place locations (both on and outside of Election Day) and to relevant documents and information that the Department requests. It is the intent of the Board to accompany the Department whenever possible on any visits to polling place locations, both on Election Day and outside of Election Day, in order to assist the Department and work cooperatively in evaluating a polling place location for accessibility and determining any remedial measures that may be necessary to ensure ADA compliance at the location on Election Day. The Board is responsible for a polling place location's ADA compliance on Election Day. The Department recognizes that, on any day outside of Election Day, the Board, in most instances, does not have jurisdiction or control of the polling place locations. Any request for access by the Department outside of Election Day will be made in writing and include the dates/times and reasons for the request. The Department will allow a Board representative to accompany the Department on any visit to a polling place location.

7. The Board agrees that the following measures will be implemented where necessary to make an otherwise inaccessible polling place location accessible on Election Day. This list of measures is not exhaustive; the Board and the Department may agree

to other reasonable temporary measures designed to make polling place locations accessible.

- a. Portable ramps (including curb ramps), up to and including ramps six feet long, with side edge protection.
- b. Portable wedges or wedge ramps.
- c. Floor mats.
- d. Traffic cones.
- e. Relocating furniture or other movable barriers.
- f. Door stops.
- g. Propping open doors.
- h. Unlocking doors.
- i. Signage, including parking signage.
- j. Portable buzzers or doorbells.
- k. Removing astragals (doorposts) that are not a permanent part of the structure from doorways.

Survey and Review of Polling Place Locations

8. The State of New Jersey Division of Elections has developed, and the Department has approved, a survey instrument ("Checklist") to be utilized by the Board to assess whether a polling place location is or can be made accessible on Election Day. A copy of that Checklist is attached as Exhibit A. The Board will work together with the Department to ensure that the Board implements in a timely manner any changes, modifications or additions to the Checklist necessary so that polling place locations can be properly assessed for compliance with Title II. The Board's assessments contained in the Checklist will be based on the ADA Standards applicable to the particular polling place location, which standards are set forth at 28 C.F.R. § 36.104 and 28 C.F.R. part 36, app. D (2011), respectively.

9. The Board will conduct an annual inspection of each polling place location using, at minimum, the Checklist referenced in Paragraph 8. The Checklist does not replace any other documents or information that the Board is currently required to use, maintain, or complete as part of its general duties. If, during an annual inspection, the Board identifies one or more instances of Title II non-compliance at a particular polling place location, the Board will document the non-compliance in the Checklist and attach photographs to the Checklist for that location. For locations where the Board identifies Title II non-compliance, the Board will determine whether temporary remedial measures can bring the polling place locations into Title II compliance on the upcoming Election Day. If the Board determines that it cannot implement temporary remedial measures to make a non-compliant polling place location accessible on Election Day, the Board will

relocate the inaccessible polling place location to an accessible location. Within thirty [30] days of assessing a polling place location using the Checklist, the Board will provide the Department with a summary of the Board's findings regarding Title II accessibility compliance, including copies of all completed Checklists as well as the Board's response or proposed response to any Title II non-compliance noted in the Checklists. The Board plans to conduct annual inspections during the summer months of each calendar year in order to determine the anticipated accessibility of each location on the next upcoming Election Day.

10. Prior to selecting a new polling place location, the Board will evaluate whether that location is accessible as required by Title II. The Board will use the Checklist referenced in paragraph 8 to conduct this evaluation. If the Board deems a potential polling place location inaccessible, the Board will assess whether temporary remedial measures or permanent modifications can make that location accessible on Election Day. The Board will submit the completed Checklists and any proposed remedial measures to the Department prior to Election Day.

11. If the Department concludes that a Checklist completed pursuant to Paragraphs 9 or 10 contains one or more errors, and the Department notifies the Board of the error or errors, the Board will re-survey the erroneous portions in a timely manner and report its findings and any proposed remedial measures to the Department. The Department may request additional information from the Board, if necessary, to assess a completed Checklist. If the Department concludes that the Board has proposed a temporary remedial measure that does not address an identified Title II violation, then the Department will recommend, if appropriate, an alternate temporary remedial measure consistent with Paragraph 7.

12. If, at any time, the Board finds that it cannot or chooses not to implement a previously agreed-to or Department-recommended remedial measure regarding a specific polling place location, the Board will immediately notify the Department. If, within a reasonable period of time and sufficiently prior to the next Election Day, the Board and the Department cannot agree on a resolution to make the identified polling place location accessible on Election Day, the Board will relocate the polling place location to an alternative accessible polling place location and provide the Department with the associated completed Checklist.

Election Day Compliance Review

13. In the materials provided to each district board worker for each Election Day during the term of this MOA, the Board will

include a separate checklist ("Day-Of Checklist") to identify the temporary remedial measures required to be implemented on Election Day at the polling place location or locations serviced by that district board worker. The Board has developed, and the Department has approved, the Day-Of Checklist, which is attached as Exhibit B. Each Day-Of Checklist contains a place for signature by the inspecting Judge or Master Board Worker in order to certify that the temporary measures have been installed or inspected and were kept in place from the opening until the close of the polls. After the polling place location closes, the Day-Of Checklist should be returned to the Board promptly along with other election materials. The Board will retain copies of the completed Day-Of Checklists that it receives pursuant to this paragraph and will provide those Day-Of Checklists to the Department within forty-five (45) days of receipt.

14. For each election, the Board will identify any polling place location where the Day-Of Checklist or other report indicated a problem with the implementation of temporary remedial measures, will explain the problem to the inspecting Judge or Master Board Worker assigned to that location, and will explain how to remedy the identified issue(s) on subsequent Election Days. The Board will have the inspecting Judge or Master Board Worker indicate in writing that he/she has received this information from the Board.

15. On any Election Day where the Board receives a report of an ADA compliance issue at a polling place location, the Board shall take immediate steps to correct/remediate the issue to ensure ADA compliance during the remainder of that Election Day. To the extent possible, where the Department is at a polling location on Election Day and it observes any ADA compliance issue, it will immediately notify the Board so that the Board may take immediate action on Election Day to correct/remediate the reported ADA compliance issue.

16. If the Board finds that temporary remedial measures were not properly implemented at any polling place location on Election Day, the Board will conduct an investigation to determine the cause and will provide the Department with the results of the investigation and any proposed corrective action that the Board intends to take. The Department will promptly review the proposed action.

Training

17. ADA training materials have been developed and have been approved by the Department. Union County's Voting Accessibility

Advisory Committee (VAAC) members conducting inspections have been provided with ADA training by the State of New Jersey Division of Elections, and the Board has provided ADA training to district board workers, Judges, and Master Board Workers. The training includes, but is not limited to: (a) instruction on how to inspect polling place locations using the Checklists and Day-Of Checklists; (b) why temporary remedial measures are necessary; (c) how to install ramps, and the placement of mats over, and not in front of thresholds; and (d) what should be done on Election Day if a temporary remedial measure becomes inoperable. This training will be required and offered annually for newly hired/appointed VAAC members, district board workers, and Judges and Master Board workers, and refresher training will be offered every two years for individuals who have already received the initial training. If, however, a polling place location is found to be inaccessible because of noncompliant temporary remedial measures, the district board workers and Judges and Master Board Workers assigned to that polling place location will undergo refresher training before the next election.

E. MONITORING

18. The Department may review Board compliance with the terms set forth in this MOA at any time. If the Department believes that the Board has failed to comply in a timely manner with any of the terms in this MOA, the Department will so notify the Board in writing within ten (10) days after making that determination. The Department and the Board will thereafter work together to attempt to resolve the issue in good faith. If either party determines at any time that resolution of the issue is not possible, then it will promptly notify the other party. If, after thirty (30) days of attempted resolution, the Department and the Board have not been able to resolve the issue, the Department may elect to seek to enforce this MOA as authorized by law.

19. All information or materials exchanged between the Board and Department shall be in writing and delivered by email or overnight delivery to the following persons and addresses (or such other persons and addresses as either the Board or Department may designate in writing from time to time):

For the Department:

Kristin L. Vassallo
Assistant U.S. Attorney
United States Attorney's Office
970 Broad Street
Newark, NJ 07102
(973) 645-2835
kristin.vassallo@usdoj.gov

For the Board:

Nicole DiRado
Administrator
Union County Board of Elections
271 North Broad Street
Elizabeth, NJ
(908) 527-4128
ndirado@ucnj.org

F. Terms of Finalization

20. The terms of this MOA may be revised in writing by the mutual consent and signature of the authorized Department and Board representatives.

21. Failure by the Department to enforce this entire MOA or any provision thereof with regard to any deadline or any other provision herein shall not be construed as a waiver of the Department's right to enforce other deadlines and provisions of the MOA.

22. This is a public document. Upon request to the Board or the Department, a copy of this document or any information contained in it shall be made available to any person.

23. This MOA will terminate three years after the Effective Date.

24. This MOA constitutes the entire agreement between the Department and the Board on the matters raised herein, and no other statement or promise, written or oral, made by any party or agents of any party, that is not contained in this written MOA, including its attachments, shall be enforceable.

25. This MOA is limited to resolving claims under Title II of the ADA related to the facts specifically set forth in the MOA above concerning physical accessibility of polling place locations. Nothing in this MOA relates to other provisions of the


ADA or affects the Board's obligations to comply with any other federal, state, or local statutory, administrative, regulatory, or common law obligation, including those relating to nondiscrimination against individuals with disabilities.

26. This MOA shall be applicable to and binding upon the Board, its officers, agents, and employees.

27. The person signing for the Board represents that he or she is authorized to bind the Board to this MOA.


FOR THE UNITED STATES:

CRAIG CARPENITO
UNITED STATES ATTORNEY

By: 
KRISTIN L. VASSALLO
Assistant U.S. Attorney

Date: 8/15/2019

FOR THE UNION COUNTY BOARD OF ELECTIONS:

By: 
John DeSimone
Chairman

Date: 8-13-19

Exhibit A



2019 POLLING PLACE ACCESSIBILITY

If any questions are checked off as "No" please provide a brief explanation on the comments section of the checklist.

Checklist

County:	_____
Municipality:	_____
Polling Address:	_____
Building Name:	_____
Ward(s) & District(s)	_____
Inspected By:	_____
Date Inspected:	_____

1. If off-street parking is available to voters, will there be a sufficient number of spaces accessible for **YES** **NO** **N/A**
people with disabilities, and are they the proper size, on level ground that is stable, firm, slip resistant,
properly identified, and is the shortest route to the closest entrance?

Parking spaces accessible for the disabled must be at least 8' wide, with adjacent striped access aisles at least 5' wide. At least one accessible parking space in each parking lot and one in every eight accessible spaces must be van accessible with an access aisle at least 8' wide. The parking spaces and access aisles must be painted to contrast with the pavement. Each parking space must have signage that includes the International Symbol of Accessibility, the language "Reserved Parking" with appropriate arrow marks below, and a Penalty Sign that includes the language required by N.J.S.A. 39:4-197(3)c, "Penalty, \$250 First Offense. Subsequent Offenses \$250 minimum and/or up to 90 days Community Service". The lowest edge of the signs must be 60" from the ground when the sign is parallel to the sidewalk or walkway and it must be 72" above the ground when the sign is perpendicular to the walkway. N.J.A.C. 5:23-7.9 (f) 1. This is not a range; it is a requirement.

2. Will any special parking accommodations be made on a temporary basis on Election Day for the
elderly and people with disabilities? (Please specify on back)

For example, will an area and/or on-street parking be identified as "for use only for people with disabilities"?

3. Is the path of travel to the entrance of the polling location at least 36" wide, except doorways, and is
the ground stable, firm, and slip resistant with no changes in elevation greater than 1/4" or 1/2", including
curbs? A change in level greater than 1/4" can be beveled at 1:2 up to 1/2"; higher than 1/2" is a ramp and
has to be constructed at 1:12. Refer to question six for ramps.

4. Will disabled voters be required to use an alternate entrance?

- a. Will there be directional signage to the alternate entrance?
- b. Will the alternate entrance be identified with the international symbol of accessibility?
- c. Will the alternate entrance be left unlocked?

5. Are all doorways leading to the voting area handicapped accessible?

Doors should be easy to open for those with limited hand/arm motion. Door hardware should be easy to grasp with one hand without tight grasping or twisting of the wrist to operate. Lever operated mechanism, push-type mechanism and U-shaped handles are acceptable designs. Doors should also provide a clear opening of 32" and have thresholds leveled with a slope not exceeding 1:2. Interior doors should not exceed 5lbs of force.

6. If ramps are used to gain access to the location, are they accessible to people with disabilities?

Ramp must be at least 36" wide, stable, firm, and slip resistant. Least possible slope should be used for any ramp. 1:12 is recommended. Ramps on existing buildings that have a slope of 1:10 to 1:12 are allowed for a rise up to 6". A slope of 1:8 to 1:10 is allowed for a raise up to 3". Handrails on both sides of the ramp must be used if there is a rise exceeding 6", and protected edges of a minimum of 2" in height must be used with drop-offs exceeding 6". The ramp should have a 5' by 5' landing at the top of the ramp, the bottom of the ramp and where the ramp changes direction.

YES NO N/A

7. Is the interior path of travel at least 36" wide, except doorways, and is stable, firm, slip resistant, and well-lit with no changes in elevation greater than ¼" or ½"? A change in level greater than ¼" can be beveled at 1:2 up to ½"; higher than ½" is a ramp and has to be constructed at 1:12. Refer to question six for ramps.

8. Objects should protrude from the wall no more than 4". If the leading edges of objects between 27" and 80" above the floor protrude from the wall more than 4", is there protection provided that is detectable by someone using a cane or to alert people who are blind or have low vision?

9. If elevators are used, does one have a clear opening of 32", have an interior that is at least 68" x 54" and have easy to use operating controls that are no higher than 48" above the floor?

10. Are the ceilings and any objects hanging from the ceiling at least 6' 8" high?

11. Will at least one table used for signing the poll books have a clear knee space underneath that is at least 27" high and 30" wide, and is at least one of the table tops a maximum of 34" above the floor?

12. Are restrooms available to voters? (Doorways should comply with #5 above.)

a. Is there clear floor space of at least 5' by 5' clear of the door swing?

b. Are the water faucets operable without tight grasping, pinching, or twisting of the wrist?

c. Is the soap dispenser no more than 48" above the floor?

d. Is the paper towel dispenser no more than 54" for a side reach or 48" for a forward reach?

13. Will typed instructions at the voting machine be in at least 14 type fonts?

14. Have additional comments been placed on this form, such as descriptions of barriers?

15. Is this facility publicly owned?

Additional Comments:

Exhibit B

**County Board of Elections
Polling Place Accessibility Checklist**

Location: _____ **Election:** _____
Town: _____ **Ward:** _____ **District:** _____

Prior to the opening of polls at 6:00am, you must inspect and certify that this polling location provides full ADA accessibility for all voters.

Instructions to Poll Workers:

Walk the path of travel to confirm there are no obstructions preventing ADA accessibility. This location requires temporary modifications and these remedies must be in place to provide full ADA accessibility at the polls. Use the photos to determine compliance. If you check NO to any of these questions, please contact your Board of Elections immediately.

Yes No

If off-street parking is available - is there at least one ADA accessible parking space marked with ADA accessible parking signs?

Yes No

If off-street parking is available - is the parking sign marked "van accessible"?

Yes No

Is the path of travel to the front door free of any large cracks or holes?

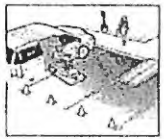

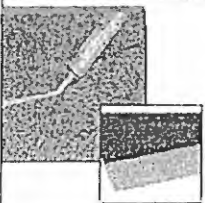

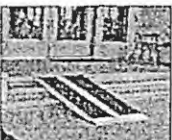
Yes No

Is the path of travel from the parking area to the voting area free of any obstructions?

Yes No

Is there at least a 6 foot area in front of the sign-in table and the voting machines?




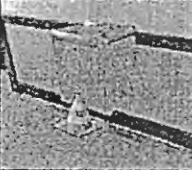

If you checked NO to any of these questions, please provide the name of the person you notified at your County Board of Elections: _____

	Yes No <input type="checkbox"/> <input type="checkbox"/>	Cones and ADA accessible parking sign have been placed to create temporary ADA van accessible parking space.
ED Notes: _____		
	Yes No <input type="checkbox"/> <input type="checkbox"/>	"Van Accessible" sign has been posted in the ADA accessible parking space.
ED Notes: _____		
	Yes No <input type="checkbox"/> <input type="checkbox"/>	Any large cracks or holes are filled or covered by a slip resistant mat to provide a stable and firm surface.
ED Notes: _____		
	Yes No <input type="checkbox"/> <input type="checkbox"/>	A temporary doorbell has been posted outside to remedy a non-compliant ramp or entrance issue.
ED Notes: _____		
	Yes No <input type="checkbox"/> <input type="checkbox"/>	A temporary ramp has been installed over steps or high thresholds.
ED Notes: _____		

**County Board of Elections
Polling Place Accessibility Checklist**

Location: _____ **Election:** _____

Town: _____ **Ward:** _____ **District:** _____

	Yes No The exterior entrance is non-compliant and the door must be propped open.
	<input type="checkbox"/> <input type="checkbox"/>
	ED Notes: _____
	Yes No The interior entrance is non-compliant and the door must be propped open.
	<input type="checkbox"/> <input type="checkbox"/>
	ED Notes: _____
	Yes No Middle bar is removed from doorway to expand width of opening
	<input type="checkbox"/> <input type="checkbox"/>
	ED Notes: _____
	Yes No A cone or other object is placed underneath the object that extends more than 4" into the path of travel.
	<input type="checkbox"/> <input type="checkbox"/>
	ED Notes: _____
	Yes No Other issue:
	<input type="checkbox"/> <input type="checkbox"/>
	ED Notes: _____

This polling location has been inspected & determined to be in compliance by the County Board of Elections with the above temporary modifications. If an unforeseen event creates an ADA inaccessible condition, please contact your County Board of Elections immediately.

Election Day Certification

I/we hereby certify that the above identified polling location has been inspected and found compliant for ADA accessibility. All temporary modifications are in place providing full ADA accessibility at this polling location.

I/we certify that the foregoing statements made by me are true. I/we are aware if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Boardworker Printed Name / Signature

Boardworker Printed Name / Signature

Boardworker Printed Name / Signature

Boardworker Printed Name / Signature

Master Boardworker Printed Name / Signature