

**Settlement Agreement**  
**National Federation of the Blind, et al. & The County of Alameda**

This Settlement Agreement (“Agreement”), deemed in effect as of the Effective Date, is entered into by and between the National Federation of the Blind (“NFB”), Timothy Elder, Jessie Lorenz, and Jim Barbour (collectively, “Claimants”) on one hand and the County of Alameda (“Alameda County” or “the County”) on the other. Each of the foregoing is also referred to as a “Party” and collectively referred to as the “Parties.”

**RECITALS**

Whereas, Claimants allege that Alameda County has failed to provide them or their members an equal opportunity to vote privately and independently in all elections held in the County, both through in-person voting at polling places and through voting by mail, and has failed to make the website of the Registrar of Voters for Alameda County (“ROV”), <http://www.acvote.org> (“Website”), accessible to them or their members or to provide them with accessible sample ballots, all of which violate Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101-12213, and California Civil Code § 51(f);

Whereas, Mr. Elder, on December 4, 2016, and Ms. Lorenz and Mr. Barbour, on February 7, 2017, each sent a tort claim letter to the Alameda County Board of Supervisors pursuant to California Government Code § 910 concerning their inability to vote privately and independently at Alameda County polling places in the June 2016 election in the case of Mr. Elder and in the November 2016 election in the cases of Ms. Lorenz and Mr. Barbour;

Whereas, Alameda County denies any wrongdoing or violation of Title II of the ADA or of California Civil Code § 51(f);

Whereas, to avoid uncertainty and the costs of potential litigation, the Parties executed an Agreement to Enter Negotiations on August 23, 2017, and extended the term of that agreement thereafter;

Whereas, the Parties have worked collaboratively since August 2017 to resolve potential claims concerning the County’s voting program and Website; and

Whereas, the Parties mutually desire to resolve all of the claims asserted by Claimants without the need for litigation, without any admission of liability by any party, and in pursuit of the shared goal of creating an accessible voting program for blind County residents, the Parties hereby agree to resolve and compromise all issues related to the accessibility of the County’s voting program and Website as provided in the following terms and conditions.

**I. DEFINITIONS**

The following terms shall have the following meanings with respect to this Agreement. Unless otherwise provided in this Agreement, technical terms used in this Agreement have the same meaning as provided in the Web Content Accessibility Guidelines (“WCAG”) 2.1 (June 5,

2018), published by the World Wide Web Consortium (“W3C”), available at [www.w3.org/TR/WCAG/](http://www.w3.org/TR/WCAG/). The term “WCAG 2.1 AA” as used in this Agreement incorporates the WCAG 2.1 Level A and Level AA Success Criteria. All other terms shall be interpreted according to their plain and ordinary meaning:

1. “Accessible Forms” are forms, applications, services, or transactions that are electronically fillable and submittable, produce a savable confirmation of submission for users, are provided in an HTML format option, and are compliant with WCAG 2.1 AA.
2. “Accessible Voting Machines” are technology that enables blind voters to mark and cast their ballots privately and independently at Polling Places.
3. “Archived Web Content” means Web Content that: (1) is maintained exclusively for reference, research, or recordkeeping; (2) is not altered or updated after the date of archiving; and (3) is organized and stored in a dedicated area or areas clearly identified as being archived.
4. “Blind persons” is used in its broadest sense to include all persons who have a vision-related disability that requires the use of alternative techniques or assistive technology to access visual information.
5. “Bug fix practices and procedures” are those practices and/or procedures that the County implements and maintains to resolve errors, flaws, failures, or faults in the Website that produce an incorrect or unexpected result, or cause it to behave in unintended ways.
6. “Complaint Personnel” are all personnel who receive to inquiries and complaints about accessibility for the Website and direct them to the appropriate personnel to respond.
7. “Conformance” and “conform” have the same meaning as used in WCAG 2.1 AA.
8. “Documents” are any electronic files posted to the Website that are available to the general public, regardless of format.
9. “Effective Date” is the date of the last signature on this Agreement.
10. “Election” is an election administered by the Registrar of Voters for the County of Alameda (“ROV”).
11. “Orphan Pages” are files found on the Website’s web servers that are no longer linked to the website and have been abandoned by the County’s web services/developers.
12. “Polling Place” is any site, building, and/or facility that the ROV has designated and/or used as a location for in-person voting during an Election.

13. “Poll Worker” includes all County election workers, including Polling Place Inspectors, Polling Place Judges, Polling Place clerks, high school Polling Place workers, and all other individuals who are authorized by the ROV to participate in the operation of the County’s Polling Places during an Election.
14. “Substantial Proposed Change” is a proposed material change, modification, alteration, or addition to the Website’s user interface design (*i.e.*, any interactive control or area a user can manipulate), but content added to the current user interface in accessible formats is not considered a substantial proposed change.
15. “Voting Program” includes, but is not limited to: (i) the opportunity the County provides to its residents to vote privately and independently in-person at designated Polling Places or to vote by mail in lieu of voting in person; (ii) the County’s provision of sample ballots to its residents in advance of Elections; and (iii) the Website, including all Web Content and Documents.
16. “Web Content” and/or “Website Content” include all textual, visual, and aural content encountered as part of the user experience of the Website, but does not extend to Orphan Pages, as defined above.
17. “Digital Services Team” is all ROV employees who are involved with, oversee, or work with those who write or develop programs or code for, or who publish final content to, the Website.
18. “Website” refers to the website of the Registrar of Voters for Alameda County, <http://www.acvote.org/>, and includes:
  - a) All client side web pages, web applications, resources, services, transactions, and forms within the <http://www.acvote.org> domain; and its subdomains contained within acvote.org; and
  - b) All of the information, resources, files, databases, images, graphics, text, audio, video, multimedia, services, code (including Hypertext Markup Language (“HTML”), .Net Framework, C#, etc., Dynamic HTML (including Cascading Style Sheets (“CSS”)), and any other communications sent by or retrieved from the client side of <http://www.acvote.org> to members of the public accessing it;
  - c) But does not include Orphan Pages, as defined above.

## **II. GENERAL NONDISCRIMINATION REQUIREMENTS**

Pursuant to the terms of this Agreement, the County:

1. Shall not exclude individuals with disabilities, including Claimants, from participation in, or deny them the benefits of, the Voting Program’s services, programs, or

activities, or subject them to discrimination by the County with respect to its Voting Program. 42 U.S.C. § 12132.

2. Shall not provide individuals with disabilities, including Claimants, an unequal opportunity to participate in or benefit from aids, benefits, or services, or provide an aid, benefit, or service that is not as effective in affording equal opportunity to gain the same result or benefit as provided to others with respect to its Voting Program. 28 C.F.R. § 35.130(b)(1)(ii)-(iii).
3. Shall take the necessary and timely steps to ensure that it furnishes appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including Claimants, an equal opportunity to participate in, and enjoy the benefits of, the services, programs, and activities of the County's Voting Program. 28 C.F.R. § 35.160(b)(1).

### **III. VOTING AT POLLING PLACES**

The County shall ensure that all blind persons have an opportunity that is equal to the opportunity the County affords to other all other persons to vote privately and independently at their designated, local Polling Place.

#### **1. Voting Machines:**

a) Within a sufficient amount of time to use them in the 2020 March Primary Election, the County shall acquire new Accessible Voting Machines for all Polling Places in accordance with the following:

(1) At least 30 days before purchasing the new equipment, the County shall notify Claimants in writing of which Accessible Voting Machine it intends to acquire, including identifying information such as the name, model number, and vendor. The County shall work with the machine's vendor, to the extent reasonably possible, to facilitate the NFB's testing of the Accessible Voting Machine.

(2) After purchasing the equipment, the County shall also host a public demonstration of the Accessible Voting Machine and invite individuals with disabilities in Alameda County to participate in the demonstration and test the machine. The County shall publicize the demonstration to local disability advocacy groups. The County shall gather feedback from individuals with disabilities who test the machine during the demonstration and shall send Claimants this feedback within 10 days of the demonstration.

b) By the March 2020 Primary Election, and in each Election thereafter for the term of this Agreement, the County shall cease using the Sequoia AVC Edge Model II voting machines and instead implement and use the acquired Accessible

Voting Machines at each of its Polling Places. The County shall place at least two of the newly acquired Accessible Voting Machines at each Polling Place.

## 2. Testing of Accessible Voting Machines

The County shall implement the following practices and procedures related to testing of Accessible Voting Machines (including the Sequoia AVC Edge Model II machines while they are still in use) before all Elections:

- a) The County shall test the functionality of each Accessible Voting Machine, including volume levels (which shall be set initially to 60 to 70 dB), headphones, and all tactile controls, no sooner than 45 days before, its use in each Election.
- b) After confirming that each Accessible Voting Machine is functioning properly, the County shall ensure that the headphones are connected securely to the back of the tactile controls or to the cable connecting the tactile controls to the Accessible Voting Machine and place a tamper seal to ensure that the headphones remain connected to this location during delivery and setup of the Accessible Voting Machines to each Polling Place.
- c) The County shall include in the instructions for the Polling Place setup the following types of step-by-step instructions for Poll Workers:
  - (1) Instructions on how to connect any piece of hardware, provided by the Accessible Voting Machine's vendor, that must be attached to the Accessible Voting Machine to enable nonvisual access;
  - (2) Instructions on how to confirm that the nonvisual access features of the Accessible Voting Machine, including but not limited to audio output, tactile controls, and headphones, are working properly, to the extent the Accessible Voting Machine allows for such confirmation without casting, or attempting to cast, a real ballot, which shall be determined in consultation with the Accessible Voting Machine's vendor; and
  - (3) Instructions on how to maintain all connections necessary for nonvisual access to the Accessible Voting Machine throughout each day of use.
- d) The County shall instruct Poll Workers to keep the headphones securely plugged into the Accessible Voting Machines during Elections. By December 31, 2019, the County shall study whether it is feasible and preferable for voters with disabilities for the County to offer voters the option of using their own listening devices when using the Accessible Voting Machines. As part of this study, the County shall solicit and consider feedback from individuals with disabilities and disability advocacy groups, including Claimants. The County's study shall also

consider the option of using an audio splitter that is tamper sealed to the Accessible Voting Machine, with headphones provided by the County tamper sealed to one of the audio splitter's jacks. The County shall share the results of this study with Claimants within 30 days of completing it.

e) Prior to each Election, the County shall require its staff to listen to and check the accuracy and functionality of the audio ballots.

### 3. Poll Workers

The County shall implement the following policies and practices related to the classification and training of Poll Workers:

a) The County shall ensure that each Polling Place has at least four trained Poll Workers, with one Poll Worker designated as an Inspector and another Poll Worker designated as a Judge. The County shall ensure that each Polling Place has at least one Inspector or Judge present at all times throughout an Election.

b) The ROV shall provide a smartphone to each Polling Place that can be used for real-time video communication between the Poll Workers and Help Desk staff.

c) Prior to each Election, the County shall provide each Poll Worker trainee, with the following in-person training:

(1) Hands-on training on the Accessible Voting Machine. Each Poll Worker trainee, shall be required to demonstrate:

(a) The ability to set up an Accessible Voting Machine under the two-person rule, whereby Poll Workers set up the voting machine in pairs of two, including properly connecting any external hardware, such as headphones or tactile controls, to the machine;

(b) If a card must be programmed or configured to enable blind voters to access the Accessible Voting Machine nonvisually, the ability to configure such a card properly and use it to initiate a nonvisual ballot on the Accessible Voting Machine; and

(c) If there is a method for configuring or initiating nonvisual access to the Accessible Voting Machine that does not involve a card, as described in the preceding paragraph, the ability to configure or initiate nonvisual access using this method;

(2) A demonstration of how to use the smartphone referred to in Section III.3.b to initiate a video call with the Help Desk to obtain assistance resolving problems with the Accessible Voting Machine;

- (3) The option to review a video demonstrating procedures for setting up, operating, and troubleshooting problems at the poll worker level with the Accessible Voting Machines at labs, online, and after certain classes where space allows;
- (4) Training involving proper etiquette for interacting with and assisting voters with disabilities, using the ROV's Disability Sensitivity at the Polls Guide, as the basis of such training, but excluding language contained in the Guide that incorrectly states that guide or service animals are "responsible for the owner's safety";
- (5) Role playing demonstration on how to instruct and work with blind voters to ensure correct operation of the Accessible Voting Machines; and
- (6) Review of the troubleshooting protocol described in Section III.5.b herein.

d) In addition to the training required in Section III.3.c, prior to each Election, when the election supplies, including the smartphone, are picked up or delivered, the County shall provide all Polling Place Inspectors and Judges with additional in-person, hands-on training on how to use the smartphone referred to in Section III.3.b to initiate a video call with the Help Desk to obtain assistance resolving problems with the Accessible Voting Machine.

e) The County shall make available hands-on training labs within the County that are designed for Poll Workers to gain more experience and knowledge with Accessible Voting Machines and Election Day materials outside of the Poll Worker classes on their own time. These labs shall take place at least once per week on varying days of the week. Poll Workers shall be encouraged to attend one lab within two months of each Election.

f) The class size for all Poll Worker training classes shall be no greater than 25 Poll Workers per class. The County shall offer extra training classes on Saturday evenings and all day on Sundays in addition to regularly scheduled classes.

#### 4. Equipment Technical Hotline and Training of Hotline Staff

The County shall implement the following policies and practices related to the Help Desk Hotline and Help Desk staff:

- a) For each Election, the County shall maintain a dedicated team within the Help Desk Hotline that shall concentrate solely on equipment issues, including the Accessible Voting Machines and any related equipment necessary for the Accessible Voting Machines to allow for nonvisual access (hereafter referred to as the "Equipment Technical Team").

- b) The County shall continue its practice of opening “Heat Tickets” for issues that are called into the Help Desk Hotline and Equipment Technical Team. The “Heat Tickets” shall document what the issue is, the Polling Place, what was done to try to resolve the issue, and whether the issue was resolved.
- c) Until the County has placed at least two of the Accessible Voting Machines to be acquired pursuant to Section III.1.a in each Polling Place or in cases where there are no properly functioning Accessible Voting Machines at a Polling Place, when the Equipment Technical Team receives a telephone or video call from a Poll Worker regarding a problem affecting a voter with a disability’s ability to privately and independently operate an Accessible Voting Machine, it shall promptly determine whether the problem is caused by human or machine error and order delivery of a replacement Accessible Voting Machine to the affected Polling Place if it determines the problem to be machine error or more than 10 minutes have elapsed attempting to troubleshoot the problem. Should the problem be resolved before the replacement machine arrives, the Equipment Technical Team shall cancel the delivery.
- d) Prior to each Election, the County shall require all Help Desk Staff who are assigned to respond to calls to the Equipment Technical Team to attend a training that includes the same items required in the training of Poll Workers and Polling Place Inspectors and Judges described in Section III.3, as well as the following additional components:
- (1) Hands-on training on how to troubleshoot potential problems affecting the functionality of the Accessible Voting Machine. The County shall determine the content of this troubleshooting training by consulting with the vendor of the Accessible Voting Machine and the NFB and reviewing complaints about the functionality of the Accessible Voting Machine from previous Elections. At the conclusion of the training, each Help Desk Staff member shall demonstrate the ability to troubleshoot at least three potential problems with the Accessible Voting Machine.
  - (2) Hands-on training on how to use the smartphone referred to in Section III.3.b to assist a Poll Worker, via video call, in resolving a problem with the Accessible Voting Machine. This training shall include role-playing to simulate potential interactions between Poll Workers and Help Desk Staff members.
  - (3) Hands-on training in which the Help Desk Staff member shall cast a ballot nonvisually using the Accessible Voting Machine to better understand the blind voter’s experience interacting with the machine.
- e) The County shall train all Help Desk Staff who are assigned to respond to calls to the Equipment Technical Hotline regarding the policies and procedures for



deploying replacement Accessible Voting Machines to Polling Places during Elections as described in Section III.4.c.

f) The County shall train all Help Desk Staff to transfer any calls received relating to use of the Accessible Voting Machines by individuals with disabilities to those staffing the Equipment Technical Hotline.

#### 5. Instructions for Poll Workers at Polling Places

a) At each Polling Place during an Election, the County shall provide a written Job Card on how to properly set up and operate the Accessible Voting Machines for nonvisual access. This Job Card shall include text and demonstrative images. The County shall ensure that the Job Card is located in a prominent location of which all Poll Workers are aware. The County shall provide the Job Card to Poll Workers in an accessible electronic format that conforms with WCAG 2.1 AA. This electronic version of the Job Card shall be provided on the smartphones described in Section III.3.b. Once the County has acquired the new Accessible Voting Machines pursuant to Section III.1.a, it shall provide a revised, draft Job Card Guide to Claimants on or before 140 days before the 2020 Presidential Primary Election (which is October 15, 2019). Claimants shall then provide any feedback on the draft to the County by 120 days before the 2020 Presidential Primary Election (which is November 4, 2019). The County shall incorporate Claimants' feedback unless it asserts that Claimants' recommendations are unnecessary, excessive, or contrary to the proper set-up, security or operation of the new Accessible Voting Machines.

b) The ROV shall follow the following protocol for addressing any issues that arise with respect to the functionality of the Accessible Voting Machines:

(1) Step 1: Notify Polling Place Judge or Inspector of issue. Judge or Inspector shall then work to resolve issue directly.

(2) Step 2: If Judge or Inspector is unable to resolve problem either after following the Job Card troubleshooting guidelines or within 10 minutes of being notified of the issue, whichever occurs first, the Judge or Inspector shall use the smartphone provided under Section III.3.b to initiate a video call with the Equipment Technical Team.

(3) Step 3: The Judge or Inspector shall work with the Equipment Technical Hotline, via video call, to attempt to fix the Accessible Voting Machine.

(4) Step 4:

(a) Prior to acquisition of new Accessible Voting Machines pursuant to Section III.1.a or in cases where there are no properly functioning Accessible Voting Machines at a Polling Place: If the issue remains unresolved following troubleshooting attempts, the

Judge or Inspector shall inform voters with disabilities who require use of the Accessible Voting Machine to vote privately and independently at the polling place that a replacement machine will be arriving and that it will arrive within two hours of when the Equipment Technical Team ordered the replacement machine. The Judge or Inspector shall inform the voter of the options included in the Job Card and Tally Sheet (entitled "Touchscreen Tally") in use at the time of this Agreement's Effective Date and shall also inform the voter that:

- (i) the Polling Place will remain open for the voter until the replacement machine arrives or two hours have passed since the replacement was ordered, whichever is longer;
- (ii) the voter may leave the Polling Place and return to vote within the two-hour period for the replacement machine to arrive, but must return by 8:00 p.m. regardless; and
- (iii) the voter may file a complaint with the ROV and provide the voter with contact information for doing so.

These instructions shall appear on the revised Equipment Technical Team training outline, attached as Exhibit A.

(b) After acquisition of new Accessible Voting Machines pursuant to Section III.1.a and when at least one Accessible Voting Machine is properly functioning at a Polling Place: If the issue remains unresolved following troubleshooting attempts or the video call with the Equipment Technical Team has lasted twenty minutes, whichever occurs first, the Poll Worker shall request that a replacement Accessible Voting Machine be delivered to the Polling Place. The Poll Worker shall direct voters to use the remaining properly functioning Accessible Voting Machine(s) at the Polling Place.

c) The ROV's Poll Worker Guide shall provide instructions on how to use the smartphone described in Section III.3.b to video call the Equipment Technical Team. The guide shall also include a telephone number for the Equipment Technical Hotline in case the smartphone option is not working.

d) The County shall draft and provide at each Polling Place throughout each Election a script that describes the proper use of the Accessible Voting Machine for voters with disabilities, including blind voters. The County shall attach this script to every Accessible Voting Machine before the polls open for an Election. If requested by the voter, a Poll Worker shall read the script out loud to guide the

voter through operation of the Accessible Voting Machine.

e) The County shall provide copies of the Poll Worker Guide and script described in the preceding paragraphs (Section III.5.a-d) on the My Poll Worker Profile, an individualized smartphone app and webpage site provided to all Poll Workers.

#### **IV. VOTING BY MAIL**

The County shall ensure that all blind persons have an opportunity that is equal to the opportunity the County affords to all other persons to vote privately and independently by mail.

1. So that it may be used for the November 2018 election, the County shall acquire a remote accessible vote-by-mail system (“RAVBM”) that shall allow blind voters to review and mark vote-by-mail ballots electronically, privately and independently, in accordance with the following:

a) At least 30 days before purchasing any RAVBM, at any time throughout the term of this Agreement, the County shall notify Claimants in writing of which RAVBM it intends to acquire, including identifying information such as the name, model number, and vendor. The County shall provide NFB at least 30 days to review and test the proposed RAVBM for usability and accessibility and shall work with the RAVBM’s vendor, to the extent reasonably possible, to facilitate such testing. Nothing herein shall affect the ROV’s discretion to change or adopt a new or different RAVBM.

b) In the Election immediately following the purchase of a RAVBM, and in each Election thereafter for the term of this Agreement, the County shall:

(1) Provide accessible, electronic forms in HTML format through which voters with disabilities can independently request vote-by-mail ballots and certify that they are voters with disabilities who are eligible to use the RAVBM;

(2) Send voters with disabilities electronic ballots that can be marked using the RAVBM, along with instructions on how to use the RAVBM to mark and print their ballots;

(3) Permit voters with disabilities to use the acquired RAVBM to review and mark their vote-by-mail ballots electronically and to print and return those marked ballots for counting; and

(4) Accept and tabulate all ballots completed using the RAVBM that are received in time.

- c) The certification described above in Section IV.1.b.1 shall be no more burdensome for voters with disabilities than is required by the laws and regulations that govern RAVBM.
2. The County shall post step-by-step instructions for how to use the acquired RAVBM on the Website.

## V. WEBSITE ACCESSIBILITY

The County shall ensure that all blind persons have an opportunity that is equal to the opportunity the County affords to all other persons to access and navigate the Website.

1. By September 1, 2019, the County shall ensure that, with the exception of PDFs created or posted to the Website before 2018 and not altered in or after 2018, the entire Website, including Sample Ballots and Voter Information Pamphlets made available through the Website, conforms to, at minimum, WCAG 2.1 AA, so that blind visitors to the Website can access all of the same information and engage in all of the same transactions available to all sighted users with a substantially equivalent ease of use. To further provide substantially equivalent ease of use, the County shall ensure that all of its forms, applications, services, or transactions are Accessible Forms.
2. By January 1, 2020, the County shall ensure that all Results Summary Report PDFs on the Website are available in formats that comply with WCAG 2.1 AA.
3. Archived Web Content: The County may maintain content that does not conform to WCAG 2.1 AA on the Website that is exclusively for reference, research, or recordkeeping, is not altered or updated after the date of archiving, and is organized and stored in a clearly identified, dedicated area or areas. Such dedicated areas must: prominently note that accessible formats for this Archived Web Content are available upon request; provide an e-mail address or online form for submitting such requests; and state that requests shall be honored within a specified number of days. The County shall not link directly to Archived Web Content from other areas of the Website (but may link to a “landing” page, or other accessible page listing or linking to Archived Web Content). The County states that as of the Effective Date, all PDFs on the Website that were created prior to 2018 meet the definition of Archived Web Content. During the term of this Agreement, if there is any Archived Web Content for which at least two requests for electronic accessible formats have been made within a year, the County agrees to make such content available on the Website in a version that conforms with WCAG 2.1 AA within 60 days of the second request. Claimants agree not make any such request or requests solely for the purposes of forcing the County to reformat material that would otherwise be archived.
4. ROV Digital Services Team: By January 1, 2019, the County shall provide the name and contact information for the ROV Digital Services Team contact to NFB. The ROV Digital Services Team:

- a) Shall be knowledgeable about the terms of this Settlement Agreement, including, but not limited to, WCAG 2.1 AA, and web accessibility generally;
- b) Shall be responsible for overseeing, managing, and coordinating the County's implementation of Section V of this Agreement; and
- c) Shall be responsible for reporting and documenting every six months, at minimum, to the Deputy Registrar of Voters for the County of Alameda that all new website releases have been made accessible pre-production; any post-production accessibility barriers have been remediated; and the County is in compliance with this Settlement Agreement.

5. Web Accessibility Consultant and Evaluation: The County has retained WebAIM as an independent consultant ("Web Accessibility Consultant") that has expertise concerning accessible web development, the terms of this Settlement Agreement, and WCAG 2.1 AA.

- a) By December 15, 2018, and annually through the term of this Agreement thereafter, the independent Web Accessibility Consultant shall provide the parties a written evaluation (the "Web Accessibility Evaluation"). This evaluation shall: describe whether the Website (including but not limited to all forms, applications, services, and transactions) is in conformance with the requirements of WCAG 2.1 AA and this Settlement Agreement; include any recurring, frequent, or significant deviations from the Bug Fix Priority Policies defined below in Section V.13; and shall make recommendations to improve the accessibility of the Website.
- b) The County shall provide Claimants with a copy of the Web Accessibility Consultant's Web Accessibility Evaluation within 7 business days of receipt.
- c) The County shall incorporate all of the recommendations contained in the Web Accessibility Evaluation within the longer of ninety (90) days of receiving the Accessibility Evaluation or when the deadline for implementing such recommendations is due under this Agreement.

6. Web Accessibility Policy: By January 1, 2019, the ROV shall adopt and implement a Web Accessibility Policy consistent with the attachment at Exhibit B and as approved by Claimants. By January 1, 2019, the County shall:

- a) Distribute the Web Accessibility Policy to the ROV Digital Services Team and County ITD personnel who work on changing and creating content for the Website with the Digital Services Team and redistribute the policy annually thereafter;
- b) Make publicly available and directly link from the Website's homepage, the Web Accessibility Policy; and

- c) Accompany the Web Accessibility Policy posted on the Website with an accessible means of submitting accessibility questions and problems to the ROV Digital Services Team, who shall maintain a record of such communications and the responses.
7. Web Accessibility Feedback: By September 1, 2019, the County shall provide a notice, prominently and directly linked from the Website homepage, soliciting feedback from visitors to the Website on how the accessibility of the Website can be improved; the link shall provide several methods to provide feedback, including an accessible form to submit feedback or an email address, and a phone number to contact representatives knowledgeable about the Web Accessibility Policy. The Digital Services Team shall be responsible (directly or via delegates) for recording and responding to all feedback.
8. Assistance for Website Users with Disabilities: By March 1, 2019, the ROV shall train its Complaint Personnel automatically to escalate calls from users with disabilities who encounter difficulties using the Website to identified personnel trained to timely assist such calls from users with disabilities. The County shall have trained sufficient personnel to handle such escalated calls and to timely assist such calls from users with disabilities. The County shall establish procedures for promptly directing requests for assistance to such personnel including notifying the public that caller assistance is available to users with disabilities and describing the process to obtain that assistance. The availability of phone assistance does not, however, eliminate or diminish the requirement for website accessibility.
9. Web Accessibility Training: By December 31, 2019, and at least once annually thereafter for the term of this Settlement Agreement, the County shall provide mandatory web accessibility training to all Digital Service Team members on how to conform all web content and services with, at minimum, WCAG 2.1 AA and the terms of this Settlement Agreement. Digital Services Team also shall receive the training when they are hired into a position that includes such a role. County IT Personnel who work with the Digital Services Team shall also have annual web accessibility training, but this training may be done on-line. The County shall ensure that contractors are familiar with WCAG 2.1 AA and the requirements of this Settlement Agreement to the extent necessary to perform the duties under their contract with respect to the Website.
10. Automated Web Accessibility Testing: Beginning on September 1, 2019, and at least once every three months for the term of this Settlement Agreement, the County shall use Siteimprove's automated accessibility testing tool to conduct automated accessibility tests of the Website to identify any instances where the Website is no longer in conformance with WCAG 2.1 AA. The County may change the automated accessibility testing tool that it uses with written notice to Claimants and an opportunity for comment.
11. Manual Web Accessibility Testing: By June 15, 2020, and at least once every year for the term of this Settlement Agreement, the County shall ensure that the

Website is manually tested for conformance with WCAG 2.1 AA by testing all portions of the Website in which content has changed in the preceding one-year period.

12. User Accessibility Testing Group: By December 1, 2019, and at least once annually for the term of this Settlement Agreement, and whenever a substantial proposed change to the Website is implemented, the County shall have individuals from the ROV's Voter Accessibility Advisor Committee (VAAC) with different disabilities, including at a minimum individuals who are blind, deaf, and/or have physical disabilities affecting manual dexterity (such as those limiting the ability to use a mouse), test the Website for accessibility barriers. If requested by the ROV, the National Federation of the Blind may assist in identifying blind participants for the User Accessibility Testing Group.
13. Bug Fix Priority Policies: By September 1, 2019, the ROV shall modify existing bug fix practices and procedures to include the elimination of bugs that create nonconformance with WCAG 2.1 AA to the Website. The Bug Fix Priority Practice/Procedure shall ensure that any bugs that create nonconformance with WCAG 2.1 AA to the Website are remedied with the same level of priority (e.g., speed, resources used to remediate) as any other equivalent loss of function for individuals without disabilities.

## **VI. REPORTING AND FEEDBACK**

1. Within 90 days after a General Election, the ROV shall provide Claimants a report for the preceding Primary and General Elections containing the following information pertaining to the preceding Election:
  - a) The dates of the pre-Election functional testing described in Section III.2.a.
  - b) Dates of trainings for Poll Workers, Polling Place Inspectors and Judges, and Help Desk Staff and attendance lists for each training.
  - c) Descriptions of all Heat Tickets, as required under Section III.4.b, created in response to issues concerning voters with visual disabilities, as well as follow-up steps taken in response to each Heat Ticket, including but not limited to whether and at what time a new Accessible Voting Machine was dispatched and, if so, the time(s) that it arrived and became operational at the Polling Place. The County shall include the date, time, and Polling Place location in its descriptions, but shall not include the name or address of the affected voter.
  - d) The number of individuals with disabilities who accessed the RAVBM and descriptions of any complaints or feedback received from voters with disabilities regarding attempts to use or use of the RAVBM and descriptions of how any complaints were resolved.

- e) A description of all complaints concerning use of the Accessible Voting Machines by voters with disabilities, which shall include the date, time, and Polling Place location, but shall exclude the name and address of the affected voter, as well as a description of how such complaints were resolved.
2. At least 140 days before the next Election after the Effective Date of this Agreement, the ROV shall send Claimants its most current training, set-up, and troubleshooting materials and procedures that are provided to Poll Workers and Help Desk Staff relating to the use of Accessible Voting Machines. Throughout the term of this Agreement, the ROV shall send Claimants any proposed revisions to its training, set-up, and troubleshooting materials and procedures. Claimants shall provide any feedback on these materials, including both current materials and proposed revisions, within 20 days of receipt. The ROV shall incorporate Claimant's feedback unless it asserts that Claimants' recommendations are unnecessary, excessive, or would undermine the security of the voting system.
  3. Within 120 days of the County's acquisition of the new Accessible Voting Machines, pursuant to Section III.1.a, the Parties shall confer as to whether it is possible to shorten the time between when a replacement Accessible Voting Machine is ordered for a Polling Place and the replacement machine is delivered and fully operational ("Delivery Time") to less than 2 hours. The County shall confer with the vendor of the new Accessible Voting Machine about this issue and shall make a good faith effort to shorten the Delivery Time. If the Parties reach agreement about a shorter Delivery Time, the Parties shall modify Section III.5.b.4.a of this Agreement accordingly. Either Party may use the dispute resolution procedures set forth in Section X to resolve any issues arising under this paragraph.
  4. By July 1, 2019, and yearly thereafter for the term of this Agreement, as well as one month before the conclusion of the term of this Agreement should a report not have been made within the preceding 3 months, the County's Digital Services Team shall submit a report detailing the County's compliance with Section V of this Settlement Agreement. Each report shall include an explanation of each action the County has taken in response to each comment provided by visitors to the Website pursuant to Section V.7 above or if no action is taken in response to a particular comment, the County shall include an explanation why. Each report shall also include the results of the most recent manual testing of the Website, as required under Section V.11, as well as a summary of the results of automated testing of the Website over the past year, as required under Section V.10, which shall include whether such testing identifies or identified any area of noncompliance of WCAG 2.1 AA, and, if so, shall include whether and when those violations were remediated and for those violations that remain outstanding, a plan and timeline for remediating those violations. The County shall then report to Claimants when such violations have been remediated.
  5. Within (30) business days after completing each instance of user accessibility testing required by Section V.12, the County shall provide Claimants with a summary of findings from this testing.



## **VII. INDIVIDUAL RELIEF**

Within 45 days after the Effective Date, the County shall make a payment of \$4,000 to each of the following Claimants: Timothy Elder, Jessie Lorenz, and Jim Barbour.

## **VIII. NOTICE TO PUBLIC**

Within 90 days of the Effective Date of this Agreement, the County shall post a copy of this Agreement on the Website and include a “Know Your Rights” synopsis of the Agreement for voters with disabilities. The County shall send Claimants a copy of the draft “Know Your Rights” synopsis before posting it and Claimants shall send any feedback within 30 days of receipt. The County shall incorporate Claimants’ feedback unless it asserts that doing so would make the synopsis inaccurate. If the County rejects any recommendations and Claimants dispute such rejection, the Parties shall resolve the issue through the dispute resolution procedures set forth in Section X.

## **IX. ATTORNEYS’ FEES AND COSTS**

1. Within 30 days of the Effective Date of this Agreement, the County shall pay \$75,000.00 to the trust account of Brown, Goldstein & Levy, LLP, 120 E. Baltimore Street, Suite 1700, Baltimore, MD 21202, Attention: Jessica P. Weber, for Claimants’ attorneys’ fees and costs incurred through the Effective Date of this Agreement.
2. In addition, the County agrees to pay Claimants attorneys’ fees and costs (“Monitoring Fees”) for their work monitoring compliance with this Agreement, including providing feedback pursuant to the Agreement. Monitoring Fees may include time spent by the NFB’s staff on technical issues related to this Agreement. The County’s payment of Monitoring Fees shall not exceed \$20,000 for each year following the Effective Date (total Monitoring Fees through the term of the Agreement shall not exceed \$60,000, unless the term of the Agreement is extended pursuant to Section XII below). Within 45 days from the conclusion of each year following the Effective Date, Claimants shall notify the County in writing of their total Monitoring Fees from the previous year for which they seek compensation. Upon request from the County, Claimants shall provide descriptions of each fee entry and expense. The County shall pay the requested Monitoring Fees, not to exceed \$20,000, within 30 days of Claimants’ request or provision of fee and expense descriptions, whichever occurs later, to the trust account of Brown, Goldstein & Levy, LLP, 120 E. Baltimore Street, Suite 1700, Baltimore, MD 21202, Attention: Jessica P. Weber.

## **X. DISPUTE RESOLUTION**

Any dispute or disagreement between the Parties related to this Agreement and any enforcement of this Agreement shall be resolved according to the following procedure:

1. **Meet and Confer.** Prior to bringing any action, suit or proceeding in connection with any dispute or disagreement arising out of this Agreement or to enforce this

Agreement, the concerned Party shall notify the other Party or Parties in accordance with Section XIII of this Agreement. Within fifteen (15) business days from notification of any such dispute or disagreement, the Parties shall meet and confer in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution mutually satisfactory to the Parties.

2. **Mediation.** If the Parties are unable to resolve the dispute or disagreement in good faith through the meet and confer process within thirty (30) calendar days after the notice referred to in Section X.1 has been delivered, any Party may bring the dispute or disagreement to a mutually acceptable mediator.
3. **Submission to Court.** If mediation fails to resolve the dispute or disagreement, any of the Parties may submit the matter to a court of competent jurisdiction through initiation of a lawsuit to secure all remedies available by law.
4. **Fees and Costs for Dispute Resolution.** The parties may seek to recover reasonable fees and costs in connection with the dispute resolution process, including submission to court, in accordance with applicable law.

## **XI. RELEASE**

Plaintiffs waive and release claims for declaratory and injunctive relief and any claims for damages against the County and its agents, successors, assigns, and officers, that are based on allegations concerning access to the Website prior to the Effective Date and/or the denial of the right to vote privately and independently in Elections prior to the Effective Date.

## **XII. TERM OF AGREEMENT**

The term of this Agreement shall be three years from the Effective Date. The Parties agree that if, at the end of the three-year period, any provision of this Agreement remains unfulfilled, the term of the Agreement shall be extended for an additional one-year term.

## **XIII. NOTICES**

Any notice or communication provided under this Agreement shall be made in writing and shall be delivered or sent by way of the U.S. Postal Service, private commercial carrier, hand delivery, facsimile transmission, or electronic mail to the addresses below or to such other addresses as may be specified in writing by any Party:

1. To Claimants: Jessica P. Weber, Brown, Goldstein & Levy LLP, 120 East Baltimore Street, Suite 1700, Baltimore, Maryland 21202, [jweber@browngold.com](mailto:jweber@browngold.com)
2. To the County: Raymond S. Lara, Office of the County Counsel for the County of Alameda, 1221 Oak Street, Suite 450, Oakland, CA 94706, [raymond.lara@acgov.org](mailto:raymond.lara@acgov.org)

## **XIV. GENERAL PROVISIONS**

1. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matters discussed herein, and supersedes all prior or contemporaneous discussions, communications, or agreements, expressed or implied, written or oral, by or between the Parties with respect to such subject matters. Without limiting the generality of the foregoing, upon the execution of this Agreement by the Parties, the Agreement to Enter Negotiations, and all rights and obligations of the parties thereto, shall terminate. This Agreement cannot be amended without the written and signed approval of all Parties.
2. **Headings.** The section headings in this Agreement are for the Parties' convenience and shall not be deemed a part of the various terms and provisions of this Agreement, nor used to limit the construction thereof.
3. **Governing Law.** This Agreement shall be governed and construed in accordance with the domestic laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of California; provided, however, that to the extent that federal law expressly applies to any specific issue or question, federal law shall be applicable to said issue or question.
4. **Waiver; Severability.** No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach of such provision or any other provisions hereof and no waiver shall be effective unless made in writing. The paragraphs and provisions of this Agreement are severable. In the event that any provision of this Agreement shall be determined to be illegal or otherwise unenforceable, such provision shall be severed and the balance of the Agreement shall continue in full force and effect.
5. **Counterparts.** This Agreement may be executed in one or more counterparts, and authentic facsimile signatures or electronic signatures shall be deemed to be original signatures for all purposes. All executed counterparts, and each of them, shall be deemed to be one and the same instrument.

Date: \_\_\_\_\_

COUNSEL FOR NATIONAL FEDERATION OF  
THE BLIND, TIM ELDER, JESSIE LORENZ,  
AND JIM BARBOUR

By \_\_\_\_\_

Jessica P. Weber  
Brown, Goldstein & Levy, LLP  
120 E. Baltimore Street, Suite 1700

Baltimore, MD 21202  
Tel: 410-962-1030  
Fax: 410-385-0869  
Email: [jweber@browngold.com](mailto:jweber@browngold.com)

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Telephone: (415) 421-7151  
Facsimile: (415) 362-8064  
E-mail: [dleonard@altshulerberzon.com](mailto:dleonard@altshulerberzon.com)

Date: \_\_\_\_\_

FOR THE COUNTY OF ALAMEDA

By \_\_\_\_\_

Tim Dupuis  
Registrar of Voters  
County of Alameda  
1225 Fallon Street, Rm. G-1  
Oakland, CA 94612-4283  
Tel: (510) 272-6933