

## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (the "Agreement"), effective this 31st day of May 2016, is entered into by and between the United States of America (the "United States") and the County of Napa, California, and the Napa County Assessor -Recorder-County Clerk, ex officio Registrar of Voters (ROV), in his official capacity (collectively hereafter the "County").

On April 7, 2016, the United States informed the County by letter of its intent to file a Complaint pursuant to Section 203 of the Voting Rights Act, 52 U.S.C. § 10503 ("Section 203"). The United States District Court for the Northern District of California has jurisdiction to hear cases brought to enforce the provisions of Section 203 in the County, and the federal court would have jurisdiction of an action brought by the United States to enforce any of the terms of this Agreement, pursuant to 28 U.S.C. §§ 1331 and 1345 and 52 U.S.C. §§ 10308(d) & (f) and 10504. The cause of action under Section 203 must be heard and determined by a court of three judges, pursuant to 52 U.S.C. § 10504 and 28 U.S.C. § 2284.

The County has been covered continuously under Section 203 to provide election-related materials and assistance in Spanish since October 13, 2011. *See* 76 Fed. Reg. 63,602 (Oct. 13, 2011). Since October 19, 2011, the Department of Justice has directly notified Napa County election officials of the County's obligations under Section 203. The determination of the Census Bureau that Napa County is covered by Section 203 for Spanish is final and non-reviewable. *See* 52 U.S.C. § 10503(b)(4).

According to the 2010 Census, Napa County had a total population of 136,484, of whom 44,010 (32.2%) were Hispanic. The total voting-age citizen population of the county was 86,960, of whom 14,490 (16.7%) were of Hispanic origin. Of the voting-age citizens of Hispanic origin, 4,510 (31.1%) were limited English proficient.

The United States alleges that the County has not complied with the requirements of Section 203 for Spanish-speaking citizens residing in the County. Specifically, the United States alleges that the County has failed to provide in an effective manner certain election-related information to Spanish-speaking voters and has failed to provide an adequate number of bilingual poll workers trained to assist Spanish-speaking voters at its voter assistance centers and on Election Day.

To avoid protracted and costly litigation, the parties have agreed that this dispute should be resolved through the terms of this Agreement. Accordingly, the United States and the County, without admitting liability, hereby agree to the terms of this Agreement, as indicated by the signatures of counsel and ROV at the end of this Agreement. Each party shall bear its own costs and fees.

Accordingly, it is hereby AGREED that:

1. The County, its agents, employees, contractors, successors, and all other persons representing the interests of the County hereby agree to provide in Spanish any "registration or voting notices, forms, instructions, assistance, or other materials or information relating to the

electoral process, including ballots” that they provide in English, as required by Section 203 of the Voting Rights Act. 52 U.S.C. § 10303(f)(4).

2. The terms of this Agreement will apply to all Federal, State, and local elections that are administered by the County. Whenever the County enters into an election services contract with any other entity, political subdivision, or political party to conduct an election on behalf of that entity, the County shall require such entity to agree to abide by the terms of this Agreement for that portion of the entity located within Napa County as if such entity were a party to this Agreement with the United States, and consistent with the responsibility of each entity to comply fully with Section 203.

### **Translation and Dissemination of Election-Related Materials**

3. The County shall provide the following election-related materials in English and Spanish, such that each is bilingual with English and Spanish translations on the same document: (a) the official ballot; (b) vote-by-mail applications and envelopes; (c) sample pamphlets; (d) provisional ballots and envelopes; (e) voter registration cards and applications; (f) voting instructions; (g) any voter information guides, lists of polling places and voter assistance centers, or pamphlets provided by the County; and (h) notification of elections and polling place changes.

4. The County shall make every effort to ensure that all other Spanish language election information, materials, and announcements not listed in Paragraph 3 above are made equally available and provided to the same extent as they are provided in English. Spanish language information shall be distributed in newspapers, radio, the Internet, and other media that exclusively or regularly publish or broadcast information in Spanish to the local population. The County shall consult with the Advisory Group, discussed in paragraphs 19-21 below, to ensure that dissemination of these Spanish language announcements shall be in the form, frequency, and media best calculated to achieve notice and understanding equal to that provided to the English-speaking population and to provide substantially the same information.

5. The County shall utilize a professional translator to prepare translated materials. The translator shall work in coordination with the bilingual election program Coordinator and the Advisory Group described in paragraphs 21-23 to ensure that bilingual materials are complete, accurate, linguistically competent and accessible for limited-English proficient voters. The translated materials must include effective translations that most accurately convey the meaning of the original English-language information.

6. Electronic voting machines shall offer the readily apparent options of a Spanish ballot, and any audio version of the ballot on such machines shall be available at least in English and Spanish.

7. All election information and materials posted or displayed in the polling places and voter assistance centers shall be translated in both English and Spanish, with the translations either on the same posting or display, or in near proximity to each other.

### **Spanish-Language Assistance**

8. The County shall ensure that Spanish-language assistance shall be available at all locations where election-related transactions are conducted, including voter assistance centers. Trained bilingual (fluent in both Spanish and English) poll workers located at the County's main election office shall be available to answer voting-related questions by telephone without cost during normal business hours, while voter-assistance centers are open, and while the polls are open on election days. The County may coordinate the provision of such services with other governmental or non-governmental entities that conduct elections.

9. The County shall recruit, hire, train, and assign poll workers able to understand, speak, write, and read Spanish fluently to provide effective assistance to Spanish-speaking voters at the polls on election days and at voter assistance centers.

10. The County shall invite eligible members of the Advisory Group, discussed below, to serve as poll workers and to encourage other bilingual voters to do so.

11. Each polling place in Napa County shall be staffed by at least one bilingual poll worker. The parties may by written agreement adjust these requirements in light of reliable information that the actual need for language assistance in a particular polling place is less or greater than this requirement.

12. The County shall staff all voter assistance centers, including any drive-through locations, with at least one bilingual poll worker. Pursuant to paragraph 3, the County shall make the document setting out the location of all voter assistance centers and related information available in a bilingual format, and within that format prominently display the dates bilingual assistance is available for each. The parties may by written agreement adjust these requirements in light of reliable information that the actual need for language assistance in a particular voter assistance center is less or greater than this requirement.

13. The County shall alert voters that Spanish-speaking poll workers are available to provide assistance, and shall make such poll workers available when voters choose these workers as their assistants of choice. Signs in both English and Spanish shall be posted prominently at all polling places and voter assistance centers stating that Spanish language assistance is available. Such signs shall be printed in large, easily visible lettering, and English and Spanish signs shall be posted adjacent to each other. At any voter assistance centers without bilingual staff, signs in both English and Spanish shall be posted that explain how voters can obtain Spanish-language assistance.

14. The County shall also provide at least one English-Spanish election glossary (such as, for example, the Spanish-English Election Terms Glossary prepared by the United States Election Assistance Commission, available at [http://www.eac.gov/election\\_management\\_resources/glossaries\\_of\\_election\\_terminology.aspx](http://www.eac.gov/election_management_resources/glossaries_of_election_terminology.aspx)) at each polling place and voter assistance center.

### **Election Official Training**

15. Prior to each election, in addition to any required State or County training, the County shall train all poll workers and other election personnel present at the polls and voter assistance centers regarding the provisions of Section 203 of the Voting Rights Act, including the legal obligation and means to make Spanish language assistance and materials available to voters, and the requirement that poll workers avoid inappropriate comments and be respectful and courteous to all voters regardless of race, ethnicity, color, or language abilities.

16. In addition to the above general training for poll officials and other election personnel, the County shall train all bilingual poll officials on Spanish language election terminology, voting instructions, and other election related issues. The County shall include in its training of all bilingual poll officials the following election-related materials: the official ballot; sample pamphlets; provisional envelopes; vote-by-mail applications and envelopes; voter registration cards and applications; voting instructions; any voter information guides or pamphlets provided by the County; notification of elections and polling place changes; and polling place signage. The County shall also provide Spanish translations of election-related information, materials, and announcements applicable to elections in the County that are provided by the State of California. The County shall also provide all bilingual poll officials with a copy of the Spanish-language election terminology glossary referenced in paragraph 14.

17. The County shall maintain a record of the time and location of training personnel and the materials involved with bilingual assistance training. The County shall also record the names of poll officials who attended such training and their assigned polling places. The County shall provide a copy of the training materials to the United States upon request.

### **Response to Complaints about Poll Workers**

18. The County, upon receipt of complaints by voters, whether oral or written, shall investigate expeditiously any allegations of poll worker discrimination against Spanish-speaking and/or Hispanic voters in any election. The results of the investigation(s) conducted by the County shall be reported to the United States within 45 days. Where there is credible evidence that a poll worker has engaged in inappropriate treatment of Spanish-speaking or Hispanic voters, the County shall take appropriate action, including not allowing the person to serve as a poll worker.

### **Spanish Language Election Program Coordinator**

19. The County shall designate an individual to coordinate the County's Spanish language election program ("the Coordinator") for all elections within the County. The County shall provide the Coordinator, within the confines of budgetary constraints, with support sufficient to meet the goals of the program. The Coordinator shall be able to understand, speak, write, and read fluently both Spanish and English. The Coordinator's responsibilities shall include coordination of the translation of ballots and other election information; development and oversight of Spanish publicity programs, including selection of appropriate Spanish language

media for notices and announcements; training, recruitment, and assessment of Spanish language proficiency of bilingual poll workers; and managing other aspects of the program.

### **Advisory Group**

20. The ROV shall establish an Advisory Group to assist and inform the Spanish language election program. The Advisory Group shall be open to any interested person or organization. The Advisory Group shall meet at least once during the time before the June 2016 primary election, at least twice during the six months before the June 2018 primary election, at least twice during the five months before the November 2016 and 2018 general elections, and at least once during the two months after the November 2016 and 2018 general elections. By written agreement, the Parties may adjust the Advisory Group's meeting schedule after consultation with the Advisory Group. The Coordinator shall provide notice of all planned meetings, including the date, time, location, and agenda, at least 14 days in advance of such meeting, although members of the Advisory Group may agree to waive or shorten this time period as necessary.

21. Within five business days after each meeting, the Coordinator shall provide a written summary of the discussion and any decisions reached at the meeting to all Advisory Group members and to the ROV. If the ROV decides not to implement an Advisory Group suggestion or a consensus cannot be reached respecting such suggestion, the ROV shall provide to the Advisory Group through the Coordinator, and maintain on file, a written statement of the reasons for rejecting such suggestion. The County shall maintain a roster of Advisory Group members and interested members of the public who attend an Advisory Group meeting. The County shall maintain a log of the public who request to receive future notices together with the telephone and facsimile numbers or e-mail addresses of each, and shall provide to each interested party notices it provides to the Advisory Group.

22. The Coordinator shall transmit to all members of the Advisory Group, in English and Spanish, all election information, announcements, and notices that are provided or made available to the electorate and general public, with the exception of materials that are not reasonably transmittable either in hard copy or in electronic format, and request that they share such information with others.

### **Federal Monitors**

23. To assist in monitoring compliance with and ensure effectiveness of this Agreement, and to protect the Fourteenth and Fifteenth Amendment rights of the citizens of Napa County, the County shall permit Department of Justice personnel to monitor training, early voting and election day activity. The County shall recognize the authority of federal monitors to observe all aspects of voting conducted in the Voter Assistance Centers and at polls during early voting and on Election Day, including the authority to view County personnel providing assistance to voters during voting, except where the voter objects.

### **June 7, 2016 Primary Election**

24. For the June 7, 2016 primary election only, the County is exempt from the requirements of Paragraph 3.

25. For the June 7, 2016 primary election only, the County is exempt from the requirement in Paragraph 12 that information regarding Voter Assistance Centers be provided in a bilingual format on the same document. For the June 7, 2016 election, the County will include a separate insert in Spanish that includes such information.

26. For the June 7, 2016 primary election, in consideration of the limited time between the signing of this agreement and date of the election, the parties agree that the County must make reasonable efforts to comply with the remaining paragraphs of this agreement.

### **Evaluation of Plan**

27. The parties recognize that regular and ongoing reassessment may be necessary to provide the most effective and efficient Spanish language program and to ensure compliance with the Voting Rights Act. The County shall evaluate the Spanish language assistance program after each election to determine which aspects of the program are functioning well; whether any aspects need improvement; and how to affect needed improvements. The County also shall evaluate its program to ensure that each polling place is in compliance with the Voting Rights Act. The program may be adjusted at any time upon joint written agreement of the parties.

28. This Agreement shall terminate on January 31, 2019, provided the parties agree that County have achieved substantial compliance with the terms of the Agreement for the previous two election cycles. An "election cycle" refers to all elections administered by the County during a calendar year.

29. If after the November 2018 general election, or anytime subsequent to that date, the County's assessments show that they have been substantially complying with all aspects of this Agreement for the previous two election cycles and have the intent and means to continue compliance with Section 203, the County will file a report with the United States demonstrating substantial compliance with each provision of this Agreement. The County shall include with any certification or reports from the Coordinator and the Advisory Group detailing the County's efforts to comply with the Agreement. The County shall bear the burden of demonstrating that they have substantially complied with the Agreement and maintained substantial compliance for the required period.

30. After conferring with the County, the United States, in its good faith discretion, will determine whether the County has maintained substantial compliance for the requisite election cycles. A conclusion of substantial compliance may not be unreasonably withheld. If at any time after the November 2018 election, the parties agree that there is substantial compliance, the agreement will be terminated.

31. Within 30 days of submission of the information described in paragraph 36 regarding any election conducted throughout the term of this Agreement, the United States shall notify the County's attorney and the County ROV of any known alleged violation or potential violation of this Agreement. The United States and the County shall work together in good faith to remedy as soon as possible any violation of this Agreement. If the County indicates that it does not have the intent or means to comply with the terms of this Agreement applicable to the particular election, the United States shall have the right to seek such relief as may be necessary to enforce the terms of this Agreement.

### **Enforcement**

32. If the County materially fails to comply with the terms of this Agreement, this Agreement is enforceable in the United States District Court for the Northern District of California and pursuant to law, and additionally in any such event, the United States may take any other actions required to enforce Section 203 of the Voting Rights Act in the United States District Court, including seeking appropriate relief as a substitute for or in addition to enforcement of this Agreement. Nothing in this Agreement precludes the United States from taking appropriate enforcement action against the County for any other violations of the Voting Rights Act that are not the subject of this Agreement.

### **Retention of Documents and Reporting Requirements**

33. Throughout the duration of this Agreement, the County shall make and maintain written records of all actions taken pursuant to this Agreement. Such written documents and records shall be made available, upon request with reasonable notice, to the United States.

34. Throughout the duration of this Agreement, at least 15 days before each County-administered election, the County shall provide to counsel for the United States:

- (a) the name, address, and precinct designation of each polling place;
- (b) the name and title of each poll worker appointed and assigned to serve at each precinct;
- (c) a designation of whether each poll worker is fluent in English and another language, and an indication of what other languages are spoken by each poll worker;
- (d) an electronic copy of the official voter registration list current to be used in each such election; and
- (e) copies of any signs or other written information provided at polling places.

35. Within 45 days after each such election, the County shall provide to counsel for the United States any updated report regarding changes in the items identified in paragraph 35 as

well as information about all complaints the County received at the election regarding language or assistance issues pursuant to paragraph 18, by Federal Express or electronically to the following address:

Voting Section  
United States Department of Justice  
Civil Rights Division  
1800 G Street, N.W., Room NWB-7254  
Washington, D.C. 20006  
Facsimile: (202) 307-3961  
[amanda.hine@usdoj.gov](mailto:amanda.hine@usdoj.gov)  
[voting.section@usdoj.gov](mailto:voting.section@usdoj.gov)

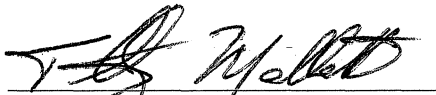
### **Other Provisions**

36. This Agreement is final and binding between the parties and their successors in office regarding the claims raised in this action. The Parties agree to the admissibility of this Agreement in any subsequent proceeding for its enforcement, or other action filed to enforce Section 203 of the Voting Rights Act.

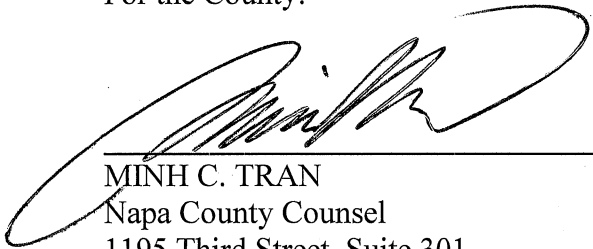
The undersigned enter into this Agreement this 31st day of May, 2016.

For the United States:

VANITA GUPTA  
Principal Deputy Assistant Attorney General  
Civil Rights Division

  
T. CHRISTIAN HERREN JR.  
TIMOTHY F. MELLETT  
JOHN "BERT" RUSS  
AMANDA K. HINE  
Attorneys, Voting Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
Telephone: (202) 305-0919  
Facsimile: (202) 307-3961

For the County:



MINH C. TRAN

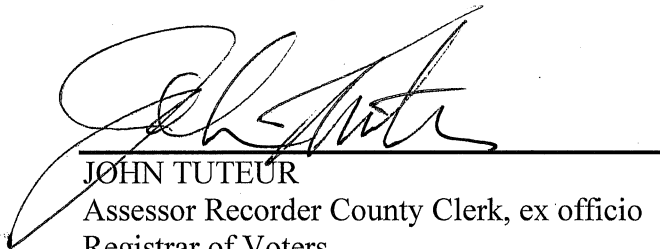
Napa County Counsel

1195 Third Street, Suite 301

Napa, CA 94559

Telephone : (707)259-8273

Email: [minh.tran@countyofnapa.org](mailto:minh.tran@countyofnapa.org)



JOHN TUTEUR

Assessor Recorder County Clerk, ex officio

Registrar of Voters

1127 First Street, Suite 128

Napa, CA 94559

Telephone: (707) 253-4459

Email: [john.tuteur@countyofnapa.org](mailto:john.tuteur@countyofnapa.org)