

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND
UPTON COUNTY, TEXAS
DJ # 204-76-243**

I. BACKGROUND

1. This Settlement Agreement (“Agreement”) is entered into between the United States of America and Upton County, Texas, (“the County”) (collectively, the “Parties”).
2. This Agreement resolves the United States Department of Justice’s (“Department”) investigation of the County under Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12131–34, as amended (“Title II”), and its implementing regulation, 28 C.F.R. pt. 35.
3. The United States investigated the County based on a complaint alleging that the County’s Election Website was inaccessible to individuals with disabilities in violation of Title II of the ADA. Following an investigation, the United States determined that the County’s Election Website was not accessible to people with vision or manual disabilities and thus fails to provide equal access to critical election information such as where, when, and how to vote. The United States set forth its findings of fact and conclusions of law in a Letter of Findings on November 6, 2023.
4. By entering into this Agreement, the County neither admits nor denies the findings of the Department’s investigation. The County is entering into this Agreement solely to resolve this controversy and implement any corrective measures in order to provide programs, services, and activities accessible to qualified individuals with disabilities as required by Title II and its implementing regulation. The County has not received any complaints from citizens of the County or registered voters of the County alleging that the County’s Election Website is inaccessible to individuals with disabilities in violation of Title II of the ADA.
5. The Parties agree that it is in their best interest, and the United States believes it is in the public interest, to voluntarily enter into this Agreement and resolve this matter as set forth below.
6. In consideration of, and consistent with, the terms of this Agreement, the Attorney General agrees to refrain from filing a civil suit in this matter regarding Paragraphs 7 through 36, during the term of the Agreement, except as provided in the section entitled “Enforcement and Other Provisions.”

II. DEFINITIONS

7. The term “Election Website” means the County’s election website located at <https://www.co.upton.tx.us/page/upton.elections> and any subdomain of that website that may be accessed by the general public and that the County maintains, operates, or controls, including through the County’s agent or contractor. It also includes any website or subdomain to which the County moves or migrates election-related Online Content during the term of this Agreement.
8. The term “Election Online Content” means all content that the County creates, develops, uploads, or controls, and makes publicly available, on the County’s Election Website or on any other audio or video channel or account controlled by the County that is hosted on a third-party website, such as YouTube, during the term of this Agreement. “Election Online Content” includes content that any County employee or contractor acting within the scope of their employment or contract with the County posts or uploads on such websites. Examples of “Election Online Content” include text, images, sounds, videos, controls, animations, and conventional electronic documents.
9. The term “Audio and Video Content” means Election Online Content in audio or video format.
10. The term “Covered Individual” means an officer, employee, contractor, or other individual whose duties include uploading or managing Election Online Content on behalf of the County.

III. GENERAL PROVISIONS

11. The County shall not exclude qualified individuals with disabilities from participation in, or deny qualified individuals with disabilities the benefits of, the County’s Election Website and Election Online Content, including its election program and online services, consistent with Title II and its implementing regulation. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a)-(b)(1).
12. The County shall afford qualified individuals with disabilities an equal opportunity to participate in and benefit from any aid, benefit, or service provided to others on the County’s Election Website and Election Online Content, consistent with Title II and its implementing regulation. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(1).
13. The County shall make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability when providing information on the County’s Election Website and Election Online Content, consistent with Title II and its implementing regulation. 28 C.F.R. § 35.130(b)(7)(i).

14. The County shall take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others, consistent with Title II and its implementing regulation. 28 C.F.R. § 35.160(a)(1).

IV. SPECIFIC RELIEF

A. County and Website Auditor Web Accessibility and Evaluation Responsibilities

15. The County receives services from a third-party website hosting service. The County shall ensure that the third-party website hosting service retains an independent web accessibility services provider (“Website Auditor”), approved by the United States, whose team includes individuals with disabilities who are experienced users of assistive technology to conduct automated and manual accessibility reviews throughout the term of this Agreement. The Website Auditor shall have expertise in conducting manual (non-automated) accessibility reviews, accessible Web development, and Web Content Accessibility Guidelines (“WCAG”), WCAG 2.1, Level AA, and shall be knowledgeable about the terms of this Agreement. In the event the County stops receiving services from the third-party website hosting service or the third-party website hosting service does not retain the Website Auditor, then the County shall retain a Website Auditor who is approved by the United States.
16. The County shall ensure that the Website Auditor conducts automated and manual accessibility testing of the County’s Election Website and Election Online Content at least annually for the term of this Agreement and any time new information is made publicly available on the County’s Election Website and Election Online Content.
- a. The Website Auditor’s review shall be based on a sample of Election Online Content on the County’s Election Website selected based on a methodology determined by the Website Auditor.
 - b. The Website Auditor shall provide a copy of each of its final evaluations to the County for submission to the United States. The evaluations shall assess whether the information on the County’s Election Website and Election Online Content reviewed complies with requirements of WCAG 2.1, Level AA and this Agreement, and shall make recommendations to address any accessibility barriers found in the Election Online Content.
 - c. The County shall implement the recommendations contained in the evaluations within sixty (60) calendar days of receiving the evaluation with the assistance of the Website Auditor.

17. Within four (4) months of the Effective Date, the County with assistance from the Website Auditor shall ensure that all existing information on the County's Election Website and Election Online Content, including audio and video content, conforms to WCAG 2.1, Level AA.
18. The County through the Website Auditor shall ensure that all new information posted to the County's Election Website and Election Online Content conforms to WCAG 2.1, Level AA prior to posting it and remains compliant for as long as it is posted on the Election Website.
19. Throughout the term of this Agreement, the County shall provide notice, prominently and directly linked from the County's homepage (currently located at <https://www.co.upton.tx.us/page/upton.Home>) and the County's Election Website. The notice will solicit comments and requests from visitors to and users of the County's Election Website and Election Online Content about any accessibility barriers to the information and, if applicable, how to best address or resolve the identified accessibility barriers. The link shall provide several methods to provide comments and requests related to accessibility issues, including an accessible form that can be submitted electronically and an email address to contact County representatives.
 - a. The County with the assistance of the Website Auditor will respond to, as well as resolve or otherwise substantively address, any comments or requests within fourteen (14) calendar days from when the County received it. If the County and/or Website Auditor identifies an accessibility barrier and requires additional time to resolve or otherwise substantively address the accessibility barrier, the County may take an additional fourteen (14) calendar days to resolve the barrier; provided, however, that the County notifies the requester of the additional time needed to remove the barrier and reports each such instance for which an extension is necessary to the United States in accordance with the reporting requirements below.
 - b. If the County cannot or does not remove an accessibility barrier in response to a complaint or request to do so, the County shall promptly notify the requester. In addition, the County shall report to the United States the number of instances in which it did not remove an accessibility barrier in response to a request and the reason(s), in accordance with the reporting requirements below.
 - c. If the County receives information about a barrier or barriers to accessibility on the County's Election Website or Election Online Content, the County will not be liable for a violation of this Agreement if it complies with all other requirements of the Agreement and, within twenty-eight (28) calendar days of receiving information that the County's Election Website or Election Online Content has accessibility barriers, it

brings the County's Election Website or Election Online Content into compliance with WCAG 2.1, Level AA or otherwise provides the requester with full and equal access to the County's Election Website or Election Online Content in a manner consistent with or equally effective as the method or manner requested.

- d. If the Election Online Content on the County's Election Website that has been identified to have a barrier or barriers to accessibility is not required by state law to be provided on the County's Election Website, the County will engage in a good-faith effort to make the content at issue compliant with WCAG 2.1, Level AA (or otherwise fully and equally accessible) rather than remove the content from public access.

20. Within sixty (60) calendar days of the Effective Date, the County shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title II of the ADA and this Agreement, including any investigation and resolution of any complaint communicated to it alleging its noncompliance with Title II of the ADA or alleging any actions that would be prohibited by Title II of the ADA. The County shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated. This information also shall be posted on the County's Election website along with the Web Accessibility Procedures discussed in Paragraphs 21-22.

- a. The County shall adopt and publish on the County's Election Website grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by Title II of the ADA.
- b. The coordinator shall provide the reports to the United States set forth in Paragraph 24.

21. Within four (4) months of the Effective Date of this Agreement, the County shall adopt and implement updated Web Accessibility Procedures ("Procedures"). In accordance with Paragraph 25 of this Agreement, the United States shall review and approve the Procedures for conformance with the provisions of this Paragraph. The Procedures shall:

- a. Set forth required procedures for Covered Individuals to follow regarding the creation, development, and publication of Election Online Content.
- b. Require conformance to WCAG 2.1, Level AA.

- i. Require that, where Election Online Content cannot be made to conform to WCAG 2.1, Level AA without causing a fundamental alteration or undue burden as defined by Title II of the ADA and its implementing regulation, the County shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, qualified individuals with disabilities will be able to access the substance of that content.
- ii. Require that any third-party content to which the County links, to access the County's election services, programs, or activities, conform to WCAG 2.1, Level AA.

22. Within thirty (30) calendar days of the date on which the United States approves the Procedures, the County shall:

- a. Distribute a digital or physical copy of the Procedures to all Covered Individuals, and annually thereafter for the term of the Agreement; and
- b. Make the Procedures publicly available via a direct link on the footer of the County's Election Website (<https://www.co.upton.tx.us/page/upton.elections>) homepage, labeled "Accessibility."

B. Training

23. Within sixty (60) calendar days of the United States' approval of the Procedures established pursuant to this Agreement, the County shall ensure that the Website Auditor provides at least one (1) hour of mandatory, interactive Web accessibility training to all Covered Individuals on how the County's Election Website and Election Online Content, including its election program and online services, will be accessible consistent with Title II, the Procedures described in Paragraphs 21-22, the terms of this Agreement, and in conformance with WCAG 2.1, Level AA. The Website Auditor then shall provide at least one (1) hour of this mandatory, interactive Web accessibility training annually to all Covered Individuals for this Agreement's term.

V. REPORTING AND MONITORING

24. Within four (4) months of the Effective Date of this Agreement and every six (6) months thereafter, the County shall provide the following information in electronic format to the United States:

- a. All reports created by the Website Auditor detailing the County's compliance with this Agreement, and any challenges or delays the County has encountered in complying with the Agreement.
 - b. All comments and requests the County received pursuant to Paragraph 19 and steps the County through the Website Auditor took to investigate, resolve, and respond to the comments and requests. If the County took no action in response to a specific issue, the County shall include an explanation.
 - c. All testing reports and evaluations created, and steps taken to resolve issues and implement recommendations identified in such reports and evaluations. If the County took no action in response to a specific issue or recommendation, the County shall include an explanation.
25. **Procedure for Approval by U.S. of Specific Provisions:** For provisions in this Agreement that require the approval of the United States, the County shall submit its proposal thirty (30) calendar days before the deadline. The United States shall timely respond to proposals submitted by the County and shall not unreasonably withhold approval.
26. **Notification:** Unless otherwise instructed by the United States, the County shall send all documents, reports, and communications required to be sent to the United States under this Agreement electronically to Cheryl Rost at cheryl.rost@usdoj.gov, Alice Yao at alice.yao@usdoj.gov, and Liane Noble at liane.noble@usdoj.gov.

VI. ENFORCEMENT AND OTHER PROVISIONS


27. **Disputes:** The United States may review compliance with this Agreement at any time and if it finds that the County has violated this Agreement, it will notify the County in writing of the alleged noncompliance and attempt to seek a resolution of the matter with the County. The County must respond to the United States as soon as practicable, but no later than seven (7) calendar days thereafter. The Parties will negotiate in good faith to resolve any dispute relating thereto; if the Parties cannot reach a mutually acceptable resolution within thirty (30) days of written notice, the United States may institute a civil action in the appropriate U.S. District Court to enforce this Agreement or Title II of the ADA.
28. **Authority:** The signatories represent that they have the authority to bind the Parties identified below to the terms of this Agreement.
29. **Binding:** This Agreement will be binding on the County and its subsidiaries, agents, employees, officers, and contractors. In the event that the County seeks to transfer or assign all or part of its interest in any service covered by this Agreement, and the successor or

assign intends on carrying on the same or similar use of the website or online services, then as a condition of transfer or assignment, the County shall obtain the written accession of the successor or assign to any obligations remaining under this Agreement for the remaining term of this Agreement.

30. **Counterparts:** This Agreement may be executed in counterparts, each copy, email, or pdf of which will be considered an original, but all of which, taken together, constitute one agreement.
31. **Entire Agreement:** This Agreement contains the entire agreement between the United States and the County on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by any party or agent of any party, that is not contained in this Agreement will be enforceable.
32. **Modification or Amendment:** The timeframe for completion of any act required by this Agreement may be modified with the mutual written consent of the Parties. The United States will not unreasonably deny requested extensions, if made by the County in advance of any deadline and following the County's diligence to meet such a requirement. The Parties acknowledge that such written agreement may be completed by email so long as the email has specific language designed to bind either Party. All other modifications to this Agreement require the written consent of all Parties.
33. **Scope:** This Agreement is not intended to remedy any other potential violations of the ADA or any other federal or state law, other than the violations alleged in this Agreement. This Agreement does not affect the County's continuing responsibility to comply with all provisions of the ADA. Nothing in this Agreement shall preclude the United States from filing a separate action under the ADA, or any other law, for any alleged violation not covered by this Agreement.
34. **Severability:** If any provision of this Agreement is determined by any court to be invalid, unenforceable, or otherwise contrary to applicable law, such provision shall be deemed restated to reflect as nearly as possible, and to the fullest extent permitted by applicable law, its original intent and shall not, in any event, affect any other provisions, all of which will remain in effect to the fullest extent permitted by applicable law.
35. **Non-Waiver:** Failure by the United States to seek enforcement of this Agreement pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to enforce the Agreement regarding any instance or provision. The County does not waive its right to assert any available affirmative defenses.

36. **Effective Date and Term:** The Effective Date will be the date of the last signature on the Agreement. Unless otherwise specified, all time periods designated for an action run from the Effective Date. The Agreement will remain in effect for three (3) years from the Effective Date.

For the County:


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Date: *june 13, 2024*

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Date: June 14, 2024

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Date: June 13, 2024