

## AGREEMENT

This Agreement ("Agreement") is made and entered into, as of this \_\_ day of \_\_, 2012, by and among the City of Lancaster, a California charter city (the "City"), and The Community Action League, a California non-profit organization ("TCAL"), California State Conference of the National Association for the Advancement of Colored People, a non-profit organization ("NAACP"), Sheila Williams, an individual, and Michelle Ross, an individual (collectively "Plaintiffs"). The City and Plaintiffs are collectively referenced herein as "the Parties."

### Recitals

A. *Whereas*, Plaintiffs have brought an action in the United States District Court for the Central District of California (the "District Court") entitled *The Community Action League, et al. vs. City of Lancaster*, Case No. CV-11-04817 ODW (VBKx) (the "Action"), and filed their Third Amended Complaint against the City on March 30, 2012;

B. *Whereas*, Plaintiffs have alleged in their Third Amended Complaint that the City engaged in discrimination against black and Latino participants ("Section 8 Tenants") in the federal Section 8 Housing Choice Vouchers Program (the "Section 8 Program") by, *inter alia*, sending the unlawful message that black and Latino Section 8 Tenants are not welcome in the City and targeting them and the landlords who rent to them ("Section 8 Landlords") for harassment using the City's Chronic Nuisance Ordinance and Rental Business Licensing Ordinance;

C. *Whereas*, the City denies each and every allegation in the Third Amended Complaint, including the allegation that it has engaged in discrimination against black and Latino Section 8 Tenants;

D. *Whereas*, the City maintains that many of the actions and activities that originally formed the basis of the Action were undertaken by third party governmental entities, which entities are lawfully authorized to adopt, pursue and enforce their own policies, procedures and rules, subject to approval by such entities' own governing bodies, all of which are wholly separate, distinct and outside the control of the City; and

E. *Whereas*, the Parties agree that further litigation of the issues raised in the Action is not a productive or efficient use of the Parties' time and resources and they further desire to work together to develop and further their mutual goals in the Lancaster community;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

#### 1. Commitment To Fair Housing Opportunities For Section 8 Tenants.

1.1. The City hereby commits to continue to abide by federal, state, and local laws requiring fair housing opportunities for all people regardless of race, color, religion, sex, familial status, national origin, or source of income.

1.2. The City, in its capacity as an entity, and City officials acting in their official capacity will not state or convey a message that Section 8 Tenants are not welcome in the City

because of or by virtue of their racial identity or status. In general, however, this provision shall not bar the City's elected officials or City administrators from expressing views about the need for the Section 8 Program, expressing concerns about the manner in which the Section 8 Program is administered, or advocating in support of policy changes to the Section 8 Program.

1.3. Upon execution of this Agreement, and for the duration of this Agreement, the City shall post a statement on the Department of Housing and Neighborhood Revitalization homepage on the City's website and in a publicly-conspicuous location in the offices of the Department of Housing and Neighborhood Revitalization that the City is committed to fair housing opportunities for all citizens, regardless of race, color, religion, sex, familial status, national origin, or source of income.

1.4. To promote understanding and cooperation between the Parties, City representatives, including but not limited to Mayor R. Rex Parris, and local community leaders, including but not limited to representatives of TCAL and/or the NAACP, shall, within 90 days from the execution of this Agreement, form a working group ("Community Working Group").

1.4.1. The purpose of the Community Working Group is to identify issues of concern to the community and discuss proposals and initiatives to address those concerns. The Community Working Group shall meet quarterly, or with such frequency as the group shall decide.

1.4.2. The Community Working Group shall have no more than 7 members, to be selected by the Mayor, one representative of TCAL, and one representative of NAACP, each of the three of whom shall have veto power over selection of the members.

1.4.3. The rules and procedures governing the Community Working Group's meetings shall be developed by the Community Working Group.

1.4.4. At the first meeting of the Community Working Group, Mayor Parris, if he is in attendance, and/or other City representatives in attendance, shall reiterate on the record the City's commitment to fair housing opportunities, regardless of race, color, religion, sex, familial status, national origin, or source of income.

1.4.5. Among the functions of the Community Working Group is to help the City determine whether any existing City ordinance or regulation relating to rental housing, housing development, land use zoning, or public safety is causing an unjustified disparate impact on Section 8 Tenants or Section 8 Landlords. Whenever a new ordinance in any of these aforementioned subject areas is proposed, the Community Working Group may at its discretion prepare a report that, if timely prepared, shall be included with the Staff Report on the proposed ordinance when it is presented to the City Council.

## **2. Dismissal of Action Without Prejudice and Tolling of Statute of Limitations.**

2.1. Within ten (10) business days following execution of this Agreement, Plaintiffs shall dismiss their Third Amended Complaint in the Action without prejudice.

2.2. Provided that the City complies in all respects with the terms of this Agreement, then Plaintiffs and Plaintiffs' Counsel agree not to resume litigation against the City seeking to enjoin or remedy any of the alleged conduct of the City set forth in the Third Amended Complaint.

2.3. In the event that any Party believes that there has been a violation of the terms of this Agreement or disagrees with another Party's interpretation of this Agreement, the complaining Party shall notify the other Party in writing of the alleged violation or the disagreement, in the manner described in Section 19.2 of this Agreement. The Parties agree that they will meet and confer, after service of the written notice and during a period not longer than 45 days, in an attempt to correct the alleged violation or resolve any disagreement about the meaning of this Agreement.

2.4. Should the Parties be unable to correct any alleged violation of this Agreement or resolve any disagreement about the terms of this Agreement in the meet and confer process, any Party will have the right to request that an arbitrator be retained at the Parties' shared expense to interpret this Agreement before any action is filed. The arbitrator will be agreed upon by the Parties, or, if an agreement cannot be reached, Plaintiffs and the City shall each select one arbitrator and the two arbitrators will select a third. JAMS arbitration rules shall govern the arbitration, whether or not JAMS arbitrators are selected.

2.5. Should the Parties be unable to rectify any violation of this Agreement or resolve any disagreement about the terms of this Agreement in the meet and confer or arbitration process, then it is expressly agreed that Plaintiffs shall have the right to resume litigation by filing a new Complaint against the City and seeking any and all injunctive and monetary relief permitted by law for any wrongful conduct identified in the new complaint, including conduct that may have preceded this Agreement and conduct identified or referred to in the Plaintiffs' Third Amended Complaint.

2.6. The City shall respond to any outstanding discovery requests served upon the City in this Action within thirty (30) days of the refile of the Third Amended Complaint or any new Complaint. Plaintiffs agree to meet and confer with the City within ten (10) days of filing any new Complaint to discuss whether any of the pending discovery requests are no longer warranted in light of changes in the asserted claims.

2.7. The statute of limitations on any of the Plaintiffs' claims shall be tolled for the duration of this Agreement. The City further agrees that its obligation to preserve all documents and electronically stored information that would be discoverable in this Action shall continue for the duration of this Agreement.

### **3. Press Conference Following Execution Of Agreement and Subsequent Public Statements.**

3.1. Following the execution of this Agreement, the Parties shall conduct a joint press conference to announce the amicable resolution of the Action. The City shall be represented at the press conference by Mayor R. Rex Parris, who will state that so long as he is Mayor he guarantees the City will continue to abide by Federal, state, and local laws requiring fair housing

opportunities for all people regardless of race, color, religion, sex, familial status, national origin, or source of income. The Plaintiffs will be represented by individuals whom Plaintiffs deem appropriate.

3.2. The content of statements by the Plaintiffs and City officials acting in their official capacity at the press conference and in any subsequent public statements about the Action and its resolution shall conform to the guidelines set forth in Exhibit A hereto.

#### **4. Costs.**

The Parties each acknowledge that they have incurred attorneys' fees in connection with the Action and further expressly agree to bear their own attorneys' fees and costs incurred in the Action as well as in connection with the negotiation and execution of this Agreement. Should any lawsuit, action, or proceeding be brought to enforce, avoid, nullify, reform, rescind, seek damages for alleged breach of this Agreement, or in any other way arising out of, related to or referencing this Agreement, then the prevailing party or parties in such a proceeding shall be entitled to be reimbursed by the other party or parties for all costs and expenses incurred as a result, whether or not ordinarily collectible, including but not limited to, reasonable attorneys' fees, expert witness fees and costs for the services rendered to such prevailing party or parties, if there is a finding at the conclusion of the litigation that the opposing side brought or defended the suit without substantial justification.

#### **5. Mutual Releases.**

5.1. Except as to the rights created by this Agreement, upon execution of this Agreement, each and every Plaintiff does for itself or herself, and its or her respective heirs, executors, administrators, successors, and assigns, hereby irrevocably, fully, finally and forever release, acquit and forever discharge the City and all present and former officials, council members, commissioners, directors, officers, employees, deputies, agents, representatives, attorneys, servants, affiliates, departments, divisions, branches, and commissions of the City, as applicable and to the extent they are acting within their official capacities, whether elected, appointed or otherwise, and their heirs, successors, assigns, and legal representatives, and each of them from any and all claims, demands, cause or causes of action, damages or costs, and liabilities of whatever kind or nature in law, equity or otherwise, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, arising out of, connected with or incidental to the alleged discrimination described or referred to in this Agreement and/or the Action occurring prior to the date of this Agreement.

5.2. Except as to the rights created by this Agreement, upon execution of this Agreement, the City and all present and former officials, council members, commissioners, directors, officers, employees, deputies, agents, representatives, attorneys, servants, affiliates, departments, divisions, branches, and commissions of the City, as applicable and to the extent they are acting within their official capacities, whether elected, appointed or otherwise, and its heirs, successors, assigns, and legal representatives, hereby irrevocably, fully, finally and forever release, acquit and forever discharge each and every one of the Plaintiffs and all their present and former officials, directors, officers, employees, deputies, agents, representatives, attorneys, servants, affiliates, departments, divisions, and branches, and their heirs, successors, assigns, and



legal representatives, and each of them from any and all claims, demands, cause or causes of action, damages or costs, and liabilities of whatever kind or nature in law, equity or otherwise, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, arising out of, connected with or incidental to the alleged discrimination described or referred to in this Agreement and/or the Action occurring prior to the date of this Agreement

5.3. The Plaintiffs acknowledge that they may have claims against the City of which they are currently unaware, and the City acknowledges that it may have claims against the Plaintiffs, individually or collectively, of which it is currently unaware. The Parties acknowledge that this Agreement is intended to and does extend to any and all claims they may have against the other side in this Action, whether known or unknown, that are within the scope of this Agreement. The Parties acknowledge that they may have sustained damages, losses, costs or expenses that are currently unknown or unsuspected, and that such damages, losses, costs or expenses as may have been sustained may give rise to additional damages, losses, costs or expenses in the future. The Parties acknowledge, however, that this Agreement has been negotiated and agreed upon in light of this situation, and that they hereby expressly waive any and all rights they may have under California Civil Code Section 1542. Section 1542 provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

5.4. For purposes of this release, individual members of TCAL and the NAACP or any branch thereof will not be deemed Plaintiffs or heirs, executors, administrators, successors or assigns of Plaintiffs to the extent they have individual claims, known or unknown, foreseen or unforeseen, suspected or unsuspected, relating to or arising out of their individual participation in the Section 8 Program to the extent such individual members are not any of the named individual Plaintiffs in the Action and further to the extent such claims seek damages. Plaintiffs warrant that they have made a reasonable affirmative inquiry and that they are unaware of any such potential claims as of the date of execution of this Agreement.

## **6. No Admission of Liability.**

Each of the Parties understands and hereby expressly agrees that this Agreement is not to be construed as any admission of liability whatsoever on the part of any Party, and that this Agreement is made solely for the purpose of avoiding the burden that would be imposed upon the Parties by continued litigation. The Parties expressly agree that this Agreement shall not be admissible in the Action for any purpose, other than for the Agreement's enforcement.

## **7. Successors and Agents.**

This Agreement shall inure to the benefit of and be binding upon the heirs, representatives, successors, and assigns of each of the Parties to it. This Agreement shall further inure to the benefit of and be binding upon every person or entity associated with each Party, including without limitation each Party's elected and appointed officials, to the extent permitted by law.

However, this Agreement shall not bind individual members of Plaintiffs' respective organizations in the context of any lawsuits against the City on their own behalf.

#### **8. Covenants Regarding Assignments.**

Each Party hereby represents and warrants to the other Parties that it has not heretofore assigned, transferred or hypothecated or purported to assign or transfer or hypothecate, or will in the future assign, or transfer or hypothecate to anyone any debt, judgment, claim, liability, demand, action or cause of action, or any interest therein, based upon or arising out of or pertaining to or concerning or connected with any of the matters, facts, events or circumstances addressed herein.

#### **9. Entire Agreement.**

This Agreement, including all exhibits and addenda incorporated by reference, represents the entire agreement and understanding between the Parties and supersedes any prior agreement, understanding, or negotiations (orally or in writing) respecting such subject.

#### **10. Captions and Pronouns.**

Any titles, captions, or subheadings contained in this Agreement are for convenience only and shall not be deemed part of the context of this Agreement or considered in any interpretation or construction of this Agreement. Whenever the masculine, feminine or neuter genders are used herein, as required by the context or particular circumstance, they shall include each of the other genders as appropriate. Whenever the singular or plural numbers are used, they shall be deemed to be the other as required. Wherever the present or past tense is utilized in this Agreement and the context or circumstances require another interpretation, the present shall include the past and future, the future shall include the present, and the past shall include the present.

#### **11. Consideration.**

The Parties hereby expressly acknowledge and agree that each and every term and condition of this Agreement is of the essence of this Agreement, constitutes a material part of the bargained for consideration without which this Agreement would not have been executed, and is a material part of the Agreement.

#### **12. Further Acts**

Each of the Parties agrees to execute any and all further documents that may be necessary or appropriate to make this Agreement legally binding upon each of the other Parties, their officers, directors, agents, employees, attorneys, representatives, subsidiaries, affiliates, predecessors, successors and assigns.

#### **13. Severability.**

In the event that any provision or any part of any provision of this Agreement shall be void or unenforceable for any reason whatsoever, then such provision shall be stricken and of no force

and effect. The remaining provisions of this Agreement, however, shall continue in full force and effect, and to the extent required, shall be modified to preserve their validity.

#### **14. Amendments, Modifications, and Waivers.**

Provisions of this Agreement may be amended, modified, or waived only by a writing signed by the Parties.

#### **15. Representations and Warranties.**

The Parties represent and warrant to and agree with each other as follows:

15.1. Each Party has received independent legal advice from attorneys of its choice with respect to the advisability of making this settlement and with respect to the advisability of executing this Agreement.

15.2. Except as is expressly stated in this Agreement, no Party has made any statement or representation to any other Party regarding any fact that has been relied upon by any other Party in entering into this Agreement. In connection with the execution of this Agreement or the making of the settlement provided for herein, no Party has relied upon any statement, representation or promise of any other Party or their attorney not expressly contained herein.

15.3. This Agreement is intended to be final and binding upon the Parties and is further intended to be effective as a full and final accord and satisfaction among them regardless of any claims of fraud, misrepresentation, concealment of fact, mistake of fact or law, duress or any other circumstances whatsoever. Each Party relies upon the finality of this Agreement as a material factor inducing that Party's execution of this Agreement.

15.4. The terms of this Agreement are contractual and are the result of negotiations among the Parties. Each Party has cooperated in the drafting and preparation of this Agreement. Accordingly, in any construction to be made of this Agreement, the same shall not be construed against any Party.

15.5. This Agreement has been carefully read by each of the Parties and the contents thereof are known and understood by each of the Parties. This agreement is signed by each Party executing it.

#### **16. Authority.**

The individual or individuals signing this Agreement on behalf of each Party has been validly authorized and directed to sign this Agreement on behalf of that Party and by signing in such capacity will bind that Party, and all individuals and entities on whose behalf he or she signs, to all of the terms of this Agreement.

#### **17. Notices.**

17.1. All notices identified in this Agreement shall be in writing and shall be transmitted by overnight mail.



17.2. All notices identified in this Agreement shall be sent to the following addresses:

(a)	To the City:	City of Lancaster 44933 N. Fern Avenue Lancaster, CA 93534 Attn: City Manager
	With copy to:	Allison E. Burns STRADLING YOCCA CARLSON & RAUTH 660 Newport Center Drive, Suite 1600 Newport Beach, CA 92660
(b)	To Plaintiffs:	Catherine Lhamon Director of Impact Litigation Public Counsel 610 South Ardmore Ave. Los Angeles, CA 90005

## **18. Counterparts.**

This Agreement may be executed in one or more counterparts, each of which when executed and delivered will be an original, and all of which when executed will constitute one and the same instrument.

## **19. Term of Agreement.**

Except as otherwise specified, the term of this Agreement is five years from the date of its execution.

## **20. Governing Law.**

This Agreement shall be in accordance with and be governed by the laws of the State of California.



#### **EXHIBIT A: Guidelines For Press Conference**

- The Parties' theme at the press conference and in any follow-up conversations they have together or individually with the press they make together or individually shall be that neither side was interested in conflict for the sake of conflict, and that Plaintiffs and the City have come together to identify and ensure that issues facing the community are effectively addressed for the benefit of the community.
- No Party shall refer to the resolution of the Action and its dismissal as a "settlement."
- The Parties may indicate that they have reached a "resolution" or "mutual understanding" and are planning to work together in the future.
- Plaintiffs may indicate that this mutual understanding includes Plaintiffs' ability to resume litigation if they believe it is necessary.
- The City may not state that the Plaintiffs' claims were meritless.
- Plaintiffs may not state that the City's defenses were meritless.
- The City may state that it believes it would have won at trial. Plaintiffs may state that they believe they would have won at trial. However, both parties will emphasize that continued conflict and a full-blown trial would have been counterproductive to the community and all interests involved.
- The City may frame the litigation as a legitimate misunderstanding of the City's actions and intentions. The City may not frame the litigation as a personal vendetta of the Plaintiffs, an effort to attract attention or support for the Plaintiffs, or a sham.
- The City may not assert that Plaintiffs have wasted City time or funds. Both Parties may indicate that the litigation was regrettable, but that it had a productive outcome.
- Plaintiffs may clarify that they were never in favor of letting crime or fraud go unaddressed. Plaintiffs may explain that the goals of this litigation were to promote fair housing and end negative stereotyping of Section 8 participants.