

AMENDED SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter “Agreement”) is entered into as of _____, 2016, by and between CITY OF PLACENTIA, a California charter law municipal corporation, (“Placentia”) and JOSEPH V. AGUIRRE, an individual (“Plaintiffs”). Placentia and Plaintiffs are collectively hereinafter referred to as the “Parties.”

WHEREAS, Placentia currently utilizes an at-large method of electing its five city council members (“Placentia’s Election System”); and,

WHEREAS, Plaintiffs allege that Placentia’s Election System violates the California Voting Rights Act (the “CVRA”), and are prepared to file a lawsuit seeking to enjoin Placentia from conducting further at-large elections (the “Litigation”); and,

WHEREAS, Placentia denies that Placentia’s Election System violates any provision of the CVRA or any other provision of law and asserts that Placentia’s Election System is legal in all respects and further denies any wrongdoing whatsoever in connection with the manner in which it has conducted its city council elections; and,

WHEREAS, On February 23, 2016, the Parties executed a Settlement Agreement relating to the CVRA claims and potential Litigation; and

WHEREAS, Since execution of the original Settlement Agreement, circumstances have changed and the parties desire to enter into an Amended Settlement Agreement (“Amended Agreement”); and

WHEREAS, On or before August 12, 2016, the Placentia City Council will place on its agenda for action a resolution to place a City sponsored initiative measure (“Charter Amendment Measure”) on the November 8, 2016 Statewide General Election Ballot asking the voters of Placentia whether the Placentia City Charter should be amended to change from an at-large method of election to a by-district method of election with the districts established by Ordinance for City Council elections following a public hearing; and,

WHEREAS, The Parties stipulate that if the Charter Amendment Measure to change the method of election does not pass based on the results of the November 2016 general election provided for herein, a second measure will be placed on the November 2018 Statewide General Election Ballot asking the voters of Placentia whether the Placentia City Charter should be amended to change from an at-large method of election to a by-district method of election with the districts established by Ordinance for City Council elections following a public hearing; and

WHEREAS, The Parties stipulate that if the Charter Measure to change the method of election does not pass based on the results of the November 2018 general election, Plaintiffs explicitly retain and do not waive their right to take legal action against Placentia under the CVRA, the Federal Voting Rights Act (“FVRA”) and any and all other state and federal voting rights laws; and,

WHEREAS, The Parties now desire to settle and resolve any and all claims arising out of the Litigation; and,

WHEREAS, The Parties warrant and represent that each is the sole owner and holder of all rights, interests, and claims asserted against the other, and that each has the full right, power, and authority to settle and compromise all claims asserted in the Litigation without the consent of any other person or entity; and,

WHEREAS, The Parties acknowledge the terms of this Agreement are contractual and not merely recitals, and the Parties further acknowledge that they are bound by this Agreement and their respective obligations as set forth herein.

NOW, THEREFORE, for value received and in consideration of the mutual covenants and conditions as set forth below, the Parties agree as follows:

1. **Charter Amendment Measure to be Placed on Ballot.** On or before August 12, 2016, the City Council of Placentia (“City Council”) will place on its agenda for action a resolution to place a Charter Amendment Measure on the Statewide General Election Ballot on November 8, 2016 asking whether the Placentia City Charter should be amended to change from an at-large method of election to a by-district method of election with the actual district lines being established by Ordinance and requiring by-district elections for the November 2018 City Council elections and thereafter. The City Council shall adopt the draft Charter Amendment Measure and related documents so that they are submitted to the Orange County Registrar of Voters before the deadline to place on the ballot for voters in the City of Placentia for the general election.

2. **Ballot Argument in Favor of Charter Amendment Measure.** On or before the statutory deadline for submitting arguments, the City Council shall authorize, pursuant to California Elections Code Section 9282(b), the City Council with up to five Members thereof as signatories to file jointly a written Argument in Favor of the Charter Amendment Measure. Should the City Council or any member(s) thereof determine to submit a written argument in favor of the Charter Amendment Measure, it shall be made available for public review prior to City Council action. The City Council agrees that it shall not file a ballot Argument against the Charter Amendment Measure pursuant to California Elections Code Section 9282(b). No City Council member shall sign a ballot argument or rebuttal opposing the Charter Amendment using that Member’s title as a City Council Member for identification purposes in the signature block. Other than as provided in this paragraph, nothing in this Amended Agreement limits the right of any City Council Member personally to campaign for or against the Ballot measure as permitted by law.

3. **Second Ballot Measure.** If the ballot measure does not pass at the November 2016 election, on or before August 1, 2018, the City Council of Placentia (“City Council”) will place on its agenda for action a resolution to place a second Charter Amendment Measure on the Statewide General Election Ballot at the November 2018 general election asking whether the Placentia City Charter should be amended to change from an at-large method of election to a by-district method of election with the actual district lines being established by Ordinance and requiring by-district elections for the November 2020 City Council elections and thereafter. The

City Council shall adopt the draft Charter Amendment Measure and related documents so that they are submitted to the Orange County Registrar of Voters before the deadline to place on the ballot for voters in the City of Placentia for the November 2018 general election.

4. **Electoral District Map.** The intent of the Parties is that the electoral map shall include one electoral district in which Latinos constitute a majority of the citizen voting age population according to the most recently available relevant estimates from the Census Bureau's American Community Survey, drawn in a manner consistent with applicable law. The boundaries of the electoral district map required by Paragraph 1 shall be drawn in accordance with the criteria set forth in the following order of priority:

- i. Districts shall contain reasonably equal total population;
- ii. Districts shall comply with applicable federal and state law, including, without limitation, the CVRA, the Constitution of the United States and of the State of California, and the federal Voting Rights Act of 1965, as amended, 52 U.S.C. §§ 10301, et seq.;
- iii. Districts shall be geographically contiguous and drawn to encourage geographic compactness; and
- iv. Districts shall be drawn with respect for geographic integrity of any neighborhood and any community of interest, including racial, ethnic, and language minorities, to the extent possible without violating the requirements of any of the preceding provisions.

5. **Process for Developing Electoral District Map.** If the Charter Amendment Measure is adopted by the voters, Placentia shall contract a demographer to design one or more electoral maps in accordance with the provisions in paragraph 4, above. The process for developing the electoral district map will include, at a minimum, two public hearings on a proposal to establish the district boundaries prior to a public hearing at which the City Council votes to approve the electoral district map. Placentia will maintain information on its website for the districting process where notices, agendas, and proposed maps, among other items, will be posted. Official required notices and agendas will be translated into all languages required under the federal Voting Rights Act.

6. **Final Approval and Adoption of District Boundaries.** If the Charter Amendment Measure passes in November 2016, then by May 1, 2018, Placentia shall approve and adopt one of the final district map plans from the draft map plans. If the Charter Amendment Measure passes in November 2018, then by May 1, 2020, Placentia shall approve and adopt of the final district map plans from the draft map plans. The City Council reserves the right to make modifications and adjustments to the map if the reason for doing so is to ensure full compliance with the requirements of either the CVRA or FVRA and related court decisions.

7. **Single-Member By-District Elections.** It is further agreed that in the November 2018 general city council member election or the November 2020 general city council member election, whichever is applicable, Placentia shall select at least two electoral districts to be filled.

Among the districts which will have council member seats filled in the first single-member by-district election, the district with the highest percentage of Latino citizen voting age population shall be designated to elect a council member.

8. **By-District Election Implementation.** Following Placentia's adoption of a final districting plan, as provided above, Placentia shall submit the district plans to the Orange County Elections Department to implement the new by-district election method in time for Placentia's November general election at which the first single-district by-district city council elections is to occur as provided above.

9. **Attorneys' Fees and Costs.** Placentia shall be solely responsible for all costs and expenses related to the creation and implementation of its by-district election plan. Placentia has previously paid to Plaintiffs' counsel the amount of \$20,000 in settlement of all costs, expenses and fees associated with the litigation prepared in this matter and avoided by the Settlement Agreement and the Amended Agreement and any activities associated with the Settlement Agreement and Amended Agreement, except for any costs and/or attorneys' fees incurred in enforcing this Amended Agreement, if any.

10. **Release.** Upon taking the actions described herein, and unless expressly reserved in this Amended Agreement, the Parties hereby release and forever discharge each other and each other's respective directors, officers, employees, attorneys, successors and assigns, from any and all claims, demands, suits, rights, actions, causes of action, expenses, interest, costs, damages, attorneys' fees, liability or obligation of any kind, whenever or however derived, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, in any way relating to or connected with the proposed Litigation.

11. **Amendments to be in Writing.** No supplement, modification, waiver or amendment with respect to this Agreement shall be binding unless executed in writing and signed by the party against whom enforcement of such supplement, modification, waiver or amendment is sought. This Amended Agreement is intended to supersede and replace the Settlement Agreement dated February 23, 2016.

12. **Integrated Agreement.** All agreements, covenants and representations, oral or written, of the Parties concerning the subject matter of this Amended Agreement are contained herein. No other agreements, covenants or representations, oral or written, have been made by any party to any other party concerning the subject matter of this Amended Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations and covenants concerning the subject matter of this Amended Agreement are merged herein. This is a fully integrated document.

13. **Further Actions.** The Parties hereto agree to execute all further and additional documents, and undertake such further acts, as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Amended Agreement, and the Parties further agree to cooperate with each other to effectuate the intent of this Amended Agreement.

14. **Prior Review by Legal Counsel.** The Parties acknowledge the opportunity that this Amended Agreement be reviewed by their respective attorneys and that it has been approved as to form. They further agree that this Amended Agreement is to be construed and interpreted without regard to the identity of the party drafting this Amended Agreement.

15. **Governing Law.** This Amended Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of California applicable to such instruments, persons, transactions and subject matter which have legal contexts and relationship solely within the State of California.

16. **Severability.** If any term or provision of this Amended Agreement, or the application thereof, to any persons or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term or provision of this Amended Agreement shall be valid and be enforced to the fullest extent permitted by law.

17. **Multiple Originals.** This Amended Agreement may be executed in multiple counterparts, each of which so fully executed counterpart shall be deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other party to this Amended Agreement is in the physical possession of the party seeking enforcement thereof.

18. **Authority to Execute.** Each party hereto expressly warrants and represents that he/she/they has/have the authority to execute this Amended Agreement on behalf of his/her/their corporation, partnership, business entity, or governmental entity and warrants and represents that he/she/they has/have the authority to bind his/her/their entity to the performance of its obligations hereunder.

19. **Enforcement—Attorneys’ Fees.** Should any of the Parties reasonably retain counsel for the purpose of enforcing or preventing the breach of any provision of this Amended Agreement, including but not limited to instituting any action or proceeding to enforce any provision of this Amended Agreement, the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including but not limited to reasonable attorneys’ fees, costs and expenses.

IN WITNESS WHEREOF this Amended Settlement Agreement has been executed by the authorized representatives of the parties hereto.

Dated: _____

CITY OF PLACENTIA

By: Jeremy B. Yamaguchi
Mayor

APPROVED AS TO FORM:

CHRISTIAN L. BETTENHAUSEN Date
City Attorney

PLAINTIFF

Dated: _____

By: JOSEPH V. AGUIRRE

APPROVED AS TO FORM:

DENISE HULETT Date
MATTHEW J. BARRAGAN
MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND
Attorneys for Plaintiff