

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into as of _____, 2024 (“Effective Date”) by and between the **CITY OF LANCASTER**, a California municipal corporation and charter city (“**Lancaster**”), and the **CITY OF PALMDALE**, a California municipal corporation and charter city (“**Palmdale**”) (Lancaster and Palmdale are sometimes singularly referred to as a “**City**” and collectively referred to as the “**Cities**”).

RECITALS

A. In the past, the Cities have competed to attract new business and investment to their respective jurisdiction by offering financial incentives such as sales tax rebates, reduced land costs, and tax credits. This competition risks depleting resources that each City needs in order to perform and/or provide important public services.

B. Vehicle dealerships are a major source of sales tax revenue; consequently, cities often go to great lengths, including offering sales tax rebates and other incentives, to attract and retain vehicle dealerships. In an effort to limit this practice, section 53084 of the California Government Code (“**Section 53084**”) prohibits a city from providing any form of financial assistance to a vehicle dealer, or a business entity that sells or leases land to a vehicle dealer, that is relocating from the territorial jurisdiction of another city to the offering city but within the same market area.

C. The Cities desire to enter into this MOU to clarify and expand upon the prohibition set forth in Section 53084 as it relates to the Cities.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Cities hereby agree as follows:

1. Incorporation of Recitals. The foregoing recitals are incorporated in and constitute a substantive part of this MOU.

2. Term. The term of this MOU (“**Term**”) shall commence upon the Effective Date and, unless terminated earlier as provided in this MOU, terminate on _____, 2079, whichever is later. The Cities may mutually agree in writing to extend the Term of this MOU.

3. Applicability and Relationship to Existing Law. The Cities acknowledge and agree that each is subject to Section 53084. This MOU shall not be interpreted or applied in a way that results in it being preempted, either in whole or in part, by Section 53084. If and to the extent there is any difference, the more restrictive of Section 53084 or this MOU shall control.

4. Remedy for Violation of Section 53084. If either City violates the provisions of Section 53084 as to a vehicle dealership operating in the other City, the violating City agrees to and shall pay to the other City all sales tax revenue that is generated by the vehicle dealership and actually received by the violating City. Each City covenants and agrees that the payment of sales tax revenue as provided in this section 4 shall be and is the sole and exclusive remedy for the other City’s violation

of Section 53084. To the maximum extent permitted by law, each City waives the right to seek and/or obtain any other form of relief against the other City for a violation (or alleged violation) of Section 53084, including, without limitation, declaratory relief, injunctive relief, and/or money damages. Each City further covenants and agrees that it will not commence, maintain, and/or prosecute any action against the other City based a violation (or alleged violation) of Section 53084, except an action to recover sale tax revenue pursuant to this section 4.

5. Application of Section 53084 to Existing Vehicle Dealerships and Brands. The Cities mutually agree that the term “vehicle dealer” as defined in Section 53084(b)(6) of the California Government Code shall be broadened to also mean and include a particular vehicle brand, regardless of the dealership’s owner. The Cities intend by this section 5 to make the provisions of Section 53084 applicable to every vehicle dealer (as defined in section 53084(b)(6) of the California Government Code) *and* every vehicle dealership brand currently operating in each City.

6. Future Vehicle Dealerships and Brands. The Cities mutually agree to meet, confer, and negotiate in good faith prior to offering or granting any financial assistance (as defined in section 53084(b)(3) of the California Government Code) to a vehicle dealer (as defined in section 53084(b)(6) of the California Government Code and broadened by section 5 of this MOU).

7. Relocations Without Incentives. The Cities acknowledge that the terms of Section 53084 do not apply where a vehicle dealer relocates from one City to another without Financial Assistance (as defined in Section 53084). Nonetheless, the Cities mutually agree that in the event a vehicle dealer as defined in Section 53084(b)(6) relocates from one City to the other, the City to which the vehicle dealer relocates agrees to and shall pay to the other City all sales tax revenue that is generated by the vehicle dealer and actually received by the violating City for a period of fifty-five (55) years.

8. Default. Either City may terminate this MOU if the other City is in default with the terms and conditions herein. Notwithstanding any provision to the contrary, a City shall not be in default and the MOU shall not terminate if: (a) the City cures the default within the thirty (30) days after notice is given, or (b) the default cannot reasonably be cured within the thirty (30) days after notice is given, but the City reasonably commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default to completion.

9. Designated Representatives. Each City’s legislative body designates its City Manager as its sole representative with respect to the matters set forth in this MOU, who, until further notice to the other City, shall have the full authority and responsibility to act on behalf of the City as required in this MOU.

10. General Provisions.

(a) No Predetermination of Discretion. The Cities agree and acknowledge that nothing in this MOU in any respect does or shall be construed to affect or prejudice the exercise of either City’s discretion concerning any matter, including, without limitation, any matter related to this MOU. By its execution of this MOU, neither City is committing itself to nor agreeing to undertake any act or activities requiring the subsequent independent exercise of discretion by any legislative body, board, commission, agency, or department.

(b) Address for Notices. Any notices pursuant to this MOU shall be in writing and sent by (a) Federal Express (or other established express delivery services which maintains delivery records); or (b) by hand delivery; or (c) by certified or registered USPS mail postage prepaid, return receipt requested, to the following addresses:

To Lancaster: City of Lancaster
44933 Fern Avenue
Lancaster, California 93534
Attn: City Manager

To Palmdale: City of Palmdale
38300 Sierra Highway
Palmdale, CA 93550
Attn: City Manager

(c) Entire Agreement. This MOU constitutes the entire understanding and agreement of the Cities, integrates all the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Cities or their predecessors in interest with respect to all or any part of the subject matter hereof.

(d) Time of Essence. Time is of the essence of every portion of this MOU in which time is a material part.

(e) Governing Law. This MOU shall be construed in accordance with the laws of the State of California.

(f) Waiver. Any waiver by either City or any breach of any one or more of the covenants, terms and conditions contained herein shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, term or condition, nor shall failure on the part of either City to require exact, full and complete compliance with any of the covenants, terms or condition be construed as in any manner changing the terms of this MOU or stopping either City from enforcing the full provisions hereof. No option, right, power, remedy, or privilege of either City shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options and remedies given either City by this MOU shall be cumulative.

(g) Interpretation. Unless the context of this MOU clearly requires otherwise: (i) the plural and singular numbers shall be deemed to include the other; (ii) the masculine, feminine and neuter genders shall be deemed to include the others; (iii) "or" is not exclusive; and (iv) "includes" and "including" are not limiting.

(h) Construction of Terms. This MOU is jointly prepared by the Cities. Therefore, this MOU shall not be construed against any City on the basis such City drafted this MOU or any provision within it.

(i) Severability. If any provision of this MOU is held by a court of competent jurisdiction to be invalid, void, or unenforceable, then upon written agreement of the Cities' representatives, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

(j) Force Majeure. The respective duties and obligations of the Cities pursuant to this MOU shall be suspended while and so long as performance is prevented or impeded by strikes, disturbances, riots, fire, severe weather, government action, war acts, acts of God, or any other cause similar or dissimilar to the foregoing which are beyond the control of the City from whom the affected performance was due.

(k) Counterparts. This MOU may be executed in any number of counterparts, each of which when so executed shall be deemed to be original, but altogether shall constitute but one and the same agreement, and it is also understood and agreed that separate counterparts of this MOU may be separately executed by the Cities, all with the same full force and effect as though the same counterpart has been executed simultaneously by both Cities.

(l) Warranty of Authority. Each individual executing this MOU hereby personally covenants, guarantees, and warrants that he/she has the power and authority to obligate his/her respective City to the terms and conditions of this MOU.

[Signatures begin on next page.]

IN WITNESS WHEREOF, the undersigned have executed this MOU as of the day and year first above written.

LANCASTER:

CITY OF LANCASTER,

a California municipal corporation and charter city

By: _____
Name: Jason Caudle
Its: City Manager

ATTEST:

By: _____
Andrea Alexander, City Clerk

APPROVED AS TO FORM:

By: _____
Allison E. Burns, City Attorney

PALMDALE:

CITY OF PALMDALE,

a California municipal corporation and charter city

By: _____
Name: Ronda Perez
Its: City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney