

## REIMBURSEMENT AGREEMENT

**THIS REIMBURSEMENT AGREEMENT** (this “Agreement”) is made and entered into between the **CITY OF LANCASTER**, a municipal corporation and charter city (the “City”), and **ANTELOPE VALLEY CONSERVANCY**, a California public benefit corporation (“AVC”), sometimes individually referred to as a “Party” and collectively as the “Parties.”

### R E C I T A L S

WHEREAS, the City has committed to mitigate against environmental impacts to the Amargosa Creek caused by development-related activity as described in California Department of Fish and Game Agreement Regarding Proposed Stream or Lake Alteration 1600-2007-0398-R5 pursuant to Section 1602, by restoration/creation of 19.98 acres desert wash and desert riparian scrub and 0.06 acres wetlands. To that end, the City previously retained H.T. Harvey and Associates to prepare and begin implementation of the City of Lancaster Amargosa Creek Riparian and Wetland Mitigation Assessment (the “Existing Plan”).

WHEREAS, since its original preparation and approval, the City has determined that the Existing Plan is not feasible and that a new environmental mitigation plan should be developed in order to replace the Existing Plan.

WHEREAS, AVC is a California public benefit corporation, qualified under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, with the mission of preserving and stewarding habitat lands for the public benefit. AVC operates a Mitigation Program, implements preservation and restoration of habitat lands, is authorized by the California Department of Fish and Wildlife (CDFW) under Section 65965 since 2008, and is authorized to hold conservation easements pursuant to Civil Code Section 815.3.

WHEREAS, in accordance with AVC’s Mitigation Program, the City submitted to AVC an application for Mitigation Evaluation for creating a replacement for the City’s Existing Plan. In response, AVC provided an Offer of Mitigation (the “Offer”) dated February 6, 2012, and then extended the expiration date thereof to August 30, 2012. The Offer outlined AVC’s proposed restoration strategies and seven-step schedule, to start with developing a Revised Mitigation Plan (“Revised Plan”) (Step 1), and garnering CDFW approval (Step 2).

WHEREAS, subject to the terms and conditions set forth in this Agreement, the City has agreed to reimburse AVC for the costs of an Extension of the Offer to the current date as well as review of the City’s proposed Reimbursement Agreement, and the City hereby agrees to reimburse AVC for production of a Revised Mitigation Plan and the work necessary to ensure that the Revised Plan meets with CDFW approval (Steps 1 and 2 of the Offer) (collectively, the “Project”).

**NOW, THEREFORE**, in consideration of the promises and mutual covenants contained herein, the sufficiency of which are acknowledged by both Parties, the Parties agree as follows:

**1. Responsibilities of City.** City agrees to pay to AVC within thirty (30) days of receipt of an invoice from AVC, for fees charged by and costs incurred by AVC in the Project oversight and coordination, including but not limited to site visits, communication with

consultants, City staff, and the California Department of Fish and Wildlife (CDFW), document review and preparation, and other related activities. The total amount to be paid by the City pursuant to this Section 1 shall not exceed thirty-six thousand six hundred thirty-five dollars (\$36,635.00). The City agrees to allow AVC representatives access to the Project site without delay, notice, or interference during the term of the Project, to inspect, photograph, study and monitor soils and wildlife, and other activities relevant to develop the Revised Plan. The City agrees to provide information about the Project site necessary for development of the Revised Plan.

**2. Responsibilities of AVC.** AVC shall be responsible for preparing (or causing to be prepared) an environmental mitigation plan that is sufficient in order to replace the Existing Plan and obtaining approval from the CDFW for the Revised Plan. AVC shall provide the City with the final report produced by AVC for the environmental mitigation plan, presented to CDFW, as well as any subsequent revisions thereof. AVC shall notify the City of, and allow the City to participate in, meetings with CDFW personnel to discuss the Revised Plan.

**3. Indemnification.** Each Party agrees to indemnify, defend and hold the other (“Indemnitees”) harmless from and against any losses, claims, demands, actions, or causes of action, of any nature whatsoever, arising out of or in any way connected with this Agreement including reasonable attorneys’ fees, incurred in defense of such claim. The Parties shall ensure customary and appropriate insurance is in effect for their organizations, lands, and activities involved in this project, and shall provide evidence thereof upon request. The Parties shall not be responsible for damage by a natural catastrophe, act of God, fire, flood, vandalism, geomorphic alterations, climate changes, or acts of third parties beyond the Party’s control, unless caused by the Party, or caused by any prudent action taken by any party under emergency conditions to prevent, abate, or mitigate significant injury to the project lands resulting from such causes. The responsibility for and satisfaction of any jurisdictional permit(s) and agreement(s) entered into by the City, its successors and assigns with any government agency or other third party entity remain the City’s sole and separate responsibility.

**4. Officers and Employees.** No officer or employee of the City or AVC shall be personally liable to the other Party in the event of any default or breach or for any amount which may become due for breach of any obligation of the terms of this Agreement. The liability for any breach or default of this Agreement shall be limited to the contract value stated in Section 1 above.

**5. Notice.** Any notice, demand, request, consent, approval, or communication either Party desires or is required to give to the other Party or any person shall be in writing and either served personally or sent by prepaid, first-class mail to the address set forth below. Notice shall be deemed communicated forty-eight (48) hours from the time of mailing if mailed as provided in this Section.

If to the City:                                   City of Lancaster  
44933 N. Fern Avenue  
Lancaster, CA 93534  
Attn: City Manager

If to AVC: Antelope Valley Conservancy  
P.O. Box 3133  
Quartz Hill, CA 93586-0133  
Attn: President

**6. Assignment of Agreement.** The Parties hereto may not assign their obligations hereunder to any assignee.

**7. General Provisions.**

(a) Except as otherwise provided herein, the terms, conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns, and successors of the Parties hereto.

(b) The Parties to this Agreement do not rely upon any warranty or representation not contained in this Agreement.

(c) This Agreement shall be governed by and interpreted with respect to the laws of the State of California.

(d) Any failure or delay by any Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any rights or remedies provided for herein.

(e) This Agreement may be amended at any time by the mutual consent of the Parties by an instrument in writing signed by the Parties.

**8. Severability.** In the event that any provision or provisions of this Agreement are held unenforceable, all provisions not so held shall remain in full force and effect.

**9. Authority of Signatories.** The persons executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by so executing this Agreement the Parties are formally bound to the provisions of this Agreement.

[Signatures begin on next page.]

**IN WITNESS WHEREOF**, the Parties hereto have executed this Reimbursement Agreement on the date written below.

**ANTELOPE VALLEY CONSERVANCY**,  
a California public benefit corporation

**CITY OF LANCASTER**, a California  
municipal corporation and charter city

Approved:

Approved:

By: \_\_\_\_\_  
Name: Rebecca Jones  
Title: President

By: \_\_\_\_\_  
Name: Mark V. Bozigian  
Title: City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved by Department Head:

By: \_\_\_\_\_  
Name: Robert C. Neal  
Title: Director of Public Works

**ATTEST:** \_\_\_\_\_  
Geri K. Bryan, CMC, City Clerk

Approved as to Form:

By: \_\_\_\_\_  
Name: David R. McEwen  
Title: City Attorney