

REIMBURSEMENT AGREEMENT
(Construction of Master Planned Drainage Facilities)

This **REIMBURSEMENT AGREEMENT** (this "Agreement") is entered into this _____ day of _____, 20__ by and between the **CITY OF LANCASTER**, a California charter city and municipal corporation (the "City") and _____, a _____ (the "Developer").

RECITALS

A. The purpose of this Agreement is to set forth the terms and conditions upon which the Developer will construct certain Master Planned Drainage Facilities (the "Drainage Facilities") for the benefit of the City and other property owners, and the terms and conditions upon which the City will reimburse the Developer for such construction; and

B. City has adopted a policy, effective as of August 10, 2011, (the "Reimbursement Policy") that governs reimbursement to developers for the construction of Drainage Facilities; and

C. Developer's Tentative Map for Tract No. _____ has been conditioned by the City to construct the Drainage Facilities.

NOW, THEREFORE, in consideration of the above recitals and other good and valuable consideration, the parties hereby agree as set forth below.

1. Incorporation of Recitals and Reimbursement Policy. The foregoing Recitals are hereby incorporated into and are a fully operative and effective part of this Agreement. The Reimbursement Policy, as may be amended from time to time, is hereby incorporated into and is a fully operative and effective part of this Agreement. In the event of a conflict between the terms and conditions of the Reimbursement Policy and this Agreement, the terms and conditions of the Reimbursement Policy shall control.

2. Developer's Obligation to Construct the Drainage Facilities. Developer shall construct all segments and portions of the Drainage Facilities located within the Master Drainage Benefit Area ("Area"), which Area is the watershed defined as follows:
_____.

3. Issuance of Drainage Contract. Developer, at its discretion, shall select all companies necessary to perform direct and indirect constructions services and determine the amounts payable for these services. Developer, at its discretion, shall also select all companies to bid on the construction of the Drainage Facilities, determine which bids qualify and select the lowest, qualified bid. Developer shall present the bid it has selected to the City for review and approval. The scope of work to be constructed and bid on shall be the work shown on the Grading Plan (the "Plan") prepared by _____, which has been approved by the City and is attached hereto as Exhibit "B" and incorporated herein by reference.

4. City's Reimbursement Obligation. The City shall reimburse the Developer the actual direct and indirect costs of constructing the Drainage Facilities (which shall include, but shall not necessarily be limited to, design engineering, utility relocation, surveying, and geotechnical services), subject to the terms and conditions set forth in this Agreement and in the City's Reimbursement Policy.

4.1 Amount of Reimbursement. The Developer and City currently estimate the cost of constructing the Drainage Facilities to be _____ Dollars (\$_____). Upon completing construction of the Drainage Facilities, the Developer shall submit to the City a written request for reimbursement, which request shall be accompanied by an itemized list of costs for which the Developer seeks reimbursement. The written request for reimbursement submitted by the Developer pursuant to this Section shall be accompanied by supporting documentary evidence (which may include, but is not necessarily limited to, receipts, invoices and/or other similar documents). The City shall review the written request for reimbursement submitted by the Developer and shall, in the City's sole and absolute discretion, either approve (in whole or in part) or deny the request.

4.2 Reimbursement Payments. The City shall make reimbursement payments to the Developer as provided in this Section and as provided in the City's Reimbursement Policy; provided, however, that the City shall have no obligation to make any reimbursement payment until and unless the Developer submits to the City a written request for reimbursement and the City has approved such written request and has determined the actual amount of reimbursement.

4.2.1 Initial Reimbursement Payments - Refund of Developer's Drainage Impact Fees. The initial source of payment by the City to the Developer shall be a refund of the actual Drainage Impact Fee paid by the Developer and collected by the City for any lot located within Tract No. _____. Reimbursement payments pursuant to this Section 4.2.1 shall be made, at the City's sole discretion, on a quarterly, semi-annual or annual basis. Under no circumstances shall the aggregate amount of reimbursement payments made to the Developer pursuant to this Section 4.2.1 exceed the amount of reimbursement as determined by the City pursuant to Section 4.1 of this Agreement.

4.2.2 Subsequent Reimbursement Payments – Pro Rata Share of Other Drainage Impact Fees. If and to the extent the aggregate reimbursement payments made by the City to the Developer pursuant to Section 4.2.1 are less than the amount of reimbursement as determined by the City pursuant to Section 4.1 of this Agreement, the City shall make payments to the Developer pursuant to this Section. The City shall not be obligated to make and the Developer shall not be entitled to receive any payment pursuant to this Section until and unless a building permit has been issued for each and every lot within Tract No. _____ and all applicable Drainage Impact Fees have been paid.

Subject to the foregoing, and to the extent the aggregate reimbursement payments made by the City to the Developer pursuant to Section 4.2.1 are less than the amount of reimbursement as determined by the City pursuant to Section 4.1 of this Agreement, the City shall make payments to the Developer as set forth in the City's Reimbursement Guidelines, which generally provides that the City shall pay to the Developer a pro rata share of twenty percent (20%) of all

Drainage Impact Fees paid to the City in a fiscal year. Pursuant to the Reimbursement Guidelines, the Developer's pro rata share shall be calculated by dividing the balance owed to the Developer by the total amount owed by the City to other developers that have constructed drainage facilities and are participating in the City's Reimbursement Policy. The City shall make the reimbursement payments provided in this Section within ninety (90) days of the last day of each fiscal year; provided, however, that notwithstanding any other provision of this Agreement, the City's obligation to make the reimbursement payments provided in this Section shall expire and terminate on the tenth (10th) anniversary of the date of this Agreement.

5. Assignment by Developer. Except as provided below, the Developer shall be entitled to assign its rights under this Agreement with the City's written consent, which consent shall not be unreasonably withheld. City hereby consents to the assignment of Developer's rights hereunder (a) to a general or limited partnership to be formed, or a limited liability corporation, that is created to handle this construction project, or (b) to an entity that has purchased Developer's Tract No. _____.

6. Conformity with State Labor and Work Safety Laws. The Developer shall carry on the design and construction of the improvements in a timely manner and in conformity with all applicable laws, including but not limited to all applicable state labor and work safety laws and regulations, including the provisions of Labor Code Sections 1770, et seq. relating to prevailing wages, to the extent applicable to the improvements, as to which the City makes no representations. The Developer agrees to hold the City harmless and to indemnify and defend the City from all claims arising under the provisions of Labor Code §§ 1720, et. seq., including, but not limited to the provisions of Labor Code Section 1726 and 1781.

7. Entire Agreement. This Agreement contains the entire agreement and understanding concerning reimbursement for the Developer's construction of the Drainage Facilities, and this Agreement supersedes and replaces all prior negotiations and proposed agreements, written or oral, except as they are included in this Agreement. The Developer and City acknowledge that neither the other party nor its agents nor attorneys have made any promise, representation, or warranty whatsoever, express or implied, not contained herein to induce the execution of this Agreement and acknowledge that this Agreement has not been executed in reliance upon any promise, representation, or warranty not contained herein.

8. Amendment must be in Writing. This Agreement may not be modified except by a writing signed by the Developer and City.

9. Venue for Resolving Disputes. Any arbitration or litigation arising out of this Agreement shall be conducted only in the County of Los Angeles, State of California.

10. Interpretation Guides. In interpreting this Agreement, it shall be deemed to have been prepared by the Parties jointly and no ambiguity shall be resolved against either Party on the premise that it or its attorneys was responsible for drafting this Agreement or any provision hereof. The captions or headings set forth in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent or any Sections, Subsections, or other provisions of this Agreement. Any reference in the Agreement to a Section or to a Subsection, unless specified otherwise, shall be a reference to a Section or Subsection of this Agreement.

11. Due Authority of Signatures. Each individual signing this Agreement warrants and represents that he or she has been authorized by appropriate action of the Party which he or she represents to enter into this Agreement on behalf of the Party.

12. Notices. All notices, demands, and communications between the Developer and the City shall be duly addressed as indicated below and given by personal delivery, registered or certified mail (postage prepaid and return receipt requested), Federal Express or other reliable private express delivery, or by facsimile transmission. Such notices, demands, or communications shall be deemed received (i) upon deliver if personally served or set by facsimile, or (ii) after three business days if given or sent by any other approved manner specified above. Any Party to this Agreement may change its below-specified name, address, facsimile number, or person to whom attention should be directed by giving notice as specified in this Section. A copy of any notice, demand, or communication sent to City pursuant to this Agreement shall be sent to the City's legal counsel. Notices, demands, and communications shall be duly addressed and sent as follows:

To City:

City of Lancaster
Attn: City Manager
44933 N. Fern Avenue
Lancaster CA 93534

To City's Legal Counsel:

David R. McEwen, Esq.
Stradling, Yocca, Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660

To Developer:

13. California Law Governs. This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California.

14. Counterparts. This Agreement may be signed in one or more counterparts; which, taken together, shall constitute one original document.

15. Exhibits. All Exhibits attached hereto or referenced herein are incorporated into this Agreement.

16. Effective Date. This Agreement shall be effective as of the date noted on page one (1) of this Agreement.

IN WITNESS WHEREOF, the undersigned execute this Agreement on behalf of the Parties.

CITY:

CITY OF LANCASTER, a California charter city and municipal corporation

By: _____
Name: _____
Its: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DEVELOPER:

_____, a

By: _____
Name: _____
Its: _____