

CONSTRUCTION REIMBURSEMENT AGREEMENT

This CONSTRUCTION REIMBURSEMENT AGREEMENT (“**Agreement**”) is entered into this ____ day of April, 2025 (“**Effective Date**”), by and between the CITY OF FONTANA, a California municipal corporation (“**City**”), and HDO4, LLC, a New Mexico limited liability company (and its successors and assigns) (“**Developer**”). The City and the Developer are sometimes hereinafter referred to individually as “**Party**” and collectively as “**Parties**”.

RECITALS

A. The Developer is constructing a mixed use residential-commercial project (“**Project**”) within a portion of that area of the City of Fontana designated as the “**Ventana Specific Plan**” (as it may be amended from time to time, the “**Specific Plan**”). A site map of the Specific Plan area is attached as Exhibit A.

B. The Developer is obligated pursuant to the various regulatory requirements associated with the approval of the Specific Plan and/or other Project entitlements (the “**Conditions of Approval**”) to construct certain public circulation and signal improvements (“**Public Improvements**”) which are to be dedicated to City that will both (i) benefit the Project by providing a more attractive, safe, and appropriate method of ingress and egress to the Project, and (ii) benefit the City by improving public safety and circulation. For purposes of the administration and enforcement of this Agreement, the Public Improvements are segregated into two (2) discrete components, each of which will be referred to in this Agreement as a “**Component**.” Each Component is described on the improvement plans attached as Exhibit B. The Estimated Construction Costs (defined in Section 3.2) of each Component is set forth on Exhibit C.

C. Prior to commencing construction of the Public Improvements, the Parties will enter into the City’s standard land improvement agreement (“**Improvement Agreement**”), which will set forth the terms and conditions governing the construction of the Public Improvements. A separate Improvement Agreement may be used for each Component. The Improvement Agreement will govern the Parties’ rights and obligations concerning the design, development, construction, and maintenance of the Public Improvements. This Agreement does not modify, extend, release, or waive any term or condition of the Improvement Agreement.

D. The City and the Developer have agreed that the City will reimburse the Developer for certain of the Public Improvements’ “**Construction Costs**” (defined below), subject to the terms and conditions of this Agreement.

AGREEMENT

The Developer and the City agree as follows:

1. Incorporation of Recitals. The Recitals above are a substantive part of this Agreement.

2. Construction of Public Improvements.

2.1. Compliance with Improvement Agreement. The Developer will construct the Public Improvements in accordance with the Improvement Agreement(s) at its own cost and expense, subject to reimbursement in accordance with this Agreement.

2.2. Plans. To the extent that it has not already done so, the Developer shall cause plans to be prepared for the Public Improvements (the “**Plans**”). The Developer shall obtain the City’s written approval of the Plans, which shall conform to the Improvement Agreement(s), the Conditions of Approval, and all applicable ordinances and regulations of the City. Copies of all Plans shall be provided by the Developer to the City upon request therefor, and, in any event, a written assignment of the Plans shall be provided to the City prior to its acceptance of the Public Improvements, and as-built drawings satisfactory to the City Engineer shall be provided to the City within twenty (20) days of such acceptance.

2.3. Responsibility for Construction. All Public Improvements for which reimbursement occurs pursuant to the terms hereof shall be constructed at the direction of the Developer in accordance with the Plans and the requirements of Section 2.7 hereof, unless specifically provided for otherwise herein or waived in writing by the City. The Developer shall employ at all times adequate staff or consultants with the requisite experience necessary to bid, administer and coordinate all work related to the design, engineering, acquisition, construction, inspection and installation of the Public Improvements to be dedicated to the City.

2.4. Permit Fees. In as much as the City is reimbursing Developer for Construction Costs associated with the Public Improvements, no construction permit fees for the construction of traffic signals will be charged to Developer for building permits issued in connection with the Public Improvements. Accordingly, Exhibit C (Estimated Construction Costs) does not include amounts for construction permit fees.

2.5. No Release of Obligation. The Developer shall not be relieved of its obligation to cause the construction of any of the Public Improvements (or any Component thereof) required by the Conditions of Approval and to convey each of such Public Improvements to the City or other applicable public entity in the event it is not eligible for reimbursement pursuant to the terms hereof.

2.6. Relationship to Public Works. This Agreement is for the reimbursement by the City of certain of the Public Improvements required to be dedicated to it by Developer pursuant to the Conditions of Approval and is not intended to be a public works contract.

2.7. Bid Process. Unless waived by the City as provided below, the Developer shall competitively bid and cause all contracts for construction of the Public Improvements that are subject to reimbursement hereunder to be awarded pursuant to the process set forth below. The Developer shall establish a list of written criteria acceptable to the City (including experience, ability to perform on schedule, and financial ability) to determine qualified contractors for any construction contract. Formal bids need be requested from only those entities on the list of qualified contractors determined by such criteria; and if no such list is established for any Component of the Public Improvements, the Developer shall use commercially reasonable efforts

to nonetheless obtain at least three bids for such Component. All bids shall be submitted in sealed envelopes to the Developer prior to the time and date prescribed for bid opening, which date shall be not less than ten (10) working days from the request for bids. The City Engineer, or his or her designee, may be present at all bid openings. The Developer shall provide the City a tabulation of bid results. Each bid shall be awarded to the lowest responsible and responsive bidder, as determined by the Developer. The contractor to whom a construction contract is awarded shall be licensed by the State to perform the contract work, shall not be listed on the California Division of Labor Standards Enforcement Debarment List, and shall be required to pay not less than the prevailing rates of wages pursuant to Labor Code Sections 1770, 1773 and 1773.1. A current copy of applicable wage rates shall be on file in the Office of the City Engineer, as required by Labor Code Section 1773.2. Upon the Developer's written request, the City Engineer may for good cause, as determined by the City Engineer in his or her sole but reasonable discretion, waive the bidding requirements (but not the prevailing wage requirements) of this Section 2.7. Each waiver request must include a reasonably detailed justification for the request. The City Engineer will approve or disapprove each request within ten (10) working days following receipt.

2.8. Periodic Meetings. From time to time at the request of the City Engineer, the Developer shall meet and confer with City staff, consultants, and contractors regarding matters arising hereunder with respect to the Public Improvements and the progress in constructing and acquiring the same, and as to any other matter related to the Public Improvements or this Agreement. The City Engineer (or designee) shall have the right to be present at such meetings and to meet and confer with individual contractors if deemed advisable by the City Engineer to resolve disputes and/or ensure the proper completion of the Public Improvements.

3. Reimbursement.

3.1. Construction Costs. As used in this Agreement, the term "**Construction Costs**" means all reasonable hard and soft costs incurred by the Developer in connection with the design, development, and construction of the Public Improvements, including, without implied limitation, costs of: design and engineering; testing and inspection; permits, bonds, and insurance; labor, material, and equipment; general conditions; field supervision; and administrative overhead not exceeding ten percent (10%) of total Construction Costs.

3.2. Estimated Construction Costs; Reimbursement Cap. Exhibit C to this Agreement sets forth the estimated Construction Costs of each Component of the Public Improvements (as to each Component, the "**Estimated Construction Costs**"). The maximum amount that the City will reimburse the Developer for each Component pursuant to this Agreement (as to each Component, the "**Reimbursement Cap**") shall not exceed either (a) the Verified Construction Costs (defined in Section 3.4.1) of the Component, or (b) an amount equal to one hundred ten percent (110%) of the Estimated Construction Costs of the Component; provided, however, upon the Developer's request, duly approved by the City Council, the Reimbursement Cap for each Component may be increased.

3.3. Change Orders. The Reimbursement Cap has been established at an amount that exceeds the Estimated Construction Costs by 10%. This occurred in recognition of both the fact the Estimated Construction Costs an estimate, and the fact unforeseen circumstances may result in the need for change orders. Accordingly, the City shall reimburse Developer for Verified

Construction Costs for a Component that exceed the Estimated Construction Costs, provided they do not exceed the Reimbursement Cap. Should Verified Construction Costs exceed Estimated Construction Costs as a result of a change order, reimbursement is conditioned upon (i) the City having been provided with a reasonable explanation and documentation supporting the change order, and (ii) the City Engineer having approved the change order, in his or her sole but reasonable discretion, prior to the time the work attributable to the change order is constructed.

3.4. Reconciliation.

3.4.1. Reimbursement Request. Upon completion and the City's acceptance of a Component of Public Improvements in accord with the Improvement Agreement for such Component, the Developer may submit to the City Engineer a written reimbursement request ("**Reimbursement Request**") with such information (including copies of all bills and/or invoices evidencing the Construction Cost, including change orders) as the City Engineer may require, in his or her sole but reasonable discretion, to calculate and verify the total actual Construction Costs incurred by the Developer to construct the Component (as to each Component, the "**Verified Construction Costs**"). The City Engineer will review and provide the Developer with the City's written approval or full/partial disapproval of the Reimbursement Request within twenty (20) days following the City's receipt thereof or shall request additional documentation from the Developer to support the Reimbursement Request within such twenty (20) day period. The Developer will provide any additional documentation reasonably requested by the City Engineer in connection with his or her review of the Reimbursement Request within ten (10) days following the Developer's receipt of written request therefor, and the forgoing twenty (20) day review period shall commence again once all requested additional documentation has been provided. The City Engineer may disprove any Reimbursement Request if she/he determines that any provision of this Agreement, including the Improvement Agreement applicable to the subject Component incorporated herein, has not been complied with in connection with the work associated with such Reimbursement Request. Should the City Engineer fail to provide a response to the Reimbursement Request within the above noted twenty (20)-day period, or any additional such period following receipt of additional documentation, Developer shall notify the City Manager in writing of such failure, and the City Manager shall thereafter approve, deny or partially deny the Reimbursement Request within twenty (20) days of such written notice. Any disapproval of a Reimbursement Request must state with specificity the reason for disapproval, and following any disapproval the City Manager, the City Engineer, and the Developer shall meet and confer in good faith to attempt to resolve any disagreement related to a disapproval. The City may not disapprove an entire Reimbursement Request on the basis of any objection concerning less than the entirety of the Reimbursement Request.

3.4.2. Reimbursement for Staged Component Construction. The Parties acknowledge that the Component identified as the "Duncan Canyon & John Previti Avenue Improvements" on Exhibit C will be completed in multiple stages as surrounding development occurs. The Developer may submit a separate Reimbursement Request for each stage of the Component; provided that the aggregate reimbursement for all stages of the Component may not, in total, exceed the Reimbursement Cap for the Component.

3.4.3. Payment of Reimbursement. The City will pay all undisputed amounts of any Reimbursement Request within forty-five (45) days following approval. The City

will pay all disputed amounts, if any, of the Reimbursement Request within forty-five (45) days following resolution of the dispute.

4. Miscellaneous.

4.1. Assignment. The Developer may assign all or a portion of its rights and obligations under this Agreement upon City's advance written approval, which approval shall not be unreasonably withheld.

4.2. Relationship Between the Parties. This Agreement does not create a relationship of partnership, joint venture, or agency between the City and the Developer. The Developer's contractors are exclusively and solely under the control and dominion of the Developer. Nothing herein may be deemed to make the Developer or its contractors an agent or contractor of the City.

4.3. Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement on its behalf have the legal power, right, and authority to bind the warranting Party.

4.4. Notices. To be effective, any notice, demand, request, consent, approval, or communication either Party desires or is required to give to the other Party or any person must 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 immediately upon personal delivery or seventy-two (72) hours from the time of mailing if mailed as provided in this Section:

If to the City: City Manager
 City of Fontana
 8353 Sierra Avenue
 Fontana, CA 92334-0518

With copies to: Best Best & Krieger LLP
 2855 E. Guasti Rd., Suite 400
 Ontario, CA 91767
 Attn: Ruben Duran

If to Developer: HDO4, LLC
 2151 E. Convention Center Way, Suite 222
 Ontario, CA 91764
 Attn: Richard Munkvold

With copies to: HDO4, LLC
 2151 E. Convention Center Way, Suite 114
 Ontario, CA 91764
 Attn: Steven B. Imhoof

Either Party may change its address for notice at any time by delivering written notice of the change to the other Party.

4.5. Cooperation; Further Acts. The Parties must cooperate with one another, in good faith, assist each other in the performance of the provisions of this Agreement, and take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement so long as the Party is not put to any material expense or liability. However, the foregoing does not require the City to take any discretionary or legislative action in connection with the implementation of this Agreement.

4.6. Construction; References; Captions. The language of this Agreement is to be construed simply, according to its fair meaning, and not strictly for or against either Party. Any term referencing days means calendar days and not business days, unless otherwise specified. All references to the Developer include all personnel, employees, agents, and contractors of the Developer. All references to the City include its elected officials, officers, employees, agents, and volunteers. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

4.7. Amendment; Modification. No supplement, modification, or amendment of this Agreement will be binding unless executed in writing and signed by the Party to be charged with performance.

4.8. Binding Effect. Each and all of the covenants and conditions are binding on and inure to the benefit of the Parties and their successors, heirs, personal representatives, and assigns.

4.9. No Third Party Beneficiaries. Except with respect to the Developer's assignees as provided in Section 4.1, there are no intended third party beneficiaries of any right or obligation arising under this Agreement.

4.10. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions will continue in full force and effect.

4.11. Governing Law; Consent to Jurisdiction and Venue. This Agreement is to be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, must be filed and prosecuted in the appropriate California State Court in the County of San Bernardino, California.

4.12. Time is of the Essence. Time is of the essence as to the performance of actions under this Agreement as to which time is an element.

4.13. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by electronic means, including PDF e-mail, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by electronic means, including PDF, shall be deemed to be their original signatures for all purposes. No Party hereto may raise the use of electronic means to

deliver a signature hereto, or the fact that any signature or agreement or instrument was transmitted or communicated electronically, as a defense to the formation of a contract.

4.14. Entire Agreement. This Agreement and the exhibits and references incorporated into this Agreement fully express all agreements of the Parties concerning the matters covered in this Agreement. The Recitals set forth above and Exhibits attached are also incorporated herein by this reference. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees, will be valid unless made in the form of a written change agreed to in writing by both Parties or an amendment to this Agreement agreed to by both Parties. All prior negotiations, oral and written communications, and agreements are merged into this Agreement.

4.15. Consent. Where the consent or approval of a Party is required or necessary under this Agreement, the consent or approval may not be unreasonably withheld.

4.16. Indemnification and Hold Harmless. Subject to the provisions of the Conditions of Approval and any other agreement between the Parties, the provisions of which shall supersede the provisions of this section in the event of any conflict or ambiguity, the Developer shall assume the defense of, indemnify and save harmless the City, its elected officials officers, officials, employees and agents, from and against all actions, damages, claims, losses or expense of every type and description to which they may be subjected or put, by reason of, or resulting from the failure to comply with any applicable law, or the breach of any provision of this Agreement by the Developer, the Developer's personnel, employees, agents or contractors in connection with or arising out of the construction of any of the Public Improvements for which reimbursement occurs hereunder, including without limitation, (a) claims made by a contractor excluded from a qualified bid list and arising from or related to the Developer's use of such qualified list, (b) claims related to violations of any provision of the Labor Code (including Labor Code Sections 1770, 1773 and 1773.1.), (c) claims related to the Developer's non-payment under contracts between the Developer and its consultants, engineer's, advisors, contractors, subcontractors and suppliers in the provision of the Public Improvements, or (d) any claims of persons employed by the Developer or its agents to construct the Public Improvements.

(SIGNATURES ON NEXT PAGE)

IN WITNESS WHEREOF, the City has executed this Agreement as of the day and year first above written.

CITY OF FONTANA,
a California municipal corporation

HDO4, LLC,
A New Mexico limited liability company

By: _____
Matthew Ballantyne
City Manager

By: _____
Richard Munkvold
Chief Financial Officer

Attest

By: _____
Germaine Key
City Clerk

Approved as to form:

By: _____
Best Best & Krieger LLP
City Attorney