

**AGREEMENT FOR REIMBURSEMENT OF COSTS FOR RESTORATION
WORK RESULTING FROM FRENCH VALLEY PARKWAY
CONSTRUCTION ON TEMPORARY CONSTRUCTION EASEMENT
BETWEEN THE CITY OF TEMECULA AND HOEN ENTERPRISE 4
TEMECULA LLC, A CALIFORNIA LIMITED LIABILITY COMPANY**

This Agreement for Reimbursement of Costs for Certain Improvements (“Agreement”) is entered into and effective as of April ____, 2025 between the City of Temecula, a municipal corporation (“City”) and Hoen Enterprise 4 Temecula LLC, a California limited liability company (“Owner”). City and Owner are sometimes referred to herein as the “Parties”, and individually as a “Party”. In consideration of the mutual promises and benefits described herein, the Parties hereto agree as follows:

1. Recitals. This Agreement is made with respect to the following facts and purposes, which each of the Parties hereto agree are true and correct:

A. Owner is the owner of that certain real property located at _____ Temecula, California, and identified as Riverside County Tax Assessor’s Parcel Number 916-400-073 (“Owner’s Property”).

B. City acquired a portion of APN 916-400-073, owned by Audi, for the purpose of constructing freeway improvements as part of French Valley Parkway Phase 2 Project (PW16-01) (“Project”).

C. Construction of the Project required the demolition of improvements existing on portions of the Owner’s Property acquired by the City, including a mow strip, separator, irrigation, and plantings. This work also included removal of certain improvements on Owner’s Property required for compliance with regulations of the Rancho California Water District.

D. Owner advised City that Rancho California Water District has required Owner to install those certain improvements required for compliance with regulations of the Rancho California Water District that were removed during the freeway construction. This work is described on Exhibit A, Restoration Work (“Restoration Work”). The contract documents for the Project do not include the Restoration Work but would have included the Restoration Work in the contract documents had it know of this requirement.

E. City and Owner have determined that the most effective way to complete the necessary Restoration Work is to have the work completed by Owner’s contractor and for the City to reimburse Owner for the costs of the Restoration Work pursuant to the terms of this Agreement.

2. Construction of Restoration Work.

A. Owner and City agree that completion of the Restoration Work, shall bring Owner’s Property into compliance with regulations of the Rancho California Water District Regulations and that no further work is required by the City to bring Owner’s Property into the condition it was prior to freeway construction.

B. In order to guarantee completion of the Restoration Work and to secure payment to any contractor, subcontractor, persons renting equipment, or furnishing labor materials for the Restoration Work, Owner' contractor shall procure and maintain a performance bond and a labor and materials bond from a qualified surety admitted in California in the amount of 100% of the estimated cost of the Restoration Work, subject to the approval of the City Attorney, in substantially the form of the City's subdivision surety bonds. Such bonds shall be approved prior to commencement of construction of the Restoration Work.

C. The construction of the Restoration Work under this Agreement shall be completed within ____ calendar days of the date of this Agreement.

D. Owner agrees to prepare and maintain all books, records, reports and correspondence to or from contractors, subcontractors and other persons relating to the construction and installation of the Restoration Work necessary to document the Restoration Work incurred in constructing the Restoration Work. Owner shall permit representatives of City to review and copy all books, records, reports and correspondence to or from, or prepared by, contractors, subcontractors and other persons relating to the construction and installation of the Restoration Work or which document the costs incurred in constructing the Restoration Work on two (2) business days' notice to Owner.

3. Reimbursement of Costs of Restoration Work. Within ____ days after final inspection by the final inspection and approval of the Restoration Work by Rancho California Water District, City shall pay to the Owner the actual cost of the Restoration Work not to exceed _____ dollars (\$ _____.00).

4. Prevailing Wages

A. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this contract from the Director of the Department of Industrial Relations and on its website at <http://www.dir.ca.gov/DLSR/DPreWageDetermination.htm>. These rates are on file with the City Clerk. Copies may be obtained at cost at the City Clerk's office of Temecula. Contractor shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Owner and all contractors working on this project shall comply with the provisions of Sections 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Owner and contractors shall forfeit to the City, as a penalty, the sum of \$50.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this contract, by him or by any subcontractor under him, in violation of the provisions of the contract.

B. Registration with the Department of Industrial Relations (DIR) is mandatory as a condition for bidding, providing certain services, and working on a public works project as specified in Labor Code Section 1771.1(a). Owner and any contractor and any subcontractors must be registered with the Department of Industrial Relations to be qualified to bid, or provide a proposal and/or time and material quote or be listed in a bid, proposal or quote, subject to the

requirements of Public Contract Code Section 4104; or engage in the performance of any contract that is subject to Labor Code Section 1720 et seq., unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Contractor and subcontractors will be required to provide proof of registration with the DIR. For more information regarding registration with the Department of Industrial Relations, refer to <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

5. Indemnification. The Owner agrees to defend, indemnify, protect and hold harmless the City, Temecula Community Services District, Successor Agency to the Temecula Redevelopment Agency, Temecula Housing Authority and their officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, or liability of any kind or nature which the City, Temecula Community Services District, Successor Agency to the Temecula Redevelopment Agency, Temecula Housing Authority and their officers, agents and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Owner's negligent or wrongful acts or omissions in performing or failing to perform under the terms of this Agreement, excepting only liability arising out of the sole negligence of the City Temecula Community Services District, Successor Agency to the Temecula Redevelopment Agency, Temecula Housing Authority and their officers, agents and employees. All duties of Owner under this Section shall survive the termination of this Agreement.

6. Liability Insurance. Owner and its contractors shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons and/or damages to property, which may arise from or in connection with the performance of the work hereunder and the results of work by the Owner, its contractors, agents, representatives, employees, or subcontractors.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1) Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operation, property damage, bodily injury, and personal & advertising with limits no less than One Million (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence limit.

2) Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Owner has no owned autos, covering hired, (Code8) and non-owned autos (Code 9), with limits no less than One Million (\$1,000,000) per accident for bodily injury, including death, of one or more persons, property damage and personal injury.

3) Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than One million (\$1,000,000) per accident for bodily injury or disease. In accordance with the provisions of Labor Code Section 3700, every contractor will be required to secure the payment of compensation to its employees. Pursuant to Labor Code Section 1861, Owner must submit to City the following certification before beginning any work on the Improvements:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

By executing this Agreement, Owner is submitting the certification required above.

The policy must contain a waiver of subrogation in favor of the City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees, or volunteers.

B. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared and approved by the City's Risk Manager.

C. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

1) The City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor's products and completed operations of the Contractor; premises owned, occupied or used by the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor Insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used). The coverage shall contain no special limitations on the scope of protection afforded to the City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees, or volunteers.

2) For any claims related to this project, the Owner's insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 04 13 as respects the City, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, officials, employees, or volunteers shall be excess of the Owner's insurance and shall not contribute with it. This also applies to any Excess or Umbrella liability policies.

3) The Owner may use Umbrella or Excess Policies to provide the limits as required in this agreement. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability Insurance.

4) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect the indemnification provided to the City of Temecula, the Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees, or volunteers.

5) The Owner's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6) If the Owner maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Owner.

7) If insurance coverage is canceled or, reduced in coverage or in limits the Owner shall within two (2) business days of notice from insurer phone, fax, and/or notify the City via certified mail, return receipt requested of the changes to or cancellation of the policy.

8) Unless otherwise approved by City, if any part of the Restoration Work is contracted or subcontracted, the Minimum Insurance Requirements must be provided by, or on behalf of, all contractors and subcontractors even if City has approved lesser insurance requirements for Owner, and all contractors and subcontractors must agree in writing to be bound by the provisions of this section.

D. Acceptability of Insurers. Insurance required above, except for workers' compensation insurance, must be placed with insurers with a current A.M. Best rating of A-: VII or better, unless otherwise acceptable to the City. Self-insurance shall not be considered to comply with these insurance requirements.

E. Verification of Coverage. Owner and Owner's contractors shall furnish the City with original certificates and amendatory endorsements, or copies of the applicable policy language affecting coverage required by this clause. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Owner and Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

F. Special Risks or Circumstances. The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

7. General

A. Notices. All notices and demands will be given in writing by certified or registered mail, postage prepaid, and return receipt requested, or by overnight carrier. Notices will be considered given upon the earlier of (a) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (b) one business day following deposit with a commercially recognized overnight carrier service. The Parties will address such notices as provided below or as may be amended by written notice:

CITY: City of Temecula
Attention: Director of Public Works
41000 Main Street
Temecula, California 92590

OWNER: _____

B. Choice of Law. This Agreement is made under and in all respects will be interpreted, enforced and governed by the laws of the State of California.

C. Jurisdiction. Any action by either Party shall be brought in the appropriate court of competent jurisdiction within the County of Riverside, State of California, notwithstanding any other provision of law which may provide that such action may be brought in some other location.

D. Amendment. This Agreement cannot be altered, amended or modified in any way without the express written consent of each Party hereto or their authorized successor-in-interest.

E. Assignment. This Agreement shall not be assignable by either Party in whole or in part without the prior written consent of the other Party, which written consent shall not be unreasonably withheld. The assigning Party shall provide to the other Party thirty (30) days' advanced notice of any such proposed assignment.

F. Binding on Successors. This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, assigns, executors and administrators.

G. Entire Agreement. This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties relating to the subject matter of this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, relating to the reimbursement of Restoration Work are merged into this Agreement.

H. Owner Not Agent of City. Neither Owner nor any of Owner's agents or contractors are or shall be considered to be agents of City in connection with the performance of Owner's obligations under this Agreement.

I. Legal Responsibilities. Owner shall keep itself informed of all local, State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its obligations pursuant to this Agreement. Owner at all times observe and comply with all such laws and regulations. City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of Owner to comply with this Subparagraph.

J. Time of the Essence. Time is of the essence of this Agreement

K. Interpretation and Construction. Each Party has reviewed this Agreement and each has had the opportunity to have its respective counsel review and revise this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not apply in the interpretation of this Agreement or Exhibits thereto. In this Agreement the neuter gender includes the feminine and masculine, and singular number includes the plural, and the words “person” and “party” include corporation, partnership, firm, trust, or association wherever the context so requires.

L. Severability. If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if this Agreement did not contain the particular part, term or provision held to be invalid.

M. Authority to Execute Agreement. The person or persons executing this Agreement on behalf of Owner and City each warrants and represents that he or she has the authority to execute this Agreement on behalf of Owner or City, as applicable, and has the authority to bind Owner or City, as applicable, to the performance of its obligations hereunder.

N. Counterparts; Electronic Signatures. This Agreement may be executed in one of more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement. Each Party to this Agreement agrees to the use of electronic and digital signatures that meet the requirements of the California Uniform Electronic Transactions Act Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Agreement. The Parties further agree that the electronic signatures of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.

O. Exhibits. The following exhibit is attached to this Agreement and incorporated into this Agreement as though set forth in full: Exhibit A Description of Restoration Work

[Signatures begin on next page.]

IN WITNESS WHEREOF, this Agreement has been executed as of the date first set forth above:

**Hoen Enterprise 4 Temecula LLC, a
California limited liability company**

City of Temecula, a municipal corporation

By: _____
Name: _____
Title: _____

By: _____
Aaron Adams
City Manager

Attest: _____
Randi Johl, JD, MMC, City Clerk

Approved as to form:

By: _____
Peter M. Thorson, City Attorney

EXHIBIT A

DESCRIPTION OF RESTORATION WORK