



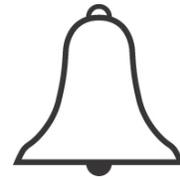
MEETING HANDOUT

Meeting: Board of Directors

Date: March 2, 2016

Item: Consideration and Action on Joint Community Facilities Agreement 2016-1, First Amendment to Tri-Party Agreement, and Resolution No. 2016-03-03; Approving Joint Community Facilities Agreement with County of Orange for Communities Facilities District No. 2016-1 of the County of Orange (Village of Esencia).

Santa Margarita Water District



MEMORANDUM

TO: Board of Directors **DATE:** March 2, 2016

FROM: Nancy Trujillo

SUBJECT: Consideration and Action on Joint Community Facilities Agreement 2016-1, First Amendment to Tri-Party Agreement, and Resolution No. 2016-03-03; Approving Joint Community Facilities Agreement with County of Orange for Communities Facilities District No. 2016-1 of the County of Orange (Village of Esencia).

SUMMARY

Issue: Rancho Mission Viejo (RMV) is developing the Village of Esencia (Planning Area 2 (PA-2) within Improvement District 4C (ID 4C)), and formed a Communities Facilities District (CFD 2015-1) with Santa Margarita Water District (SMWD) and the County of Orange (County) as the lead agency in April 2015. The CFD 2015-1 sold \$87.7 million in bonds in October 2015 for the first phase of PA-2. The second phase of the Village of Esencia is under construction and leading to the formation of CFD No. 2016-1.

Recommendation: Adopt Resolution No. 2016-03-03 and authorize the General Manager to commit the District to the terms of the two agreements and to execute them on behalf of the District.

Committee Review: The draft agreements have not been reviewed by any District committee.

Fiscal Impact: Provides funding for capital facilities and reimbursement of in-tract facilities constructed by the developers. For CFD 2016-1, SMWD will be allocated up to \$2,900,000 of the total \$8,727,000 as reimbursement for water facilities constructed that benefit PA-2.

Previous Related Action: The Board approved on February 20, 2015 the first phase of the Village of Esencia, which included the Joint Community Facilities Agreement (JCFA), letter of bond repayment and Tri-Party Agreement, and Resolution No. 2015-02-04 which formed CFD 2015-1.

DISCUSSION

Joint Community Facilities Agreement for CFD 2016-1

Rancho Mission Viejo has requested the County to form CFD 2016-1 for the second phase of development for the Village of Esencia to establish the financing of the water facilities

in ID 4C. The County will remain the lead agency and will continue to have primary responsibility for the administration of the CFD.

The CFD 2016-1 bond issue is proposed to include up to \$8,727,000 for District facilities and is expected to be issued in October 2016. The amount of bond proceeds allocated to for District capital facilities will be up to \$2,900,000. See Exhibit A of the JCFA for the list of capital assets identified for this allocation.

The parties intend to have the CFD assist in financing the water facilities by transferring a portion of the bond proceeds to SMWD (or directly to others at SMWD's request), as costs are incurred and submitted for reimbursement.

Revisions to the original JCFA are as follows:

- Recitals, Section B – residential units on the property has been updated 878 residential units.
- Recitals, Section F – proceed of bonds issued by the District and disbursed to SMWD has been updated to \$8,727,000.
- Agreement, Section 3, Second Paragraph – water facilities amount to be funded by the District has been updated to \$8,727,000.
- Agreement, Section 4F – General Manager will sign Disbursement Requests on behalf of SMWD.
- Exhibit A – list of facilities has been updated and 3 footnotes have been included providing further explanation of amounts listed SMWD will have the right to request disbursements from bond funds up to the specified amounts.
- Exhibit B – description of property has been updated to reflect Tract No. 17562.
- Exhibit C – Disbursement Request Form has been revised to reflect CFD 2016-1.

Tri-Party Agreement Amendment

The Tri-Party Agreement is the collaboration between the County, SMWD, and RMV for the purpose of establishing the agreed upon stabilized tax rate for ID 4C to support general obligation bonds for its portion of Improvement District No. 4 based on the ultimate assessed land values upon full development and sale of the parcels. The assessed land values in Esencia are anticipated to increase as the land is sold, and therefore the current land tax rate of 1.27225% is anticipated to decrease to 0.13036% so that the total tax rate is equal to 2%. The lower land tax rate is passed on to the homebuyer and may possibly generate higher bond proceeds for PA-2 (Esencia).

RMV deposited with SMWD, prior to the date of issuance of the first series of bonds by the District, the sum of \$346,000 to establish the separate Subsidy Account to compensate for the anticipated tax shortfall arising due to the lower tax rate before the land reaches the stabilized assessed values. Commencing in FY 2016/2017, SMWD will withdraw from the

Subsidy Account an amount necessary to result in the combined tax rate being assessed for ID 4 and ID 4C on the property. RMV will, from time to time, deposit additional amounts with SMWD to replenish all or a portion of the Subsidy Amount if it is not sufficient. RMV will ultimately be responsible for ensuring that the tax bill is paid in full except for any changes resulting from a change in the tax allocation methodology.

The First Amendment to the Tri-Party Agreement restates the original agreement dated March 3, 2015, enhancing the definitions and amends the existing agreement (utilizing the same language).

Revisions to the original Tri-Party Agreement are as follows:

- Agreement, Section 2 - definitions set forth in the original agreement shall have the same meanings in the first amendment. "Property" is now defined as set forth in Recital D of the Tri-Party Agreement Amendment.
- Agreement, Section 3 – deleted and revised section 2 of the original agreement by modifying the third sentence. This revision allows SMWD to withdraw funds from the subsidy account.
- Agreement, Section 4 – deleted and replaced the subparagraph (i) of section 3 of the original agreement. This revision clarifies that the 0.13036% tax rate applies to any applicable portion of the Property in terms of when the unused subsidy account is returned.
- Agreement, Section 5 – deleted and replaced section 4 of the original agreement. This allows SMWD to require additional deposits from RMV or from bond funds if the subsidy account amounts are not sufficient to cover the combined tax rate. SMWD may also increase the tax rate if funds are not available.
- Agreement, Section 6 – deleted and revised section 5 by modifying the second sentence. This clarifies the definition of governmental agencies issuing additional bonds to be other than this CFD or any future CFD.

RESOLUTION NO. 2016-03-03

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SANTA MARGARITA WATER DISTRICT APPROVING JOINT COMMUNITY FACILITIES AGREEMENT WITH COUNTY OF ORANGE FOR COMMUNITY FACILITIES DISTRICT NO. 2016-1 OF THE COUNTY OF ORANGE (VILLAGE OF ESENCIA)

WHEREAS, Resolution No. 2015-02-04 was heretofore adopted by the Board establishing a community facilities district, designated “Community Facilities District No. 2015-1 of the County of Orange (Village of Esencia)” to construct water facilities to serve the first phase of development in the Village of Esencia; and

WHEREAS, Rancho Mission Viejo, as the master developer of the Property intends to obtain, or has obtained, the necessary development approvals to construct approximately 878 residential units as the second phase of development in the Village of Esencia and the development requires infrastructure includes water and wastewater facilities; and

WHEREAS, The District has determined to finance the construction and/or acquisition of the water and wastewater facilities in an amount up to \$8,727,000; and.

WHEREAS, the County of Orange (the “County”) is initiating proceedings to establish a community facilities district, to be designated “Community Facilities District No. 2016-1 of the County of Orange (Village of Esencia)” (the “Community Facilities District”) pursuant to Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the California Government Code, commonly known as the “Mello-Roos Community Facilities Act of 1982,” for the formation of the Community Facilities District, for the purpose, among others, of financing through the sale of bonds or the levy of special taxes the design, construction and acquisition of public facilities which are necessary to meet increased demands placed upon the County and the Santa Margarita Water District (the “Water District”) as a result of the development of the property within the Community Facilities District; and

WHEREAS, pursuant to Sections 53316.2 through 53316.6 of the California Government Code, a community facilities district may finance facilities to be owned or operated by an entity other than the agency that created the district pursuant to a joint community facilities agreement if the legislative body of each entity adopts a resolution declaring that such a joint agreement would be beneficial to the residents of that entity; and

WHEREAS, there has been presented to the Board of Directors a form of joint community facilities agreement to be entered into by the County and the Water District; and

WHEREAS, the Board of Directors has determined that the proposed joint community facilities agreement will be beneficial to the residents of the Water District;

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE SANTA MARGARITA WATER DISTRICT DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The Board of Directors determines that the joint community facilities agreement entitled “Joint Community Facilities Agreement among the County of Orange, Santa Margarita Water District and RMV PA2 Development, LLC relating to Community Facilities District No. 2016-1 of the County of Orange (Village of Esencia)” (the “Agreement”) will be beneficial to the residents of the Water District.

SECTION 2. The Agreement is approved in the form submitted to the Board of Directors at the meeting at which this resolution is adopted and the General Manager is authorized to execute and deliver the Agreement on behalf of the Water District. The General Manager is authorized to consent to such modifications of the Agreement as may be necessary to effectuate its purposes.

SECTION 3. The Secretary shall deliver an executed copy of the Agreement to the County.

APPROVED AND ADOPTED by the Board of Directors of the Santa Margarita Water District this 2nd day of March, 2016.

Charley Wilson
President, Board of Directors
Santa Margarita Water District

ATTEST:

Kelly Radvansky
Secretary to the Board of Directors
of Santa Margarita Water District

STATE OF CALIFORNIA)
)ss.
COUNTY OF ORANGE)

I, Kelly Radvansky, Secretary of the Board of Directors of the Santa Margarita Water District, do hereby certify that the foregoing Resolution was duly adopted by the Board of Directors of said District at a regular meeting held on the 20th day of February, 2015 and that it was so adopted by the following vote:

AYES: DIRECTORS: Olson, Wilson, Gibson, McCusker, Jacobs

NOES: DIRECTORS:

ABSENT: DIRECTORS:

ABSTAIN: DIRECTORS:

Kelly Radvansky
Secretary to the Board of Directors
Santa Margarita Water District

I, Kelly Radvansky, Secretary of the Board of Directors of the Santa Margarita Water District, do hereby certify that the above and foregoing is a full, true and correct copy of Resolution No. 2016-03-XX of said Board, and that the same has not been amended or repealed.

DATED: March 2, 2016

Kelly Radvansky
Secretary to the Board of Directors
Santa Margarita Water District

(Seal)

JOINT COMMUNITY FACILITIES AGREEMENT

among

**COUNTY OF ORANGE
and
SANTA MARGARITA WATER DISTRICT
and
RMV PA 2 DEVELOPMENT, LLC,
a Delaware Limited Liability Company
relating to**

**COMMUNITY FACILITIES DISTRICT NO. 2016-1
OF THE COUNTY OF ORANGE
(VILLAGE OF ESENCIA)**

JOINT COMMUNITY FACILITIES AGREEMENT

THIS JOINT COMMUNITY FACILITIES AGREEMENT (the “Agreement”) is entered into effective as of the 1st day of _____, 2016, by and among the COUNTY OF ORANGE, a political subdivision of the State of California (the “County”), the SANTA MARGARITA WATER DISTRICT, a California water district (“SMWD”), and RMV PA 2 DEVELOPMENT, LLC, a Delaware limited liability company (the “Company”), and relates to the proposed formation by the County of COMMUNITY FACILITIES DISTRICT NO. 2016-1 OF THE COUNTY OF ORANGE (VILLAGE OF ESENCIA) (the “District”) for the purpose of financing certain facilities more particularly described on Exhibit A hereto (the “Water Facilities”) to be constructed by, or on behalf of, SMWD.

R E C I T A L S:

A. The Company is the master developer of the land described in Exhibit B hereto (the “Property”) which is located in the unincorporated area of the County of Orange and is being developed into the master-planned community known as “Esencia.”

B. The Company as the master developer of the Property intends to obtain, or has obtained, the necessary development approvals to construct approximately 878 residential units on the Property and to provide the required infrastructure for such units. The required infrastructure includes the Water Facilities.

C. The County will have primary responsibility for the formation and administration of the District.

D. The Company has requested the Board of Supervisors of the County (the “Board”) to form and establish the District on a portion of the Property pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part I of Division 2 of Title 5 of the California Government Code (the “Act”).

E. The provision of the Water Facilities is necessitated by the development of the Property and the parties hereto find and determine that the residents residing within the boundaries of the District will be benefited by the construction and/or acquisition of the Water Facilities and that this Agreement is beneficial to the interests of such residents.

F. The parties hereto intend to have the District assist in financing the construction and/or acquisition of the Water Facilities by disbursing to SMWD proceeds of bonds issued by the District up to the amount of \$8,727,000 (the “Water Facilities Amount”).

G. The District, when formed, is authorized by California Government Code Section 53313.5 to assist in the financing of the acquisition and/or construction of the Water Facilities. This Agreement constitutes a joint community facilities agreement, within the meaning of California Government Code Section 53316.2, by and among the County, SMWD and the Company, pursuant to which the District, when formed, will be authorized to finance the costs of the construction and/or acquisition of the Water Facilities in the amount of up to the Water Facilities Amount. As authorized by California Government Code Section 53316.6,

responsibility for constructing and/or acquiring, providing for and operating the Water Facilities is delegated to SMWD to the extent set forth herein.

H. The parties hereto intend to have the District assist in financing the Water Facilities by transferring to SMWD (or directly to others at SMWD's request) a portion of the bond proceeds of the District, in accordance with the terms of this Agreement and pursuant to the Act.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties hereto agree as follows:

1. Recitals. Each of the above recitals is incorporated herein and is true and correct.
2. Proposed Formation of the District. At the request of the Company, the County will undertake to analyze the appropriateness of forming the District to finance the Water Facilities and other facilities. The County will retain, at the Company's expense, the necessary consultants to analyze the proposed formation of the District, including an engineer, special tax consultant, bond counsel, appraiser and other consultants deemed necessary by the County.
3. Sale of Bonds and Use of Proceeds. The purpose of this Agreement is to provide a mechanism by which the Company may request the District to issue bonds to provide funds to finance the Water Facilities.

In the event that the District is formed, the Board of the County, acting as the legislative body of the District, may, in its sole discretion, finance the construction and acquisition of the Water Facilities by issuing bonds (the "Bonds"). To the extent that the District determines, in its sole discretion, that Bond proceeds are available to finance the Water Facilities, it shall reserve an amount not to exceed the Water Facilities Amount for such purpose; provided, however, that SMWD agrees that, without the prior written consent of the Company, the Water Facilities Amount to be funded by the District shall not exceed \$8,727,000. Upon consent of the Company, the Water Facilities Amount may be increased. In the event that any proceeds of the Bonds (including interest earnings thereon) reserved to pay for Water Facilities have not been disbursed by the date that is thirty-four (34) months following the date of issuance of the Bonds, the District may, in its sole discretion, apply any remaining undisbursed amount to pay principal due on the Bonds at maturity or by redemption.

The Company and SMWD acknowledge that the timing of the disbursement of the Water Facilities Amount to SMWD (or directly to others at SMWD's request) shall be in all respects subject to the sole discretion and approval of the County. In no event will an act, or an omission or failure to act, by the County or the District with respect to the disbursement or non-disbursement of the Water Facilities Amount subject the District or the County to pecuniary liability hereunder.

The Bonds shall be issued only if, in its sole discretion, the Board determines that all requirements of state and federal law and all County policies have been satisfied or have been waived by the County. In no event shall the Company or SMWD have a right to compel the

issuance of the Bonds or the disbursement of Bond proceeds to fund the Water Facilities Amount. This Agreement does not release Company from any obligation it may have to provide any Water Facilities.

4. Disbursements

(a) Bond proceeds of the District designated for the Water Facilities shall be held by the District in a special fund (the “Water Facilities Account of the Acquisition and Construction Fund”) which shall be invested by the County Treasurer and earn and accumulate its own interest. In the event that the District has deposited Bond proceeds to the Water Facilities Account of the Acquisition and Construction Fund to fund all or a portion of the Water Facilities Amount, the County shall notify SMWD and the Company, in writing, as to the amount of Bond proceeds so deposited. All interest earnings on amounts in the Water Facilities Account of the Acquisition and Construction Fund shall remain in the Water Facilities Account and will be available for disbursement for the Water Facilities as described below.

(b) The Treasurer shall make disbursements from the Water Facilities Account of the Acquisition and Construction Fund in accordance with the terms of this Agreement and neither the County nor the District shall be responsible to SMWD for costs incurred by SMWD as a result of withheld or delayed disbursements.

(c) SMWD agrees that it will request a disbursement of Bond proceeds only for costs related to the Water Facilities that are eligible for financing under the Act which include the costs of acquiring the land for the Water Facilities (if applicable), constructing or acquiring the Water Facilities including the cost of planning and designing the Water Facilities, the cost of environmental evaluation of the Water Facilities and other expenses incidental to the construction, completion and inspection of the authorized work. SMWD agrees that prior to requesting disbursement from the District it shall review and approve all costs included in its request, and either SMWD or third parties constructing the Water Facilities will have already paid such costs of the Water Facilities. Bond proceeds shall be paid directly to SMWD only to reimburse it for costs previously paid by SMWD. All other Bond proceeds to be disbursed shall be paid at the direction of SMWD to third parties, which may include the Company, who have previously paid costs of the Water Facilities. SMWD agrees that in processing disbursements it will comply with all legal requirements for the expenditure of Bond proceeds under the Act and the Internal Revenue Code of 1986 and any amendments thereto. Further, the Company agrees that if it requests that SMWD make any submissions for a disbursement under this Agreement for any Water Facilities constructed by the Company, the Company will have already paid for the costs included in such disbursement request, and the Company will comply with all legal requirements for the expenditure of Bond proceeds under the Act and the Internal Revenue Code of 1986 and any amendments thereto in connection with the construction of such Water Facilities. Without limiting the foregoing, if SMWD elects to purchase the Water Facilities from a third party, SMWD may request disbursements in connection with improvements based upon the discrete portion or phases of a partially completed project as set forth on Exhibit A and as permitted by California Government Code Section 53313.51. In such event, (i) the discrete portions or phases shall be constructed pursuant to plans, standards, specifications and other requirements that satisfy the provisions of Section 5 below, (ii) the price for each discrete portion or phase shall equal the lesser of the cost or the value thereof, and shall be in no event in excess

of the amount set forth on Exhibit A, and (iii) SMWD shall have inspected and approved of such discrete portion or phase and accepted conveyance or dedication thereof (or shall have an irrevocable commitment to convey or dedicate for SMWD's benefit), all pursuant to SMWD's normal procedures and in accordance with California Government Code Section 53313.51.

(d) SMWD will not use or permit the Water Facilities to be used for any activity that would constitute a "Private Use" in violation of legal requirements for the expenditure of Bond proceeds under the Act and the Internal Revenue Code of 1986 and any amendments thereto. SMWD understands (i) that the term "Private Use" means any activity that constitutes a trade or business that is carried on by persons or entities, other than governmental entities; (ii) that the leasing of the Water Facilities or access by persons or entities other than a governmental unit to the Water Facilities on a basis other than as a member of the general public ("General Public Use") would constitute a Private Use; and (iii) that the use of the Water Facilities in a trade or business would constitute a General Public Use only if the Water Facilities are intended to be available and are in fact reasonably available for use on the same basis by natural persons not engaged in a trade or business. SMWD represents to the District that SMWD's employer identification number is 95-6269461. As a condition to receiving proceeds of the Bonds pursuant to this Agreement, SMWD agrees that it shall provide to the District a certificate confirming the representations contained in clauses (i) and (ii) of this Section 4(d) and such other matters as the District may reasonably request upon which the District and its bond counsel may rely in connection with the issuance of such Bonds and their conclusion that interest on such Bonds is not included in gross income for purposes of federal income taxation.

(e) SMWD agrees to maintain adequate internal controls over its payment function and to maintain accounting records in accordance with generally accepted accounting procedures. The District and the County shall have the right to conduct their own audit of SMWD's records related to the expenditure of the Water Facilities Amount at reasonable times during normal business hours.

(f) SMWD shall submit a request for payment to the District along with adequate supporting documentation acceptable to the District which shall be in the form attached hereto as Exhibit C (a "Disbursement Request"), which shall be signed by the General Manager of SMWD, or written designee, and which shall be for the exact amount to be reimbursed to SMWD (or to other parties, with the name and address to which such reimbursement should be made), which costs shall in no event exceed the amount remaining on deposit in the Water Facilities Account of the Acquisition and Construction Fund. Upon receipt of an approved Disbursement Request completed in accordance with the terms of this Agreement, the Treasurer of the County shall transfer such portion of requested funds in an ACH transaction (or, in his discretion, issue a warrant if the transfer is less than \$50,000) as are then available for release pursuant to the documents pursuant to which the Bonds are issued to SMWD's bank account (or to such other party or such other parties' bank account, as directed by SMWD).

(g) If, for any reason whatsoever, there are insufficient funds to complete the Water Facilities, or any portion thereof, neither the County, nor the District shall have any obligation to fund any such shortfall under this Agreement.

5. Construction and Ownership of Facilities. SMWD will complete, or cause the Company to complete, the design of the Water Facilities and the plans and specifications for construction of the Water Facilities and will be responsible for constructing, or causing the Company to construct, the Water Facilities, and will be responsible for inspecting the Water Facilities. SMWD covenants and agrees that with respect to the Water Facilities it will comply with all statutory provisions applicable to the design and construction of public works projects. The Water Facilities shall be and remain the property of SMWD.

6. Indemnification. The County shall assume the defense of, indemnify and save harmless, SMWD, its officers, employees and agents, and each and every one of them, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from, any act or omission of the County with respect to this Agreement and the issuance of the Bonds. No provision of this Agreement shall in any way limit the extent of the County's responsibility for payment of damages resulting from the operations of the County and its contractors; provided, however, that the County shall not be required to indemnify any person or entity as to damages resulting from negligence or willful misconduct of such person or entity or their agents or employees. SMWD shall assume the defense of, indemnify and save harmless, the County, its officers, employees and agents, and each and every one of them, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from, any act or omission of SMWD with respect to this Agreement, and the design, engineering, inspection, construction and acquisition of the Water Facilities. No provision of this Agreement shall in any way limit the extent of SMWD's responsibility for payment of damages resulting from the operations of SMWD and its contractors; provided, however, that SMWD shall not be required to indemnify any person or entity as to damages resulting from negligence or willful misconduct of such person or entity or their agents or employees.

7. Allocation of Special Taxes. The Board, as the legislative body of the District, shall annually levy a special tax as provided for in the formation proceedings of the District. The entire amount of any special tax levied by the District to repay Bonds, or to fund other obligations, shall be allocated to the District.

8. Amendment. This Agreement may be amended at any time but only in writing signed by each party hereto.

9. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the matters provided for herein and supersedes all prior agreements and negotiations between the parties with respect to the subject matter of this Agreement.

10. Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to any party shall be deemed to have been received when personally delivered or seventy-two hours following deposit of the same in any United States Post Office in California, registered or certified, postage prepaid, addressed as follows:

County: Orange County Public Works Department
300 N. Flower Street, 6th Floor
Santa Ana, California 92701

Attn: Planned Communities Division Manager

With a copy to: County of Orange
10 Civic Center Plaza, 3rd Floor
Santa Ana, California 92701
Attn: County Executive Office-Public Finance

SMWD: Santa Margarita Water District
26111 Antonio Parkway
Rancho Santa Margarita, CA 92688
Attention: Chief Financial Officer

Company: RMV PA 2 Development, LLC
c/o Rancho Mission Viejo
28811 Ortega Highway
San Juan Capistrano, California 92693
Attn: Elise Millington

Each party may change its address for delivery of notice by delivering written notice of such change of address to the other parties hereto.

11. Exhibits. All exhibits attached hereto are incorporated into this Agreement by reference.

12. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

13. Governing Law and Venue. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

14. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other parties hereto, or the failure by a party to exercise its rights upon the default of another party, shall not constitute a waiver of such party's right to insist and demand strict compliance by such other parties with the terms of this Agreement thereafter.

15. No Third Party Beneficiaries. No person or entity other than the District, when and if formed, shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than SMWD, the County, the District and the Company (and their respective successors and assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement.

16. Singular and Plural; Gender. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

17. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute but one instrument.

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

COUNTY OF ORANGE

By: _____
Chair of the Board of Supervisors

APPROVED AS TO FORM
Office of County Counsel
Orange County California

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIR OF THE BOARD PER
G.C. SEC 25103, RESOLUTION 79-1535

By: _____
Deputy

By: _____
Clerk of the Board of Supervisors
County of Orange, California

SANTA MARGARITA WATER DISTRICT

By: _____
Its: _____

ATTEST:

By: _____

RMV PA 2 DEVELOPMENT, LLC, a Delaware limited liability company

By: RANCHO MISSION VIEJO, LLC, a Delaware limited liability company, its authorized agent and manager

By: _____
Elise Millington, SVP and CFO

By: _____
Donald L. Vodra
Chief Operating Officer

EXHIBIT A

**LIST OF FACILITIES
(INCLUDING SEGMENTS AND PRICES)**

PA2 Domestic & Recycled Water Facilities	Prices
Middle Chiquita Reservoirs and Pipelines:	
a) Sewers - PA2 SW Lift Station	\$ - *
b) DW - PA2 zone 2 Reservoir No. 1	- *
c) DW - Zone 2 - 24" Pipeline from PA2 to Reservoir No 2	- *
d) ND - PA2 Zone B Reservoir Site 1	- *
e) ND - PA2 Zone B Pump Station No 1	- *
f) ND - Zone B - 20" Pipeline from CWRP to Reservoir No 1	- *
g) Grading	- *
Other Water Related Improvements:	
h) Tesoro - Native Habitat Restoration	900,000
Subtotal	900,000

PA2 - Chiquita Treatment Plant	Prices
a) Chiquita Treatment Plant Modernization	\$ 2,000,000 **
Subtotal	2,000,000

PA2.2 In-Tract Projects	Prices
a) Domestic Water Improvements	\$ 2,451,000
b) Reclaimed Water Improvements	2,742,000
c) Sewer Improvements	634,000
Subtotal	5,827,000
Total	\$ 8,727,000 ***

*The parties hereto have previously entered into that certain Joint Community Facilities Agreement dated April 14, 2015 relating to the formation by the County of COMMUNITY FACILITIES DISTRICT NO. 2015-1 OF THE COUNTY OF ORANGE (VILLAGE OF ESENCIA - PA 2.1) (THE "2015 JCFA"). The Major Infrastructure Projects listed above are also listed in the 2015 JCFA. In the event that SMWD is not able to move available funds from one or more of the line items listed above under Major Infrastructure Projects in the 2015 JCFA to another line item listed above under Major Infrastructure Projects in the 2015 JCFA, then SMWD shall have the right to request disbursements pursuant to this Agreement for such line item(s), provided that in no event shall the total amount of disbursements received by SMWD pursuant to the 2015 JCFA and this Agreement for all such line items under Major Infrastructure Projects exceed \$18,600,000 (unless the Company otherwise consents in writing as set forth above in the Agreement).

**The amounts listed in this line item shall be limited to those items contracted by SMWD for installation on or after December 31, 2016.

*** Except as expressly permitted by footnote * above, reallocations of amounts may not be made with respect to the matters set forth in footnote * or footnote ** above without the prior written consent of the Company. Amounts set forth under In-Tract Projects may be re-allocated by the Company between the listed projects.

EXHIBIT B

DESCRIPTION OF PROPERTY

All of Tract No. 17562, in the Unincorporated Territory of the County of Orange, State of California, as shown on the map recorded October 28, 2015, in Book 945, Pages 16 through 42, inclusive, of Miscellaneous Maps, in the office of the County Recorder of said County.

EXHIBIT C

DISBURSEMENT REQUEST FORM

1. Community Facilities District No. 2016-1 of the County of Orange (Village of Esencia) (“CFD No. 2016-1”) is hereby requested to pay from the Water Facilities Account of the Acquisition and Construction Fund established by the Board of Supervisors of the County of Orange (the “County”) in connection with its CFD No. 2016-1 Special Tax Bonds (the “Bonds”), directly to the person or entity listed below, as Payee, the sum set forth below in payment of project costs described below:

Payee: _____ Amount: \$ _____

Payee: _____ Amount: \$ _____

Payee: _____ Amount: \$ _____

2. The undersigned certifies that the amount requested has been expended for the purposes of constructing and completing Water Facilities. The amount requested is (or was) due and payable under a purchase order, contract or other authorization with respect to the project costs described below and has not formed the basis of a prior request or payment. SMWD has confirmed that the Water Facilities covered by this request, or the discrete portion or phase thereof, has been constructed as required and SMWD has either obtained fee title or an easement to the underlying land, or SMWD has received an irrevocable offer of dedication for the fee title or an easement to the underlying land.

3. Description of Water Facilities Costs:

4. The amount set forth is authorized and payable pursuant to the terms of the Joint Community Facilities Agreement among the County, RMV PA 2 Development, LLC and SMWD dated as of _____ 1, 2016 (the “Agreement”). Capitalized terms not defined herein shall have the meaning set forth in the Agreement.

5. Total payments for the Water Facilities from CFD No. 2016-1, including the amount to be paid under paragraph 1 above, will not exceed the maximum amount to be disbursed for Water Facilities under the Agreement.

Executed by an authorized representative of SMWD.

By: _____

Name: _____

Title: _____

Date: _____

Request No. _____

FIRST AMENDMENT TO TRI-PARTY AGREEMENT

This FIRST AMENDMENT TO TRI-PARTY AGREEMENT (“First Amendment”) is entered into effective as of _____, 2016, by and among the COUNTY OF ORANGE, a political subdivision of the State of California (the “County”), the SANTA MARGARITA WATER DISTRICT, a California water district (“SMWD”), and RMV PA 2 DEVELOPMENT, LLC, a Delaware limited liability company (the “Company”).

RECITALS

A. The Company is the master developer of the land described in Exhibit A hereto which is located in the unincorporated area of the County of Orange and is being developed into the master-planned community known as “Esencia.”

B. The County previously formed Community Facilities District No. 2015-1 of the County of Orange (Village of Esencia) (“the District”), and the Company, SMWD and the County (collectively, the “Parties”) entered into that certain Tri-Party Agreement effective as of March 3, 2015 (the “Agreement”) in connection therewith.

C. At the request of the Company, the County has commenced proceedings for the formation of Community Facilities District No. 2016-1 of the County of Orange (Village of Esencia), and the Company and the County anticipate the formation of future community facilities districts encumbering portions of Esencia (collectively, the “Future Districts”).

D. The land included within the District and the land contemplated to be encompassed by the Future Districts (collectively, the “Property”) is described on Exhibit A attached hereto and is within the boundaries of SMWD Improvement District 4 (“ID 4”) and Improvement District 4C (“ID 4C”).

E. The Parties desire to amend the Agreement in order to result in the Agreement applying to the District and the Future Districts, all as more fully provided below in this First Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants provided herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. **Recitals.** Each of the recitals is incorporated herein and is true and correct.
2. **Definitions.** Initially capitalized terms used in this First Amendment and not defined herein shall have the meanings given to such terms in the Agreement. Notwithstanding the foregoing, the “Property” shall be defined as set forth in Recital D above.
3. **Deposit of Funds.** The third sentence of Section 2 of the Agreement is deleted and is replaced with the following: “SMWD agrees to withdraw from the Subsidy Account an

amount necessary in order to result in the combined tax rate being assessed by ID 4 and ID 4C on the applicable portion of the Property located in each of the District and in any Future District being equal to 0.13036% of the assessed land value of the portion of the Property located in the District and in each Future District, respectively.”

4. Termination and Return of Unused Amount. Subparagraph (i) of Section 3 of the Agreement is deleted and is replaced with the following: “(i) the combined tax rate levied by ID 4 and ID 4C with respect to the applicable portion of the Property located in each of the District and in any Future District not exceeding 0.13036% of the assessed land value of the portion of the Property located in the District and in each Future District, respectively, without the contribution of any of the Subsidy Amount, or”

5. Deficiencies. Section 4 of the Agreement is deleted and is replaced with the following: “If it is determined in the future (and prior to the provisions of Section 3 above becoming applicable) that the amounts deposited into the Subsidy Account are not sufficient in order to result in the combined tax rate assessed by ID 4 and ID 4C on the applicable portions of the Property located in each of the District and in any Future District being reduced to 0.13036% of the assessed land value of the portion of the Property located in the District and in each Future District, then the Company shall, within thirty (30) days of demand from SMWD (which demand shall include a computation of the amount required to be deposited by the Company), deposit such additional amounts as are necessary to result in the combined tax rate being assessed by ID 4 and ID 4C on the applicable portions of the Property located in each of the District and in any Future District being equal to 0.13036% of the assessed land value of the portion of the Property located in the District and in each Future District, respectively. If the Company fails to timely make any such deposit, then the County shall have the right to utilize any funds of the District in order to fund such deficiency by depositing funds directly with SMWD. If funds of the District are not available to fully fund such deficiency, then SWMD shall have the right, notwithstanding anything to the contrary contained herein, to increase tax rates above the amount permitted in Section 3 above in order to fund such deficiency.”

6. Calculation of Tax Rate. The second sentence of Section 5 of the Agreement is deleted and is replaced with the following “However, in no event shall the Company be required to pay additional amounts pursuant to Section 2 or Section 4 of this Agreement as a result of any change in the methodology utilized by SMWD to compute the combined tax rate for ID 4 and ID 4C or as a result of any additional bonds being issued by any governmental agency other than the District or any Future District (but the foregoing shall not affect the obligation of the Company to pay any increased taxes levied on property owned by the Company as a result thereof).

7. Counterparts; Copies. This First Amendment may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

8. Miscellaneous. If any conflict between this First Amendment and the Agreement should arise, the terms of this First Amendment shall control. Except as expressly amended by this First Amendment, the Agreement shall remain in full force and effect and is hereby ratified and reaffirmed.

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment as of the first date written above:

COUNTY OF ORANGE

By: _____
Chair of the Board of Supervisors

APPROVED AS TO FORM
Office of County Counsel
Orange County California

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIR OF THE BOARD PER
G.C. SEC 25103, RESOLUTION 79-1535

By: _____
Deputy

By: _____
Clerk of the Board of Supervisors
County of Orange, California

SANTA MARGARITA WATER DISTRICT

By: _____
Its: _____

ATTEST:

By: _____

RMV PA 2 DEVELOPMENT, LLC, a Delaware limited liability company

By: RANCHO MISSION VIEJO, LLC, a Delaware limited liability company, its authorized agent and manager

By: _____
Elise Millington, SVP and CFO

By: _____
Donald L. Vodra
Chief Operating Officer

EXHIBIT A
LEGAL DESCRIPTION

VILLAGE OF ESENCIA:

Phase 2.1 (CFD 2015-1):

All of Tract No. 17561, in the Unincorporated Territory of the County of Orange, State of California, as shown on the map recorded October 27, 2014 in Book 932, Pages 1 through 38, inclusive, of Miscellaneous Maps, in the office of the County Recorder of said County.

Phase 2.2 (CFD 2016-1):

All of Tract No. 17562, in the Unincorporated Territory of the County of Orange, State of California, as shown on the map recorded October 28, 2015, in Book 945, Pages 16 through 42, inclusive, of Miscellaneous Maps, in the office of the County Recorder of said County.

Phase 2.3 & 2.4 (Future District):

PA2.3

A portion of Parcels 27, 51, and 30 of Certificate of Compliance CC 2011-01, in the Unincorporated Territory in the County of Orange, State of California, recorded December 27, 2011 as Instrument No. 2011000677171 of Official Records, in the office of the County Recorder of said County; together with portions of Parcels 2, 3, and 4 of Lot Line Adjustment LL 2015-037, recorded September 11, 2015 as Instrument No. 2015000470132 of said Official Records; and together with the land described in the Quitclaim Deed recorded May 8, 2015 as Instrument No. 2015000240966 of said Official Records.

PA2.4

Parcel 1 and portions of Parcels 2 and 3 of Lot Line Adjustment LL 2015-037, in the Unincorporated Territory in the County of Orange, State of California, recorded September 11, 2015 as Instrument No. 2015000470132 of Official Records, in the office of the County Recorder of said County; together with a portion of Parcel 54 of Certificate of Compliance CC 2011-01, recorded December 27, 2011 as Instrument No. 2011000677171 of said Official Records