

COUNTY OF ORANGE
COMMUNITY FACILITIES DISTRICT NO. 2017-1
OF THE COUNTY OF ORANGE
(VILLAGE OF ESENCIA)

IMPROVEMENT AREA NO. 2
SERIES A OF 2020 SPECIAL TAX BONDS

ACQUISITION, FUNDING AND DISCLOSURE AGREEMENT

DATED _____, 2020

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ACQUISITION, FUNDING AND DISCLOSURE AGREEMENT**

THIS IMPROVEMENT AREA NO. 2 SERIES A OF 2020 SPECIAL TAX BONDS ACQUISITION, FUNDING AND DISCLOSURE AGREEMENT (the “Agreement”) is entered into effective as of the ____ day of _____, 2020, by and between the COUNTY OF ORANGE, a political subdivision of the State of California (the “County”), COMMUNITY FACILITIES DISTRICT NO. 2017-1 OF THE COUNTY OF ORANGE (VILLAGE OF ESENCIA) (the “District”) and RMV PA2 DEVELOPMENT, LLC, a Delaware limited liability company (the “Company”).

R E C I T A L S :

A. The Board of Supervisors of the County of Orange (the “Board of Supervisors”) has formed and established the District pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the California Government Code (the “Act”) and has designated Improvement Area No. 1 and Improvement Area No. 2 therein. The parties hereto acknowledge that the District has been established as a legally constituted governmental entity pursuant to the Act. The land included within the District is described on the map recorded with the County Recorder on February 22, 2017 in Book of Maps of Assessment and Community Facilities Districts in the County Recorder’s Office in Book No. 104 Page No. 44, as Instrument No. 2017000075306.

B. The purpose of the District is to provide for funding the costs of forming the District and issuing bonds for the construction, purchase, modification, expansion and/or improvement of certain roadways and roadway improvements (including, without limitation, the Foothill Transportation Corridor improvements and the South County Roadway Improvement Program), tunnels, regional hiking and biking trails, storm drains, water and wastewater facilities (including, without limitation, domestic and non-domestic water facilities, wells, reservoirs, pipelines, storm and sewer drains and related infrastructure and improvements), wet and dry utilities, bridges and pedestrian bridges, parks, traffic signals, school sites, facilities and equipment, sheriff's substations and equipment and library facilities and equipment, and related infrastructure improvements, both onsite and offsite, and all appurtenances and appurtenant work in connection with the foregoing (including utility line relocations and electric, gas and cable utilities) (the "Facilities") upon land, or which will benefit land, within the District. The Facilities and the estimated cost thereof are described in the engineer's report prepared by Stantec and submitted to the Board of Supervisors on March 2, 2017 (the "Report").

C. The District includes approximately 224 gross acres of land within the unincorporated area of the County of which approximately 52 gross acres are within Improvement Area No. 2. The land within Improvement Area No. 2 is being developed by the Company and others in accordance with the Ranch Plan Planned Community Planning Area 2 Master Area Plan and Subarea Plan 2.4 (PA18-0029) and Final Map No. 18194, recorded on September 4, 2019, the General Plan of the County covering such property and the Rancho Mission Viejo Development Agreement dated November 8, 2004 and recorded on December 6, 2004 in the Official Records of Orange County (the "Development Agreement"). The land within the District will be benefited by the construction and/or acquisition of the Facilities.

D. The purpose of this Agreement is to provide for coordination by and among the County, the District and the Company with regard to the use and application of the Community

Facilities District No. 2017-1 (Village of Esencia) (Improvement Area No. 2) Series A of 2020 Special Tax Bonds (the “Series A of 2020 Bonds”). The proceeds of the Series A of 2020 Bonds, will be applied to finance all or a portion of the Facilities listed in Exhibit A.

E. The District is authorized by Section 53313.5 of the Government Code and by that certain Joint Community Facilities Agreement (the “Water District JCFA”) by and among the County, the Company and the Santa Margarita Water District (the “Water District”) dated as of March 28, 2017 to acquire and finance the acquisition and/or construction of the portion of the Facilities consisting of water and sewer facilities described in the Water District JCFA and listed in Part II of Exhibit A (the “Water District Facilities”).

AGREEMENT

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

Section 1. Recitals. Each of the above recitals is incorporated herein and is true and correct.

Section 2. Sale of District Bonds and Related Agreements of Company.

(a) Sale of District Bonds. The Board of Supervisors authorized the sale of the Series A of 2020 Bonds in accordance with the terms and conditions of Resolution No. _____ (the “Series A of 2020 Bonds Resolution”) and the Series A of 2020 Bonds will be issued pursuant to the Bond Indenture, dated as of August 1, 2020, by and between the District and U.S. Bank National Association, as trustee (the “Trustee”). The sale of the Series A of 2020 Bonds will be made pursuant to a Bond Purchase Contract with the underwriter for the Series A of 2020 Bonds. The amount and timing of the sale of the Series A of 2020 Bonds shall be in all respects subject to the sole discretion and approval of the District.

The Bond Indenture will provide for the issuance of Parity Bonds (as defined therein) secured on a parity with the Series A of 2020 Bonds (together with any Parity Bonds, the “Bonds”) to fund additional Facilities or to refund the Series A of 2020 Bonds and any series of Parity Bonds. The District may issue Parity Bonds at any time without the consent of the Company solely for the purpose of refunding all or a portion of the Series A of 2020 Bonds or any series of Parity Bonds outstanding under the Bond Indenture and may issue Parity Bonds to finance additional Facilities with the prior written consent of the Company.

Nothing contained herein shall be construed as requiring the District to issue the Series A of 2020 Bonds or any Parity Bonds or to levy any special tax in accordance with the Act, nor shall anything herein be construed as affecting the Company’s duty to perform its obligations under other agreements, including, but not limited to, the Development Agreement, land use regulations or subdivision requirements relating to the land within the District and the Facilities, which obligations are and shall remain independent of the Company’s rights and obligations under this Agreement.

(b) Cooperation in Initial and Continuing Disclosure. The Company agrees to provide all information regarding the planned development of the property within the District which is necessary to ensure that the official statement for each series of Bonds complies with the requirements of Rule 15c2-12 of the Securities and Exchange Commission and all other applicable federal and state securities laws. As a condition to the issuance of each series of Bonds, the Company further agrees to enter into a Continuing Disclosure Agreement to provide certain semiannual and event disclosure related to the District as and to the extent determined necessary by the District to comply with federal and state securities laws; provided, however that the termination provision of any such agreement shall be the same as that for the Series A of 2020 Bonds unless otherwise agreed to by the Company.

Section 3. Deposit and Use of Bond Proceeds.

(a) Application of Proceeds for District Formation Costs, Costs of Issuance and Reserve Account. The proceeds of the Series A of 2020 Bonds will be applied first to pay any cost of forming the District and issuing the Series A of 2020 Bonds, funding capitalized interest for the Series A of 2020 Bonds and funding the Reserve Account established under the Bond Indenture. The costs of issuing the Series A of 2020 Bonds will include, but not be limited to, all amounts which the County Executive Officer (“CEO”), the Public Finance Director of the County, or their respective designees (the “Authorized Officers”), determines are to be reimbursed to the Company in accordance with the Reimbursement Agreement dated as of October 28, 2014 (the “Reimbursement Agreement”) between the Company and the County for the advance of the costs of formation of the District. As of the date hereof, the CEO has determined that the Company has advanced \$_____ pursuant to the Reimbursement Agreement. The portion of the \$_____ that has been expended as of the date of issuance of the Series A of 2020 Bonds shall be reimbursed from proceeds of the Series A of 2020 Bonds on the date of issuance of the Series A of 2020 Bonds, and the balance shall be remitted to the Company within 30 days following the issuance of the Series A of 2020 Bonds.

(b) Application of Proceeds for Facilities. All proceeds of the Series A of 2020 Bonds remaining after the funding of the items described in (a) above shall be deposited in the Acquisition and Construction Fund established in the Bond Indenture and shall be applied to finance the construction and acquisition of the Facilities listed in Exhibit A. The Facilities described in Exhibit A Part I.A will be constructed by the County and are referred to herein as the “County Facilities.” The Facilities other than the County Facilities and the Water District Facilities listed in Exhibit A Part II.B are to be constructed by the Company for acquisition by the County and are referred to herein as the “Project Facilities.” Notwithstanding anything to the contrary contained in this Agreement for all purposes of this Agreement, the amounts shown on Exhibit A of this Agreement are to be cumulative amounts when taken into consideration with the amounts shown on

Exhibit A of that certain Improvement Area No. 1 Series A of 2018 Special Tax Bonds Acquisition, Funding and Disclosure Agreement (the “IA No. 1 AFDA”) effective as of February 22, 2018, as amended by Reallocation Request #1 dated February 13, 2020, and, for all purposes of the IA No. 1 AFDA, the amounts shown on Exhibit A of the IA No. 1 AFDA are also cumulative amounts when taken into consideration with the amounts shown on Exhibit A of this Agreement. The sum of the amounts disbursed under this Agreement and the IA No. 1 AFDA for any line item in Exhibit A shall not exceed the amount set forth in Exhibit A.

On the date that the Series A of 2020 Bonds are issued, all proceeds of the sale of the Series A of 2020 Bonds that are remaining after the application of funds as described in (a) above shall be deposited in the Project Facilities Account to be used for the Facilities described in Exhibit A, Part I.B.

Amounts in the County Facilities Account shall be disbursed at the direction of an Authorized Officer to acquire and construct the County Facilities. Amounts in the Water Facilities Account shall be disbursed at the direction of an Authorized Officer, from time to time, to finance the acquisition and construction of the Water District Facilities in accordance with the provisions of this Agreement and the Water District JCFA. Amounts in the Project Facilities Account shall be disbursed at the direction of an Authorized Officer, from time to time, as provided in this Agreement and be used to acquire the Project Facilities.

Upon mutual approval of the County, the District and the Company, amounts may be transferred from one Account to another Account from time to time and corresponding adjustments shall be made to the line items in Exhibit A. For purposes of the immediately preceding sentence, the Public Finance Director may provide such approval on behalf of the County and the District. Notwithstanding the foregoing, the Company may provide one or more written requests to the District setting forth an amount to be transferred from the Project Facilities Account to the Water Facilities Account and the corresponding adjustments to be made to Exhibit A; provided, however,

that the total amount transferred shall not cause the total amount deposited to the Water Facilities Account, when added to the total amount deposited to the Water Facilities Account pursuant to the IA No. 1 AFDA to exceed the amount set forth in the Water District JCFA, as the same may be amended from time to time.

[As of the date hereof, Stantec (the “District Engineer”) has not yet reviewed and approved any of the costs previously incurred by the Company for the Project Facilities listed in Exhibit A, Part I B. Reimbursement for previously incurred costs will be made from proceeds of the Series A of 2020 Bonds only upon the review and approval by the District Engineer.] [As of the date hereof, Stantec (the “District Engineer”) has reviewed and approved the reimbursement of \$_____the costs previously incurred by the Company for the Regional Sports Park listed in Exhibit A, Part I B.7, which amount shall be reimbursed to the Company upon the issuance of the Series A of 2020 Bonds. Reimbursement for any additional previously incurred costs will be made from proceeds of the Series A of 2020 Bonds only upon the review and approval by the District Engineer.]

(c) Allocation of Interest Earnings. The District intends to invest amounts on deposit in the Acquisition and Construction Fund in investments permitted by law. Interest earnings realized on amounts in each Account of the Acquisition and Construction Fund will remain in such Account until disbursed in accordance with this Agreement. Earnings on amounts in the County Facilities Account shall not be deemed to reduce or partially fulfill the amount of the Company’s financial obligations related to the County Facilities or other facilities required by the Development Agreement.

(d) Other Applications of Proceeds by Board of Supervisors. Notwithstanding any other provision of this Agreement, an Authorized Officer, in his or her sole discretion, following written notice to the Company, may determine on any date that is more than thirty-six (36) months after the date of issuance of the Series A of 2020 Bonds that any unexpended proceeds of such series

in an Account of the Acquisition and Construction Fund shall either (i) be reallocated to another Account to reimburse eligible costs previously incurred for the Facilities, or (ii) no longer be retained therein to finance Facilities in which case the remaining unexpended proceeds shall be applied at the direction of an Authorized Officer to the payment of principal due on the Series A of 2020 Bonds or to the redemption or purchase of the Series A of 2020 Bonds in accordance with the Bond Indenture, or, upon direction of the Board of Supervisors, for other lawful purposes of the District.

Section 4. Acquisition and Construction of and Payment for Facilities.

(a) Disbursements for Facilities Other than Project Facilities. Subject to the provisions of Section 3(d) above, and provided that the Company is in compliance with all provisions of this Agreement, the District agrees to disburse funds from the Water District Account to the Water District in accordance with the Water District JCFA, and to disburse funds from the County Facilities Account to finance the County Facilities.

(b) Preparation and Acquisition of Plans and Specifications. For Project Facilities other than Cow Camp Bridge and Road listed in Exhibit A Part I.B.2, to the extent not already commenced, upon receipt of written notice from the Director of OC Public Works, or written designee (the “Director”), the Company agrees to cause plans and specifications and construction contract documents (collectively the “Plans”) to be prepared for all Project Facilities, or portions thereof, listed on Exhibit A which the County is requested to acquire from the Company with the proceeds of the Bonds. The Plans will be prepared in accordance with the County’s general requirements for plans for public improvements and all provisions of this Agreement.

The Company shall obtain the written approval of the Director for any Plans for Project Facilities or portions thereof which are to be prepared by the Company. Upon submission to the Director by the Company of the completed Plans satisfactory to the Director for any Project Facility, the Director shall notify the Company that the Plans for such Project Facility have been

approved and are eligible for acquisition when the related Project Facility is complete and is acquired pursuant to the terms of this Agreement.

The County has previously approved Plans and certain agreements as more specifically set forth in that certain Construction Agreement for Cow Camp Road (Segment I, Phases 1a and 1b) dated April 9, 2013, by and between the County and the Company (as amended, the “Cow Camp Agreement”). In addition, the Cow Camp Agreement provides the process for approval of Plans and agreements in the future, and the County and the Company may enter into further agreements relating to the construction of other segments of Cow Camp Road (each, a “Future Cow Camp Agreement”). Notwithstanding any provision in this Agreement to the contrary, the provisions of this Section 4(b) shall not apply to any Plans or other agreements approved pursuant to the Cow Camp Agreement or any Future Cow Camp Agreement, but such Plans shall remain eligible for reimbursement as otherwise provided in this Agreement.

(c) Acquisition and Construction of Project Facilities. Subject to all of the provisions of this Agreement, the County agrees to acquire from the Company those Project Facilities listed in Exhibit A which are constructed by the Company and tendered for acquisition in accordance with the provisions of this Agreement. The Company agrees that any Project Facility being constructed by, or under the direction of, the Company and to be acquired by the County shall be constructed in substantial compliance with the approved Plans and in compliance with the requirements of Government Code Section 53313.5, which requires those improvements to be constructed as if such improvements had been constructed under the direction and supervision, or under the authority, of the County. In partial satisfaction of the requirements of Section 53313.5, the Company shall be required to secure the faithful performance of construction and completion of construction of the Project Facilities by appropriate contractor’s bonds as required by the California Public Contracts Code and shall require its contractor or contractors to pay the prevailing rate of per diem wages for work of a similar character in the locality of the District and not less than the general

prevailing rate of per diem wages for holiday and overtime work, as provided in Section 1771 *et seq.* of the California Labor Code, to all workers employed by each such contractor in the construction of the Project Facilities. As to each Project Facility, the Company shall obtain from its contractor or contractors and furnish to District payroll records for a minimum of one payroll period as to all such workers employed by the contractor or contractors demonstrating compliance with the requirements of Section 1771 *et seq.* of the California Labor Code.

This paragraph and the following two paragraphs of this Section 4(c) are applicable only to contracts to be let for a Project Facility subsequent to the date of this Agreement. Prior to the advertising of bids for a contract to be let subsequent to the date of this Agreement, the Director will advise the Company as to whether adequate funds are on deposit in the Project Facilities Account of the Acquisition and Construction Fund to pay the amounts to be paid under such contract. The decision as to whether such funds are available for a particular contract to be let for a Project Facility, or portion thereof, shall be in the sole discretion of the Director. If the Director advises the Company that adequate funds exist to pay all or a portion of the contract to be let, the Director will also notify the Company as to the amount of available funds for such Project Facility and the Company may then publicly advertise for bids for such Facility. Following the Director's approval of the winning bid in accordance with the California Public Contract Code as described in the following paragraph, the Director will advise the Company as to the amount of funds available in the Project Facilities Account which will be reserved to pay for such Project Facility. If adequate funds do not exist from the sources described above for the work to be bid by the Company, the Director will so notify the Company and the Company may publicly advertise for bids for such Project Facility, provided that it first acknowledges to the Director, in writing, that (i) the District currently lacks available funds to acquire such Project Facility from the Company, (ii) no assurance can be given as to when, or if, adequate funds will be available to pay for some or all of such Project Facility, and (iii) neither the District nor the County will have any liability to the Company in the event adequate funds are never

available to acquire such Project Facility. To the extent that the Director, in his sole discretion, determines that funds are available in the Project Facilities Account of the Acquisition and Construction Fund subsequent to the letting of such contract, the Director shall notify the Company and, if requested by the Company, in writing, to do so, shall encumber funds for purposes of acquiring the applicable Project Facility.

Following the Director's approval to let a contract for a Project Facility, the Company shall publicly advertise for bids for such Project Facility and shall provide the Director a list of all bids received for the contract. Thereafter, with the prior written approval of the Director as to the winning bid, the Company shall award the contract or contracts for such Project Facility in accordance with the Uniform Construction and Cost Accounting Act, codified at California Public Contract Code Sections 22030 et seq., and in accordance with other provisions of the Public Contracts Code as they may apply. The Company agrees that it has a duty to and will record an irrevocable offer of dedication of the land owned by the Company necessary for a Project Facility prior to reimbursement for such Project Facility hereunder.

The Director, in his sole discretion, may require the Company to reject all bids and either require the work for a Project Facility to be rebid or may postpone the letting of such contract to a future date to be determined by the Director, in his sole discretion. If the Company desires to be reimbursed for any change order, the Company shall first obtain the prior written approval of the Director, or his written designee. In no event shall the Director approve contracts and change orders for a Project Facility which causes the Purchase Price (as defined in Section 4(f) below) for such Project Facility when added to the Purchase Prices previously approved for all Project Facilities listed in the same line item in Exhibit A as such Project Facility to exceed the applicable line item total in Exhibit A plus 10% (as modified in accordance with Section 3(b) of this Agreement from time to time) (the "Purchase Price Limit"), unless such higher amount is first approved by the Board of Supervisors.

Following the award of a contract by the Company for a Project Facility, the County shall have the right but not the obligation to require the Company to make an irrevocable offer of dedication of the land owned by the Company for such Project Facility to the County and to assume responsibility for the work to be performed thereunder if the County has provided the Company with written notice that the work is not being performed in a satisfactory manner and the Company has not commenced actions to cure any such defects within 60 days after the giving of such notice and does not diligently pursue to completion the cure of any such defects as determined by the Director.

In the event the County elects to assume the responsibility for any work on a previously awarded contract as described in the preceding paragraph, the following will occur:

(i) the Company will make an irrevocable offer of dedication to the County of the land owned by the Company for such Project Facility;

(ii) to the extent permitted by law and the applicable contract, the Company will assign all of the contracts for the work performed to date to the County, if requested to do so by the Director;

(iii) the County will use its best efforts to complete the Project Facility within a reasonable time frame;

(iv) upon completion of the Project Facility, the Company will be reimbursed for the lesser of the cost or value of the previously unreimbursed satisfactory work performed or paid for by the Company. The cost of such work will be determined by taking the unreimbursed amounts expended by the Company under the contract(s) taken over by the County and deducting any incremental cost incurred by the County to complete the work under the contracts in question. Incremental cost shall be costs in excess of the sum of the original contract cost plus change orders approved by the County.

(d) Inspection and Acceptance. The construction activities relating to the Project Facilities shall be subject at all reasonable times to inspection by authorized representatives of the County, which inspection shall be accomplished in a timely manner. If an entire Project Facility to be acquired is completed substantially in accordance with the approved Plans for such Project Facility (including any change orders approved by the Director), and in accordance with the requirements of Section 53313.5 or Section 53314.9 of the Act, then such Project Facility shall be promptly accepted by the Director for purposes of paying the Purchase Price (as defined in Section 4(f) below) for that Project Facility.

Prior to acceptance of any Project Facility for reimbursement by the Director for purposes of paying the Purchase Price thereof, the Company shall provide (i) documentation indicating that approved Plans or where there are no approved Plans, the improvement plans, as-built drawings or other similar plans and specifications of such Project Facility have been received in a form reasonably acceptable to the Director, or, in lieu thereof, the Director may refer to the official improvement plans on file with OC Public Works, (ii) a certificate of the Company, supplemented by information satisfactory to the Director, that the improvements being acquired were constructed as if they had been constructed under the direction and supervision, or under the authority, of the County, (iii) a certificate of the Company stating that no mechanic's liens or other encumbrances have attached, or to the best of its knowledge will attach, to the improvements being acquired, and (iv) if previously required by the Director, evidence that performance bonds, in a form acceptable to the Director, are on file with the County.

The Company shall be obligated for a period of twelve (12) months from the date the County accepts a Project Facility into the County system for purposes of maintenance, to repair or replace any defects or failures resulting from the work of the Company, its contractors or agents, which is not in conformance with the Plans. Upon the expiration of such twelve (12) month period, the Company shall assign to the County all of its rights in any remaining warranties, guarantees or other evidence

of contingent obligations of third persons with respect to such Project Facilities. However, nothing herein shall limit the District's or the County's rights under Section 18 of this Agreement.

(e) Notice of Completion and Lien Releases. The Company shall notify the Director, in writing, upon completion of each Project Facility to be acquired hereunder. The Company shall prepare and execute a Notice of Completion in form acceptable to the Director as to such work and record such notice in the office of the Clerk-Recorder of the County of Orange, State of California, and cause its contractor(s) to provide lien releases in a form acceptable to the Director for all such work. Notwithstanding the foregoing, the Director may waive the requirement for a Notice of Completion and lien releases if the Director determines that, as of the date of payment of the Purchase Price for a Project Facility, title to such Project Facility meets the requirements for "Acceptable Title" as defined in Section 4(h)(1) below.

(f) Purchase Price. Upon satisfaction of the conditions to acceptance of a Project Facility for purposes of paying the Purchase Price thereof described in Sections 4(c), (d) and (e) above, the Director shall determine, and pay, the Purchase Price for such Project Facility in accordance with this Section 4(f). The Purchase Price will be paid in accordance with this Section 4(f) within 45 calendar days from the date of the District Engineer's approval of such Project Facility for acquisition. The amount to be paid for a Project Facility being acquired from the Company (hereinafter and hereinafter the "Purchase Price" as to each such Project Facility), shall (i) be determined by the Director in accordance with the provisions of this paragraph and the County's Facilities, Acquisition and Reimbursement Procedures as amended from time to time (a copy of which shall be delivered by the County to the Company); (ii) equal the lesser of the cost or the value thereof; (iii) include the reasonable cost or value of eligible appurtenant public facilities; and (iv) include all other costs of construction reasonably determined by the Director to be eligible under the Act as a part of the cost of the Project Facility, such as fees and costs incurred in obtaining permits, licenses, the costs of change orders, engineering, legal, fiscal and inspection fees

constituting a part of the public improvements; provided, however, in no event shall the Purchase Price exceed the amount of the contracts and change orders previously approved by the Director, and, provided further, that the Director shall not approve a Purchase Price which causes the Purchase Price Limit applicable to such Project Facility to be exceeded, unless such higher amount is first approved by the Board of Supervisors.

The Purchase Price will not include interest on amounts disbursed by the Company and will not include construction management costs for services performed by the Company (but may include construction management costs paid by the Company to third parties). The Company shall provide any documentation reasonably requested by the Director to substantiate the Purchase Price. The Director shall not unreasonably withhold or delay its approval of costs. Costs incurred under a construction contract entered into as a result of a call for public bids by the Company shall be deemed to be reasonable, provided that no extraordinary limitations or requirements (such as short time frame) which have not been approved by the Director are imposed by the Company on the performance of such contract. If at any time any contract for a Project Facility is to be let and the Director determines that the value of the completed Project Facility constructed in accordance with the Plans would be less than the cost of constructing the Facility, then the Director shall notify the Company in writing prior to the execution of the contract.

Notwithstanding any of the provisions of this Agreement to the contrary, (a) the Company may elect and shall be entitled to receive payment of the Purchase Price for each completed Project Facility or approved segment thereof in two installments in accordance with the provisions set forth below and in Exhibit B hereto and (b) with respect to the Cow Camp Agreement and any Future Cow Camp Agreement, the provisions of such agreement shall control with respect to payment of the Purchase Price for segments of such Facility.

With respect to segments that are not governed by the Cow Camp Agreement or any Future Cow Camp Agreement, the first installment shall be in the amount requested by the Company;

provided, however, such installment shall in no event exceed seventy percent (70%) of the expenditures determined by the Director to be eligible for reimbursement for such Project Facility or segment thereof approved by the Director. Such amount shall be paid to the Company within 45 calendar days after the Director receives from the District Engineer a certification as described in Exhibit B with respect to such reimbursement and the Director approves such payment. The District Engineer's review of a request for reimbursement shall be completed within 15 working days of the District Engineer's receipt of the documentation to be provided by the Company as set forth in Exhibit B. When such documentation is satisfactory to the District Engineer, the District Engineer shall expeditiously deliver a certification to the Director, or his designee, with respect to such reimbursement request. The Director's review of such request shall be completed within ten (10) working days and, if satisfactory, said first installment will be expeditiously approved. The District Engineer's written certification, upon which the Director's approval shall be based, shall contain copies of materials and statements adequate to satisfy the requirements shown on Exhibit B attached hereto.

The second installment of the Purchase Price shall be reimbursed for the Project Facility, or any segment thereof being acquired from the Company as approved by the Director, upon satisfaction of all the conditions for payment of the Purchase Price contained in this Agreement.

In the event that the Director determines from the final acquisition report for a Project Facility, or any segment thereof, that the amount previously paid to the Company for such Project Facility, or segment thereof, exceeds the amount eligible for payment to the Company under the final acquisition report, the Company agrees to repay to the District within 30 days of receipt of notice from the Director the amount of such overpayment.

(g) Determination of Segments to be Acquired. Except as set forth in the Cow Camp Agreement or in any Future Cow Camp Agreement, the Director, in his sole discretion, will determine whether, and to what degree, a Project Facility will be acquired from the Company in

segments smaller than the entire Project Facility to be acquired from the Company. Except as set forth in the Cow Camp Agreement or in any Future Cow Camp Agreement, the Purchase Price of each specific segment to be acquired shall be determined by the Director in accordance with Section 4(f) above; provided, however, the aggregate Purchase Price for all segments related to such Project Facility shall not exceed the value of such segments and shall not cause the Purchase Price Limit applicable to such Project Facility to be exceeded. If the costs incurred by the Company in connection with the construction of a Project Facility cause the Purchase Price Limit applicable to such Project Facility to be exceeded, then the Company may be reimbursed for all or a portion of the amount in excess of the Purchase Price Limit from District revenues to the extent that the Board of Supervisors determines, in its sole discretion, that funds are available for such purpose and that such costs are eligible for reimbursement under the Act and other provisions of law and are consistent with the County's policies for reimbursement of costs.

Notwithstanding any of the provisions of this Agreement to the contrary, the District shall have the right to withhold payment of the Purchase Price or any increment thereof of any Project Facility if the Company is delinquent in the payment of any special taxes levied by the District on properties then owned by the Company within the District. The Director shall provide written notice to the Company of the decision to withhold any such payment and shall specify the reason for such decision. If the payment is withheld as a result of the delinquency in the payment of special taxes, the notice shall identify the delinquent parcels and the amount of such delinquency. Upon receipt by the Director of evidence reasonably satisfactory to the Director of the payment of the delinquent special taxes, the District shall forthwith make any payment which has been withheld pursuant to the provisions of this paragraph.

(h) Ownership and Transfer of Facilities. The provision of or conveyance of Project Facilities from the Company to the County shall take place as follows:

(1) Land (Easement). At the time that the Director approves the reimbursement for a Project Facility to be acquired from the Company, and as a precondition to the payment of any portion of the Purchase Price for a Project Facility, the Company shall cause to be made, or shall have previously made, an irrevocable offer of dedication to the County of the appropriate right, title and interest in and to the portion of the land owned by the Company related to such Project Facility to be acquired hereunder, including any temporary construction or access easements. The Company agrees to execute and deliver to the County those documents required to complete the transfer of Acceptable Title (as defined herein) to such portion of the land. "Acceptable Title" means title to the land delivered free and clear of all taxes, liens, encumbrances, assessments, easements, leases, whether any such item is recorded or unrecorded, except those nonmonetary encumbrances and easements which are reasonably determined by the Director not to interfere with the intended use of the land and therefore are not required to be cleared from the title. As a further precondition to the payment of the Purchase Price for a Project Facility, the Company shall provide a policy of title insurance on such land, in an amount determined by the Director, which is equal to or, with the consent of the Company, greater than the Purchase Price for a Project Facility and in the form normally required by the County in connection with the dedication of land for subdivision improvements.

The Company shall maintain the land and any improvements thereon in good and safe condition until the County accepts the Project Facility into the County system for maintenance.

The County's final acceptance of the land and improvements shall not be unreasonably withheld or delayed; however, the County may not accept an improvement if the Director has determined that such improvement has not been constructed in accordance with County standards for public facilities.

(2) Personal Property. If any of the Project Facilities to be acquired from the Company contain personal property, then transfer to the County of such personal property shall be accomplished by a Bill of Sale.

(3) Funds. If the Company provides funds for Project Facilities, the provision of such funds to the County and/or the District shall be acknowledged with a written receipt from the Director.

Section 5. Disclosure of Special Tax. The Company covenants and agrees that from and after the date hereof it will provide all forms of disclosure of the special tax to be levied by the District as required by existing law and by any future laws. In particular, the Company covenants and agrees from and after the date hereof to provide the special tax disclosure notice required by Section 53341.5 of the Act and to retain in its files copies of all notices signed by purchasers in accordance with Section 53341.5. The County shall have the right to inspect and obtain copies of all of the Company's records regarding special tax disclosure. The Company represents that it has included in its contracts with purchasers of land within the District, and further agrees to include in its contracts with purchasers of land within the District entered into from and after the date hereof, a requirement that such purchasers (i) provide all forms of disclosure of the special tax required by law, including the Section 53341.5 notice in the form provided by the County, (ii) retain signed copies of the Section 53341.5 notice following the sale of any parcel of land within the District to another, and (iii) provide the County on request an opportunity to review and obtain copies of all records relating to disclosure of the special tax. Such contractual provision shall further provide that the County and the District are third party beneficiaries of such disclosure requirements and that the

purchaser of land will indemnify the County, the District and their respective officers and employees for any failure of such purchaser to disclose the special tax as required by law.

Section 6. Indemnification and Hold Harmless. The Company hereby assumes the defense of, and indemnifies and saves harmless the County, the District and each of their respective officers, directors, employees and agents, 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, this Agreement, or arising out of the design, engineering and construction of any of the Project Facilities, or arising out of a failure of the Company to provide notice of the special tax to be levied by the District or arising out of any alleged misstatements of fact or alleged omission of a material fact made by the Company, its officers, directors, employees or agents to the County, the District, the District's Underwriter and its counsel, Appraiser, Special Tax Consultant, Market Absorption Consultant or Bond and Disclosure Counsel regarding the Company, its proposed developments, its property ownership and its contractual arrangements contained in the Official Statement relating to the Series A of 2020 Bonds or any series of Parity Bonds under the captions "The Community Facilities District," "Property Ownership and the Development" and "Special Risk Factors;" provided that the actions, damages, claims, losses and expenses covered by this Section 6 which relate to the Project Facilities being acquired shall be those arising out of the personal injury or property damage which occurred during the period up to the acceptance of the Project Facilities by the County, whether or not an action or claim is filed by the date of acceptance of the Project Facilities; and provided, further, that nothing in this Section 6 shall limit in any manner the indemnified party's rights against any of the Company's architects, engineers, contractors or other consultants. The Company shall furnish to the District a certificate or certificates of insurance substantiating that it has obtained for the entire period of the construction of the Project Facilities a policy of comprehensive general liability insurance with coverage broad enough to include the Company's contractual obligations under this section and having a combined single limit of liability

in the amount of \$2,000,000. The certificate of insurance shall include an endorsement naming the parties entitled to indemnity under this Section 6 as additional named insureds.

Except as set forth in this Section 6, no provision of this Agreement shall in any way limit the extent of the responsibility of the Company for payment of damages resulting from the operations of the Company, its agents, employees or contractors. Nothing in this Section 6 shall be understood or construed to mean that the Company agrees to indemnify the County or the District, or any of their respective officers, directors, employees or agents, for any negligent or wrongful acts or omissions to act of the County or the District, or any of their respective officers, directors, employees or agents.

Section 7. Relationship to Public Works. The parties hereto agree that this Agreement is for the financing and acquisition of certain public facilities to be owned by the County and the Water District and the sale of one or more series of Bonds for the payment of the construction and/or acquisition cost of such Facilities and such other amounts as are herein provided, and is not nor is intended to be a public works contract. In performing this Agreement, the Company is an independent contractor and not the agent of the County or the District. The County or the District shall have no responsibility for payment to any contractor or supplier of the Company. Notwithstanding the foregoing, the Company shall be subject to certain public contract requirements as provided in Section 53313.5 or Section 53314.9 of the Act and in subsection 4(b) hereof.

Section 8. Audit. The Authorized Officers, and each of them, shall have the right, during normal business hours and upon the giving of ten days' written notice to the Company, to review all books and records of the Company relating to the Project Facilities.

Section 9. Conflict with Other Agreements. Nothing contained herein shall be construed as releasing the Company from any condition of development or requirement imposed by any other agreement with the County, and, in the event of a conflicting provision, such other agreement shall prevail unless such conflicting provision is specifically waived or modified in writing by the County.

Section 10. General Standard of Reasonableness. Any provision of this Agreement which requires the consent, approval, discretion or acceptance of either party hereto or any of their respective employees, officers or agents shall be deemed to require that such consent, approval or acceptance not be unreasonably withheld or delayed, unless such provision expressly incorporates a different standard. The foregoing provision shall not apply to provisions in the Agreement which provide for decisions to be in the sole discretion of the party making the decision.

Section 11. Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either 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:

Company: RMV PA2 Development, LLC
 c/o Rancho Mission Viejo
 28811 Ortega Highway
 San Juan Capistrano, CA 92675
 Attention: Chief Financial Officer

County or County of Orange
 CFD No. 2017-1: County Executive Office
 333 W. Santa Ana Boulevard
 Santa Ana, CA 92701
 Attention: Public Finance Director

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

Section 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.

Section 13. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. The Company may not assign its rights or obligations hereunder except with the prior written approval of an Authorized Officer. Notwithstanding the preceding sentence, the Company may assign its rights and obligations

hereunder as security to lenders for the purpose of obtaining loans to finance development within the District, but no such assignment shall release the Company from its obligations hereunder to the County and the District, which the Company shall remain obligated to perform itself. The Company shall provide written notice to the County of any assignment of this Agreement as security for lenders.

Section 14. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

Section 15. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by another party, 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 party with the terms of this Agreement thereafter.

Section 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.

Section 17. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 18. Remedies in General; Damages Limited.

(a) Damages Limited. It is acknowledged by the parties that neither the County nor the District would have entered into this Agreement if it were to be liable in damages under or with respect to this Agreement or the application thereof, other than for the payment to the Company of any Purchase Price owing to the Company hereunder, together with interest on the Purchase Price up to the limit described in this Section 18. Any and all obligations arising out of or related to this Agreement are the special and limited obligations of the County and/or the District payable only from funds of the District, to the extent such revenues may become available. Neither the County nor the District shall have any pecuniary liability for any act or omission on the part of the County or

the District, except as set forth in this Section 18. In no event will an act, or an omission or failure to act, by the County or the District with respect to the sale or proposed sale of the Series A of 2020 Bonds or any Parity Bonds subject the County or the District to pecuniary liability therefor.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement; except that the County and the District shall not be liable in damages to the Company, or to any assignee or transferee of the Company, other than to pay up to an amount equal to the Purchase Price for any Project Facility which the County is obligated to acquire from the Company hereunder, together with interest on the Purchase Price at a rate equal to the yield on the Series A of 2020 Bonds. In light of the foregoing, the Company covenants not to sue for or claim any damages for any alleged breach of, or dispute which arises out of, this Agreement, except for the payment of an amount equal to the Purchase Price of any Facility to be acquired from the Company hereunder, together with interest on the Purchase Price up to the limit described in the previous sentence.

(b) Resolution of Disputes Regarding Purchase Price. Notwithstanding any provision in this Agreement to the contrary, in the event of a dispute as to the amount of the Purchase Price to be paid for any Project Facility to be acquired hereunder, the County and the District will pay any undisputed portion of the Purchase Price upon compliance with the provisions of this Agreement and may elect to withhold payment of the amount of the Purchase Price in dispute, in which case the parties agree to meet and confer regarding such matter.

Section 19. Entire Agreement; Amendment. This Agreement and the agreements expressly referred to herein contains all of the agreements of the parties hereto with respect to the matters contained herein and no prior or contemporaneous agreement or understandings, oral or written, pertaining to any such matters shall be effective for any purpose. No provision of this Agreement may be modified, waived, amended or added to except by a writing signed by the party

against which the enforcement of such modification, waiver, amendment or addition is or may be sought.

Section 20. Construction of Agreement. This Agreement has been reviewed by legal counsel for the County and the Company and shall be deemed for all purposes to have been jointly drafted by such parties. No presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. The language in all parts of this Agreement, in all cases, shall be construed as a whole and in accordance with its fair meaning and not strictly for or against any party and consistent with the provisions hereof, in order to achieve the objectives of the parties hereunder. The captions of the sections and subsections of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction.

Section 21. Authority of Signatories. Each signatory and party hereto hereby represents and warrants to the other party that it has legal authority and capacity and direction from its principal to enter into this Agreement, and that all resolutions and/or other actions have been taken so as to enable such party to enter into this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

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

COUNTY OF ORANGE

By: _____
Public Finance Director

COMMUNITY FACILITIES DISTRICT NO. 2017-1
OF THE COUNTY OF ORANGE (VILLAGE OF
ESENCIA)

By: _____
Public Finance Director of the County of
Orange

APPROVED AS TO FORM:

LEON J. PAGE,
County Counsel

By: _____
Nikhil G. Daftary
Senior Deputy County Counsel

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

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

By: _____
Elise L. Millington
Senior Vice President/Chief Financial Officer

By: _____
Donald L. Vodra
President/Chief Operating Officer

	<i>Estimated Eligible Facilities</i>
I. ONSITE AND OFFSITE FACILITIES	
A. COUNTY FACILITIES (Constructed by County)	
Roadways (including, without limitation, rough grading for roadways and traffic improvements)	
1. La Pata Road	\$ 0 ⁽¹⁾
B. PROJECT FACILITIES (Acquired by County)⁽²⁾	
Roadways (including, without limitation, rough grading for roadways and traffic improvements)	
1. Gibby Road	\$ 1,852,800
2. Cow Camp Bridge and Road	25,698,393
3. Los Patrones Parkway	26,700,000
4. Oso/Antonio Intersection	1,207,099
5. Street Improvements (including, without limitation, those listed on Schedule I)	7,618,349
Other Facilities	
6. Storm Drains	6,222,451
7. Regional Sports Park	17,000,000
8. Gobernadora Basin	-
9. Dry Utilities ⁽³⁾	<u>3,700,908</u>
Subtotal Onsite and Offsite Facilities	\$ 90,000,000
II. JCFA – SANTA MARGARITA WATER DISTRICT	
A. In-Tract Sewer and Water Facilities (Acquired by SMWD)	\$ 5,000,000
B. Trampas Reservoir and related recycled water improvements	<u>15,000,000</u>
Subtotal SMWD Facilities	<u>\$ 20,000,000</u>
TOTAL	<u>\$ 110,000,000⁽⁴⁾</u>

⁽¹⁾ Amounts may be transferred in the future from line items in Part I.B or Part II to fund La Pata Road upon mutual approval of the County, the District and the Company as described in Section 3(b) of the Agreement.

⁽²⁾ The amounts in Part I.B may be reallocated between any of categories 1 through 9 based on the Purchase Prices approved by the Director so long as the total Purchase Prices approved for the Project Facilities do not exceed the amount on deposit in the Project Facilities Account.

⁽³⁾ The amount to be disbursed for Dry Utilities may not exceed 5% of the initial amount deposited to the Acquisition and Construction Fund on the date of issuance of the Series A of 2020 Bonds and may be made only upon receipt by the Director of evidence satisfactory to it that the requirements of Section 53313.5(e) of the Act have been satisfied.

⁽⁴⁾ This total exceeds the initial deposit to be made to the Acquisition and Construction Fund to finance the Facilities. Neither the County nor the District is liable to pay any cost of the Facilities from any amount other than the proceeds of the Series A of 2020 Bonds and any Parity Bonds, if any, deposited to the Acquisition and Construction Fund and the interest earnings deposited therein in accordance with the Bond Indenture.

SCHEDULE ICollector Roadways/Trail and Fire Access Roads:

- a. Chiquita Canyon Drive
- b. Airoso Street
- c. Fauna Street
- d. Andaza Street
- e. Esencia Drive
- f. Tierno Road
- g. Aprender Street
- h. Medano Street
- i. Trails
- j. *Signals*
 - Cow Camp Road at Chiquita Canyon Drive
 - Cow Camp Road at Esencia Drive
 - Cow Camp Road at Antonio Parkway
 - Chiquita Canyon Drive at Esencia Drive
 - Chiquita Canyon Drive at Airoso Street
- k. Saliente Road
- l. Cima Drive
- m. Suerte Street
- n. Ocaso Street
- o. Rodear Road
- p. Emotivo Lane
- q. Picaro
- r. Salubre Street

EXHIBIT B**REQUIREMENT FOR PHASED REIMBURSEMENT OF PURCHASE PRICE
FOR PROJECT FACILITIES OR SEGMENTS THEREOF**

If the Company elects to receive reimbursement of the Purchase Price for a completed Project Facility or segment thereof in two installments, the following conditions must be complied with as a precondition to payment of the first installment.

The District Engineer shall provide the Director with a written certification which states and which contains documentation to support the following:

1. That the Project Facility or segment in question is complete and has been constructed in the same manner as if it had been constructed under the direction and supervision or under the authority of the County and in compliance with the provisions of the Mello-Roos Community Facilities Act of 1982, as amended;
2. That the first installment of the Purchase Price does not exceed seventy percent (70%) of the reimbursable expenditures attributable to such Project Facility or segment;
3. That the requested payment does not exceed the lesser of cost or value of the completed Project Facility or segment;
4. That an irrevocable offer of dedication of all rights of way for the Project Facility or segment has been recorded by the County Recorder. This provision shall not apply to right of way already owned by the County or a special district or other body governed by the County's Board of Supervisors;
5. That Title Insurance on the dedicated right of way in an amount equal to or greater than the estimated full Purchase Price has been provided to the Director. This provision shall not apply to right of way already owned by the County or a special district or other body governed by the County's Board of Supervisors; and
6. That the Company has submitted a request for partial reimbursement to the District Engineer which shall include the following:
 - (a) A summary of project expenditures for which reimbursement is requested. This summary shall clearly distinguish:
 - (1) Contract amount for which reimbursement is requested;
 - (2) Contract change order amounts for which reimbursement is requested; and
 - (3) Noncontractual expenditures for which reimbursement is requested.
 - (b) Statements from contractors, consultants and other payees certifying that they have received amounts from the Company for work on the Project Facility or

segment, the sum of such amounts is equal to the amount requested for reimbursement, and releases of any lien rights as to such amounts. In lieu of the statement of the amount received, cancelled checks and releases of any lien rights may be submitted.

- (c) Copies of approval letters for all applicable consultant contracts from the Director or his designee.
- (d) A letter, if applicable, from the Director or his designee, concurring with any cost prorations.
- (e) Copies of applicable executed “Potential Change of Work Acknowledgment” forms (PCOWs) and “Change of Work Eligibility and Value” forms (CWEVers), and the Director’s concurrence for each CWEVer.
- (f) A letter from the Director that the Project Facility or segment is complete and eligible for reimbursement.
- (g) A certification letter from the Company that wages paid for all work performed on the Project Facility or segment comply with Article 2, Chapter 1, Part 7, Division 2 of the California Labor Code (commencing with Section 1770), as amended.