

**CONSTRUCTION AGREEMENT
(Cow Camp Road Segment 2 – Phases 2a and 2b)**

This Construction Agreement No. _____ (“**Agreement**”) is made and entered into this _____ day of _____, 2017 (“**Effective Date**”) by and between THE COUNTY OF ORANGE, a political subdivision of the State of California (“**County**”), and RMV COMMUNITY DEVELOPMENT, LLC, a California limited liability company (“**RMV**”). The County and RMV are sometimes hereafter collectively referred to as the “**Parties**” and individually as a “**Party**.”

RECITALS

- A. Cow Camp Road is located within the boundaries of that comprehensive land use, management and conservation program originally approved by the Orange County Board of Supervisors on November 8, 2004 and commonly known as the “**Ranch Plan**”. As part of the Ranch Plan approvals, the Board approved Development Agreement DA04-01 (the “**Ranch Plan DA**”) and the South County Roadway Improvement Program (the “**SCRIP**”).
- B. Under the Ranch Plan DA and SCRIP, the owners of the lands comprising the Ranch Plan project area (the “**Owners**”) are authorized to construct certain transportation improvements on lands located within the project area. These transportation improvements include Cow Camp Road.
- C. The Owners have designated RMV to act on their behalf with respect to coordinating the implementation of the Ranch Plan, including the construction of Cow Camp Road.
- D. On April 9, 2013, the County and RMV entered into Agreement No. D13-018 (the “**Segment 1 Agreement**”) concerning the construction of those portions of Cow Camp Road specifically identified as “Phase 1a” and “Phase 1b.”
- E. Consistent with the terms of the Segment 1 Agreement, RMV constructed Phase 1a and Phase 1b in accordance with the project description attached to the Segment 1 Agreement. For its part, the County performed certain oversight and inspection services in relation to the Phase 1a and Phase 1b work, and coordinated with RMV in securing funds from certain third-party sources to offset the costs associated with construction of Phases 1a and 1b – including (i) a grant of Measure M2 funds from the Orange County Transportation Authority (“**OCTA**”) totaling approximately \$8 million (the “**Segment 1 Grant**”) and (ii) the provision of funding from Community Facilities District 2013-1 (“**CFD 2013-1**”), as established by the Santa Margarita Water District.
- F. RMV now proposes to perform those services necessary to construct Phases 2a and 2b of Cow Camp Road – *i.e.*, that portion of the right-of-way that begins at its current terminus point (just east of the Los Patrones Parkway alignment, at the endpoint of Segment 1b) and extends easterly for approximately 1.28 miles (the “**Project**”). The Project is more particularly described in the attached Exhibit A-1 (the “**Project Description**”).
- G. County is supportive of the Project in that it will promote the completion of Cow Camp Road and improve the mobility of south County roads consistent with the Roads First

Strategy.

H. In furtherance of the Project, the County has (to date): (i) reviewed and certified an addendum to EIR for the Project (February 2015); (ii) reviewed and approved a project study report for the Project (June 2016); (iii) obtained from OCTA a Measure M2 grant in the amount of \$3,250,000 for design and engineering activities relative to the Project (April 2016); and (iv) filed an application with OCTA seeking a supplemental grant of Measure M2 funds in the amount of \$14.27 million to offset a portion of the costs associated with construction of the Project (October 2016).

I. Subject to the terms and conditions hereof:

- RMV (acting individually and/or through its contractors and consultants) is willing and able to perform those construction and construction administration/support tasks which are necessary in relation to implementation of the Project (collectively, the “**Services**”); and
- County is willing and able to (i) compensate RMV for the Services performed pursuant to this Agreement using Measure M2 grant funds actually received by County from OCTA, (ii) facilitate RMV’s receipt of funds from existing and future community facilities districts (“**CFDs**”) as reimbursement for qualified Project costs and (iii) accomplish those additional tasks and obligations that are specifically prescribed for County herein.

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants, terms and conditions herein contained, the Parties hereto agree as follows:

Section 1 BASIC COMMITMENTS

a. RMV shall perform the Services in accordance with the terms and provisions hereof.

b. In consideration of RMV’s provision of the Services, County shall (i) compensate RMV for said Services using OCTA Measure M2 grant funds actually received by the County and (ii) facilitate RMV’s receipt of reimbursement payments from existing and future CFDs for those Services which qualify for distribution of funds from said CFDs. In satisfying the foregoing compensation and payment facilitation obligations, County shall comply with the provisions of Section 10, below.

c. RMV may employ contractors and consultants, all of whom shall be professionals duly licensed or registered in the State of California (as appropriate and as legally required), for the accomplishment of the Services specified.

d. RMV's employment of independent consultants/contractors shall not relieve RMV from the performance of its own responsibilities pursuant to this Agreement.

e. County shall authorize RMV to represent County for administration of pre-construction and construction activities necessary for implementation of the Project.

Section 2 SERVICES

a. Description of Services.

(i) The Services shall be performed generally in accordance with the “**Project Schedule**” attached hereto as Exhibit A-2. The Parties acknowledge that contracts for certain portions of the Project improvements may be awarded prior to execution of this Agreement. In that event, the Parties’ execution of this Agreement shall act to ratify such work as included within the scope of this Agreement, and subject such work to the terms and conditions of this Agreement.

(ii) The overall objective shall be for RMV and County to coordinate as needed to complete the Project. RMV shall lead the work effort under the direction of the person designated by RMV to serve as the Project Construction Manager, while County shall be responsible for providing inspection oversight in a timely manner and acceptance of Project facilities and improvements (*see Section 3* below). Upon its completion and acceptance into the County’s highway system, Cow Camp Road shall become part of the County’s arterial highway system and County shall take over maintenance responsibilities for the roadway.

(iii) RMV has or will obtain certain regulatory permits and environmental approvals from state and federal agencies/departments (including, but not limited to, California Department of Fish and Wildlife, San Diego Regional Water Quality Control Board, U.S. Fish and Wildlife Service and U.S. Army Corps of Engineers) that authorize RMV to proceed with implementation of the Ranch Plan, including the Project (the “**Regulatory Permits**”).

(iv) RMV and County shall work cooperatively to identify the procedures (*e.g.*, OCTA Measure M2 Program Guidelines) to be used in connection with the identification and retention of contractors who will perform services in relation to the Project.

(1) Bidder Prequalification Method. In light of (i) the size and anticipated cost of the Project, (ii) the Project Schedule and (iii) the specialty services to be performed in regard to certain elements of the Project, it may be appropriate - and in the best interest of County and RMV - to establish a protocol for prequalifying bidders for all or portions of the Project. If RMV and County elect to use a bidder prequalification protocol for all or portions of the Project, (A) said protocol shall be developed in accordance with the applicable provisions of the OCTA Measure M2 Program Guidelines, County’s Design & Construction Procurement Policy Manual (*see* Section 6.1 thereof) and State law (*see, e.g.*, Public Contract Code Sections 20101 *et seq.*) and (B) RMV shall comply with said protocol in relation to the identification, selection and retention of qualified bidders / contractors.

(2) Competitive Bid Method. For those portions / elements of the Project (if any) that are not subject to bidder prequalification, RMV shall publicly advertise said work for competitive bid. RMV shall award the contract or contracts to the lowest responsible, responsive bidder.

(v) In performing the work relative to the Project, RMV shall comply with (as applicable): Government Code Sections 4525 *et seq.* (Mini Brooks Act), Public Contract Code Sections 22000 *et seq.* (Uniform Construction Cost Accounting Act), Streets & Highways

Code Section 906, Public Contract Code Section 20101, Labor Code Sections 1720-1861, and other requirements for construction of County highways, as applicable. RMV shall also comply with the provisions of the Mello-Roos Community Facilities Act of 1982 (Government Codes Sections 53311 *et seq.* [the “**CFD Act**”]) to the extent CFD funds are being used. [Note: All references to code sections herein are to California codes unless otherwise indicated.]

(vi) RMV agrees that it has a duty to and will cause to be dedicated land owned by the Owners and/or their affiliates necessary for the Project right of way prior to the commencement of construction (“**Right of Way**”). The Right of Way (representing a portion of the overall Cow Camp Road facility) is generally depicted on Exhibit A-1 attached hereto.

(vii) The construction support services performed by RMV and/or its construction team for bridge-related improvements shall involve oversight by a registered engineer. Other construction support services for the Project shall include, as appropriate, inspection services, survey, materials testing, soils testing and ensuring compliance with geotechnical requirements, as well as environmental and archeological requirements (see Exhibit E attached hereto). With regard to inspection, RMV shall be responsible for inspection quality control (“**QC**”) whereas the County shall be responsible for quality assurance (“**QA**”) as further described in Section 3.a.(iii) below.

b. Design Criteria and Standards

All Services shall be performed in accordance with the County’s Highway Design Manual and other instructions, criteria and standards of the County set forth by the Director, OC Public Works or his designee, hereinafter referred to as “**Director**,” and provided (in writing) to RMV prior to the commencement of the relevant Service(s).

c. Restriction on Provider(s) of Construction Management Services

The Parties acknowledge that, per the OCTA Measure M2 Program Guidelines, only RMV and its contractor(s) may perform construction management services and receive OCTA Measure M2 grant funds in payment thereof. Neither the Owners nor their subsidiaries may perform such work and receive payments for said services from OCTA Measure M2 grant funds.

Section 3 ASSISTANCE/QA INSPECTION/ACCEPTANCE BY COUNTY; AS BUILT PLANS

a. Assistance/QA Inspection/Acceptance by County

(i) County shall assign appropriate staff to work with RMV in connection with overseeing the work of this Agreement, and facilitating the inspection oversight and acceptance of facilities/improvements. The duties of the staff member(s) assisting with such oversight will consist of the giving of advice and consultations, assisting RMV in negotiations with other public agencies and private parties, providing and/or performing miscellaneous items which in the judgment of RMV or County’s staff warrant attention, and all other duties as may be described in this Agreement.

(ii) County shall adhere to and follow those portions and elements of the Procedures (as said term is defined in Section 10.c below) which are relevant to County's performance obligations under this Agreement.

(iii) The construction activities relating to the Project shall be subject at all reasonable times to inspection by authorized representatives of the County, which inspection shall be accomplished in a timely manner. The scope of the County's QA inspection responsibilities shall extend to street improvements, underground utilities, storm drains, drainage structures, pavement subgrade and pavement. Specific inspection and testing responsibilities for both RMV and County are set forth in Exhibit E attached hereto.

(iv) Subject to all of the provisions of this Agreement, the County agrees to acquire from RMV the Project facilities generally described in Exhibit A-1, which will be constructed by RMV and tendered for acquisition in accordance with the provisions of this Agreement. The Parties acknowledge that the Project will be partially financed using CFD funds (*see Sections 11.b.(iii)-(v)*, below), and RMV will be eligible for receipt of CFD funds in accordance with applicable distribution rules and procedures.

(v) Prior to final acceptance of any Project facility, RMV shall provide (i) documentation indicating that approved improvement plans, as-built drawings or other similar plans and specifications of such 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 the County, (ii) (for facilities funded by a CFD) a statement/certificate of RMV, supplemented by information satisfactory to the Director, that the improvements being acquired were 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 they had been constructed under the direction and supervision, or under the authority, of the County, (iii) a statement/certificate of RMV 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. RMV shall be obligated for a period of twelve (12) months from the date the County accepts a facility into the County system for purposes of maintenance, to repair or replace any defects or failures resulting from the work of RMV, its contractors or agents, which is not in conformance with the approved plans. Upon the expiration of such twelve (12) month period, RMV shall assign to the County all of its rights in any warranties, guarantees or other evidence of contingent obligations of third persons with respect to such facilities.

(vi) In partial satisfaction of the requirements of Section 53313.5 of the CFD Act, RMV shall be required to secure the faithful performance of construction and completion of construction of the Project facilities to be funded by the CFD(s), by appropriate contractor's bonds as required by the Public Contract 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 CFD(s) and not less than the general prevailing rate for holiday and overtime work, as provided in Section 1771 *et seq.* of the Labor Code, to all workers employed by each such contractor in the construction of such Project facilities to be so funded. As to each such Project facility to be so funded, RMV shall obtain from its contractor or contractors and furnish to County and to the CFD(s) 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 Labor

Code.

b. As Built Plans.

RMV shall prepare “as built” plans and deliver same to County at the time of its completion of the Services.

Section 4 NON-EMPLOYMENT OF COUNTY PERSONNEL

RMV agrees that no employee of County, including but not limited to those who may be involved in the Services for the Project shall be given or offered employment by RMV during the life of this Agreement regardless of the assignments said employee may be given or the days or hours employee may work.

Section 5 NON-DISCRIMINATION

a. In the performance of this Agreement, RMV agrees that it will comply with the requirements of the Labor Code, including those provisions described in Section 3.a.(vi), above (as applicable), and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons.

b. In the event that a court of competent jurisdiction finds that RMV has violated (or has otherwise failed to comply with) the provisions of the Labor Code, RMV acknowledges that it shall be solely responsible for any and all penalties imposed as a result of said violation or failure to comply.

Section 6 EMPLOYEE ELIGIBILITY VERIFICATION

a. At all times during the term of this Agreement, RMV shall (i) comply with all Federal and State statutes and regulations regarding the employment of aliens and others and (ii) ensure that all its employees performing work under this Agreement meet the citizenship or alien status requirement set forth in Federal statutes and regulations. RMV shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations, including but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324 *et seq.*, as they currently exist and as they may be hereafter amended. RMV shall retain all such documentation for all covered employees for the period prescribed by the law.

b. RMV shall indemnify, defend with counsel approved in writing by County, and hold harmless the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against RMV or the County or both in connection with any adjudicated violation of any Federal or State statutes or regulations by RMV pertaining to the eligibility for employment of any persons performing work under this Agreement.

Section 7 TERMINATION

a. Right to Terminate Agreement for Cause. If either Party breaches any of the covenants or conditions of this Agreement, the other Party shall have the right to terminate this

Agreement upon thirty (30) days written notice to the breaching Party (“**Notice of Breach**”). The breaching Party shall have a reasonable opportunity to cure the alleged breach prior to termination, which cure period shall be identified in the Notice of Breach.

(i) During any period in which RMV is in breach of this Agreement, County shall have the right to suspend payment to RMV for Services rendered pursuant to this Agreement and/or not recommend payment from a CFD (if applicable) until such time as the breach is cured. Furthermore, in the event of a breach by RMV (where said breach is not cured by RMV prior to termination), all work performed by RMV pursuant to this Agreement, which work has been reduced to plans or other documents, shall be made available to County.

(ii) During any period in which County is in breach of this Agreement, RMV shall have the right to suspend the provision of Services until such time as the breach is cured. Furthermore, in the event of a breach by County (where said breach is not cured by County prior to termination), County shall pay RMV for all work completed to the satisfaction of County prior to the effective date of termination, except for any Services that are the subject of RMV’s alleged breach.

b. Authority to Terminate Agreement. The Director (on behalf of County) shall have the right to prepare and deliver to RMV a Notice of Breach and a written notice of termination (“**Notice of Termination**”) and thereby terminate this Agreement. The preparation and delivery of a Notice of Breach/Notice of Termination by the Director shall not require the prior approval of the County Board of Supervisors to be effective and binding upon County.

Section 8 TERM AND EXTENSION OF CONTRACT

The term of this Agreement with regard to the construction-related Services is for five (5) years commencing on the date of execution by the Board of Supervisors (the “**Effective Date**”) and ending upon the earlier to occur of the fifth anniversary of the Effective Date or upon completion of the construction-related Services. The Parties recognize, however, that RMV will have certain obligations under the Regulatory Permits or otherwise requiring it to perform certain restoration, monitoring and/or other mitigation activities (the “**Mitigation Activities**”) after completion of construction, in support of the Project. Therefore, the provisions of this Agreement which provide for payment, compensation or reimbursement to RMV for such Mitigation Activities shall be extended and be in force for an additional five (5) years beyond the completion of construction. The term of the Agreement may be extended upon mutual agreement of the Parties, upon the same terms and conditions and following approval by the Board of Supervisors. Any extension of the term shall be memorialized in writing and executed by all Parties; in no event, however, shall any extension (by itself) increase the maximum allowable compensation (as identified in Section 10.a, below).

Section 9 INTENTIONALLY OMITTED

Section 10 RMV COMPENSATION

For the Services authorized under this Agreement, RMV shall be compensated in accordance with – and subject to – the following:

a. Maximum County Obligation. Notwithstanding any provision herein to the contrary, and in the absence of prior written authorization of the County Board of Supervisors, County's obligation to compensate RMV for the Services performed pursuant to this Agreement shall be limited to a maximum amount equal to the aggregate Measure M2 Funds actually received by County from OCTA (*see, specifically, Sections 11.a and 11.b.(i), below*), inclusive of services provided by County for the Project; provided, however, if additional funds become available from the other Funding Sources (*see, generally, Section 11, below*) the amount payable to RMV shall be increased by the amount of the funds that become available, so as to allow full payment to RMV for provision of the Services.

b. Compensable Items.

(i) Generally. RMV shall be compensated for all actual and reasonable costs incurred by or on behalf of RMV in providing the Services authorized under this Agreement including, but not limited to, the following: (i) all costs to purchase equipment, materials and supplies for the Project, (ii) the compensation paid to the contractor(s) for constructing/installing the Project; (iii) the compensation paid to the consultants for construction support services; (iv) RMV's cost to obtain any Regulatory Permits required for implementation of the Project, including the cost of the associated Mitigation Activities; and (v) RMV's cost to obtain any performance, payment, and warranty bonds, letters of credit, or other securities for the Project.

(ii) Relocation Activities. County acknowledges that in order to construct the Project, RMV will be required to relocate or cause to be relocated certain existing infrastructure improvements and other features including, but not limited to, high-power electrical transmission facilities, trees, fences, water lines and sewer lines. County agrees that (i) RMV may work directly with the owners of all affected facilities and features in order to accomplish any required relocations and (ii) the costs of relocation incurred by RMV are part of the costs of the Project and, therefore, are compensable expenses authorized under this Agreement.

c. Payment Procedures. In relation to the actual payment of RMV for its performance of Services hereunder, the Parties shall comply with the Invoice and Payment Procedures (the "**Procedures**") attached hereto as Exhibit B. Specifically:

(i) For RMV invoices that will be paid using Measure M2 Funds (or amounts derived from other Funding Sources), the Parties shall comply with the submittal and payment protocols set forth in Part I of the Procedures; and

(ii) For RMV invoices that will be paid using CFD funds, the Parties shall comply with the submittal and payment protocols set forth in Part II of the Procedures.

Section 11 FUNDING SOURCES; COOPERATION TO PURSUE OUTSIDE FUNDING

a. Initial Funding. This Agreement focuses on funds for the costs of construction, specifically including "Construction Support" and "Construction Capital". As identified in Recital I, above, the County has submitted an application to OCTA requesting issuance of a supplemental Measure M2 grant in the amount of \$14.27 million in relation to construction of the Project. All Measure M2 funds secured in response to the Segment 2a/2b grant request are

collectively referred to herein as the “**Measure M2 Funds.**” Compensation to RMV under this Agreement will initially come from the Measure M2 Funds, as well as available and projected CFD funds (*see Sections 11.b.(iii)-(v)*, below). However, the aggregate of the Measure M2 Funds and available and projected CFDs funds alone are not sufficient to cover the estimated construction costs, and additional funds will be needed in order to cover anticipated costs of Project construction.

b. Funding Sources. The Ranch Plan DA provides that the County and the Owners shall work cooperatively and in good faith to apply for, pursue and obtain funding from local, state, federal and other resources to help construct those improvements set forth in the DA and SCRIP (*see Ranch Plan DA, Exhibit D, Section 1.D*). The Parties hereby confirm their intention to comply with the foregoing and to cooperate in seeking additional funds sufficient to cover the full costs of the Project which, when such funds are received, would enable County to compensate RMV for the full costs of construction.

The Ranch Plan DA further stipulates that RMV shall be entitled to certain credits against its funding obligations to the extent that funding is received from other sources including, without limitation, funding through CFDs or similar funding mechanisms (Ranch Plan DA, Exhibit D, Section 1.C). In addition, the SCRIP provides that developers are eligible to receive credits for (i) monies advanced before SCRIP payments are due and (ii) for SCRIP improvements that they are required to construct under development agreements or project conditions of approval (SCRIP, Section V.13). Thus, RMV would be eligible to receive the credits described above (“**SCRIP Credits**”) for use as allowed under the Ranch Plan DA and SCRIP.

The financial resources and programs (“**Funding Sources**”) that are currently anticipated to be used to compensate RMV, and those specific actions to be taken by the Parties to obtain the funding, are further described below in subparagraphs (i) through (vi) (collectively, these provisions are the “**Funding Plan**”). A summary of the Funding Plan is set forth in Exhibit D attached hereto.

(i) OCTA – Measure M2

(a) Description of Funds. As noted in Section 11.a, above, the County has prepared and submitted to OCTA an application seeking an additional \$14.27 million in Measure M2 Funds in relation to construction of the Project.

(b) Actions to be Taken. In relation to any Measure M2 Funds awarded by OCTA in response to the Segment 2a/2b grant application described above, the County and RMV shall work cooperatively to meet all OCTA requirements relative to release and use of the funds (including the award of one or more contracts for the Project (“**Service Contracts**”) prior to the June 30, 2018 contract execution deadline established by OCTA [the “**Contract Deadline**”]). Moreover, following County’s receipt of Measure M2 Funds, the Parties shall coordinate for release and payment of said funds to RMV in accordance with the provisions of Part I of Exhibit B, including (i) release of up to ninety percent (90%) of the value of each Service Contract executed before the Contract Deadline and (ii) County’s payment of RMV for the remaining value of each Service Contract (*e.g.*, 10%) in advance of County’s receipt of corresponding Measure M2 Funds from OCTA.

(c) Note. RMV also has the lead on design of the Project, which is estimated to cost more than \$6,500,000. The County has secured \$3,250,000 in Measure M2 funds for the design and engineering effort. RMV has also advanced (or will advance) the additional \$3,250,000± (or more) needed to complete design (the “**Supplemental Design Advance**”). Thus, RMV would be eligible for reimbursement of the Supplemental Design Advance from other (*e.g.*, CFD) funds.

(ii) Other County Designated Funds

(a) Description of Funds. These are funds which could potentially become available to the County from various sources in the future and which, at the discretion of the County, could provide funds for certain public facilities, including the Project and related infrastructure improvements. Although the County is not obligated to provide such funds, once such funds are identified, RMV would work with the County to provide a mechanism whereby said funds could be designated for payment or reimbursement of Project construction costs, if allowed by the funding program.

(b) Actions to be Taken. To the extent that funds are identified and designated, compensation would be requested for eligible construction costs as discussed in Section 10, above.

(c) Note: As discussed in subparagraph (i)(c), above, RMV has already advanced (or will advance) money for the design of the Project in order to supplement the monies available from OCTA for that purpose (*i.e.*, the Supplemental Design Advance). County acknowledges that, subject to its discretion, the other County designated funds could also be used to reimburse RMV for the monies it has advanced (and/or will advance) for the design work.

(iii) CFD 2015-1 (PA2.1)

(a) Description of Funds. CFD 2015-1 was formed by the County in conjunction with the development of Planning Area 2.1 of the Ranch Plan (now, the “**Rancho Mission Viejo Planned Community**”). Notably, the Acquisition, Funding and Disclosure Agreement (“**AFDA**”) approved in connection with CFD 2015-1 identified Cow Camp Road as a public infrastructure improvement that was eligible to receive funding from the CFD. In accordance therewith, approximately \$22.7 million in CFD 2015-1 funds have been earmarked in connection with Cow Camp Road, and approximately \$2.9 million of said earmarked funds may still be available.

(b) Actions to be Taken. To the extent that any unexpended portions of CFD 2015-1 remain available for the Cow Camp Road project, the County shall work cooperatively with RMV to allow use of said funds for construction of the Project. Notwithstanding any provision herein to the contrary, the Parties expressly acknowledge that the expenditure of any funds from CFD 2015-1 may not be used to compensate or otherwise reimburse RMV for construction management services in relation to the Project.

(iv) CFD 2016-1 (PA2.2)

(a) Description of Funds. CFD 2016-1 was formed by the County in conjunction with the development of Planning Area 2.2 of the Rancho Mission Viejo Planned Community. The AFDA prepared in connection with CFD 2016-1 identifies Cow Camp Road as a public infrastructure improvement that is eligible to receive funding from the CFD. Notably, approximately \$19.5 million in CFD 2016-1 bond funds have been earmarked for use in connection with the development of Cow Camp Road.

(b) Actions to be Taken. It is anticipated that funds from CFD 2016-1 will be authorized to be disbursed in such amounts as correspond to the construction costs incurred by RMV in relation to the Project. Notwithstanding any provision herein to the contrary, the Parties expressly acknowledge that the expenditure of any funds from CFD 2016-1 may not be used to compensate or otherwise reimburse RMV for construction management services in relation to the Project.

(v) Future CFDs

(a) Description of Funds. Future CFDs are planned as additional Planning Areas of the Rancho Mission Viejo Planned Community are developed (e.g., CFD 2017-1). It is anticipated that up to \$38.9 million of additional funds could become available for Cow Camp Road – including the Project -- in one or more future CFDs.

(b) Actions to be Taken. RMV and the County will cooperate with one another (and other parties, as appropriate) to establish additional CFDs.

(vi) RMV Right of Way Contribution

(a) Description of Funds. As part of its efforts in support of the Project, RMV would dedicate (or cause to be dedicated) sufficient right of way for the Project as required by the Ranch Plan DA. The estimated value of the required right of way is not determined at this time. Although this contribution is not funding construction *per se* (and, therefore, is not included in the Exhibit D summary), it is mentioned here because the contribution is necessary to allow construction to proceed.

(b) Actions to be Taken. RMV will dedicate (or cause to be dedicated) right of way for the Project prior to the commencement of construction.

Section 12 INDEMNIFICATION

RMV agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which the Orange County Board of Supervisors acts as the governing Board (“**County Indemnities**”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising out of, pertaining to, or relating to (i) RMV’s breach of any term or condition of this Agreement and (ii) the negligence, recklessness or willful misconduct of RMV in relation to RMV’s performance of this Agreement; provided, however, that nothing contained in this Section 12 (specifically) or this Agreement (generally) shall operate to relieve the County from any loss, liability, damages, claims, costs or

expenses to the extent determined by a court of competent jurisdiction to have been proximately caused by the negligence, recklessness or willful misconduct of the County, the County Indemnities, or any of them. If judgment is entered against RMV and the County by a court of competent jurisdiction because of the concurrent active negligence of RMV and the County or the County Indemnities, RMV and the County agree that liability will be apportioned as determined by the Court. Neither Party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve RMV of any insurance requirements or obligations created elsewhere in this Agreement.

Section 13 AMENDMENTS

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

Section 14 SUCCESSORS AND ASSIGNS

The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns.

Section 15 ENTIRETY

This Agreement contains the entire agreement between the Parties with respect to the matters provided for herein.

Section 16 SEVERABILITY

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

Section 17 BINDING OBLIGATION

The Parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity enforceable in accordance with its terms.

Section 18 GOVERNING LAW AND VENUE

a. This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under 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.

b. The Parties specifically agree that by soliciting and entering into and performing Services under this Agreement, RMV shall be deemed to constitute doing business

within Orange County from the time of solicitation of work, through the period when all Services under this Agreement are completed, and continuing until the expiration of any applicable limitations period.

Section 19 CHILD SUPPORT ENFORCEMENT REQUIREMENTS

a. To comply with child support enforcement requirements of the County, within thirty (30) days of notification of selection for award of Services, RMV agrees to complete and furnish to Director the information required in County of Orange Child Support Enforcement Contract Certification, as set forth in Exhibit C attached hereto.

b. It is expressly understood that this data will be transmitted by County to governmental agencies charged with the establishment and enforcement of child support orders and for no other purposes.

Section 20 OWNERSHIP OF DOCUMENTS

a. All data, including but not limited to letters, reports, files, plans, drawings, specifications, proposals, sketches, diagrams and calculations, prepared by RMV and/or anyone acting under the supervision of RMV pursuant to this Agreement (collectively, “**Data**”), shall become the property of County upon preparation by RMV and following payment of all compensation due to RMV pursuant to this Agreement. Following satisfaction of the aforesaid conditions, the Data may be used by the County as it may require without additional cost to the County.

b. At such time as the Data becomes the property of County, County shall not be limited in any way to its use thereof at any time, including the release of the Data to third parties. If RMV and/or anyone acting under the supervision of RMV should later desire to use any of the Data prepared in connection with this Agreement, RMV shall first obtain the written approval of County.

Section 21 TITLE TO COUNTY MATERIALS; CONFIDENTIALITY

a. All memoranda, specifications, plans, procedures, drawings, descriptions, and all written or other information submitted or furnished by County to RMV in connection with the performance of this Agreement (collectively, “**County Materials**”) will, at all times, remain the property of County. All County Materials, including copies furnished by County and loaned to RMV for its temporary use, must be returned to County at the end of this Agreement unless otherwise specified by the Director.

b. All County Materials shall be held confidential by RMV and/or anyone acting under the supervision of RMV and shall not, without the prior written consent of County, be used for any purposes other than the performance of the Services described in Exhibit A-1, nor be disclosed to any person, partnership, company, corporation or agency, not connected with the performance of the Services.

c. Notwithstanding any provision herein to the contrary, nothing submitted or furnished to RMV which is generally known shall be deemed confidential.

d. RMV and/or anyone acting under the supervision of RMV shall not use County's name or insignia, photographs of the work, or any other publicity pertaining to the work in any magazine, trade paper, newspaper, or other medium without the express written consent of County.

Section 22 RECORDS AND AUDIT/INSPECTIONS

a. RMV shall keep an accurate record of time expended by RMV and/or the contractors and consultants employed by RMV in the performance of the Services.

b. Within ten (10) days of County's written request, RMV shall allow County, OCTA or authorized State or Federal agencies or any duly authorized representative to have the right to access, examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, time cards or other records relating to this Agreement.

c. RMV shall keep such material, including all pertinent cost accounting, financial records and proprietary data for a period of three (3) years after termination or completion of this Agreement or until resolution of any claim or dispute between the Parties, whichever is later.

d. Should RMV cease to exist as a legal entity, records pertaining to this Agreement shall be forwarded within a reasonable period of time not to exceed sixty (60) days to its successor in interest or surviving entity in a merger or acquisition, or, in the event of liquidation, to County.

Section 23 NOTICES

a. Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties' project managers' routine exchange of information and cooperation during the Services.

b. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt, or no greater than four (4) calendar days after being mailed by U. S. certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day.

c. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid:

For RMV	RMV Community Development, LLC P.O. Box 9 San Juan Capistrano, CA 92693 Attn: RMV Project Manager
---------	--

For County:	County of Orange Orange County Public Works Department 300 N. Flower Street, 3 rd Floor
-------------	--

Santa Ana, CA 92703
Attn: Planned Communities Section Manager

Section 24 ATTORNEY'S FEES

In any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.

Section 25 INTERPRETATION

- a. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement.
- b. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of its own choosing, or has knowingly declined to seek such counsel despite having the opportunity to do so.
- c. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Agreement by any other Party hereto or by any person representing the other Party, or both.
- d. Any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived.
- e. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Agreement.

Section 26 HEADINGS

The various headings and numbers herein, the grouping of provisions of this Agreement into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

Section 27 ACCEPTANCE

Unless otherwise agreed to in writing by County, acceptance shall not be deemed complete unless in writing and until all the Services have actually been received, inspected, and tested to the satisfaction of County.

Section 28 CONSENT TO BREACH NOT WAIVER

- a. No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented.
- b. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or

subsequent breach.

Section 29 REMEDIES NOT EXCLUSIVE

The remedies for breach set forth in this Agreement are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Agreement does not preclude resort by either Party to any other remedies provided by law.

Section 30 INDEPENDENT CONTRACTOR

a. RMV shall be considered an independent contractor and neither RMV, its employees, nor anyone working under RMV shall be considered an agent or an employee of County.

b. Neither RMV, its employees nor anyone working under RMV shall qualify for workers' compensation or other fringe benefits of any kind through County.

Section 31 BILLS AND LIENS

RMV shall pay promptly all indebtedness for labor, materials and equipment used in performance of the Services. RMV shall not permit any lien or charge to attach to any work or premises owned by County, but if any does so attach, RMV shall promptly procure its release and, in accordance with the requirements of the indemnification paragraph above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses arising from or related thereto.

Section 32 BINDING EFFECT

The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties.

Section 33 CHANGES IN OWNERSHIP

RMV agrees that if there is a change or transfer in ownership of RMV's business prior to completion of this Agreement, the new owners shall be required under terms of sale or other transfer to assume RMV's duties and obligations contained in this Agreement and to fully perform all remaining duties/obligations in accordance with the provisions of this Agreement.

Section 34 FORCE MAJEURE

RMV shall not be assessed with damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Agreement caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided RMV gives written notice of the cause of the delay to County within thirty-six (36) hours of the start of the delay and RMV avails itself of any available remedies. Moreover, any time of completion or performance established for the Services (or any portion thereof) shall be automatically extended upon the occurrence of any delay caused by the force majeure event(s) identified above.

Section 35 COMPLIANCE WITH LAWS

a. RMV represents and agrees that the Services to be provided under this Agreement shall fully comply, at RMV's expense, with all applicable standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "Laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the Services at the time Services are provided to and accepted by County.

b. RMV acknowledges that County is relying on RMV for such compliance, and pursuant to the requirements of the indemnification paragraph above, RMV agrees that it shall defend with counsel approved in writing by County, indemnify and hold County and County Indemnities harmless from all liability, damages, costs and expenses arising from or related to a violation of such Laws by RMV.

Section 36 CALENDAR DAYS

Any reference to the word "day" or "days" herein means calendar day or calendar days, respectively, unless otherwise expressly provided.

Section 37 WAIVER OF JURY TRIAL

Each Party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Agreement.

Section 38 CONFLICT OF INTEREST

a. RMV shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County relating to the performance of this Agreement. This obligation shall apply to RMV; RMV's employees, agents, and members; sub-tier contractors; and third parties associated with accomplishing work and Services hereunder.

b. RMV's efforts shall include, but not be limited to, establishing precautions to prevent its employees or agents from: making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

Section 39 INCORPORATION OF EXHIBITS

All exhibits and schedules attached hereto are hereby incorporated into this Agreement by this reference.

Section 40 AVAILABILITY OF FUNDS

The payment obligations of County hereunder are subject to the availability of funds appropriated for this purpose, and nothing herein shall be construed as obligating the County to expend or as involving the County in any contract or other obligation for future payment of money in excess of appropriations authorized by law.

Section 41 CONTINGENCY OF FUNDING

RMV acknowledges that funding or portions of funding for this Agreement may also be contingent upon receipt of funds from, and/or appropriation of funds by the OCTA, or applicable community facility districts. If such funding and/or appropriations are not forthcoming, or are otherwise limited, County and/or RMV may immediately terminate or modify this Agreement without penalty in accordance with Section 7.a, above. Notwithstanding, RMV shall be paid for all authorized services performed up to the date of termination.


[signatures on following pages]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates opposite their respective signatures:


RMV COMMUNITY DEVELOPMENT, LLC
a California limited liability company

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

Date: June 20, 2017

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

Date: June 20, 2017

By: 
Richard Broming
Senior Vice President
Planning & Entitlement

COUNTY of ORANGE

Date: _____

By _____
Chair of the Board of Supervisors
Orange County, CA

**Signed and certified that a copy of this document
has been delivered to the Chair of the Board per
G.C. Sec 25103, Reso 79-1535**

Attest:

Robin Stieler
Clerk of the Board of Supervisors
County of Orange, California

Date: _____

APPROVED AS TO FORM
Office of the County Counsel
Orange County, California

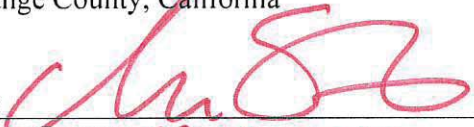
By: 
Deputy **08.09.2017**

EXHIBIT A-1

PROJECT DESCRIPTION

The Project consists of the construction of Phases 2a and 2b of Segment 2 of that public right-of-way known as “Cow Camp Road” – a new arterial highway located in the unincorporated portion of Orange County and within the project area boundaries of the Rancho Mission Viejo Planned Community. Construction of Cow Camp Road began in 2013 with the development of that portion identified as “Segment 1” – *i.e.*, a section commencing at Antonio Parkway and extending easterly to a point just east of the planned intersection with Los Patrones Parkway (the “Current Terminus Point”). Construction of Segment 1 was completed in June, 2016. Segment 2 of Cow Camp Road is proposed to begin at the Current Terminus Point and extend easterly for a distance of approximately 2.5 miles, ultimately culminating at/connecting to Ortega Highway (SR-74). Phases 2a and 2b represent approximately one-half of the ultimate improvements planned for Segment 2, commencing at the Current Terminus Point and extending east for approximately 1.28 miles. [Refer to attached “Cow Camp Road Phasing Exhibit” dated September 20, 2016, on following page.] The Project also includes the grading and placement of drainage facilities, bike lanes, trails, curbs, sidewalks and the installation of utilities within, crossing and adjacent to the roadway to accommodate both current and future needs. The Project includes a new bridge structure across Gobernadora Canyon that spans a distance of approximately 1,400 feet. These improvements are consistent with the County of Orange’s Master Plan of Arterial Highways (MPAH) for the ultimate circulation improvements in this area.

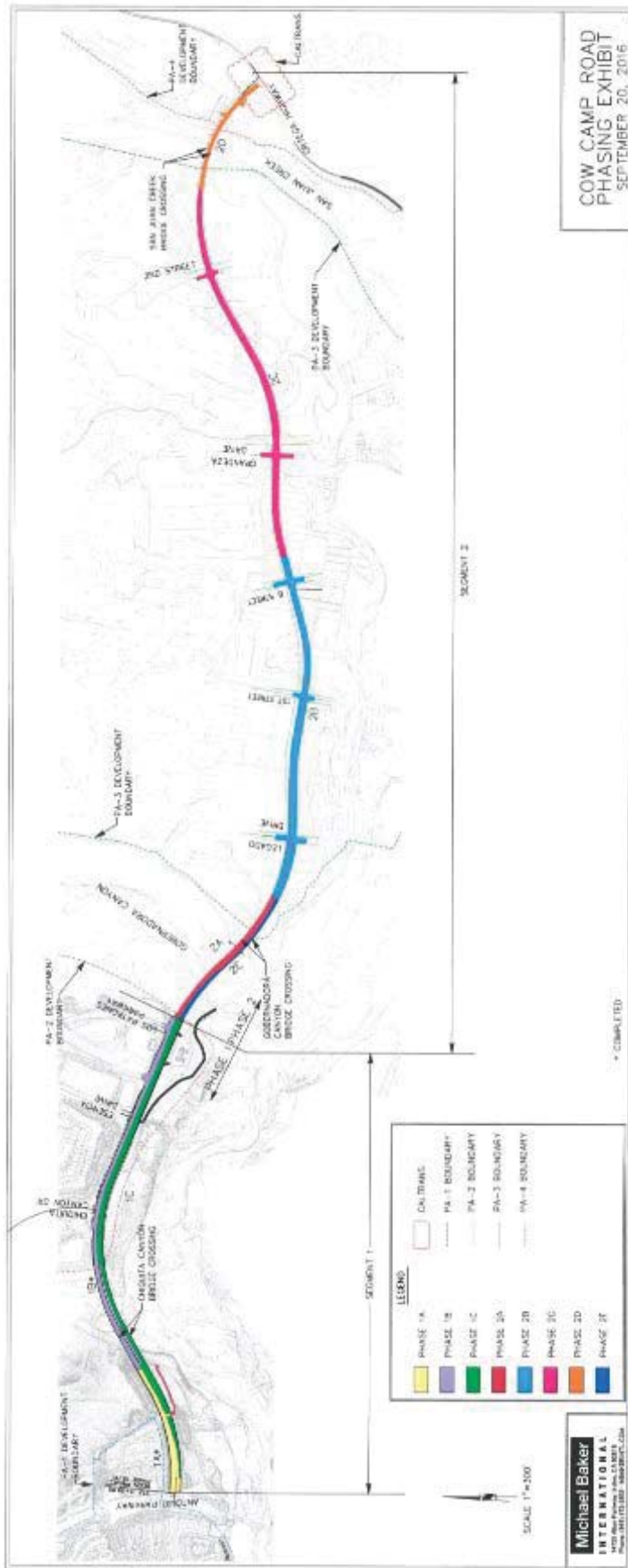


Exhibit A-1 (Page 2 of 2)

EXHIBIT A-2

PROJECT SCHEDULE

<u>Dates:</u>	<u>Activities</u>
April 2016	RMV awards final design contract for Project
[2018 - <i>TBD</i>]	RMV awards construction contract(s) for Project.
[2018 - <i>TBD</i>]	Start Construction of Project

EXHIBIT B

INVOICE AND PAYMENT PROCEDURES

RMV Community Development, LLC (“RMV”) has agreed to take the lead in the construction of the Project and the County Board of Supervisors has approved this Agreement with RMV (Agreement No. _____) whereby County has committed to compensate and/or reimburse RMV (as applicable) in accordance with the terms of said Agreement.

As addressed in Section 11 of this Agreement, several funding sources may be available for County’s use in compensating and/or reimbursing RMV for its work in relation to the Project. Notably, the Parties expect that certain Measure M2 Funds (as provided by OCTA) are and will be available for use by County to compensate RMV for performance of the Services. Furthermore, the Parties anticipate that funding may be available from one or more existing or future community facilities districts (“CFDs”), where (i) said CFDs identify the Project as a qualifying facility and (ii) the CFD(s) are in possession of (or will receive) bond proceeds in relation to the Project facilities.

Depending upon the source of funds to be used by the County, the Parties shall follow different invoice and payment procedures for compensation and/or reimbursement of RMV for Project-related activities. Specifically, for payments to RMV that will be made using Measure M2 Funds (or other non-CFD funds), the Parties shall use the procedures set forth in Part I, below. For payments that will be made using CFD funds, the Parties shall use the procedures set forth in Part II, below.

Irrespective of which payment procedure is followed, RMV shall be responsible for tracking all compensable and reimbursable costs and expenses incurred in relation to the Project (collectively, “Project Costs”).

[Part I Begins on Following Page]

Exhibit B

**PART I – PAYMENTS FROM MEASURE M2 FUNDS
(AND OTHER NON-CFD FUNDS)**

I. Invoices for Project Costs; Content

As Project Costs are incurred by RMV in relation to the Project, RMV shall be entitled to prepare and submit invoices (“**Invoices**”) that request reimbursement for the Project Costs paid by RMV. The Invoices shall be prepared by RMV at such times / intervals as are consistent with RMV’s billing practices for major construction projects, including progress payments.

Each Invoice shall be prepared using a form that is mutually-acceptable to RMV and County (and in conformance with OCTA invoice requirements in relation to any requests involving Measure M2 Funds). The format of the Invoice shall allow for electronic submission and shall contain summary and detailed information that includes the materials/data described in the attached Schedule B-2. Notably, the Invoice transaction detail shall include copies of contracts for services, work and materials (“**Project Contracts**”), change orders, invoices and cancelled checks. Each Invoice shall reflect all Project Costs incurred by RMV since the date(s) identified in the prior Invoice.

II. Process for Preparation of Invoices

In connection with the preparation and presentation of any Invoice described in Section I, above, RMV shall comply with the following:

1. Collection of Invoices. RMV shall be responsible for collecting invoices from each contractor and consultant that provides services in relation to the Project, all in accordance with the terms of the individual Project Contracts (each, a “**Contractor Invoice**”).
2. Field Work (exclusive of Resident Engineer invoices) – All Contractor Invoices will be reviewed by the person designated by RMV as the “Project Lead” to determine if the invoice meets the requirements of the relevant Project Contracts. Contractor Invoices approved by the Project Lead will be forwarded to the Project Construction Manager for review and concurrence. Incomplete Contractor Invoices and/or non-verified work within the invoices shall not be approved for payment processing and shall be returned by the Project Lead to the contractor or consultant for clarification within ten (10) days of their receipt. The Project Construction Manager will sign the Contractor Invoices to identify their concurrence for payment and submit the package to the Project Lead for inclusion in RMV’s master invoice to the County (*see* subsection 5, below).
3. Resident Engineer [Bridge Area Construction Only] – The Resident Engineer will not have responsibility or authority for reviewing or otherwise approving any Contractor Invoices that detail the Resident Engineer’s services. Review and

approval authority for invoices submitted by the Resident Engineer shall rest exclusively with the Project Lead and the Project Construction Manager.

4. Consultants Performing Off Site Work – Contractor Invoices for offsite work will be initially reviewed by the Oversight Consultant and, if approved, will be submitted to the Project Lead for review and approval. Provided that the Contractor Invoice is deemed acceptable to the Project Lead (*e.g.*, the invoice and services provided meet the requirements of the relevant Project Contract), the Project Lead will approve the Contractor Invoice and forward same to the Project Construction Manager for review and concurrence.
5. RMV Invoice – Upon approval of individual Contractor Invoices prepared, submitted and approved in accordance with subsections 1 through 4, above, a single Invoice package containing all approved Contractor Invoices (including all supporting information) will be prepared by the Project Construction Manager. RMV will submit the completed Invoice to the person designated by the County as the “Primary County Representative” for approval and payment in accordance with the provisions of Sections IV and V, below.
6. Lien Releases Upon Progress Payments – At the time of submittal of Invoices for progress payments, RMV shall submit to the County, together with each such Invoice, (i) conditional mechanics’ lien releases relating to the amounts being requested for payment in connection with such submission, if applicable, and (ii) unconditional mechanics’ lien releases relating to the amounts paid to RMV in connection with the immediately prior submission (except that this subparagraph (ii) shall not apply with respect to the first such request), if applicable.

III. **Alternative Compensation Procedure – Executed Service Contracts**

As an alternative to the procedures identified in Sections I and II, above, RMV may present to the County copies of one or more of the contracts, work orders or agreements (each, a “**Service Contract**”) executed by and between RMV and the relevant provider(s) of the services, work and/or materials in relation to the Project. Concurrent with the submission of any Service Contract, RMV shall tender to the County a written request (“**Contract Payment Request**”) that (A) describes the services, work and/or materials that are covered by the Service Contract, (B) identifies the aggregate amounts that RMV is obligated to pay the relevant provider(s) under the Service Contract (“**Contract Value**”) and (C) requests advance payment in an amount not to exceed ninety percent (90%) of the Contract Value (“**Partial Contract Payment**”).

IV. **Submission of Invoices / Contract Payment Requests; Review by County**

Following the preparation of an Invoice and/or Contract Payment Request, RMV shall submit same to the County for review. Upon receipt of an Invoice or Contract Payment Request from RMV, the County shall review same within fifteen (15) working days and advise RMV, in writing, concerning (i) the completeness of the Invoice or Contract Payment Request or (ii) the County’s need for supplemental information (including any documentation that may be required by OCTA). In the event the County requests that RMV

provide supplemental information, RMV shall promptly proceed to assemble and provide all supplemental information reasonably requested by the County. Within ten (10) working days following the County's receipt of the supplemental information, the County shall review same and advise RMV concerning the sufficiency thereof or, in the alternative, whether additional information is desired or necessary. Should the County request the submission of additional information, representatives of RMV and the County shall meet and confer within five (5) working days following said request in order to address the County's questions/concerns. Said representatives shall work cooperatively and in good faith to promptly resolve said questions/concerns.

V. Payment of Invoices and Contract Payment Requests

Within thirty (30) calendar days following the County's receipt of a completed Invoice or Contract Payment Request (including the resolution of all reasonable questions/concerns identified by the County in accordance with Section III, above), County shall process the Invoice or Contract Payment Request for payment and tender funds directly to RMV (or, as appropriate, cause OCTA to pay the funds directly to RMV). All payment from the County to RMV is contingent on receiving funding from OCTA and on OCTA approval of the invoices, project contracts, and as applicable, change orders and cancelled checks.

VI. Payment of Remaining Balance of Contract Value (Retention Amount)

Following the completion of any Service Contract for which RMV has previously requested and received a Partial Contract Payment from the County, RMV shall have the right to submit a supplemental Contract Payment Request to the County for the remaining balance of the Contract Value (said remaining balance hereafter referred to as the "**Retention Amount**"). As a condition precedent to RMV's right to submit a supplemental Contract Payment Request in relation to the Retention Amount, RMV shall (i) confirm that all work under the Service Contract has been fully and completely performed in accordance with the terms of said Service Contract and (ii) pay to the relevant service provider the full Contract Value (less any authorized or approved chargebacks, adjustments, *etc.*). RMV shall, concurrent with its submittal of the supplemental Contract Payment Request, prepare and provide to County a statement (the "**Verification**") which declares that (A) all work under the Service Contract has been fully/completely performed and (B) RMV has paid the relevant provider the full Contract Value (subject to adjustments). As appropriate, the supplemental Contract Payment Request and the Verification shall be accompanied by copies of all change orders, invoices and cancelled checks issued, paid, *etc.* in connection with the Service Contract.

Upon the County's receipt of the supplemental Contract Payment Request and the Verification, the County shall review same in accordance with the procedures and time frames identified in Section IV, above. Following the County's approval of the supplemental Contract Payment Request and the Verification (including the resolution of all reasonable questions/concerns identified by the County), the County shall coordinate with OCTA regarding the agency's review of the supplemental Contract Payment Request, the Verification and the County's intention to pay the Retention Amount to RMV (the "**Retention Amount Submittal**"). As deemed appropriate or necessary by the County,

representatives of RMV shall participate in the County's coordination efforts with OCTA relative to the Retention Amount Submittal. Upon OCTA's approval of the Retention Amount Submittal (*i.e.*, confirmation that Measure M2 Funds may be used to pay for the services, work and/or materials identified in the supplemental Contract Payment Request), the County shall (i) pay the Retention Amount directly to RMV in accordance with the provisions of Section IV, above and (ii) thereafter submit a payment request to OCTA seeking release of Measure M2 Funds to the County in an amount equal to the Retention Amount.

VII. Notice of Completion; Final Lien Releases

RMV shall notify the Director, in writing, upon completion of the Project. RMV 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 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.

VIII. Return of Measure M2 Funds

In the event that RMV receives a distribution of Measure M2 Funds for a service, material, product or other item that is deemed a "non-qualified expense" pursuant to the OCTA Measure M2 Program Guidelines, RMV shall be responsible for returning to County or OCTA, as applicable, an amount equal to the non-qualified expense.

Moreover, if at the conclusion of this Agreement OCTA determines that (i) the scope of work for the Project has not been met and (ii) OCTA is entitled to a return of Measure M2 Funds based upon the failure of RMV to achieve the scope of work, then:

- RMV shall be responsible for returning to County or OCTA, as applicable, an amount equal to the Measure M2 Funds actually received by RMV in relation to the Project; and
- RMV shall indemnify, defend and hold harmless the County, the County Indemnitees, and each of them, from any claims, demands or liability of any kind or nature arising out of RMV's failure to meet the scope of work for the Project; provided, however, that the foregoing indemnity, defense and hold harmless obligations shall not apply if RMV's failure to complete the Project in accordance with the scope of work was proximately caused by the negligence, recklessness or willful misconduct of the County, the County Indemnities, or any of them.

[Part II Begins on Following Page]

Exhibit B

PART II – PAYMENTS FROM CFD FUNDS

I. Overview

The County and RMV contemplate that the Project will be constructed as a series of segments, portions and/or phases based upon particular elements of the Project. Notably, RMV anticipates that it will enter into individual contracts for specific divisions of the work (*i.e.*, Bridge, Road, Grading, Storm Drain, Utilities and Relocation of SDG&E Facilities [collectively, the “**Project Elements**”]), and that the Project Elements will be implemented by the individual contractors in accordance with the sequencing and increment schedules deemed most efficient by the contractors.

Pursuant to California Government Code Section 53313.51(a), a legislative body (on behalf of a CFD) may enter into an agreement for the construction of discrete portions or phases of facilities *if* said phases or portions are capable of serviceable use. Notwithstanding the foregoing, if the purchase value of a facility exceeds \$1,000,000, California Government Code Section 53313.51(b) declares that the legislative body is authorized to purchase partially completed portions of a project (*i.e.*, the requirement for delivery and purchase of serviceable portions is not applicable).

In light of the foregoing, the Parties acknowledge and agree that the County may use CFD funds to reimburse RMV, on an incremental basis, for Project Costs incurred in relation to segments, portions or phases of the Project Elements *PROVIDED THAT*:

- If the purchase value of the facility is \$1,000,000 or less, then the segment, portion or phase must be capable of serviceable use by the County/CFD; or
- If the purchase value of the facility is more than \$1,000,000, then the segment, portion, or phase need not be capable of serviceable use by the County/CFD.

II. Description of Reimbursable Project Segments, Portions and Phases

In order to determine whether CFD funds may be used to reimburse RMV for segments, portions and/or phases of the Project Elements (all in accordance with Section I, above), the components of the Project Elements, and the values thereof, must be identified. However, given that this Agreement predates RMV’s negotiation, execution and delivery of the individual contracts for the Project Elements, it is not possible for RMV and the County to immediately categorize, identify and value the CFD-reimbursable components. Accordingly, the Parties agree that the following protocol shall be utilized for obtaining said data:

- Following RMV’s negotiation and execution of a contract for a Project Element (a “**Project Contract**”), RMV shall notify the County regarding said fact and provide the County with a copy of the Project Contract.
- Within thirty (30) days following RMV’s delivery of the Project Contract to the County, representatives of RMV, the County Director of Public Finance (or his

designee) and the Project Contract contractor shall meet and confer for the purpose of identifying (i) segments, portions and/or phases (as appropriate) for the work described in the Project Contract and (ii) the value to be ascribed to each segment, portion and/or phase. The Parties shall utilize the form attached hereto as Schedule B-1 (the “**Project Cost Form**”) to memorialize the work divisions and valuations determined during their meeting.

- The completed Project Cost Form shall be executed by each of RMV and the County Director of Public Finance (or his designee) and shall thereafter be appended to, and incorporated into, this Agreement. The Project Cost Form may be subsequently updated and amended upon mutual agreement, in writing, between, RMV and the County Director of Public Finance (or his designee). Execution of the Project Cost Form (and any updates or amendments thereto) shall not require the prior approval of the Board of Supervisors to be effective, as the County Director of Public Finance (or his designee) has authority to act on behalf of the County in relation to the Project Cost Form and any updates or amendments thereto.

III. Invoices; Content

As Project Costs are incurred by RMV in relation to the Project Elements (with specific reference to the items and values set forth in each Project Cost Form), RMV shall be entitled to prepare and submit Invoices that request reimbursement for the Project Costs paid by RMV (*see* Invoice preparation and submittal process identified in Section IV, below). The Invoices shall be prepared by RMV at such times and/or intervals as are deemed appropriate by RMV, based upon RMV’s payment for work identified in the Project Cost Forms.

Each Invoice shall be prepared using a form that is mutually-acceptable to RMV and County. The format of the Invoice shall allow for electronic submission and shall contain summary and detailed information that includes the materials and data described in the attached Schedule B-2. Notably, the Invoice transaction detail shall include copies of all contract change orders, invoices and cancelled checks which relate to each reimbursable element of the Project Cost Form.

IV. Process for Preparation of Invoices

In connection with the preparation and presentation of any Invoice requesting payment of CFD funds, RMV shall comply with the following:

1. Collection of Invoices. RMV shall be responsible for collecting invoices from each contractor and consultant that provides services in relation to the Project Elements, all in accordance with the terms of the individual Project Contracts (each, a “**Contractor Invoice**”).
2. Field Work (exclusive of Resident Engineer invoices) – All Contractor Invoices will be reviewed by the person designated by RMV as the “Project Lead” to determine if the invoice meets the requirements of the relevant Project Contracts. Contractor Invoices approved by the Project Lead will be forwarded to the Project Construction Manager for review and concurrence. Incomplete Contractor Invoices and/or non-verified work within the invoices shall not be approved for payment

processing and shall be returned by the Project Lead to the contractor or consultant for clarification within ten (10) days of their receipt. The Project Construction Manager will sign the Contractor Invoices to identify their concurrence for payment and submit the package to the Project Lead for inclusion in RMV's master invoice to the County (*see* subsection 5, below).

3. Resident Engineer [Bridge Area Construction Only] – The Resident Engineer will not have responsibility or authority for reviewing or otherwise approving any Contractor Invoices that detail the Resident Engineer's services. Review and approval authority for invoices submitted by the Resident Engineer shall rest exclusively with the Project Lead and the Project Construction Manager.
4. Consultants Performing Off Site Work – Contractor Invoices for offsite work will be initially reviewed by the Oversight Consultant and, if approved, will be submitted to the Project Lead for review and approval. Provided that the Contractor Invoice is deemed acceptable to the Project Lead (*e.g.*, the invoice and services provided meet the requirements of the relevant Project Contract), the Project Lead will approve the Contractor Invoice and forward same to the Project Construction Manager for review and concurrence.
5. RMV Invoice – Upon approval of individual Contractor Invoices prepared, submitted and approved in accordance with subsections 1 through 4, above, a single invoice package containing all approved Contractor Invoices (including all supporting information) will be prepared by the Project Construction Manager. RMV will submit the completed invoice (“**Invoice**”) to the person designated by the County as the “Primary County Representative” for approval and payment in accordance with the provisions of Section V, below.
6. Lien Releases Upon Progress Payments – At the time of submittal of Invoices for progress payments, RMV shall submit to the County, together with each such Invoice, (i) conditional mechanics' lien releases relating to the amounts being requested for payment in connection with such submission, if applicable, and (ii) unconditional mechanics' lien releases relating to the amounts paid to RMV in connection with the immediately prior submission (except that this subparagraph (ii) shall not apply with respect to the first such request), if applicable.

V. **Payment of Invoices**

In connection with each Invoice submitted by RMV to the County pursuant to this Exhibit B – Part II, the Parties shall proceed as follows:

1. County Review and Approval of Invoice. Upon receipt of an Invoice from RMV, the County shall review same within fifteen (15) working days and advise RMV, in writing, concerning (i) the completeness of the Invoice or (ii) the County's need for supplemental information. In the event the County requests that RMV provide supplemental information, RMV shall promptly proceed to assemble and provide all supplemental information reasonably requested by the County. Within ten (10) working days following the County's receipt of the supplemental information, the

County shall review same and advise RMV concerning the sufficiency thereof or, in the alternative, whether additional information is desired or necessary. Should the County request the submission of additional information, representatives of RMV and the County shall meet and confer within five (5) working days following said request in order to address the County's questions and concerns. Said representatives shall work cooperatively and in good faith to promptly resolve said questions and concerns.

2. Recommendation for CFD Payment. As to any Invoice recommended for payment from CFD funds, within five (5) working days following the County's receipt of the completed Invoice from RMV (including the resolution of all reasonable questions and concerns identified by the County in accordance with subsection 1, above), the County shall submit to the CFD(s) a request for disbursement directly to RMV in the amount so requested, utilizing the Disbursement Request Form(s) that is/are applicable to the relevant CFD(s). Following the submittal of a request for disbursement, the County Executive Office shall determine whether payment of the Invoice will comply with the terms of the applicable Acquisition, Funding and Disclosure Agreement for the CFD(s) from which payment is to be made and, if so, then such disbursement shall be made.

VI. Notice of Completion; Final Lien Releases

RMV shall notify the Director, in writing, upon completion of the Project. RMV 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 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.

EXHIBIT B

Schedule B-1

PROJECT COST FORM

Name of Contractor:		
Date of Contract:		
Description of Project Portion or Phase Work	Station or Range of Component (if Applicable)	Value of Component*
1. Bridge – crossing over Gobernadora Canyon	10+00 to 24+00	\$22,000,000
A. Discrete Portion or Phase	TBD	TBD
B. Discrete Portion or Phase	TBD	TBD
C. Discrete Portion or Phase	TBD	TBD
D. Discrete Portion or Phase	TBD	TBD
E. Discrete Portion or Phase	TBD	TBD
F. Discrete Portion or Phase	TBD	TBD
G. Discrete Portion or Phase	TBD	TBD
H. Discrete Portion or Phase	TBD	TBD
2. SDG&E 138kV Relocation	10+00 to 60+00	\$4,500,000
A. Project Elements	TBD	TBD
B. Project Elements	TBD	TBD
3. Grading –bridge abutments, basins, & roadway	10+00 to 60+00	\$4,000,000
A. Project Elements	TBD	TBD
B. Project Elements	TBD	TBD
C. Project Elements	TBD	TBD
D. Project Elements	TBD	TBD
E. Project Elements	TBD	TBD
F. Project Elements	TBD	TBD

4. Storm Drain – inlets, culverts, outlets, and other drainage structures	24+00 to 60+00	\$4,000,000
A. Project Elements	TBD	TBD
B. Project Elements	TBD	TBD
C. Project Elements	TBD	TBD
D. Project Elements	TBD	TBD
E. Project Elements	TBD	TBD
F. Project Elements	TBD	TBD
A. Project Elements	TBD	TBD
5. Utilities – water, sewer, electric, telephone, cable TV, etc.	24+00 to 60+00	\$3,500,000
A. Discrete Portion or Phase	TBD	TBD
B. Discrete Portion or Phase	TBD	TBD
C. Discrete Portion or Phase	TBD	TBD
D. Discrete Portion or Phase	TBD	TBD
E. Discrete Portion or Phase	TBD	TBD
F. Discrete Portion or Phase	TBD	TBD
G. Discrete Portion or Phase	TBD	TBD
H. Discrete Portion or Phase	TBD	TBD
6. Roadway	24+00 to 60+00	\$5,300,000
A. Project Elements	TBD	TBD
B. Project Elements	TBD	TBD
C. Project Elements	TBD	TBD
D. Project Elements	TBD	TBD
Total	10+00 to 60+00	\$43,300,000

**Note: If value of a Facility is \$1,000,000 or greater, said component need not be usable or serviceable in order to qualify for CFD reimbursement. However, if value of a Facility is less than \$1,000,000, said Facility must be capable of serviceable use in order to qualify for CFD reimbursement.*

EXHIBIT B

Schedule B-2

INFORMATION TO ACCOMPANY INVOICES

- Executed contracts
- Lien releases
- Invoices and corresponding cancelled checks confirming payment
- Information corresponding to AFDAs and CFDs

EXHIBIT C

CHILD SUPPORT ENFORCEMENT QUESTIONNAIRE

In order to comply with child support enforcement requirements of the COUNTY, within thirty (30) days of notification of selection for award of CONTRACT but prior to official award of CONTRACT, CONTRACTOR agrees to furnish to DIRECTOR the following:

1. In the case of an individual CONTRACTOR, his/her name, date of birth, Social Security number, and residence address;
2. In the case of a CONTRACTOR doing business in a form other than as an individual, the name, date of birth, Social Security Number, and residence address of each individual who owns an interest of ten (10) percent or more in the CONTRACTOR's contracting entity;
3. A certification that the CONTRACTOR has fully complied with all the applicable federal and state reporting requirements regarding its employees; and
4. A certification that the CONTRACTOR has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

It is expressly understood that this data will be transmitted by COUNTY to governmental agencies charged with the establishment and enforcement of child support orders.

Failure of the CONTRACTOR to timely submit the data and/or certifications required above or to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment may result in the CONTRACT being awarded to another CONTRACTOR, or, in the event a CONTRACT has been issued, shall constitute a material breach of the CONTRACT. Failure to cure such breach within sixty (60) calendar days of notice from COUNTY shall constitute grounds for termination of the CONTRACT.

EXHIBIT D

SUMMARY OF FUNDING SOURCES FOR PROJECT

(Construction Capital and Construction Support)

Existing Sources

1. OCTA – Measure M2¹ . \$ 14.3 Million
2. Other County Designated Funds² . \$ 0.0 Million
3. CFD 2015-1 (PA1)³ . \$ 0.0 Million
4. CFD 2016-1 (PA2) . \$ 3.0 Million

Pending Sources

5. Future CFDs . \$ 26.0 Million

Overall Program Budget for Construction Capital & Construction Support: \$ 43.3 Million*

¹ Includes only anticipated funds from Segment 2a/2b grant application; does not include amounts awarded by OCTA for design and engineering

² No County obligation

³ Estimate of remaining funds available for Project

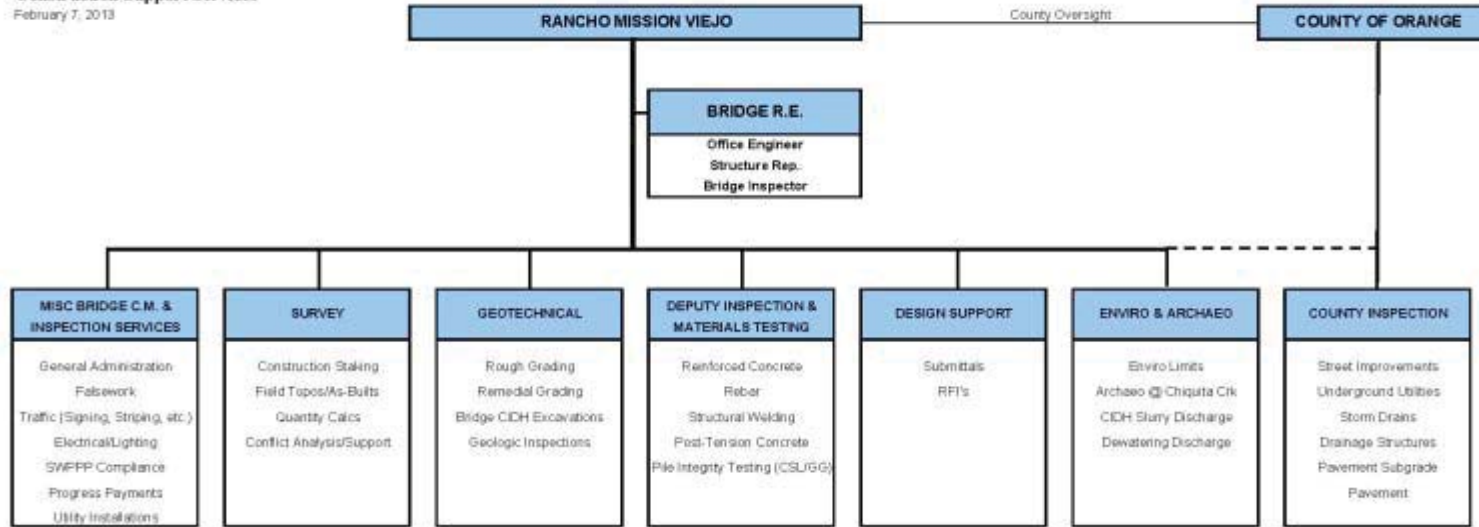
* Funding amounts and sources are subject to adjustment and written approval of Parties

EXHIBIT E

**CONSTRUCTION SUPPORT AND INSPECTION SERVICES
AND RESPONSIBILITIES**

[See following pages]

COW CAMP ROAD
 Construction Support Services
 February 7, 2013



COW CAMP ROAD
Inspection and Testing Responsibility
 February 7, 2013

	Task	Responsibility	Comments
Grading	Rough Grading	RMV	Rough grading for road, embankments, perimeter slopes, water quality basins, etc.
	Balance Site Grading and Dewatering	RMV	Includes dewatering, remedial grading, and fill placement in balance site below future PA-2
	Geologic Mapping & Misc. Grading Observations	RMV	Inspect removal bottoms, keyway locations/dimensions, removal depths/limits, geologic mapping, subdrains, etc.
Utilities	Storm Drains	County	Includes jack & bore storm drain crossing.
	Drainage Structures, Outlets, Inlets	County	
	Wet Utilities	County	In County R/W
	Dry Utilities	County	In County R/W
Street Improvements	Pavement Subgrade	County	
	AC Placement (Base Course)	County	
	ARHM Overlay	County	
	Curb & Gutter; Sidewalks	County	
	Misc. Street Improvements	County	
	Batch Plant Inspections	County	
	Maintenance Access Roads	County	Observation & testing for subgrade prep., aggregate base, and asphalt/concrete paving
Bridge & Foundations	CIDH Foundations	RMV	Monitor shaft excavation, geologic conditions, rebar placement, concrete, etc.
	Bridge Superstructure	RMV	Bridge deck, columns, abutment walls, and misc. structural inspections
	Bridge Falsework	RMV	
	Misc. Bridge Improvements	RMV	Utilities, electrical, lighting, signing, striping, etc.
Concrete and Steel	Registered Deputy Inspector for Reinforced Concrete	RMV	For CIDH foundations, bridge columns, bridge superstructure, abutment walls, etc.
	Registered Deputy Inspector for Post-Tension Concrete	RMV	For bridge superstructure
	Materials Testing for Concrete	RMV	
	Materials Testing for Rebar	RMV	
	WtC Integrity Testing	RMV	For CIDH Foundations: Crosshole Sonic Logging; Gamma Gamma Testing
	AWS-Certified Welding Inspector	RMV	For structural welding
Environ	Revegetation of Creek below bridge	RMV	Biological monitoring/inspection
	Testing/Monitoring for Dewatering Discharges	RMV	For Cow Camp Balance Site and SMWD jack & bore crossing below Chiquita Crk
	Archaeo/Paleo Inspections	RMV	
Final Reporting	Final Geotechnical Report of Rough Grading	RMV	
	Street Improvements	County	
	Bridge As-Builts	RMV	