

**GEOGRAPHIC INFORMATION SYSTEM DIGITAL INFORMATION
SHARING AGREEMENT**

This Geographic Information System Digital Information Sharing Agreement (“**Agreement**”) is made and entered into this _____ day of _____, 2023 (“**Effective Date**”) by and between the County of Orange, a political subdivision of the State of California (“**County**”), and Rancho Mission Viejo, LLC, a Delaware limited liability company (“**RMV**”). County and RMV are sometimes hereafter collectively referred to as the “**Parties**” and individually as a “**Party**.”

RECITALS

A. County and RMV have each created, and each Party currently maintains, Geographic Information Systems (“**GIS**”) and associated digital files to support their respective land ownership, development and management needs.

B. County and RMV agree that they can reduce their individual land ownership, development and management costs by sharing their respective GIS Information (as said term is defined below). For example, in the context of processing subdivisions, establishing easements and siting public infrastructure within and proximate to the Rancho Mission Viejo / Ranch Plan project areas, the Parties would benefit by sharing their respective GIS Information for the subject areas in order to eliminate the need for one Party to create land data that has already been developed by the other Party.

C. In light of the foregoing, the Parties desire to enter into this Agreement concerning the sharing of their respective GIS Information.

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

I. DEFINITIONS

“**GIS Information**” includes GIS digital files, including the information and/or data contained therein, and any other information, data, or documentation from GIS, regardless of medium or format, which is provided pursuant to this Agreement.

II. EFFECTIVE DATE

This Agreement shall become effective on the date it is signed by County and RMV’s legally authorized designees.

III. TERM

The term of this Agreement is a period of five (5) years beginning on the Effective Date. The term of this Agreement may be extended by mutual written agreement of the Parties.

IV. OBLIGATIONS OF RMV

A. Upon written request by County, but subject to RMV's discretion, RMV shall provide County with digital file documentation (metadata) (*i.e.*, GIS Information) that pertain to the subdivision of land and public infrastructure on / within the Rancho Mission Viejo / Ranch Plan project area. Any such request made by County shall be delivered to RMV.

B. Any and all GIS Information shared by RMV with County shall be provided to County at no cost (*i.e.*, County shall not be required to pay for any GIS Information shared by RMV, provided that County utilizes and maintains RMV's GIS Information in accordance with the terms of this Agreement).

C. With respect to any and all GIS Information obtained by RMV from County, RMV shall use said GIS Information solely for RMV's own purposes (including use by RMV's own staff or consultants) and shall not sell, assign, lease, loan, convey, or otherwise transfer to any other person or entity the GIS Information received from County without the prior written consent of County.

D. RMV agrees that the County GIS Information is, and shall at all times remain, the sole property of the County, and there is no intention by County to transfer ownership to RMV.

E. RMV shall not be obligated to share with County any GIS Information that RMV is prohibited from sharing pursuant to law, contract or any other legal mechanism or restriction. In the event that the County requests GIS Information that RMV is prohibited from sharing, RMV shall inform County in writing that the information requested cannot be shared.

V. OBLIGATIONS OF COUNTY

A. Upon written request by RMV, but subject to County's discretion, County shall provide RMV with access to County's GIS portal and the GIS Information appearing therein. RMV's request for access shall be delivered to the County and shall identify the RMV representatives and agents of who are to be granted access to the County's GIS portal and the GIS Information appearing therein.

B. County shall not charge RMV for access to County's GIS portal, nor shall County charge any fee for RMV's receipt and use of any GIS Information obtained from County's GIS portal, provided that RMV utilizes and maintains County's GIS Information in accordance with the terms of this Agreement.

C. With respect to any and all GIS Information obtained by County from RMV, County shall use said GIS Information solely for County's own purposes (including use by County's own staff or consultants) and shall not sell, assign, lease, loan, convey, or otherwise transfer to any other person or entity the GIS Information received from RMV without the prior written consent of RMV. This section, including the requirement of obtaining written consent from RMV, does not apply to the County's production of RMV GIS Information data based upon a request pursuant to the California Records Act, as outlined further below.

D. County agrees that the RMV GIS Information is, and shall at all times remain, the sole property of RMV, and there is no intention by RMV to transfer ownership to County.

E. County shall not be obligated to share with RMV any GIS Information that County is prohibited from sharing pursuant to law, contract, or any other legal mechanism or restriction. In the event that RMV requests GIS Information that County is prohibited from sharing, County shall inform RMV in writing that the information requested cannot be shared.

VI. PUBLICATION OF GIS INFORMATION

A. Publication – Need for Prior Written Consent. If a Party wishes to publish the other Party's GIS Information, it may do so only after submitting a request to the other Party and receiving the express written consent of the other Party. The request shall identify, with particularity, the GIS Information to be published and the purpose for said publication. The other Party may deny the request for publication or place conditions / limitations on its consent. Written consent may be provided by email communication. Any publication of GIS Information without the written consent of the Party that owns the GIS Information shall be deemed a material breach of this Agreement.

B. Acknowledgement. In the event that any GIS Information is authorized for publication, the Parties shall acknowledge each other as a source on publication.

C. Disclaimer. The following disclaimer shall be placed in a conspicuous location on all authorized publications.

The information provided is for informational purposes only and is not intended to replace any legal records. Users are aware that the information provided may not be up to date and that further investigation by the user may be required. The publisher and its partners disclaim any responsibility or warranty for the accuracy or correctness of the information provided.

D. Public Records. This section shall not apply to production of data by County based upon a request pursuant to the California Records Act as outlined further below.

VII. TERMINATION

Each Party shall have the right to terminate this Agreement by giving the other Party ten (10) calendar days' written notice.

In the event of termination:

A. RMV will cease to provide County with any additional GIS Information County shall (i) return to RMV all original copies of RMV GIS Information in County's possession (if any) and (ii) destroy all other copies, regardless of format or medium, of the RMV GIS information.

B. County will cease to provide RMV with any further access to the County's GIS portal. RMV shall (i) return to County all original copies of County GIS Information in RMV's possession (if any) and (ii) destroy all other copies, regardless of format or medium, of the County GIS information.

VIII. NOTICES

All notices, requests, and demands hereunder must be in writing to be effective. All notices required to be given hereunder or by operation of law in connection with the performance or enforcement hereof shall be deemed given upon delivery if delivered personally (which includes notices delivered by messenger or overnight courier) or, if delivered by mail, shall be deemed given three (3) calendar days after being deposited by certified mail in any duly authorized United States mail depository, postage prepaid. All such notices shall be addressed as follows, or to such other address or addresses as the Parties may from time to time specify in writing:

To County: County of Orange
OC Public Works
601 N. Ross Street
Santa Ana, CA 92701
Attn: Cameron Smith, Geospatial Services Manager

To RMV: Rancho Mission Viejo, LLC
28811 Ortega Highway
San Juan Capistrano, CA 92675
Attn: Tyler Holst, Senior Vice President – Infrastructure

IX. DISCLAIMER; PUBLIC RECORDS ACT, DAMAGES WAIVER; AND HOLD HARMLESS

A. Disclaimer. Although the GIS digital files are tested for accuracy and proper functioning, each Party disclaims any responsibility or warranty for the accuracy or correctness for the use of its files.

B. Public Records Act. RMV understands and agrees that any information that is submitted to and/or obtained by County from RMV may be treated as a Public Record per the California Records Act (Government Code 7920.000, *et seq.*), as now in force or hereafter amended, or any Act in substitution thereof. RMV understands and agrees that any information that is submitted to and/or obtained by County from RMV may be treated as a Public Record per the California Records Act and may be produced as required by law. In the event the County (i) receives a request pursuant to the California Records Act that includes RMV GIS Information or (ii) is otherwise required by law to disclose RMV GIS information, the County will provide RMV written notice of such request/obligation.

C. Damages Waiver. In no event shall County or RMV be liable to the other for consequential damages, including but not limited to loss of time, money, or goodwill, arising from the receipt, use, operation or modification of GIS Information.

D. Hold Harmless and Indemnity.

i. In Favor of County. Neither County nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by RMV, its contractors, sub-contractors, and/or its agents under or in connection with this Agreement. It is understood and agreed that RMV, to the extent permitted by law, will defend, indemnify, and hold harmless County and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by RMV, its contractors, sub-contractors, and/or its agents under this Agreement.

ii. In Favor of RMV. Neither RMV nor any officer, employee, member, manager or affiliate thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by County, its contractors, sub-contractors, and/or its agents under or in connection with this Agreement. It is understood and agreed that County, to the extent permitted by law, will defend, indemnify and hold harmless RMV and all of its officers, employees, members, managers and affiliates from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by County, its contractors, sub-contractors, and/or its agents under this Agreement.

X. OTHER PROVISIONS

A. Data Acquired from Third Party. The Parties agree that any GIS Information provided to / received by the requesting Party is consistent with the providing Party's legal ability to share GIS Information via license or any other legal mechanism. If GIS Information is limited via license or other legal mechanism, the Party providing the GIS Information shall inform the Party requesting / receiving the GIS Information of any limitations, requirements, allowed uses, or prohibitions of use per any license agreement. The Parties agree to abide by any requirements of any existing license.

B. Successors and Assigns. This Agreement and the rights and obligations of the Parties hereunder may not be assigned to any other party. This Agreement is for the sole benefit of the Parties for their own purposes and shall not be sold, assigned, leased, loaned, conveyed, or otherwise transferred to any other person or entity without the prior written consent of the other Party.

C. Governing Law and Venue. 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.

D. Attorney's Fees. In any action or proceeding to enforce or interpret any provisions 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.

E. No Third-Party Rights. Nothing in this Agreement shall be deemed or otherwise construed as granting any rights, benefits, or interests to any individual, entity, or body who/that is not a party to this Agreement.

F. Authority and Requisite Action. The Parties to this Agreement represent, covenant, and affirm that the individuals executing this Agreement have the legal power, right, and authority to enter into this Agreement and to bind their respective principals/entities to the terms and conditions set forth herein. Furthermore, the Parties covenant that all requisite action has been taken by their respective principals/entities in connection with the entering into this Agreement and the instruments referenced herein, and the consummation of the transactions contemplated hereby.

G. Entire Agreement. This writing constitutes the entire agreement between the Parties, and no modification of this Agreement shall be valid unless executed in writing by the Parties hereto. Further, none of the Parties to this Agreement shall be bound by any representations, warranties, promises, statements, or information unless expressly set forth herein.

H. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

I. No Waiver. The failure of any Party to enforce against the other a provision of this Agreement shall not constitute a waiver of that Party's right to enforce such a provision at a later time.

J. Captions. The captions of the various Sections in this Agreement are for convenience and organization only and are not intended to be any part of the body of this Agreement, nor are they intended to be referred to in construing the provisions of this Agreement.

K. Counterparts. This Agreement may be executed in one or more counterparts, and all the counterparts shall constitute but one and the same agreement, notwithstanding that all Parties hereto are not signatories to the same or original counterpart.

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their officers thereunto duly authorized on the dates ascribed below.

“COUNTY”

COUNTY OF ORANGE, a political subdivision of the State of California

Date: _____

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

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

Date: _____

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

Approved as to form:
Office of the County Counsel
Orange County, California

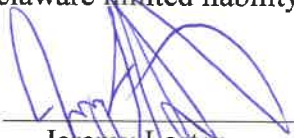
Date: 7/25/2023

By: 
Deputy County Counsel


“RMV”

Rancho Mission Viejo, LLC,
a Delaware limited liability company

Date: 7/20/2023

By: 
Jeremy Laster
President

Date: 07/20/2023

By: 
Tyler Holst
Senior Vice President –
Infrastructure Engineering