



MEETING HANDOUT

Meeting: Board Meeting

Date: February 17, 2017

Item: 7.2 Consideration and Action on Joint Community Facilities Agreement 2017-1, and Resolution No. 2017-02-08; Approving Joint Community Facilities Agreement with County of Orange for Communities Facilities District No. 2017-1 of the County of Orange (Village of Esencia)

Revision: Revised redline final version of the agreement.

JOINT COMMUNITY FACILITIES AGREEMENT

among

COUNTY OF ORANGE

and

SANTA MARGARITA WATER DISTRICT

and

**RMV PA 2 DEVELOPMENT, LLC,
a Delaware Limited Liability Company**

relating to

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

JOINT COMMUNITY FACILITIES AGREEMENT

THIS JOINT COMMUNITY FACILITIES AGREEMENT (the "Agreement") is entered into effective as of the 1st day of _____, 2017, by and among the COUNTY OF ORANGE, a political subdivision of the State of California (the "County"), the SANTA MARGARITA WATER DISTRICT, a California water district ("SMWD"), and RMV PA 2 DEVELOPMENT, LLC, a Delaware limited liability company (the "Company"), and relates to the proposed formation by the County of COMMUNITY FACILITIES DISTRICT NO. 2017-1 OF THE COUNTY OF ORANGE (VILLAGE OF ESENCIA) (the "District") for the purpose of financing certain facilities more particularly described on Exhibit A hereto (the "Water Facilities") to be constructed by, or on behalf of, SMWD.

RECITALS:

- A. The Company is the master developer of the land described in Exhibit B hereto (the "Property") which is located in the unincorporated area of the County of Orange and comprises Phases 2.3 and 2.4 of the master-planned community being developed and known as "Esencia."
- B. The Company as the master developer of the Property intends to obtain, or has obtained, the necessary development approvals to construct approximately 752 residential units and approximately 500,000 square feet of commercial/industrial/retail development on the Property and to provide the required infrastructure for such units and development. The required infrastructure includes the Water Facilities.
- C. The County will have primary responsibility for the formation and administration of the District.
- D. The Company has requested the Board of Supervisors of the County (the "Board") to form and establish the District on the Property pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part I of Division 2 of Title 5 of the California Government Code (the "Act").
- E. The provision of the Water Facilities is necessitated by the development of the Property and the parties hereto find and determine that the residents residing within the boundaries of the District will be benefited by the construction and/or acquisition of the Water Facilities and that this Agreement is beneficial to the interests of such residents.
- F. The parties hereto intend to have the District assist in financing the construction and/or acquisition of the Water Facilities by disbursing to SMWD proceeds of bonds issued by the District up to the amount of \$15,806,000 (the "Water Facilities Amount").
- G. The District, when formed, is authorized by California Government Code Section 53313.5 to assist in the financing of the acquisition and/or construction of the Water Facilities. This Agreement constitutes a joint community facilities agreement, within the meaning of California Government Code Section 53316.2, by and among the County, SMWD and the Company, pursuant to which the District, when formed, will be authorized to finance the costs of the construction and/or acquisition of the Water Facilities in the amount of up to the Water

Facilities Amount. As authorized by California Government Code Section 53316.6, responsibility for constructing and/or acquiring, providing for and operating the Water Facilities is delegated to SMWD to the extent set forth herein.

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

AGREEMENT

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

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

In the event that the District is formed, the Board of the County, acting as the legislative body of the District, may, in its sole discretion, finance the construction and acquisition of the Water Facilities by issuing bonds (the "Bonds"). To the extent that the District determines, in its sole discretion, that Bond proceeds are available to finance the Water Facilities, it shall reserve an amount not to exceed \$10,000,000 (the "Reservoir Amount") to be used exclusively for construction and contracted construction administration of the Trampas Reservoir including pipelines, pump stations, valves and treatment facilities (the "Trampas Facility"), and an additional \$5,806,000 (the "In-Tract Facilities Amount") to be used exclusively for PA 2.3 and 2.4 in-tract projects (the "In-Tract Facilities"), all as contemplated by Exhibit A attached hereto; provided, however, that SMWD agrees that, without the prior written consent of the Company, the Reservoir Amount to be funded by the District shall not exceed \$10,000,000 and the In-Tract Facilities Amount to be funded by the District shall not exceed \$5,806,000. Upon consent of the Company, either or both of the Reservoir Amount and the In-Tract Facilities Amount may be increased. In the event that any proceeds of the Bonds (including interest earnings thereon) reserved to pay for Water Facilities have not been disbursed by the date that is thirty-four (34) months following the date of issuance of the Bonds, the District may, in its sole discretion, apply any remaining undisbursed amount to pay principal due on the Bonds at maturity or by redemption.

The Company and SMWD acknowledge that the timing of the disbursement of the Water Facilities Amount to SMWD (or directly to others at SMWD's request) shall be in all respects subject to the sole discretion and approval of the County. In no event will an act, or an

omission or failure to act, by the County or the District with respect to the disbursement or non-disbursement of the Water Facilities Amount subject the District or the County to pecuniary liability hereunder.

The Bonds shall be issued only if, in its sole discretion, the Board determines that all requirements of state and federal law and all County policies have been satisfied or have been waived by the County. In no event shall the Company or SMWD have a right to compel the issuance of the Bonds or the disbursement of Bond proceeds to fund the Water Facilities Amount. This Agreement does not release Company from any obligation it may have to provide any Water Facilities.

4. ~~Disbursements~~—Bond proceeds of the District designated for the Water Facilities shall be held by the District in a special fund (the “Water Facilities Account of the Acquisition and Construction Fund”), and shall be separated into two (2) separate subaccounts. Funds in an amount up to the Reservoir Amount shall be deposited into one subaccount (the “Reservoir Subaccount”), and funds in an amount up to the In-Tract Facilities Amount shall be deposited into another subaccount (the “In-Tract Subaccount”). Funds in each subaccount shall be invested by the ~~County Treasurer~~Trustee for the Bonds at the direction of the District and earn and accumulate its own interest. In the event that the District has deposited Bond proceeds to the Water Facilities Account of the Acquisition and Construction Fund to fund all or a portion of the Water Facilities Amount, the County shall notify SMWD and the Company, in writing, as to the amount of Bond proceeds so deposited and the amount thereof deposited into each such subaccount. If there are not sufficient Bond proceeds to fund both the Reservoir Amount and the In-Tract Facilities Amount, then the Reservoir Amount shall be funded first. All interest earnings on amounts in the Reservoir Subaccount shall remain in the Reservoir Subaccount and will be available for disbursement for the Trampas Facility. All interest earnings on amounts in the In-Tract Subaccount shall remain in the In-Tract Subaccount and will be available for disbursement for the In-Tract Facilities.

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

(c) SMWD agrees that it will request a disbursement of Bond proceeds only for costs related to the Water Facilities that are eligible for financing under the Act which include the costs of acquiring the land for the Water Facilities (if applicable), constructing or acquiring the Water Facilities including the cost of planning and designing the Water Facilities, the cost of environmental evaluation of the Water Facilities and other expenses incidental to the construction, completion and inspection of the authorized work. SMWD agrees that prior to requesting disbursement from the District it shall review and approve all costs included in its request, and either SMWD or third parties constructing the Water Facilities will have already paid such costs of the Water Facilities. Bond proceeds shall be paid directly to SMWD only to reimburse it for costs previously paid by SMWD. All other Bond proceeds to be disbursed shall be paid at the direction of SMWD to third parties, which may include the Company, who have previously paid or incurred costs of the Water Facilities. SMWD agrees that in processing

disbursements it will comply with all legal requirements for the expenditure of Bond proceeds under the Act and the Internal Revenue Code of 1986 and any amendments thereto. Further, the Company agrees that if it requests that SMWD make any submissions for a disbursement under this Agreement for any Water Facilities constructed by the Company, the Company will have already paid for the costs included in such disbursement request, and the Company will comply with all legal requirements for the expenditure of Bond proceeds under the Act and the Internal Revenue Code of 1986 and any amendments thereto in connection with the construction of such Water Facilities. Without limiting the foregoing, if SMWD elects to purchase the Water Facilities from a third party, SMWD may request disbursements in connection with improvements based upon the discrete portion or phases of a partially completed project as set forth on Exhibit A and as permitted by California Government Code Section 53313.51. In such event, (i) the discrete portions or phases shall be constructed pursuant to plans, standards, specifications and other requirements that satisfy the provisions of Section 5 below, (ii) the price for each discrete portion or phase shall equal the lesser of the cost or the value thereof, and shall be in no event in excess of the amount set forth on Exhibit A, and (iii) SMWD shall have inspected and approved of such discrete portion or phase and accepted conveyance or dedication thereof (or shall have an irrevocable commitment to convey or dedicate for SMWD's benefit), all pursuant to SMWD's normal procedures and in accordance with California Government Code Section 53313.51.

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

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

(f) SMWD shall submit a request for payment to the District along with adequate supporting documentation acceptable to the District which shall be in the form attached

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

(g) If for any reason beyond SMWD's control the Bonds are not sold, SMWD shall not be required to complete the Water Facilities, or any portion thereof. Neither the County, the District, nor SWMD shall have any obligation pursuant to this Agreement to fund any such shortfall under this Agreement, and the Company shall not have any obligation to fund any such shortfall relating to the ~~Reservoir Trampas~~ Facility.

(h) Notwithstanding anything to the contrary contained above or elsewhere in this Agreement, unless and until SMWD and the Company have entered into a binding capital infrastructure agreement with respect to the ~~Reservoir Trampas~~ Facility, and the Company has given the County written acknowledgement thereof prior to the issuance of the Bonds, (i) no funds shall be deposited into the Reservoir Account, (ii) all references herein to the Reservoir Account and/or the ~~Reservoir Trampas~~ Facility shall be deemed null and void, (iii) the Water Facilities Account shall be reduced to \$5,806,000, and (iv) this Agreement shall only apply with respect to the In-Tract Improvements.

5. Construction and Ownership of Facilities. Subject to Section 4(g) herein, SMWD will complete, or cause the Company to complete, the design of the Water Facilities and the plans and specifications for construction of the Water Facilities and will be responsible for constructing, or causing the Company to construct, the Water Facilities, and will be responsible for inspecting the Water Facilities. SMWD covenants and agrees that with respect to the Water Facilities it will comply with all statutory provisions applicable to the design and construction of public works projects. The Water Facilities shall be and remain the property of SMWD.

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

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

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

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

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

County: Orange County Public Works Department
300 N. Flower Street, 6th Floor
Santa Ana, California 92701
Attn: Planned Communities Division Manager

With a copy to: County of Orange
~~10 Civic Center Plaza~~ 333 West Santa Ana
Boulevard, 3rd Floor
Santa Ana, California 92701
Attn: County Executive Office-Public Finance

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

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

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

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

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

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

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

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

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

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

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

COUNTY OF ORANGE

By: _____
Chair of the Board of Supervisors

APPROVED AS TO FORM
Office of County Counsel
Orange County California

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

By: _____
Deputy

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

SANTA MARGARITA WATER DISTRICT

By: _____
Its: _____

ATTEST:

By: _____

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

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

By: _____
Elise Millington, SVP and CFO

By: _____
Donald L. Vodra
Chief Operating Officer

EXHIBIT A
LIST OF FACILITIES
(INCLUDING SEGMENTS AND PRICES)

PA2.3 & PA2.4 Water Infrastructure Projects (Constructed by SMWD)	Prices
a) Trampas Reservoir (Reclaimed Water)	\$ 10,000,000
Subtotal	<u>\$ 10,000,000</u>

PA2.3 & PA2.4 In-Tract Projects (Constructed by RMV)	Prices
a) Domestic Water Improvements	\$ 3,300,000
b) Reclaimed Water Improvements	1,193,000
c) Sewer Improvements	1,313,000
Subtotal	<u>\$ 5,806,000</u>
Grand Total	<u>\$ 15,806,000</u>

PA2.3 & PA2.4 Water Infrastructure Projects (Constructed by SMWD)	Prices
a) Trampas Reservoir (Reclaimed Water)	\$ 10,000,000
Subtotal	<u>\$ 10,000,000</u>

PA2.3 & PA2.4 In-Tract Projects (Constructed by RMV)	Prices
a) Domestic Water Improvements	\$ 3,300,000
b) Reclaimed Water Improvements	1,193,000
c) Sewer Improvements	1,313,000
Subtotal	<u>\$ 5,806,000</u>
Grand Total	<u>\$ 15,806,000</u>

EXHIBIT B
DESCRIPTION OF PROPERTY

Improvement Area No. 1:

All of Tract No. 17563, in the Unincorporated Area of the County of Orange, State of California, as shown on the map recorded October 18, 2016 as Instrument No. 2016000510635, in Book 960, Pages 21 through 41, inclusive, of Miscellaneous Maps, in the office of the County Recorder of said County.

Improvement Area No. 2:

All of Tract No. 17564, in the Unincorporated Area of the County of Orange, State of California, as shown on the map recorded October 28, 2016 as Instrument No. 20160533045, in Book 961, Pages 12 through 17, inclusive, of Miscellaneous Maps, in the office of the County Recorder of said County

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EXHIBIT C

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DISBURSEMENT REQUEST FORM

1. Community Facilities District No. 2017-1 of the County of Orange (Village of Esencia) ("CFD No. 2017-1") is hereby requested to pay from the _____ Subaccount of the Water Facilities Account of the Acquisition and Construction Fund established by the Board of Supervisors of the County of Orange (the "County") in connection with its CFD No. 2017-1 Special Tax Bonds (the "Bonds"), directly to the person or entity listed below, as Payee, the sum set forth below in payment of project costs described below:

Payee: _____ Amount: \$ _____
Payee: _____ Amount: \$ _____
Payee: _____ Amount: \$ _____

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

3. Description of Water Facilities Costs:

4. The amount set forth is authorized and payable pursuant to the terms of the Joint Community Facilities Agreement among the County, RMV PA 2 Development, LLC and SMWD dated as of _____ 1, 2017 (the "Agreement"). Capitalized terms not defined herein shall have the meaning set forth in the Agreement.

5. Total payments from the applicable Subaccount for the ~~Reservoir~~Trampas Facility and the In-Tract Facilities from CFD No. 2017-1, including the amount to be paid under paragraph 1 above, will not exceed the maximum amount to be disbursed from the applicable Subaccount for the ~~Reservoir~~Trampas Facility or the In-Tract Facilities under the Agreement.

Executed by an authorized representative of SMWD.

By: _____
Name: _____
Title: _____
Date: _____

Request No. _____

