

JOINT COMMUNITY FACILITIES AGREEMENT - EMWD

THIS JOINT COMMUNITY FACILITIES AGREEMENT – EMWD (the “Agreement”) is entered into this 20th day of March, 2024, by and among the TEMECULA PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority (the “Authority”), the EASTERN MUNICIPAL WATER DISTRICT, a public agency organized and existing pursuant to Division 20 of the California Water Code (the “EMWD”), and MERITAGE HOMES OF CALIFORNIA, INC., a California corporation (the “Company”), and relates to the proposed formation of the TEMECULA PUBLIC FINANCING AUTHORITY COMMUNITY FACILITIES DISTRICT NO. 23-02 (PRADO) (the “CFD”), for the purpose of financing certain public facilities, including sewer facilities to be ultimately owned and operated by EMWD.

RECITALS

A. The Company is developing and owns the property described in Exhibit A hereto (the “Property”) which is located in the City of Temecula, California, and is located within the boundaries of the EMWD and the proposed CFD.

B. Pursuant to the request of Company, the Board of Directors of the Authority has initiated proceedings to form the CFD pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the California Government Code (the “Act”).

C. The Company has requested and proposed that the CFD be formed for the purpose of providing the means of financing the acquisition of various public facilities, including certain public facilities to be constructed, owned and operated by EMWD, which are described in further detail on Exhibit B (the “EMWD Facilities”), in lieu of the payment of certain sewer financial participation charges and sewer treatment capacity charges of EMWD (collectively, the “EMWD Fees”) incident to the development of homes to occur in the CFD. The EMWD Fees do not include meters, processing fees, construction water and other EMWD charges.

D. The Company has not yet determined that it will finance the EMWD Facilities in lieu of payment of the EMWD Fees, and the parties hereto acknowledge that this Agreement is for the purpose of meeting the requirements of the Act.

E. The Act effectively provides that the CFD may finance the EMWD Facilities only pursuant to a joint community facilities agreement adopted pursuant to Government Code Section 53316.2.

F. The Authority and EMWD have determined that entering into this Agreement to enable the CFD to finance some or all of the EMWD Facilities will be beneficial to the residents of each entity and, therefore, desire to enter into this joint community facilities agreement pursuant to Government Code Section 53316.2.

G. Nothing contained herein shall be construed as requiring the Company to take any specific action, or for the Authority to form the CFD or to issue any special tax bonds for the CFD.

A G R E E M E N T

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, and for other consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Recitals. Each of the above recitals is incorporated herein and is true and correct.
2. Proceedings for the Formation of CFD; Costs of Formation. The Board of Directors of Authority shall have the jurisdiction to and shall be solely responsible for undertaking the proceedings pursuant to the Act to consider the formation of the CFD and the authorization for the CFD to levy special taxes within the CFD and to incur bonded indebtedness. Notwithstanding the forgoing, if and when the Board of Directors of the Authority determines to issue special tax bonds for the CFD, the Board of Directors of the Authority shall take such actions in its reasonable discretion to ensure that the total effective property tax rate within the CFD (including the special tax rate for the CFD) does not exceed two percent (2%) of the projected value of the property subject to the special taxes when developed, determined at the time of the sale of the Bonds. The Authority shall not include EMWD's name on property tax bills that include the special taxes for property within the CFD.

EMWD is not directly or indirectly approving or responsible in any way whatsoever for the levy of special taxes within the CFD, nor is EMWD directly or indirectly approving or responsible in any way whatsoever for the issuance or administration of bonds that may be issued by the Authority for the CFD. EMWD shall not be responsible in any way whatsoever for the costs of formation of the CFD or of the issuance of any special tax bonds for the CFD.

The Authority agrees that any funds advanced by the Developer to EMWD to pay costs of EMWD related to the review and approval by EMWD of this Agreement shall, at the written request of the Company provided to the Authority prior to issuance by the Authority of the special tax bonds for the CFD, be included in the costs of issuance funded from the proceeds of such bonds and reimbursed to the Company promptly following the issuance of such bonds.

3. Use of Bond Proceeds. Prior to the sale of bonds issued by the Authority for the CFD (the "Bonds"), the Company shall notify EMWD of the amount of Bond proceeds that are estimated to be reserved or otherwise available to fund EMWD Facilities. To the extent Bond proceeds are made available to EMWD to finance EMWD Facilities, but only to such extent, the Company may request payment from the Authority executing and submitting a request for payment, in substantially the form attached hereto as Exhibit C (the "Disbursement Request"), executed by the Company and countersigned by EMWD. Upon receipt of such Disbursement Request, the Authority will cause the fiscal agent for the Bonds to promptly wire transfer (or pay in another mutually acceptable manner) to EMWD such requested funds to the extent that Bond proceeds are available for such purpose.

Upon such notice and EMWD's receipt of such disbursement of funds relating to EMWD Facilities, the Company shall be deemed to have satisfied the applicable EMWD Fees with respect to the number of dwelling units or lots for which the EMWD Fees would otherwise have been required in an amount equal to the amount of such disbursement. EMWD agrees to use Bond proceeds transferred to it within three years of the date of the issuance of the Bonds for the construction or acquisition of EMWD Facilities which shall consist of public infrastructure improvements owned by a governmental entity in which no nongovernmental entity has any special legal entitlements, which improvements have a useful life of five years or more, and are otherwise identified on Exhibit B hereto.

Notwithstanding the foregoing, EMWD shall maintain written records as to the investment and disposition of any Bond proceeds remitted to it under this Section 3, and will make such records available to the Treasurer of the Authority upon the Treasurer's written request. The Authority shall have no responsibility or obligation whatsoever with respect to the construction or operation of any of the EMWD Facilities, or with respect to any investment or use by EMWD of funds remitted to it pursuant to the preceding paragraph.

Nothing in this Section 3 shall prohibit the Company from using its own funds to pay all or any portion of the EMWD Fees for any dwelling unit or lot in the CFD. If the Bond proceeds available for purposes of this Agreement are less than the amount of EMWD Fees required to be paid by the Company for the development of all of the property within the CFD, the Company, in its discretion, may submit a Disbursement Request to use available Bond proceeds to pay a pro rata portion of the EMWD Fees for any dwelling unit or lot, and use its own funds to pay the balance of the EMWD Fees due, so long as EMWD reasonably expects to expend all of the available Bond proceeds by the date which is 3 years after the date the Bonds are issued.

Nothing herein shall relieve the Company from paying EMWD Fees to the extent Bond proceeds are not made available to EMWD to finance EMWD Facilities.

4. Other Public Utility Facilities. EMWD shall not acquire from the Company or construct the water, electric, natural gas and telephone underground public utility improvements to be installed in the street rights-of-way within the tracts into which the Property will be subdivided. The Company shall construct all such improvements and make such arrangements with respect to refunding of the cost of the installation of such improvements with the utility companies that will own and operate same as is permitted by the rules of such companies.

5. Indemnification. The Company shall assume the defense of, indemnify and save harmless, EMWD, its directors, officers, employees and agents, and the Authority, its members, directors, 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 subject or put, by reason of, or resulting from this Agreement or the issuance of the Bonds; provided, however that the Company shall not be required to indemnify any person or entity as to damages resulting from willful misconduct of such person or entity or their agents or employees.

6. Termination. The provisions of this Agreement related to the funding of the EMWD Facilities shall terminate and be of no further force or effect if Bonds are not sold by December 31, 2033. If for any reason the Bonds are not issued by such date, this Agreement shall terminate and be of no further force and effect. If not earlier terminated in accordance with the foregoing, this Agreement shall terminate on the date which is five years after the date on which EMWD has fully expended any Bond funds remitted to it (and any investment earning thereon) to pay costs of EMWD Facilities.

7. Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or seventy-two (72) hours following deposit of the same in any United States Post Office in California, registered or certified, postage prepaid, addressed as follows:

Authority/CFD:

Temecula Public Financing Authority
c/o City of Temecula
41000 Main Street
Temecula, CA 92589
Attention: Director of Finance

EMWD: Eastern Municipal Water District
2270 Trumble Road
Post Office Box 8300
Perris, CA 92572-8300
Attn: General Manager

Company: Meritage Homes of California, Inc.
5 Peters Canyon Road, Suite 310
Irvine, CA 92606
Attention: Aaron Talarico

with a copy to: O'Neil LLP
1990 MacArthur Boulevard, Suite 1050
Irvine, CA 92612
Attention: John P. Yeager, Esq.

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

8. No Obligation. The parties agree that the Company has no obligations hereunder until or unless the Authority issues the Bonds and allocates a portion of the proceeds of the Bonds specifically to fund the EMWD Facilities.

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

10. 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.

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. 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.

14. No Third Party Beneficiaries. No person or entity 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 EMWD, the Authority, the CFD and the Company (and their respective successors and assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement.

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

16. 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 hereto have executed this Agreement as of the day and year first written above.

TEMECULA PUBLIC FINANCING AUTHORITY

By: _____
Aaron Adams,
Executive Director

20009.24;J19208

[signature page to CFD 23-02 – Joint Community Facilities Agreement – EMWD]

EASTERN MUNICIPAL WATER DISTRICT

By: _____
Joe Mouawad,
General Manager

20009.24;J19208

[signature page to CFD 23-02 – Joint Community Facilities Agreement – EMWD]

MERITAGE HOMES OF CALIFORNIA, INC.,
a California corporation

By: _____
Aaron Talarico,
Vice President-Land Acquisition
and Forward Planning

20009.24;J19208

[signature page to CFD 23-02 – Joint Community Facilities Agreement – EMWD]

EXHIBIT A

PROPERTY DESCRIPTION

Riverside County Assessor's Parcel Numbers:

916-400-051
916-400-052
916-400-053
916-400-070

EXHIBIT B

DESCRIPTION OF EMWD FACILITIES

“EMWD Facilities” means sewer system and water development improvements included in EMWD’s sewer capacity and connection fee programs used to finance expansion projects except for those in-tract facilities that are contributed by the Company. EMWD Facilities include, but are not limited to: sewer transmission pipelines, sewer treatment plants, disposal ponds, pumping plants, lift stations, water reservoirs, including all costs of site acquisition, planning, design, engineering, legal services, materials testing, coordination, surveying, construction staking, construction, inspection and any and all appurtenant facilities relating to the foregoing.

EXHIBIT C

**DISBURSEMENT REQUEST FORM FOR FUNDING OF
EMWD FACILITIES IN LIEU OF PAYMENT OF EMWD FEES**

Sequence No. _____

EMWD SA# _____

1. The Temecula Public Financing Authority (the "Authority") is hereby requested to pay from the Bond proceeds to Eastern Municipal Water District ("EMWD"), as Payee, the sum set forth in 3 below.

2. The undersigned certifies that the amount requested for funding of EMWD Facilities in lieu of payment of EMWD Fees, has not formed the basis of prior request or payment, and is being made with respect to the connection of the property described in Exhibit A to the Agreement described below, to the EMWD system.

3. Amount requested: \$ _____ For Lot Nos. _____

Wire transfer instructions for remission of funds to EMWD:

4. The amount set forth in 3 above is authorized and payable pursuant to the terms of the Joint Community Facilities Agreement among the Authority, EMWD and Meritage Homes of California, Inc., dated as of March 20, 2024 (the "Agreement").

By entering into Agreement and requisitioning funds that may include proceeds of bonds issued by the Authority for the CFD (the "Bonds") as described above, EMWD is not passing upon, determining or assuming the tax-exempt status of the Bonds for federal or State income tax purposes.

Capitalized terms used but not defined herein have the respective meanings given to them in the Agreement.

MERITAGE HOMES OF CALIFORNIA, INC.
a California corporation

By: _____

Its: _____

EASTERN MUNICIPAL WATER DISTRICT

By: _____

Its: _____