

JOINT COMMUNITY FACILITIES AGREEMENT – CITY**TEMECULA PUBLIC FINANCING AUTHORITY
COMMUNITY FACILITIES DISTRICT NO. 23-02
(PRADO)**

This Joint Community Facilities Agreement – City (the “Agreement”), dated for convenience as of January 23, 2024, is by and between the Temecula Public Financing Authority (the “Authority”) and the City of Temecula, California (the “Participating Agency”).

RECITALS:

WHEREAS, the Authority is undertaking proceedings to form the Temecula Public Financing Authority Community Facilities District No. 23-02 (Prado) (the “CFD”) pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the “Act”), and the Authority intends to issue bonds of the Authority for the CFD (the “Bonds”) in order to finance various public improvements to be acquired and constructed in the City of Temecula; and

WHEREAS, the improvements to be financed with the proceeds of the Bonds may include the improvements described in Attachment A hereto (the “Improvements”), which Attachment is, by this reference, incorporated herein; and

WHEREAS, the CFD will also be authorized to finance certain maintenance services (the “Services”), and the Participating Agency is willing to provide the Services to the extent it is reimbursed for the costs thereof by the CFD; and

WHEREAS, some of the Improvements designated as the CFD Designated Facilities on Attachment A (the “CFD Designated Facilities”) are to be constructed by Meritage Homes of California, Inc., the owner of the land in the CFD (the “Developer”), and the Authority expects to enter into an Acquisition Agreement (the “Acquisition Agreement”) with the Developer, whereby the Authority will use proceeds of the Bonds to acquire the CFD Designated Facilities from the Developer; and

WHEREAS, the parties hereto expect that the Participating Agency will own and operate the CFD Designated Facilities if they comply with the standards and have been completed to the satisfaction of the Participating Agency; and

WHEREAS, the implementation of the Acquisition Agreement will involve actions by officials of the Participating Agency, and the Participating Agency is willing to provide the services of its officials as necessary to implement the provisions of the Acquisition Agreement; and

WHEREAS, the Improvements designated as the City Designated Facilities on Attachment A (the “City Designated Facilities”) will be determined, constructed, and owned and operated by the Participating Agency, costs of which will be funded with Bond proceeds; and

WHEREAS, Section 53316.2 of the Act requires that the Authority enter into a joint community facilities agreement with the Participating Agency, prior to the adoption by the Authority of a resolution authorizing the issuance of the Bonds in respect of the Improvements which Improvements are to be financed with the proceeds of the Bonds, and, upon completion,

are to be owned and operated by the Participating Agency, and in respect to the Services to be provided by the Participating Agency; and

WHEREAS the Authority and the Participating Agency now desire to enter into this Agreement to satisfy the requirements of Section 53316.2 of the Act and to memorialize their understanding with respect to the proceeds of the Bonds, the Improvements, the Services and the Acquisition Agreement, all as more particularly set forth below.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants set forth below, the parties hereto do hereby agree as follows:

Section 1. Reservation of Bond Funds. If and when it issues the Bonds, the Authority intends to deposit a portion of the proceeds of the Bonds in an Acquisition Account (the "Acquisition Account") of an Improvement Fund (the "Improvement Fund") for the CFD to be available to finance a portion of the costs incurred in connection with the acquisition and construction of the CFD Designated Facilities, and to deposit a portion of the proceeds of the Bonds to a City Account (the "City Account") of the Improvement Fund to finance costs of the City Designated Facilities. Amounts in the Improvement Fund, including in the accounts therein, together with any investment earnings thereon, shall be held in the Improvement Fund for the sole and exclusive benefit of the CFD, and such amount shall in no way be pledged as security for the Bonds.

Other than the funds described in the preceding paragraph, the Authority shall have no obligation to pay for any of the costs of the Improvements, including but not limited to any costs of planning, acquisition, construction, installation or inspection of the Improvements. Any costs of the CFD Designated Facilities listed in Attachment A hereto in excess of the proceeds of the Bonds in the Acquisition Account and any earnings thereon while in the Acquisition Account available to pay such costs will be paid by or on behalf of the Developer. Any costs of the City Designated Facilities in excess of the proceeds of the Bonds in the City Account and any earnings thereon while in the City Account available to pay such costs will be paid by the Participating Agency.

The Participating Agency shall provide a credit against its development impact fees and Quimby Act fees (together, the "City Development Fees") otherwise payable with respect to the construction of residential dwelling units in the territory of the CFD, on a dollar for dollar basis, equal to amounts disbursed to the Participating Agency from the City Account.

In the event that the Developer, prior to the issuance of the Bonds pays to the City either a public facility contribution in the amount of \$665,000 (the "Developer Contribution") or any of the City Development Fees, or prepays in full the special taxes on any property in the CFD authorized to be levied by the Authority for its Community Facilities District No. 01-2 (Harveston) (the "Special Tax Prepayment"), the Authority shall, following the issuance of the Bonds, rebate to the Developer an amount equal to the lesser of (a) the aggregate of the Developer Contribution, the City Development Fees and the Special Tax Prepayment so paid, or (b) the amount deposited from the Bond proceeds to the Acquisition Account plus the amount to be rebated in respect of the Special Tax Prepayment that is funded with proceeds of the Bonds. Any such payment to the Developer shall be made upon the written request of the Developer setting forth the amounts to be rebated, and shall be made solely from (i) proceeds of annual special taxes levied on property in the CFD after providing for Bond debt service and CFD administrative expenses, or (ii) the proceeds of the Bonds to the extent approved by bond counsel to the Authority, in any event without interest.

Section 2. Construction of Improvements. (a) The CFD Designated Facilities have been or will be constructed pursuant to plans and specifications approved by the Participating Agency. The Participating Agency shall not have any liability whatsoever in respect of any work performed in connection with the CFD Designated Facilities; provided that this sentence shall in no way limit any rights the Participating Agency may have against any persons or entities in respect of the acquisition or construction of the CFD Designated Facilities once the Participating Agency accepts title to and control over the CFD Designated Facilities.

To the extent that the Participating Agency incurs expenses incident to reviewing and approving design plans and specifications, conducting construction field inspections and otherwise in connection with the design, construction and acceptance of the CFD Designated Facilities, such expenses may be reimbursed to the Participating Agency upon presentation of invoices as to the nature and amount of such costs and expenses, from available amounts in the Acquisition Account, or if there are no such available funds, then from one of the owners of the land in the CFD (as may be required in any applicable subdivision improvement agreements pertaining thereto) or from any other legally available funds.

(b) The Participating Agency (i) shall determine the specific City Designated Facilities to be funded in whole or in part with funds in the City Account, each of which shall have a useful life of five years or longer, shall be owned by the Participating Agency or a governmental entity (other than the federal government) in which no nongovernmental entity (or the federal government) has any special legal entitlements; (ii) shall proceed with due diligence to complete the improvements and to pay costs thereof from amounts in the City Account within three years of the date of issuance of the Bonds; and (iii) reasonably expects to draw and expend all amounts in the City Account within three years of the date of issuance of the Bonds. The Participating Agency shall be responsible for the construction of the City Designated Facilities, cost of which shall be paid from amounts in the City Account or from other lawfully available funds of the Participating Agency.

Section 3. Inspection and Acceptance; Ownership. (a) The Participating Agency shall cause inspections to be made during the construction of the CFD Designated Facilities in accordance with its customary procedures for construction projects of a similar nature. Upon completion of construction of the CFD Designated Facilities to the satisfaction of the Participating Agency, the Participating Agency shall accept dedication of the CFD Designated Facilities in accordance with its customary procedures, and shall accept ownership, and responsibility for operation of the CFD Designated Facilities conditioned upon the passage to the Participating Agency of fee title clear of all encumbrances and easements not otherwise acceptable to the Participating Agency in its sole discretion. The Participating Agency shall have no responsibility with respect to the ownership or operation of the CFD Designated Facilities unless and until construction has been completed to the satisfaction of the Participating Agency. The Authority shall have no obligation to at any time own or operate any of the CFD Designated Facilities.

(b) The Participating Agency shall own all of the City Designated Facilities during their construction and upon their completion. The Authority shall have no obligation to at any time own or operate any of the City Designated Facilities.

(c) The Participating Agency shall not sell or lease all or any portion of the Improvements, or grant any special legal entitlements to any of the Improvements, that would cause the Authority to be in breach of its covenants related to the tax-exempt status of the interest on the Bonds.

Section 4. Provision of Services. The Participating Agency hereby agrees to provide, or cause to be provided, the Services authorized to be financed by the CFD and otherwise identified in Attachment A hereto, but only to the extent and so long as proceeds of special taxes levied in the CFD are made available to the Participating Agency for such purpose.

Section 5. Assistance with Acquisition Agreement. The Participating Agency hereby agrees to assist the Authority in connection with the implementation of the Acquisition Agreement by making its Director of Public Works and other officials available for the purposes, on the terms and as otherwise provided for in the Acquisition Agreement with respect to any actions to be performed by Participating Agency officials under the Acquisition Agreement.

Section 6. Limited Obligations. All obligations of the Authority under and pursuant to this Agreement shall be limited (a) with respect to the Improvements, to the amounts on deposit in the Acquisition Account and the City Account of the Improvement Fund and described in Section 1 above, and (b) with respect to the Services, to the proceeds of special taxes levied in the CFD for such purpose and otherwise collected from the property owners in the CFD. No Boardmember, officer or employee of the Authority shall in any event be personally liable hereunder.

The sole obligation of the Participating Agency hereunder with respect to the CFD Designated Facilities shall be to inspect and accept the CFD Designated Facilities as described above, and as otherwise provided in Section 3(c) above. The Participating Agency shall have no responsibility or obligation with respect to the CFD Designated Facilities for any action occurring prior to acceptance by the Participating Agency. If, for any reason whatsoever, there are insufficient funds to complete the CFD Designated Facilities or any portion thereof, the Participating Agency shall have no obligation under this Agreement to fund any such shortfall.

The sole obligation of the Participating Agency with respect to the City Designated Improvements shall be as set forth in Sections 2(b) and 3(b) and (c) above.

The sole obligation of the Participating Agency hereunder with respect to the Services shall be to provide all or such portion of the Services as the Participating Agency shall determine can be provided for in respect of any special tax revenue from the CFD made available to the Participating Agency for such purpose.

The sole obligation of the Participating Agency hereunder with respect to the Acquisition Agreement shall be to make available officials of the Participating Agency specifically referenced in, and for the tasks specifically to be undertaken by such officials under the terms of, the Acquisition Agreement.

If the Participating Agency shall fail to perform any of its obligations hereunder, the sole remedy of the Authority shall be the commencement of an action in the Superior Court for specific performance by the Participating Agency of such obligations.

Section 7. Termination. Notwithstanding any other provision of this Agreement, this Agreement shall cease to be effective and shall terminate if the Bonds are not issued by December 31, 2033. If not earlier terminated pursuant to the preceding sentence, this Agreement shall terminate: (a) as to the Improvements, upon acceptance of the ownership and operation of the CFD Designated Facilities by the Participating Agency, and disbursement of all amounts from the Improvement Fund to pay costs of the Improvements, and (b) as to the Services, when the special taxes are no longer levied on the property owners in the CFD.

Section 8. No Obligation to Form CFD; Agreement of Benefit to Residents. The provisions of this Agreement shall in no way obligate the Authority to form the CFD or to issue the Bonds. Notwithstanding the foregoing, by their respective execution of this Agreement, the Authority and the Participating Agency each declare that this Agreement is beneficial to the residents within the jurisdiction of their respective entities in assuring the provision of financing for a portion of the costs of the Improvements and the Services in furtherance of the purposes of the Act.

Section 9. Partial Invalidity. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Section 10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 11. Beneficiaries. This Agreement is for the benefit of the Authority and the Participating Agency and their successors and assigns, and no other person or entity shall be deemed to be a beneficiary hereof or have an interest herein; provided, however, that notwithstanding the foregoing Meritage Homes of California, Inc. is a third party beneficiary of the third and fourth paragraphs of Section 1 above and shall have the right to enforce such provision against the Authority and Participating Agency, but solely by an action for specific performance.

Section 12. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

* * * * *

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year written alongside their signature below.

CITY OF TEMECULA (the "Participating Agency")

By: _____
Aaron Adams,
City Manager

TEMECULA PUBLIC FINANCING AUTHORITY (the "Authority")

By: _____
Aaron Adams,
Executive Director

20009.24:J19207

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

ATTACHMENT A

DESCRIPTION OF THE IMPROVEMENTS

CFD Designated Facilities

- The acquisition and construction of: streets (including paving, aggregate base, striping and traffic marking, sidewalks, curbs, gutters and driveways), including Temecula Center Drive, Date Street and Ynez Road within and in the vicinity of the CFD; stormwater drainage systems (including storm drain lines, inlets, outlets, channels, structures, junctions, manholes, catch basins and related dewatering); street light improvements (including light fixtures, substructures, conduits and service points of connection); and street signage (including traffic, stop and street name signs).
- The foregoing are to include the acquisition of any related right-of-way and other land needed for the installation of any such improvements, demolition of existing structures and site leveling needed for the installation of any such improvements, erosion control, and other appurtenances.
- The acquisition and installation of traffic signal improvements, including traffic signal interconnection and video surveillance systems, at the intersection of Ynez Road and Temecula Center Drive.
- Landscaping improvements in the public right of way along or in the vicinity of Temecula Center Drive, Date Street and Ynez Road, including related appurtenances.

City Designated Facilities

- Capital improvements included in the City of Temecula's adopted Capital Improvement Program for Fiscal Years 2024-2028.

DESCRIPTION OF THE SERVICES

- Public safety services, including police and fire protection.
- Maintenance of parks, and landscaping in public areas, public easements and public right of way in or near the area of the CFD, such maintenance to include but not be limited to maintenance of planting areas, trees, bioretention filters, multipurpose trails, and the furnishing of water for irrigation.
- Maintenance of public signage in or near the CFD.
- Maintenance of storm drainage systems within or serving the area of the CFD, and including storm drain pipes, culverts, detention/desilting basins, manholes, catch basins and drop inlets, cleanout of storm drains and catch basin cleaning and inspection.
- Maintenance of sidewalks, streets and roadways within or in the vicinity of the area of the CFD, and including slurry, overlay, curbs and gutters, curb ramps, striping and street sweeping.
- Maintenance of street lighting located within or in the vicinity of the CFD, and including decorative lighting and pull box assemblies.
- Maintenance of traffic signals, and traffic interconnection and video surveillance systems, within and in the vicinity of the CFD, and including electrical, LED replacement, maintenance and replacement.
- Graffiti removal from public improvements within and in the area of the CFD.