

JOINT COMMUNITY FACILITIES AGREEMENT

relating to

City of Menifee Community Facilities District No. 2019-1

by and among

City of Menifee, Eastern Municipal Water District and
Meritage Homes of California, Inc.

THIS JOINT COMMUNITY FACILITIES AGREEMENT (the “**Agreement**”) is entered into effective as of the ____ day of ____, 2019, by and among CITY OF MENIFEE, a California general law city (the “**City**”), EASTERN MUNICIPAL WATER DISTRICT, a public agency organized and existing pursuant to Division 20 of the California Water Code (“**EMWD**”), and MERITAGE HOMES OF CALIFORNIA, INC., a California Corporation (“**Property Owner**”), and relates to the formation by the City of a community facilities district known as “City of Menifee Community Facilities District No. 2019-1” (the “**CFD**”) for the purpose of financing certain facilities to be owned, operated or maintained by the City or EMWD from proceeds of bonds issued by the CFD and the proceeds of special taxes levied by the CFD.

RECITALS:

A. The property (“**Property**”) depicted in Exhibit “A” hereto, which is located in the City, County of Riverside, State of California, constitutes the land within the boundaries of the CFD.

B. Property Owner owns the Property included in the CFD. Property Owner intends to develop the Property for residential purposes. The Property is described in Exhibit “B” hereto.

C. The Property Owner petitioned the City to form the CFD for the purpose of financing, among other things, certain public facilities to be constructed and owned and operated by EMWD (the “**EMWD Facilities**”) in lieu of the payment of EMWD Fees (defined herein) and certain water and sewer facilities to be constructed by Property Owner and acquired by EMWD (the “**Acquisition Facilities**”).

D. In conjunction with the issuance of permits for the construction of homes on the Property and/or receipt of water meters for such homes, the Property Owner, or its successors or assigns, may elect to advance EMWD Facilities costs in lieu of payment of EMWD Fees (the “**Advances**”) before Bond Proceeds (defined herein) are available in sufficient amounts to pay for EMWD Facilities. In such case, the Property Owner shall be entitled to (i) reimbursement of such Advances limited to Bond Proceeds available to EMWD, if any (the Advances being considered an interest free loan by the Property Owner with no repayment obligation except to the extent there are Bond Proceeds received by or made available to EMWD as described herein, all as further described in Section 5(a) below), and (ii) credit against EMWD Fees which would otherwise be due to EMWD equal to the amount of Bond Proceeds disbursed to EMWD or at the direction of EMWD for EMWD Facilities, all as further described herein.

E. The City will have sole discretion and responsibility for the formation and administration of the CFD.

F. The City is authorized by Section 53313.5 of the Act to assist in the financing of the acquisition and/or construction of the EMWD Facilities and/or the Acquisition Facilities. This Agreement constitutes a joint community facilities agreement, within the meaning of Section 53316.2 of the Act, by and among EMWD, the Property Owner and the City, pursuant to which the CFD, when and if formed, will be authorized to finance the acquisition and/or construction of all or a portion of the EMWD Facilities and/or the Acquisition Facilities. As authorized by Section 53316.6 of the Act, responsibility for constructing, providing for and operating the EMWD Facilities and/or the Acquisition Facilities is delegated to EMWD.

G. The Parties (defined below) hereto find and determine that the residents residing within the boundaries of EMWD, the City and the CFD will be benefited by the construction and/or acquisition of the EMWD Facilities and/or the Acquisition Facilities and that this Agreement is beneficial to the interests of such residents.

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. Definitions. Unless the context clearly otherwise requires, the terms defined in this Section shall, for all purposes of this Agreement, have the meanings herein specified.
 - (a) “Acquisition Facility(ies)” means the sewer and water facilities described as such in Exhibit “C” hereto.
 - (b) “Act” means 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.
 - (c) “Advance” or “Advances” means an amount advanced by Property Owner to EMWD for EMWD Facilities in lieu of payment of EMWD Fees prior to the availability of sufficient Bond Proceeds. Advances shall be deemed payment of EMWD Fees to the extent sufficient Bond Proceeds are not received by or made available to EMWD.
 - (d) “Bond Proceeds” or “Proceeds of the Bonds” shall mean those net funds generated by the sale of the Bonds and investment earnings thereon, net of costs of issuance, reserve fund, capitalized interest and administrative expenses, and may include net funds generated by the levy of Special Taxes and investment earnings thereon.
 - (e) “Bond Resolution” means that Resolution, Resolution Supplement, Fiscal Agent Agreement, Indenture of Trust or other equivalent document(s) providing for the issuance of the Bonds.
 - (f) “Bonds” shall mean those bonds, or other securities, issued by, or on behalf of the CFD, in one or more series, as authorized by the qualified electors within the CFD.

(g) “Disbursement Request” means a request for payment relating to EMWD Facilities in the form attached hereto as Exhibit “D.”

(h) “EMWD Engineer Representative” means the EMWD Engineer or his designee.

(i) “EMWD Fees” means water supply development fees, water backup fees, sewer backup fees, sewer treatment capacity charges and all components thereof imposed by EMWD upon the Property to finance EMWD Facilities.

(j) “EMWD Facilities” means those sewer and water facilities listed on Exhibit “C” hereto, which are necessary for the provision of water and sewer services to the Property and paid for with Bond Proceeds in lieu of the payment of EMWD Fees.

(k) “Other Facilities Account of the Improvement Fund” means the fund, account or subaccount of the CFD (regardless of its designation within the Bond Resolution) into which a portion of the Bond Proceeds may be deposited in accordance with the Bond Resolution to finance EMWD Facilities and/or the Acquisition Facilities and which may have subaccounts.

(l) “Party” or “Parties” shall mean any one or all of the parties to this Agreement.

(m) “Payment Request” means a request for payment relating to Acquisition Facilities in the form attached hereto as Exhibit “E”.

(n) “Rate and Method” means the Rate and Method of Apportionment of the Special Tax authorizing the levy and collection of Special Taxes pursuant to proceedings undertaken for the formation of the CFD pursuant to the Act.

(o) “Special Taxes” means the special taxes authorized to be levied and collected within the CFD pursuant to the Rate and Method.

(p) “State” means the State of California.

3. Formation of the CFD. The City has undertaken to analyze the appropriateness of forming the CFD to finance the EMWD Facilities, Acquisition Facilities, and other facilities. The City has and will retain, at the expense of the Property Owner, the necessary consultants to analyze the formation of the CFD.

4. Sale of Bonds and Use of Bond Proceeds. In the event that the CFD is formed and Bonds are issued, the City and the Property Owner shall determine the amount of Bond Proceeds to be deposited in the Other Facilities Account of the Improvement Fund and each subaccount thereof. As Bond Proceeds are transferred to EMWD and reserved to fund EMWD Facilities, as described in Section 5 below, the Property Owner shall receive a credit in the amount transferred against the payment of EMWD Fees with respect to the Property. Nothing herein shall supersede the obligation of an owner of the Property to make an Advance or pay EMWD Fees to EMWD when due. The purpose of this Agreement is to provide a mechanism by which the CFD may issue the Bonds and levy Special Taxes to provide a source of funds to finance EMWD Facilities and to finance Acquisition Facilities in lieu of the payment of EMWD Fees and provision of Acquisition Facilities. In the event that Bond Proceeds, including investment earnings thereon, are not available or sufficient to satisfy the

obligation, then the Property Owner shall remain obligated to make an Advance for which it will receive no reimbursement (except to the extent Bond Proceeds later become available to EMWD), or pay EMWD Fees to EMWD as a condition of receiving water and sewer service to the Property.

The Bonds shall be issued only if, in its sole discretion, the City Council determines that all requirements of State and federal law and all City policies have been satisfied or have been waived by the City. Nothing in this Agreement shall confer upon EMWD or any owner of the Property, including Property Owner, a right to compel the issuance of the Bonds or the disbursement of Bond Proceeds to fund EMWD Facilities and/or Acquisition Facilities except in accordance with the terms of this Agreement.

If and when the CFD determines to issue Bonds, the CFD shall take such actions necessary in its reasonable discretion to ensure the total effective tax rate within the CFD does not exceed two percent (2%) at the time of Bond sale. CFD shall not include EMWD's name on property owners' special tax bills within the CFD.

By entering into this Agreement and requisitioning Bond Proceeds as described herein, EMWD is not passing upon, determining or assuming the tax-exempt status of the Bonds for federal or California state income tax purposes.

5. Disbursements for EMWD Facilities.

(a) Upon the funding of the Other Facilities Account of the Improvement Fund with funds reserved to fund EMWD Facilities, the Property Owner shall notify EMWD of the amount of Bond Proceeds reserved to fund EMWD Facilities and the Property Owner and EMWD may execute and submit a Disbursement Request for payment to the City or the CFD requesting disbursement of an amount equal to all or a portion of Advances from the Other Facilities Account of the Improvement Fund to the extent that Bond Proceeds are available in the Other Facilities Account of the Improvement Fund for such purpose. Upon EMWD's receipt of funds pursuant to such Disbursement Request, the Property Owner shall receive reimbursement of the Advances from EMWD. To facilitate EMWD's bookkeeping, EMWD may direct in a Disbursement Request, that all or a portion of a payment be made directly to the Property Owner as reimbursement for Advances made by the Property Owner. In the event of a reimbursement to the Property Owner pursuant to the preceding sentence, EMWD shall account for an equivalent amount of Advances previously received from the Property Owner in accordance with Section 5(c) below.

To the extent that EMWD expends all or a portion of an Advance pending the deposit of Bond Proceeds in the Other Facilities Account of the Improvement Fund, for purposes of Treasury Regulations regarding investment and expenditure of Bond Proceeds and State law provisions regarding financing of public capital facilities, the Advance shall be considered an interest free loan by the Property Owner, which EMWD only agrees to repay to the extent of the deposit, if any, of Bond Proceeds in the Other Facilities Account of the Improvement Fund and EMWD's written direction as described below to pay all or a portion of such deposit to the Property Owner as repayment of an Advance.

(b) From time to time following the funding of the Other Facilities Account of the Improvement Fund, the Property Owner may notify EMWD in writing and the Property Owner and EMWD may jointly request a disbursement from the Other Facilities Account of the Improvement Fund to fund EMWD Facilities by executing and submitting a Disbursement Request. Upon receipt of

such Disbursement Request completed in accordance with the terms of this Agreement, the CFD shall wire transfer or otherwise pay to EMWD (or upon EMWD's written direction pay to the Property Owner or an EMWD contractor) such requested funds to the extent that Bond Proceeds are available in the Other Facilities Account of the Improvement Fund for such purpose. Upon such notice and EMWD's receipt of such disbursement (or upon payment to the Property Owner or an EMWD contractor in accordance with directions from EMWD relating to EMWD Facilities), the Property Owner 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 such disbursement.

(c) EMWD agrees that prior to submitting a Disbursement Request requesting payment from the CFD it shall review and approve all costs included in its request and will have already paid or incurred such costs of EMWD Facilities from its own funds (which may include Advances from the Property Owner) subsequent to the date of this Agreement, or will disburse such amounts to pay the costs of EMWD Facilities following receipt of funds from the CFD. In the event that EMWD does not disburse any Bond Proceeds (or equivalent amount of Advances repaid pursuant to the second to the last sentence of the first paragraph of Section 5(a) above) received by it to third parties within five banking days of receipt, it will trace and report to the CFD all earnings, if any, earned by EMWD, from the date of receipt of such Bond Proceeds by EMWD (or the date of disbursement pursuant to the second to the last sentence of the first paragraph of Section 5(a) above) to the date of expenditure by EMWD for capital costs of the EMWD Facilities. Such report shall be delivered at least semiannually until all Bond Proceeds are expended by EMWD. EMWD agrees that in processing the above disbursements it will comply with all legal requirements for the expenditure of Bond Proceeds under the Internal Revenue Code of 1986 and any amendments thereto.

(d) EMWD agrees to maintain adequate internal controls over its payment function and to maintain accounting records in accordance with generally accepted accounting procedures. EMWD will, upon request, provide the City and/or the Property Owner with access to EMWD's records related to the EMWD Facilities and expenditure of Advances and will provide to the City its annual financial report certified by an independent certified public accountant for purposes of assisting the City in calculating the arbitrage rebate obligation of the CFD, if any.

(e) The City or the CFD agrees to maintain full and accurate records of all amounts, and investment earnings, if any, expended from the Other Facilities Account of the Improvement Fund and expenditure of Advances. The City or the CFD will, upon request, provide EMWD and/or Property Owner with access to the City's or the CFD's records related to the Other Facilities Account of the Improvement Fund.

(f) The City acknowledges that it is in receipt of and has reviewed the EMWD Comprehensive Debt Policy ("Debt Policy"). At the time of formation of the CFD, the City and the CFD are in conformance with Section 3.1 of the Debt Policy and it is expected that the City and CFD will remain in conformance with Section 3.1 at the time of any Bond sale. However, City and EMWD acknowledge that the City has the ultimate responsibility for issuance of the Bonds, the administration of the CFD, and the tax-exempt status of any Bonds issued by the CFD. Accordingly, the City Council shall have ultimate responsibility for making all decisions with respect to the issuance of any CFD Bonds and the levy of CFD Special Taxes.

6. Ownership of EMWD Facilities and Acquisition Facilities. The EMWD Facilities and Acquisition Facilities shall be and remain the property of EMWD.

7. Acquisition Facilities. The requirements of this Section 7 shall apply to any Acquisition Facility for which a Payment Request is submitted to EMWD pursuant to this Section 7.

(a) Design Plans and Specifications. All plans, specifications and bid documents for the Acquisition Facility (“**Plans**”) constructed or to be constructed by the Property Owner shall be prepared by the Property Owner at the Property Owner’s initial expense, subject to approval by EMWD. Costs for preparation of the Plans shall be included in the acquisition price. Reimbursement of costs for plan revisions will be considered on a case by case basis. The Property Owner shall not award bids for construction, or commence or cause commencement of construction, of the Acquisition Facility until the Plans and bidding documents have been approved by EMWD. The bid opening for the Acquisition Facility shall be coordinated with and take place at EMWD’s offices, with EMWD personnel in attendance.

(b) Construction of Acquisition Facilities. A qualified engineering firm (the “**Field Engineer**”) shall be employed by the Property Owner to provide all field engineering surveys determined to be necessary by the EMWD’s inspection personnel. Field Engineer shall promptly furnish to EMWD a complete set of grade sheets listing all locations, offsets, etc., in accordance with good engineering practices, and attendant data and reports resulting from Field Engineer’s engineering surveys and/or proposed facility design changes. EMWD shall have the right, but not the obligation, to review, evaluate and analyze whether such results comply with applicable specifications.

A full-time soil testing firm, approved by EMWD, shall be employed by the Property Owner to conduct soil compaction testing and certification. The Property Owner shall promptly furnish results of all such compaction testing to EMWD for its review, evaluation and decision as to compliance with applicable specifications. In the event the compaction is not in compliance with applicable specifications, the Property Owner shall be fully liable and responsible for the costs of achieving compliance. A final report certifying all required compaction in accordance with the specifications shall be a condition of final acceptance of the Acquisition Facility.

The costs of all surveying, testing and reports associated with the Acquisition Facility furnished and constructed by the Property Owner’s contractor(s) shall be included in the acquisition price.

EMWD shall not be responsible for conducting any environmental, archaeological, biological, or cultural studies or any mitigation requirements that may be requested by appropriate Federal, State, and/or local agencies with respect to the Acquisition Facility. Any such work shall be paid for and conducted by the Property Owner and included in the acquisition price of the Acquisition Facility.

(c) EMWD Public Works Requirements. In order that the Acquisition Facility may be properly and readily acquired by EMWD, the Property Owner shall comply with all of the following requirements with respect to the Acquisition Facility, and the Property Owner shall provide such proof to the EMWD as EMWD may reasonably require and at such intervals and in such form as EMWD may reasonably require, that the following requirements have been satisfied as to the Acquisition Facility:

i. The Property Owner shall prepare a bid package for review, comment and approval by the General Manager of EMWD or his designee (the “**EMWD Representative**”).

ii. The Property Owner shall, after obtaining at least three sealed bids for the construction of the Acquisition Facility in conformance with the procedures and requirements of EMWD, submit to EMWD written evidence of such competitive bidding procedure, including evidence of the means by which bids were solicited, a listing of all responsive bids and their amounts, and the name or names of the contractor or contractors to whom the Property Owner proposes to award the contracts for such construction, which shall be the lowest responsible bidder.

iii. The EMWD Representative shall attend the bid opening. If unable to attend the bid opening, the EMWD Representative shall approve or disapprove of a contractor or contractors, in writing, within five (5) business days after receipt from the Property Owner of the name or names of such contractor or contractors recommended by the Property Owner. If the EMWD Representative disapproves of any such contractor; the Property Owner shall select the next lowest responsible bidder from the competitive bids received who is acceptable to the EMWD Representative.

iv. The specifications and bid and contract documents shall require all such contractors to pay prevailing wages and to otherwise comply with applicable provisions of the Labor Code, the Government Code and the Public Contract Code relating to public works projects and as required by the procedures and standards of EMWD with respect to the construction of its public works projects.

v. The Property Owner shall submit faithful performance and payment bonds conforming in all respects to the requirements set forth in EMWD’s “Standard Water and/or Sewer Facilities and Service Agreement.” The following documents shall be submitted to EMWD along with the performance and payment bonds:

(1) The original, or a certified copy, of the unrevoked appointment, power of attorney, bylaws, or other instrument entitling or authorizing the person who executed the bond to do so;

(2) A certified copy of the certificate of authority of the insurer issued by the State of California’s Insurance Commissioner; and

(3) Copies of the insurer’s most recent annual and quarterly statements filed with the Department of Insurance.

vi. The Property Owner and its contractor and subcontractors shall be required to provide proof of insurance coverage throughout the term of the construction of the Acquisition Facility, which they will construct in conformance with EMWD’s standard procedures and requirements. EMWD’s insurance requirements are set out in Section 7(n) herein.

vii. The Property Owner and all such contractors shall comply with such other requirements relating to the construction of the Acquisition Facility which EMWD may impose by written notification delivered to the Property Owner and each such contractor at the time either prior to the receipt of bids by the Property Owner for the construction of such Acquisition Facility or, to the extent required as a result of changes in applicable laws, during the progress of construction thereof. In accordance with Section 7(f), the Property Owner shall be deemed the awarding body and shall be solely responsible for compliance and enforcement of the provisions of the Labor Code, Government Code, and Public Contract Code.

viii. A “**Change Order**” is an order from the Property Owner to a contractor authorizing a change in the work to be performed. The Property Owner shall receive comments from the EMWD Representative prior to the Property Owner’s approval of any Change Order. The EMWD Representative shall comment on or deny the Change Order request within five (5) business days of receipt of all necessary information. EMWD’s comments to a Change Order shall not be unreasonably delayed, conditioned or withheld. The Property Owner shall not be entitled to include in the acquisition price costs associated with a Change Order that have not been approved by the EMWD Representative.

(d) Inspection; Completion of Construction. EMWD shall have primary responsibility for inspecting the Acquisition Facility to assure that the work is being accomplished in accordance with the Plans. Such inspection does not include inspection for compliance with safety requirements by the Property Owner’s contractor(s). EMWD’s personnel shall be granted access to each construction site at all reasonable times for the purpose of accomplishing such inspection. Upon satisfaction of EMWD’s inspectors, the Property Owner shall notify EMWD in writing that an Acquisition Facility has been completed in accordance with the Plans.

Within three (3) business days of receipt of written notification from EMWD inspectors that an Acquisition Facility has been completed in accordance with the Plans, the EMWD Representative shall notify the Property Owner in writing that such Acquisition Facility has been satisfactorily completed. Upon receiving such notification, the Property Owner shall file a Notice of Completion with the County of Riverside Recorder’s Office, pursuant to the provisions of Section 3093 of the Civil Code. The Property Owner shall furnish to EMWD a duplicate copy of each such Notice of Completion showing thereon the date of filing with the County of Riverside (the “**County**”). EMWD will in turn file a notice with the County for acceptance.

(e) Liens. With respect to the Acquisition Facility, upon the earlier of (i) receipt of all applicable lien releases, or (ii) expiration of the time for the recording of claim of liens as prescribed by Sections 3115 and 3116 of the Civil Code, the Property Owner shall provide to EMWD such evidence or proof as EMWD shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment for the construction of the Acquisition Facility have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation.

(f) Acquisition; Acquisition Price; Source of Funds. The costs eligible to be included in the acquisition price of the Acquisition Facility (the “**Actual Costs**”) shall include:

i. The actual hard costs for the construction of such Acquisition Facility as established by EMWD-approved construction contracts and approved Change Orders, including costs of payment, performance and maintenance bonds and insurance costs, pursuant to this Agreement;

ii. The design and engineering costs of such Acquisition Facility including, without limitation, the costs incurred in preparing the Plans. Costs for plan revisions will be considered on a case by case basis;

iii. The costs of environmental evaluations and public agency permits and approvals attributable to the Acquisition Facility;

iv. Costs incurred by the Property Owner for construction management and supervision of such Acquisition Facility, not to exceed five percent (5%) of the actual construction cost, subject to prior approval by EMWD of any construction management or supervision contract with respect to the Acquisition Facility;

v. Professional costs associated with the Acquisition Facility such as engineering, inspection, construction staking, materials, testing and similar professional services; and

vi. Costs approved by EMWD of acquiring from an unrelated third party any real property or interests therein required for the Acquisition Facility including, without limitation, temporary construction easements, temporary by-pass road and maintenance easements.

Provided the Property Owner has complied with the requirements of this Agreement, EMWD agrees to execute and submit to the City a Payment Request for payment of the acquisition price of the completed Acquisition Facility to the Property Owner or its designee within thirty (30) days after the Property Owner's satisfaction of the preconditions to such payment stated herein.

As a condition to EMWD's execution of the Payment Request for the acquisition price, the property ownership of the completed Acquisition Facility shall be transferred to EMWD by grant deed, bill of sale or such other documentation as EMWD may require free and clear of all taxes, liens, encumbrances, and assessments, but subject to any exceptions determined by EMWD to not interfere with the actual or intended use of the land or interest therein (including the lien of a community facilities district so long as the subject property is exempt from taxation or is otherwise not taxable by such community facilities district). Upon the transfer of property ownership of the Acquisition Facility or any portion thereof to EMWD, EMWD shall be responsible for the maintenance of such Acquisition Facility or the portion transferred. Notwithstanding the foregoing, the acquisition price of an Acquisition Facility may be paid prior to transfer of property ownership and acceptance of the Acquisition Facility if it is substantially completed at the time of payment. The Acquisition Facility shall be considered "substantially complete" when it has been reasonably determined by EMWD to be usable, subject to final completion of such items as the final lift or any other items not essential to the primary use or operation of the Acquisition Facility.

For purposes of determining the acquisition price to be paid by the CFD for the acquisition of each Acquisition Facility by EMWD, the value of such Acquisition Facility shall include the

construction costs specified in EMWD-approved contracts and EMWD-approved change orders conforming to this Section 7, as hereinbefore specified. EMWD approval is a condition prior to initiation of contract work. However, if EMWD reasonably determines that the additional Actual Costs are excessive and that the value of the Acquisition Facility is less than the total amount of such Actual Costs and such construction costs, the price to be paid for the acquisition of the Acquisition Facility shall be the value thereof as determined by the EMWD Engineer Representative, subject, however, to the Property Owner's right to appeal to EMWD's Board of Directors.

Upon completion of the construction of an Acquisition Facility, the Property Owner shall deliver or cause to be delivered to EMWD a Payment Request in substantially the form of Exhibit "E," attached hereto, copies of the contract(s) with the contractor(s) who have constructed the Acquisition Facility and other relevant documentation with regard to the payments made to such contractor(s) and each of them for the construction of the Acquisition Facility, documentation evidencing payment of prevailing wages, and shall also provide to EMWD invoices and purchase orders with respect to all equipment, materials and labor purchased for the construction of the Acquisition Facility. EMWD shall require the EMWD Engineer Representative to complete its determination of the acquisition price of the Acquisition Facility as promptly as is reasonably possible.

Notwithstanding the preceding provisions of this Section, the source of funds for the acquisition of the Acquisition Facility or any portion thereof shall be funds on deposit in the Other Facilities Account of the Improvement Fund. If no such funds are available, EMWD shall not be required to acquire the Acquisition Facility from the Property Owner. In such event, the Property Owner shall complete the design and construction and offer to EMWD Property Ownership of such portions of the Acquisition Facility as are required to be constructed by the Property Owner as a condition to recordation of subdivision maps for the Property, but need not construct any portion of the Acquisition Facility which it is not so required to construct. Reimbursement for these facilities would be made pursuant to the "Standard Water and/or Sewer Facilities and Service Agreement(s)" by and between EMWD and the Property Owner.

(g) Easements and/or Fee Title Property Ownership Deeds. The Property Owner shall, at the time EMWD acquires the Acquisition Facility as provided in Section 7(f) hereof, grant or cause to be granted to EMWD, by appropriate instruments prescribed by EMWD, all easements across private property and/or fee title property ownership deeds which may be reasonably necessary for the proper operation and maintenance of such Acquisition Facility, or any part thereof.

(h) Permits. The Property Owner shall be responsible for obtaining all necessary construction permits from the City covering construction and installation of the Acquisition Facility. EMWD will request the City to issue an "operate and maintain permit" to EMWD, which will become effective upon the completion of the Acquisition Facility and acceptance of property ownership therewith by EMWD.

(i) Maintenance. Prior to the transfer of property ownership of an Acquisition Facility by the Property Owner to EMWD, as provided in Section 7(f) hereof, the Property Owner shall be

responsible for the maintenance thereof and shall require its contractor(s) to repair all facilities damaged by any party, prior to acceptance by EMWD and/or make corrections determined to be necessary by EMWD's inspection personnel.

(j) Inspection of Records. EMWD shall have the right to review all books and records of the Property Owner pertaining to the costs and expenses incurred by the Property Owner for the design and construction of the Acquisition Facility during normal business hours by making arrangements with the Property Owner. The Property Owner shall have the right to review all books and records of EMWD pertaining to costs and expenses incurred by EMWD for services of the EMWD Engineer Representative by making arrangements with EMWD.

(k) Property Ownership of Improvements. Notwithstanding the fact that some or all of the Acquisition Facility may be constructed in dedicated street rights-of-way or on property which has been or will be dedicated to EMWD, each Acquisition Facility shall be and remain the property of the Property Owner until acquired by EMWD as provided in this Agreement.

(l) Materials and Workmanship Warranty. Upon the completion of the acquisition of an Acquisition Facility by EMWD, the performance bond related to such individual Acquisition Facility provided by the Property Owner pursuant to Section 7(c)(v) hereof, shall be reduced by 90%, and the remaining 10% shall serve as a maintenance bond to guarantee that such Acquisition Facility will be free from defects due to faulty workmanship or materials for a period of one year. Release of performance and payment bonds is addressed in the Standard Water and/or Sewer Facilities and Service Agreement, by and between EMWD and the Property Owner.

(m) Independent Contractor. In performing this Agreement with respect to the Acquisition Facilities, the Property Owner is an independent contractor and not the agent of EMWD. EMWD shall not have any responsibility for payment to any contractor, subcontractor or supplier of the Property Owner. It is not intended by the Parties that this Agreement create a partnership or joint venture among them and this Agreement shall not otherwise be construed.

(n) Insurance Requirements. Neither the Property Owner nor its contractor shall commence work on an Acquisition Facility under this Agreement prior to obtaining all insurance required hereunder with a company or companies acceptable to EMWD, nor shall the Property Owner's contractor allow any subcontractor to commence work on its subcontract until all insurance required of the subcontractor has been obtained.

The Property Owner shall, during the life of this Agreement, notify EMWD in writing of any incident giving rise to any potential bodily injury or property damage claim and any resultant settlements, whether in conjunction with this or any other project which may affect the limits of the required coverage, as soon as is reasonable and practical.

Both the Property Owner and its contractor shall conform in every respect to the requirements set forth in the Standard Water and/or Sewer Facilities and Service Agreement, by and between EMWD and the Property Owner.

8. Indemnification.

(a) *Indemnification by the City.* The City shall assume the defense of, indemnify and save harmless, EMWD, 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 City with respect to this Agreement and the issuance of the Bonds; provided, however, that the City 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 officers, agents or employees.

(b) *Indemnification by Property Owner.* Property Owner shall assume the defense of, indemnify and save harmless, the City, the CFD and EMWD, their respective 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 Property Owner with respect to this Agreement; provided, however, that Property Owner 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 officers, agents or employees.

(c) *Indemnification by EMWD.* EMWD shall assume the defense of, indemnify and save harmless, the City, the CFD and their respective 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 EMWD with respect to this Agreement, and the design, engineering and construction of the EMWD Facilities and the Acquisition Facilities constructed by EMWD; provided, however, that EMWD 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 officers, agents or employees.

9. Allocation of Special Taxes. The entire amount of any Special Taxes levied by the CFD to repay Bonds, or to fund other obligations, shall be allocated to the CFD.

10. Amendment and Assignment. This Agreement may be amended at any time but only in writing signed by each Party hereto. This Agreement may be assigned, in whole or in part, by the Property Owner to the purchaser of any parcel of land within the Property, provided, however, such assignment shall not be effective unless and until EMWD and the City have been notified, in writing, of such assignment and the assignment specifies whether the Property Owner or such assignee is authorized to execute disbursement requests.

11. 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.

12. 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 hours following deposit of the same in any United States Post Office in California, registered or certified, postage prepaid, addressed as follows:

City:

City of Menifee
29844 Haun Road
Menifee, CA 92586

Attention: Deputy City Manager

EMWD:

Eastern Municipal Water District
P.O. Box 8300
2270 Trumble Road
Perris, CA 92572-8300
Attention: Special Funding Division
Email: specialfundingdivision@emwd.org

Property Owner:

Meritage Homes of California, Inc.
5 Peters Canyon Road, Suite 310
Irvine, CA 92606
Telephone: (949) 299-3824
Attention: Lester Tucker

Each Party may change its address for delivery of notice by delivering written notice of such change of address to the other Parties hereto. Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the party to whom it is addressed (a) if personally served or delivered, upon delivery, (b) if given by electronic communication, whether by telex, telegram or telecopier upon the sender's receipt of written acknowledgement from the addressee, (c) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, (d) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (e) if given by any other means, upon delivery at the address specified in this Section.

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

14. Attorney's Fees. In the event of the bringing of any action or suit by any Party against any other Party arising out of this Agreement, the Party in whose favor final judgment shall be entered shall be entitled to recover from the losing Party all costs and expenses of suit, including reasonable attorney's fees.

15. Interpretation in the event of Ambiguities or Disputes. The Parties acknowledge and agree that each has been given the opportunity to review this Agreement with legal counsel independently, and/or has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. In the event of an ambiguity in or dispute regarding the interpretation of same, the interpretation of this Agreement shall not be resolved by any rule of interpretation providing for interpretation against the Party who causes the uncertainty to exist or against the drafter.

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

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

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

19. No Third Party Beneficiaries. No person or entity other than the CFD, 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 EMWD, the City, the CFD and Property Owner (and their respective successors and assigns, exclusive of individual homebuyers), any rights, remedies, obligations or liabilities under or by reason of this Agreement.

20. 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.

21. 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.

[Remainder of page intentionally left blank]

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

CITY OF MENIFEE

ATTEST:

By: _____
City Clerk

EASTERN MUNICIPAL WATER DISTRICT

Paul D. Jones II, General Manager

ATTEST:

By: _____
Sheila Zelaya, Board Secretary

PROPERTY OWNER
MERITAGE HOMES OF CALIFORNIA, INC., a
California Corporation

By: _____

EXHIBIT "A"

**CITY OF MENIFEE
COMMUNITY FACILITIES DISTRICT NO. 2019-1**

DEPICTION OF PROPERTY

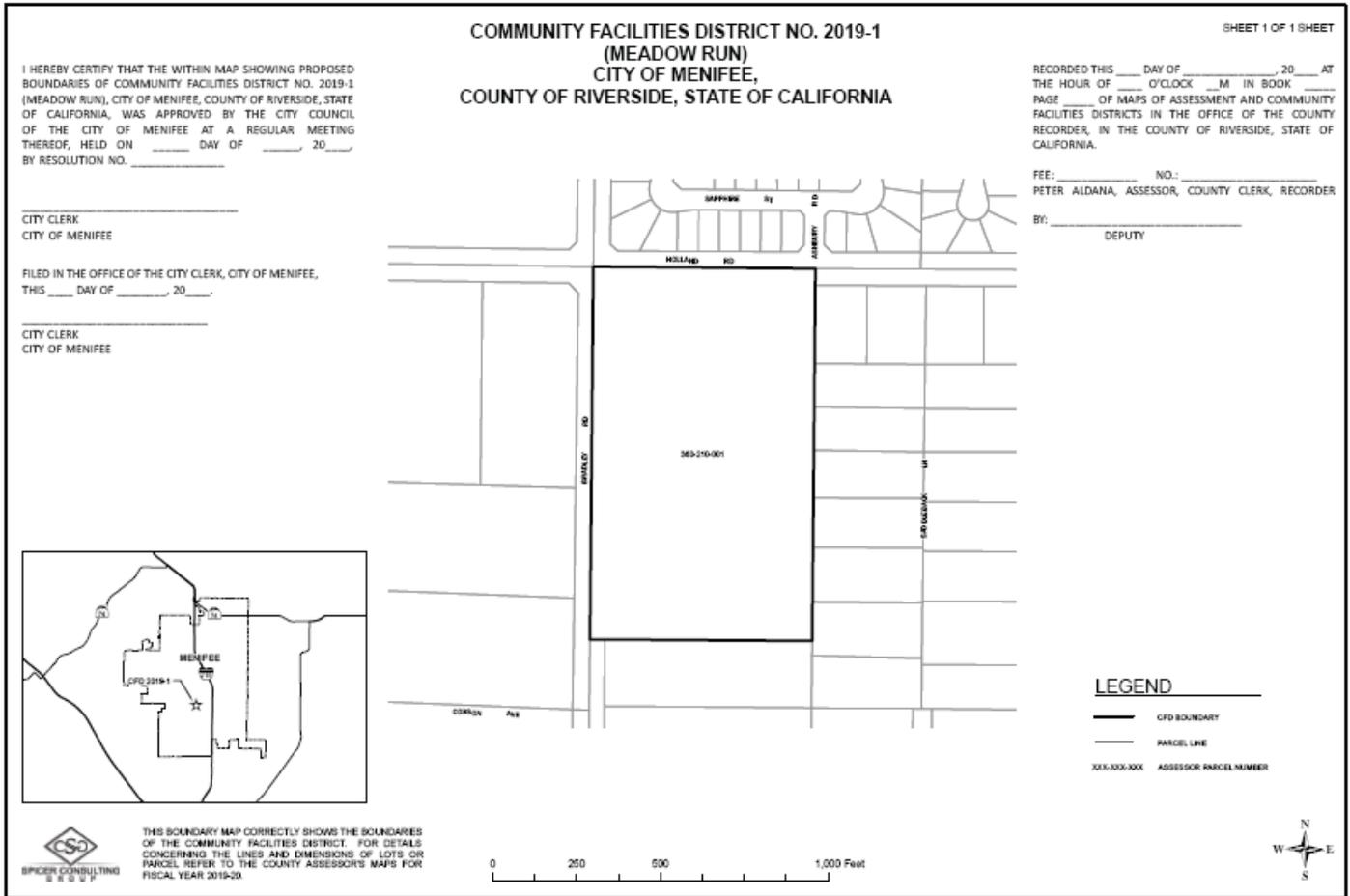


EXHIBIT "B"

**CITY OF MENIFEE
COMMUNITY FACILITIES DISTRICT NO. 2019-1**

DESCRIPTION OF PROPERTY

Riverside County Assessor Parcel Number(s):

360-210-001

EXHIBIT “C”

CITY OF MENIFEE COMMUNITY FACILITIES DISTRICT NO. 2019-1

FACILITIES DESCRIPTION

1. EMWD Facilities. The type of EMWD Facilities eligible to be financed by the CFD under the Act are as follows:

Those water and sewer facilities included in EMWD’s water and sewer capacity and connection fee programs used to finance expansion projects, exclusive of in-tract facilities contributed by Property Owner. EMWD Facilities include, but are not limited to the following: water and sewer transmission pipelines, sewer treatment plants, disposal ponds, pumping plants, lift stations and 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 and appurtenant work relating to the foregoing.

2. Acquisition Facilities. The types of Acquisition Facilities eligible to be financed by the CFD under the Act shall consist of sewer and water transmission lines, sewer and water pump stations and 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 to the foregoing required to serve the Property. The facilities listed above are representative of the types of facilities eligible to be financed by the CFD as Acquisition Facilities. Detailed scope and limits of specific projects will be determined by EMWD as appropriate, consistent with the standards of the EMWD.

EXHIBIT "D"

**CITY OF MENIFEE
COMMUNITY FACILITIES DISTRICT NO. 2019-1**

**DISBURSEMENT REQUEST FORM
(EMWD Facilities)**

1. City of Menifee Community Facilities District No. 2019-1 (“**CFD**”) is hereby requested to pay from the CFD bond proceeds to Eastern Municipal Water District (“**EMWD**”), as Payee, or to EMWD’s designee, the sum set forth in 3 below.

2. The undersigned certifies that the amount requested for EMWD Facilities is due and payable, has not formed the basis of prior request or payment, and is being made with respect to the connection of the property described below to the EMWD system.

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

4. The amount set forth in 3 above is authorized and payable pursuant to the terms of the Joint Community Facilities Agreement, by and among the City of Menifee, EMWD and Meritage Homes of California, Inc., dated _____, 2019 (the “**Agreement**”). Capitalized terms not defined herein shall have the meaning set forth in the Agreement. EMWD shall spend the Bond Proceeds allocated hereby in accordance with the requirements set forth in Section 5 of the Agreement.

5. By entering into the Agreement and requisitioning Bond Proceeds as described herein, EMWD is not passing upon, determining or assuming the tax-exempt status of the Bonds for federal or California state income tax purposes.

PROPERTY OWNER
MERITAGE HOMES OF CALIFORNIA, INC., a
California Corporation

By:

EASTERN MUNICIPAL WATER DISTRICT

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

cc: EMWD Special Funding District

EXHIBIT “E”

**CITY OF MENIFEE
COMMUNITY FACILITIES DISTRICT NO. 2019-1**

**PAYMENT REQUEST FORM
CITY OF MENIFEE CFD NO. 2019-1 – OTHER FACILITIES ACCOUNT
OF THE IMPROVEMENT FUND**

City of Menifee (“**City**”), Eastern Municipal Water District (“**EMWD**”) and _____ (“**Property Owner**”) are parties to the Joint Community Facilities Agreement, dated as of _____ (the “**EMWD JCFA**”). Capitalized undefined terms used herein shall have the meanings ascribed thereto in the EMWD JCFA. Pursuant to the EMWD JCFA, Property Owner hereby requests approval of the acquisition price of the Acquisition Facility(ies) described in Attachment A attached hereto. In connection with this Payment Request, Property Owner hereby represents and warrants to the EMWD as follows:

(a) The person executing this Payment Request is qualified to execute this Payment Request on behalf of Property Owner and knowledgeable as to the matters set forth herein.

(b) The Acquisition Facility(ies) have been constructed in accordance with the Plans therefor, and in accordance with all applicable EMWD standards and the requirements of the EMWD JCFA.

(c) The true and correct Actual Cost of the Acquisition Facility(ies) is set forth in Attachment A.

(d) Property Owner has submitted or submits herewith to EMWD the contracts, invoices, receipts, worksheets and other evidence of Actual Costs which are in sufficient detail to allow the EMWD Representative to verify the Actual Cost of the Acquisition Facility(ies) for which payment is requested.

(e) There are no liens, rights to lien or attachment upon, or claims affecting the right to receive the payment requested herein which has not been released or will not be released simultaneously with the payment of such obligation, other than materialmen’s or mechanics’ liens accruing by operation of law. Copies of lien releases for all work for which payment is requested hereunder are attached hereto.

Property Owner hereby declares under penalty of perjury that the above representations and warranties are true and correct.

[Remainder of page intentionally left blank]

Property Owner hereby requests that the acquisition price be paid to the person or persons, in the amount set forth in Attachment B hereto.

PROPERTY OWNER
MERITAGE HOMES OF CALIFORNIA, INC.,
a California Corporation

By:

CONFIRMATION AND APPROVAL BY EMWD

EMWD has (a) confirmed that the Acquisition Facility(ies) described in Attachment A is complete and was constructed in accordance with the Plans therefor, and (b) reviewed, verified and approved the acquisition price of such Acquisition Facility(ies). Such Acquisition Facility(ies) is/are complete and the acquisition price therefor eligible for payment is \$_____. The amount to be paid and the payee(s) are described in Attachment B.

Date:

**AUTHORIZED REPRESENTATIVE OF
EMWD**

By:_____

ATTACHMENT B

ACQUISITION PRICE PAYMENT INSTRUCTIONS

[Include name and address of payee and wire transfer instructions]