

## WASTEWATER PUMP AND HAUL AGREEMENT FOR CARMEL RANCH

This Pump and Haul Agreement (this "Agreement") is made and entered into as of the \_\_\_\_ day of, \_\_\_\_\_ 2022 (the "Effective Date") by and between the CITY OF SCHERTZ, TEXAS, a Texas home rule municipal corporation ("City"), and MERITAGE HOMES OF TEXAS, LLC. or its successors and assigns ("Developer"). City and Developer are sometimes referred to herein as the "Parties."

### RECITALS:

Whereas, Developer is the owner of certain real property, which is more particularly described herein on Exhibit "A" attached hereto and made a part hereof (the "Property"), and, which is located within the Sewer CCN and the (city limits) of the City; and

Whereas, Developer desires to develop the Property as a residential subdivision known as Carmel Ranch (the "Project"); and

Whereas, the offsite wastewater infrastructure necessary to collect and treat the Development (OWI) is not completed; and

Whereas, Construction and acceptance of OWI is required by the Unified Development Code of the City of Schertz in order to record the plats for the "Development"; and

Whereas, Developer desires to allow up to 20 residential homes and 1 model home to be constructed and be eligible to obtain certificates of occupancy while the aforementioned OWI is being completed; and

Whereas, Before the OWI is completed Developer is requesting to use a licensed contractor to "pump and haul" the wastewater from the Development; and

Whereas, Developer will be responsible for onsite wastewater infrastructure in the Development until the City accepts it; and

Whereas, Developer and City also desire to memorialize certain terms with respect to the testing on onsite wastewater infrastructure and operation of pump and haul service from the Development; and

Whereas, Developer agrees to enter into a contract with a company licensed to provide pump and haul services; and

Whereas, Developer and City have contemporaneously herewith also executed an Escrow Agreement associated with pump and haul service from the Development; and

Whereas, City is amenable to the proposed interim solution as long as Developer provides financial security guaranteeing the continuity of pump and haul services until connection to the

“OWI” is completed and accepted by City for public maintenance;

NOW, THEREFORE, in consideration of the mutual promises contained herein along with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the parties hereto agree as follows:

### **Article I. Terms**

1. Term. This Agreement shall be effective on the Effective Date. The term of this Agreement shall be from the Effective Date until the Project is connected to the OWI and the “pump and haul” service is no longer necessary.

2. Testing of Onsite Wastewater Infrastructure. All onsite wastewater infrastructure will be pressure tested prior to plat recordation. In the event additional dry utility work is completed after construction of wastewater collection system within the Project, the onsite wastewater infrastructure, including lateral service lines will be tested again and any necessary repairs will be made prior to the issuance of any certificates of occupancy by City.

3. Collection Tanks. Prior to completion of connection to the OWI, Developer will install adequate facilities for the collection of onsite wastewater, which shall serve the first 20 single family main structures (“houses”) and 1 model home to be constructed on separate lots within the Project. Developer shall be responsible for the maintenance, operation and removal, and disposal, of the collection facilities and pumping system during the term of this Agreement. Although permission to “Pump and Haul” shall expire as provided in Article I. Section 1, above, Developer’s obligation to safely remove and dispose of the collection facilities and pumping system, shall survive the expiration of this Agreement, until the collection tanks and pumping system are safely removed.

4. Alarm System. Developer will install an alarm system to monitor the wastewater collection system within sixty (60) days after the recordation of the plat for the Project.

5. Monitoring/Pumping. Developer or its contractor shall monitor the level of the wastewater collection tank(s) on at least a weekly basis and will pump the tank(s) at least weekly or prior to them reaching 75 percent capacity, whichever is more frequent. The monitoring and pumping frequency may be required to be increased, at the sole discretion of the City Engineer, as warranted by increased flow.

6. Maintenance of Onsite Water System. Developer will maintain the onsite wastewater system within the Project until the Term of this Agreement has expired.

### **Article II. Building Permits and Certificates of Occupancy**

1. Issuance of Building Permits and Certificates of Occupancy. The issuance of any building permit or certificate of occupancy for any improvement within the Project area prior to completion of connection to the OWI, subject to the terms and conditions that follow:

- (a) Inspections. All facilities necessary to provide pump and haul service to the lot for which a building permit or a certificate of occupancy is to be issued have been completed and

passed inspection by City, and wastewater service by pump and haul under this Agreement is otherwise available to the lot.

- (b) Fiscal Security to Assure Continuation of Pump and Haul. Fiscal security shall be provided and maintained in accordance with the Escrow Agreement a copy of which is attached hereto as Exhibit C. Developer has estimated the cost to use the Pump and Haul contractor until the OWI is completed will not exceed \$XXX,000.00, and such amount shall be deposited with the Escrow Agreement. Upon the reasonable determination by City that additional fiscal security must be deposited with the Escrow Agent; Developer shall promptly deposit the required amount with the Escrow Agent.
- (c) Compliance with Agreement. Developer shall at all times during its term remain in compliance with all material terms and conditions of this Agreement.
- (d) Compliance with Development and Building Regulations. Except as expressly provided herein, this Agreement in no way negates or diminishes the regulatory requirements, which must be addressed for the approval of subdivision plats, or issuance of a building permit, or certificate of occupancy, as set forth in applicable local state, or federal regulations have been met.
- (e) This Agreement is not effective until Developer demonstrates to the City that the Developer has a current contract with a pump and haul provider that meets the requirements of this Agreement.
- (f) Until the OWI is completed an accepted, the City will issue no more than 21 building permits for lots within the Project.

2. Suspension on Issuance of Permits. In the event that at any time the conditions in Section 1 of this Article, or any other provision of this Agreement are not met, it is specifically agreed that City may suspend development approvals for the Project, and may suspend the issuance of building permits and certificates of occupancy for the Subdivision until Developer comes into compliance with this Agreement.

### **Article III. Pump and Haul Services**

1. Service Provided. In consideration for the City authorizing the issuance of building permits and certificates of occupancy as provided herein, the Developer, at its sole cost and expense, shall cause wastewater from the Project to be pumped and hauled and disposed of in a manner that is compliant with applicable local, state, and federal regulations, and that does not result in any spills, leaks, or detriment to the public health, safety or welfare. The pump and haul shall continue until such time that connection to the OWI is completed and accepted by City for service and maintenance. The Developer shall at all times, during the term of this Agreement, maintain all facilities related to the pump and haul service in good repair and working condition and all wastewater effluent in compliance with applicable law. The Developer shall promptly report any spills or leaks to the City. The Developer shall cooperate with the City to provide any information to and file any reports with the Texas Commission on Environmental Quality (the TCEQ) as required by law; and shall promptly, sooner than 30 days after demand, reimburse the City for any expenses the City may incur under this Agreement.

2. Pump and Haul Provider. The Developer shall contract with a reputable company that holds all licenses required by the “TCEQ” to pump and haul wastewater from the Project area and to maintain all pump and haul facilities, including wastewater manholes, pumps, piping, tanks, secondary containment, alarm systems, and any other appurtenances as shown on approved Construction Plans, in good repair and working condition. Immediately upon completion of pump and haul operation Developer is required to clear and restore the site of the pump and storage system.

3. Pump and Haul Operations. Prior to starting the pump and haul operation the Pump and Haul Operator and Developer must comply with the following:

(a) Plans. Texas Licensed Professional Engineer must provide certification to the City Engineer that the wastewater collection, storage, pumping, and alarm systems have been tested as required in 30 TAC 213.5(c)(3)(A) and (D) and City requirements. The plans shall include, but not be limited to:

(i) All weather access road to final collection site;

(ii) Secondary containment provision;

(iii) Pump specifications

(iv) Alarm system specifications.

(b) Installation of a watertight wet well/holding tank as per TCEQ requirements.

No discharge shall be allowed until installation of the tank, pump, and monitoring/alarm system is complete and verified by Developer’s engineer.

4. Insurance. The Pump and Haul Provider shall maintain worker comp insurance in at least the minimum coverage required by statute; liability insurance covering death, injury or property loss with a minimum coverage amount of \$100,000.00 per occurrence unless the Pump and Haul Provider is the San Antonio River Authority.

5. Contact information. Developer shall maintain with the City at all times the company’s current contact information and designated representatives who are available twenty-four hours a day to respond to complaints or issues related to wastewater disposal.

6. Records. The Developer shall cause the company to maintain complete records of the pump and haul service provided, and the Developer shall maintain with the City a copy of any reports required by applicable state and federal regulations, related to providing pump and haul services. Specifically Developer shall provide reports as follows:

(a) A monthly report of the pump-and-haul operation shall be provided to the City by the 10th day of each following month. The report must include the following:

(i) The volume of wastewater pumped each day

(ii) The total volume of wastewater pumped each month

(iii) Verification of proper disposal

(b) A final report totaling the items above is due within 10 days of the final inspection.

7. Transition of Services. The City and Developer shall reasonably cooperate to smoothly transition wastewater service from the Developer to the City upon connection to the OWI.

#### **Article IV. Wastewater Service to be provided by City**

1. The Parties agree that upon final acceptance of the connection to the OWI by the City and placement of the Wastewater Infrastructure into service, the City will provide wastewater utility service to all customers within the Subdivision on same terms and conditions as similarly situated customers and property.

#### **Article V. Insurance and Indemnification**

1. Insurance. If the Pump and Haul provider is a party other than the San Antonio River Authority, the company selected by Developer to provide pump and haul services under this Agreement shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the services as required by this Agreement. The Developer shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the services as required by this Agreement. All Certificates of Insurance and endorsements shall be furnished to the City's at the time of execution of this Agreement.

(a) Insurance policies required:

(i) General Commercial Liability Coverage – Minimum of \$1,000,000.00 per occurrence for bodily injury and property damage; \$2,000,000.00 aggregate.

(ii) Business Automobile Liability Coverage. – Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

(iii) Umbrella/Excess Liability Coverage -- Minimum of not less than \$1,000,000.00.

(b) General Requirements Applicable to Policies.

(i) Only insurance carriers licensed and admitted to do business in the State of Texas will be accepted.

(ii) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been

given to the City of Schertz, Texas.

- (iii) Upon request, certified copies of all insurance policies shall be furnished to the City of Schertz, Texas.
- (iv) The City of Schertz, Texas, its officials, employees, and volunteers, are to be added as “Additional Insured” to the General Commercial Liability Policy and the Umbrella/Excess Liability Policy. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, or volunteers.
- (v) Each insurance policy shall comply with such other requirements as set forth in Exhibit “D” (entitled “Requirements For All Insurance Documents”).

2. Developer acknowledges and agrees that City is providing this Agreement as an accommodation to Developer so that Developer may receive building permits and certificate of occupancies before the OWI is complete; and, therefore, as part of the consideration offered to City for its agreement to allow the pump and haul activities authorized hereunder, is Developer’s promise and agreement, after consultation with its attorney, to the provisions that follow:

**DEVELOPER, SHALL ON BEHALF OF ITSELF ITS, SUCCESSORS, ASSIGNS, EMPLOYEES, OR AGENTS, INCLUDING BUT NOT LIMITED TO ANY PUMP AND HAUL CONTRACTOR ENGAGED BY OR FOR DEVELOPER, (COLLECTIVELY “DEVELOPER”), IN THE EXECUTION OR PERFORMANCE OF ITS RIGHTS, DUTIES, OBLIGATIONS, ACTS OR OMISSIONS UNDER THIS WASTEWATER PUMP AND HAUL AGREEMENT FOR THE HALLIE’S COVE SUBDIVISION UNITS 1 AND 2 (THE “AGREEMENT”) SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS ELECTED OFFICIALS, AGENTS, OFFICERS AND EMPLOYEES (COLLECTIVELY, THE “CITY INDEMNITEES”) FROM AND AGAINST ANY AND ALL DEMANDS, LOSSES, JUDGMENTS, DAMAGES, SUITS, CLAIMS, ACTIONS, LIABILITIES AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ALL ATTORNEYS’ FEES AND EXPENSES, IN LAW OR IN EQUITY, OF EVERY KIND AND NATURE WHATSOEVER, FOR BODILY INJURY, DEATH OR DAMAGE TO PROPERTY, WHICH ANY CITY INDEMNITEES MAY SUFFER OR SUSTAIN OR WHICH MAY BE ASSERTED OR INSTITUTED AGAINST ANY OF THE CITY INDEMNITEES RESULTING FROM, ARISING OUT OF OR IN CONNECTION WITH INJURY TO OR DEATH TO ANY INDIVIDUAL PERSON OR DAMAGE TO OR DESTRUCTION OF PROPERTY CAUSED BY DEVELOPER’S INTENTIONAL, RECKLESS, GROSSLY NEGLIGENT OR NEGLIGENT ACTS OR OMISSION UNDER THE AGREEMENT OR UNDER COLOR OF THE AGREEMENT, INCLUDING WITHOUT LIMITATION:**

- (i) **THE BREACH BY DEVELOPER OF ANY WARRANTY, REPRESENTATION OR COVENANT MADE IN THE AGREEMENT, OR**
- (ii) **THE VIOLATION OF ANY STATUTE, ADMINISTRATIVE RULE OR REGULATION BY DEVELOPER, WHICH CAUSES ANY REGULATORY AUTHORITY OF THIS STATE, OR A SUBDIVISION OF THIS STATE, OR THE FEDERAL GOVERNMENT, TO ASSESS A FINE OR TAKE OTHER ACTION ADVERSE TO THE CITY.**

**DEVELOPER FURTHER EXPRESSLY AGREES THIS INDEMNITY AND HOLD HARMLESS PROVISION SHALL EXTEND TO PROTECT THE CITY INDEMNITIES FROM CITY INDEMNITIES' OWN NEGLIGENCE IN THE PERFORMANCE OF THEIR RIGHTS, DUTIES, OBLIGATIONS, ACTS OR OMISSIONS UNDER THIS AGREEMENT AND THAT THESE INDEMNITY AND HOLD HARMLESS PROVISION SHALL ONLY BE LIMITED TO THE EXTENT THE CITY INDEMNITIES' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IS THE SOLE CAUSE OF ANY INJURY TO OR DEATH OF ANY INDIVIDUAL PERSON OR ANY DAMAGE TO OR DESTRUCTION OF PROPERTY, BUT NOT OTHERWISE. DEVELOPER FURTHER EXPRESSLY AGREES THIS INDEMNIFY AND HOLD HARMLESS PROVISION SHALL SURVIVE AND CONTINUE TO BE IN FULL FORCE AND EFFECT FOR FOUR YEARS FROM THE DATE OF TERMINATION OF THE AGREEMENT.**

3. Enforcement Actions. In the event that the EPA or the TCEQ issues any form or order or penalty for violations of applicable law resulting from the pump and haul services provided under this Agreement, the Developer shall be responsible for payment of said penalties within the time required under the order or applicable law.

#### **Article VI. Notice of Agreement**

1. Notice of Agreement and Pump and Haul Services. Developer shall record a memorandum of this agreement in the Official Public Records of Bexar County, Texas that places prospective property owners on notice that wastewater service may be provided by pump and haul service. The Developer shall further give written notice to purchasers of lots within the Project that wastewater service will be provided by pump and haul until completion of the Wastewater Infrastructure and shall cause anyone who purchases lots within the Project to give such notice to subsequent purchasers.

#### **Article VII. Default and Related Provisions**

1. Default. If one Party believes that the other Party is in Default (herein so called) of any other provision of this Agreement, the non-defaulting Party will give written notice to the other Party, specifying the event of Default and extending the defaulting Party 30 days to cure the Default or, if the curative action cannot reasonably be completed within 30 days, 30 days to commence the curative action and thereafter to diligently pursue the curative action to

completion. This 30-day period for notice and opportunity to cure must pass before the non-defaulting Party may initiate any remedies available to the non-defaulting Party due to an alleged Default. The non-defaulting Party must mitigate any direct or consequential damages arising from any Default to the extent reasonably possible under the circumstances. The Parties agree that they will use good faith, reasonable efforts to resolve any dispute by agreement, including engaging in non-binding mediation or other alternative dispute resolution methods as recommended by the laws of the State of Texas, before initiating any lawsuit to enforce their respective rights under this Agreement. If the Default is not cured within the 30-day period, or if curative action is not commenced or diligently pursued in the case of curative action that cannot reasonably be completed in 30 days, the non-defaulting Party may pursue all remedies, at law or in equity, that it deems appropriate to redress such Default. Either Party may seek specific performance or mandamus to enforce the terms of this Agreement.

### **Article VIII. Miscellaneous**

The following miscellaneous provisions are made part of this Agreement:

1. **Additional Instruments.** City and Developer agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.
2. **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
3. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Bexar County, Texas.
4. **Assignment.** Developer understands and agrees that the City expressly prohibits Developer from selling, transferring, assigning or conveying in any way any rights to receive under this Agreement without the City's prior written consent.
5. **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. Developer warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
6. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
7. **Legal Construction.** The Parties acknowledge that the Parties and their counsel have

reviewed and revised the Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Agreement.

8. Enforcement. The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Developer shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Developer's compliance with this Agreement.

9. Entire Agreement. This Agreement, along with the Escrow Agreement, contains the entire agreement between the parties. This Agreement may only be amended, altered or revoked by written instrument signed by the City and Developer.

10. Exhibits and Attachments. All Exhibits and Attachments referenced in this Agreement are attached hereto and incorporated herein for all purposes.

11. Force Majeure. It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, governmental action, delay in issuance of permits or approvals (including, without limitation, fire marshal approvals), enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the obligated party and delays caused by the other party, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

12. Immunities and defenses.

- a) It is expressly understood and agreed by all Parties hereto that in the exercise of their rights, and the performance of their obligations, hereunder, Developers at no time will be acting as agents of the City and that all consultants or contractors engaged by Developers respectively will be independent contractors of the Developers; and nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. The Parties hereto understand and agree that City will not be liable for any claims that may be asserted by any third party occurring in connection with the pump and hall services performed by, or on behalf of Developer under this Agreement.
- b) By entering into this Agreement, the PARTIES do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign, statutory or official immunity by the CITY with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution

hereof.

- c) No employee of City, or any councilmember or agent of City, shall be personally responsible for any liability arising under or growing out of this Agreement.

13. Mutual Assistance. City and Developer will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

14. Notices. Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, by messenger, by facsimile, or by reputable overnight carrier, and shall be deemed delivered when received at the addresses of the Parties set forth below, or at such other address furnished in writing to the other Parties thereto:

DEVELOPER: Meritage Homes of Texas, LLC  
2722 W. Bitters, Road, Suite 200  
San Antonio, Texas 78248  
Attention: Brian Otto

CITY: City of Schertz, Texas  
1400 Schertz Parkway  
Schertz, Texas 78154  
Attention: City Manager

WITH COPY TO: Denton Navarro Rocha Bernal & Zech, P.C.  
2517 N. Main Avenue  
San Antonio, Texas 78212  
Attention: T. Daniel Santee

15. Ordinance Applicability. The signatories hereto shall be subject to all ordinances of the City, whether now existing or in the future arising provided however no ordinance shall reduce or diminish the contractual obligations contained herein. This Agreement shall confer no vested rights on the Project unless specifically enumerated herein.

16. Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceable under the present or future laws, then, and in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

17. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

[Signature pages to follow]

Owner:

**MERITAGE HOMES OF TEXAS, LLC,**  
a Texas limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

THE STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2022 by \_\_\_\_\_, the \_\_\_\_\_ of Meritage Homes of Texas, LLC, a Texas limited liability company, on behalf of said limited liability company.

(SEAL)

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

My Commission Expires: \_\_\_\_\_

City:

CITY OF SCHERTZ,  
a Texas municipal corporation

By: \_\_\_\_\_

Name: Dr. Mark Browne, City Manager

Date: \_\_\_\_\_

THE STATE OF TEXAS §

§

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2022 by Dr. Mark Browne, City Manager of the City of Schertz, Texas, a Texas municipal corporation, on behalf of said City.

(SEAL)

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

My Commission Expires: \_\_\_\_\_







