

RESOLUTION NO. 2025-006

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE WATER UTILITIES COMMUNITY FACILITIES DISTRICT "WUCFD", AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT FOR THE SALE OF RECLAIMED WATER AND THE LEASE OF FIBER OPTIC CABLES WITH APACHE JUNCTION SEWER DISTRICT "AJSD".

WHEREAS, WUCFD desires to receive class A effluent water from AJSD; and AJSD desires to lease fiber optic cables from WUCFD; and

WHEREAS, pursuant to A.R.S. § 11-952(A), public entities may enter into intergovernmental agreements with other public entities for joint or cooperative activities; and

WHEREAS, WUCFD and AJSD have crafted the attached written agreement in the form of an intergovernmental agreement ("IGA") which formalizes the arrangement.

NOW, THEREFORE, BE IT RESOLVED BY THE WUCFD CHAIRPERSON AND BOARD OF DIRECTORS (APACHE JUNCTION, ARIZONA) AS FOLLOWS:

- 1) The WUCFD chairperson and board of directors approve the IGA for the sale of reclaimed water and the lease of fiber optic cables set forth in Attachment A; and the chairperson is hereby authorized to sign the IGA on behalf of the WUCFD.
- 2) The district manager and/or his designee is authorized and directed to take all steps necessary to carry out the purpose and intent of this resolution and to fulfill all the duties required under the IGA.

PASSED AND ADOPTED BY THE WUFCD CHAIRMAN AND BOARD OF DIRECTORS,  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

SIGNED AND ATTESTED TO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
WALTER "CHIP" WILSON  
Chairperson

ATTEST:

\_\_\_\_\_  
EVIE MCKINNEY  
District Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
RICHARD J. STERN  
District Attorney

**ATTACHMENT A**

**INTERGOVERNMENTAL AGREEMENT BETWEEN APACHE JUNCTION SEWER  
DISTRICT AND APACHE JUNCTION WATER UTILITIES COMMUNITY FACILITIES  
DISTRICT FOR THE SALE OF RECLAIMED WATER  
AND THE LEASE OF FIBER OPTIC CABLES**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2025 ("Effective Date") for the sale of treated, non-potable water ("Reclaimed Water") and the lease of fiber optic cables, by and between the Apache Junction Sewer District, a community facilities district (formerly known as Superstition Mountains Community Facilities District No. 1) ("AJSD"), and the Apache Junction Water Utilities Community Facilities District, a community facilities district ("WUCFD") (collectively referred to as the "Parties" or individually as a "Party").

**RECITALS**

- A.** AJSD and WUCFD are empowered by A.R.S. § 48-709(D)(2) to enter into intergovernmental agreements for joint or cooperative action.
- B.** Pursuant to A.R.S. §§ 48-701(14)(a) and 48-709, AJSD has the authority to operate and maintain sanitary sewage systems for the collection and transport of effluent and the storage, treatment, dispersal, use, and discharge of Reclaimed Water, as defined in A.R.S. § 49-201(41), and AJSD has obtained the necessary permits from the Arizona Department of Environmental Quality ("ADEQ") to do so.
- C.** On September 24, 2021, AJSD entered into a Development and Sewer Service Agreement for Superstition Vistas with D.R. Horton, Inc., for the development of approximately 2,800 gross acres of real property (the "Property") that has been annexed into the City of Apache Junction (the "Sewer Agreement"). As part of the Sewer Agreement, AJSD agreed to provide WUCFD with Class A effluent and non-potable water to be resold for construction and landscape irrigation use on the Property.
- D.** On October 13, 2021, WUCFD entered into a Development and Water Service Agreement for Superstition Vistas with D.R. Horton, Inc., for the development of the Property (the "Water Agreement"). As part of the Water Agreement, WUCFD agreed to accept Reclaimed Water from AJSD to be resold for construction and landscape irrigation use on the Property.
- E.** For the ongoing benefit of the Parties and their mutual customers, AJSD desires to sell Reclaimed Water to WUCFD, and WUCFD agrees to purchase Reclaimed Water from AJSD. This water will be Class A+ or A Reclaimed Water, as defined under A.A.C. §§ R 18-11-303 and 304.
- F.** The Parties contemplate that this Agreement will help protect the environment through the increased beneficial reuse of Reclaimed Water. AJSD is authorized to discharge reclaimed water into a wash, but under this Agreement AJSD will send reclaimed water to WUCFD for direct

reuse. This Agreement also helps WUCFD conserve drinking water supplies by providing an alternate source of water for construction, irrigation, and potentially other non-potable uses.

- G. WUCFD owns fiber optic cables that extend from WUCFD's property located at 4850 S Ironwood Dr, Apache Junction, Arizona, to facilities on AJSD's property located at 5661 S Ironwood Dr, Apache Junction, Arizona (the "Cables").
- H. AJSD desires the exclusive use of at least four strands of WUCFD's Cables to provide internet access to AJSD facilities (the "Fiber"), and WUCFD agrees to lease that Fiber to AJSD for AJSD's exclusive use as part of this Agreement.

## **AGREEMENT**

**NOW WHEREFORE, the Parties agree as follows:**

### **I. Purpose**

- A. This Agreement provides the terms, conditions, and responsibilities of AJSD and WUCFD for the sale and purchase of Reclaimed Water for non-potable use, and for the lease of the Fiber by WUCFD to AJSD.
- B. The foregoing recitals are hereby incorporated by reference into this Agreement as if fully restated herein.

### **II. Compliance with Regulations**

- A. WUCFD agrees, at its sole cost, to comply with all federal, state, or local laws, rules, regulations, and standards relating to its ability to purchase and utilize Reclaimed Water from AJSD. WUCFD shall be solely responsible for verifying that it is eligible to receive and use the Reclaimed Water to be purchased pursuant to this Agreement, and WUCFD assumes all risks relating to whether its intended use of Reclaimed Water is permissible now or in the future.
- B. AJSD agrees, at its sole cost, to comply with all federal, state, or local laws, rules, regulations, and standards relating to its ability to produce and make available Reclaimed Water.

### **III. Duration and Termination**

- A. Except as otherwise provided in the Agreement, the "Duration" of this Agreement shall start on the Effective Date and continue through December 31, 2046, or as thereafter extended by mutual written consent of the Parties.

- B. If the Parties do not otherwise agree to extend the Duration, this Agreement shall automatically renew for one-year terms until the Parties take joint written action to the contrary.
- C. If the Parties each respectively opt to extend both the Water Agreement and Sewer Agreement, those extensions shall also constitute the Parties' written agreement to extend the Duration of this Agreement for an equivalent period of time.
- D. This Agreement shall not be subject to unilateral termination.
- E. If AJSD declares a material breach of this Agreement by WUCFD, and that breach is not timely cured, AJSD cannot terminate this Agreement, but AJSD may stop delivery of Reclaimed Water to WUCFD until WUCFD has come current on all outstanding Reclaimed Water Invoices and accrued interest.
- F. If WUCFD declares a material breach of this Agreement by AJSD, and that breach is not timely cured, WUCFD cannot terminate this Agreement, but WUCFD may withhold its payments for Reclaimed Water until the breach is cured. If such a withholding occurs, WUCFD will pay AJSD the withheld payments once the breach is cured, but WUCFD will not be required to pay any accrued interest on those payments.

#### IV. The Ground Lease

As set forth in § 8 of the Sewer Agreement, AJSD will provide WUCFD with a long-term lease (the "Ground Lease") for a parcel of land within AJSD's larger property located at 5661 S Ironwood Dr, Apache Junction, Arizona, to be used for the construction, maintenance, and operation of a non-potable water storage facility (the "NPW Facility"). The NPW Facility will be capable of storing at least 3.33 million gallons, as described in § 3.7 of the Non-Potable Water Infrastructure Master Plan ("NPW Plan") incorporated into the Sewer Agreement and Water Agreement. The material terms of the Ground Lease shall be as follows:

- A. The Ground Lease parcel shall be located at a mutually agreeable point within AJSD's property (the "Leased Property"), and will be approximately 129,200 sq ft. A legal description and map of the Leased Property are attached as **Exhibit A**.
- B. The Ground Lease will initially extend through December 31, 2046 (the "Ground Lease Term"), but the Parties intend that the Ground Lease Term continue for at least as long as the Duration of this Agreement. Unless agreed in writing to the contrary, if the Parties extend the Duration of this Agreement, such extensions shall also constitute the Parties' written agreement to extend the Ground Lease Term for an equivalent period of time.

- C. Rent for the Ground Lease will be \$1.00 per year. AJSD offers this *de minimis* rental price to its fellow public entity in recognition of their mutual, nonprofit service to the residents of Apache Junction.
1. Notwithstanding § IV(C) above, if WUCFD were to assign its interest in the Ground Lease or the Improvements to a third party, AJSD reserves the right to establish a market-reasonable rental price for the Property, to be adjusted no more often than once per calendar year, and the right to require a market-reasonable security deposit.
- D. During the Ground Lease Term, the NPW Facility and all of its fixtures and appurtenances (collectively, the “Improvements”), will be owned, operated, maintained, and insured solely by WUCFD.
- E. Per A.R.S. § 11-952(B)(4), at the end of the Ground Lease Term, the Parties will negotiate whether to enter into another lease and whether and to what extent the NPW Facility and other Improvements might become the property of AJSD.
1. WUCFD will not permit a third party to take an interest in the Leased Property or the Improvements without AJSD’s explicit written consent.
- F. As between WUCFD and AJSD, WUCFD will be solely responsible for the construction and maintenance of the Improvements, including the procurement of all necessary permits and governmental approvals for the NPW Facility. WUCFD will also be solely responsible for compliance with all federal, state, or local laws and regulation relating to the operation and maintenance of the Improvements. AJSD will cooperate with WUCFD’s reasonable requests to help acquire all such permits and approvals.
- G. Unless it receives AJSD’s explicit written permission, WUCFD will not construct any improvements on the Leased Property that do not directly service the NPW Facility.
- H. As between WUCFD and AJSD, AJSD will be responsible for damage caused by the AJSD Wastewater Reclamation Facility (“WRF”) to the Improvements, and WUCFD will be responsible for all liability caused by or arising out of the Improvements, including any damage caused to the WRF or AJSD. Should a third party bring a claim against AJSD arising out of the NPW Facility or Improvements, WUCFD will indemnify AJSD against all such claims.
- I. WUCFD will, at its sole cost and expense, keep the Improvements insured throughout the Ground Lease Term in an amount mutually agreed upon between the Parties and to be reevaluated at least every five years of the Ground Lease Term. WUCFD will list AJSD

as an additional insured on all insurance policies relating to the construction and operation of the Improvements, including on all insurance policies maintained by any contractors or subcontractors acting on WUCFD's behalf.

- J.** During the Ground Lease Term, WUCFD will discharge and not permit to remain any and all liens, encumbrances, or charges that are filed against the Property or the Improvements based on WUCFD's ownership, construction, or operation of the Improvements.
- K.** The Parties cannot assign the Ground Lease, or any interest in the Ground Lease, to any third party without the other Party's prior written consent.
- L.** The Parties agree to use their best efforts to avoid disturbing or interfering with the operations of the other Party.
- M.** If WUCFD materially defaults under this Agreement and fails to timely cure that default, including through its failure to timely pay AJSD for Reclaimed Water, to maintain the Improvements, or to maintain insurance over the Property and Improvements, then AJSD will have the option, in its sole discretion, to terminate the Ground Lease.

**V. Commitments**

**A. AJSD's Commitments**

- 1.** AJSD will make every reasonable effort to reclaim as much water as possible for beneficial use.
- 2.** Per A.R.S. § 11-952(B)(3), AJSD contemplates financing this Agreement through its standard operating funds, and with in-kind services provided by WUCFD and third parties under the Sewer Agreement and Water Agreement.
- 3.** At AJSD's sole discretion, the Reclaimed Water provided under this Agreement can be either Class A or Class A+ Reclaimed Water. AJSD will not charge WUCFD an additional fee if AJSD chooses to supply Class A+ water when the Water Agreement or Sewer Agreement requires a lesser quality of reclaimed water.
- 4.** For the Duration of this Agreement, AJSD will provide WUCFD with Reclaimed Water in volumes consistent with the requirements of the Sewer Agreement and Water Agreement, as follows:



- a. Once the NPW Facility is operational, AJSD will provide to WUCFD a minimum of 0.37 million gallons per day (“MGD”) of Reclaimed Water to the NPW Facility for the purpose of reuse on the Property in compliance with the Sewer Agreement (the “Minimum Delivery”).
  - b. As development on the Property progresses, AJSD commits to deliver to WUCFD up to 1.31 MGD of Class A Reclaimed Water for landscape irrigation uses on the Property, as well as up to 2 MGD of non-potable water for construction uses on the Property, as the Property developer requests through WUCFD, for a combined total of up to 3.31 MGD (the “Maximum Delivery”). However, AJSD’s obligation to provide any Reclaimed Water beyond the Minimum Delivery is contingent on AJSD first receiving sufficiently equivalent amounts of wastewater from the Property.
  - c. As circumstances change over time, the Parties may, but are not required to, agree in writing to change the amount of Minimum Delivery or Maximum Delivery. The Parties cannot, however, decrease the amount of Minimum Delivery while the Water Agreement and Sewer Agreement are active unless they obtain the approval of all parties to both the Water Agreement and Sewer Agreement.
5. AJSD will maintain the WRF in good working order for the Duration of this Agreement. If AJSD becomes aware of a mechanical or logistical issue that will substantially affect AJSD’s ability to supply Reclaimed Water under this Agreement, AJSD will promptly notify WUCFD, and the Parties will work together in good faith to resolve that issue.

**B. WUCFD’s Commitments**

1. As between the Parties, WUCFD is solely responsible for the construction, maintenance, and operation of the Improvements, and for the delivery of Reclaimed Water from the NPW Facility.
2. Once the NPW Facility is operational, WUCFD will use AJSD’s Supervisory Control and Data Acquisition system (“SCADA”) to order and receive Reclaimed Water on an ongoing basis from AJSD consistent with the volumes and pricing set forth in § V(A)(4) and § VII herein, and generally in compliance with the Water Agreement.

3. The amount of water delivered by AJSD to WUCFD under this Agreement shall be measured by a meter installed on the delivery pipe upstream of the NPW Facility (the "Reclaimed Water Meter"). The Reclaimed Water Meter shall be owned and maintained by WUCFD.
4. In its discretion, WUCFD may opt to use the water level within the NPW Facility as a gauge to determine the developers' construction and irrigation demands under the Water Agreement. If so, WUCFD will take the necessary steps to ensure that it does not order more Reclaimed Water than is available to it under § V(A)(4) of this Agreement.
5. Per A.R.S. § 11-952(B)(3), WUCFD contemplates financing this Agreement through its standard operating funds, and with in-kind services provided by third parties under the Sewer Agreement and Water Agreement.
6. For the Duration of this Agreement, WUCFD will discharge and not permit to remain any and all liens, encumbrances, or charges that are filed against the Leased Property or the Improvements based on WUCFD's ownership, construction, or operation of the Improvements. This prohibition includes forbidding any third party, including any lender to WUCFD, from taking a legal interest in the Leased Property or the Improvements without AJSD's explicit written consent.
7. WUCFD will, at its sole cost and expense, keep the Improvements insured throughout the Duration of this Agreement, in an amount mutually agreed upon between the Parties and re-evaluated at least every five years of the Duration. WUCFD will name AJSD as an additional insured under all relevant policies insuring the Improvements or the Leased Property.
8. WUCFD will pay the Reclaimed Water Invoice in full within 30 calendar days of receipt. WUCFD's unintentional delay of payment, or unintentional partial payment, shall not constitute a material breach of this Agreement.
9. WUCFD will maintain the Improvements in good working order for the Duration of this Agreement. If WUCFD becomes aware of a mechanical or logistical issue that will affect WUCFD's ability to accept Reclaimed Water from AJSD or deliver Reclaimed Water, WUCFD will so notify AJSD, and the Parties will work together in good faith to resolve that issue.

**C. Mutual Commitments**

1. The Parties will negotiate and execute the Ground Lease using the material terms set forth in § IV of this Agreement.
2. Both Parties acknowledge that the availability of Reclaimed Water is dependent upon ADEQ's ongoing authorization of the Parties' compliance with their respective ADEQ regulations and permit requirements.
  - a. Should ADEQ restrict, prohibit, or disqualify AJSD from supplying Reclaimed Water in sufficient quantity or quality to meet the terms of this Agreement, or if ADEQ restricts, prohibits, or disqualifies WUCFD from accepting or delivering Reclaimed Water as contemplated in this Agreement, then the Parties agree that they will consider that ADEQ action to be a force majeure event.
3. AJSD and WUCFD will each provide the other Party with access to their relevant SCADA systems, so that each Party can obtain necessary data to perform under this Agreement.
4. WUCFD will measure the amount of flow delivered through the Reclaimed Water Meter. Each month, AJSD will obtain the flow data for the prior month from WUCFD's SCADA, verify it against AJSD's records, and invoice WUCFD at the Water Rate that was in effect for that month within 30 calendar days ("Reclaimed Water Invoice"). In the event of a discrepancy between the Parties' measurements, the Parties will promptly work together to identify and resolve the discrepancy to their mutual satisfaction.
5. The Parties cannot assign or transfer ownership of Improvements, or any interest in the Improvements, to any third party without the other Party's prior written consent.
6. The Parties acknowledge their close relationship with the City of Apache Junction (the "City"). Notwithstanding §§ (IV)(C)(1), (IV)(K), (V)(C)(5), (VI)(E-G), and (XII)(A) herein, if either Party desires to transfer to the City that Party's interests under this Agreement, the Ground Lease, the Leased Property, or the Improvements, the other Party agrees that the City will not be considered a third party for whom Party consent is required, but will instead be treated as the transferring Party's qualified successor.

7. For purposes of A.R.S. § 23-1022, irrespective of the operations protocol in place, each Party is solely responsible for the payment of workers' compensation benefits for its employees.
8. The Parties acknowledge and agree that the performance of their duties may involve that Party's employees or agents entering the Leased Property (by AJSD agents) or areas owned by AJSD (by WUCFD agents). The Parties agree that they will remain responsible for the acts of their employees or agents while on the other Party's property, and that each Party's employees or agents will use their best efforts to avoid interfering with the other Party's operations.
9. The Parties will follow the NPW Plan in good faith, as that NPW Plan is revised and adapted over time. The most current revision to the NPW Plan was on July 1, 2022.
10. The Parties intend that this Agreement may be expanded in the future to include the sale of Reclaimed Water for additional non-potable uses, and/or for delivery to additional properties within WUCFD's service area in accordance with Arizona law.
11. In the event that WUCFD orders and receives more Reclaimed Water than AJSD is obligated to provide under § V(A)(4) without AJSD's written consent ("Excess Water"), then AJSD will be entitled to charge WUCFD at AJSD's then-prevailing Excess Water Rate for that amount of Excess Water, or at the closest equivalent thereto among AJSD's then-prevailing rates, fees, and charges.
  - a. If WUCFD orders and receives Excess Water for three months or more in a rolling, contiguous twelve-month period, AJSD shall have the right, but not the obligation, to declare WUCFD to be in material breach of this Agreement.
  - b. For the purposes of this § (V)(C)(11), the determination of whether Excess Water has occurred in a given month will not include *de minimis* amounts of flow, such as flow that typically follows a water delivery, or flow that is released due to mechanical error. The Parties will identify what constitutes *de minimis* flow over time based on actual figures.

**VI. Fiber Lease**

WUCFD will lease four strands of Fiber to AJSD to be used for AJSD's internet connection under the following terms (the "Fiber Lease"):

- A.** The Parties acknowledge that AJSD does not have a stable, high-speed internet connection through which to conduct its business, and that AJSD customers would benefit from AJSD obtaining a stable, high-speed internet connection to provide its services both under this Agreement and generally to the public.
- B.** In recognition of their mutual, nonprofit service to the residents of Apache Junction, WUCFD agrees to lease as Fiber at least four strands of Cables to AJSD, for AJSD's exclusive use. AJSD intends to contract separately with an internet service provider for stable, high-speed internet service.
- C.** The Fiber Lease will connect 5661 S Ironwood Dr, Apache Junction, Arizona, to 4850 S Ironwood Dr, Apache Junction, AZ, with the understanding that AJSD will from there be able to contract with a third party for its internet services at that connected location.

  - 1.** If at some point in the future, AJSD is no longer able to obtain sufficient internet services through that connection point, the Parties agree to work together in good faith and to take the reasonable steps necessary to further extend and/or otherwise facilitate AJSD's connection to a suitable internet services provider.
- D.** The Fiber Lease will initially extend through December 31, 2046 (the "Fiber Lease Term"), but the Parties intend that the Fiber Lease Term continue for at least as long as the Duration of this Agreement. Unless agreed in writing to the contrary, if the Parties extend the Duration of this Agreement, such extensions shall also constitute the Parties' written agreement to extend the Fiber Lease Term for an equivalent period of time.
- E.** Rent for the Fiber Lease will be \$1.00 per year. WUCFD offers this *de minimis* rental price to its fellow public entity in recognition of their mutual, nonprofit service to the residents of Apache Junction.

  - 1.** Notwithstanding § (VI)(E) above, if AJSD were to assign its interest in the Fiber Lease to a third party, WUCFD reserves the right to establish a market-reasonable rental price for the Fiber, to be adjusted no more often than once per calendar year, and the right to require a market-reasonable security deposit.

- F.** Per A.R.S. § 11-952(B)(4), at the end of the Fiber Lease Term, the Parties will negotiate whether to enter into another lease.
- G.** The Parties cannot assign the Fiber Lease, or any interest in the Fiber Lease, to any third party without the other Party's prior written consent. AJSD will not permit a third party to take a superior interest in the Fiber without WUCFD's explicit written consent.
- H.** The Parties agree to use their best efforts to avoid disturbing or interfering with the operations of the other Party.
- I.** If AJSD materially defaults under this Agreement and fails to cure that default, then WUCFD will have the option to terminate the Fiber Lease.
- J.** The Parties agree that the Cables contain more than sufficient physical capacity and digital bandwidth to accommodate WUCFD's expected traffic for the foreseeable future, and that WUCFD's ability to conduct business will not be appreciably disturbed by the lease of Fiber to AJSD.
- K.** If four strands of Fiber cables prove unable to provide AJSD with sufficient bandwidth, and if doing so would not reasonably disturb WUCFD's ability to conduct business, WUCFD agrees that it will work with AJSD in an effort to ultimately lease additional needed strands of Cables for AJSD's exclusive use as Fiber.

**VII. Pricing and Payment**

- A.** For the period between the Effective Date and December 31, 2026, the amount WUCFD will pay for Reclaimed Water under this Agreement (the "Water Rate") will be \$0.85 per 1,000 gallons.
- B.** Beginning on January 1, 2027, the Water Rate will increase to be equal to AJSD's then-prevailing rates, fees, and charges for Class A Reclaimed Water, or the closest equivalent thereto.
- C.** On July 1, 2027, and on July 1 of every year thereafter, the Water Rate will automatically increase to match AJSD's then-prevailing rates, fees, and charges for Class A Reclaimed Water, or the closest equivalent thereto, unless the Parties agree in writing to another method.
- D.** In the event that WUCFD orders Reclaimed Water, but that Reclaimed Water is wasted or otherwise lost on account solely of WUCFD's actions, WUCFD will be responsible for paying AJSD for the wasted or otherwise lost water at the effective Water Rate, unless the waste was purely a consequence of AJSD's actions. If the circumstances of a waste/loss equitably require that the amount

of waste be determined by flow through AJSD's SCADA instead of the Reclaimed Water Meter, then the Parties shall do so.

- E. If WUCFD fails to timely or completely pay the Reclaimed Water Invoice for three months or more within a rolling, contiguous twelve-month period, AJSD shall have the option to declare WUCFD to be in material breach of this Agreement.
- F. No security deposit shall be required from either WUCFD or AJSD under the Ground Lease or Fiber Lease.

#### **VIII. Force Majeure**

In the event that either Party is rendered unable, wholly or in part, by powers outside that Party's reasonable control, to carry out its obligations under this Agreement, the obligations of both Parties, so far as they are affected by that force majeure, shall be suspended during the continuance of that inability, but for no longer. Any Party suffering from a force majeure event will notify the other Party as soon as is reasonably possible. The interfering force majeure cause shall be, so far as possible, remedied with the best efforts of the disabled Party and with all reasonable dispatch. The term "force majeure" in this Agreement includes acts of God, strikes, lockouts or other industrial or labor disturbances, acts of the public enemy, wars, terrorism, blockades, insurrections, riots, pandemics, epidemics, executive orders, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, unavoidable interruptions in electric power, interruptions by government not due to the fault of a Party, including injunctions, civil disturbances, explosions, well collapses, breakage or accident to machinery or transmission facilities, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits that are not due to the negligence or willful action of a Party. Nothing in this Agreement will be construed as requiring either Party to settle a strike or labor dispute against its will. Nothing in this Agreement will prohibit either Party, at its own expense, from using whatever self-help remedies may be available to it.

#### **IX. Mutual Indemnifications**

To the fullest extent permitted by law, each Party agrees to indemnify and hold harmless the other Party and the other Party's officers, agents, and employees from all claims, losses, causes of actions, damage, or injury arising out of, resulting from, or in any manner connected with this Agreement, but only to the extent that the claim, loss, cause of action, damage, or injury is caused by the negligent acts or omissions of the indemnifying Party.

**X. Future Changes in the Laws, Regulations and Permits**

AJSD and WUCFD agree to timely confer in order to comply with relevant changes in laws, regulations, or permit requirements that could affect a Party's performance under this Agreement.

**XI. Notices**

All oral communications of notices, schedules or requests made in connection with this Agreement shall be confirmed in writing and shall be deemed properly served if delivered in person, sent by electronic mail, or by United States mail, postage prepaid.

All notices, schedules or requests shall be sent to:

FOR WUCFD: Michael Loggins, District Director  
Apache Junction Water Utilities  
Community Facilities District  
PO Box 4768  
Apache Junction, AZ 85278-4768  
Phone (480) 982-6030  
e-mail [mloggins@apachejunctionaz.gov](mailto:mloggins@apachejunctionaz.gov)

FOR AJSD: Darron Anglin, District Manager  
Apache Junction Sewer District  
5661 S. Ironwood Dr.  
Apache Junction, AZ 85120  
Phone (480) 941-6754  
e-mail [danglin@ajsewer.org](mailto:danglin@ajsewer.org)

or as otherwise specified in writing by each party.

**XII. Miscellaneous Provisions**

- A. Assignment:** No Party shall have the right to assign this Agreement or any interest in the Agreement except to the Party's respective successors. This Agreement shall be binding on the successors of the Parties.
- B. Waiver:** The waiver or sufferance by either Party of any breach of any term, covenant, or condition in this Agreement shall not be deemed a waiver of any other term, covenant, or condition, nor of any subsequent breach of the same or any other term, covenant, or condition.
- C. Amendment:** This Agreement shall not be amended except by written instrument mutually agreed upon and executed by the Parties.



- D. Severability:** In the event that any provision of this Agreement is declared void or unenforceable, the invalidity or unenforceability of that provision shall not affect the remainder of the Agreement, which shall otherwise remain in full force and effect, and the invalid provision shall be deemed severed from this Agreement.
- E. Non-Discrimination:** The Parties shall not discriminate against any employee, client, or any other individual in any way because of that person's age, race, creed, color, religion, sex, gender, disability, or national origin in the course of carrying out duties pursuant to this Agreement.
- F. ADA:** The Parties shall comply with all applicable provisions of the Americans with Disabilities Act and all applicable federal regulations under that Act.
- G. Conflict of Interest:** This contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511.
- H. Integration:** This Agreement supersedes any prior Agreements and understandings, whether written or oral, between AJSD and WUCFD concerning the sale of Reclaimed Water.
- I. Applicable Venue and Law:** The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either Party for the purpose of enforcing a right or rights provided for in this Agreement, shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue to any other county, for the right to a jury trial, or for removal to federal court. In the event either Party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the substantially prevailing Party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorney fees, necessary witness fees, and court costs to be determined by the court in such action.
- J. Representation:** The Parties have each been duly authorized to enter into this Agreement, and each has delegated execution authority to the persons signing the Agreement on its respective behalf such that no further action needs to be taken in connection with such execution. The Parties have each been assisted by counsel of their own choosing in connection with the preparation and execution of this Agreement.

- K. Third Party Beneficiary:** The Parties expressly agree that there are no third-party beneficiaries to this Agreement.
- L. Implied Terms.** Each provision of law and any terms required by law to be in this Agreement are understood to be a part of this Agreement as if fully stated herein.
- M. Counterparts and Interpretation.** This Agreement may be executed in one or more parts, each of which when executed shall be deemed to be an original, and all of which taken together shall constitute one instrument. The headings of sections of this Agreement are for convenience only and shall not be deemed to constitute part of the Agreement or to affect the construction or interpretation thereof. Whenever required by the context, pronouns and any variation thereof shall be deemed to refer to the masculine, feminine, or neuter, and the singular shall include the plural, and vice versa. The term "include" or "including" does not denote or imply any limitation. An emailed copy of a fully executed version of this Agreement shall be deemed valid as if it was an original hard copy version.

[SIGNATURE PAGE TO FOLLOW]

The Apache Junction Sewer District executed this Intergovernmental Agreement by its Chairperson, as authorized by its Board of Directors, and the Water Utilities Community Facilities District executed this Intergovernmental Agreement by its District Chairperson, as authorized by its Board of Directors.

Apache Junction Sewer District


Apache Junction Water Utilities  
Community Facilities District

  
Kathleen Waldron, Chairperson

\_\_\_\_\_  
Walter "Chip" Wilson, Chairperson

Attest:

Attest:

  
Darron Anglin, District Clerk


\_\_\_\_\_  
Evie McKinney, District Clerk

#### APPROVAL AS TO FORM

The foregoing Intergovernmental Agreement between the Apache Junction Sewer District and the Apache Junction Water Utilities Community Facilities District has been reviewed pursuant to A.R.S. § 11-952(D) by the undersigned, who have determined that it is in the proper form and is within the powers and authority granted under the laws of the State of Arizona to those Parties to the Intergovernmental Agreement represented by the undersigned.

Apache Junction Sewer District

Apache Junction Water Utilities  
Community Facilities District

  
Jason L. Cassidy  
Cassidy Law Firm, PLC  
Attorney for Apache Junction Sewer  
District

\_\_\_\_\_  
R. Joel Stern  
Attorney for Apache Junction  
Water Utilities Community  
Facilities District

## **EXHIBIT A**

### **Apache Junction Water District Legal Description**

An area utilized by the Apache Junction Water District lying within and being a portion of the North half of Section 8, Township 1 South, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona, said area being more particularly described as follows:

COMMENCING at the most southwesterly corner of a parcel of land described in Fee 2023-084612, official records, Pinal County, Arizona;

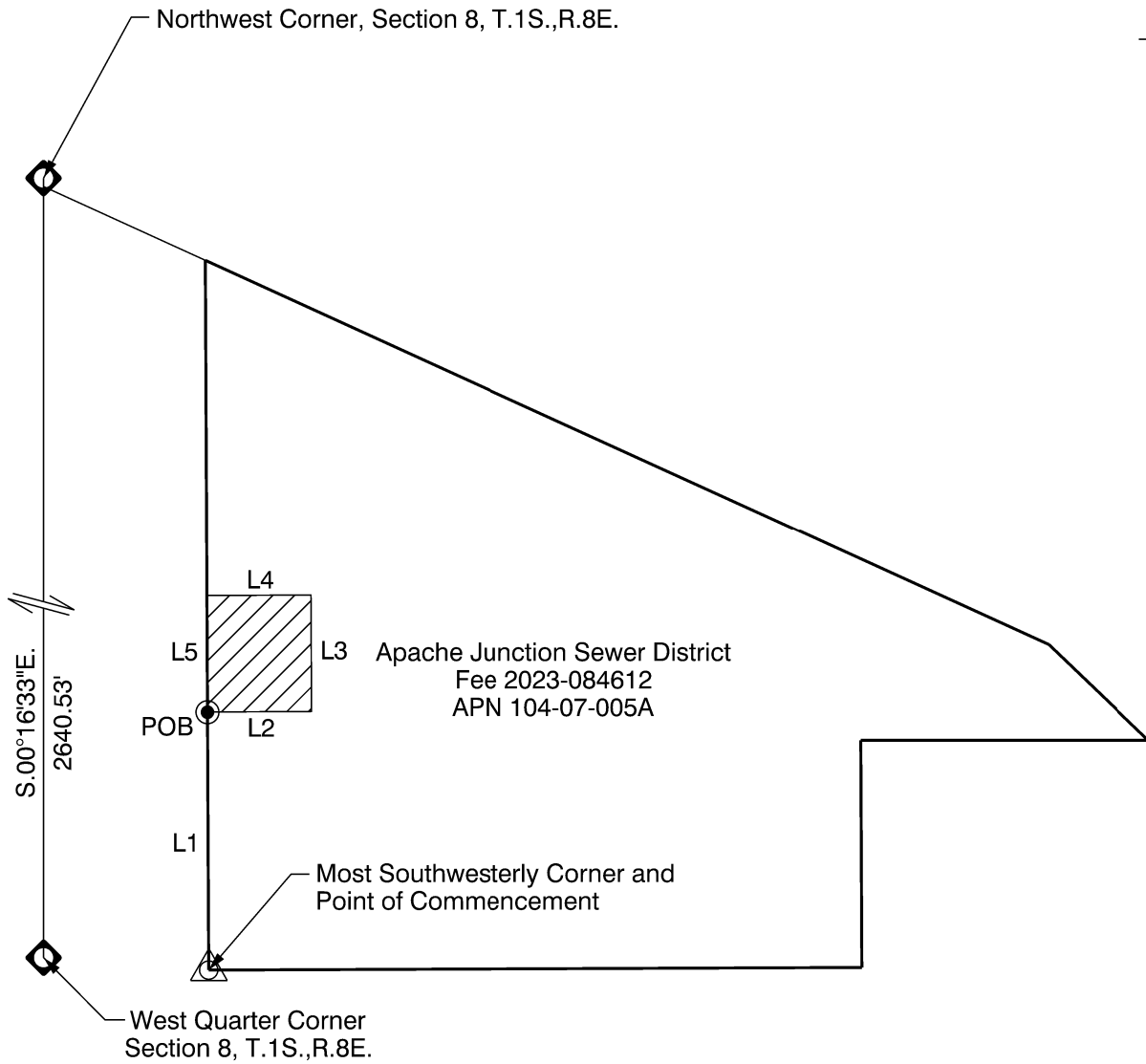
Thence North 00 degrees 16 minutes 18 seconds West, coincident with the west line of said parcel, a distance of 842.00 feet to the POINT OF BEGINNING of the herein described area;

Thence leaving said west line, North 89 degrees 43 minutes 42 seconds East, a distance of 340.00 feet;

Thence North 00 degrees 16 minutes 18 seconds West, a distance of 380.00 feet;

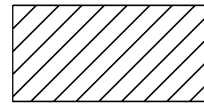
Thence South 89 degrees 43 minutes 42 seconds West, a distance of 340.00 feet to a point on the west line of said parcel;

Thence South 00 degrees 16 minutes 18 seconds East, coincident with the west line of said parcel, a distance of 380.00 feet to the POINT OF BEGINNING of the herein described area.



LINE TABLE

LINE	DISTANCE	BEARING
L1	842.00'	N.00°16'18"W.
L2	340.00'	N.89°43'42"E.
L3	380.00'	N.00°16'18"W.
L4	340.00'	S.89°43'42"W.
L5	380.00'	S.00°16'18"E.



Apache Junction Water District  
Area of Use

## MAP TO EXHIBIT A

LEGAL DESCRIPTION  
APACHE JUNCTION WATER DISTRICT

0 300 600 1200

Graphic Scale in Feet