

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
APACHE JUNCTION SEWER DISTRICT  
AND  
APACHE JUNCTION WATER UTILITIES COMMUNITY FACILITIES DISTRICT  
FOR THE  
SALE OF LONG-TERM STORAGE CREDITS**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2024 ("Effective Date") for the sale of Long-Term Storage Credits ("Recharge Credits") 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 ("WUCFD"), a municipal corporation (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. § 48-709, AJSD has the authority to operate and maintain sanitary sewage systems for the collection, transport, storage, treatment, dispersal, use and discharge of effluent;
- C.** AJSD has obtained the required permits from the Arizona Department of Water Resources ("ADWR") and the Arizona Department of Environmental Quality ("ADEQ") for the operation of a constructed Underground Storage Facility ("USF") to store its treated effluent;
- D.** The treated effluent discharged into AJSD's USF yields Recharge Credits which, consistent with Arizona law, including A.R.S. § 45-834.01, and ADWR regulations, may be recovered within the Phoenix Active Management Area;
- E.** For the ongoing benefit of the Parties and their mutual customers, AJSD desires to sell Recharge Credits generated from the storage of treated effluent in its USF, and WUCFD desires to purchase a portion of those Recharge Credits.

**AGREEMENT**

**I. Purpose**

- A.** This Agreement provides the terms, conditions and responsibilities of AJSD and WUCFD for the sale and transfer of Recharge Credits generated from the storage of AJSD's treated effluent.

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

## III. Commitments

- A. AJSD's Commitments:
  - 1. AJSD may, in its sole discretion, store treated effluent pursuant to the AJSD USF and the AJSD Water Storage Permit to accrue Recharge Credits. AJSD also retains the right and ability to sell or transfer its treated effluent for all other legal purposes. This includes the ability to sell or transfer treated effluent in accordance with all uses permitted by law, currently or in the future. The obligations created by this Agreement to sell Recharge Credits to AJWD are only for those Credits that AJSD chooses to accrue for its discretionary storage of municipal treated effluent in a given year.
  - 2. AJSD will offer to WUCFD all Recharge Credits that AJSD produces each year in excess of the 70 acre-feet per year that have already been committed to Roadhaven Resort of Apache Junction Homeowner's Association ("Roadhaven") or its successors.
  - 3. AJSD will submit an Annual Underground Water Storage Report to ADWR on or before March 31st for Recharge Credits produced in the preceding calendar year.
  - 4. AJSD will provide WUCFD with an estimate of Recharge Credits produced ("Summary Report") in the previous year on or before March 31st, identifying the number of Recharge Credits that AJSD anticipates will be eligible for WUCFD to purchase. A sample Summary Report is attached as **Exhibit A**.

B. WUCFD's Commitments:

1. After receiving AJSD's Summary Report each year, WUCFD agrees to notify AJSD on or before May 1st of the amount of Recharge Credits reflected on the report that WUCFD commits to purchase ("Contract Credits"). WUCFD is not obligated to purchase any of the Summary Report's Recharge Credits that it has not committed to purchase, or indeed any Recharge Credits at all. WUCFD further agrees that, beginning on May 2nd of each year, AJSD will have the sole discretion to sell, transfer, or otherwise utilize any Recharge Credits that WUCFD did not designate as Contract Credits.

C. Mutual Commitments:

1. Both parties acknowledge that the availability of Recharge Credits is dependent upon ADWR's acceptance of AJSD's Annual Underground Water Storage Report. In the event that ADWR does not accept AJSD's report or modifies the number of Recharge Credits available for sale, and that impacts the number of credits available for WUCFD to purchase, WUCFD will not hold and AJSD will not be responsible for any shortfall.
2. Both Parties acknowledge that the available Recharge Credits will be offered to WUCFD before they are offered to any other entities unless AJSD has a prior commitment to that other entity. If WUCFD does not request any Contract Credits, AJSD can offer the remaining Recharge Credits to any entity it so desires.

**IV. Sale and Transfer of Contract Credits**

- A. WUCFD shall pay any administrative fees established by ADWR to transfer the Contract Credits to WUCFD.
- B. Within 30 calendar days after receiving notification from ADWR that its Annual Underground Water Storage Report has been accepted, AJSD will invoice WUCFD for the Contract Credits as set forth in Section VI below.
- C. WUCFD shall pay the invoices for the Contract Credits within 30 calendar days of its receipt.
- D. Upon receipt by AJSD of payment in full for all Contract Credits being purchased by WUCFD, AJSD shall, within 30 calendar days, start with ADWR the legal transfer process for the purchased Contract Credits.
- E. The Parties shall complete the Assignment of Long-Term Storage Credits Form approved by ADWR.

- F. If ADWR determines that a transfer will result in the disqualification of Contract Credits because WUCFD does not qualify to withdraw water in the year the credits were stored, AJSD shall modify its transfer request to remove the number of disqualified Contract Credits and will return WUCFD's payment for those Credits. AJSD will then have the right to sell or transfer to others any Contract Credits that are disqualified or otherwise returned to AJSD by WUCFD.
- G. The Parties shall cooperate to take such further actions and execute such further documents as may be determined by either Party to be reasonably necessary or advisable in order to complete the transfer of the Contract Credits to WUCFD as contemplated by this Agreement.

**V. Stored Recharge Credits**

- A. AJSD retains the right and sole discretion to retain, sell to third parties, and otherwise dispose of all Recharge Credits that are not Contract Credits purchased by WUCFD under Sections III and IV of this Agreement.
- B. As of the Effective Date, AJSD possesses 3,971.75 Stored Recharge Credits that WUCFD may purchase immediately at the rate established in Section VI of this Agreement, if it so desires. WUCFD will have the right to purchase those Credits until the sooner of (1) three months from the Effective Date of this Agreement; or (2) WUCFD notifies AJSD in writing that it does not desire to purchase those Credits.

**VI. Pricing**

- A. Contract Credits will be sold to WUCFD at 98% of the Water & Replenishment Component rate listed in the Final Central Arizona Groundwater Replenishment District Assessment Rate Schedule for the Phoenix AMA ("CAGRDRate"), rounded to the nearest dollar, at the amount in effect on the date that WUCFD commits to purchasing the Credits.
- B. AJSD will set the rates each June, or as soon thereafter as CAGRDRate finalizes the CAGRDRate for the succeeding year to become effective on January 1st of the succeeding year.
- C. In the event that CAGRDRate ceases to establish the CAGRDRate, or if the underlying factors used to establish the CAGRDRate change materially, WUCFD and AJSD agree to hold the then-existing CAGRDRate constant until they can administratively agree upon a revised pricing structure.

**VII. Duration and Termination**

Except as otherwise provided in the Agreement, the term of this Agreement shall start on the Effective Date and continue through December 31, 2035, or as extended by mutual written consent of WUCFD and AJSD in no more than two, five year increments, and shall be subject to termination at any time for any reason by either Party, or its successors or assigns, upon -year's prior written notice to the other.

**VIII. Force Majeure**

In the event that either Party is rendered unable, wholly or in part, by force majeure to carry out its obligations under this Agreement, the obligations of both Parties, so far as they are affected by the force majeure, shall be suspended during the continuance of any inability, but for no longer. The 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 means acts of God, strikes, lockouts or other industrial or labor disturbances, acts of the public enemy, wars, terrorism, blockades, insurrections, riots, pandemics, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, unavoidable interruptions in electric power to drive pumps, 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 defend, indemnify, and hold harmless the other Party, and the other Party's officers, agents, and employees, from all claims, losses, and causes of actions 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 or contributed to by the negligent, reckless, willful, or wanton 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 changes in laws, regulations and permit requirements.

**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 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)

And to:

Bryant Powell, District Manager  
Apache Junction Water Utilities Community Facilities District  
300 E. Superstition Boulevard  
Apache Junction, AZ 85119  
Phone (480) 474-5066  
E-mail [bpowell@apachejunctionaz.gov](mailto:bpowell@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. Recovery of Recharge Credits**

The Parties acknowledge that the recovery of any Long-Term Storage Credits is beyond the scope of this Agreement, and the recovery of such Credits will be the sole responsibility of WUCFD.

### **XIII. 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, 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 the 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 Long-Term Storage Credits.
- 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 prevailing Party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorney fees, necessary expert 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.

[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

\_\_\_\_\_  
Jennifer Pena, 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 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


 9-11-24  
\_\_\_\_\_  
R. Joel Stern  
Attorney for Apache Junction Water  
Utilities Community Facilities District

EXHIBIT A

Apache Junction Sewer District  
Estimate of Long-Term Storage Credits Produced  
Calendar Year: \_\_\_\_\_

Long-Term Storage Credits Produced				
Month	Total Recharge Credits	Committed to Others	Available Recharge Credits	Excess Recharge Credits
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				
<b>TOTAL</b>				