

# Superstition Mountains Community Facilities District No. 1

## SERVICE AGREEMENT

### Background

Superstition Mountains Community Facilities District No. 1 (“**District**”) is a municipal corporation and political subdivision of the State of Arizona with its principal place of business at 5661 South Ironwood Drive, Apache Junction, Arizona 85120. The District provides sewer service within the City of Apache Junction, Arizona (the “**City**”). Those submitting this Application for sewer service (“**Application**”) are the legal owner or owners of the real property described in and located at the address provided in the Application as the property to be served by the District (“**Property**”). The term Customer is defined in the District’s Operating Policies and Procedures (“**Policies**”), as amended from time to time as provided in the Policies and includes the legal owners of the Property. The Application also includes the Customer’s mailing address for receiving notices and statements from the District.

### Terms and Conditions

**1. Service.** The District will provide the Customer with sewer service to the Property. Service will be provided subject to the terms of the Customer’s Application to the District and this agreement (collectively with the Application, the “**Agreement**”), the District’s Policies and the District’s published rates, fees and charges (“**Rates**”). The Customer has reviewed and agreed to abide by the Policies, located on the District’s website at [www.smcfcd.org](http://www.smcfcd.org).

### 2. Rates

**2.1 Basic Service.** The Customer agrees to pay for basic sewer service at the Rates in effect at the time service is provided and for the type of service identified in the Customer’s Application.

**2.2 Connection Fees.** The Customer agrees to pay the Connection Fees specified in the Rates for the class of service identified in the Application. The Customer is not entitled to any service until the applicable Connection Fee is paid, or arrangements are made for payment of the Connection Fee that are satisfactory to the District.

**2.3 Other Charges.** As a condition to receiving sewer service the Customer agrees to pay, in addition to the charges identified in paragraphs 2.1 and 2.2, any other fees or charges imposed by the Policies as established in the Rates in effect.

### 3. Terms of Service

**3.1 Construction, Service Notices, and Inspection.** The Customer has sole responsibility for the construction and the payment of all expenses associated with the construction of facilities necessary to connect the building(s) on the Property to the Collection System. The Customer acknowledges and agrees that the Customer is solely responsible for any modifications and the associated costs to the Property’s existing wastewater system necessary to connect to the Collection System. These modifications may include construction of a Service Line, Lateral Sewer Line, or Lateral Collection System and the retirement, abandonment, and remediation of any existing private wastewater treatment facilities, septic tanks, cesspools, leach lines, pits, privies, open drains, or unconnected drains on the Property that are not necessary for the Sewage Treatment System to serve the Property.

The Customer will provide the District notice of its intention to connect to the Collection System at least 24 hours prior to the proposed connection date and will afford the District Manager the opportunity to inspect the construction for the connection of the Customer’s facilities to the Collection System.

The Customer will provide the District access to and use of the Customer’s Lateral Sewer Line in order to disconnect or reconnect service in compliance with the Policies.

**3.2 No Collection Main Extension Agreement.** If the Collection System is not already adjacent to the Property, the District is not obligated to extend its Collection System adjacent to the Property.

If the District Manager determines it is necessary to extend the Collection System to provide service to the Property, then the Customer will only be entitled to receive service if the Customer takes the appropriate steps to extend the Collection System through a separate Collection Main Extension Agreement between the District and the Customer.

**3.3 City Approval.** If the Property is located outside the City, the District’s obligations under this Agreement are conditioned upon consent to service by the Apache Junction City Council. The City Council may require owners of properties located outside the City boundaries to sign an appropriate petition for annexation of their Property into the City and require that the owner of the property will pledge and promise (a) the annexation petition must be renewed at its expiration if the City has not taken action to annex the Property and (b) that these conditions attach to the land. If the Property is outside the City and

the City does not wish to annex the Property at the time of the Application, the City may require that the Customer sign a Memorandum of Understanding expressing the Customer’s willingness to sign an annexation petition at some future date.

### 4. Miscellaneous

**4.1 Water Records.** The Customer authorizes either Arizona Water Company or Water Utilities Community Facilities District to release the Customer’s monthly water use data to the District for the District’s use.

**4.2 Offer and Acceptance.** When the Application is signed by the Customer, it constitutes an offer to purchase sewer service from the District. It does not constitute a binding agreement between the parties until the District accepts it. The District reserves the right to reject the Application for any reason, including without limitation the District’s determination, in its sole discretion, that the District cannot feasibly or economically serve the Property.

**4.3 Notice of A.R.S. Section 38-511-Cancellation.** Notice is given of the provisions of Arizona Revised Statutes Section 38-511. The provisions of that statute are incorporated in this Agreement to the extent of their applicability to contracts like this Agreement under the laws of the State of Arizona.

**4.4 Further Assurances and Corrective Instruments.** The parties will, from time to time, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, those supplements and those further instruments as may be reasonably required for carrying out the intention of, or facilitating the performance of, this Agreement.

**4.5 Compliance with Applicable Laws.** The parties will use reasonable efforts to comply with all laws, rules, and regulations applicable to performance of this Agreement.

**4.6 Governing Laws.** This Agreement will be governed and construed in accordance with the laws of the State of Arizona. Any action brought to enforce or interpret the terms of this Agreement will be litigated in a court of competent jurisdiction located in Pinal County, Arizona.

**4.7 Notice.** All notices, demands and other communications to be given or delivered pursuant to this Agreement must be in writing, and will be deemed given after: (a) personal delivery; (b) 1 business day from the transmission by telecopy or e-mail; or (c) 3 business days from deposit in the United States mail, registered or certified mail, return receipt requested, and postage prepaid to the Notice Address that appears in the Application. The parties may from time to time by notice in writing to the other designate a different address for receipt of notices or other communications. That address will be the party’s Notice Address for this Agreement. Any communication mailed or delivered to the Notice Address is deemed to be given for all purposes under this Agreement and under the Policies.

**4.8 Rules of Construction.** For purposes of this Agreement, except as otherwise expressly provided or unless the context of this Agreement requires otherwise:

**4.8.1 Accounting Terms.** All accounting terms not otherwise defined herein have the meaning assigned to them in accordance with generally accepted accounting principles.

**4.8.2 Counterparts.** This Agreement may be executed in two or more counterparts, each counterpart will be deemed to be an original and all counterparts taken together will constitute a single instrument.

**4.8.3 Headings.** The subject headings included in this Agreement are included for purposes of convenience only and will not affect the construction or interpretation of any of its provisions.

**4.8.4 Successors.** The terms of this Agreement will be binding upon and inure to the benefit of, and will be enforceable by, the successors, assignees, and transferees of the parties to this Agreement.

**4.8.5 Incorporation of Policies.** The parties acknowledge the existence and effect of the Policies and incorporate them into this Agreement.

**4.8.6 Terms.** Initially capitalized terms that are not otherwise defined in this Agreement will have the meanings provided in the Policies, as may be amended from time to time.

**4.8.7 Merger.** All prior and contemporaneous agreements, statements, and understandings concerning the subject of this Agreement, if any, among the parties to this Agreement, or their agents, are merged into this Agreement, and this Agreement constitutes the entire agreement among the parties.