



**RESOLUTION OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION**

**(Authorizing the Posting of Proposed Ordinance Nos. 249 and 250,
Deleting Chapter Six from the Government Code and Creating
the White Mountain Apache Tribal Utility Authority Code)**

- WHEREAS,** pursuant to Article IV, Section 1(a) and 1(s) of the Constitution of the White Mountain Apache Tribe, *inter alia*, the Tribal Council has the authority to represent the Tribe and act in all matters that concern the welfare of the Tribe; and
- WHEREAS,** Chapter Six of the Government Code, which pertains to the Tribal Utility Authority, was created by Ordinance No. 93 enacted November 1, 1972 and amended by Ordinance No. 144 enacted April 18, 1984; and
- WHEREAS,** the Tribal Council of the White Mountain Apache Tribe previously authorized through Council Resolution No. 09-2006-334 that the Tribal Utility Authority Water Policy Working Group act on behalf of the Tribal Utility Authority (WMATUA), however there is currently no sitting Tribal Utility Authority Board of Directors; and
- WHEREAS,** representatives of the Water Policy Working Group have come before the Tribal Council with proposed changes to Chapter Six of the Tribe's Government Code, entitled "Tribal Utility Authority" to incorporate provisions that, amongst other purposes, support the self-sustaining operation of a meter-based system and by other charges and fees consistent with a modern, self-supporting utility; and
- WHEREAS,** Ordinance No. 249 removes Chapter Six from the Government Code and Ordinance No. 250 creates a new Tribal Code known as the Tribal Utility Authority Code, both of which are attached to this resolution and incorporated by reference herein; and
- WHEREAS,** the Tribal Council of the White Mountain Apache Tribe finds that the recommendation of the Tribal Utility Water Policy Working Group is in the best interest of the White Mountain Apache Tribe and that the proposed Tribal Utility Authority Code constitutes an essential function of the Tribal Government and the exercise of tribal sovereignty over the use and distribution of water for domestic use on the reservation; and
- WHEREAS,** the Tribal Council concludes that Ordinance Nos. 249 and 250 should be posted in each district for at least ten (10) days before final action is taken by the Council, as required by Article XV, Section 2, of the Constitution of the White Mountain Apache Tribe.
- BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe, as follows:

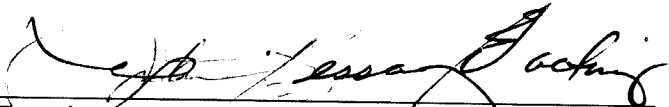
**Resolution No. 01-2011-16
Ordinance Nos. 249 and 250**

1. The Tribal Council Secretary is hereby authorized and directed to post this resolution along with Ordinance No. 249 and Ordinance No. 250 in the form and content attached hereto, in each District for at least ten (10) days before final action on the amendment is taken by the Tribal Council.
2. That any and all comments concerning these Ordinances may be sent to the attention of the Tribal Council Secretary, White Mountain Apache Tribe, P. O. Box 700, Whiteriver, AZ 85941.
3. That upon completion of the posting period, the Tribal Council Secretary is directed to (a) submit proof of posting of the amendment to the Tribal Council and to the Legal Department; (b) report any public comments to the Tribal Council, and (c) schedule a Tribal Council meeting through the Office of the Tribal Chairman for final action by the Tribal Council.

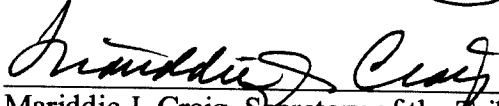
BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall govern.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Chairman, or in his absence, the Vice Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

The foregoing resolution was on **JANUARY 20, 2011** duly adopted by a vote of **SEVEN** for and **THREE** against by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (f), (h), (i), (q), (r), (s), (t), and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).



Ronnie Lupe, Chairman of the Tribal Council



Mariddie J. Craig, Secretary of the Tribal Council

**ORDINANCE OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION**

BE IT ENACTED BY THE COUNCIL OF THE WHITE MOUNTAIN APACHE TRIBE
Ordinance No. 249, amending White Mountain Apache Government Code, Chapter Six as follows:

**CHAPTER SIX
TRIBAL UTILITY AUTHORITY**

**Article 1
Establishment of Authority**

[NOTE: Article 1 is derived from Ordinance 93, enacted November 1, 1972.]

~~SECTION 6.1~~ ~~**ESTABLISHMENT OF TRIBAL UTILITY AUTHORITY;
BY-LAWS; PLAN OF OPERATION**~~

- ~~A. There is hereby established the White Mountain Apache Utility Authority.~~
- ~~B. The Utility Authority shall be governed by the By-Laws and the Plan of Operation approved by the Tribal Council on November 1, 1972, as amended.~~
- ~~C. A copy of the By-Laws and Plan of Operation of the Utility Authority, as amended, shall be available for public inspection during business hours at the office of the Utility Authority.~~

**Article 2
Notice and Hearing Requirements**

[NOTE: Article 2 is derived from Ordinance 144, enacted on April 18, 1984.
Ordinance 144 rescinded Ordinance 136.]

[NOTE: Chapter Six repealed by Ordinance No. 249, enacted _____, 2011; See
Tribal Utility Authority Code derived from Ordinance 250, enacted _____, 2011.]

~~SECTION 6.2~~ ~~**DECLARATION OF PURPOSE**~~

~~The purpose of this Article is (1) to require the Utility Authority to provide notice to customers that their utility account is delinquent and their services are subject to~~

disconnection unless the account is paid by a specified date; (2) to provide an opportunity for the customer to be heard before a Utility Grievance Committee so that the customer may show just cause as to why his or her utility services should not be disconnected; (3) to provide for emergency situations where a customer is unable to appear before the disconnection date; and (4) to provide penalties against the Utility Authority for failure to provide proper notice and a grievance procedure to a customer.

SECTION 6.3 ~~LIBERAL CONSTRUCTION~~

~~This Article shall be liberally construed to effect its objects and to promote justice.~~

SECTION 6.4 ~~DEFINITIONS~~

~~For the purposes of this Article the following words and phrases have the meanings ascribed to them in this section:~~

~~A. "conspicuous print": Lettering which is in clear black form, positioned so that a customer may find it, and large enough to be easily seen.~~

~~B. "disconnection notice": A warning mailed at the end of the 15-day payment period to pay the monthly bill which notifies a customer that he/she has 10 days from the postmarked mailing date to either pay the bill or file a timely appeal. It is mailed separately from the monthly bill.~~

~~C. "emergency": Any unexpected situation which suddenly arises and necessitates the immediate departure of the customer to a place other than the Fort Apache Indian Reservation so as to prevent the customer from making arrangements for timely payment of his/her month bill.~~

~~D. "just cause": Any reason designated by the Grievance Committee as one justifying a reasonable person not to pay his/her utility bill on time. Guidelines for determining "just cause" will be prepared by the Grievance Committee.~~

~~E. "utility billing card": The monthly statement reflecting the amount due for services rendered by the Authority, the type and amount of services rendered; the due date; the debtor's name and address; creditor's name, address, and telephone number; the Utility collection policy, and notification to the customer of his/her right to an appeal.~~

~~F. "Utility Grievance Committee": The committee of three individuals appointed by the Tribal Council who will hear appeals and issue directives regarding a matter which has been appealed.~~

~~G. "working days": Any regular day of business Monday through Friday, not including weekends and holidays.~~

~~SECTION 6.5 SAVING CLAUSE~~

~~This Article does not affect rights and duties that matured, penalties that were incurred and proceedings that were commenced before its effective date.~~

~~SECTION 6.6 JURISDICTION~~

~~The White Mountain Apache Tribal Court shall have exclusive jurisdiction over all legal proceedings arising out of this Article after administrative procedures before the Utility Authority have been exhausted.~~

~~SECTION 6.7 NOTICE OF COLLECTION POLICY; NOTICE OF RIGHT TO APPEAL~~

~~A. A collection policy notice and a notice of right of appeal shall appear on the reverse side of each utility billing card. This notification shall be printed conspicuously in plain English.~~

~~B. Collection Policy Notice. The collection policy notice shall be printed conspicuously and shall read as follows:~~

~~**COLLECTION POLICY**~~

~~ALL BILLS ARE DUE AND PAYABLE UPON RECEIPT. THEY ARE PAST DUE 15 DAYS AFTER THE STATEMENT DATE. IF PAYMENT IS NOT RECEIVED WITHIN 10 DAYS AFTER THE PAST DUE DATE, THE BILL IS DELINQUENT AND YOUR WATER AND SEWER SERVICE MAY BE DISCONNECTED. IF YOU NEED TO MAKE PAYMENT ARRANGEMENTS ON YOUR ACCOUNT CALL 338-4825.~~

~~C. Notice of Right to Appeal. Notice of the right to an appeal shall be printed below the collection policy notice on each billing card. This notice shall be printed conspicuously and shall read as follows:~~

~~**RIGHT TO APPEAL**~~

~~IF YOU ARE DISSATISFIED WITH THE RESULTS OBTAINED BY AN INVESTIGATION OF YOUR BILL OR SERVICE COMPLAINT BY UTILITY PERSONNEL YOU HAVE A RIGHT TO APPEAL TO:~~

~~UTILITY GRIEVANCE COMMITTEE
UTILITY AUTHORITY
P.O. BOX 517
WHITRIVER, ARIZONA 85941
(602) 338-4825~~

~~YOU HAVE TWO WORKING DAYS FROM RECEIPT OF A DISCONNECTION NOTICE TO FILE AN APPEAL.~~

SECTION 6.8 DISCONNECTION NOTICE

~~A. If a customer does not pay his or her bill within the twenty-five (25) days specified in the monthly bill, a second notice shall be issued to the customer by the Utility Authority. This notice is the disconnection notice and shall give the customer ten days from the postmarked date to contact the Utility Authority regarding payments or to pay the bill for utilities. The notice shall specify the amount due and time allowed for the customer to pay the entire bill or to make arrangements with the Authority. This notice shall be printed conspicuously and shall include the following:~~

DISCONNECTION NOTICE

~~YOUR WATER AND SEWER SERVICE ACCOUNT IS NOW DELINQUENT AND YOUR SERVICE WILL BE DISCONNECTED IF YOU DO NOT MAKE PAYMENT ARRANGEMENTS WITH THE UTILITY AUTHORITY WITHIN TEN DAYS OF THE DATE OF THE POSTMARK ON THIS NOTICE.~~

~~B. Every disconnection notice shall also contain the Notice of Right to Appeal prescribed by Section 6.7C.~~

~~C. No water or sewer service provided by the Utility Authority shall be disconnected and/or discontinued if the notices required by Section 6.7 and Section 6.8 have not been issued to the customer.~~

SECTION 6.9 RIGHT TO HEARING, PROCEDURES, UTILITY GRIEVANCE COMMITTEE, DECISIONS

~~A. Any customer, who wants to show just cause as to why his or her services should not be disconnected, may request a hearing of the Utility Grievance Committee by contacting the Utility Authority within 2 working days after receipt of disconnection notice.~~

~~B. Disconnection of service shall not occur until there is a final resolution of the matter by the grievance committee.~~

~~C. Once a request for hearing has been filed with the Utility Authority, a date shall be set for a hearing. The hearing shall be held within 5 working days from the date of request.~~

~~D. A utility Grievance Committee shall hear the matter to determine if the customer has shown just cause as to why his water and sewer services should not be suspended. If just cause is shown, the committee shall issue a directive to the Utility Authority on how to resolve the bill. If a further dispute exists on behalf of the Utility Authority, the matter may be pursued by either party in the Tribal Court for resolution. Services shall not be suspended during this appellate period.~~

~~E. The Utility Grievance Committee shall consist of three members appointed by the Tribal Council and shall be appointed for a term of 2 years each. Committee members shall be granted administrative leave for the time they are in committee session.~~

SECTION 6.10 — EMERGENCY PROVISION

~~Whenever a customer has been called away on an emergency outside the exterior boundaries of the Fort Apache Indian Reservation, said emergency shall constitute just cause not to disconnect his or her water and sewer services. The customer shall inform the Authority of this emergency verbally prior to departure and in writing at the commencement of any Utility Grievance Committee proceedings. Reasonable arrangements for payment of the customer's bill shall be made upon his or her return from the emergency. Service shall not be disconnected pending the customer's return to the reservation.~~

SECTION 6.11 — PENALTY FOR FAILURE TO COMPLY WITH ARTICLE

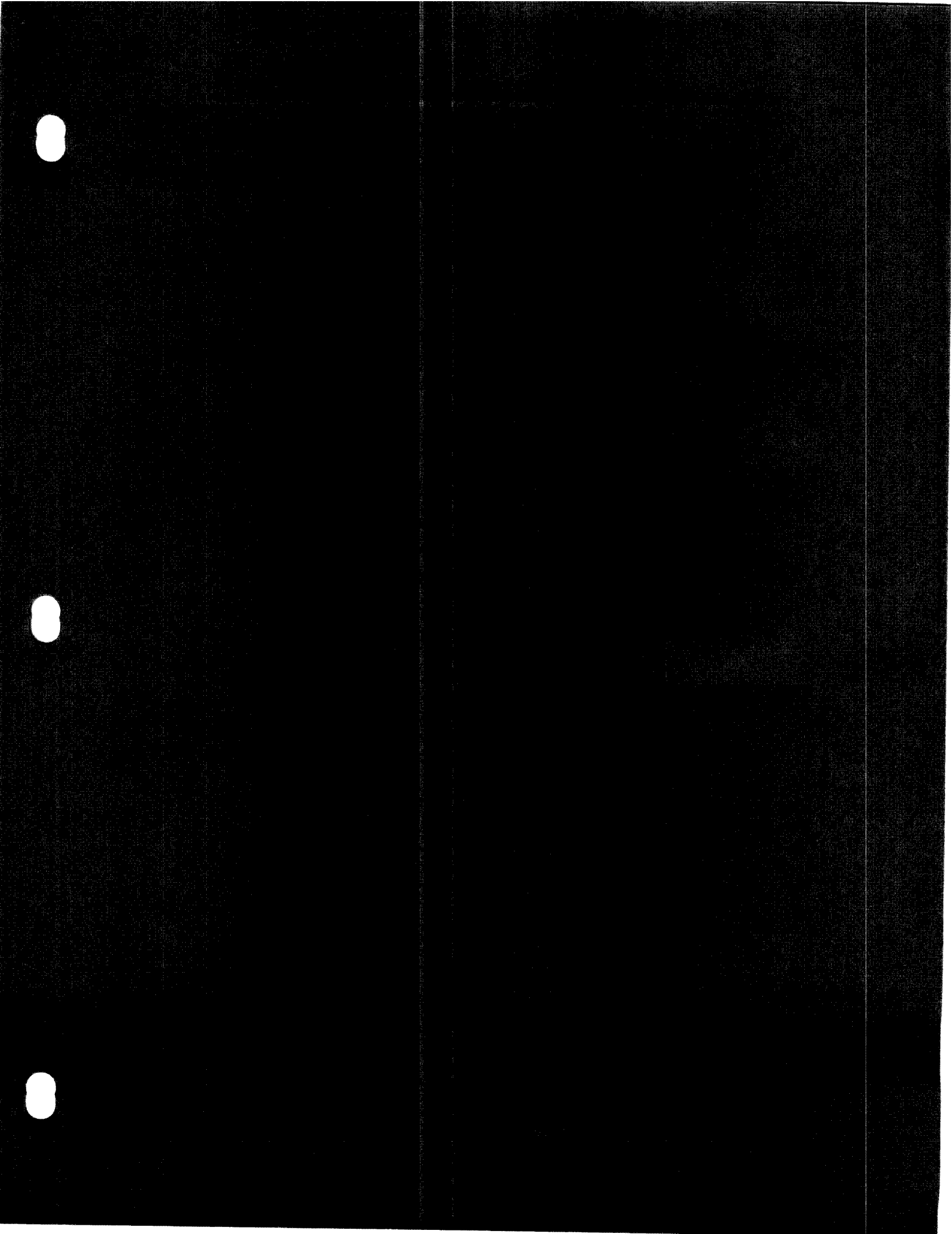
~~Where the Utility Authority disconnects service without issuing the notices required by Section 6.7 and 6.8 and/or without justifiable cause, the Utility Authority shall be liable for triple damages to the customer unless the lessor, or the lessor's agent, or the customer's landlord have made the request for disconnection. Triple damages shall be based upon three times the sum of the cost of resumption of services and the amount of the bill outstanding at the time of the disconnection.~~

~~SECTION 6.12~~ ~~SOVEREIGN IMMUNITY NOT WAIVED~~

~~— This Article shall not constitute consent by the White Mountain Apache Tribe, its sub-organizations, or any agent thereof to be sued in any Court. This Article does not constitute a waiver of the sovereign immunity of the White Mountain Apache Tribe for any purpose.~~

~~SECTION 6.13~~ ~~SEVERABILITY CLAUSE~~

~~— If any provisions of this Article or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Article which can be given effect without the invalid provisions or application, and to this end the provisions of this Article are severable.~~



**ORDINANCE OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION**

BE IT ENACTED BY THE COUNCIL OF THE WHITE MOUNTAIN APACHE TRIBE
Ordinance No. 250, creating White Mountain Apache Tribal Utility Authority Code as follows:

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ARTICLE ONE: STATEMENT OF PURPOSE, DEFINITIONS**Section 1.1 Statement of Purpose**

(a) The White Mountain Apache Tribal Utility Authority is established by the Tribe to develop and utilize the Tribe's precious water resources for the delivery of safe drinking water and sanitary sewer facilities throughout the Reservation. The TUA, a subordinate tribal governmental entity, provides an essential tribal government service for the health, well being, and economic welfare of the White Mountain Apache Tribe, and has the exclusive responsibility for development and management of all public water and waste water facilities throughout the Reservation. So that the TUA may operate with necessary independence, guided by sound business and operational judgment, the TUA is established as a self-sustaining entity, relying solely on the fees collected from the system users, as well as grants, loans and other intergovernmental transfers, for its operating budget.

(b) This Code is the governing document for the TUA. All actions and procedures concerning the management and governance of the TUA shall conform to this Code.

Section 1.2 Scope

This Code applies to all public or community utility systems within the Reservation and to all activities of the TUA.

Section 1.3 Definitions

- (a) *Advisory board* means the board established pursuant to Section 2.6 to provide periodic review of TUA performance and recommendations to the Tribal Council.
- (b) *Applicant* means a person submitting an application for a service agreement or permit.
- (c) *BOD* denoting biochemical oxygen demand, means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees centigrade expressed in parts per million (ppm) in weight.
- (d) *Branch sewer* means a sewer which receives sewage from lateral sewers from a relatively small area.
- (e) *Building sewer or house sewer* means the extension from the building drain to the building connection or other place of disposal.
- (f) *Code* means this Tribal Utility Code which is Chapter 6 of the Tribal Government Code of the White Mountain Apache Tribe.
- (g) *Combined sewer* means a sewer receiving both surface run-off and sewage.
- (h) *Cross connection* means any physical connection or arrangement of piping or fixtures which may allow non-potable water or industrial fluids or other material of questionable quality to come in contact with potable water inside a distribution system. This would include any temporary connections, such as swing connections, removable sections, four way plug valves, spools, dummy sections of pipe, swivel or change-over devices or sliding multiport tubes or other plumbing arrangements.

- (i) *Customer* means the person responsible for making payments to the TUA for service and whose name appears on the signed TUA Service Application and Agreement. The customer means the property owner, renter, lessee or tenant for either commercial or residential properties.
- (j) *Days* means calendar days of the week (Monday through Sunday) unless otherwise specified.
- (k) *Delinquent* means past due or late.
- (l) *Garbage* means solid wastes from the preparation, cooking and dispensing of food and from the handling, storage and sale of produce.
- (m) *Hearing board* means the board established pursuant to Section 2.7 to conduct appeal hearings as established in Section 6.6.
- (n) *Industrial wastes* means the liquid wastes from industrial processes as distinct from sanitary sewage.
- (o) *Lateral sewer* means a sewer which discharges into a branch or other sewer and has no other common sewer tributary to it.
- (p) *Main sewer* means a sewer which receives sewage from one or more branch sewers as tributaries.
- (q) *Naphtha* means a broad term covering the lightest and most volatile/flammable fraction of the liquid hydrocarbons in petroleum.
- (r) *Objectionable waste* means any substance that poses a threat of contamination to the Tribe's drinking water system or any surface water or groundwater supply, or which otherwise poses a threat to human health.
- (s) *Oversize* means a line of a diameter in excess of that in an approved project design.
- (t) *Permanent connection* means a water service line that is constructed out of a material such as plastic or metal and that is intended for long-term residential or business use. Garden hoses do not constitute permanent connections.
- (u) *Permit* means a written grant of authority from TUA to the permit holder to install a water main extension, sewer main extension, or other specified facility.
- (v) *Permittee* means an individual or other entity who receives an approved permit from TUA.
- (w) *Person* means any individual, partnership, corporation, association, government body or government program, or any other entity.
- (x) *Plan of Operation* means the compilation of regulations, rates and fees, and operating procedures for the TUA. Also referred to as the "TUA Plan of Operation."
- (y) *Potable water* means water that is suitable for human consumption without risk of immediate or long-term harm.
- (z) *Properly shredded garbage* means garbage that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers with no particle greater than one-fourth (1/4) inch in any dimension.
- (aa) *Public sewer* means a sewer controlled by the TUA.
- (bb) *Reservation* means the Fort Apache Indian Reservation.
- (cc) *Sanitary sewer* means a sewer which carries sewage and to which storm, surface and ground waters are not intentionally admitted.
- (dd) *Septic system* means a small sewage treatment system, usually for an individual building, that is not connected to any sewer.
- (ee) *Service* means water service, sewer service or both or any special services provided by TUA.

- (ff) *Service Application and Agreement* or *Service Agreement* means the form used to apply for utility service and which, when signed by the customer and approved by TUA, constitutes a contractual agreement for service by the TUA for which the customer indicates by signature consent to the provisions of this Code.
- (gg) *Service Fees* means fees charged for services, including installation and connection fees charged by TUA, other than charges for service rates.
- (hh) *Service Rates* means monthly reoccurring rates charged for water or sewer service.
- (ii) *Sewage* means a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments together with such ground, surface and storm waters as may be present.
- (jj) *Sewage works* means all facilities for collecting, pumping, treating and disposing of sewage.
- (kk) *Sewage treatment plant* means any arrangement of devices and structures used for treating sewage.
- (ll) *Sewer* means part of the wastewater system that conveys sewage from structures to a sewage treatment facility.
- (mm) *Sewer connection* means the connection to the public sewer and the extension therefrom of the sewer to the property line at the alley or the curb line of the street, whichever is applicable, depending on the location of the public sewer.
- (nn) *Storm sewer* or *storm drain* means a sewer which carries storm and surface waters and drainage, but excludes sewage and polluted industrial wastes.
- (oo) *Suspended solids* means solids that either float on the surface of, or are in suspension in, water, sewage, or other liquids and which are removable by laboratory filtering.
- (pp) *Terms and Conditions* means the list of conditions for water and/or sewer or other service incorporated in this Code, all of which the customer agrees to when he signs a TUA Service Application and Agreement.
- (qq) *Trunk sewer* means a sewer which receives sewage from many tributary main sewers, and serves as an outlet for a large territory.
- (rr) *TUA* means the White Mountain Apache Tribal Utility Authority.
- (ss) *TUA Plan of Operation* is the same as "Plan of Operation" defined above.
- (tt) *TUA Service Area* means the parts of the Fort Apache Indian Reservation served by TUA infrastructure. A map of the service area is available in the TUA Business Office.
- (uu) *Utility Director* means the person responsible for daily operations of the TUA, including directing the work of all employees of the TUA, overseeing operation and maintenance of the utility systems, and handling customer complaints.
- (vv) *Utility system* means all infrastructure including water mains, meters, sewer mains, and other integral components owned and operated by the TUA for the purpose of providing water and sewer service to its customers.
- (ww) *Water line* means any potable water transmission pipe.
- (xx) *Water main* means a water transmission pipe that provides potable water to individual service connections.
- (yy) *Water outlet* means any point of discharge for water from the TUA's potable water distribution system.

ARTICLE TWO: TRIBAL UTILITY AUTHORITY

Section 2.1 General Powers and Duties of the TUA

The TUA shall have full responsibility for control and management of the White Mountain Apache Tribe's Utility System and shall perform, or cause to be performed, all acts as permitted by this Code for the prudent, efficient, and economical management and protection of the Utility System. The TUA, through its Utility Director or designee, shall report to the Tribal Council, but shall otherwise operate as a self-sustaining and quasi-independent entity pursuant to the provisions in this Code.

Section 2.2 Utility Director

The Utility Director shall direct all functions of the TUA and shall report directly to the Tribal Council. The Utility Director shall have professional qualifications and experience aligned with industry standards. In keeping with standard Tribal personnel policies, the Utility Director position shall be filled by public advertisement. As part of the hiring process for the Utility Director position, the TUA Advisory Board shall review applications, organize interviews, and make recommendations for hiring to the Tribal Council. The Utility Director may be terminated with cause by the Tribal Council, as provided by official Tribal personnel policy.

Section 2.3 Audits and Reporting

The TUA shall obtain an annual audit by an independent certified public accountant of TUA operations, assets and liabilities. Special audits may also be conducted as required by the Tribal Council. All audit reports shall be promptly provided to the Tribal Council and the TUA Advisory Board. On a semi-annual basis, or more frequently as the Tribal Council may request, the TUA Director shall provide reports to the Tribal Council on TUA matters including, but not limited to the TUA financial status and TUA operations and utility systems.

Section 2.4 Plan of Operation

TUA shall adopt and enforce a Plan of Operation containing all approved fees, rates, and other TUA service charges, as well as various aspects of TUA's routine operating plans and procedures, including system maintenance and monitoring schedules. The Plan of Operation shall be reviewed and renewed annually by the Utility Director and the TUA Advisory Board. Any changes to the Plan of Operation must be adopted by signature of the Utility Director and a majority of the TUA Advisory Board. Any changes to the Plan of Operation involving adjustments to billing rates, fees, and other charges must also receive prior approval by Tribal Council resolution.

Section 2.5 Authorization for Rates, Fees and Other Charges

TUA is authorized to assess and collect charges, including fees, rates, deposits, and other assessments and charges, including civil penalties, from customers and other persons, provided that such charges are established in the Plan of Operation and approved by the Tribal Council.

Section 2.6 Authorization to Initiate Suit

TUA is authorized to initiate suit in the Tribal Court or other court of competent jurisdiction for any lawful claim or remedy consistent with the purposes and duties of this Code, including an action for injunctive relief.

Section 2.7 Accounts and Receipts

TUA shall be responsible for the accounting of all receipts, the issuance of all bills for service and for materials furnished to customers, collect the same, and deposit the proceeds so collected to the credit of the TUA in a separate bank account expressly designated for such purpose. TUA may incur debt or encumber any TUA property or funds, and apply for and accept grant funds, but only with Tribal Council approval.

Section 2.8 TUA Advisory Board

(a) *Composition:* The TUA Advisory Board shall consist of the following four members: 1) Indian Health Service-Division of Sanitation Facilities Construction-District Engineer or designee, 2) Tribal Water Resources Director or designee, 3) Tribal Engineer or designee, and 4) one industry expert approved by the Utility Director and the TUA Advisory Board, but not employed by the Tribe.

(b) *Role:* The Advisory Board shall meet with the Utility Director not less than once each quarter for the purpose of reviewing TUA performance and developing and making recommendations to the Utility Director concerning service rates, fees, and other charges and all TUA regulations and operations, including annual renewal of the Plan of Operation. The TUA Advisory Board shall have access to all TUA records in order to make informed recommendations regarding TUA operations. The TUA Advisory Board shall have no direct management authority over the TUA, but shall play an integral role in identifying and recommending eligible candidates for the Utility Director position to the Tribal Council for hiring, as specified in Section 2.2.

Section 2.9 TUA Hearing Board

The members of the TUA Hearing Board shall be the Tribal Engineer or designee, the Tribal Water Resource Director, or designee, and a third member appointed by the Tribal Council who is a Tribal employee not employed by TUA but who is a TUA customer. The Hearing Board shall conduct the appeal hearings established in Section 6.6.

ARTICLE THREE: UTILITY SYSTEM ADMINISTRATION

Section 3.1 TUA Records

(a) *Customers:* TUA shall keep a record of all service connections and locations with the customer name and the property owner, if different from the customer, as well as all other pertinent customer account information, including all processed permit applications. It is the customer's responsibility to notify TUA of any change in address or other information in the Service Agreement after the date service commences.

(b) *Utility System:* TUA shall maintain records documenting the current status of the Utility System, including updated as-built drawings, as well as monitoring records for infrastructure and water quality.

(c) *Finances:* The TUA shall maintain accurate, current, and well organized records of all financial transactions, including, but not limited to, all invoices and receipts for payment, expenditures, and all bank deposits and withdrawals. These records shall be maintained at the TUA administrative office and be available for inspection by an outside auditor, the TUA Advisory Board, or the Tribal Council or its designee at any time.

Section 3.2 No Service or Connection Except as Permitted by this Code

No person shall obtain service or make or attempt to make any connection to the Utility System except as permitted by, and in compliance with, the requirements of this Code.

Section 3.3 Service Application and Agreement, Payment Requirement

(a) No new service or change in existing service shall be made without submission of a completed application to the TUA Business Office. The applicant shall pay all applicable fees when the application is filed.

(b) Upon acceptance of the application and payment, TUA shall present the applicant with a copy of the approved TUA Water/Sewer Service Application and Agreement specific to that connection. By signing the Service Agreement, the applicant agrees to the terms of service in the Agreement and in this Code and all other applicable regulations.

(c) All provisions of this Code and the TUA Plan of Operation shall be considered a part of the Service Agreement and the customer shall be considered as having expressly consented to be bound by such provisions. All customers shall, upon application for service, be required to sign a statement agreeing to the provisions set forth in this Code and the TUA Plan of Operation.

Section 3.4 Denial of Application

(a) TUA may reject a service application for sufficient reason including, but not limited to, the following:

1. Service not available under a standard rate;
2. Service which involves excessive TUA expense;
3. Service which may detrimentally affect the service to other customers;
4. Insufficient capacity of the system to accommodate additional users;
5. Applicant is delinquent in payment of bills incurred for other TUA service;
6. Service which has been initiated in violation of Section 3.2; or
7. Absence of approved sanitary sewer service or private sewer system at the location.

(b) TUA may discontinue service in accordance with Article Six to any customer who provides materially false or misleading information in an application for service.

Section 3.5 Service Commencement

(a) TUA shall commence service charges for a customer when the service connection is made whether or not the service is used, unless a different commencement date is specified in the Service Agreement.

(b) The minimum charges for additional permanent connections shall apply whether or not the unit or building space is occupied.

Section 3.6 Service Interruptions

Whenever possible and by reasonable means, TUA will notify the customer of any anticipated service interruption.

Section 3.7 Service Bills

(a) The customer is responsible for payment of bills, irrespective of any third-party agreements, such as tenant-landlord rental agreements.

(b) All customers shall receive a monthly bill for service with payment due within fifteen (15) days from the billing date. Any payment owed which is not received by the due date shall be past due and a late fee shall be added to the past-due balance. If a bill remains unpaid thirty (30) days past the billing date, TUA shall issue a past-due notice advising that the customer has thirty (30) days in which to pay the current bill or incur service disconnection.

(c) The customer may request an alternative payment schedule by contacting the TUA Business Office. At the discretion of the Utility Director, the TUA may consent to an alternative payment schedule for the customer. Such new payment schedule shall be reflected in the customer's bill.

(d) If the past due amount is not paid within sixty (60) days from the billing date,

service shall be discontinued in accordance with Article Six and applicable termination and/or reconnection fees, together with any other amounts owed and any interest charges for late payment, shall be collected before utility service is reinstated.

Section 3.8 Incorrect Bill

(a) If a customer believes a bill is in error, the customer may file a claim by following the procedures for filing a Customer Dispute Form in Section 6.5 before the bill becomes delinquent. The customer may file a claim following payment of the bill and such payment shall not prejudice the claim. Such claim shall not exempt the customer from delinquency penalties if the customer fails to pay the bill on time.

(b) If the customer is not satisfied with the outcome of the initial claim process under this section, the customer may pursue further action through the administrative process for customer disputes in Section 6.5.

Section 3.9 Voluntary Discontinuation of Service

Any customer who desires to discontinue service shall notify the TUA Business Office at least three days before the intended discontinuation of service. The customer's responsibility for service extends to the time of departure or to the time specified for departure, whichever occurs last. The customer's failure to notify TUA of an intention to leave the service address does not relieve the customer from the obligation to pay for service as specified in the customer's Service Agreement.

Section 3.10 Turn-offs and Turn-ons

A reasonable charge shall be made for each turn-on and turn-off of water service, including short-term suspension and reactivation fees.

Section 3.11 Termination of Service by TUA

TUA may disconnect service to any customer for cause as authorized in Article Six.

Section 3.12 Connection, Reconnection, and Other Fees Required

Subject to Sections 3.2 and 3.3, no service shall be initiated or reinstated without an approved TUA Service Agreement, and payment in full of any past-due bills and fees, if any, as well as the applicable connection or reconnection fees.

Section 3.13 Access, Easements, and Rights-of-Way

Each customer shall provide to TUA such access, easement, and right-of-way as is necessary to provide service to that customer and to conduct all activities allowed under this Code, including reading of meters.

Section 3.14 Inspections

For the purpose of verifying specifications and the protection of the utility system, and with prior notice, TUA shall have the right to inspect connections and piping and fixtures owned and maintained by the customer. At its discretion, TUA may offer inspection services when requested by customers, subject to fees which TUA may establish.

Section 3.15 Protection of TUA Property

The customer shall provide proper protection for TUA property placed on the customer's premises and shall permit access to such property only to authorized TUA representatives. Only authorized TUA employees or TUA-approved contractors shall perform any work on the utility system or within the utility system right-of-way or easement.

Section 3.16 Tampering with Equipment Prohibited

No person shall damage, destroy, uncover, deface or tamper with any structure, appurtenance, or equipment which is a part of the utility system. The cost of any damage to the utility system caused or allowed by a customer, as well as applicable civil penalties pursuant to Section 6.4(c), shall be added to that customer's bill, and if such charges are not paid, service may be discontinued in accordance with Article Six.

ARTICLE FOUR: WATER SERVICE

Section 4.1 Water Service and Systems

The TUA is responsible for providing drinking water service at established rates and fees to those houses, businesses, and institutions connected to mainlines of the community water systems. Responsibility for maintenance will include treatment facilities, pumping stations, mainlines, and service lines to the property lines only. Tribal drinking water systems shall be managed in compliance with applicable Tribal and Federal regulations, including the Safe Drinking Water Act as established by the U.S. Environmental Protection Agency.

Section 4.2 Water Rates

All water services shall be provided at the rates established in the TUA Plan of Operation. TUA may furnish water for fire protection at no charge to Tribal communities through unmetered hydrants.

Section 4.3 Restrictions on Water Use

(a) Customers shall prevent unnecessary waste of water and keep all water outlets closed when not in actual use. All water outlets, including but not limited to, hydrants, outdoor spigots, sprinklers, irrigation systems, urinals, water closets, bathtubs and other fixtures, must not be left running for any purpose other than the use for which they were intended. In addition to

levying a penalty for Code violations, as authorized in Section 2.3, TUA may discontinue water service where any such waste occurs.

(b) In case of water shortage, TUA, with approval by Tribal Council resolution, may place restrictions which it deems necessary upon outdoor water use.

(c) No occupant or owner of any building into which water is introduced by a service connection will be allowed to supply water through a permanent connection to other persons or families or for use on any other property. TUA reserves the right to shut off the supply for abuses of water service privileges.

Section 4.4 Water Meters

(a) *Meter use.* TUA shall be authorized to install, operate and require the use of meters at every service connection. All meters shall be owned and maintained by TUA. Customers without meters will be billed for water use at an established flat rate. Customers with meters will be billed at meter-based rates approved by Tribal Council resolution and established in the TUA Plan of Operation.

(b) *Installation.* TUA may install a water meter on the property line or on the customer's property in such location as deemed necessary and which is conveniently accessible by a meter reader. No meter or service line shall be located on any premises other than that described in the customer's Service Agreement.

(c) *Single meter.* Pipes and equipment for water service belonging to the customer shall be arranged to permit the placing of a single water meter and/or unmetered connection for that property that is convenient to TUA. If the pipes and equipment belonging to the customer are not arranged to permit such placement of a meter or unmetered connection and additional meters or connections are required, each such additional meter or connection shall be considered as an additional account and shall be so billed.

(d) *Grouping of meters.* When two (2) or more meters are installed on the same premises for different customers, they shall be closely grouped and each meter shall be clearly marked as to the customer to whom it belongs.

(e) *Water meter installation fee schedule.* Fees for water meter installations shall be published in the TUA Plan of Operation.

Section 4.5 Water Meter Reading Failure and Inaccuracies

(a) If a water meter reading cannot be taken for any reason, TUA may issue a bill in an amount based on the average monthly billing of the previous three (3) months.

(b) With payment of a deposit in an amount established by TUA, any customer may request to have his meter tested for accuracy or request a special meter reading by TUA. If the meter registration or the regular meter reading is found to be more than three percent (3%) off in

accuracy, the deposit shall be refunded to the customer and if the customer was overcharged because of the meter inaccuracy or error in the regular meter reading, the indicated adjustment shall be made in the water service charges for the current month and the immediately preceding month only. If the tested meter registration or the regular meter reading is within three percent (3%) of accuracy, the deposit shall be retained by TUA as a fee to pay the cost of the test. All defective meters shall be replaced by TUA.

Section 4.6 Customer-Owned Water Facilities

The customer shall have complete responsibility for the installation and maintenance of adequate water facilities, such as pipelines, connections, plumbing fixtures, and appurtenances on the customer's property downstream of the meter or property line, and TUA shall not be responsible for the installation, maintenance, inspection, or protection of such facilities on the customer's premises. All customer-owned facilities shall be maintained by the customer in full compliance with all Tribal rules and regulations and applicable federal statutes.

Section 4.7 Cross Connection and Backflow Prevention

(a) The TUA shall have the right to refuse service or discontinue service unless the customer's lines or piping are installed and maintained in such manner as to prevent cross connections or backflow, with all required reports filed and testing completed as the TUA may require.

(b) Until such time as the Tribal Council adopts a Tribal Cross Connection and Backflow Prevention Code, the standard for cross connection and backflow prevention shall be the *Uniform Plumbing Code* as provided by the International Association of Plumbing and Mechanical Officials.

(c) Notwithstanding any other provision in this Code, no water line shall be at any point less than ten (10) feet laterally from any sewer line and less than eighteen (18) inches above any sewer line, without prior written authorization from the Tribal Engineer.

Section 4.8 Water Main Extensions, Permitting

(a) *Connections; permit required.* No person shall connect to any water main or any special water line without first applying for and obtaining a permit for such connection from TUA and complying with all requirements in this Section.

(b) *Application process:* To obtain a water main construction or connection permit, the applicant must submit the following items to the TUA business office for approval:

1. A completed official TUA permit application form (blank forms available in the TUA Business Office);
2. A complete set of design drawings and specifications prepared and sealed by a Professional Engineer and developed in compliance

with TUA standards, which will be available at the TUA business office;

3. A letter of approval from the Tribal Engineer; and
4. An engineer's affidavit, stamped by an engineer registered in the State of Arizona, stating that the design complies with Tribal standards.

(c) *Granting of permit.* Upon receiving a complete written permit application, TUA may approve or deny the application. An approved application shall, after payment of applicable fees and any past-due amounts owed, constitute a permit to make such water line connection. Approved permit applications are only valid for six (6) months from the date of approval.

(d) *Permit compliance and modifications.* The permit holder must comply with all applicable specifications and drawings. Any changes to approved plans must be resubmitted to the TUA Business Office with Tribal Engineer's signature for approval.

(e) *Other required permits.* The permit holder shall be responsible for obtaining all other required permits (eg, Bureau of Indian Affairs, Arizona Department of Transportation, Tribal Employment Rights Office, and White Mountain Apache Tribe).

(f) *Inspections.* TUA and the Tribal Engineer shall at all times have access to the water main construction/connection project to make inspections to verify that construction meets TUA standards. If inspections reveal that the construction is not in accordance with TUA standards, TUA may order all work stopped and all defective work removed at the permit holder's expense. TUA shall not be responsible for the installation or maintenance of the customer's service line piping or apparatus from the property line to the home or for any defects therein.

(g) *Additional conditions.* TUA reserves the right to oversize any water main extension. The permit holder shall pay for the rights-of-way, the construction and installation of the lines, pipes, mains, and hydrants and all other expenses necessary for the extension; and upon acceptance of the improvements by TUA, and upon completion, the permit holder shall relinquish interest in the improvements and rights-of-way to TUA without reimbursement or compensation as a condition of TUA providing future service to others from the main.

Section 4.9 Water Main Activation

- (a) A permitted water main connection will be activated only after receiving final approval from TUA. To receive final approval, the permit holder must submit to the TUA:
1. Documentation of a completed pressure test meeting the requirements of the TUA standards including standard forms that have been witnessed and attested by a TUA representative;
 2. Documentation of bacteriological testing and laboratory reports meeting the requirements of the TUA standards;
 3. A complete set of as-built drawings in AutoCAD (electronic) format and a hard copy stamped by an engineer registered in the State of Arizona.

(b) After TUA has received and approved the documents in Sub-part (a), TUA will stamp the as-built drawings "APPROVED" and will initiate water service to the new water main.

ARTICLE FIVE: SEWER SYSTEMS

Section 5.1 Sewer Service and Systems.

The TUA is responsible for providing sanitary disposal of domestic, municipal, and industrial waste for a fee to those houses, businesses, and institutions connected to the mainlines of the community sewerage systems. Responsibility for maintenance will include treatment facilities, pumping stations, mainlines, manholes, and service lines to the property lines only. Tribal sewage collection, treatment, and disposal systems shall be managed in compliance with applicable Tribal and Federal regulations of the Clean Water Act and the National Pollution Discharge Elimination System as established by the U.S. Environmental Protection Agency.

Section 5.2 Sewer Rates

Sewer service shall be provided at the rates established in the TUA Plan of Operation.

Section 5.3 Use of Public Sewers

In locations where sewer service is available, TUA is authorized to require that all premises connect to and discharge all waste water into the public sewer.

Section 5.4 Prohibited Substances

(a) Except as provided in this section, no person shall discharge or cause to be discharged any of the following described waters or wastes into any public sewer:

1. Any liquid or vapor having a temperature higher than one hundred fifty (150) degrees Fahrenheit.
2. Any water or waste which may contain more than fifty (50) parts per million by weight of fat, oil or grease.
3. Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.
4. Any garbage that has not been properly shredded.
5. Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure, grits such as brick, cement, onyx, carbide or any other solid or viscous substance capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewage works.
6. Any acidic or basic waters or wastes having a pH lower than five and one-half (5.5) or higher than nine (9) or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works.

7. Any waters or wastes containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans, or animals, or create any hazard in the receiving waters of the sewage treatment plant.
8. Any waters or wastes containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant.
9. Any noxious or malodorous gas or substance capable of creating a public nuisance.

Section 5.5 Interceptors Required

(a) Grease, oil, and sand interceptors shall be provided when, in the opinion of TUA, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts or any flammable wastes, sand, and other harmful ingredients except that such interceptors shall not be required for private living quarters or dwelling units.

(b) Grease and oil interceptors shall be constructed of impervious material capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight and equipped with easily removable covers which, when bolted in place, shall be gastight and watertight.

(c) Where installed, all grease, oil, and sand interceptors shall be maintained by the customer, at customer's expense, and be in continuously efficient operation at all times.

Section 5.6 TUA Review of Discharges

(a) The admission into the public sewers of any waters or wastes having any of the following characteristics shall be subject to the review and approval of TUA:

1. A five-day biochemical oxygen demand (BOD) greater than three hundred (300) parts per million by weight; or
2. Containing more than three hundred fifty (350) parts per million by weight of suspended solids; or
3. Having an average daily flow of greater than two (2%) percent of the average daily sewage flow of the community sewer system.

(b) TUA may direct the customer to take reasonable corrective measures within a TUA-specified timeframe for any condition in Sub-part (a), impose a civil penalty and/or initiate service disconnection.

Section 5.7 Preliminary Treatment

(a) *Required.* Where necessary in the opinion of TUA, the customer shall provide, at customer's expense, such preliminary treatment as may be necessary to:

1. Reduce the BOD to three hundred (300) parts per million and the suspended solids to three hundred fifty (350) parts per million by weight; and/or
2. Control the quantities and rates of discharge of such waters or wastes.

(b) *Approval.* Plans and specifications and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for approval by TUA and Tribal Engineer. No construction of such facilities shall be commenced until both approvals are obtained in writing.

(c) *Maintenance of facilities.* Where preliminary treatment facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the customer at the customer's expense.

Section 5.8 Manholes

When required by TUA, the customer served by a sewer carrying industrial wastes shall install a suitable control manhole in the building sewer to facilitate observation and sampling of wastes in accordance with Tribal standards and specifications. The manhole shall be accessible and safely located and shall be constructed in accordance with plans approved by TUA and the Tribal Engineer. The manhole shall be installed by the customer at the customer's expense and shall be maintained by the customer so as to be safe and accessible at all times.

Section 5.9 Tests and Analyses

All tests and analyses of the characteristics of waters and wastes shall be determined in accordance with "Standard Methods for Examination of Water and Sewage" jointly published by the American Public Health Association (APHA), the American Water Works Association (AWWA), and the Water Environment Federation (WEF), and shall be determined at the control manhole provided for in the preceding section or upon suitable samples taken at such control manhole.

Section 5.10 Special Agreements with Industrial Concerns

Notwithstanding the other requirements in this Article, TUA may enter into a special agreement with any industrial concern to permit the discharge of industrial waste of unusual strength or character into the public sewer for treatment, subject to special payment to TUA.

Section 5.11 Unsanitary Disposal of Excrement, Other Waste Prohibited

It is unlawful for any person to deposit, or permit to be deposited, in an unsanitary manner upon public or private property within the TUA service area, any human or animal excrement or other objectionable waste.

Section 5.12 Private Sewage Systems (Septic Systems)

Where a public sewer is not available, the building sewer shall be connected to a private sewage disposal system which complies with Tribal regulations. Such private sewage disposal system is the sole responsibility of the customer and shall be constructed, maintained and operated at all times in a sanitary manner. Permission to construct and approval of plans must be obtained through the Tribal Engineer prior to installation.

Section 5.13 Use of Meters

TUA may require sewer meters for specified commercial service connections. All meters shall be owned and maintained by TUA and subject to regulations and fee schedules enacted by the TUA in its Plan of Operation.

Section 5.14 Responsibility for Customer-Owned Sewer Facilities

(a) The sewer service line from the customer's property line to the house or building and interior plumbing of any building are the responsibility of the customer.

(b) Building or house sewer connections on the customer's property shall be so arranged as to provide service to one lot. Except as otherwise provided, no sewer system shall be placed upon any lot other than that for which the permit was issued. If additional service is required it will be considered a separate account.

(c) The customer's house or building service line, sewer connection and apparatus shall be installed and maintained by the customer, at the customer's expense, in a safe and efficient manner and in accordance with the Tribe's rules and regulations. No use of property shall be such as to decrease accessibility by the TUA to its utility lines. Customers, by applying for hookup, consent to TUA's right to ingress and egress to/from customer's property.

Section 5.15 Sewer Main Extensions, Permitting

(a) *Connections; permit required.* No person shall connect to any sewer main without first applying for and obtaining a permit for such a connection from TUA and complying with all requirements in this Section.

(b) *Application process:* To obtain a sewer main connection construction permit, the applicant must submit the following items to the TUA business office for approval:

1. A completed official TUA sewer main connection permit application form (blank forms available in the TUA Business Office);
2. A complete set of design drawings and specifications prepared and sealed by a Professional Engineer and developed in compliance with TUA standards which will be available at the TUA business office;
3. A letter of approval from the Tribal Engineer; and

4. An engineer's affidavit, stamped by an engineer registered in the State of Arizona, stating that the design complies with Tribal standards.

(c) *Granting of permit.* Upon receiving a complete written application, the TUA may approve or deny the application. An approved application, after payment of applicable fees and any past-due amounts owed, shall constitute a permit to make such sewer main connection. Approved permit applications are only valid for six (6) months from the date of approval.

(d) *Permit compliance and modifications.* The permit holder must comply with all applicable specifications and drawings. Any changes to approved plans must be resubmitted to the TUA business office and Tribal Engineer for approval.

(e) *Other required permits.* The permit holder shall be responsible for obtaining all other required permits (eg, BIA, ADOT, TERO, and WMAT).

(f) *Inspections.* TUA and the Tribal Engineer shall at all times have access to the sewer construction/connection project to make inspections to verify that construction meets TUA standards. If any inspection reveal that construction is not in accordance with TUA standards, TUA may order all work stopped and all defective work removed at the permit holder's expense. TUA shall not be responsible for the installation, maintenance or inspection of the customer's service line piping or apparatus from the property line to the home or for any defects therein, but shall have the right of inspection and control over installation specifications.

(g) *Additional conditions.* TUA reserves the right to install or oversize any sewer main extension. A permit holder shall pay for the rights-of-way, the construction and installation of the lines, pipes, mains, and hydrants and all other expenses necessary for the extension; and upon acceptance of the improvements by TUA, and upon completion, the permit holder shall relinquish interest in the improvements and rights-of-way to TUA without reimbursement or compensation as a condition of TUA providing future service to others from the main.

Section 5.16 Sewer Main Activation

(a) A permitted sewer main connection will be activated only after receiving final approval from TUA. To receive final approval, the permit holder must submit to the TUA:

1. A complete set of as-built drawings in AutoCAD (electronic) format and a hard copy stamped by an engineer registered in the State of Arizona.
2. Documentation of the following successfully completed tests meeting TUA standards:
 - a) air,
 - b) alignment,
 - c) deflection, and
 - d) manhole vacuum.

(b) After TUA has received and approved the documents in sub-part (a), TUA will stamp the as-built drawings "APPROVED" and will initiate sewer service from the new sewer main connection.

ARTICLE SIX: SERVICE DISCONNECT, CIVIL PENALTIES, DISPUTES, AND APPEALS

Section 6.1 Termination of Service With Notice

(a) TUA may disconnect service to any customer with notice, as provided in Sub-part (b), for the following reasons:

1. Violation of this Code, the TUA Plan of Operation;
2. Failure to pay any amounts owed to the TUA;
3. Failure to provide TUA reasonable access to its equipment and property;
4. Misrepresentation in an application for service, service agreement, or permit;
5. Material breach of a Service Agreement or permit;
6. When necessary for TUA to comply with an order of any court or governmental agency having jurisdiction.

(b) *Notice.* TUA must provide written notice to the customer by first class mail, post-marked not less than fifteen (15) days prior to the termination date, at the last address on file or by personal delivery. The written notice shall contain, at a minimum, the following information:

1. The name of the customer whose service is to be terminated and the service address;
2. The reason for termination;
3. The date on or after which service may be terminated;
4. A statement advising the customer that the termination of service may only be disputed by contacting TUA and making arrangements to discuss the cause of termination with the Utility Director before the scheduled date of termination; and
5. A statement advising the customer of the right to file an appeal before the TUA Hearing Board in the event that the Utility Director issues a written denial of the customer's request.

(c) Any customer who intends to dispute the service termination must contact the TUA before the scheduled date of termination in compliance with Section 6.5.

(d) If, after the period of time allowed by the termination notice has elapsed and the delinquent account has not been paid nor arrangements made with the TUA for the payment thereof, or in the case of a violation of the TUA's policies and procedures, the customer has not satisfied the Utility Director that such violation has been remedied, TUA may then terminate service on or after the date specified in the notice without further notice of any kind.

Section 6.2 Termination of Service Without Prior Notice

(a) TUA may terminate service to any customer without prior notice for the following reasons:

1. To prevent the potential for likely and serious damage to TUA property;
2. To prevent the threat of injury to any person;
3. To prevent the potential for a hazard to health or safety;
4. To prevent fraud or abuse;
5. For emergency repairs; or
6. Due to circumstances of insufficient supply outside of TUA's control.

(b) Not later than the day following the date of service termination without notice under this Section, TUA shall provide a written notice to the customer by first class mail to the address on file or by personal delivery, which at a minimum, shall contain the following information:

1. The name of the customer whose service is terminated and the service address;
2. The reason for termination;
3. The date and time of service termination;
4. A statement advising the customer that the termination of service may be disputed by contacting TUA and making arrangements to discuss the cause of termination with the Utility Director; and
5. A statement advising the customer of the right to file an appeal before the TUA Hearing Board.

(c) Any customer who intends to dispute the grounds for the service termination must contact the TUA within ten (10) days of the notice in compliance with Section 6.5.

Section 6.3 Method of Service Disconnection

For any termination of service, TUA may enter customer's property and use any reasonable means to disconnect service. It is permissible to disconnect sewer utility service by disconnecting the customer's water service.

Section 6.4 Civil Penalties for Violation of Tribal Utility Code

(a) *Notice of Violation:* The TUA shall, upon first observance or after confirming a violation pursuant to Section 6.4(c), issue a written Notice of Violation to the customer delivered by first-class mail or personally delivered to the customer. The Notice of Violation shall contain, at a minimum:

1. The date of the written notice;
2. A description of the violation, including a citation to the provision of this Code that has been violated;

3. Action required by customer to avoid termination of service; and
4. Any civil penalties that apply per Section 6.4(c).

(b) *Warning Notice for Excessive Water Waste.* For excessive water waste in violation of Section 4.3, the TUA shall issue two written Warning Notices before any Notice of Violation is issued. No Notice of Violation shall be issued unless the customer has received a written Warning Notice for excessive water waste on two separate dates in the prior ninety (90) day period. In addition to containing the information in subsection 6.4 (a) 1 through 3, the Warning Notice shall state whether the warning is the first or second warning, and that two warnings will be issued prior to a Notice of Violation.

(c) In addition to all other fees and charges authorized by this Code, the following civil penalties apply for each violation of this Code:

1. Illegal service connection, in violation of Section 3.2: \$300.00
2. Failure to provide access to TUA personnel, in violation of Section 3.13: \$100.00
3. Damage to, or destruction of, TUA property, in violation of Section 3.16: \$100.00, plus material replacement and labor cost.
4. Excessive water waste, in violation of Section 4.3: \$30.00.
5. Illegal discharge to public sewer, in violation of the provisions of Article Five: \$50.00

(d) Each day that a violation is permitted to continue after receipt of a written Notice of Violation from TUA per Section 6.4(a) shall be deemed a separate violation. Any civil penalty charges shall be added to the customer's regular water/sewer service bill. If the penalty payment is not received or other payment arrangements made with TUA pursuant to Section 3.6(c) by the due date on the bill, late fees and possible termination of service will apply, in accordance with Section 3.6 of this Code.

Section 6.5 Disputes

(a) Any customer who seeks to dispute a Notice of Violation, service termination, or other notification or decision by the TUA Business Office or other TUA personnel, or a civil penalty, must do so in writing by filing an official TUA Customer Dispute Form (available in the TUA Business Office) with the TUA Business Office within ten days of the issuance of the Notice of Violation or other notification or action being disputed.

(b) Any customer who disputes the proposed termination of service must file a TUA Customer Dispute Form to the TUA Business Office before the scheduled date of termination.

(c) In response to any customer dispute, the Utility Director must document details of the dispute and record the administrative decision within ten (10) days from the filing date on the Customer Dispute Form. The administrative decision may rescind, modify or affirm the prior Notice of Violation, service termination or other decision or notice issued by the TUA Business Office or other TUA personnel. A copy of the written decision shall be maintained in TUA records as well as provided to the customer.

(d) Nothing herein shall relieve the customer of paying any fees for water services or other fines, rates, fees or charges while the matter is pending resolution.

Section 6.6 Appeal of Utility Director Decision

(a) Any customer who seeks to challenge the Utility Director's decision issued pursuant to Section 6.5(c) shall, within ten (10) days of receiving the Director's decision or notice of penalty, file a written appeal with the TUA on an official TUA Request for Appeal Form (available in the TUA Business Office). In the appeal, the customer must document the specific action of TUA which is appealed, the specific grounds by which the customer contends the TUA action is in error, as well as the remedy the customer seeks. Upon receiving a customer's appeal, the Utility Director shall schedule a hearing on the matter before the TUA Hearing Board. Once an appeal is made by the customer, the TUA shall not terminate service until the matter is resolved, unless there exist grounds for immediate termination pursuant to Section 6.2(a).

(b) TUA shall give the customer five (5) days' prior written notice of the hearing date, as indicated by post-mark on the written notice, with such hearing date not more than fifteen (15) days after the receipt of the request for appeal. The Hearing Board shall conduct the hearing in a manner it deems best suited to protect the interests of the parties and shall provide for a written transcript or tape recording of the hearing. Formal rules of procedure or of evidence shall not be required. The customer may be represented by legal counsel licensed to practice law on the Reservation and TUA may be represented by legal counsel appointed by the Tribe.

(c) After hearing all evidence and the testimony of the parties, the Hearing Board will have the authority to enter an order overturning, modifying, or affirming the Utility Director's prior decision. The Hearing Board shall have no authority to require TUA to pay any amount, including attorneys' fees and other costs, other than a refund of amounts paid by the customer which were sought in the appeal.

(d) Nothing herein shall relieve the customer of paying any fees for water services or other fines, rates, fees or charges while the matter is pending resolution.

ARTICLE SEVEN: MISCELLANEOUS

Section 7.1 Sovereign Immunity Not Waived

As a subordinate Tribal governmental entity performing essential governmental services, TUA is entitled to the same immunity from suit as the Tribe, except as provided in this Code. Any claims against TUA shall be governed by Tribal law, including the White Mountain Apache Tribe Tort Claims Act. Except to the limited extent permitted and as applicable in Section 7.4, nothing in this Code shall be deemed to waive the sovereign immunity of the White Mountain Apache Tribe for any purpose.

Section 7.2 Severability Clause

If any provisions of this Code or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Code which can be given effect without the invalid provisions or application, and to this end the provisions of this Code are severable.

Section 7.3 Savings Clause

This Code does not affect rights and duties that matured, penalties that were incurred and proceedings that were commenced before its effective date.

Section 7.4 Jurisdiction

The White Mountain Apache Tribal Court shall have exclusive jurisdiction over all legal proceedings arising out of a customer dispute but only after exhaustion of administrative procedures before the TUA Hearing Board, as provided in Article Six, Section 6.6. The relief available under any such judicial proceeding shall be limited to the relief expressly authorized in Article Six, Section 6.6(c), except that the court may order payment of reasonable attorneys fees and costs of the prevailing party, not to exceed the amount of the award.