

After Recording, Return to:
WHITE BEAR ANKELE TANAKA & WALDRON
2154 East Commons Avenue, Suite 2000
Centennial, Colorado 80122

Resolution No. 2022-01

AMENDED AND RESTATED RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
KIOWA WATER AND WASTEWATER AUTHORITY

CONCERNING THE IMPOSITION OF VARIOUS FEES, RATES, PENALTIES AND
CHARGES FOR WATER AND SANITARY SEWER SERVICES AND FACILITIES

WHEREAS, Kiowa Water and Wastewater Authority (the “**Authority**”) is a body corporate and a political subdivision of the State of Colorado; and

WHEREAS, pursuant to § 29-1-204.2(3)(j), C.R.S. the Board of Directors of the Authority (the “**Board**”) is authorized to fix, maintain and revise fees, rates, and charges for the functions, services or facilities provided by the Authority, and pursuant to that certain Amended and Restated Kiowa Water and Wastewater Authority Establishing Agreement, dated June 4, 2013 (the “**Establishing Agreement**”), has the authority to fix and from time to time to increase fees, rates, tolls, penalties, or charges for services, programs or facilities furnished by the Authority (collectively, the “**Fees**”) to properties within the Authority’s Service Area (as defined by the Establishing Agreement) (each property individually referred to herein as the “**Property**”); and

WHEREAS, the Board has determined it to be in the best interests of the Authority, and the property owners, taxpayers, and residents of the Authority, to acquire, construct, operate and maintain certain amenities and facilities benefitting property owners, taxpayers, and residents within the Authority, which amenities and facilities generally include water and sanitary sewer improvements, facilities, appurtenances and rights-of-way (collectively, the “**Facilities**”); and

WHEREAS, the Board has determined it to be in the best interests of the Authority, and the property owners and residents of the Authority, to provide certain water and sanitary sewer services to the property owners, taxpayers, and residents of the District, and the general public, including without the boundaries of the Authority (collectively, the “**Services**”); and

WHEREAS, the Authority incurs certain direct and indirect costs associated with the acquisition, construction, installation, replacement, improvement, and reconstruction of the Facilities, as necessary, inclusive of the costs of utilities and capital replacement costs (collectively, the “**Facility Costs**”) in order that the Facilities may be properly provided; and

WHEREAS, the Authority incurs certain direct and indirect costs associated with the provision of the Services in order that the Services may be properly provided, the property within and without the Authority maintained, and that the health, safety and welfare of the Authority, its users and its inhabitants may be safeguarded (collectively, the “**Service Costs**”); and

WHEREAS, the establishment and continuation of fair and equitable fees and charges (collectively, the “**Operations Fees**”) to provide a source of funding to pay for the Service Costs, (collectively, the “**Operations Costs**”), which Operations Costs are generally attributable to the persons and/or properties subject to such Operations Fees, is necessary to provide for the common good and for the prosperity and general welfare of the property owners, taxpayers, and residents within the, Authority its inhabitants and the general public, and for the orderly and uniform administration of the Authority’s affairs; and

WHEREAS, the establishment of fair and equitable fees (the “**Tap Fees**”) to provide a source of funding to pay for the initial capital direct and indirect costs associated with the construction, installation, reconstruction, and acquisition of the Facilities (the “**Capital Facilities Costs**”), which Capital Facilities Costs are generally attributable to each Lot and Commercial Lot (defined below), is necessary to provide for the common good and for the prosperity and general welfare of the Authority, its users and its inhabitants; and

WHEREAS, the Authority finds that the Operations Fees and Capital Facilities Fee, as set forth in this Resolution, are reasonably related to the overall cost of providing the Facilities and Services and paying the Operations Costs and Capital Facilities Costs (the “**Costs**”), and that imposition thereof is necessary and appropriate; and

WHEREAS, the Board adopted Resolution No. 2014-1, a Resolution Regarding Water and Sewer User Fees on December 11, 2014, Resolution No. 2015-04, a Resolution regarding Water and Sewer Tap Fees on July 22, 2015, Resolution No. 2018-03, a Resolution regarding Water and Sewer Tap Fees on November 13, 2018 (the “**Prior Fee Resolutions**”), and the Board desires to adopt this Resolution to amend and restate the Prior Fee Resolutions in their entirety. Any fees, rates, tolls, penalties or charges due under the Prior Fee Resolutions, to the extent outstanding and unpaid, shall remain in effect until fully paid and shall not be eliminated hereby.

NOW, THEREFORE, be it resolved by the Board as follows:

1. DEFINITIONS. Except as otherwise expressly provided or where the context indicates otherwise, the following capitalized terms shall have the respective meanings set forth below:

“**Apartment Unit**” means a unit within an apartment building which unit is held for lease or rent for residential occupancy and for which a final certificate of occupancy has been issued.

“**Authority Boundaries**” means the legal boundaries of the Authority, as well as properties outside of the Authority’s legal boundaries which receive service from the Authority, all as more particularly set forth in the map attached hereto as **Exhibit B** and incorporated herein by this reference.

“**Commercial Lot**” means each Lot, regardless of the number of Commercial Units thereon, within the Authority Boundaries that is used and/or zoned for general commercial, industrial, office, retail or other non-residential uses.

“**Commercial Unit**” means each office space, unit, building or other structure within the Authority Boundaries that is used and/or zoned for general commercial, industrial, office, retail, or other non-residential uses.

“**Due Date**” means the date by which the Operations Fees and Tap Fees are due, which Due Date is reflected on the Schedule of Fees.

“**End User**” means any third-party homeowner or tenant of any homeowner occupying or intending to occupy a Residential Unit and any third party owner or tenant occupying or intending to occupy a Commercial Unit. End User specifically excludes a tenant occupying an Apartment Unit.

“**Fee Schedule**” or “**Schedule of Fees and Charges**” means the schedule of fees set forth in **Exhibit A**, attached hereto and incorporated herein by this reference, until and unless otherwise amended and/or repealed.

“**Lot**” means each parcel of land established by a recorded final subdivision plat and which is located within the Authority Boundaries.

“**Property Owner**” shall include all owners of real property, customers, users, residents, leaseholders and other recipients of Authority services.

“**Residential Unit**” means each residential dwelling unit (including, without limitation, condominiums, townhomes, and any other attached dwelling unit and detached single family dwelling units) located on a Lot which has been Transferred to an End User.

“**Transfer**” or “**Transferred**” shall include a sale, conveyance or transfer by deed, instrument, writing, lease or any other documents or otherwise by which real property is sold, granted, let, assigned, transferred, exchanged or otherwise vested in an End User.

“**Vacant Lot**” means each parcel of land within the Authority established by a recorded final subdivision plat, but specifically excluding any parcel upon which one or more Residential Units, Apartment Units or Commercial Units is/are situated and specifically excluding any parcel owned by the Authority.

2. OPERATIONS FEES.

a. The Board has determined, and does hereby determine, that it is in the best interests of the Authority and its respective residents, users and property owners and the general public to impose, and does hereby impose the Operations Fees set forth in the Schedule of Fees and Charges to fund the Operations Costs. The Operations Fees are hereby established and imposed in an amount as set forth by the Authority from time to time pursuant to the “Fee Schedule” and shall constitute the rate in effect until such schedule is amended or repealed. The Fee Schedule is set forth in **Exhibit A**, attached hereto and incorporated herein by this reference. The Operations Fee shall consist of a recurring payments (the “**Recurring Payments**”) and a

separate payment imposed on the Transfer of a Residential Unit to an End User (the “**Transfer Payment**”), which together shall comprise the Operations Fees.

b. Transfer Payment. The Fees shall include a separate payment imposed on transfers of a Residential Unit (the “**Transfer Payment**”). The Transfer Payment shall be imposed on all Transfers of a Residential Unit and Commercial Unit by an End User. The Transfer Payment shall not apply to any of the following, except to the extent the Authority determines that such exception is being undertaken for the purpose of improperly avoiding the Operations Fees:

i. Any Transfer wherein the United States, or any agency or instrumentality thereof, the State of Colorado, any county, city and county, municipality, district or other political subdivisions of this State, is either the grantor or the grantee.

ii. Any Transfer by document, decree or agreement partitioning, terminating or evidencing termination of a joint tenancy, tenancy in common or other co-ownership; however, if additional consideration or value is paid in connection with such partition or termination the Transfer Payment shall apply and be based upon such additional consideration.

iii. Any Transfer of title or change of interest in real property by reason of death, pursuant to a will, the law of descent and distribution, or otherwise.

iv. Any Transfer made and delivered without consideration for the purpose of: confirming, correcting, modifying or supplementing a Transfer previously made; making minor boundary adjustments; removing clouds of title; or granting easements, rights-of-way or licenses.

v. Any decree or order of a court of record quieting, determining or resting title, except for a decree of foreclosure.

vi. Transfers to secure a debt or other obligation, or releases other than by foreclosure, which is security for a debt or other obligation.

vii. Transfers pursuant to a decree or separation of divorce.

d. The revenues generated by the Operations Fee will be accounted for separately from other revenues of the District. The Operations Fee revenue will be used solely for the purpose of paying Operations Costs, and may not be used by the District to pay for general administrative costs of the District.

e. The Board has determined, and does hereby determine, that the Operations Fees and Tap Fees are calculated to defray the cost of funding the Costs and reasonably distribute the burden of defraying the Costs.

3. WATER TAP FEE/SEWER TAP FEE/IRRIGATION TAP FEE. The Tap Fees are hereby established and imposed upon each Residential Unit and each Commercial Unit within the Authority Boundaries in the amounts set forth in the Schedule of Fees and Charges.

4. LATE FEES AND INTEREST. Pursuant to § 29-1-1102(3), C.R.S., any Operations Fees and Tap Fee not paid in full within fifteen (15) days after the scheduled Due Date will be assessed a late fee in the amount of Fifteen Dollars (\$15.00) or up to five percent (5%) per month, or fraction thereof, not to exceed a total of twenty-five percent (25%) of the amount due. Interest will also accrue on any outstanding Operations Fees and Tap Fee, exclusive of assessed late fees, penalties, interest and any other costs of collection, specially including, but not limited, to attorney fees, at the rate of 18% per annum, pursuant to § 29-1-1102(7), C.R.S. The Authority may institute such remedies and collection procedures as authorized under Colorado law, including, but not limited to, foreclosure of its perpetual lien. The defaulting property owner shall pay all fees and costs, specifically including, but not limited to, attorneys' fees and costs and costs associated with the collection of delinquent fees, incurred by the Authority and/or its consultants in connection with the foregoing.

5. PAYMENT. Payment for all fees, rates, tolls, penalties, charges, interest and attorney fees shall be made by check or equivalent form acceptable to the Authority, made payable to "Kiowa Water and Wastewater Authority" and sent to the address indicated on the Fee Schedule. The Authority may change the payment address from time to time and such change shall not require an amendment to this Resolution.

6. LIEN. The fees imposed hereunder, together with any and all late fees, interest, penalties and costs of collection, shall, until paid, constitute a statutory, perpetual lien on and against the property served, and any such lien may be foreclosed in the manner provided by the laws of the State of Colorado for the foreclosure of mechanic's liens, pursuant to § 24-1-204.2(3)(l), C.R.S. and Article 106.2.v. of the Establishing Agreement. Said lien may be foreclosed at such time as the Authority, in its sole discretion, may determine. The lien shall be perpetual in nature (as defined by the laws of the State of Colorado) on the property and shall run with the land. This Resolution shall be recorded in the offices of the Clerk and Recorder of Elbert County, Colorado.

7. SHUT OFF OR DISCONTINUATION OF SERVICE. Pursuant to § 24-1-204.2(3)(l), C.R.S. and Article 106.2.v. of the Establishing Agreement, the Board may elect to shut off or discontinue water and/or sewer service for delinquencies. The shut off or discontinuation of service may be in addition to or in lieu of any procedures set forth in this Resolution in the Board's sole discretion. The fees associated with the shut off or discontinuation of service as set forth in the Schedule of Fees and Charges.

8. SEVERABILITY. If any portion of this Resolution is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion of this Resolution, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Resolution a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.


9. THE PROPERTY. This Resolution shall apply to all property within the Authority Boundaries, including, but not limited to, the property set forth in **Exhibit B**, attached hereto and incorporated herein by this reference, and any additional property included into the Authority after the date of this Resolution.

10. EFFECTIVE DATE. This Resolution shall become effective as of July 12, 2022

[Remainder of Page Intentionally Left Blank. Signature Page to Follow].

ADOPTED this 12th day of July, 2022.

KIOWA WATER AND WASTEWATER
AUTHORITY, a quasi-municipal corporation and
political subdivision of the State of Colorado



Officer of the Authority

ATTEST:

Tasha Chavarria

*[Signature page to Resolution Concerning the Imposition of Various Fees and Charges for
Water and Sanitary Sewer Services and Facilities]*

EXHIBIT A
KIOWA WATER AND WASTEWATER AUTHORITY
Schedule of Fees and Charges
Effective July 12, 2022

WATER TAP FEE

¾" tap	\$6,500.00
1" tap	\$9,500.00
1½" tap	\$13,000.00
2" tap	\$20,000.00
3" tap or larger – To be determined by the Board on a rational and reasonable basis related to the cost of providing the service.	
Out of Authority - To be determined by the Board on a rational and reasonable basis related to the cost of providing the service.	

SEWER TAP FEE

¾" tap	\$6,500.00
1" tap	\$9,500.00
1½" tap	\$13,000.00
2" tap	\$20,000.00
3" tap or larger – To be determined by the Board on a rational and reasonable basis related to the cost of providing the service.	
Out of Authority - To be determined by the Board on a rational and reasonable basis related to the cost of providing the service.	

IRRIGATION TAP FEE

¾" tap	\$6,500.00
1" tap	\$9,500.00
1½" tap	\$13,000.00
2" tap	\$20,000.00
3" tap or larger – To be determined by the Board on a rational and reasonable basis related to the cost of providing the service.	
Out of Authority - To be determined by the Board on a rational and reasonable basis related to the cost of providing the service.	
Any installation of irrigation only taps and meters will be at the customers cost.	

TAP INSPECTION FEE

\$150

This fee is intended to cover the cost of the Authority's inspection of the physical tap and of the Customer's Service Line, entering the tap location on the Authority's as-built drawing set, and other ancillary services needed in connection with a new tap.

MONTHLY WATER SERVICE CHARGES

Water is billed per gallon used, with rates based on the amount of water used as shown in the tables below.

Residential Rates

Base Rate (< 3,000 gallons)	\$54.51 flat rate
3,000 – 5,000 gallons	\$2.85 per 1,000 gals.
5,000 – 15,000 gallons	\$3.12 per 1,000 gals.
15,000 – 26,000 gallons	\$3.70 per 1,000 gals.
26,000 – 38,000 gallons	\$4.83 per 1,000 gals.
38,000 + gallons	\$5.98 per 1,000 gals.

Business and Commercial Rates

Base Rate (< 3,000 gallons)	\$52.92 flat rate
3,000 – 5,000 gallons	\$2.76 per 1,000 gals.
5,000 – 15,000 gallons	\$3.03 per 1,000 gals.
15,000 – 26,000 gallons	\$3.59 per 1,000 gals.
26,000 – 38,000 gallons	\$4.69 per 1,000 gals.
38,000 + gallons	\$5.80 per 1,000 gals.

Government-Owned Property Rates (Other than Schools)

Base Rate (< 3,000 gallons)	\$64.05 flat rate
3,000 – 5,000 gallons	\$3.35 per 1,000 gals.
5,000 – 15,000 gallons	\$3.68 per 1,000 gals.
15,000 – 26,000 gallons	\$4.35 per 1,000 gals.
26,000 – 38,000 gallons	\$5.68 per 1,000 gals.
38,000 + gallons	\$7.02 per 1,000 gals.

School Property Rates

Base Rate (< 3,000 gallons)	\$64.05 flat rate
3,000 – 5,000 gallons	\$3.35 per 1,000 gals.
5,000 – 15,000 gallons	\$3.68 per 1,000 gals.
15,000 – 26,000 gallons	\$4.35 per 1,000 gals.
26,000 – 38,000 gallons	\$5.68 per 1,000 gals.
38,000 + gallons	\$7.02 per 1,000 gals.

MONTHLY SEWER SERVICE CHARGES

Residential Rates

Base Rate	\$48.63 flat rate
Water Usage Sewer Fee	\$2.19 per 1,000 gallons metered water usage in excess of 4,000 gallons

Business and Commercial Rates

Base Rate \$69.46 flat rate
Water Usage Sewer Fee \$3.19 per 1,000 gallons metered water usage in excess of 10,000 gallons

Government-Owned Property Rates (Other than Schools)

Base Rate \$76.41 flat rate
Water Usage Sewer Fee \$3.51 per 1,000 gallons metered water usage in excess of 10,000 gallons

School Property Rates

Base Rate \$72.24 flat rate
Water Usage Sewer Fee \$3.32 per 1,000 gallons metered water usage in excess of 10,000 gallons

LATE CHARGE \$15.00

INSPECTION FEES

Service Line / Meter Pit Inspection \$180.00
Meter Installation \$180.00
Other Inspection \$180.00

RE-INSPECTION FEE OR RETURN VISIT FEE \$180.00

SERVICE METER DEPOSIT

Upon the application for water service, each property owner shall be required to deposit as a meter deposit a sum equivalent to two (2) months of the Town's minimum water user fee as established in the Monthly Water and Service Charges.

METER COST Current cost to District

WATER TURN ON/TURN OFF \$90.00 each on/off
(Customer Requested)

MISCELLANEOUS FEES:

IRRIGATION ONLY WATER USAGE FEE

Authority shall make irrigation only water taps available for purchase. Irrigation only taps are not subject to a monthly minimum service charge and will not include any sewer charges. Water usage will be billed at the Monthly Water Services Charges set forth above.

BULK/FIRE HYDRANT FEES

Meter Assembly Rental Deposit \$3,000.00 (refundable)
Meter Rental Fee \$50 per day

Bulk Rate \$20.00 / 1,000 gallons

TRANSFER OF SERVICE FEE

\$175.00/occurrence

Fee due and owing upon transfer of account from one responsible party and/or account holder to another.

PLAN REVIEW FEES

Actual Time and expenses incurred by Authority \$1,500.00 / minimum fee

PENALTY FEES / FINES:

Excavation During Non-Excavation Period - Bond \$5,000.00

December 1 through March 31 of each year. The Authority may adjust the no-excavation period based on actual weather conditions. The bond is security for repairs which may be required due to damage to the Authority's existing facilities.

Installation of any non-metered device \$2,000.00 / occurrence

Installation of any device (i.e., "jumper") to allow for circumvention of the Authority's monitoring or delivery systems shall constitute unauthorized tampering and the use of the Authority water system shall be subject to a penalty fee. Such fines shall, until paid, constitute a lien upon the subject property.

Occupation of Building Prior to Meter Set \$1,000.00

Repair of Broken or Damaged Water Meters, Meter Pits and Curb Stop Boxes 100%¹

Plus any management and attorneys' fees incurred to collect associated costs.

Unauthorized Tampering with District systems or meters: \$2,000.00 / incident

Plus actual cost of damage, expense, and loss.

Unauthorized Connection Fee 2 x the current water usage rate

Plus actual cost of damage, expense, and loss, legal fees, and any other costs incurred in the filing of criminal charges.

PAYMENTS: Payment for each fee shall be made payable to the Kiowa Water and Wastewater Authority and sent to the following address for receipt by the Due Date:

¹ A) If a Customer damages or breaks their water meter, the Customer shall pay 100% of the associated costs for the repair and/or replacement of the water meters, meter pits and curb stop boxes.

B) The District will notify the Customer of the broken or damaged water meters, meter pits and curb stop boxes and the costs of repair and/or replacement. A copy of the invoice for the work will be included with the notice. The Customer will reimburse the costs to the District within thirty (30) days of receipt of the notice.

C) If reimbursement is not received by the District within thirty (30) days of the notice, the costs will be added as a charge to the Customer's water bill for the next billing cycle.

EXHIBIT B

KIOWA WATER AND WASTEWATER AUTHORITY

Authority Boundaries

