

**ORDINANCE NO. 1995-1
VILLAGE OF MAGDALENA
AMENDED 2009-02
AMENDED 2017-01**

AN ORDINANCE ESTABLISHING A JOINT UTILITY SERVICE; ESTABLISHING A VILLAGE SERVICE FOR THE COLLECTION AND DISPOSAL OF TRASH; AMENDING ALL PREVIOUS ORDINANCES RELATING TO WATER AND SEWER SERVICE; PROVIDING FOR THE IMPOSITION AND COLLECTION OF FEES, CONNECTION CHARGES, UTILITY RATES; DEFINING APPLICATION AND SERVICE POLICIES; AND PRESCRIBING PENALTIES FOR VIOLATIONS OF ITS PROVISIONS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE VILLAGE OF MAGDALENA, NEW MEXICO, THAT:

SECTION ONE – JOINT UTILITY DECLARED.

It is necessary and for the best interests of the Village of Magdalena and the inhabitants thereof that the Village-owned water system, sewer system, and trash service constitute a joint public utility system designated as the *Village of Magdalena's Joint Utility System* and be operated and maintained as such.

SECTION TWO – SEPARABILITY.

If any section, paragraph, clause or provision of this ordinance shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

SECTION THREE – NONSEPARABLE CHARGES AND SERVICE.

(a) Except as otherwise provided in this ordinance, the water, sewer, and trash services of the Village are nonseparable services; and the request for the furnishing of one service shall mean the charge and collection, whether used or not, of all other services, such services to appear on the same monthly statement. Similarly, a request for the termination of one such utility service is a request for the termination of all such utility services, and a termination of utility service for a portion of a structure is declared to be termination of utility services for all of the structure.

(b) Should one (1) or more of the utility services not be used when all of the nonseparable services are available, the minimum rates as set forth in the applicable rate sections shall be charged and collected with the charges for the utilities used.

(c) When it is not otherwise possible for the Village to furnish all of the nonseparable services, the furnishing of separate utility services may be permitted provided proper application is made with the Village utility office and approval has been granted by the Mayor and confirmed by the Board of Trustees. Under these circumstances, the Village will charge only for the services available.

However, no sewer service will be provided unless the unit or multiunit is on the Village water system.

SECTION FOUR - UTILITY SERVICE APPLICATION: DEPOSIT REQUIREMENTS.

(a) Before utility services shall be supplied to any person, firm or corporation application for the use of such utility service must be made at the Village utility office on printed forms furnished for that purpose. Every such application must be signed by the owner of such property to be benefited or by his agent and must state fully and truly the purposes for which the utility services are to be used, the name and address of the person, firm or corporation to be billed for such service, the description of lot and block or tract, name of the street on which property fronts and must agree to the rules and regulations established from time to time as a condition for the use of utility service. Refer to Section 10 for review of owner's financial responsibility.

(b) The application shall constitute a contract on the part of the Village of Magdalena to furnish utility services within the Village limits or when applicable, within the Existing Service Area (ESA) and on the part of the applicant to pay the stipulated rates at the time and in the manner provided for in this ordinance, reserving to the Village of Magdalena the right to enforce and collect rates and penalties in the manner provided for in the utility ordinance; to temporarily discontinue service at any time without notice to the consumer for maintenance, repair, conservation or emergency; and further to provide that the utility department of the Village of Magdalena, or the officials or employees thereof: shall not be responsible for any damages by water or otherwise resulting from defective plumbing, broken or faulty service, or condition of the water itself: or any substance that may be mixed with, or be in the water, as delivered to the consumer.

(c) Application for non-standard utility service shall be made with the Village Clerk for the following exceptions to standard utility service:

- (1) Residents living outside of the ESA but requesting trash collection service.
- (2) Requests for multiple trash collection trips.
- (3) Requests for additional or larger trash bins.
- (4) Requests for any non-standard service.

Application Procedure for non-standard utility service: Application must be made with the Village Clerk. If no new construction is required; the Mayor can approve or deny the application. If approved by the Mayor, service can be provided on a temporary basis pending presentation and approval of the application at the next regularly scheduled meeting of the Board of Trustees. All rates and conditions of service provided in this utility ordinance apply unless otherwise specified by mutual agreement and in writing. If the Mayor's decision is confirmed by the Board of Trustees, service continues. If not, service is terminated and a final bill for the term of service is rendered. If construction services are required, no temporary service can be provided and approval must come from the Mayor and the Board of Trustees. All applications and related final actions will be kept on file at Village utility office for future reference.

(d) Each application for utility service supplied to any person, firm or corporation by the Village of Magdalena will require an application fee as set forth in APPENDIX A and a deposit sufficient to cover two months of utility usage. Two months is used because that is the length of time a unit or multiunit can use utility service before being disconnected for non-payment (from the first of one

month until the 25th of the following month). Refer to Section 8 for details. A minimum deposit is set forth in APPENDIX A which is based on average consumption figures for existing customers. That is the amount that will be used for new accounts with no usage history. Meter deposits will be refunded to customers in good standing for five (5) years.

Existing utility customers of the Village of Magdalena utility services will not be required to place additional deposit money with the Village provided their account has a good payment history. A good payment history is defined as an account that has not been issued more than two late payment notices within a two year period and has not been disconnected for non-payment within two years. If an account presents a risk to the Village of Magdalena's Joint Utility System due to bad payment history, then it is subject to additional deposit requirement up to an amount sufficient to cover two months total utility billing based on a twelve month average of that account; but not less than the current minimum stated in APPENDIX A Any account that has been disconnected for non-payment will be considered to have bad payment history and will be required to meet the current deposit requirement in addition to paying the amount of past due usage for which the account was disconnected.

All utility deposits shall be retained by the Village to be applied against unpaid charges for utility service. Upon payment in full of all charges for utility service and discontinuance of utility service, such deposit or the balance thereof after application to unpaid charges, shall be refunded.

SECTION FIVE - DISCONTINUANCE OF SERVICE.

A. Written request must be submitted to the Village Clerk by the Applicant of Record, his designee, or the designated responsible party on the account to discontinue Village utility service. The written request must state the date service is to be discontinued and the address to send the final bill or refund of deposit. There is no fee for voluntary discontinuance of utility service provided a written request is made.

B. Trash service may be discontinued for customers if unacceptable waste, as defined by Section 18 of this Ordinance is deposited in bins as such waste, particularly infectious waste, places Village employees in harm's way. Improper disposal of such waste may constitute a felony under NMSA 1978, Section 74-9-37(B).

SECTION SIX - VILLAGE OF MAGDALENA RESPONSIBILITIES.

(a) The Village shall be responsible for the installation of a secondary water line from the water main to a stopcock located just within the customer's property line next to the street curb and for installation of a secondary sewer line from the customer's property line to the sewer main, but nothing herein shall obligate the Village to lay any service line for a distance of more than twenty (20) feet. Extensions beyond twenty (20) feet can be made at the expense of the applicant based on the actual cost of the extension beyond twenty (20) feet.

(b) The Village shall be responsible for the maintenance, repair and clearing of all water and sewer mains.

- i) If blockage occurs, the customer will notify the Village immediately. The Village will determine whether the blockage is on the Village's or the customer's side;

- ii) **The Village will not be responsible for damage caused or invoices charged by a plumber hired by the customer when the blockage is on the Village's side. The Village will arrange for and approve plumbing when it is determined by Village staff that the blockage is on the Village's side.**

(c) The Village shall be responsible for the installation, maintenance, and repair of the meter box and curbside stopcock.

(d) The Village shall be responsible for the installation, maintenance, repair, inspection, calibration for accuracy, and replacement of all water meters, as well as all service lines from the meter to the main.

- i) **each customer may request one (1) free Field Test on their meter per year;**
- ii) **the second Field Test will incur a \$25.00 charge, unless the second test determines that the meter is defective;**
- iii) **if the customer requests a new meter that has passed Field Test(s), a \$150.00 charge will be incurred for the new meter.**

(e) The Village shall be responsible for meeting all federal and state regulatory requirements for the proper maintenance and management of its utility service systems.

(f) Every attempt will be made to notify customers of unusually high usage once it comes to the Village's attention.

(g) The Village shall be responsible for trash collection service as follows:

- (1) Prompt, dependable collection as scheduled each week**
- (2) Clean up of employee-caused collection spills**
- (3) Routine maintenance, repair, and inventory of trash bins**
- (4) Prompt customer notification of and reason for failure to collect trash**
- (5) Proper sanitation of recycled trash bins prior to reissuing**

SECTION SEVEN - UTILITY CUSTOMER RESPONSIBILITIES.

(a) The customer shall be responsible for the installation, maintenance and repair of all water service lines between the meter and the point of use and for the installation, maintenance and repair of all plumbing fixtures, and shall provide that an emergency valve be placed upon such line between the meter and the customer's premises. For service lines installed prior to enactment of the requirement, if such emergency valve has not been installed, it shall be installed prior to any subsequent reconnection. A one-time credit of ten dollars (\$10) is offered to any customer with existing service prior to enactment of this requirement who voluntarily installs an emergency valve on their water service line in order to comply with this requirement. Verification of the new installation must be made by Village utility personnel.

(b) The customer shall be responsible for the installation, maintenance, repair, and clearing of all

sewer service lines between point of use and up to the sewer main line and for the installation, maintenance and repair of all plumbing fixtures. Each sewer service is required to have a clean-out. For service lines installed prior to enactment of this requirement, if such clean-out has not been installed, it shall be installed prior to any subsequent reconnection. A one-time credit of dollars (\$10) is offered to any customer with existing service prior to enactment of this requirement who voluntarily installs a clean-out on their sewer service line in order to comply with this requirement. Verification of the new installation must be made by Village utility personnel.

(c) The customer shall be responsible to make their Village-provided trash bin accessible for trash collection. All trash bins shall be placed at their designated collection curb site no later than 8:00 am on the day scheduled for trash collection in their area. Customers whose residence is accessible by cross streets may choose the street curb which is most convenient for them, but once designated, no change will be made without written request and approval. The customer shall be responsible for keeping all trash picked up from around the designated trash collection site.

(d) The customer shall be responsible for the care and cleaning of their Village provided trash bin. This includes the periodic washing of the trash bin, placing all trash in sealed trash bags before depositing it in the trash bin to promote cleanliness and prevent possible health hazards, and not depositing any toxic or hazardous waste or any hot or flammable objects in the trash bin. Cardboard items may be placed in the trash bin if torn or folded to fit with the lid closed without being put in a trash bag first. All trash is to be placed inside the Village-provided trash bin for collection, and the bins not to be filled to overflowing. If one trash bin is not sufficient, the customer may request an extra bin or bins for an additional charge as described in APPENDIX A. The Village will not collect any trash not placed in a Village-provided trash bin. Failure to comply with proper care and maintenance of a Village-provided trash bin may result in a written notice from the Village utility office citing the steps necessary to comply' and if no action is taken to correct the noncompliance, charges may be assessed as prescribed in APPENDIX A.

SECTION EIGHT - MONTHLY SERVICE RATES; BILLING; DUE DATE; DELINQUENCY.

Monthly service rates for water, sewer, and trash service are set forth in APPENDIX A. These rates will become effective on the first of the month following the enactment of this joint utility ordinance. Monthly service rates may be reviewed annually, but in no case less than bi-annually on the anniversary date of enactment, to insure that the rates continue to be a reflection of the cost of providing reliable and consistent service. APPENDIX A may be amended without changing any other provision of this joint utility ordinance.

The New Mexico Governmental Gross Receipts Tax and other taxes, if applicable, shall be added to the rates and charges established in APPENDIX A

Bills for water, sewer, and trash service supplied by the Village Joint Utility System shall be sent to account holders on or about the first (1st) day of the month and shall be due upon receipt or the 20th day of the month billed.

Bills not paid in full by the 21st of the month shall be considered delinquent, and a past due penalty as prescribed in APPENDIX A shall be added to the unpaid balance. A notice shall be mailed to the customer citing the delinquent bill and penalty and warning that, if any account remains unpaid fifteen (15) days following the date due and payable, utility service may be shut off. The notice shall

also contain the address and phone number of the Village utility office and the name of the Village Clerk or other employee designated to investigate complaints, resolve disputed billing and negotiate delayed payments, if justified.

No service will be disconnected for non-payment on a Friday or the day preceding a holiday. The utility customer will always have one working day following disconnect to pay the outstanding charges and have service restored.

Utility service shall not be resumed for that customer unless payment has been received of the unpaid balance plus a disconnection for non-payment charge as set forth in APPENDIX A. Other charges may apply such as additional deposit as described in Section 4. There will be no additional charge for reconnection by the same customer of record provided no tampering has occurred.

Any attempt by the disconnected customer to reconnect to Village water service by tampering with the water meter, bypassing the meter or by any other unauthorized means of connection to water service shall be considered theft of service and shall be subject to penalty as prescribed in Section 25. In addition, a disconnect fee for each removal of bypass connection and any actual cost to repair damages to the utility system caused by the tampering must be paid.

Any build-up of trash during the period of disconnection of service shall be billed according to the number of additional trips necessary to collect and remove the trash. If no additional trips are necessary, then no additional charges will be rendered.

The Village may use collection agencies to collect delinquencies, and may report such delinquencies to credit bureaus.

SECTION NINE - ASSISTANCE PROGRAM FOR LOW-INCOME FAMILIES TO PAY FOR UTILITY BILLS.

In order to reduce the financial hardship on low-income persons that this joint utility ordinance may present, the Village of Magdalena would like to implement an Assistance Fund as approved by the state Legislature in 1993 entitled the Low Income Water, Sewer and Solid Waste Service Assistance Act. Revenues for the Assistance Fund would be derived from voluntary surcharges on utility customers' monthly bills, donations, pledge drives, or other community fund-raising events. The number of low-income persons which could be assisted each month and the level of assistance would be dependent upon the amount of balances in the Assistance Fund. A maximum monthly subsidy amount as described in Appendix A would be available to those who qualify. The customer would be responsible for paying charges above the subsidized amount. If the Assistance Fund does not have sufficient balances to pay all of the maximum subsidy, then each eligible customer would only receive a pro-rata share of the subsidy and the customer would be responsible to pay the rest of the monthly utility bill. No free service or reduced charges would be provided by the Village of Magdalena. The only money available for subsidy would be that which was contributed on a volunteer basis from the community. Assistance Program Qualification Policy is defined in APPENDIX B.

SECTION TEN - FINANCIAL RESPONSIBILITY FOR SERVICE USED.

Customers whose names appear on utility accounts shall be billed monthly for all water metered since the previous monthly reading, whether put to constructive use or lost through leakage on customer service lines. An exception can be made one time per customer for excessive usage prior to detection of leakage on customer service line. The adjustment is available only on the first months bill showing high usage and only if the customer makes written request for such adjustment. The adjustment will be made by averaging the current usage and the previous two months usage on an account with less than a twelve month history, or the current usage plus two months average usage based on the previous twelve months actual usage.

Example:

High usage month 70,000 gallons of water
Average month usage 10,000 gallons of water

$70,000 + 10,000 + 10,000 = 90,000$ gallons of water
 $90,000/3 = 30,000$ gallons of water to be billed based on average

In the above example, 40,000 gallons of actual usage due to the customer service line leak would be adjusted off the bill. This adjustment is not available on the following month's bill. The customer must agree to repair their service line leak within a week and pay all usage registering through the meter until it is fixed in order to get the adjustment. The utility has the right to disconnect the service if the leak is sufficient to affect water pressure to other utility customers.

All rates and charges shall be due and payable regardless of whether the property owner or another customer is billed as designated on the Utility Service Application.

Uncollectible balances for final bill after disconnection of service and application of deposit that exceed 90 days shall be the responsibility of the owner regardless of owner designation of person, firm or corporation to be billed for such service on the Utility Service Application or of any agreement between the owner and occupant of unit or multiunit provided utility service by the Village of Magdalena.

All unpaid utility service, connection or other charges provided for in this ordinance are hereby declared to be a lien upon the property benefited; but such lien shall not be enforceable until a declaration of the lien claim is filed with the County Clerk; and such lien shall describe the property against which the lien is claimed, shall set forth the amount of the claim, and shall state the date of the service or connection.

SECTION ELEVEN - PRIVACY OF INFORMATION; ACCEPTING PAYMENTS.

No account billing information may be discussed by or with Village personnel outside the Village of Magdalena utility office. All payments are to be made either through the mail to the Village of Magdalena, P.O. Box 145, Magdalena, NM. 87825; in person at the Village of Magdalena utility office during regular office hours; in a designated Drop Box; or, by credit/debit card over the phone.

SECTION TWELVE - RETURNED CHECKS.

Upon receipt of a returned check, the Village staff will assess a Non-Sufficient Fund (NSF) Fee as prescribed in APPENDIX A and reverse payment credit on the customer account or accounts. The account is then subject to treatment for non-payment as if no payment had been received. Notice will be mailed to the customer of the failure of payment, the NSF fee, the outstanding balance due, and the date the service will be subject to disconnection for non-payment. The disconnection date will be on or around the twenty-fifth (25th) of the month following the due date, but not less than seven (7) days from the date the NSF notice will be mailed. Unless prior request not to do so has been made by the utility customer, the NSF check will be submitted to the Village bank for a second time. If the check is returned a second time, action will proceed as described in the NSF notice that will have already been mailed to the utility customer. If the check is good for payment, no further action will be taken. It is the responsibility of the utility customer to verify that the Village has received payment before the disconnect date stated in the NSF notice.

SECTION THIRTEEN - PAYMENT ARRANGEMENTS.

No more often than once in a two-year period, Payment Arrangements (PA) may be made on an outstanding account balance. The request for PA must be made with the Village Clerk who can approve PA on up to 50% of an outstanding account balance under \$1,000.00. PA on over 50% of the outstanding account balance under \$1,000.00 must be approved by the Mayor or his designee. If the amount owed is \$1,000.00 or more, PA must be made by the Board of Trustees. A PA can not reduce any portion of the outstanding balance, including returned check fees, disconnection fees, account deposits, or any other account charges. The Village Clerk can extend the outstanding account balance for a period of up to three months. Any period of time beyond three months must be approved by the Mayor or his designee. Payment arrangements made on the outstanding balance will be due with the next billing of monthly service charges, but will not extend the due date of the monthly service charges not included in the payment arrangement.

Example:

Outstanding balance due 1-20-95	\$60.00
Pay 50% prior to 1-20-95	<u>-30 00</u>
PA on balance of	\$30.00 for three payments of \$10.00 each

Monthly service charges due 2-20-95	\$20.00
1st payment on PA	<u>10 00</u>
Payment due prior to 2-20-95	\$30.00

Balance due on PA is \$20.00
Repeat for bills due on 3-20-95 and 4-20-95.

In the above example, if payment of at least \$30.00 is not received by 2-20-95, a disconnect notice will be mailed citing a disconnect date of 2-25-95. If the account has to be disconnected for non-payment of the monthly service charge plus the amount due on the P A, then the entire account balance becomes due prior to reconnection. The PA is voided.

The Payment Arrangement must be in writing and signed by the utility customer and the Village

Clerk or other designated Village employee. If approval by the Mayor was required, then the Mayor's signature will also be required.

SECTION FOURTEEN – INOPERATIVE METER.

In the event that the water meter is found to be inoperative, the next billing shall be based on usage registered as of the stoppage or upon the average monthly usage reading for that account for the prior twelve months, whichever is greater. In the event that the Village is unable to repair or replace the meter before the next monthly reading, billing for the subsequent month shall be based on the average usage reading for that account for the prior twelve months.

SECTION FIFTEEN – VILLAGE AUTHORITY TO RESTRICT WATER USE.

The Village Mayor or his designee reserves the right, in case of drought, lack of rainfall or other emergency, to forbid the use of water for irrigation, sprinkling or for any other use not necessary for the preservation of life; and the Village Council, in its discretion, may at any time, make such order by giving public notice within the Village. Any person, firm or corporation violating such order shall be subject to a first-offense charge as set forth in APPENDIX A, and double the first offense charge for each subsequent offense; and the water shall be turned off, and the same shall not be turned on again until all such charges and any unpaid balances are paid in full.

SECTION SIXTEEN – INDIVIDUAL UTILITY SERVICES.

Except as provided in Section 17, utility service is provided only for the owner's single-family residential unit, and no connection will be made to provide utility service to any building or structure other than the owner's single-family residential unit and related accessory structures. Each unit served shall be under separate ownership or control of the customer and shall be located on a separately owned tract of land unless otherwise authorized by the Village of Magdalena pursuant to exceptions in Section 17. All fees and/or charges for the initiation of utility services shall be paid by the person owning such unit(s) to be served before such service begins.

SECTION SEVENTEEN – EXCEPTION TO REQUIREMENT OF INDIVIDUAL UTILITY SERVICES.

(a) Multiunit residential and multiunit general service units which are under a single ownership may be furnished utility service from the Village through one (1) master water meter or sewer tap at the rates specified for multiunit.

(b) The Village Mayor may also, subject to review by the Village Council, upon determination that unnecessary expense and undue burden or other unreasonable difficulty would be caused by the requirement set forth in Section 16 that a single meter be required for each residential or general service unit, permit and direct that utility service be provided through one (1) or more water meters or sewer tap of adequate size installed by the Village and paid for by the user as provided in Section 16 to serve two (2) or more units.

(c) The Village of Magdalena may enter into separate contracts, notwithstanding Section 3 pertaining to nonseparable charges, and provide water service to separate meters for sprinkling and lawn watering if the customer can demonstrate that the installation of a separate meter will provide an equitable sewer service charge to such customer. Sprinkling meters shall be subject to periodic inspection by the Village.

(d) The Village Mayor may authorize utility service to separate water meters or sewer taps installed within mobile home parks as an exception to Section 16.

SECTION EIGHTEEN - TRASH & REFUSE COLLECTION AND DISPOSAL.

(a) **Acceptable Trash.** The Village of Magdalena shall pick up and dispose of any and all normal household trash which is properly placed in a sealed trash bag and placed in trash bins. Acceptable trash is defined in APPENDIX B.

(b) **Unacceptable Trash.** The Village of Magdalena will not pick up and dispose of any unacceptable trash such as old car bodies, hazardous waste, or infectious waste. Unacceptable trash is defined in APPENDIX B. For instructions on the proper disposal of these items, call the Village utility office.

(c) **Disposal of Ashes.** Ashes can be taken to the Transfer Station during normal business hours free of charge.

(d) **Village-provided Trash Bins.** Trash bins will be numbered and the numbers recorded for inventory purposes. Each customer shall be required to sign for their bins and thereby accept responsibility for said bin. (Customer responsibility does not include normal maintenance- See Section 7 on Responsibilities). If, during the course of normal wear & tear and between regular scheduled collections, a customer notices a faulty bin (bad wheels, handles, lid fastener, etc.) and wishes it replaced, the customer may call the Village utility office and request a replacement bin. A \$30.00 replacement charge will be owed for each replacement bin. The customer shall again be required to sign for the issue of the new bin. The defective bin shall then be replaced, as soon as is practical, with a bin of good working order.

(e) **Transfer Station.** The Transfer Station shall have operating hours as determined by the Village Council at which time the Village of Magdalena Joint Utility System customers may take items not suitable for curbside collection, but which the Transfer Station will accept. Such items are defined in APPENDIX B. For specific details, contact the Village utility office.

SECTION NINETEEN - INITIAL CONNECTION CHARGES - (TAP FEE).

In addition to meeting the utility service application and deposit requirements listed in Section 4, if new construction is required then the following will apply.

(a) Each applicant for water service connection shall pay a connection charge to cover indirect costs for tapping the water main, laying a secondary distribution line from the water main to a point just outside the applicant's property adjacent to the street curb and for the installation of the meter box, water meter and curbside stopcock.

(b) Each applicant for sewer service connection shall pay a connection charge to cover indirect costs for tapping into the sewer main.

(c) The Village of Magdalena shall not be held responsible to provide utility service that will require line extensions of more than twenty (20) feet from existing main lines or connections at a higher elevation than the elevation of existing storage facilities. Extensions that exceed the preceding description may be negotiated in the same manner as the application procedure for non-standard utility service described in Section 4.

SECTION TWENTY - RATES AND CONDITIONS OF SERVICE: UTILITY SERVICE TO SINGLE-FAMILY RESIDENTIAL UNITS LOCATED OUTSIDE THE VILLAGE OF MAGDALENA.

(a) *Service to single-family residential units located within the Existing Service Area (ESA).* The Village Mayor or his designee may enter into agreements to provide utility service to single-family residential units located outside of the Village limits but within the ESA. Such agreements shall be in writing and in such form as may be approved by the Village Attorney, and, unless otherwise directed by the Village Council, shall, among other things, require the owner of the property to be served to agree as conditions to the receipt of such utility service:

(1) To pay customer and capacity charges and volume charges at one hundred fifty (150) percent of the rate for single-family residential units within the Village limits (provision to apply even if the water meter or sewer tap is located within the Village limits but the use of the utility service occurs outside of the Village limits);

(2) That the property to be served shall be subject to a lien for payment of charges for any and all municipal services provided by the Village to the property;

(3) To the annexation of the property to be served by the Village of Magdalena at such time as the Village government may determine that the growth and expansion of the Village requires such annexation;

(4) To comply with all applicable ordinances, rules and regulations of the Village of Magdalena, including the provisions of this ordinance, pertaining to the providing of joint utility service;

(5) To furnish a bond or other security in such form as the Village may require to guarantee payment for utility services;

(6) To comply with all federal, state, county, or local land use regulations that may be applicable to the premises, including those of the Village of Magdalena;

(7) To pay in advance for any line extension required to serve the property pursuant to the rules and regulations of the Village of Magdalena and Section 19 of this joint utility ordinance;

(8) To provide any and all easements (which shall be dedicated to the Village of Magdalena and be in such form as the Village may require) as may be necessary to provide utility service to the

property to be served;

(9) That all lines, meters, and other facilities required to serve the premises shall meet or exceed village standards and specifications and shall be subject to Village installation and inspection procedures;

(10) That there shall be no obligation on the part of the Village to provide fire protection or other village services to the property to be served;

(11) That the user and owner of the property to be served shall be subject to the provisions of the Utility Ordinance which pertain to conservation and curtailment of water service in the event of drought, lack of rainfall or other emergency;

(12) That utility service is provided only for the owner's single-family residential unit and that no connection will be made to provide utility service to any building or structure other than the owner's single-family residential unit and related accessory structures;

(13) That failure of the utility user, or of the owner of the property to be served, to abide by the rules and regulations of the Village of Magdalena shall be cause for termination of utility service to the property;

(14) That the foregoing provisions shall be incorporated into the agreement as covenants which shall attach to and run with the land to be served.

(b) Service to single-family residential units located outside of the ESA. The Village Mayor or his designee may enter into agreements to provide utility service to single-family residential units located outside of the Village limits and outside the ESA only if a variance has been granted for such utility service by the Zoning Commission. Any such agreement shall be in writing, shall be approved by the Village Attorney, shall include all restrictions or conditions imposed by the Zoning Commission or the Village Council, shall require the owner of the property to be served, among other things, to agree to all of the conditions set forth in subsection (a) above, and further require the owner of the property to be served to agree:

(1) That there may not be adequate water pressure available to serve the premises and owner must therefore, at owner's expense, provide supplemental pumping, pressure and water storage facilities to be located on owner's premises;

(2) That the supply of water available to serve the premises may be severely limited or interrupted from time to time;

(3) That, in the event of water shortage or emergency, water users within the Village ESA shall be first served and that utility service available for the owner in such case may be severely limited or restricted;

(4) That the foregoing provisions shall be incorporated into the agreement as covenants which shall attach to and run with the land to be served.

SECTION TWENTY-ONE - EXTENSION OF UTILITY SERVICE OUTSIDE OF EXISTING SERVICE AREA (ESA).

(a) New utility service outside of the ESA shall be restricted to those zones for which current facilities are adequate to serve the additional demand, except in those instances where the Village shall determine that extraordinary circumstances exist and that the extension of municipal utility service beyond the boundaries of the ESA is in the best interests of the citizens of Magdalena.

(b) The boundaries of the ESA shall be reviewed periodically, and amended if necessary, to assure that ample amounts of serviceable land remain available for development;

(c) Future expansion by the Village within the boundaries of the ESA which is aimed at serving new areas or improving service to areas already serviced, shall be allowed only after finding that a need for the expansion exists and, in the case of new service, after the cost of providing new service, is weighed against revenues to be derived from new customers;

(d) Future annexation action by the Village shall be taken only after due consideration is given to the constraints of the water delivery system, sewer system, and trash collection service, in order to avoid annexing territory which lies beyond the boundaries of the ESA;

(e) The Village, in the reasonable exercise of its discretion, may grant a variance to the policy set forth in this section any may authorize utility service to single-family residential units beyond the ESA boundaries if the owner of the property to be served shall enter into a written agreement as required by Section 20 of the utility ordinance subject to the following restrictions:

(1) A variance shall not be granted for water service if the elevation of the property to be served is greater than the elevation of the Village water tank which serves the area;

(2) A variance shall not be granted if the distance from the premises to be served to a Village water or sewer line is greater than six hundred (600) feet;

(3) Customer-provided transmission lines outside of Village limits become Village property.

(f) The Village, in the granting of a variance pursuant to subsection (e) above, shall take the following factors, among others, into consideration:

(1) The proximity of the premises to be served to the Village limits;

(2) Benefits which may result to the Village, such as increased revenues, better water circulation, and the like;

(3) The ability of the Village to otherwise satisfy utility service requirements of other residents in the areas;

(4) Water pressure available and water pressure problems which may be encountered if the variance is granted;

(5) Sewage disposal capacity of existing system and whether such waste, refuse, or sewage proposed contains ingredients, chemicals or other matter which will not permit the proper, efficient, successful and continuous operation and functioning of the Village sewage disposal works in a continuous and efficient manner;

(6) The impact upon other residents in the area to be served;

(7) The density of development in the area for which service has been requested and the probability of future development in the area.

SECTION TWENTY-TWO - EXCEPTIONS TO RATES; LARGE USERS.

(a) Notwithstanding any other provision of this chapter, the Mayor, subject to the approval of the Village Council, may negotiate and establish separate utility rates and reasonable rate classifications for utility user associations i.e.: subdivisions, whose members are not individually metered by the Village and large commercial utility users.

(b) All such contracts shall be in writing, and all such contracts (except those entered into with other municipalities) which provide for utility usage outside of the Magdalena Village limits shall, among other things, unless for good cause waived by the Village Council, require that the utility user shall;

(1) Abide by all terms and conditions of any applicable Village ordinance, rule, or regulation which pertains to the providing of utility service;

(2) Require that a large commercial or other large user , whether within or outside the Established Service Area, reasonably expected to utilize 75 thousand gallons or more per billing period or month shall provide bond or security to guarantee payment of utility service;

(a) Require that the large commercial or other large user, whether within or outside the ESA, shall provide the Village a projection of the impact of their water and/or sewer usage over a ten year period, on water supplies utilized by the Village. Such projections shall be provided to the Village at the time the potential user makes application for water service. Cost of such projection shall be borne by the applicant.

(3) Unless specifically otherwise authorized by the Village Council, pay by cash in advance and prior to installation all costs and expenses which the Village may incur to provide utility service to the point of delivery, including, but not necessarily limited to: the cost and expense of utility lines, extensions, meters, meter back-flow preventer, engineering, licenses, permits, fees, legal expenses and the cost and expense of obtaining easements and rights-of-way;

(4) Pay for any cost-of-service study which may be required to determine the cost at which utility service should be provided to the utility user;

(5) Comply with all federal, state, county or village land subdivision rules and regulations which are now or which hereafter maybe made applicable to properties to be served under the agreement, and require any person who receives utility service through the utility user's association, and the owner of any property who is to be served through the utility user, to comply with such rules and regulations;

(6) Agree that all utility lines and facilities shall be installed in publicly dedicated streets, or within rights of way or easements which are or will be assigned easily and readily to the Village of Magdalena without cost to the Village upon annexation to the Village of the property to be served;

(8) Agree that all utility lines and facilities which may be installed by the user beyond the Village water meter or sewer tap, including, but not necessarily limited to, pipes, lines, equipment, regulators, meters, meter cans and stubs, shall meet or exceed the standards established by the Village for such installation at the time of installation and shall be installed and maintained pursuant to Village inspection procedures;

(9) Agree that all lines and facilities shall be certified and properly installed by a licensed and qualified contractor and that all installation shall be inspected by a qualified inspector or engineer acceptable to the Village of Magdalena;

(10) Agree that, as a condition of receiving service, that each customer of the large user or utility users association shall provide to the village a written agreement in such form as the village may require, signed by the owner of the parcel of land which is to receive utility service which shall constitute a covenant which will attach to and run with such land, and which shall be binding upon such owner, and the heirs, personal representatives, successors and assigns of such owner, wherein the owner of the property to receive utility service shall agree to the annexation of the property so served to the Village of Magdalena at such time as the Village Council of the Village of Magdalena may determine that the growth and expansion of the Village of Magdalena requires such annexation;

(11) Agree that the Village of Magdalena will not be obligated to provide fire protection or other municipal service to the users or to persons who reside outside of the village limits of the Village of Magdalena;

(12) Agree to be fully responsible for pumping and delivery of utility service beyond the water meter or sewer tap and that Village of Magdalena will not be obligated to provide more water or water pressure greater than that which is specified in any agreement between the Village and the large utility user or treat any sewerage that could damage or present possible interference with the proper sewerage process such as, but not limited to, dyes, plants, blood, oil, feathers, or product waste solids;

(13) Agree to, periodically at such times and in such form as may be requested by the Village, provide the Village with a list of all utility users served through the large utility user or utility users association, identified by customer name, address, and phone number, the large users meter number, description of the property to be served, and such other information as the village may require;

(14) Agree that the large utility user, utility user's association, or other entity receiving utility service, shall, in case of drought, water shortage, or other emergency, be subject to the same curtailment or restriction upon use of water as are other persons and entities who receive water from the water system of the Village of Magdalena.

SECTION TWENTY-THREE - ILLEGAL CONNECTION OR EXCAVATION; PENALTY.

It is unlawful for any person, other than an authorized Village employee, to:

- (a) make connection with Village water mains or sewer mains;
- (b) tap a Village water main or sewer main or secondary line between the water main and the water curb cock or between the sewer main and customer property line;
- (c) excavate or lay pipe in or upon any Village street or Village property;
- (d) turn water on or off at the Village curb cock or at the water meter; or
- (e) connect, disconnect, recalibrate, bypass, impede or tamper with a Village water meter.

Any person convicted in Magdalena Municipal Court of violating this section shall be punished as prescribe in Section 25 of this Ordinance.

SECTION TWENTY-FOUR - DAMAGING OR INTERFERING WITH VILLAGE-OWNED EQUIPMENT PROHIBITED.

(a) Water System

- (1) Seals placed upon meters, boxes, doors or any other appurtenances or equipment of the utility department must not be removed by persons unauthorized to do so.
- (2) It shall be unlawful for any persons to open, close, turn, interfere with, or to attach to or connect with any fire hydrant, stop valve, or stopcock belonging to the Village water system, or to damage any machinery, pipe, tools, valve, manhole, stopcock, meter or meter box, connected with the said water system, any object, material, debris, or structure of any kind so as to prevent tree access to the same at all times, or to deface or disturb, or tie horses or other animals to fire hydrants, or injure any building, structure, or to trespass upon the tank, tank site or other corporate property of the Village water system.

(b) Sewer System

- (1) Commercial or industrial waste, refuse, or sewage disposal.

No person shall be permitted to discharge commercial or industrial waste, refuse, or sewage into the public sewer system of the Village without first obtaining a permit from the Village; and the Mayor, before giving his approval, shall ascertain whether or not such connections will be detrimental to the sewer system. No commercial or industrial waste, refuse, or sewage shall be discharged into the public, sewer system until the duly qualified representative or agent of the Village of Magdalena has determined beyond reasonable doubt that such waste, refuse, or sewage do not contain ingredients chemicals or other matter of such a nature that will not permit the proper, efficient, successful and continuous operation and functioning of the sewage disposal works in a continuous and efficient manner.

- (2) Depositing Prohibited Material; Tampering with Connections; Creating a Nuisance.

Any persons who deposit or throw into any sewer line, manhole, or drain or inlet any straw, shavings, ashes, rocks, stones, bricks, dead animals, or any kind of rubbish or substance which shall or may cause the drain or sewer line to be choked up or stopped, or

Who shall willfully tamper with the connections leading to the main lateral of the sewer system, or shall shut off any connection properly made, or shall reopen any connections which have been discontinued by the proper authorities, or

Who shall discharge waste water from sink, tub, bathtub, shower, washing machine, or dishwasher onto the ground instead of the sewer system, except gray water systems meeting EP A standards and that do not create a public nuisance, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as prescribed Section 25 of this Ordinance, and in addition shall be liable for all costs for repairing the damage to the sewer system caused by such act.

(c) Trash Receptacles - It shall be unlawful for any person(s) to vandalize any Village owned trash receptacle. Such vandalism may include but will not be limited to defacing, breaking or attempting to break any part of said receptacle. Damages will be assessed based on current market value of replacement part or parts.

(d) Fire Hydrants

(1) Fire hydrants are provided for the sole purpose of extinguishing fires and are to be opened and used only by the water and fire departments or for such purposes as may be specifically designated by the water department and then only by a duly authorized agent of the department.

(2) To insure the safety and efficiency of the fire protection, any person authorized to open the same, for any purpose, will be required to use only an approved spanner wrench, and to replace the caps on the outlets when the same are not in use.

(3) Any person, firm or individual violating the provisions of this subsection 24 subsection shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine as set forth in Section 25.

SECTION TWENTY-FIVE - PENALTY.

Any person convicted of a violation of this Ordinance shall be punished by a fine of not more than three hundred dollars (\$300.00) or by imprisonment not to exceed four (4) days, or both fine and imprisonment.

APPENDIX A

FEES AND CHARGES	AS OF FEBRUARY 2017	RATE CODE
-------------------------	------------------------------------	----------------------

METER DEPOSIT (RESIDENTIAL)	\$125.00	METER
METER DEPOSIT (COMMERCIAL)	\$250.00	METER
GARBAGE DEPOSIT (GARBAGE CUSTOMERS ONLY)	\$50.00	
DISCONNECTION FEE	\$25.00	DRF
RECONNECT FEE	\$25.00	DRF
NON-SUFFICIENT FUND (NSF) FEE	\$30.00	NSF
PAST DUE PENALTY	\$10.00	PDP
WATER TAP FEE	\$600.00	WTAP
SEWER TAP FEE	\$600.00	STAP
TRASH BIN REPLACEMENT FEE	\$30.00	
WATER METER FIELD TEST FEE	\$25.00	
WATER METER REPLACEMENT FEE	\$150.00	

RATES WITHIN VILLAGE LIMITS - WATER, ALL CUSTOMERS

METER SIZE (INCHES)

3/4 OR 5/8 (FIRST 1999 GALLONS)	\$24.00	WA
1 (FIRST 1999 GALLONS)	\$26.30	NONE
1.5 (FIRST 1999 GALLONS)	\$28.65	WA1.5
2 (FIRST 1999 GALLONS)	\$33.10	W2"
3 (FIRST 1999 GALLONS)	\$37.65	W3"
4 (FIRST 1999 GALLONS)	\$46.70	W4"
6 (FIRST 1999 GALLONS)	\$55.80	NONE
EACH 1,000 GALLONS THEREAFTER UP TO 5,000 GALLONS	\$3.36	

EACH 1,000 GALLONS THEREAFTER UP TO 8,000 GALLONS	\$4.74	
EACH 1,000 GALLONS THEREAFTER UP TO 15,000 GALLONS	\$6.00	
EACH 1,000 GALLONS THEREAFTER UP TO 25,000 GALLONS	\$7.92	
EACH 1,000 GALLONS THEREAFTER (EXCLUDING SCHOOL)	\$10.50	
HYDRANT RATE	\$24.00	HYD
SPRINKLER RATE: FIRST 2,000 GALLONS	\$24.00	WSPR
SPRINKLER RATE: EACH 1,000 GALLONS THEREAFTER	\$10.56	WSPR

RATES OUTSIDE VILLAGE LIMITS

NOTE: RATES ARE 125% OF RATES WITHIN VILLAGE LIMITS

METER SIZE (INCHES)

3/4 OR 5/8 (FIRST 1999 GALLONS)	\$30.00	WA
EACH 1,000 GALLONS THEREAFTER UP TO 5,000 GALLONS	\$4.20	
EACH 1,000 GALLONS THEREAFTER UP TO 8,000 GALLONS	\$5.93	
EACH 1,000 GALLONS THEREAFTER UP TO 15,000 GALLONS	\$7.50	
EACH 1,000 GALLONS THEREAFTER UP TO 25,000 GALLONS	\$ 9.90	
EACH 1,000 GALLONS THEREAFTER	\$13.13	

SEWER - ALL CUSTOMERS RESIDENTIAL

WINTER RATES: SEPTEMBER THRU APRIL

BASE RATE-FIRST 2,000 GALLONS OF WATER USAGE	\$13.25	SWIN
EACH 1,000 GALLONS THEREAFTER UP TO 5,000 GALLONS	\$1.50	
EACH 1,000 GALLONS THEREAFTER UP TO 8,000 GALLONS	\$1.75	
EACH 1,000 GALLONS THEREAFTER	\$1.90	

SEWER - ALL CUSTOMERS RESIDENTIAL**SUMMER RATES: MAY THRU AUGUST**

BASE RATE-FIRST 2,000 GALLONS OF WATER USAGE	\$13.25	SSUM
EACH 1,000 GALLONS THEREAFTER UP TO 5,000 GALLONS	\$1.00	
EACH 1,000 GALLONS THEREAFTER UP TO 8,000 GALLONS	\$1.25	
EACH 1,000 GALLONS THEREAFTER	\$1.30	

TRASH**SENIOR RATE: (TO QUALIFY ALL RESIDENTS OF THE HOUSEHOLD MUST BE 65 YEARS OF AGE OR OVER)**

ONE (1) BIN	\$16.25	GBSN
-------------	---------	------

RESIDENTIAL RATE- IN VILLAGE LIMITS

ONE (1) BIN/PER MONTH	\$21.90	GBRE
EACH ADDITIONAL BIN/PER MONTH	\$18.70	GBRE

RESIDENTIAL RATE - OUTSIDE VILLAGE LIMITS

ONE (1) BIN/PER MONTH	\$33.85	GORE
EACH ADDITIONAL BIN/PER MONTH	\$21.90	GORE

BUSINESS/COMMERCIAL RATE (ONE PICK-UP PER WEEK)

ONE (1) BIN/PER MONTH	\$24.65	GBC2
TWO (2) BINS/PER MONTH	\$32.70	GBC2
EACH ADDITIONAL BIN/PER MONTH	\$20.85	GBC+

BUSINESS/COMMERCIAL RATE (TWO PICK-UPS PER WEEK)

ONE (1) BIN/PER MONTH	\$29.55	GC2P
TWO (2) BINS/PER MONTH	\$43.60	GC2P

EACH ADDITIONAL BIN/PER MONTH	\$21.90	GC2+
-------------------------------	---------	------

GOVERNMENT/SCHOOLS (TWO PICK-UPS PER WEEK)

TEN (10) BINS/PER MONTH	\$255.00	GBGS
EACH ADDITIONAL BIN/PER MONTH	\$21.90	GBGS
TRANSFER STATION USE DURING NON-OPERATING HOURS (PER CUBIC YARD)	\$7.50	TRAN

TRANSFER STATION - ACCESS VIA PERMIT

DISPOSAL OF CARDBOARD & ASHES ARE FREE OF CHARGE (AVAILABLE TO VILLAGE & COUNTY RESIDENTS)	\$0.00	TRAN
DISPOSAL OF USED MOTOR OIL/TRANSMISSION FLUID (PER GALLON)	\$1.00	TRAN
DISPOSAL OF VEHICLE BATTERY(IES) (DISPOSAL OF ABOVE ARE LIMITED TO VILLAGE RESIDENTS)	\$3.00	TRAN
DISPOSAL OF TIRES (LIMITED UP TO SIZE 16) (DISPOSAL OF ABOVE ARE LIMITED TO VILLAGE RESIDENTS)	\$6.00	TRAN
DISPOSAL OF ALL OTHER DEBRIS (SHORT BED PICK-UP)	\$10.00	TRAN
DISPOSAL OF ALL OTHER DEBRIS (LONG BED PICK-UP)	\$15.00	TRAN
DISPOSAL OF ALL OTHER DEBRIS (PER CUBIC YARD)	\$7.50	TRAN
APPLIANCES/FURNITURE – ONLY ON QUARTERLY CLEAN-UP DAYS SPONSORED BY THE VILLAGE WITH A FEE TO BE DETERMINED AT THAT TIME (NOT AVAILABLE TO COUNTY CUSTOMERS)	\$	TRAN

ALL WATER/SEWER/TRASH RATES WILL BE ANNUALLY, BUT NO MORE THAN BIANNUALLY REVIEWED AND RAISED IF AN INCREASE IS NECESSARY

ORDINANCE NO. 1995-1
VILLAGE OF MAGDALENA

APPENDIX B

DEFINITIONS:

ASSISTANCE PROGRAM QUALIFICATION

Presently the Village of Magdalena utilizes the Mid-West NM Community Action Program (CAP)/Headstart to qualify customers needing financial assistance in paying their utility bills. For details, contact the Village utility office.

TRANSFER STATION

Acceptable Trash - Any trash generated from normal household activities which is not collected during normal house to house collection and which is not defined as unacceptable trash for the Transfer Station. The Transfer Station will also accept: used motor oil, small dead animals which have been placed inside a plastic bag, tires. Ash from cooking/heating stoves will be accepted at the Transfer Station at a designated area.

Unacceptable trash - Unacceptable trash would include, but not necessarily be limited to: corrosive or flammable items, medical waste, construction debris, large dead animals that will not fit in a plastic bag.

EXISTING SERVICE AREA (ESA)

Water - The ESA for water service covers approximately 1 and 1/2 sections of land (approximately 1,000 acres). Specifically, the area includes the S 1/2 Section 22, N 1/2 Section 27, W 1/2 NW 1/4 Section 26, NW 1/4 NW 1/4 SW 1/4 Section 26, all T2S, R4W. An additional corridor which extends approximately one and one half miles east along Highway 60 is in Section 23, T2S, R4W. The majority of the residents are in the S 1/2 Section 22 and the N 1/2 Section 27. A map of the service area is shown in APPENDIX C.

The ground elevation within the present service area ranges from a high of approximately 6730 at the base of the 200,000 storage tank south of the Village to a low of approximately 6410 at the Trujillo well. The users east of the Trujillo well are at a ground elevation of approximately 6370. ESA does not extend to an elevation higher than the base of the 200,000 storage tank south of the Village.

Sewer - The ESA for sewer service is located throughout most of the developed areas of Magdalena, which covers approximately 1 and 1/2 sections (1,000 acres) of land.

Specifically, the service area includes parts or all of the S 1/2 Section 22, the N 1/2 Section 27, the

W 1/2 NW 1/4 Section 26, the NW 1/4 NW 1/4 SW 1/4 Section 26, all in Township 2 South, Range 4 West.

Trash - The proposed service area for solid waste "collection will be the Village of Magdalena limits provided the truck can safely reach the collection point. The feasibility of collection will be determined by the Public Works Director.

TRASH & REFUSE COLLECTION AND DISPOSAL


Acceptable Trash - Any trash generated from normal household activities which is placed in a plastic bag for sanitary purposes and is not listed under the description of unacceptable trash is acceptable. Cardboard does not have to be bagged in plastic to be placed in a Village of Magdalena provided trash bin.

Unacceptable Trash - Trash should not exceed weight limit of particular container: 200 pounds for a 90 gallon container and 150 pounds for a 60 gallon container. No tires, batteries, corrosive or flammable items, toxic, medical or hazardous waste (including hypodermic needles), or building materials will be accepted in the trash bins. For information on the disposal of unacceptable trash, call the Village utility office.

Note: Acceptable and unacceptable trash definitions could change at any time due to mandates imposed on the Village of Magdalena. For the latest information, please contact the Village utility office.

PASSED, APPROVED & ADOPTED by the Village of Magdalena, Board of Trustees on this 13th day of February, 2017.

Approved:


Richard Rumpf, Mayor

Attest:


Stephanie Finch, Clerk/Treasurer