RESOLUTION NO. 10658

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA DECLARING AS A PUBLIC RECORD THE TERMS AND CONDITIONS FOR THE SALE OF UTILITIES AS MODIFIED.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, COUNTY OF MARICOPA, STATE OF ARIZONA, AS FOLLOWS:

Section 1: That the "TERMS AND CONDITIONS FOR THE SALE OF UTILITIES" a true and correct copy of which is attached hereto and incorporated herein by reference is declared to be a public record pursuant to A.R.S. §9-801, *et seq.*, three copies of which shall be filed in the Office of the City Clerk and kept available for public use and inspection.

Additions to the text are shown in bold and underline: **Abc**
Deletion to the text are shown in strike-outs: ~~Abc~~

PASSED AND ADOPTED by the City Council of the City of Mesa, Arizona, this 8th day of July, 2015.

APPROVED:

Mayor

ATTEST:

City Clerk

CITY OF MESA CORPORATE SEAL MARICOPA COUNTY, AZ

TERMS AND CONDITIONS FOR THE SALE OF UTILITIES

The following terms and conditions ("Terms and Conditions") **apply to the provision of utility services by the City and** shall be considered a part of the City of Mesa's ("City") Rate Schedules.

1. Service Rendered Under Special Agreement:

Utility services will be supplied in accordance with these Terms and Conditions and such applicable rates as may from time to time be ~~authorized~~**adopted by Ordinance** by the City Council. However, in the case of Customers whose service requirements are of unusual size or characteristics, special rate agreements may be required and authorized by the City Council. Any individual who receives City owned utility service and requires life support equipment at their residential premises may provide written notice of such need to the City ("Life Support Customers"). The City will manage associated accounts in accordance with its Life Support Customer Policy and these Terms and Conditions.

2. Continuity of Service:

The City will use reasonable diligence to supply steady and continuous service, but does not guarantee the service against fluctuations or interruptions. The City will not be liable to the Customer for any damages occasioned by fluctuations or interruptions, or by failure to begin supplying service. The City may, without incurring any liability therefore, suspend service for periods reasonably necessary to accomplish repairs to or changes in any of the City's facilities.

3. Service and Main Connections and Charges:

A. In order to receive water or wastewater service, each parcel of real property must be served from a separate service connection from a public main line designated to serve the appropriate water zone. Additionally, each parcel must meet one of the following requirements:

1 Right of Way Frontage. The parcel must have frontage on dedicated public right- of-way, directly adjacent to the parcel.

2 Dedicated Private Street. The parcel must have frontage on a directly adjacent dedicated private street that is a minimum of twenty four (24) feet in width. Additionally, such private street must meet all requirements of the City, including but not limited to, a public utilities and facilities easement.

3 Common Parcel. The parcel receiving service must be directly adjacent to a parcel which is at least twenty (20) feet wide and owned by a property owner's association. In addition, such common parcel must meet the requirements of 1 or 2 above. All water and wastewater lines to the parcel receiving service shall be located on the common parcel and privately owned and maintained. Water meters must not be located within the common parcel.

B. In order to receive water or wastewater service, each parcel must have frontage meeting the minimum widths required by the applicable zoning classification.

C. In order to receive residential solid waste and recycling service, each parcel of real property must have an individual location for at least two barrels on a public right of way, or a dedicated private street meeting the requirements set forth in Section 3(A)(2) herein, with a minimum of eighteen (18) inches of separation between barrels.

D. **In order to receive water or wastewater service, ~~A~~all** real property **must** ~~authorized to receive service shall~~ **be** ~~develop~~ in compliance with all applicable ~~City~~ regulations, standards, and requirements established by the City**, including but not limited to compliance with the Zoning Code, Building Codes, Fire Code, and the street, utility improvement and other requirements in 9-8-3 of the Mesa City Code (M.C.C.)**. ~~In order for real property located outside Mesa's corporate limits to receive service such property shall also develop in compliance with City regulations, standards, and~~

~~requirements as if it were located within the City; provided, however, if a property owner is seeking service for one lot or one parcel of real property that is being developed or used for a detached single residence on real property located outside Mesa's corporate limits, such property owner has the alternative to defer the requirements in sub-sections 1 and 2 below until the real property is sought to be annexed into the City of Mesa subject to the following requirements and limitations:~~

~~1. Those requirements in the Mesa City Code Sections 9-8-3(E), (G), and (H) for public improvements for streets, alleys, sidewalks, sewer lines, fire hydrants, irrigation lines and ditches, storm drainage, streetlights, traffic control devices, street name signs, and survey monuments may be deferred until the property owner seeks to have the property annexed into the City of Mesa; provided, however, the deferral of requirements in this sub-section 1 shall not apply to Section 9-8-3(H)(4) regarding water lines or to sewer lines if the property owner seeks sewer service. All City-owned lines shall be designed, installed, constructed, and inspected in compliance with the Mesa City Code and standards, and there is no deferral of any requirements for City-owned lines.~~

~~2. If the property does not comply with the requirements in the International Fire Code – as adopted and amended by the Mesa City Code, in Title 7, Chapter 2 – in Section 503 "Fire Apparatus Access Roads," Section 508 "Fire Protection Water Supplies," Appendix B "Fire Flow Requirements for Buildings," and Appendix C "Fire Hydrant Locations and Distribution" (or equivalent code section and/or appendices if the code edition format has been modified), the property owner has the alternative to defer these requirements until the property owner seeks to have the property annexed into the City of Mesa so long as prior to receiving service the property owner installs a National Fire Protection Association (NFPA) fire sprinkler system. The fire sprinkler system must comply with the NFPA 13D standard in effect at the time the service is provided with installation in all areas of the residence and no omissions permitted; provided, however, the City of Mesa Building Official may make reasonable modifications to allow omissions to the NFPA 13D standard.~~

~~3. The requirements described in sub-sections 1 and 2 above (the "Deferred Requirements") will only be deferred until the property owner seeks annexation. Prior to annexation, the property owner must construct, install, and complete the Deferred Requirements.~~

~~4. Prior to receiving service, the property owner must enter into a Utility Services Agreement wherein the property owner agrees to complete the Deferred Requirements prior to seeking annexation and agrees to such other terms as required by the City.~~

~~5. The alternative of deferring the Deferred Requirements is only available to a property owner that is seeking service for one lot or parcel of property that is being developed or used for a detached single residence. The term "detached single residence" as used in this Section D shall have the same definition as that term is defined in the City of Mesa Zoning Ordinance 11-86-2, except with the exclusion of manufactured homes, manufactured home parks, and recreational vehicles.~~

~~6. If the Water Resources Director determines that the deferral of all or a portion of the Deferred Requirements would adversely affect water quality or service, those Deferred Requirements that would have such an affect will not be deferred and are required prior to receiving service.~~

~~7. Nothing in this Section shall be interpreted as obligating the City to provide service either within or without the corporate limits.~~

E. No group of structures may be served by one (1) meter unless situated on the same parcel of real property, under one (1) ownership~~, unless excepted under Section 23 herein~~.

F. The owner or developer of a parcel requesting utility service will be responsible for extending the public main line(s) to bring the utility adjacent to, and along all appropriate frontages of, the parcel.

G. No sale or transfer of service from one real property ownership to another shall be permitted. In the event that any real property with utility service is subdivided and any portion of that real property is

subsequently sold to another party, a public main extension and/or meter relocation will be required as necessary to make service directly adjacent to each new lot so created~~, or unless excepted under Section 23 herein~~.

H. All meters will be supplied by the City. Charges for installing new services and meters will be in accordance with the current Utility Service Fee Schedule.

I. The following criteria are required for water meter installations:

1. Water piping on Customer side must coincide with the requested meter size for a minimum distance of 48 inches, after which such piping may transition to alternative sizes and/or materials.

2. Installation of proper-sized water meter box.

3. Meter installation site is marked with the Identification for Water Meter Card.

4. Sites not properly prepared at the time of request are subject to Trip Charges. See Utility Service Fee Schedule.

J. All applicable development impact fees shall be paid in accordance with Chapter 17 of Title 5. ~~When the parcel to be served is located outside Mesa's corporate limits as approved under Section 23 herein, an additional Utility Service Agreement fee shall be paid. The Utility Service Agreement fee shall be equal to the sum of all development impact fees charged for parcels of the same or similar land use receiving service within the Mesa corporate limits in accordance with Chapter 17 of Title 5, except water and wastewater impact fees. The Utility Service Agreement fee shall be in addition to the applicable water and wastewater development impact fees.~~

K. Buy-ins for the right to use certain utility main lines will be in accordance with the private line agreement on file with the City or as determined by the City for a specific utility main.

L. All monies must normally be paid at the time service is requested.

M. All real property located outside Mesa's corporate limits must be annexed into the City's corporate limits before connecting to and receiving water and/or wastewater service from the City, except those Customers that satisfy all the requirements of Section 23 herein may be provided such service subject to compliance with these Terms and Conditions.

4. Access To Customer Premises:

A. As a condition of service, authorized representatives of the City must be given access at all reasonable hours to the Customer's premises for the purpose of meter reading, connection and disconnection of service as well as operating and maintaining the City's facilities up to the point of delivery.

B. The Customer, at his or her expense, will ~~give~~**provide at no cost to the City** a license or an easement in a form acceptable to the City, ~~when necessary, to the City~~ **as needed** for the purpose of constructing and maintaining the City's service facilities required on the Customer's premises up to the point of delivery.

5. Authority To Connect or Disconnect Service:

A. The City will not install and maintain any lines and equipment on the Customer's side of the point of delivery.

B. For the mutual protection of the Customer and the City, only authorized employees of the City are permitted to connect or disconnect service.

C. Where new services are to be connected, a satisfactory final inspection by the City Development and

Sustainability Department or other authorized jurisdiction will normally be required prior to turning on the gas or electrical service. Development and Sustainability Department permits and/or inspections may be required for the resetting of a gas meter that had been previously removed from a property.

D. All connections of gas service require the presence of a responsible party 18 years of age or older at the property for completion of the safety inspection. Additional trip charges to property will be applicable.

E. All Life Support Customers will be contacted in person or via posting at the premises on the date of disconnect and provided an additional twenty-four (24) hours to make alternate arrangements or to pay the required amount owing prior to service termination.

6. Termination of Service:

A. In addition to applicable conditions and/or circumstances established in other sections of these Terms and Conditions, the City may disconnect service to any Customer when necessary for the Utility to comply with an order of any Governmental Agency having such jurisdiction.

B. Upon notice that a Customer-of-record is deceased, the City will disconnect all services. This notice of disconnection ~~shall~~**will** be mailed to "all residents of" the subject service location. This notice ~~shall~~**will** explain that in order to ~~maintain continuity of~~**restore** service, a new account must be opened in the name of another resident at the service location within thirty (30) calendar days. Except in the case where the new Customer-of-record is the surviving spouse, a new deposit shall be required.

7. Metering Provisions:

A. The Customer will provide, in accordance with the City's current service standards and free of expense to the City, a sufficient and proper space in an approved location for the installation of the meter.

B. The readings of the City's meter will be conclusive as to the amount of consumption used by the Customer, unless upon test, the City's meter is found to be in error by more than three percent (3%). If a meter is found in error by more than three percent (3%), the City will compute the consumption based on the error percentage and/or applicable history.

C. If the Customer requests an accuracy test and the meter proves to be not more than three percent (3%) in error, a service charge to cover the vehicle expense, driving time and labor expense for meter exchange and testing will be made by the City in accordance with the current Utility Service Fee Schedule.

8. Cooling Tower/Subtractive Metering:

For a commercial Customer with cooling towers, the City may allow the Customer to have influent and effluent meters installed to properly meter the amount of water discharged to the wastewater system. The Customer shall be responsible for all costs associated with the purchase and installation of City approved meters and must provide City approved ground level meter readout devices in an approved location. Construction plans must be approved by the applicable City departments before any purchase of the meters and their installation can proceed.

9. Grounds for Termination or Refusal of Service:

The City may refuse to connect or reconnect or may terminate City utility services if any of the following conditions exist:

A. Applicant has an outstanding amount due with the City for utility services or any other delinquent City account and is unwilling to make acceptable arrangements with the City for payment.

B. A condition exists which in the City's judgment is unsafe or hazardous.

C. Applicant has failed to meet the security deposit requirements set forth by the City.

D. Applicant is receiving service in violation of the City's Rate Schedules.

E. Applicant fails to furnish such funds, service, equipment, licenses, easements and/or rights-of-way required to serve Applicant and which have been specified by the City as a condition for providing service.

F. Applicant falsifies his or her identity for the purpose of obtaining service.

G. Service is requested by an Applicant and a prior Customer living with the Applicant owes a delinquent utility bill.

H. Applicant is acting as an agent for a prior Customer who is deriving benefits of the service and who owes a delinquent utility bill.

I. Applicant has failed to obtain all required permits and/or inspections indicating that Applicant's facilities comply with local construction and safety codes.

J. Applicant or anyone residing at the premises has an outstanding debt with any City department.

K. Applicant otherwise is not in compliance with these Terms and Conditions.

10. Residential Establishment of Credit or Security Deposit:

A. Residential Customers are ~~normally~~ required to place a deposit.

B. The City may waive the security deposit from a new applicant for residential service if the applicant is able to meet any of the following requirements and has no other delinquent City accounts.

1. Applicant has had service of a comparable nature with the City within the past twenty-four (24) months and was not delinquent in payment more than twice during the last twelve (12) consecutive months or disconnected for non-payment.

2. Applicant authorizes the City to obtain a consumer credit report from a third-party consumer credit reporting agency chosen by the City and applicant's credit score provided by the credit reporting agency is satisfactory to the City. An applicant requesting the City obtain a credit history is required to pay a fee in accordance with the City's utility service fee schedule to offset the City's cost of obtaining the credit report.

11. Nonresidential Establishment of Security Deposit:

All nonresidential customers may be required to:

A. Place a cash deposit to secure payment of bills for City services as prescribed herein.

B. Provide a non-cash security deposit in the form of a Surety Bond in an amount equal to the required security deposit.

12. Re-establishment of Security Deposit:

A. Residential Service. The City may require a residential Customer to establish or re-establish a security deposit if Customer becomes delinquent in the payment of more than two (2) bills within a twelve (12) consecutive month period or has been disconnected for non-payment during the last twelve (12) months or when the Customer's financial condition may jeopardize the payment of their bill, as determined by a credit scoring service or other objective criteria.

B. Nonresidential Service. The City may require a nonresidential Customer to establish or re-establish a

security deposit if the Customer becomes delinquent in the payment of more than two (2) bills within a twelve (12) consecutive month period or if the Customer has been disconnected for non-payment during the last twelve (12) months, or when the Customer's financial condition may jeopardize the payment of their bill, as determined by a credit scoring service or other objective criteria.

13. Security Deposits:

A. The City reserves the right to increase security deposit amounts applicable to the services being provided by the City if the Customer becomes delinquent in the payment of more than two (2) bills within a twelve (12) consecutive month period or has been disconnected for non-payment during the last twelve (12) months:

B. Separate security deposits are required for each service location.

C. Customer security deposits shall not preclude the City from terminating service or suspending service for any failure in the performance of Customer's obligation under the Terms and Conditions.

D. Deposits (cash and non-cash) are applied to the final bill when all services become inactive. Customers-of-record subject to the provisions of Mesa City Code Title 5, Chapter 10 shall next have the deposit balance applied to any City accounts receivable balances that arise from Mesa privilege, use, or transient occupancy tax liabilities. Deposits shall also not be refunded unless and until the Customer-of-record files all delinquent privilege, use, or transient occupancy tax returns. Any remainder shall next be applied to set-off other delinquent City accounts before the balance is refunded to the Customer-of-record. Any remaining amounts shall be refunded to the Customer.

If the previous months' payments were made by credit card or debit card, refunds will be provided to the same credit and debit card accounts in amounts up to such payments, when possible. A check will be issued for all other refunds. If a combination of payment types were used in the previous months' payments, the refund will be made up to the payment amount for each method in the same manner as previously described.

~~D~~E. Subject to the provisions in Section 13(D), deposits on file with the City, upon request, will be reviewed after twenty-four (24) consecutive months of service for residential accounts and thirty-six (36) consecutive months of service for nonresidential accounts. Accounts will be credited the amount of the security deposit on file with the City provided the Customer has not been delinquent more than twice in such review periods.

F. Nonresidential security deposits shall be set at two and one-half (2-1/2) times the service address' maximum monthly billing within the preceding twelve (12) month period as estimated by the City for the service being provided by the City.

G. For residential dwelling units with individual service meters, the security deposits shall be in accordance with the current Utility Service Fee Schedule unless applicant's past service history warrants an additional amount. In which case the security deposit shall not exceed two and one-half (2 ½) times the maximum monthly billing based on the most recent historic usage for the service address.

H. The City has the right to suspend utility services to enforce payment of utility bills, collection charges, service charges, meter test charges, or security deposit amounts.

I. Security Deposits may be increased for those Customers whose services have been disconnected for non-payment.

14. Billing and Terms:

A. The City will read meters or calculate meter readings and bill Customers at regular intervals, normally every twenty-six (26) to thirty-four (34) calendar days. At its sole discretion, the City may change the frequency of meter reading.

B. Services billed for periods outside of the twenty-six (26) to thirty-four (34) calendar day range are subject to pro-ration of minimum charges based on a standard thirty (30) day billing cycle.

C. The City may compute, re-compute or adjust bills for Customer accounts based on a reasonable usage estimate made by the City if any of the following conditions apply:

1. The meter fails to accurately register;

2. The meter reader is unable to obtain a meter reading because of locked gates, safety concerns, inclement weather, or other deterrent;

3. Service is temporarily supplied without a meter; or

4. A contrivance has been used to circumvent the accurate registration of metering devices.

D. When an error is found to exist in the billing rendered to Customer, or if service is discovered in use at the property that had not previously been charged to the Customer, the City will correct such error to recover or, subject to the City account set-off provisions in Section 13(D), refund the difference between the original billing and the correct billing. Such adjusted billings will not be rendered for periods in excess of thirty-six (36) months from the date the error is discovered. Any refunds to Customer resulting from adjusted billings will be made promptly upon discovery by the City. Under billings by the City shall be billed to Customer who shall, upon Customer's request, be given an equal length of time, such as number of months under billed, to pay the back bill on a level installment basis without late fee penalties, unless there is evidence of meter tampering or theft. This payment arrangement will become null and void if payments are not received by each bill's stated due date; normal collection procedures and late fees will then apply.

E. The City is not responsible for any increased usage that results from problems on the Customer side of the point of delivery (metering device).

F. Customers must notify the City immediately of a lost, stolen or damaged solid waste barrel and the need for a repair or replacement. Adjustments shall not be given for barrels that are unusable, have not been at the service address, or have not been properly reported by the Customer.

G. When a Customer is responsible to report a unit count for billing purposes and fails to timely provide an accurate count, the unit count shall be estimated or the driver count shall be used to bill for the month. Thereafter, the City will only make account adjustments if the Customer provides an accurate report prior to the start of the next billing cycle.

H. Wastewater Fee Adjustment forms are available annually to residential Customers who use a large percentage of their domestic water usage for landscaping purposes or who experienced a leak during the months of December through March. Data provided by the Customer will be used to determine the eligibility for a reduction in monthly wastewater charges. Wastewater charges are re-evaluated each April based on the average water consumption used during the months of December, January, February and March. Forms must be submitted to the City annually.

I. Any failure of the City to render a complete monthly bill shall not be a waiver of the City's right to payment for services supplied by the City.

J. Customer Select Due Date ("CSDD"):
Subject to availability, eligible residential Customers may select the date in the month, within City guidelines, that their utility bill is due. The requesting account must have a zero balance at the time of CSDD activation. The Customer must pay the bill by the due date to remain on the program.

K. SurePay (Automatic Payment Option):
The Customer may authorize the City to electronically withdraw the amount of the monthly bill for City services directly from a specified checking or savings account. The City may discontinue the Customer's participation in this option upon the second occurrence of insufficient funds regarding the Customer's payments during the period of the current and immediately preceding eleven (11) Billing

Periods. The requesting account must have a zero balance at the time of SurePay activation.

L. Budget Payment Plan ("BPP"):
Subject to availability, all eligible residential Customers may have the City equalize their monthly charges over a twelve (12) month period for utility services provided by the City. The requesting account must have a zero balance at the time of BPP activation. The account must stay current to remain in BPP.

1. The City will not offer a BPP to Direct Access Customers. Customers who have a managed payment billing plan at the time of their switch to Direct Access Service will be removed from such plan, and must pay any accumulated charges in full. The City will refund any accumulated credit to the Customer after generation of the final Standing Offer Service Bill.

M. Available Service Activation:

1. Where service is available, residential Solid Waste and Wastewater service charges will be assessed when the domestic water meter at the property is active and in use per the applicable City of Mesa Rate Schedule.

2. Residential solid waste and recycling service, where available, will be billed in association with water and wastewater services on all commercial and multi-use dwellings as outlined in the applicable City of Mesa Rate Schedule.

15. Utility Service, Collection, and/or Late Fee Charges:

A. All utility service, collection and late fee charges shall be in accordance with the current Utility Service Fee Schedule.

B. A utility administrative fee will be assessed to establish a utility account. In addition, all applicable service connection charges will be assessed for each metered service activated.

C. A late fee will be assessed to all accounts with an amount owing in arrears one (1) day after the due date. An amount more than one (1) billing cycle past due shall be subject to additional late fees.

D. If a non-payment disconnection notice must subsequently be produced and mailed, an additional charge will be billed to defray the cost of producing and mailing this notice.

E. In the event that a utility field representative must be dispatched to a service address, a trip charge will be assessed to defray the cost of each field trip.

F. Should it become necessary to reconnect utility service that has been disconnected due to non-payment, normal administrative and service connection charges will apply.

G. Should it become necessary to remove a meter or regulator, or to disconnect service to enforce payment, additional service charges will be made, including charges for damages to utility meters, meter locking devices or any other City owned property.

H. City and State Transaction Privilege tax will be assessed on all charges as applicable.

16. Change to Optional Rate Schedule:

A. Where optional Rate Schedules are available, only one change requested by the Customer-of-record will be allowed in any twelve (12) month period.

17. Payment of Utility Bills:

A. Utility bills shall be rendered monthly, are payable upon presentation and are past due after the due date.

B. The City reserves the right to suspend or terminate any or all of the Customer's services for non-payment of bills past due or for utility payment items (checks, credit cards, etc.) returned or rejected by a financial institution unpaid. Payment is effective upon receipt in hand of the full balance due at a City of Mesa Utility Payment Center.

C. If a Customer has been notified of a pending disconnection, or has been disconnected, and the payment to maintain continuity of service, or to reinstate service following disconnection is returned or rejected by a financial institution, the City reserves the right to disconnect service without further notice.

D. A lien for unpaid utility account balances and the cost of preparing, processing and releasing a lien may be placed on the property, lot or tract of land to which service was rendered, or any other real property currently owned by the Customer, or any real property that may become owned by the Customer subsequent to termination of their account.

E. At the City's option, any person, other than the Customer-of-record, specifically including, but not limited to, the property owner, who benefited from the utility services provided by the City may be held responsible for payments.

F. Any overpayment made on a utility account that results in a credit to the utility account shall be available to set-off City account receivable balances in conformity with Section 13(D).

18. Collection of Accounts:

A. A Customer whose account has been terminated will be issued a final bill, which must be paid in full upon presentation. If a final bill becomes delinquent, the City may use any legal means available to collect the amount due. The Customer will be responsible for paying all costs and expenses incurred by the City to collect the amount due.

B. An unpaid utility account balance may be transferred to another City utility account with the same Customer or any other person(s) who benefited from the utility service.

C. The City may apply any Customer's privilege, use, or transient occupancy tax credit or refund or any other City account credit or refund to the utility account in order to satisfy any unpaid utility debt before the Customer receives such credit or refund.

19. Payment and Billing Disputes:

A. The Customer should notify Mesa Customer Information and Billing Operations of discrepancies in the City's billing for services provided by the City. The City will not consider the amount in dispute for collection action until the City has verified that the bill was correct, provided the Customer notifies the City of the claim before the amount becomes delinquent and pays all other undisputed amounts billed by the City.

B. A Customer dissatisfied with the City's determination may appeal the decision in writing to the City's Business Services Administrator.

C. If a Customer has a dispute with a City bill that has not been satisfactorily resolved by the Business Services Administrator, a written complaint may be submitted to the Business Services Director for further review. The Business Services Director shall respond to the Customer within twenty (20) days of the receipt of the Customer's complaint. The timeline for response may be extended by agreement of the Customer and the City.

D. If the complaint is not resolved by the Business Services Director's action, the Customer may submit the complaint within twenty (20) calendar days of the response to the City Manager. The City Manager or designee shall issue a written decision to the Customer within twenty (20) calendar days of receipt by the City Manager. The timeline for response may be extended by agreement of the Customer and the City Manager or designee.

E. Decisions of the City Manager or designee regarding a dispute with the City's electric charges may be appealed to the City Council or designated City Council Committee but if not appealed, the decision will serve as the City's ultimate determination of the dispute; however, if appealed, the City Council or designated City Council Committee's decision will be the City's ultimate determination of the dispute.

20. Unauthorized Use of Utilities:

A. Unauthorized use of utilities shall mean:

1. The taking of a utility service, (1) by turning the service on without authority, (2) by bypassing a meter, connecting directly into the service or a hydrant without a meter, (3) willfully modifying the meter or service apparatus so as to cause loss or reduction of registration, (4) obtaining service via another City Customer's service, (5) unauthorized connection to wastewater services, or (6) without otherwise complying with these Terms and Conditions.

2. For an Interruptible Gas Service Customer, the taking of gas on any day in excess of the maximum daily contract quantity specified in the gas service contract between the City and the Customer.

3. For any gas Customer subjected to curtailment during a curtailment period, the taking of gas in excess of a daily variable entitlement specified by the City and based upon the Customer's priority class (see the City of Mesa's Curtailment Ordinance) and the curtailment imposed upon the City by its general gas transportation supplier, El Paso Natural Gas Company.

4. For any Customer with a maximum monthly quantity specified in the gas service contract between the City and the Customer, the taking of gas in any billing period in excess of the maximum monthly quantity.

B. If unauthorized use of a utility occurs, the City shall charge:

1. Residential Customers for an estimated usage according to the applicable Rate Schedule plus a service charge for each connection in accordance with the current Utility Service Fee Schedule.

2. Nonresidential, multi-family and construction Customer accounts for an estimated usage according to applicable rates plus a service charge in accordance with the current Utility Service Fee Schedule for each connection. Subsequent fees paid for the appropriate required meters may be subtracted from the service charge.

3. Customers found to have unauthorized connections are subject to criminal prosecution, paying all damages, and/or paying charges found in the current Utility Service Fee Schedule.

4. City and State Transaction Privilege Tax will be assessed on all charges as applicable.

21. High Pressure Gas Service:

Gas is normally supplied by the City from a main or service regulator normally operating at a pressure equivalent to seven inches of water column. Where, in the City's opinion, gas is available at high pressure, it will be supplied subject to the following provisions:

A. Such higher delivery pressure shall be agreed upon by the City and the Customer, and supplied within the range of accuracy provided by a standard service regulator.

B. For billing purposes, the volume of gas registered in cubic feet by the meter at a pressure in excess of seven inches of water column shall be corrected to a basis of four ounces (0.25 pounds) per square inch above an assumed atmospheric pressure of 14.12 pounds per square inch, or 14.37 pounds per square inch absolute pressure; the City reserves the right to correct gas deliveries to a temperature standard of

60° F., and to apply deviation factors for super-compressibility.

22. Landlord Agreements:

A landlord agreement is defined herein as an agreement between the City and a qualified landlord which allows for the automatic continuation of service in the landlord's name when a tenant requests disconnection of service. A qualified landlord is a rental property owner that has established a satisfactory credit status of no more than two (2) delinquent utility payments per year or has a utility deposit on-hand with the City of Mesa Utility Customer Accounts Section.

A. The landlord agreement shall not apply when a tenant is disconnected for non-payment of utilities.

B. Disputes regarding effective dates of service shall be resolved between the tenant and the landlord.

C. The utility administrative fee may be waived for landlord agreement Customers in which the City is the retail supplier of the account's electric, gas or water service, whichever service is Applicable to the account being activated, when that service under the landlord agreement automatically reverts to the landlord's account, but shall apply when a new tenant requests service at that location.

D. The landlord agreement may be terminated by the landlord or the City at any time with thirty (30) days' written notice.

23. Parcels Outside the Municipal Limits, Annexation Exceptions.

A. Parcels of real property located outside Mesa's corporate limits requesting water or wastewater service may be provided such service if (i) the real property complies with all City ordinances, regulations, standards, and other requirements as if it were located within the City's corporate limits, including but not limited to compliance with the Zoning Code, Building Codes, Fire Code, and the street, utility improvement and other requirements in M.C.C. 9-8-3; and (ii) the owner of the property enters into a Utility Services Agreement wherein the owner agrees to comply with these Terms and Conditions and waives all rights under A.R.S. § 9-500.34, and further agrees that if such waiver is found to be unenforceable, the City will have no obligation (under the Agreement or otherwise) to provide water or wastewater service.

B. Where one parcel of real property located outside of Mesa's corporate limits requesting water or wastewater service is being developed or used for a detached single residence (as defined in the City of Mesa Zoning Ordinance 11-86-2, but with the exclusion of manufactured homes, manufactured home parks, and recreational vehicles), that parcel may be provided water or wastewater service if (i) the real property complies with all City ordinances, regulations, standards, and other requirements as if it were located within the City's corporate limits, including but not limited to compliance with the Zoning Code, Building Codes, Fire Code, and the street, utility improvement and other requirements in M.C.C. 9-8-3, except as such compliance may be deferred under subsections 1 through 4 below; and (ii) the owner of the property enters into a Utility Services Agreement wherein the owner agrees to comply with these Terms and Conditions and waives all rights under A.R.S. § 9-500.34, and further agrees that if such waiver is found to be unenforceable, the City will have no obligation (under the Agreement or otherwise) to provide water or wastewater service. Certain compliance requirements of 23(B)(i) above may be deferred as follows:

1. Those requirements in Mesa City Code Sections 9-8-3(E), (G), and (H) for public improvements for streets, alleys, sidewalks, wastewater lines, fire hydrants, irrigation lines and ditches, storm drainage, streetlights, traffic control devices, street name signs, and survey monuments may be deferred until the property owner seeks to have the property annexed into the City of Mesa; provided, however, the deferral of requirements in this sub-section 1 shall not apply to M.C.C. 9-8-3(H)(4) regarding water lines or to wastewater lines if the property owner seeks wastewater service. All City-owned lines shall be designed,

installed, constructed, and inspected in compliance with the Mesa City Code and standards, and there is no deferral of any requirements for City-owned lines.

2. **If the property does not comply with the requirements in the International Fire Code—as adopted and amended by the M.C.C. Title 7, Chapter 2—in Section 503 "Fire Apparatus Access Roads," Section 508 "Fire Protection Water Supplies," Appendix B "Fire-Flow Requirements for Buildings," and Appendix C "Fire Hydrant Locations and Distribution" (or equivalent code section and/or appendices if the code edition format has been modified), the property owner has the alternative to defer these requirements until the property owner seeks to have the property annexed into the City of Mesa so long as prior to receiving service the property owner installs a National Fire Protection Association (NFPA) fire sprinkler system. The fire sprinkler system must comply with the NFPA 13D standard in effect at the time the service is provided with installation in all areas of the residence and no omissions permitted; provided, however, the City of Mesa Building Official may make reasonable modifications to allow omissions to the NFPA 13D standard.**

3. **The requirements described in sub-sections 1 and 2 above (the "Deferred Requirements") will only be deferred until the property owner seeks annexation. Prior to annexation, the property owner must construct, install, and complete the Deferred Requirements. Additionally, if the Water Resources Director determines that the deferral of all or a portion of the Deferred Requirements would adversely affect water quality or service, those Deferred Requirements that would have such an affect will not be deferred and are required prior to receiving service.**

4. **The property owner must further agree in the Utility Services Agreement to complete the Deferred Requirements prior to seeking annexation, as well as such other terms as are required by the City.**

C. In addition to the requirements set forth above, the Utility Service Fee shall be paid for each parcel connecting. The owner shall also be responsible for payment of all applicable water and wastewater development impact fees and applicable connection and meter fees and charges under City Rate and Fee Schedules.

2~~3~~**4**. ~~Exceptions~~**Modifications**:

A. Where an individualized assessment reveals the existence of special conditions involving topography, land ownership, adjacent development, parcel configuration, or other factors relating to the impact the development will have on the need for public improvements associated with the proposed development, the City Manager or designee may reduce, defer, or approve alternatives to the requirements in Sections 3(D) and 3(F), of these Terms and Conditions for the Sale of Utilities, based upon a finding that such conditions or factors exist and that the requirements would substantially impair existing uses or the ability for development; provided, however, the requirement in Section 3(F) for the parcel requesting service to extend the public main line(s) adjacent to the parcel may not be modified or eliminated. The determination of the City Manager, or his designee, hereunder may be appealed to the City Council committee that is designated by the City to hear such appeals, and such committee's determination may be appealed to the City Council. All appeals must include a written notice of appeal that contains an explanation of why the appellant feels that the determination was in error. The written notice of appeal must be filed with the City Clerk within thirty (30) days after the determination for which the appeal is being filed. The determination of the City Council shall be final.

B. In order to promote the interests of the City, the City Council may modify, eliminate or approve alternatives from the requirements of Section 3 of the Terms and Conditions for the Sale of Utilities for an individual parcel of real property. Any such decision shall be at the discretion of the City Council and shall be made only upon a recommendation from the designated City Council Committee to allow such modifications, eliminations or alternatives. An approved modification may be contingent upon the applicant entering into a **U**~~u~~tility **S**~~s~~ervice **A**~~a~~greement~~ as defined in the City's annexation guidelines~~.

~~C. If the City Council determines that annexation is not in the best interest of the City, but the property owner will suffer a hardship if not provided one or more utility services, the City Council may consider entering into a Utility Service Agreement subject to all associated utility service fees without a recommendation from the designated City Council Committee.~~

~~D~~**C**. Parcels of real property ~~within Mesa's corporate limits~~ that are developed as new or converted commercial or residential condominiums, as defined in A.R.S. § 33-1202, may be excepted from some or all of the requirements of Sections 3(A), 3(C) or 3(E) by the City Engineer as follows:

1. A group of structures or parcels may be served by one (1) meter and service connection when the real property under ownership by multiple parties is governed by a Homeowner's Association or a Unit Owners Association; or

2. A group of structures or parcels may be served by more than one (1) meter when the main lines are located in public utility easements or public utility facility easements.

~~24~~**25.** Violation; Penalty:

Among other penalties that may apply, any person that violates any provision of this Ordinance shall be guilty of a misdemeanor. Upon conviction, individuals shall be punished by a fine not to exceed $2,500, or by imprisonment for a period not to exceed six (6) months, or by such fine and imprisonment. Upon conviction, businesses shall be punished by a fine not to exceed $20,000. Each instance of violation continued shall be a separate offense, punishable as described above.

~~25~~**26**. Confidentiality:

Customer-specific information shall not be released without specific prior written Customer authorization unless the information is reasonably required for legitimate account collection activities or credit analysis activities or when such information aids in providing safe and reliable service to the Customer or unless otherwise provided by court order or law.