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KICKAPOO TRIBE OF OKLAHOMA  
TRIBAL UTILITY ORDINANCE

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KICKAPOO TRIBE OF OKLAHOMA  
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Table of Contents

Enactment Clause.

Section 101. Creation; Governmental Status.

Section 102. Name, Location and Place of Business.

Section 103. Kickapoo Lands.

Section 104. Duration.

Section 105. Declaration of Policy; Purposes.

Section 106. Applicability of Kickapoo Tribal Laws and Policies.

Section 107. Control of Operations.

Section 108. Membership of the Management Board; Qualification; Term of Office.

Section 109. Management Board; Purpose; Duties and Powers.

Section 110. Indemnification of Officers and Employees of the Utility Authority and Directors of  
the Management Board.

Section 111. Meetings of the Management Board.

Section 112. Officers' powers and duties; general manager.

Section 113. Election; Term of Office; Qualification.

Section 114. General Manager; Functions; Duties.

Section 115. Accounting; Fiscal Year.

Section 116. Records; Inspection; Audits.

Section 117. Distribution of Cash Flow.

Section 118. Rates and charges.

Section 119. Exemption from Judicial Process.

· KICKAPOO TRIBE OF OKLAHOMA  
TRIBAL UTILITY ORDINANCE

**Enactment Clause.**

Be it enacted by the Council of the Kickapoo Tribe of Oklahoma the "*Tribal Utility Ordinance*".

**Section 101. Creation; Governmental Status.**

The Kickapoo Tribal Utility Authority ("Utility Authority") is hereby created as an instrumentality of The Kickapoo Tribe of Oklahoma, hereinafter referred to as "The Kickapoo Tribe." The Utility Authority created hereby is and shall be a governmental instrumentality, subject to the control of its governing board as provided in this Article, but it shall have legal existence separate and apart from that of the government of The Kickapoo Tribe. The debts, obligations, liabilities, contracts, bonds, notes, receipts, expenditures accounts, finds, undertakings and property of the Utility Authority its officers, agents or employees shall be deemed to be those of the Utility Authority and not to be those of The Kickapoo Tribe or any office, division, department, committee, commission or any other instrumentality thereof.

**Section 102. Name, Location and Place of Business.**

- (a) The name shall be: the Kickapoo Tribal Utility Authority.
- (b) The principal place of business and the office of the Utility Authority shall be at the Kickapoo Tribe of Oklahoma, P.O. Box 70, McLoud, OK 74851.
- (c) The Utility Authority may also have offices at such other place or places as the Management Board, as hereinafter defined, may from time to time direct, or as the operation of the Utility Authority shall require.

**Section 103. Kickapoo Lands.**

As used in this Article, the term "Kickapoo Lands" shall refer to all trust lands of The Kickapoo Tribe, all lands over which The Kickapoo Tribe has regulatory authority, and all lands which contain equipment relating to utilities that The Kickapoo Tribe owns and/or maintains.

**Section 104. Duration.**

The duration of the Utility Authority is perpetual.

**Section 105. Declaration of Policy; Purposes.**

- (a) *Policy.*

(1) It is important to the public health, safety and welfare that adequate supplies

of electric power, natural gas, water, wastewater treatment and solid waste be available to The Kickapoo Tribe.

- (2) The development, acquisition, construction, improvement, reconstruction, enlargement, extension, operation, repair, maintenance and use of electric power, natural gas, water, wastewater treatment and solid waste systems in Kickapoo Lands are necessary to assure adequate supplies of such services and to promote the public interest and economic development of The Kickapoo Tribe.
- (3) The activities powers and purposes conferred by this Article are public purposes and for public uses are essential governmental functions for which funds may be expended; property acquired and notes, bonds or other obligations may be issued.
- (4) The provisions of this Article are declared to be necessary and in the public interest and all facilities authorized herein are declared to be public improvements and activities.

(b) *Purposes.* The Utility Authority is organized for the following purposes:

- (1) To operate, own, maintain and/or promote utility systems furnishing electric power, natural gas, water, wastewater and solid waste utility services in Kickapoo Lands.
- (2) To expand and execute such extensions of utility systems giving appropriate consideration to efficiency and feasibility.
- (3) To encourage economic development in Kickapoo Lands by making utility services available at reasonable cost.
- (4) To promote the use of utility services where available in order to improve the public health, safety and welfare of The Kickapoo Tribe and its members.
- (5) To participate in utility projects of every kind and nature where the project could or would benefit The Kickapoo Tribe, the Kickapoo People or the Utility Authority.

(c) *Ancillary Purposes.* To do everything necessary, proper, or advisable to carry out the policy, and for the accomplishment of the purposes set forth in this Article, and do all things incidental thereto or connected therewith, which are not inconsistent with or prohibited by any applicable Federal or Kickapoo Tribal Law or Regulation and Kickapoo Tribal Policies.

**Section 106. Applicability of Kickapoo Tribal Laws and Policies.**

- (a) The Utility Authority shall be subject to all laws, regulations, policies and procedures of the Kickapoo Tribe except to the extent that the Kickapoo Business Committee specifically excludes the Utility Authority's compliance.
- (b) The Utility Authority may solicit the assistance of the Kickapoo Tribe's human resource, finance and other appropriate departments with respect to enforcement of tribal policies and procedures.

**Section 107. Control of Operations.**

The Utility Authority shall operate as a full service utility with a Management Board (the "Management Board") having control over such operations.

**Section 108. Membership of the Management Board; Qualification; Term of Office.**

- (a) *Number.* The Management Board shall consist of three (3) directors, who shall be appointed by the Kickapoo Business Committee.
- (b) *Qualifications.* The Directors shall have the following qualifications:
  - (1) Two (2) of the Directors shall be members of The Kickapoo Tribe having education and experience to qualify them for learning utility business practices and procedures and for making sound business judgments.
  - (2) At least one (1) of the Directors shall have a college degree.
- (c) *Term of Office.* Directors shall serve for staggered terms of three (3) years each, at least one (1) of such terms shall expire each year at the annual meeting of the Management Board, and each Director shall hold office until the appointment by the Kickapoo Business Committee of a successor.
- (d) *Resignations.* Any Director may resign at any time by giving written notice to the Management Board and to the Secretary of the Kickapoo Business Committee. Such resignation shall take effect at the time specified therein, and, unless otherwise specified in such notice the acceptance of such resignation shall not be necessary to make it effective.
- (e) *Removal.* Any Director maybe removed, by majority vote of the Kickapoo Business Committee if:
  - (1) Such Director has failed to attend three (3) consecutive meetings of the Management Board or has failed to attend any three (3) out of six (6) consecutive meetings without good cause; or
  - (2) Such Director has been convicted of any crime reflecting upon such Director's honesty or ability to fulfill the fiduciary obligations imposed by aw upon such

Director; or

- (3) Such Director has acted with a dereliction of duty, gross negligence, willful misconduct, or malfeasance in office; or
  - (4) Such Director is disabled from discharge of his powers or duties, or engaged in behavior involving moral turpitude; or
  - (5) In its judgment the best interests of the Utility Authority will be served thereby.
- (f) *Vacancies.* Any vacancy on the Management Board shall be filled by the Kickapoo Business Committee for the unexpired portion of the term in the manner prescribed herein for appointment.
- (g) *Duties.* A Director shall perform his duties as a Director, including his duties as a Director of any committee of the Management Board upon which the Director may serve, in good faith, in a manner the Director believes to be in the best interests of the Utility Authority and with such care as an ordinarily prudent person would use under similar circumstances in a like position. In performing such duties, a Director shall be entitled to rely on factual information opinions, reports or statements including financial statements and other financial data in each case prepared or presented by:
- (1) One (1) or more officers or employees of the Utility Authority or of The Kickapoo Tribe whom the Director reasonably believes to be reliable and competent in the matters presented;
  - (2) Counsel, public accountants or other persons as to matters which the Director reasonably believes to be within such persons' professional or expert competence; or
  - (3) A committee of the Management Board upon which the Director does not serve, duly designated by the Management Board as to matters within its designated authority, which committee the Director reasonably believes to merit confidence; provided, however, the Director shall not be considered to be acting in good faith if the Director has knowledge concerning the matter in question that would cause such reliance to be unwarranted.
- (h) *Liabilities.* No Director of the Management Board shall be personally liable to the Utility Authority or The Kickapoo Tribe for monetary damages for breach of fiduciary duty as a Director unless:
- (1) The Director has breached or failed to perform in good faith the duties of the Director's office; and

- (2) The Director's actions resulted in actual financial loss to the Utility Authority.
- (i) *Appointment of Acting Directors.* Notwithstanding the provisions of Subsections (a), (b) and (c) of this Section, the Kickapoo Business Committee may, as a result of a vacancy and pending the appointment of one or more permanent Director(s) of the Management Board, appoint one or more acting Director(s) to carry out the duties and responsibilities of the Management Board.

**Section 109. Management Board; Purpose; Duties and Powers.**

- (a) *Direction of Purposes and Exercise of Power by Management Board.* The Management Board shall accomplish the purposes and exercise the following powers and duties:
  - (1) To manage, direct and operate the Utility Authority.
  - (2) To exercise its authorized powers in the best interests of The Kickapoo Tribe within the limits of responsible business judgment and , provided, that it shall not incur any contract obligation in excess of the reasonable ability of the Utility Authority to make repayment on the due date.
  - (3) To be reimbursed for expenses incurred in attending its meetings or in furtherance of the objectives of the Utility Authority. The Management Board may propose a fee to be paid to its Directors, subject to approval by the Business Committee, on a per meeting attended or annual basis.
- (c) *Further Powers Upon Approval of the Kickapoo Business Committee.* The Management Board shall exercise the following enumerated powers only upon the approval of the Kickapoo Business Committee:
  - (1) *To Expand Facilities.* To approve expansions and enlargements of the public utility property and facilities, including the planning, acquisition, construction, development and operation of additional utility facilities, to negotiate and execute engineering and construction contracts, and to take any and all usual, necessary, and convenient actions incident thereto.
  - (2) *To Deal in Real Property.* To negotiate the acquisition of (by purchase, exchange, lease, hire or otherwise) and to acquire, utilize, improve, manage, operate, to negotiate the sale, and to sell, lease, or mortgage, either alone or in conjunction with others, real property of every kind, character and description and any interest therein, necessary or incidental to the purposes set forth in this Article, except as prohibited by law. Title to all trust or restricted real property shall be and remain in its trust or restricted status. Any real property shall be taken in the name of or on the behalf of the Kickapoo Tribe of Oklahoma unless otherwise authorized by the Business Committee.

- (3) *To Make and Enter into Joint Agreements.* To make, enter into, perform and carry out joint or cooperative agreements with Federal, State, Regional or local units of government in furtherance of the policy and purposes set forth in this Article.
- (4) *To Sue or be Sued.* To bring suit in its name and, subject to legal limitations, if any, under Federal or Kickapoo Tribal law, to contractually waive immunity of the Utility Authority to suit. No such waiver shall waive the sovereign immunity of the Kickapoo Tribe Oklahoma nor extend liability to any assets, revenue, or income of the Kickapoo Tribe Oklahoma.
- (d) *Ancillary Powers.* To have and exercise all powers necessary to affect any or all of the purposes for which the Utility Authority is organized.

**Section 110. Indemnification of Officers and Employees of the Utility Authority and Directors of the Management Board.**

The sovereign immunity of the Utility Authority shall attach to the actions of its officers and employees and to Directors of the Management Board acting within the scope of their authority.

- (a) The Utility Authority shall indemnify any officer or employee of the Utility Authority or Director of the Management Board or any person who may have served as an officer or employee of the Utility Authority or Director of the Management Board, against reasonable expenses, actually and necessarily incurred by that person in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being, or having been, such officer or employee of the Utility Authority or Director of the Management Board acting in the discharge of his duties or within the scope of his employment except in relation to matters as to which he shall be found to be liable for gross negligence, willful misconduct, recklessness in the performance of duty or guilty of criminal misconduct.
- (b) The Utility Authority shall also reimburse any Director of the Management Board the reasonable costs of settlement of any such action, suit or proceeding if it shall be found by a majority of the Management Board other than Director(s) involved in the matter or controversy, that it is in the best interest of the Utility Authority and The Kickapoo Tribe that such settlement be made and that such Director of the Management Board was not guilty of gross negligence, willful misconduct or recklessness. Any decision of the Management Board to pay the reasonable costs of settlement as aforesaid shall be subject to the approval of the Kickapoo Business Committee.
- (c) Any officer or employee of the Utility Authority or Director of the Management Board shall give to the Chairperson and Secretary of the Utility Authority and to the Secretary of the Kickapoo Business Committee prompt written notice of any action, suit or proceeding for which indemnification hereunder may be sought, and the

Utility Authority at its option, may defend against such action, suit or proceeding with counsel of its choosing.

**Section 111. Meetings of the Management Board.**

- (a) *Annual Meeting.* The annual meeting of the Management Board shall be held at 10:00 a.m., on the second Tuesday of each November at the principal place of business, or at such other place as the Management Board shall fix. The meeting, except for executive session(s), if any, shall be open to Kickapoo Tribal members.
- (b) *Regular Meetings.* The Management Board shall meet at least quarterly upon notice, as described herein, at such place as the Management Board shall direct or as shall be fixed by the notice in either the Utility Authority's principal place of business and in the Kickapoo Tribal Government office. The open session portion of the meeting shall be open to Kickapoo Tribal members. The Management Board shall submit to the Kickapoo Business Committee written reports of its operations, projects and finances, on no less than on a quarterly basis.
- (c) *Special Meetings.* Special meetings of the Management Board may be held upon notice, as described herein, given by the Chairperson or Secretary of the Management Board or by any two (2) Directors of the Management Board, at such place as the Management Board shall direct or as shall be fixed by the notice. Special meetings may be conducted in person or by telephone (including video or such other electronic or digital means) as necessary.
- (d) *Notice.*
  - (1) Notice of meetings stating the time, place and date shall be given in writing by letter, or facsimile properly addressed to each Director and to the Kickapoo Business Committee according to the latest available Utility Authority records, not later than three (3) days or more than thirty (30) days immediately preceding the meeting excluding the day of the meeting.
  - (2) Notice may be waived in writing signed by the Director or Directors entitled to such notice; whether before or after the time stated therein, and such waiver shall be deemed equivalent to the giving of such notice. Attendance of any Director at the meeting shall also constitute a waiver of notice.
- (e) *Quorum.* A majority of the Directors of the Management Board shall constitute a quorum for the transaction of any business. The act of the majority of the Directors present, either in person or telephonically, and voting at a meeting at which a quorum is present shall be the act of the Management Board.

**Section 112. Officers' powers and duties; general manager.**



(a) *Officers.* There shall be a Chairperson and Secretary of the Management Board and may be such other officers, as provided herein. All officers of the Utility Authority shall have the following duties as may be determined by the Management Board:

(1) *The Chairperson.* The Chairperson of the Management Board shall be chosen from among the Directors by the Management Board, shall preside at all meetings of the Management Board if present, and shall, in general, perform all duties incident to the office of the Chairperson of the Management Board and such other duties as, from time to time, may be assigned by the Management Board. If a Vice-Chairperson is selected by the Management Board, said officer shall act in the capacity of the Chairperson in the absence of the latter, and shall discharge any other duties designated by the Chairperson.

(2) *The Secretary.* The Secretary, chosen by the Directors of the Management Board, shall keep or cause to be kept the minutes of the meetings of the Management Board. Minutes of each meeting (in draft form if not officially approved) of the Management Board shall be filed with the Business Committee Secretary within 10 days of Board meetings. Official minutes shall be promptly filed with the Business Committee after approval. The Secretary shall see that all notices are duly given in accordance with the provisions of this Article, shall be custodian of the seal and records, and in general, shall perform all duties incident to the office of the Secretary and such other duties as may, from time to time, be assigned by the Management Board or the Chairperson.

(b) *General Manager.* A General Manager may be selected by the Management Board and, if selected, shall be the principal executive officer of the Utility Authority and shall have direction of all aspects of the Utility Authority's daily operations, except as otherwise provided in this Article. The General Manager shall be responsible to the Management Board as a chief executive officer of a public service corporation normally would be, shall render reports to the Management Board and perform all other functions and duties specified in this Article for the General Manager. The General Manager shall not serve on the Management Board.

### **Section 113. Election; Term of Office; Qualification.**

The officers, with the exception of a General Manager, if selected, shall be chosen annually by the Management Board at its annual meeting, or as soon after such annual meeting as newly appointed Directors shall have qualified. Each such officer shall hold office until a successor is chosen and qualified, or until such officer shall have resigned or shall have been removed from the Management Board in the manner provided herein. Any vacancy in any such office because of death, resignation removal, or any other cause shall be filled for the unexpired portion of the term in the manner prescribed herein for election or appointment to such office.

**Section 114. General Manager; Functions; Duties.**

- (a) A General Manager, if selected, shall:
- (1) Be responsible to the Management Board;
  - (2) Among other things, execute the general policies formulated by the Management Board, provide for the operation of the Utility Authority and discharge the duties and responsibilities of the office;
  - (3) Exercise good judgment in the determination of the ways and means by which general policy set forth by the Management Board is to be carried out;
  - (4) Be the active, operating executive of the Utility Authority and prepare plans and annual budgets and make suggestions as to policies and any proposals for improvements and cost control;
  - (5) Be responsible for the general supervision of the performance of staff and ensure compliance with all applicable laws, policies and procedures relating to human resource management, including performance evaluations employee relations, orientations training, and other personnel related areas;
  - (6) Render regular reports to the Management Board and perform all other functions and duties specified in this Article;
  - (7) Be reimbursed for any reasonable expenses incurred in carrying out the responsibilities of the office.

**Section 115. Accounting; Fiscal Year.**

The accounting system for the Utility Authority shall be maintained in accordance with generally accepted accounting principles and in compliance with the regulations of any governmental agencies having jurisdiction and by using the same system as The Kickapoo Tribal government. The fiscal year of the Utility Authority shall be October 1 to September 30, or such other fiscal year to coincide with the fiscal year of The Kickapoo Tribe.

**Section 116. Records; Inspection; Audits.**

The books, records and property of the Utility Authority shall be available for inspection at all reasonable times by authorized representatives of The Kickapoo Tribe. The accounts and records of the Utility Authority shall be audited at the close of each fiscal year by outside auditors approved by the Kickapoo Business Committee.

**Section 117. Distribution of Cash Flow.**

At the end of each calendar month, the Utility Authority shall distribute to The Kickapoo Tribe all cash flow generated from the operation of the Utility Authority for such calendar month less reasonable reserves required by the Utility Authority for its operations and the payment of liabilities.

**Section 118. Rates and charges.**

- (a) The Management Board shall fix rates to be charged for gas, electricity, water, wastewater and solid waste services sold and other services rendered by the Utility Authority.
- (b) Such rates shall be just, reasonable and compensatory and shall be uniform for all consumers in the same class, but different rate schedules may be applied to different classes of consumers as determined by the Management Board. In the event that the Management Board elects to change the rates or the rate schedule charges, then it shall be required that the Management Board schedule a public hearing to consider such changes of which at least fourteen (14) days notice is given to each affected consumer via United States Postal mail or such other means as reasonably deemed to provide notice.

**Section 119. Exemption from Judicial Process.**

- (a) All property of the Utility Authority shall be exempt from levy and sale by virtue of an execution. No execution or other judicial process shall not be issued against such property; nor shall any judgment against the Utility Authority be a charge or lien upon its property;
- (b) This Section shall not apply to or limit the right of note holders, bondholders or entities or contractors providing electric, gas, water, wastewater or solid waste utility service to pursue any remedies or rights, including, but not limited to, possession, execution, attachment, and sale of security for the enforcement of any pledge or lien given by the Utility Authority on its property, including personality, removable trade fixtures, revenues, rates, fees, or other income of any other funds.
- (c) To the extent that any right or remedy is found to be provided under this Act, the sole jurisdiction shall be in the Kickapoo Tribe of Oklahoma District Tribal Court.
- (d) Nothing in this Section shall be construed as a waiver of the sovereign immunity of the Utility Authority.