

Control Number: 49225



Item Number: 8

Addendum StartPage: 0

DOCKET NO. 49225

PETITION BY OUTSIDE CITY
RATEPAYERS APPEALING THE
WATER RATES ESTABLISHED BY
THE CITY OF CELINA

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2019 MAR 15 PM 1:33
BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

**FIRST AMENDED PETITION APPEALING
WATER AND WASTEWATER RATES OF THE CITY OF CELINA
AND REQUEST FOR INTERIM RATES**

TO THE HONORABLE COMMISSIONERS:

COME NOW, Petitioners, water and wastewater customers of the City of Celina (the "City"), by and through the undersigned counsel, and pursuant to Texas Water Code ("TWC") Section 13.043(b)(3) and Title 16 Texas Administrative Code ("TAC ") Section 24.101, file this First Amended Petition appealing the City's water and wastewater rates. Further, pursuant to TWC § 13.043(h), Petitioners request that the Commission establish interim rates to be in effect until such time as a final decision regarding this appeal is made.

In support of this First Amended Petition and Request for Interim Rates, Petitioners would respectfully show the following:

I. PARTIES

1.1. The City of Celina is a home-rule municipality and a political subdivision of the State of Texas, governed by the Constitution of the State of Texas and the Texas Local Government Code.

1.2. Petitioners, who are signatories to the petitions attached to the Original Petition,¹ are customers of the City and ratepayers within the meaning of TWC § 13.043(d). Petitioners reside outside the City's corporate boundary.

¹ The Original Petition filed February 14, 2019 is incorporated herein for all purposes. Although the Original Petition provides a clear and concise statement that the Ratepayers appeal and protest "the three-phase, *water and sewer* rate increases adopted by the City of Celina Council (mailing address – 142 North Ohio Street Celina, Tx 75009, phone number – (972) 382-2682) on November 13, 2018," a header and cover letter inadvertently reference only an appeal of the water rates. This is an appeal of both the City's water and sewer rate increases.

II. JURISDICTION

A. Appeal of Municipal Rates Pursuant to Section 13.043(b)(3)

2.1. Petitioners challenge the water and wastewater rates of the City pursuant to TWC § 13.043(b)(3) and 16 TAC § 24.101 of the Commission Rules.² Petitioners are ratepayers of the City, which is “a municipally owned utility” that provides utility service to ratepayers who reside outside the corporate limits of the municipality.

2.2. Pursuant to TWC § 13.043(c) and 16 TAC § 24.101(b), Petitioners timely filed the Original Petition on February 14, 2019. The effective date of the rates appealed in the Original Petition and herein was January 1, 2019, which was less than 90 days prior to the filing of the Original Petition on February 14, 2019. Petitioners provided the City with a copy of Petitioners’ Original Petition.

2.3 The Original Petition complied with 16 TAC § 24.103. Each signature page of the Petition contained, in legible form, the following information for each ratepayer:

- (1) a clear and concise statement that the petition is an appeal of a specific rate action of the water or sewer service supplier in question as well as a concise description and date of that rate action;
- (2) the name, telephone number, and street or rural route address (post office box numbers are not sufficient) of each signatory ratepayer. The petition shall list the address of the location where service is received if it differs from the residential address of the signatory ratepayer;
- (3) the effective date of the decision being appealed;
- (4) the basis of the request for review of rates;³

² TWC §13.043(b)(3); 16 TAC §24.101.

³ 16 TAC §24.103(a).

2.4 The Original Petition contained signatures of 322 customers affected by the City's rate increase, which is more than 10 % of the out-of-City ratepayers who are eligible to appeal under TWC § 13.043(b).

2.5 TWC § 13.043(i) required the City to provide individual, written notice to each Petitioner within sixty (60) days after the date of a final decision on a rate change.⁴ Petitioners did not receive notice of the adopted rates until on or about February 14, 2019, more than a month and a half after the new rates became effective on January 1, 2019.⁵

2.6 The increased water and wastewater rates adopted by the City of Celina are unjust and unreasonable, and the rates unfairly burden existing customers with the costs unrelated to the cost of service. Petitioners request that the Commission refer this matter to the State Office of Administrative Hearings ("SOAH") and adopt an order setting the City's rates so that those rates are just, reasonable, nondiscriminatory, and based upon the City's actual cost of providing service to Petitioners.

B. Interim Rates

2.7 Pursuant to TWC § 13.043(h) and 16 TAC § 24.37, Petitioners request that the Commission set interim rates during the pendency of this rate appeal until a final decision is rendered.⁶ The Commission may establish interim rates under its original or appellate jurisdiction where the proposed increase in rates could result in an unreasonable economic hardship on the utility's customers, unjust or unreasonable rates, or failure to set interim rates could result in an unreasonable economic hardship on the utility.⁷ In fact, the proposed rates charge Petitioners an arbitrary 1.5 times more than rates charged to residents located within the City, which the use of

⁴ TWC §13.043(i).

⁵ See Affidavit of Lissa Shepard, Mar. 15, 2019, attached as **Exhibit A**.

⁶ TWC §13.043 (h); 16 TAC §24.37.

⁷ 16 TAC §24.37(d).

such a multiplier against outside-city customers the Commission has previously ruled to be discriminatory, unjust, unreasonable, and not allowed under Texas law.⁸

The City adopted the rates pursuant to City Ordinance 2018-66, which shows definitively that the City applied a 150% multiplier to in-City rates to establish its out-of-City rates.⁹ For example, the in-City monthly minimum charge effective January 1, 2019 for inside City customers with a ¾" meter was \$23.84; for outside City customers the monthly minimum charge was \$35.77.¹⁰ Clearly, the City's rates are based on a discriminatory basis. For that reason alone, the Commission should set interim rates due to the City's unjust and unreasonable rates charged to Petitioners.

2.8 Insofar as the City failed to provide proper notice of the proposed rate increase required by TWC § 13.043(i), the rate increases placed an additional, unfair economic hardship on the Petitioners. The City's increased rates, without providing Petitioners an opportunity to adjust consumption, placed an unfair economic hardship to Petitioners.

2.9 The Commission will reduce or completely eliminate the proposed rate increase; therefore, the City will refund to Petitioners any additional revenue collected during the pendency of this matter. The burden of such unjust rates on Petitioners for both water and wastewater service is sufficient grounds for the imposition of interim rates, and Petitioners hereby request that the Commission establish interim rates for water and wastewater services at the same levels as the rates existed prior to the Celina City Council's action adopting its rate ordinance on November 13, 2018.

⁸ *In the Matter of the Complaints of Springwoods MUD, et. al against the City of Austin* at Finding of Fact No. 45.f., p. 23 ("Different Treatment of inside-city and outside-city municipal utility district is discriminatory and illustrates the inequitable aspects of the distance factor.").

⁹ See Ordinance No. 2018-66, City of Celina, Texas, November 13, 2018, Appendix A, attached as **Exhibit B**; see also Appendix A Fee Schedule, City of Celina Code of Ordinances, <https://z2.franklinlegal.net/franklin/Z2Browser2.html?showset=celinaset> (last visited March 15, 2019), attached as **Exhibit C**.

¹⁰ *Id.*, at 1.

III. PRAYER

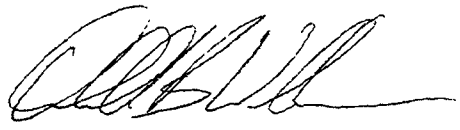
WHEREFORE, PREMISES CONSIDERED, Petitioners respectfully pray that the Commission:

1. Refer this Appeal to SOAH for a contested case proceeding under TWC § 13.043(b) and require the City to show through a cost of service study that its rates are just and reasonable and based upon the City's actual cost of providing service, in compliance with the Texas Water Code and the Commission Rules;
2. Set interim rates at the same rates that were in effect prior to the effective date of the City's rates adopted pursuant to City of Celina Ordinance 2018-66 on November 13, 2018, until such time as the Commission makes a final decision on this appeal;
3. Enter an Order vacating the City of Celina's unjust, unreasonable, prejudicial, preferential, and discriminatory water and wastewater rates as those rates apply to Petitioners; and,
4. Grant such other and further relief as the Petitioners may show themselves to be entitled.

Respectfully submitted,

Randall B. Wilburn
State Bar No. 24033342
Helen Gilbert
State Bar No. 00786263
GILBERT WILBURN PLLC
7000 North MoPac Blvd., Suite 200
Austin, Texas 78731
Telephone: (512) 535-1661
Telecopier: (512) 535-1678

By:

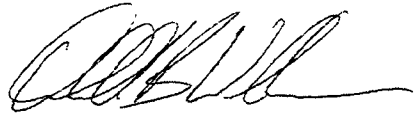


Randall B. Wilburn

COUNSEL FOR PETITIONERS

CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested on all parties on the 15th day of March 2019.



Randall B. Wilburn

EXHIBIT A

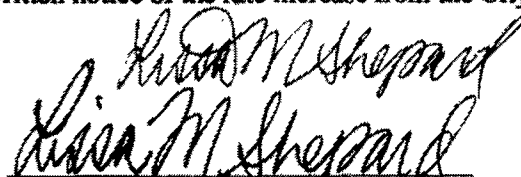
STATE OF TEXAS §
COLLIN COUNTY §

AFFADAVIT OF LISSA SHEPARD

Before me, the undersigned notary, on this day personally appeared Lissa Shepard, a person whose identity is known to me. After I administered an oath to Lissa Shepard, upon her oath, she said:

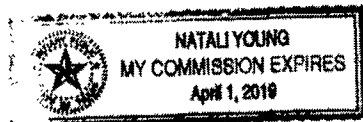
"My name is Lissa Shepard. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

I am a retail utility ratepayer of the City of Celina ("City"), residing outside the corporate boundaries of the City. I am also a board member of Collin County Municipal Utility District No. 1 (the "MUD") within which most of the City's outside utility customers reside. On November 13, 2018, the City Council of the City of Celina adopted City Ordinance No. 2018-66, which raised our water and sewer rates effective January 1, 2019. On behalf of 321 other outside City utility customers, I prepared and mailed the petition to the Public Utility Commission of Texas ("PUC") on February 8, 2019, which the PUC received for filing on February 14, 2019. The only written notice of the City's rate increase that I received was a postcard from the City announcing the rate increase. However, I received the City's postcard on or about February 14, 2019, which was after I mailed the petition to the PUC. I did not receive written notice of the rate increase from the City any time before the middle of February 2019."


Lissa Shepard, City of Celina Ratepayer

Given under my hand and seal of office on March 15, 2019.

[Seal]




Notary Public, State of TX

EXHIBIT B

CITY OF CELINA, TEXAS ORDINANCE 2018-66

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CELINA, TEXAS, AMENDING THE CITY'S CODE OF ORDINANCES, APPENDIX A: FEE SCHEDULE; ARTICLE A5.000: UTILITY RATES AND CHARGES; SECTION A5.002 WATER RATES AND SECTION A5.003 SEWER RATES; ADOPTING REVISED FEES FOR UTILITY RATES; PROVIDING FOR INCORPORATION OF PREMISES; PROVIDING FINDINGS; PROVIDING FOR AMENDMENT TO THE CODE OF ORDINANCES; PROVIDING A CUMULATIVE REPEALER CLAUSE; PROVIDING FOR SAVINGS; PROVIDING FOR SEVERABILITY; PROVIDING FOR PENALTY, PROVIDING FOR PUBLICATION; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Celina is a home rule municipality located in Collin County and Denton County, Texas created in accordance with the provisions of the Texas Local Government Code, the Texas Constitution and operating pursuant to the enabling legislation of the state of Texas; and

WHEREAS, the City Council of the City of Celina, Texas is empowered under Local Government Code 54.001 to do all acts and make all regulations which may be necessary or expedient for the promotion of the public health, safety and general welfare; and

WHEREAS, the City Council is legally empowered to regulate the utility rates charged to customers of its municipal system; and

WHEREAS, it is in the best interest of the public health, safety, and welfare that this amendment to the utility rates be enacted.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CELINA, TEXAS

SECTION 1 INCORPORATION OF PREMISES

The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

SECTION 2 FINDINGS

After due deliberations the City Council has concluded that the adoption of this Ordinance is in the best interest of the City of Celina, Texas and of the public health, safety and welfare.

EXHIBIT B

SECTION 3 **AMENDMENTS**

3.01 That the City of Celina Code of Ordinances, Appendix A: Fee S Article A5.000: Utility Rates and Charges; Section A5.002: Water rates, is hereby amended to adopt such rates and charges which are set forth on the attached Exhibit "A" which is incorporated herein for all intents and purposes.

3.02 That the City of Celina Code of Ordinances, Appendix A: Fee Schedule; Article A5.000: Utility Rates and Charges; Section A5.003: Sewer rates, is hereby amended to adopt such rates and charges which are set forth on the attached Exhibit A which is incorporated herein for all intents and purposes.

SECTION 4 **CUMULATIVE REPEALER CLAUSE**

This Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances, or parts thereof, in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance. Provided however, that any complaint, action, claim or lawsuit which has been initiated or has arisen under or pursuant to such other Ordinances on this date of adoption of this Ordinance shall continue to be governed by the provisions of such Ordinance and for that purpose the Ordinance shall remain in full force and effect.

SECTION 5 **SAVINGS CLAUSE**

All rights and remedies of the City of Celina, Texas are expressly saved as to any and all violations of the provisions of any other ordinance affecting utility rates and fees which have secured at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances same shall not be affected by this Ordinance but may be prosecuted until final disposition by the court.

SECTION 6 **SEVERABILITY**

The provisions of the Ordinance are severable. However, in the event this Ordinance or any procedure provided in this Ordinance becomes unlawful, or is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unenforceable, void, illegal or otherwise inapplicable, in whole in part, the remaining and lawful provisions shall be of full force and effect and the City shall promptly promulgate new revised provisions in compliance with the authority's decisions or enactment.

EXHIBIT B

SECTION 7 **PENALTY**

If the governing body of the City of Celina determines that a violation of this Ordinance has occurred, the City of Celina may bring suit in district court to enjoin the person, firm, partnership, corporation, or association from engaging in the prohibited activity.

Any person, firm or corporation violating any of the provisions or terms of this ordinance or of the Code of Ordinances as amended hereby, shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Celina, and upon conviction shall be punished by a fine not to exceed Five Hundred Dollars (\$500) for each offense, and a separate offense shall be deemed committed upon each day during or on which a violation occurs and continues.

SECTION 8 **PUBLICATION CLAUSE**

The City Secretary of the City of Celina is hereby directed to publish in the Official Newspaper of the City of Celina the Caption, and Effective Date Clause of this Ordinance as required by Section 52.013 of the Local Government Code.

SECTION 9 ENGROSSMENT AND **ENROLLMENT**

The City Secretary is hereby directed to engross and enroll this Ordinance by copying the descriptive Caption in the minutes of the City Council and by filing this Ordinance in the Ordinance records of the City.

SECTION 10 **EFFECTIVE DATE**

This Ordinance shall become effective from and after its date of passage in accordance with law.

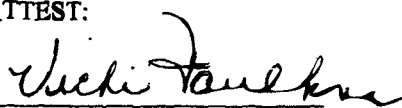
AND IT IS SO ORDAINED.

PASSED AND APPROVED by the City Council of the City of Celina, Texas this 13th day of November, 2018.


Sean Terry, Mayor
City of Celina, Texas

EXHIBIT B

ATTEST:


Vicki Faulkner, City Secretary
City of Celina, Texas

[SEAL]



APPROVED AS TO FORM:



Lance Vanzant, City Attorney
City of Celina, Texas

EXHIBIT B

Date: 11/13/2018

2018 11 14 Celina Rate Model Scen 2 2.0 City Rate Plan 3 Yr

CITY OF CELINA WATER/WASTEWATER COST OF SERVICE MODEL

City Rate Plan – Three Year Summary
Scen: 2018 11 14 Scenario 2 – WW Inverted Block

1

Monthly Minimum Charge						
	3/4"	\$	23.84	\$	24.56	\$ 25.30
	1"		40.10		41.30	42.54
	1 1/2"		80.21		82.61	85.09
	2"		128.33		132.18	136.14

Volume Rate/1,000 Gal						
2,001	10,000	\$	5.21	\$	5.37	\$ 5.53
10,001	20,000		7.89		8.13	8.37
20,001	30,000		9.29		9.57	9.86
30,001	Above		13.41		13.61	14.23

Monthly Minimum Charge						
	3/4"	\$	35.77	\$	36.84	\$ 37.94
	1"		58.40		60.15	61.95
	1 1/2"		116.61		120.31	123.92
	2"		185.89		192.49	198.27

Volume Rate/1,000 Gal						
2,001	10,000	\$	7.82	\$	8.05	\$ 8.29
10,001	20,000		11.83		12.19	12.56
20,001	30,000		13.94		14.35	14.78
30,001	Above		20.12		20.72	21.34

EXHIBIT "A"

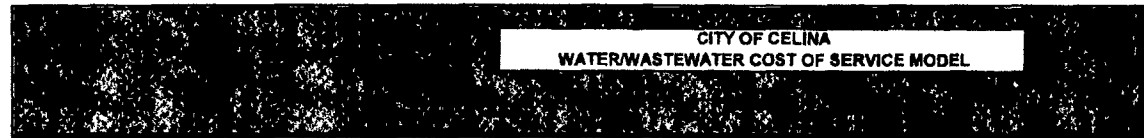
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EXHIBIT B

Date: 11/13/2018

2018 11 14 Celina Rate Model Scen 2 2.0 City Rate Plan 3 Yr



City Rate Plan – Three Year Summary
Scen: 2018 11 14 Scenario 2 – WW Inverted Block

<u>Monthly Minimum Charge</u>						
	3/4"		\$	28.64	\$	29.50
	1"			50.13		51.63
	1 1/2"			100.26		103.27
	2"			160.41		165.22
	3"			240.61		247.83
	4"			401.02		413.05
						425.44
<u>Volume Rate/1,000 Gal</u>						
2,001	10,000		\$	5.21	\$	5.37
10,001	20,000			7.89		8.13
20,001	30,000			9.29		9.57
30,001	Above			13.41		13.81
						14.23

<u>Monthly Minimum Charge</u>						
	3/4"		\$	42.97	\$	44.26
	1"			75.20		77.45
	1 1/2"			150.39		154.90
	2"			240.62		247.84
	3"			380.91		371.74
	4"			601.53		619.58
						638.16
<u>Volume Rate/1,000 Gal</u>						
2,001	10,000		\$	7.82	\$	8.06
10,001	20,000			11.83		12.19
20,001	30,000			13.94		14.35
30,001	Above			20.12		20.72
						21.34

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EXHIBIT B

Date: 11/13/2018

2018 11 14 Celina Rate Model Scen 2 2.0 City Rate Plan 3 Yr

CITY OF CELINA WATER/WASTEWATER COST OF SERVICE MODEL

City Rate Plan -- Three Year Summary
Scen: 2018 11 14 Scenario 2 -- WW Inverted Block

2

<u>Monthly Minimum Charge</u>					
	3/4"	\$	23.44	\$	25.54
	1"		42.11		45.90
	1 1/2"		78.59		85.88
	2"		134.72		148.85
<u>Volume Rate/1,000 Gal</u>					
2,001	5,000		5.84		6.37
5,001	Maximum		7.23		7.88
	Maximum Gallons		13,000		12,000
					11,000
<u>Monthly Minimum Charge</u>					
	3/4"		35.15		38.32
	1"		63.16		68.84
	1 1/2"		117.88		128.49
	2"		202.09		220.27
<u>Volume Rate/1,000 Gal</u>					
2,001	5,000		12.90		14.06
5,001	Maximum		15.97		17.41
	Maximum Gallons		13,000		12,000
					11,000

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EXHIBIT B

Date: 11/13/2018

2018 11 14 Celina Rate Model Scen 2 2.0 City Rate Plan 3 Yr



City Rate Plan – Three Year Summary
Scen: 2018 11 14 Scenario 2 – WW Inverted Block

<u>Monthly Minimum Charge</u>				
	3/4"	28.07	30.58	33.35
	1"	52.84	57.37	62.54
	1 1/2"	98.24	107.08	116.72
	2"	168.41	183.56	200.06
	4"	421.01	458.90	500.20

<u>Volume Rate/1,000 Gal</u>	2,001	Above	6.37	6.94	7.56
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<u>Monthly Minimum Charge</u>				
	3/4"	42.10	45.89	50.02
	1"	78.95	86.06	93.81
	1 1/2"	147.36	160.63	175.06
	2"	252.61	275.34	300.12
	4"	631.52	688.35	750.31

<u>Volume Rate/1,000 Gal</u>	2,001	Above	14.06	15.33	16.71
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EXHIBIT C

Sec. A5.002 Water rates

(a) Residential.

(1) Inside city (W1 residential).

(A) Monthly minimum charge:

	Effective Jan-19	Effective Jan-20	Effective Jan-21
3/4"	\$23.84	\$24.56	\$25.30
1"	\$40.10	\$41.30	\$42.54
1-1/2"	\$80.21	\$82.61	\$85.09
2"	\$128.33	\$132.18	\$136.14

(B) Volume rate/1,000 gal:

	Effective Jan-19	Effective Jan-20	Effective Jan-21
2,001-10,000	\$5.21	\$5.37	\$5.53
10,001-20,000	\$7.89	\$8.13	\$8.37
20,001-30,000	\$9.29	\$9.57	\$9.86
30,001 above	\$13.41	\$13.81	\$14.23

(2) Outside city (W2 residential outside).

(A) Monthly minimum charge:

	Effective Jan-19	Effective Jan-20	Effective Jan-21
3/4"	\$35.77	\$36.84	\$37.94
1"	\$58.40	\$60.15	\$61.95
1-1/2"	\$116.81	\$120.31	\$123.92
2"	\$186.89	\$192.49	\$198.27

(B) Volume rate/1,000 gal:

	Effective Jan-19	Effective Jan-20	Effective Jan-21
2,001-10,000	\$7.82	\$8.05	\$8.29
10,001-20,000	\$11.83	\$12.19	\$12.56

EXHIBIT C

20,001–30,000	\$13.94	\$14.35	\$14.78
30,001 above	\$20.12	\$20.72	\$21.34

(b) Commercial.

(1) Inside city (W3 commercial).

(A) Monthly minimum charge:

	Effective Jan-19	Effective Jan-20	Effective Jan-21
3/4"	\$28.64	\$29.50	\$30.39
1"	\$50.13	\$51.63	\$53.18
1-1/2"	\$100.26	\$103.27	\$106.37
2"	\$160.41	\$165.22	\$170.18
3"	\$240.61	\$247.83	\$255.26
4"	\$401.02	\$413.05	\$425.44

(B) Volume rate/1,000 gal:

	Effective Jan-19	Effective Jan-20	Effective Jan-21
2,001–10,000	\$5.21	\$5.37	\$5.53
10,001–20,000	\$7.89	\$8.13	\$8.37
20,001–30,000	\$9.29	\$9.57	\$9.86
30,001 above	\$13.41	\$13.81	\$14.23

(2) Outside city (W4 commercial outside).

(A) Monthly minimum charge:

	Effective Jan-19	Effective Jan-20	Effective Jan-21
3/4"	\$42.97	\$44.26	\$45.58
1"	\$75.20	\$77.45	\$79.77
1-1/2"	\$150.39	\$154.90	\$159.55
2"	\$240.62	\$247.84	\$255.27

EXHIBIT C

3"	\$360.91	\$371.74	\$382.89
4"	\$601.53	\$619.58	\$638.16

(B) Volume rate/1,000 gal:

	Effective Jan-19	Effective Jan-20	Effective Jan-21
2,001–10,000	\$7.82	\$8.05	\$8.29
10,001–20,000	\$11.83	\$12.19	\$12.56
20,001–30,000	\$13.94	\$14.35	\$14.78
30,001 above	\$20.12	\$20.72	\$21.34

(Ordinance 2018-66, ex. A, adopted 11/13/18)

(c) Temporary water service. Temporary water service may be established at a residential structure for cleaning at the rate of \$15.00 per day. (Ordinance 2013-31, sec. 3.03, adopted 11/12/13)

(d) Bulk water sales. Bulk water sales via a fire hydrant connection will be billed at the most current commercial rate. A hydrant meter deposit will be collected in the amount of \$1,000.00, returnable upon settlement of the account. Anyone caught obtaining water without permission will be charged with a criminal offense. (Ordinance 2013-31, sec. 3.04, adopted 11/12/13)