



**AGENDA
CITY OF ALLEN
CITY COUNCIL REGULAR MEETING
MAY 25, 2021 - 7:00 PM
CITY COUNCIL CHAMBERS
ALLEN CITY HALL
305 CENTURY PARKWAY
ALLEN, TX 75013**

Call to Order and Announce a Quorum is Present.

Pledge of Allegiance.

1. Posting of the Colors by Boy Scouts from Troop #1914.

Public Recognition.

2. Citizen's Comments.

[The City Council invites citizens to speak to the Council on any topic not on the agenda or not already scheduled for Public Hearing. Prior to the meeting, please complete a "Public Meeting Appearance Card" and present it to the City Secretary. The time limit is three minutes per speaker, not to exceed a total of fifteen minutes for all speakers.]

Consent Agenda.

[Routine Council business. Consent Agenda is approved by a single majority vote. Items may be removed for open discussion by a request from a Councilmember or member of staff.]

3. Approve Minutes of the May 11, 2021, Regular City Council Meeting.
4. Adopt an Ordinance Amending the Code of Ordinances, Chapter 6 - Health and Environment, Article VIII, Division 4 Related to Swimming Pools, Spas, Lagoons and Public Interactive Water Features.
5. Adopt an Ordinance Approving the Settlement Agreement between CoServ Gas, Ltd. and the CoServ Gas Cities.
6. Adopt a Resolution Denying Oncor Electric Delivery Company's Application for Approval of a Distribution Cost Recovery Factor.
7. Adopt a Resolution Appointing Pete Phillis to Fill a Vacant Term in Place No. 4 on the Board of Directors for Tax Increment Financing (TIF) Reinvestment Zone

No. 1 (Garden District).

8. Adopt a Resolution Approving the Terms and Conditions of an Advance Funding Agreement (AFA) with The State of Texas Acting by and through The Texas Department of Transportation for the Allen Gateway Project.
9. Award Bid and Authorize the City Manager to Execute a Contract with Advance Contracting Group for the 2021 Streets and Alley Rehabilitation Project in the Amount of \$967,050.
10. Authorize the City Manager to Execute a Sales Tax Revenue Reimbursement Agreement By and Between the City of Allen and Allen Economic Development Corporation for The Farm and The Avenue Projects.
11. Approve the Recommendation from the Tax Increment Financing (TIF) Reinvestment Zone Number One (Garden District) Board of Directors Relating to Payment to Watters Creek Owner, LLC, from the TIF Fund in the Amount of \$662,819.33 from the City Tax Increment, \$147,947.72 from the County Tax Increment, and a payment to the City from the TIF Fund in the Amount of \$15,000 for Administrative Support.
12. Authorize the City Manager to Execute a Contract with Erik Carlson, dba Area C Projects for the Design, Fabrication, and Installation of Artwork at the Don Rodenbaugh Natatorium in the Amount of \$200,000.

Regular Agenda.

13. Conduct a Public Hearing and Adopt an Ordinance for a Specific Use Permit for a Restaurant/Private Club Use for a 6,493± Square Foot Portion of a Building Located on Lot 7A-1, Block A, The Village at Allen; Generally Located South of Stacy Road and East of U.S. Highway 75 (and Commonly Known as 190 E. Stacy Road, B1000, Suite 1000). [Bar Louie (change ownership)]
14. Conduct a Public Hearing and Adopt an Ordinance to Amend the Development Regulations of a Portion of Tract 6 of Planned Development No. 55 Commercial/Office to Allow Medical Clinic as a Permitted Use on Lot 4, Block B, Allen Central Retail Addition No. 3, Generally Located Directly South of McDermott Drive and West of U.S. Highway 75. (805 W. McDermott Drive) [Texas Health Urgent Care]
15. Adopt a Resolution Establishing Rates and Fees for Commercial and Residential Solid Waste, Recycling, and Household Hazardous Waste Services.

Other Business.

16. Calendar.
 - May 24 - June 1 - Early Voting Period for Runoff Election
 - May 31 - City Facilities Closed in Observance of Memorial Day
 - June 5 - Election Day, 7 a.m. - 7 p.m.
17. Items of Interest. [*Council announcements regarding local civic and charitable events, meetings, fundraisers, and awards.*]

Executive Session. (As needed)

Legal, Section 551.071.

As authorized by Section 551.071(2) of the Texas Government Code, the Workshop Meeting and/or the Regular Agenda may be Convened into Closed Executive Session for the Purpose of Seeking Confidential Legal Advice from the City Attorney on any Agenda Item Listed Herein.

(Closed to Public as Provided in the Texas Government Code.)

18. Economic Development Deliberations As Authorized by Section 551.087 of the Texas Government Code —
Discussion of Potential Economic Incentives with Thakkar Development Group, LLC, for The Avenue Project Along the SH 121 Corridor.
19. Reconvene and Consider Action on Items Resulting from Executive Session.

Adjournment.

This notice was posted at Allen City Hall, 305 Century Parkway, Allen, Texas, at a place convenient and readily accessible to the public at all times. Said notice was posted on Friday, May 21, 2021, at 5:00 p.m..

Shelley B. George, City Secretary

Allen City Hall is wheelchair accessible. Access to the building and special parking are available at the entrance facing Century Parkway. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 214.509.4105.

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:

May 25, 2021

SUBJECT:

Approve Minutes of the May 11, 2021, Regular City Council Meeting.

STAFF RESOURCE:

Shelley B. George, City Secretary

ATTACHMENTS:

Minutes

ALLEN CITY COUNCIL

REGULAR MEETING

MAY 11, 2021

Present:

Kenneth Fulk, Mayor

Councilmembers:

Baine Brooks, Mayor Pro Tem

Kurt Kizer

Daren Meis

Carl Clemencich (absent)

Lauren Doherty

Chris Schulmeister

City Staff:

Eric Ellwanger, City Manager

Eric Strong, Deputy City Manager

Tim Dentler, Assistant City Manager

Rebecca Vice, Assistant City Manager

Shelley B. George, City Secretary

Teresa Warren, Director, Public and Media Relations

Rocio Gonzalez, Deputy City Secretary

Pete Smith, Attorney

Workshop Session

The Workshop Session was not held.

Call to Order and Announce a Quorum is Present

With a quorum of the Councilmembers present, the Regular Meeting of the Allen City Council was called to order by Mayor Fulk at 7:00 p.m. on Tuesday, May 11, 2021, in the City Council Chambers of Allen City Hall, 305 Century Parkway, Allen, Texas.

Pledge of Allegiance

1. **Consider All Matters Incident and Related to the Joint General Election Held on May 1, 2021.**
 - **Canvass of Election Returns.**
 - **Adopt a Resolution Declaring the Results of the Joint General Election for City Councilmembers.**

Ms. George reviewed for the City Council the election returns for the City Council Joint General Election of the City Councilmembers for Place Nos. 1, 3 and 5. She distributed and reviewed handout materials including early voting totals, Election Day totals, and the combined Election Day totals. She

also reviewed voting statistics including 66,019 registered voters and 10,142 total votes, which indicated a 15.4% voter turnout. Any votes cast by military overseas ballots (FPCA - Federal Post Card Application) and provisional ballots have been verified by the Early Voting Ballot Board and are included in the verified totals. The totals verified the following results:

	EARLY VOTES CAST	BALLOTS BY MAIL	REGULAR VOTES CAST	PROVIS- IONAL BALLOTS	TOTAL VOTES CAST
COUNCILMEMBER PLACE NO. 1					
CHRISTOPHER GASPARD	147	13	75	1	236
MALCOM J. WILKINSON	158	18	77	0	253
DAREN MEIS	3,072	45	1,558	2	4,677
NATHAN POLSKY	157	17	123	0	297
ANDRE HINES	138	16	92	2	248
DWIGHT BURNS	2,261	170	1,094	4	3,529
COUNCILMEMBER PLACE NO. 3					
JOSEPH JACKSON	99	13	64	1	177
JOEY HERALD	929	33	446	2	1,410
LAUREN DOHERTY	2,491	213	1,288	4	3,996
DAVE CORNETTE	2,563	37	1,318	3	3,921
KENNETH WINEBURG, JR.	43	4	21	0	68
COUNCILMEMBER PLACE NO. 5					
DIANE MARTIN	512	75	268	3	858
DAVE SHAFER	2,848	42	1,475	2	4,367
PHILIP BREWER	2,393	153	1,164	4	3,714
EDSON MUREEBA	116	13	72	0	201

Ms. George announced that Daren Meis was duly elected Councilmember Place No. 1 having received a majority of all votes cast. No one candidate received a majority of all votes cast for the offices of Councilmembers for Place No. 3 and 5, a runoff election will be held on June 5, 2021, for the two candidates who received the highest and second highest number of votes.

RESOLUTION NO. 3821-5-21(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, DECLARING THE RESULTS OF THE JOINT GENERAL ELECTION OF THE CITY OF ALLEN HELD MAY 1, 2021, FOR THE PURPOSE OF ELECTING THE CITY COUNCILMEMBERS FOR PLACE NOS. 1, 3 AND 5; AND PROVIDING AN EFFECTIVE DATE.

MOTION: Upon a motion made by Mayor Pro Tem Brooks and a second by Councilmember Schulmeister, the Council voted five (5) for and none (0) opposed to adopt Resolution No. 3821-5-21(R), as previously captioned, declaring the results of the May 1, 2021, Joint General Election. The motion carried.

The Canvass of the Election was announced as completed.

2. Recognition of Outgoing Councilmember Kurt Kizer.

Mayor Fulk recognized councilmember Kizer for his dedicated service to the citizens of Allen and presented him a framed collage of photos commemorating his years of service.

3. Administration of the Oath-of-Office and Presentation of the Certificate-of-Election.

City Secretary George administered the Oath-of-Office to newly elected Councilmember Daren Meis. Mayor Fulk presented Certificate-of-Election to Councilmember Meis and offered his congratulations.

Public Recognition

Mayor Fulk moved to Agenda Item 5.

5. Presentation of a Proclamation by the Office of the Mayor.

- **Presentation of a Proclamation to the City of Allen Community Services Department, Proclaiming May 16-22, 2021, as Public Works Week.**

6. Annual Report by Greg Roemer, President of Community Waste Disposal, Inc. (CWD).

Mayor Fulk moved to Agenda Item 4.

4. Citizen Comments.

Consent Agenda

MOTION: Upon a motion made by Councilmember Doherty and a second by Mayor Pro Tem Brooks, the Council voted five (5) for and none (0) opposed to adopt all items on the Consent Agenda as follows:

7. Approve Minutes of the April 27, 2021, Regular City Council Meeting.

8. Adopt a Resolution Ordering the June 5, 2021, General Runoff Election for the Purpose of Electing the City Councilmembers for Place Nos. 3 and 5.

RESOLUTION NO. 3822-5-21(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ORDERING A GENERAL RUNOFF ELECTION TO BE HELD ON JUNE 5, 2021, FOR THE PURPOSE OF ELECTING THE CITY COUNCILMEMBERS FOR PLACE NOS. 3 AND 5; DESIGNATING LOCATION OF POLLING PLACE; ORDERING NOTICES OF ELECTION TO BE GIVEN AS PRESCRIBED BY LAW IN CONNECTION WITH SUCH ELECTION; AND PROVIDING AN EFFECTIVE DATE.

9. Adopt a Resolution Supporting a Grant Application by the Five North Texas Municipal Water District Solid Waste Member Cities to Fund a Technical Study on the Feasibility of Beginning a Food Waste Source Reduction Program.

RESOLUTION NO. 3823-5-21(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, SUPPORTING THE FILING OF A GRANT APPLICATION BY THE CITY OF PLANO FOR REGIONAL FUNDS IN AN AMOUNT NOT TO EXCEED \$100,000 FOR A TECHNICAL STUDY RELATED TO FOOD WASTE DIVERSION THROUGH

THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS AS PART OF A REGIONAL COLLABORATIVE PROJECT; AND DECLARING AN EFFECTIVE DATE.

10. **Award Bid and Authorize the City Manager to Execute a Contract with Restocon Corporation for Labor, Equipment, and Installation in the Amount of \$239,444 and with The Garland Company for the Materials in the Amount of \$144,827 for the City Hall Waterproofing Project.**
11. **Award Bid and Authorize the City Manager to Execute a Contract with SDB, Inc., doing business as SDB Contracting Services for the South Garage Fire Damage Repairs at the Allen Event Center in the Amount of \$107,227.**
12. **Motion to Reappoint Mr. James Kerr to the North Texas Municipal Water District Board as a Representative for the City of Allen for a Two-Year Term Effective June 1, 2021, through May 31, 2023.**

The motion carried.

Regular Agenda

13. **Motion to Accept the City of Allen Strategic Plan.**

MOTION: Upon a motion made by Councilmember Doherty and a second by Councilmember Meis, the Council voted five (5) for and none (0) opposed to receive the City of Allen Strategic Plan. The motion carried.

Other Business

14. **Calendar.**

- May 24 - June 1 - General Runoff Election Early Voting Period

15. **Items of Interest.**

Mayor Pro Tem Brooks invited everyone to attend the Dallas Card Show being held at the Delta Hotel by Marriott Dallas | Allen, Friday, May 21 – May 23.

Executive Session

The Executive Session was not held.

16. **Reconvene and Consider Action on Items Resulting from Executive Session.**

Adjournment

MOTION: Upon a motion made by Mayor Pro Tem Brooks and a second by Councilmember Meis, the Council voted five (5) for and none (0) opposed to adjourn the Regular Meeting of the Allen City Council at 7:59 p.m. on Tuesday, May 11, 2021. The motion carried.

These minutes approved on the 25th day of May 2021.

APPROVED:

Kenneth M. Fulk, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:

May 25, 2021

SUBJECT:

Adopt an Ordinance Amending the Code of Ordinances, Chapter 6 - Health and Environment, Article VIII, Division 4 Related to Swimming Pools, Spas, Lagoons and Public Interactive Water Features.

STAFF RESOURCE:

Lee Battle, Director of Community Enhancement

ACTION PROPOSED:

Adopt an Ordinance Amending the Code of Ordinances, Chapter 6 - Health and Environment, Article VIII, Division 4 Related to Swimming Pools, Spas, Lagoons and Public Interactive Water Features.

BACKGROUND

Regulations maintaining the health and safety of public swimming pools and spas are established by the State of Texas and are located in the Texas Administrative Code. Local jurisdictions adopt local ordinances that implement these regulations along with local amendments. In the last legislative session, the International Swimming Pool and Spa Code was adopted as the new standard for pool regulations in the State. As a result, the State modified the Texas Administrative Code to match. The City now must amend the Environmental Health ordinance to reflect the State's new standards.

This ordinance amends the Code of Ordinances to synchronize the City's health and safety regulations for public swimming pools and spas with State law. The City's ordinance will continue to include some local amendments, primarily related to permitting, plan review, and inspection processes. There are two notable changes from the current regulations:

- 1) Adoption of regulations for "artificial swimming lagoons." This is included in State law, but was never adopted by the City. Adopting this will prepare the City in the event a developer proposes to construct an artificial lagoon.
- 2) Adopting the State's fence height requirement for pool enclosures (fences). The State requirement is a minimum of 4 feet, while the City's ordinance currently requires 6 feet. The new ordinance will require a minimum of 4 feet for pool enclosures, which is typical for surrounding communities. This will apply to any future fence installations.

STAFF RECOMMENDATION

Staff recommends that the City Council adopt an Ordinance amending the Code of Ordinances, Chapter 6 - Health and Environment, Article VIII, Division 4 related to swimming pools, spas, lagoons and public interactive water features.

MOTION

I make a motion to adopt Ordinance No. _____ amending the Code of Ordinances, Chapter 6 - Health and Environment, Article VIII, Division 4 related to swimming pools, spas, lagoons and public interactive water features.

ATTACHMENTS:

Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 6, "HEALTH AND ENVIRONMENT," ARTICLE VIII, "ENVIRONMENTAL HEALTH," BY AMENDING DIVISION 1, IN ITS ENTIRETY; AND BY AMENDING DIVISION 4, IN ITS ENTIRETY; PROVIDING FOR A REPEALING CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The City of Allen Code of Ordinances Chapter 6, "Health and Environment," Article VIII, "Environmental Health," is hereby amended by amending Division 1, in its entirety, to read as follows:

"DIVISION 1. - IN GENERAL

Sec. 6-233. - Purpose.

The purpose of this article is to establish uniform regulations and standards for food service establishments, bed and breakfast establishments, childcare facilities and public and semi-public swimming pools, spas, lagoons, and public interactive water features and fountains (PIWFs) located within the City of Allen in addition to the requirements contained in state and federal law for the purpose of further protecting the public from health hazards and nuisances. The regulatory authority shall enforce all state, federal, and local laws and regulations applicable to the above-referenced establishments operating within the City of Allen, as permitted by law."

SECTION 2. The City of Allen Code of Ordinances Chapter 6, "Health and Environment," Article VIII, "Environmental Health," is hereby amended by amending Division 4 in its entirety, to read as follows:

**"DIVISION 4. - SWIMMING POOLS, SPAS, LAGOONS,
AND PUBLIC INTERACTIVE WATER FEATURES (PIWFs)**

Sec. 6-246. - Adoption of state rules on standards for public pools and spas, lagoons, and interactive water features and fountains.

The city adopts by reference the provisions of the current standards for public pools and spas set forth in Texas Administrative Code Title 25, Ch. 265, Subchapter K, as amended, which establish regulations regarding artificial swimming lagoons, with the exceptions of such sections thereof as are hereinafter deleted, modified or amended below. The city also adopts by reference the provisions of the current standards for public swimming pools and spas set forth in Texas Administrative Code Title 25, Ch. 265, Subchapter L, as amended, which establish regulations regarding public swimming pools and spas, with the exceptions of such sections thereof as are hereinafter deleted, modified or amended below. The city further adopts by reference the current public interactive water features and fountains regulations, as set forth in Texas Administrative Code Title 25, Ch. 265, Subchapter M, as amended, with the exceptions of such sections thereof as are modified or amended below.

Sec. 6-247. - Definitions.

The following words, terms, and phrases, when used in this division, shall have the following meanings, unless the context clearly indicates otherwise:

Artificial swimming lagoon (lagoon). An artificial body of water used for recreational purposes with more than 20,000 square feet of surface area, an artificial liner, and a method of disinfectant. The term does not include a body of water open to the public that continuously recirculates water from a spring or a pool. The term “lagoon” used in this subchapter means “artificial swimming lagoon.”

Certified pool operator (CPO). Any individual who has taken and successfully passed a certified pool operator course and has in their possession an unexpired certificate of completion.

Certified pool operator course. A course recognized by the Texas Department of State Health Services as provided in 25 TAC 265.205(b), or by the regulatory authority.

Disinfectant. Energy or chemicals used to kill undesirable or pathogenic (disease causing) organisms and having a measurable residual at a level adequate to make the desired kill.

Extensively remodel. Replacement of facility components or modification of the facility so that the design, configuration, capacity, or operation is 20% or more different from the original design, configuration, capacity, or operation. This term may include complete replacement of plaster, deck, or enclosure, including doors and gates. This term does not include the normal maintenance and repair of a facility or a water circulation system or the partial replacement of circulation system equipment if the size, type, or operation of the equipment is not substantially different from the original equipment. Replacement of 30% or more of the circulation system shall fall within the meaning of extensively remodeled.

Facility. A public or semi-public pool, spa, lagoon, public interactive water feature, restroom, dressing room, equipment room, deck, walkway, beach entry, enclosure, or other appurtenance directly serving the pool, spa, lagoon, or PIWF.

Person. An individual, association, corporation, company, or other similar entity with ownership, care, custody, or control over a swimming pool, spa, or public interactive water features and fountains, including, but not limited to the permit or license holder, employee, or person-in-charge.

pH. A value expressing the relative acidic or basic tendencies of a substance, such as water, as indicated by the hydrogen ion concentration. The pH is expressed as a number on the scale of 0 to 14, 0 being most acidic, lower than 7 being acidic, 7 being neutral, higher than 7 being basic and, 14 being most basic.

Public interactive water features and fountains (PIWFs). Any privately or publicly owned indoor or outdoor installation maintained for public recreation, regardless of whether a fee is charged for use, that includes water sprays, dancing water jets, waterfalls, dumping buckets, or shooting water cannons in various arrays for the purpose of wetting the persons playing in the spray streams. These may stand alone or share a water supply, disinfection system, filtration system, circulation system, or other treatment system that allows water to mingle with a pool. PIWFs:

- (1) Include, but are not limited to, interactive water features or fountains that are open exclusively to members of an organization and their guests, residents of a multi-unit apartment building or complex, residential or commercial real estate development, or other multi-family residential area, schools, day care facilities, youth camp or hotel or other public accommodations facility; and

- (2) Do not include interactive water features or fountains located on private property under control of the property owner or owner's tenant, serving a single-family residence or duplex that are intended for use by not more than two resident families and their guests; and
- (3) Are not fountains, installations, amusement rides, or other attractions, whether decorative or interactive, in which only incidental water contact occurs; and
- (4) Do not include interactive water features that are supplied entirely by drinking water that is not recirculated; or use fresh water originating from a natural watercourse and release the fresh water back into the same natural watercourse.

Public pool. A swimming pool or spa to which the general public has access, regardless of whether a fee is charged.

Regulatory authority. City of Allen Environmental Health, or another Department authorized by the City Manager.

Remodel. The replacement of or modification to a swimming pool, spa, lagoon, or PIWF structure, circulation system and/or its appurtenances such that the design, configuration and/or operating characteristics are different than the original design, configuration and/or operating characteristics.

Residential pool/spa. A pool or spa that is located on private property under the control of the owner or lessee, the use of which is limited to swimming, diving and/or recreational bathing by not more than two (2) resident families and their guests. It includes a pool or spa serving only a single-family home or a duplex.

Semi-public pool. A swimming pool or spa that is privately owned and opened only to an identifiable class of persons, including but not limited to, hotel guests, apartment residents, homeowner's association and club members.

Spa. A constructed permanent or portable structure that is two (2) feet or more in depth and that has a surface area of two hundred fifty (250) square feet or less or a volume of three thousand two hundred fifty (3,250) gallons or less and that is intended to be used for bathing or other recreational uses and is not drained and refilled after each use. It may include, but is not limited to, hydro jet circulation, hot water, cold water, mineral baths, air induction bubbles, or any combination thereof. A spa, as is defined in these rules, does not refer to a business establishment such as a day spa or a health spa. Industry terminology for a spa includes, but is not limited to, "hydrotherapy pool," "whirlpool," "hot spa," "hot tub".

Swimming pool or pool. Any man-made, permanently installed or nonportable structure, basin, chamber, or tank containing an artificial body of water that is used for swimming, diving, wading, aquatic sports, or other aquatic activity other than a residential pool and that is operated by an owner, lessee, operator, licensee or concessionaire, regardless of whether a fee is charged for use. The pool may be either publicly or privately owned. The term does not include a spa or a decorative fountain that is not used as a pool.

Sec. 6-248. – Construction and maintenance standards, plan reviews and plan review fees.

- (a) All lagoons shall comply with the Texas Department of State Health Services Standards set forth in Title 25, Part 1, Chapter 265, Subchapter K of the Texas Administrative Code, as amended.
- (b) All public and semi-public swimming pools and spas shall comply with the Texas Department of State Health Services Standards set forth in Title 25, Part 1, Chapter 265, Subchapter L of the Texas Administrative Code, as amended.

- (c) All PIWFs shall comply with the Texas Department of State Health Services Standards set forth in Title 25, Part 1, Chapter 265, Subchapter M of the Texas Administrative Code, as amended.
- (d) Whenever a facility is constructed or extensively remodeled, or whenever an existing structure or part of a facility enclosure is changed, properly prepared plans and specifications for such construction, remodeling, or conversion shall be submitted to the regulatory authority for review and approval before construction begins. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The regulatory authority shall approve the plans and specifications if they meet the requirements of this division. No facility, facility enclosure, facility structure, or facility equipment shall be constructed, extensively remodeled, or converted except when a permit has been granted by the regulatory authority demonstrating compliance with this division. A pre-operational inspection shall be conducted at the facility prior to the start of operations to determine compliance with approved plans and with the requirements of this division.
- (e) The regulatory authority may direct the replacement of the facilities and equipment because of a change of ownership and all requirements of this division shall be met prior to resuming normal course of operations.
- (f) The regulatory authority shall require the replacement of equipment and facilities if they are discovered to be in poor condition, fail to function properly, do not meet current requirements, or endanger the health and safety of the public.
- (g) A health plan review fee in the amount set by the city council shall accompany submitted plans and specifications.
- (h) The regulatory authority may require a certification letter from a licensed electrician that certifies the facility meets all electrical requirements of this Division.

Sec. 6-249. - Permit required.

- (a) No person shall operate a public or semi-public swimming pool, spa, lagoon or PIWF without a valid and current permit issued by the regulatory authority. Only a person who complies with the requirements of this division shall be entitled to receive or retain such a permit. Permits are not transferable and must be displayed in an area visible to the public.
- (b) The permit required by subsection (a), above, will be issued in accordance with the following:
 - (1) An application for a permit for each body of water with separate disinfectant systems shall be submitted on a form provided by the regulatory authority. Such application shall include all information deemed necessary by the regulatory authority.
 - (2) A permit that is issued will be valid from date of issuance until January 31 of the immediately following calendar year, unless suspended or revoked. Permits must be renewed on an annual basis by filing a renewal application and payment of a non-refundable permit fee. An administrative late fee in the amount set by the city council for the city may be required if an application for a renewal permit is made more than ten (10) days after the previous permit has expired. No fees shall be charged to any facility owned and operated by a government agency or independent school district; however, such facilities must comply with all other requirements of this division.

- (3) Prior to final approval of an application for permit or renewal and issuance of such permit, the regulatory authority shall inspect the facility to determine compliance with requirements of this division. If a permitted facility fails inspection at any time during the year and a re-inspection is required, a re-inspection fee in the amount set by the city council for the city may be charged.
- (4) If an application for permit or renewal is denied, the applicant will be informed of the reasons for denial and what action is required to qualify for a permit. The regulatory authority shall issue a permit to the applicant if subsequent inspection reveals that the facility complies with the requirements of this division and all fees have been paid.

Sec. 6-250. - Revocation or suspension of permits.

The regulatory authority may deny, revoke, or suspend any operating permit for the failure of the applicant to comply with the provisions of these standards, or in cases where the operating permit has been obtained through nondisclosure, misrepresentation, or misstatement of a material fact. Notices of closure shall be processed as follows:

- (a) All notices or orders issued shall be either delivered personally or sent by certified mail to the person to whom the permit was issued or to the person in charge of the subject premises. Except in cases of emergency or urgent public necessity, such notice shall be delivered or mailed at least ten (10) days before any operating permit is revoked or suspended and shall state the reason(s) for such proposed revocation or suspension and notify that person of a right to appeal the decision of the regulatory authority to the director.
- (b) An operating permit which has been revoked or suspended may be reissued upon proper application and upon presentation of evidence that the deficiencies and/or irregularities which caused the revocation or suspension have been corrected.
- (c) If the regulatory authority determines that the operation or maintenance of any swimming pool is such as to constitute an imminent hazard to the health and safety of the public, the operating permit shall be suspended immediately, and the swimming pool shall be closed for use and shall remain closed until the necessary remedial action has been completed.

Sec. 6-251. - Inspections.

Agents of the regulatory authority, after presenting proper identification, shall be permitted to enter any facility at any time, for the purpose of making inspections to determine compliance with these rules. The agents shall be permitted to examine the records of the facility, including testing logs and proof of operator certification.

- (1) Consent and authorization. Application for and operation of a facility inside the City of Allen constitutes consent for the regulatory authority to inspect the facility to determine compliance with this division. Should any owner, person in charge, employee, or agent of the facility hinder, physically prevent, interfere with, or otherwise obstruct the lawful inspection of a facility by the regulatory authority, such action may constitute reason for suspension or revocation of permit and a violation of this section.
- (2) Pre-opening or pre-season inspection.
 - (i) The regulatory authority shall conduct a pre-opening or pre-season inspection at facilities that have been closed for 30 days or longer to verify the facilities conform with requirements contained within this Division.

(ii) No pool or spa shall open for the season if it does not pass this pre-opening or pre-season inspection.

(iii) The certified pool operator shall be present at this inspection.

(3) Inspection reports.

(i) Whenever an inspection is conducted at a facility, the findings shall be recorded on an inspection report form provided by the regulatory authority. The original inspection report form shall be furnished to the owner or person in charge at the completion of the inspection and constitutes a written notice. The inspection report form shall summarize the requirements of these rules and shall set forth a pass or fail ranking for the facility. The completed inspection report form is a public document that should be posted at a conspicuous location for the public.

(ii) Violations noted on the inspection report by the regulatory authority shall be corrected within the time frame given. A reasonable time frame for compliance shall be given for violations unless the health, welfare, or safety of persons using the facility is at risk. If the regulatory notes any condition that endangers public health, the facility shall immediately be closed, and the permit temporarily suspended.

Sec. 6-252. - Certified operator required.

- (a) No person shall operate a facility without obtaining and maintaining certification as a certified aquatic facility operator (A.F.O.), certified pool/spa operator (C.P.O.), pool operator on location (P.O.O.L.) or other certification deemed equivalent by the regulatory authority. All certifications shall be approved by the regulatory authority.
- (b) On days the pool and spa will be open, a certified operator shall test swimming water for pH, disinfectant, water clarity, stabilizer, and temperature to assure safety and protect public health. If test results are not within required limits, the pool or spa shall be immediately closed, and a closure sign posted in a highly visible area. Prior to opening the pool or spa for use, all test results shall be within approved state limits and findings documented to include initial results, corrective actions, and final readings.

Sec. 6-253. - Water quality and disposal standards.

- (a) All swimming pools, spas, lagoons, and PIWFs in the City of Allen, including those intended for private residential use, shall comply with the water requirements of this section to protect public health.

(1) Water quality.

- (i) All swimming pools and spas shall be maintained and kept free of algae to provide sufficient clarity of the main drain from outside the pool at all times. No person shall allow a pool or spa under their control to violate this standard unless the pool or spa has a cover installed or is otherwise secured and meets the requirements of the regulatory authority.
- (ii) All swimming pools, spas, lagoons, and PIWFs shall use make-up water from an approved source suitable for drinking as deemed acceptable by the regulatory authority.

(2) Water disposal.

- (i) All swimming pools, spas, lagoons, and PIWFs containing disinfectant shall discharge filter backwash and overflow lines into an approved septic tank system or sanitary sewer. Additionally,

no person shall allow water containing disinfectant from pools, spas, lagoons, or PIWFs to be discharged into the storm sewer or other natural or manmade watercourse.

- (ii) It shall be unlawful for any person to drain water from a swimming pool, spa, lagoon, or PIWF onto public or privately-owned property at any time. Pools drained for repairs shall be discharged into the sanitary sewer or approved septic tank system.
- (iii) Deck drains of all swimming pools and spas, including residential pools, shall be discharged to a lawn, leaching field, or natural drain.

Secs. 6-254, 6-255. - Reserved.”

SECTION 3. All ordinances of the City of Allen in conflict with the provisions of this ordinance shall be, and the same are hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict herewith shall remain in full force and effect.

SECTION 4. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

SECTION 5. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 6. 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 Allen, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense.

SECTION 7. This ordinance shall take effect immediately from and after its passage in accordance with its provisions of the Charter of the City of Allen, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 25TH DAY OF MAY 2021.

APPROVED:

Kenneth M. Fulk, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY
(PGS:4-15-21:TM 121844)

Shelley B. George, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:	May 25, 2021
SUBJECT:	Adopt an Ordinance Approving the Settlement Agreement between CoServ Gas, Ltd. and the CoServ Gas Cities.
STAFF RESOURCE:	Rebecca Vice, Assistant City Manager
PREVIOUS COUNCIL ACTION:	On January 12, 2021, Council approved a Resolution suspending the January 23, 2021 effective date of CoServ Gas, Ltd.'s requested increase to permit city time to study the request and to establish reasonable rates.
ACTION PROPOSED:	Adopt an Ordinance Approving the Settlement Agreement between CoServ Gas, Ltd. and the CoServ Gas Cities.

BACKGROUND

On or about November 13, 2020, CoServ Gas, Ltd. ("CoServ" or "Company") filed to increase rates in all cities with exclusive original jurisdiction over the rates, operations, and services within its service area. In its application, CoServ sought to increase base rates by 11.8% for its entire service area.

The City, pursuant to 104.102 of the Gas Utility Regulatory Act ("GURA"), has exclusive original jurisdiction over the gas rates charged by the Company. Although CoServ proposed an original effective date of January 23, 2021, the Company agreed to extend the proposed effective date to March 14, 2021, with a statutory deadline of August 10, 2021. The City suspended the effective date for 90 days, giving the City until June 12, 2021 to evaluate the application and take final action. The City joined with the other cities (collectively the "CoServ Gas Cities") to conduct a review of the Company's application by hiring and directing legal counsel and consultants to prepare a common response and negotiate with the Company.

On or about May 14, 2021, a Settlement Agreement was reached between the CoServ Gas Cities and the Company. The Settlement Agreement reduces the Company's requested rate increase of \$11.5 million down to \$6.25 million representing a 45.6% reduction to the Company's request. Additionally, the Settlement Agreement provides for a 9.5% return on equity rather than the Company's requested 11.5% return on equity. Finally, the Settlement Agreement provides for a customer charge of \$15, compared to the Company's original \$18.50 request. The commercial and public authority customer charge will be \$35, versus the Company's original \$43.50 request. The Company has agreed to 100% recovery of City's rate case expenses.

The purpose of this Ordinance is to approve the Settlement Agreement and direct the Company to implement the rates in the Settlement Agreement. Additionally, pursuant to GURA 103.022, cities are entitled to reimbursement of the expenses associated with the rate case to the extent the expenses are reasonable.

STAFF RECOMMENDATION

Staff recommends that the City Council adopt an Ordinance approving the Settlement Agreement, setting rates at the level indicated in the Settlement Agreement, and directing the Company to reimburse the City's reasonable rate case expenses.

MOTION

I make a motion to adopt Ordinance No. _____ approving the Settlement Agreement between CoServ Gas, Ltd. and the CoServ Gas Cities.

ATTACHMENTS:

Resolution

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, FINDING THAT THE SETTLEMENT AGREEMENT BETWEEN THE CITY AND COSERV GAS, LTD., IS REASONABLE; ORDERING COSERV GAS, LTD., TO IMPLEMENT THE RATES AGREED TO IN THE SETTLEMENT AGREEMENT; REQUIRING REIMBURSEMENT OF CITIES' RATE CASE EXPENSES; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS ORDINANCE TO THE COMPANY AND LEGAL COUNSEL; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on or about November 13, 2020, CoServ Gas, Ltd. ("CoServ" or "Company"), pursuant to Gas Utility Regulatory Act ("GURA") § 104.102, filed a Statement of Intent to Increase Rates with the Railroad Commission of Texas (the "Commission") within the unincorporated areas it serves in the State of Texas and filed with the City of Allen a Statement of Intent to change gas rates in all municipalities exercising original jurisdiction within the Company's service area, effective January 23, 2021; and,

WHEREAS, the Company agreed to extend the proposed effective date to March 14, 2021; and,

WHEREAS, the City of Allen has exclusive original jurisdiction over the rates, operations, and services of a gas utility within the municipality, pursuant to GURA § 103.001; and,

WHEREAS, GURA § 103.021 grants a municipality authority to require a utility to submit information as necessary to make a reasonable determination of rate base, expenses, investment, and rate of return in the municipality; and,

WHEREAS, the City of Allen suspended the effective date of the proposed rate change for ninety (90) days pursuant to GURA § 104.107; and,

WHEREAS, the City of Allen joined with other similarly situated cities, the Steering Committee of Cities Served by CoServ Gas, Ltd. ("CoServ Gas Cities"), to conduct a review of the Company's application by hiring and directing legal counsel and consultants to prepare a common response and to negotiate with the Company and direct any necessary litigation; and,

WHEREAS, on or about May 14, 2021, the CoServ Gas Cities reached a Settlement Agreement resolving all issues relating to the Company's Statement of Intent to Increase Rates; and,

WHEREAS, the CoServ Gas Cities members and attorneys recommend that the City of Allen approve this settlement agreement setting rates; and,

WHEREAS, GURA § 103.022 provides that reasonable costs incurred by cities in ratemaking activities are to be reimbursed by the regulated utility.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The City approves the Settlement Agreement reached between the CoServ Gas Cities and the Company and directs the Company to implement the rates indicated in the Settlement Agreement as attached as Exhibit A.

SECTION 2. The City's reasonable rate case expenses shall be reimbursed by the Company.

SECTION 3. It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

SECTION 4. A copy of this Ordinance shall be sent to CoServ, care of Charles Harrell, CoServ Gas, Ltd. 7701 South Stemmons Freeway, Corinth, Texas 76210 (CHarrell@coserv.com), and to Thomas Brocato at Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701 or tbrocato@lglawfirm.com.

SECTION 5. This Resolution shall take effect from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS ON THIS THE 25TH DAY OF MAY 2021.

APPROVED:

Kenneth M. Fulk, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY

RAILROAD COMMISSION OF TEXAS

STATEMENT OF INTENT OF COSERV GAS, LTD. TO INCREASE RATES IN UNINCORPORATED AREAS OF COLLIN, DENTON, AND KAUFMAN COUNTIES, TEXAS	§ § § § §	OS-20-00005136
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UNANIMOUS SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between CoServ Gas, Ltd. (“CoServ” or the “Company”), Staff of the Railroad Commission of Texas (“Staff”), and the Steering Committee of Cities Served by CoServ Gas, Ltd. (“CoServ Gas Cities”)¹ (collectively, the “Signatories”).

WHEREAS, on November 13, 2020, CoServ filed a Statement of Intent to Increase Rates with the Railroad Commission of Texas (the “Commission”) within the unincorporated areas it serves in the State of Texas² and filed a Statement of Intent with the Cities of Allen, Aubrey, Carrollton, Celina, Corinth, Denton, Forney, Fort Worth, Frisco, Highland Village, Lewisville, Lucas, McKinney, Murphy, Parker, Plano, Providence Village, The Colony, and Wylie and Towns of Argyle, Bartonville, Copper Canyon, Crossroads, Double Oak, Fairview, Flower Mound, Little Elm, Northlake, Ponder, Prosper, Shady Shores, and St. Paul (collectively, “Statement of Intent”); and

WHEREAS, the Commission docketed the rate request as OS-20-00005136; and

WHEREAS, Staff and CoServ Gas Cities sought intervention and were granted party status in OS-20-00005136; and

WHEREAS, on December 9, 2020, the Commission suspended the implementation of the Company’s rate request until June 22, 2021, and CoServ later agreed to extend the jurisdictional deadline further to August 10, 2021; and

WHEREAS, CoServ filed direct testimony and erratum to its Statement of Intent; and

WHEREAS, CoServ provided public notice by publishing notice of the proposed increase in a newspaper having general circulation on January 9-10, 2021, January 16-17, 2021, January 23-24, 2021, and January 30-31, 2021, to all affected customers in the form approved by the ALJ; and

¹ The CoServ Gas Cities includes the Cities of Allen, Aubrey, Carrollton, Celina, Corinth, Denton, Forney, Fort Worth, Frisco, Highland Village, Lewisville, Lucas, McKinney, Murphy, Parker, Plano, Providence Village, The Colony, Wylie and Towns of Argyle, Bartonville, Copper Canyon, Crossroads, Double Oak, Fairview, Flower Mound, Little Elm, Northlake, Ponder, Prosper, Shady Shores, St. Paul.

² CoServ serves unincorporated areas within Collin, Denton and Kaufman Counties.

WHEREAS, the CoServ Gas Cities, suspended the implementation of the Company's rate request until April 23, 2021; and

WHEREAS, direct testimony of CoServ Gas Cities was due on April 8, 2021, and Staff direct testimony was due on April 15, 2021, but CoServ Gas Cities and Staff did not file direct testimony in reliance on this Settlement Agreement; and

WHEREAS, the parties engaged in significant discovery regarding the issues in dispute; and

WHEREAS, the Signatories agree that resolution of this docket by unanimous settlement agreement will significantly reduce the amount of rate case expenses associated with this docket; and

NOW, THEREFORE, in consideration of the mutual agreements and covenants established herein, the Signatories, through their undersigned representatives, agree to and recommend approval by the Commission and the CoServ Gas Cities the following Settlement Terms:

Settlement Terms

1. The Signatories agree to the rates, terms and conditions reflected in the rate schedules attached to this Settlement Agreement as Exhibit A. The rate schedules attached as Exhibit A replace and supersede the CoServ rate schedules currently in effect for customers within unincorporated areas and incorporated municipal boundaries. These rate schedules represent an increase of \$6,250,000 in annual revenues from the Company's proposed revenue requirement (as updated 6/30/2020). The total revenues are subject to an agreed credit of \$10,325,015 for Excess Accumulated Deferred Income Taxes ("EDIT"), to be refunded over thirty-eight (38) years (the "EDIT credit"). The rate schedules are premised on a base rate revenue requirement of \$39,162,395, a total revenue requirement of \$40,291,395 before application of the EDIT credit, and a total revenue requirement of \$40,026,602 after applying the EDIT credit, as illustrated in the proof of revenues attached as Exhibit B to this Settlement Agreement. Except as specifically provided herein, the Signatories agree that the revenue increase amount is not tied to any specific expense or methodology in CoServ's underlying cost of service. The Signatories further agree that the rates, terms and conditions reflected in Exhibit A to this Settlement Agreement comply with the rate-setting requirements of Chapter 104 of the Texas Utilities Code. The gas rates, terms and conditions established by this Settlement Agreement shall, subject to approval of the Commission and the CoServ Gas Cities, be effective for meters read on or after the effective date of the Final Order.
2. The Signatories agree to the following customer and consumption charges, which are reflected in the rate schedules attached as Exhibit A. The consumption charges have been decreased by the amount of the EDIT credit reflected in Item 10b.

	Customer Charge	Consumption Charge (per Ccf)
Residential	\$15.00	\$0.12097
Commercial & Public Authority	\$35.00	\$0.06479

3. The Signatories agree that the depreciation rates as shown on Exhibit C are reasonable and necessary.
4. The Signatories agree that the Company's capital investment booked to plant through June 30, 2020, in the net amount of \$180,368,138 as shown on Exhibit C is reasonable and prudent.
 - a. Any capital investment items not in service by June 30, 2020, are not included in the above-referenced net plant amount and are preserved for future prudence review and potential rate recovery once CoServ files a rate-setting mechanism after those items have been placed into service and have become used and useful.

5. The Signatories agree to the following capital structure and weighted cost of capital, including the pre-tax return, as shown below:

	Capital Structure	Debt/Equity Cost	Weighted Cost of Capital	Pre-Tax Return
Long-Term Debt	45.91%	4.18%	1.92%	1.92%
Common Equity	54.09%	9.50%	5.14%	6.51%
Rate of Return	100%		7.06%	8.43%

6. The Signatories agree that any Interim Rate Adjustment ("IRA") filing CoServ makes pursuant to Texas Utilities Code § 104.301 shall use the following factors until changed by a subsequent general rate proceeding:
 - a. The capital structure and related components shall be as shown above in Item 5.
 - b. For the initial IRA filing and for all subsequent IRA filings, the depreciation rate for each account shall be as shown in Exhibit C.
 - c. For the initial IRA filing, the beginning balance of net plant in service amount shall be \$180,368,138.
 - d. For the initial IRA filing, the customer and consumption charges as noted in Item 2 above will be the starting rates to which any IRA adjustment is applied. IRA increases will be recovered through the customer charge.
 - e. Federal income taxes will be calculated using a 21% rate, unless the federal income tax rate is changed, in which case the new rate will be applied.

- f. Ad valorem taxes at a 0.71% rate.
- g. Texas Franchise Tax at a 0.50% rate
- h. The base rate revenue allocation factors to spread any change in IRA increase/decrease to the appropriate customer classes are as follows:

	Allocation
Residential	94.2%
Commercial and Public Authority	5.8%
Total Allocation	100.0%

7. The Signatories agree that the following customer class allocation, customer counts and volumes for base rates are reasonable and should be approved.

	Allocation	Customer Count	Volumes (Ccf)
Residential	94.2%	1,617,096	101,003,816
Commercial and Public Authority	5.8%	35,820	15,313,408
Total Allocation	100.0%	1,652,916	116,317,224

8. On February 27, 2018, the Commission issued an Accounting Order in GUD No. 10695 that reflects the Commission's directives regarding changes to utility rates to account for the change in the federal corporate income tax rate due to the Federal Tax Cut and Jobs Act of 2017 ("Act"). The Signatories agree that CoServ has complied with the requirements in the Accounting Order and that its related filings were reasonable and accurate, subject to Items 9 and 10.
9. The Signatories agree that the cost of service reflected in Item 1 includes amortization of CoServ's Excess Accumulated Deferred Income Tax ("EDIT") and that CoServ will continue to amortize its EDIT, including any associated gross-up in taxes, in compliance with the Accounting Order in GUD No. 10695 and guidance from the Internal Revenue Service.
10. The Signatories agree that Rate Schedules EDIT is reasonable and should reflect an EDIT refund of \$10,325,015 to customers within unincorporated areas and incorporated municipal boundaries for past amortization amounts, which includes the income tax gross-up component, with the refund to be made as a credit to base rates amortized over 38 years. The Signatories further agree to and propose the inclusion of the following Findings of Fact and Ordering Paragraphs in the Final Order in this case:
- a. Finding of Fact: It is reasonable that CoServ has an Excess Accumulated Deferred Income Tax ("EDIT") liability, including associated gross-up for income taxes, attributable to the Tax Cut and Jobs Act of 2017, which it will continue to amortize over 38 years in compliance with the Accounting Order in GUD No. 10695 and guidance from the Internal Revenue Service.

- b. Finding of Fact: It is reasonable that the EDIT refund be applied to bills to customers within unincorporated and incorporated areas in the following amounts as a credit to the consumption charge on a volumetric basis per customer: Residential, \$0.00247/Ccf for a total consumption charge of \$0.12097/Ccf; Commercial, \$0.001/Ccf for a total consumption charge of \$0.06479/Ccf; and Public Authority, \$0.001/Ccf for total consumption charge of \$0.06479/Ccf. It is reasonable that this refund shall be made on a volumetric basis beginning with bills rendered on or after the effective date of the Final Order.
 - c. Finding of Fact: It is reasonable that CoServ file an annual EDIT Compliance Filing with Staff in compliance with Rate Schedules EDIT.
 - d. Ordering Paragraph: IT IS FURTHER ORDERED that the refund for an EDIT credit in Finding of Fact No. ___ shall be made to customers beginning in TBD 2021.
 - e. Ordering Paragraph: IT IS FURTHER ORDERED that CoServ file an EDIT Compliance Filing with Staff detailing refund of amounts in compliance with Rate Schedules EDIT and as described in Finding of Fact No. ___.
 - f. Ordering Paragraph: IT IS FURTHER ORDERED that CoServ will continue to amortize the EDIT liability, including associated gross-up for income taxes, described in Finding of Fact No. ___ in compliance with the Accounting Order in GUD No. 10695 and guidance from the Internal Revenue Service.
- 11. The Signatories agree it is reasonable for CoServ to maintain its books and records for ratemaking purposes to thoroughly provide documentation of meal and hotel expenditures, both capitalized and expenses, in excess of \$25 per person per meal and \$175 per person per night, as well as any alcoholic beverage expenditures, both capitalized and expensed. The Signatories further agree to and propose the inclusion of the following Finding of Fact and Ordering Paragraph in the Final Order in this case:
 - a. Finding of Fact: It is reasonable that CoServ maintain its books and records for ratemaking purposes to thoroughly provide documentation of meal and hotel expenditures, both capitalized and expenses, in excess of \$25 per person per meal and \$175 per person per night, as well as any alcoholic beverage expenditures, both capitalized and expensed.
 - b. Ordering Paragraph: IT IS FURTHER ORDERED that CoServ, shall maintain its books and records for ratemaking purposes to thoroughly provide documentation of meal and hotel expenditures, both capitalized and expenses in excess, of \$25 per person per meal and \$175 per person per night, as well as any alcoholic beverage expenditures, both capitalized and expensed.

12. CoServ and CoServ Gas Cities represent that their reasonable rate case expenses incurred through April 30, 2021, and estimated rate case expenses incurred through completion of this case, are as follows:

	Regulatory Expenses	Litigation Expenses	Invoices Due and Est. to Completion	Total Recoverable Expenses
Total Recoverable Expenses	\$373,271.13	\$214,116.77	\$617,387.90	\$617,387.90
CoServ Gas Cities	\$27,649.28	\$109,646.75	\$157,296.03	\$157,296.03
			Total	\$774,683.93

13. CoServ and CoServ Gas Cities attach, as Exhibit D, affidavits and invoices in support of the rate case expense amounts and will supplement with additional invoices as they are processed. Signatories agree that the amounts represented above are reasonable and recoverable pursuant to Texas Utilities Code § 103.022. Signatories agree that the recovery period for the applicable surcharge to recover rate case expenses shall be a period of approximately 24 months and that the surcharge shall be volume based in an amount of \$0.00333/Ccf. CoServ agrees to reimburse CoServ Gas Cities the amount of rate case expenses set forth above within 30 days of the issuance of an order authorizing recovery of those expenses. CoServ and CoServ Gas Cities shall recover estimated rate case expenses only to the extent they are actually incurred. The Signatories intend and advocate that the Commission and cities authorize recovery of the rate case expenses recited above in the same proceeding and at the same time as they approve this Settlement Agreement.
14. The Signatories agree that equal recovery of rate case expenses on a system-wide basis from customers within unincorporated areas and incorporated municipalities boundaries is appropriate and reasonable and that good cause exists to support equal recovery of rate case expenses from all customers on a system-wide basis for the following reasons:
- CoServ Litigation and Estimated expenses: Good cause exists to recover CoServ Litigation and Estimated expenses equally from all customers within unincorporated areas and incorporated municipal boundaries. The intent of Commission Rule 7.5530(e) is to allocate rate case expenses to the participating parties according to which party caused the expenses to be incurred, therefore it is reasonable to seek recovery of rate case expenses from all customers who benefit from the settlement agreement in this case, which includes all CoServ customers within the unincorporated areas and incorporated municipal boundaries CoServ serves in Texas. Recovery of these expenses is also necessary in the interest of justice.
 - CoServ Gas Cities Litigation and Estimated expenses: Good cause exists to recover CoServ Gas Cities Litigation and Estimated expenses equally from all customers,

including customers within the unincorporated areas and incorporated municipal boundaries CoServ serves in Texas because CoServ Gas Cities' participation in OS-20-0005136 resulted in this Settlement Agreement, which benefits all such customers, and doing so is necessary in the interest of justice.

15. CoServ shall file annually, due on or before April 1, a Rate Case Expense Compliance Filing with the Railroad Commission of Texas, Oversight and Safety Division, Market Oversight Section, referencing OS-20-0005136. The compliance filing shall include the volumes used by month by customer class during the applicable period, the amount of rate case expense recovered by month, and the outstanding balance by month as set out in the approved Rate Schedule RCE. The Signatories agree to and propose the inclusion of the following Findings of Fact and Ordering Paragraph in the Final Order in this case:
 - a. Finding of Fact: It is reasonable that CoServ and CoServ Gas Cities submit to Staff invoices reflecting actual rate case expenses with sufficient detail so that Staff can accurately audit such invoices for the purposes of reconciling estimated rate case expenses to actual rate case expenses. In no case shall the total expenses recovered exceed the actual expenses submitted to the Commission, plus the approved estimated expenses.
 - b. Finding of Fact: It is reasonable that CoServ file an annual Rate Case Expense Compliance Filing with Staff detailing the balance of actual plus estimated rate case expenses at the beginning of the annual period, the amount collected by customer class, and the ending or remaining balance as of December 31 of each year by April 1 of the following year until and including the calendar year end in which the rate case expenses are fully recovered.
 - c. Ordering Paragraph: IT IS THEREFORE ORDERED that CoServ file an annual Rate Case Expense Compliance Filing with Staff detailing recovery of rate case expenses as described in Finding of Fact No. ____ as of December 31 of each year by April 1 of the following year until and including the calendar year end in which the rate case expenses are fully recovered.
16. The Signatories agree to and propose the inclusion of the following Ordering Paragraphs in the Final Order in this case:
 - a. Ordering Paragraph: IT IS FURTHER ORDERED that within thirty (30) days of this Final Order, in accordance with 16 Tex. Admin. Code § 7.315, CoServ SHALL electronically file its rate schedules in proper form that accurately reflect the rates in Exhibit A approved in this Final Order.
 - b. Ordering Paragraph: IT IS FURTHER ORDERED that any incremental change in rates approved by this Final Order and implemented by CoServ shall be subject to refund unless and until CoServ's tariffs are electronically filed and accepted by the Gas Services Department in accordance with 16 Tex. Admin. Code § 7.315.

17. The Signatories agree that CoServ collect the Pipeline Safety and Regulatory Program Fee surcharge pursuant to 16 Tex. Admin. Code § 8.201 as an annual fee. The Signatories further agree to and propose the inclusion of the following Findings of Fact and Ordering Paragraph in the Final Order in this case:
 - a. Finding of Fact: It is reasonable that CoServ collect the Pipeline Safety and Regulatory Program Fee surcharge pursuant to 16 Tex. Admin. Code § 8.201 as an annual fee.
 - b. Finding of Fact: It is reasonable that CoServ file an annual Pipeline Safety and Regulatory Program Compliance Filing with Staff no later than ninety (90) days after the last billing cycle in which the Pipeline Safety and Regulatory Program Fee is billed to customers.
 - c. Ordering Paragraph: IT IS FURTHER ORDERED that CoServ file an annual Pipeline Safety and Regulatory Program Compliance Filing with Staff no later than ninety (90) days after the last billing cycle in which the Pipeline Safety and Regulatory Program Fee is billed to customers.
18. The Signatories agree that the Companies provided proper public notice of the Statement of Intent filing by publishing notice of the proposed increase in a newspaper having general circulation to all affected customers consistent with the applicable provisions of the Texas Utilities Code, the Commission's rules, and the orders issued in this case.
19. The Signatories agree that CoServ must file a lead-lag study in its next Statement of Intent filed with the Commission under its original jurisdiction, and the Commission should include an Ordering Paragraph to that effect.
20. Relative to CoServ's Operation Roundup, the Signatories agree that CoServ must provide all new natural gas only customers the option to sign-up to be a part of the Operation Roundup Program instead of being automatically enrolled into the program. This is to be implemented within 60 days of the effective date of rates under the Final Order issued in this case.
21. The Signatories agree to support and seek approval by the Commission and CoServ Gas Cities of this Settlement Agreement. CoServ agrees to make every effort to present its cities with this Settlement Agreement at city council meetings that will allow for implementation of new rates for meters read on or after the effective date of the Final Order.
22. The Signatories agree that all negotiations, discussions, and conferences related to the Settlement Agreement are privileged, inadmissible, and not relevant to prove any issues associated with the Statement of Intent filed on November 13, 2020.
23. The Signatories agree that neither this Settlement Agreement nor any oral or written statements made or documents exchanged or provided during the course of settlement

negotiations may be used for any purpose other than as necessary to support the entry by the Commission of an order approving this Settlement Agreement.

24. The Signatories agree that the terms of the Settlement Agreement are interdependent and indivisible, and that if the Commission intends to enter an order that is inconsistent with this Settlement Agreement, then any Signatory may withdraw without being deemed to have waived any procedural right or to have taken any substantive position on any fact or issue by virtue of that Signatory's entry into the Settlement Agreement or its subsequent withdrawal.
25. The Signatories agree that this Settlement Agreement is binding on each Signatory only for the purposes of settling the issues set forth herein and for no other purposes, and except to the extent the Settlement Agreement governs a Signatory's rights and obligations for future periods, this Settlement Agreement shall not be binding or precedential upon a Signatory outside this proceeding.
26. No Signatory is under any obligation to take the same positions as set out in this Settlement Agreement in other cases, dockets or jurisdictions, regardless of whether other cases or dockets present the same or a different set of circumstances, except as otherwise may be explicitly provided by this Settlement Agreement. Agreement by the Signatories to any provision in this Settlement Agreement will not be used against any Signatory in any future proceeding with respect to different positions that may be taken by that Signatory.
27. The Signatories agree that this Settlement Agreement may be executed in multiple counterparts and may be filed with facsimile signatures.

[Remainder of page intentionally left blank; signature pages follow]

Agreed to this 14th day of May, 2021.

CoServ Gas, Ltd.

By: /s/ John R. Hays, Jr.
John R. Hays, Jr.
Attorney for CoServ Gas, Ltd.

Agreed to this 14th day of May, 2021.

Staff of the Railroad Commission of Texas

By: /s/ Natalie Dubiel (with permission)
Natalie Dubiel
Attorney for Staff of the Railroad Commission of Texas

Agreed to this 14th day of May, 2021.

Steering Committee of Cities Served by CoServ Gas, Ltd.

By: /s/ Thomas Brocato (with permission)

Attorney for Steering Committee of Cities Served by CoServ Gas, Ltd.

Agreed in principle, subject to approval of the CoServ Gas Cities' City Councils

Exhibit A to Settlement Agreement
Rate Schedules

TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.

Rate Schedule TOC

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Schedules specific to Unincorporated Areas

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CU	COMMERCIAL UNINCORPORATED AREAS SALES
PU	PUBLIC AUTHORITY UNINCORPORATED AREAS SALES
UTF	UNINCORPORATED AREAS TAX FACTORS
LEU	LINE EXTENSION POLICY – UNINCORPORATED AREAS

Schedules applicable to all areas

PGF	PURCHASED GAS FACTOR
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TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.

Rate Schedule TOC

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WNA	WEATHER NORMALIZATION ADJUSTMENT
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TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.

Rate Schedule UO

UTILITY OPERATIONS

Applicable to: Entire System
Effective Date: _____

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CoServ Gas, Ltd. owns and operates a natural gas distribution system that provides natural gas service in Texas.

The following will respond to inquiries regarding provisions of this Tariff for Gas Service:

Tariff Coordinator
CoServ Gas, Ltd.
7701 South Stemmons
Corinth, Texas 76210
Telephone: (940) 321-7800
Email Address: tariff@coserv.com

**TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.**

Rate Schedule SA

INCORPORATED AND UNINCORPORATED SERVICE AREAS AND COUNTIES

Applicable to: Entire System

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Effective Date: _____

INCORPORATED SERVICE AREAS

Allen
Argyle
Aubrey
Bartonville
Carrollton
Celina
Copper Canyon
Corinth
Crossroads
Denton
Double Oak
Fairview
Flower Mound
Forney
Fort Worth
Frisco
Highland Village
Little Elm
Lewisville
Lucas
McKinney
Murphy
Northlake
Parker
Plano
Ponder
Prosper
Providence Village
St. Paul
Shady Shores
The Colony
Wylie

UNINCORPORATED SERVICE AREAS

Allen environs
Argyle environs
Aubrey environs
Bartonville environs

Celina environs

Crossroads environs
Denton environs

Forney environs
Fort Worth environs
Frisco environs

Little Elm environs
Lewisville environs
Lucas environs
McKinney environs

Parker environs

Prosper environs

St. Paul environs

Wylie environs

COUNTIES

Denton
Denton
Kaufman

UNINCORPORATED MASTER PLAN COMMUNITIES

Denton County Fresh Water District 1A (Castle Hills)
Denton County Fresh Water District 7 (Lantana)
Kaufman County Development District (Windmill Farms)

**TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.**

Rate Schedule DEF

DEFINITIONS

Applicable to: Entire System
Effective Date: _____

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COMMERCIAL CUSTOMER – A customer, other than a residential customer, and not otherwise covered by a contract under the contract rate provisions of Section 104.003 of the Texas Utilities Code.

COMMISSION - The Railroad Commission of Texas.

COMPANY - CoServ Gas, Ltd., its successors, and its assigns.

CUSTOMER - An individual, family, partnership, association, joint venture, corporation, etc., or governmental agency who is receiving or who is receiving the benefit of gas service at a specified point of delivery.

ENVIRONS – The unincorporated areas outside the city limits in the Company’s service area.

RATE SCHEDULE - A statement of the method of determining charges for gas service, including the conditions under which such method applies.

RESIDENTIAL CUSTOMER - Unless otherwise specified in the rate schedule, a customer whose service is separately and individually metered in an individual private dwelling unit or in an individually metered apartment, condominium, or similar dwelling and who uses natural gas primarily for Residential End Uses and occupies the building.

RESIDENTIAL END USES - Heating, space heating, cooking, water heating, and other similar type uses in a dwelling.

TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.

Rate Schedule RI

RESIDENTIAL INCORPORATED AREAS SALES

Applicable to:	Residential customers in unincorporated areas	Page 1 of 1
Effective Date:	_____	

Application of Schedule

Schedule applies to all Residential Customers in incorporated areas.

Monthly Base Rate

Customer's base monthly bill will be calculated using the following Customer and Ccf charges:

Charge	Amount
Customer Charge	\$15.00 per month, plus
Volumetric Charge	\$0.12097 per Ccf

Other Fees and Credits

Purchased Gas Factor: The basic rates for cost of service set forth above shall be increased by the amount of the Purchased Gas Factor for the billing month computed in accordance with the provisions of Rate Schedule PGF – Purchased Gas Factor.

Rate Case Expenses: Plus applicable charge in accordance with provisions of Rate Schedule RCE – Rate Case Expenses.

Taxes: Plus applicable taxes and fees related to above in accordance with the provisions of Rate Schedule ITF – Incorporated Areas Tax Factors.

Pipeline Safety Fee: Plus applicable charge in accordance with the provisions of Rate Schedule PSF – Pipeline Safety Fee.

Excess Deferred Income Tax Credit: Credit to Volumetric Charge has been applied in accordance with provisions of Rate Schedule EDIT – Excess Deferred Income Tax Credit.

**TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.**

Rate Schedule CI

COMMERCIAL INCORPORATED AREAS SALES

Applicable to: Commercial customers in incorporated areas

Page 1 of 1

Effective Date: _____

Application of Schedule

Schedule applies to commercial customers in incorporated areas.

Monthly Base Rate

Customer's base monthly bill will be calculated using the following customer and Ccf charges:

<u>Charge</u>	<u>Amount</u>
Customer Charge	\$35.00 per month, plus
Volumetric Charge	\$0.06479 per Ccf

Other Fees and Credits

Purchased Gas Factor: The basic rates for cost of service set forth above shall be increased by the amount of the Purchased Gas Factor for the billing month computed in accordance with the provisions of Rate Schedule PGF – Purchased Gas Factor.

Rate Case Expenses: Plus applicable charge in accordance with provisions of Rate Schedule RCE – Rate Case Expenses.

Taxes: Plus applicable taxes and fees related to above in accordance with the provisions of Rate Schedule ITF – Incorporated Areas Tax Factors.

Pipeline Safety Fee: Plus applicable charge in accordance with the provisions of Rate Schedule PSF – Pipeline Safety Fee.

Excess Deferred Income Tax Credit: Credit to Volumetric Charge has been applied in accordance with provisions of Rate Schedule EDIT – Excess Deferred Income Tax Credit.

**TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.**

Rate Schedule PI

PUBLIC AUTHORITY INCORPORATED AREAS SALES

Applicable to: Public authority customers in unincorporated areas

Page 1 of 1

Effective Date: _____

Application of Schedule

Schedule applies to public authority customers in unincorporated areas.

Monthly Base Rate

Customer's base monthly bill will be calculated using the following customer and Ccf charges:

<u>Charge</u>	<u>Amount</u>
Customer Charge	\$35.00 per month, plus
Volumetric Charge	\$0.06479 per Ccf

Other Fees and Credits

Purchased Gas Factor: The basic rates for cost of service set forth above shall be increased by the amount of the Purchased Gas Factor for the billing month computed in accordance with the provisions of Rate Schedule PGF – Purchased Gas Factor.

Rate Case Expenses: Plus applicable charge in accordance with provisions of Rate Schedule RCE – Rate Case Expenses.

Taxes: Plus applicable taxes and fees related to above in accordance with the provisions of Rate Schedule ITF – Incorporated Areas Tax Factors.

Pipeline Safety Fee: Plus applicable charge in accordance with the provisions of Rate Schedule PSF – Pipeline Safety Fee.

Excess Deferred Income Tax Credit: Credit to Volumetric Charge has been applied in accordance with provisions of Rate Schedule EDIT – Excess Deferred Income Tax Credit.

**TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.**

Rate Schedule ITF

INCORPORATED AREAS TAX FACTORS

Applicable to: Entire System
Effective Date: _____

Page 1 of 1

Taxes

In addition to the monthly charges, each customer's bill will include a charge for an amount equivalent to the customer's proportional part of the city franchise fees, state gross receipts taxes, or other governmental levies payable by the Company, exclusive of federal income taxes. Municipal franchise fees are determined by each municipality's franchise ordinance. Each municipality's franchise ordinance will specify the percentage and applicability of franchise fees. From time to time, the tax factor may be adjusted, if required, to account for any over- or under-recovery of municipal franchise fees by the Company and to include an amount equivalent to the proportionate part of any new tax or increased franchise fee or tax, or any other governmental imposition, rental fee, or charge levied, assessed or imposed subsequent to the effective date of this tariff by any governmental authority, including districts, created under the laws of the State of Texas. The Company will also collect sales taxes where applicable. Gross receipts taxes and municipal franchise fees will only be charged to customers within the incorporated areas.

**TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.
Rate Schedule LEI**

LINE EXTENSION POLICY – INCORPORATED AREAS

Applicable to: Entire System

Page 1 of 1

Effective Date: _____

Line Extension Policy

The Company has the right to contract with individual customers for the installation of gas facilities as provided for by the city franchise. Upon the request of a prospective new residential or commercial customer for service in an area served by CoServ Gas, CoServ Gas will extend its main lines up to 100 feet from an existing CoServ Gas main in the Public Rights of Way, without charge. The 100-foot allowance applies to a single customer or to a group of customers requesting service from the same extension. Customers requesting mainline extensions in excess of 100 feet shall bear the cost of any additional main, and shall bear the cost of all yard lines, service lines, customer meters and regulators, and appurtenant equipment, in accordance with the charges listed in item 11, Line Extension and Installation, of Rate Schedule M, Miscellaneous Service Charges. CoServ Gas is not required to extend its mains or facilities if the customer will not use gas for space heating and water heating, or the equivalent load, at a minimum.

**TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.**

Rate Schedule RU

RESIDENTIAL UNINCORPORATED AREAS SALES

Applicable to: Residential customers in unincorporated areas

Page 1 of 1

Effective Date: _____

Application of Schedule

Schedule applies to all Residential Customers in unincorporated areas.

Monthly Base Rate

Customer's base monthly bill will be calculated using the following Customer and Ccf charges:

<u>Charge</u>	<u>Amount</u>
Customer Charge	\$15.00 per month, plus
Volumetric Charge	\$0.12097 per Ccf

Other Fees and Credits

Purchased Gas Factor: The basic rates for cost of service set forth above shall be increased by the amount of the Purchased Gas Factor for the billing month computed in accordance with the provisions of Rate Schedule PGF – Purchased Gas Factor.

Rate Case Expenses: Plus applicable charge in accordance with provisions of Rate Schedule RCE – Rate Case Expenses.

Taxes: Plus applicable taxes and fees related to above in accordance with the provisions of Rate Schedule UTF – Unincorporated Areas Tax Factors.

Pipeline Safety Fee: Plus applicable charge in accordance with the provisions of Rate Schedule PSF – Pipeline Safety Fee.

Excess Deferred Income Tax Credit: Credit to Volumetric Charge has been applied in accordance with provisions of Rate Schedule EDIT – Excess Deferred Income Tax Credit.

**TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.**

Rate Schedule CU

COMMERCIAL UNINCORPORATED AREAS SALES

Applicable to: Commercial customers in unincorporated areas

Page 1 of 1

Effective Date: _____

Application of Schedule

Schedule applies to commercial customers in unincorporated areas.

Monthly Base Rate

Customer's base monthly bill will be calculated using the following customer and Ccf charges:

<u>Charge</u>	<u>Amount</u>
Customer Charge	\$35.00 per month, plus
Volumetric Charge	\$0.06479 per Ccf

Other Fees and Credits

Purchased Gas Factor: The basic rates for cost of service set forth above shall be increased by the amount of the Purchased Gas Factor for the billing month computed in accordance with the provisions of Rate Schedule PGF – Purchased Gas Factor.

Rate Case Expenses: Plus applicable charge in accordance with provisions of Rate Schedule RCE – Rate Case Expenses.

Taxes: Plus applicable taxes and fees related to above in accordance with the provisions of Rate Schedule UTF – Unincorporated Areas Tax Factors.

Pipeline Safety Fee: Plus applicable charge in accordance with the provisions of Rate Schedule PSF – Pipeline Safety Fee.

Excess Deferred Income Tax Credit: Credit to Volumetric Charge has been applied in accordance with provisions of Rate Schedule EDIT – Excess Deferred Income Tax Credit.

TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.

Rate Schedule PU

PUBLIC AUTHORITY UNINCORPORATED AREAS SALES

Applicable to:	Public authority customers in unincorporated areas	Page 1 of 1
Effective Date:	_____	

Application of Schedule

Schedule applies to public authority customers in unincorporated areas.

Monthly Base Rate

Customer's base monthly bill will be calculated using the following customer and Ccf charges:

<u>Charge</u>	<u>Amount</u>
Customer Charge	\$35.00 per month, plus
Volumetric Charge	\$0.06479 per Ccf

Other Fees and Credits

Purchased Gas Factor: The basic rates for cost of service set forth above shall be increased by the amount of the Purchased Gas Factor for the billing month computed in accordance with the provisions of Rate Schedule PGF – Purchased Gas Factor.

Rate Case Expenses: Plus applicable charge in accordance with provisions of the Rate Schedule RCE – Rate Case Expenses.

Taxes: Plus applicable taxes and fees related to above in accordance with the provisions of Rate Schedule. UTF – Unincorporated Areas Tax Factors.

Pipeline Safety Fee: Plus applicable charge in accordance with the provisions of Rate Schedule PSF – Pipeline Safety Fee.

Excess Deferred Income Tax Credit: Credit to Volumetric Charge has been applied in accordance with provisions of Rate Schedule EDIT – Excess Deferred Income Tax Credit.

TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.

Rate Schedule UTF

UNINCORPORATED AREAS TAX FACTORS

Applicable to: Unincorporated areas
 Effective Date: _____

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Taxes

<u>Environs Area</u>	<u>Fee</u>	<u>Entity Collecting Fee</u>
Frisco, Denton Co.	4% of gross receipts	Denton Co. Fresh Water Supply Dist. No. 8A, 8B, 9, 10, 11A, and 11B
Lantana Subdiv., Denton Co.	3% of gross receipts	Denton Co. Fresh Water Supply Dists. No. 6 and 7
Windmill Farms Subdiv., Kaufman Co.	4% of gross receipts	Kaufman Co. Dev. Dist. No. 1

In addition to the monthly charges above, each customer's bill in the above referenced areas will include a charge for an amount equivalent to the customer's proportional part of any taxes, fees, or similar levies payable by the Company to governmental or quasi-governmental entities with authority over the area in which the customer resides. Any such charge will be computed by multiplying the Monthly Base Rate charges and Purchased Gas Factor charges by a factor calculated to recover the actual amount of such taxes, fees, or similar levies.

Currently applicable taxes, fees, or similar levies for each unincorporated area are detailed on the CoServ Rate Schedule UTF – Unincorporated Areas Tax Factors.

CoServ does not charge municipal franchise fees to unincorporated area customers.

**TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.**

Rate Schedule LEU

LINE EXTENSION POLICY – UNINCORPORATED AREAS

Applicable to: Entire System

Page 1 of 1

Effective Date: _____

Line Extension Policy

The Company has the right to contract with individual customers for the installation of gas facilities as provided for by the city franchise. Upon the request of a prospective new residential or commercial customer for service in an area served by CoServ Gas, CoServ Gas will extend its main lines up to 100 feet from an existing CoServ Gas main in the Public Rights of Way, without charge. The 100-foot allowance applies to a single customer or to a group of customers requesting service from the same extension. Customers requesting mainline extensions in excess of 100 feet shall bear the cost of any additional main, and shall bear the cost of all yard lines, service lines, customer meters and regulators, and appurtenant equipment, in accordance with the charges listed in item 11, Line Extension and Installation, of Rate Schedule M, Miscellaneous Service Charges. CoServ Gas is not required to extend its mains or facilities if the customer will not use gas for space heating and water heating, or the equivalent load, at a minimum.

TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.

Rate Schedule PGF

PURCHASED GAS FACTOR

Applicable to: Entire System
Effective Date: _____

Page 1 of 6

Purpose and Intent

This provision is intended to allow collection of the gas purchase costs of CoServ Gas, Ltd. (hereinafter “CoServ Gas” or the “Company”) in a manner that will lessen monthly fluctuations in the Purchased Gas Factor and ensure that actual costs billed to customers are fully reconciled with actual costs incurred, subject to limitations for excessive lost and unaccounted for gas. The billing methods set forth herein are intended to be followed to the extent the goals are realized. To the extent the billing methods fail to achieve these goals, the methodology shall be revised, and a revised tariff filed to reflect such revisions. The Company will make appropriate regulatory filings and obtain regulatory approvals, as required, before making changes to its rates. The Company will notify the Railroad Commission within 10 days of the date its policies and procedures for recovering the uncollectable portion of its gas cost charges.

Applicability

This clause shall apply to all CoServ Gas tariffs that incorporate this Purchased Gas Factor provision and which have been properly filed and implemented with the appropriate jurisdictional authority.

Definitions

Standard Cubic Foot of Gas – the amount of gas contained in one (1) cubic foot of space at a standard pressure of fourteen and sixty-five hundredths (14.65) pounds per square inch, absolute and a standard temperature of sixty (60) degrees Fahrenheit.

Ccf – one hundred standard cubic feet of gas.

Mcf – one thousand standard cubic feet of gas.

Purchased Gas Volumes – The volumes of gas, expressed in Mcf’s, purchased by the Company and received into the Company’s distribution systems from all sources, including withdrawals from storage, and excluding gas injected into storage.

Purchased Gas Cost(s) –The total cost of Purchased Gas Volumes, as received into the Company’s distribution systems, all as more specifically described herein.

Weighted Average Cost of Gas – The Purchased Gas Costs divided by the Purchased Gas Volumes, calculated on a monthly basis, and expressed as dollars per Mcf. Weighting us by the volume of each gas component.

TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.

Rate Schedule PGF

PURCHASED GAS FACTOR

Applicable to: Entire System
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Billed Gas Volumes – The volumes of gas billed to customers, plus volumes of gas billed to third parties following losses or damages, expressed in Mcf's

Billed Gas Revenues – The total amount of revenues attributable to billings by CoServ for Purchased Gas Costs during a given period, exclusive of any billings for any Reconciliation Factor during the same period.

Lost and Unaccounted for Gas (LUG) – Purchased Gas Volumes minus the sum of Billed Gas Volumes and metered Company used gas.

Purchased Gas Factor (PGF) – A factor on each customer's monthly bill, expressed in dollars per Ccf, to reflect the Purchase Gas Costs and the Reconciliation Factor, all as more specifically described herein.

Fixed Transportation Costs (FTC) – The fixed monthly or demand amount of transportation costs determined by a Maximum Daily Quantity (MDQ) or such other similarly named fixed costs for transportation.

Estimated Fixed Transportation Costs (EFTC) – The anticipated FTC to be incurred during the Annual Review period.

Annual Fixed Transportation Costs (AFTC) – The actual FTC incurred during the Annual Review Period.

Annual Review Period – The 12-month period ending June 30 of each year.

Annual Review – An annual review of the Company's records covering the 12-month period ending June 30 to determine LUG volumes and any imbalances between the Purchased Gas Costs and Billed Gas Revenues existing at the end of the Annual Review Period.

Annual Imbalance Total – The total amount determined through the Annual Review to be credited or surcharged to customers' bills, plus interest, in order to balance Purchased Gas Costs with Billed Gas Revenues.

Reconciliation Factor – A credit or surcharge included in the Purchased Gas Factor to reflect the pro-rated adjustment in billings for any over or under collections on an annual basis, inclusive of interest.

**TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.**

Rate Schedule PGF

PURCHASED GAS FACTOR

Applicable to: Entire System
Effective Date: _____

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Record Keeping

The Company shall keep accurate records of all gas metered in and out of its system, gas purchases, and Company-owned gas injected into and withdrawn from storage, and any adjustments, including interest, relative to any imbalances. The records shall include date, quantity, and cost details for all gas handled.

Purchased Gas Cost Calculation

The Purchased Gas Cost shall be determined for each month to fairly and accurately reflect the cost to the Company at the points of delivery into the Company's distribution systems. The determination shall include, but not be limited to, volumetric and demand charges for Purchased Gas Volumes, fees paid to others where such fees are integrally tied to the purchase or transportation of gas purchased by CoServ, pipeline transportation volumetric charges, gas storage charges (both volumetric and demand), and an adjustment for any gas imbalances due to or from the shipper.

Fixed Transportation Costs will be estimated for the year (EFTC). The EFTC will be divided by the estimated annual volume of gas to be delivered to determine the FTC rate per Mcf. This rate will be applied monthly to the anticipated gas volume for a particular month and will be included in the PGF. The EFTC will be updated for the remainder of the Annual Review Period and a new rate will be determined and used for calculating the PGF during the remaining months of the Annual Review Period. A running over or under collected balance will be maintained and an interest will be added to or subtracted from the over/under balance as appropriate. Any remaining balance in the over/under account will be added to or subtracted from the EFTC for the subsequent Annual Review Period.

The Company shall account separately for gas injected into storage on a specific identification basis and withdrawn from storage on a weighted average cost basis.

Purchased Gas Factor Calculation

Each customer bill shall include a Purchased Gas Factor reflecting the estimated Weighted Average Cost of Gas for the period covered by the bill, which estimate shall include, as applicable, a pro-rata amount to adjust for previous over- or under-estimates of the Weighted Average Cost of Gas; plus the total amount of gas cost determined to have been uncollectible, written off, and remaining unpaid; plus a Reconciliation Factor to account for any Annual Imbalance Total.

**TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.**

Rate Schedule PGF

PURCHASED GAS FACTOR

Applicable to: Entire System
Effective Date: _____

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Annual Review

For each Annual Review Period, the Company shall determine (i) the amount of any imbalance between the Purchased Gas Costs and Billed Gas Revenues, and (ii) the LUG volume for the Annual Review Period. As limited by the LUG volume limitation set forth below, the Annual Imbalance Total shall then be credited or surcharged, together with interest, to the customers' bills over a twelve-month period commencing each September 1 following the Annual Review Period.

Annual Imbalance Total -- LUG Volume less than five percent of Purchased Gas Volumes or LUG Volume is negative

If the Annual Review shows the LUG volume for the Annual Review Period to be less than five percent of the Purchased Gas Volumes, or if the LUG volume is negative (indicating a line gain), the Annual Imbalance Total shall be the difference between the total Purchased Gas Cost and the total Billed Gas Revenues for the Annual Review Period.

Annual Imbalance Total – LUG Volume is positive and is greater than five percent of Purchased Gas Volumes

If the Annual Review shows the LUG volume for the Annual Review Period to be positive and to be greater than five percent of the Purchased Gas Volumes, the Annual Imbalance Total shall be determined as follows:

- The difference between the total Purchased Gas Costs and the total Billed Gas Revenues for the Annual Review Period shall be determined;
- Minus, the Purchased Gas Costs attributable to LUG volumes in excess of 5% of the Purchase Gas Volumes, using the Company's Weighted Average Cost of Purchased Gas for the Review Period.

Reconciliation Factor Calculation

The Annual Imbalance Total (whether positive or negative) shall be credited or surcharged over twelve months in equal total amounts per month, together with interest on the declining unrecovered or uncredited balance. The recovery shall be through a Reconciliation Factor included in the Purchased Gas Factor. The Reconciliation Factor for each month shall be determined as follows:

- The total interest to be collected or paid shall be computed by using a monthly interest factor equal to the annual interest rate divided by 12. The annual interest rate shall be the

**TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.**

Rate Schedule PGF

PURCHASED GAS FACTOR

Applicable to: Entire System
Effective Date: _____

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interest rate established pursuant to Section 183.003 of the Texas Utilities Code, as applicable to customer deposits, if any, of customers covered by this tariff, as such rate is in effect during the last month of the Annual Review Period.

- The total interest to be collected or paid over the 12-month period shall be added to the Annual Imbalance Total.
- The resulting total shall then be divided by 12 to determine the total amount to be credited or surcharged each month.
- Each month of the twelve-month reconciliation period, the Reconciliation Factor, expressed in Ccfs, shall be calculated by dividing the sum of amount to be credited or surcharged during that month (which amount shall include, as necessary, an amount to correct for any previous over- or under-estimates of Billed Gas Volumes during the previous month or months in the same reconciliation period), by the estimated Billed Gas Volumes for the month.
- At the end of each 12-month period, any remaining balance in the Annual Imbalance Total shall be included in any Annual Imbalance Total to be credited or surcharged during the successor 12-month period.

Annual Reconciliation Report

The Company shall file an Annual Reconciliation Report with the Regulatory Authority that shall include but not necessarily be limited to:

1. A tabulation of volumes of gas purchased and costs incurred listed by account or type of gas, supplier and source by month for the twelve months ending June 30;
2. A tabulation of the uncollectible gas cost by month for the twelve months ending June 30;
3. A description of all other costs and refunds made during the year and their effect on Rate Schedule PGF – Purchased Gas Factor to date;
4. A tabulation of gas units sold to general service customers and related Rate Schedule PGF - Purchased Gas Factor revenues; and,
5. A description of the imbalance payments made to and received from the Company's transportation customers within the service area, including monthly imbalances

**TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.**

Rate Schedule PGF

PURCHASED GAS FACTOR

Applicable to: Entire System
Effective Date: _____

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incurred, the monthly imbalances resolved, and the amount of cumulative imbalances. The description should reflect the system imbalance and imbalance amount for each supplier using the Company's distribution system during the reconciliation period.

6. The Annual Reconciliation Report prepared for the Railroad Commission shall be sent to the Audit Section of the Gas Services Division and shall also include uncollected expenses, uncollected margin, uncollected gas costs, uncollected taxes, subsequent collected gas costs and subsequent collected margin.

The Company shall maintain detailed information that will allow the Regulatory Authority to audit the operation of the uncollectible gas cost recovery process.

**TARIFF FOR GAS SERVICE
CoServ Gas, Ltd**

Rate Schedule PSF

PIPELINE SAFETY FEE

Applicable to: Entire System
Effective Date: _____

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Application of Schedule

Applicable to all customer classes.

Monthly Calculation

Company will charge a surcharge to recover pipeline safety fees assessed by the Commission pursuant to Section 121.211 of the Texas Utilities Code and Commission Rule 16 TAC § 8.201. The surcharge will be charged not more often than once a year and will be billed following payment by the Company to the Commission, in accordance with the Commission's rules.

Compliance Report

The Company shall file an annual pipeline safety fee (PSF) report no later than 90 days after the last billing cycle in which the pipeline safety fee surcharge is billed to customers. The Company shall file the report with the Railroad Commission of Texas addressed to the Director of Oversight and Safety Division, Gas Services Department, referencing OS-20-00005136, and titling the report "Pipeline Safety Fee Recovery Report". The report shall include the following:

- a) the pipeline safety fee-amount paid to the Commission;
- b) the unit rate for each customer;
- c) the date or dates the surcharge was billed to customers; and
- d) the total amount billed to customers for the surcharge.

Reports for the Commission should be filed electronically at GUD_Compliance@rrc.texas.gov or at the following address:

Compliance Filing
Director of Oversight and Safety Division
Gas Services Dept.
Railroad Commission of Texas
P.O. Box 12967
Austin, TX 78711-2967

**TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.**

Rate Schedule RCE

RATE CASE EXPENSES

Applicable to: Entire System
Effective Date: _____

Page 1 of 1

Application of Schedule

Applicable to residential, commercial, and public authority customer classes.

Monthly Surcharge

Pursuant to the Final Order in OS-20-00005136, CoServ is authorized to recover a total of \$774,683.93 in rate case expenses from OS-20-00005136 customers identified above by a surcharge of \$0.00333 per Ccf for a period of approximately 24 months commencing TBD 2021.

Compliance Report

The Company shall file an annual rate case expense reconciliation report within 90 days after each calendar year end until and including the calendar year end in which the rate case expenses are fully recovered. The Company shall file the report with the Railroad Commission of Texas addressed to the Director of Oversight and Safety Division, Gas Services Department and referencing OS-20-00005136 Rate Case Expense Recovery Report.

The report shall detail the monthly collections for RCE surcharge by customer class and show the outstanding balance. Reports to the Commission should be filed electronically at GUD_Compliance@rrc.texas.gov or at the following address:

Compliance Filing
Director of Oversight and Safety Division
Gas Services Dept.
Railroad Commission of Texas
P.O. Box 12967
Austin, TX 78711-2967

TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.

Rate Schedule WNA

WEATHER NORMALIZATION ADJUSTMENT

Applicable to: Entire System
Effective Date: _____

Page 1 of 3

Application of Schedule

Applicable to residential, commercial and public authority customers.

Purpose and Intent

This provision is intended to account for the effects of abnormal temperatures on both customers and the Company. Under this provision customers will receive a credit when the temperature is colder than normal or will be surcharged when the temperature is warmer than normal. The billing methods set forth herein are intended to be followed to the extent the goals are realized. To the extent the billing methods fail to achieve these goals, the methodology shall be revised so that the goals are achieved, subject to review by the Gas Services Division of the Railroad Commission of Texas.

Applicability

This tariff shall be applicable for the months of November through April of each year. The WNA charge shall be reflected on the monthly bills rendered to customers in the months of December through May to account for the variation in gas consumption due to the variation in temperatures from normal during the November through April period. The WNA charge billed for a month will be based on Heating Degree Day parameters for the previous month, actual number of customers for the previous month, and estimated rate class Ccf consumption for the current month.

Definitions

Ccf – One hundred standard cubic feet of gas

HDD – Heating Degree Days

HDDn – Normal heating degree days for the previous month based on normal determined by NOAA for the Dallas Fort Worth International Airport (KDFW weather station)

HDDa – Actual heating degree days for the previous month

HL– Is a factor for heat load per HDD for the test year. The factor is 0.10012 for residential customers, 0.457193 for commercial customers and 1.385462 for public authority customers

C –Number of customers in the customer class at the end of the previous month.

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CoServ Gas, Ltd.

Rate Schedule WNA

WEATHER NORMALIZATION ADJUSTMENT

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WNV – Weather Normalization Volume calculated by customer class using the following formula:

$$WNV = C * (HL * (HDDn - HDDa))$$

BMVe – The estimate of the volume of natural gas for the current month to be consumed by each customer class.

WNAf – Weather Normalization Adjustment factor

VC – The Volumetric Charge in effect for the appropriate customer class.

RF – The Reconciliation Factor is an adjustment to be applied to the current monthly billing to account for differences in WNA revenues calculated using actual, final billing and HDD parameters for previous periods and the WNA revenues actually recovered in previous periods. Any remaining RF balance after the May billing will be included in the next December billing.

WNA Calculation

The amount to be billed or credited to each customer in a customer class will be determined as follows:

$$WNAf = ((WNV * VC) \pm RF) / BMVe$$

The customer will be charged or credited as follows:

$$WNA = \text{Customer's Actual Ccf Consumption} \times WNAf$$

Monthly Report

By the 25th day of the month following the month in which a given WNA is billed or credited, the Company will file with the Regulatory Authority a report showing the volume adjustments and WNA revenues for each applicable customer class. Supporting documentation will be made available for review upon request.

Annual Report

An annual report shall be filed with the regulatory authority for each five-month period beginning with November and ending the subsequent April by customer class. The report shall provide: (a) the total amount of volumetric revenues collected from customers including WNA revenues, (b) the Base Load revenues collected from customers using the Base Load per customer during the

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period, (c) the difference between the volumetric revenues collected from customers and the Base Load, which represents the weather sensitive revenues billed, and (d) the calculated WNA revenues determined by the operation of the provisions of this weather normalization adjustment clause.

Compliance Report

The Company shall file with the Commission an annual report verifying the past year's WNA collections or refunds. The report shall show the amount collected or refunded by WNA month, total monthly volume, average WNA rate, average bill impact, percent bill impact and itemized by service area.

The Company shall file the report with the Commission electronically at GUD_Compliance@rrc.texas.gov or at the following address:

WNA Tariff Filing
Director of Oversight and Safety Division
Gas Services Department
Railroad Commission of Texas
P.O. Box 12967
Austin, TX 78711-2967

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Rate Schedule EDIT

EXCESS DEFERRED INCOME TAX CREDIT

Applicable to: Entire System

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Application of Schedule

This Excess Deferred Income Tax Credit applies to all general service rate schedules of CoServ Gas, Ltd. ("Company") currently in force within the incorporated and unincorporated areas of Collin, Denton, and Kaufman Counties.

Calculation of Credit

The annual amortization of the regulatory liability for excess deferred income taxes resulting from the Tax Cuts and Jobs Act of 2017 and in compliance with GUD No. 10695, will be credited to customers monthly on avolumetric basis until fully amortized. The initial credit will occur in _____, 2021.

EDIT CREDIT – The total amount, if any, of the credit in a given year will be determined by:

- The average rate assumption method ("ARAM") as required by the Tax Cuts and Jobs Act of 2017 Section 13001(d) for the protected portion of the regulatory liability for excess deferred income taxes, which results in an amortization over approximately 38 years.

TRUE-UP ADJUSTMENT – The Excess Deferred Income Tax credit shall be trued-up in CoServ's next rate case. The True-Up Adjustment will be the difference between the amount of the EDIT Credit and the amount actually credited to customers.

EDIT Credit per Ccf

Residential:	\$0.00247
Commercial:	\$0.00100
Public Authority:	\$0.00100

Other Adjustments

Taxes: Plus applicable taxes and fees (including franchise fees) related to above.

Compliance Filing

The Company shall make a filing with the Commission no later than March 31 of each year, including the following information for the previous calendar year:

- a. the total dollar amount of that year's EDIT Credit;

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EXCESS DEFERRED INCOME TAX CREDIT

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- b. the total dollar amount actually credited to customers;
- c. the amount of the upcoming year's EDIT Credit; and
- d. the amounts of the upcoming year's EDIT Credit per Customer.

Conditions

Subject to all applicable laws and orders, and the Company's rules and regulations on file with the regulatory authority.

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Rate Schedule M

MISCELLANEOUS SERVICE CHARGES

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Application of Schedule

The service charges listed below are in addition to any other charges under the Company's Tariff for Gas Service and will be applied for the condition described. Other services not covered by these standard conditions will be charged on the basis of an estimate for the job or the Company's actual cost plus appropriate surcharges.

Applicable Charges

Service Charge No.	Name and Description	Amount of Charge
1	<p>Connection Charge During Business Hours</p> <p>During standard business hours, for each reconnection of gas service where service has been discontinued at the same premises for any reason, for the initial inauguration of service, and for each inauguration of service when the billable party has changed, with the following exceptions:</p> <ul style="list-style-type: none"> (a) For a builder who uses gas temporarily during construction or for display purposes. (b) Whenever gas service has been temporarily interrupted because of System outage or service work done by Company; or (c) For any reason deemed necessary for Company operations. The charge will also apply in the event that the connection or reconnection cannot be made because there is an issue on the builder's or customer's premises, including the inability for CoServ to gain access to the premises, failure of the appliances to meet required specifications, a leak in the piping, or the like. <p style="text-align: center;">This will be identified as a Failed Connect Attempt.</p>	\$ 65.00
2	<p>Connection Charge After Business Hours</p> <p>After standard business hours, for each reconnection of gas service where service has been discontinued at the same premises for any reason, for the initial inauguration of service, and for each inauguration of service when the billable party has changed, with the following exceptions:</p> <ul style="list-style-type: none"> (a) For a builder who uses gas temporarily during construction or for display purposes. (b) Whenever gas service has been temporarily interrupted 	\$ 97.00

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MISCELLANEOUS SERVICE CHARGES

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Service Charge No.	Name and Description	Amount of Charge
2	<p>because of System outage or service work done by Company; or</p> <p>(c) For any reason deemed necessary for Company operations. The charge will also apply in the event that the connection or reconnection cannot be made because there is an issue on the builder's or customer's premises, including the inability for CoServ to gain access to the premises, failure of the appliances to meet required specifications, a leak in the piping, or the like.</p> <p>This will be identified as a Failed Connect Attempt.</p>	
3	<p>Field Read of Meter</p> <p>A read for change charge when it is necessary for the Company to read the meter at a currently served location because of a change in the billable party.</p>	\$ 19.00
4	<p>Returned Check Charges</p> <p>Returned check handling charge for each check returned to Company for any reason.</p>	\$ 20.00
5	<p>Charge for Temporary Discontinuance of Service - Residential</p> <p>Whenever service has been temporarily disconnected at the request of the customer, this charge plus the appropriate Connection Charge will be made to reestablish such service for that customer at the same address.</p>	\$ 65.00
6	<p>Charge for Temporary Discontinuance of Service– Non-Residential</p> <p>Whenever service has been temporarily disconnected at the request of the customer, this charge plus the appropriate Connection Charge will be made to reestablish such service for that customer at the same address.</p>	\$ 107.00

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MISCELLANEOUS SERVICE CHARGES

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Service Charge No.	Name and Description	Amount of Charge
7	Charge for Meter Testing The Company shall, upon request of a customer, make a test of the accuracy of the meter serving that customer. The Company shall inform the customer of the time and place of the test and permit the customer or his authorized representative to be present if the customer so desires. If no such test has been performed within the previous four (4) years for the same customer at the same location, the test shall be performed without charge. If such test has been performed for the same customer at the same location within the previous four (4) years, the Company will charge the Meter Test Fee. The customer must be properly informed of the result of any test on a meter that services the customer.	\$ 15.00
8	Charge for Service Calls During Business Hours A Service Call Charge is made for responding to a service call during standard business hours that is determined to be a customer related problem rather than a Company or Company facilities problem.	\$ 26.00
9	Charge for Service Calls After Business Hours A Service Call Charge is made for responding to a service call after standard business hours that is determined to be a customer related problem rather than a Company or Company facilities problem.	\$ 40.00
10	Tampering Charge No Company meters, equipment, or other property, whether on Customer's premises or elsewhere, are to be tampered with or interfered with for any reason. A Tampering Charge is made for unauthorized reconnection or other tampering with Company metering facilities or a theft of gas service by a person on the customer's premises or evidence by whomsoever at customer's premises. An additional cost for the cost of repairs and/or replacement of damaged facilities and the installation of protective facilities or relocation of meter are made at cost plus appropriate charges as may be detailed in the Company's Service Rules and Regulations	\$ 125.00

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MISCELLANEOUS SERVICE CHARGES

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Service Charge No.	Name and Description	Amount of Charge
11	<p>Line Extension and Installation Charges</p> <p>Customers in incorporated areas: Extension and installation of new mains, service lines, risers, fittings and other appurtenant equipment pursuant to main extension policy in municipal franchise and in Rate Schedule LEI – Line Extension Policy – Incorporated Areas. Credit for main pursuant to municipal franchise. The customer is responsible for the installation of yard line and yard line risers.</p> <p>Customers in unincorporated areas: Extension and installation of new mains, service lines, risers, fittings and other appurtenant equipment pursuant to line extension policy contained in Rate Schedule LEU – Line Extension Policy – Unincorporated Areas. The customer is responsible for the installation of yard line and yard line risers.</p> <p>*Actual cost of the portion of any extensions exceeding the free extension allowance provided within the line extension.</p>	Actual Cost *
12	<p>Construction Crew Charges</p> <p>All labor charges if a construction crew is required.</p>	Actual Cost
13	<p>Construction Costs Charges</p> <p>All other construction charges.</p>	Actual Cost

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QUALITY OF SERVICE

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CoServ Gas follows the quality of service requirements as set forth in the Commission rules at 16 TAC Sections 7.45 (Quality of Service) and Section 7.460 (Suspension of Gas Utility Service Disconnection During an Extreme Weather Emergency). These rules follow.

Sections 7.45 (Quality of Service)

For gas utility service to residential and small commercial customers, the following minimum service standards shall be applicable in unincorporated areas. In addition, each gas distribution utility is ordered to amend its service rules to include said minimum service standards within the utility service rules applicable to residential and small commercial customers within incorporated areas, but only to the extent that said minimum service standards do not conflict with standards lawfully established within a particular municipality for a gas distribution utility. Said gas distribution utility shall file service rules incorporating said minimum service standards with the Railroad Commission and with the municipalities in the manner prescribed by law.

(1) Continuity of service.

(A) Service interruptions.

(i) Every gas utility shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall reestablish service within the shortest possible time consistent with prudent operating principles so that the smallest number of customers are affected.

(ii) Each utility shall make reasonable provisions to meet emergencies resulting from failure of service, and each utility shall issue instructions to its employees covering procedures to be followed in the event of an emergency in order to prevent or mitigate interruption or impairment of service.

(iii) In the event of national emergency or local disaster resulting in disruption of normal service, the utility may, in the public interest, interrupt service to other customers to provide necessary service to civil defense or other emergency service agencies on a temporary basis until normal service to these agencies can be restored.

(B) Record of interruption. Except for momentary interruptions which do not cause a major disruption of service, each utility shall keep a complete record of all interruptions, both emergency and scheduled. This record shall show the cause of interruptions, date, time duration, location, approximate number of customers affected, and, in cases of emergency interruptions, the remedy and steps taken to prevent recurrence.

(C) Report to commission. The commission shall be notified in writing within 48 hours of interruptions in service affecting the entire system or any major division thereof lasting more than four hours. The notice shall also state the cause of such interruptions. If any service interruption is reported to the commission otherwise (for example, as a curtailment report or safety report), such other report is sufficient to comply with the terms of this paragraph.

(2) Customer relations.

(A) Information to customers. Each utility shall:

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(i) maintain a current set of maps showing the physical locations of its facilities. All distribution facilities shall be labeled to indicate the size or any pertinent information which will accurately describe the utility's facilities. These maps, or such other maps as may be required by the regulatory authority, shall be kept by the utility in a central location and will be available for inspection by the regulatory authority during normal working hours. Each business office or service center shall have available up-to-date maps, plans, or records of its immediate area, with such other information as may be necessary to enable the utility to advise applicants and others entitled to the information as to the facilities available for serving that locality;

(ii) assist the customer or applicant in selecting the most economical rate schedule;

(iii) in compliance with applicable law or regulations, notify customers affected by a change in rates or schedule or classification;

(iv) post a notice in a conspicuous place in each business office of the utility where applications for service are received informing the public that copies of the rate schedules and rules relating to the service of the utility as filed with the commission are available for inspection;

(v) upon request inform its customers as to the method of reading meters;

(vi) provide to new customers, at the time service is initiated or as an insert in the first billing, a pamphlet or information packet containing the following information. This information shall be provided in English and Spanish as necessary to adequately inform the customers; provided, however, the regulatory authority upon application and a showing of good cause may exempt the utility from the requirement that the information be provided in Spanish:

(I) the customer's right to information concerning rates and services and the customer's right to inspect or obtain at reproduction cost a copy of the applicable tariffs and service rules;

(II) the customer's right to have his or her meter checked without charge under paragraph (7) of this section, if applicable;

(III) the time allowed to pay outstanding bills;

(IV) grounds for termination of service;

(V) the steps the utility must take before terminating service;

(VI) how the customer can resolve billing disputes with the utility and how disputes and health emergencies may affect termination of service;

(VII) information on alternative payment plans offered by the utility;

(VIII) the steps necessary to have service reconnected after involuntary termination;

(IX) the appropriate regulatory authority with whom to register a complaint and how to contact such authority;

(X) the hours, addresses, and telephone numbers of utility offices where bills may be paid and information may be obtained; and

(XI) the customer's right to be instructed by the utility how to read his or her meter;

(vii) at least once each calendar year, notify customers that information is available upon request, at no charge to the customer, concerning the items listed in clause (vi)(I) - (XI) of this subparagraph. This notice may be accomplished by use of a billing insert or a printed statement upon the bill itself.

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(B) Customer complaints. Upon complaint to the utility by residential or small commercial customers either at its office, by letter, or by telephone, the utility shall promptly make a suitable investigation and advise the complainant of the results thereof. It shall keep a record of all complaints which shall show the name and address of the complainant, the date and nature of the complaint, and the adjustment or disposition thereof for a period of one year subsequent to the final disposition of the complaint.

(C) Utility response. Upon receipt of a complaint, either by letter or by telephone, from the regulatory authority on behalf of a customer, the utility shall make a suitable investigation and advise the regulatory authority and complainant of the results thereof. An initial response must be made by the next working day. The utility must make a final and complete response within 15 days from the date of the complaint, unless additional time is granted within the 15-day period. The commission encourages all customer complaints to be made in writing to assist the regulatory authority in maintaining records of the quality of service of each utility; however, telephone communications will be acceptable.

(D) Deferred payment plan. The utility is encouraged to offer a deferred payment plan for delinquent residential accounts. If such a plan is offered, it shall conform to the following guidelines:

(i) Every deferred payment plan entered into due to the customer's inability to pay the outstanding bill in full must provide that service will not be discontinued if the customer pays current bills and a reasonable amount of the outstanding bill and agrees to pay the balance in reasonable installments until the bill is paid.

(ii) For purposes of determining reasonableness under these rules, the following shall be considered: size of delinquent account; customer's ability to pay; customer's payment history; time that the debt has been outstanding; reasons why debt has been outstanding; and other relevant factors concerning the circumstances of the customer.

(iii) A deferred payment plan, if reduced to writing, offered by a utility shall state, immediately preceding the space provided for the customer's signature and in bold-face print at least two sizes larger than any other used, that: "If you are not satisfied with this agreement, do not sign. If you are satisfied with this agreement, you give up your right to dispute the amount due under the agreement except for the utility's failure or refusal to comply with the terms of this agreement."

(iv) A deferred payment plan may include a one-time 5.0% penalty for late payment on the original amount of the outstanding bill with no prompt payment discount allowed except in cases where the outstanding bill is unusually high as a result of the utility's error (such as an inaccurately estimated bill or an incorrectly read meter). A deferred payment plan shall not include a finance charge.

(v) If a customer for utility service has not fulfilled terms of a deferred payment agreement or refuses to sign the same if it is reduced to writing, the utility shall have the right to disconnect pursuant to disconnection rules herein and, under such circumstances, it shall not be required to offer a subsequent negotiation of a deferred payment agreement prior to disconnection.

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(vi) Any utility which institutes a deferred payment plan shall not refuse a customer participation in such a program on the basis of race, color, creed, sex, marital status, age, or any other form of discrimination prohibited by law.

(E) Delayed payment of bills by elderly persons.

(i) Applicability. This subparagraph applies only to:

(I) a utility that assesses late payment charges on residential customers and that suspends service before the 26th day after the date of the bill for which collection action is taken;

(II) utility bills issued on or after August 30, 1993; and

(III) an elderly person, as defined in clause (ii) of this subparagraph, who is a residential customer and who occupies the entire premises for which a delay is requested.

(ii) Definitions.

(I) Elderly person--A person who is 60 years of age or older.

(II) Utility--A gas utility or municipally owned utility, as defined in Texas Utilities Code, §§101.003(7), 101.003(8), and 121.001 - 121.006.

(iii) An elderly person may request that the utility implement the delay for either the most recent utility bill or for the most recent utility bill and each subsequent utility bill.

(iv) On request of an elderly person, a utility shall delay without penalty the payment date of a bill for providing utility services to that person until the 25th day after the date on which the bill is issued.

(v) The utility may require the requesting person to present reasonable proof that the person is 60 years of age or older.

(vi) Every utility shall notify its customers of this delayed payment option no less often than yearly. A utility may include this notice with other information provided pursuant to subparagraph (A) of this paragraph.

(3) Refusal of service.

(A) Compliance by applicant. Any utility may decline to serve an applicant for whom service is available from previously installed facilities until such applicant has complied with the state and municipal regulations and approved rules and regulations of the utility on file with the commission governing the service applied for or for the following reasons.

(i) Applicant's facilities inadequate. If the applicant's installation or equipment is known to be hazardous or of such character that satisfactory service cannot be given.

(ii) For indebtedness. If the applicant is indebted to any utility for the same kind of service as that applied for; provided, however, that in the event the indebtedness of the applicant for service is in dispute, the applicant shall be served upon complying with the applicable deposit requirement.

(iii) Refusal to make deposit. For refusal to make a deposit if applicant is required to make a deposit under these rules.

(B) Applicant's recourse. In the event that the utility shall refuse to serve an applicant under the provisions of these rules, the utility must inform the applicant of the basis of its refusal and that the applicant may file a complaint with the municipal regulatory authority or commission, whichever is appropriate.

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(C) Insufficient grounds for refusal to serve. The following shall not constitute sufficient cause for refusal of service to a present customer or applicant:

- (i) delinquency in payment for service by a previous occupant of the premises to be served;
- (ii) failure to pay for merchandise or charges for nonutility service purchased from the utility;
- (iii) failure to pay a bill to correct previous underbilling due to misapplication of rates more than six months prior to the date of application;

(iv) violation of the utility's rules pertaining to operation of nonstandard equipment or unauthorized attachments which interfere with the service of others unless the customer has first been notified and been afforded reasonable opportunity to comply with these rules;

(v) failure to pay a bill of another customer as guarantor thereof unless the guarantee was made in writing to the utility as a condition precedent to service; and

(vi) failure to pay the bill of another customer at the same address except where the change of customer identity is made to avoid or evade payment of a utility bill.

(4) Discontinuance of service.

(A) The due date of the bill for utility service shall not be less than 15 days after issuance, or such other period of time as may be provided by order of the regulatory authority. A bill for utility service is delinquent if unpaid by the due date.

(B) A utility may offer an inducement for prompt payment of bills by allowing a discount in the amount of 5.0% for payment of bills within 10 days after their issuance. This provision shall not apply where it conflicts with existing orders or ordinances of the appropriate regulatory authority.

(C) A customer's utility service may be disconnected if the bill has not been paid or a deferred payment plan pursuant to paragraph (2)(D) of this section has not been entered into within five working days after the bill has become delinquent and proper notice has been given. Proper notice consists of a deposit in the United States mail, postage prepaid, or hand delivery to the customer at least five working days prior to the stated date of disconnection, with the words "Termination Notice" or similar language prominently displayed on the notice. The notice shall be provided in English and Spanish as necessary to adequately inform the customer, and shall include the date of termination, the hours, address, and telephone number where payment may be made, and a statement that if a health or other emergency exists, the utility may be contacted concerning the nature of the emergency and the relief available, if any, to meet such emergency.

(D) Utility service may be disconnected for any of the following reasons:

(i) failure to pay a delinquent account or failure to comply with the terms of a deferred payment plan for installment payment of a delinquent account;

(ii) violation of the utility's rules pertaining to the use of service in a manner which interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation;

(iii) failure to comply with deposit or guarantee arrangements where required by paragraph (5) of this section;

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(iv) without notice where a known dangerous condition exists for as long as the condition exists;

(v) tampering with the utility company's meter or equipment or bypassing the same.

(E) Utility service may not be disconnected for any of the following reasons:

(i) delinquency in payment for service by a previous occupant of the premises;

(ii) failure to pay for merchandise or charges for nonutility service by the utility;

(iii) failure to pay for a different type or class of utility service unless fee for such service is included on the same bill;

(iv) failure to pay the account of another customer as guarantor thereof, unless the utility has in writing the guarantee as a condition precedent to service;

(v) failure to pay charges arising from an underbilling occurring due to any misapplication of rates more than six months prior to the current billings;

(vi) failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due;

(vii) failure to pay an estimated bill other than a bill rendered pursuant to an approved meter reading plan, unless the utility is unable to read the meter due to circumstances beyond its control.

(F) Unless a dangerous condition exists, or unless the customer requests disconnection, service shall not be disconnected on a day, or on a day immediately preceding a day, when personnel of the utility are not available to the public for the purpose of making collections and reconnecting service.

(G) No utility may abandon a customer without written approval from the regulatory authority.

(H) No utility may discontinue service to a delinquent residential customer permanently residing in an individually metered dwelling unit when that customer establishes that discontinuance of service will result in some person residing at that residence becoming seriously ill or more seriously ill if the service is discontinued. Any customer seeking to avoid termination of service under this section must make a written request supported by a written statement from a licensed physician. Both the request and the statement must be received by the utility not more than five working days after the date of delinquency of the bill. The prohibition against service termination provided by this section shall last 20 days from the date of receipt by the utility of the request and statement or such lesser period as may be agreed upon by the utility and the customer. The customer who makes such request shall sign an installment agreement which provides for payment of such service along with timely payments for subsequent monthly billings.

(5) Applicant deposit.

(A) Establishment of credit for residential applicants. Each utility may require a residential applicant for service to satisfactorily establish credit but such establishment of credit shall not relieve the customer from complying with rules for prompt payment of bills. Subject to these rules, a residential applicant shall not be required to pay a deposit:

(i) if the residential applicant has been a customer of any utility for the same kind of service within the last two years and is not delinquent in payment of any such utility service account and during the last 12 consecutive months of service did not have more than one occasion in which a

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bill for such utility service was paid after becoming delinquent and never had service disconnected for nonpayment;

(ii) if the residential applicant furnishes in writing a satisfactory guarantee to secure payment of bills for the service required; or

(iii) if the residential applicant furnishes in writing a satisfactory credit rating by appropriate means, including, but not limited to, the production of generally acceptable credit cards, letters of credit reference, the names of credit references which may be quickly and inexpensively contacted by the utility, or ownership of substantial equity.

(B) Reestablishment of credit. Every applicant who has previously been a customer of the utility and whose service has been discontinued for nonpayment of bills shall be required before service is rendered to pay all his amounts due the utility or execute a written deferred payment agreement, if offered, and reestablish credit as provided in subparagraph (A) of this paragraph.

(C) Amount of deposit and interest for residential service, and exemption from deposit.

(i) Each gas utility shall waive any deposit requirement for residential service for an applicant who has been determined to be a victim of family violence as defined in Texas Family Code, §71.004, by a family violence center, by treating medical personnel, by law enforcement agency personnel, or by a designee of the Attorney General in the Crime Victim Services Division of the Office of the Attorney General. This determination shall be evidenced by the applicant's submission of a certification letter developed by the Texas Council on Family Violence and made available on its web site.

(ii) The required deposit shall not exceed an amount equivalent to one-sixth of the estimated annual billings. If actual use is at least twice the amount of the estimated billings, a new deposit requirement may be calculated and an additional deposit may be required within two days. If such additional deposit is not made, the utility may disconnect service under the standard disconnection procedure for failure to comply with deposit requirements.

(iii) All applicants for residential service who are 65 years of age or older will be considered as having established credit if such applicant does not have an outstanding account balance with the utility or another utility for the same utility service which accrued within the last two years. No cash deposit shall be required of such applicant under these conditions.

(iv) Each utility which requires deposits to be made by its customers shall pay a minimum interest on such deposits according to the rate as established by law. If refund of deposit is made within 30 days of receipt of deposit, no interest payment is required. If the utility retains the deposit more than 30 days, payment of interest shall be made retroactive to the date of deposit.

(I) Payment of interest to the customer shall be annually or at the time the deposit is returned or credited to the customer's account.

(II) The deposit shall cease to draw interest on the date it is returned or credited to the customer's account.

(D) Deposits for temporary or seasonal service and for weekend or seasonal residences. The utility may require a deposit sufficient to reasonably protect it against the assumed risk, provided such a policy is applied in a uniform and nondiscriminatory manner.

**TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.**

Rate Schedule Q

QUALITY OF SERVICE

Applicable to: Entire System

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Effective Date: _____

(E) Records of deposits.

(i) The utility shall keep records to show:

- (I) the name and address of each depositor;
- (II) the amount and date of the deposit; and
- (III) each transaction concerning the deposit.

(ii) The utility shall issue a receipt of deposit to each applicant from whom a deposit is received and shall provide means whereby a depositor may establish claim if the receipt is lost.

(iii) A record of each unclaimed deposit must be maintained for at least four years, during which time the utility shall make a reasonable effort to return the deposit.

(F) Refund of deposit.

(i) If service is not connected or after disconnection of service, the utility shall promptly and automatically refund the customer's deposit plus accrued interest on the balance, if any, in excess of the unpaid bills for service furnished. The transfer of service from one premise to another within the service area of the utility shall not be deemed a disconnection within the meaning of these rules, and no additional deposit may be demanded unless permitted by these rules.

(ii) When the customer has paid bills for service for 12 consecutive residential bills without having service disconnected for nonpayment of bill and without having more than two occasions in which a bill was delinquent and when the customer is not delinquent in the payment of the current bills, the utility shall promptly and automatically refund the deposit plus accrued interest to the customer in the form of cash or credit to a customer's account.

(G) Upon sale or transfer of utility or company. Upon the sale or transfer of any public utility or operating units thereof, the seller shall file with the commission under oath, in addition to other information, a list showing the names and addresses of all customers served by such utility or unit who have to their credit a deposit, the date such deposit was made, the amount thereof, and the unpaid interest thereon.

(H) Complaint by applicant or customer. Each utility shall direct its personnel engaged in initial contact with an applicant or customer for service seeking to establish or reestablish credit under the provisions of these rules to inform the customer, if dissatisfaction is expressed with the utility's decision, of the customer's right to file a complaint with the regulatory authority thereon.

(6) Billing.

(A) Bills for gas service shall be rendered monthly, unless otherwise authorized or unless service is rendered for a period less than a month. Bills shall be rendered as promptly as possible following the reading of meters.

(B) The customer's bill must show all the following information. The information must be arranged and displayed in such a manner as to allow the customer to compute his bill with the applicable rate schedule. The applicable rate schedule must be mailed to the customer on request of the customer. A utility may exhaust its present stock of nonconforming bill forms before compliance is required by this section:

(i) if the meter is read by the utility, the date and reading of the meter at the beginning and end of the period for which rendered;

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- (ii) the number and kind of units billed;
- (iii) the applicable rate schedule title or code;
- (iv) the total base bill;
- (v) the total of any adjustments to the base bill and the amount of adjustments per billing unit;
- (vi) the date by which the customer must pay the bill to get prompt payment discount;
- (vii) the total amount due before and after any discount for prompt payment within a designated period;
- (viii) a distinct marking to identify an estimated bill.

(C) Where there is good reason for doing so, estimated bills may be submitted, provided that an actual meter reading is taken at least every six months. For the second consecutive month in which the meter reader is unable to gain access to the premises to read the meter on regular meter reading trips, or in months where meters are not read otherwise, the utility must provide the customer with a postcard and request that the customer read the meter and return the card to the utility if the meter is of a type that can be read by the customer without significant inconvenience or special tools or equipment. If such a postcard is not received by the utility in time for billing, the utility may estimate the meter reading and render the bill accordingly.

(D) Disputed bills.

(i) In the event of a dispute between the customer and the utility regarding the bill, the utility must forthwith make such investigation as is required by the particular case and report the results thereof to the customer. If the customer wishes to obtain the benefits of clause (ii) of this subparagraph, notification of the dispute must be given to the utility prior to the date the bill becomes delinquent. In the event the dispute is not resolved, the utility shall inform the customer of the complaint procedures of the appropriate regulatory authority.

(ii) Notwithstanding any other subsection of this section, the customer shall not be required to pay the disputed portion of the bill which exceeds the amount of that customer's average usage for the billing period at current rates until the earlier of the following: resolution of the dispute or the expiration of the 60-day period beginning on the day the disputed bill is issued. For purposes of this section only, the customer's average usage for the billing period shall be the average of the customer's usage for the same billing period during the preceding two years. Where no previous usage history exists, the average usage shall be estimated on the basis of usage levels of similar customers and under similar conditions.

(7) Meters.

(A) Meter requirements.

(i) Use of meter. All gas sold by a utility must be charged for by meter measurements, except where otherwise provided for by applicable law, regulation of the regulatory authority, or tariff.

(ii) Installation by utility. Unless otherwise authorized by the regulatory authority, each utility must provide and install and will continue to own and maintain all meters necessary for measurement of gas delivered to its customers.

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(iii) Standard type. No utility may furnish, set up, or put in use any meter which is not reliable and of a standard type which meets generally accepted industry standards; provided, however, special meters not necessarily conforming to such standard types may be used for investigation, testing, or experimental purposes.

(B) Meter records. Each utility must keep the following records:

(i) Meter equipment records. Each utility must keep a record of all its meters, showing the customer's address and date of the last test.

(ii) Records of meter tests. All meter tests must be properly referenced to the meter record provided for therein. The record of each test made on request of a customer must show the identifying number and constants of the meter, the standard meter and other measuring devices used, the date and kind of test made, by whom made, the error (or percentage of accuracy) at each load tested, and sufficient data to permit verification of all calculations.

(iii) Meter readings--meter unit location. In general, each meter must indicate clearly the units of service for which charge is made to the customer.

(iv) Meter tests on request of customer.

(I) Each utility must, upon request of a customer, make a test of the accuracy of the meter serving that customer. The utility must inform the customer of the time and place of the test and permit the customer or his authorized representative to be present if the customer so desires. If no such test has been performed within the previous four years for the same customer at the same location, the test is to be performed without charge. If such a test has been performed for the same customer at the same location within the previous four years, the utility is entitled to charge a fee for the test not to exceed \$15 or such other fee for the testing of meters as may be set forth in the utility's tariff properly on file with the regulatory authority. The customer must be properly informed of the result of any test on a meter that serves him.

(II) Notwithstanding subclause (I) of this clause, if the meter is found to be more than nominally defective, to either the customer's or the utility's disadvantage, any fee charged for a meter test must be refunded to the customer. More than nominally defective means a deviation of more than 2.0% from accurate registration.

(v) Bill adjustments due to meter error.

(I) If any meter test reveals a meter to be more than nominally defective, the utility must correct previous readings consistent with the inaccuracy found in the meter for the period of either:

(-a-) the last six months; or

(-b-) the last test of the meter, whichever is shorter. Any resulting underbillings or overbillings are to be corrected in subsequent bills, unless service is terminated, in which event a monetary adjustment is to be made. This requirement for a correction may be foregone by the utility if the error is to the utility's disadvantage.

(II) If a meter is found not to register for any period of time, the utility may make a charge for units used but not metered for a period not to exceed three months previous to the time the meter is found not to be registering. The determination of amounts used but not metered is to be based on consumption during other like periods by the same customer at the same location, when

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available, and on consumption under similar conditions at the same location or of other similarly situated customers, when not available.

(8) New construction.

(A) Standards of construction. Each utility is to construct, install, operate, and maintain its plant, structures, equipment, and lines in accordance with the provisions of such codes and standards as are generally accepted by the industry, as modified by rule or regulation of the regulatory authority or otherwise by law, and in such manner to best accommodate the public and to prevent interference with service furnished by other public utilities insofar as practical.

(B) Line extension and construction charges. Every utility must file its extension policy. The policy must be consistent, nondiscriminatory, and is subject to the approval of the regulatory authority. No contribution in aid of construction may be required of any customer except as provided for in extension policy.

(C) Response to request for service. Every gas utility must serve each qualified applicant for service within its service area as rapidly as practical. As a general policy, those applications not involving line extensions or new facilities should be filled within seven working days. Those applications for individual residential service requiring line extensions should be filled within 90 days unless unavailability of materials or other causes beyond the control of the utility result in unavoidable delays. In the event that residential service is delayed in excess of 90 days after an applicant has met credit requirements and made satisfactory arrangements for payment of any required construction charges, a report must be made to the regulatory authority listing the name of the applicant, location, and cause for delay. Unless such delays are due to causes which are reasonably beyond the control of the utility, a delay in excess of 90 days may be found to constitute a refusal to serve.

Section 7.460 (Suspension of Gas Utility Service Disconnection During an Extreme Weather Emergency)

(a) Applicability and scope. This rule applies to gas utilities, as defined in Texas Utilities Code, §101.003(7) and §121.001, and to owners, operators, and managers of mobile home parks or apartment houses who purchase natural gas through a master meter for delivery to a dwelling unit in a mobile home park or apartment house, pursuant to Texas Utilities Code, §§124.001-124.002, within the jurisdiction of the Railroad Commission pursuant to Texas Utilities Code, §102.001. For purposes of this section, all such gas utilities and owners, operators and managers of master meter systems shall be referred to as "providers." Providers shall comply with the following service standards. A gas distribution utility shall file amended service rules incorporating these standards with the Railroad Commission in the manner prescribed by law.

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(b) Disconnection prohibited. Except where there is a known dangerous condition or a use of natural gas service in a manner that is dangerous or unreasonably interferes with service to others, a provider shall not disconnect natural gas service to:

(1) a delinquent residential customer during an extreme weather emergency. An extreme weather emergency means a day when the previous day's highest temperature did not exceed 32 degrees Fahrenheit and the temperature is predicted to remain at or below that level for the next 24 hours according to the nearest National Weather Station for the county where the customer takes service.

(2) a delinquent residential customer for a billing period in which the provider receives a written pledge, letter of intent, purchase order, or other written notification from an energy assistance provider that it is forwarding sufficient payment to continue service; or

(3) a delinquent residential customer on a weekend day, unless personnel or agents of the provider are available for the purpose of receiving payment or making collections and reconnecting service.

(c) Payment plans. Providers shall defer collection of the full payment of bills that are due during an extreme weather emergency until after the emergency is over, and shall work with customers to establish a payment schedule for deferred bills as set forth in §7.45 of this title (relating to Quality of Service).

(d) Notice. Beginning in the September or October billing periods utilities and owners, operators, or managers of master metered systems shall give notice as follows:

(1) Each utility shall provide a copy of this rule to the social services agencies that distribute funds from the Low Income Home Energy Assistance Program within the utility's service area.

(2) Each utility shall provide a copy of this rule to any other social service agency of which the provider is aware that provides financial assistance to low income customers in the utility's service area.

(3) Each utility shall provide a copy of this rule to all residential customers of the utility and customers who are owners, operators, or managers of master metered systems.

(4) Owners, operators, or managers of master metered systems shall provide a copy of this rule to all of their customers.

(e) In addition to the minimum standards specified in this section, providers may adopt additional or alternative requirements if the provider files a tariff with the Commission pursuant to §7.315 of this title (relating to Filing of Tariffs). The Commission shall review the tariff to ensure that at least the minimum standards of this section are met.

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CoServ Gas, Ltd.**

Rate Schedule CP

CURTAILMENT POLICY

Applicable to: Entire System

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Effective Date: _____

CoServ Gas follows the requirements of the order in the Railroad Commission of Texas, Gas Utilities Docket No. 489.

**TARIFF FOR GAS SERVICE
CoServ Gas, Ltd.**

Rate Schedule DEP

CUSTOMER DEPOSITS

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Customer deposits are not required with acceptable credit bureau or other report of good credit by a utility. Deposits may be required of CoServ Gas customers who have been disconnected for nonpayment and later request to be reconnected. Deposits will be determined by estimating one-sixth of the average annual bill, and may include allowable additional charges, as specified by Texas Railroad Commission regulation. See applicable Commission regulation at 16 TAC Section 7.45 (Quality of Service Rule) for other provisions governing deposits.

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE: May 25, 2021

SUBJECT: Adopt a Resolution Denying Oncor Electric Delivery Company's Application for Approval of a Distribution Cost Recovery Factor.

STAFF RESOURCE: Rebecca Vice, Assistant City Manager

PREVIOUS COUNCIL ACTION: On April 28, 2020, City Council adopted a Resolution denying Oncor Electric Company's application for approval of a Distribution Cost Recovery Factor.

ACTION PROPOSED: Adopt a Resolution Denying Oncor Electric Delivery Company's Application for Approval of a Distribution Cost Recovery Factor.

BACKGROUND

On April 8, 2021, Oncor Electric Delivery Company LLC ("Oncor" or "Company") filed an Application for Approval of a Distribution Cost Recovery Factor ("DCRF") in Public Utility Commission of Texas ("Commission") Docket No. 51996. In the filing, the Company is seeking an increase in distribution revenues of \$97,826,277. This is Oncor's third DCRF filing under a law adopted in 2011 allowing electric utilities to file limited issue, limited review cases. [For reference, Oncor initially asked for \$75,889,531 last year and the final settlement agreement amount was \$64,859,172.]

The Oncor Cities Steering Committee ("OCSC"), of which the City of Allen is a member, has engaged the services of a consultant, Mr. Karl Nalepa, to review the Company's filing. Mr. Nalepa will review the filing and identify adjustments that should be made to the Company's request. Cities have jurisdiction over this matter.

The Public Utility Commission's rules allow cities 60 days to act on this application. That deadline is June 7, 2021. the attached Resolution authorizes the City of Allen to join the OCSC to evaluate the filing, determine whether the filing complies with the law, and if lawful, to determine what further strategy, including settlement, to pursue.

STAFF RECOMMENDATION

Staff recommends that the City Council adopt a Resolution denying Oncor Electric Delivery Company's application for approval of a Distribution Cost Recovery Factor.

MOTION

I make a motion to adopt Resolution No. _____ denying Oncor Electric Delivery Company's application for approval of a Distribution Cost Recovery Factor.

ATTACHMENTS:

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, FINDING THAT ONCOR ELECTRIC DELIVERY COMPANY, LLC’S, APPLICATION FOR APPROVAL TO AMEND ITS DISTRIBUTION COST RECOVERY FACTOR TO INCREASE DISTRIBUTION RATES WITHIN THE CITY SHOULD BE DENIED; AUTHORIZING PARTICIPATION WITH ONCOR CITIES STEERING COMMITTEE; AUTHORIZING THE HIRING OF LEGAL COUNSEL AND CONSULTING SERVICES; FINDING THAT THE CITY’S REASONABLE RATE CASE EXPENSES SHALL BE REIMBURSED BY THE COMPANY; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Allen, Texas (“City”), is an electric utility customer of Oncor Electric Delivery Company, LLC (“Oncor” or “Company”), with an interest in the rates and charges of Oncor; and,

WHEREAS, the Steering Committee of Cities Served by Oncor (“OCSC”) is a coalition of similarly situated cities served by Oncor that have joined together to efficiently and cost effectively review and respond to electric issues affecting rates charged in Oncor’s service area in matters before the Public Utility Commission (“Commission”) and the courts; and,

WHEREAS, on or about April 8, 2021, Oncor filed with the Commission an Application for Approval to Amend its Distribution Cost Recovery Factor (“DCRF”), Commission Docket No. 51996, seeking to increase its total distribution revenue requirement by approximately \$97,826,277; and,

WHEREAS, the City of Allen will cooperate with OCSC in coordinating their review of Oncor’s DCRF filing with designated attorneys and consultants, prepare a common response, negotiate with the Company, and direct any necessary litigation, to resolve issues in the Company’s filing; and,

WHEREAS, all electric utility customers residing in the City will be impacted by this ratemaking proceeding if Oncor’s Application is granted; and,

WHEREAS, working with the OCSC to review the rates charged by Oncor allows members to accomplish more collectively than each city could do acting alone; and,

WHEREAS, OCSC’s members and attorneys recommend that members who have retained original jurisdiction over electric utility rates deny Oncor’s DCRF.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The City is authorized to participate with OCSC in Commission Docket No. 51996.

SECTION 2. Subject to the right to terminate employment at any time, the Allen City Council hereby authorizes the hiring of the law firm of Lloyd Gosselink Rochelle & Townsend, P.C., and consultants to negotiate with the Company, make recommendations to the City regarding reasonable rates, and to direct any necessary administrative proceedings or court litigation associated with an appeal Oncor’s DCRF application.

SECTION 3. The rates proposed by Oncor to be recovered through its DCRF charged to customers located within the City limits should be denied.

SECTION 4. The Company should continue to charge its existing rates to customers within the City.

SECTION 5. The City's reasonable rate case expenses shall be reimbursed in full by Oncor within 30 days of the adoption of this Resolution, and within 30 days of presenting monthly bills to Oncor thereafter.

SECTION 6. It is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

SECTION 7. A copy of this Resolution shall be sent to J. Michael Sherburne, Vice President – Regulatory, Oncor Electric Delivery Company LLC, 1616 Woodall Rodgers Freeway, Dallas, Texas 75202; to Tab R. Urbantke, Hunton Andrews Kurth LLP, 1445 Ross Avenue, Suite 3700, Dallas, Texas 7520; and to Thomas Brocato, General Counsel to OCSC, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, TX 78767-1725, or tbrocato@lglawfirm.com.

SECTION 8. This Resolution shall take effect from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS ON THIS THE 25TH DAY OF MAY 2021.

APPROVED:

Kenneth M. Fulk, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:

May 25, 2021

SUBJECT:

Adopt a Resolution Appointing Pete Phillis to Fill a Vacant Term in Place No. 4 on the Board of Directors for Tax Increment Financing (TIF) Reinvestment Zone No. 1 (Garden District).

STAFF RESOURCE:

Shelley B. George, City Secretary

ACTION PROPOSED:

Adopt a Resolution Appointing Pete Phillis to Fill a Vacant Term in Place No. 4 on the Board of Directors for Tax Increment Financing (TIF) Reinvestment Zone No. 1 (Garden District).

BACKGROUND

On December 13, 2005, the City Council adopted Ordinance No. 2471-12-05 designating Allen Tax Increment Financing Reinvestment Zone No. 1 and creating a Board of Directors. Members are appointed to serve two year staggered terms. The City Council is asked to consider the following appointment to fill a vacancy:

Place 4 - Pete Phillis, Chief Financial Officer, City of Allen

STAFF RECOMMENDATION

Staff recommends the City Council appoint Pete Phillis to fill a vacant term on the Board of Directors for Tax Increment Financing (TIF) Reinvestment Zone No. 1 (Garden District).

MOTION

I make a motion to adopt Resolution No. _____ appointing Pete Phillis to fill Place No. 4 on the Board of Directors for Tax Increment Financing (TIF) Reinvestment Zone No. 1 (Garden District).

ATTACHMENTS:

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPOINTING THE BOARD OF DIRECTORS OF THE ALLEN TAX INCREMENT FINANCING REINVESTMENT ZONE NO. 1; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council has designated Allen Tax Increment Financing Reinvestment Zone No. 1 and appointed the initial Board of Directors; and,

WHEREAS, the City Council desires to appoint successor directors to the Board of Directors whose terms of office will expire or are vacant.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The following persons are appointed to the respective places of the Board of Directors of Allen Tax Increment Financing Reinvestment Zone No. 1, beginning with the adoption of this Resolution:

Place 4:	Pete Phillis Chief Financial Officer City of Allen 305 Century Parkway Allen, Texas 75013 (214) 509-4627 (214) 519-4118 (fax)	Term Expiration: September 30, 2021
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SECTION 2. Members of the Board are appointed to provide for two year staggered terms.

SECTION 3. Eric Ellwanger is hereby appointed as Chairperson for successive terms of one year each until such time as the City Council appoints a different Chairperson. The Board of Directors may elect a Vice-Chairperson to preside in the absence of the Chairperson, or when there is a vacancy in the office of Chairperson. The Board may elect other officers as it considers appropriate.

SECTION 4. This Resolution shall take effect from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 25TH DAY OF MAY 2021.

APPROVED:

Kenneth M. Fulk, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:	May 25, 2021
SUBJECT:	Adopt a Resolution Approving the Terms and Conditions of an Advance Funding Agreement (AFA) with The State of Texas Acting by and through The Texas Department of Transportation for the Allen Gateway Project.
STAFF RESOURCE:	Chris Flanigan, Director of Engineering
PREVIOUS COUNCIL ACTION:	<p>On February May 23, 2017, Council authorized the City Manager to execute a professional services contract with Huitt-Zollars, Inc. for the Schematic Design of the Allen Drive/US75 Interchange Improvements in the amount of \$225,953.</p> <p>On February 27, 2018, Council adopted a Resolution approving the terms and conditions of a Local Project Advance Funding Agreement (LPAFA) with The State of Texas acting by and through The Texas Department of Transportation for the US 75 Roundabout Project.</p> <p>On February 12, 2019. Council authorized the City Manager to execute a design contract with Huitt-Zollars, Inc. in the Amount of \$389,400 for the Allen Drive Gateway Project</p>
ACTION PROPOSED:	Adopt a Resolution Approving the Terms and Conditions of an Advance Funding Agreement (AFA) with The State of Texas Acting by and through The Texas Department of Transportation for the Allen Gateway Project.

BACKGROUND

For years, it has been a strategic initiative to provide a gateway, monument, or other aesthetic improvement to the US75 corridor that announces and establishes the community identity for the City of Allen. Over \$500,000 in Governor's Achievement Award funds (from two separate awards) has been set-aside for this initiative.

Years ago, city staff presented to the Allen City Council a concept to accomplish this long-standing aesthetic goal and has been working on it ever since. As a result, the project has been published in the 5-year Capital Improvement Program since origination. While implementing an innovative and practical solution to enhance traffic flow for the near- and long-term at the Allen Drive/US75 Interchange, the project scope also provides aesthetic enhancement to the US75 corridor.

Reconstruction of the interchange will provide an opportunity to eliminate the all-way stop condition and create islands on either side of the highway that hold potential for community identity and/or public art. Additionally, the scope of the project includes installing decorative enhancements (pedestrian-scale fencing) onto the overpass parapet walls (railing) that span the highway. When finished, the existing height of the Allen Drive bridge with respect to the US 75 main lanes presents a future opportunity for highly visible, vertically oriented artwork. Artwork installation is not a part of the project scope, but has been pitched to the Public Art Committee for future funding consideration.

Over the years, the project concept has undergone review and scrutiny by the Texas Department of Transportation (TxDOT) at various levels, starting with traffic control legitimacy and culminating to this day with final design construction drawings nearly ready for bidding and construction. At present, drawings are undergoing final review in Austin to prepare for bidding by the City of Allen.

The project is expected to be delivered in two phases - Phase 1, bid this summer, will include the roadway improvements (roundabouts), decorative paving/sidewalks, and illuminated fencing atop the existing bridge railing. Phase 2, bid toward the end of Phase 1, will include all irrigation and landscape surrounding the new interchange.

Since this project lies within the TxDOT right-of-way, the state agency has final approval authority on any design and construction associated with the project. Our completed design plans and specifications are in the final stage of TxDOT approval and TxDOT has required that we execute an Advance Funding Agreement (AFA) prior to their formal authorization for bidding and construction. This agreement outlines the responsibilities of the City of Allen as well as TxDOT for the project, memorializing that the project is 100% locally funded. Since there are no federal funds involved, many of the provisions of the agreement do not apply. The agreement language is a universal template used by the State, so those items are not applicable, even though they remain in the agreement language.

There is no additional project cost to the City of Allen in executing this agreement. TxDOT has waived their traditional review and management fee for implementation of this project (see Attachment 'C' where local agency is not responsible for reimbursing the State for their costs). Even so, TxDOT still requires the AFA to be executed as *symbolic* approval of the project to be constructed within their right-of-way.

This action does not approve or obligate the construction on behalf of the City of Allen or encumber funds toward the project, beyond what is already published in the 5-year Capital Improvement Program; rather, this action is the last step for approval of the project by TxDOT. After the project is bid, the project will be brought forth to the Allen City Council for consideration of awarding a bid to construct. Only at that time, will the project expenses be officially approved by the Allen City Council.

BUDGETARY IMPACT

There is no immediate budgetary impact resulting from this agreement. Expenses for the project will derive from future action by the City Council; specifically, the award for construction is predicted to occur in the Summer of 2021, after bidding and securing final approval from TxDOT.

STAFF RECOMMENDATION

Staff recommends that Council Adopt a Resolution Approving the Terms and Conditions of an Advance Funding Agreement (AFA) with The State of Texas Acting by and through The Texas Department of Transportation for the Allen Gateway Project.

MOTION

I make a motion to adopt Resolution No. _____ Approving the Terms and Conditions of an Advance Funding Agreement (AFA) with The State of Texas Acting by and through The Texas Department of Transportation for the Allen Gateway Project.

ATTACHMENTS:

Resolution

Advanced Funding Agreement

Bridge Rendering

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING THE TERMS AND CONDITIONS OF THE ADVANCE FUNDING AGREEMENT (HEREINAFTER “AGREEMENT”) FOR THE ALLEN GATEWAY PROJECT BY AND BETWEEN THE CITY OF ALLEN, TEXAS, AND THE STATE OF TEXAS, ACTING BY AND THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Advance Funding Agreement by and between the City of Allen, Texas, and the State of Texas, acting by and through the Texas Department of Transportation, which provides funding for the construction of a roundabout on US 75 at Allen Drive in the City of Allen, Collin County, Texas (CSJ 0047-06-164) (Allen Gateway Project), substantially in the form attached as Exhibit “A” and incorporated herein by reference; and,

WHEREAS, the City Council is of the opinion and finds that the City Manager should be authorized to execute an Advance Funding Agreement by and between the City of Allen, Texas, and the State of Texas, acting by and through the Texas Department of Transportation, which provides funding for the construction of a roundabout on US 75 at Allen Drive in the City of Allen, Collin County, Texas (CSJ 0047-06-164) (Allen Gateway Project), substantially in the form attached as Exhibit “A.”

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. An Advance Funding Agreement for the US 75 - Roundabout Project, which provides funding for the construction of a roundabout on US 75 at Allen Drive, in the City of Allen, Collin County, Texas, is hereby approved, and the City Manager is hereby authorized to execute an Advance Funding Agreement by and between the City of Allen, Texas, and the State of Texas, acting by and through the Texas Department of Transportation, which provides funding for the construction of a roundabout on US 75 at Allen Drive in the City of Allen, Collin County, Texas (CSJ 0047-06-164) (Allen Gateway Project), substantially in the form attached as Exhibit “A (and any amendments thereto, including any related instruments), on behalf of the City of Allen, Texas.

SECTION 2. This Resolution shall take effect immediately upon its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 25TH DAY OF MAY 2021.

APPROVED:

Kenneth M. Fulk, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY
(PGS:5-14-21:TM 122489)

TxDOT:		Federal Highway Administration:	
CSJ #	0047-06-164	CFDA No.	20.205
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Project Name	Allen Drive	<i>AFA Not Used For Research & Development</i>	
Limits	On US 75 At Allen Drive		

STATE OF TEXAS §

COUNTY OF TRAVIS §

ADVANCE FUNDING AGREEMENT
For A
100% Locally Funded
On-System

THIS AGREEMENT (Agreement) is made by and between the State of Texas, acting by and through the Texas Department of Transportation called the “State”, and the **City of Allen**, acting by and through its duly authorized officials, called the “Local Government”. The State and Local Government shall be collectively referred to as “the parties” hereinafter.

WITNESSETH

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

WHEREAS, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments, and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision, and

WHEREAS, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds, and

WHEREAS, the Texas Transportation Commission has codified 43 TAC, Rules 15.50-15.56 that describe federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects, and

WHEREAS, the Texas Transportation Commission passed Minute Order Numbers **115291** authorizing the State to undertake and complete a highway improvement or other transportation project generally described as **intersection improvement**. The portion of the project work covered by this Agreement is identified in the Agreement, Article 3, Scope of Work (Project), and

WHEREAS, the Governing Body of the Local Government has approved entering into this Agreement by resolution, ordinance, or commissioners court order dated _____, **20**____, which is attached to and made a part of this Agreement as Attachment A, Resolution, Ordinance, or Commissioners Court Order (Attachment A). A map showing the Project location appears in

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Attachment B, Location Map Showing Project (Attachment B), which is attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as set forth in this Agreement, it is agreed as follows:

AGREEMENT

1. Responsible Parties:

For the Project covered by this Agreement, the parties shall be responsible for the following work as stated in the article of the Agreement referenced in the table below:

1.	N/A	Utilities	Article 8
2.	N/A	Environmental Assessment and Mitigation	Article 9
3.	N/A	Architectural and Engineering Services	Article 11
4.	Local Government	Construction	Article 12
5.	N/A	Right of Way and Real Property	Article 14

2. Period of the Agreement

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until the Project is completed or unless terminated as provided below.

3. Scope of Work

The scope of work for the Project consists of **the reconstruction of frontage road intersections and bridge improvements on US 75 at Allen Drive in the City of Allen.**

4. Project Sources and Uses of Funds

The total estimated cost of the Project is shown in Attachment C, Project Budget (Attachment C) which is attached to and made a part of this Agreement.

- A. If the Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. If federal funds are being used, the training must be completed before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled "Local Government Project Procedures and Qualification for the Texas Department of Transportation" and retains qualification in accordance with applicable TxDOT procedures. Upon request, the Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the

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- Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.
- B. The expected cash contributions from the federal government, the State, the Local Government, or other parties are shown in Attachment C. The State will pay for only those Project costs that have been approved by the Texas Transportation Commission. For projects with federal funds, the State and the federal government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration (FHWA). After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
- C. Attachment C shows, by major cost categories, the cost estimates and the party responsible for performing the work for each category. These categories may include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.
- D. The State will be responsible for securing the federal and State share of the funding required for the development and construction of the local Project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.
- E. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement. For items of work subject to specified percentage funding, the Local Government shall only in those instances be responsible for all Project costs that are greater than the maximum State and federal participation specified in Attachment C and for overruns in excess of the amount specified in Attachment C to be paid by the Local Government.
- F. The budget in Attachment C will clearly state all items subject to fixed price funding, specified percentage funding, and the periodic payment schedule, when periodic payments have been approved by the State.
- G. When the Local Government bears the responsibility for paying cost overruns, the Local Government shall make payment to the State within thirty (30) days from the receipt of the State's written notification of additional funds being due.
- H. When fixed price funding is used, the Local Government is responsible for the fixed price amount specified in Attachment C. Fixed prices are not subject to adjustment unless (1) differing site conditions are encountered; (2) further definition of the Local Government's requested scope of work identifies greatly differing costs from those estimated; (3) work requested by the Local Government is determined to be

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- ineligible for federal participation; or (4) the adjustment is mutually agreed to by the State and the Local Government.
- I. Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment C. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering performed or reviewed by the State for the Project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction cost.
 - J. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this Agreement.
 - K. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation" or may use the State's Automated Clearing House (ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT's Finance Division. The funds shall be deposited and managed by the State and may only be applied by the State to the Project.
 - L. The State will not pay interest on any funds provided by the Local Government.
 - M. If a waiver for the collection of indirect costs for a service project has been granted under 43 TAC §15.56, the State will not charge the Local Government for the indirect costs the State incurs on the Project, unless this Agreement is terminated at the request of the Local Government prior to completion of the Project.
 - N. If the Local Government is an Economically Disadvantaged County (EDC) and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments.
 - O. Where the Local Government is authorized to perform services under this Agreement and be reimbursed by the State, the Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice, in a form and containing all items required by the State, no more frequently than monthly and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.
 - P. Upon completion of the Project, the State will perform a final accounting of the Project costs for all items of work with specified percentage funding. Any funds due by the Local Government, the State, or the federal government for these work items will be promptly paid by the owing party.
 - Q. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is

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the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

- R. Payment under this Agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this Agreement shall be terminated immediately with no liability to either party.

5. Termination of This Agreement

This Agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A. The Agreement is terminated in writing with the mutual consent of the parties;
- B. The Agreement is terminated by one party because of a breach, in which case any costs incurred because of the breach shall be paid by the breaching party;
- C. The Local Government elects not to provide funding after the completion of preliminary engineering, specifications, and estimates (PS&E) and the Project does not proceed because of insufficient funds, in which case the Local Government agrees to reimburse the State for its reasonable actual costs incurred during the Project; or
- D. The Agreement is terminated by the State because the parties are not able to execute a mutually agreeable amendment when the costs for Local Government requested items increase significantly due to differing site conditions, determination that Local government requested work is ineligible for federal or state cost participation, or a more thorough definition of the Local Government's proposed work scope identifies greatly differing costs from those estimated. The State will reimburse Local Government remaining funds to the Local Government within ninety (90) days of termination; or
- E. The Project is inactive for thirty-six (36) consecutive months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this Agreement.

6. Amendments

Amendments to this Agreement due to changes in the character of the work, terms of the Agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

7. Remedies

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

8. Utilities

The party named in Article 1, Responsible Parties, under AGREEMENT shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The

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Local Government will not be reimbursed with federal or State funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is commenced.

9. Environmental Assessment and Mitigation

Development of a transportation project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects. The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. The identification and assessment of any environmental problems associated with the development of a local project governed by this Agreement.
- B. The cost of any environmental problem's mitigation and remediation.
- C. Providing any public meetings or public hearings required for the environmental assessment process. Public hearings will not be held prior to the approval of the Project schematic.
- D. The preparation of the NEPA documents required for the environmental clearance of this Project.

If the Local Government is responsible for the environmental assessment and mitigation, before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

10. Compliance with Accessibility Standards

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with standards issued or approved by the Texas Department of Licensing and Regulation (TDLR) as meeting or consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

11. Architectural and Engineering Services

The party named in Article 1, Responsible Parties, under AGREEMENT has responsibility for the performance of architectural and engineering services. The engineering plans shall be developed in accordance with the applicable State's *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the special specifications and special provisions related to it. For projects on the State highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the State highway system, the design shall, at a minimum, conform to applicable American Association of State Highway and Transportation Officials (AASHTO) design standards.

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In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if the Project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases. Professional contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters. If the Local Government is the responsible party, the Local Government shall submit its procurement selection process for prior approval by the State. All professional services contracts must be reviewed and approved by the State prior to execution by the Local Government.

12. Construction Responsibilities

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. Advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project.
Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- B. If the State is the responsible party, the State will use its approved contract letting and award procedures to let and award the construction contract.
- C. If the Local Government is the responsible party, the Local Government shall submit its contract letting and award procedures to the State for review and approval prior to letting.
- D. If the Local Government is the responsible party, the State must concur with the low bidder selection before the Local Government can enter into a contract with the vendor.
- E. If the Local Government is the responsible party, the State must review and approve change orders.
- F. Upon completion of the Project, the party responsible for constructing the Project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion and submit certification(s) sealed by a professional engineer(s) licensed in the State of Texas.
- G. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Subpart B.

13. Project Maintenance

The Local Government shall be responsible for maintenance of locally owned roads and locally owned facilities after completion of the work. The State shall be responsible for maintenance of the State highway system after completion of the work if the work was on

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the State highway system, unless otherwise provided for in existing maintenance agreements with the Local Government.

14. Right of Way and Real Property

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the provision and acquisition of any needed right of way or real property.

15. Insurance

If this Agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work, the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

16. Notices

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

Local Government:	State:
City of Allen ATTN: City Manger 305 Century Parkway Allen, Texas 75013	Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 th Street Austin, TX 78701

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this Agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

17. Legal Construction

If one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

18. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party, and each party agrees it is responsible for its individual acts

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and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

19. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data and information prepared under this Agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State, in the format directed by the State, on a monthly basis or as required by the State. The originals shall remain the property of the Local Government.

20. Compliance with Laws

The parties to this Agreement shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

21. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

22. Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the cost principles established in 2 CFR 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

23. Procurement and Property Management Standards

The parties to this Agreement shall adhere to the procurement and property management standards established in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and to the Texas Uniform Grant Management Standards. The State must pre-approve the Local Government's procurement procedures for purchases to be eligible for state or federal funds.

24. Inspection of Books and Records

The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the FHWA and the U.S. Office of the Inspector General or their duly authorized representatives for review and inspection at its office during the Agreement period and for seven (7) years from the date of final reimbursement by FHWA under this Agreement or until any impending litigation or claims are resolved. Additionally, the State, the Local

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Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

25. Civil Rights Compliance

The parties to this Agreement are responsible for the following:

- A. Compliance with Regulations: Both parties will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.
- B. Nondiscrimination: The Local Government, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government's obligations under this Agreement and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this Agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 1. withholding of payments to the Local Government under the Agreement until the Local Government complies and/or
 2. cancelling, terminating, or suspending of the Agreement, in whole or in part.
- F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives

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issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

26. Pertinent Non-Discrimination Authorities

During the performance of this Agreement, each party, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients and contractors, whether such programs or activities are federally funded or not).
- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- I. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination

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against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.

- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

27. Disadvantaged Business Enterprise (DBE) Program Requirements

If federal funds are used:

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall incorporate into its contracts with subproviders an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall submit its proposed scope of services and quantity estimates to the State to allow the State to establish a DBE goal for each Local Government contract with a subprovider. The Local Government shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

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- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.*

28. Debarment Certifications

If federal funds are used, the parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this Agreement, the Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a subcontract or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

If state funds are used, the parties are prohibited from making any award to any party that is debarred under the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter G, Rule §20.585 and the Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter G.

29. Lobbying Certification

If federal funds are used, in executing this Agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants,

TxDOT:		Federal Highway Administration:	
CSJ #	0047-06-164	CFDA No.	20.205
District #	18 - Dallas	CFDA Title	Highway Planning and Construction
Code Chart 64 #	00650		
Project Name	Allen Drive	<i>AFA Not Used For Research & Development</i>	
Limits	On US 75 At Allen Drive		

loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

30. Federal Funding Accountability and Transparency Act Requirements

If federal funds are used, the following requirements apply:

- A. Any recipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This Agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>
 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
 3. Report the total compensation and names of its top five executives to the State if:
 - i. More than 80% of annual gross revenues are from the federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

31. Single Audit Report

If federal funds are used:

- A. The parties shall comply with the single audit report requirements stipulated in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- B. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if

TxDOT:		Federal Highway Administration:	
CSJ #	0047-06-164	CFDA No.	20.205
District #	18 - Dallas	CFDA Title	Highway Planning and Construction
Code Chart 64 #	00650		
Project Name	Allen Drive	<i>AFA Not Used For Research & Development</i>	
Limits	On US 75 At Allen Drive		

- applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division by email at singleaudits@txdot.gov.
- C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Compliance Division as follows: "We did not meet the \$_____ expenditure threshold and therefore, are not required to have a single audit performed for FY _____."
- D. For each year the Project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the Agreement, unless otherwise amended or the Project has been formally closed out and no charges have been incurred within the current fiscal year.

32. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this Agreement on behalf of the entity represented.

Each party is signing this Agreement on the date stated under that party's signature.

THE STATE OF TEXAS

By: _____
Kenneth Stewart
Director of Contract Services
Texas Department of Transportation

Date: _____

THE LOCAL GOVERNMENT

By: _____
Eric Ellwanger
City Manager
City of Allen

Date: _____

TxDOT:		Federal Highway Administration:	
CSJ #	0047-06-164	CFDA No.	20.205
District #	18 - Dallas	CFDA Title	Highway Planning and Construction
Code Chart 64 #	00650		
Project Name	Allen Drive	<i>AFA Not Used For Research & Development</i>	
Limits	On US 75 At Allen Drive		

ATTACHMENT A RESOLUTION

TxDOT:		Federal Highway Administration:	
CSJ #	0918-47-290	CFDA No.	20.205
District #	18 - Dallas	CFDA Title	Highway Planning and Construction
Code Chart 64 #	00650		
Project Name	Allen Drive	<i>AFA Not Used For Research & Development</i>	
Limits	On US 75 AT Allen Drive		

**ATTACHMENT B
LOCATION MAP SHOWING PROJECT**



TxDOT:		Federal Highway Administration:	
CSJ #	0918-47-290	CFDA No.	20.205
District #	18 - Dallas	CFDA Title	Highway Planning and Construction
Code Chart 64 #	00650		
Project Name	Allen Drive	AFA Not Used For Research & Development	
Limits	On US 75 At Allen Drive		

ATTACHMENT C PROJECT BUDGET

The Local Government will be responsible for 100% of construction. The Local Government will be responsible for 100% of the cost overruns.

The Project cost is to be as follows:

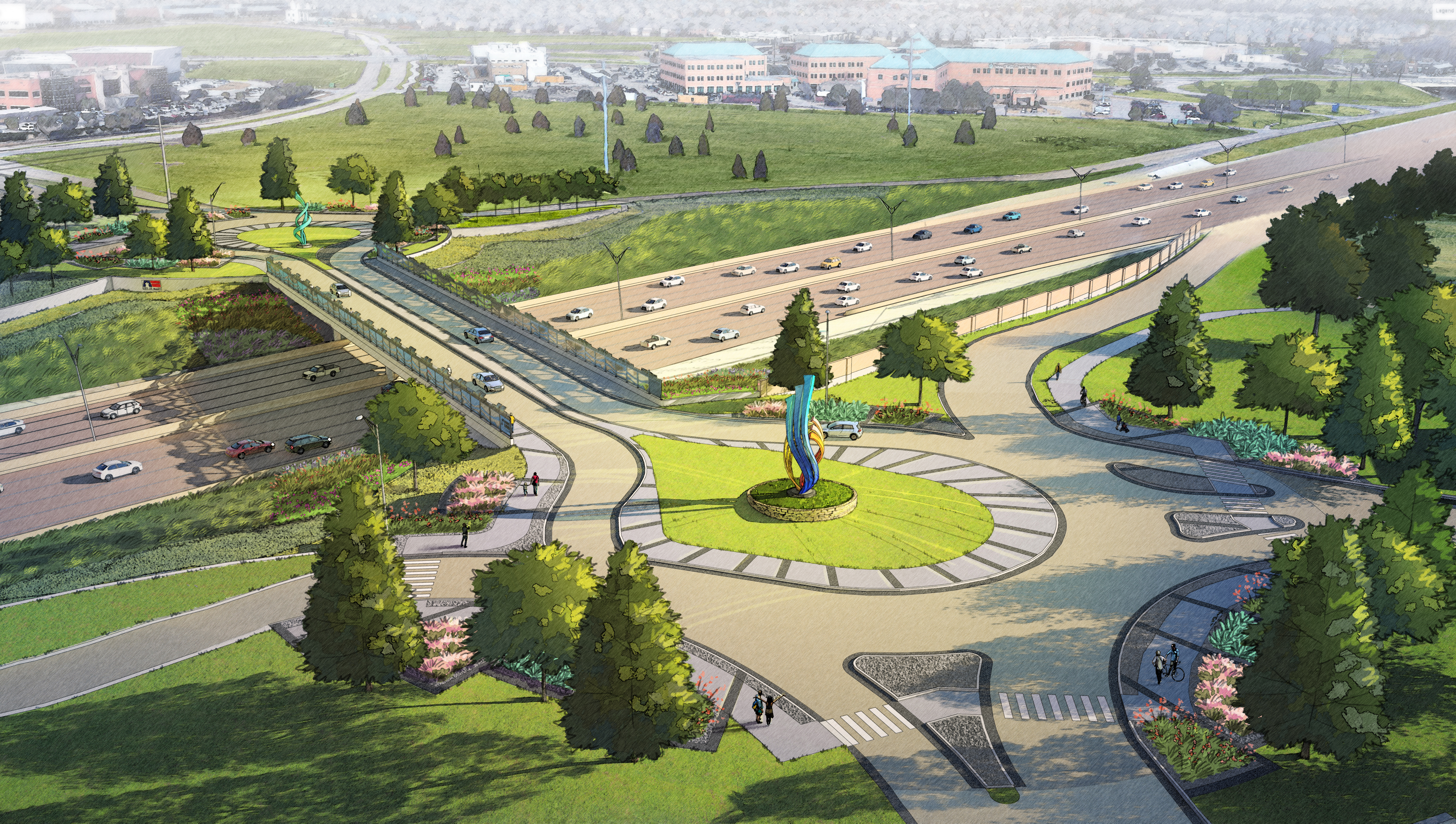
PROJECT BUDGET							
Description	Total Estimated Cost	Federal Participation		State Participation		Local Participation	
		%	Cost	%	Cost		Cost
Construction- (Local)	\$2,000,000.00	0%	\$0.00	0%	\$0	100%	\$2,000,000.00
Subtotal	\$2,000,000.00		\$0.00		\$0		\$2,000,000.00
Direct State Cost – Env	\$8,000.00	0%	\$0.00	0%	\$8,000.00	100%	\$0
Direct State Cost – Eng.	\$8,000.00	0%	\$0.00	0%	\$8,000.00	100%	\$0
Direct State Cost – ROW	\$8,000.00	0%	\$0.00	0%	\$8,000.00	100%	\$0
Direct State Cost – UTL	\$8,000.00	0%	\$0.00	0%	\$8,000.00	100%	\$0
Direct State Cost – CNST	\$8,000.00	0%	\$0.00	0%	\$8,000.00	100%	\$0
Subtotal	\$40,000.00		\$0.00		\$40,000.00		\$0.00
Indirect State Cost – 4.52%	\$88,592.00	0%	\$0.00		\$88,592.00	0%	\$0.00
TOTAL	\$2,128,592.00		\$0.00		\$128,592.00		\$2,000,000.00

Initial Payment by the Local Government to the State: \$0.00

Payment by the Local Government to the State prior to construction: \$0.00

Estimated total payment due by the Local Government to the State = \$0.00

This is an estimate. The final amount of the Local Government participation will be based on actual costs.



CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:

May 25, 2021

SUBJECT:

Award Bid and Authorize the City Manager to Execute a Contract with Advance Contracting Group for the 2021 Streets and Alley Rehabilitation Project in the Amount of \$967,050.

STAFF RESOURCE:

Chris Flanigan, Director of Engineering

ACTION PROPOSED:

Award Bid and Authorize the City Manager to Execute a Contract with Advance Contracting Group for the 2021 Streets and Alley Rehabilitation Project in the Amount of \$967,050.

BACKGROUND

The systematic repair and replacement of aging, cracked, and failing pavement is part of our ongoing maintenance program. By removing and replacing panels of concrete, the life span of the roadway is extended. Annual contracts, just like this, have been implemented in prior years:

Awarded Value of Previous Street and Alley Rehabilitation Contracts	
Fiscal Year 2017	\$ 1,004,318
Fiscal Year 2018	\$ 1,407, 431
Fiscal Year 2019	\$ 891,478
Fiscal Year 2020	\$ 1,111,172

Included in the city-wide project for this fiscal year is approximately 960 square yards of alley pavement reconstruction, 6,158 square yards of roadway pavement repair, and associated curb and gutter repair, barrier free ramps, and incidental items associated with the repairs at various locations.

On April 23, 2021, eleven (11) bids were received, each proposing the time they would complete the project (in calendar days) as well as the price they were bidding. The three (3) lowest and responsive bids are below:

Bid 2021-3-69

Contractor	Calendar Days	Bid Amount
New World Contracting, LLC	275	\$ 865,438.00
Advance Contracting Group Construction	130	\$ 880,107.00
RBR Infrastructure & Road, LLC	151	\$ 911,748.00

This project was competitively bid and publicly advertised, with terms for selection based on "best value". Upon review of the price proposals, reference checks, past work experience of each bidder, and the time of completion bid on the project, it is recommended to award the contract to Advance Contracting Group. Time savings were considered due to the need to complete as much work during the summer months, while there is traditionally less traffic and school is not in session. This allows for less construction related delays for the traveling public and reduces impact for schools. Bids were normalized in the attached Normalized Bid Evaluation Chart to show the lowest bidder, when considering time for completion as well as absolute price. **The value of each day saved was estimated to be \$240 in value added to any bid with greater time proposed for completion.** After evaluating the complete bid packages in this manner, Advance Contracting Group represents the best value.

BUDGETARY IMPACT

The total budget and proposed funding sources are as follows, below.

ST2106 - 2021 Street and Alley Rehabilitation Project (Various Locations) Award Itemization	
Bid Amount	\$ 880,107.00
Bid Contingency (9%)	\$ 86,943.00
TOTAL AWARD AMOUNT	\$ 967,050.00

ST2106 - 2021 Street and Alley Rehabilitation Project (Various Locations) Project Funding Source	
Funding Source	Proposed
GO BOND	\$ 570,000.00
ROADWAY IMPACT FEE ZONE 1	\$ 45,000.00
SOLID WASTE	\$ 352,050.00
TOTAL	\$ 967,050.00

STAFF RECOMMENDATION

Staff recommends that Council award bid and authorize the City Manager to execute a contract with Advance Contracting Group for the 2021 Streets and Alley Rehabilitation Project in the Amount of \$967,050.

MOTION

I make a motion to Award bid and Authorize the City Manager to execute a Contract with Advance Contracting Group for the 2021 Streets and Alley Rehabilitation Project in the Amount of \$967,050.

ATTACHMENTS:

Standard Form of Agreement

Bid Proposal

Normalized Bid Evalutaion Chart

Location Map

**EXHIBIT 9
STANDARD FORM OF AGREEMENT**

STATE OF TEXAS }
COUNTY OF COLLIN }

THIS AGREEMENT, made and entered into this _____ day of _____, of 2021, by and between The City of Allen, Texas, a municipal corporation, of the County of Collin and State of Texas, acting through its City Manager _____ thereunto duly authorized so to do, Party of the First Part, hereinafter termed OWNER, and Advance Contracting Group of the City of Allen, County of Collin and State of Texas, Party of the Second Part, hereinafter termed CONTRACTOR.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Party of the First Part (OWNER), and under the conditions expressed in the bond bearing even date herewith, the said Party of the Second Part (CONTRACTOR), hereby agrees with the said Party of the First Part (OWNER) to commence and complete the construction of certain improvements described as follows:

2021 STREET AND ALLEY REHABILITATION, VARIOUS LOCATIONS

and all extra work in connection therewith, under the terms as stated in the General Conditions of the Agreement and at his (or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said construction, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Contractors, General and Special Conditions of Agreement, Plans and other drawings and printed or written explanatory matter thereof, and the Specifications and addenda together with the CONTRACTOR'S written Proposal, the General Conditions of the Agreement, and the Performance and Payment Bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire contract.

The CONTRACTOR hereby agrees to commence work within ten (10) days after the date written notice to do so shall have been given to him, and to substantially complete the same within One Hundred Thirty (130) calendar days after the date of the written notice to commence work, subject to such extensions of time as are provided by the General and Special Conditions.

THE OWNER agrees to pay the CONTRACTOR in current funds the price or prices shown in the proposal, which forms a part of this contract, such payments to be subject to the General and Special Conditions of the contract.


IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in the year and day first above written.

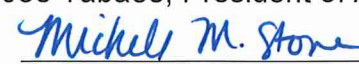
CITY OF ALLEN, TEXAS
Party of the First Part (OWNER)

By _____
Eric Ellwanger, City Manager

Attest _____
Shelley B. George, City Secretary

Advance Contracting Group
Party of the Second Part (CONTRACTOR)

By 
Joe Tabae, President of ACG

Attest 

2021 STREET AND ALLEY REHABILITATION PROJECT
(VARIOUS LOCATIONS) BASE BID
BID# 2021-3-69 CIP# ST2106

BASE BID					
ITEM NO.	EST QNTY	UNIT	DESCRIPTION AND PRICE IN WORDS	UNIT PRICE IN FIGURES	EXTENDED AMOUNT
1	1	LS	Mobilization, Bonds, Insurance and all Permitting (entire project), complete, for the Lump Sum of <u>Ten Thousand</u> Dollars & <u>Zero</u> Cents Lump Sum	\$10,000.00	\$10,000.00
2	1	LS	Provide Construction Material Testing of subgrade and concrete as specified in the plans including all incidentals utilizing City approved firm for the Lump Sum of <u>Five Thousand</u> Dollars & <u>Zero</u> Cents Lump Sum	\$7,000.00	\$7,000.00
3	5	MO	For temporary portable arrow boards (2) and all incidentals for the sum of <u>One Thousand and Five Hundred</u> Dollars & <u>Zero</u> Cents Per Month	\$1,500.00	\$7,500.00
4	5	MO	For temporary portable message boards (2) and all incidentals for the sum of <u>Three Thousand</u> Dollars & <u>Zero</u> Cents Per Month	\$3,000.00	\$15,000.00
5	1	LS	Traffic Control for single lane closure of arterial or collector roadways, including all incidentals for the sum of <u>Four Thousand</u> Dollars & <u>Zero</u> Cents Lump Sum	\$4,000.00	\$4,000.00
6	1	LS	Erosion Control for all disturbed areas, including inlet sediment barriers and all incidentals for the Lump Sum of <u>Two</u> Dollars & <u>Zero</u> Cents Lump Sum	\$2,000.00	\$2,000.00
7	5,911	SY	Saw, remove and dispose of existing reinforced or non-reinforced concrete street, alley, sidewalk, curb ramp, pavers, median pavers, <u>Eleven</u> Dollars & <u>Zero</u> Cents Per Square Yard	\$11.00	\$65,021.00
8	450	CY	Unclassified roadway or alley excavation including all clearing, hauling and disposal of surplus for the sum of <u>Thirty</u> Dollars & <u>Zero</u> Cents Per Cubic Yard	\$30.00	\$13,500.00
9	2,920	SY	Construct 8 inch Class C, 3600 psi, reinforced concrete street paving, to include but not limited to integral curb, striping, and manhole /valve adjust including all incidentals for the sum of <u>Eighty Five</u> Dollars & <u>Zero</u> Cents Per Square Yard	\$85.00	\$248,200.00
10	2,382	SY	Construct 10 inch Class C, 3600 psi, reinforced concrete street paving, to include but not limited to integral curb, striping, and manhole /valve adjust including all incidentals for the sum of <u>Eighty Six</u> Dollars & <u>Zero</u> Cents Per Square Yard	\$86.00	\$204,852.00

2021 STREET AND ALLEY REHABILITATION PROJECT
(VARIOUS LOCATIONS) BASE BID
BID# 2021-3-69 CIP# ST2106

11	100	CY	Furnish and install flexible base, including all incidentals for the sum of _____ Dollars & _____ Cents Per Square Yard	\$30.00	\$3,000.00
12	960	SY	Construct 8-4-8 inch Class C, 3600 psi, strength reinforced concrete _____ Dollars & _____ Cents Per Square Yard	\$79.00	\$75,840.00
13	500	SY	Construct 4 inch Class C, 3600 psi, reinforced concrete sidewalk paving, including all incidentals for the sum of _____ Dollars & _____ Cents Per Square Yard	\$73.00	\$36,500.00
14	6	EA	Construct 4 inch Class C, 3600 psi, reinforced concrete barrier free ramp, including truncated domed pavers and all incidentals for the sum _____ Dollars & <u>One Thousand and Five Hundred</u> _____ Cents Per Each	\$1,500.00	\$9,000.00
15	1	EA	Construct 4 inch Class C, 3600 psi, reinforced concrete barrier free ramp for 10' wide trail, including truncated domed pavers and all incidentals for the sum of _____ Dollars & <u>one Thousand and Four Hundred</u> _____ Cents Per Each	\$1,400.00	\$1,400.00
16	1,127	SY	Furnish and install block sodding (match existing type), including 4 inches of top soil and watering until established, including all incidentals for the sum of _____ Dollars & <u>Eleven</u> _____ Cents Per Square Yard	\$11.00	\$12,397.00

TOTAL - STREET AND ALLEY REHABILITATION BASE BID: \$715,210.00

CALENDAR DAYS _____

2021 STREET AND ALLEY REHABILITATION PROJECT
(VARIOUS LOCATIONS) BASE BID
BID# 2021-3-69 CIP# ST2106

ALTERNATE 1					
ITEM NO.	EST QNTY	UNIT	DESCRIPTION AND PRICE IN WORDS	UNIT PRICE IN FIGURES	EXTENDED AMOUNT
1	1	LS	Provide Construction Material Testing of subgrade and concrete as specified in the plans including all incidentals utilizing City approved firm for the Lump Sum of _____ Dollars & _____ Cents Lump Sum	\$2,000.00	\$2,000.00
2	0.5	MO	For temporary portable arrow boards (2) and all incidentals for the sum of _____ Dollars & _____ Cents Per Month	\$1,500.00	\$750.00
3	0.5	MO	For temporary portable message boards (2) and all incidentals for the sum of _____ Dollars & _____ Cents Per Month	\$3,000.00	\$1,500.00
4	1	LS	Traffic Control for single lane closure of arterial or collector roadways, including all incidentals for the sum of _____ Dollars & _____ Cents Lump Sum	\$1,500.00	\$1,500.00
5	1	LS	Erosion Control for all disturbed areas, including inlet sediment barriers and all incidentals for the Lump Sum of _____ Dollars & _____ Cents Lump Sum	\$1,200.00	\$1,200.00
6	204	SY	Saw, remove and dispose of existing reinforced or non-reinforced concrete street, alley, sidewalk, curb ramp, pavers, median pavers, _____ Dollars & _____ Cents Per Square Yard	\$11.00	\$2,244.00
7	49	CY	Unclassified roadway or alley excavation including all clearing, hauling and disposal of surplus for the sum of _____ Dollars & _____ Cents Per Cubic Yard	\$30.00	\$1,470.00
8	44	SY	Construct 8 inch Class C, 3600 psi, reinforced concrete street paving, to include but not limited to integral curb, striping, and manhole /valve adjust including all incidentals for the sum of _____ Dollars & _____ Cents Per Square Yard	\$85.00	\$3,740.00
9	160	SY	Construct 10 inch Class C, 3600 psi, reinforced concrete street paving, to include but not limited to integral curb, striping, and manhole /valve adjust including all incidentals for the sum of _____ Dollars & _____ Cents Per Square Yard	\$86.00	\$13,760.00

2021 STREET AND ALLEY REHABILITATION PROJECT
(VARIOUS LOCATIONS) BASE BID
BID# 2021-3-69 CIP# ST2106

10	280	SY	Construct 4 inch Class C, 3600 psi, reinforced concrete sidewalk paving, including all incidentals for the sum of _____ Dollars	\$74.00	\$20,720.00
			& _____ Cents Per Square Yard		
11	137	SY	Furnish and install block sodding (match existing type), including 4 inches of top soil and watering until established, including all incidentals for the sum of _____ Dollars	\$11.00	\$1,507.00
			& _____ Cents Per Square Yard		

TOTAL - STREET AND ALLEY REHABILITATION BASE BID: **\$50,391.00**

CALENDAR DAYS _____

2021 STREET AND ALLEY REHABILITATION PROJECT
(VARIOUS LOCATIONS) BASE BID
BID# 2021-3-69 CIP# ST2106

ALTERNATE 2					
ITEM NO.	EST QNTY	UNIT	DESCRIPTION AND PRICE IN WORDS	UNIT PRICE IN FIGURES	EXTENDED AMOUNT
1	1	LS	Provide Construction Material Testing of subgrade and concrete as specified in the plans including all incidentals utilizing City approved firm for the Lump Sum of _____ Dollars & _____ Cents Lump Sum	\$2,000.00	\$2,000.00
2	0.5	MO	For temporary portable arrow boards (2) and all incidentals for the sum of _____ Dollars & _____ Cents Per Month	\$1,500.00	\$750.00
3	0.5	MO	For temporary portable message boards (2) and all incidentals for the sum of _____ Dollars & _____ Cents Per Month	\$3,000.00	\$1,500.00
4	1	LS	Traffic Control for single lane closure of arterial or collector roadways, including all incidentals for the sum of _____ Dollars & _____ Cents Lump Sum	\$1,000.00	\$1,000.00
5	1	LS	Erosion Control for all disturbed areas, including inlet sediment barriers and all incidentals for the Lump Sum of _____ Dollars & _____ Cents Lump Sum	\$1,200.00	\$1,200.00
6	30	SY	Saw, remove and dispose of existing reinforced or non-reinforced concrete street, alley, sidewalk, curb ramp, pavers, median pavers, _____ Dollars & _____ Cents Per Square Yard	\$11.00	\$330.00
7	365	CY	Unclassified roadway or alley excavation including all clearing, hauling and disposal of surplus for the sum of _____ Dollars & _____ Cents Per Cubic Yard	\$30.00	\$10,950.00
8	15	SY	Construct 10 inch Class C, 3600 psi, reinforced concrete street paving, to include but not limited to integral curb, striping, and manhole /valve adjust including all incidentals for the sum of _____ Dollars & _____ Cents Per Square Yard	\$86.00	\$1,290.00
9	334	SY	Construct 9 inch Class C, 3600 psi, reinforced concrete street paving, to include but not limited to integral curb, striping, and manhole /valve adjust including all incidentals for the sum of _____ Dollars & _____ Cents Per Square Yard	\$85.00	\$28,390.00
10	362	SY	Pulverizing, mixing and compacting 6 inch thick, 6% cement treated subgrade compacted to 95% proctor density 1 foot past curb for the sum of _____ Dollars & _____ Cents Per Square Yard	\$25.00	\$9,050.00
11	100	LF	Furnish and install 8" white stripe including all incidentals for the sum of _____ Dollars & _____ Cents Per Linear Foot	\$12.00	\$1,200.00

2021 STREET AND ALLEY REHABILITATION PROJECT
(VARIOUS LOCATIONS) BASE BID
BID# 2021-3-69 CIP# ST2106

12	1	EA	Furnish and install white left turn arrow including all incidentals for the		
			& _____ Dollars _____ Cents Per Each	\$2,500.00	\$2,500.00
13	56	SY	Furnish and install block sodding (match existing type), including 4		
			& _____ Dollars _____ Cents Per Square Yard	\$11.00	\$616.00

TOTAL - STREET AND ALLEY REHABILITATION BASE BID: \$60,776.00

CALENDAR DAYS _____

2021 STREET AND ALLEY REHABILITATION PROJECT
(VARIOUS LOCATIONS) BASE BID
BID# 2021-3-69 CIP# ST2106

ALTERNATE 3					
ITEM NO.	EST QNTY	UNIT	DESCRIPTION AND PRICE IN WORDS	UNIT PRICE IN FIGURES	EXTENDED AMOUNT
1	1	LS	Provide Construction Material Testing of subgrade and concrete as specified in the plans including all incidentals utilizing City approved firm for the Lump Sum of _____ Dollars & _____ Cents Lump Sum	\$1,500.00	\$1,500.00
2	0.2	MO	For temporary portable arrow boards (2) and all incidentals for the sum of _____ Dollars & _____ Cents Per Month	\$1,500.00	\$300.00
3	0.2	MO	For temporary portable message boards (2) and all incidentals for the sum of _____ Dollars & _____ Cents Per Month	\$3,000.00	\$600.00
4	1	LS	Traffic Control for single lane closure of arterial or collector roadways, including all incidentals for the sum of _____ Dollars & _____ Cents Lump Sum	\$1,000.00	\$1,000.00
5	1	LS	Erosion Control for all disturbed areas, including inlet sediment barriers and all incidentals for the Lump Sum of _____ Dollars & _____ Cents Lump Sum	\$1,000.00	\$1,000.00
6	303	SY	Saw, remove and dispose of existing reinforced or non-reinforced concrete street, alley, sidewalk, curb ramp, pavers, median pavers, _____ Dollars & _____ Cents Per Square Yard	\$11.00	\$3,333.00
7	26	CY	Unclassified roadway or alley excavation including all clearing, hauling and disposal of surplus for the sum of _____ Dollars & _____ Cents Per Cubic Yard	\$30.00	\$780.00
8	303	SY	Construct 8 inch Class C, 3600 psi, reinforced concrete street paving, to include but not limited to integral curb, striping, and manhole /valve adjust including all incidentals for the sum of _____ Dollars & _____ Cents Per Square Yard	\$85.00	\$25,755.00

2021 STREET AND ALLEY REHABILITATION PROJECT
(VARIOUS LOCATIONS) BASE BID
BID# 2021-3-69 CIP# ST2106

9	200	SY	Construct 10 inch Class C, 3600 psi, high-early strength reinforced concrete street paving, to include but not limited to integral curb, striping, and manhole /valve adjust including all incidentals for the sum of _____ Dollars	\$95.00	\$19,000.00
			& _____ Cents Per Square Yard		
10	42	SY	Furnish and install block sodding (match existing type), including 4 _____ Dollars	\$11.00	\$462.00
			& _____ Cents Per Square Yard		

TOTAL - STREET AND ALLEY REHABILITATION BASE BID: \$53,730.00

CALENDAR DAYS _____

PROPOSAL SUMMARY

TOTAL STREET AND ALLEY REHABILITATION BASE BID	\$715,210.00
TOTAL STREET AND ALLEY REHABILITATION ALTERNATE #1	\$50,391.00
TOTAL STREET AND ALLEY REHABILITATION ALTERNATE #2	\$60,776.00
TOTAL STREET AND ALLEY REHABILITATION ALTERNATE #3	\$53,730.00

CALENDAR DAYS BASE BID:	70 Days	0	0
CALENDAR DAYS ALTERNATE BID #1:	30 Days	0	0
CALENDAR DAYS ALTERNATE BID #2:	20 Days	0	0
CALENDAR DAYS ALTERNATE BID #3:	10 Days	0	0

<u>TOTAL BID</u>	\$715,210.00
<u>TOTAL BID + ALTERNATE #1</u>	\$765,601.00
<u>TOTAL BID + ALTERNATE #2</u>	\$775,986.00
<u>TOTAL BID + ALTERNATE #3</u>	\$768,940.00
<u>TOTAL BID + ALTERNATE #1-3</u>	\$880,107.00

The City of Allen reserves the right to award the base bid and any combination of alternates by signing the Bid Endorsement and Standard Form of Agreement.

2021 STREETS AND ALLEYS BID COMPARISON

Value of a Calendar Day \$ 240.00
Lowest Day Bid 130

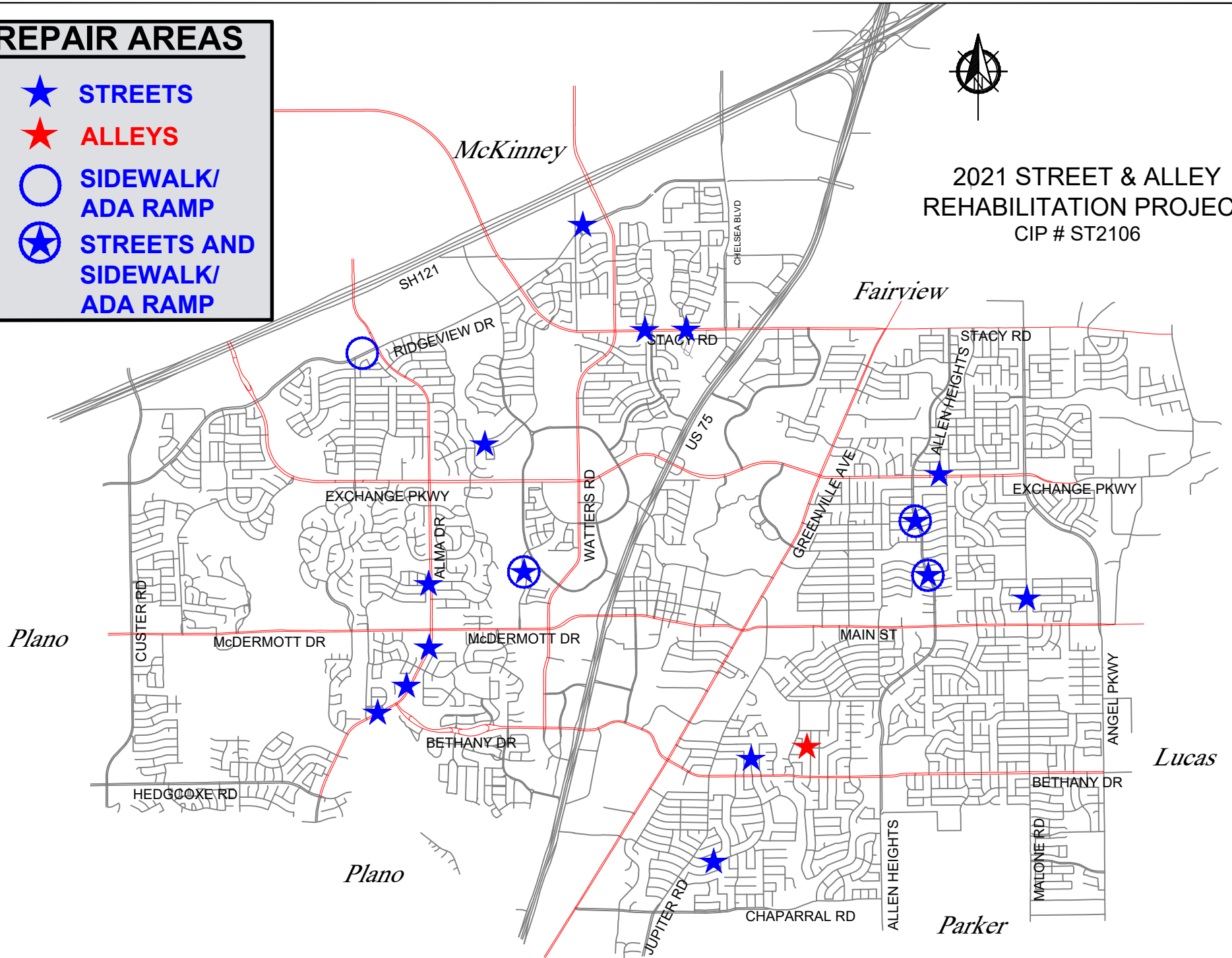
Contractor	Bid Price	Calendar Day	Day Diff	Add Value of Time	Normalized Bid Value
ADVANCED CONTRACTING GROUP	\$ 880,107.00	130	0	\$ -	\$ 880,107.00
NEW WORLD CONTRACTING, LLC	\$ 865,438.00	230	100	\$ 24,000	\$ 889,438.00
RBR INFRASTRUCTURE & ROAD	\$ 911,748.00	151	21	\$ 5,040	\$ 916,788.00
DANGOLO BROTHERS, LLC	\$ 914,774.12	175	45	\$ 10,800	\$ 925,574.12
URBAN INFRASTRUCTURE & ROAD, LLC	\$ 956,250.00	148	18	\$ 4,320	\$ 960,570.00
JIM BOWMAN CONSTRUCTION	\$ 1,031,458.50	230	100	\$ 24,000	\$ 1,055,458.50
AXIS CONTRACTING, INC.	\$ 1,109,980.00	315	185	\$ 44,400	\$ 1,154,380.00
JOE FUNK CONSTRUCTION INC.	\$ 1,131,722.56	255	125	\$ 30,000	\$ 1,161,722.56
KT CONTRACTING - CONCRETE SERIES LLC	\$ 1,140,885.00	233	103	\$ 24,720	\$ 1,165,605.00
RATLIFF HARDSCAPE, LTD	\$ 1,183,310.00	325	195	\$ 46,800	\$ 1,230,110.00

REPAIR AREAS

- ★ STREETS
- ★ ALLEYS
- SIDEWALK/
ADA RAMP
- ★ STREETS AND
SIDEWALK/
ADA RAMP



2021 STREET & ALLEY REHABILITATION PROJECT CIP # ST2106



CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:	May 25, 2021
SUBJECT:	Authorize the City Manager to Execute a Sales Tax Revenue Reimbursement Agreement By and Between the City of Allen and Allen Economic Development Corporation for The Farm and The Avenue Projects.
STAFF RESOURCE:	Dan Bowman, Executive Director and CEO, Allen Economic Development Corporation
BOARD / COMMISSION ACTION:	April 21, 2021, Sales Tax Revenue Reimbursement Agreement approved by the Allen Economic Development Corporation.
ACTION PROPOSED:	Authorize the City Manager to Execute a Sales Tax Revenue Reimbursement Agreement with the Allen Economic Development Corporation for The Farm and The Avenue Projects.

BACKGROUND

The Allen City Council previously approved an incentive package for The Farm and a separate incentive package for The Avenue to spur the development of infrastructure to support these developments located at Alma and SH 121. Over time, the combined investment for these two mixed-use projects by the private sector is estimated to be \$1.5 billion and is projected to generate significant economic benefits to the City of Allen and other taxing entities. The incentive packages were put in place to specifically support the construction of infrastructure necessary for these economic development projects, including utilities, drainage, roads, sidewalks and shared parking garages, among other items.

It was previously determined that Allen Economic Development Corporation (AEDC) Sales Tax Revenue Bonds would be an advantageous financial vehicle to provide a portion of the overall incentive package. The portion to be funded through AEDC bonds was determined to be \$2 million for The Farm, and \$4.5 million for The Avenue, for a cumulative total of \$6.5 million. The actual bond issuance is anticipated to be approximately \$7.34 million, once the cost of issuance and the required Debt Service Reserve Fund (DSRF) are included.

It has been the intention that the City of Allen will reimburse the AEDC for the cost of debt service associated with these bonds. This is being reimbursed to AEDC because the infrastructure incentives were intended to come from the City of Allen, with the AEDC instead dedicating its funding to incentivize the construction of Class A office buildings within these mixed-use projects. The recruitment of office employers, including primary jobs and capital investment, are core to the mission of the AEDC.

The City of Allen would reimburse the AEDC for the cost of debt service on an annual basis using only those property and sales taxes generated by The Farm and The Avenue. Should the property and sales taxes generated by the project for a specific year be insufficient to cover the debt service, any unreimbursed amounts will be rolled forward and reimbursed in future years.

BUDGETARY IMPACT

The property tax and sales tax revenues for The Farm and The Avenue are not currently included in City budgets, as the developments are not anticipated to be on the tax rolls in any significant amount until 2023 or beyond.

In order to allow the debt service schedule for the AEDC Sales Tax Revenue Bonds to align with the timing for the completion of construction of the first phases of The Farm and The Avenue, the AEDC Board chose to defer payment of principal on the bonds until 2024. The anticipated term of the bonds is 15 years, with the annual debt service being approximately \$685,000 once principal payments begin. If the phases of the two mixed-use projects progress on the schedule estimated in the previously completed impact analysis, the developments are anticipated to generate \$144.6 million in taxes to the City of Allen over the next 15 years. The cost of servicing the AEDC Sales Tax Revenue Bonds is estimated at \$9.3 million during that same period. This means the City of Allen can anticipate retaining \$135.3 million during this period, after reimbursing the AEDC, based on projections.

STAFF RECOMMENDATION

Staff recommends that City Council Authorize the City Manager to Execute a Sales Tax Revenue Reimbursement Agreement By and Between the City of Allen and Allen Economic Development Corporation for The Farm and The Avenue Projects.

MOTION

I make a motion to authorize the City Manager to execute a Sales Tax Revenue Reimbursement Agreement by and between the City of Allen and Allen Economic Development Corporation for The Farm and The Avenue Projects.

ATTACHMENTS:

Agreement

STATE OF TEXAS §
 § SALES TAX REVENUE REIMBURSEMENT AGREEMENT
COUNTY OF COLLIN §

This Sales Tax Revenue Reimbursement Agreement (“Agreement”) is made by and between the Allen Economic Development Corporation (“AEDC”) and the City of Allen, Texas (“City”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, City and AEDC desire to incentivize the development of The Farm Project and the Avenue Project; and

WHEREAS, City has requested AEDC assist in funding incentives for The Farm Project and the Avenue Project; and

WHEREAS, City and The Farm Development Co., a Texas corporation (“The Farm”) entered that certain Economic Development and Easement Agreement dated February 10, 2021 for the Farm Project (the “Farm Economic and Easement Agreement”); and

WHEREAS, AEDC, City and The Farm entered that certain Project Development Agreement dated February 10, 2021 for The Farm Project (the “Farm Project Development Agreement”) pursuant to which the City intends to issue certificates of obligation in the approximate amount of Three Million Dollars (\$3,000,000.00), the sales proceeds from which will in part provide City funding for the public infrastructure pursuant to the Farm Project Development Agreement (the “Farm Project Certificates of Obligation”), and pursuant to which the AEDC intends to issue sales tax revenue bonds in the approximate amount of Two Million Dollars (\$2,000,000.00), the sales proceeds from which will in part provide AEDC funding of the costs for infrastructure pursuant to the Farm Project Development Agreement (the “Farm Sales Tax Revenue Bonds”); and

WHEREAS, AEDC and Thakkar Development Group, LLC, a Texas limited liability company (“Thakkar”) intend to enter or have entered that certain Infrastructure Reimbursement Agreement for the Avenue Project (the “Avenue Infrastructure Reimbursement Agreement”) pursuant to which the AEDC intends to issue sales tax revenue bonds in the approximate amount of Four Million Five Hundred Thousand Dollars (\$4,500,000.00), the sales proceeds from which will in part provide AEDC funding of the costs for infrastructure pursuant to Avenue Infrastructure Reimbursement Agreement (the “Avenue Sales Tax Revenue Bonds”); and

WHEREAS, City and Thakkar intend to enter or have entered that certain Project Development Agreement for the Avenue Project (the “Avenue Project Development Agreement”) pursuant to which City intends to issue certificates of obligation in the approximate amount of Five Million Nine Hundred Thousand Dollars (\$5,900,000.00), the sales proceeds

from which will in part provide City funding for the public infrastructure pursuant to the Avenue Project Development Agreement (the “Avenue Certificates of Obligation”); and

WHEREAS, City has agreed to reimburse AEDC the amount of annual debt service payments for the Farm Sales Tax Revenue Bonds and the Avenue Sales Tax Revenue Bonds;

NOW THEREFORE, in consideration of the foregoing, and other consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article I Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“AEDC” shall mean the Allen Economic Development Corporation.

“Avenue Infrastructure Reimbursement Agreement” shall have the meaning assigned by the Recitals.

“Avenue Project Development Agreement” shall have the meaning assigned by the Recitals.

“Avenue Sales Tax Revenue Bonds” shall have the meaning assigned by the Recitals.

“City” shall mean the City of Allen, Collin County, Texas.

“Farm Economic and Easement Agreement” shall have the meaning assigned by the Recitals.

“Farm Project Development Agreement” shall have the meaning assigned by the Recitals.

“Farm Sales Tax Revenue Bonds” shall have the meaning assigned by the Recitals.

“Property Tax Revenue” shall mean the amount of the ad valorem taxes assessed by the City against the Taxable Property located within the Farm Project and the Avenue Project, as the case may be, and collected by the City.

“Sales Tax Revenue” shall mean the sales and use taxes received by the City from the State of Texas Comptroller for the sale of Taxable Items consummated within the Farm Project and within the Avenue Project, as the case may be.

“Sales Tax Revenue Bonds” shall collectively mean the Farm Sales Tax Revenue Bonds and the Avenue Sales tax Revenue Bonds.

“Taxable Items” shall mean both “taxable items” and “taxable services” as those terms are defined by Chapter 151, Texas Tax Code, as amended.

“Taxable Property” shall mean real property and tangible personal property located in Farm Project and the Avenue Project, as the case may be, subject to ad valorem taxation by the City.

Article II

Term

The term of this Agreement shall begin on the Effective Date and continue until the Parties have fully satisfied their respective obligations herein, unless sooner terminated as provided herein.

Article III

Sales Tax Revenue Bond Reimbursement

City agrees, subject to AEDC issuance of the Farm Sales Tax Revenue Bonds and the Avenue Sales tax Revenue Bonds, to reimburse AEDC for the AEDC annual debt service payments for the Avenue Sales Tax Revenue Bonds and the Farm Sales Tax Revenue Bonds. The annual debt service payments for the Sales Tax Revenue Bonds will be due each calendar year, with a payment for interest due on March 1 and on September 1 of each calendar year and a payment of principal due on September 1 of each calendar year. City shall make such reimbursement payments to AEDC at least thirty (30) days prior to each due date for the annual debt service payments (“Reimbursement Payments”); provided, however, in the event the combined Property Tax Revenue and the Sales Tax Revenue for any given year for the respective project is less than the annual debt service payments for the Avenue Sales Tax Revenue Bonds and the Farm Sales Tax Revenue Bonds, as the case may be, the Reimbursement Payment shall be the lesser of the combined Property Tax Revenue and the Sales Tax Revenue for such period for the respective project and the annual debt service payment for the respective Sales Tax Revenue Bond, with any deficiency carried forward to future Reimbursement Payments until such deficiency has been paid. The Parties acknowledge that AEDC may elect to combine the Avenue Sales Tax Revenue Bonds and the Farm Sales Tax Revenue Bonds into one issuance which issuance may include additional funds for other AEDC projects, in which event the Reimbursement Payments shall only apply to such issuance directly related to the Avenue Project Infrastructure Reimbursement Agreement and The Farm Project Development Agreement. The City may elect to make the Reimbursement Payments on behalf of AEDC directly in accordance with the respective sales tax revenue bonds.

Article IV

Termination

This Agreement shall terminate upon the date the Parties have fully satisfied their respective obligation herein and upon any one of the following:

- (a) by written agreement of the Parties;
- (b) upon written notice by either Party in the event the other Party breaches any of the terms or conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof; and
- (c) upon written notice by either AEDC or City, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal, or unenforceable.

Article V Miscellaneous

5.1 Binding Agreement; Assignment. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, affiliates, administrators, executors, and permitted assigns of the respective Parties. This Agreement may not be assigned by either Party without the prior written consent of the other Party.

5.2 Limitation on Liability. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties. It is understood and agreed between the Parties that City, in satisfying the conditions of this Agreement, has acted independently, and AEDC assumes no responsibilities or liabilities to third parties in connection with these actions.

5.3 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

5.4 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received as sent by courier or otherwise hand delivered.

If intended for AEDC, to:

Attn: Daniel Bowman
Executive Director/CEO
Allen Economic Development Corp.
900 W. Bethany Drive, Suite 280
Allen, Texas 75013

With a copy to:

Peter G. Smith
General Counsel
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard Street
Dallas, Texas 75201

If intended for City, to:

Attn: Eric Ellwanger
City Manager
City of Allen, Texas
305 Century Parkway
Allen, Texas 75013

With a copy to:

Peter G. Smith
City Attorney
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard Street
Dallas, Texas 75201

5.5 Entire Agreement. This Agreement is the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

5.6 Governing Law. This Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said Court.

5.7 Amendment. This Agreement may be amended by the mutual written agreement of the Parties.

5.8 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

5.9 Recitals. The recitals to this Agreement are incorporated herein.

5.10 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

5.11 Exhibits. Any exhibits to this Agreement are incorporated herein by reference for the purposes wherever reference is made to the same.

5.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

(Signature page to follow)

EXECUTED on this _____ day of _____, 2021.

CITY OF ALLEN, TEXAS

By: _____
Eric Ellwanger, City Manager

EXECUTED on this _____ day of _____, 2021.

ALLEN ECONOMIC DEVELOPMENT CORPORATION

By: _____
Daniel Bowman, Executive Director/CEO

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:

May 25, 2021

SUBJECT:

Approve the Recommendation from the Tax Increment Financing (TIF) Reinvestment Zone Number One (Garden District) Board of Directors Relating to Payment to Watters Creek Owner, LLC, from the TIF Fund in the Amount of \$662,819.33 from the City Tax Increment, \$147,947.72 from the County Tax Increment, and a payment to the City from the TIF Fund in the Amount of \$15,000 for Administrative Support.

STAFF RESOURCE:

Eric Ellwanger, City Manager
Pete Phillis, Chief Financial Officer
Chris Landrum, Assistant Chief Financial Officer

PREVIOUS COUNCIL ACTION:

On December 13, 2005, the City Council held a public hearing and passed Ordinance No. 2471-12-05 that created Reinvestment Zone No. 1 (Garden District).

On November 27, 2007, the City Council approved the Final Project and Financing Plan for Reinvestment Zone No. 1.

On an annual basis, the City Council considers a recommendation from the TIF Board of Directors to approve TIF funds allocated based on the Development Agreement.

BOARD / COMMISSION ACTION:

On May 14, 2021, the TIF No. 1 Board recommended that the City Council approve a TIF payment in the amount of \$810,767.05 to Watters Creek Owner, LLC, and \$15,000 to the City for City administrative support.

BACKGROUND

On September 1, 2005, the City received a TIF petition from Emerson Partners, Inc. for the redevelopment of the Montgomery Farm Garden District area through the use of Tax Increment Financing (TIF). The overall Tax Increment Financing Reinvestment Zone encompasses approximately 113 acres at the southwest corner of Bethany Drive and US 75.

The City created the TIF Zone at the December 13, 2005 City Council meeting. In 2007, the City, Montgomery Farms Garden District Ltd., and Coventry II DDR/Trademark Montgomery Farms (Trademark) entered into an Amended and Restated Development Agreement (Agreement) that addressed issues related to

the inclusion of Trademark in the TIF development.

In 2013, the City entered into a Supplemental Agreement to the Amended and Restated Development Agreement with Watters Creek Owner, LLC (WCO) successor to Trademark. In the Supplemental Agreement, the term was extended by five (5) years and the percentage of reimbursement was decreased from 50% to 45% for years 11-12 and from 45% to 40% for years 13 through the end of the term for property tax. Sales tax receipts commencing on January 1, 2016 are reduced to 45% and will be further reduced on January 1, 2018 to 40%. The FY2014 reimbursement was still at the 50% rate pursuant to the Supplemental Agreement.

In January 2015, the TIF No. 1 Board approved the Second Supplemental Agreement that was concerned with additional terms and conditions related to Watters Creek Owner's obligations with respect to the construction and payment for the Montgomery Boulevard extension and the Watters Branch bridge. The Second Supplemental Agreement indicates in Section 2.4 that upon occupancy of Building V, the percentage of reimbursement will be adjusted to 50% for both the property and sales tax. Building V received a temporary Certificate of Occupancy on March 1, 2016.

Attachment 1 reflects the current status of the TIF Fund with proposed deductions for the City's \$15,000 administration cost and the proposed developer reimbursement of \$810,767.05 to Watters Creek Owner, LLC.

Attachment 2 reflects the proposed developer reimbursement being appropriated between the City and County participation. The County participation is initially restricted to the priority projects such as the ramp reversal and traffic signalization. Therefore, the proposed \$810,767.05 payment to Watters Creek Owner, LLC is allocated as \$662,819.33 towards parking spaces and \$147,947.72 towards the priority projects.

A proposed payment to the City in the amount of \$15,000.00 is for the City's administrative costs.

BUDGETARY IMPACT

The TIF Fund has adequate funds available for the payments and will result in \$50,000 remaining as a fund balance pursuant to the Amended and Restated Development Agreement.

STAFF RECOMMENDATION

Staff recommends that the City Council approve the recommendation from the Tax Increment Financing (TIF) Reinvestment Zone Number One (Garden District) Board of Directors relating to payment to Watters Creek Owner, LLC, from the TIF Fund in the amount of \$662,819.33 from the City tax increment, \$147,947.72 from the County tax increment, and a payment to the City from the TIF Fund in the amount of \$15,000 for administrative support.

MOTION

I make a motion to approve the recommendation from the Tax Increment Financing (TIF) Reinvestment Zone Number One (Garden District) Board of Directors relating to payment to Watters Creek Owner, LLC, from the TIF Fund in the amount of \$662,819.33 from the City tax increment, \$147,947.72 from the County tax increment, and a payment to the City from the TIF Fund in the amount of \$15,000 for administrative support.

ATTACHMENTS:

TIF 1 Revenues and Expenses

Allocation of City and County Reimbursements

TIF #1 Watters Creek/Montgomery Farms

April 26, 2021

	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	YTD FY2021	Project to Date
Beginning Balance	\$ -	\$ 160,430	\$ 114,027	\$ 251,301	\$ 215,005	\$ 279,891	\$ 277,719	\$ 272,970	\$ 277,893	\$ 300,677	\$ 337,471	\$ 309,594	\$ 302,669	\$ 216,162	\$ -
REVENUES															
Sales Tax - City Increment (distributed)	99,942	260,446	294,138	320,230	336,437	364,954	363,826	379,381	398,705	396,000	395,109	376,542	145,454		4,131,164
Sales Tax - City Increment (undistributed)	-	-	-	-	-	-	-	-	-	-	-	-	161,293	92,814 (A)	254,107
Property Tax - City Increment	41,801	181,213	315,189	319,996	356,638	315,420	293,574	289,246	295,195	319,174	332,321	346,340	374,448	417,346	4,197,901
Property Tax - County Increment	18,385	79,036	137,718	138,626	154,783	137,131	126,771	125,876	125,319	127,912	125,269	125,729	133,921	147,948	1,704,422
Project Savings	-	-	-	-	6,679	-	-	-	-	-	-	-	-	-	6,679
Investment Earnings (distributed)	490	1,884	4,340	2,474	1,608	897	1,369	2,177	1,878	2,329	5,492	7,734	3,742	-	36,414
Investment Earnings (undistributed)	-	-	-	-	-	-	-	-	-	-	-	-	4,870	1,497 (B)	6,367
Total Revenues	160,618	522,579	751,385	781,327	856,145	818,402	785,539	796,680	821,097	845,415	858,191	856,345	823,727	659,605	10,337,053
EXPENDITURES															
Developers Reimbursements	-	516,714	596,991	767,622	776,219	802,102	775,048	774,844	783,313	793,621	871,067	848,269	895,235	810,767 (C)	10,011,813
Administration Expenses FY08	-	15,000	-	-	-	-	-	-	-	-	-	-	-	-	15,000
Administration Expenses	-	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000 (D)	195,000
Legal Expenses	188	22,268	2,120	-	40	3,472	240	1,913	-	-	-	-	-	-	30,241
Drainage Improvement	-	-	-	35,000	-	-	-	-	-	-	-	-	-	-	35,000
Total Expenditures	188	568,982	614,111	817,622	791,259	820,574	790,288	791,756	798,313	808,621	886,068	863,269	910,235	825,767	10,287,053
Revenues Over/(Under) Expenditures	160,430	(46,403)	137,274	(36,296)	64,886	(2,172)	(4,749)	4,923	22,784	36,794	(27,878)	(6,924)	(86,508)	(166,162)	50,000
Ending Balance	\$ 160,430	\$ 114,027	\$ 251,301	\$ 215,005	\$ 279,891	\$ 277,719	\$ 272,970	\$ 277,893	\$ 300,677	\$ 337,471	\$ 309,594	\$ 302,669	\$ 216,162	\$ 50,000 (E)	\$ 50,000

(A) Represents sales tax collections through 3 months.

(B) Represents 6 months worth of interest allocations.

(D) Administrative Expenses

(E) \$50,000 balance maintained pursuant to the Amended and Restated Development Agreement.

Motion

(C) I make a motion to recommend to the Allen City Council the approval of a payment to Watters Creek Owner, LLC from the TIF Fund in the amount of \$662,819.33 from the City tax increment, \$147,947.72 from the County tax increment, and a payment to the City from the TIF Fund in the amount of \$15,000.00 (D) for administrative support.

Watters Creek/Montgomery Farms

Attachment 2

City Reimbursements - TIF

Date	Description	Parking Spaces	\$ per Space	Due	Balance
1/17/2008	Garage G	199	\$ 11,440.81	\$ 2,276,721.19	\$ 2,276,721.19
4/29/2008	Garage M	408	\$ 11,440.81	\$ 4,667,850.48	\$ 6,944,571.67
9/26/2008	Garage P	803	\$ 11,440.81	\$ 9,186,970.43	\$ 16,131,542.10
Total Parking Space		1,410			
9/25/2009		-36.65	\$ 11,440.81	\$ (419,293.00)	\$ 15,712,249.10
4/20/2010		-40.14	\$ 11,440.81	\$ (459,273.00)	\$ 15,252,976.10
6/16/2011		-54.98	\$ 11,440.81	\$ (628,996.02)	\$ 14,623,980.08
5/8/2012		-54.32	\$ 11,440.81	\$ (621,436.30)	\$ 14,002,543.78
5/17/2013		-58.12	\$ 11,440.81	\$ (664,971.22)	\$ 13,337,572.56
5/30/2014		-56.66	\$ 11,440.81	\$ (648,277.41)	\$ 12,689,295.15
4/13/2015		-56.72	\$ 11,440.81	\$ (648,968.10)	\$ 12,040,327.05
5/25/2016		-57.51	\$ 11,440.81	\$ (657,994.74)	\$ 11,382,332.31
5/30/2017		-58.19	\$ 11,440.81	\$ (665,709.27)	\$ 10,716,623.04
5/21/2018		-65.19	\$ 11,440.81	\$ (745,798.24)	\$ 9,970,824.80
5/28/2019		-63.15	\$ 11,440.81	\$ (722,540.36)	\$ 9,248,284.44
6/2/2020		-66.54	\$ 11,440.81	\$ (761,313.84)	\$ 8,486,970.60
Proposed		-57.93	\$ 11,440.81	\$ (662,819.33)	\$ 7,824,151.27
Subtotal					<u>-726.12</u>
Parking Space Balance		683.88			

County Reimbursement - TIF

Priority Projects	Project Cost	
Ramp Reversals	\$ 802,052.00	\$ 685,375.44
TXDOT Reimbursement	\$ (116,676.56)	
Montgomery Blvd and Bridge	\$ 3,139,842.40	\$ 3,139,842.40
Traffic signalization for Bethany Dr (2 Sets)	\$ 352,454.00	\$ 352,454.00
deceleration lanes for Bethany and 75	\$ 340,267.00	\$ 340,267.00
Structured Parking Spaces @ \$4,685.14 max	<u>\$ 2,088,108.56</u>	
Total project costs		\$ 6,606,047.40
		\$ (97,421.00)
9/25/2009	\$ (97,421.00)	\$ (235,138.77)
4/14/2010	\$ (137,717.77)	\$ (373,765.24)
6/16/2011	\$ (138,626.47)	\$ (528,547.83)
5/8/2012	\$ (154,782.59)	\$ (665,678.38)
5/17/2013	\$ (137,130.55)	\$ (792,448.88)
5/30/2014	\$ (126,770.50)	(918,324.50)
4/13/2015	\$ (125,875.62)	(1,043,643.22)
5/25/2016	\$ (125,318.72)	(1,171,555.19)
5/30/2017	\$ (127,911.97)	(1,296,824.42)
5/21/2018	\$ (125,269.23)	(1,422,553.43)
5/28/2019	\$ (125,729.01)	(1,556,474.10)
6/2/2020	\$ (133,920.67)	(1,704,421.82)
Proposed	\$ (147,947.72)	
Total reimbursements		<u>\$ (1,704,421.82)</u>
Project Balance		\$ 4,901,625.58

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:	May 25, 2021
SUBJECT:	Authorize the City Manager to Execute a Contract with Erik Carlson, dba Area C Projects for the Design, Fabrication, and Installation of Artwork at the Don Rodenbaugh Natatorium in the Amount of \$200,000.
STAFF RESOURCE:	Kate Meacham, Director, Parks and Recreation Jennifer Robinson, Strategic Projects Manager, Parks and Recreation
BOARD / COMMISSION ACTION:	On March 16, 2021, the Public Art Committee voted to recommended the artist selection of Erik Carlson, dba Area C Projects, to Allen City Council.
ACTION PROPOSED:	Authorize the City Manager to Execute a Contract with Erik Carlson, dba Area C Projects for the Design, Fabrication, and Installation of Artwork at the Don Rodenbaugh Natatorium in the Amount of \$200,000.

BACKGROUND

As part of the two percent of General Obligation bonds dedicated to Public Art and with the direction of the 2016 Allen Public Art Master Plan, the Public Art Committee elected to pursue a public art installation in the lobby of the Don Rodenbaugh Natatorium.

The Public Art Committee appointed an Artist Selection Panel January 21, 2020, to review artist submissions and to conduct interviews of artists for the Don Rodenbaugh Natatorium Public Art Project. The Selection Panel reviewed all the submissions on February 25, 2020, and narrowed the candidate pool to six semi-finalists which were invited to participate in initial interviews via video conference on October 8, 2020.

After the initial interviews three finalists, Adam Frank, Erik Carlson and Mitchell Chan, were invited to virtually tour the Don Rodenbaugh Natatorium and receive input regarding the community as well as the project, via video conference. Each artist then presented their concept(s) to the Selection Panel on March 11, 2021. After discussion and assessment of all three concepts, Erik Carlson (Area C) was selected by the Selection Panel for recommendation to the Public Art Committee. The Public Art Committee reviewed the recommendation of the Selection Panel and the artists' concept designs on March 16, 2021, and voted, without opposition, to recommend Erik Carlson (Area C) to the Allen City Council as the artist selection for the Don Rodenbaugh Natatorium Public Art Project.

At the City Council Workshop on April 13, 2021, staff presented the Public Art Committee's recommendation of Erik Carlson, dba Area C Projects concept designs. The piece titled, ALL IN, visualizes water-forms and structurally the installation will be built on an 18' x 15' wall-mounted base, with a grid of roughly one thousand

rods, each set atop an LED node. Installation is expected late 2021.

BUDGETARY IMPACT

Funding for this project is derived from General Obligation Bonds dedicated to Public Art.

STAFF RECOMMENDATION

Authorize the City Manager to Execute a Contract with Erik Carlson, dba Area C Projects for the Design, Fabrication, and Installation of Artwork at the Don Rodenbaugh Natatorium in the Amount of \$200,000.

MOTION

I make a motion to authorize the City Manager to execute a contract with Erik Carlson, dba Area C Projects for the design, fabrication, and installation of artwork at the Don Rodenbaugh Natatorium in the amount of \$200,000.

ATTACHMENTS:

Professional Services Agreement

THE STATE OF TEXAS §
§ PROFESSIONAL SERVICES AGREEMENT
COUNTY OF COLLIN §

This Agreement (“Agreement”) is made by and between the City of Allen, Texas (“City”), and Erik Carlson, doing business as Area C Projects (“Artist”), (each a “Party” or collectively the “Parties”), acting by and through their respective authorized representatives.

WITNESSETH:

WHEREAS, City desires to engage the services of Artist as an independent contractor and not as an employee in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, Artist desires to render professional services for City in accordance with the terms and conditions set forth in this Agreement;

NOW THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Article I
Definitions

For the purposes of this Agreement and the various covenants, conditions, terms, and provisions which follow, the definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the Parties.

“Artist” shall mean Erik Carlson, dba Area C Projects.

“Contract Administrator” shall mean the Landscape Architect of City of Allen.

“City” shall mean the City of Allen, a municipal corporation in the State of Texas.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, City delay of permits or other approvals, government or de facto governmental action (unless caused by acts of omissions of the Party), fires, explosions or floods, strikes, pandemics, slowdowns or work stoppages.

“Notice to Proceed” shall mean a written notice directing Artist to proceed with performance of the Scope of Work issued by the Contract Administrator.

“Project” shall mean the final design, implementation, fabrication, delivery and installation of the Don Rodenbaugh Natatorium Artwork, including artwork of appropriate durable, weather resistant materials that meets the design intent and scope of the project, including professional services required for a complete turn-key system, as described in the Scope of Work entitled “a

public art proposal for the Don Rodenbaugh Natatorium”, which is incorporated herein and is on file in the City Secretary’s Office.

“Scope of Work” shall mean the proposal submitted by the Artist entitled “a public art proposal for the Don Rodenbaugh Natatorium”, which is incorporated herein and is on file in the City Secretary’s Office.

“Work” or “Artwork” shall mean the completed form of artwork created by Artist, including all activities undertaken to complete the performance of the Scope of Work for the Project, in conformity with the design of the proposed Work as submitted by Artist and selected by City, a graphic representation of which shall be provided for review and approval to the Public Art Committee and Contract Administrator during the design phase.

Article II Scope of Work

2.1 Artist shall furnish all services as described in the Scope of Work for the Project, subject to the provisions of Article 3, below.

2.2 City shall issue a notice to proceed to Artist prior to Artist initiating any work on the phases set out in the Scope of Work.

2.3 City shall be responsible for providing Artist, without cost, copies of designs, drawings, reports, and other relevant data needed by Artist to design, install, deliver, and execute the Work.

2.4 Artist shall provide monthly progress reports and/or deliverables, as provided in the Scope of Work, to Contract Administrator, in a manner acceptable to the Contract Administrator.

Article III Changes in Scope and Additional Work

3.1 Artist shall, whenever required during the term of this Agreement by the terms of this Agreement or at the request of the Contract Administrator, present to City written materials, drawings or other appropriate media for further review and approval, any “Significant Change” in the scope, design, color, size, material, utility and support requirements, texture, or location of the site or of the Work. A Significant Change is any change which affects the installation, scheduling, site preparation or maintenance of the Work, or the concept of the Work as represented in the original approved design.

3.2 No services for which additional compensation will be charged shall be provided by Artist without the prior written authorization by City.

3.3 Upon completion of the Design Phase, City reserves the right to make such alterations as may be deemed necessary or advisable and to require such extra work as may be required for the proper completion of the Project contemplated by Artist. Any such changes will

be set forth in an amendment which will specify, in addition to the work done in connection with the change made, adjustments of contract time, if any, and the basis of compensation for such work.

Article IV Responsibilities of Artist

4.1 Artist agrees that an essential element of this Agreement is the artistic skill and creativity of the Artist. Artist shall not assign the creative or artistic portions of the Work to another Party for the production of the Work without the prior written consent of City. Failure to conform to this provision may be cause for termination of this Agreement, at the sole discretion of City.

4.2 Artist shall be responsible for providing services described in the Scope of Work including, but not limited to, the quality and timely completion of the services, delivery, transportation, and installation of the Artwork. Artist shall be responsible for designing the Artwork so that it can be fabricated, delivered, transported, and installed without exceeding the Contract Price for the Project. Artist shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in the Artist's Work.

4.3 In the event the services of Artist are integrated into, combined, or otherwise coordinated with services by third parties not within Artist's control, Artist shall not be responsible for such third party services. If any part of Artist's Work depends on proper execution or results upon the work of City, or a third party responsible to City, Artist shall, prior to proceeding with the Work, promptly report to City any apparent discrepancies or other defects in such other work which renders it unsuitable for proper execution and results by Artist. Artist shall not be responsible for any liability or failure to fulfill Artist's obligations because of such discrepancies or defects, subject to confirmation by the Contract Administrator and timely notice provided by Artist. Failure of Artist to report a discrepancy or defect shall constitute an acceptance of City's or third party's work as fit and proper to receive Artist's Work. Any costs caused by defective or ill-timed work shall be borne by the Party responsible therefore. Nothing in this section shall limit the responsibility of Artist to take all reasonable steps to coordinate his Work with the work of City or a third party on the Project.

4.4 Artist shall, when working on City property, supervise such clean-up as may be reasonably requested by City. At the close of Artist's Work, Artist shall promptly remove the Artist's equipment, excess materials, etc., as requested by City.

4.5 City and any third party contractor on the Project site shall notify Artist of such contractor's operation, construction and maintenance schedules in and around the area where Artist's Work is to be performed. Artist shall perform the Scope of Work services in a manner and time so as not to cause interference with any of the operations, construction, or maintenance of City or third party contractor. In the event of a conflict between the schedules of the contractor and/or City and Artist, the conflict will be resolved by City. If the resolution of the conflict results in a significant delay of Artist's performance, Artist shall have the right to renegotiate this Agreement to compensate him for any reasonable costs or expenses incurred by the delay.

Article V Responsibilities of City

5.1 City shall assist Artist by placing at Artist's disposal all public information it has available pertaining to the Project.

5.2 City shall perform in a timely manner each activity as set forth in the Scope of Services. If delays occur when deliverables of Artist are dependent upon City's timeliness, Artist's schedule of performance shall be adjusted accordingly.

5.3 City shall:

- (a) Arrange for access so that Artist may enter upon public property as required for Artist to perform the services under this Agreement;
- (b) Give prompt written notice to Artist whenever City observes or otherwise becomes aware of any development that affects the scope or timing of Artist's services; and
- (c) Arrange appointments, meetings, and/or consultations as needed for Artist to fulfill the Artist's obligations under this Agreement.

Article VI Warranties/Standards

6.1 Artist warrants that: (a) the design of the Work being commissioned is the original product of the Artist's own creative efforts; (b) that the Work is original; and (c) that Artist shall not sell or reproduce the Work, or allow others to do so without the prior written consent of City; unless the Work is destroyed or modified while in City's control or custody.

6.2 Artist shall guarantee the Work to be free from faults of material and workmanship for a period of one (1) year after installation and final acceptance by City. Artist shall deliver the Work to City free and clear of any liens from any source whatsoever. This guarantee shall apply only to that Work which is entirely that of Artist or persons responsible to Artist, as installed, and shall not apply to materials or workmanship of projects in which the Work of Artist is integrated or combined, or to materials purchased, acquired, or installed by a person or entity not under the control or responsible to Artist.

6.3 Artist shall faithfully perform the services for the Work required under this Agreement in accordance with standards of care, skill, training, diligence, and judgment provided by highly competent professionals who perform work of a similar nature to the Work described in this Agreement.

Article VII Compensation and Time of Performance

7.1 City shall compensate Artist for the services performed under this Agreement pursuant to the Payment Schedule set forth in Exhibit “A” in an amount not to exceed the fixed sum of **Two Hundred Thousand Dollars (\$200,000.00) (the “Contract Price”)**.

7.2 When all of the Work is finally complete, installed and Artist is ready for a final inspection, Artist shall notify City thereof in writing. Thereupon, City will make final inspection of the Work and, if the Work is complete in accordance with this Agreement, City will promptly issue a final Certificate for Payment certifying that the Work is complete and Artist is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Agreement.

7.3 Title to the Artwork shall pass to the City upon the City’s written final acceptance and payment for the Artwork. Artist in consideration of the payment of the Contract Price does hereby sell and transfer to City, its successors and assigns, the Artwork. Artist warrants that Artist is the lawful owner in every respect of the Artwork and that the Artwork is free and clear of liens, security agreements, encumbrances, claims, demands, and charges of every kind whatsoever. For the above consideration, Artist further assigns, transfers, and conveys to City all of Artist’s right, title, and interest in any copyrights of and related to the Artwork, including, but not limited to, all rights to reproduce copies and likenesses of the Artwork in any form or media, and the right to grant licenses to third parties for reproduction copies and likenesses of the Artwork in any form or media. Artist, binds Artist, and Artist’s heirs, successors, and assigns, to warrant and defend the title to the Artwork to City, its successors, and assigns, forever against every person lawfully claiming the Artwork described or any part of it.

7.4 Any costs incurred by Artist in excess of the Contract Price shall be the sole responsibility of Artist.

7.5 Artist shall submit invoices and receipts to City in a form reasonably requested by City for payment in accordance with the Payment Schedule. City shall compensate Artist within thirty (30) days after receiving Artist’s invoice, provided there are no errors or discrepancies and that all work noted on the invoice has been completed.

7.6 In the event City determines that the portion of the Work for which it has been invoiced does not meet the Scope of Work and that the City intends to withhold payment, City shall provide detailed written notice to Artist within fifteen (15) days after receipt of invoice, specifying the failure of performance for which City intends to withhold payment. Artist shall thereafter meet Scope of Work and Agreement standards to the satisfaction of City or advise City that the Artist disputes City's determination that the specifications have not been met.

7.7 The services to be required of Artist under this Agreement shall be completed in accordance with the schedule for completion of the Work as proposed by Artist and approved by City, provided that such time limits may be extended or otherwise modified by written agreement between Artist and City.

7.8 If, when Artist completes fabrication or procurement of the Work in accordance with the approved schedule and notifies City that the Work is ready for installation, Artist is delayed from supervising the installation of the Work within the time specified in the schedule as a result of the construction on the Site not being sufficiently complete to reasonably permit installation of the Work, or City otherwise does not make the Project site available to Artist in accordance with the approved schedule, City shall promptly reimburse Artist for reasonable transportation and storage costs incurred for the period of time provided in the schedule for commencement of installation to the date upon which the Project site is made available to Artist for installation of the Work.

7.9 Artist shall bear any transportation and storage costs resulting from the completion of the Work prior to the time provided in the schedule for installation of the Work.

7.10 City shall grant a reasonable extension of time to Artist in the event there is a delay on the part of City in performing its obligations under this Agreement or in completing the underlying capital project, or for events of Force Majeure. Failure to fulfill contractual obligations due to conditions beyond either Party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions and providing notice of the existence of any such condition is provided to the other Party not less than ten (10) days after such occurrence.

Article XIII

Artist's Rights

8.1 City shall, at its expense, prepare and install at appropriate locations, after consultation with Artist, a plaque or sign, identifying Artist, the title of the Work and the year of completion, and any other information agreed to between the Parties and shall reasonably maintain such notice in good repair against damages due to normal wear and tear over time, vandalism, and the elements.

8.2 City recognizes that maintenance of the Work on a regular basis is essential to the integrity of the Work. City shall reasonably assure that the Work is properly maintained and protected, taking into account the recommendations of the Artist.

8.3 City agrees that it shall not commit or authorize the intentional commission of any physical defacement, mutilation, alteration, destruction, damage, modification, change or relocate the Work of Artist without first conferring with Artist and taking reasonable measures to obtain the prior written approval of Artist to the proposed modification. City reserves the right to remove the Work of Artist in the event such work has been substantially altered or such Work becomes an immediate safety hazard to the public due to its condition or location.

8.4 Notwithstanding Section 8.3, City, in its sole discretion, shall have the right to remove any Work of Art providing the following terms and conditions are met.

- (a) The removal proposal shall first be submitted to and considered by the Public Art Committee. Following review and consideration of the removal proposal by the

Public Art Committee, a recommendation on removal shall be submitted to City Council.

- (b) City Council shall have the right to remove a Work of Art after recommendation from the Public Art Committee.
- (c) In the event that City Council shall decide to remove the Work, Artist shall have the right of first refusal to purchase his Work for the amount of the Contract Price paid to Artist, providing it stands alone and is not integrated into a larger artwork, building or structure and can be removed without expense to City; the right to have Artist's name removed from the Work; and, the election to keep the plaque installed pursuant to Section 8.1.

8.5 City shall have the right to determine, after consultation with a professional conservator, when and if repairs and restorations to the Work shall be made. During Artist's lifetime, Artist shall have the right to review all major repairs and restorations. In the event that City makes repairs or restorations not reviewed and approved by Artist, Artist shall have the right to have Artist's name and association with the Work severed. To the extent practical, Artist, during Artist's lifetime, may be given the reasonable opportunity to make or supervise significant repairs and restorations, and be paid a mutually agreed fee for any such services.

8.6 All repairs and restorations, whether performed by Artist or City, or by third parties responsible to Artist or City, shall be made in accordance with professionally recognized principles of conservation of artworks.

Article IX Copyrights

9.1 Artist shall, except as otherwise provided herein, retain all copyrights and all other rights to the Artwork, provided that Artist hereby grants to City an irrevocable perpetual license to graphically depict the Artwork for any non-commercial purpose whatsoever. For the purposes of this limitation, the graphic depiction of the Artwork(s) on materials designed to promote City shall be deemed to be a non-commercial use. City shall not be responsible for any third party infringement of Artist's copyright.

9.2 If, for any reason, the approved design is not implemented, all rights to the proposed Artwork shall be retained by Artist.

9.3 Artist agrees that all Work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the State of Texas and the United States. Artist hereby represents and warrants that the Work does not, and Artist has not and will not, utilize any intellectual property, protected patent, trademark or copyright in performance under this Agreement unless and until Artist has obtained proper consent and all releases and other necessary documents. If Artist specifies any material, equipment, process, or procedure which is protected, Artist shall disclose such patents, trademarks and copyrights in the

construction drawings and technical specifications, such listing to be appended to this Agreement and shall be incorporated by this reference.

9.4 Artist agrees to release, indemnify, defend and save harmless City, its officers and employees from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind arising from third-party claims that the Artwork infringes or violates the intellectual property rights of such third-party.

Article X Time for Performance

10.1 Prior to beginning the performance of the services under this Agreement, Artist must receive a written Notice to Proceed.

10.2 In the event Artist is unable to complete the above services because of delays resulting from untimely issuance of a "Notice to Proceed", or from untimely review and approval by City, and such delays are not the fault of Artist, City shall grant a reasonable extension of time for completion.

10.3 City requires the Scope of Work to be completed within **259 calendar days** after the date of written Notice to Proceed.

Article XI Termination

11.1 This Agreement terminates on the acceptance of the Artwork by the City, and may be terminated upon any one or more of the following:

- (a) by mutual written agreement of the Parties;
- (b) by either party, if the other Party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
- (c) by City, if any Impositions owed to the City or the State of Texas by Artist shall have become delinquent (provided, however, Artist retains the right to timely and properly protest and contest any such taxes or Impositions); or
- (d) by City, if Artist suffers an event of Bankruptcy or Insolvency.

11.2 In the event that this Agreement is terminated by City for an uncured breach of this Agreement by the Artist, the Artist shall promptly reimburse City for payments of the Contract Price made under this Agreement prior to the date of such termination by City and upon such payment City shall have no rights to Artist's creative Work, designs or unfinished Artwork(s).

11.3 In the event that this Agreement is terminated by Artist without cause, Artist shall promptly reimburse City for all payments made under this Agreement prior to the termination by Artist.

11.5 If, because of the death of Artist, or any other catastrophic occurrence, Artist's estate and/or employees will complete the Project. If it becomes impossible for Artist's estate and employees to render services or perform under this Agreement, the Agreement shall be terminated, upon written notice to City and Artist, Artist Estate or heirs and successors shall promptly reimburse City for all payments made under this Agreement prior to such the termination .

Article XII Insurance

Insurance.

- (a) Artist shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to Artist's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage; (ii) policy of automobile liability insurance covering any vehicles owned and/or operated by Artist, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$500,000.00 combined single limit and aggregate for bodily injury and property damage; (iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Artist's employees involved in the provision of services under this Agreement with policy limit of not less than \$500,000.00; and (iv) Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limit of not less than \$1,000,000.00 per claim and \$1,000,00.00 in the aggregate.
- (b) All insurance and certificate(s) of insurance shall contain the following provisions: (1) name City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability; (2) provide for at least thirty (30) days prior written notice to City for cancellation or non-renewal of the insurance; (3) provide for a waiver of subrogation against City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability Insurance. The Artist shall provide written notice to City of any nonrenewal or cancellation or material change of the insurance required herein.
- (c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.
- (d) Copies of the policy endorsements and the certificate(s) of insurance evidencing the required insurance shall be submitted to the City prior to commencement of services by the Artist and upon written request of the City..

Article XIII Indemnification

CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF ARTIST PURSUANT TO THIS AGREEMENT. ARTIST HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS THE "CITY") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY. ARTIST AGREES TO INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS OF THE ARTIST IN THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY ACT OR OMISSION ON THE PART OF ARTIST, ITS OFFICERS, DIRECTORS, SERVANTS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO SOLE NEGLIGENCE OF CITY).

WITHOUT LIMITING THE FOREGOING AND TO THE FULLEST EXTENT PERMITTED BY LAW, ARTIST HEREBY INDEMNIFIES AND HOLDS HARMLESS THE CITY FROM AND AGAINST ALL DAMAGES, LOSSES, COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, INCURRED BY CITY IN CONNECTION WITH ANY ACTION AGAINST CITY FOR PERSONAL INJURY AT THE SITE OF ANY EMPLOYEE, CONTRACTOR, OR SUBCONTRACTOR OF THE ARTIST OR ANY CONSULTANTS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, BROUGHT BY SUCH INJURED PARTY OR THE EMPLOYEE'S WORKERS COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE INJURY CLAIM"), EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OF THE CITY. THE INDEMNIFICATION OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. THE OBLIGATION OF THE ARTIST UNDER THIS SECTION SHALL SURVIVE TERMINATION OF THE AGREEMENT.

Article XIV Miscellaneous

14.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

14.2 Assignment. Artist may not assign this Agreement in whole or in part without the prior written consent of City. In the event of an assignment by Artist to which City has consented, the assignee shall agree in writing with City to personally assume, perform, and be bound by all the covenants and obligations contained in this Agreement.

14.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

14.4 Governing Law. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

14.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

14.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

14.7 Independent Contractor. It is understood and agreed by and between the Parties that Artist in satisfying the conditions of this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Artist pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of City. Artist shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement. There is no intended third party beneficiary to this agreement.

14.8 Subcontractors. In the event Artist, during the course of performance under this Agreement, requires the service of any subcontractors or other professional associates in connection with services or activities covered by this Agreement, Artist has identified in the exhibits to this Agreement, or if Artist requests changes or additions, Artist must secure the prior written approval of City's Contract Administrator. Artist shall directly pay any such subcontractor and is solely responsible for assuring subcontractor(s) provide proof of insurance and provided in Article 12, above. Artist is solely responsible for evaluation of the qualifications, expertise, and

selection of any subcontractor(s), for supervision of and payment of any and all subcontractors. City shall in no way be liable to or responsible for the acts or activities of any subcontractor.

14.9 Right-of-Access. City will furnish right-of-access on the Project Site for Artist to perform the required assessments, or other necessary investigations. Artist will take reasonable precautions to minimize damage to the Project Site in the performance of such assessments and investigations.

14.10 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City:

Eric Ellwanger, City Manager
City of Allen, Texas
305 Century Parkway
Allen, Texas 75013
214-509-4118 Fax

With a copy to:

Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
Attn: Peter G. Smith
1800 Ross Tower
500 North Akard
Dallas, Texas 75201
214-965-0010 Fax

If intended for Artist:

Erik Carlson, dba Area C Projects
Attn: Erik Carlson
2 Westwood Avenue
Cranston, RI 02905
401-474-5335 Phone

14.11 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

14.12 Exhibits. The exhibit attached hereto is incorporated herein and made a part hereof for all purposes.

14.13 Audits and Records. Artist agrees that during the term hereof, City and its representatives may, during normal business hours and as often as deemed necessary, inspect, audit, examine and reproduce any and all of Artist's records relating to the services provided pursuant to this Agreement for a period of one year following the date of completion of services as determined by City or date of termination if sooner.

14.14 Survival of Obligations. Any of the representations and obligations of the Parties, as well as any rights and benefits of the Parties pertaining to a period of time following the termination of this Agreement shall survive termination.

14.15 Time. Both Parties recognize that time is of the essence in the performance of the provisions of this Agreement.

14.16 Authority to Execute. The undersigned represent and warrant they are each duly authorized by the Parties to execute this Agreement.

[signature page to follow]

EXECUTED this ____ day of _____, 2021.

CITY OF ALLEN, TEXAS

By: _____
Eric Ellwanger, City Manager

Attest:

By: _____
Shelley B. George, City Secretary

Approved as to Form:

By: _____
Peter G. Smith, City Attorney

EXECUTED this 10th day of May, 2021.

ARTIST:

AREA C PROJECTS

By:  _____
Erik Carlson

**EXHIBIT “A” Payment Schedule –
Don Rodenbaugh Natatorium
Artwork**

City shall pay the Artist a fixed fee of Two Hundred Thousand Dollars (\$200,000.00), which shall constitute full and complete compensation for all the services performed and materials furnished by the Artist under this Agreement. Payment shall be made in accordance with the following scheduled installments, each installment representing full and final payment for all services and materials provided prior to payment thereof:

- (a) \$40,000.00 (20%) upon the execution of this Agreement, recognizing that Artist will invest time and expense in preparing the Final Design;
- (b) \$40,000.00 (20%) upon City’s notification to the Artist of its approval of the Final Design and issuance of a Notice to Proceed with Fabrication and Installation;
- (c) \$60,000.00 (30%) Upon initiation of Fabrication;
- (d) \$40,000.00 (20%) within 30 days after Artist notifies the City that the Work’s fabrication is 50% complete and provides photographic or other reasonable documentation as requested by the City;
- (e) \$20,000.00 (10%) Completion of Installation and final acceptance of work within 30 days after final acceptance of the Work by the City.

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:	May 25, 2021
SUBJECT:	Conduct a Public Hearing and Adopt an Ordinance for a Specific Use Permit for a Restaurant/Private Club Use for a 6,493± Square Foot Portion of a Building Located on Lot 7A-1, Block A, The Village at Allen; Generally Located South of Stacy Road and East of U.S. Highway 75 (and commonly known as 190 E. Stacy Road, B1000, Suite 1000). [Bar Louie (change ownership)]
STAFF RESOURCE:	Hayley Angel, Planning Manager
PREVIOUS COUNCIL ACTION:	Planned Development PD No. 73 - Approved September, 1998 Planned Development PD No. 73 - Approved November, 2006 Planned Development PD No. 73 - Approved October, 2007 Specific Use Permit - Approved June, 2018
BOARD / COMMISSION ACTION:	On May 4, 2021, the Planning and Zoning Commission voted 6 in favor (Commissioners Trahan, Platt Jr., Metevier, Shaikh, Smiddy and Ogrizovich), and 0 opposed to recommend approval of the request.
ACTION PROPOSED:	Conduct a Public Hearing and Adopt an Ordinance for a Specific Use Permit for a Restaurant/Private Club Use for a 6,493± Square Foot Portion of a Building Located on Lot 7A-1, Block A, The Village at Allen; Generally Located South of Stacy Road and East of U.S. Highway 75 (and commonly known as 190 E. Stacy Road, B1000, Suite 1000). [Bar Louie (change ownership)]

BACKGROUND

The property is generally located south of Stacy Road and east of U.S. Highway 75 (and commonly known as 190 E. Stacy Road, B1000, Suite 1000) and the home of the restaurant/private club Bar Louie. The properties to the north, east, south, and west are zoned Planned Development No. 73 (PD-73) with a base zoning of Shopping Center (SC).

The applicant is requesting a new Specific Use Permit (SUP) to change the authorized legal entity operating Bar Louie. A private club requires a conditional SUP, which is typically tied to a specific business and/or legal entity. A change in the business name and/or legal entity triggers the requirement for a new SUP.

The property is zoned PD-73 with a base zoning of SC. The Planned Development requires an SUP for a Restaurant/Private Club use within the zoning district. In June 2018, City Council granted an SUP for a Restaurant/Private Club to BL Restaurants, Inc. d/b/a Bar Louie or a legal entity owned by BL Restaurants, Inc. In 2020, BLH Acquisition Co. LLC acquired Bar Louie prompting the requirement for a new SUP for a Restaurant/Private Club use.

Bar Louie will continue to tenant a 6,493± square foot suite in an existing building and operate as a restaurant, which allows for an alcohol to food sale ratio of 60/40. At the applicant's request, this SUP is for a Restaurant/Private Club use, which would allow the applicant to exceed the alcohol to food sale ratio of 60/40, to a maximum of 75/25. The applicant will continue to utilize the existing outdoor patio which is connected to the main dining room.

There are no proposed to changes the current hours of operation or to the exterior of the building.

The Specific Use Permit request has been reviewed by staff and meets the standards of the Allen Land Development Code.

On May 4, 2021, the Planning and Zoning Commission voted to recommend approval of this request.

LEGAL NOTICES:

Public Hearing Sign - April 23, 2021
Public Hearing Letters - April 23, 2021
Newspaper Notice - May 6, 2021

STAFF RECOMMENDATION

Staff recommends approval.

MOTION

I make a motion to adopt Ordinance No. _____ for Specific Use Permit No. 180 for a Restaurant/Private Club use.

ATTACHMENTS:

Ordinance
Property Notification Map
Draft Minutes

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE ALLEN LAND DEVELOPMENT CODE AND ZONING MAP AS PREVIOUSLY AMENDED BY GRANTING SPECIFIC USE PERMIT NO. 180 AUTHORIZING AN APPROXIMATELY 6,493± SQUARE FOOT PORTION OF A BUILDING LOCATED ON LOT 7A-1, BLOCK A, THE VILLAGE AT ALLEN, PRESENTLY ZONED FOR PLANNED DEVELOPMENT “PD” NO. 73 SHOPPING CENTER “SC” TO BE USED FOR A RESTAURANT/PRIVATE CLUB USE; PROVIDING A CONFLICTS RESOLUTION CLAUSE; REPEALING ORDINANCE NO. 3582-6-18; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission and the governing body of the City of Allen, Texas, in compliance with the laws of the State of Texas and the Ordinances of the City of Allen, Texas, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all the property owners generally and to all persons interested and situated in the affected area, and in the vicinity thereof, and in the exercise of its legislative discretion, the City Council has concluded that the Allen Land Development Code Zoning Regulations and Zoning Map of the City of Allen, Texas, as previously amended, should be further amended as follows.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The Allen Land Development Code Zoning Regulations and Zoning Map of the City of Allen, Collin County, Texas, be amended by granting Specific Use Permit No. 180 authorizing an approximately 6,493± square foot portion of a building located on Lot 7A-1, Block A, The Village at Allen, an addition to the City of Allen, Collin County, Texas, according to the Plat recorded in Volume 2009, Page 76, Plat Records, Collin County, Texas, as shown on Exhibit “A” attached hereto and incorporated herein by reference (“the Property”), which is presently zoned for Planned Development “PD” No. 73 Shopping Center “SC” to be used for a Restaurant/Private Club use.

SECTION 2. The Property shall be used only in the manner and for the purposes provided for in the Allen Land Development Code Zoning Regulations, as heretofore amended, and the use and development regulations of Planned Development “PD” No. 73 as amended, and, if developed and used for Restaurant/Private Club purposes, shall be subject to the following special conditions:

- A. The Specific Use Permit granted hereby is expressly limited to the area of the Property shown in the SUP Site Plan attached hereto as Exhibit “A” and incorporated herein by reference.
- B. Only BLH Acquisition Co., LLC, d/b/a Bar Louie, or a legal entity owned or controlled by BLH Acquisition Co., LLC, are authorized by this Ordinance to use the Property for a Restaurant/Private Club use. Notwithstanding the foregoing to the contrary, it shall not be a violation of this ordinance if a third party holds the Private Club Permit issued by the Texas Alcoholic Beverage Commission for purposes of operating a Private Club on the Property pursuant to Chapter 32 of the Texas Alcoholic Beverage Code, as amended, if, and only if, the Property is at all times also operated as a restaurant.

- C. Any outdoor space or patio must be physically connected to the main dining room through a door or other passageway providing ingress and egress by customers between the main dining room and the outdoor space or patio.

SECTION 3. To the extent of any irreconcilable conflict with the provisions of this ordinance and other ordinances of the City of Allen governing the use and development of the Property and which are not expressly amended by this ordinance, the provisions of this ordinance shall be controlling.

SECTION 4. Ordinance No. 3582-6-18 is hereby repealed.

SECTION 5. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, or of the Allen Land Development Code Zoning Regulations, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Allen Land Development Code Zoning Regulations, as amended hereby, which shall remain in full force and effect.

SECTION 6. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Allen Land Development Code Zoning Regulations, as amended, in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 7. Any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in Allen Land Development Code Zoning Regulations of the City of Allen, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense.

SECTION 8. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Allen, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS 25TH DAY OF MAY 2021.

APPROVED:

Kenneth M. Fulk, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY
(kbl:4/26/21:1221)

Shelley B. George, TRMC, CITY SECRETARY

TABULATION

RETAIL

ANCHORS:	271,367 SF
MAJORS:	292,576 SF ⁽¹⁾
IN-LINE RETAIL:	336,071 SF ⁽¹⁾
RESTAURANTS:	129,191 SF
TOTAL RETAIL:	1,029,205 SF ⁽²⁾

PARKING REQUIRED:

RETAIL PARKING @ 4.5/1000 :	4,050 CARS
RESTAURANT PARKING @ 10/1000 :	1,292 CARS
TOTAL PARKING REQUIRED:	5,342 CARS

PARKING PROVIDED :

	5,413 CARS
--	------------

HOTEL

ROOMS:	220 ROOMS
CONFERENCE CENTER (NET USABLE AREA):	15,000 SF

PARKING REQUIRED:

	350 CARS
--	----------

PARKING PROVIDED :

	350 CARS
--	----------

EVENTS CENTER

	6,275 SEATS
--	-------------

PARKING REQUIRED :

	2,300 CARS
--	------------

FUTURE OFFICE: NORTH

	200,000 SF
--	------------

PARKING REQUIRED @ .28/1000 :

	56 CARS ⁽³⁾
--	------------------------

TOP GOLF

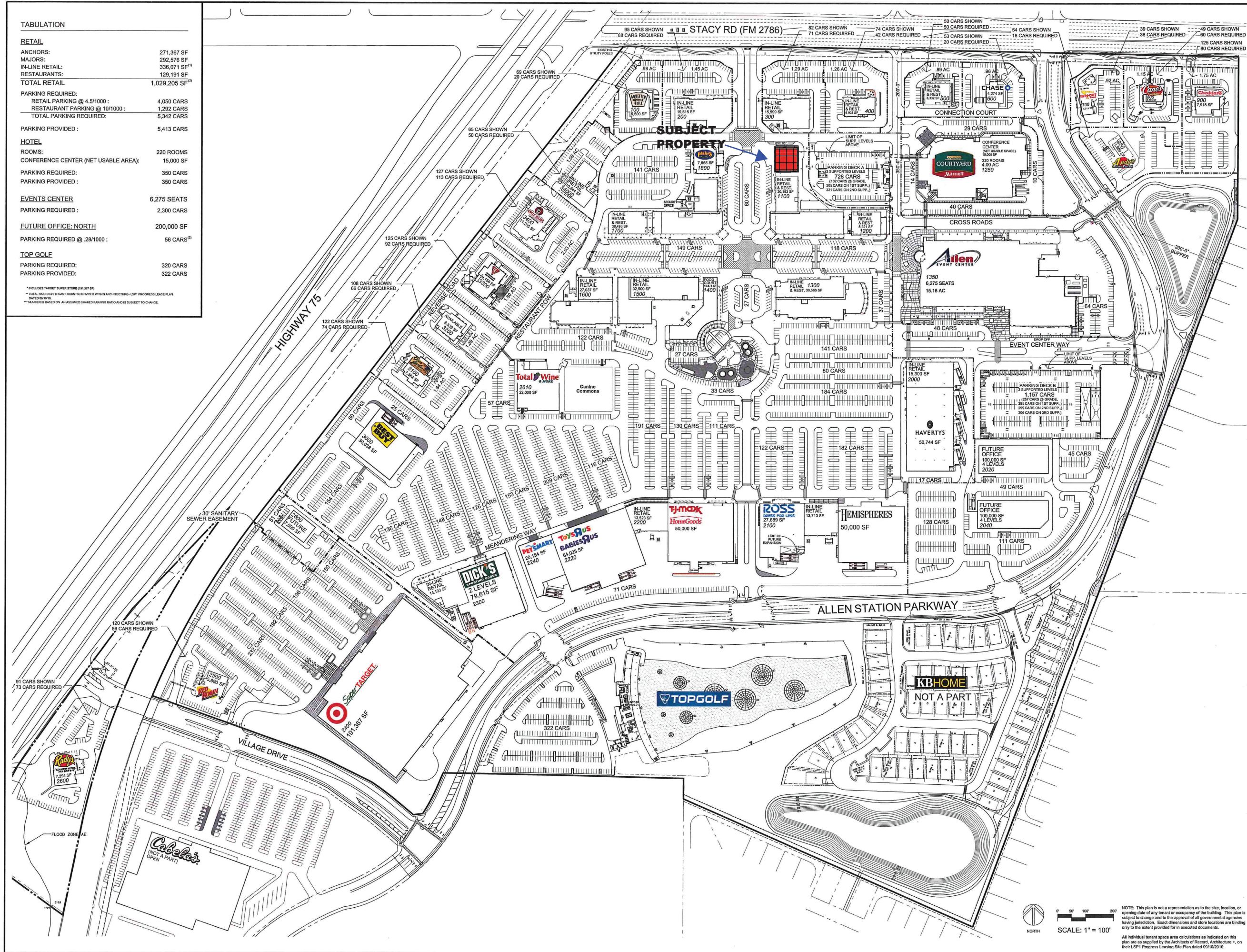
PARKING REQUIRED:	320 CARS
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PARKING PROVIDED:	322 CARS
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⁽¹⁾ INCLUDES TARGET SUPER STORE (191,367 SF)

⁽²⁾ TOTAL BASED ON TENANT COUNTS PROVIDED WITHIN ARCHITECTURE - LSP1 PROGRESS LEASE PLAN DATED 09/10/10

⁽³⁾ NUMBER IS BASED ON AN ASSURED SHARED PARKING RATIO AND IS SUBJECT TO CHANGE



NO.	DATE	COMMENTS
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DRAWN BY: JPRA	CHECKED BY: JPRA
DATE: 10/13/10	
SCALE: 1" = 100'-0"	

JPra ARCHITECTS
3900 West Twelve Mile Road, Suite 100
Farmington Hills, MI 48331
phone 248.737.0180 fax 248.737.9161
www.jparch.com

The MGHerring Group
5710 LB FREEWAY DALLAS, TX 75240 PHONE: (972) 448-0200

05-09-17

THE VILLAGE
AT ALLEN
ALLEN, TX





SITE
PLAN
SP-51

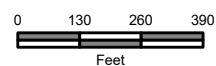
NOTE: This plan is not a representation as to the size, location, or opening date of any tenant or occupancy of the building. This plan is subject to change and to the approval of all governmental agencies having jurisdiction. Exact dimensions and store locations are binding only to the extent provided for in executed documents.
All individual tenant space area calculations as indicated on this plan are as supplied by the Architects of Record, Architecture P, on their LSP1 Progress Leasing Site Plan dated 09/10/2010.



Location Map
Bar Louie
190 E. Stacy Rd.
Suite 1000

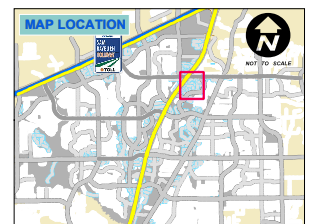
Map Legend

-  BarLouie_Buffer
-  BarLouie
-  Railroad
-  CollinCAD Parcels



Community Development - Planning
 Date Saved: 4/22/2021

NOTE: This map is only for illustration purpose only, please contact the City of Allen Planning & Development Department for specific rules and regulations.



May 4, 2021 Planning and Zoning Commission Meeting Minutes

Public Hearing - Conduct a Public Hearing and Consider a Request for a Specific Use Permit (SUP) for a Restaurant/Private Club Use for a 6,493± Square Foot Portion of a Building Located on Lot 7A-1, Block A, The Village at Allen; Generally Located Directly South of Stacy Road and East of U.S. Highway 75 (and Commonly Known as 190 E. Stacy Road, B1000, Suite 1000). (SUP-032621-0002) [Bar Louie (change ownership)]

Ms. Russell, Planner, presented the item to the Commission.

Ms. Russell stated that the Specific Use Permit meets the requirements of the Allen Land Development Code. She noted that staff is in support of the agenda item.

Chairman Trahan opened the public hearing.

With no one speaking, Chair Trahan closed the public hearing.

Motion: Upon a motion by 1st Vice-Chair Platt, and a second by 2nd Vice-Chair Metevier, the Commission voted 6 IN FAVOR and 0 OPPOSED to recommend approval for a Specific Use Permit request for a Restaurant/Private Club use for a portion of Lot 7A-1, Block A, The Village at Allen, subject to the development regulations and SUP Site Plan, as presented

The motion carried.

ATTENDANCE:

Commissioners Present:

Ben Trahan, Chair
Stephen Platt, Jr., 1st Vice-Chair
Dan Metevier, 2nd Vice-Chair
Elias Shaikh
Michael Smiddy
John Ogrizovich

Commissioners Absent:

Jeff Burkhardt

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:

May 25, 2021

SUBJECT:

Conduct a Public Hearing and Adopt an Ordinance to Amend the Development Regulations of a Portion of Tract 6 of Planned Development No. 55 Commercial/Office to Allow Medical Clinic as a Permitted Use on Lot 4, Block B, Allen Central Retail Addition No. 3, Generally Located Directly South of McDermott Drive and West of U.S. Highway 75. [Texas Health Urgent Care]

STAFF RESOURCE:

Hayley Angel, Planning Manager

PREVIOUS COUNCIL ACTION:

Planned Development No. 55 - Approved March, 1994
Planned Development No. 55 - Approved November, 1997

BOARD / COMMISSION ACTION:

On May 4, 2021, the Planning and Zoning Commission voted 6 in favor (Commissioners Trahan, Platt Jr., Metevier, Shaikh, Smiddy and Ogrizovich), and 0 opposed to recommend approval of the request.

ACTION PROPOSED:

Conduct a Public Hearing and Adopt an Ordinance to Amend the Development Regulations of a Portion of Tract 6 of Planned Development No. 55 Commercial/Office to Allow Medical Clinic as a Permitted Use on Lot 4, Block B, Allen Central Retail Addition No. 3, Generally Located Directly South of McDermott Drive and West of U.S. Highway 75. (805 W. McDermott Drive) [Texas Health Urgent Care]

BACKGROUND

The subject property is located directly south of McDermott Drive and west of U.S. Highway 75, with the said property being addressed as 805 W. McDermott Drive. The properties to the north (across McDermott Drive) are zoned Planned Development No. 54 with a base zoning of Corridor Commercial. The properties to the east are zoned Planned Development No. 8 with a base zoning of General Business District. The properties to the south and west are zoned Planned Development No. 55 (PD-55) with a base zoning of Commercial/Office (C/O).

The property is zoned PD-55 with a base zoning district of C/O. The applicant is requesting to amend the development regulations to allow for a Medical Clinic use onsite by right, in addition to the uses already permitted by the existing Planned Development. The site is already developed and has an existing 8,965± square foot building which currently houses Comerica Bank.

The applicant desires to lease 3,984± square feet of the existing building for an urgent care facility use, which is classified as a medical clinic use. The overall site has a total of 85 parking spaces, which is sufficient to adequately serve the medical clinic and bank uses.

There are no proposed changes to the exterior of the building or the site itself. The applicant provided a site plan to demonstrate that onsite parking is adequate. While the site plan is provided for illustrative purposes, it is not proposed to be adopted with the ordinance.

Staff has reviewed the Planned Development Amendment request and finds it to be compatible with the surrounding uses.

On May 4, 2021, the Planning and Zoning Commission voted to recommend approval of this request.

LEGAL NOTICES

Public Hearing Sign - April 23, 2021

Public Hearing Letters - April 23, 2021

Newspaper Notice - May 6, 2021

STAFF RECOMMENDATION

Staff recommends approval.

MOTION

I make a motion to adopt Ordinance No. _____ to amend the Development Regulations of Planned Development No. 55 with the base zoning of Commercial/Office for a property generally located directly south of McDermott Drive and west of U.S. Highway 75.

ATTACHMENTS:

Ordinance

Property Notification Map

TH Urgent Care Site Plan (Illustrative Purposes only)

Draft Minutes of the May 4, 2021 P&Z Meeting

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE ALLEN LAND DEVELOPMENT CODE AND ZONING MAP, AS PREVIOUSLY AMENDED, BY AMENDING THE USE AND DEVELOPMENT REGULATIONS OF LOT 4, BLOCK B, ALLEN CENTRAL RETAIL ADDITION, LOCATED IN AND SUBJECT TO THE REGULATIONS OF TRACT 6 OF PLANNED DEVELOPMENT “PD” NO. 55 TO ALLOW SAID PROPERTY TO BE USED FOR MEDICAL CLINIC USE; PROVIDING FOR A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission and the governing body of the City of Allen, Texas, in compliance with the laws of the State of Texas and the ordinances of the City of Allen, Texas, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all the property owners generally and to all persons interested and situated in the affected area, and in the vicinity thereof, and in the exercise of its legislative discretion, have concluded that Allen Land Development Code Zoning Regulations and Zoning Map of the City of Allen, Texas, as previously amended, should be amended.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The Allen Land Development Code Zoning Regulations and the Zoning Map of the City of Allen, Collin County, Texas, be amended by amending the Development Regulations relating to the use and development of Lot 4, Block B, Allen Central Retail Addition, an addition to the City of Allen, according to the plat thereof recorded in Book L, Page 93, Plat Records, Collin County, Texas (“the Property”) which is located in and subject to the development and use of the regulations applicable to Tract 6 of Planned Development “PD” No. 55 Commercial/Office C/O.

SECTION 2. The Property shall be developed and used in accordance with applicable provisions of the Allen Land Development Code, as amended, (“ALDC”) and Tract 6 of Planned Development “PD” No. 55; provided, however, in addition to the uses permitted in Tract A of PD 55, the Property may be developed and used for Medical Clinic purposes as such use is defined in the ALDC.

SECTION 3. To the extent of any irreconcilable conflict with the provisions of this Ordinance and other ordinances of the City of Allen governing the use and development of the Property and which are not expressly amended by this Ordinance, the provisions of this Ordinance shall be controlling.

SECTION 4. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Ordinance, or of the Allen Land Development Code Zoning Regulations, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Allen Land Development Code Zoning Regulations, as amended hereby, which shall remain in full force and effect.

SECTION 5. An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the Allen Land Development Code Zoning Regulations, as amended, in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 6. Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in Allen Land Development Code Zoning Regulations of the City of Allen, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense.

SECTION 7. This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Allen, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 25TH DAY OF MAY 2021.

APPROVED:

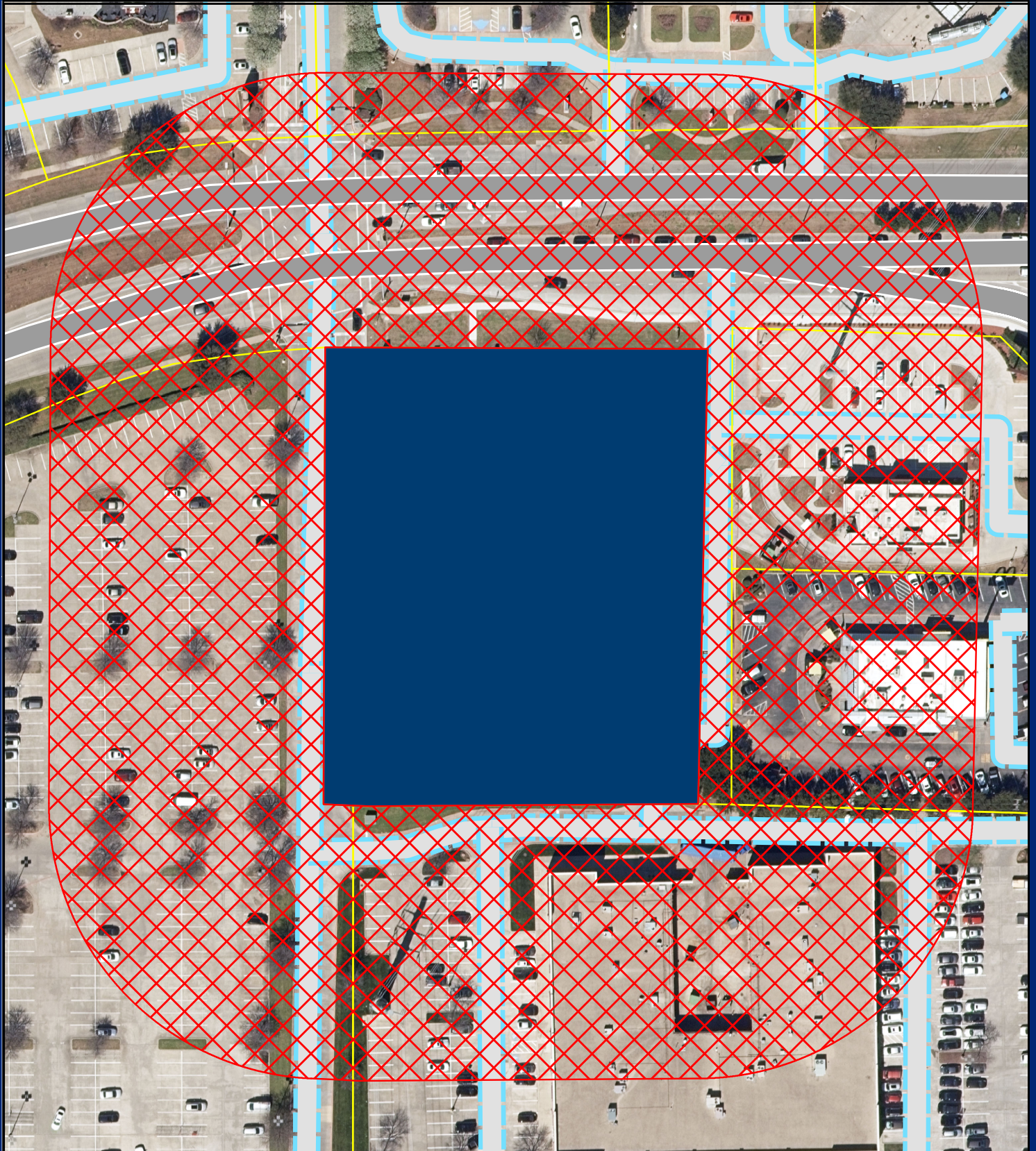
Kenneth M. Fulk, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, City Attorney
(kbl:4/26/21:122115)





Shelley B. George, TRMC, City Secretary



Location Map

Texas Health Urgent Care
805 W. McDermott Dr.

Map Legend

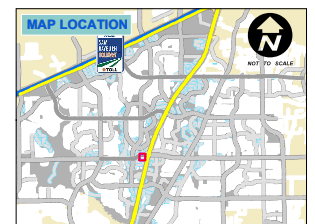
-  200' Buffer
-  Public Hearing Property
-  Railroad
-  CollinCAD Parcels



Community Development - Planning

Date Saved: 4/22/2021

NOTE: This map is only for illustration purpose only, please contact the City of Allen Planning & Development Department for specific rules and regulations.



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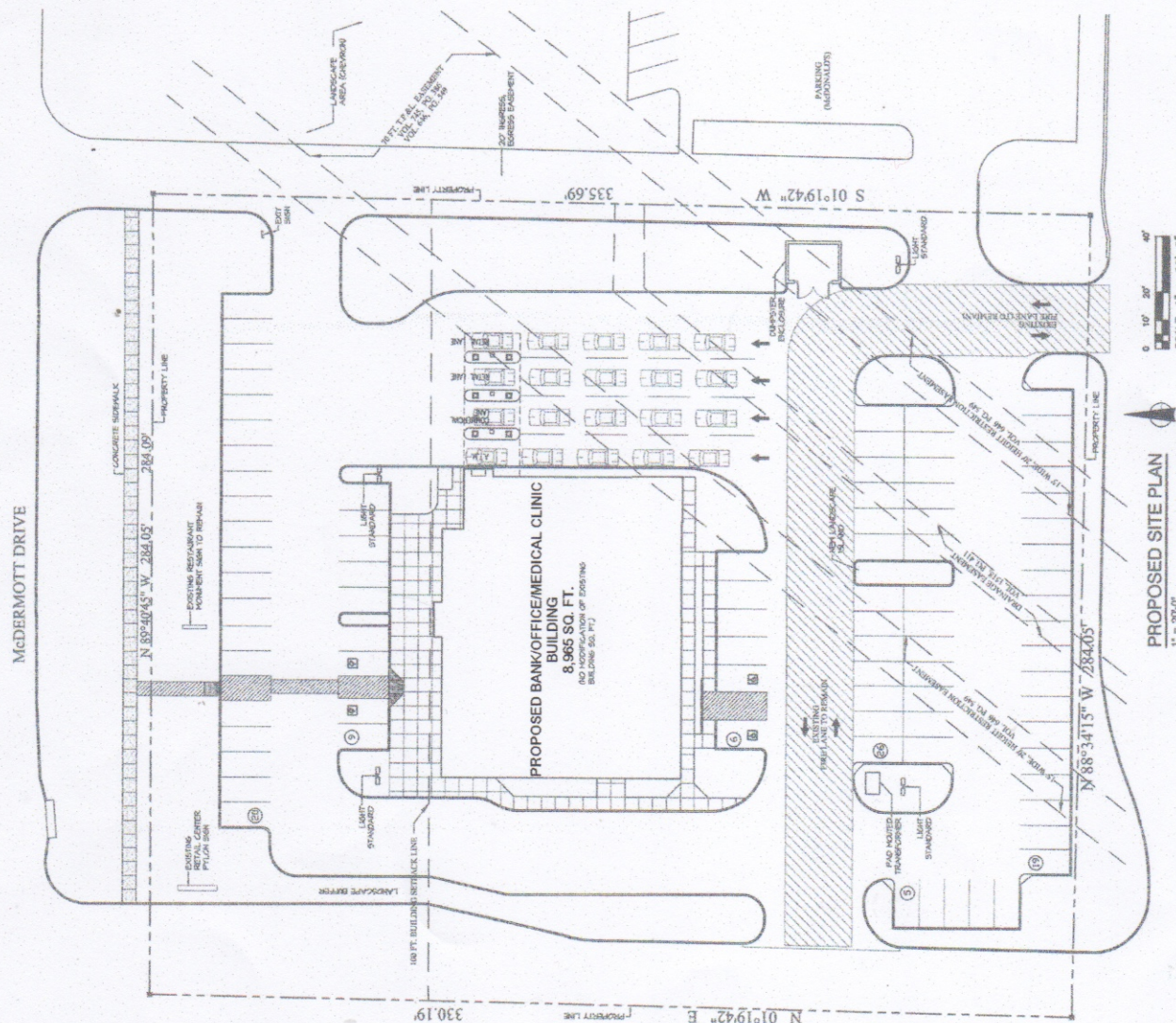
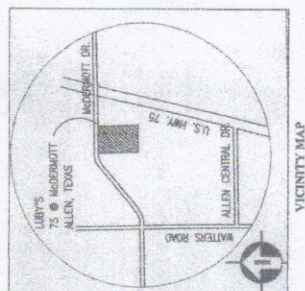
NOT FOR CONSTRUCTION

20	19	18	17	16
15	14	13	12	11
10	09	08	07	06
05	04	03	02	01

DETAIL MAP

PROJECT NO.: 39-21422-09

A2.0



SITE DATA SUMMARY TABLE

ZONING:
PROPOSED USES:
LOT AREA:
EXISTING BUILDING:
EXISTING BUILDING HT:

REQUIRED PARKING
BANK/OFFICE: 4,881 SQ. FT.
1sp/300 SQ. FT. 16.27 sp.
MEDICAL CLINIC: 3,984 SQ. FT.
1sp/250 SQ. FT. 15.936 sp.

TOTAL REQUIRED SPACES: 32,206 sp.

PARKING PROVIDED:
HANDICAP PARKING REQUIRED:
HANDICAP PARKING PROVIDED:

May 4, 2021 Planning and Zoning Commission Meeting Minutes

Public Hearing - Conduct a Public Hearing and Consider a Request to Amend the Development Regulations of a Portion of Tract 6 of Planned Development PD No. 55 Commercial/Office C/O to Allow Medical Clinic as a Permitted Use on Lot 4, Block B, Allen Central Retail Addition No. 3; Generally Located Directly South of McDermott Drive and Approximately 548± Feet West of U.S. Highway 75. (ZN-040221-0002) [Texas Health Urgent Care]

Ms. Russell, Planner, presented the item to the Commission.

Ms. Russell noted that staff is in support of the agenda item.

Chair Trahan opened the public hearing.

Robert Reeves, Applicant, 3807 Vinecrest Drive, Dallas, TX, 75229, gave a brief overview of the company and project.

Chair Trahan closed the public hearing.

Motion: **Upon a motion by 2nd Vice-Chair Metevier, and a second by Commissioner Smiddy, the Commission voted 6 IN FAVOR and 0 OPPOSED to recommend approval of the request to amend the development regulations of a portion of Tract 6 of Planned Development No. 55 with the base zoning of Commercial/Office for Lot 4, Block B, Allen Central Retail Addition No. 3, as presented**

The motion carried.

ATTENDANCE:

Commissioners Present:

Ben Trahan, Chair
Stephen Platt, Jr., 1st Vice-Chair
Dan Metevier, 2nd Vice-Chair
Elias Shaikh
Michael Smiddy
John Ogrizovich

Commissioners Absent:

Jeff Burkhardt

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE: May 25, 2021

SUBJECT: Adopt a Resolution Establishing Rates and Fees for Commercial and Residential Solid Waste, Recycling, and Household Hazardous Waste Services.

STAFF RESOURCE: Steve Massey, Community Services Director

ACTION PROPOSED: Adopt a Resolution Establishing Rates and Fees for Commercial and Residential Solid Waste, Recycling, and Household Hazardous Waste Services.

BACKGROUND

Residential Rates

The residential rate paid by a resident to the City of Allen for typical solid waste and household hazardous waste (HHW) services is currently \$15.59 per month. On the utility bill, this charge appears as \$15.02 for solid waste service and \$0.57 for HHW services. There are no changes proposed in the proposed rate resolution to the residential rate charged to citizens. \$15.59 has been the residential waste services rate since June of 2010.

Seventy-four (74) percent of waste services revenues go to pay two (2) large operational costs. First, they pay the North Texas Municipal Water District (NTMWD) for waste disposal costs that fund the operation of the Transfer Stations and the Regional Disposal Facility. Second, the funds pay Community Waste Disposal (CWD), the City's franchised waste services provider for trash, recycle, yard waste, and bulk waste collections. Our current contract with CWD runs through May 31, 2024. CWD has provided Allen's waste services since 1997.

Residential waste services paid to CWD are contractually subject to rate adjustments driven by the Department of Labor Annual Consumer Price Index (CPI). The Department of Labor CPI for the one-year period ending annually in March 2021 for all goods and services in the Dallas, Fort Worth, and Arlington area is the basis for cost adjustments. For the one-year period ending March 31, 2021, the indicator showed a CPI increase of 3.4 percent.

This CPI translates to an increase in the City's monthly payment to CWD for residential services of \$0.26 per month per home served. The City also reimburses CWD for the disposal of home yard wastes for composting. The cost adjustment for this service is based on "compostable" tons taken to the transfer station. This compost adjustment is a \$0.03 per month increase per home served. In total, CWD's reimbursement for residential services is increasing \$0.29 per month, from \$7.63 to \$7.92 per month. For the year beginning June 1, 2021, when the new rate resolution takes effect, this represents about a \$104,000 increase in payments to CWD.

The CPI increase raises the payments to CWD for each additional trash poly cart by \$0.15 per month, and for each additional recycle poly cart by \$0.08 per month.

The CPI adjustment also applies to reimbursement for lost 95-gallon poly carts. The new replacement cost increases by \$2.82 bringing the cost to \$85.75 for replacing a lost cart. CWD replaces trash and recycling carts due to "fair wear and tear" at no expense to the customer.

The City discounts the current residential waste services rates (trash, recycling, and HHW) by 20 percent for senior citizens beginning at age 65. The proposed Rate Resolution reflects the continuation of this discounted cost. This savings currently generates about \$109,512 in annual cost savings to 2,925 Allen seniors. The number of participating seniors is up by 181 in the last year.

The North Texas Municipal Water District (NTMWD) Solid Waste member cities include Allen, Plano, Richardson, McKinney and Frisco. Every member city offers slightly different residential waste services, so comparing charges to customers is not a direct comparison. However, the average cost for typical residential services among the five member cities is now \$17.33 per month. The costs vary from \$15.59 to \$19.40 per month. Allen's monthly residential cost of \$15.59 is very competitive with the residential charges of other NTMWD Solid Waste System Member Cities.

<p align="center">Comparison of the Residential Rates of NTMWD Solid Waste Member Cities</p>

City	Residential Rate Now	Comments
Allen	\$15.59	No FY21-22 rate increase to residents. \$15.59 = \$15.02 Trash + \$0.57 HHW
Frisco	\$16.00	Rate increase being considered for FY21-22. Rate increase is not in the \$16.00
McKinney	\$18.56*	*Includes a \$1.60 increase (10%) effective July 1, 2021
Plano	\$17.10	No increase planned for FY 2021-22.
Richardson	\$19.40	Rate increase being considered for FY21-22. Rate increase is not in the \$19.40
Current Average Rate	\$17.33	

Commercial Rates

Commercial waste services paid by customers directly to CWD are also contractually subject to rate adjustments driven by the Department of Labor Annual Consumer Price Index (CPI). Commercial waste services rates to customer will increase by 3.4 percent based on the Department of Labor (DOL) Consumer Price Increase (CPI) increase for the last year. The new rates are shown on CWD's attachment and in the new Rate Resolution that is effective June 1, 2021.

CWD provides a 15% franchise fee payment to the City's General Fund from the commercial waste charges they collect. These payments help fund operational street maintenance to offset the wear and tear caused by commercial waste vehicles on the streets of Allen.

Besides the Franchised Waste Services provider's CPI adjustment, commercial rates can also be affected by changes in the waste disposal cost charged by NTMWD. The District's solid waste disposal rates have been stable at \$38.25 per ton; and will continue at this level through Fiscal Year 2022. Therefore, there was no need to consider a disposal cost adjustment when developing the new commercial waste services rates that become effective June 1, 2021.

Summary

Residential. The strength of the Solid Waste Fund's reserves and projected revenue and expenses for FY22 allows the City to maintain the current residential waste services rates to customers despite the CPI adjusted payment increases to CWD. Our last residential rate increase for typical services (one trash cart, one recycle cart, and household hazardous waste collection) was on June 1, 2010.

Commercial. Due to favorable contract terms and the consistent NTMWD waste disposal cost, commercial costs have only increased by modest amounts since 2010. This year's 3.4 percent commercial rate increase is the largest since 2010.

BUDGETARY IMPACT

Staff projects that the residential rate changes will increase the Solid Waste Fund expenses to pay CWD by about \$104,000 in the next 12-month period. The Solid Waste Fund will maintain its fund reserve at the upper end of the guideline 90 to 120 days of reserve through the end of FY21.

STAFF RECOMMENDATION

Staff recommends that the City Council adopt a Resolution establishing rates and fees for commercial and residential solid waste, recycling, and household hazardous waste services.

MOTION

I make a motion to adopt Resolution No. _____ establishing rates and fees for commercial and residential solid waste, recycling, and household hazardous waste services.

ATTACHMENTS:

Resolution
CWD Market Adjustment Letter

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ESTABLISHING FEES AND RATES FOR RESIDENTIAL AND COMMERCIAL SOLID WASTE COLLECTION SERVICES; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Code of Ordinances of the City of Allen authorizes the City Council to amend the fees and rates for solid waste and household hazardous waste collection services by Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The City Council of the City of Allen, Texas, hereby establishes the following residential and commercial solid waste and household hazardous waste collection service fees:

1. RESIDENTIAL Solid Waste Services

(Garbage, bulk, recycling, yard waste, Christmas tree composting, and Household Hazardous Waste (HHW))

Residential rate per month to CWD.....	\$7.92
Residential rate per month to City.....	\$15.59
Senior rate (residential customers who are 65 years of age or older and who own or lease and occupy the residence) per month; 20% discount from standard rate.....	\$12.47
Additional garbage poly-cart per month to CWD.....	\$4.62
Additional garbage poly-cart per month resident to City.....	\$8.89
Additional recycle poly-cart per month to CWD.....	\$2.37
Additional recycle poly-cart per month resident to City.....	\$2.10
Replace lost/stolen garbage or recycle poly-cart to CWD	\$85.76

2. COMMERCIAL Solid Waste Services

All commercial costs in Paragraph 2 include the City of Allen's 15% Franchise Fee

- **Side Loading Commercial Trash Poly-Carts** (All Disposal Weight Charges Included in Cost)

One (1) poly-cart per month	\$19.55
Two (2) poly-carts per month	\$36.54
Three (3) poly-carts per month	\$51.54
Three commercial trash poly cart maximum per account	

- **Front Loading Trash Dumpsters** (All Disposal Weight Charges Included in Cost)

Monthly rates:

3 Cubic Yard Container

One time per week	\$97.35
Two times per week.....	\$188.69
Three times per week.....	\$259.95

4 Cubic Yard Container

One time per week.....	\$106.70
Two times per week.....	\$200.43
Three times per week.....	\$290.47

Four times per week.....	\$369.70
Five times per week.....	\$442.06
Six times per week.....	\$505.95
6 Cubic Yard Container	
One time per week.....	\$131.76
Two times per week.....	\$246.76
Three times per week.....	\$352.80
Four times per week.....	\$449.83
Five times per week.....	\$537.88
Six times per week.....	\$615.62
8 Cubic Yard Container	
One time per week.....	\$155.27
Two times per week.....	\$288.70
Three times per week.....	\$413.84
Four times per week.....	\$528.64
Five times per week.....	\$633.24
Six times per week.....	\$727.44
• Extra pickups	
3 cu. yd. containers per pickup	\$45.87
4 cu. yd. containers per pickup	\$48.33
6 cu. yd. containers per pickup	\$53.25
8 cu. yd. containers per pickup	\$58.12
• Refills	
3 cu. yd. containers per refill	\$32.95
4 cu. yd. containers per refill	\$35.27
6 cu. yd. containers per refill	\$40.39
8 cu. yd. containers per refill	\$45.30
• Front Load Trash Compactors	
2 cu. yd. containers per pickup	\$87.60
3 cu. yd. containers per pickup	\$101.84
4 cu. yd. containers per pickup	\$111.63
6 cu. yd. containers per pickup	\$138.02
• Roll Off Trash Compactor Containers- Disposal Weight Charge of \$44.20	
per ton is added for all tonnage over 6 tons (12,000 pounds)	
Trip Charge/Dry Run/Container not Available - weekday.....	\$122.83
Trip Charge /Dry Run/Container not Available - weekend.....	\$159.19
Haul charges -	
20 cu. yd. per load - weekday.....	\$343.80
20 cu. yd. per load - weekend.....	\$380.17
35 cu. yd. per load - weekday.....	\$481.15
35 cu. yd. per load - weekend.....	\$517.50
42 cu. yd. per load - weekday.....	\$536.45
42 cu. yd. per load - weekend	\$572.80

- **Open Top Roll Off Trash/Construction Waste Containers-** Disposal Weight Charge of \$44.20 per ton is added for all tonnage over 6 tons (12,000 pounds)

Delivery – weekday	\$117.92
Delivery – weekend.....	\$152.81
Trip Charge (Dry Run) - weekday.....	\$117.92
Trip Charge (Dry Run) - weekend.....	\$152.81
Weekly Rental	\$44.95
Monthly Rental	\$194.56
Haul charge to Melissa Landfill - weekday.....	\$534.76
Haul charge to Melissa Landfill - weekend.....	\$569.68

3. SPECIAL COLLECTIONS

- **Appliances: Listed Below**.....\$31.51
Stoves, ovens, water heaters, furnaces, garbage compactors, etc.; refrigerators, freezers and ice makers (refrigerant professionally removed and certified)
- **Furniture: Listed Below**.....\$22.71
Couch, bed, love seat, tables, EZ chairs, etc.

4. COMMERCIAL SPECIAL RECYCLING SERVICES

- Mandatory commercial apartment recycling
Price per month per apartment unit charged to apartment owner/operator\$0.68
- 95-gallon ASL Recycling Cart - charge per month\$13.58
- Additional (up to two additional carts) 95- gallon ASL Recycling Cart
- charge per extra Cart per month.....\$10.88
- Franchisee will provide site specific fees for commercial recycling collections based on the type and volume of recyclables, the type of recycling container, and the frequency of collection
- Cardboard collected in Front Load 8 Cubic Yard Containers

	<u>Monthly Recycle Fee</u>	<u>Monthly Trash Fee</u>	<u>Savings/Month by Recycling</u>
○ One pickup per week	\$108.92	\$155.27	\$46.35
○ Two pickups per week	\$202.50	\$288.70	\$86.20
○ Three pickups per week	\$290.22	\$413.84	\$123.62
○ Four pickups per week	\$370.64	\$528.64	\$158.00
○ Five pickups per week	\$443.26	\$633.24	\$189.98
○ Six pickups per week	\$509.21	\$727.44	\$218.23

- Roll Off Recycling Containers- Larger Volume Commercial Recyclers

	<u>Fee Per Haul</u>	<u>Trash Haul Fee</u>	<u>Savings/Haul by Recycling</u>
○ Roll Off Cont. Weekday	\$365.52	\$534.76	\$169.24
○ Roll Off Cont. Weekend	\$396.85	\$569.68	\$172.83
○ Trip Charge Weekday	\$122.84	Dry Run/Container not Available to Service	
○ Trip Charge Weekend	\$159.18	Dry Run/Container not Available to Service	

- Additionally, larger volume Roll off Recyclers qualify for recycling profit sharing rebate to further encourage recycling. The customer rebate from profits vary from 40 to 85 percent of the net value of the commodity sold. The standard profit-sharing template is incorporated into the current franchised waste carrier's current contract.
- For unique recycling requirements, the franchisee will develop special cost proposals that the City will review before presentation to the customer. Unique situations include special recycling circumstances

such as when businesses are striving for Leadership in Energy and Environmental Design (LEED) certification for facilities under construction or renovation.

5. COMMERCIAL SPECIAL SERVICES

All commercial costs in paragraph 5 include the City of Allen's 15% Franchise Fee

- Deodorize containers – per container\$65.76
- Caster container– per collection per container moved by contractor (≤ 4 cu. yd.)\$11.83
- To unlock gates and open and close gates – per pickup\$9.22
- To unlock secured trash containers – per pickup\$9.22
- Signed receipts – per pickup.....\$9.22

6. OTHER CHARGES

- Returned check fee\$26.11

SECTION 2. All provisions of the Resolutions of the City of Allen, Texas, in conflict with the provisions of this Resolution be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this Resolution shall remain in full force and effect.

SECTION 3. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Resolution, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said Resolution which shall remain in full force and effect.

SECTION 4. This Resolution shall take effect from and after its passage except that service fees established herein shall take effect for services provided beginning June 1, 2021.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 25TH DAY OF MAY 2021.

APPROVED:

Kenneth M. Fulk, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY



CommunityWasteDisposal.com

Since 1984

April 25, 2021

Stephen Massey
City of Allen
Community Service Director
305 Century Parkway
Allen, TX 75013-8042

RE: Market Adjustment Effective June 1, 2021

Dear Stephen:

In accordance with the Solid Waste, Collection, Disposal and Recycling Services contract, Community Waste Disposal LP (CWD) hereby requests that the City Council of the City of Allen formally consider the following residential and commercial market adjustment with effective date of June 1, 2020.

	2020 Current Rate	2021 Compost Adjustment	2021 3.4% CPI Adjustment	New Rate for June 2021
Residential Rate to Allen Residents	\$7.63	\$0.03	\$0.26	\$7.92
Additional Residential Trash Cart Pricing (Each)	\$4.47	N/A	\$0.15	\$4.62
Additional Residential Recycling Cart Pricing (Each)	\$2.29	N/A	\$0.08	\$2.37
Replace lost/stolen Trash or Recycle Cart (Each) (w/franchise fee)	\$82.94	N/A	\$2.82	\$85.76

Back up information detailing our request for a 2021 adjustment is attached. Included is a spreadsheet that details the residential compost recovery request-summary and the March 2021 CPI information from the Department of Labor.

If you have any questions concerning this matter, please feel free to contact me at 972.392.9300 extension 2250.

Sincerely,

David Dalrymple

cc: Donna Kliewer
Robert Medigovich
Greg Roemer
Dale Pound

Enc: CPI – Index
Compost Recovery
Schedule A

CITY of ALLEN - Schedule "A"
Effective 06.01.21

Solid Waste & Recycling Services	June 2020 Allen Customer Rate	June 2020 Net Rate to CWD	2021 Disposal Adjustment	2021 Compost Adjustment	2021 CPI Adjustment 3.4%	June 2021 Net Rate to CWD	June 2021 Allen Customer Rate
Residential Collection (Includes Garbage, Bulk, Recycling, Compost)							
Residential Rate to Allen Residents	N/A	\$7.63	N/A	\$0.03	\$0.26	\$7.92	N/A
Additional Residential Trash Cart Pricing (Each)	N/A	\$4.47	N/A	N/A	\$0.15	\$4.62	N/A
Additional Residential Recycling Cart Pricing (Each)	N/A	\$2.29	N/A	N/A	\$0.08	\$2.37	N/A
Replace lost/stolen Trash or Recycle Cart (Each)	\$82.94	N/A	N/A	N/A	\$2.82	\$2.82	\$85.76
Commercial Cart							
First Poly-Cart	\$18.91	\$16.44	\$0.00	N/A	\$0.56	\$17.00	\$19.55
Two (2) Poly-Carts	\$35.34	\$30.73	\$0.00	N/A	\$1.04	\$31.77	\$36.54
Three (3) Poly-Carts	\$49.85	\$43.35	\$0.00	N/A	\$1.47	\$44.82	\$51.54
Commercial Container Services							
3 Cubic Yard Container							
One time per week	\$94.15	\$81.87	\$0.00	N/A	\$2.78	\$84.65	\$97.35
Two times per week	\$182.48	\$158.68	\$0.00	N/A	\$5.40	\$164.08	\$188.69
Three times per week	\$251.40	\$218.61	\$0.00	N/A	\$7.43	\$226.04	\$259.95
4 Cubic Yard Container							
One time per week	\$103.19	\$89.73	\$0.00	N/A	\$3.05	\$92.78	\$106.70
Two times per week	\$193.84	\$168.56	\$0.00	N/A	\$5.73	\$174.29	\$200.43
Three times per week	\$280.91	\$244.27	\$0.00	N/A	\$8.31	\$252.58	\$290.47
Four times per week	\$357.55	\$310.91	\$0.00	N/A	\$10.57	\$321.48	\$369.70
Five times per week (added new frequency)	\$427.52	\$371.76	\$0.00	N/A	\$12.64	\$384.40	\$442.06
Six times per week (added new frequency)	\$489.31	\$425.49	\$0.00	N/A	\$14.47	\$439.96	\$505.95
6 Cubic Yard Container							
One time per week	\$127.42	\$110.80	\$0.00	N/A	\$3.77	\$114.57	\$131.76
Two times per week	\$238.64	\$207.51	\$0.00	N/A	\$7.06	\$214.57	\$246.76
Three times per week	\$341.19	\$296.69	\$0.00	N/A	\$10.09	\$306.78	\$352.80
Four times per week	\$435.05	\$378.30	\$0.00	N/A	\$12.86	\$391.16	\$449.83
Five times per week	\$520.19	\$452.34	\$0.00	N/A	\$15.38	\$467.72	\$537.88
Six times per week	\$595.38	\$517.72	\$0.00	N/A	\$17.60	\$535.32	\$615.62
8 Cubic Yard Container							
One time per week	\$150.17	\$130.58	\$0.00	N/A	\$4.44	\$135.02	\$155.27
Two times per week	\$279.21	\$242.79	\$0.00	N/A	\$8.25	\$251.04	\$288.70
Three times per week	\$400.23	\$348.03	\$0.00	N/A	\$11.83	\$359.86	\$413.84
Four times per week	\$511.26	\$444.57	\$0.00	N/A	\$15.12	\$459.69	\$528.64
Five times per week	\$612.41	\$532.53	\$0.00	N/A	\$18.11	\$550.64	\$633.24
Six times per week	\$703.52	\$611.76	\$0.00	N/A	\$20.80	\$632.56	\$727.44
Extra Pick-Ups							
3 cu. Yd. Containers	\$44.37	\$38.58	\$0.00	N/A	\$1.31	\$39.89	\$45.87
4 cu. Yd. Containers	\$46.75	\$40.65	\$0.00	N/A	\$1.38	\$42.03	\$48.33
6 cu. Yd. Containers	\$51.50	\$44.78	\$0.00	N/A	\$1.52	\$46.30	\$53.25
8 cu. yd. Containers	\$56.21	\$48.88	\$0.00	N/A	\$1.66	\$50.54	\$58.12
Refills							
3 cu. Yd. Containers	\$31.87	\$27.71	\$0.00	N/A	\$0.94	\$28.65	\$32.95
4 cu. Yd. Containers	\$34.11	\$29.66	\$0.00	N/A	\$1.01	\$30.67	\$35.27
6 cu. Yd. Containers	\$39.07	\$33.97	\$0.00	N/A	\$1.15	\$35.12	\$40.39
8 cu. Yd. Containers	\$43.80	\$38.09	\$0.00	N/A	\$1.30	\$39.39	\$45.30
Front Load Compactor (Rate per Pick Up)							
2 Cubic Yard	\$84.72	\$73.67	\$0.00	N/A	\$2.50	\$76.17	\$87.60
3 Cubic Yard (added new container size)	\$98.50	\$85.65	\$0.00	N/A	\$2.91	\$88.56	\$101.84
4 Cubic Yard (added new container size)	\$107.96	\$93.88	\$0.00	N/A	\$3.19	\$97.07	\$111.63
6 Cubic Yard	\$133.48	\$116.07	\$0.00	N/A	\$3.95	\$120.02	\$138.02

CITY of ALLEN - Schedule "A"
Effective 06.01.21

Solid Waste & Recycling Services	June 2020 Allen Customer Rate	June 2020 Net Rate to CWD	2021 Disposal Adjustment	2021 Compost Adjustment	2021 CPI Adjustment 3.4%	June 2021 Net Rate to CWD	June 2021 Allen Customer Rate
Recycle Cart(s) - Commercial							
First 95 Gallon Recycle Poly-Cart	\$13.13	\$13.13	\$0.00	N/A	\$0.45	\$13.58	\$13.58
Additional 95 Gallon Recycle Poly-Cart	\$10.52	\$10.52	\$0.00	N/A	\$0.36	\$10.88	\$10.88
Front Load OCC Commercial Container Services							
8 Cubic Yard Container							
One time per week	\$105.34	\$105.34	\$0.00	N/A	\$3.58	\$108.92	\$108.92
Two times per week	\$195.84	\$195.84	\$0.00	N/A	\$6.66	\$202.50	\$202.50
Three times per week	\$280.68	\$280.68	\$0.00	N/A	\$9.54	\$290.22	\$290.22
Four times per week	\$358.45	\$358.45	\$0.00	N/A	\$12.19	\$370.64	\$370.64
Five times per week	\$428.68	\$428.68	\$0.00	N/A	\$14.58	\$443.26	\$443.26
Six times per week	\$492.47	\$492.47	\$0.00	N/A	\$16.74	\$509.21	\$509.21
Rolloff Recycle Containers							
Trip Charge (Dry Run) - weekday	\$118.80	\$118.80	\$0.00	N/A	\$4.04	\$122.84	\$122.84
Trip Charge (Dry Run) - weekend	\$153.95	\$153.95	\$0.00	N/A	\$5.23	\$159.18	\$159.18
Recycle Haul Charge - weekday	\$353.50	\$353.50	\$0.00	N/A	\$12.02	\$365.52	\$365.52
Recycle Haul Charge - weekend	\$383.80	\$383.80	\$0.00	N/A	\$13.05	\$396.85	\$396.85
Rolloff Compactors							
Trip Charge (Dry Run) - weekday	\$118.80	\$103.30	\$0.00	N/A	\$3.51	\$106.81	\$122.83
Trip Charge (Dry Run) - weekend	\$153.96	\$133.88	\$0.00	N/A	\$4.55	\$138.43	\$159.19
20 cu. Yd. Per Load - weekday	\$332.50	\$289.13	\$0.00	N/A	\$9.83	\$298.96	\$343.80
20 cu. Yd. Per Load - weekend	\$367.67	\$319.71	\$0.00	N/A	\$10.87	\$330.58	\$380.17
35 cu. Yd. Per Load - weekday	\$465.32	\$404.63	\$0.00	N/A	\$13.76	\$418.39	\$481.15
35 cu. Yd. Per Load - weekend	\$500.48	\$435.20	\$0.00	N/A	\$14.80	\$450.00	\$517.50
42 cu. Yd. Per Load - weekday	\$518.81	\$451.14	\$0.00	N/A	\$15.34	\$466.48	\$536.45
42 cu. Yd. Per Load - weekend	\$553.97	\$481.71	\$0.00	N/A	\$16.38	\$498.09	\$572.80
** Plus \$44.20 Disposal Per Ton if over 12,000 lb.'s							
Open Top Rolloff Containers							
Delivery - weekday	\$114.05	\$99.17	\$0.00	N/A	\$3.37	\$102.54	\$117.92
Delivery - weekend	\$147.79	\$128.51	\$0.00	N/A	\$4.37	\$132.88	\$152.81
Trip Charge (Dry Run) - weekday	\$114.05	\$99.17	\$0.00	N/A	\$3.37	\$102.54	\$117.92
Trip Charge (Dry Run) - weekend	\$147.79	\$128.51	\$0.00	N/A	\$4.37	\$132.88	\$152.81
Weekly Rental	\$43.47	\$37.80	\$0.00	N/A	\$1.29	\$39.09	\$44.95
Monthly Rental	\$188.16	\$163.62	\$0.00	N/A	\$5.56	\$169.18	\$194.56
Haul Charge** (weekday)	\$517.18	\$449.72	\$0.00	N/A	\$15.29	\$465.01	\$534.76
Haul Charge** (weekend)	\$550.94	\$479.08	\$0.00	N/A	\$16.29	\$495.37	\$569.68
** Plus \$44.20 Disposal Per Ton if over 12,000 lb.'s							
Special Collections							
A. Appliances: listed below	\$30.47	\$26.50	\$0.00	N/A	\$0.90	\$27.40	\$31.51
Freezers and Refrigerators (Freon Removed)							
Stoves, Ovens, Water Heaters, Furnaces							
Garbage Compactors, Ice Makers and Etc.							
B. Furniture: listed below	\$21.96	\$19.10	\$0.00	N/A	\$0.65	\$19.75	\$22.71
Couch, Bed, Love Seat, Tables, EZ Chairs, Etc.							
Residential Apartment Recycling							
Price Per Apartment Unit	\$0.66	\$0.57	\$0.00	N/A	\$0.02	\$0.59	\$0.68
Commercial Special Services							
Deodorize containers - per cont.	\$63.60	\$55.30	\$0.00	N/A	\$1.88	\$57.18	\$65.76
To Unlock, Open and Close Gates - Per Pick-Up	\$8.92	\$7.76	\$0.00	N/A	\$0.26	\$8.02	\$9.22
Caster - Per Cont.(<4 cu. Yd.)	\$11.44	\$9.95	\$0.00	N/A	\$0.34	\$10.29	\$11.83
Locks - Per Pick Up	\$8.92	\$7.76	\$0.00	N/A	\$0.26	\$8.02	\$9.22
Signed Receipts - Per Pick-Up	\$8.92	\$7.76	\$0.00	N/A	\$0.26	\$8.02	\$9.22
Other Charges							
Returned Checks	\$25.25	\$25.25	\$0.00	N/A	\$0.86	\$26.11	\$26.11

**Community Waste Disposal
City of Allen
Residential Compost Recovery Request - Summary
4/23/21**

2013	(January through December)		
	Compost Tip Fees (monthly average)	\$	4,781.65
	Compost Purchase & Delivery (monthly average)	\$	1,693.51
	Total Monthly Average Compost	\$	6,475.16
2020	(January through December)		
	Compost Tip Fees (monthly average)	\$	7,183.65
	Compost Purchase & Delivery (monthly average)	\$	-
	Total Monthly Average Compost	\$	7,183.65
Compost Cost Increase 2013 vs. 2020		\$	708.49
Amount Recovered through previous adjustments			
	6/1/2020	\$	305.77
Amount to be recovered (monthly)		\$	1,014.26
Allen house count (annual average 2020)			29,472
Cost per home adjustment (compost)		\$	0.03

Note: CWD considers this material as proprietary rate information that could affect their competitiveness if the waste services contract goes to competitive bid process. Therefore, CWD requests that their extension request letters and all associated discussion information to be exempt from public disclosure. CWD request this information is exempt from Public Records, and is only allowed to be part of Public Records, after a ruling of the Attorney General of Texas.



Southwest Consumer Price Index Indicators

CPI for All Urban Consumers (CPI-U): U.S. City Average, Dallas-Fort Worth-Arlington, and Houston-The Woodlands-Sugar Land, March 2021
(1982-84=100 unless otherwise noted)

Item and group	U.S. City Average				Dallas-Fort Worth-Arlington				Houston-The Woodlands-Sugar Land			
	Index	Percent change			Index	Percent change			Index	Percent change		
	Mar. 2021	12-month	1-month	2-month	Mar. 2021	12-month	1-month	2-month	Mar. 2021	12-month	1-month	2-month
All items	264.877	2.6	0.7	1.3	246.995	3.4		1.8				
Food and beverages	271.135	3.4	0.2	0.3	272.916	4.4		1.3				
Food	271.812	3.5	0.2	0.3	264.904	3.5		0.2				
Food at home	253.231	3.3	0.2	0.4	220.368	2.1	0.5	2.3	235.889	3.9	2.4	2.3
Cereals and bakery products	284.746	2.6	0.2	0.6	260.166	0.4		-0.3				
Meats, poultry, fish, and eggs	268.457	5.4	0.7	1.0	250.625	0.4		2.2				
Dairy and related products	229.249	1.6	-0.5	-1.0	198.356	2.2		1.0				
Fruits and vegetables	311.168	3.8	0.4	0.4	198.362	0.5		6.5				
Nonalcoholic beverages and beverage materials ⁽¹⁾	180.018	3.2	-0.1	0.1	199.389	6.6		2.0				
Other food at home	219.263	2.2	0.1	0.7	209.179	3.6		1.4				
Food away from home	300.897	3.7	0.1	0.2	332.015	5.0		-1.9				
Alcoholic beverages	260.652	2.0	0.2	0.3	381.532	14.0		14.1				
Housing	276.028	2.1	0.3	0.6	242.489	2.2		0.5				
Shelter	330.122	1.7	0.3	0.6	271.998	2.1	0.3	0.7	274.342	0.4	0.2	0.2
Rent of primary residence	345.717	1.8	0.1	0.3	290.952	2.2	-0.7	-0.2	270.876	0.8	0.3	0.1
Owners' equivalent rent of residences ⁽²⁾	339.565	2.0	0.2	0.4	295.503	3.0	0.5	1.0	256.202	1.2	0.0	0.0
Owners' equivalent rent of primary residence ⁽²⁾	339.589	2.0	0.2	0.4	295.503	3.0	0.5	1.0	256.202	1.2	0.0	0.0
Fuels and utilities	251.797	4.4	0.2	1.2	250.364	1.2		-1.0				
Household energy	206.271	4.7	0.2	1.4	218.799	1.4	-1.8	-1.5	172.991	23.2	0.7	4.0
Energy Services	209.623	4.1	0.2	1.0	215.329	1.5	-1.8	-1.6	170.376	23.4	0.7	3.9
Electricity	216.528	2.5	-0.2	0.6	200.350	-2.8	-2.1	-1.8	173.533	26.4	0.8	3.9
Utility (piped) gas service	185.624	9.8	1.4	2.2	236.664	30.2	-0.3	-0.3	138.359	6.5	0.0	4.3
Household furnishings & operations	128.350	3.1	0.3	0.5	125.379	3.8		0.5				
Apparel	120.746	-2.5	0.6	2.5	109.803	-3.0		6.0				
Transportation	215.761	5.8	3.2	4.9	211.699	10.0		6.1				
Private transportation	214.743	7.0	3.4	5.3	217.875	10.7		6.5				
New and used motor vehicles ⁽³⁾	103.909	4.4	1.2	1.4	112.200	11.6		2.8				
New vehicles ⁽¹⁾	149.321	1.5	-0.1	0.0	205.150	11.5		1.9				
Used cars and trucks ⁽¹⁾	153.873	9.4	2.4	2.8	362.472	10.4		3.1				
Motor fuel	248.681	22.2	11.7	19.3	242.473	31.5	15.7	22.9	223.080	18.9	17.0	25.6
Gasoline (all types)	247.652	22.5	11.7	19.4	241.040	31.7	15.7	22.9	223.277	19.2	17.1	25.8
Motor vehicle insurance ⁽¹⁾	565.166	-2.5	0.9	2.5	683.887	-10.6		-0.1				
Medical care	524.734	1.8	0.1	0.5	477.233	1.7		1.1				
Recreation ⁽³⁾	123.567	1.1	0.4	1.2	122.507	1.0		1.8				
Education and communication ⁽³⁾	141.289	1.5	-0.3	-0.2	135.022	1.5		0.3				
Tuition, other school fees, and childcare ⁽¹⁾	780.209	0.8	-0.3	-0.2	1272.244	-1.6		0.3				
Other goods and services	472.607	2.4	0.6	1.0	447.320	5.0		3.3				
SPECIAL INDEXES (CPI-U)												
Energy	225.861	13.2	5.9	10.0	231.420	15.1	6.6	9.9	195.487	21.0	8.4	13.9
All items less shelter	242.430	3.1	0.9	1.6	235.976	4.1		2.5				
All items less food and energy	271.713	1.6	0.4	0.7	250.644	2.5		1.5				
All items (1967 = 100)	793.455				774.809							
CPI FOR URBAN WAGE EARNERS AND CLERICAL WORKERS (CPI-W)												
All items	258.935	3.0	0.8	1.4	253.289	3.8		2.0				
All items (1967 = 100)	771.287				781.059							

(1) Dallas indexes on a February 1978=100 base. Houston indexes on an April 1978=100 base.

(2) Indexes on a December 1982=100 base.

(3) Indexes on a December 1997=100 base.

Note: The CPI measures changes in prices of all goods and services purchased for consumption by urban households. The indexes for food at home, energy, and shelter are compiled monthly for the Dallas and Houston areas. Full surveys, which produce the All Items Indexes and major components, are compiled every two months. These full surveys are published for the odd-numbered months for Dallas and for the even-numbered months for Houston.