



## MEETING NOTICE Tuesday, March 24, 2026



LOCATION: COUNCIL CHAMBER  
TOWN OF WESTLAKE TOWN HALL  
1500 SOLANA BLVD., SUITE 7100  
BUILDING 7, WESTLAKE, TX 76262

### TOWN OF WESTLAKE TOWN COUNCIL MEETING 4 PM

### WESTLAKE ACADEMY BOARD OF TRUSTEES MEETING 5 PM

#### REGULAR MEETING AGENDA

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The Town Council of the Town of Westlake also serves as the governing Board of Trustees for Westlake Academy. This agenda may contain both municipal and Westlake Academy items, which will be clearly identified. **NOTE: To comply with Senate Bill 12, Westlake Academy items will begin no earlier than 5 p.m. but may start later depending on the progression of posted agenda items.** Town Council/Board of Trustees meetings are available for viewing online via live-stream or on-demand at <https://www.westlake-tx.org/787/Watch-Meetings-Live>. In an effort to improve meeting efficiency, any residents wishing to speak must submit a speaker request form to the Town Secretary prior to the start of the meeting.

Pursuant to Texas Government Code Section 551.127, one or more members of the Town Council may participate in this meeting by video-conference call. A quorum of the Town Council and the presiding officer will be present at the physical location of the meeting.

**NOTE:** As authorized by Section 551.071 of the Texas Government Code, the Town Council/Board of Trustees may enter into closed Executive Session for the purpose of seeking confidential legal advice from the Town Attorney and/or School Attorney on any agenda item listed herein.

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- A. CALL REGULAR TOWN COUNCIL MEETING TO ORDER (4 P.M.) AND ANNOUNCE A QUORUM PRESENT**
- B. INVOCATION AND PLEDGES OF ALLEGIANCE**
- C. CITIZEN/PUBLIC COMMENTS**

This is an opportunity for citizens/public to address the Town Council/Board of Trustees on any matter, whether or not it is posted on the agenda. Anyone wishing to speak on action items must submit a speaker request form to the Town Secretary prior to the start of the meeting. Individual comments are normally limited to three (3) minutes. The presiding officer may ask the speaker to hold their comment on an agenda item if the item is posted as a Public Hearing. The Town Council/Board of Trustees cannot by law take action nor have any discussion or deliberations on any presentation made at this time concerning an item not listed on the agenda. The Town Council/Board of Trustees will receive the information, ask staff to review the matter, or an item may be noticed on a future agenda for deliberation or action.
- D. ITEMS OF COMMUNITY INTEREST**

Mayor and Council Reports on Items of Community Interest pursuant to Texas Government Code Section 551.0415 the Town Council may report on the following items: (1) expression of thanks, congratulations, or condolences; (2) information about holiday schedules; (3) recognition of individuals; (4) reminders about upcoming Town Council events; (5) information about community events; and (6) announcements involving imminent threat to public health and safety.

D.1. Items of Community Interest

## TOWN COUNCIL AGENDA ITEMS

### E. PRESENTATIONS

- E.1. Recognition of Westlake Academy Students
- E.2. Presentation of Annual Report from the Keller Police Department relative to Police Services and the Racial Profiling Report for the Town of Westlake.
- E.3. Update from the Texas Student Housing Authority (TSHA) (Tracy Harrow, TSHA Executive Director)

### F. BOARDS AND COMMISSIONS

- F.1. Discuss, consider and act to approve Resolution 26-05 appointing a member to the Texas Student Housing Authority Board of Directors to fill a current vacancy thru the term ending June 2026.

### G. WORK SESSION

- G.1. Discussion of Fire Department Pay Plan (*Consideration of Action Regular Agenda Item J.3.*)
- G.2. Discussion of Salary Percentiles for Employee Positions
- G.3. Discussion of 5-Year Capital Improvements Plan (CIP)
- G.4. Discussion regarding current and future budgeted Town Subsidy for Westlake Academy
- G.5. Discussion of Timing for Town of Westlake Audit

### H. CONSENT AGENDA

All items listed below are considered routine by the Town Council and/or Board of Trustees and will be enacted with one motion. There will be no separate discussion of items unless a Council/Board Member or citizen so requests, in which event the item will be removed from the general order of business and considered in its normal sequence.

- H.1. Discuss, consider and act to approve the February 17, 2026 Town Council/Board of Trustees Regular Meeting Minutes and the February 24, 2026 Town Council/Board of Trustees/Westlake Development Corporation, Inc. Special Joint Meeting Minutes.
- H.2. Discuss, consider and act to approve Resolution 26-03 authorizing the execution of the Interlocal Agreement by and between the Trinity River Authority of Texas, the Town of Westlake, and the City of Southlake for the transfer of ownership and maintenance responsibility of the Sanitary Sewer Trunk Main N-1 Wastewater Pipeline to the Trinity River Authority in perpetuity by the Town Manager.
- H.3. Discuss, consider and act regarding Resolution 26-04 to approve a contract authorizing a professional services agreement with Westwood Professional Services, Inc. for engineering the design of the Westlake Pump Station Generator Installation for an amount not to exceed \$57,500.

- H.4. Discuss, consider and act to approve Resolution 26-06 amending the purchasing authority spending limits for the Town Manager and Head of School to conform with changes to Texas Law enacted by Senate Bill 1173; authorizing the Town Manager and Head of School to execute purchases and contracts for goods and services up to \$99,999.99 without formal competitive procurement; and providing an effective date.

**I. PUBLIC HEARING AND CORRESPONDING ACTION ITEM**

- I.1. Hold a public hearing and discuss, consider and act to adopt Ordinance 1044 approving text amendments related to Sections 102-61 and 1-1 of the Unified Development Code by establishing and defining the land uses “hotel” and “motel”, by amending the land use schedule, and by establishing performance standards in a new Article X that is entitled “Supplemental Land Use Regulations”.

**J. REGULAR AGENDA ITEMS**

- J.1. Discuss, consider and act to Approve a Letter of Commitment to provide for temporary storm shelter accommodations for students, staff, and visitors associated with the Westlake Academy Arts & Sciences Building Expansion project.
- J.2. Discuss, consider and act regarding Resolution 26-07 approving a construction contract with Sedalco Inc. for the WA Arts & Sciences Building Project in an amount not to exceed \$6,700,000.
- J.3. Discuss, consider and act to adopt a Fire Department compensation step plan designed to position Westlake's firefighter salaries targeting the 80th percentile of the regional market.

**WESTLAKE ACADEMY BOARD OF TRUSTEES AGENDA ITEMS**

**K. PARENT/PUBLIC COMMENTS**

This is an opportunity for parents/public to address the Board of Trustees on any matter, whether or not it is posted on the agenda. Anyone wishing to speak on action items must submit a speaker request form to the Town Secretary prior to the start of the meeting. Individual comments are normally limited to three (3) minutes. The presiding officer may ask the speaker to hold their comment on an agenda item if the item is posted as a Public Hearing. The Board of Trustees cannot by law take action nor have any discussion or deliberations on any presentation made at this time concerning an item not listed on the agenda. The Board of Trustees will receive the information, ask staff to review the matter, or an item may be noticed on a future agenda for deliberation or action.

**L. CONSENT AGENDA**

- L.1. Discuss, consider and act regarding WA Resolution 26-07 Ratifying the Certification of Provision of Instructional Materials Allotment Survey for the 2026-2027 School Year, in compliance with the Texas Education Code and State Board of Education Rules.

**M. REGULAR AGENDA ITEMS**

- M.1. (TABLED 2.17.2026, 2.24.2026) Discuss, consider and act regarding WA Resolution 26-03 to approve contracting with Technology Lab to provide Information Technology services to Westlake Academy and authorizing the Head of School to execute the agreement for same. (Dr. Kelly Ritchie, Head of School)

M.2. Discuss, review and acknowledge receipt of the Intruder Detection Audit Report submitted by the Texas School Safety Center and approve related corrective action and security measures at Westlake Academy as needed.

**N. EXECUTIVE SESSION**

The Town Council/Board of Trustees will conduct a closed session pursuant to Section 551.071 (2) of the Texas Government Code, for the purpose of seeking confidential legal advice from the Town Attorney/Westlake Academy Attorney for the following:

- N.1. Section 551.071: Consultation with and legal advice from the Town Attorney regarding pending litigation - Vertical Bridge v. Town of Westlake.
- N.2. Section 551.076: Deliberation regarding Security Devices or Security Audits related to Summary of Findings of an Intruder Detection Audit for Westlake Academy.
- N.3. Section 551.087: Deliberation regarding Economic Development Negotiations - to deliberate the offer of a financial or other incentive to business prospects:
  - a. ED 2025-06
  - b. ED 2026-01

**O. TAKE ANY ACTION, IF NEEDED, FROM EXECUTIVE SESSION ITEMS**

**P. FUTURE AGENDA ITEMS**


**Q. STAFF RECAP OF TOWN COUNCIL/BOARD DIRECTIONS RECEIVED**

**R. ADJOURNMENT**

*I certify that the above notice was posted on the bulletin board at Town of Westlake, Town Hall, located at 1500 Solana Blvd., Building 7, Suite 7100, Westlake, TX 76262, and at the Westlake Academy Administration Building located at 2600 JT Ottinger Road, Westlake, TX 76262 in compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code.*



Dianna Buchanan, Town/Board Secretary

 **Disabilities Notice:** *If you plan to attend the meeting and have a disability that requires special needs, please contact the Town Secretary's Office 48 hours in advance by calling phone number 817-490-5711 and reasonable accommodation will be made to assist you.*



## Town Council/Board of Trustees AGENDA ITEM REPORT



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**DATE:** March 24, 2026  
**FROM:** Jon Sasser, Director of Communications, Communications  
**SUBJECT:** Items of Community Interest

**AGENDA ITEM NO:** D.1.

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**SUMMARY/BACKGROUND:**

Updates on events and news around Westlake and Westlake Academy.

*Pursuant to Texas Government Code Section 551.0415 the Town Council (and or designee) may report on the following items: (1) expression of thanks, congratulations, or condolences; (2) information about holiday schedules; (3) recognition of individuals; (4) reminders about upcoming Town Council events; (5) information about community events; and (6) announcements involving imminent threat to public health and safety.*

**NOTABLE ITEMS AND UPCOMING EVENTS:**

**Alliance Development Forum**

Wednesday, March 25, 2026; 11 am-1 pm  
Cambria Hotel and Conference: 4450 Dale Earnhardt Wy, Northlake, TX 76262

**Town Hall/Municipal Court Closed**

Observance of Good Friday  
Friday, April 3, 2026

**Planning & Zoning Meeting**

Tuesday, April 7, 2026; 5 pm  
1500 Solana Blvd, Westlake

**Town Council Meeting**

Tuesday, April 21, 2026; 4 pm  
1500 Solana Blvd, Westlake

**Spring Concert #1**

Thursday, April 23<sup>rd</sup>, 2026; 6 pm  
1500 Solana Blvd, Westlake

**Election Day**

Saturday, May 2, 2026  
(Westlake Polling Location: Fire Station)

**Spring Cleanup**

Saturday, May 2, 2026; 9 am-12 pm  
1600 Solana Blvd, Westlake

**National Day of Prayer**

Thursday, May 7, 2026; 12 pm  
The Church at Trophy Lakes in Trophy Club

**Spring Concert #2**

Thursday, May 7, 2026; 6 pm  
1500 Solana Blvd, Westlake

**Fire Station Open House**

Saturday, May 9, 2026; 10 am-2 pm  
2000 Dove Road, Westlake

**Additional Notes:**

- **Election Canvass will be on May 12<sup>th</sup>**
- **WA Senior Banquet will be on May 20<sup>th</sup>**
- **WA Graduation will be on May 23<sup>rd</sup>**
- **WA Gala raised (see sheet)**



## Town Council/Board of Trustees AGENDA ITEM REPORT



**DATE:** March 24, 2026  
**FROM:** Kelly Ritchie, Head of School, Westlake Academy  
**SUBJECT:** Recognition of Westlake Academy Students

**AGENDA ITEM NO:** E.1.

**ATTACHMENTS:**

None

**SUMMARY :**

Recognition of Westlake Academy Students

Shubhi Sharma (G6): Winner, Denton County Area Spelling Bee

Zain Hashmani (G8): Model UN Conference First Place - Best Delegate, making him eligible for the 2026 Model United Nations National Championships.

Eshan Patel (G12): DECA state champion, advancing to the International Career Development Conference in April.

Westlake Academy Talent Show Winners:

1st place - Nainika Mummaneni (G4)

2nd place - Isaac Wang (G3), Jonah Crawford (G3), Eli Wang (G5), and Ethan Evans (G5)

3rd place: Dexter Shahwan (G7) and Connor Justak (G7)

Girls Soccer Team--TAIAO State Champions for 2026



## Town Council/Board of Trustees AGENDA ITEM REPORT



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**DATE:** March 24, 2026 **AGENDA ITEM NO:** E.2.  
**FROM:** Bradley Fortune, Keller Police Chief, Town Manager's Office  
**SUBJECT:** Presentation of Annual Report from the Keller Police Department relative to Police Services and the Racial Profiling Report for the Town of Westlake.

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### **ATTACHMENTS:**

1. Westlake Annual Police Services Report 2025
2. 2025 Racial Profiling Report

### **SUMMARY :**

Each year the Keller Police Department provides the Town Council with an annual report regarding various police services provided to the Westlake community as well as the required racial profiling report.

### **BACKGROUND AND DISCUSSION:**

The Keller Police Department continues to provide policing services to the Town of Westlake with a focus on building trust, enhancing transparency, and fostering community partnerships. In this report, Chief Fortune will provide the 2025 annual update for the police department as well as provide data surrounding our four (4) performance measures: Crime Rate, Traffic Safety, Timely Service and Quality of Service. We will also provide ***the annual Racial Profiling Report completed by Del Carmen Consulting.***

### **FISCAL IMPACT:**

None.

### **LEGAL REVIEW:**

N/A.

### **RECOMMENDATION:**

Receive the information contained within the reports.

### **ACTION OPTIONS:**

Receive the reports.

# 2025

## Annual Report

### Town of Westlake



Chief Bradley G. Fortune  
March 14, 2026

***SERVICE ~ JUSTICE ~ FAIRNESS***

March 14, 2026

## PERFORMANCE SUMMARY

The men and women of the Keller Police Department adapted to the various challenges they were faced with throughout 2025 and continued to provide excellent service to the citizens of Westlake as evident by their four (4) performance measures: Crime Rate (1.48 per 1,000 in daytime population), Traffic Safety (13% decrease reportable traffic crashes), Timely Service (4:17 minute average response time to an emergency call) and Quality of Service (98% rated the overall competency as well as department employees' attitudes and behavior as having met or exceeded expectations).

Westlake finished the year with 34 reported Part 1 Crimes. Department objectives coupled with a continued focus on establishing and enhancing relationships, community engagement, support from City Management and City Council continue to play critical roles in maintaining a low crime rate and high quality of life in the Town of Westlake. Our continuous improvement model drives us to work each day to improve our partnership with the community by maintaining a focus on Service, Justice, and Fairness. We continue to strive to be open and transparent in all we do by collaborating with community members as we establish policies and strategies for reducing crime and addressing quality of life issues. As you will see when you read this annual report, the Keller model is a model for success. I believe the quality of our team coupled with the police service model we engage, was directly responsible for maintaining a low crime rate in Westlake and continuing to be responsive to the needs of our community.

As of December 31, 2025, we had five (5) professional staff vacancies (five (5) NETCOM Dispatchers) in the organization. This is 96% of our authorized positions filled.

Please note that attached to the end of this report is the statistical summary of activity for the Town of Westlake for the calendar year 2025 and the preceding ten years. This report does not account for the service level in Keller, which is reported in a separate report to their City Council.

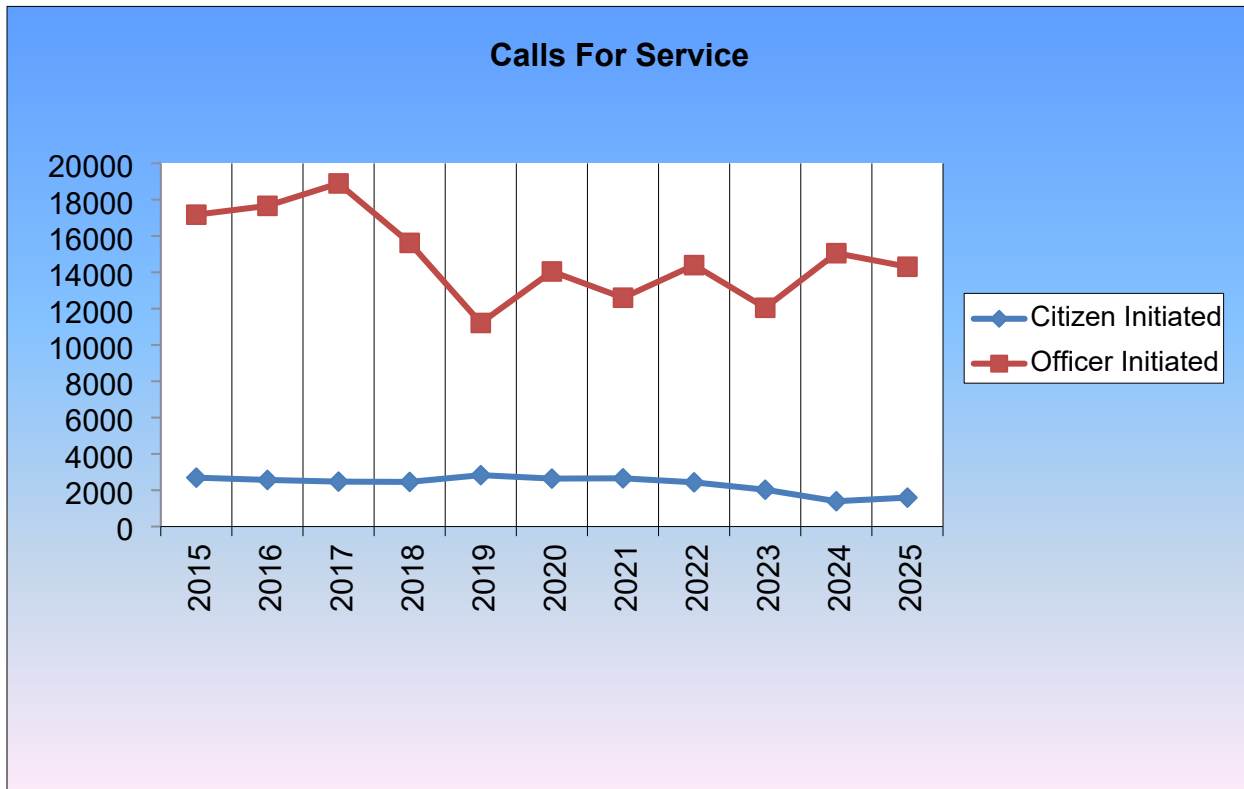
## RECOGNITION

We continue to commend our employees for outstanding performance and demonstrating servant traits in providing service not only to our external customers, but team members as well. During 2025, team members received over 60 commendations. We continue to see an increase in public commendations communicated by mail, email, our social media and our new My90 User Survey.

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### ACTIVITY AND EMERGENCY RESPONSE

Because we are a service industry, we carefully monitor our calls for service. Our total calls for service measures both calls from the public and employee-initiated activities.



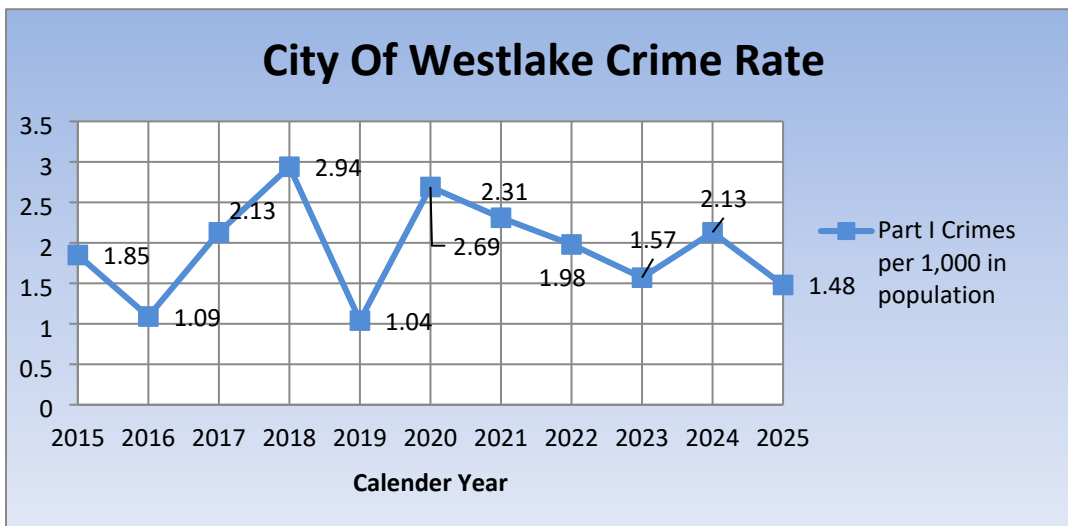
During calendar year 2025, we responded to 1,594 calls from our citizens and our officers initiated 14,306 calls for service. The citizen-initiated calls for service have increased by 14% from the previous year and the officer-initiated calls decreased by 4%. Self-initiated police activity has a direct effect on crime. Properly enforcing the motor vehicle laws by stopping cars helps in the apprehension of dangerous criminals, the prevention of crime, and the change in driver behavior.

Our average response time to an emergency call (priority 1), from receiving the 911 call to arrival on scene, was a 4:17 minute average. This achieves our goal of five (5) minutes or less. Our average response time to priority calls (priority 2-3) was a 9:04 minute average. This exceeds our goal of nine (9) minutes or less by four (4) seconds.

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### CRIME RATE AND QUALITY OF LIFE

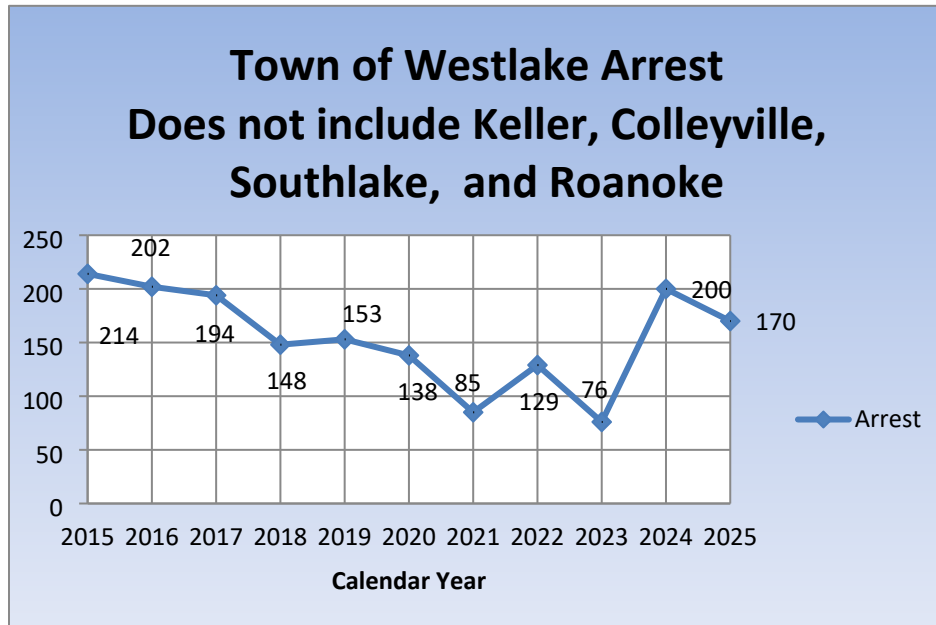
The benchmark to measure crime in communities across the United States is the Uniform Crime Report Part 1 Index Crime. This includes Murder, Rape, Robbery, Aggravated Assault, Burglary, Theft, and Auto Theft. We experienced 34 Part 1 Crimes in 2025, a decrease of 30% from 49 in 2024.



The Town of Westlake continues to maintain a low Part 1 Crime rate, by having a high level of community engagement and the organization deploying a policing strategy that is congruent with the community’s expectations and accepted by our stakeholders. This, along with the continued support of our city council, town manager, and community to provide the resources needed to effectively perform our duties continues to have a direct impact on the lowering of crime in the Town of Westlake and being able to sustain a low crime rate over time.

The total number of in-custody arrests for 2025 was 170, a decrease of 15% from the previous year. This does not include the housing of prisoners under the jail agreements with Southlake, Colleyville, & Roanoke. The prisoners housed in our jail facility last year totaled 2,271. Factors which continue to impact these numbers each year include our agreement with our municipal Judge reference assigning time served to prisoner pickups, and the impact of the Sandra Bland Act, which diverts prisoners in need of psychological and/or medical services to those facilities rather than being housed in holding facilities and jails.

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### TRAFFIC SAFETY

We experienced a 12% decrease in reportable automobile collisions last year. A total of 115 collision reports were completed by our officers in 2025 compared to 132 in 2024. The top three locations are Hwy 114/Davis, Hwy 114/Trophy Lake, and 170/Roanoke Road. The top three contributing factors of crashes in Westlake were Failed to Control Speed, Failed to Yield Right of Way - Stop Sign or Disregard Stop and Go Sign, and Driver Inattention. There was three (3) fatality.

### INTERNAL INVESTIGATIONS AND COMPLAINTS

There were twenty (18) documented complaints against our employees which included twenty-seven (27) total allegations: twelve (12) external and fifteen (15) internal. Of the twenty-seven (27) allegations, fourteen (14) were sustained, two (2) were unfounded, two (2) were not-sustained, one (1) was exonerated, and one (1) was exonerated-policy/training failure. Seven (7) allegations are awaiting an outcome. Eleven (11) of the eighteen (18) complaints were assigned to Internal Affairs to be investigated in 2025.

### RESPONSE TO RESISTANCE

In 2025, officers responded to resistance 33 times against persons who resisted arrest, search, or transport and each time the incident was documented and investigated by a supervisor, reviewed by a Defensive Tactics Instructor, reviewed by the Division Commander, and finally reviewed by the Chief of Police. The number of responses to resistance reports increased by 5 (17%) in 2025. The combined total of prisoners processed in the Keller Regional Detention facility was 2,271 which is an increase of 176 (8%) from 2,095 last year.

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The response to resistance ratio of incidents per thousand prisoners increased from 13 per thousand prisoners in 2024 to 14.5 per thousand prisoners in 2025.

There were no patterns of incidents involving individual officers as 82% (27) responses to resistance incidents were spread among multiple officers and jailers.

Personnel were more likely to become involved in a response to resistance incident on a Saturday (21%) involving a white (55%) male (85%) between the ages of 21 - 29 (30%) between the hours of 00:00 - 05:59 (33%) in a house or residence (36%). The primary response to resistance force type was Show of Force at 18 (55%) uses, followed by Miscellaneous Physical Force at 12 (36%) uses. Miscellaneous Physical Force involves holding, grabbing, or pushing.

Importantly, the review found very few injuries associated with response to resistance incidents. Officers sustained two minor injuries (4%), and arrestees sustained one minor injury (3%), with no moderate, serious, severe, or critical injuries reported for either officers or arrestees. These outcomes indicate that officers generally applied force in a controlled and proportionate manner consistent with departmental policy and training.

The analysis did not reveal any equipment needs or recommended equipment modifications, nor did it reveal any policy / procedure issues or corrections needed at this time. The 2025 Response to Resistance Analysis will be used to guide the defensive tactics training classes throughout 2026. These training sessions are developed around previous Response to Resistance Incidents by refreshing the officer's knowledge on techniques used for certain situations. These incidents also guide our training on new methods and alternatives for handling resistance and noncompliance from suspects. It is recommended that these training sessions should continue to be influenced by the incidents officers are encountering in the field.

#### ATTEMPT TO STOP

There were fifteen (15) reported Attempts to Stop and two (2) Pursuits. The current pursuit policy permits officers to pursue suspects when probable cause exists that the suspect has committed a felony involving the use or threatened use of deadly physical force. Eleven (11) officers were involved in Attempts to Stop. Sixteen (16) of the incidents were terminated by the involved officer/supervisor discretion. There were no trends or patterns of conduct with the officers involved. Nor did it reveal any changes that needed to be made with our pursuit policy and procedure.

#### VOLUNTEER SERVICES

Volunteers in Policing Service (VIPS) vehicle patrol program has completed its 16th year. This is a community policing initiative where graduates of our Citizens Police Academy patrol our city in specially marked vehicles to assist in service and crime prevention activities. Participating members receive special training before they begin patrols and can ride tandem or alone. They assist officers at accident scenes, perform routine tasks,

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ride through the parks and commercial establishments, and perform other non-dangerous crime prevention activities. In addition, VIPS help with the annual recycling event, Keller various city events, Drug Take Back, vacation house checks and wherever else they can be utilized to assist the officers. The Keller VIPS Unit receives yearly training on special police topics of interest or need, such as CPR, AED and Stop the Bleed techniques. This is a great service to our police department and our community.

The VIPS Service Vehicle Team (SVT) takes police vehicles to and from dealerships and outfitters for vehicle service, warranty work, build out, maintenance concerns and state inspections. This service keeps officers on the street and in their sectors instead of tying them up with this task. The Service Vehicle Team (SVT) conducted 24 transports this past year.

The CID Assist Team which involves selected VIPS members to assist CID by being assigned non-violent cases, which require basic complainant contact by phone. They gather basic follow-up information and/or new related information needed for the case. They pick up videos or other electronic devices, which aid CID in solving cases. In 2025, the CID Assist Team had 148 cases assigned to them and completed 149 cases (including several from the year before).

The Gift Guardian program of 2025 sees Keller citizen's holiday packages delivered to the Keller Police Department so that they are safe from potential "porch pirates." This program started November 28<sup>th</sup>, 2025, running through December 24<sup>th</sup>, 2025, and saw 18 packages delivered for safe keeping.

The VIPS unit logged 2,5017.25 hours of active service and drove 8,405 miles patrolling the city of Keller in 2025. During those miles and hours, the VIPS conducted 1,687 house checks and 557 extra school patrols at KISD schools among other activities.

The VIPS have also been responsible for the monthly maintenance/vehicle inspections and care of the CID van and all our PD bicycles.

## COMMUNITY ENGAGEMENT

The Community Services Officer conducts various crime prevention presentations and attends community events on behalf of the police department. These events include Coffee with a Cop, Personal Safety Awareness, Internet Crimes and Social Media Safety, Business and Home Security Surveys, Fraud /Forgery for the Elderly, Citizens Police Academy, Crime Prevention Through Environmental Design (CPTED), Citizen Response to Active Shooter Events (CRASE), Advanced Law Enforcement Rapid Response Training (ALERRT), Etc.

KPD uses multiple social media platforms with the assistance of City Hall, to disseminate relevant information related to crime-trends and crime prevention tips via the City Website, Facebook, and Twitter. In 2025, the Keller Public Safety Facebook account had 28,731 followers, with an average of 3-5 postings each week notifying our followers of crime trends and crime prevention tips. This led to 16,043 total comments, 6,999 shares, 123,798 reactions

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and 28,731 followers. We have increased our Facebook followers by 5% during the past year.

### NATIONAL AND STATE ACCREDITATION

We continue to meet and exceed the standards required as being a Nationally Accredited agency. The voluntary process of accreditation demonstrates a level of excellence by a police department where they comply with over 460 national standards and subjects the organization to an outside review by a team of independent assessors. Accreditation strengthens an agency's accountability, both within the agency and the community, through a set of standards that clearly define authority, performance, and responsibilities. Because the award is only for four years, accreditation is a continuous improvement tool requiring agencies to show compliance to the standards if they wish to remain an accredited police department. In March 2022, the Keller Police Department virtually hosted CALEA Assessors as we again attempted to achieve Accreditation with Excellence for Law Enforcement and Public Safety Communication National Accreditation. The on-site assessments were successful, and the Keller Police Department was awarded Advanced Accreditation and Public Safety Communication Accreditation in July of 2022 in Chicago, Illinois. In March 2023, July 2024, and September 2025 the Keller Police Department and NETCOM Dispatch participated in CALEA remote based assessments and were found to be in compliance with all reviewed files. We will participate in our next onsite assessment in 2026.

In addition to our National Law Enforcement Accreditation programs, we are also a Texas Police Chief's Association (TPCA) Best Practices Accredited Agency, which also requires an onsite evaluation every four years. In May 2025, the Keller Police Department successfully passed another TPCA onsite and were awarded re-accredited. The Keller Police Department first earned Advanced Law Enforcement Accreditation in 2006, Public Safety Communication Accreditation in 2018, and Texas Police Chief's Association Recognition (now accreditation) in 2013. The accreditation processes are funded by the Keller Crime Control and Prevention District Sales Tax.

### CRIME CONTROL PREVENTION DISTRICT

Keller voters decided in November 2021 to renew the city's Crime Control and Prevention District for another 15 years. A common funding mechanism used by cities throughout the state, the 1/4-cent sales tax revenue allocation provides funding for the Keller Police Department's capital projects, vehicles and equipment.

Residents originally passed the CCPD sales tax in 2001 aimed primarily at building Phase I of the Keller Police Department's facility. Five years later, voters approved a 15-year continuation. That money has since been used for Phase II of the facility, including the Regional Animal Adoption Center and Regional Detention Facility, the department's accreditation programs, and a replacement fund for anticipated capital maintenance.

The CCPD also funds vehicle and technology purchases and replacements, including patrol vehicles, motorcycles and bicycles; body-worn and in-vehicle camera systems; radio systems

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and mobile data terminals; NETCOM 911's computer-aided dispatch system for regional police and fire/EMS response; uniforms and training for members of the regional SWAT team; technology and equipment used by the Criminal Investigations Division; and more.

A portion of the 8.25% sales tax collected on all applicable sales within the city limits is expected to generate approximately \$2 million during the next fiscal year funded by residents and non-residents alike.

## REGIONAL SERVICES

The multi-year agreements with the Cities of Southlake and Colleyville, to provide jail and public safety dispatching services, and full police services to the Town of Westlake, continues to show value in cost effectiveness and service delivery. The city of Roanoke joined the jail aspect of this interlocal agreement in 2020. The sharing of communication across the borders continues to pay dividends. We continue to have success stories where the quick sharing of information between the cities because of the consolidated communications center led to the apprehension of suspects of crime. Fire dispatching continues to improve with faster turnout times and better sharing of information among the four fire departments. The estimated cost savings to the four cities well exceeds \$1,200,000 in personnel and equipment costs. The regional communications center answered 28,507 9-1-1 calls and 65,547 non-emergency phone calls.

In 2012, the cities of Keller, Southlake, and Colleyville merged their respective animal services operations into a single regional animal services operation at the Keller Police facility. Roanoke joined this operation in 2020. Costs related to the Regional Animal Services and Adoption Center are shared by each city and paid in direct proportion to the percentage of calls for animal services, and number of animals impounded and housed in the facility annually. During 2025, the Regional Animal Services responded to 709 calls for service in Keller. The unit impounded 636 animals, a decrease of 39% and placed 615 of those animals for a live release rate of 96%. The Animal Control Unit euthanized forty four (44) dogs and cats due to illness, temperament and/or at the animal owner's request during the year. During 2025 the unit impounded 62 wildlife and relocated 4 of them back to their habitat or to a rescue.

In May of 2014, the Humane Society of North Texas (HSNT) came on-board at the Keller Police Department adjoining their professionalism in animal care and adoption with our partnering cities. The HSNT now operates the Regional Animal Adoption Center with both its full-time staff as well as dedicated volunteers. This public/not for profit partnership allows the experts in the industry of animal care to manage and staff the adoption center. This has increased the adoption rate of animals from the regional animal control facility, while allowing the cities to avoid \$150,000 in annual staffing costs. From January 1<sup>st</sup> through December 31<sup>st</sup>, 2025, HSNT successfully adopted 615 dogs and cats from the Regional Adoption Center. This is a decrease 37% over 2024. In addition to the adoption successes, HSNT staff members assisted Keller Regional Services with processing pet registrations and greeting the public when they have an Animal Service issue or concern.

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### FISCAL RESPONSIBILITY

We operated within our budget expending \$12,791,039. The City received \$3,899,203 of revenue from the Cities of Colleyville, Southlake, Westlake, and Roanoke for our regional efforts. We also operated within our Crime Control and Prevention budget expending \$2,353,322.

Price of the Town of Westlake police services agreement for FY26 is \$1,315,245. The total number of Westlake calls for service is 15,900. The price per call for service for the Town of Westlake is **\$82.72**. The price per call for service for the City of Keller is **\$205.75**.


	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
<b>Motor Vehicle Stops</b>	10,432	11,109	10,718	8,339	7,729	7,457	7,049	7,351	5,016	6,429	5,834
<b>Investigative Motor Vehicle Stops</b>	1,248	1,265	1,374	930	853	960	945	764	758	267	211
<b>Miscellaneous Service Calls</b>	2,240	1,077	560	538	1,770	1,465	1,394	2,233	2,095	3,234	4,300
<b>Traffic Accident Investigations</b>	398	461	386	333	327	219	254	310	265	348	419
<b>Building Checks</b>	6,506	6,061	7,453	6,621	3,244	5,872	5,161	6,256	6,499	6,249	5,276
<b>Alarm Responses</b>	230	241	224	277	212	191	215	284	200	187	161
<b>Animal Control Calls for Service</b>	60	74	78	81	84	65	153	113	101	60	72
<b>Citizen Initiated Calls for Service</b>	2,693	1,833	1,613	1,618	1,671	1,420	1,641	1,228	1,132	1,394	1,594
<b>Total Calls for Service</b>	19,866	18,949	19,289	16,108	13,282	15,204	14,073	16,434	14,075	16,447	15,900
<b>Part 1 Crimes</b>	20	13	22	31	14	48	48	34	28	49	34
<b>Traffic Violations on Citations</b>	7,524	7,583	6,777	5,134	5,724	5,204	4,427	4,234	2,696	3,929	3,637
<b>Westlake Prisoners Booked-In</b>	211	202	194	148	153	138	85	129	76	200	170
<b>DWI Arrests</b>	62	66	70	50	25	33	36	47	30	60	52
<b>Case Reports</b>	118	122	133	134	91	175	157	188	164	326	322
<b>Fire/EMS Calls Dispatched</b>	463	493	503	523	454	416	620	650	551	638	558

# KELLER POLICE DEPARTMENT 2025 RACIAL PROFILING REPORT



**DEL CARMEN**  
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LAW ENFORCEMENT EXPERTS



*"Dr. Alex del Carmen's work on racial profiling exemplifies the very best of the Sandra Bland Act, named after my daughter. My daughter's pledge to fight for injustice is best represented in the high quality of Dr. del Carmen's reports which include, as required by law, the data analysis, audits, findings and recommendations. I commend the agencies that work with him as it is clear that they have embraced transparency and adherence to the law."*

*-Quote by Geneva Reed (Mother of Sandra Bland)*

January 19, 2026

Keller City Council  
1100 Bear Creak Pkwy.  
Keller, TX 76248

Dear Distinguished Members of the City Council,

The Texas Racial Profiling Law, originally enacted by the Texas Legislature in 2001, was designed to address concerns regarding racial profiling practices in law enforcement. Throughout the preceding calendar year, the Keller Police Department, in full compliance with statutory requirements, systematically collected and reported traffic and motor vehicle-related contact data for the express purpose of identifying, evaluating, and addressing any potential concerns regarding racial profiling practices within the department.



Since its initial enactment, the Texas Racial Profiling Law has undergone significant legislative modifications. During the 2009 legislative session, the law was amended to incorporate additional data collection and reporting requirements. Subsequently, in 2017, the Texas Legislature passed two landmark pieces of legislation: House Bill 3051, which standardized racial and ethnic classification categories, and the Sandra Bland Act (Senate Bill 1849), which substantially expanded data collection mandates and analytical requirements. The Sandra Bland Act represents the most comprehensive legislative framework in Texas history pertaining to law enforcement contact data requirements. I am pleased to confirm that the Keller Police Department has satisfied all statutory requirements, and the documentation contained herein demonstrates full compliance with these legislative mandates.

This annual report is organized into distinct sections, each addressing specific components of the compliance framework. Section One contains the table of contents, providing navigational guidance throughout the document. Section Two presents documentation demonstrating the Keller Police Department's compliance with the procedural requirements established under the Texas Racial Profiling Law, including evidence of mandatory training protocols for all sworn personnel on racial profiling prevention, as well as the institutionalization of formal compliment and complaint processes as required by statute.

Section Three contains comprehensive statistical data pertaining to motor vehicle-related contacts, as defined by applicable law, occurring between January 1, 2025, and December 31, 2025. This section includes the Tier 2 reporting form, which must be submitted to the Texas Commission on Law Enforcement (TCOLE) and the local governing authority by March 1 of each calendar year. All data presented in this report was compared against the Fair Roads Standard, a baseline measure derived from U.S. Census Bureau data. The analytical findings and corresponding recommendations are presented in detail within this section.

The final section of this report contains reference materials, including the original text of Senate Bill 1074 (the Texas Racial Profiling Law) and the Sandra Bland Act (current governing law). Additionally, this section includes a comprehensive listing of compliance requirements established by TCOLE. The findings documented in this report substantiate the Keller Police Department's ongoing commitment to full compliance with the Texas Racial Profiling Law and its commitment to constitutional policing practices.

Respectfully submitted,

Alex del Carmen, Ph.D.  
Criminologist

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## **Informing the Public on the Process of Filing a Compliment or Complaint with the Keller Police Department**

The Texas Racial Profiling Law requires that police agencies provide information to the public regarding the manner in which to file a compliment or racial profiling complaint. In an effort to comply with this particular component, the Keller Police Department launched an educational campaign aimed at informing the public on issues relevant to the racial profiling complaint process.

The police department made available, in the lobby area and on its web site, information relevant to filing a compliment and complaint on a racial profiling violation by a Keller Police Officer. In addition, each time an officer issues a citation, ticket or warning, information on how to file a compliment or complaint is given to the individual cited. This information is in the form of a web address (including in the document issued to the citizen), which has instructions and details specifics related to the compliment or complaint processes.

It is believed that through these efforts, the community has been properly informed of the new policies and the complaint processes relevant to racial profiling.

All Keller Police Officers have been instructed, as specified in the Texas Racial Profiling Law, to adhere to all Texas Commission on Law Enforcement (TCOLE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements. To date, all sworn officers of the Keller Police Department have completed the TCOLE basic training on racial profiling. The main outline used to train the officers of Keller has been included in this report.

It is important to recognize that the Chief of the Keller Police Department has also met the training requirements, as specified by the Texas Racial Profiling Law, in the completion of the LEMIT program on racial profiling. The satisfactory completion of the racial profiling training by the sworn personnel of the Keller Police Department fulfills the training requirement as specified in the Education Code (96.641) of the Texas Racial Profiling Law.



## **Racial Profiling 3256**

### **Instructor's Note:**

You may wish to teach this course in conjunction with Asset Forfeiture 3255 because of the related subject matter and applicability of the courses. If this course is taught in conjunction with Asset Forfeiture, you may report it under Combined Profiling and Forfeiture 3257 to reduce data entry.

### **Abstract**

This instructor guide is designed to meet the educational requirement for racial profiling established by legislative mandate: 77R-SB1074.

**Target Population:** Licensed law enforcement personnel in Texas

**Prerequisites:** Experience as a law enforcement officer

**Length of Course:** A suggested instructional time of 4 hours

**Material Requirements:** Overhead projector, chalkboard and/or flip charts, video tape player, handouts, practical exercises, and demonstrations

**Instructor Qualifications:** Instructors should be very knowledgeable about traffic stop procedures and law enforcement issues

### **Evaluation Process and Procedures**

An examination should be given. The instructor may decide upon the nature and content of the examination. It must, however, sufficiently demonstrate the mastery of the subject content by the student.

### **Reference Materials**

Reference materials are located at the end of the course. An electronic copy of this instructor guide may be downloaded from our web site at <http://www.tcleose.state.tx.us>.

## **Racial Profiling 3256**

### **1.0 RACIAL PROFILING AND THE LAW**

**1.1 UNIT GOAL: The student will be able to identify the legal aspects of racial profiling.**

**1.1.1 LEARNING OBJECTIVE: The student will be able to identify the legislative requirements placed upon peace officers and law enforcement agencies regarding racial profiling.**

#### **Racial Profiling Requirements:**

Racial profiling CCP 3.05

Racial profiling prohibited CCP 2.131

Law enforcement policy on racial profiling CCP 2.132

Reports required for traffic and pedestrian stops CCP 2.133

Liability CCP 2.136

Racial profiling education for police chiefs Education Code 96.641

Training program Occupations Code 1701.253

Training required for intermediate certificate Occupations Code 1701.402

Definition of "race or ethnicity" for form Transportation Code 543.202

#### **A. Written departmental policies**

1. Definition of what constitutes racial profiling
2. Prohibition of racial profiling
3. Complaint process
4. Public education
5. Corrective action
6. Collection of traffic-stop statistics
7. Annual reports

#### **B. Not prima facie evidence**

#### **C. Feasibility of use of video equipment**

#### **D. Data does not identify officer**

#### **E. Copy of complaint-related video evidence to officer in question**

#### **F. Vehicle stop report**

1. Physical description of detainees: gender, race or ethnicity
2. Alleged violation
3. Consent to search
4. Contraband
5. Facts supporting probable cause
6. Arrest
7. Warning or citation issued

#### **G. Compilation and analysis of data**

#### **H. Exemption from reporting - audio/video equipment**

#### **I. Officer non-liability**

#### **J. Funding**

#### **K. Required training in racial profiling**

1. Police chiefs
2. All holders of intermediate certificates and/or two-year-old licenses as of 09/01/2001 (training to be completed no later than 09/01/2003) - see legislation 77R-SB1074

**1.1.2 LEARNING OBJECTIVE: The student will become familiar with Supreme Court decisions and other court decisions involving appropriate actions in traffic stops.**

**A. Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769 (1996)**

1. Motor vehicle search exemption
2. Traffic violation acceptable as pretext for further investigation
3. Selective enforcement can be challenged

**B. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968)**

1. Stop & Frisk doctrine
2. Stopping and briefly detaining a person
3. Frisk and pat down

**C. Other cases**

1. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977)
2. Maryland v. Wilson, 117 S.Ct. 882 (1997)
3. Graham v. State, 119 MdApp 444, 705 A.2d 82 (1998)
4. Pryor v. State, 122 Md.App. 671 (1997) cert. denied 352 Md. 312, 721 A.2d 990 (1998)
5. Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999)
6. New York v. Belton, 453 U.S. 454 (1981)

**2.0 RACIAL PROFILING AND THE COMMUNITY**

**2.1 UNIT GOAL: The student will be able to identify logical and social arguments against racial profiling.**

**2.1.1 LEARNING OBJECTIVE: The student will be able to identify logical and social arguments against racial profiling.**

A. There are appropriate reasons for unusual traffic stops (suspicious behavior, the officer's intuition, MOs, etc.), but police work must stop short of cultural stereotyping and racism.

B. Racial profiling would result in criminal arrests, but only because it would target all members of a race randomly – the minor benefits would be far outweighed by the distrust and anger towards law enforcement by minorities and the public as a whole.

C. Racial profiling is self-fulfilling bad logic: if you believed that minorities committed more crimes, then you might look for more minority criminals, and find them in disproportionate numbers.

D. Inappropriate traffic stops generate suspicion and antagonism towards officers and make future stops more volatile – a racially-based stop today can throw suspicion on tomorrow's legitimate stop.

E. By focusing on race, you would not only be harassing innocent citizens, but overlooking criminals of all races and backgrounds – it is a waste of law enforcement resources.

### 3.0 RACIAL PROFILING VERSUS REASONABLE SUSPICION

**3.1 UNIT GOAL: The student will be able to identify the elements of both inappropriate and appropriate traffic stops.**

**3.1.1 LEARNING OBJECTIVE: The student will be able to identify elements of a racially motivated traffic stop.**

- A. Most race-based complaints come from vehicle stops, often since race is used as an inappropriate substitute for drug courier profile elements
- B. "DWB" – "Driving While Black" – a nickname for the public perception that a Black person may be stopped solely because of their race (especially with the suspicion that they are a drug courier), often extended to other minority groups or activities as well ("Driving While Brown," "Flying While Black," etc.)
- C. A typical traffic stop resulting from racial profiling
  1. The vehicle is stopped on the basis of a minor or contrived traffic violation which is used as a pretext for closer inspection of the vehicle, driver, and passengers
  2. The driver and passengers are questioned about things that do not relate to the traffic violation
  3. The driver and passengers are ordered out of the vehicle
  4. The officers visually check all observable parts of the vehicle
  5. The officers proceed on the assumption that drug courier work is involved by detaining the driver and passengers by the roadside
  6. The driver is asked to consent to a vehicle search – if the driver refuses, the officers use other procedures (waiting on a canine unit, criminal record checks, license-plate checks, etc.), and intimidate the driver (with the threat of detaining him/her, obtaining a warrant, etc.)



**3.1.2 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which would constitute reasonable suspicion of drug courier activity.**

- A. Drug courier profile (adapted from a profile developed by the DEA)
  1. Driver is nervous or anxious beyond the ordinary anxiety and cultural communication styles
  2. Signs of long-term driving (driver is unshaven, has empty food containers, etc.)
  3. Vehicle is rented
  4. Driver is a young male, 20-35
  5. No visible luggage, even though driver is traveling
  6. Driver was over-reckless or over-cautious in driving and responding to signals
  7. Use of air fresheners
  
- B. Drug courier activity indicators by themselves are usually not sufficient to justify a stop

**3.1.3 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which could constitute reasonable suspicion of criminal activity.**

- A. Thinking about the totality of circumstances in a vehicle stop
  
- B. Vehicle exterior
  1. Non-standard repainting (esp. on a new vehicle)
  2. Signs of hidden cargo (heavy weight in trunk, windows do not roll down, etc.)
  3. Unusual license plate suggesting a switch (dirty plate, bugs on back plate, etc.)
  4. Unusual circumstances (pulling a camper at night, kids' bikes with no kids, etc.)
  
- C. Pre-stop indicators
  1. Not consistent with traffic flow
  2. Driver is overly cautious, or driver/passengers repeatedly look at police car
  3. Driver begins using a car- or cell-phone when signaled to stop
  4. Unusual pull-over behavior (ignores signals, hesitates, pulls onto new street, moves objects in car, etc.)
  
- D. Vehicle interior
  1. Rear seat or interior panels have been opened, there are tools or spare tire, etc.
  2. Inconsistent items (anti-theft club with a rental, unexpected luggage, etc.)

**Resources**

Proactive Field Stops Training Unit – Instructor's Guide, Maryland Police and Correctional Training Commissions, 2001. (See Appendix A.)

Web address for legislation 77R-SB1074



**Report on Compliments**

The following table contains data regarding officers that have been the subject of a complaint, during the time period of 1/1/25-12/31/25 based on allegations outlining possible violations related to the Texas Racial Profiling Law. The final disposition of the case is also included.

A check above indicates that the Keller Police Department has not received any complaints, on any members of its police services, for having violated the Texas Racial Profiling Law during the time period of 1/1/25-12/31/25.

**Complaints Filed for Possible Violations of The Texas Racial Profiling Law**

Complaint Number	Alleged Violation	Disposition of the Case
1	Racial Profiling	Unsubstantiated
2	Racial Profiling	Unsubstantiated

**Additional Comments:**

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# Tables Illustrating Motor\_Vehicle-Related Contacts

TIER 2 DATA

## TOTAL STOPS: 17,459

### STREET ADDRESS OR APPROXIMATE LOCATION OF STOP.

City Street	8,266
US Highway	4,968
State Highway	3,775
County Road	378
Private Property	72

### WAS RACE OR ETHNICITY KNOWN PRIOR TO STOP?

Yes	114
No	17,345

### RACE OR ETHNICITY

Alaska Native/American Indian	219
Asian/Pacific Islander	1,234
Black	3,002
White	9,866
Hispanic/Latino	3,138

### GENDER

#### Female Total: 6,559

Alaska Native/American Indian	58
Asian/Pacific Islander	415
Black	1,168
White	3,939
Hispanic/Latino	979

#### Male Total: 10,900

Alaska Native/American Indian	161
Asian/Pacific Islander	819
Black	1,834
White	5,927
Hispanic/Latino	2,159

### REASON FOR STOP?

#### Violation of Law Total: 197

Alaska Native/American Indian	5
Asian/Pacific Islander	14
Black	42
White	102
Hispanic/Latino	34

#### Pre-existing Knowledge Total:77

Alaska Native/American Indian	0
Asian/Pacific Islander	3
Black	19
White	37
Hispanic/Latino	18

#### Moving Traffic Violation Total: 13,240

Alaska Native/American Indian	159
Asian/Pacific Islander	976
Black	2,112
White	7,713
Hispanic/Latino	2,280

**Vehicle Traffic Violation Total: 3,945**

Alaska Native/American Indian	55
Asian/Pacific Islander	241
Black	829
White	2,014
Hispanic/Latino	806

**Contraband (in plain view) Total: 34**

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	6
White	18
Hispanic/Latino	10

**WAS SEARCH CONDUCTED?**

	<b>YES</b>	<b>NO</b>
Alaska Native/American Indian	3	216
Asian/Pacific Islander	13	1,221
Black	167	2,835
White	200	9,666
Hispanic/Latino	100	3,038
<b>TOTAL</b>	<b>483</b>	<b>16,976</b>

**Probable Cause Total: 288**

Alaska Native/American Indian	1
Asian/Pacific Islander	7
Black	125
White	103
Hispanic/Latino	52

**Inventory Total: 22**

Alaska Native/American Indian	1
Asian/Pacific Islander	1
Black	9
White	8
Hispanic/Latino	3

**REASON FOR SEARCH?**

**Consent Total: 82**

Alaska Native/American Indian	0
Asian/Pacific Islander	1
Black	19
White	40
Hispanic/Latino	22

**Incident to Arrest Total: 57**

Alaska Native/American Indian	1
Asian/Pacific Islander	4
Black	8
White	31
Hispanic/Latino	13

# TIER 2 DATA

## WAS CONTRABAND DISCOVERED?

	YES	NO
Alaska Native/American Indian	1	2
Asian/Pacific Islander	6	7
Black	103	64
White	124	76
Hispanic/Latino	63	37
<b>TOTAL</b>	<b>297</b>	<b>186</b>

## Did the finding result in arrest?

	YES	NO
Alaska Native/American Indian	0	1
Asian/Pacific Islander	0	6
Black	13	90
White	22	102
Hispanic/Latino	4	59
<b>TOTAL</b>	<b>39</b>	<b>258</b>

## DESCRIPTION OF CONTRABAND

### Drugs Total: 192

Alaska Native/American Indian	1
Asian/Pacific Islander	4
Black	71
White	78
Hispanic/Latino	38

### Currency Total: 2

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	2
Hispanic/Latino	0

### Weapons Total: 12

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	7
White	2
Hispanic/Latino	3

### Alcohol Total: 54

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	9
White	31
Hispanic/Latino	14

**Stolen Property Total: 3**

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	1
White	1
Hispanic/Latino	1

**Other Total: 120**

Alaska Native/American Indian	0
Asian/Pacific Islander	3
Black	45
White	46
Hispanic/Latino	26

**RESULT OF THE STOP**

**Verbal Warning Total: 8**

Alaska Native/American Indian	0
Asian/Pacific Islander	1
Black	2
White	2
Hispanic/Latino	3

**Written Warning Total: 10,936**

Alaska Native/American Indian	169
Asian/Pacific Islander	759
Black	1,869
White	6,454
Hispanic/Latino	1,685

**Citation Total: 6,407**

Alaska Native/American Indian	48
Asian/Pacific Islander	470
Black	1,106
White	3,352
Hispanic/Latino	1,431

**Written Warning and Arrest Total: 46**

Alaska Native/American Indian	1
Asian/Pacific Islander	2
Black	12
White	23
Hispanic/Latino	8

**Citation and Arrest Total: 62**

Alaska Native/American Indian	1
Asian/Pacific Islander	2
Black	13
White	35
Hispanic/Latino	11

**Arrest Total: 0**

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

# TIER 2 DATA

## ARREST BASED ON

### Violation of Penal Code Total: 93

Alaska Native/American Indian	2
Asian/Pacific Islander	2
Black	19
White	55
Hispanic/Latino	15

### Violation of Traffic Law Total: 6

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	2
White	2
Hispanic/Latino	2

### Violation of City Ordinance Total: 0

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

### Outstanding Warrant Total: 9

Alaska Native/American Indian	0
Asian/Pacific Islander	2
Black	4
White	1
Hispanic/Latino	2

## Was physical force used resulting in bodily injury during the stop?

	YES	NO
Alaska Native/American Indian	0	219
Asian/Pacific Islander	0	1,234
Black	0	3,002
White	0	9,866
Hispanic/Latino	0	3,138
<b>TOTAL</b>	<b>0</b>	<b>17,459</b>



**Table 1. Citations and Warnings**

Race/ Ethnicity	All Contacts	Citations	Verbal Warning	Written Warning	Contact Percent	Citation Percent	Verbal Percent	Written Percent
<b>Alaska Native/ American Indian</b>	219	49	0	169	1%	1%	0%	2%
<b>Asian/ Pacific Islander</b>	1,234	472	1	759	7%	7%	13%	7%
<b>Black</b>	3,002	1,119	2	1,869	17%	17%	25%	17%
<b>White</b>	9,866	3,387	2	6,454	57%	52%	25%	59%
<b>Hispanic/ Latino</b>	3,138	1,442	3	1,685	18%	22%	38%	15%
<b>TOTAL</b>	17,459	6,469	8	10,936	100%	100%	100%	100%



**Table 2. Motor Vehicle Contacts and Fair Roads Standard Comparison**

Comparison of motor vehicle-related contacts with households that have vehicle access.

Race/Ethnicity	Contact Percentage	Households with Vehicle Access
<b>Alaska Native/American Indian</b>	1%	0%
<b>Asian/Pacific Islander</b>	7%	5%
<b>Black</b>	17%	14%
<b>White</b>	57%	60%
<b>Hispanic/Latino</b>	18%	19%
<b>TOTAL</b>	100%	98%

**Table 3. Motor Vehicle Searches and Arrests.**

Race/Ethnicity	Searches	Consent Searches	Arrests
<b>Alaska Native/American Indian</b>	3	0	2
<b>Asian/Pacific Islander</b>	13	1	4
<b>Black</b>	167	19	25
<b>White</b>	200	40	58
<b>Hispanic/Latino</b>	100	22	19
<b>TOTAL</b>	483	82	108

**Table 4. Instances Where Peace Officers Used Physical Force Resulting in Bodily Injury**

<b>Instances Where Peace Officers Used Physical Force that Resulted in Bodily Injury</b>	<b>Arrest</b>	<b>Location of Stop</b>	<b>Reason for Stop</b>	<b>Bodily Harm</b>

**Table 5. Search Data**

<b>Race/ Ethnicity</b>	<b>Searches</b>	<b>Contraband Found Yes</b>	<b>Contraband Found No</b>	<b>Arrests</b>	<b>Percent Searches</b>	<b>Percent Contraband Found</b>	<b>Percent No Contraband</b>	<b>Percent Arrest</b>
<b>Alaska Native/ American Indian</b>	3	1	2	2	1%	0%	1%	2%
<b>Asian/ Pacific Islander</b>	13	6	7	4	3%	2%	4%	4%
<b>Black</b>	167	103	64	25	35%	35%	34%	23%
<b>White</b>	200	124	76	58	41%	42%	41%	54%
<b>Hispanic/ Latino</b>	100	63	37	19	21%	21%	20%	18%
<b>TOTAL</b>	483	297	186	108	100%	100%	100%	100%

**Table 6. Report on Audits.**

The following table contains data regarding the number and outcome of required data audits during the period of 1/1/25-12/31/25.

<b>Audit Data</b>	<b>Number of Data Audits Completed</b>	<b>Date of Completion</b>	<b>Outcome of Audit</b>
1	1	03/01/25	Data was valid and reliable
2	1	06/01/25	Data was valid and reliable
3	1	09/01/25	Data was valid and reliable
4	1	12/01/25	Data was valid and reliable

<b>ADDITIONAL COMMENTS:</b>

**Table 7. Instance Where Force Resulted in Bodily Injury.**

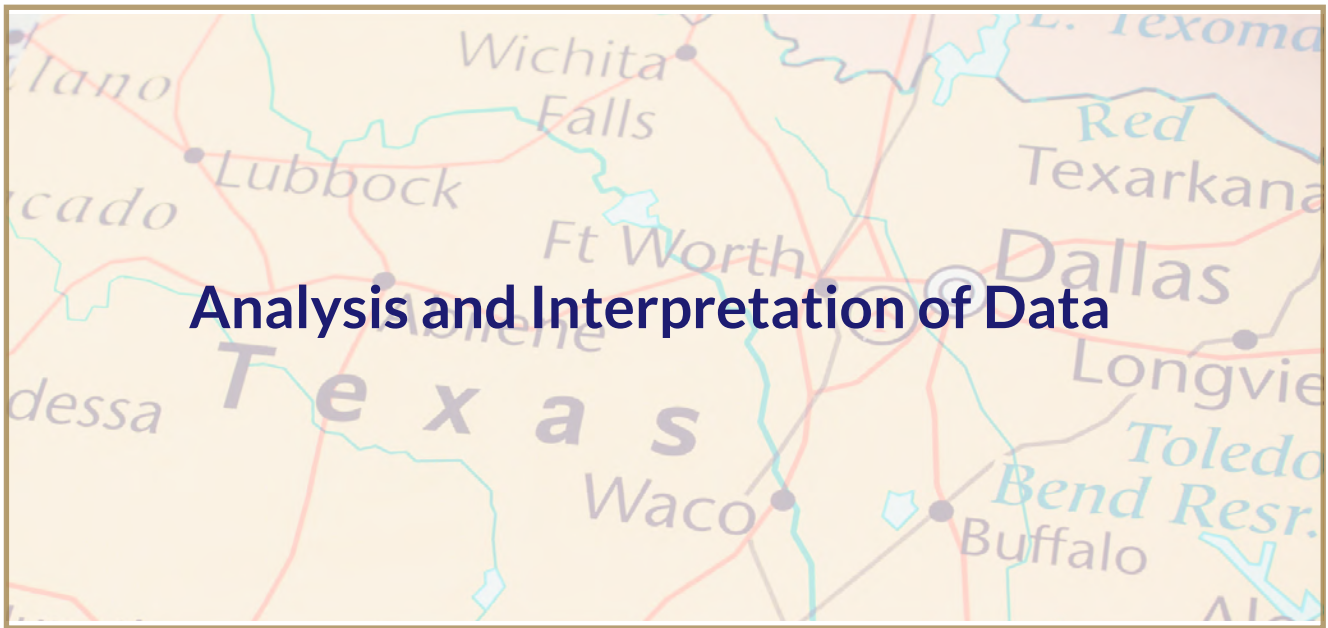
<b>Race/Ethnicity</b>	<b>Number</b>	<b>Percent</b>
<b>Alaska Native/American Indian</b>	0	0%
<b>Asian/Pacific Islander</b>	0	0%
<b>Black</b>	0	0%
<b>White</b>	0	0%
<b>Hispanic/Latino</b>	0	0%
<b>TOTAL</b>	0	0%

**Table 8. Reason for Arrests from Vehicle Contact**

Race/ Ethnicity	Violation of Penal Code	Violation of Traffic Law	Violation of City Ordinance	Outstanding Warrant	Percent Penal Code	Percent Traffic Law	Percent City Ordinance	Percent Warrant
Alaska Native/ American Indian	2	0	0	0	2%	0%	0%	0%
Asian/Pacific Islander	2	0	0	2	2%	0%	0%	22%
Black	19	2	0	4	20%	33%	0%	44%
White	55	2	0	1	59%	33%	0%	11%
Hispanic/ Latino	15	2	0	2	16%	33%	0%	22%
<b>TOTAL</b>	93	6	0	9	100%	100%	0%	100%

**Table 9. Contraband Hit Rate**

Race/ Ethnicity	Searches	Contraband Found Yes	Contraband Hit Rate	Search Percent	Contraband Percent
Alaska Native/ American Indian	3	1	33%	1%	0%
Asian/ Pacific Islander	13	6	46%	3%	2%
Black	167	103	62%	35%	35%
White	200	124	62%	41%	42%
Hispanic/Latino	100	63	63%	21%	21%



## Legislative Background and Statutory Framework

In 2001, the Texas Legislature enacted Senate Bill 1074, establishing the Texas Racial Profiling Law. This legislation became effective on January 1, 2002, and required all law enforcement agencies in Texas to collect traffic-related contact data and submit annual reports to their respective local governing authorities by March 1 of each calendar year. The original statutory framework remained substantially unchanged until 2009, when the Texas Legislature passed House Bill 3389, introducing significant amendments to the data collection and reporting requirements.

The 2009 legislative amendments, which took effect on January 1, 2010, expanded the definition of reportable contacts to include all motor vehicle-related encounters resulting in the issuance of a citation or custodial arrest. Additionally, the amended statute required law enforcement officers to document whether they possessed knowledge of the individual's race or ethnicity prior to initiating the detention. The 2009 legislation also mandated the inclusion of "Middle Eastern" as a distinct racial and ethnic classification category and established TCOLE as the central repository for annual data submissions.

In 2017, the Texas Legislature enacted two significant pieces of legislation affecting racial profiling data collection requirements. House Bill 3051 eliminated the Middle Eastern classification category and standardized racial and ethnic designations to align with federal reporting standards. Concurrently, the Sandra Bland Act (Senate Bill 1849) was passed and signed into law, representing the most comprehensive legislative mandate in Texas history regarding law enforcement contact data requirements. The Sandra Bland Act, which became effective on January 1, 2018, not only expanded data collection requirements but also mandated detailed analytical assessments addressing the following statutory elements:

1. *A comparative analysis of compiled information pursuant to Article 2.133, including:*
  - a. *Evaluation and comparison of motor vehicle stops within the applicable jurisdiction between persons recognized as racial or ethnic minorities and persons not recognized as racial or ethnic minorities;*
  - b. *Examination of the disposition of motor vehicle stops conducted by agency personnel, categorized according to the race or ethnicity of affected persons, including any searches resulting from stops within the applicable jurisdiction;*
  - c. *Evaluation and comparison of searches resulting from motor vehicle stops within the applicable jurisdiction and documentation of whether contraband or other evidence was discovered during the course of such searches.*
2. *Documentation of all complaints filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.*

## **Analytical Methodology and Baseline Considerations**

In accordance with the Texas Racial Profiling Law and Sandra Bland Act requirements, the Keller Police Department commissioned an independent analysis of its 2025 motor vehicle contact data. The analytical framework employed in this study incorporated two distinct methodological approaches. The primary analysis involved a comprehensive evaluation of all motor vehicle-related contact data collected during the 2025 reporting period. This analysis measured, as required by statute, the number and percentage of contacts involving individuals classified as White, Black, Hispanic or Latino, Asian and Pacific Islander, and Alaska Native and American Indian, who encountered law enforcement during motor vehicle-related contacts resulting in the issuance of citations, warnings, or custodial arrests.

The Tier 2 data analysis encompassed multiple variables including, but not limited to: the number and percentage of contacts by race and ethnicity; gender distribution; documented reason for the stop; geographic location of the encounter; search activity including search type classification; outcome of the contact; legal basis for any resulting arrest; and any use of physical force resulting in bodily injury. This comprehensive data collection framework enables a thorough assessment of departmental practices and facilitates identification of any patterns warranting further examination.

The analytical framework employed in this report utilized a comparative methodology that assessed 2025 motor vehicle contact data against an established demographic baseline. It should be noted that considerable scholarly debate exists regarding the appropriate baseline measure for analyzing motor vehicle-related contact data. Among available baseline measures, the Keller Police Department accepted the recommendation to employ the Fair Roads Standard as the primary comparative benchmark. This particular baseline is derived from U.S. Census Bureau data (2020) pertaining to the number of households with vehicle access, controlled for the race and ethnicity of heads of households.

It is important to acknowledge the methodological limitations inherent in utilizing census-derived baseline data for racial profiling analysis. Census data encompasses all residents within a given jurisdiction, regardless of their status within the driving population. Furthermore, census data captures information exclusively pertaining to municipal residents, thereby excluding individuals who may have encountered the Keller Police Department during the reporting period but reside outside jurisdictional boundaries. In certain municipalities, contacts with non-residents constitute a substantial proportion of all motor vehicle-related encounters recorded during any given reporting period.

In 2002, prominent civil rights organizations in Texas advocated for the adoption of the Fair Roads Standard as the preferred baseline measure for all law enforcement agencies conducting racial profiling analyses. This standard compares census data specific to "households" with vehicle access against "contacts," which represent individual-level counts. This methodological approach introduces the potential for ecological fallacy, as household-level data is being compared with individual-level contact data. Notwithstanding these limitations, the Keller Police Department elected to employ this comparison methodology to demonstrate institutional commitment to transparency and community accountability. The Fair Roads Standard data utilized in this analysis is specific to the jurisdiction of the Dallas Fort-Worth (DFW) Metroplex.

## **Tier 2 Motor Vehicle-Related Contact Analysis (2025)**

Examination of the enhanced Tier 2 data collected during the 2025 reporting period reveals distinct patterns in motor vehicle-related contacts. The demographic distribution of contacts indicates that the majority of motor vehicle-related encounters involved White individuals, followed by Hispanic individuals. Among all individuals contacted by law enforcement, the greatest number of citations were issued to White and Hispanic individuals, followed by Black individuals. With respect to written warnings, the majority were issued to White individuals, with Black individuals representing the second largest recipient group.

Analysis of search and arrest data reveals that the majority of searches were conducted involving White individuals. When examining search methodology, the greatest number of consent searches involved White and Hispanic individuals. Similarly, the majority of custodial arrests involved White individuals. Overall, the preponderance of searches resulted in the discovery of contraband. Among searches that yielded contraband, the majority involved White individuals, followed by Black individuals. Among searches that did not produce contraband, the majority involved White individuals.

Arrest data indicates that the majority of custodial arrests involved White individuals. Among arrests originating from alleged violations of the Texas Penal Code, the majority involved White individuals. With respect to use of force, the department reports no instances where physical force was used resulting in bodily injury during the reporting period.

## **Comparative Analysis**

A comprehensive comparative analysis was conducted examining 2025 motor vehicle contact data against census data pertaining to households within DFW that reported vehicle access in the 2020 Census. This analysis produced the following findings:

The percentage of White and Hispanic individuals who came into contact with law enforcement was equal to or lower than the percentage of White and Hispanic households within DFW that reported vehicle access in the most recent census enumeration. Conversely, the data revealed that a higher percentage of Black, Asian, and American Indian individuals came into contact with law enforcement compared to the percentage of Black, Asian, and American Indian households that reported vehicle access. It should be noted that the percentage differential for Asian and American Indian contacts relative to household representation is less than 3%, which may be considered statistically insignificant depending upon the analytical threshold employed.

The contraband discovery rate analysis reveals that among all searches conducted during the 2025 reporting period, Hispanic individuals demonstrated the highest contraband hit rate, followed by White and Black individuals respectively. This indicates that among all searches performed, the highest percentage of searches resulting in contraband discovery involved Hispanic individuals. The lowest contraband discovery rate was observed among American Indian individuals.

## **Summary of Findings**

As mandated by the current Texas Racial Profiling Law, law enforcement agencies are required to conduct data audits to validate the accuracy and reliability of reported data. In compliance with this requirement, the Keller Police Department engaged Del Carmen Consulting, LLC to perform independent data audits consistent with normative statistical practices and methodological standards. As documented in the accompanying audit report, the validation process confirms that the data submitted is both valid and reliable.

Furthermore, as required by statute, this report includes a comprehensive analysis of search activity, including documentation of whether contraband was discovered as a result of searches while controlling for the race and ethnicity of searched individuals. The search analysis demonstrates that the Keller Police Department is engaging in search practices consistent with prevailing national trends in law enforcement and does not reveal patterns indicative of discriminatory practices.

Based upon the analytical findings presented in this report, the following recommendations are offered to ensure continued compliance and institutional best practices:

1. Continue to collect and evaluate supplementary motor vehicle contact data elements, including but not limited to documented bases for probable cause searches and detailed contraband classification, which may prove valuable in assessing the nature and circumstances of law enforcement contacts with all individuals.
2. Commission an independent analysis of contact and search data during the upcoming reporting period to maintain analytical continuity and identify any emerging trends.
3. Continue to commission periodic data audits to ensure data integrity and verify that collected data is consistent with reported data, thereby maintaining the validity and reliability of all submissions.

## **Conclusion**

The comprehensive data analysis presented in this report serves as documented evidence that the Keller Police Department has achieved full compliance with the Texas Racial Profiling Law and all associated statutory requirements. This report demonstrates that the department has:

- Implemented and maintains a comprehensive racial profiling policy in accordance with statutory requirements;
- Established and publicized procedures for members of the public to file compliments or complaints regarding officer conduct;
- Commissioned periodic data audits to ensure the validity and reliability of all collected and reported data;
- Collected and commissioned independent analysis of all required Tier 2 data elements; and
- Ensured that the practice of racial profiling is expressly prohibited and will not be accepted or tolerated within the organization.

The Keller Police Department remains committed to constitutional policing practices, equitable treatment of all individuals, and continued compliance with all applicable state and federal requirements pertaining to racial profiling prevention and reporting.

# APPENDICES

*[This section should include the following reference materials:]*

- ✓ Original text of Senate Bill 1074 (Texas Racial Profiling Law)
- ✓ Sandra Bland Act (Senate Bill 1849) - Current governing law
- ✓ TCOLE compliance requirements and guidelines
- ✓ Agency racial profiling policy documentation
- ✓ Training documentation and certifications
- ✓ Complaint and compliment procedure documentation
- ✓ Data audit methodology and validation results
- ✓ Tier 2 data collection forms and submission confirmation



# LEGISLATIVE & ADMINISTRATIVE

# TCOLE GUIDELINES

## Guidelines for Compiling and Reporting Data under Senate Bill 1074

### Background

Senate Bill 1074 of the 77<sup>th</sup> Legislature established requirements in the Texas Code of Criminal Procedure (TCCP) for law enforcement agencies. The Commission developed this document to assist agencies in complying with the statutory requirements.

The guidelines are written in the form of standards using a style developed from accreditation organizations including the Commission on Accreditation for Law Enforcement Agencies (CALEA). The standards provide a description of *what* must be accomplished by an agency but allows wide latitude in determining *how* the agency will achieve compliance with each applicable standard.

Each standard is composed of two parts: the standard statement and the commentary. The *standard statement* is a declarative sentence that places a clear-cut requirement, or multiple requirements, on an agency. The commentary supports the standard statement but is not binding. The commentary can serve as a prompt, as guidance to clarify the intent of the standard, or as an example of one possible way to comply with the standard.

### Standard 1

Each law enforcement agency has a detailed written directive that:

- clearly defines acts that constitute racial profiling;
- strictly prohibits peace officers employed by the agency from engaging in racial profiling;
- implements a process by which an individual may file a complaint with the agency if the individual believes a peace officer employed by the agency has engaged in racial profiling with respect to the individual filing the complaint;
- provides for public education relating to the complaint process;
- requires appropriate corrective action to be taken against a peace officer employed by the agency who, after investigation, is shown to have engaged in racial profiling in violation of the agency's written racial profiling policy; and
- requires the collection of certain types of data for subsequent reporting.

### Commentary

Article 2.131 of the TCCP prohibits officers from engaging in racial profiling, and article 2.132 of the TCCP now requires a written policy that contains the elements listed in this standard. The article also specifically defines a law enforcement agency as it applies to this statute as an “agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers’ official duties.”

The article further defines race or ethnicity as being of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American.” The statute does not limit the required policies to just these ethnic groups.

This written policy is to be adopted and implemented no later than January 1, 2002.

## **Standard 2**

Each peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic, or who stops a pedestrian for any suspected offense reports to the employing law enforcement agency information relating to the stop, to include:

- a physical description of each person detained, including gender and the person’s race or ethnicity, as stated by the person, or, if the person does not state a race or ethnicity, as determined by the officer’s best judgment;
- the traffic law or ordinance alleged to have been violated or the suspected offense;
- whether the officer conducted a search as a result of the stop and, if so, whether the person stopped consented to the search;
- whether any contraband was discovered in the course of the search, and the type of contraband discovered;
- whether probable cause to search existed, and the facts supporting the existence of that probable cause;
- whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;
- the street address or approximate location of the stop; and
- whether the officer issued a warning or citation as a result of the stop, including a description of the warning or a statement of the violation charged.

## **Commentary**

The information required by 2.133 TCCP is used to complete the agency reporting requirements found in Article 2.134. A peace officer and an agency may be exempted from this requirement under Article 2.135 TCCP Exemption for Agencies Using Video and Audio Equipment. An agency may be exempt from this reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds. Section 2.135 (a)(2) states, “the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a) (1) (A) and the agency does not receive from the state funds for video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.”

## **Standard 3**

The agency compiles the information collected under 2.132 and 2.133 and analyzes the information identified in 2.133.

## Commentary

Senate Bill 1074 from the 77<sup>th</sup> Session of the Texas Legislature created requirements for law enforcement agencies to gather specific information and to report it to each county or municipality served. New sections of law were added to the Code of Criminal Procedure regarding the reporting of traffic and pedestrian stops. Detained is defined as when a person stopped is not free to leave.

Article 2.134 TCCP requires the agency to compile and provide and analysis of the information collected by peace officer employed by the agency. The report is provided to the governing body of the municipality or county no later than March 1 of each year and covers the previous calendar year.

There is data collection and reporting required based on Article 2.132 CCP (tier one) and Article 2.133 CCP (tier two).

The minimum requirements for “tier one” data for traffic stops in which a citation results are:

- 1) the race or ethnicity of individual detained (race and ethnicity as defined by the bill means of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American”);
- 2) whether a search was conducted, and if there was a search, whether it was a consent search or a probable cause search; and
- 3) whether there was a custody arrest.

The minimum requirements for reporting on “tier two” reports include traffic and pedestrian stops. Tier two data include:

- 1) the detained person’s gender and race or ethnicity;
- 2) the type of law violation suspected, e.g., hazardous traffic, non-hazardous traffic, or other criminal investigation (the Texas Department of Public Safety publishes a categorization of traffic offenses into hazardous or non-hazardous);
- 3) whether a search was conducted, and if so whether it was based on consent or probable cause;
- 4) facts supporting probable cause;
- 5) the type, if any, of contraband that was collected;
- 6) disposition of the stop, e.g., arrest, ticket, warning, or release;
- 7) location of stop; and
- 8) statement of the charge, e.g., felony, misdemeanor, or traffic.

Tier one reports are made to the governing body of each county or municipality served by the agency an annual report of information if the agency is an agency of a county, municipality, or other political subdivision of the state. Tier one and two reports are reported to the county or municipality not later than March 1 for the previous calendar year beginning March 1, 2003. Tier two reports include a comparative analysis between the race and ethnicity of persons detained to see if a differential pattern of treatment can be discerned based on the disposition of stops

including searches resulting from the stops. The reports also include information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling. An agency may be exempt from the tier two reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds [See 2.135 (a)(2) TCCP].

Reports should include both raw numbers and percentages for each group. Caution should be exercised in interpreting the data involving percentages because of statistical distortions caused by very small numbers in any particular category, for example, if only one American Indian is stopped and searched, that stop would not provide an accurate comparison with 200 stops among Caucasians with 100 searches. In the first case, a 100% search rate would be skewed data when compared to a 50% rate for Caucasians.

#### **Standard 4**

If a law enforcement agency has video and audio capabilities in motor vehicles regularly used for traffic stops, or audio capabilities on motorcycles regularly used to make traffic stops, the agency:

- adopts standards for reviewing and retaining audio and video documentation; and
- promptly provides a copy of the recording to a peace officer who is the subject of a complaint on written request by the officer.

#### **Commentary**

The agency should have a specific review and retention policy. Article 2.132 TCCP specifically requires that the peace officer be promptly provided with a copy of the audio or video recordings if the officer is the subject of a complaint and the officer makes a written request.

#### **Standard 5**

Agencies that do not currently have video or audio equipment must examine the feasibility of installing such equipment.

#### **Commentary**

None

#### **Standard 6**

Agencies that have video and audio recording capabilities are exempt from the reporting requirements of Article 2.134 TCCP and officers are exempt from the reporting requirements of Article 2.133 TCCP provided that:

- the equipment was in place and used during the proceeding calendar year; and
- video and audio documentation is retained for at least 90 days.

#### **Commentary**

The audio and video equipment and policy must have been in place during the previous calendar year. Audio and video documentation must be kept for at least 90 days or longer if a complaint has been filed. The documentation must be retained until the complaint is resolved. Peace officers are not exempt from the requirements under Article 2.132 TCCP.

**Standard 7**

Agencies have citation forms or other electronic media that comply with Section 543.202 of the Transportation Code.

**Commentary**

Senate Bill 1074 changed Section 543.202 of the Transportation Code requiring citations to include:

- race or ethnicity, and
- whether a search of the vehicle was conducted and whether consent for the search was obtained.

# The Texas Law on Racial Profiling

S.B. No. 1074 - An Act relating to the prevention of racial profiling by certain peace officers.  
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.131 through 2.138 to read as follows:

Art. 2.131. RACIAL PROFILING PROHIBITED. A peace officer may not engage in racial profiling.

Art. 2.132. LAW ENFORCEMENT POLICY ON RACIAL PROFILING. (a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers' official duties.

(2) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to traffic stops in which a citation is issued and to arrests resulting from those traffic stops, including information relating to:

(A) the race or ethnicity of the individual detained; and

(B) whether a search was conducted and, if so, whether the person detained consented to the search; and

(7) require the agency to submit to the governing body of each county or municipality served by the agency an annual report of the information collected under Subdivision (6) if the agency is an agency of a county, municipality, or other political subdivision of the state.

(c) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make traffic stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make traffic stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the

policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a traffic stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(f) On the commencement of an investigation by a law enforcement agency of a complaint described by Subsection (b)(3) in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

Art. 2.133. REPORTS REQUIRED FOR TRAFFIC AND PEDESTRIAN STOPS. (a) In this article:

(1) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic or who stops a pedestrian for any suspected offense shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of each person detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the traffic law or ordinance alleged to have been violated or the suspected offense;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband was discovered in the course of the search and the type of contraband discovered;

(5) whether probable cause to search existed and the facts supporting the existence of that probable cause;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a warning or a citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED.

(a) In this article, "pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each local law enforcement agency shall submit a report containing the information compiled

during the previous calendar year to the governing body of each county or municipality served by the agency in a manner approved by the agency.

(c) A report required under Subsection (b) must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) determine the prevalence of racial profiling by peace officers employed by the agency; and  
(B) examine the disposition of traffic and pedestrian stops made by officers employed by the agency, including searches resulting from the stops; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a traffic or pedestrian stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education shall develop guidelines for compiling and reporting information as required by this article.

(f) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

Art. 2.135. EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and a law enforcement agency is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make traffic and pedestrian stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make traffic and pedestrian stops is equipped with transmitter-activated equipment; and

(B) each traffic and pedestrian stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each traffic and pedestrian stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a traffic or pedestrian stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

Art. 2.136. LIABILITY. A peace officer is not liable for damages arising from an act relating to the collection or reporting of information as required by Article 2.133 or under a policy adopted under Article 2.132.

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT.

(a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A). The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has installed video and audio equipment as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1).

Art. 2.138. RULES. The Department of Public Safety may adopt rules to implement Articles 2.131-2.137.

SECTION 2. Chapter 3, Code of Criminal Procedure, is amended by adding Article 3.05 to read as follows:

Art. 3.05. RACIAL PROFILING. In this code, "racial profiling" means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

SECTION 3. Section 96.641, Education Code, is amended by adding Subsection (j) to read as follows:

(j) As part of the initial training and continuing education for police chiefs required under this section, the institute shall establish a program on racial profiling. The program must include an examination of the best practices for:

(1) monitoring peace officers' compliance with laws and internal agency policies relating to racial profiling;

(2) implementing laws and internal agency policies relating to preventing racial profiling;  
and

(3) analyzing and reporting collected information.

SECTION 4. Section 1701.253, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

SECTION 5. Section 1701.402, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on racial profiling established by the commission under Section 1701.253(e).

SECTION 6. Section 543.202, Transportation Code, is amended to read as follows:

Sec. 543.202. FORM OF RECORD. (a) In this section, "race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) The record must be made on a form or by a data processing method acceptable to the department and must include:

(1) the name, address, physical description, including race or ethnicity, date of birth, and driver's license number of the person charged;

(2) the registration number of the vehicle involved;

(3) whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;

(4) the person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver learner's permit;

(5) the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;

(6) whether a search of the vehicle was conducted and whether consent for the search was obtained;

(7) the plea, the judgment, and whether bail was forfeited;

(8) [~~7~~] the date of conviction; and

(9) [~~8~~] the amount of the fine or forfeiture.

SECTION 7. Not later than January 1, 2002, a law enforcement agency shall adopt and implement a policy and begin collecting information under the policy as required by Article 2.132, Code of Criminal Procedure, as added by this Act. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.132, Code of Criminal Procedure, as added by this Act, on March 1, 2003. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2002, and ending December 31, 2002.

SECTION 8. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.134, Code of Criminal Procedure, as added by this Act, on March 1, 2004. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2003, and ending December 31, 2003.

SECTION 9. Not later than January 1, 2002:

(1) the Commission on Law Enforcement Officer Standards and Education shall establish an education and training program on racial profiling as required by Subsection (e), Section 1701.253, Occupations Code, as added by this Act; and

(2) the Bill Blackwood Law Enforcement Management Institute of Texas shall establish a program on racial profiling as required by Subsection (j), Section 96.641, Education Code, as added by this Act.

SECTION 10. A person who on the effective date of this Act holds an intermediate proficiency certificate issued by the Commission on Law Enforcement Officer Standards and Education or has held a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education for at least two years shall complete an education and training program on racial profiling established under Subsection (e), Section 1701.253, Occupations Code, as added by this Act, not later than September 1, 2003.

SECTION 11. An individual appointed or elected as a police chief before the effective date of this Act shall complete a program on racial profiling established under Subsection (j), Section 96.641, Education Code, as added by this Act, not later than September 1, 2003.

SECTION 12. This Act takes effect September 1, 2001

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President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1074 passed the Senate on April 4, 2001, by the following vote: Yeas 28, Nays 2; May 21, 2001, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 22, 2001, House granted request of the Senate; May 24, 2001, Senate adopted Conference Committee Report by a viva-voce vote.

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Secretary of the Senate

I hereby certify that S.B. No. 1074 passed the House, with amendments, on May 15, 2001, by a non-record vote; May 22, 2001, House granted request of the Senate for appointment of Conference Committee; May 24, 2001, House adopted Conference Committee Report by a non-record vote.

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Chief Clerk of the House

Approved:

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Date

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Governor

# Modifications to the Original Law (H.B. 3389)

Amend CSHB 3389 (Senate committee report) as follows:

(1) Strike the following SECTIONS of the bill:

(A) SECTION 8, adding Section 1701.164, Occupations Code (page 4, lines 61-66);

(B) SECTION 24, amending Article 2.132(b), Code of Criminal Procedure (page 8, lines 19-53);

(C) SECTION 25, amending Article 2.134(b), Code of Criminal Procedure (page 8, lines 54-64);

(D) SECTION 28, providing transition language for the amendments to Articles 2.132(b) and 2.134(b), Code of Criminal Procedure (page 9, lines 40-47).

(2) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly: SECTION \_\_\_\_\_. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (a),(b), (d), and (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make motor vehicle~~[traffic]~~ stops in the routine performance of the officers' official duties.

(2) "Motor vehicle stop" means an occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.

(3) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, ~~[or]~~ Native American, or Middle Eastern descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to motor vehicle ~~[traffic]~~ stops in which a citation is issued and to arrests made as a result of ~~[resulting from]~~ those ~~[traffic]~~ stops, including information relating to:

(A) the race or ethnicity of the individual detained; and

(B) whether a search was conducted and, if so, whether the individual ~~[person]~~ detained consented to the search; and

(C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit ~~[to the governing body of each county or~~

~~municipality served by the agency]~~ an annual report of the information collected under Subdivision (6) to:

(A) the Commission on Law Enforcement Officer Standards and Education; and

(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle ~~[traffic]~~ stops and transmitter activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle ~~[traffic]~~ stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a motor vehicle ~~[traffic]~~ stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b)(7), the commission shall begin disciplinary procedures against the chief administrator.

SECTION \_\_\_\_\_. Article 2.133, Code of Criminal Procedure, is amended to read as follows:

Art. 2.133. REPORTS REQUIRED FOR MOTOR VEHICLE ~~[TRAFFIC AND PEDESTRIAN]~~ STOPS. (a) In this article, "race ~~[:~~

~~{(1) "Race]~~ or ethnicity" has the meaning assigned by Article 2.132(a).

~~[(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.]~~

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance ~~[regulating traffic or who stops a pedestrian for any suspected offense]~~ shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any ~~[each]~~ person operating the motor vehicle who is detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop ~~[traffic law or ordinance alleged to have been violated or the suspected offense];~~

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search and a description ~~[the type]~~ of the contraband or evidence ~~[discovered];~~

(5) the reason for the search, including whether:

(A) any contraband or other evidence was in plain view;

(B) any probable cause or reasonable suspicion existed to perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle [existed and the facts supporting the existence of that probable cause];

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a written warning or a citation as a result of the stop[, including a description of the warning or a statement of the violation charged].

SECTION \_\_\_\_\_. Article 2.134, Code of Criminal Procedure, is amended by amending Subsections (a) through (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Motor vehicle[, "pedestrian] stop" has the meaning assigned by Article 2.132(a) [means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest].

(2) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each [~~local~~] law enforcement agency shall submit a report containing the incident-based data [information] compiled during the previous calendar year to the Commission on Law Enforcement Officer Standards and Education and, if the law enforcement agency is a local law enforcement agency, to the governing body of each county or municipality served by the agency [in a manner approved by the agency].

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities [determine the prevalence of racial profiling by peace officers employed by the agency]; and

(B) examine the disposition of motor vehicle [traffic and pedestrian] stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from [the] stops within the applicable jurisdiction; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a motor vehicle [traffic or pedestrian] stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education, in accordance with Section 1701.162, Occupations Code, shall develop guidelines for compiling and reporting information as required by this article.

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b), the commission shall begin disciplinary procedures against the chief administrator.

SECTION \_\_\_\_\_. Article 2.135, Code of Criminal Procedure, is amended to read as follows:

Art. 2.135. PARTIAL EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and the chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make motor vehicle [~~traffic and pedestrian~~] stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make motor vehicle [~~traffic and pedestrian~~] stops is equipped with transmitter-activated equipment; and

(B) each motor vehicle [~~traffic and pedestrian~~] stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each motor vehicle [~~traffic and pedestrian~~] stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a motor vehicle [~~traffic or pedestrian~~] stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

(d) In this article, "motor vehicle stop" has the meaning assigned by Article 2.132(a).

SECTION \_\_\_\_\_. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.1385 to read as follows:

Art. 2.1385. CIVIL PENALTY. (a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in the amount of \$1,000 for each violation. The attorney general may sue to collect a civil penalty under this subsection.

(b) From money appropriated to the agency for the administration of the agency, the executive director of a state law enforcement agency that intentionally fails to submit the incident-based

data as required by Article 2.134 shall remit to the comptroller the amount of \$1,000 for each violation.

(c) Money collected under this article shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION \_\_\_\_\_. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.022 to read as follows:

Art. 102.022. COSTS ON CONVICTION TO FUND STATEWIDE REPOSITORY FOR DATA RELATED TO CIVIL JUSTICE. (a) In this article, "moving violation" means an offense that:

(1) involves the operation of a motor vehicle; and

(2) is classified as a moving violation by the Department of Public Safety under Section 708.052, Transportation Code.

(b) A defendant convicted of a moving violation in a justice court, county court, county court at law, or municipal court shall pay a fee of 10 cents as a cost of court.

(c) In this article, a person is considered convicted if:

(1) a sentence is imposed on the person;

(2) the person receives community supervision, including deferred adjudication; or

(3) the court defers final disposition of the person's case.

(d) The clerks of the respective courts shall collect the costs described by this article. The clerk shall keep separate records of the funds collected as costs under this article and shall deposit the funds in the county or municipal treasury, as appropriate.

(e) The custodian of a county or municipal treasury shall:

(1) keep records of the amount of funds on deposit collected under this article; and

(2) send to the comptroller before the last day of the first month following each calendar quarter the funds collected under this article during the preceding quarter.

(f) A county or municipality may retain 10 percent of the funds collected under this article by an officer of the county or municipality as a collection fee if the custodian of the county or municipal treasury complies with Subsection (e).

(g) If no funds due as costs under this article are deposited in a county or municipal treasury in a calendar quarter, the custodian of the treasury shall file the report required for the quarter in the regular manner and must state that no funds were collected.

(h) The comptroller shall deposit the funds received under this article to the credit of the Civil Justice Data Repository fund in the general revenue fund, to be used only by the Commission on Law Enforcement Officer Standards and Education to implement duties under Section 1701.162, Occupations Code.

(i) Funds collected under this article are subject to audit by the comptroller.

SECTION \_\_\_\_\_. (a) Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.061, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.061. ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a statutory county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;

(2) a fee for services of the clerk of the court (Art. 102.005, Code of Criminal Procedure) . . . \$40;

- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50 [~~\$5~~]; [~~and~~]
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

(b) Section 102.061, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION \_\_\_\_\_. (a) Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.081, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.081. ADDITIONAL COURT COSTS ON CONVICTION IN COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;
- (2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) . . . \$40;
- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50 [~~\$5~~]; [~~and~~]
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

(b) Section 102.081, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION \_\_\_\_\_. Section 102.101, Government Code, is amended to read as follows:

Sec. 102.101. ADDITIONAL COURT COSTS ON CONVICTION IN JUSTICE COURT: CODE OF CRIMINAL PROCEDURE. A clerk of a justice court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;

- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$4;
- (5) a fee for technology fund on a misdemeanor offense (Art. 102.0173, Code of Criminal Procedure) . . . \$4;
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5;
- (7) a fee on conviction of certain offenses involving issuing or passing a subsequently dishonored check (Art. 102.0071, Code of Criminal Procedure) . . . not to exceed \$30; ~~and~~
- (8) a court cost on conviction of a Class C misdemeanor in a county with a population of 3.3 million or more, if authorized by the county commissioners court (Art. 102.009, Code of Criminal Procedure) . . . not to exceed \$7; and
- (9) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION \_\_\_\_\_. Section 102.121, Government Code, is amended to read as follows:

Sec. 102.121. ADDITIONAL COURT COSTS ON CONVICTION IN MUNICIPAL COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a municipal court shall collect fees and costs on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a fee for technology fund on a misdemeanor offense (Art. 102.0172, Code of Criminal Procedure) . . . not to exceed \$4; ~~and~~
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION \_\_\_\_\_. Subchapter D, Chapter 1701, Occupations Code, is amended by adding Section 1701.164 to read as follows:

Sec. 1701.164. COLLECTION OF CERTAIN INCIDENT-BASED DATA SUBMITTED BY LAW ENFORCEMENT AGENCIES. The commission shall collect and maintain incident-based data submitted to the commission under Article 2.134, Code of Criminal Procedure, including incident-based data compiled by a law enforcement agency from reports received by the law enforcement agency under Article 2.133 of that code. The commission in consultation with the Department of Public Safety, the Bill Blackwood Law Enforcement Management Institute of Texas, the W. W. Caruth, Jr., Police Institute at Dallas, and the Texas Police Chiefs Association shall develop guidelines for submitting in a standard format the report containing incident-based data as required by Article 2.134, Code of Criminal Procedure.

SECTION \_\_\_\_\_. Subsection (a), Section 1701.501, Occupations Code, is amended to read as follows:

- (a) Except as provided by Subsection (d), the commission shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of:
  - (1) this chapter;

(2) the reporting requirements provided by Articles 2.132 and 2.134, Code of Criminal Procedure;  
or

(3) a commission rule.

SECTION \_\_\_\_\_. (a) The requirements of Articles 2.132, 2.133, and 2.134, Code of Criminal Procedure, as amended by this Act, relating to the compilation, analysis, and submission of incident-based data apply only to information based on a motor vehicle stop occurring on or after January 1, 2010.

(b) The imposition of a cost of court under Article 102.022, Code of Criminal Procedure, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

# Racial and Ethnic Designations (H.B. 3051)

H.B. No. 3051 - An Act relating to the categories used to record the race or ethnicity of persons stopped for or convicted of traffic offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 2.132(a)(3), Code of Criminal Procedure, is amended to read as follows:

(3) "Race or ethnicity" means the following categories:

(A) Alaska native or American Indian;

(B) ~~[of a particular descent, including Caucasian, African, Hispanic,]~~ Asian or Pacific Islander;

(C) black;

(D) white; and

(E) Hispanic or Latino ~~[, Native American, or Middle Eastern descent]~~.

SECTION 2. Section 543.202(a), Transportation Code, is amended to read as follows:

(a) In this section, "race or ethnicity" means the following categories:

(1) Alaska native or American Indian;

(2) ~~[of a particular descent, including Caucasian, African, Hispanic,]~~ Asian or Pacific Islander;

(3) black;

(4) white; and

(5) Hispanic or Latino ~~[, or Native American descent]~~.

SECTION 3. This Act takes effect September 1, 2017.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 3051 was passed by the House on May 4, 2017, by the following vote: Yeas 143, Nays 2, 2 present, not voting.

\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 3051 was passed by the Senate on May 19, 2017, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

\_\_\_\_\_  
Governor

# The Sandra Bland Act

## (S.B. 1849)

S.B. No. 1849

An Act relating to interactions between law enforcement and individuals detained or arrested on suspicion of the commission of criminal offenses, to the confinement, conviction, or release of those individuals, and to grants supporting populations that are more likely to interact frequently with law enforcement.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. SHORT TITLE

SECTION 1.01. SHORT TITLE. This Act shall be known as the Sandra Bland Act, in memory of Sandra Bland.

ARTICLE 2. IDENTIFICATION AND DIVERSION OF AND SERVICES FOR PERSONS SUSPECTED OF HAVING A MENTAL ILLNESS, AN INTELLECTUAL DISABILITY, OR A SUBSTANCE ABUSE ISSUE

SECTION 2.01. Article 16.22, Code of Criminal Procedure, is amended to read as follows:

Art. 16.22. EARLY IDENTIFICATION OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR INTELLECTUAL DISABILITY [MENTAL RETARDATION]. (a)(1) Not later than 12 [72] hours after receiving credible information that may establish reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or is a person with an intellectual disability [mental retardation], including observation of the defendant's behavior immediately before, during, and after the defendant's arrest and the results of any previous assessment of the defendant, the sheriff shall provide written or electronic notice of the information to the magistrate. On a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability [mental retardation], the magistrate, except as provided by Subdivision

(2), shall order the local mental health or intellectual and developmental disability [mental retardation] authority or another qualified mental health or intellectual disability [mental retardation] expert to:

(A) collect information regarding whether the defendant has a mental illness as defined by Section 571.003,

Health and Safety Code, or is a person with an intellectual disability [mental retardation] as defined by Section 591.003, Health and Safety Code, including information obtained from any previous assessment of the defendant; and

(B) provide to the magistrate a written assessment of the information collected under Paragraph (A).

(2) The magistrate is not required to order the collection of information under Subdivision

(1) if the defendant in the year preceding the defendant's applicable date of arrest has been determined to have a mental illness or to be a person with an intellectual disability [mental retardation] by the local mental health or intellectual and developmental disability [mental retardation] authority or another mental health or intellectual disability [mental retardation] expert described by Subdivision

(1). A court that elects to use the results of that previous determination may proceed under Subsection (c).

(3) If the defendant fails or refuses to submit to the collection of information regarding the defendant as required under Subdivision (1), the magistrate may order the defendant to submit to an examination in a mental health facility determined to be appropriate by the local mental health or intellectual and developmental disability [mental retardation] authority for a reasonable period not to exceed 21 days. The magistrate may order a defendant to a facility operated by the Department of State Health Services or the Health and Human Services Commission [Department of Aging and Disability Services] for examination only on request of the local mental health or intellectual and developmental disability [mental retardation] authority and with the consent of the head of the facility. If a defendant who has been ordered to a facility operated by the Department of State Health Services or the Health and Human Services Commission [Department of Aging and Disability Services] for examination remains in the facility for a period exceeding 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the facility for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(b) A written assessment of the information collected under Subsection (a)(1)(A) shall be provided to the magistrate not later than the 30th day after the date of any order issued under Subsection (a) in a felony case and not later than the 10th day after the date of any order issued under that subsection in a misdemeanor case, and the magistrate shall provide copies of the written assessment to the defense counsel, the prosecuting attorney, and the trial court. The written assessment must include a description of the procedures used in the collection of information under Subsection (a)(1)(A) and the applicable expert's observations and findings pertaining to:

(1) whether the defendant is a person who has a mental illness or is a person with an intellectual disability [mental retardation];

(2) whether there is clinical evidence to support a belief that the defendant may be incompetent to stand trial and should undergo a complete competency examination under Subchapter B, Chapter 46B; and

(3) recommended treatment.

(c) After the trial court receives the applicable expert's written assessment relating to the defendant under Subsection (b) or elects to use the results of a previous determination as described by Subsection (a)(2), the trial court may, as applicable:

(1) resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032;

(2) resume or initiate competency proceedings, if required, as provided by Chapter 46B

or other proceedings affecting the defendant's receipt of appropriate court-ordered mental health or intellectual disability [mental retardation] services, including proceedings related to the defendant's receipt of outpatient mental health services under Section 574.034, Health and Safety Code; or

(3) consider the written assessment during the punishment phase after a conviction of the offense for which the defendant was arrested, as part of a presentence investigation report, or in connection with the impositions of conditions following placement on community supervision, including deferred adjudication community supervision.

(d) This article does not prevent the applicable court from, before, during, or after the collection of information regarding the defendant as described by this article: (1) releasing a defendant who has a mental illness [mentally ill] or is a person with an intellectual disability [mentally retarded defendant] from custody on personal or surety bond; or

(2) ordering an examination regarding the defendant's competency to stand trial.

SECTION 2.02. Chapter 16, Code of Criminal Procedure, is amended by adding Article 16.23 to read as follows:

Art. 16.23. DIVERSION OF PERSONS SUFFERING MENTAL HEALTH CRISIS OR SUBSTANCE ABUSE ISSUE. (a) Each law enforcement agency shall make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction if:

(1) there is an available and appropriate treatment center in the agency's jurisdiction to which the agency may divert the person;

(2) it is reasonable to divert the person;

(3) the offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence; and

(4) the mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense.

(b) Subsection (a) does not apply to a person who is accused of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code.

SECTION 2.03. Section 539.002, Government Code, is amended to read as follows:

Sec. 539.002. GRANTS FOR ESTABLISHMENT AND EXPANSION OF COMMUNITY COLLABORATIVES. (a) To the extent funds are appropriated to the department for that purpose, the department shall make grants to entities, including local governmental entities, nonprofit community organizations, and faith-based community organizations, to establish or expand community collaboratives that bring the public and private sectors together to provide services to persons experiencing homelessness, substance abuse issues, or [and] mental illness. [The department may make a maximum of five grants, which must be made in the most populous municipalities in this state that are located in counties with a population of more than one million.] In awarding grants, the department shall give special consideration to entities:

(1) establishing [a] new collaboratives; or

(2) establishing or expanding collaboratives that serve two or more counties, each with a population of less than 100,000 [collaborative].

(b) The department shall require each entity awarded a grant under this section to:

(1) leverage additional funding from private sources in an amount that is at least equal to the amount of the grant awarded under this section; [and]

(2) provide evidence of significant coordination and collaboration between the entity, local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in establishing or expanding a community collaborative funded by a grant awarded under this section; and

(3) provide evidence of a local law enforcement policy to divert appropriate persons from jails or other detention facilities to an entity affiliated with a community collaborative for the purpose of providing services to those persons.

SECTION 2.04. Chapter 539, Government Code, is amended by adding Section 539.0051 to read as follows:

Sec. 539.0051. PLAN REQUIRED FOR CERTAIN COMMUNITY COLLABORATIVES. (a) The governing body of a county shall develop and make public a plan detailing:

(1) how local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in the county could coordinate to establish or expand a community collaborative to accomplish the goals of Section 539.002;

(2) how entities in the county may leverage funding from private sources to accomplish the goals of Section 539.002 through the formation or expansion of a community collaborative; and

(3) how the formation or expansion of a community collaborative could establish or support resources or services to help local law enforcement agencies to divert persons who have been arrested to appropriate mental health care or substance abuse treatment.

(b) The governing body of a county in which an entity that received a grant under Section 539.002 before September 1, 2017, is located is not required to develop a plan under Subsection (a).

(c) Two or more counties, each with a population of less than 100,000, may form a joint plan under Subsection (a).

### ARTICLE 3. BAIL, PRETRIAL RELEASE, AND COUNTY JAIL STANDARDS

SECTION 3.01. The heading to Article 17.032, Code of Criminal Procedure, is amended to read as follows:

Art. 17.032. RELEASE ON PERSONAL BOND OF CERTAIN [MENTALLY ILL] DEFENDANTS WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITY.

SECTION 3.02. Articles 17.032(b) and (c), Code of Criminal Procedure, are amended to read as follows:

(b) A magistrate shall release a defendant on personal bond unless good cause is shown

otherwise if the:

(1) defendant is not charged with and has not been previously convicted of a violent offense;

(2) defendant is examined by the local mental health or intellectual and developmental disability [mental retardation] authority or another mental health expert under Article 16.22 [of this code];

(3) applicable expert, in a written assessment submitted to the magistrate under Article 16.22:

(A) concludes that the defendant has a mental illness or is a person with an intellectual disability [mental retardation] and is nonetheless competent to stand trial; and

(B) recommends mental health treatment or intellectual disability treatment for the defendant, as applicable; and

(4) magistrate determines, in consultation with the local mental health or intellectual and developmental disability [mental retardation] authority, that appropriate community-based mental health or intellectual disability [mental retardation] services for the defendant are available through the [Texas] Department of State [Mental] Health Services [and Mental Retardation] under Section 534.053, Health and Safety Code, or through another mental health or intellectual disability [mental retardation] services provider.

(c) The magistrate, unless good cause is shown for not requiring treatment, shall require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health or intellectual disability [mental retardation] treatment as recommended by the local mental health or intellectual and developmental disability [mental retardation] authority if the defendant's:

(1) mental illness or intellectual disability [mental retardation] is chronic in nature; or

(2) ability to function independently will continue to deteriorate if the defendant is not treated.

SECTION 3.03. Article 25.03, Code of Criminal Procedure, is amended to read as follows:

Art. 25.03. IF ON BAIL IN FELONY. When the accused, in case of felony, is on bail at the time the indictment is presented, [it is not necessary to serve him with a copy, but] the clerk shall [on request] deliver a copy of the indictment [same] to the accused or the accused's [his] counsel[,] at the earliest possible time.

SECTION 3.04. Article 25.04, Code of Criminal Procedure, is amended to read as follows:

Art. 25.04. IN MISDEMEANOR. In misdemeanors, the clerk shall deliver a copy of the indictment or information to the accused or the accused's counsel at the earliest possible time before trial [it shall not be necessary before trial to furnish the accused with a copy of the indictment or information; but he or his counsel may demand a copy, which shall be given as early as possible

SECTION 3.05. Section 511.009(a), Government Code, as amended by Chapters 281 (H.B. 875), 648 (H.B. 549), and 688 (H.B. 634), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended to read as follows:

- (a) The commission shall:
- (1) adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails;
  - (2) adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners;
  - (3) adopt reasonable rules establishing minimum standards for the number of jail supervisory personnel and for programs and services to meet the needs of prisoners;
  - (4) adopt reasonable rules and procedures establishing minimum requirements for programs of rehabilitation, education, and recreation in county jails;
  - (5) revise, amend, or change rules and procedures if necessary;
  - (6) provide to local government officials consultation on and technical assistance for county jails;
  - (7) review and comment on plans for the construction and major modification or renovation of county jails;
  - (8) require that the sheriff and commissioners of each county submit to the commission, on a form prescribed by the commission, an annual report on the conditions in each county jail within their jurisdiction, including all information necessary to determine compliance with state law, commission orders, and the rules adopted under this chapter;
  - (9) review the reports submitted under Subdivision (8) and require commission employees to inspect county jails regularly to ensure compliance with state law, commission orders, and rules and procedures adopted under this chapter;
  - (10) adopt a classification system to assist sheriffs and judges in determining which defendants are low-risk and consequently suitable participants in a county jail work release program under Article 42.034, Code of Criminal Procedure;
  - (11) adopt rules relating to requirements for segregation of classes of inmates and to capacities for county jails;
  - (12) require that the chief jailer of each municipal lockup submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the lockup, including all information necessary to determine compliance with state law concerning secure confinement of children in municipal lockups;
  - (13) at least annually determine whether each county jail is in compliance with the rules and procedures adopted under this chapter;
  - (14) require that the sheriff and commissioners court of each county submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the county jail, including all information necessary to determine compliance with state law concerning secure confinement of children in county jails;
  - (15) schedule announced and unannounced inspections of jails under the commission's jurisdiction using the risk assessment plan established under Section 511.0085 to guide the inspections process;
  - (16) adopt a policy for gathering and distributing to jails under the commission's jurisdiction information regarding:
    - (A) common issues concerning jail administration;
    - (B) examples of successful strategies for maintaining compliance with state law and the rules,

standards, and procedures of the commission; and

(C) solutions to operational challenges for jails;

(17) report to the Texas Correctional Office on Offenders with Medical or Mental Impairments on a jail's compliance with Article 16.22, Code of Criminal Procedure;

(18) adopt reasonable rules and procedures establishing minimum requirements for jails to:

(A) determine if a prisoner is pregnant; and

(B) ensure that the jail's health services plan addresses medical and mental health care, including nutritional requirements, and any special housing or work assignment needs for persons who are confined in the jail and are known or determined to be pregnant;

(19) provide guidelines to sheriffs regarding contracts between a sheriff and another entity for the provision of food services to or the operation of a commissary in a jail under the commission's jurisdiction, including specific provisions regarding conflicts of interest and avoiding the appearance of impropriety; [and]

(20) adopt reasonable rules and procedures establishing minimum standards for prisoner visitation that provide each prisoner at a county jail with a minimum of two in-person, noncontact visitation periods per week of at least 20 minutes duration each;

(21) [(20)] require the sheriff of each county to:

(A) investigate and verify the veteran status of each prisoner by using data made available from the Veterans Reentry Search Service (VRSS) operated by the United States Department of Veterans Affairs or a similar service; and

(B) use the data described by Paragraph (A) to assist prisoners who are veterans in applying for federal benefits or compensation for which the prisoners may be eligible under a program administered by the United States Department of Veterans Affairs;

(22) [(20)] adopt reasonable rules and procedures regarding visitation of a prisoner at a county jail by a guardian, as defined by Section 1002.012, Estates Code, that:

(A) allow visitation by a guardian to the same extent as the prisoner's next of kin, including placing the guardian on the prisoner's approved visitors list on the guardian's request and providing the guardian access to the prisoner during a facility's standard visitation hours if the prisoner is otherwise eligible to receive visitors; and

(B) require the guardian to provide the sheriff with letters of guardianship issued as provided by Section 1106.001, Estates Code, before being allowed to visit the prisoner; and

(23) adopt reasonable rules and procedures to ensure the safety of prisoners, including rules and procedures that require a county jail to:

(A) give prisoners the ability to access a mental health professional at the jail through a telemental health service 24 hours a day;

(B) give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a day or, if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be transported to access a health professional; and

(C) if funding is available under Section 511.019, install automated electronic sensors or cameras to ensure accurate and timely in-person checks of cells or groups of cells confining at-risk individuals.

SECTION 3.06. Section 511.009, Government Code, is amended by adding Subsection (d) to read

as follows:

(d) The commission shall adopt reasonable rules and procedures establishing minimum standards regarding the continuity of prescription medications for the care and treatment of prisoners. The rules and procedures shall require that a qualified medical professional shall review as soon as possible any prescription medication a prisoner is taking when the prisoner is taken into custody.

SECTION 3.07. Chapter 511, Government Code, is amended by adding Sections 511.019, 511.020, and 511.021 to read as follows:

Sec. 511.019. PRISONER SAFETY FUND. (a) The prisoner safety fund is a dedicated account in the general revenue fund.

(b) The prisoner safety fund consists of:

(1) appropriations of money to the fund by the legislature; and

(2) gifts, grants, including grants from the federal government, and other donations received for the fund.

(c) Money in the fund may be appropriated only to the commission to pay for capital improvements that are required under Section 511.009(a)(23).

(d) The commission by rule may establish a grant program to provide grants to counties to fund capital improvements described by Subsection (c). The commission may only provide a grant to a county for capital improvements to a county jail with a capacity of not more than 96 prisoners.

Sec. 511.020. SERIOUS INCIDENTS REPORT. (a) On or before the fifth day of each month, the sheriff of each county shall report to the commission regarding the occurrence during the preceding month of any of the following incidents involving a prisoner in the county jail:

(1) a suicide;

(2) an attempted suicide;

(3) a death;

(4) a serious bodily injury, as that term is defined by

Section 1.07, Penal Code;

(5) an assault;

(6) an escape;

(7) a sexual assault; and

(8) any use of force resulting in bodily injury, as that term is defined by Section 1.07, Penal Code.

(b) The commission shall prescribe a form for the report required by Subsection (a).

(c) The information required to be reported under Subsection (a)(8) may not include the name or other identifying information of a county jailer or jail employee.

(d) The information reported under Subsection (a) is public information subject to an open records request under Chapter 552.

Sec. 511.021. INDEPENDENT INVESTIGATION OF DEATH OCCURRING IN COUNTY JAIL. (a) On the death of a prisoner in a county jail, the commission shall appoint a law enforcement agency, other

than the local law enforcement agency that operates the county jail, to investigate the death as soon as possible.

(b) The commission shall adopt any rules necessary relating to the appointment of a law enforcement agency under Subsection

(a), including rules relating to cooperation between law enforcement agencies and to procedures for handling evidence.

SECTION 3.08. The changes in law made by this article to Article 17.032, Code of Criminal Procedure, apply only to a personal bond that is executed on or after the effective date of this Act. A personal bond executed before the effective date of executed, and the former law is continued in effect for that purpose.

SECTION 3.09. Not later than January 1, 2018, the Commission on Jail Standards shall:

(1) adopt the rules and procedures required by Section 511.009(d), Government Code, as added by this article, and the rules required by Section 511.021(b), Government Code, as added by this article; and

(2) prescribe the form required by Section 511.020(b), Government Code, as added by this article.

SECTION 3.10. Not later than September 1, 2018, the Commission on Jail Standards shall adopt the rules and procedures required by Section 511.009(a)(23), Government Code, as added by this article. On and after September 1, 2020, a county jail shall comply with any rule or procedure adopted by the Commission on Jail Standards under that subdivision.

SECTION 3.11. To the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to non-substantive additions to and corrections in enacted codes.

#### ARTICLE 4. PEACE OFFICER AND COUNTY JAILER TRAINING

SECTION 4.01. Chapter 511, Government Code, is amended by adding Section 511.00905 to read as follows:

Sec. 511.00905. JAIL ADMINISTRATOR POSITION; EXAMINATION REQUIRED. (a) The Texas Commission on Law Enforcement shall develop and the commission shall approve an examination for a person assigned to the jail administrator position overseeing a county jail.

(b) The commission shall adopt rules requiring a person, other than a sheriff, assigned to the jail administrator position overseeing a county jail to pass the examination not later than the 180th day after the date the person is assigned to that position. The rules must provide that a person who fails the examination may be immediately removed from the position and may not be reinstated until the person passes the examination.

(c) The sheriff of a county shall perform the duties of the jail administrator position at any time there is not a person available who satisfies the examination requirements of this

section.

(d) A person other than a sheriff may not serve in the jail administrator position of a county jail unless the person satisfies the examination requirement of this section.

SECTION 4.02. Section 1701.253, Occupations Code, is amended by amending Subsection (j) and adding Subsection (n) to read as follows: commission shall require an officer to complete a 40-hour statewide education and training program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. An officer may not satisfy the requirements of this subsection [section] or Section 1701.402(g) by taking an online course on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments.

(n) As part of the minimum curriculum requirements, the commission shall require an officer to complete a statewide education and training program on de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury.

SECTION 4.03. Section 1701.310(a), Occupations Code, is amended to read as follows:

(a) Except as provided by Subsection (e), a person may not be appointed as a county jailer, except on a temporary basis, unless the person has satisfactorily completed a preparatory training program, as required by the commission, in the operation of a county jail at a school operated or licensed by the commission. The training program must consist of at least eight hours of mental health training approved by the commission and the Commission on Jail Standards.

SECTION 4.04. Section 1701.352(b), Occupations Code, is amended to read as follows:

(b) The commission shall require a state, county, special district, or municipal agency that appoints or employs peace officers to provide each peace officer with a training program at least once every 48 months that is approved by the commission and consists of:

(1) topics selected by the agency; and

(2) for an officer holding only a basic proficiency certificate, not more than 20 hours of education and training that contain curricula incorporating the learning objectives developed by the commission regarding:

(A) civil rights, racial sensitivity, and cultural diversity;

(B) de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments; [and]

(C) de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury; and

(D) unless determined by the agency head to be inconsistent with the officer's assigned duties:

(i) the recognition and documentation of cases that involve child abuse or neglect, family violence, and sexual assault; and

(ii) issues concerning sex offender characteristics.

SECTION 4.05. Section 1701.402, Occupations Code, is amended by adding Subsection (n) to read

as follows:

(n) As a requirement for an intermediate proficiency certificate or an advanced proficiency certificate, an officer must complete the education and training program regarding de-escalation techniques to facilitate interaction with members of the public established by the commission under Section 1701.253(n).

SECTION 4.06. Not later than March 1, 2018, the Texas Commission on Law Enforcement shall develop and the Commission on Jail Standards shall approve the examination required by Section 511.00905, Government Code, as added by this article.

SECTION 4.07. (a) Not later than March 1, 2018, the Texas Commission on Law Enforcement shall establish or modify training programs as necessary to comply with Section 1701.253, Occupations Code, as amended by this article.

(b) The minimum curriculum requirements under Section 1701.253(j), Occupations Code, as amended by this article, apply only to a peace officer who first begins to satisfy those requirements on or after April 1, 2018.

SECTION 4.08. (a) Section 1701.310, Occupations Code, as amended by this article, takes effect January 1, 2018.

(b) A person in the position of county jailer on September 1, 2017, must comply with Section 1701.310(a), Occupations Code, as amended by this article, not later than August 31, 2021.

## ARTICLE 5. MOTOR VEHICLE STOPS, RACIAL PROFILING, AND ISSUANCE OF CITATIONS

SECTION 5.01. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (b) and (d) and adding Subsection (h) to read as follows:

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's compliment and complaint process, including providing the telephone number, mailing address, and e-mail address to make a compliment or complaint with respect to each ticket, citation, or warning issued by a peace officer;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to motor vehicle stops in which a ticket, citation, or warning is issued and to arrests made as a result of those stops, including information

relating to:

- (A) the race or ethnicity of the individual detained;
- (B) whether a search was conducted and, if so, whether the individual detained consented to the search; [and]
- (C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;
- (D) whether the peace officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop;
- (E) the location of the stop; and
- (F) the reason for the stop; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:

- (A) the Texas Commission on Law Enforcement; and
- (B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle stops. The agency also shall examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body worn camera, as that term is defined by Section 1701.651, Occupations Code. If a law enforcement agency installs video or audio equipment or equips peace officers with body worn cameras as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(h) A law enforcement agency shall review the data collected under Subsection (b)(6) to identify any improvements the agency could make in its practices and policies regarding motor vehicle stops.

SECTION 5.02. Article 2.133, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any person operating the motor vehicle who is detained as a result of the stop, including:

- (A) the person's gender; and
- (B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search

and a description of the contraband or evidence;

(5) the reason for the search, including whether:

(A) any contraband or other evidence was in plain view;

(B) any probable cause or reasonable suspicion existed to perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop; [and]

(8) whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop; and

(9) whether the officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop.

(c) The chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is responsible for auditing reports under Subsection (b)

to ensure that the race or ethnicity of the person operating the motor vehicle is being reported.

SECTION 5.03. Article 2.134(c), Code of Criminal Procedure, is amended to read as follows:

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities; [and]

(B) examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction; and

(C) evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

SECTION 5.04. Article 2.137, Code of Criminal Procedure, is amended to read as follows:

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT. (a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship,

available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)]. The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has taken the necessary actions to use and is using [installed] video and audio equipment and body worn cameras for those purposes [as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1)].

SECTION 5.05. Article 2.1385(a), Code of Criminal Procedure, is amended to read as follows:

(a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in an [the] amount not to exceed \$5,000 [of \$1,000] for each violation. The attorney general may sue to collect a civil penalty under this subsection.

SECTION 5.06. Article 2.135, Code of Criminal Procedure, is repealed.

SECTION 5.07. Articles 2.132 and 2.134, Code of Criminal Procedure, as amended by this article, apply only to a report covering a calendar year beginning on or after January 1, 2018.

SECTION 5.08. Not later than September 1, 2018, the Texas Commission on Law Enforcement shall:

(1) evaluate and change the guidelines for compiling and reporting information required under Article 2.134, Code of Criminal Procedure, as amended by this article, to enable the guidelines to better withstand academic scrutiny; and

(2) make accessible online:

(A) a downloadable format of any information submitted under Article 2.134(b), Code of Criminal

Procedure, that is not exempt from public disclosure under Chapter 552, Government Code; and  
(B) a glossary of terms relating to the information to make the information readily understandable to the public. This Act takes effect September 1, 2017.

\_\_\_\_\_  
Senate Speaker of the House

I hereby certify that S.B. No. 1849 passed the Senate on May 11, 2017, by the following vote:  
Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1849 passed the House on May 20, 2017, by the following vote:  
Yeas 137, Nays 0, one present not voting.

ARTICLE 6. EFFECTIVE DATE

SECTION 6.01. Except as otherwise provided by this Act,

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

\_\_\_\_\_  
Chief Clerk of the House

**KELLER  
POLICE DEPARTMENT  
RACIAL PROFILING POLICY**



## BIASED POLICING OR ENFORCEMENT 100.03



Effective Date: 09/26/03  
Revised: 09/09/08;  
12/4/12; 9/1/17; 10/4/17;  
08/24/18  
Standard: 1.2.9

### I. **PURPOSE AND RESPONSIBILITY:**

- A. **Purpose:** To set the policy and establish the procedures to prevent biased policing or enforcement at the Keller Police Department.
- B. **Responsibility:**
  - 1. It will be the responsibility of the Chief of Police to provide the Keller City Council an annual report containing statistical data relevant to the public contacts made in accordance with the Texas Racial Profiling Law (S.B. No. 1074).

### II. **DEFINITIONS:**

- A. **BIASED POLICING OR ENFORCEMENT:** The selection of an individual(s) for enforcement action based in whole or in part on a trait common to a group, without actionable intelligence to support consideration of that trait. This includes, but is not limited to, race, ethnic background, national origin, gender, sexual orientation/identity, religion, economic status, age, cultural group, immigration status, disability, housing status, occupation, language fluency or any other identifiable characteristics.
- B. **RACE or ETHNICITY:** Means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

### III. **POLICY:**

- A. It is the policy of the Keller Police Department that biased policing or enforcement by any employee is strictly prohibited. This includes law enforcement-initiated action based on an individual's race, ethnicity, gender, sexual orientation/identity, religion, economic status, age, cultural group, national origin or any other identifiable group rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity. Profiling in regards to traffic contacts, field contacts,

searches, interviews and interrogations, asset seizures and forfeiture efforts will not be allowed. Any officer found in violation of this policy will be disciplined accordingly.

*Standard 1.2.9 (a)*

#### IV. **PROCEDURES:**

##### A. **MOTOR VEHICLE and PEDESTRIAN STOPS:**

1. Officers will be diligent during their patrol and are expected to enforce the traffic laws, and stop and detain motorist or pedestrians whenever there is reasonable suspicion that they have committed, are committing, or are about to commit an infraction of the law. An arrest can only be made with probable cause.
  - a. An officer should not stop a driver or pedestrian when looking for a suspect if the only commonality between the suspect and the civilian is his or her race/ethnicity or national origin.
  - b. Officers should not pick out people to stop from among similarly situated individuals based in whole or in part of their race/ethnicity or national origin. For example, a driver speeding in a stream of traffic should not be picked out from among the traffic because of race/ethnicity or national origin.
  - c. An officer should not stop a driver when there is no traffic violation in order to get a look inside the vehicle based on the driver's race/ethnicity or national origin.
2. Officers must conduct themselves in a dignified and respectful manner at all times. The officers must remain courteous and professional keeping in mind the anxiety the person will feel when stopped by a police officer. Officers will remain professional and courteous even if challenged verbally from the detained individual.
3. During the stop of the motorist or pedestrian, officers shall utilize the mobile video and audio recording equipped in the car/motorcycle pursuant to General Order 401.04.
4. The detaining of motorists and pedestrians will be brief in duration and officers shall explain to the individual the reason for the detention with the objective to gain compliance and understanding.
5. If the officer decides to issue a warning, a citation or take the person into custody for a more serious offense the officer must record on the warning/ citation the race of the individual using the following codes:

- a. White/Caucasian (W)
- b. Hispanic (H)
- c. Asian (A)
- d. Native American (I)
- e. African (B)
- f. Middle Eastern (M)

- 6. When issuing a warning/ citation resulting from a traffic stop the officer shall record the following information on the warning/ citation:
  - a. Search Y/N
  - b. Consent Y/N, if Y above.
  - c. Contraband/Evidence Found Y/N, if searched
  - d. Reason and Probable Cause for the Search Y/N, if searched
  - e. Arrest Made Y/N
  - f. Physical Force Resulted in Bodily Injury Y/N
  - g. Race/ethnicity known before stop Y/N
  - h. Gender, street address of stop and reason for the stop.

**B. COMPLAINTS of BIASED POLICING:**

- 1. Any person may file a complaint with the department if they believe law enforcement-initiated action was based on the individual's race, ethnicity, gender, sexual orientation, religion, economic status, age, cultural group, national origin or any other identifiable group than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.
- 2. Any employee, including the employee who initiated the enforcement action, who is told by the citizen that they wish to file a complaint, shall inform the person that they can meet a supervisor at police headquarters or contact the supervisor on the telephone providing the telephone

number to the complainant. At no time should the complainant be told to call back the next day unless they desire to do so.

3. Supervisors receiving the complaint of biased policing or enforcement shall record the name, address, telephone number and the allegation from the complainant. The individual should be advised that the complaint will be taken seriously and they will be contacted with the findings of the investigation. The supervisor will obtain any and all mobile video recordings from the mobile video recording system. The recording(s) along with the information from the complainant should be forwarded to the Chief's office for assignment.
4. The Chief of Police shall assign the complaint to the Division Commander, Lieutenant, or the Internal Affairs investigator based on the complaint.
5. In conformance with the act on Biased Based Profiling, on the commencement of an investigation by a law enforcement agency of a complaint regarding racial profiling the agency shall promptly provide a copy of the video/audio recording to the peace officer that is the subject of the complaint on written request by the officer.
6. Should the results of the investigation show that the employee had engaged in biased based profiling in violation of this policy the Chief of Police shall take corrective action against the officer. The corrective action can range from training up to and including termination depending on the totality of the circumstances.
  - a. If the complaint is "not sustained" the complainant may appeal the determination to the City Manager's Office.
  - b. The complainant also has the right to appeal the determination to the Tarrant County District Attorney's Office.
7. This agency will comply with the public education requirement of the act by posting the complaint process on our internet web site, by having printed brochures on the complaint procedure available in our public lobby, and also available from the employees on the street. The complaint and compliment contact telephone number, mailing address, and email address will be provide on every warning/ citation.

C. RETENTION of VIDEO and AUDIO TAPES:

1. The act on Biased Based Profiling requires the audio and video recording of traffic and pedestrian stops to be retained for 90 days after

the date of the stop. In case of a complaint the video will be retained until the disposition of the complaint.

2. The standards and safeguards for reviewing the video and audio are outlined in General Order 401.04.

D. TRAINING:

1. All enforcement personnel will receive initial and annual training in biased policing issues including legal aspects, field contacts, traffic stops, searches, asset seizure and forfeiture, interview and interrogation techniques, cultural diversity, discrimination, and community support.

*Standard 1.2.9 (b)*

E. REPORTING REQUIREMENTS OF THE ACT:

1. The Chief of Police shall make a documented annual report to the City Council on the information collected relating to traffic stops in which a warning or citation is issued and to arrests resulting from those traffic stops containing the following:
  - a. The gender and race or ethnicity of the individuals detained.
  - b. Whether a search was conducted and, if so, whether the person consented, if contraband/evidence was found, PC for the search, and if an arrest was made.
  - c. Whether physical force resulted in Bodily Injury to a party.
  - d. An administrative review of agency practices, including community concerns on the issue, the number of racial profiling complaints, and any corrective measures taken.
2. The required report will not contain identifying information about the officers or the individuals detained.
3. The documented annual report will be submitted by March 1<sup>st</sup> of each year for information compiled by the agency during the period beginning January 1<sup>st</sup> and ending December 31<sup>st</sup>.

*Standard 1.2.9 (c)*

F. IMMIGRATION STATUS DETENTIONS:

1. Officers are not prohibited from inquiring about immigration status during temporary detentions, but are prohibited from detaining people longer than is necessary to finish the purpose of the detention and that purpose cannot be solely to make an immigration inquiry.

2. An officer should have some articulable facts, besides race, color, religion, language, or national origin, to explain why the officer asked a person about citizenship or immigration status.
3. Warrants for a person's arrest or removal as an alien is an administrative warrant and must not be the sole reason for an arrest. If a person is arrested for another offense and has an immigration warrant, see General Order 700.01 Detention Facility for further.
4. Officers shall not enforce immigration laws while working off-duty for religious organizations. Officers shall not enforce immigration laws against a person detained solely because he or she is a victim, a witness to a crime, or reported a crime.



For additional questions regarding the information presented in this report, please contact:

**Del Carmen Consulting©**  
**817.681.7840**  
**[www.texasracialprofiling.com](http://www.texasracialprofiling.com)**  
**[www.delcarmenconsulting.com](http://www.delcarmenconsulting.com)**

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## Town Council/Board of Trustees AGENDA ITEM REPORT



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**DATE:** March 24, 2026 **AGENDA ITEM NO:** F.1.  
**FROM:** Dianna Buchanan, Town Secretary, Town Secretary's Office  
**SUBJECT:** Discuss, consider and act to approve Resolution 26-05 appointing a member to the Texas Student Housing Authority Board of Directors to fill a current vacancy thru the term ending June 2026.

---

### **ATTACHMENTS:**

1. Res 26-05 Appoint TSHA Board Member
2. Kear Katherine TSHA Board App Recd. 2.19.2026\_Redacted

### **SUMMARY :**

There is a current vacancy on the Texas Student Housing Authority (TSHA) Board of Directors for the term through June 2026 and the Town Council is responsible for making appointments to the same. An application was received from Ms. Katherine Kear, which is attached, for consideration to be appointed to the vacancy.

### **BACKGROUND AND DISCUSSION:**

The TSHA is an instrumentality of the Town of Westlake created in 1995 pursuant to Chapter 53 of the Education Code and Higher Education Authority Act with the mission to provide scholarships for housing to graduates of Texas High Schools and Community Colleges. Appointment to the TSHA Board of Directors also appoints members to the Texas Student Housing Corporation and the Texas Student Housing Corporation - Denton Project Boards. Members are appointed for two-year terms and members are considered "hold-overs" if they do not resign or another appointment is not made for the same place by Town Council. The current Board of Directors members are as follows: Scott Bradley, Paula Peterson, Richard Mueller, Dahlia Hassani, and James Krekow.

### **FISCAL IMPACT:**

N/A

### **LEGAL REVIEW:**

N/A

### **RECOMMENDATION:**

Staff recommends Town Council act as desired regarding the appointment.

### **ACTION OPTIONS:**

Motion to Approve as Presented  
Motion to Approve with Changes/Conditions

Motion to Deny  
Motion to Continue or Table

**TOWN OF WESTLAKE**

**RESOLUTION 26-05**

**A RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS, APPOINTING A MEMBER TO THE BOARD OF DIRECTORS OF THE TEXAS STUDENT HOUSING AUTHORITY, THE TEXAS STUDENT HOUSING CORPORATION AND THE TEXAS STUDENT HOUSING CORPORATION—DENTON PROJECT**

**WHEREAS**, the Texas Student Housing Authority (TSHA) is an instrumentality of the Town of Westlake created in 1995 pursuant to Chapter 53 of the Education Code and Higher Education Authority Act with the mission to provide scholarships for housing to graduates of Texas High Schools and Community Colleges; and

**WHEREAS**, the Town Council shall appoint the Board of Directors of the TSHA; and

**WHEREAS**, the Town Council finds that passage of this Resolution is in the best interest of the citizens of Westlake.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS:**

**SECTION 1:** That all matters stated in the Recitals hereinabove are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

**SECTION 2:** That the following individual is hereby appointed to fill a vacancy on the Board of Directors for the Texas Student Housing Authority, the Texas Student Housing Corporation, and the Texas Student Housing Corporation – Denton Project:

Katherine Kear                      Term thru June 2026

**SECTION 3:** If any portion of this resolution shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and the Council hereby determines that it would have adopted this resolution without the invalid provision.

**SECTION 4:** That this resolution shall become effective from and after its date of passage.

**PASSED AND APPROVED ON THIS 24th DAY OF MARCH 2026.**

\_\_\_\_\_  
Kim Greaves, Mayor

**ATTEST:**

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Dianna Buchanan, Town Secretary

**APPROVED AS TO FORM:**

---

Alex Crowley, Town Attorney

## Dianna Buchanan

---

**From:** noreply@civicplus.com  
**Sent:** Thursday, February 19, 2026 2:43 PM  
**To:** Dianna Buchanan  
**Subject:** [EXTERNAL] Online Form Submission #3926 for Boards and Commissions Application

**CAUTION:** This email is from an EXTERNAL source.

### Boards and Commissions Application

#### Application for Boards, Commissions, and Committees

If you are interested in serving the community as a committee member, please submit a completed application. Committee applications are kept on file and reviewed as necessary to fill vacancies. If you have any additional questions, contact Dianna Buchanan, the Town Secretary, at 817.490.5711 or at dbuchanan@westlakex.gov.

---

**Board, Commission, or Committee you are applying for:** Texas Student Housing Authority Board of Directors

---

**First Name** Katherine

---

**Last Name** Kear

---

**Address1** [REDACTED]

---

**Address2** *Field not completed.*

---

**City** Grapevine

---

**State** TX

---

**Zip** [REDACTED]

---

**How long have you lived at this address?** 6 years

---

**Email Address** [REDACTED]


---

**Phone Number** [REDACTED]

---

**Occupation, Experience, and Degrees Held** Sales Manager, Gartner. BA in Psychology - UT, Arlington

---

Are you currently serving on a Board, Commission, or Committee?	No
If yes, which one(s)?	<i>Field not completed.</i>
Have you ever served on a Westlake Board, Commission, or Committee?	No
If yes, which one(s)?	<i>Field not completed.</i>
Why do you want to serve on this committee?	<p>I am excited to apply for a position on the Texas Student Housing Authority Board of Directors because I am passionate about ensuring students have access to higher education and to safe, affordable, and supportive housing as they pursue their education. I firmly believe that no student should be denied the opportunity to further their education due to financial barriers related to housing.</p> <p>Serving on the TSHA Board would allow me to give back to my community and support a cause I am truly avid about. I admire TSHA's mission to help deserving students achieve their academic dreams by providing the resources they need to succeed.</p>
Do you have any political conflicts of interest?	No
Do you have any related experience?	As a leader of a team of recent college graduates, I bring extensive experience in strategic coaching and mentorship. I specialize in guiding emerging professionals to achieve their personal and career goals, fostering their growth, and supporting their development. This background equips me with valuable insights into talent development, leadership, and organizational growth-perspectives. I am eager to contribute this experience as a board member.
What do you feel that you have to offer this committee?	As a board member, I hope to bring my perspective, dedication, and enthusiasm to help shape policies and initiatives that address students' needs and foster an inclusive, welcoming environment for all.
Please include your resume for consideration:	

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<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.552.htm>



**Town Council/Board of Trustees  
AGENDA ITEM REPORT**



---

**DATE:** March 24, 2026 **AGENDA ITEM NO:** G.1.  
**FROM:** Sandy Garza, Human Resources Director, Human Resources  
John Ard, Fire Chief, Fire Department  
Wade Carroll, Town Manager  
**SUBJECT:** Discussion of Fire Department Pay Plan  
(*Consideration of Action Regular Agenda Item J.3.*)

---

**ATTACHMENTS:**

1. Fire Department Compensation Presentation - 03-24-2026-final

**SUMMARY :**

The Fire Department has been struggling with a high attrition rate and difficulty hiring new employees. We have resorted to hiring Firefighter EMTs instead of paramedics and the cost to train those individuals is very high. The time it takes to certify and train new employees has caused an increase in overtime costs and employee burn out, as many firefighters are filling shifts mandatorily instead of voluntarily. Consideration of Action regarding this item is Regular Agenda Item J.3.

**ACTION OPTIONS:**

Receive Presentation and Hold Work Session Discussion. Consideration of Action regarding the Fire Dept. Pay Plan is Regular Agenda Item J.3.

# Fire Department Compensation Presentation

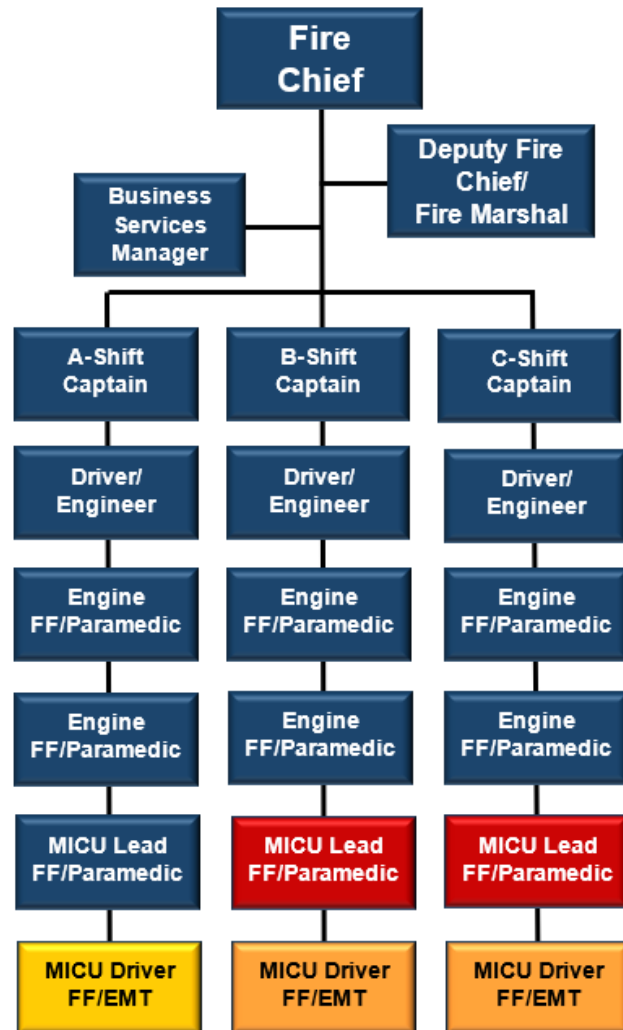
March 24, 2026



THE TOWN OF  
WESTLAKE

# Background

## Organizational Chart



## Current Condition

- Operate with 5-person minimum staffing each shift
- Two (2) Firefighter/Paramedic positions open – one vacancy open 9 months, the other vacancy open for 4 months - RED
- One (1) Firefighter/EMT attending paramedic school full-time (school – 9 months long) - YELLOW
- Two (2) Firefighter/EMTs needing to attend paramedic school - ORANGE
- Third hiring process underway to fill vacant positions



# Background

## Workforce Attrition and Staffing Concerns

- Since September 2019, hired and trained 19 personnel
- 93% of resignations left to area fire departments

## Turnover has caused:

- Increased costs to recruit, hire, and train replacement personnel
- Loss of operational experience and advance skills
- Added strain on existing staff to maintain minimum emergency staffing levels



# Fire Department Compensation – Market Position


## Strong Department Culture

- High standards for hiring, training, and accountability
- Strong leadership, mentorship, and professional development
- Commitment to maintaining safe and reliable emergency response

## Competitive Market Challenge

- Firefighter / Paramedic positions are highly competitive in North Texas
- Many comparable departments position salaries at the 80th–85th percentile
- Westlake currently falls below this competitive range

## Proposed Direction

-  Position Westlake Fire Department compensation at the **80th percentile of the regional fire service labor market.**



# Hiring and Training

## Hiring Process Timeline

**Compressed to approximately three (3) months**

- Application period
- Written test – passing 80% or higher
- DPS Row Test – passing 70% or higher
- Candidate Physical Ability Test (CPAT) – Pass or Fail
- Panel Interview
- Chief Interview
- Conditional Job Offer
  - Psychological Examination
  - Pre-Employment Medical/Physical complying with NFPA 1580
  - Background Investigation

## Bootcamp - Paramedic School – Paramedic Field Training Program

### **Bootcamp**

- Four (4) week on boarding process

### **Paramedic School**

- Nine (9) month full-time program

### **Paramedic Field Training Program**



THE TOWN OF  
WESTLAKE

# Cost to Replace Firefighters

**1 Firefighter/EMT : \$196,623**

**1 Firefighter/Paramedic: \$72,476**

**TOTAL COST OF HIRES SINCE 9/2019**

2 VACANT POSITIONS	\$382,684	2026
2 HIRE EMT-B	\$382,684	9/2/2019
2 HIRE EMT-B	\$382,684	4/20/2020
1 HIRE PARAMEDIC	\$41,412	4/20/2020
1 HIRE EMT-B	\$196,000	7/6/2020
1 HIRE EMT-B	\$196,000	10/26/2020
1 HIRE PARAMEDIC	\$72,477	10/11/2021
1 HIRE EMT-B	\$196,000	1/3/2022
1 HIRE EMT-B	\$196,000	4/18/2022
1 HIRE PARAMEDIC	\$72,477	5/2/2022
1 HIRE PARAMEDIC	\$72,476	7/31/2023
2 HIRE PARAMEDIC	\$134,660	3/17/2024
1 HIRE EMT-B	\$196,000	7/1/2024
2 HIRE EMT-B	\$382,684	5/5/2025
2 HIRE PARAMEDIC	\$134,660	5/5/2025
<b>TOTAL COST</b>	<b>\$3,038,897</b>	

**Total expenditure is at \$3,038,897 to replace and certify personnel since September 2019**



# Retention & Recruitment Strategy

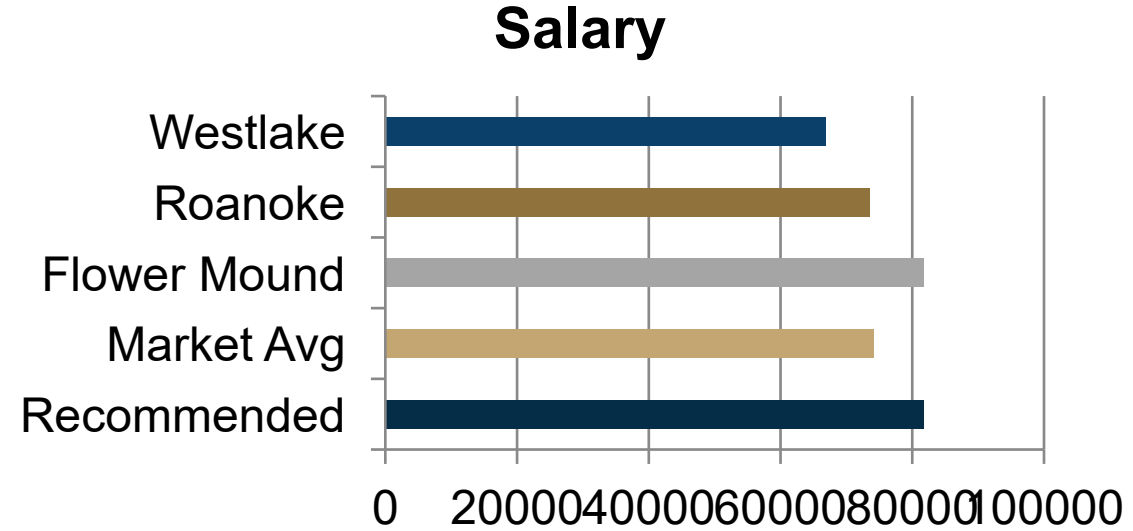
- **High Standards** – Character, credentials, accountability
- **Strong Culture** – Leadership, mentorship, wellness
- **Professional Development** – Training, education, career pathways
- **Strategic Recruitment** – Proactive outreach and streamlined hiring
- **Competitive Compensation** – Build and adopt highly competitive plan for predictable salary progression



# Firefighter / EMT-B Compensation – Market Comparison

Westlake is ~10% below market average for starting Firefighter/EMT-B salaries

City	Starting Salary	Max Salary
Highland Park	\$81,940	\$100,269
Southlake	\$69,814	\$83,777
University Park	\$81,991	\$99,640
Flower Mound	\$81,743	\$100,511
Roanoke	\$73,486	\$80,829
Colleyville	\$74,697	\$85,154
Trophy Club	\$72,538	\$97,626
Keller	\$69,480	\$79,246
Bellaire	\$62,363	\$84,190
Market Average	\$74,228	



**Recommended Adjustment: Increase starting salary from \$66,900 → ~\$81,800**

## Key Takeaway

- Westlake starting salary is ~10% below the market average
- Comparable departments start \$73K – \$82K
- Recommended starting salary ≈ \$81,800 (80th percentile)

**Current Westlake Salary**  
**\$66,900**

**Market Average**  
**\$74,228**

**Recommended Starting Salary**  
**\$81,822**

# Firefighter / Paramedic Compensation – Market Comparison

Westlake is ~7% below market average for starting Firefighter/Paramedic salaries

City	Starting Salary	Max Salary
Highland Park	\$86,761	\$106,167
Southlake	\$86,499	\$104,410
University Park	\$84,091	\$101,740
Flower Mound	\$82,943	\$101,711
Roanoke	\$81,120	\$105,747
Colleyville	\$78,432	\$95,238
Trophy Club	\$76,368	\$102,782
Keller	\$76,061	\$90,884
Bellaire	\$72,069	\$97,293
Market Average	\$80,483	



**Recommended Adjustment: Increase starting salary from \$75,158 → ~\$85,000**

**Key Takeaway:**

- Westlake starting salary is ~7% below the market average
- Comparable departments start \$80K – \$87K
- Recommended starting salary ≈ \$85K (80th percentile)

**Current Westlake Salary**  
**\$75,158**

**Market Average**  
**\$80,483**

**Recommended Starting Salary**  
**\$85,054**

# Driver Engineer Compensation – Market Comparison

Westlake starting salary is near the market average for Driver/Engineer positions

City	Starting Salary	Max Salary
University Park	\$107,705	\$110,978
Southlake	\$107,542	\$118,296
Roanoke	\$105,768	\$116,355
Flower Mound	\$102,192	\$111,673
Trophy Club	\$96,727	\$130,182
Colleyville	\$96,190	\$107,024
Keller	\$92,689	\$104,395
Bellaire	\$80,057	\$107,553
Highland Park	\$86,761	\$128,736
Market Average	\$97,292	



**Recommended Adjustment: Increase starting salary from \$97,260 → ~\$106,500**

**Key Takeaway:**

- Westlake starting salary is roughly aligned with the market average
- Comparable departments range from ~\$100K to ~\$106K
- Recommended target salary ≈ \$106K (80th percentile)

Current Westlake Salary  
**\$97,260**

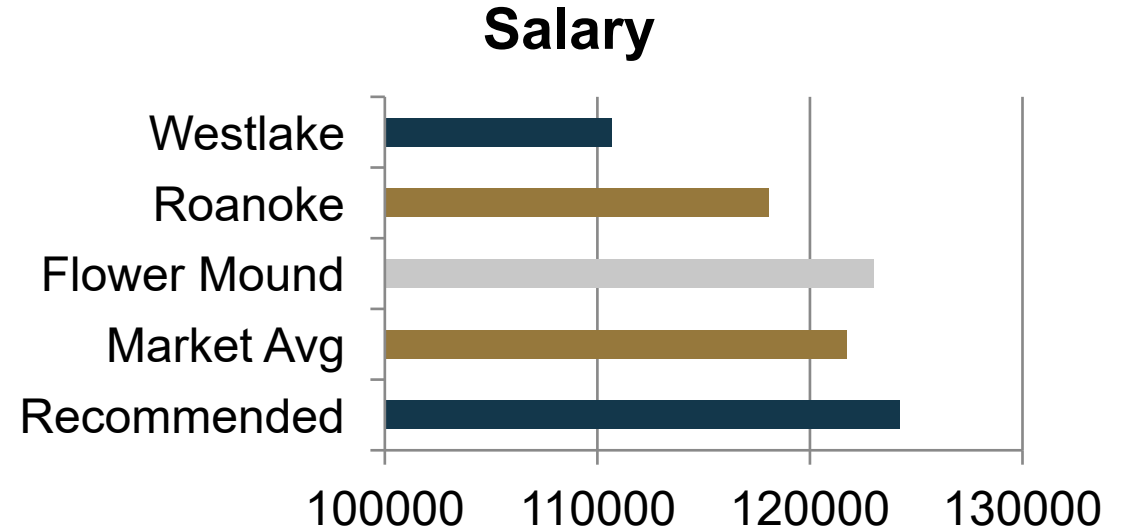
Market Average  
**\$97,292**

Recommended Starting Salary  
**\$106,478**

# Captain Compensation – Market Comparison

Westlake Captain salary is below the market average for comparable departments

City	Starting Salary	Max Salary
Highland Park	\$169,649	\$207,743
University Park	\$125,997	\$133,682
Flower Mound	\$123,000	\$134,410
Southlake	\$121,845	\$134,029
Roanoke	\$118,061	\$129,875
Trophy Club	\$117,395	\$157,998
Colleyville	\$115,570	\$128,560
Keller	\$107,977	\$121,605
Bellaire	\$96,245	\$129,931
Market Average	\$121,749	



**Recommended Adjustment: Increase starting salary from \$110,656 → ~\$124,200**

**Key Takeaway:**

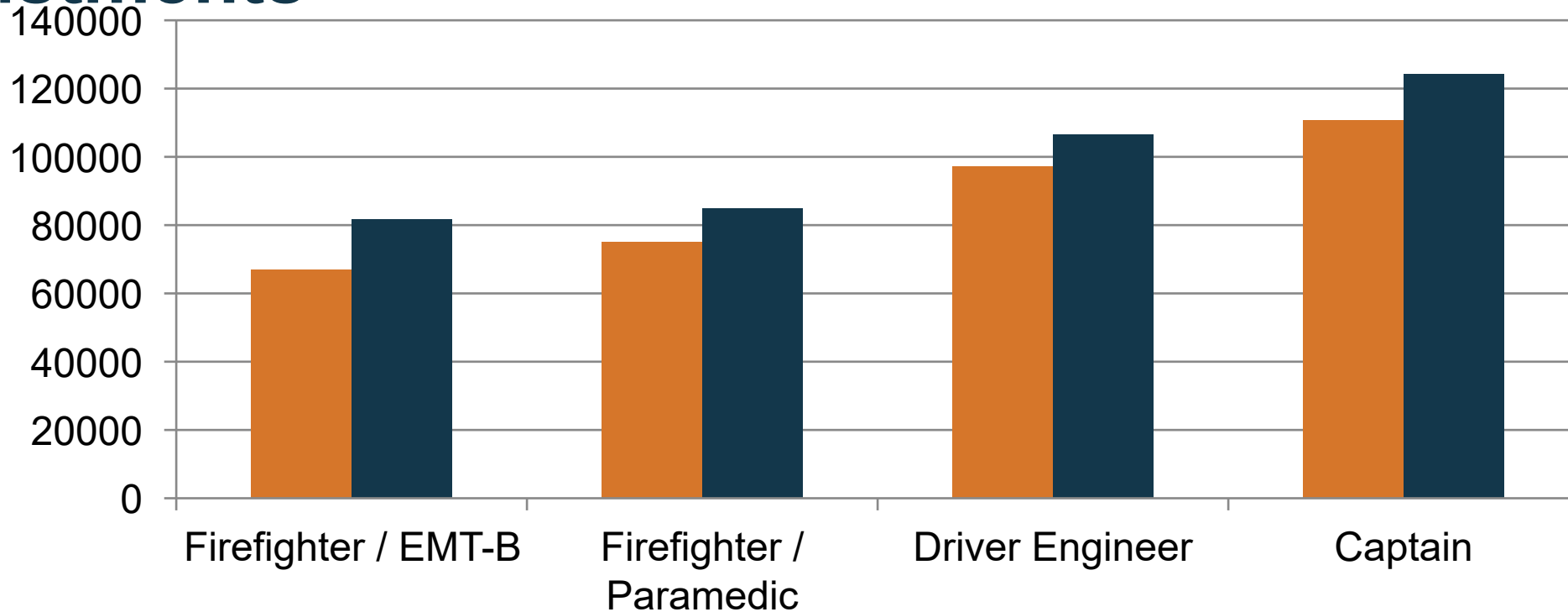
- Westlake Captain salary is below the market average
- Comparable departments range from ~\$118K to ~\$123K
- Recommended target salary ≈ \$124K (80th percentile)

**Current Westlake Salary**  
**\$110,656**

**Market Average**  
**\$121,749**

**Recommended Starting Salary**  
**\$124,199**

# Summary of Recommended Fire Department Pay Adjustments



Adjustments position Westlake near the 80th percentile of the regional fire service labor market. Competitive salaries are necessary to recruit and retain certified firefighters and paramedics. Proposed adjustments align Westlake with comparable North Texas departments.

# Proposed Fire Department Step Plan

## Firefighter / EMT-B (≈5% steps)

Step 1	Step 2
\$77,150	\$81,000

## Firefighter / Paramedic (≈5.4% steps)

Step 1	Step 2	Step 3	Step 4	Step 5
\$85,054	\$89,642	\$94,477	\$99,574	\$104,945

## Driver / Engineer (≈4.8% steps)

Step 1	Step 2	Step 3	Step 4
\$106,478	\$111,563	\$116,890	\$122,472

## Captain (≈5% steps)

Step 1	Step 2	Step 3	Step 4
\$124,199	\$130,430	\$136,973	\$143,845

**Note: The annual implementation cost is significantly lower than the cumulative cost of firefighter turnover since 2019.**

**Steps average approximately 5% between levels to provide predictable career progression. Step increases occur annually based on the employee's anniversary date in position.**

# Fire Department Step Plan Implementation – Cost Impact

**Total Annual Cost**

**\$357,300**

(Includes projected overtime impact)

**FY2026 Implementation Cost**

**\$151,118**

(Effective May 4, 2026)

<b>Rank</b>	<b>Annual Increase</b>
Firefighter / Paramedic (9)	\$202,941
Captains (3)	\$58,597
Drivers / Engineers (3)	\$54,392
Firefighter / EMT-B (3)	\$41,344

**Implementation Notes:**

Employees will be placed on the appropriate step based on tenure in their assigned position. Future step progression occurs on the employee's anniversary date in that role.



# SUMMARY AND RECOMMENDATION

## Staff Recommendation

Approve the **Fire Department Step Plan positioned at the 80th percentile of the regional fire service labor market effective May 4, 2026.**

This plan will:

- Improve recruitment of certified firefighter/paramedics
- Reduce turnover and long-term training costs
- Maintain safe and reliable emergency staffing for the Town



# TOWN COUNCIL/BOARD OF TRUSTEES ACTIONS / OPTIONS

The actions / options available to the Town Council are as follows:

1. Motion to approve
2. Motion to amend with the following stipulations (include stipulations in motion)
3. Motion to table (include specific date in motion)
4. Motion to deny



# QUESTIONS OR COUNCIL DISCUSSION



THE TOWN OF  
WESTLAKE



**Town Council/Board of Trustees  
AGENDA ITEM REPORT**



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**DATE:** March 24, 2026 **AGENDA ITEM NO:** G.3.  
**FROM:** Wade Carroll, Town Manager  
Jason Oliver, Project Manager, Town Manager's Office  
**SUBJECT:** WORK SESSION: Discussion of 5-Year Capital Improvements Plan (CIP)

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**ATTACHMENTS:**

CIP Spreadsheet

**SUMMARY :**

Staff has updated our 5-year Capital Improvement Plan, as required annually by the Strategic Plan and best practices in budgeting. We will discuss current and future projects, as well as funding mechanisms, as a precursor to the Town's FY2027 budget process. The items, amounts, and timing are all in draft status at this early stage and will be refined based on Council's input, available resources, and staff prioritization over the next several months. Each year, only the first year of projects listed in the 5-year CIP is appropriated within the Town's budget and the remaining out years are revisited annually.

# Capital Improvement Program

FY2027

Project Type	2026 Budget	2027 Projected	2028 Projected	2029 Projected	2030 Projected	2031 Projected	2032 +
Streets	\$470,000	\$350,000	\$100,000	\$750,000	\$750,000	\$2,680,000	\$0
Facilities	\$5,037,850	\$1,000,000	\$500,000	\$0	\$741,500	\$11,000,000	\$4,000,000
Parks/Trails	\$100,000	\$50,000	\$0	\$0	\$0	\$0	\$0
Drainage	\$0	\$0	\$300,000	\$0	\$0	\$0	\$1,000,000
Water	\$7,145,800	\$13,000,000	\$15,150,000	\$0	\$300,000	\$300,000	\$0
Sewer	\$40,000	\$0	\$0	\$0	\$90,000	\$0	\$0
Vehicles/Equipment	\$800,000	\$2,400,000	\$75,000	\$230,000	\$200,000	\$3,255,908	\$30,000
Information Technology	\$470,506	\$0	\$0	\$0	\$0	\$0	\$0
<b>Totals</b>	<b>\$14,064,156</b>	<b>\$16,800,000</b>	<b>\$16,125,000</b>	<b>\$980,000</b>	<b>\$2,081,500</b>	<b>\$17,235,908</b>	<b>\$5,030,000</b>

Expenditure Type	2026 Budget	2027 Projected	2028 Projected	2029 Projected	2030 Projected	2031+	2032 +
Capital	\$13,030,800	\$16,800,000	\$16,125,000	\$980,000	\$2,081,500	\$17,235,908	\$5,030,000
O&M	\$1,033,356	\$0	\$0	\$0	\$0	\$0	\$0
<b>Totals</b>	<b>\$14,064,156</b>	<b>\$16,800,000</b>	<b>\$16,125,000</b>	<b>\$980,000</b>	<b>\$2,081,500</b>	<b>\$17,235,908</b>	<b>\$5,030,000</b>

Funding Source	2026 Budget	2027 Projected	2028 Projected	2029 Projected	2030 Projected	2031+	2032 +
General Fund	\$875,926	\$1,050,000	\$875,000	\$230,000	\$941,500	\$13,735,000	\$5,030,000
Academy Budget	\$612,430	\$0	\$0	\$0	\$0	\$0	\$0
Utility Revenues	\$450,000	\$0	\$150,000	\$0	\$390,000	\$450,000	\$0
General/Utilities	\$0	\$0	\$0	\$0	\$0	\$370,908	\$0
Capital Funds/Donations	\$540,000	\$0	\$0	\$0	\$0	\$0	\$0
Certificates of Obligation	\$11,585,800	\$15,750,000	\$15,100,000	\$750,000	\$750,000	\$2,680,000	\$0
<b>Totals</b>	<b>\$14,064,156</b>	<b>\$16,800,000</b>	<b>\$16,125,000</b>	<b>\$980,000</b>	<b>\$2,081,500</b>	<b>\$17,235,908</b>	<b>\$5,030,000</b>

Green represents changes since the FY 2026 document



## Town Council/Board of Trustees AGENDA ITEM REPORT



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**DATE:** March 24, 2026 **AGENDA ITEM NO:** H.1.  
**FROM:** Dianna Buchanan, Town Secretary, Town Secretary's Office  
**SUBJECT:** Discuss, consider and act to approve the February 17, 2026 Town Council/Board of Trustees Regular Meeting Minutes and the February 24, 2026 Town Council/Board of Trustees/Westlake Development Corporation, Inc. Special Joint Meeting Minutes.

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**ATTACHMENTS:**

1. 02.17.2026 TC BOT MINUTES DRAFT
2. 02.24.2026 JOINT TCBOT AND WDC MINUTES DRAFT

**SUMMARY :**

The Town Council/Board of Trustees Meeting Minutes are attached for the February 17, 2026 Town Council/Board of Trustees Regular Meeting Minutes and the February 24, 2026 Town Council/Board of Trustees/Westlake Development Corporation, Inc. Special Joint Meeting Minutes for review and consideration of approval.

**BACKGROUND AND DISCUSSION:**

Approval of meeting minutes is a formal process ensuring accuracy, transparency, and compliance with the Texas Open Meetings Act. Meeting minutes must document a quorum being present, accurately reflect the meeting's proceedings, and record specific actions taken. Upon approval and execution, the minutes become the official transcript and permanent record of the meeting. Minutes of open meetings are considered public records and are available upon approval for inspection as outlined by the Texas Public Information Act upon request.

**FISCAL IMPACT:**

N/A

**LEGAL REVIEW:**

N/A

**RECOMMENDATION:**

Staff recommends approval of the minutes as presented.

**ACTION OPTIONS:**

Motion to Approve as Presented

Motion to Deny

Motion to Approve with Changes/Conditions

Motion to Continue or Table

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**Town Council/Board of Trustees  
Town of Westlake**

Council Chamber, 1500 Solana Blvd  
Building 7, Suite 7100 Westlake, TX 76262



**Tuesday, February 17, 2026, 4:00 PM**  
**Meeting Minutes - Draft**

The Town Council of the Town of Westlake also serves as the governing Board of Trustees for Westlake Academy. This agenda may contain both municipal and Westlake Academy items, which will be clearly identified. **NOTE: To comply with Senate Bill 12, Westlake Academy items will begin no earlier than 5 p.m. but may start later depending on the progression of posted agenda items.** Town Council/Board of Trustees meetings are available for viewing online via live-stream or on-demand at <https://www.westlake-tx.org/787/Watch-Meetings-Live>. In an effort to improve meeting efficiency, any residents wishing to speak must submit a speaker request form to the Town Secretary prior to the start of the meeting.

Pursuant to Texas Government Code Section 551.127, one or more members of the Town Council may participate in this meeting by video-conference call. A quorum of the Town Council and the presiding officer will be present at the physical location of the meeting.

**NOTE:** As authorized by Section 551.071 of the Texas Government Code, the Town Council/Board of Trustees may enter into closed Executive Session for the purpose of seeking confidential legal advice from the Town Attorney and/or School Attorney on any agenda item listed herein.

**A. CALL REGULAR TOWN COUNCIL MEETING TO ORDER (4 P.M.) AND ANNOUNCE A QUORUM PRESENT**

**Mayor Greaves called the meeting to order at 4 p.m. and announced a quorum present.**

**COUNCIL PRESENT:**

Mayor Kim Greaves  
Council Member Michael Yackira  
Council Member T. J. Duane

Mayor Pro Tem Tammy Reeves  
Council Member Kevin Smith  
Council Member Todd Gautier

**STAFF PRESENT:**

Town Manager Wade Carroll  
Deputy Town Manager Jason Alexander  
Town Secretary Dianna Buchanan  
Town Attorney Alex Crowley  
Town Attorney Matthew Boyle  
Human Resources Director Sandy Garza  
IT Network Admin. Duston McCready  
Project Manager Jason Oliver  
Town Planner Cole Davenport  
Keller Police Chief Bradley Fortune  
Database Coordinator Yi Zhang

Head of School Dr. Kelly Ritchie  
Dir. of Innovation and Dev. Michelle Briggs  
Finance Director Cayce Lay Lamas  
School Attorney Janet Bubert  
Fire Chief John Ard  
Communications Director Jon Sasser  
High School Principal Dr. James Owen  
Dir. of Secondary Education Maxwell Ituah  
Dir. of Accountability Darcy McFarlane  
Academy Finance Manager Marlene Rutledge  
IT Coordinator Mitch Wells

**B. INVOCATION AND PLEDGES OF ALLEGIANCE**

**Pastor Clayton Reed, Southlake Baptist Church, provided the invocation. Mayor Greaves, assisted by Dr. Kelly Ritchie, Head of School, and Westlake Academy students Liv Bassett (G8) and Mays Rehman (G7) led the Pledges.**

**At this time, Mayor Greaves announced Executive Session and Item L.1. "Section 551.071: Consultation with and legal advice from the Town Attorney regarding pending litigation - Vertical Bridge v. Town of Westlake" and recessed the Regular Meeting to Executive Session at 4:03 p.m.**

**Mayor Greaves reconvened the Regular Meeting from Executive Session at 4:38 p.m. and directed the meeting to Item C.**

**C. CITIZEN/PUBLIC COMMENTS**

This is an opportunity for citizens/public to address the Town Council/Board of Trustees on any matter, whether or not it is posted on the agenda. Anyone wishing to speak on action items must submit a speaker request form to the Town Secretary prior to the start of the meeting. Individual comments are normally limited to three (3) minutes. The presiding officer may ask the speaker to hold their comment on an agenda item if the item is posted as a Public Hearing. The Town Council/Board of Trustees cannot by law take action nor have any discussion or deliberations on any presentation made at this time concerning an item not listed on the agenda. The Town Council/Board of Trustees will receive the information, ask staff to review the matter, or an item may be noticed on a future agenda for deliberation or action.

**There was no one to speak at this time.**

**D. ITEMS OF COMMUNITY INTEREST**

Mayor and Council Reports on Items of Community Interest pursuant to Texas Government Code Section 551.0415 the Town Council may report on the following items: (1) expression of thanks, congratulations, or condolences; (2) information about holiday schedules; (3) recognition of individuals; (4) reminders about upcoming Town Council events; (5) information about community events; and (6) announcements involving imminent threat to public health and safety.

D.1. Items of Community Interest (Jon Sasser, Communications Director)

**Communications Director Jon Sasser provided Items of Community Interest including mention of the upcoming Planning and Zoning Commission on March 3rd, Westlake Academy Spring Break beginning March 16th thru March 20th, and details of the Ballot Order Drawing for the May 2, 2026 General election to be held at 10 a.m. on February 26th.**

**E. PRESENTATION**

E.1. Receive Westlake Fire-EMS 2025 Annual Report (Fire Chief John Ard)

**Fire Chief John Ard provided a presentation and highlights of the Westlake Fire-EMS 2025 Annual Report.**

**TOWN COUNCIL AGENDA ITEMS FOR CONSIDERATION**

**F. CONSENT AGENDA**

All items listed below are considered routine by the Town Council and/or Board of Trustees and will be enacted with one motion. There will be no separate discussion of items unless a Council/Board Member or citizen so requests, in which event the item will be removed from the general order of business and considered in its normal sequence.

**Mayor Greaves asked if there were any items to be removed from the Consent Agenda. There were none.**

- F.1. Discuss, consider and act to approve the Town Council/Board of Trustees Meeting Minutes for the January 14, 2026 Workshop meeting and the January 20, 2026 Regular Meeting. (Town Secretary Dianna Buchanan)
- F.2. Discuss, consider, and act to approve Resolution 26-01 adopting the 2025 Jurisdictional Annex to the Tarrant County Hazard Mitigation Action Plan. (Fire Chief John Ard)
- F.3. Discuss, consider and act to approve Resoluton 26-02 ratifying the approval by the Town Manager to purchase one new ambulance Ford Chassis F-550 Diesel 4X4 from Sterling McCall Ford through Houston-Galveston Area Council (HGAC) Cooperative Purchasing Program for an amount not to exceed \$89,250 as part of the originally approved Resolution 25-44; and authorizing the expenditure for completion of said acquisition. (Fire Chief John Ard)

**Motion by Council Member Yackira and Motion Second by Council Member Gautier to approve the Consent Agenda as presented. Mayor Greaves called for the vote. Motion approved unanimously.**

#### WESTLAKE ACADEMY BOARD OF TRUSTEES AGENDA ITEMS

- G. **CALL REGULAR WESTLAKE ACADEMY BOARD OF TRUSTEES MEETING TO ORDER (5 P.M. OR LATER) AND ANNOUNCE A QUORUM PRESENT**

**Mayor Greaves called the Westlake Academy Board of Trustees Meeting to Order at 5 p.m. and announced a quorum present. All Board Members were present.**

- H. **PARENT/PUBLIC COMMENTS**

This is an opportunity for parents/public to address the Board of Trustees on any matter, whether or not it is posted on the agenda. Anyone wishing to speak on action items must submit a speaker request form to the Town Secretary prior to the start of the meeting. Individual comments are normally limited to three (3) minutes. The presiding officer may ask the speaker to hold their comment on an agenda item if the item is posted as a Public Hearing. The Board of Trustees cannot by law take action nor have any discussion or deliberations on any presentation made at this time concerning an item not listed on the agenda. The Board of Trustees will receive the information, ask staff to review the matter, or an item may be noticed on a future agenda for deliberation or action.

**This item was announced following consideration of item J. CONSENT AGENDA. Mayor Greaves acknowledged Ms. Susan Thurman, Fort Worth resident and Westlake Academy parent, who spoke regarding her concerns about Westlake Academy administration and the ethicality of the use of non-disclosure agreements in educational settings.**

- I. **PUBLIC HEARING WITH DISCUSSION**

- I.1. Conduct Public Hearing & Discuss Westlake Academy's Charter FIRST 2025 Rating

**Academic Finance Manager Marlene Rutledge provided an overview of the Westlake Academy's Charter FIRST 2025 Rating details which was received by the Board and a discussion was held regarding the same. Mayor Greaves opened the public hearing and asked if there was anyone that wanted to speak regarding this matter. There was no one to speak, and Mayor Greaves closed the public hearing.**

**J. CONSENT AGENDA**

**Mayor Greaves asked if there were any items to be removed from the Consent Agenda. Council Member Duane requested Items J.3. and J.4. be removed from the Consent Agenda for individual consideration.**

- J.1. Discuss, consider and act regarding WA Resolution 26-01 adopting the Westlake Academy Academic Calendar for School Year 2026-2027. (Dr. Kelly Ritchie, Head of School)
- J.2. Discuss, consider and act regarding WA Resolution 26-02 to approve submission of a Missed School Day Waiver Application to the Texas Education Agency (TEA). (Dr. Kelly Ritchie, Head of School)
- J.5. Discuss, consider and act to approve all library materials proposed to be purchased or donated to the Westlake Academy school library in an open meeting in compliance with SB 13. (Dr. Kelly Ritchie, Head of School)
- J.6. Discuss, consider and act to approve WA Resolution 26-06 adopting amendments to the Westlake Academy Admissions Policy. (Dr. Kelly Ritchie, Head of School)
- J.7. Discuss, consider, and act on the allocation of one additional fifth grade teaching position for the 2026-2027 school year. (Dr. Kelly Ritchie, Head of School)

**Mayor Greaves asked for a Motion to approve the remainder of the Consent Agenda. Motion by Council Member Yackira and Motion Second by Council Member Gautier to approve Consent Agenda Items J.1., J.2., J.5., J.6. and J.7. Motion approved unanimously.**

- J.3. Discuss, consider and act regarding WA Resolution 26-03 to approve contracting with Technology Lab to provide Information Technology services to Westlake Academy and authorizing the Head of School to execute the agreement for same. (Dr. Kelly Ritchie, Head of School)

**This item was removed from the Consent Agenda for individual consideration. Dr. Ritchie, Head of School, provided an overview of the item. The proposal will outsource the academy's information technology services to a third-party company that is experienced in working with education providers, moving away from the outdated shared services model that was put in place years ago when there were less staff and students. WA has distinct needs that are related to charter schools specifically—making sure we are in TEA compliance, being as efficient and effective as possible and making sure all decisions are school-centered. Technology Lab is being recommended for award of the contract because of the expertise, work ethic, culture and solutions they offer. Council Member Duane wants to see the final contract before voting and has concerns about some of the provisions in the draft contract. School Attorney Bubert advised that the contract version Council was provided was a draft and the contract details are still being negotiated. She also said that a Request for Proposals (RFP) is not required for these professional services. Several proposed motions were not voted on as the appropriate action to move forward was discussed. Technology Lab representative James Pope addressed Town Council via telephone conference regarding the proposed contract. Staff received Board direction to continue contract negotiations with Technology Lab. Motion by Council Member Gautier and Motion Second by Council Member Yackira to Table J.3. until the February 24th Special Meeting and at that time the Board will consider the negotiated contract for final approval. Mayor Greaves called for the vote. Motion approved unanimously.**

- J.4. Discuss, consider and act regarding WA Resolution 26-04 to approve a contract with Charter Impact to provide services to Westlake Academy and to authorize execution of the agreement by the Head of School. (Dr. Kelly Ritchie, Head of School)

**This item was removed from the Consent Agenda for individual consideration. Staff received direction to continue to negotiate the contract with Charter Impact and to return to Council with the final contract. Council Member Gautier made a motion to Table the Item until we have the final contract and bring it back at the February 24th special meeting for final approval. Motion second by Mayor Pro Tem Reeves. Mayor Greaves called for the vote. Motion approved unanimously.**

**Mayor Greaves directed the meeting to Item H. Parent/Public Comments at this time.**

**K. REGULAR AGENDA ITEMS**

- K.1. Discuss, consider and act regarding WA Resolution 26-05 Affirming the Constitutional and Legal Right to Choose to Pray in School and Opposing a resolution to adopt a state-organized prayer policy for our district, as contemplated by S.B. 11, 89th Legislature, codified at Texas Education Code § 25.0823. (Dr. Kelly Ritchie, Head of School)

**Dr. Ritchie, Head of School, provided an overview of the item. Motion by Council Member Gautier and Motion Second by Council Member Yackira to approve WA Resolution 26-05 affirming the constitutional and legal right to choose to pray in school and opposing a resolution to adopt a state-organized prayer policy for our district, as contemplated by S.B. 11, 89th Legislature, codified at Texas Education Code Section 25.0823. Mayor Greaves called for the vote. Motion approved unanimously.**

**L. EXECUTIVE SESSION**

The Town Council/Board of Trustees will conduct a closed session pursuant to Section 551.071 (2) of the Texas Government Code, for the purpose of seeking confidential legal advice from the Town Attorney/Westlake Academy Attorney for the following:

**At this time, Mayor Greaves announced Item L.1. and recessed the Regular Meeting to Executive Session at 5:59 p.m.**

- L.1. Section 551.071: Consultation with and legal advice from the Town Attorney regarding pending litigation - Vertical Bridge v. Town of Westlake.
- L.2. Section 551.087: Deliberation regarding Economic Development Negotiations - to deliberate the offer of a financial or other incentive to business prospects:
- a. 2025-05
  - b. 2025-08

**Mayor Greaves reconvened the Regular Meeting from Executive Session at 7:04 p.m.**

**M. TAKE ANY ACTION, IF NEEDED, FROM EXECUTIVE SESSION ITEMS**

**There was no action as a result of Executive Session.**

**N. FUTURE AGENDA ITEMS**

**No Future Agenda Items were mentioned.**

**O. STAFF RECAP OF TOWN COUNCIL/BOARD DIRECTIONS RECEIVED**

None were mentioned.

**P. ADJOURNMENT**

Mayor Greaves reminded the March meeting will be held March 24th and there is a scheduled Special Meeting on February 24th. He adjourned the meeting at 7:06 p.m.

Approved by the Town Council/Board of Trustees at the Regular Meeting Held on March 24, 2026.

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**Kim Greaves, Mayor and Board President**

**ATTEST:**

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**Dianna Buchanan  
Town/Board Secretary**



**Town Council/Board of Trustees  
Town of Westlake**

Council Chamber, 1500 Solana Blvd  
Building 7, Suite 7100 Westlake, TX 76262



**Tuesday, February 24, 2026, 5:00 PM  
Meeting Minutes - Draft**

The Town Council of the Town of Westlake also serves as the governing Board of Trustees for Westlake Academy. This agenda may contain both municipal and Westlake Academy items, which will be clearly identified. **NOTE: To comply with Senate Bill 12, Westlake Academy items will begin no earlier than 5 p.m. but may start later depending on the progression of posted agenda items.** Town Council/Board of Trustees meetings are available for viewing online via live-stream or on-demand at <https://www.westlake-tx.org/787/Watch-Meetings-Live>. In an effort to improve meeting efficiency, any residents wishing to speak must submit a speaker request form to the Town Secretary prior to the start of the meeting.

Pursuant to Texas Government Code Section 551.127, one or more members of the Town Council/Board of Trustees and/or Westlake Development Corporation Board may participate in this meeting by video-conference call. A quorum of the Town Council and the presiding officer will be present at the physical location of the meeting. A quorum of the Westlake Development Corporation Board and the presiding officer will be present at the physical location of the meeting.

**NOTE:** As authorized by Section 551.071 of the Texas Government Code, the Town Council/Board of Trustees and/or the Westlake Development Corporation Board may enter into closed Executive Session for the purpose of seeking confidential legal advice from the Town Attorney and/or School Attorney on any agenda item listed herein.

**A. CALL SPECIAL TOWN COUNCIL/BOARD OF TRUSTEES JOINT MEETING WITH THE WESTLAKE DEVELOPMENT CORPORATION TO ORDER (5 P.M) AND ANNOUNCE QUORUMS PRESENT**

**Mayor Greaves called the meeting to order at 5 p.m. and announced quorums present.**

**COUNCIL PRESENT:**

Mayor Kim Greaves  
Council Member Michael Yackira  
Council Member T. J. Duane

Mayor Pro Tem Tammy Reeves  
Council Member Kevin Smith  
Council Member Todd Gautier

**WESTLAKE DEVELOPMENT CORPORATION  
BOARD OF DIRECTORS PRESENT:**

President Kim Greaves  
Vice President Tammy Reeves  
Director Matthew Rose

Treasurer Todd Gautier  
Director John Nestor  
Director Mike Asselta\*present virtually

**STAFF PRESENT:**

Town Manager Wade Carroll  
Deputy Town Manager Jason Alexander  
Town Secretary Dianna Buchanan  
Town Attorney Alex Crowley  
Deputy Director of IT Ray Workman

Head of School Dr. Kelly Ritchie  
Dir. of Innovation and Dev. Michelle Briggs  
School Attorney Janet Bubert  
IT Network Administrator Duston McCready

## TOWN COUNCIL AGENDA ITEMS

**At this time, Mayor Greaves announced Executive Session and Items B.1. and B.2., and adjourned the meeting to Executive Session at 5:01 p.m.**

### **B. EXECUTIVE SESSION**

The Town Council/Board of Trustees and Westlake Development Corporation Board will conduct a closed session pursuant to Section 551.071 (2) of the Texas Government Code, for the purpose of seeking confidential legal advice from the Town Attorney/Westlake Academy Attorney for the following:

- B.1. Section 551.072: Deliberation regarding the Purchase, Exchange, Lease or Value of Real Property:
  - a. 48 and 52 Girona and 34 Cortez, Westlake Entrada
- B.2. Section 551.087: Deliberation regarding Economic Development Negotiations - to deliberate the offer of a financial or other incentive to business prospects:
  - a. Project 2025-06
  - b. Project 2025-09

**Mayor Greaves reconvened the Regular Meeting from Executive Session at 5:49 p.m.**

### **C. TAKE ANY ACTION, IF NEEDED, FROM EXECUTIVE SESSION ITEMS**

#### **WESTLAKE DEVELOPMENT CORPORATION (WDC)**

**WDC Board Chairman Kim Greaves asked if there was any action needed as a result of Executive Session? Motion by WDC Director John Nestor with Second by WDC Director Todd Gautier to grant authority to the WDC Board Chairman to execute documents as discussed during Executive Session related to Project 2025-09 on behalf of the Westlake Development Corporation, Inc. Board Chairman Greaves called for the vote. Motion approved 5 ayes - 0 nays - 2 absent. Director Asselta did not vote as he did not return to the meeting via virtual connection after Executive Session.**

#### **WESTLAKE TOWN COUNCIL**

**Mayor Greaves asked if there was any action needed as a result of Executive Session? Motion by Council Member Todd Gautier with Second by Council Member Michael Yackira to grant authority to the Mayor to execute documents as discussed during Executive Session related to Project 2025-09 on behalf of the Town of Westlake. Mayor Greaves called for the vote. Motion approved unanimously.**

#### **WESTLAKE ACADEMY BOARD OF TRUSTEES AGENDA ITEMS**

### **D. REGULAR AGENDA ITEMS**

- D.1. (TABLED 2.17.2026) Discuss, consider and act regarding WA Resolution 26-03 to approve contracting with Technology Lab to provide Information Technology services to Westlake Academy and authorizing the Head of School to execute the agreement for same. (Dr. Kelly Ritchie, Head of School)

**The contract with Technology Lab is still being negotiated. Motion by Council Member Yackira and Motion Second by Council Member Gautier to continue the item to the March 24, 2026 Town Council/Board of Trustees meeting. Mayor Greaves called for the vote. Motion approved unanimously.**

- D.2. (TABLED 2.17.2026) Discuss, consider and act regarding WA Resolution 26-04 to approve a contract with Charter Impact to provide services to Westlake Academy and to authorize execution of the agreement by the Head of School. (Dr. Kelly Ritchie, Head of School)

**Dr. Ritchie, Head of School, provided an overview of the negotiated contract for consideration of approval. School Attorney Janet Bubert and Charter Impact**

representative Dave Murphy (via remote connection) participated in the discussion regarding the contract. Motion by Council Member Gautier and Motion Second by Council Member Yackira to approve WA Resolution 26-04 approving the proposed contract between Westlake Academy and Charter Impact, with revisions at the request of Council Member Duane to clarify the 90-day transition services to be provided by Charter Impact following termination of the agreement. Mayor Greaves called for the vote. Motion approved unanimously.

**E. FUTURE AGENDA ITEMS**

None were mentioned.

**F. STAFF RECAP OF TOWN COUNCIL/BOARD DIRECTIONS RECEIVED**

None were mentioned.

**G. ADJOURNMENT**

Mayor Greaves reminded that the next regular Town Council/Board of Trustees Meeting is March 24th and adjourned the meeting at 6:18 p.m.

Approved by the Town Council/Board of Trustees at the Regular Meeting held March 24, 2026.

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**Kim Greaves, Mayor and Board President**

**ATTEST:**

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**Dianna Buchanan, Town/Board Secretary**



## Town Council/Board of Trustees AGENDA ITEM REPORT



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**DATE:** March 24, 2026 **AGENDA ITEM NO:** H.2.  
**FROM:** Kyle Flanagan, Public Works Director, Public Works  
**SUBJECT:** Discuss, consider and act to approve Resolution 26-03 authorizing the execution of the Interlocal Agreement by and between the Trinity River Authority of Texas, the Town of Westlake, and the City of Southlake for the transfer of ownership and maintenance responsibility of the Sanitary Sewer Trunk Main N-1 Wastewater Pipeline to the Trinity River Authority in perpetuity by the Town Manager.

---

### **ATTACHMENTS:**

1. Resolution 26-03 ILA with TRA and Southlake to Transfer N-1 Sewer Main
2. TRA Westlake Southlake Interlocal Agreement N-1 Line
3. TRA Westlake Southlake N1 Exhibit MS1\_8N ILA Ownership

### **SUMMARY :**

This agreement will transfer ownership and future maintenance of the 18-inch N-1 sewer line from the Town of Westlake and City of Southlake to the Trinity River Authority (TRA). The attached Interlocal Agreement (ILA) has been approved by the Southlake Town Council and executed. Upon approval by Westlake Town Council, the (ILA) will be provided to the Trinity River Authority for execution to complete the transfer.

### **BACKGROUND AND DISCUSSION:**

The developer of Coventry development in Southlake constructed the off-site sanitary sewer improvements in 1995 to serve 1,163 acres located in Southlake and 1078 acres in Westlake. Since that time, development in Westlake has tied into the Coventry sewer line based on interlocal agreements with Southlake for Vaquero, Quail Hollow, Glenwyck, The Knolls, Entrada, and Terra Bella. The Town of Westlake approved prior interlocal agreements with Southlake that allowed them to charge Westlake the TRA costs for sewer service plus an administration fee of 10% in the most recent agreement.

The transfer of ownership of the N-1 sewer line, which includes approximately 6,500 linear feet of pipe and related appurtenances that connect to TRA's existing wastewater system was initiated by Southlake in 2005/2006. The purpose of the transfer was to reduce the future maintenance responsibilities and costs from Southlake and Westlake. The TRA agreed to the transfer but stipulated that a sewer study be carried out and any recommendations be made by the municipalities prior to their acceptance of the main line. At that time, the City of Southlake performed maintenance improvements on their share of the N-1 manholes, as noted in the study. The Town of Westlake did not perform their share of the agreed-upon maintenance improvements, thus stalling the transfer. Current Westlake Public Works staff re-initiated discussions with TRA and Southlake and all

parties agreed that the transfer would be beneficial to the public. Based on the interlocal agreement before you, the Trinity River Authority has agreed to perform the remaining manhole maintenance improvements once the N-1 sanitary sewer line is transferred. Also, upon approval of the interlocal agreement, TRA will take over the metering station at the Southlake Meadows development from the City of Southlake (located at Sam School Road) which meters flow from Westlake and Southlake and will be used to bill each entity for sewer use.

Approval of this item will simplify billing for the Town of Westlake, as the Trinity River Authority will begin billing Westlake directly, and remove Southlake from the process. This will reduce our current rate for sewer service.

The City of Southlake presented the interlocal agreement to their Council in January and it was approved. The executed copy is attached. The ILA will be transmitted upon Westlake Town Council's approval to the Trinity River Authority for final approval and acceptance to complete the transfer of ownership of the sanitary sewer N-1 trunk main to the TRA. No payment or compensation shall be exchanged by the parties under the agreement.

**FISCAL IMPACT:**

There is no cost to the Town of Westlake for the transfer of ownership of the N-1 Sewer Line to the Trinity River Authority.

**LEGAL REVIEW:**

Yes.

**RECOMMENDATION:**

Staff recommends approval of Resolution 26-03 as presented to authorize the execution of the Interlocal Agreement by and between the Trinity River Authority of Texas, the Town of Westlake, and the City of Southlake for the transfer of ownership and maintenance responsibility of the Sanitary Sewer Trunk Main N-1 wastewater pipeline to the Trinity River Authority in perpetuity by the Town Manager.

**ACTION OPTIONS:**

Motion to Approve as Presented

Motion to Deny

Motion to Approve with Changes/Conditions

Motion to Continue or Table

**TOWN OF WESTLAKE**

**RESOLUTION NO. 26-03**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS, APPROVING AN INTERLOCAL AGREEMENT BY AND BETWEEN THE TRINITY RIVER AUTHORITY OF TEXAS, THE TOWN OF WESTLAKE, AND THE CITY OF SOUTHLAKE FOR THE TRANSFER OF OWNERSHIP AND MAINTENANCE RESPONSIBILITY OF THE SANITARY SEWER TRUNK MAIN N-1 WASTEWATER PIPELINE TO THE TRINITY RIVER AUTHORITY IN PERPETUITY AND AUTHORIZING EXECUTION BY THE TOWN MANAGER**

**WHEREAS**, Chapter 791 of the Texas Government Code, also known as the Interlocal Cooperation Act, and Chapter 271.102 of the Local Government Code authorize all local governments to contract with each other to perform governmental functions or services; and

**WHEREAS**, the Town of Westlake, City of Southlake, and the Trinity River Authority desire to enter into this agreement for the purpose of transferring the ownership and maintenance responsibility of the Sanitary Sewer Trunk Main N-1 Wastewater Pipeline to the Trinity River Authority; and

**WHEREAS**, the participating entities are of the opinion that the transfer of ownership and maintenance as provided in the Interlocal Agreement attached as “Exhibit A” will be beneficial to the taxpayers of the entities through the efficiencies and potential savings to be realized; and

**WHEREAS**, the Town Council finds that the passage of this Resolution is in the best interest of the citizens of Westlake.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS:**

**SECTION 1:** That all matters stated in the Recitals hereinabove are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

**SECTION 2:** That the Town Council of Westlake does hereby approve the Interlocal Agreement between the Town of Westlake, the City of Southlake and the Trinity River Authority transferring the ownership and maintenance responsibility of the Sanitary Sewer Trunk Main N-1 Wastewater Pipeline to the Trinity River Authority in perpetuity, and authorizes the Town Manager to execute the Interlocal Agreement attached hereto as “Exhibit A”.

**SECTION 3:** If any portion of this Resolution shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and the Council hereby determines that it would have adopted this Resolution without the invalid provision.

**SECTION 4:** That this Resolution shall become effective from and after its date of passage.

**PASSED AND APPROVED ON THIS 24<sup>th</sup> DAY OF MARCH, 2026.**

\_\_\_\_\_  
Kim Greaves, Mayor

ATTEST:

\_\_\_\_\_  
Dianna Buchanan, Town Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Alex Crowley, Town Attorney

INTERLOCAL AGREEMENT BY AND BETWEEN  
THE TRINITY RIVER AUTHORITY OF TEXAS,  
THE TOWN OF WESTLAKE, AND THE CITY OF SOUTHLAKE, TEXAS

STATE OF TEXAS

§  
§  
§

COUNTY OF TARRANT

This Interlocal Agreement (Agreement) is made and entered into as of \_\_\_\_\_, 2026, by and between the Trinity River Authority of Texas, a conservation and reclamation district of the State of Texas, with its principal office at 5300 South Collins Street, Arlington, Tarrant County, Texas 76018 (Authority); the Town of Westlake, Texas, a Type A general law municipal corporation, located in Tarrant County, Texas (Westlake); and the City of Southlake, Texas, a home-rule municipal corporation, located in Tarrant County, Texas (Southlake); singularly and collectively referred to as “Party” and “Parties” respectively.

WITNESSETH:

WHEREAS, the Texas Legislature has authorized the execution of Interlocal Cooperation Agreements between and among governmental entities pursuant to the Interlocal Cooperation Act, Texas Government Code Chapter 791; and

WHEREAS, the Authority owns and operates the Denton Creek Regional Wastewater System (DCRWS) that receives wastewater from the cities of Fort Worth, Haslet, Justin, Keller, Roanoke and Southlake; the towns of Argyle, Flower Mound, Northlake and Westlake; and Circle T Municipal Utility District Nos. 1 and 3; and

WHEREAS, Westlake and Southlake own and operate a retail wastewater collection system that serves the needs of their residential and commercial customers; and

WHEREAS, the Sanitary Sewer Trunk Main N-1 wastewater pipeline was constructed by the City of Southlake in November 1995 and includes 6,500 linear feet of 18-inch polyvinyl chloride pipe (PVC); and

WHEREAS, Westlake and Southlake have requested that the Authority take ownership of the 6,500 linear feet of the Sanitary Sewer Trunk Main N-1 wastewater pipeline; and

WHEREAS, the Sanitary Sewer Trunk Main N-1 wastewater pipeline includes approximately 6,500 linear feet of the Sanitary Sewer Trunk Main N-1 wastewater pipeline and related appurtenances, including manhole structures, that connect to the Authority’s existing Denton Creek Pressure System from Westlake and Southlake’s point-of-entry manholes numbers 375D and 780D (Project); and

WHEREAS, Westlake, Southlake, and the Authority agree that the Authority is to take ownership of the Sanitary Sewer Trunk Main N-1 wastewater pipeline that will remain a regional asset with the combined flow from Westlake and Southlake; and

WHEREAS, Westlake, Southlake, and the Authority agree that the Authority is to take ownership of the Southlake Meadows Meter Station, as described in [Exhibit A](#) (Meter Station); and

WHEREAS, Westlake, Southlake, and the Authority agree that Westlake and Southlake shall retain ownership of the 8-inch PVC, Sewer SS-1 pipeline at the Southlake Meadows Meter Station, as described in [Exhibit A](#), which solely conveys Westlake and Southlake flows; and

WHEREAS, the governing bodies of the Authority, Westlake, and Southlake believe that this Agreement is necessary for the benefit of the public, and that each party has the legal Authority to provide governmental function as described in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and mutual covenants contained herein, the Parties agree as follows:

## ARTICLE I

### TERMS OF AGREEMENT

- (A) For the convenience of the Authority, Westlake, and Southlake agree that the Authority has the right to use any and all public easements conveyed to Westlake and Southlake, and any and all public right-of-way's controlled by Westlake and Southlake, for the reconstruction, maintenance, and repairs to the Project.
- (B) In addition to these rights, Westlake and Southlake agree to convey and do hereby convey to the Authority all title and acquired rights to the Sanitary Sewer Trunk Main N-1 wastewater pipeline, free and clear of all liens and claims. The Authority shall assume ownership of the Sanitary Sewer Trunk Main N-1 wastewater pipeline upon final acceptance by the Authority;
- (C) Southlake agrees to convey and does hereby convey to the Authority all title and acquired rights to the Southlake Meadows Meter Station, free and clear of all liens and claims. The Authority shall assume ownership of the Southlake Meadows Meter Station upon final acceptance by the Authority and rename it "MS1\_8N." Southlake shall provide all as-builts and specifications for the Meter Station and transfer any applicable easements covering the Meter Station to the Authority. The Authority shall install a recorder and do a "Startup" calibration on the Meter Station. The Authority shall be responsible for the maintenance of a screening wall to screen the metering station from view from the adjacent right-of-way;
- (D) Southlake further agrees to convey and does hereby convey to the Authority its public easement under and around the Meter Station from the back of curb on the adjacent right-of-way to the Meter Station, as shown for Authority ownership on [Exhibit A](#). Southlake reserves the right to use and the Authority agrees to allow Southlake to use the conveyed public easement for purposes of accessing its own public easements and its facilities located within a public easement. The Authority's use of the conveyed public easement shall not be exclusive, and Southlake or other utilities may utilize that portion of the conveyed public easement between the Meter Station and the adjacent right-of-way so long as the use does not interfere with the Authority's maintenance or use of the Metering Station.
- (E) Westlake and Southlake shall provide the Authority any available as-builts and specifications for the Metering Station and the Project. Southlake has already made

available as-builts and specifications for the Metering Station and the Project, and those documents are in the possession of the Authority. The Authority agrees that the documents provided satisfy Southlake's obligation to provide as-builts and specifications under this Agreement;

- (F) The Authority shall perform a closed-circuit television inspection, manhole inspection, survey, and other related field activities along the Project to determine the condition of the pipeline;
- (G) It is the intent of this Agreement that this Agreement shall convey and that the Authority shall own, operate, and maintain the Metering Station and the Project facilities and appurtenances upon final acceptance by the Authority;
- (H) The Metering Station and Project facilities and appurtenances shall be considered finally accepted by the Authority upon written final acceptance by the Authority, which shall occur within 30 days of Agreement execution; and
- (I) No payment or compensation shall be exchanged for the services provided or assets conveyed under this Agreement.

## ARTICLE II

### TERMINATION OF OTHER AGREEMENTS

Prior to the execution of this Agreement, Westlake and Southlake operated the Project facilities and appurtenances pursuant to three Interlocal Agreements between the two parties. With the approval of this Agreement, Westlake and Southlake acknowledge that these three Interlocal Agreements are no longer necessary, and Westlake and Southlake mutually agree to and do hereby terminate said Interlocal Agreements.

Immediately upon the execution of this Agreement by both Westlake and Southlake, Westlake and Southlake mutually agree that the following three Interlocal Agreements shall be immediately terminated without any further action from either party:

- (A) Interlocal Agreement Between the Town of Westlake and the City of Southlake For Use of N-1 Sewer Line, effective August 29, 1995;
- (B) Interlocal Agreement Between the Town of Westlake and the City of Southlake for Temporary Water and Sewer Service and Wastewater Treatment for Glynwick Farms Subdivision, effective August 6, 1999; and
- (C) Interlocal Agreement for the Provisions of Sanitary Sewer Services Connected to the N-1 Sanitary Sewer Collector Main in the Town of Westlake, effective June 14, 2016.

ARTICLE III

NOTICES

All notices or communications provided for herein shall be delivered to Parties or, if mailed, shall be sent to Authority and Parties at their respective addresses. For the purpose of notices, the addresses of the Parties, until changed by written notice, shall be as follows:

Authority:

Trinity River Authority of Texas  
5300 South Collins  
Arlington, Texas 76018

Attention: Matthew Jalbert  
Executive Manager, Northern Region

Westlake:

The Town of Westlake, Texas  
1500 Solana Boulevard (The Terraces)  
Building 7, Suite 7200  
Westlake, TX 76262

Attention: Wade Carroll  
Town Manager

Southlake:

City of Southlake, Texas  
1400 Main Street, Suite 460  
Southlake, TX 76092

Attention: Alison Ortowski  
City Manager

ARTICLE IV

DEFAULT

In the event that either Party or the Authority shall breach or fail to perform any of the provisions of this Agreement, the aggrieved Party shall promptly notify the other Party of the breach or failure to perform ("Default Notice"). In the event such breach or failure to perform is not cured within 30 days after the receipt of such notice, the Party sending the notice, at its discretion, may notify the other Party of its intention to declare this Agreement terminated. Upon receipt of such Default Notice the violating Party shall have 30 days to cure such violation or if the violation cannot reasonably be cured in 30 days, such longer time as is reasonably required not to exceed 90 days if within 15 days of receiving the notice the defaulting Party commences to cure the default and thereafter continuously and diligently pursues the cure prior to final action by the other Party declaring this Agreement terminated.

No failure on the part of any Party to this Agreement to require the performance by the any other Party of any provision of this Agreement shall in any way affect any Party's right to enforce such provision, nor shall any waiver by any Party be held to be a waiver of any other provision. No rights under this Agreement may be waived and no modification or amendment to this Agreement may be made except by written amendment executed by the Parties.

#### ARTICLE IV

##### CAPTION

The captions to the various clauses of this Agreement are for informational purposes only and in no way alter the substance of the terms and conditions of this Agreement.

#### ARTICLE VI

##### IMMUNITY

It is expressly understood and agreed that, in the execution of this Agreement, no Party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

#### ARTICLE VII

##### INDEMNIFICATION

To the extent allowed by law and subject to and without waiving any defenses or immunities under Texas law, the Authority, Southlake, and Westlake do hereby release, indemnify, and hold each other and their respective officials, agents, and employees, in both their public and private capacities, harmless from any and all liability, claims, costs, and expenses arising out of the performance of this Agreement due to their own respective negligence or that of their officials, officers, or employees.

#### ARTICLE VIII

##### SEVERABILITY

If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, or conditions of this Agreement are for any reason held to be invalid, void, or unenforceable, the remainder of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, or conditions in this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

ARTICLE IX

GOVERNING LAW

The validity of the Agreement and of any of its terms or provisions, as well as the rights and duties hereunder, shall be governed by the laws of the State of Texas.

ARTICLE X

ASSIGNMENT

The Parties understand and agree that this Agreement may not be assigned without the express written consent of any other Party except to a successor entity created by law to take over substantially all of the functions for which a Party now has responsibility.

ARTICLE XI

PLACE OF PERFORMANCE

All actions taken and obligations assumed under this Agreement are performable in Tarrant County, Texas. In the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought in Tarrant County, Texas.

ARTICLE XII

CURRENT REVENUES

The Parties hereto shall make payments called for hereunder only from current revenues legally available to each Party.

ARTICLE XIII

FORCE MAJEURE

In the event that the performance by the Parties hereto of any of the Parties' obligations or undertakings hereunder shall be interrupted or delayed by an occurrence beyond the reasonable control of that Party (the "Affected Party") and not occasioned by the conduct of or the failure to take action by any Party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto ("Force Majeure Event"), then the Parties shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof. Notwithstanding the preceding sentence, economic conditions that render a Party's performance of this Agreement unprofitable or otherwise uneconomic will not be a Force Majeure Event. Additionally, the Affected Party:

- (A) shall give prompt notice to the other Parties of any Force Majeure Event;
- (B) use its best efforts to mitigate the effects of such Force Majeure Event as promptly as reasonably practicable;

- (C) furnish weekly reports to the other Parties regarding the progress in overcoming the adverse effects of such event or circumstance of the Force Majeure Event; and
- (D) resume the performance of its obligations under this Agreement as soon as is reasonably practicable after the Force Majeure Event is remedied or ceases to exist.

#### ARTICLE XIV

##### STATE OR FEDERAL LAWS, RULES, ORDERS, OR REGULATIONS

This Agreement is subject to all applicable federal, state, and local laws and any applicable ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having or asserting jurisdiction. Nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule, or regulation in any forum having jurisdiction, and each Party agrees to make a good faith effort to support such proposed laws and regulations which would be consonant with the performance of this Agreement in accordance with its terms.

#### ARTICLE XV

##### ENTIRE AGREEMENT

This Agreement contains all the terms, commitments, and covenants of the Parties pursuant to this Agreement. Any verbal or written commitment not contained in this Agreement or expressly referred to in this Agreement and incorporated by reference shall have no force or effect. No amendment, modification, or alteration of the terms hereof shall be binding unless the same is in writing, dated subsequent to the date hereof, and duly executed by the Parties.

#### ARTICLE XVI

##### REMEDIES

All remedies provided for in this Agreement are in addition to, not in substitution of, all remedies of the Parties at law or in equity. All remedies are intended to be cumulative, and a Party to this Agreement may pursue the remedies provided for in this Agreement and all remedies at law or in equity at the same time.

#### ARTICLE XVII

##### TERM OF AGREEMENT

This Agreement shall become effective on the day and year first written above (the "Effective Date") and shall continue in force and effect for so long as the Authority, or a successor, operates the Project facilities and appurtenances.

IN WITNESS WHEREOF, the Parties hereto acting under authority of their respective governing bodies have caused this Agreement to be duly executed in several counterparts, each of which is deemed to be an original and as of the day and date written above.

CITY OF SOUTHLAKE, TEXAS



Alison Ortowski  
City Manager

ATTEST:

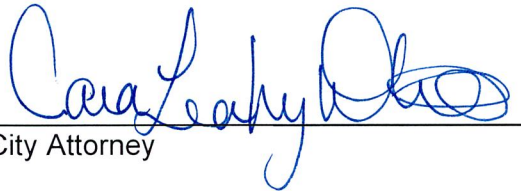


Amy Shelley  
City Secretary



(CITY'S SEAL)

APPROVED AS TO FORM AND  
LEGALITY:



Cara Leahy  
City Attorney

**THE TOWN OF WESTLAKE, TEXAS**

\_\_\_\_\_  
Wade Carroll  
Town Manager

ATTEST:

\_\_\_\_\_  
Dianna Buchanan  
Town Secretary

APPROVED BY THE TOWN OF  
WESTLAKE COUNCIL

MARCH 24, 2026

\_\_\_\_\_  
Date

(CITY'S SEAL)

APPROVED AS TO FORM AND  
LEGALITY:

\_\_\_\_\_  
Town Attorney  
Alex Crowley

**TRINITY RIVER AUTHORITY OF TEXAS**

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J. KEVIN WARD  
General Manager

ATTEST:

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ALEXIS S. LONG  
Secretary, Board of Directors

(AUTHORITY'S SEAL)

**RESOLUTION NO. 25-026**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOUTHLAKE, TEXAS, AUTHORIZING THE CITY MANAGER OR THEIR DESIGNEE TO ENTER INTO INTERLOCAL AGREEMENTS ON BEHALF OF THE CITY FOR ANY GOVERNMENTAL FUNCTION OR SERVICE AUTHORIZED BY CHAPTER 791 OF THE TEXAS GOVERNMENT CODE, INCLUDING COOPERATIVE PURCHASING AGREEMENTS; REPEALING AND REPLACING RESOLUTION NO. 12-049 TO REFLECT RECENT AMENDMENTS TO TEXAS LOCAL GOVERNMENT CODE SECTION 252.021(a); AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Southlake is a home rule municipality acting under its charter adopted pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

**WHEREAS**, Chapter 791 of the Texas Government Code, known as the Interlocal Cooperation Act, authorizes local governments to contract with one another and with other political subdivisions and state agencies to perform governmental functions and services to increase efficiency and effectiveness; and

**WHEREAS**, the definition of "governmental functions and services" under Section 791.003 of the Government Code includes a wide range of services such as police and fire protection, public health and welfare, parks and recreation, library services, engineering, administrative functions, and other functions in which local governments are mutually interested; and

**WHEREAS**, interlocal agreements, including cooperative purchasing agreements, are essential tools for municipalities to deliver services, share resources, reduce costs, and improve public service delivery; and

**WHEREAS**, Section 791.011 of the Texas Government Code authorizes a local government to enter into interlocal contracts with other governmental entities to perform governmental functions and services that each party is authorized to perform individually; and

**WHEREAS**, the City Council of the City of Southlake finds it to be in the best interest of the City to authorize the City Manager, or their designee, to execute such agreements as necessary or appropriate to carry out the City's governmental functions in accordance with Chapter 791; and

**WHEREAS**, the Texas Legislature has amended Section 252.021(a) of the Texas Local Government Code to increase the monetary threshold for competitive bidding for municipal purchases, thereby necessitating an update to the City's prior authorizing resolution; and

**WHEREAS**, this Resolution repeals and replaces Resolution No. 12-049 in order to align with the amended provisions of Section 252.021(a) and to more broadly authorize interlocal cooperation consistent with Chapter 791.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOUTHLAKE, TEXAS THAT:**

**SECTION 1.**

The City Manager or their designee is hereby authorized to negotiate, execute, and administer on behalf of the City any and all interlocal agreements as permitted under Chapter 791 of the Texas Government Code, including but not limited to cooperative purchasing agreements, emergency assistance agreements, and contracts for shared services, infrastructure, facilities, or other governmental functions or services.

**SECTION 2.**

This authority includes the ability to contract with other municipalities, counties, special districts, state agencies, local government corporations, councils of government, and any other governmental entities as defined in Chapter 791, provided such contracts comply with applicable law and are within the budgeted appropriations or otherwise approved by the City Council as required.

**SECTION 3.**

Nothing in this Resolution limits the City Council’s authority and responsibility to approve contracts equal to or exceeding the dollar amount required by Section 252.021(a) of the Texas Local Government Code.

**SECTION 4.**

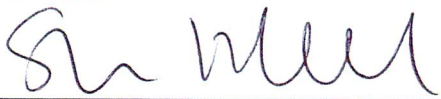
Resolution No. 12-049 is hereby repealed in its entirety and replaced by this Resolution.

**SECTION 5.**

This Resolution shall take effect immediately upon its adoption.

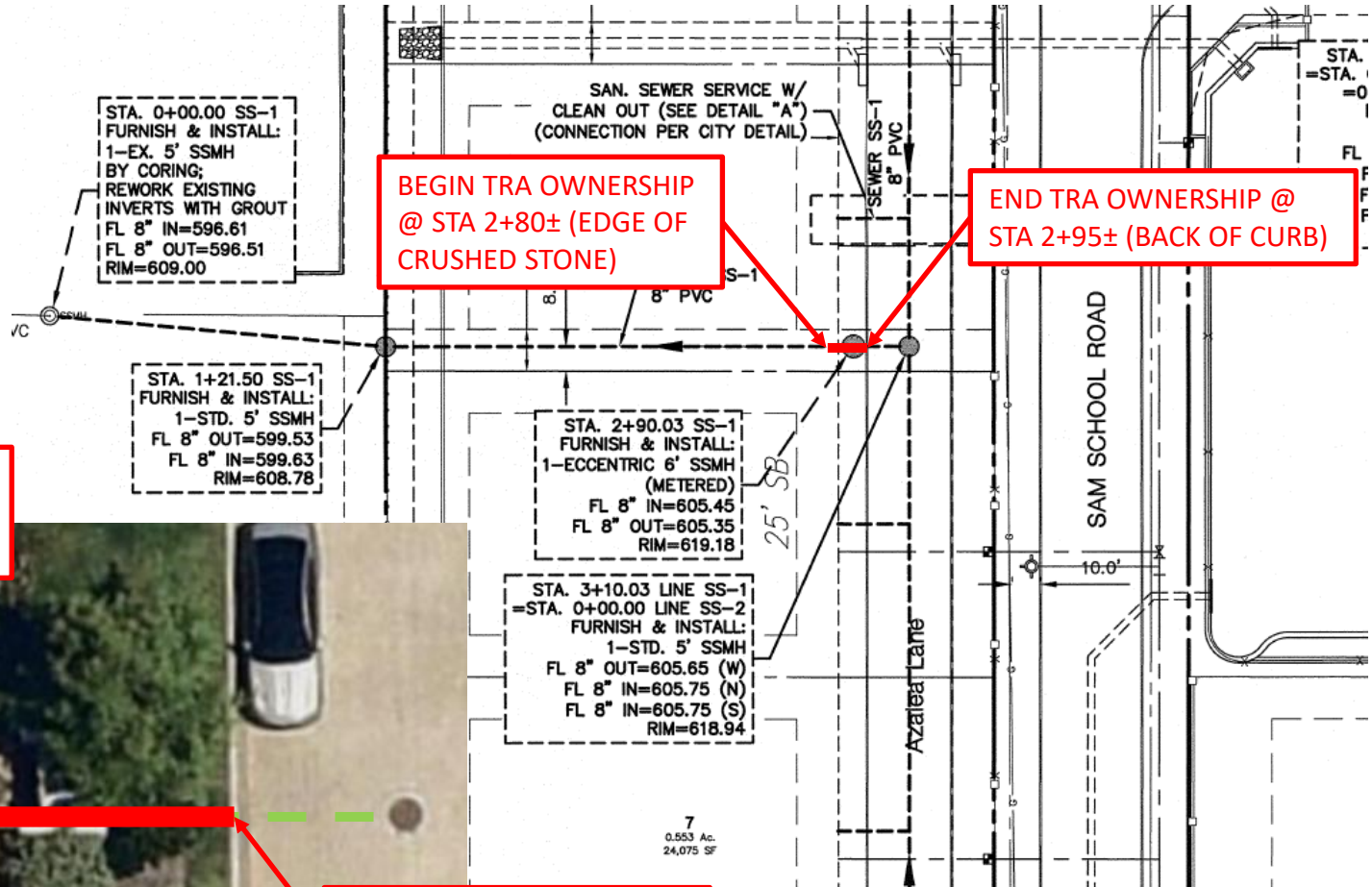
**PASSED AND APPROVED** this the 5<sup>th</sup> day of August, 2025.

ATTEST:

  
Shawn McCaskill, Mayor City of Southlake

  
Amy Shelley TRM  
The seal of the City of Southlake, Texas, is circular with a five-pointed star in the center. The words "CITY OF SOUTHLAKE, TEXAS" are written around the perimeter of the seal, and there are three smaller stars at the bottom.

# EXHIBIT A



BEGIN TRA OWNERSHIP @ STA 2+80± (EDGE OF CRUSHED STONE)

END TRA OWNERSHIP @ STA 2+95± (BACK OF CURB)

BEGIN TRA OWNERSHIP @ STA 2+80± (EDGE OF CRUSHED STONE)

END TRA OWNERSHIP @ STA 2+95± (BACK OF CURB)





## Town Council/Board of Trustees AGENDA ITEM REPORT



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**DATE:** March 24, 2026 **AGENDA ITEM NO:** H.3.  
**FROM:** Kyle Flanagan, Public Works Director, Public Works  
**SUBJECT:** Discuss, consider and act regarding Resolution 26-04 to approve a contract authorizing a professional services agreement with Westwood Professional Services, Inc. for engineering the design of the Westlake Pump Station Generator Installation for an amount not to exceed \$57,500.

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### **ATTACHMENTS:**

1. Res 26-04 PSA Westwood Engineering Generator
2. Res 26-04 Attachment A PSA Westwood

### **SUMMARY :**

The existing Pump Station located along United States (“U.S.”) Highway 377 was constructed in early 2000 and requires critical improvements and upgrades to reliably provide potable water to the Town of Westlake (the “Town”).

### **BACKGROUND AND DISCUSSION:**

The existing Pump Station located along United States (“U.S.”) Highway 377 was constructed in early 2000 and requires critical improvements and upgrades to reliably provide potable water to the Town of Westlake (the “Town”). This was identified as a project in the Pump Station Condition Assessment conducted earlier this year. The Town has already procured --- and is anticipating delivery of a new generator in June 2026. The scope of this project consists of design plans for the addition of a proposed generator to accommodate the pump station expansion, and electrical and civil plans to site and connect the generator to the site electrical system.

The approximately 25-year-old pump station is critical to the continued operation and maintenance of the Town’s public water system. The Department of Public Works has identified upgrades, as many of the components are either at their end of life, or the technology has become outdated. Pursuant to Resolution 25-05, the Town Council authorized the procurement of a 700KW on-site backup diesel generator set for the Town’s water pump station in the amount of \$342,481.28 --- utilizing Sourcewell Cooperative Purchasing Contract #092222-CAT.

Staff has been informed the anticipated completion date of the generator build is June of 2026. The scope of this project is for project management, coordination and permitting, civil design, electrical design, structural design, bid phase services and construction administration.

During the pump station evaluation performed by Freese and Nichols, Inc., the pump station

generator was found to be defective and the firm recommended that it be replaced.

Westwood Professional Services, Inc. provides engineering design services to municipalities throughout the DFW Metroplex. They have a team of specialized professionals that design multiple municipal water systems including ESTs and PSs[JA1.1] in the area. Engineering design is a professional service that is not required to be bid.

Funding for the design and construction of the Pump Station Improvement project will come from the 2025 Certificate of Obligation and is included in the 5-year Capital Improvement Plan (“CIP”) approved by the Town Council on September 16, 2025.

**FISCAL IMPACT:**

The cost of the agreement with Westwood Professional Services, Inc. for the engineering design of the Pump Station Improvement project in the amount of \$57,500 will be paid from the 2025 Certificate of Obligation.

**LEGAL REVIEW:**

N/A.

**RECOMMENDATION:**

Staff recommends approval of Resolution 26-04 authorizing a professional services agreement with Westwood Professional Services, Inc. for the engineering design of the Westlake Pump Station Improvements project in an amount not to exceed \$57,500.

**ACTION OPTIONS:**

Motion to Approve as Presented

Motion to Deny

Motion to Approve with Changes/Conditions

Motion to Continue or Table

**TOWN OF WESTLAKE**

**RESOLUTION NO. 26-04**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS, AUTHORIZATING THE TOWN MANAGER OR HIS DESIGNEE TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH WESTWOOD PROFESSIONAL SERVICES, INC. FOR THE ENGINEERING DESIGN OF THE WESTLAKE PUMP STATION GENERATOR INSTALLATION IMPROVEMENTS PROJECT IN AN AMOUNT TO EXCEED \$57,500.**

**WHEREAS,** the Town Council of the Town of Westlake recognizes the need to maintain and protect public infrastructure to serve its residents; and,

**WHEREAS,** the Town Council recognizes that the professional engineering design of the Pump Station improvements is critical to reliably provide potable water to the Town of Westlake; and,

**WHEREAS,** the Town Council finds that the passage of this Resolution is in the best interest of the citizens of the Town of Westlake.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS:**

**SECTION 1:** That all matters stated in the Recitals hereinabove are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

**SECTION 2:** That the Town Council for the Town of Westlake does hereby authorize a professional services agreement with Westwood Professional Services, Inc., “ATTACHMENT A”, for the engineering design of the Westlake Pump Station Generator Installation Design project for the existing pump station located along United States (“U.S.”) Highway 377.

**SECTION 2:** That the funding for the professional services agreement of the pump station generator installation project which is included in the Town of Westlake’s 5-year Capital Improvement Plan (“CIP”) in an amount not to exceed \$57,500 will be paid for from the 2025 Certificates of Obligation.

**SECTION 3:** If any portion of this Resolution shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and the Council hereby determines that it would have adopted this Resolution without the invalid provision.

**SECTION 4:** That this Resolution shall become effective from and after its date of passage.

**PASSED AND APPROVED ON THIS 24<sup>th</sup> DAY OF MARCH 2026.**

\_\_\_\_\_  
Kim Greaves, Mayor

ATTEST:

\_\_\_\_\_  
Dianna Buchanan, Town Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Alex Crowley, Town Attorney

February 3, 2026  
Project No.: 0070155.01

**Mr. Kyle Flanagan**  
*Deputy Director of Public Works*  
**TOWN OF WESTLAKE**  
1500 Solana Boulevard  
The Terraces  
Building 7, Suite 7200  
Westlake, Texas 76262

Re: Professional Engineering Services  
**WESTLAKE GENERATOR DESIGN**  
*Westlake, Texas*

Dear Mr. Flanagan:

**Westwood Professional Services, Inc.** is pleased to submit this proposal to provide professional civil and electrical engineering services relating to the referenced project. It is our understanding the project consists of design plans for a new generator for the Town's Pump Station site.

Based on our preliminary discussions and the information received to date, our perception of the project is described in the attached documents:

- General Conditions of Agreement;
- Exhibit A – Scope of Services;
- Exhibit B – Compensation and Method of Payment;
- Exhibit C – Insurance; and
- Exhibit D – Schedule

**Westwood Professional Services, Inc. is pleased to have this opportunity to submit this proposal and look forward to working with you on this project.** If the proposed agreement is acceptable to you as presented, please execute one copy of the agreement form and return one original copy to our office. If you have any questions or would like any additional information, please do not hesitate to call us at your convenience.

Sincerely,

Clint A. Bissett, P.E.

CAB/jmc

These **General Conditions of Agreement** for the **Westlake Generator Design** (the “**Project**”), together with the attached Exhibits and any amendments hereto, are an agreement (collectively, the “**Agreement**”) between **Town of Westlake** (“**Client**”), a **Texas Governmental Entity**, and **Westwood Professional Services, Inc.** (“**Westwood**”), a Texas corporation. Client and Westwood are each a “**Party**” and collectively, the “**Parties**” to this Agreement dated **February 3, 2026** (the “**Effective Date**”).

**1.01 BASIC AGREEMENT**

In exchange for the mutual covenants and promises contained in this Agreement and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree that Westwood shall provide, or cause to be provided, the professional services (the “**Services**”) set forth in this Agreement for Client in exchange for payment contemplated herein. In addition, Westwood shall provide drawings, specifications, plans, designs, work product, and other items and materials as described in this Agreement (the “**Deliverables**”).

**2.01 SCOPE AND RESPONSIBILITIES**

- A. *Westwood.* Westwood shall perform Services for the Project as set forth in the Scope of Services & Fee Proposal, attached and incorporated by reference herein as **Exhibit “A”**, in accordance with the terms of this Agreement and consistent with the Project Schedule, attached and incorporated by reference herein as **Exhibit “E”**. Westwood reserves the right to augment its staff with employees and/or consultants as it deems appropriate to assist in the performance of Services for the Project due to Project logistics, scheduling issues, and/or market conditions. The Deliverables and all other documents, software, data, intellectual property, and other work products created, developed, produced, delivered, performed, and/or provided by Westwood, whether in hard copy or in electronic form, are instruments of service (“**Instruments of Service**”) for this Project, whether the Project is completed or not.
  
- B. *Client.* In addition to the other responsibilities described in this Agreement and/or imposed by law or in equity, Client shall have the following obligations:
  - 1. Provide all information and criteria as to Client’s requirements, objectives, and expectations for the Project, including all numerical criteria that Client expects Westwood and its consultants, if any, to meet, including all standards of development, design, and/or construction.
  - 2. Provide Westwood all previous studies, plans, and/or other documents pertaining to the Project, including but not limited to the contract with the property owner (the “**Prime Contract**”), if any, and all applicable data requested by Westwood.
  - 3. Arrange for reasonable access to the Project site and other private or public property, including any easements or other authorizations as required for Westwood to provide the Services.
  - 4. Review all documents and/or oral reports presented by Westwood and render in writing decisions pertaining thereto within a reasonable time so as not to delay the Services for the Project.
  - 5. Apply for and furnish applicable approvals, licenses, and/or permits from governmental authorities having jurisdiction over the Project.
  - 6. Furnish certifications and/or consents from other entities as may be necessary from time to time and in accordance with Section 10.01.C herein.

7. Be responsible for obtaining from others such independent accounting, legal, insurance, cost estimating, and overall feasibility services as Client may desire for the Project.
8. Comply with all applicable safety guidelines at the Project site at its own expense.
9. Give reasonably prompt written notice to Westwood whenever Client becomes aware of any development that affects the scope, timing, and/or payment of Westwood's Services and/or any defect or noncompliance in any aspect of the Project.
10. Bear all costs incidental to the responsibilities of Client under this Agreement.

### 3.01 ADDITIONAL SERVICES

- A. The Parties recognize that the Project scope may change from time to time, and in such an event, Westwood may furnish services in addition to those set forth in the Scope of Services & Fee Proposal, if authorized by Client in writing.
- B. In such case(s), the Parties shall appropriately and reasonably adjust Westwood's Services, the Project Schedule, and compensation for such additional services. Specifically, Client shall pay Westwood for such additional services an amount equal to the cumulative hours charged to the Project by each class of Westwood's employees multiplied by the rates for each applicable billing class plus reimbursable expenses and Westwood's consultant charges, if any. Client shall also adjust the budget and anticipated design and construction milestones, if any, as necessary to accommodate such changes to the Project Schedule.

### 4.01 PAYMENT PROCEDURES

- A. *Compensation.* Client shall compensate Westwood for its Services as set forth in the Compensation & Method of Payment/Fee Schedule, attached and incorporated by reference herein as **Exhibit "B"**, including any subsequent amendments and/or change orders. Client shall pay Westwood as follows:
  1. *Hourly.* If the Services are agreed to be on an hourly basis, invoice amounts shall be in accordance with Westwood's Fee Schedule in effect at the time when the Services are performed. Westwood's standard hourly rates in the Fee Schedule shall be defined as an amount equal to the cumulative hours charged to the Project by Westwood's employees times standard hourly rates for each applicable billing class for all Services performed on the Project plus reimbursable expenses and Westwood's consultant charges, if any. Fee Schedule prices and rates are subject to change.
  2. *Lump Sum.* If the Services are agreed to on a lump sum basis, invoice amounts shall be an amount equal to the percent of each task's completion multiplied by the lump sum of the task plus reimbursable expenses and Westwood's consultant charges, if any.

Reimbursable expenses are defined as project-related internal expenses to Westwood actually incurred plus all invoiced external reimbursable expenses allocable to the specific project, the latter of which is multiplied by a factor of 1.15.

If applicable, when compensation to Westwood includes charges of Westwood's consultants, those charges shall be the amounts billed by Westwood's consultants to Westwood multiplied by a factor of 1.15. The consultant's reimbursable expenses and Westwood's factors include consultant overhead and profit associated with Westwood's responsibility for the administration of such services.

Fee estimates are included in the Scope of Services & Fee Proposal. Westwood may alter the distribution of compensation between individual phases of work to be consistent with Services actually rendered.

- B. *Preparation of Invoices.* Westwood will prepare a monthly invoice in accordance with Westwood's standard invoicing practices and submit the invoice to Client.
- C. *Payment of Invoices.* Invoices are due and payable within thirty (30) days of receipt.
- D. *Termination or Suspension of Services.* If Client fails to make any payment due to Westwood for fees, costs, or expenses within thirty (30) days of receipt of Westwood's invoice, such failure shall be considered substantial nonperformance and cause for termination in accordance with Section 9.01.B.2.iii of this Agreement. Alternatively, Westwood may suspend Services under this Agreement until Westwood has been paid in full for all amounts due and after giving seven (7) days advance written notice to Client. In the event of a suspension of Services, Westwood shall have no liability for delay or damage caused because of its suspension of Services. If Westwood resumes its Services after being paid all amounts due, the Project and Fee Schedules may be equitably adjusted, if necessary.
- E. *Payment Disputes.* Client shall provide written notification to Westwood within fourteen (14) days of receipt of the invoice should Client object to all or any part of the charges appearing on the invoice. Such written notice shall set forth, at a minimum, the specific portion of the invoice disputed, the amount disputed, and the alleged factual and legal basis for the dispute. The portion of the invoice not in dispute shall be paid by Client within thirty (30) days receipt of said invoice, and the disputed portion shall be resolved in accordance with Section 8.01 herein.

In no event shall Client withhold amounts from Westwood's compensation to impose a penalty or liquidated damages unless Westwood has been found liable for the amounts in a binding dispute resolution proceeding or lawsuit. Further, Westwood has the right to engage consultants to mitigate its damages, if needed.

- F. *Taxes.* Each Party shall be solely responsible for their own tax returns and payments required to be filed with or made to any federal, state or local tax authority with respect to this Agreement.
- G. *Attorney Fees.* In the event that Westwood must retain an attorney or collection agency due to Client's breach of this Agreement and/or to recover amounts due and owing to Westwood, including any additional services authorized by Client in writing pursuant to Section 3.01, Client shall be liable for all fees, costs, and expenses, including reasonable attorney fees, incurred regardless of whether an action is filed or not.
- H. *Interest.* Interest on any outstanding invoice balance past 30 days shall accrue at the rate of 1.25% per month or the highest rate permitted by law. Payments will be credited first to interest and then to principal.

## **5.01 INTELLECTUAL PROPERTY**

- A. *Ownership and License.* Upon Westwood's receipt of full payment for the Deliverables and/or Instruments of Services, Client shall be the owner of all right, title, and interest in and to any and all Deliverables and/or Instruments of Service. Provide, however, that Westwood shall retain any ownership, copyright, and property interests in its standard systems, sections, details and specification.

- B. *Reuse.* Deliverables and/or Instruments of Service are not intended or represented to be suitable and are not licensed to Client for reuse, change, or alteration on extensions of the Project or on any other project without the express written permission of Westwood. Any unauthorized use of the Deliverables and/or Instruments of Service will be at the Client's sole risk without legal exposure or liability to Westwood.

## 6.01 GENERAL CONSIDERATIONS

- A. *Standard of Care.* The standard of care (“**Standard of Care**”) for all Services performed or furnished by Westwood under this Agreement will be the care and skill ordinarily used by members of Westwood's profession practicing under similar circumstances at the same time and in the same locality. Westwood shall perform its Services as expeditiously as is consistent with such professional skill and care and in accordance with the orderly progress of the Project.
- B. **DISCLAIMER OF WARRANTIES AND GUARANTEES. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.01.A ABOVE, WESTWOOD MAKES NO OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO WESTWOOD'S SERVICES UNDER THIS AGREEMENT. WESTWOOD HEREBY DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. THESE SERVICES AND THIS DISCLAIMER EXTEND TO ALL WESTWOOD DELIVERY SERVICES, SOFTWARE, DATA, AND ALL OTHER WESTWOOD WORK PRODUCT AND INTELLECTUAL PROPERTY. FURTHER, WESTWOOD NEITHER GUARANTEES THE PERFORMANCE OF ANY THIRD PARTY, INCLUDING CONTRACTORS, USING THE DELIVERABLES OR SERVICES NOR ASSUMES ANY RESPONSIBILITY FOR ANY THIRD PARTY'S FAILURE TO FURNISH OR PERFORM ANY WORK THAT USES THE DELIVERABLES OR SERVICES.**
- C. *Compliance with Laws.* The Parties will apply the Standard of Care identified in Section 6.01.A and will comply with applicable laws, codes, regulations, and ordinances in effect during the term of this Agreement, which to the best of each Party's knowledge, information, and belief, apply to each Party's respective obligations.
- D. *Right of Entry.* Client grants to Westwood, and, if the Project site is not owned by Client, shall obtain permission for, a reasonable right of entry, access, and/or easement from time to time by Westwood, its employees, agents, and/or consultants upon the Project site for the purpose of providing the Services. Upon written request and approval by Westwood, Westwood may assist Client in obtaining necessary permits and/or licenses related to rights of entry and/or easements in order for Westwood and Westwood's consultants, if any, to adequately access and perform Services at the Project site under this Agreement.
- E. *Underground Data and Investigative Equipment.* Client shall advise and provide Westwood with all information and data in its possession concerning the type and location of all underground utilities, both public and private, as applicable. Client recognizes that the use of investigative equipment and practices may unavoidably alter the existing Project site conditions and affect the environment in the area being studied despite the use of reasonable care. To the extent allowed by Texas law, Client shall indemnify and hold Westwood harmless from claims for damages caused by reasons of Westwood's provision of Services under this Section.

- F. *Reliance on Client-Provided Data.* Client shall be responsible for—and Westwood and its consultants, if any, may use and/or rely upon—the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Client or Client’s consultants, if any, including but not limited to Client’s contractors, manufacturers, and/or suppliers (collectively, “**Client-Provided Data**”). Westwood may use such Client-Provided Data in performing or furnishing the Services under this Agreement, and Westwood shall coordinate the Services with the work provided by Client and/or Client’s consultants for the Project.
- G. *Corrections.* Within 60 days of delivery, if Client reasonably and timely notifies Westwood in writing of a deficiency(ies) with Westwood’s Services, Deliverables, and/or Instruments of Service, Westwood—as Client’s sole and exclusive remedy—shall correct such deficiency(ies) without additional compensation to Client within 60 days after Westwood’s receipt of Client’s written notice, except to the extent such action is directly attributable to deficiencies in Client-Provided Data. If for any reason Westwood is not able to correct such deficiency(ies) within 60 days after Westwood’s receipt of Client’s written notice under this Section, Westwood will notify Client and will advise in writing the timeframe needed to correct the deficiency(ies) as expeditiously as possible.
- H. *Responsibility for Others.* Westwood shall not be responsible for the acts, errors, or omissions of any consultant(s), contractor(s), subconsultant(s), subcontractor(s), and/or supplier(s), or of any of their agents or employees or any other persons (except Westwood’s own employees or those for whom Westwood is legally responsible) furnishing or performing any work or for any decision made on interpretations or clarifications of Deliverables or Instruments of Service without the consultation and advice of Westwood.
- I. *Non-Construction Phase Work.* It is understood and agreed that if Westwood’s Services under this Agreement do not include construction-phase work, and that such work will be provided by Client or others on behalf of Client, then Client assumes all responsibility for interpretation of the Deliverables and/or Instruments of Service for construction observation and/or review. In such instances, if applicable, Client waives any and all claims against Westwood that may be in any way connected thereto. Further, Westwood shall not be required to make exhaustive or continuous on-site inspections of the Project to check the quality or quantity of the work for construction but will reasonably promptly report to Client known deviations, defects, and/or deficiencies, if any.
- J. *Hazardous Environmental Conditions.* The Parties acknowledge this Agreement does not include any Services related to a hazardous environmental condition. Such conditions include, but are not limited to the presence of, asbestos, polychlorinated byphenyls, petroleum, toxic substances or waste, and/or radioactive materials (collectively, “**Hazardous Environmental Conditions**”). If Westwood or any other entity or individual encounters a Hazardous Environmental Condition, Westwood may, at its option and without liability for consequential, liquidated, or any other damages, suspend performance of Services on the portion of the Project affected thereby until Client (i) retains an appropriate specialist consultant and/or contractor to identify and, as appropriate, abate, remediate, and/or remove the Hazardous Environmental Condition and (ii) warrants that the site is in full compliance with applicable laws, codes, regulations, and ordinances then in effect, if any. Westwood shall have no responsibility for the discovery, presence, handling, removal, disposal of, or exposure of persons or property to any such Hazardous Environmental Condition in any form at the Project site.
- K. *Substitutions.* Westwood shall not be responsible for Client’s directive, substitution, or acceptance of non-conforming work at the Project that is made or given without Westwood’s written approval.

## 7.01 ALLOCATION OF RISKS

- A. ***INDEMNITY BY WESTWOOD.*** TO THE FULLEST EXTENT PERMITTED BY LAW, WESTWOOD SHALL INDEMNIFY AND HOLD HARMLESS (BUT SHALL NOT DEFEND) CLIENT, CLIENT'S OFFICERS, DIRECTORS, PARTNERS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL THIRD-PARTY CLAIMS FOR COSTS, LOSSES, OR DAMAGES TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF WESTWOOD OR WESTWOOD'S OFFICERS, DIRECTORS, PARTNERS, OR EMPLOYEES IN THE PERFORMANCE OF WESTWOOD'S OBLIGATIONS UNDER THIS AGREEMENT. IN NO EVENT SHALL WESTWOOD'S INDEMNITY OBLIGATIONS EXTEND BEYOND ANY APPLICABLE ANTI-INDEMNITY STATUTE OR THE LIMITS OF LIABILITY CONTEMPLATED IN SECTION 7.01.C BELOW.
- B. ***INDEMNITY BY CLIENT.*** TO THE FULLEST EXTENT PERMITTED BY LAW, CLIENT SHALL INDEMNIFY AND HOLD HARMLESS (BUT SHALL NOT DEFEND) WESTWOOD, WESTWOOD'S OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AND WESTWOOD'S CONSULTANTS, IF ANY, FROM AND AGAINST ANY AND ALL THIRD-PARTY CLAIMS FOR COSTS, LOSSES, OR DAMAGES TO THE EXTENT CAUSED IN WHOLE OR IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF CLIENT OR CLIENT'S OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, OR CLIENT'S CONSULTANTS IN THE PERFORMANCE OF CLIENT'S OBLIGATIONS UNDER THIS AGREEMENT.
- C. ***LIMITATION OF LIABILITY.***
1. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THIS AGREEMENT TO CLIENT AND WESTWOOD, THE RISKS HAVE BEEN ALLOCATED SUCH THAT CLIENT AGREES, TO THE FULLEST EXTENT OF THE LAW AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT OR THE EXISTENCE OF APPLICABLE INSURANCE COVERAGE, THAT THE TOTAL LIABILITY, IN THE AGGREGATE, OF WESTWOOD AND WESTWOOD'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND CONSULTANTS TO CLIENT OR TO ANYONE CLAIMING BY, THROUGH, OR UNDER CLIENT, FOR ANY AND ALL CLAIMS, LOSSES, COSTS, OR DAMAGES WHATSOEVER ARISING OUT OF, RESULTING FROM, OR IN ANY WAY RELATED TO THE SERVICES UNDER THIS AGREEMENT FROM ANY CAUSE OR CAUSES, INCLUDING BUT NOT LIMITED TO THE NEGLIGENCE, PROFESSIONAL ACTS, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF ANY WARRANTY, EXPRESS OR IMPLIED, OF WESTWOOD OR WESTWOOD'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR CONSULTANTS, SHALL NOT EXCEED THE TOTAL COMPENSATION RECEIVED BY WESTWOOD UNDER THIS AGREEMENT OR \$1,000,000.00, WHICHEVER IS GREATER.
  2. FURTHER, WESTWOOD'S TOTAL LIABILITY TO CLIENT AND ANYONE CLAIMING BY, THROUGH, OR UNDER CLIENT FOR ANY COST, LOSS, OR DAMAGES CAUSED IN PART BY THE NEGLIGENCE OF WESTWOOD AND IN PART BY THE NEGLIGENCE OF CLIENT OR ANY OTHER NEGLIGENT ENTITY OR INDIVIDUAL SHALL NOT EXCEED THE

**PERCENTAGE SHARE THAT WESTWOOD'S NEGLIGENCE BEARS TO THE TOTAL NEGLIGENCE AT ISSUE.**

- 3. IT IS INTENDED BY THE PARTIES THAT THE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT SHALL NOT SUBJECT WESTWOOD'S INDIVIDUAL SHAREHOLDERS, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, OR EMPLOYEES TO ANY PERSONAL LEGAL EXPOSURE FOR THE RISKS ASSOCIATED WITH WESTWOOD'S SERVICES UNDER THIS AGREEMENT.**
- 4. UNDER NO CIRCUMSTANCES SHALL WESTWOOD BE LIABLE FOR EXTRA COSTS, DAMAGES, FEES, OR OTHER CONSEQUENCES DUE TO CHANGED CONDITIONS OR FOR THE FAILURE OF OTHER ENTITIES OR INDIVIDUALS TO PERFORM WORK IN ACCORDANCE WITH THE DESIGN PLANS AND SPECIFICATIONS.**

**D. *WAIVER OF CERTAIN DAMAGES.* TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY WAIVES AGAINST THE OTHER, INCLUDING THEIR EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS, AND INSURERS, ANY AND ALL CLAIMS FOR OR ENTITLEMENT TO INCIDENTAL, SPECIAL, CONSEQUENTIAL, LIQUIDATED, INDIRECT, EXEMPLARY, AND/OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT, THE PROJECT, THE DELIVERABLES, INSTRUMENTS OF SERVICE, AND/OR EACH PARTY'S OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES. THIS PROHIBITION EXTENDS TO ANY CLAIMS BY CLIENT OR A THIRD PARTY(IES) FOR LOSS OF PROFITS, REVENUE, OPPORTUNITY, GOOD WILL, COST OF SUBSTITUTE FACILITIES, GOODS, SERVICES, AND/OR COST OF CAPITAL.**

## **8.01 CLAIMS AND DISPUTES**

- A. *Notice.* In addition to the provisions of Section 4.01.F above regarding payment disputes, if any other dispute, controversy, or claim ("**Dispute**") should arise between the Parties relating to this Agreement, written notice of the Dispute shall be provided by the aggrieved Party to the other Party within 14 days of the instance giving rise to the Dispute.
- B. *Informal Dispute Resolution.* After written notice of a Dispute, the Parties shall attend an in-person meeting, or by remote means if mutually agreeable, in the county where the Project is located or at another mutually agreeable venue. Each Party shall designate at least one person with authority to act and bind the company on its behalf to attend the meeting in a good faith effort to resolve the Dispute and in a timely and cost-effective manner before any further escalation as detailed in this Section.
- C. *Mediation and Litigation.* Should any Dispute fail to resolve during the meeting required under Section 8.01.B, such Dispute shall be submitted to mediation in accordance with the Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association as a condition precedent to litigation. The Parties shall agree upon a mediator in the county where the project from which the Dispute arises is located or in another county if mutually agreed in writing by the Parties. The Parties shall split any mediation fee(s) payable to the mediator to conduct the mediation. The Parties shall each be responsible for and bear their own separate costs and fees for the mediation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

Should mediation fail, the Dispute shall be resolved by litigation to be held in the county where the Project is located or in another county if mutually agreed in writing by the Parties.

- D. *Subpoenas and Document Production.* In the event Westwood is asked or forced through subpoena, deposition, or otherwise to participate in a dispute resolution proceeding between Client and a third-party(ies), including but not limited to providing trial and pre-trial testimony and searching, reviewing, and/or producing documents, Westwood shall recover its costs, fees, and expenses (including its attorney fees) and be compensated for all time spent at the highest rate provided in **Exhibit “B”**.
- E. *Prevailing Party.* In the event of a Dispute, mediation, arbitration, or litigation related to the enforcement of this Agreement, the prevailing party shall be entitled to reimbursement of its reasonable attorney fees, expenses, and costs in bringing or defending the action. As used herein, a **“Prevailing Party”** means the party that is afforded the greater relief (whether affirmatively or by means of a successful defense) with respect to the totality of claims, including counterclaims and crossclaims, if any, and having the greatest value or importance as determined by the court, mediator, or arbitrator(s) allowing for all of the claims and defenses asserted. In claims for money damages, the total amount of recoverable attorney fees, expenses, and costs shall not exceed the net monetary award or judgment of the prevailing party.
- F. *Consolidation/Joinder.* The Parties agree to consolidation and/or joinder with another pending dispute resolution proceeding, if any, to the extent such consolidation and/or joinder (i) substantially involves common questions of law or fact; (ii) is in the interest of justice or is otherwise necessary to afford complete relief to the Parties hereto; and (iii) is permitted by the judge, arbitrator, mediator, or other decision maker in the other dispute resolution proceeding. The Parties consent to consolidation and/or joinder under this Section even if the other dispute resolution proceeding is in a venue not provided for in this Agreement and/or otherwise is not selected by the Parties hereto.
- G. *Performance.* Client shall continue its payment obligations in accordance with this Agreement during the pendency of any dispute resolution proceedings, including informal dispute resolution, mediation, arbitration, and/or litigation.

## 9.01 TERM AND TERMINATION

- A. *Term.* This Agreement shall commence on the Effective Date and remain in full force and effect for a period of one (1) year after Westwood’s completion of Services. This Agreement may be renewed by mutual written agreement of the Parties.
- B. *Termination.* This Agreement may be terminated:
  - 1. By either Party upon 30 days written notice in the event of failure by the other Party to perform in accordance with the Agreement’s terms through no fault of the terminating party.

Notwithstanding the foregoing, this Agreement will not terminate as a result of a failure to perform in accordance with the Agreement if the Party receiving a notice of failure to perform begins within seven (7) days of receipt of such notice to correct its failure and proceeds diligently to cure such failure within 30 days of receipt of said notice; provided, however, that if and to the extent such failure cannot be reasonably cured within such 30 day period, and if such Party has diligently attempted to cure the same

and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. By Westwood:

- i. Upon seven (7) days written notice if Westwood believes that Westwood is being requested by Client to furnish or perform services contrary to Westwood's responsibilities as a licensed professional;
- ii. Upon seven (7) days written notice if Westwood's Services for the Project are delayed or suspended for more than 90 days for reasons beyond Westwood's control; or
- iii. Upon seven (7) days written notice if Client fails to make any payment due to Westwood in accordance with this Agreement.

Westwood shall have no liability to Client as a result of such termination in this Section.

3. In the event of a termination of this Agreement, the terminating Party may set the effective date of termination at a time up to 30 days later than would otherwise be provided to allow Westwood time to demobilize personnel and equipment from the Project site; to complete tasks providing value that would otherwise be lost; to prepare notes as to the status of completed and uncompleted tasks; and/or to assemble Project materials in orderly files. Westwood shall be compensated for the time required to complete such tasks.

## 10.01 MISCELLANEOUS PROVISIONS

- A. *Insurance.* Westwood shall maintain insurances during the term of this Agreement as indicated in **Exhibit "C"**, attached and incorporated by reference herein.
- B. *Independent Contractor.* Nothing contained in this Agreement shall be construed to mean that Westwood and Client are engaging in an employer/employee relationship, joint venture, agency, fiduciary relationship, or partnership. The Parties shall at all times be and remain independent contractors of one another. Except as expressly agreed by the Parties in writing, neither Party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other Party or to bind the other Party in any respect whatsoever. Neither Party shall have any obligation or duty to the other Party except as expressly and specifically set forth herein, and no such obligation or duty shall be implied by or inferred from this Agreement or the conduct of the Parties hereunder.
- C. *Successors and Assigns.* The Parties and the partners, successors, executors, administrators, and legal representatives of each Party are each hereby bound to the other Party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other Party, in respect of all covenants, agreements, and obligations of this Agreement. Neither Party may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) under this Agreement without the written consent of the other.
- D. *No Third-Party Rights.* This Agreement shall not create any rights or benefits to entities other than to Client and Westwood, and all duties and responsibilities undertaken pursuant to this Agreement

will be for the sole benefit of Client and Westwood. No third party shall have the right to rely on Westwood's Deliverables, Instruments of Service, or opinions rendered in connection with the Services without the written consent of Westwood and the third party's agreement to be bound to the same conditions and limitations as Client.

- E. *Force Majeure*. An event of force majeure (“**Force Majeure**”) occurs when an event beyond the control of the Party claiming Force Majeure prevents such Party from fulfilling its obligations under this Agreement. An event of Force Majeure includes, without limitation, floods, hurricanes and other adverse weather conditions, war, riot, civil disorder, acts of terrorism, disease, epidemic, pandemic, strikes and labor disputes, actions or inactions of government or other authorities, law enforcement actions, curfews, closure of transportation systems or other unusual travel difficulties, or the inability to provide a safe working environment.

In the event of a Force Majeure, the obligations of Westwood to perform Services shall be suspended for the duration of the event of Force Majeure. In such event, Westwood shall be compensated for time expended and expenses incurred during the event of Force Majeure, and the Project Schedule shall be equitably extended by a like number of days as the event of Force Majeure.

If Services are suspended for 30 days or more, Westwood may, in its sole discretion and upon five (5) days prior written notice, terminate this Agreement, the amendments hereto, if any, the affected change order(s), if any, or any of the above. In the case of such termination, and in addition to the compensation and time extension set forth above, Westwood shall be compensated for all reasonable termination expenses.

- F. *Choice of Law*. This Agreement and any disputes arising out of or relating hereto and/or to this Agreement, its formation, and/or the Exhibits hereto shall be governed by the laws of the State of Texas.
- G. *Survivability*. Sections 5.01, 6.01.A-B, 7.01, and 8.01 included in this Agreement shall survive this Agreement's completion or termination for any reason.
- H. *Invalidity*. Any provision or part of this Agreement held to be invalid, void, or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Parties. To the fullest extent permitted by law, the stricken portion shall be revised to the extent necessary to make that provision legal and enforceable and shall give effect to the Parties' intentions and purposes in executing this Agreement.
- I. *Conflicting Provisions*. In the event the terms of these General Conditions conflict with the Agreement Exhibits, the Prime Contract, or any other applicable agreement, these General Conditions as between Client and Westwood shall govern unless the Parties expressly agree in writing otherwise.
- J. *Notices*. Any notice, request, demand, or other communication required or permitted hereunder shall be in writing, shall reference this Agreement, and shall be deemed to be properly given (i) when delivered personally; by registered or certified mail, return receipt requested, postage prepaid; or by UPS/FedEx express courier service or (ii) when sent by e-mail with receipt confirmation requested, provided, that a hard copy of such notice shall also be sent in accordance with the methods described in clause (i) of this Section within two (2) business days of such email. All notices shall be sent to the address set forth on the signature page of this Agreement or to such other address or person as may be designated by a Party in writing to the other Party pursuant to this Section.

- K. *Total Agreement.* This Agreement constitutes the entire Agreement between the Parties and supersedes all prior written or oral understandings regarding this subject. This Agreement may only be amended, supplemented, superseded, or modified by a mutually executed written instrument by both Parties. No waiver of any condition or of the breach of any term of this Agreement shall be deemed to be a further or continuing waiver of any such condition or of the breach of any term of this Agreement.
- L. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed to be one and the same instrument.

***[Remainder of Page Left Intentionally Blank; Signature Page Follows]***

The Parties hereto have executed this Agreement as of the Effective Date first indicated above.

**CLIENT:**  
**Town of Westlake**

**WESTWOOD:**  
**Westwood Professional Services, Inc.**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

Wade Carroll

\_\_\_\_\_  
(Name – Printed)

\_\_\_\_\_  
(Name – Printed)

Town Manager

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

**Client Address/Contact for giving notices:**

**Westwood Address/Contact for giving notices:**

ATTN: TOWN MANAGER

**Westwood Professional Services, Inc.**

TOWN OF WESTLAKE

C/O General Counsel

1500 SOLANA BLVD. SUITE 7200

2805 North Dallas Parkway, Suite 150

WESTLAKE, TEXAS 76262

Plano, Texas 75093

wcarroll@westlaketx.gov

Email: legal@westwoodps.com

**EXHIBITS:**

- A Scope of Services & Fee Proposal**
- B Compensation & Method of Payment/Fee Schedule**
- C Insurance**
- D Project Schedule**

## EXHIBIT 'A' – SCOPE OF SERVICES

### WESTLAKE GENERATOR DESIGN

#### PROJECT DESCRIPTION:

The project consists of design plans for the addition of a proposed generator to accommodate the pump station expansion, including electrical and civil plans to site and connect the generator to the site electrical system (PROJECT).

#### BASIC SERVICES:

##### A. Project Management, Coordination & Permitting

###### 1. Manage the Team:

- Lead, manage and direct design team activities.
- Ensure quality control is practiced in performance of the work.
- Communicate internally among team members.
- Allocate team resources.

###### 2. Communications and Reporting:

- Attend a pre-design project kickoff meeting with Client staff to confirm and clarify scope, understand Client objectives, and ensure economical and functional designs that meet Client requirements.
- Conduct review meetings with the Client at the end of each design phase.
- Prepare and submit monthly invoices in the format acceptable to the Client.
- Prepare and submit monthly progress reports.
- Prepare and submit baseline Project Schedule initially and Project Schedule updates.
- Coordinate with other agencies and entities as necessary for the design of the proposed infrastructure and provide and obtain information needed to prepare the design.
- With respect to coordination with permitting authorities, Westwood shall communicate with permitting authorities such that their regulatory requirements are appropriately reflected in the designs. Westwood shall work with regulatory authorities to obtain approval of the designs, and make changes necessary to meet their requirements.

###### 3. Permit Coordination:

Westwood will provide coordination with the railroad, TCEQ, USCOE and/or TxDOT or other required agency for Permitting of the proposed infrastructure construction.

Included in this item are:

- Coordination of submittal of Application for Permit.
- Research and provide appropriate design specifications.
- Coordination for final plan approval.
- Up to three (3) coordination meetings, if required.
- Application and Permitting fees and special insurance premiums are not included.

4. Constructability Review:
    - Prior to the 60 percent review meeting with the Client, Westwood shall schedule and attend a project site visit with the Client Project Manager and Construction personnel to walk the project. Westwood shall summarize the Client's comments from the field visit and submit this information to the Client in writing.
  5. Utility Clearance:
    - Westwood will consult with the Client, public utilities, private utilities and government agencies to determine the approximate location of above and underground utilities, and other facilities (current and future) that have an impact or influence on the project. Westwood will design Client facilities to avoid or minimize conflicts with existing utilities, and where known and possible consider potential future utilities in designs.
    - Westwood will provide plans to and coordinate with utility owner related to the relocation efforts of franchise utilities that remain in conflict with the proposed construction.
- B. Preliminary Design (60% Submittal)
1. Prepare preliminary construction plans. Prepare the following sheets at the engineering scale indicated:
    - Cover Sheet
    - General Notes
    - Quantity Sheet
    - Project Layout & Control Sheet
    - Grading plan sheets  
Scale 1" = 20'
    - Electrical plan sheets
    - Electrical details
    - Erosion Control Plans
    - Tree Protection and Mitigation Plans
    - Detail sheets

Information required can be combined on sheets if the information can be clearly shown and is approved by Client's project manager.
  2. Assemble Client's standard construction contract documents and modify special technical specifications, if needed, for the project (if any).
  3. Prepare an estimate of construction quantities and develop the preliminary opinion of probable construction costs.
  4. Submit a PDF set of preliminary 60% plans, preliminary construction contract documents, special conditions and preliminary opinion of probable construction costs to the Client for review. One (1) set of half size (11"x17") plans will be submitted with the 60% plan submittal, if requested.

C. Final Design (90% & 100% Submittals)

1. Revise preliminary plans incorporating comments from the Client.
2. Submit a PDF set of 90% plans, 90% construction contract documents and 90% opinion of probable construction costs for Client review. One (1) set of half size (11"x17") plans will be submitted with the 90% plan submittal, if requested.
3. Incorporate final Client review comments into the plans and construction contract documents to finalize construction plans for proposed improvements.
4. Finalize construction contract documents including Client standard specifications, special technical specifications and special conditions (if any).
5. Estimate of final construction quantities and final opinions of construction cost.
6. Submit (1) sealed (100%) set of final plans and construction documents.

D. Electrical Design

The electrical design for the project will include electrical power and controls for the generator to be connected to the existing 1600A ATS at the facility that was recently replaced as well as the existing SCADA system. Power will be provided to the auxiliary fuel filter/polishing system to help maintain the quality of fuel in the tank.

E. Structural Design

The structural design for the project will include the design of a foundation/housekeeping pad for the new generator.

F. Bid Phase Services

Westwood will support the bid phase of the project as follows.

1. Bid Advertisement:
  - Westwood shall prepare and submit to Client a draft Bid Advertisement for publishing by the Client.
2. Bid Document Distribution:
  - Westwood shall sell construction plans and contract bid documents. Westwood shall also maintain a plan holders list of documents sold.
3. Bidder Assistance:
  - Westwood will develop and implement procedures for receiving and answering bidders' questions and requests for additional information. The procedures shall include a log of all significant bidders' questions and requests, and the response thereto. Westwood will provide technical interpretation of the contract bid documents and will prepare proposed responses to all bidders' questions and requests, in the form of addenda.
  - Attend the prebid conference in support of the Client.
  - Attend the bid opening in support of the Client.

4. Bid Analysis and Recommendation of Award:
    - Westwood will tabulate and review all bids received for the construction project, assist the Client in evaluating bids, and recommend award of the contract.
    - Westwood will assist the Client in determining the qualifications and acceptability of prospective contractors, subcontractors, and suppliers.
    - Westwood shall make a recommendation of award to the Client.
  5. Conformed Construction Documents:
    - Upon award of a contract by the Client, Westwood shall assist with the execution, assembly and distribution of the construction contract documents for the Project.
- G. Construction Administration
1. Preconstruction Conference:
    - Westwood shall attend the preconstruction conference.
  2. Site Visits:
    - Westwood shall visit the project site at appropriate intervals as construction proceeds to observe and report on progress. It is estimated that one (1) visit per month will be made by Westwood.
  3. Shop Drawing and Lab Report Review:
    - Westwood shall review shop and erection drawings submitted by the contractor for compliance with design concepts. Westwood shall review laboratory, shop, and mill test reports on materials and equipment.
  4. Instructions to Contractor:
    - The Engineer shall provide necessary interpretations and clarifications of contract documents, review change orders and make recommendations as to the acceptability of the work, at the request of the Client.
  5. Contractor's Payment Estimates:
    - The Engineer shall review monthly and final estimates for payments to contractors. The payment estimates shall include appropriate certifications.
  7. Final Inspection:
    - The Engineer shall attend final inspection of the Project with representatives of the Client and the construction contractor.
  8. Record Drawings:
    - Prepare construction "Record Drawings" based upon mark-ups and information provided by the construction contractor(s). Submit one (1) set of the record drawings (with "record drawing stamp" bearing the signature of the Engineer and the date) to the Client on a CD-ROM disk or flash drive containing scanned 22"x34" black and white PDF images.

Services not included in this contract:

- *Construction inspection services*
- *As-built surveys of constructed improvements*
- *Public hearings or City Council/Commission meetings*
- *Utility coordination meeting(s) to start relocation process with affected franchise utilities*
- *Reset property corner monumentation disturbed or removed during or after construction*
- *Required application and permitting fees (LOMR) or special insurance premiums are not included*
- *Phase II Environmental Site Assessments*
- *Storm Water Pollution Prevention Plans (SWPPP)*
- *Floodplain studies and permitting*
- *Boundary and topographic surveying*
- *Preliminary and final platting*
- *Zoning change assistance*
- *Site Plan layout*
- *Traffic and parking studies*
- *Demolition Plan*
- *Retaining wall design*
- *Design of screening walls, light pole bases, transformer or generator pads, hardscape features, pavers and/or site signage*
- *Detailed layout of walks and hardscape areas, including scoring patterns*
- *Design of any underfloor drainage systems or grading*
- *Design of french drain systems around the building perimeters*
- *Landscape Plan and Irrigation Plan*
- *Site Lighting Plan*
- *Signage Plan*
- *Off-site roadway, drainage, and utility extensions/improvements*
- *LEED pursuit*
- *Construction staking*

END OF EXHIBIT 'A'

## EXHIBIT 'B' – COMPENSATION AND METHOD OF PAYMENT

### WESTLAKE GENERATOR DESIGN

#### COMPENSATION:

For all professional services included in EXHIBIT 'A', Scope of Services, Westwood shall be compensated a lump sum fee of \$57,500.00 as summarized below. The total lump sum fee shall be considered full compensation for the services described in EXHIBIT 'A', including all labor materials, supplies, and equipment necessary to deliver the services.

#### Basic Services

A. Project Management, Coordination & Permitting	\$6,000.00
B. Civil Design	\$15,000.00
C. Electrical Design	\$17,000.00
D. Structural Design	\$5,000.00
E. Bid Phase Services	\$4,500.00
F. Construction Administration	<u>\$10,000.00</u>
<b>TOTAL</b>	<b>\$57,500.00</b>

#### METHOD OF PAYMENT:

Westwood shall be paid monthly payments as described in Article 3 of the AGREEMENT. The cumulative sum of such monthly partial fee payments shall not exceed the total current project budget including all approved Amendments. Each invoice shall be verified as to its accuracy and compliance with the terms of this Agreement by an officer of Westwood.

Monthly statements for reimbursable services performed by sub consultants will be based upon the actual cost to Westwood plus ten percent (10%). Direct expenses for services such as printing, express mail, fees, mileage and other direct expenses that are incurred during the progress of the project will be billed at 1.1 times Westwood's cost.

END OF EXHIBIT 'B'

**EXHIBIT C**  
**INSURANCE**

Westwood shall, during the term of this Agreement, maintain the following insurances:

- 1. Commercial General Liability (occurrence form not less than):
  - \$2,000,000 General Liability
  - \$2,000,000 Products and Completed Operations Aggregate
  - \$1,000,000 Personal and Advertising Injury
  - \$1,000,000 Each Occurrence
  - \$10,000 Medical Expense
  
- 2. Commercial Automobile Liability (all scheduled auto, hired and non-owned autos):
  - \$1,000,000 Combined Single Limit
  
- 3. Umbrella
  - \$5,000,000 Aggregate
  - \$5,000,000 Each Occurrence
  
- 4. Workers Compensation and Employer's Liability
  - \$1,000,000 Each Accident
  - \$1,000,000 Policy Limit
  - \$1,000,000 Each Employee
  
- 5. Professional Liability
  - \$2,000,000 Per Claim
  - \$2,000,000 Aggregate

Professional Liability shall include prior acts coverage sufficient to cover the services performed under this Agreement and shall include limited contractual liability.

## EXHIBIT 'D' – SCHEDULE

### WESTLAKE GENERATOR DESIGN

<b>Activity</b>	<b>Estimated Duration (weeks)</b>	<b>Estimated Completion After N.T.P.</b>
Notice-To-Proceed		-
Preliminary Design Submittal (60%)	4	4 Weeks
Preliminary Client Review Complete	2	6 Weeks
Final Design Submittal (95%)	4	10 Weeks
Final Client Review Complete	2	12 Weeks
Final Plans Complete (100%)	2	14 Weeks
Receive Bids	4	18 Weeks
Contract Award	4	22 Weeks
Begin Construction	2	24 Weeks
Complete Construction	8	32 Weeks
Record Drawings	2	34 Weeks

Westwood is not responsible for delays beyond its control.

END OF EXHIBIT 'D'



## Town Council/Board of Trustees AGENDA ITEM REPORT



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**DATE:** March 24, 2026 **AGENDA ITEM NO:** H.4.  
**FROM:** Wade Carroll, Town Manager, Town Manager's Office  
**SUBJECT:** Discuss, consider and act to approve Resolution 26-06 amending the purchasing authority spending limits for the Town Manager and Head of School to conform with changes to Texas Law enacted by Senate Bill 1173; authorizing the Town Manager and Head of School to execute purchases and contracts for goods and services up to \$99,999.99 without formal competitive procurement; and providing an effective date.

---

### **ATTACHMENTS:**

1. Res 26-06 Amending Purchasing Authority Limits
2. EXHIBIT A Purchasing Authority Policy FY26 amended 3.24.2026
3. Redlined Purchasing Authority Policy

### **SUMMARY :**

The purpose of this resolution is to revise the Town's Purchasing Authority Policy to increase the authorized spending limits for the Town Manager and the Head of School to \$99,999.99. This revision aligns the Town's internal purchasing authority with changes adopted by the Texas Legislature through Senate Bill 1173 (effective September 1, 2025), which increased the statutory competitive procurement threshold for municipalities and school districts from \$50,000 to \$100,000.

The costs associated with routine business is increasing dramatically. A great example is the engineering for the installation fo the pump station generator. The generator is required by TCEQ, the engineering is required by TCEQ and the installation is required for the project. However, we have to wait an extra month to begin engineering to get council approval on the engineering under 100K. Updating the policy will allow routine purchases below the statutory bidding threshold to be processed more efficiently while maintaining compliance with state law procurement.

### **BACKGROUND AND DISCUSSION:**

The State Legislature approved Senate Bill 1173, effective September 1, 2025, which modernizes and streamlines local government procurement processes by raising the monetary threshold at which competitive procurement methods are required. The legislation amended both the Texas Local Government Code and the Texas Education Code to increase the required competitive bidding threshold from \$50,000 to \$100,000 for municipalities and school districts.

As a result of this statutory change, purchases or contracts for goods and services valued below \$100,000 may be executed without the need for formal competitive bidding processes under state law.

The Town's current Purchasing Authority Policy was adopted under the prior statutory threshold and therefore limits administrative purchasing authority to an amount below the new state procurement threshold. Updating the policy to authorize the Town Manager and Head of School to approve purchases up to \$99,999.99 will align the Town's internal procedures with the updated statutory framework.

This adjustment will allow Town staff to process routine operational purchases more efficiently, reduce administrative delays associated with formal procurement processes for lower-cost transactions, and maintain compliance with state purchasing requirements. Any purchase or contract equal to or exceeding \$100,000 will continue to require competitive procurement methods and Town Council approval as required by state law and Town policy.

**FISCAL IMPACT:**

None.

**LEGAL REVIEW:**

N/A

**RECOMMENDATION:**

Staff recommends approval of Resolution 26-06 revising the Purchasing Authority Policy to align the Town's administrative purchasing limits with the updated procurement thresholds established by Senate Bill 1173.

**ACTION OPTIONS:**

Motion to Approve as Presented

Motion to Deny

Motion to Approve with Changes/Conditions

Motion to Continue or Table

**TOWN OF WESTLAKE**

**RESOLUTION NO. 26-06**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS, AMENDING THE PURCHASING AUTHORITY SPENDING LIMITS FOR THE TOWN MANAGER AND HEAD OF SCHOOL TO CONFORM WITH CHANGES TO TEXAS LAW ENACTED BY SENATE BILL 1173; AUTHORIZING THE TOWN MANAGER AND HEAD OF SCHOOL TO EXECUTE PURCHASES AND CONTRACTS FOR GOODS AND SERVICES UP TO \$99,999.99 WITHOUT FORMAL COMPETITIVE PROCUREMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Westlake, Texas “Town” operates under laws of the State of Texas and is authorized to establish purchasing procedures and spending authority limits for Town officials; and

**WHEREAS**, the Texas Legislature approved Senate Bill 1173, effective September 1, 2025, modernizing and streamlining local government procurement processes in Texas by raising the monetary threshold at which competitive procurement methods are required; and

**WHEREAS**, Senate Bill 1173 amended the Texas Education Code and the Texas Local Government Code to increase the required competitive bidding threshold from \$50,000 to \$100,000 for school districts and municipalities; and

**WHEREAS**, as a result of this statutory change, purchases or contracts for goods and services valued below \$100,000 may be executed without the need for formal competitive bidding processes; and

**WHEREAS**, the Town Council finds that updating the Town’s purchasing authority limits to align with state law will simplify procurement of routine goods and services, increase administrative efficiency, and allow Town operations to function in a more timely and effective manner; and

**WHEREAS**, the Town Council desires to amend the purchasing authority limits to allow the Town Manager and the Head of School to authorize and execute purchases and contracts for goods and services up to \$99,999 without the requirement of formal competitive procurement.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS:**

**SECTION 1:** That all matters stated in the recitals hereinabove are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

**SECTION 2:** That the Town Council hereby amends the Town’s purchasing authority limits to authorize the Town Manager and the Head of School to approve and execute purchases and contracts for goods and services up to Ninety-Nine Thousand Nine Hundred Ninety-Nine Dollars (\$99,999.99) without the requirement for formal competitive bidding or procurement procedures

**SECTION 3:** All purchases or contracts with an anticipated value of \$100,000 or greater shall be procured using competitive procurement methods in accordance with applicable provisions of the Texas Local Government Code, the Texas Education Code, and the Town’s adopted purchasing policies.

**SECTION 4:** That this Resolution is intended to align the Town’s administrative purchasing authority with the statutory procurement threshold adopted by the Texas Legislature through Senate Bill 1173, effective September 1, 2025.

**SECTION 5:** That the Town of Westlake Purchasing Authority Policy will be amended to reflect the purchasing authority limits as outlined in “Exhibit A” attached.

**SECTION 6:** All prior resolutions, policies, or administrative directives in conflict with this Resolution are hereby superseded to the extent of such conflict.

**SECTION 7:** That this Resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED ON THIS 24<sup>TH</sup> DAY OF MARCH 2026.**

\_\_\_\_\_  
Kim Greaves, Mayor

ATTEST:

\_\_\_\_\_  
Dianna Buchanan, Town Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Alex Crowley, Town Attorney

## "EXHIBIT A"

# Purchasing Authority

## Outline

1. Overview & Purpose
2. Participants
3. Authorized Spending
4. Spending Thresholds
5. Approval & Update Process

## Overview & Purpose

As a General Law municipality within the State of Texas, the Town of Westlake and its component units are subject to compliance with Local Government Code procurement laws and applicable Texas Education Code. In lieu of a voter-approved Town Charter and within compliance of the Academy Charter, the Council/Board has determined that enacting additional layers of purchasing authority for staff is necessary to maintain good budgetary controls and financial stewardship for public funds.

## Participants

Council/Board – elected officials responsible for directing staff to purchase goods and services to facilitate the mission and activities of the Town/Academy

Department Head – appointed director of a Town department or Academy function and any person authorized to act on their behalf

Employee – person tasked with the administration of ordering, receiving/implementing, and issuing authorized payments for goods and services

Head of School – Employee with authority to direct procurement activities on behalf of the Academy

Town Manager – Employee with authority to direct procurement activities on behalf of the Town

## Authorized Spending

To be considered “authorized spending,” the purchase must have been budgeted in the same fiscal year as the order is placed, the price must be within 5% of the budgeted cost, and all due diligence to meet applicable laws and procedures must be met.

In instances where the purchase is not budgeted or the amount budgeted is not sufficient, Department Heads or above (depending on the dollar value and business purpose as outlined below) must authorize the purchase.

## Spending Thresholds

Authorized spending thresholds apply to all allowable purchasing and payment methods. It is the responsibility of the employee making the purchase to adhere to the correct method.

## Budgeted Purchases

Less than \$3,000.00 – Employees designated by their Department Heads/Principals have the authority to approve purchases or spend up to \$3,000.00 in a single purchase

\$3,000.00 to \$99,999.99 – the Town Manager and Head of School have the authority to approve purchases for the Town and Academy, respectively

\$100,000.00 and above – Council/Board must approve the purchase either implicitly via budget adoption for routine, overhead purchases or explicitly for contracts, capital spending, or bid awards to adhere to competitive bid requires and promote transparency

## Unbudgeted Purchases

Less than \$3,000.00 – Department Heads/Principals have the authority to approve purchases in support of their department or school's mission if there is capacity to reduce expenditures in an equal amount exists within the same operating budget; these adjustments to the spending plan will be reported to the Council/Board within the next quarterly financial report.

\$3,000.00 to \$99,999.99 – Head of School/Town Manager has the authority to approve purchases in support of their organization's mission if there is capacity to reduce expenditures in an equal amount within the same operating budget; Council/Board must be notified, as soon as practicable, in writing of the purchase and corresponding expenditure reduction, with a detailed explanation and presentation of off-setting balances at the next posted open meeting.

\$100,000.00 and above – Head of School/Town Manager must request approval from the Council/Board in an open meeting; the request must include details on the corresponding reduction in expenditures or the purchase must qualify for use of fund balance per policy.

When considering off-setting balances to facilitate an unbudgeted purchase, staff will look for potential cuts first in the account. If funds are not available in the account, staff will consider the department's/function's non-personnel budget for cuts. If funds are still not available, the department will coordinate with the Town Manager/Head of School and the Director of Finance for potential cuts in a different department/function. If funds are still not available, staff will need to prepare a budget amendment for Council/Board approval that outlines the purchase and why it qualifies for the use of fund balance.

## Emergency Purchases

Emergency purchases – Emergency purchases are by definition unbudgeted and generally require funds prior to budget approval by Council/Board. Emergency purchases are hereby defined as follows, based on Sec. 252.022 General Exemptions:

- (1) a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality; and

- (2) a procurement necessary to preserve or protect the public health or safety of the municipality's residents; and
- (3) a procurement necessary because of unforeseen damage to public machinery, equipment, or other property which requires urgent repair or replacement to maintain critical operations.

Staff will present emergency purchases for ratification at the next regularly scheduled Council/Board meeting. When emergency purchases cannot be absorbed within existing budgets, these purchases will be included in a budget amendment.

### Approval & Update Process

The Town Council/Board of Trustees has the authority to change the authority thresholds under \$100,000.00, as they determine to be in the best interest of the Town/Academy. These thresholds shall be reviewed annually as part of the approval of the Financial Policies. The Finance Subcommittee may meet to review the details of the updates or advise of any changes prior to the Council/Board receiving the information in the form of a report. Once the report has been presented satisfactorily, the Council/Board will vote to approve the Financial Policies in whole.

Council/Board reserves the right to make changes outside the annual review and approval process. It is expected that revisions may need to occur due to staff turnover or legislative changes.

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\$3,000.00 to ~~\$49,999.99~~ \$99,999.99 – Head of School/Town Manager has the authority to approve purchases in support of their organization's mission if there is capacity to reduce expenditures in an equal amount within the same operating budget; Council/Board must be notified, as soon as practicable, in writing of the purchase and corresponding expenditure reduction, with a detailed explanation and presentation of off-setting balances at the next posted open meeting.

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Council/Board reserves the right to make changes outside the annual review and approval process. It is expected that revisions may need to occur due to staff turnover or legislative changes.



## Town Council/Board of Trustees AGENDA ITEM REPORT



---

**DATE:** March 24, 2026 **AGENDA ITEM NO:** I.1.  
**FROM:** Cole Davenport, Town Planner, Planning and Development  
**SUBJECT:** Hold a public hearing and discuss, consider and act to adopt Ordinance 1044 approving text amendments related to Sections 102-61 and 1-1 of the Unified Development Code by establishing and defining the land uses “hotel” and “motel”, by amending the land use schedule, and by establishing performance standards in a new Article X that is entitled “Supplemental Land Use Regulations”.

---

### **ATTACHMENTS:**

1. Draft Text Amendments - Hotels and Motels (03.24.2026)

### **SUMMARY :**

The request to amend the text found existing in Section 102-61 and Section 1-1 of the Unified Development Code, as well as the creation of Article X, is consistent with the Comprehensive Plan, the Strategic Plan and the shared vision for development and growth throughout the Town of Westlake (the “Town”). The proposed text amendments provide a updated definition for the land uses “hotel” and “motel”, modify the land use schedule, and establish performance standards for the uses. The Department of Planning and Development recommends approval as presented.

### **BACKGROUND AND DISCUSSION:**

This is a request to amend the current Unified Development Code to provide new definitions for a hotel and motel; amend the land use chart; and establish performance standards for these land uses. These text amendments --- if approved --- would apply in all zoning districts throughout the Town, including PD, Planned Development Districts that are existing and proposed. The proposed text amendments are in response to increased demand for lodging --- particularly in commercial areas such as the State Highway 114 Corridor. These text amendments would not impact hotel projects that are currently underway; rather, they would establish regulations for those that begin after the effective date (i.e., March 24, 2026). This ordinance provides clear standards to ensure that any future hotel development aligns with the Town’s expectations for quality, scale, and compatibility with surrounding land uses.

The proposed text amendments to the Unified Development Code --- as shown in the draft ordinance --- primarily focus on providing definitions for a hotel (i.e., revised for compatibility with all existing zoning districts and future PD, Planned Development Districts) / motel; modifying the land use chart to reflect hotel as a land use either permitted by-right or requiring approval of a specific use permit; and establishing specific performance standards to ensure compatibility with existing and future land uses in the immediate environment (e.g., a minimum number of keys, interior access into guest

rooms, minimum building height, specific amenities and related land use activities, et cetera).

Some hotels may have less than the minimum number of keys --- 150 --- if the (i) hotel is located on property between State Highway 114, Davis Boulevard, and Solana Boulevard or on property that is zoned as TC, Town Center Form-Based Development District (i.e., the town center core zone) and (ii) such facility must provide distinguished accommodations and services that are not common to the Town, the surrounding area, and the region. Deviations from these metrics --- as proposed --- are subject to review and recommendation by the Planning and Zoning Commission and approval by the Town Council.

The proposed amendments to the Unified Development Code are consistent with the vision for development in the Town of Westlake and establishes clear standards for these uses.

**FISCAL IMPACT:**

N/A.

**LEGAL REVIEW:**

N/A

**RECOMMENDATION:**

The Planning and Zoning Commission met on March 3, 2026, and by a vote of 5 to 0 (with two absences), they recommended approval of the text changes as presented.

**ACTION OPTIONS:**

Motion to Approve as Presented

Motion to Deny

Motion to Approve with Changes/Conditions

Motion to Continue or Table

**ORDINANCE NO. 1044**

**AN ORDINANCE OF THE TOWN OF WESTLAKE, TEXAS, AMENDING CHAPTER 1 AND CHAPTER 102 OF THE TOWN OF WESTLAKE, TEXAS CODE OF ORDINANCES BY ESTABLISHING AND DEFINING THE LAND USES “HOTEL” AND “MOTEL”, BY AMENDING THE LAND USE SCHEDULE, AND BY ESTABLISHING PERFORMANCE STANDARDS IN A NEW ARTICLE X THAT IS ENTITLED “SUPPLEMENTAL LAND USE REGULATIONS”; PROVIDING A PENALTY NOT TO EXCEED THE AMOUNT OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH SUCH A VIOLATION OCCURS OR CONTINUES; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AUTHORIZING PUBLICATION; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Westlake, Texas (the “Town”) is a general law municipality; and

**WHEREAS**, the Town Council of the Town (the “Town Council”) finds it necessary for the public health, safety, and welfare for development to occur in a controlled and orderly manner in accordance with the Town’s Comprehensive Plan; and

**WHEREAS**, the Planning and Zoning Commission met on March 3, 2026 and reviewed and considered the proposed text amendments to the Unified Development Code, and provided a recommendation to the Town Council; and

**WHEREAS**, the Planning and Zoning Commission and the Town Council of the Town, in compliance with the laws of the State of Texas with reference to the text amendments to the Unified Development Code and have given the requisite public hearing notices by publication and, after holding due meetings in accordance with the Texas Open Meetings Act, is of the general opinion that the Unified Development Code should be amended; and

**WHEREAS**, upon the recommendation of the Planning and Zoning Commission provided on March 3, 2026, the Town Council believes that, in the interests of the Town and its present and future residents, adopting this Ordinance will advance the economic development and physical development of the Town while preserving its distinct character and shared community values; and

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS:**

**SECTION 1:** That all matters stated in the preamble are found to be true and correct and are incorporated herein as if copied in their entirety.

**SECTION 2:** That the provisions found in Section 1-2 of Chapter 1 of the Town Code of Ordinances are hereby amended as follows for the definitions of “hotel” and “motel”:

Sec. 1-2. Definitions and rules of construction.

Hotel. The word “hotel” shall mean one or more buildings **made available for temporary human dwelling. A hotel shall also allocate a portion of its total building area to food service and beverage service, conference space, and other**

personal services containing individual living or sleeping units specially designed as temporary quarters for transient guests, including provisions for meals and personal services. A hotel includes a motel.

Motel. The word “motel” shall have the same meaning as hotel mean a building or group buildings designed, arranged or used for temporary occupancy having accommodations for housing or parking of automobiles in close proximity to the quarters occupied by the owner of such automobile and providing for five or more such quarters. The term “motel” shall include all establishments coming under the general classification of drive-in hotel, tourist court, and any other such establishment that houses visiting transient clientele.

**SECTION 3:** That the land use schedule found in Section 102-61 of Chapter 102 of the Town Code of Ordinances is hereby amended to reflect the following:

Section 102-61. – Land Use Schedule

**Westlake Land Use Schedule**

SF Residential					Permitted Uses	Commercial					
R-5	R-2	R-1	R-0.5	RA	X = Permitted, A = Accessory Use, S = SUP	GU	MF	LR	O	OH	O-I
					Hotel <del>motel with conferencing facility</del>		S	X	S		X

**SECTION 4:** That Chapter 102 of the Town Code of Ordinances, that is entitled “Zoning”, be amended to establish Article X, to be entitled “Supplemental Land Use Regulations”, that will

provide additional performance standards for specific land uses, including hotels, as provided for below:

**Sec. 102-500. – Generally.**

- (a) Certain land uses that are either permitted by-right or require approval of an SUP shall be further regulated by the provisions of this Article X.**

**Sec. 102-501. – Supplemental land use regulations.**

**(a) Hotel.**

- (1) Each hotel shall require on-site staff for 24-hours a day, seven days a week.**

- (2) Each hotel shall require a minimum of 150 keys / rooms for daily or weekly renting, except as provided for in this Section.**

- (3) Each key / room within a hotel shall require a minimum area of 350 square feet.**

- a. The point of access for guests into each key / room shall be from an interior hallway.**

- (4) Each hotel shall be a minimum of four stories in building height. For the purpose of this provision, a story is measured from the finished floor to the finished ceiling. Stories below finished grade shall not be included in the building height calculation.**

- (5) Each hotel shall allocate a portion of its total building area to all the following specific land uses and activities:**

- a. a lobby;**

- b. a full-service food establishment with full kitchen facilities, that is available for the immediate consumption of food and beverage, and open to the direct use of the general public (food service may be provided at all times);**
- c. a bar selling alcoholic beverages for consumption on the premises;**
- d. a conference center or meeting rooms made available for meetings and gatherings no less than 5,000 square feet in area;**
- e. an indoor fitness facility with fitness equipment;**
- f. a spa and wellness facility; and**
- g. a swimming pool.**

**(6) If constructing multiple buildings on a single lot, the buildings shall be constructed at the same time and may not be phased. All buildings shall have architectural continuity, subject to review and approval by the Town Planner.**

**(7) A hotel shall only be permitted to have 150 keys / rooms or less if it is located on property within 660 feet of State Highway 114 between Davis Boulevard and Solana Boulevard, or on property within the TC, Town Center Form-Based Development District (i.e., the town center core zone). Notwithstanding any provisions in Sec. 102.501(a)(5), a hotel with 150 keys / rooms or less shall**

**provide distinguished accommodations and services that are not common to the Town, the surrounding area, and the region.**

**(8) The total building area of the hotel allocated for food service, personal service, conference space, and retail shall be calculated and shall be provided with assigned parking according to Sec. 102-155 or Sec. 102-413 as applicable to the zoning district.**

**(9) Existing hotels as of March 24, 2026 that do not conform to the land use regulations of this Section in whole or in part, may be occupied, operated, repaired, renovated, or otherwise continue in use in their existing state until such time that a substantial modification is requested to 50 percent or more of the total building area of the hotel.**

**(10) The owner of a hotel may request a deviation from the metrics of this section, subject to review and recommendation by the Planning and Zoning Commission and approval by the Town Council. A public hearing shall not be required for any deviation request.**

**SECTION 5:** That this Ordinance shall be cumulative of all other Ordinances adopted by the Town of Westlake and all provisions of other Ordinances as adopted by the Town of Westlake which are inconsistent with the provisions or terms of this Ordinance are hereby repealed.

**SECTION 6:** That 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 the Code of Ordinances of the Town of Westlake, and upon conviction shall be punishable by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

**SECTION 7:** This Ordinance shall take effect immediately from and after its passage as the law in such case provides.

**SECTION 8:** It is hereby declared to be the intention of the Town Council of the Town of Westlake, that sections, paragraphs, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared legally invalid or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such legal invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance since the same would have been enacted by the Town Council of the Town of Westlake without the incorporation in this Ordinance of any such legally invalid or unconstitutional, phrase, sentence, paragraph or section.

**SECTION 9:** This ordinance shall take effect immediately from and after its passage as the law in such case provides.

**PASSED AND APPROVED ON THIS [REDACTED] DAY OF MARCH 2026.**

  
**Kim Greaves, Mayor**

**ATTEST:**

  
**Dianna Buchanan, Town Secretary**

**APPROVED AS TO FORM:**

  
**Matthew C.G. Boyle, Town Attorney**



## Town Council/Board of Trustees AGENDA ITEM REPORT



---

**DATE:** March 24, 2026 **AGENDA ITEM NO:** J.1.  
**FROM:** Jason Oliver, Project Manager, Finance  
**SUBJECT:** Discuss, consider and act to Approve a Letter of Commitment to provide for temporary storm shelter accommodations for students, staff, and visitors associated with the Westlake Academy Arts & Sciences Building Expansion project.

---

**ATTACHMENTS:**

1. Draft Commitment Letter WA Storm Shelters

**SUMMARY :**

Building code requires a storm shelter for the new Arts and Sciences Building at WA. A letter of commitment to provide this storm shelter is being requested in order to move forward with permitting the new addition.

**BACKGROUND AND DISCUSSION:**

During the project design, it was discovered that the building code required a storm shelter for the new Westlake Academy Arts and Sciences addition. In order to comply with this requirement, a temporary storm shelter can be rented and located on the campus on an annual basis. This shelter will require minor site work to guarantee accessibility to the shelter, but the structure is temporary and will not require a foundation or other major work. The shelter can be rented monthly beyond the initial twelve-month period.

**FISCAL IMPACT:**

The annual rental of the temporary storm shelter starting in July 2027 will be approximately \$80,000.

**LEGAL REVIEW:**

N/A

**RECOMMENDATION:**

Staff recommends approval of Resolution 26-06 as presented.

**ACTION OPTIONS:**

Motion to Approve as Presented

Motion to Deny

Motion to Approve with Changes/Conditions

Motion to Continue or Table

**WESTLAKE ACADEMY  
2600 J.T. Ottinger Road  
Westlake, Texas 76262**

Date: March 24, 2026

**Re: Letter of Commitment – Temporary Storm Shelter Funding, Procurement and Installation in connection with the Westlake Academy Arts and Sciences Building Expansion**

To Whom It May Concern:

The Westlake Academy Board of Trustees, the governing body of Westlake Academy, hereby affirms its commitment to provide for temporary storm shelter accommodations for students, staff, and visitors associated with the Westlake Academy Arts and Sciences Building Expansion project.

As a condition of the issuance of the Final Certificate of Occupancy by the Town of Westlake for the Westlake Academy Arts and Sciences Building Expansion, the Board of Trustees formally commits that:

1. Funding Commitment – Westlake Academy will allocate and make available sufficient funds necessary to procure and implement temporary storm shelter solutions that meet applicable life-safety requirements and the expectations of the permitting authority.
2. Contractual Commitment – Westlake Academy will enter into one or more contracts with qualified vendors or providers to supply, install, lease, or otherwise make available temporary storm shelter facilities adequate to serve the occupants of the Westlake Academy Arts and Sciences Building Expansion.
3. Compliance with Applicable Standards – The temporary storm shelter solution will comply with applicable building, life-safety, and emergency management standards as required by the Town of Westlake as permitting authority.
4. Duration of Commitment – The temporary storm shelter solution will remain in place and available for use until such time as a permanent storm shelter solution is constructed or otherwise approved by the appropriate regulatory authority.

This Letter of Commitment is authorized by formal action of the Westlake Academy Board of Trustees. The undersigned certifies that the Board of Trustees approved this commitment during a duly posted meeting held on March 24, 2026, and authorized the Board President to execute this letter on behalf of Westlake Academy.

Sincerely,

---

Kim Greaves, Board President  
Westlake Academy Board of Trustees

ATTEST:

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Dianna Buchanan, Board Secretary



## Town Council/Board of Trustees AGENDA ITEM REPORT



---

**DATE:** March 24, 2026 **AGENDA ITEM NO:** J.2.  
**FROM:** Jason Oliver, Project Manager, Town Manager's Office  
**SUBJECT:** Discuss, consider and act regarding Resolution 26-07 approving a construction contract with Sedalco Inc. for the WA Arts & Sciences Building Project in an amount not to exceed \$6,700,000.

---

### **ATTACHMENTS:**

1. Res 26-07 Approving Construction Contract with Sedalco for WA A&S Project
2. Contract Agreement Sedalco Inc

### **SUMMARY :**

Sedalco Inc. has been chosen to provide general contracting services for the Arts and Sciences addition at Westlake Academy. The contract for services must be approved by council in order to begin construction.

### **BACKGROUND AND DISCUSSION:**

The Town of Westlake accepted competitive sealed proposals February 26, 2026 for the Westlake Academy Arts and Sciences addition, designed by BRW Architects. Sedalco Inc. was chosen by the review committee to provide general contracting services for the construction portion of the project. The A101 Standard Form of Agreement Between Owner and Contractor has been completed and awaits council approval for final execution.

### **FISCAL IMPACT:**

The contract is for \$6,700,000 to be paid over the course of construction with completion set for July 2027.

### **LEGAL REVIEW:**

Yes.

### **RECOMMENDATION:**

Staff recommends approval of Resolution 26-07 as presented.

### **ACTION OPTIONS:**

Motion to Approve as Presented

Motion to Deny

Motion to Approve with Changes/Conditions

Motion to Continue or Table

**TOWN OF WESTLAKE**

**RESOLUTION NO. 26-07**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS, APPROVING A CONSTRUCTION CONTRACT WITH SEDALCO, INC. FOR THE WESTLAKE ACADEMY ARTS AND SCIENCES BUILDING PROJECT IN AN AMOUNT NOT TO EXCEED \$6,700,000.00; AUTHORIZING THE TOWN MANAGER OR DESIGNEE TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Westlake operates and supports Westlake Academy, a municipal charter school serving the educational needs of the community; and

**WHEREAS**, the Town of Westlake has undertaken the Westlake Academy Arts and Sciences Building Addition Project in order to expand educational facilities and support the continued growth of the Academy; and

**WHEREAS**, the Town issued a solicitation for competitive sealed proposals for construction services for the project in accordance with applicable Texas procurement laws; and

**WHEREAS**, proposals were publicly received and opened on February 26, 2026, for construction services for the Arts and Sciences Building Addition designed by BRW Architects; and

**WHEREAS**, after evaluation of the proposals by the review committee, Sedalco Inc. was determined to provide the best value to the Town for the project and was recommended for award of the construction contract; and

**WHEREAS**, the parties have prepared an AIA A101 Standard Form of Agreement Between Owner and Contractor establishing the terms of construction services for the project; and

**WHEREAS**, the total contract amount for construction services shall not exceed Six Million Seven Hundred Thousand Dollars (\$6,700,000) and will be paid over the course of construction with substantial completion anticipated in July 2027; and

**WHEREAS**, the proposed agreement has been reviewed by the Town's legal counsel and staff recommends approval.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS:**

**SECTION 1:** That all matters stated in the recitals hereinabove are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

**SECTION 2:** That the Town Council hereby approves the construction contract with Sedalco Inc. for the Westlake Academy Arts and Sciences Building Project in an amount not to exceed \$6,700,000, in substantially the form attached hereto.

**SECTION 3:** The Town Manager, or designee, is hereby authorized to execute the AIA A101 Standard Form of Agreement Between Owner and Contractor, together with any related documents necessary to effectuate the contract, on behalf of the Town.

**SECTION 4:** That this Resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED ON THIS 24<sup>TH</sup> DAY OF MARCH 2026.**

\_\_\_\_\_  
Kim Greaves, Mayor

ATTEST:

\_\_\_\_\_  
Dianna Buchanan, Town Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Alex Crowley, Town Attorney



# AIA<sup>®</sup> Document A101<sup>®</sup> – 2017

## **Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum**

**AGREEMENT** made as of the 24<sup>th</sup> day of March in the year 2026  
*(In words, indicate day, month and year.)*

**BETWEEN** the Owner:  
*(Name, legal status, address and other information)*

The Town of Westlake  
1500 Solana Blvd  
Building 7, Suite 7200  
Westlake, Texas 76262

and the Contractor:  
*(Name, legal status, address and other information)*

SEDALCO, INC.  
4100 Fossil Creek Boulevard  
Fort Worth, Texas 76137

for the following Project:  
*(Name, location and detailed description)*

Westlake Academy – Arts & Sciences Addition  
1 story, 4 classroom addition to a classroom building  
And small renovation

The Architect:  
*(Name, legal status, address and other information)*

Brown Reynolds Watford Architects  
3535 Travis Street  
Suite 250  
Dallas, Texas 75204

The Owner and Contractor agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

## TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

## EXHIBIT A INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:  
(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement. Notwithstanding anything herein to the contrary, the Contract Time will not begin to run until Contractor has received all the following: a) receipt of this fully executed Agreement; b) a Notice to Proceed from Owner; c) receipt of construction permits; and d) receipt of verification of funding for this Project as set forth herein and, if necessary, the Contract Time shall be adjusted accordingly.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

### § 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall

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User Notes:

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achieve Substantial Completion of the entire Work:  
*(Check one of the following boxes and complete the necessary information.)*

Not later than ( ) calendar days from the date of commencement of the Work.

By the following date: the first day of June in the year 2027

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

§ 3.4 The Owner represents and warrants that it has or, prior to commencement of the work, will secure all necessary accesses, easements or authorizations including, but not limited to, those required by applicable governmental agencies, the property owner and/or owner of property adjoining or otherwise impacted by the Project and/or performance of the Work.

§ 3.5 In the event of delay in the work beyond the reasonable control of the Contractor resulting from (1) conduct or lack of conduct by the Owner or the Architect, or their consultants, representatives, officers, agents, or employees; (2) or delay by the Owner in making the site available, in furnishing any items required to be furnished to the Contractor by Owner pursuant to the Contract Documents or (3) the failure of the Owner or Architect to timely perform their contractual obligations, the Contractor shall be entitled to an extension of time commensurate with such delay and compensation for extra costs of labor, materials and/or equipment, plus jobsite overhead, and extended home office overhead incurred by reason of such delay, plus profit on those amounts.

**ARTICLE 4 CONTRACT SUM**

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be Six Million Seven Hundred Thousand Dollars (\$6,700,000.00), subject to additions and deductions as provided in the Contract Documents.

**§ 4.2 Alternates**

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
------	-------

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.  
*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ 4.3 Allowances, if any, included in the Contract Sum:  
*(Identify each allowance.)*

Item	Price
------	-------

§ 4.4 Unit prices, if any:  
*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 4.5 Liquidated damages, if any:  
*(Insert terms and conditions for liquidated damages, if any.)*

\$500.00 per calendar day

§ 4.6 Other:  
*(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)*

**ARTICLE 5 PAYMENTS**

**§ 5.1 Progress Payments**

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

**§ 5.1.3**

The Owner will make payment of the amount certified to the Contractor no later than thirty (30) days after the Owner receives the Application for Payment certified by the Architect.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as

- provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

### § 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five Percent (5%)

§ 5.1.7.1.1 The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

Contractor's Fee, General Conditions, Insurance and Payment & Performance Bonds

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)*

Contractor shall have the right, but not the obligation, to periodically submit requests for reduction in retainage withheld by the Owner related to those portions of the Work that have been substantially completed prior to Substantial Completion of the Project (i.e. concrete structure, earthwork, site utilities). Architect shall review those portions of the Work so requested by Contractor to determine whether it has been substantially completed in accordance with the terms of the Contract Documents and, if so finding, shall certify the Contractor's request for reduction in retainage. Upon such certification, the Owner shall pay the Contractor the amount so certified in accordance with this Section.

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.1.10 Should the Owner fail to pay the Contractor promptly and in accordance with the terms of the Contract Documents, the Contractor shall be entitled to stop Work and not proceed with any further Work until proper payment is made in accordance with the Contract Documents. The Contractor shall be entitled to a time extension to the date of Substantial Completion under the Contract Documents for the period of the delay due to the Owner's failure to make timely and proper payment and for costs arising from the delay including, but not limited to, extended overhead. If the Owner fails to make payments as required herein within thirty (30) days after demand from the Contractor, then the Contractor may terminate this Agreement in accordance with Section 14.1 of AIA Document A201-2017.

### § 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the

Architect's final Certificate for Payment, or as follows:

**§ 5.3 Interest**

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

WSJ Prime + 1%

**ARTICLE 6 DISPUTE RESOLUTION**

**§ 6.1 Initial Decision Maker**

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

**§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

- Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

**§ 7.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

No additional termination fee, only responsible for Work properly performed as of the date of termination.

**§ 7.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:  
(Name, address, email address, and other information)

Wade Carroll  
Town Manager  
1500 Solana Blvd.  
Building 7, Suite 7200  
Westlake, Texas 76262  
817-430-0941

§ 8.3 The Contractor's representative:  
(Name, address, email address, and other information)

Jared Hicks  
Executive Vice President  
4100 Fossil Creek Boulevard  
Fort Worth, Texas 76137

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

**§ 8.5 Insurance and Bonds**

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.7 Other provisions:

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction

.5 Drawings

Number	Title	Date
--------	-------	------

.6 Specifications

Section	Title	Date	Pages
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.7 Addenda, if any:

<b>Number</b>	<b>Date</b>	<b>Pages</b>
---------------	-------------	--------------

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:  
*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204-2017 incorporated into this Agreement.)*

The Sustainability Plan:


<b>Title</b>	<b>Date</b>	<b>Pages</b>
--------------	-------------	--------------

Supplementary and other Conditions of the Contract:

<b>Document</b>	<b>Title</b>	<b>Date</b>	<b>Pages</b>
-----------------	--------------	-------------	--------------

.9 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

This Agreement entered into as of the day and year first written above.

<hr/> <p><b>OWNER</b> <i>(Signature)</i></p> <p>BY: Wade Carroll, Town Manager</p> <hr/> <p><i>(Printed name and title)</i></p>	 <hr/> <p><b>CONTRACTOR</b> <i>(Signature)</i></p> <p>BY: Jared Hicks, Executive Vice President</p> <hr/> <p><i>(Printed name and title)</i></p>
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# Additions and Deletions Report for AIA® Document A101® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:49:18 CDT on 03/17/2026.

## Changes to original AIA text

### PAGE 1

**AGREEMENT** made as of the -24<sup>th</sup> day of March in the year 2026

### PAGE 2

-] The date of this Agreement.

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement. Notwithstanding anything herein to the contrary, the Contract Time will not begin to run until Contractor has received all the following: a) receipt of this fully executed Agreement; b) a Notice to Proceed from Owner; c) receipt of construction permits; and d) receipt of verification of funding for this Project as set forth herein and, if necessary, the Contract Time shall be adjusted accordingly.

### PAGE 3

§ 3.4 The Owner represents and warrants that it has or, prior to commencement of the work, will secure all necessary accesses, easements or authorizations including, but not limited to, those required by applicable governmental agencies, the property owner and/or owner of property adjoining or otherwise impacted by the Project and/or performance of the Work.

§ 3.5 In the event of delay in the work beyond the reasonable control of the Contractor resulting from (1) conduct or lack of conduct by the Owner or the Architect, or their consultants, representatives, officers, agents, or employees; (2) or delay by the Owner in making the site available, in furnishing any items required to be furnished to the Contractor by Owner pursuant to the Contract Documents or (3) the failure of the Owner or Architect to timely perform their contractual obligations, the Contractor shall be entitled to an extension of time commensurate with such delay and compensation for extra costs of labor, materials and/or equipment, plus jobsite overhead, and extended home office overhead incurred by reason of such delay, plus profit on those amounts.

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Six Million Seven Hundred Thousand Dollars ~~(\$6,700,000.00-~~), subject to additions and deductions as provided in the Contract Documents.

### PAGE 4

§ 5.1.3 ~~Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall~~ The Owner will make payment of the amount certified to the Contractor no ~~no~~ later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ( ) days after the Architect receives

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User Notes:

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the Application for Payment.

~~(Federal, state or local laws may require payment within a certain period of time.)~~ thirty (30) days after the Owner receives the Application for Payment certified by the Architect.

PAGE 5

§ 5.1.10 Should the Owner fail to pay the Contractor promptly and in accordance with the terms of the Contract Documents, the Contractor shall be entitled to stop Work and not proceed with any further Work until proper payment is made in accordance with the Contract Documents. The Contractor shall be entitled to a time extension to the date of Substantial Completion under the Contract Documents for the period of the delay due to the Owner's failure to make timely and proper payment and for costs arising from the delay including, but not limited to, extended overhead. If the Owner fails to make payments as required herein within thirty (30) days after demand from the Contractor, then the Contractor may terminate this Agreement in accordance with Section 14.1 of AIA Document A201-2017.

PAGE 6

~~-%~~ WSJ Prime + 1%

PAGE 7

~~§ 8.6~~ Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:

~~(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)~~

~~4~~ Building information modeling exhibit, dated as indicated below:

~~(Insert the date of the building information modeling exhibit incorporated into this Agreement.)~~

Variable Information

PAGE 1

AGREEMENT made as of the -24<sup>th</sup> day of March in the year 2026

The Town of Westlake

1500 Solana Blvd

Building 7, Suite 7200

Westlake, Texas 76262

SEDALCO, INC.

4100 Fossil Creek Boulevard

Fort Worth, Texas 76137

Westlake Academy – Arts & Sciences

Addition 1 story, 4 classroom addition to a classroom building

And small renovation

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User Notes:

(69b969bad660c41c048c6601)

Brown Reynolds Watford Architects

3535 Travis Street

Suite 250

Dallas, Texas 75204

**PAGE 3**

By the following date: the first day of June in the year 2027

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Six Million Seven Hundred Thousand Dollars ~~(\$6,700,000.00-~~), subject to additions and deductions as provided in the Contract Documents.

**PAGE 4**

\$500.00 per calendar day

**PAGE 5**

Five Percent (5%)

Contractor's Fee, General Conditions, Insurance and Payment & Performance Bonds

Contractor shall have the right, but not the obligation, to periodically submit requests for reduction in retainage withheld by the Owner related to those portions of the Work that have been substantially completed prior to Substantial Completion of the Project (i.e. concrete structure, earthwork, site utilities). Architect shall review those portions of the Work so requested by Contractor to determine whether it has been substantially completed in accordance with the terms of the Contract Documents and, if so finding, shall certify the Contractor's request for reduction in retainage. Upon such certification, the Owner shall pay the Contractor the amount so certified in accordance with this Section.

**PAGE 6**

~~%-WSJ Prime + 1%~~

Litigation in a court of competent jurisdiction

**PAGE 7**

No additional termination fee, only responsible for Work properly performed as of the date of termination.

Wade Carroll

Town Manager

1500 Solana Blvd.

Building 7, Suite 7200

Westlake, Texas 76262

817-430-0941

Jared Hicks

Executive Vice President

4100 Fossil Creek Boulevard

Fort Worth, Texas 76137

## Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Jacquelyn Allen, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:49:18 CDT on 03/17/2026 under Order No. 20240060048 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ - 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, other than those additions and deletions shown in the associated Additions and Deletions Report.

  
(Signed)

Sr. Project Admin  
(Title)

3/17/26  
(Dated)

## **Insurance and Bonds**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 24<sup>th</sup> day of March in the year 2026  
*(In words, indicate day, month and year.)*

for the following **PROJECT**:  
*(Name and location or address)*

Westlake Academy Arts & Sciences Addition  
2600 JT Ottinger Road  
Westlake, Texas 76262

**THE OWNER:**  
*(Name, legal status and address)*

The Town of Westlake  
1500 Solana Blvd  
Building 7, Suite 7200  
Westlake, Texas 76262

**THE CONTRACTOR:**  
*(Name, legal status and address)*

SEDALCO, INC.  
4100 Fossil Creek Boulevard  
Fort Worth, Texas 76137

### **TABLE OF ARTICLES**

- A.1 GENERAL**
- A.2 OWNER'S INSURANCE**
- A.3 CONTRACTOR'S INSURANCE AND BONDS**
- A.4 SPECIAL TERMS AND CONDITIONS**

#### **ARTICLE A.1 GENERAL**

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201<sup>TM</sup>-2017, General Conditions of the Contract for Construction.

#### **ARTICLE A.2 OWNER'S INSURANCE**

##### **§ A.2.1 General**

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

##### **§ A.2.2 Liability Insurance**

#### **ADDITIONS AND DELETIONS:**

The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201<sup>®</sup>-2017, General Conditions of the Contract for Construction. Article 11 of A201<sup>®</sup>-2017 contains additional insurance provisions.

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

**§ A.2.3 Required Property Insurance**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ A.2.3.1.1 Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

*(Indicate below the cause of loss and any applicable sub-limit.)*

Causes of Loss	Sub-Limit
----------------	-----------

**§ A.2.3.1.2 Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

Coverage	Sub-Limit
----------	-----------

**§ A.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ A.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ A.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ A.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

**§ A.2.4 Optional Extended Property Insurance.**

The Owner shall purchase and maintain the insurance selected and described below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next*

to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- § **A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
  
- § **A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
  
- § **A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
  
- § **A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
  
- § **A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
  
- § **A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
  
- § **A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

- § **A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.  
*(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[ ] § A.2.5.2 Other Insurance  
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage	Limits
----------	--------

**ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS**

**§ A.3.1 General**

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

**§ A.3.2 Contractor's Required Insurance Coverage**

**§ A.3.2.1** The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

**§ A.3.2.2 Commercial General Liability**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars (\$1,000,000.00 ) each occurrence, Two Million Dollars (\$2,000,000.00 ) general aggregate, and Two Million Dollars (\$2,000,000.00 ) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

**§ A.3.2.2.2** The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.

- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than One Million Dollars (\$1,000,000.00 ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits not less than One Million Dollars (\$1,000,000.00 ) each accident, One Million Dollars (\$1,000,000.00 ) each employee, and One Million Dollars (\$1,000,000.00 ) policy limit.

§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ( \$ ) per claim and ( \$ ) in the aggregate.

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ( \$ ) per claim and ( \$ ) in the aggregate.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ( \$ ) per claim and ( \$ ) in the aggregate.

§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ( \$ ) per claim and ( \$ ) in the aggregate.

§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ( \$ ) per claim and ( \$ ) in the aggregate.

### § A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

**§ A.3.3.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

- § A.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below.*

*Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

- § A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate, for Work within fifty (50) feet of railroad property.
- § A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.
- § A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.**
- § A.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.**
- § A.3.3.2.6 Other Insurance**  
*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

Coverage	Limits
Umbrella/Excess Liability Insurance	\$3,000,000.00 per claim

**§ A.3.4 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

*(Specify type and penal sum of bonds.)*

Type	Penal Sum (\$0.00)
Payment Bond	One Hundred Percent (100%) of the Contract Sum
Performance Bond	One Hundred Percent (100%) of the Contract Sum

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

# Additions and Deletions Report for AIA® Document A101® – 2017 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 20:35:31 CDT on 03/16/2026.

## Changes to original AIA text

### PAGE 4

*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ~~(\$ One Million Dollars (\$1,000,000.00))~~ each occurrence, (\$ Two Million Dollars (\$2,000,000.00)) general aggregate, and (\$ Two Million Dollars (\$2,000,000.00)) aggregate for products-completed operations hazard, providing coverage for claims including

### PAGE 5

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than ~~(\$ One Million Dollars (\$1,000,000.00))~~ per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.6 Employers' Liability with policy limits not less than ~~(\$ One Million Dollars (\$1,000,000.00))~~ each accident, ~~(\$ One Million Dollars (\$1,000,000.00))~~ each employee, and ~~(\$ One Million Dollars (\$1,000,000.00))~~ policy limit.

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*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

Coverage	Limits
<u>Umbrella/Excess Liability Insurance</u>	<u>\$3,000,000.00 per claim</u>

## Variable Information

### PAGE 1

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 24<sup>th</sup> day of March in the year 2026

Westlake Academy Arts & Sciences Addition

2600 JT Ottinger Road

Westlake, Texas 76262

The Town of Westlake 1500 Solana Blvd

Building 7, Suite 7200

Westlake, Texas 76262

SEDALCO, INC.

4100 Fossil Creek Boulevard

Fort Worth, Texas 76137

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§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ~~(\$ One Million Dollars (\$1,000,000.00))~~ each occurrence, ~~(\$ Two Million Dollars (\$2,000,000.00))~~ general aggregate, and ~~(\$ Two Million Dollars (\$2,000,000.00))~~ aggregate for products-completed operations hazard, providing coverage for claims including

**PAGE 5**

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than ~~(\$ One Million Dollars (\$1,000,000.00))~~ per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.6 Employers' Liability with policy limits not less than ~~(\$ One Million Dollars (\$1,000,000.00))~~ each accident, ~~(\$ One Million Dollars (\$1,000,000.00))~~ each employee, and ~~(\$ One Million Dollars (\$1,000,000.00))~~ policy limit.

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[ X ] § A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

<b>Coverage</b>	<b>Limits</b>
<u>Umbrella/Excess Liability Insurance</u>	<u>\$3,000,000.00 per claim</u>
<b>Type</b>	<b>Penal Sum (\$0.00)</b>
Payment Bond	<u>One Hundred Percent (100%) of the Contract Sum</u>

Performance Bond

One Hundred Percent (100%) of the  
Contract Sum



## General Conditions of the Contract for Construction

**for the following PROJECT:**

*(Name and location or address)*

Westlake Academy Arts & Sciences Addition  
2600 JT Ottinger Road  
Westlake, Texas 76262

**THE OWNER:**

*(Name, legal status and address)*

The Town of Westlake  
1500 Solana Blvd  
Building 7 Suite 7200  
Westlake, Texas 76262

**THE ARCHITECT:**

*(Name, legal status and address)*

Brown Reynolds Watford Architects  
3535 Travis Street, Suite 250  
Dallas, Texas 75204

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- 1 GENERAL PROVISIONS**
- 2 OWNER**
- 3 CONTRACTOR**
- 4 ARCHITECT**
- 5 SUBCONTRACTORS**
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**
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- 8 TIME**
- 9 PAYMENTS AND COMPLETION**
- 10 PROTECTION OF PERSONS AND PROPERTY**
- 11 INSURANCE AND BONDS**
- 12 UNCOVERING AND CORRECTION OF WORK**

**ADDITIONS AND DELETIONS:**

The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™–2017, Guide for Supplementary Conditions.

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- 15 CLAIMS AND DISPUTES

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1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

**Written Interpretations**

4.2.11, 4.2.12

**Written Orders**

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

#### **§ 1.1.1 The Contract Documents**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### **§ 1.1.2 The Contract**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### **§ 1.1.3 The Work**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### **§ 1.1.4 The Project**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### **§ 1.1.5 The Drawings**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### **§ 1.1.6 The Specifications**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### **§ 1.1.7 Instruments of Service**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 Initial Decision Maker**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

### **§ 1.2 Correlation and Intent of the Contract Documents**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Contractor's review of the Contract Documents is solely in its capacity as a contractor for the

purposes of establishing the Project's budget, schedule, and constructability. Contractor makes no representations regarding the Project's design including, but not limited to, any representation that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities or that the design, as represented by the Contract Documents, is suitable for the purposes intended by the Design Professional preparing said documents.

**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### **§ 1.3 Capitalization**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

### **§ 1.4 Interpretation**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### **§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service**

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

### **§ 1.6 Notice**

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

**§ 1.6.2** Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

### **§ 1.7 Digital Data Use and Transmission**

The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

## **§ 1.8 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

**§ 1.9** Execution of the Contract, and all related Contract Documents, may be executed by Owner's, Architect's and/or Contractor's signature transmitted by electronic means, as allowed under State and Federal Law, and copies of this Contract and all related Contract Documents that are transmitted by electronic means and delivered by means of electronic signatures shall have the same force and effect as copies executed and delivered with original signatures. Contractor agrees that all electronic signatures, whether transmitted by e-mail, facsimile and/or AdobeSign or other verified computer program utilized by Owner, can be relied on by Owner and shall have the same force and effect as Contractor's original signature. Contractor agrees that an electronic signature may be introduced into evidence by Owner in any proceeding arising out of or related to this Contract and all related Contract Documents as if it were an original signature of an Authorized Agent of Contractor. Contractor further agrees that, at Owner's sole election, Contractor shall submit original written signatures for this Contract and/or any related Contract Documents.

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 2.1.2** The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### **§ 2.2 Evidence of the Owner's Financial Arrangements**

**§ 2.2.1** Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

**§ 2.2.3** After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.4** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or

governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### **§ 2.3 Information and Services Required of the Owner**

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.3.2** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.3.3** If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

**§ 2.3.4** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.5** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**§ 2.3.6** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### **§ 2.4 Owner's Right to Stop the Work**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### **§ 2.5 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 General**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor"

means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### § 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 The Contractor shall, before starting each portion of the Work, review compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it which can be ascertained by a reasonable on-site visual inspection. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### § 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### **§ 3.4 Labor and Materials**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### **§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner, for a period of one (1) year from the date of Substantial Completion, that materials and equipment furnished under the Contract will be new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered non-conforming. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor does not warrant or guarantee the design of sufficiency of the design of the improvements or that the materials and equipment required by the Contract Documents will accomplish the purposes intended by the design professionals.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

### **§ 3.6 Taxes**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### **§ 3.7 Permits, Fees, Notices and Compliance with Laws**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are legally required at the time bids are received or negotiations concluded.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### **§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor, Owner or Architect encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents,

the encountering entity shall promptly provide notice to the other entities referenced in Section 3.7.4 before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the Architect will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 Allowances**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### **§ 3.9 Superintendent**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### **§ 3.10 Contractor's Construction and Submittal Schedules**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required

for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### **§ 3.11 Documents and Samples at the Site**

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### **§ 3.12 Shop Drawings, Product Data and Samples**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

**§ 3.12.10.1** If professional design services or certifications by a design professional specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

**§ 3.12.10.2** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### **§ 3.13 Use of Site**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### **§ 3.14 Cutting and Patching**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### **§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the

Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 Access to Work**

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

### **§ 3.17 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

### **§ 4.2 Administration of the Contract**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress

and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### **§ 4.2.4 Communications**

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

**§ 4.2.11** The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 Definitions**

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### **§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work**

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

### **§ 5.3 Subcontractual Relations**

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor,

by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### **§ 5.4 Contingent Assignment of Subcontracts**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

#### **§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 6.1.1** The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

#### **§ 6.2 Mutual Responsibility**

**§ 6.2.1** The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

### § 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### § 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### **§ 7.4 Minor Changes in the Work**

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

#### **§ 7.5 Unavoidable Cost Escalation**

If, during the performance of this Contract, the price or lead time for delivery of materials, goods, or equipment to be provided by Contractor pursuant to the terms of this Contract increases, through no fault of Contractor or by reason of any event qualifying as a Force Majeure Event as defined herein, the Contract Sum shall be equitably adjusted by an amount reasonably necessary to cover any such price increases, as well as overhead and profit on such increases and any additional costs and expenses incurred by Contractor arising therefrom. At Owner's request Contractor shall provide information reasonably requested by Owner to document such price increases, such as quotes, invoices, or receipts. Additionally, where the delivery of materials, goods, or equipment is delayed as a result of the shortage or unavailability of such items, and to the extent Contractor could not have reasonably anticipated or mitigated such shortage, Contractor shall not be liable for any additional costs or damages associated with such delay(s), and the Contract Time shall be equitably adjusted therefor.

### **ARTICLE 8 TIME**

#### **§ 8.1 Definitions**

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

**§ 8.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

#### **§ 8.2 Progress and Completion**

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

#### **§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Contractor is delayed.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sum**

**§ 9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### **§ 9.2 Schedule of Values**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

### **§ 9.3 Applications for Payment**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

### **§ 9.4 Certificates for Payment**

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the

Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

**§ 9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.4** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

### **§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments

to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

### § 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

### § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract

Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

### **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents, but beneficial occupancy on the part of Owner shall be deemed Substantial Completion of that portion of the Work which the Owner elects to occupy or use.

### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period

required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 Safety Precautions and Programs**

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### **§ 10.2 Safety of Persons and Property**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

**§ 10.2.2** The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

**§ 10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.3 Hazardous Materials and Substances**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. Nothing in the Section 10.3 or elsewhere in the Agreement shall be construed as a requirement for the Contractor to perform any Work relating to hazardous substances or materials unless expressly required by the Contract Documents.

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

#### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

#### § 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor,

Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### **§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

### **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

### **§11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for

convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### **§ 12.2 Correction of Work**

#### **§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Architect and/or Owner that fails to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's reasonable services and expenses made necessary thereby, shall be at the Contractor's expense. Prior to incurring or assessing any such costs, the Architect and/or Owner shall provide the Contractor with prompt written notice identifying the specific Work rejected and the basis of failure to comply with the requirements of the Contract Documents as well as identifying that such costs would be considered Additional Services of the Architect under the Owner-Architect agreement.

#### **§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

### § 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, or the Owner suspends the Contract for its convenience pursuant to Section 14.3, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful

- orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

### § 14.3 Suspension by the Owner for Convenience

§ 14.3.1 Subject to Section 14.1.4, the Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

### § 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes

other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### **§ 15.1.2 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

#### **§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### **§ 15.1.4 Continuing Contract Performance**

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### **§ 15.1.5 Claims for Additional Cost**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### **§ 15.1.6 Claims for Additional Time**

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include, to the extent of the Contractor's knowledge, an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, and had an adverse effect on the scheduled construction.

#### **§ 15.1.7 Waiver of Claims for Consequential Damages**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit,

except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

## **§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Owner and the Contractor may agree to mediate any claim prior to or after submitting the claim to the Initial Decision Maker.

**§ 15.2.2** If a claim is submitted to the Initial Decision Maker, the Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, or (3) approve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

**§ 15.2.6.1** Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation.

**§ 15.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

## **§ 15.3 Mediation**

**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition proceeding to litigation.

**§ 15.3.4** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

# Additions and Deletions Report for AIA® Document A201® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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## Changes to original AIA text

### PAGE 3

8.3.1, 15.3.2, ~~15.4~~

### PAGE 7

3.14, 6.2.5-

### PAGE 15

### PAGE 16

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Contractor's review of the Contract Documents is solely in its capacity as a contractor for the purposes of establishing the Project's budget, schedule, and constructability. Contractor makes no representations regarding the Project's design including, but not limited to, any representation that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities or that the design, as represented by the Contract Documents, is suitable for the purposes intended by the Design Professional preparing said documents.

### PAGE 18

**§ 1.9** Execution of the Contract, and all related Contract Documents, may be executed by Owner's, Architect's and/or Contractor's signature transmitted by electronic means, as allowed under State and Federal Law, and copies of this Contract and all related Contract Documents that are transmitted by electronic means and delivered by means of electronic signatures shall have the same force and effect as copies executed and delivered with original signatures. Contractor agrees that all electronic signatures, whether transmitted by e-mail, facsimile and/or AdobeSign or other verified computer program utilized by Owner, can be relied on by Owner and shall have the same force and effect as Contractor's original signature. Contractor agrees that an electronic signature may be introduced into evidence by Owner in any proceeding arising out of or related to this Contract and all related Contract Documents as if it were an original signature of an Authorized Agent of Contractor. Contractor further agrees that, at Owner's sole election, Contractor shall submit original written signatures for this Contract and/or any related Contract Documents.

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~~§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and review~~ compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it which can be ascertained by a reasonable on-site visual inspection. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

## PAGE 21

~~§ 3.5.1 The Contractor warrants to the Owner, and Architect for a period of one (1) year from the date of~~ Substantial Completion, that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be ~~considered defective~~ considered non-conforming. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor does not warrant or guarantee the design of sufficiency of the design of the improvements or that the materials and equipment required by the Contract Documents will accomplish the purposes intended by the design professionals.

~~§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are~~ customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

If the Contractor, Owner or Architect encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, ~~the Contractor encountering entity~~ shall promptly provide notice to the Owner and the Architect ~~other entities~~ referenced in Section 3.7.4 before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, ~~if the Architect determines that~~ they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the Architect will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

## PAGE 23

~~§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect.~~ The Owner and the Architect Contractor shall not be entitled to

~~rely upon responsible for the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor of the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents specified in the Contract Documents.~~

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### § 7.5 Unavoidable Cost Escalation

If, during the performance of this Contract, the price or lead time for delivery of materials, goods, or equipment to be provided by Contractor pursuant to the terms of this Contract increases, through no fault of Contractor or by reason of any event qualifying as a Force Majeure Event as defined herein, the Contract Sum shall be equitably adjusted by an amount reasonably necessary to cover any such price increases, as well as overhead and profit on such increases and any additional costs and expenses incurred by Contractor arising therefrom. At Owner's request Contractor shall provide information reasonably requested by Owner to document such price increases, such as quotes, invoices, or receipts. Additionally, where the delivery of materials, goods, or equipment is delayed as a result of the shortage or unavailability of such items, and to the extent Contractor could not have reasonably anticipated or mitigated such shortage, Contractor shall not be liable for any additional costs or damages associated with such delay(s), and the Contract Time shall be equitably adjusted therefor.

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§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine Contractor is delayed.

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§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents, but beneficial occupancy on the part of Owner shall be deemed Substantial Completion of that portion of the Work which the Owner elects to occupy or use.

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§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. Nothing in the Section 10.3 or elsewhere in the Agreement shall be construed as a requirement for the Contractor to perform any Work relating to hazardous substances or materials unless expressly required by the Contract Documents.

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The Contractor shall promptly correct Work rejected by the Architect and/or failing Owner that fails to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and

inspections, the cost of uncovering and replacement, and compensation for the Architect's reasonable services and expenses made necessary thereby, shall be at the Contractor's expense. Prior to incurring or assessing any such costs, the Architect and/or Owner shall provide the Contractor with prompt written notice identifying the specific Work rejected and the basis of failure to comply with the requirements of the Contract Documents as well as identifying that such costs would be considered Additional Services of the Architect under the Owner-Architect agreement.

#### PAGE 40

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. ~~If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~

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**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, or the Owner suspends the Contract for its convenience pursuant to Section 14.3, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

#### PAGE 42

**§ 14.3.1** ~~The~~Subject to Section 14.1.4, the Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

#### PAGE 43

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include, to the extent of the Contractor's knowledge, an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, ~~could not have been reasonably anticipated,~~ and had an adverse effect on the scheduled construction.

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. ~~Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner. Owner and the Contractor may agree to mediate any claim prior to or after submitting the claim to the Initial Decision Maker.~~

**§ 15.2.2** ~~The~~If a claim is submitted to the Initial Decision Makre, the Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, ~~(3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve~~ (3) approve the Claim.

~~§ 15.2.6.1~~ Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. ~~If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

~~§ 15.3.1~~ Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition ~~precedent to binding dispute resolution proceeding to litigation.~~

~~§ 15.3.2~~ The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

~~§ 15.3.3~~ Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

~~§ 15.3.4~~ The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### ~~§ 15.4 Arbitration~~

~~§ 15.4.1~~ If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

~~§ 15.4.1.1~~ A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

~~§ 15.4.2~~ The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

~~§ 15.4.3~~ The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### ~~§ 15.4.4 Consolidation or Joinder~~

~~§ 15.4.4.1~~ Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

~~§ 15.4.4.2~~ Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose

~~presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

## **Variable Information**

### **PAGE 1**

Westlake Academy Arts & Sciences Addition

2600 JT Ottinger Road

Westlake, Texas 76262

The Town of Westlake 1500 Solana Blvd

Building 7 Suite 7200


Westlake, Texas 76262

Brown Reynolds Watford Architects 3535 Travis Street, Suite 250 Dallas, Texas 75204

## Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Jacquelyn Allen, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 20:34:42 CDT on 03/16/2026 under Order No. 20240060048 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

  
\_\_\_\_\_  
(Signed)

Sr. Project Admin  
\_\_\_\_\_  
(Title)

3/17/26  
\_\_\_\_\_  
(Dated)

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User Notes:

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## Town Council/Board of Trustees AGENDA ITEM REPORT



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**DATE:** March 24, 2026 **AGENDA ITEM NO:** J.3.  
**FROM:** Sandy Garza, Human Resources Director  
John Ard, Fire Chief  
Wade Carroll, Town Manager  
**SUBJECT:** Discuss, consider and act to adopt a Fire Department compensation step plan designed to position Westlake's firefighter salaries targeting the 80th percentile of the regional market.

---

### **ATTACHMENTS:**

1. Resolution 26-08 Fire Department Compensation Step Plan
2. Exhibit A Fire Dept. Compensation Step Plan

### **SUMMARY :**

Retention challenges caused by a non-competitive pay plan have required the department to continually hire to maintain staffing levels. Because fully qualified Firefighter/Paramedics are difficult to recruit, the department often hires Firefighter/EMTs and must invest additional funds to send them to paramedic school and cover overtime. Benchmarking salaries at the 80th percentile would strengthen retention, improve recruitment of qualified personnel, and reduce these additional costs.

### **BACKGROUND AND DISCUSSION:**

The Fire-EMS Department has faced ongoing retention challenges for several years, primarily due to the lack of a competitive pay plan. As personnel leave for better-compensated opportunities, the department must continually hire to maintain staffing levels.

Because of these vacancies, the department has often been unable to recruit fully qualified Firefighter/Paramedics and has instead hired Firefighter/EMTs who must later be sent to paramedic school. This results in significant costs for tuition and overtime to backfill positions during training.

Benchmarking Firefighter salaries at the 80th percentile of comparable Texas municipalities would place the City within the top 20% of the market, improving retention, strengthening recruitment, and supporting long-term operational stability.

### **FISCAL IMPACT:**

The total annual cost to implement the step plan, including projected overtime impact, is **\$357,300**. If implementation begins **May 4, 2026**, the cost in FY26 would be approximately **\$151,118**, reflecting a partial-year impact.

**LEGAL REVIEW:**

N/A

**RECOMMENDATION:**

Approve Resolution 26-08 to approve amending the Fire Department Step Plan positioned at the 80th percentile of the regional fire service labor market, effective May 4, 2026.

This plan will:

- Improve recruitment of certified firefighter/paramedics
- Reduce turnover and long-term training costs
- Maintain safe and reliable emergency staffing for the Town

**ACTION OPTIONS:**

Motion to Approve as Presented

Motion to Deny

Motion to Approve with Changes/Conditions

Motion to Continue or Table

**TOWN OF WESTLAKE**

**RESOLUTION NO. 26-08**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS, APPROVING A FIRE DEPARTMENT COMPENSATION STEP PLAN; PROVIDING FOR IMPLEMENTATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Westlake Fire Department provides essential emergency response and life-safety services to the residents and businesses of the Town; and

**WHEREAS**, the Town has experienced increasing challenges recruiting and retaining certified firefighter/paramedics due to a highly competitive regional labor market; and

**WHEREAS**, the Town conducted a compensation analysis comparing firefighter salaries among comparable North Texas fire departments; and

**WHEREAS**, the analysis indicates that positioning firefighter compensation near the 80th percentile of the regional labor market will improve recruitment and retention of qualified personnel; and

**WHEREAS**, staff has recommended adoption of a structured compensation step plan for Fire Department personnel including Firefighter/EMT-B, Firefighter/Paramedic, Driver/Engineer, and Captain classifications.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF WESTLAKE:**

**SECTION 1:** That all matters stated in the recitals hereinabove are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

**SECTION 2:** The Town Council hereby approves the Fire Department Compensation Step Plan attached as “Exhibit A”.

**SECTION 3:** The step plan shall position Fire Department salaries at approximately the 80th percentile of the regional fire service labor market.

**SECTION 4:** The compensation adjustments authorized by this resolution shall become effective \_\_\_\_\_ (either May 4, 2026, or October 1, 2026), as directed by the Town Council, with employees placed within the step structure based on tenure in their assigned rank.

**SECTION 5:** The Town Manager is authorized to take all administrative actions necessary to implement the compensation plan.

**PASSED AND APPROVED ON THIS 24<sup>th</sup> Day of March 2026.**

\_\_\_\_\_  
Kim Greaves, Mayor

ATTEST:

\_\_\_\_\_  
Dianna Buchanan, Board Secretary

\_\_\_\_\_  
Wade Carroll, Town Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Alex Crowley, Town Attorney

# EXHIBIT A

## Town of Westlake Fire Department Compensation Step Plan

### Compensation Structure

The step plan provides defined salary progression based on rank and experience. Advancement through steps is subject to Town policies, performance standards, and applicable departmental criteria.

#### Firefighter / EMT-B

Step	Annual Salary
Step 1	\$77,150
Step 2	\$81,000

#### Firefighter / Paramedic

Step	Annual Salary
Step 1	\$85,054
Step 2	\$89,642
Step 3	\$94,477
Step 4	\$99,574
Step 5	\$104,945

#### Engineer

Step	Annual Salary
Step 1	\$106,478
Step 2	\$111,563
Step 3	\$116,890
Step 4	\$122,472

#### Captain

Step	Annual Salary
Step 1	\$124,199
Step 2	\$130,430
Step 3	\$136,973
Step 4	\$143,845

## **Administration and Implementation**

- Placement within the step plan will be determined based on qualifications, certifications, and experience, as approved by the Town Manager or designee.
- Movement between steps is not automatic and is subject to budget approval, performance, and departmental recommendations.
- This plan may be amended as necessary to maintain market competitiveness and organizational needs.

## **Annual Review and Budget Approval**

The Fire Department Compensation Step Plan shall be reviewed at a minimum of every other year as part of the Town's budget development process. Any adjustments to the step plan, including salary ranges or step progression, are subject to available funding and approval through the annual budget adoption process.

Nothing in this plan guarantees automatic salary increases or step advancements. All compensation actions remain subject to Town policy, performance considerations, and approval by the Town Manager and/or Town Council, as applicable.

**WESTLAKE ACADEMY**

**WA RESOLUTION 26-07**

**A RESOLUTION OF THE WESTLAKE ACADEMY BOARD OF TRUSTEES RATIFYING THE CERTIFICATION OF THE PROVISION OF INSTRUCTIONAL MATERIALS SURVEY FOR THE 2026-2027 SCHOOL YEAR, IN COMPLIANCE WITH THE TEXAS EDUCATION CODE AND STATE BOARD OF EDUCATION RULES.**

**WHEREAS**, the Texas Education Code §31.0211 establishes an Instructional Materials and Technology Allotment (IMTA) to assist school districts in the acquisition of instructional materials, technology, and services necessary for the delivery of instruction to students; and

**WHEREAS**, , to remain in compliance with the Texas Education Code and the State Board of Education (SBO) rules, school districts must annually certify that instructional materials provided to students cover the essential knowledge and skills of the required curriculum for each grade level; and

**WHEREAS**, Westlake Academy utilizes the Instructional Materials Allotment (IMA) to purchase state-adopted and locally selected instructional materials, technological equipment and services, training related to instructional materials and technology, and access to digital instructional materials; and

**WHEREAS**, the certification of the Provision of Instructional Materials Survey for the 2026-2027 school year is required for Westlake Academy to continue receiving funding from the Texas Education Agency (TEA) under the IMTA program; and

**WHEREAS**, failure to certify this provision would result in a loss of revenue critical to the procurement of instructional materials and the integration of educational technology; and

**WHEREAS**, the Board of Trustees finds that the passage of this Resolution is in the best interest of the citizens of Westlake as well as the students, their parents, and faculty of Westlake Academy.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF WESTLAKE ACADEMY:**

**SECTION 1:** That, all matters stated in the recitals herein are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

**SECTION 2:** That, the Board of Trustees of Westlake Academy hereby approves the ratification of the Certification of the Provision of Instructional Materials Survey for the 2026-2027 academic year, in compliance with the Texas Education Code and State Board of Education rules.

**SECTION 3:** If any portion of this resolution shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and the Council hereby determines that it would have adopted this Resolution without the invalid provision.

**SECTION 4:** That this resolution shall become effective from and after its date of passage.

**PASSED AND APPROVED ON THIS 24th DAY OF MARCH 2026.**

\_\_\_\_\_  
Kim Greaves, President

ATTEST:

\_\_\_\_\_  
Dianna Buchanan, Board Secretary

\_\_\_\_\_  
Dr. Kelly Ritchie, Head of School

APPROVED AS TO FORM:

\_\_\_\_\_  
Janet S. Bubert, School Attorney



## Town Council/Board of Trustees AGENDA ITEM REPORT



---

**DATE:** March 24, 2026 **AGENDA ITEM NO:** M.1.  
**FROM:** Kelly Ritchie, Head of School, Westlake Academy  
**SUBJECT:** (TABLED 2.17.2026, 2.24.2026) Discuss, consider and act regarding WA Resolution 26-03 to approve contracting with Technology Lab to provide Information Technology services to Westlake Academy and authorizing the Head of School to execute the agreement for same. (Dr. Kelly Ritchie, Head of School)

---

### **ATTACHMENTS:**

1. WA Res 26-03 Technology Lab Agreement Approval
2. EXHIBIT A Quote 6257 v18 Technology Lab
3. Westlake\_Academy\_Cost\_Comparison (4)
4. Techlab\_Westlake edits to MSA Master-Services-Terms-and-Conditions

### **SUMMARY :**

Westlake Academy's technology environment has grown significantly in complexity as the Academy has expanded academically, operationally, and technologically. The current structure presents challenges related to network reliability, security, scalability, and the need for a long-term strategic technology partner with education-specific expertise.

To address these challenges, Academy leadership engaged Technology Lab to conduct an assessment and propose a comprehensive managed IT services model tailored specifically for K–12 educational environments. Technology Lab specializes in school-focused IT support and brings extensive experience working with charter schools, including network design, cybersecurity, device management, and E-Rate strategy.

### **BACKGROUND AND DISCUSSION:**

Contracting with Technology Lab will allow Westlake Academy to transition from a reactive IT model to a proactive, strategic approach that aligns technology infrastructure with instructional and operational priorities. Key benefits of the proposed partnership include:

- Education-Focused IT Expertise: Deep understanding of K–12 school operations, instructional technology needs, and compliance considerations.

- Improved Network Reliability and Security: 24/7 monitoring, proactive maintenance, cybersecurity best practices, and recommendations to eliminate single points of failure through cloud-based solutions.
- Dedicated Support and Leadership Visibility: A school-focused help desk, dedicated client relations manager, and regular technology business reviews to provide transparency, accountability, and strategic planning.
- Operational Efficiency: Streamlined onboarding and offboarding, device management for faculty and students, vendor management, and standardized support protocols.
- Strategic Planning and Financial Stewardship: Development of a long-term technology roadmap, procurement strategy, and guidance in leveraging the E-Rate program to offset infrastructure costs.

This partnership will allow campus leadership to focus on teaching, learning, and student experience while ensuring the Academy’s technology systems are secure, scalable, and aligned with best practices.

**FISCAL IMPACT:**

The financial terms of the agreement, including managed service fees and projected infrastructure investments, are outlined in the attached proposal. Costs will be incorporated into the Academy’s operating budget and offset, where applicable, through E-Rate reimbursements and improved financial clarity related to IT services.

**LEGAL REVIEW:**

Yes.

**RECOMMENDATION:**

Administration recommends approval of this item to establish a strategic, education-focused IT partnership that strengthens Westlake Academy’s technology infrastructure, improves security and reliability, and supports the Academy’s long-term operational and instructional goals.

**ACTION OPTIONS:**

- |   |                             |
|---|-----------------------------|
| Motion to Approve as Presented            | Motion to Deny              |
| Motion to Approve with Changes/Conditions | Motion to Continue or Table |

**WESTLAKE ACADEMY**

**RESOLUTION NO. 26-03**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE WESTLAKE ACADEMY APPROVING A CONTRACT WITH TECHNOLOGY LAB TO PROVIDE MANAGED INFORMATION TECHNOLOGY SERVICES TO WESTLAKE ACADEMY AND AUTHORIZING THE HEAD OF SCHOOL TO EXECUTE THE AGREEMENT FOR SAME.**

**WHEREAS**, Westlake Academy is an open-enrollment public charter school committed to providing a high-quality educational environment supported by secure, reliable, and modern technology systems; and,

**WHEREAS**, Westlake Academy's technology environment has grown significantly in complexity as the Academy has expanded academically, operationally, and technologically and,

**WHEREAS**, the Academy has identified ongoing challenges related to network reliability, cybersecurity, scalability, and the need for a long-term strategic technology partner with education-specific expertise; and

**WHEREAS**, Academy leadership engaged **Technology Lab** to conduct an assessment and propose a comprehensive managed IT services model tailored specifically for K–12 educational environments; and

**WHEREAS**, Technology Lab specializes in school-focused IT support, including network design, cybersecurity, device management, and E-Rate strategy; and

**WHEREAS**, contracting with Technology Lab will allow Westlake Academy to transition from a reactive IT support model to a proactive, strategic approach aligned with instructional and operational priorities; and

**WHEREAS**, the proposed partnership is expected to provide benefits including improved network reliability and security, dedicated support services, operational efficiency, and long-term technology planning and financial stewardship; and

**WHEREAS**, the financial terms of the agreement are outlined in **Quote #6257 v18**, including a one-time onboarding fee and monthly managed service fees, and such costs will be incorporated into the Academy's operating budget and offset where applicable through E-Rate reimbursements; and

**WHEREAS**, the Board of Trustees finds that the passage of this Resolution is in the best interest of Westlake Academy and supports the Academy's long-term operational and instructional goals.

**NOW, THEREFORE, BE IT RESOLVED BY THE WESTLAKE ACADEMY BOARD OF TRUSTEES:**

**SECTION 1:** That all matters stated in the Recitals hereinabove are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

**SECTION 2:** That the Westlake Academy Board of Trustees does hereby approve contracting with Technology Lab to provide managed Information Technology services to Westlake Academy, as described in the attached proposal.

**SECTION 3:** That the Head of School, Dr. Kelly Ritchie is hereby authorized and directed to execute all necessary agreements and related documents for these services, including:

- A one-time onboarding fee in the amount of \$11,000.00, and
- Ongoing monthly managed service fees in an amount of \$22,175.90, consistent with Quote #6257 v18, attached hereto as Exhibit "A."
- 

**SECTION 4:** Any actions previously taken by the Head of School or administration to negotiate or initiate this agreement are hereby ratified and approved.

**SECTION 5:** If any portion of this Resolution shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and the Board hereby determines that it would have adopted this Resolution without the invalid provision.

**SECTION 6:** That this Resolution shall become immediately effective from and after its date of passage.

**PASSED AND APPROVED ON THIS 24<sup>TH</sup> DAY OF MARCH 2026.**

---

Kim Greaves, Board President

**ATTEST:**

---

Dianna Buchanan, Board Secretary

**APPROVED AS TO FORM:**

---

Janet S. Bubert, School Attorney

# EXHIBIT A

03/12/2026

## Westlake Academy - Managed Services Quote



**Prepared by:**

Connor O'Neill

**Prepared for:**

Westlake Academy Charter School

Contact number: 615.784.8000

Address: 21 Cleveland Avenue, Nashville 37210

Email: [connor.oneill@technologylab.com](mailto:connor.oneill@technologylab.com)

Website: [www.technologylab.com](http://www.technologylab.com)



TechnologyLab  
21 Cleveland Avenue  
Nashville, TN 37210  
United States

T: 615.784.8000

Quote #	6257 v18
Date	03/12/2026
Expires	04/30/2026
Contact	Connor O'Neill

Prepared for Westlake Academy Charter School  
Kelly Ritchie  
1400 Creek Crest  
McKinney, TX 75071  
United States

T: +19724674113  
E: kritchier@westlakeacademy.org

**ACCEPT QUOTE**

# Westlake Academy - Managed Services Quote

## Managed Services

### One-Time Fees

Item	Qty	Price	Total
<b>EDU-Managed Network Firewall 250 ASL Bundle</b>	1	\$0.00	<b>\$0.00</b>
Managed Firewall and License			
One-Time Subtotal			\$0.00

### Monthly Fees

Item	Qty	Price	Total
<b>Managed User - EDU</b>	110	\$85.00	<b>\$9,350.00</b>
Support:			
- Unlimited Remote Control Support			
- Unlimited Onsite Support			
- Microsoft / Apple Application Support			
- Zero Touch Deployment for New Machines			
- Management of Device Imaging and Enrollment			
- G-Suite & O365 Management			
- Vendor Management			
- Network Support & Troubleshooting			
Maintenance			
- Online Trouble Ticket Management			
- Online License Management			
- Desktop Optimization & Management			
- Spyware and Adware Removal			
- VPN Client Management			
Security:			
- Patch & MacOS Management			
- Antivirus Software Management & Update			
- Malwarebytes Enterprise Included			
- Mobile Device Management			
- Implement Recommended Best Security Practices			
<b>EDU-Managed Network Firewall 250 ASL</b>	1	\$999.99	<b>\$999.99</b>
Managed Network Firewall with Advanced Security License			



Item	Qty	Price	Total
<b>Network Management - Leased</b>	110	\$30.00	<b>\$3,300.00</b>
Managed Wireless Network / Network Equipment Leased			
<b>E-RATE ELIGIBLE</b>			
<b>Managed Server</b>	6	\$100.00	<b>\$600.00</b>
Server Management Support Plan: -Unlimited Phone Support -Unlimited Remote Control Support -Service Availability Monitoring Maintenance -Microsoft Patch Management -Event Log Monitoring -Log File Maintenance -Drive Space Monitoring -Printer Setting Management -Quarterly On-Site Maintenance Security -User Account Administration -File Sharing Permission Administration -Security Administration -Virus Definition & Prevention -Online Asset Management -Online Trouble Ticket Management -Online License Management -Desktop Optimization & Management -Spyware and Adware Removal -VPN Client Management			
<b>LabVault (SaaS)</b>	15760	\$0.10	<b>\$1,576.00</b>
Managed Backup per GB - SaaS Based File Storage			
<b>TL Guardian</b>	110	\$3.00	<b>\$330.00</b>
<ul style="list-style-type: none"> <li>- Detection and remediation of SaaS security threats</li> <li>- Independent Third-Party Monitoring</li> <li>- Eliminate unnecessary guest user accounts on a monthly basis</li> <li>- Access to 365 days of event data to help diagnose issues and conduct forensics</li> <li>- Real-time monitoring and remediation of events as they occur</li> </ul>			
<b>Dark Web Monitoring + Email Phishing Simulation 51-150 Users</b>	1	\$250.00	<b>\$250.00</b>
Dark Web Monitoring + Email Phishing Simulation 51-150 Users			
<b>iPad Management</b>	1100	\$0.0909	<b>\$99.99</b>
Monthly Fee for Mobile Device Management for iOS Devices			

\* Recurring fees billed monthly with 0 upfront payment(s).

Monthly Subtotal \$16,505.98

## Professional Services

### One-Time Fees

Item	Qty	Price	Total
<b>Onboarding Fee - Managed Services</b>	1	\$11,000.00	<b>\$11,000.00</b>
New Client Onboarding & Implementation			



One-Time Subtotal \$11,000.00

## Software

### Monthly Fees

Item	Qty	Price	Total
<b>Microsoft 365 A3 Faculty (Annual/Monthly)</b>	110	\$6.09	<b>\$669.90</b>

Office 365 A3, Enterprise Mobility + Security E3, Windows 10/11 Education E3, and Minecraft: Education Edition. This per-user licensed suite of Education products offers users best-in-class productivity across devices while providing IT security and control.

Annual subscription/billed monthly

*\* Recurring fees billed monthly with 0 upfront payment(s).*

Monthly Subtotal \$669.90

## Summary

Please contact us if you have any questions.

**Total One-Time** \$11,000.00 USD

**Total Monthly** \$17,175.88 USD

**ACCEPT QUOTE**

## Cost Breakdown

Category	One-Time Fees	Monthly Fees
Managed Services	—	\$16,175.98
Networking	—	—
Power Cords	—	—
Service	\$11,000.00	\$330.00
Software	—	\$669.90
<b>Total</b>	<b>\$11,000.00 USD</b>	<b>\$17,175.88 USD</b>

# Westlake Academy

Technology Lab

Comparison of Proposals: Original Proposal versus Updated Proposal

## Proposal Updates Executive Summary

The updated proposal reflects significant strategic improvements to Westlake Academy's IT environment and service delivery model, resulting in enhanced value and cost efficiency while reducing operational redundancy and financial burden on the academy and town.

Below are the key differences from the original proposal to our most updated proposal.

## Key Monthly Savings Improvements

Metric	Original Proposal	Updated Proposal	Change
Monthly Cost	\$22,175.90	\$17,175.88	<b>-\$5,000.02</b>
With E-Rate Monthly Cost	\$18,855.90	\$15,455.88	<b>-\$3,400.02</b>

## Key Annual Savings Improvements

Metric	Original Proposal	Updated Proposal	Change
Annual Savings	\$101,447.60	\$143,247.79	<b>\$41,800.19</b>
Monthly Savings	\$8,453.97	\$11,937.32	<b>\$3,483.35</b>

## Service Enhancements

- **EDU Managed Network Firewall** – Enables network separation between the academy and town ahead of the December 2026 firewall lease expiration.
- **Elimination of Financed Network Costs** – Removed \$5,000/month lease burden through an improved intentional plan, keeping the existing network in place to reduce the financial burden on the academy and the town. See **Exhibit A** for details on the original financing proposal.
- **E-rate Eligible Services Optimization** – Optimized services to focus on E-rate compliant solutions, increasing funding opportunities

## Bottom Line Benefits

The updated proposal delivers \$41,800.19 additional annual savings while providing Westlake Academy with less financial burden, enhanced security posture, and better alignment with E-rate funding opportunities. This represents a **41.2% improvement** in savings over the original proposal.

**Total Benefit: \$3,400.02/month additional savings + stronger IT support model**

# WESTLAKE ACADEMY

## Managed IT Services — Partnership Summary

*Our commitment to Westlake Academy goes beyond a standard service agreement. We have worked collaboratively and in good faith with the Board to craft a partnership structure that protects the Academy's financial interests, respects existing infrastructure investments, and delivers school - focused IT management — on their terms.*

### KEY UPDATES MADE ON BEHALF OF WESTLAKE ACADEMY



#### No Network Rip-and-Replace Required

We eliminated the requirement for a full network infrastructure overhaul, removing significant upfront capital burden and minimizing operational disruption.



#### Existing Leases Preserved — Protecting Town Finances

By retaining current network hardware leases, the Academy and Town of Westlake avoid costly early termination penalties, directly relieving a substantial financial burden.



#### Major Contract Revisions Accepted

Every major revision submitted by the Westlake Academy has been reviewed and accommodated, demonstrating consistent flexibility and responsiveness throughout contracting.

### UPDATE ON PROPOSAL

#### Dedicated Managed Firewall Installation

We will install our leased, fully managed firewall to create a clean network boundary between the Academy and Town of Westlake.

Direct, independent management of Academy network

Faster issue resolution — no dependency on Town IT

Improved operational efficiency across all systems

Clear accountability with a single point of contact

### WHY THIS PARTNERSHIP WORKS

#### ▶ Financial Stewardship

No surprise costs, no forced replacements. The Academy's budget is protected at every stage.

#### ▶ Board-Responsive Process

Every Board request was taken seriously and addressed — a reflection of how we operate with all clients.

#### ▶ Continuity & Stability

Existing infrastructure and leases are honored. Transition is smooth, not disruptive.

#### ▶ A Responsible Path to Our Gold Standard

Although our preferred plan originally proposed was to upgrade the school's network infrastructure to our Gold Standard, we determined it best to leave the current network in place due to existing financial commitments.

## Implementation Timeline

Phase	Timeline	Key Activities
1	March 24	Board approval; secure commitment
2	Week of March 30	Welcome Call – connect with Onboarding Team
3	Week of April 6	Information intake and onboarding review
4	Week of April 20	Meet with school and town to review leases
5	April 26 – May 22	Continue and finalize onboarding
6	Week of May 25	Network reconfiguration and firewall install
7	June / July (PD Days)	Staff coaching and training
8	First day of school	Seamless IT support for faculty, staff, and students

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## Exhibit A

**Quote Number: 6497 v4**

**Date: February 27, 2026**

Dear Valued Customer,

I am pleased to provide you with the following financing proposal. Please review this information in its entirety. The information below is based upon the agreement type and term in months. Any changes to the amount financed will alter this information.

**Customer Name:** Westlake Academy  
**Product Description:** Network Hardware + MIBS

### QUOTE PROPOSAL DETAILS

**Total Amount Financed:** \$253,326.43  
**Term in Months:** 60  
**Payment Frequency:** Monthly  
**60 Monthly Payments of:** \$5,257.41 (First Payment Due Net 30)  
**Agreement Type:** \$1 Buyout

### QUOTE ASSUMPTIONS

- Subject to credit approval.
- Pricing valid for 30 days from the date of this proposal.

Thank you for your interest. Please contact us at [neades@accountservicing.com](mailto:neades@accountservicing.com), to get started with the process outlined below.

Sincerely,

**Nate Eades**  
Business Development Representative  
Tel: 319-734-4985

The journey is simple! After accepting this quote, see the next steps below.  
Ready to start the credit process? Contact us at [neades@greatamerica.com](mailto:neades@greatamerica.com).





## Master Services Terms and Conditions

This Master Services Agreement (this “Agreement”) constitutes the full terms of the Agreement that govern the relationship between TECHNOLOGY LAB, LLC, a Tennessee limited liability company (generally “TECHNOLOGY LAB”, “We” or “Our”) and their clients (each a “Client” or “You”) who agree to receive services from TECHNOLOGY LAB by executing a Proposal, as further defined below, and entering into this Agreement. All capitalized terms not otherwise defined herein shall have the meaning assigned to them in the Proposal, which is hereby incorporated into this Agreement in its entirety. By signing a Proposal or otherwise receiving any Services from TECHNOLOGY LAB, Client agrees to be bound by this Agreement which is effective upon the date the Proposal is signed by TECHNOLOGY LAB.

### 1. TERM & TERMINATION

- a) *Services.* You hereby engage TECHNOLOGY LAB to perform, as agreed by the parties, those services and support that are incorporated into this Agreement in a Proposal that is signed by both parties (the “Proposal” and the “Services” respectively). The Services will be subject to any additional terms and conditions that are described in the applicable executed Proposal.
- b) *Term.* This Agreement or any applicable addendum or executed Proposals shall be in effect for thirty-six (36) months from the date of the first monthly invoice (the “Initial Term”). At the end of the Initial Term, this Agreement and each executed Proposal shall automatically renew for a subsequent twelve (12) month term, and shall be renewed for successive twelve (12) month terms thereafter on the same terms and conditions, unless either party gives the other sixty (60) days prior written notice of its intent not to renew this Agreement.
- c) *Termination.* Either party may terminate this Agreement upon forty-five (45) days written notice if the other Party:
  - i. Fails to fulfill in any material respect its obligations under this Agreement and does not cure such failure within forty-five (45) days of receipt of such written notice; or
  - ii. Breaches any material term or condition of this Agreement and fails to remedy such breach within forty-five (45) days of receipt of such written notice.

In no event will We be determined to be in material breach or default unless You give Us written notice of the failure or default with reasonable detail and We fail to cure the described breach within forty-five (45) days after receiving the notice; provided, that if We are unable to cure the alleged breach completely with such forty-five (45) day period, We shall not be deemed to be in breach if We have commenced to cure the alleged breach and continue diligently to pursue the same.

Additionally, You may terminate the Agreement without cause by providing sixty (60) days written notice to TECHNOLOGY LAB.

- d) *Adjustments to Services.* Should adjustments or modifications be required that affect the monthly fees paid for the services rendered under this Agreement, these adjustments will be negotiated and agreed to by the parties in advance. If You request changes or modifications to this Agreement that in effect reduce or modify the Services provided by 60% or more in the Initial Term or any Renewal Term, such request shall be deemed an automatic termination by You of this Agreement without cause.
- e) *Effect of Termination.* If either party terminates this Agreement for any reason and upon payment of all outstanding bills, which includes a lump sum termination fee equal to three (3) times the monthly fee as well as any expenses, as further defined in this section (“Termination Fee”), We will assist You in the orderly termination of services, including timely transfer of the services to another designated provider. You shall pay Us the mutually agreed upon actual costs of rendering such assistance. Actual costs could include but are not limited to: training, data transfer, license transfers or equipment de-installation. Termination Fees or expenses referred to above include any unpaid subscription balance, return of any equipment provided under Section 8 and payment of return fees listed in the original Proposal (“Return Fee”), unless otherwise negotiated between the parties under Section 8(b).

- f) Nonappropriation. You may terminate this Agreement if funds sufficient to pay obligations herein are not appropriated by the Texas legislature or if Your Board of Trustees determines that insufficient funds are available for the services in any fiscal year following the fiscal year in which this Agreement is executed. In the event of non-appropriation, We will be provided ten (10) days written notice of intent to terminate. Moreover, You may terminate the Agreement if the Services provided under this Agreement are to be paid for in whole or in part by federal funds and such funds are not made available or are withdrawn due to failure to follow appropriate procurement and/or cost provisions as set forth in the U.S. Department of Education's General Administrative Regulations ("EDGAR")

## 2. FEES AND PAYMENT TERMS

- a) During the Term of this Agreement, You shall pay Us the fees at the rates and on the schedule set forth in the applicable executed Proposal subject to adjustment as provided herein. The initial month's fee will be due and owing 30 days after execution of this Agreement.
- b) For all recurring fees, You will be obligated to pay the fees monthly via ACH on the first day of the month pursuant to the ACH Transfer Authorization provided with the executed Proposal. After the first 24 months of the Initial Term, the recurring fees will increase annually by 3%. We will invoice You upon Our receipt of such automated ACH payment. For any expenses that are not monthly recurring expenses, We will invoice You monthly, with such invoices being due within thirty (30) days of receipt of the invoice.
- c) All invoices shall bear interest at a rate equal to an annual rate of six (6) percent. We reserve the right to suspend all services without notice if invoices for any services rendered are not received within 90 days of the date such payment is due – including all back up services.
- d) If You request additional services outside the terms of this Agreement or any executed Proposal, those services will be considered a Project and will be quoted and billed as separate agreements with the scope and payments terms to be agreed upon by the Parties. An initial setup fee may apply, to begin a Project. Upon completion of the Project, if the Project work leads to an ongoing monthly service or maintenance, then such work shall be performed under the terms of this Agreement and billing will begin effective immediately. Additional services available are set forth on Appendix B.1.
- e) If, in the course of completing a Project or providing Services and/or Support, unknown conditions at Client's place of business are found or Client modifies the original request such that installation or other work required is beyond the original scope of work We will issue a change order ("Change Order") defining the additional work and the additional fees required. Upon Client approval, We will commence work under the Change Order and payment will be due upon completion of the work defined therein.
- f) We may adjust Our standard hourly rates once each calendar year and will notify You in writing at least 30 days' in advance of any change. We may also increase the monthly fee for additional services and products included in the Services at rates competitive with comparable services from other providers.
- g) For the sake of clarity, We do not offer the services set forth on Appendix B.2.

## 3. TAXES

- a) We will add any applicable Federal, State or Local Taxes to each invoice for services or materials rendered under this agreement. You shall pay any such taxes unless You provide us with a valid exemption certificate for the state of use. Client is an open-enrollment charter school operated by the Town of Westlake, a Texas municipality. The parties acknowledge and agree that Client is exempt from Federal, State or Local tax.

## 4. MANAGED SERVICES COVERAGE

- a) For those clients who obtain Remote Helpdesk and Vendor Management of Client's IT networks, We will provide such services through remote means between the hours of 8:00 am – 5:00 pm Monday through Friday, excluding public holidays. Our Network Monitoring Services will be provided 24/7/365. All services qualifying under these conditions will be specified in the signed Proposal.
- b) **Support and Escalation.** TECHNOLOGY LAB will respond to Client's Trouble Tickets under the provisions of Appendix A, and with best effort after hours or on holidays. Trouble Tickets must be opened via email to support@TechnologyLab.com or by phone if internet is unavailable. Each call will be assigned a Trouble Ticket number for tracking. Our escalation process is detailed in the Appendix to this Agreement.

- c) **Service outside Normal Working Hours.** Emergency services performed outside of the hours of 8:00 am – 5:00 pm Monday through Friday, excluding public holidays, shall be subject to provisions of the Appendix to this Agreement.
- d) **Service Disclaimer.** You grant Us authorization to view any data within the regular routine of the repair or system improvement. You also authorize Us to reasonably delete, change, and/or rewrite any necessary information to complete the system repair or improvement that is consistent with the standards and practices in the industry with notice to Client.

## 5. ADDITIONAL MAINTENANCE SERVICES

- a) For Hardware and Software Maintenance Services covered in any executed Proposal, We shall provide support of all agreed upon hardware and systems, provided that all software is genuine, currently licensed, and vendor-supported. Should any hardware or systems fail to meet these provisions, they will be excluded from this Agreement and We will provide You notice of any such exclusions. We will obtain Your prior authorization before incurring any 3<sup>rd</sup> Party vendor support charges in order to resolve any issues. You will be responsible for and shall pay all such authorized charges.
- b) For Monitoring Services covered in any executed Proposal, We will provide ongoing monitoring of all critical devices as indicated therein. We will provide You with monthly reports as well as document critical alerts, scans and event resolutions. Should a problem be discovered during monitoring, We shall provide You notice and attempt to rectify the condition in a timely manner through remote means.

## 6. SUITABILITY OF EXISTING ENVIRONMENT FOR MANAGED SERVICE

### *Minimum Standards Required for Services*

In order for Your existing environment to qualify for Our Managed Services, Your environment must meet the following requirements:

- a) All Servers with Microsoft Windows Operating Systems must be running a current, Microsoft-supported operating system, and have all of the latest Microsoft Service Packs and Critical Updates installed.
- b) All Desktop PC's and Notebooks/Laptops with Microsoft Windows Operating Systems must be running a current, Microsoft-supported operating system, and have all of the latest Microsoft Service Packs and Critical Updates installed. All Apple Computers Must be running a current, Apple-supported operating system.
- c) All Server and Desktop Software must be Genuine, Licensed and Vendor-Supported.
- d) The environment must have a currently licensed, up-to-date and Vendor-Supported Server-based Antivirus Solution protecting all Servers, Desktops, Notebooks/Laptops, and Email.
- e) The environment must have a currently licensed, Vendor-Supported Server-based Backup Solution that can be monitored and send notifications on job failures and successes.
- f) The environment must have a currently licensed, Vendor-Supported Hardware Firewall between the Internal Network and the Internet.
- g) All Wireless data traffic in the environment must be securely encrypted.

We will provide You with notice of any noncompliance with the above-stated requirements.

## 7. CHRONICALLY FAILING EQUIPMENT

Experience has shown that, your equipment which has initially passed Minimum Standard Requirements for Service can reveal itself to become chronically failing. This means that the equipment repeatedly breaks down and consistently causes user and business interruption even though repairs are accomplished. Should this occur, while rare, You agree to work constructively and positively with Us to replace the equipment at an additional cost to the extent practicable.

**EXCLUDED SERVICES.** Service rendered under this Agreement does not include:

- a) Parts, equipment or software for Client's telecommunications systems which are not specifically listed in an executed Proposal.
- b) The cost of any Software, Licensing, or Software Renewal or Upgrade Fees of any kind.
- c) The cost of any 3<sup>rd</sup> Party Vendor or Manufacturer Support or Incident Fees of any kind.

- d) The cost to bring Client's environment up to minimum standards required for Services.
- e) Failure due to acts of God, building modifications, power failures or other adverse environmental conditions or factors.
- f) Service and repair made necessary by the alteration or modification of equipment other than that authorized by TECHNOLOGY LAB, including alterations, software installations or modifications of equipment made by Client's employees or anyone other than TECHNOLOGY LAB.
- g) Maintenance of Applications software packages, whether acquired from TECHNOLOGY LAB or any other source unless specified in an executed Proposal.
- h) Programming (modification of software code) and program (software) maintenance.
- i) Training Services of any kind.
- j) Replacement of or parts required for repairs on printers, screens or peripherals, (Point of Sale Scanners, Digital Cameras, Cell Phones nor any other specialized accessory), unless this equipment was originally specified in the Proposal. All labor required for installation of the above devices is not covered under this Agreement.
- k) Consumables such as printer maintenance kits, toner, ink, batteries, paper, etc. are not included or covered under this Agreement and will be invoiced separately.
- l) Providing, maintaining or repairing of legacy VOIP/phone systems, access control systems, elevators, HVAC, camera systems, alarm systems, bell system, paging system, printers and/or copiers. However, if You have or establish a vendor relationship for any listed item, We are available to coordinate Our work with any selected vendor for which You provide information to Us.

## 8. HARDWARE-AS-A-SERVICE

For equipment that is the subject of a Hardware as a Service Proposal:

- a) *Ownership of Equipment.* You agree that all equipment provided by TECHNOLOGY LAB as outlined in a signed Proposal (the "Equipment") will remain Our sole property; further, You acknowledge that We retain a 100% first-priority security interest in such Equipment. You shall not attempt to sell, resale, tamper, troubleshoot, repair, move, add, etc. to the Equipment without Our advance written permission. If We decide to file a UCC1 financing statement with the applicable Secretary of State providing notice as to our ownership interest in such Equipment, You shall be responsible for and shall pay all filing fees and taxes required for such filing.
- b) *Return of Equipment.* Upon termination of this Agreement, for any reason, You shall return any of Our Equipment within 10 days of termination, or, if agreed upon by the parties, You may purchase the Equipment at an agreed upon fair market value of the equipment, which amount will take into account any outstanding debt on such equipment ("Purchase Price"). If You terminate this Agreement during the first 36 months of the Initial Term or within 36 months of the installation of Equipment (whichever is longer), You will be required to pay the Return Fee for each piece of returned Equipment unless a Purchase Price has been agreed upon instead.
- c) *Recapture of Equipment.* If You do not return the Equipment within the 10 day period after termination of this Agreement for any reason (client default or other), You hereby irrevocably give Us permission to enter Your premises, take possession of Equipment, and compensate Us for all expenses accrued during the recovery (including but not limited to attorney's fees and costs) in addition to any amounts owing under the balance of the Agreement. All efforts to recover such property will be deemed consensual and not a trespass. You shall fully cooperate and will not interfere in any way, including but not limited to involving law enforcement. In addition, You waive any and all claims and agree to hold Us harmless for damages of any kind arising under or related to Our entry of the premises, removal of the Equipment, or rendering of Services under this Agreement.
- d) *Maintenance of Equipment.* You acknowledge and agree that Our Equipment is to be maintained exclusively by Us or our designee. If You permit any tampering, repair attempts or services to be completed by another party, We may immediately terminate this Agreement and collect all fees hereunder.
- e) *Client's Protection of Equipment.* You shall make all reasonable efforts to keep equipment safe, secure and protected while in Your possession. You shall keep current insurance on Our equipment while in their possession and shall list TECHNOLOGY LAB as an additional loss payee. **Promptly upon request, Client will**

**provide proof thereof to TECHNOLOGY LAB that TECHNOLOGY LAB is listed as an additional loss payee, providing a current copy of its insurance declaration sheet showing TECHNOLOGY LAB as a loss payee.**

- f) *Loss or Damage to Equipment/Shipment.* You further shall be responsible for any and all costs for the repair or replacement of TECHNOLOGY LAB supplied equipment while in Client's possession should it be damaged or repaired by an unauthorized third party. You are responsible for loss, damage or destruction of the equipment, including but not limited to losses while in transit, while loading and unloading, while at any and all locations, while in storage and while on your premises, and in parked vehicles, except that you are not responsible for damage to or loss of the equipment caused by Technology Lab's sole negligence or willful misconduct. **If the equipment is shipped to Client,** Client assumes possession of the equipment and all risk and expense for any shipment *once the equipment has been consigned to a carrier, or carrier's agent.* Technology Lab is not liable in any way for the loss, damage, delay, or cost arising from the shipment.

## 9. LIMITATION OF LIABILITY/INDEMNIFICATION

*Indemnification.* The parties warrant to indemnify and hold harmless each other, and each other's officers, directors, employees, and agents harmless, from and against any and all direct claims, costs, losses, liabilities and expenses for personal injury and property damage, including reasonable attorneys' fees, attributable to their actions and omissions under this Agreement, but excluding claims that would not be made but for the gross negligence, willful misconduct or fraud of the party seeking indemnification. The Parties agree and acknowledge that any indemnification obligation of Client shall be limited to the extent allowed by applicable state law.

- a) *Representation and Limitations.* Any services that We furnish shall be performed in a professional manner consistent with industry standards. Except as noted above, We disclaim all representations and warranties of any kind, express or implied, including without limitation, any warranties related to (i) merchantability, (ii) fitness for a particular purpose, (iii) title, (iv) non-infringement, (v) course of dealing, (vi) course of performance, (vii) usage of trade, (viii) warranties that the system or solution will be secure or error free, (ix) warranties that the system will always be available, accessible, uninterrupted, timely, secure or will operate without error. Except as otherwise provided herein, You assume all risk as to the quality and performance of the services provided hereunder. We do not warrant that the capabilities of the services meet Your requirements or that the operations of the services shall be uninterrupted or error free.
- b) ***Limitation of Liability.*** In no event shall We or our suppliers be held liable for any indirect, special, incidental, economic, property or consequential damages arising under this contract, including but not limited to loss of profits or revenue, business interruption, loss of use of equipment, lost data, costs of substitute equipment, or other costs arising out of this Agreement. **In no event shall Our liability for services under this Agreement exceed \$250,000 or the limits of insurance, whichever is greater.** Client acknowledges that the pricing of the Services and the other terms of this Agreement have been set based on the foregoing sections of this Agreement providing for an agreed allocation of the risk for any defective Services between the parties. Client further acknowledges that the pricing and terms would have been different if there had been a different allocation of the risk.

## 10. CONFIDENTIALITY/DATA PRIVACY

- a) TECHNOLOGY LAB and its agents may use Client information, as necessary to or consistent with providing the contracted services, and will use best efforts to protect against unauthorized use.
- b) In order to fulfill TECHNOLOGY LAB's duties and responsibilities of maintaining network security and confidentiality, administrative passwords will be retained by TECHNOLOGY LAB and not released to the Client or other third parties.
- c) Upon the mutual agreement of TECHNOLOGY LAB and the Client, including payment of all undisputed sums due to TECHNOLOGY LAB, upon termination of the Agreement, passwords and other administrative codes will be released to the Client or others at the Client's written direction.
- d) We are committed to your privacy and have taken commercially reasonable steps to ensure that all our employees, contractors and services providers are also committed to ensuring that your information remains confidential by having them sign or including confidentiality provisions in all our vendor agreements. Upon termination of this Agreement and payment of all fees and expenses incurred under this Agreement, We will take commercially reasonable steps to transfer all data back to You and then to delete

- any of your data remaining on our systems.
- e) In the event that We come in contact with any personal information or data in the process of providing the Services, We will not collect, sell, retain, use or disclose such personal information for any purpose other than the specific purpose of performing services pursuant to this Agreement.
  - f) If You receive a verified consumer request for deletion under the California Consumer Privacy Act (CCPA), You may direct Us to delete such consumer's personal information from Your records. We will assist You in responding to requests from California data subjects to exercise their rights under the CCPA. We certify that we understand the CCPA's requirements and will comply with them.
  - g) To facilitate the effective management of Client information, the parties agree to enter into a Data Sharing Agreement which shall be incorporated herein by reference.

**11. NONSOLICITATION AND NONDISPARAGEMENT.**

- a) During the Term of this Agreement and for a period of two (2) years thereafter, You shall not directly or indirectly (i) solicit, recruit, hire, attempt to hire, employ, retain on contract or subcontract or consulting basis, or otherwise engage any of Our employees; or (ii) solicit, induce or encourage or request that any of Our employees or contractors terminate their employment or engagement with the other party or perform services for or on its behalf or any third party, without Our express written permission. In the event You do solicit, hire, or retain on contract or subcontract basis an employee in violation of this Section, You agree to pay Us promptly a placement fee of \$250,000 per employee.
- b) At all times following the date hereof, the Parties agree they shall not, directly or indirectly, whether in writing or orally, criticize, disparage, or make other negative remarks about the other Party or the Party's current or former affiliates, directors, officers, members, partners, employees, agents or representatives, except as may be necessary to preserve a Party's rights under the Agreement or to an outside agency with oversight authority over Client. You may provide critical assessments of Our business to Us.

**12. INSURANCE.**

TECHNOLOGY LAB agrees to carry customary and reasonable comprehensive insurance coverage including, but not limited to, cyber liability and an errors and omissions policy throughout all terms of the Agreement and naming Client as additional insured under all policies.

TECHNOLOGY LAB will, for the term of this Agreement, list You as an additional insured on Our general liability and cyber policies.

**13. MISCELLANEOUS**

- a) *Subcontract Rights.* With Client's prior written approval, TECHNOLOGY LAB may assign, delegate, or subcontract services to third party competent contractors approved by TECHNOLOGY LAB.
- b) *Survival.* Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination, including, but not limited to Sections 1 (e), 9, and 11 (indemnity, nonsolicitation and nondisparagement).
- c) *Notices.* Any notice which may be given by a Party under this Agreement shall be deemed to have been duly delivered if delivered by hand, first class post, facsimile transmission or electronic mail to the address of the other Party as specified in this Agreement or any other address notified in writing to the other Party. Subject to any applicable local law provisions to the contrary, any such communication shall be deemed to have been made to the other Party, if delivered by: (i) first class post, 3 days from the date of posting; (ii) hand or by facsimile transmission, on the date of such delivery or transmission; and (iii) electronic mail, when the Party sending such communication receives confirmation of such delivery by electronic mail.
- d) *Venue; Choice of Law; Mediation; Waiver.* This agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Texas. Jurisdiction and venue shall exclusively lie in the state and federal courts located in Tarrant County, Texas. Each party waives any claims of forum nonconveniens

thereto. This Agreement and any Proposal executed between the parties that references this Agreement constitute the entire agreement between Client and TECHNOLOGY LAB. This agreement can only be modified by a signed written addendum by both parties or an executed proposal. In the event of conflict between the terms of the executed Proposal and this Agreement, the Proposal shall control. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. If any part, term or provision of this Agreement is held to be illegal or unenforceable neither the validity nor enforceability of the remainder of this Agreement shall be affected. If a dispute arises out of or relates to this contract, or the alleged breach thereof, and if the dispute is not settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation within 30 days administered by a Rule 31 mediator before resorting to litigation, or some other dispute resolution procedure. In the event that parties are unable to agree on a mediator, each party shall name a mediator and those appointed mediators shall agree on a mediator. The process shall be confidential based on terms acceptable to the mediator and/or mediation service provider. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

- e) *Mutual Agreement.* The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction nor interpretation of this Agreement.
- f) *Independent Contractor.* The Parties acknowledge and agree that Services performed by Technology Lab, its employees, agents or sub-contractors shall be as an independent contractor and that nothing in this Agreement shall be deemed to constitute a partnership, joint venture, agency relationship or otherwise between the parties.
- g) *Costs of Collection.* If any collection action, litigated or otherwise, is necessary to enforce the terms of this agreement, TECHNOLOGY LAB shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which it may be entitled.
- h) If any provision in this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.
- i) *Force Majeure.* TECHNOLOGY LAB is not responsible for failure to render services due to circumstances beyond its control including, but not limited to, acts of God.
- j) *Assignment.* This Agreement shall not be assignable, whether by operation of law or otherwise, by either Party without the prior written consent of the other Party in each instance.
- k) *Felony Criminal Convictions.* TECHNOLOGY LAB represents and warrants that TECHNOLOGY LAB has not and TECHNOLOGY LAB's employees, agents or representatives have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, TECHNOLOGY LAB has fully advised Client as to the facts and circumstances surrounding the conviction. Failure to give notice could result in the termination of this Agreement for cause.
- l) *Equal Treatment of All Persons.* Consistent with Article I, Section 3a of the Texas Constitution, the Fourteenth Amendment to the United States Constitution, federal and State law, and Executive Order No. GA-55, TECHNOLOGY LAB represents and warrants that:
  - (a) All conduct under this Agreement shall be administered and performed in a neutral manner without regard to race of persons;
  - (b) TECHNOLOGY LAB shall not, in the specific performance of this Agreement, elevate one individual person over another, or advantage any one person over another, due to race;
  - (c) TECHNOLOGY LAB shall not, in the specific performance of this Agreement, employ practices or engage in any advancement of the programs known as diversity, equity and inclusion, critical race theory, affirmative action, or other similar, divisive agendas;
  - (d) TECHNOLOGY LAB's staff, agents, and subcontractors that are selected and employed in the specific performance of this Agreement shall be selected and employed solely on merit and the ability to perform; and
  - (e) TECHNOLOGY LAB shall ensure that any subcontractors participating in the specific performance of this Agreement represent and warrant to the provisions of this Paragraph.
- m) *Entities that Boycott Israel.* TECHNOLOGY LAB represents and warrants that: (a) it does not, and shall not for the duration of the Agreement, boycott Israel or (b) the verification required by Section 2271.002 of the Texas Government Code does not apply to the Agreement. If circumstances relevant to this provision

change during the course of the Agreement, TECHNOLOGY LAB shall promptly notify Client.

- n) Energy Company Boycotts: TECHNOLOGY LAB represents and warrants that: (a) it does not, and will not for the duration of the Agreement, boycott energy companies or (b) the verification required by Section 2276.002 of the Texas Government Code does not apply to the Agreement. If circumstances relevant to this provision change during the course of the Agreement, TECHNOLOGY LAB shall promptly notify Client.
- o) Firearm Entities and Trade Associations Discrimination: TECHNOLOGY LAB verifies that: (1) it does not, and will not for the duration of the Agreement, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the Agreement. If circumstances relevant to this provision change during the course of the Agreement, TECHNOLOGY LAB shall promptly notify ESC Client.
- p) Companies Engaged in Business with Iran, Sudan, or a Foreign Terrorist Organization. In accordance with Texas Government Code, Chapter 2252, Subchapter F, Client is prohibited from entering into a contract with a company that is identified on a list prepared and maintained by the Texas Comptroller or the State Pension Review Board under Texas Government Code Sections 806.051, 807.051, or 2252.153. By execution of this Agreement, TECHNOLOGY LAB certifies to Client that it is not a listed company under any of those Texas Government Code provisions. TECHNOLOGY LAB hereby voluntarily and knowingly acknowledges and agrees that this Agreement shall be null and void should facts arise leading Client to believe that TECHNOLOGY LAB was a listed company at the time of this Agreement.

#### **14. ACCEPTANCE OF AGREEMENT**

This Agreement covers the Proposal and Services accepted and agreed to by You upon execution of the Proposal, as may be modified in writing and agreed to by the parties, which may result in an adjustment to the Your monthly charges. Should You wish to acquire additional equipment or services and want Us to provide service, Our prior written approval must be obtained.

# TECHNOLOGY LAB MASTER SERVICES AGREEMENT

## Appendix A

### MANAGED SERVICES

## RESPONSE AND RESOLUTION TIME

The following table shows the targets of response and resolution times for each priority level.

REPORTED TROUBLE	PRIORITY	RESPONSE TIME (IN BUSINESS HRS.)	RESOLUTION TIME (IN BUSINESS HRS.)	ESCALATION THRESHOLD (IN BUSINESS HRS.)
Service not available (All users and functions unavailable.)	1	Within 2 Hours	ASAP - Best Effort	4 Hours
Significant degradation of service (Large number of users or Business Critical Functions affected.)	2	Within 4 Hours	ASAP - Best Effort	8 Hours
Limited degradation of service (Limited number of users or functions affected, Business Process can continue.)	3	Within 24 Hours	ASAP - Best Effort	48 Hours
Small service degradation (Business Process can continue, one user affected.)	4	Within 48 Hours	ASAP - Best Effort	96 Hours

*Please note: All work done after hours is done at "Best Effort" to find a solution.*

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## SUPPORT TIERS

The following table details and describes our Support Tier Levels.

SUPPORT TIER	DESCRIPTION OF SUPPORT ESCALATION
Tier 1 Support	All support incidents begin in Tier 1, where the initial trouble ticket is created; the issue is identified and clearly documented, and basic hardware/software troubleshooting is initiated.
Tier 2 Support	All support incidents that cannot be resolved with Tier 1 Support are escalated to Tier 2, where more complex support on hardware/software issues can be provided by more experienced Engineers.
Tier 3 Support	Support Incidents that cannot be resolved by Tier 2 Support are escalated to Tier 3, where support is provided by the most qualified and experienced Engineers who have the ability

	to collaborate with 3rd Party (Vendors) Support Engineers to resolve the most complex issues.
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## Description of Managed Services

<b>GENERAL</b>		
DESCRIPTION	FREQUENCY	INCLUDED
Hardware and Software Changes Documented	As needed	YES
Quarterly Technology Business Reviews	Quarterly	YES
<b>SERVERS</b>		
Manage Servers	Ongoing	YES
Server Monitoring and Crucial Services Alerting	Ongoing	YES
Monitor Event Log for potential issues	Ongoing	YES
Monitor Hard Drive free space on Server(s)	Ongoing	YES
Monitor Server Resources	Ongoing	YES
Manage Group Policy	As needed	YES
Reboot Servers if needed	As needed	YES
After Hours Server Maintenance	As needed	NO
Management of Network Users, Email Accounts & Security/Email Distribution Groups	As needed	YES
Perform Microsoft Updates as per company policy	Ongoing	YES
Install Approved Line of Business Application Updates	As needed	YES
<b>DISASTER RECOVERY</b>		
Monitor Backup Status	Ongoing	YES
Manage Automated Offsite Backups	Ongoing	YES
Perform Disaster Virtualization	Ongoing	YES
<b>DEVICES</b>		
Manage Desktops & Laptops	Ongoing	YES
<b>NETWORKS</b>		
Performance Monitoring/Capacity Planning	Ongoing	YES
Monitor Network Switches and Internet Connectivity	Ongoing	YES
<b>SECURITY</b>		
Check Firewall Logs	Ongoing	YES

Manage Security Services on the Firewall	Ongoing	YES
Manage Client Provided Content Filtering Policy	Ongoing	YES
Manage Client Provided VPN Policy	Ongoing	YES
Monitor Anti-Virus Agent	Ongoing	YES
Set up new users including login restrictions, passwords, security, applications	Ongoing	YES
Set up and change security for users and applications	Ongoing	YES
Monitor for unusual activity among users	Ongoing	YES

## PROFESSIONAL SERVICES

8x5 Help Desk Phone Support	Ongoing	YES
Remote Screen Sharing Desktop Assistance	Ongoing	YES
Onsite Field Support & Implementation	Ongoing	YES
Technology Strategy Services	Ongoing	YES
Annual Telco Audit	Ongoing	YES

## SUMMER SERVICES

### POST-SCHOOL-YEAR SERVICES

Chromebook power wash, update, and triage	As needed	YES
PC laptop wipe, reimage, and triage	As needed	YES
Mac laptop wipe, reimage, and triage	As needed	YES

### PRE-SCHOOL-YEAR SERVICES

Pre-School-Start Room Checkup (repair costs not included): projector testing, adjusting, aligning, and cleaning; projector bulb life check and replacement (bulbs charged separate); HDMI wall port check; Chromecast check; Smartboard check; Wi-Fi check; Ethernet wall port(s) check	As needed	YES
Computer Cart rewire (chargers and cart assembly not included)	As needed	NO

## SERVICE RATES

LABOR SERVICE	RATE
Network Monitoring: <i>24 hours a day, 7 days a week</i>	INCLUDED
Help Desk: <i>8:00am to 5:00pm – Monday - Friday</i>	INCLUDED
Remote Network Management: <i>8:00am to 5:00pm – Monday - Friday</i>	INCLUDED
Onsite Labor: <i>8:00am to 5:00pm – Monday - Friday</i>	INCLUDED
Total Site Outage Monitoring: <i>(After Hours) - 24 Hours a Day, 7 Days a Week</i>	INCLUDED
LABOR SERVICE (AFTER BUSINESS HOURS)	RATE
Remote Network Management: <i>5:01pm - 9:00pm – Monday - Friday</i>	\$150/hr.
Onsite Labor: <i>5:01pm - 9:00pm Monday - Friday (2 Hour Minimum)</i>	\$200/hr.

LABOR SERVICE (ALL OTHER TIMES)	RATE
Remote Labor - ALL OTHER TIMES	\$250/hr.
Onsite Labor - ALL OTHER TIMES	\$250/hr.

## TECHNOLOGY LAB MASTER SERVICES AGREEMENT

### Appendix B.1

## ADDITIONAL SERVICES OFFERED BY TECHNOLOGY LAB OUTSIDE THE SCOPE OF THE MASTER SERVICES AGREEMENT

The services on this Appendix B.1 (“Additional Services”) are each considered a Project and subject to adjustment from time to time. Any additional services that are not listed will be considered a project. All Projects will be quoted and billed as separate agreements at the rates included in the then current published fee schedule and according to the terms and conditions to be agreed upon by the Parties. ***Upon completion of the Project, if the Project work leads to an ongoing monthly service or maintenance, then such work shall be performed under the terms of the Master Services Agreement, to which this Appendix B.1 is attached, and billing will begin effective immediately.***

ADDITIONAL SERVICES
<b>INITIAL SETUP SERVICES*</b>
Chromebook White-Glove Setup
New PC and Mac Setup
Computer Cart Setup
Projector Setup
Smartboard Setup
<b>PROJECTS</b>
Server Migration
Email Migration
Network Configuration and Installation
Cabling
Network Closet Cleanup
Smart Boards / Projectors Move and Setup
Inventory and Asset Tagging Setup (Ongoing management is Your responsibility)
Inventory Audit
Moving and relocation of technology
E-Discovery

*\*Any setup services provided for any PCs or Macs not procured through Technology Lab are subject to an additional service fee.*

**TECHNOLOGY LAB MASTER SERVICES AGREEMENT**  
**Appendix B.2**  
**SERVICES NOT OFFERED AT ANY TIME BY**  
**TECHNOLOGY LAB**

<b>SERVICES NOT OFFERED</b>
Management of Student Account and Student Roster (Managing SIS)
Management of Asset Management System
Device Distribution
Management of Inventory