



**TOWN OF WESTLAKE TOWN COUNCIL MEETING AGENDA**  
1500 SOLANA BLVD, BUILDING 7, SUITE 7100, COUNCIL CHAMBER  
WESTLAKE, TX 76262

**September 28, 2020**

**VIA VIRTUAL MEETING**

**5:00 P.M.**

In accordance with Order of the Office of the Governor issued March 16, 2020 and March 19, 2020, the Town Council of the Town of Westlake will conduct this virtual meeting at 5:00 p.m. on Monday, September 28, 2020 by video and telephonic conference in order to advance the public health goal of limiting face-to-face meetings (also called "social distancing") to slow the spread of the Coronavirus (COVID-19). There will be no public access to the physical location described above. A recording of the virtual meeting will be made and will be available to the public in accordance with the Open Meetings Act. Instructions for public participation in the meeting by video conference and telephonic conference are as follows:

**By Video:**

<http://bit.ly/towtc092820>

Webinar ID: 993 6517 3813

Passcode: 264789

**By Telephone:**

Local: (346) 248-7799 or (888) 799-0099

Webinar ID: 993 6517 3813

Passcode: 264789

*Vision Statement*

*An oasis of natural beauty that maintains our open spaces in balance with distinctive development, trails, and quality of life amenities amidst an ever expanding urban landscape.*

## **Regular Session**

### **1. CALL TO ORDER**

- 2. CITIZEN COMMENTS:** This is an opportunity for citizens to address the Council on any matter whether or not it is posted on the agenda.

**For those joining by videoconference:** Any person desiring to make a public comment using a Windows computer must first press the "Raise Hand" button on the screen. Alternatively, the Alt+Y keyboard shortcut may be used to raise or lower their hand. Any person desiring to make a public comment using a Mac computer must first press the "Raise Hand" button on the screen. Alternatively, the Option+Y keyboard shortcut may be used to raise or lower their hand.

**For those joining by teleconference:** Any person desiring to make a public comment must first press star-nine (\*9) on their telephone keypad to "Raise their hand" to speak. Persons joining the meeting by teleconference may mute and unmute their phones by pressing star-6 (\*6).

Citizens will be placed in a queue based on the order the hands were raised. The presiding officer will recognize callers based on the order of the queue, where they will be asked to state their name and address. Individual citizen comments are normally limited to three (3) minutes; however, time limits can be adjusted by the presiding officer. The presiding officer may ask the citizen to hold their comment on an agenda item if the item is posted as a Public Hearing. The Council cannot by law take action nor have any discussion or deliberations on any presentation made to the Council at this time concerning an item not listed on the agenda. The Council will receive the information, ask staff to review the matter, or an item may be noticed on a future agenda for deliberation or action.

3. **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.
  
4. **CONSENT AGENDA:** All items listed below are considered routine by the Town Council and will be enacted with one motion. There will be no separate discussion of items unless a Council 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.
  - a. Consider approval of the minutes from the meeting on August 24, 2020.
  - b. Consider approval **Resolution 20-28**, authorizing the Town Manager or designee to execute an Agreement with Robin McCaffrey to raise funds and implement a public art project proposed by the committee and artist.
  - c. Consider approval of **Resolution 20-29**, approving an Economic Development Agreement between the Town of Westlake and the Marriott Solana Hotel.
  - d. Consider approval of **Resolution 20-30**, approving Board appointments and reappointments to the Westlake Academy Foundation Board.
  
5. **DISCUSSION ITEMS**
  - a. Presentation and discussion regarding the Northwest Metroport Chamber of Commerce program and related activities.
  
6. **DISCUSSION AND CONSIDERATION OF ORDINANCE 915, APPROVING A NEGOTIATED SETTLEMENT BETWEEN THE ATMOS CITIES STEERING COMMITTEE ("ACSC") AND ATMOS ENERGY CORP., MID-TEX DIVISION REGARDING THE COMPANY'S 2020 RATE REVIEW MECHANISM FILING.**
  
7. **CONDUCT A PUBLIC HEARING AND CONSIDER APPROVING RESOLUTION 20-31 FOR A REPLAT OF LOT 10R, BLOCK K, VAQUERO PHASE 1 RESIDENTIAL ADDITION FOR AN APPROXIMATELY 1.838-ACRE PORTION OF PLANNED DEVELOPMENT DISTRICT 3, PLANNING AREA 1 (PD 3-1), LOCATED AT 1718 WISTERIA WAY.**

## **8. EXECUTIVE SESSION**

The Council will conduct a closed session pursuant to Texas Government Code, annotated, Chapter 551, Subchapter D for the following:

- a. Section 551.087 - Deliberation Regarding Economic Development Negotiations (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1) for the following:
  - Front 44
  - Entrada
- b. Section 551.071(2) Consultation with Attorney – to seek advice of counsel on matters in which the duty of the Town Attorney under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code - FM 1938 access for proposed Southlake development.
- c. Section 551.071 Consultation with Attorney - to seek advice of counsel regarding Granada Homeowners' Association matters.

## **9. RECONVENE MEETING**

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

- 11. FUTURE AGENDA ITEMS:** Any Council member may request at a workshop and / or Council meeting, under "Future Agenda Item Requests", an agenda item for a future Council meeting. The Council Member making the request will contact the Town Manager with the requested item and the Town Manager will list it on the agenda. At the meeting, the requesting Council Member will explain the item, the need for Council discussion of the item, the item's relationship to the Council's strategic priorities, and the amount of estimated staff time necessary to prepare for Council discussion. If the requesting Council Member receives a second, the Town Manager will place the item on the Council agenda calendar allowing for adequate time for staff preparation on the agenda item.

## **12. COUNCIL RECAP/STAFF DIRECTION**

## **13. ADJOURNMENT**

**ANY ITEM ON THIS POSTED AGENDA COULD BE DISCUSSED IN EXECUTIVE SESSION AS LONG AS IT IS WITHIN ONE OF THE PERMITTED CATEGORIES UNDER SECTIONS 551.071 THROUGH 551.076 AND SECTION 551.087 OF THE TEXAS GOVERNMENT CODE.**

**CERTIFICATION**

I certify that the above notice was posted at the Town Hall of the Town of Westlake, 1500 Solana Blvd., Building 7, Suite 7100, Westlake, TX 76262, September 25, 2020, by 5:00 p.m. under the Open Meetings Act, Chapter 551 of the Texas Government Code.

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Todd Wood, Town Secretary

If you plan to attend this public meeting and have a disability that requires special needs, please advise the Town Secretary's Office 48 hours in advance at 817-490-5711 and reasonable accommodations will be made to assist you.

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# Town Council

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## Item #2 – Citizen Comments

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**CITIZEN COMMENTS:** This is an opportunity for citizens to address the Council on any matter whether or not it is posted on the agenda.

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# Town Council

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**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.

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## Item # 3 – Items of Community Interest

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### *Additional Items*

- **Giving Day Results (Sept 17<sup>th</sup>)**
- **WA 1<sup>st</sup> day of in-person school (Sept 21<sup>st</sup>)**

### *Calendar of Meetings/Events:*

#### [Town Council Work Session/Meeting](#)

Monday, September 28, 2020; 5:00 pm\*

Westlake Town Hall, Solana Terrace-Bldg.7, Suite 7100 - Council Chambers OR via Teleconferencing

#### ***Possible Coffee & Conversation with the Mayor/School Board President***

Monday, October 5, 2020; 8:00 – 9:30 am

Westlake Fire-EMS Station OR via Facebook Live event

#### [Board of Trustees Work Session/Meeting](#)

Monday, October 5, 2020; 5:00 pm\*

Westlake Town Hall, Solana Terrace-Bldg.7, Suite 7100 - Council Chambers OR via Teleconferencing

#### [Planning & Zoning Work Session/Meeting](#)

Monday, October 12, 2020; 5:00 pm\*

Westlake Town Hall, Solana Terrace-Bldg.7, Suite 7100 - Council Chambers OR via Teleconferencing

#### **CANCELLED:** [Westlake Classic Car Show](#)

Saturday, October 17, 2020, 11am-4pm

2902 Sam School Rd. Westlake, TX 76262

#### [Town Council Work Session/Meeting](#)

Monday, October 26, 2020; 5:00 pm\*

Westlake Town Hall, Solana Terrace-Bldg.7, Suite 7100 - Council Chambers OR via Teleconferencing

#### ***Possible Coffee & Conversation with the Mayor/School Board President***

Monday, November 2, 2020; 8:00 – 9:30 am

Westlake Fire-EMS Station OR via Facebook Live event

#### [Board of Trustees Work Session/Meeting](#)

Monday, November 2, 2020; 5:00 pm\*

Westlake Town Hall, Solana Terrace-Bldg.7, Suite 7100 - Council Chambers OR via Teleconferencing

#### [Planning & Zoning Work Session/Meeting](#)

Monday, November 9, 2020; 5:00 pm\*

Westlake Town Hall, Solana Terrace-Bldg.7, Suite 7100 - Council Chambers OR via Teleconferencing

**Westlake Municipal Offices CLOSED for Thanksgiving Holiday**

Thursday and Friday, November 26 & 27, 2020

Holiday impacts to your trash and recycling schedule will be displayed at least a week before each major holiday. Please call Republic Services Customer Response Team at 602-237-2078 with any additional questions you may have about your holiday schedule.

**Town Council Work Session/Meeting**

Monday, November 30, 2020; 5:00 pm\*

Westlake Town Hall, Solana Terrace-Bldg.7, Suite 7100 - Council Chambers OR via Teleconferencing

*\*Reminder: Agendas for all municipal/academic meetings are posted a **minimum** of 72 hours before the meeting begins and can be found on our Town's website under the tab "[Government/Agendas & Minutes](#)."*

*\*\*For [meeting agendas](#) and details on [WA calendar](#) events or [Municipal calendar](#) events, please visit the Westlake [Academy website](#) or the Town of Westlake [website](#) for further assistance.*

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# Town Council

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## Item # 4 – Consent Agenda

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**CONSENT AGENDA:** All items listed below are considered routine by the Town Council and will be enacted with one motion. There will be no separate discussion of items unless a Council 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.

- a. Consider approval of the minutes from the meeting on August 24, 2020.
- b. Consider approval **Resolution 20-28**, authorizing the Town Manager or designee to execute an Agreement with Robin McCaffrey to raise funds and implement a public art project proposed by the committee and artist.
- c. Consider approval of **Resolution 20-29**, approving an Economic Development Agreement between the Town of Westlake and the Marriott Solana Hotel.
- d. Consider approval of **Resolution 20-30**, approving Board appointments and reappointments to the Westlake Academy Foundation Board.



**MINUTES OF THE  
TOWN OF WESTLAKE, TEXAS  
TOWN COUNCIL MEETING  
August 24, 2020**

In accordance with Order of the Office of the Governor issued March 16, 2020 and March 19, 2020, the Town Council of the Town of Westlake conducted its regular meeting following the Board of Trustees meeting at 5:00 p.m. on Monday, August 24, 2020 by video and telephone conference in order to advance the public health goal of limiting face-to-face meetings (also called "social distancing") to slow the spread of the Coronavirus (COVID-19). There was no public access to the physical location described above. A recording of the telephonic meeting was made and is available to the public.

**PRESENT:** Mayor Laura Wheat and Council Members Carol Langdon, Greg Goble, Alesa Belvedere, and Rajiv Trivedi. Rick Rennhack joined the meeting at 5:20 p.m.

**ABSENT:**

**OTHERS PRESENT:** Town Manager Amanda DeGan, Deputy Town Manager Noah Simon, Assistant Town Manager Jarrod Greenwood, Town Attorney Stan Lowry, Town Secretary Todd Wood, Director of Information Technology Jason Power, Director of Finance Debbie Piper, Director of Facilities & Public Works Troy Meyer, Director of Communications Ginger Awtry, Communications Manager Jon Sasser, Business Manager Marlene Rutledge and Finance & Budget Analyst Kelsey Wong.

## **Regular Session**

### **1. CALL TO ORDER**

Mayor Wheat called the Regular Session to order at 5:12 p.m.

### **2. CITIZEN COMMENTS**

Mayor Wheat provided a brief summary of instructions to the public for citizen comments. No one addressed the Town Council.

### 3. ITEMS OF COMMUNITY INTEREST

Communications Manager Jon Sasser provided an update on this item.

**Office closure:** Westlake Town Hall will be closed on Monday, September 7<sup>th</sup> in observance of Labor Day. Although the municipal offices will be closed, waste and recycling pickup will not be affected.

**Upcoming meetings:** The next Town Council and Board of Trustees meeting is scheduled for September 14, 2020.

**Coffee and Conversation with the Mayor:** This event is tentatively scheduled for September 14, 2020.

**Westlake Classic Car Show:** The 10<sup>th</sup> annual Westlake Classic Car Show is scheduled to be held on October 17, 2020.

**Westlake Academy:** Town Manager/Superintendent Amanda DeGan indicated that the first day of on-campus instruction for students at Westlake Academy will be September 21, 2020. Any delay in this date would need to be approved by the Board of Trustees.

Mayor Wheat asked if there were any metrics that would be used in determining additional delays to the planned return date. Mrs. DeGan replied that there were, stating first that the Public Health Plan that has been developed would be submitted to local health officials. While this is not required, these plans help to demonstrate whether additional closures are warranted at the County level based on the protocols that have been put in place. This also helps the County to provide proper guidance to school leadership, if necessary.

Mayor Wheat then asked if the Westlake Classic Car Show would be held if it were scheduled for this weekend. Mrs. DeGan said that it would not.

### 4. EXECUTIVE SESSION

The Town Council convened into Executive Session at 5:18 p.m.

The Council will conduct a closed session pursuant to Texas Government Code, annotated, Chapter 551, Subchapter D for the following:

- a. Section 551.087 - Deliberation Regarding Economic Development Negotiations (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1) for the following:
  - Front 44
  - Entrada

- b. Section 551.071(2) – Consultation with Town Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter: Resolution No. 00-19, a Contract with Hillwood Development Corporation Concerning the Design Engineering and Construction of the West Side Pump Station and the Dove Road Waterline.
- c. Section 551.071 Consultation with Attorney - to seek advice of counsel regarding Granada Homeowners' Association matters.

**5. RECONVENE MEETING**

Mayor Wheat reconvened the public meeting at 8:05 p.m.

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

None.

**7. CONSENT AGENDA:** All items listed below are considered routine by the Town Council and will be enacted with one motion. There will be no separate discussion of items unless a Council 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.

- a. Consider approval of the minutes from the meeting on June 8, 2020.
- b. Consider approval of **Resolution 20-22** to approve the tax rolls for tax year 2020 on property within the Town; approving the estimated tax collection rate; and designating an official to calculate the no-new-revenue and voter-approval tax rates.
- c. Consider approval of **Resolution 20-23**, authorizing the donation of surplus Self-Contained Breathing Apparatus equipment (SCBAs) to Texas A&M Forest Service Helping Hands Program.

**MOTION:** Council Member Belvedere made a motion to approve the consent agenda. Council Member Goble seconded the motion. The motion carried by a vote of 5-0.

**8. DISCUSSION AND CONSIDERATION OF RESOLUTION 20-24, ADOPTING A MAXIMUM PROPOSED AD VALOREM TAX RATE, TAKE A RECORD VOTE, AND SETTING THE DATE FOR THE PUBLIC HEARING AND ADOPTION OF THE OPERATING BUDGET AND TAX RATE FOR FISCAL YEAR 2020-2021.**

Mrs. DeGan presented this item, noting that this year's budget did not have a "theme", unlike previous years. She began by explaining a new term that has resulted from the last legislative session, called the "No New Revenue Tax Rate", which replaces the former "Effective Tax Rate" term. This is the total rate calculated to raise the same amount of property tax revenue from the same properties. The term "Rollback Tax Rate" has now been replaced by the term "Voter Approval Tax Rate". This term is the highest tax rate that may be adopted without holding an election requiring voter approval, unless the De Minimis Tax Rate exceeds the Voter Approval Tax Rate. In previous years, this rate was limited to

an 8% percent increase from the prior year and is now limited to a 3.5% increase. Given the Town's current property tax rate of \$0.1618 per \$100 valuation, four property tax scenarios were explained in consideration in the FY 20/21 budget:

1. Current Tax Rate: \$0.1618
2. No New Revenue Tax Rate (formerly, "Effective Tax Rate"): \$0.16809
3. Voter Approval Rate (formerly, "Rollback Tax Rate"): \$0.18969
4. De Minimis Rate: \$0.20216

Mrs. DeGan noted that unless the current tax rate is adopted, the No New Revenue Tax Rate represents the smallest increase, and the average Westlake homeowner would pay an additional \$101 annually in municipal property taxes. If the Town were to adopt the Voter Approval Tax Rate, it would represent nearly a 3.5% increase. In this scenario, the average Westlake homeowner would pay an additional \$378 annually in municipal property taxes. Mrs. DeGan did not recommend adoption of the current tax rate for the upcoming year, as it could place the Town in a less secure financial position. The No New Tax Revenue Rate would allow the Town to remain steady. The Voter Approval Tax Rate would raise additional revenues and preserve more operating days into fund balance. She then stated that calculations were not made on the De Minimis Rate, as staff did not feel that previous Council direction would support the adoption of this rate.

Mrs. Degan then presented the Financial Overview for all funds in the proposed FY 20/21 municipal budget, inclusive of a 2% employee pay increase. In this scenario, it is projected that \$700k of the Town's fund balance would be used. This calculation also includes very conservative revenue projections, and Mrs. DeGan stated that staff is not convinced that development will occur as anticipated. If this occurs, the Town is likely to see an additional \$800k-\$1M reduction in development fees, and this is an area that we should be mindful of moving forward as conversations are continued.

The General Fund Five-Year Forecast was then presented and showed a continual reduction of operating days through 2025. The ending fund balance using the No New Revenue Tax Rate in the FY 20/21 budget indicated that operating days would be reduced from 448 to 395, calculated at a cost of \$28,795 per day.

Mrs. Degan then presented a property tax rate comparison and explained the corresponding impact of each in the proposed FY 20/21 budget. If the Council were to adopt the No New Revenue Tax Rate, approximately \$160k in additional revenue would be added to fund balance. In this scenario, staff would delay several capital projects and identify other expenditure reductions to mitigate the estimated \$700k use of fund balance. If the Council were to adopt the Voter Approval Tax Rate, approximately \$477k in additional revenue would be added to fund balance, and operating days are estimated to be reduced from 448 to 413. Adoption of the Voter Approval Tax Rate would retain an additional 17 operating days when compared to the No New Revenue Tax Rate.

Mrs. DeGan then explained that this meeting's discussion would not set the tax rate. The Town Council is required to take a record vote, set a Public Hearing date, and consider the tax rate for the upcoming year. Staff recommended that the public notice should state that the maximum ad valorem rate would be \$0.18969 per \$100 valuation. This would allow the Council to have the flexibility to set a lower tax rate if they chose to do so, provided that

the rate did not exceed the maximum rate listed in the Public Hearing Notice. The Public Hearing Date, adoption of the FY 20/21 budget, and setting of the tax rate would be on the regular Town Council meeting agenda scheduled for September 14, 2020.

Mrs. Degan then asked the Council for direction as to what should be posted in the Public Hearing Notice. Council Member Langdon asked if there was any wisdom in posting the higher De Minimis tax rate, as valuations have yet to be received from Denton County, although she was not suggesting that the Town adopt this rate. Mayor Wheat said she felt that posting this rate would appear high to the public. Council Member Trivedi stated that he felt it was best to stay in between the No New Revenue Tax Rate and the Voter Approval Tax Rate. Mayor Wheat then stated that while fund balance has decreased somewhat, the Town has positioned itself conservatively in the past to provide a buffer when there is a decrease in fund balance. Council Member Rennhack and Council Member Trivedi agreed. The consensus of the Council was to post the Voter Approval Tax Rate as the maximum rate for the Public Hearing Notice.

**MOTION:** Council Member Rennhack made a motion to approve **Resolution 20-24**, adopting a maximum proposed ad valorem tax rate of \$0.18969, take a record vote, setting the date for the Public Hearing, and adoption of the operating budget and tax rate for fiscal year 2020-2021 on September 14, 2020. Council Member Goble seconded the motion. The motion carried by a vote of 5-0.

**9. DISCUSSION AND CONSIDERATION OF ORDINANCE 912, UPDATING THE SOLANA PUBLIC IMPROVEMENT DISTRICT SERVICE AND ASSESSMENT PLAN AND ASSESSMENT ROLL 2020.**

Mary Petty from Petty & Associates presented this item. She began by stating that the PID Service and Assessment Plan is required to be updated every year. The primary purpose of the PID Service and Assessment Plan Update is to update the assessment roll, which is then sent to Tarrant County for the collection of taxes.

Mrs. Petty provided a brief explanation of the main components of the PID Service and Assessment Plan, including required disclosures, how residents are notified of the taxes assessed in the PID and the communication between the PID management team, investors and residents. She then asked if she could answer any questions.

Council Member Langdon asked what was included in the administrative costs contained in the report. Mrs. Petty stated that this includes fees charged by Petty & Associates, Tarrant County collection fees, miscellaneous legal fees, audit fees, and trustee fees.

Mayor Wheat then asked who normally sees this report. Mrs. Petty replied that after approval, it is sent to the original underwriter, the Town's bond counsel and financial advisor, the Tarrant County Appraisal District, and to the project's investors.

**MOTION:** Council Member Goble made a motion to approve **Ordinance 912**. Council Member Belvedere seconded the motion. The motion carried by a vote of 5-0.

**10. FUTURE AGENDA ITEMS:**

None.

**11. BOARD RECAP/STAFF DIRECTION**

Publish the notice for the Public Hearing on September 14<sup>th</sup> with the maximum tax rate of \$0.18969.

Provide a list of cost-saving measures identified by staff to be provided to the public.

**12. ADJOURNMENT**

There being no further business before the Council, Mayor Wheat asked for a motion to adjourn the meeting.

**MOTION:** Council Member Langdon made a motion to adjourn the meeting. Council Member Trivedi seconded the motion. The motion carried by a vote of 5-0.

Mayor Wheat adjourned the meeting at 9:05 p.m.

**ANY ITEM ON THIS POSTED AGENDA COULD BE DISCUSSED IN EXECUTIVE SESSION AS LONG AS IT IS WITHIN ONE OF THE PERMITTED CATEGORIES UNDER SECTIONS 551.071 THROUGH 551.076 AND SECTION 551.087 OF THE TEXAS GOVERNMENT CODE.**

**APPROVED BY THE TOWN COUNCIL ON SEPTEMBER 28, 2020.**

ATTEST:

\_\_\_\_\_  
Laura Wheat, Mayor

\_\_\_\_\_  
Todd Wood, Town Secretary

# Westlake Town Council



## TYPE OF ACTION

Regular Meeting - Consent

## Westlake Town Council Meeting Monday, September 28, 2020

**TOPIC:** Consider approval of a resolution authorizing the Town Manager or designee to execute an Agreement with Robin McCaffrey to raise funds and implement a public art project proposed by the committee and artist.

**STAFF CONTACT:** Noah A. Simon, Deputy Town Manager

### Strategic Alignment

<u>Vision, Value, Mission</u>	<u>Perspective</u>	<u>Strategic Theme &amp; Results</u>	<u>Outcome Objective</u>
Mission: Westlake is a unique community blending preservation of our natural environment and viewscapes, while serving our residents and businesses with superior municipal and academic services that are accessible, efficient, cost-effective, & transparent.	N/A	Natural Oasis - Preserve & Maintain a Perfect Blend of the Community's Natural Beauty	Encourage Westlake's Unique Sense of Place

**Time Line - Start Date:** October 1, 2020

**Completion Date:** N/A

**Funding Amount:** N/A

**Status -** N/A

**Source -** N/A

**Contract:** Yes

**Forms:** Forms 1295 & 2270

### EXECUTIVE SUMMARY (INCLUDING APPLICABLE ORGANIZATIONAL HISTORY)

Russell Tether and Robin McCaffrey have been working for the past 3.5 years under a limited services contract which originally authorized \$25,000 for the development of a Public Art Plan (with citizen input) and articulation of a Public Art strategy going forward from the plan. After completion of those tasks, the Westlake authorized an additional \$25,000 for support of a Public Art Competition Advisory Committee (which met monthly for 2 yrs.), determination of a Public Art Budget, and administering a Public Art Competition. These tasks were completed with the selection of a finalist artist. Since then, Russell Tether and I have been directing the artist and his

team through execution of activities specified in the scope letters accompanying the first and second honorariums (awarded by the Town of Westlake). Compensation for this “directing” phase has been accommodated through a development services contract with the Town and some additional billing from Russell Tether for his individual work.

Recent communications from the Artist make it clear that the final “Artist Concept” will be completed to a stage appropriate for presentation by early June. This important event marks the beginning of the very important Fund-Raising stage of the Public Art Project. The budget for the work recommended by the Public Art Competition Advisory Committee was \$850,000. Discussion with the artist and refinement of his concept will produce a work that is estimated to cost what the recommended budget establishes. However, it is also clear that a much more important work can be accomplished with a greater scale of the work itself and, therefore, the beneficial impacts on Town would be greatly enhanced by seeking additional money in this fund-raising effort. In terms of return on this “investment”, the Public Art Plan establishes the importance of “artistic distinction” to the preservation of value within an ever-shrinking Westlake-High Value sub-market; making any investment in the “work” return “value” in terms of sustained home prices. This makes the fund-raising stage of the Public Art Program extremely important to the future of Westlake.

Russell Tether and I (hereinafter the Funding Team) anticipate that the road forward is hard to “nail down” in terms of time required and the complexity of meetings/contacts/solicitations necessary to raise the funds hoped for.

### **RECOMMENDATION**

Staff recommends entering into the Agreement to raise funds for the public art project.

### **ATTACHMENTS**

Mesa Planning Agreement  
Forms 1295 and 2270  
Resolution

# MESA + PLANNING

## INTRODUCTION:

The following is a proposed scope of work and compensation structure for further work on the Westlake Public Art Project. Russell Tether and Robin McCaffrey have been working for the past 3.5 years under a limited services contract which originally authorized \$25,000 for the development of a Public Art Plan (with citizen input) and articulation of a Public Art strategy going forward from the plan. After completion of those tasks, the Westlake authorized an additional \$25,000 for support of a Public Art Competition Advisory Committee (which met monthly for 2 yrs.), determination of a Public Art Budget, and administering a Public Art Competition. These tasks were completed with the selection of a finalist artist. Since then, Russell Tether and I have been directing the artist and his team through execution of activities specified in the scope letters accompanying the first and second honorariums (awarded by the Town of Westlake). Compensation for this “directing” phase has been accommodated through my development services contract with the Town and some additional billing from Russell Tether for his individual work.

Recent communications from the Artist make it clear that the final “Artist Concept” will be completed to a stage appropriate for presentation by early June. This important event marks the beginning of the very important Fund-Raising stage of the Public Art Project. The budget for the work recommended by the Public Art Competition Advisory Committee was \$850,000. Discussion with the artist and refinement of his concept will produce a work that is estimated to cost what the recommended budget establishes. However, it is also clear that a much more important work can be accomplished with a greater scale of the work itself and, therefore, the beneficial impacts on Town would be greatly enhanced by seeking additional money in this fund-raising effort. In terms of return on this “investment”, the Public art Plan establishes the importance of “artistic distinction” to the preservation of value within an ever-shrinking Westlake-High Value sub-market; making any investment in the “work” return “value” in terms of sustained home prices. This makes the fund-raising stage of the Public Art Program extremely important to the future of Westlake.

Russell Tether and I (hereinafter the Funding Team) anticipate that the road forward is hard to “nail down” in terms of time required and the complexity of meetings/contacts/solicitations necessary to raise the funds hoped for. **Therefore, the Funding Team is recommending that compensation, for work done in pursuit of funds, be provided as a percentage of the funds raised that will be paid to the Funding Team.** Further, it is important that the curators, who served two (2) years on the Public Art Competition Advisory Committee without compensation, continue to be engaged to support the funding effort with their expertise and qualifications (which underpin the artistic importance of the work) and that such engagement be compensated on an hourly basis.

The following proposal specifies the scope of work to be compensated by the “percentage of funds raised” and services by the curator members of the Public Art Competition Advisory Committee to be compensated on an hourly basis. Finally, the proposal, below, also specifies support of the Town that will be necessary.

## SCOPE OF SERVICES

### **Part One: Fund-Raising work of the Funding Team, supported by the “Percent of “Funds Raised” Compensation Method**

#### **Task 1.1: Continued work with the Artist,**

Robin McCaffrey and Russell Tether (the Funding Team) will continue to work with the artist and direct his completion of, and refinement of, the Public Art Concept. The first review of this “developed” concept will likely be in early August and include the WPACAC curators in a digital conference with the Artist. Members of the Town are also requested to be a part of that conference. Further refinements that the meeting participants agree are necessary will be supervised by the Funding Team, as part of this task.

#### **Task 1.2: Solicitations,**

Once the Public Art Concept Presentation is determined to be ready for further presentation (such determination will be made by the Funding Team and consulting curators), an initial presentation to the Town Council will be conducted. After Council review, the Funding Team will embark upon a series of “solicitations”, seeking funding commitments for the work and its installation. The Funding Team will keep the Town informed of such meetings and make requests, from time to time, for meeting space at Town Hall. Certain solicitations may include corporate citizens of significant stature and, therefore, such solicitation meetings may benefit from involvement by the Town Manager or Mayor. If such is determined to be necessary, the Funding Team will apprise the Town Manager and work toward a workable meeting time.

#### **Task 1.3: Presentations,**

It will be necessary to prepare, and conduct, a presentation pitch which demonstrates the work, describes its importance as a work of art, portrays its beneficial impacts to the future of the Town, and makes clear its importance as a continuing legacy for the donors (which can be memorialized in enduring ways). The presentation will also include supporting, and on-going, efforts of the community which support the work as a central element in the form and life of Westlake. The Funding Team will make presentations when they determine such is necessary and on occasion, may engage the participation of the Town and/or the consulting curators.

#### **Task 1.4: Negotiations,**

The process of solicitation may include negotiations regarding recognition, use of funds, performance relative to release of funds, etc. The Funding Team will, in such cases, find the “common ground” in such negotiations and, when involving the Town in any reciprocal obligation, review this with the Town for further comment and approval.

### **Task 1.5: Budget and Expenses**

The Funding Team shall meet with the Town Manager (or her designee) to develop a budget specifying funds that maybe needed for host events, conduct meetings, and other expenses, related to support of the Funding Team's, Fund-Raising efforts (as described herein). These budgeted funds are in addition to the compensation for the Funding Team (specified herein as 10.5% of the funds raised by the Funding Team) and deemed necessary to accomplish the goals of acquiring funds for the Public Art piece. The amount budgeted for these support expenses for the time period of October 1, 2020 to September 30, 2021 shall not exceed \$25,000 unless additional funds are approved and authorized by the town by a process which the Town deems necessary. Town approval of the budget shall precede any work by the Funding Team which would, in the opinion of the Funding Team, depend on those funds.

### **Task 1.6: Events,**

It will be appropriate, and necessary, at certain points along the way to host Funding Events. Such events are often part of any fund-raising campaign and may be centered around certain thresholds of funding attainment, presentations by the artist, or other noteworthy occasions which can serve to motivate potential donors. The Funding Team will identify occasions for such Events, which will be hosted by the Town (upon written Town approval).

### **Task 1.7: Management of the Curator Involvement,**

The Consulting curators play an important role in authentication of the work as something that makes an enduring contribution to art in general. Many of the anticipated donors are more interested in supporting good art than in supporting municipal programs. Therefore, the perception of Westlake's Pubic Art as truly artful is underwritten by the presence of the consulting curators. These curators will be brought into the Fund-Raising Program from time to time as experts who can speak to this issue in a meaningful way. MESA Planning shall gather the time and expenses of the curators and prepare an aggregate invoice for curatorial services reflecting the billable hours and expenses of each curator incurred during any one-month billing period. The Town shall pay the Curators individually.

### **Task 1.8: Reporting**

MESA-Planning shall provide monthly update e-mails (with attachments as deemed necessary) to the Town Manager and Mayor regarding the status of the project and fund-raising efforts.

## **Part Two: Curator Involvement, supported by hourly billing**

### **Task 2.1: Reviews,**

During the completion of the Artist's Concept and throughout the Fund-Raising effort, the Curators who participated in Westlake's Public Art Competition Advisory Committee (hereinafter known as the Curatorial Team) will be called upon to review and opine on the work itself. The Curatorial Team may also participate in discussions and/or events (described above) wherein they express their view of the work.

# MESA + PLANNING

## **Task 2.2: Meetings,**

During the completion of the Artist's Concept and throughout the Fund-Raising effort, the Curatorial Team may be asked to participate in meetings which include internal Team meetings, Solicitation meetings, Town meetings, and/or Events.

## **Part Three: Support by the Town of Westlake**

### **Task 3.1: Events,**

The Town of Westlake plays an essential role in the Public Art effort. Primarily seen as the "Patron" the Town is the center of this program. Therefore, the Town is the appropriate host for any events supporting its Public Art Program. The Funding Team will identify event opportunities and review with the appropriate person at the Town (designated to support this effort). Where agreement on the proposed event has been reached, the Town will undertake its organization and execution.

### **Task 3.2: Press Releases and other Public Relations,**

A key element in the sustained visibility of the Westlake Public Art Program will be press releases and other media coverage of the milestones accomplished in this effort. The Funding Team will work with the individual, designated by the Town as the public relations coordinator, in providing updates, text, and background necessary to conduct press releases (at key times) and other media coverage.

### **Task 3.3: Funding Repository,**

As funds are committed by potential donors, there must be a place where those funds can be held and from which they can be allocated. Also, there must be a system of tracking fund commitments and receipt of the funds themselves. The Funding Team will work with the individual designated by the Town as the Funds Coordinator in connecting the donors' commitments/contributions with the funding repositories.

### **Task 3.3: Meeting Space,**

As described above, it will be necessary, from time-to-time, to have meetings at Town Hall. Therefore, the Town will work with the Funding Team to provide space for such meetings

### **Task 3.4: General Involvement,**

As described above, it will be highly beneficial to the Funding Campaign for Municipal leadership to be present, from time-to-time. Therefore, the Funding Team will coordinate with the Town Manager as to when such involvement may be needed.

# MESA + PLANNING

## FEES

WORK SCOPE	PARTICIPANT	COMPENSATION
Part One: Fund Raising	The Funding Team	10.5% of the Funds received by the Town as a result of Fund-Raising efforts of the Funding Team. Payable to MESA Planning when the funds are paid to the Town.
Part Two: Curator Involvement	Curatorial Team: Rebecca Lawton Judy Deaton Sue Canterbury Patricia Delaforno Paloma Anaveros Chris Worley Barry Whistler Katie Blair	Hourly at the rate of \$100/hr. to be billed by MESA Planning on behalf of the Curators and paid to Curators by the Town
Part Three: Support by the Town		Excluded from this contract

## CONDITIONS:

This proposal concludes with the raising of funds for installation of a Work of Public Art. Efforts beyond the fund raising, such as:

- a. Coordination with any engineers, architects, landscape Architects or other professionals important to the installation of the work, or
  - b. Updating the Town regarding the installation, or
  - c. Reviewing the installation on behalf of the Town, or
  - d. Monitoring the installation in any way is not included in this proposal
1. The Client will provide the following:
    - a. Support of Fund-Raising effort as described in the Scope of Services
    - b. Available base maps, surveys, deed restrictions and/or legal obligations associated with the project area

# MESA + PLANNING

- c. Historic photographs
  - d. Coordination with on-going projects such as the Knolls and potential development of the Core Logic property.
  - e. Coordination with necessary public actions by the Town Council or Planning Commission
  - f. Coordination with Town departments
2. Not included in this proposal are the following:
- a. This proposal concludes with the raising of funds for installation of a Work of Public Art. Efforts beyond the fund raising are not a part of this proposal, such as:
    - i. Coordination with any engineers, architects, landscape Architects or other professionals important to the installation of the work, or
    - ii. Updating the Town regarding the installation, or
    - iii. Reviewing the installation on behalf of the Town, or
    - iv. Monitoring the installation in any way
    - v. Construction drawings or art designs
    - vi. Engineered drawings and/or cost estimates
    - vii. Legal services/ reviews
    - viii. Liabilities associated with Art Installation
3. This Agreement may be terminated by either party at any time by a notice to the other party, in writing, which termination shall be effective upon receipt. If such termination shall occur without fault or breach by MESA Planning, MESA Planning shall be entitled to be paid for services authorized by the Client up to the time of termination, the products of which shall be provided to the Client, in keeping with the terms of service contained in this Agreement.
4. Town will be responsible for payment of all Curator fees and reimbursables expended through the date of termination.
5. MESA Planning may subcontract consultants in the performance of any services described in this agreement (with Town approval) at no additional cost to the Town. If applicable, Town procurement policies shall apply.
6. Compensation for all services shall be paid in Dallas, Dallas County, Texas.
7. Invoice Schedule: Curator billing will be on a progress basis at the end of each month. Percent of funds raised payments shall be made at the end of any month in which donated funds have been paid to the Town. The Town shall notify MESA Planning when donated funds have been paid and MESA Planning shall prepare an invoice for the percentage specified above.
8. Terms: Payments are due within a maximum of forty-five (45) days from receipt of invoice.
9. If the client fails to make payments to MESA Planning in accordance with this agreement, such failure shall be considered substantial non-performance and cause for termination or, at MESA

# MESA + PLANNING

Planning's option, cause for suspension of performance of service under this agreement. If MESA Planning elects to suspend service, prior to suspension of services, MESA Planning shall give seven (7) days written notice to the client. In the event of a suspension of services, MESA Planning shall have no liability to the client for delay or damage caused to the client because of such suspension of services. Before resuming services, MESA Planning shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of MESA Planning's services. The Parties agree to hold each other harmless from and indemnify each party from and against damages, reasonable attorney's fees, and/or other expenses related to the claim which each party may incur as a result of any claim arising out of such suspension of work. Neither party will be required to hold harmless or indemnify any party against a claim arising from the willful misconduct or negligence of the other party to this agreement.

10. The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as Architects in Texas. Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337; tele: 512.305.9000; fax: 512.305.9005; e-mail: [www.tbae.state.tx.us](http://www.tbae.state.tx.us).
11. LIMITATION OF LIABILITY: To the maximum extent permitted by law, the Client agrees to limit MESA Planning's liability for the Client's damages to the sum of MESA Planning's fees indicated in this proposal. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.
12. By making visits to the art site, MESA Planning is not assuming the responsibilities of the artist, builder, Construction Manager, Construction Superintendent or any of their agents or subcontractors.
13. Plans, drawings and specifications or other writings or documents prepared or provided by MESA Planning hereunder are prepared as instruments of service for this Project only, but may be used by MESA Planning for purposes of illustrating the scope and nature of project involvement for business development purposes. MESA Planning shall provide Client with a reproducible set of drawings and text for its records. MESA Planning shall not provide processes or mechanisms that are proprietary in nature and part of the intellectual property of MESA Planning.
14. It is expressly understood and agreed that MESA Planning shall not have control of, or charge of, or be responsible for construction, means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the Project or for the acts or omissions of any contractor, subcontractor or other persons performing work for the Site, and the Client shall indemnify MESA Planning and hold MESA Planning harmless from and against any and all claims, demands, losses, costs, liabilities and damages including, without limitation, reasonable attorney's fees and expenses, incurred by MESA Planning and arising out of or related to any of the aforesaid.

# MESA + PLANNING

15. Notwithstanding any other provision of this Agreement, MESA Planning and MESA Planning's sub-consultants shall have no responsibility for the discovery, presence, handling, removal, disposal or exposure of persons to hazardous materials in any form at the project site, including but not limited to asbestos, asbestos products, mold, polychlorinated biphenyl (PCB) or other toxic substances.
16. During the term of this Agreement, MESA Planning shall maintain: Professional liability insurance in an amount not less than \$1,000,000 per occurrence and \$1,000,000 annual aggregate.
17. MESA Planning shall indemnify and hold the Client harmless from and against loss, claims, actions, damages, liability and expenses in connection with loss of life, personal injury, damage to property or any other loss or injury arising directly from or out of the negligent performance of the Scope of Work described herein. MESA Planning shall not be required, however, to indemnify any party against a claim arising from the willful misconduct or negligence of that party.
18. Should any provision contained in this Agreement for any reason be held to be void, invalid, illegal or unenforceable, such determination shall not affect any other provision hereof, and this Agreement shall be considered as if the entirety of such void, invalid or unenforceable provision had never been contained in this Agreement.
19. In the event disputes are not satisfactorily resolved through informal discussions, the Client and MESA Planning agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation. In the event that the parties to this Agreement are unable to reach a settlement through mediation, then such disputes shall be settled through litigation, in a court of competent jurisdiction.
20. This Agreement shall be administered and interpreted under the laws of the State of Texas. Exclusive venue shall lie in any court of competent jurisdiction located in a mutually agreed upon venue.
21. All notification to either party by the other that is required under this Agreement shall be personally delivered or mailed to such party at the following respective addresses:

Amanda DeGan  
**Town Manager**  
**Town of Westlake**  
1500 Solana Blvd. Bldg. 7, Suite 7200  
Westlake, TX 76262

Robin McCaffrey AIA, FAICP  
**MESA Planning**  
11700 Preston Road, Suite 660-299  
Dallas, Texas 75230  
Phone: 214-543-9557

Accepted:

\_\_\_\_\_  
Town of Westlake by Amanda DeGan, Town Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
MESA-Planning by Robin H. McCaffrey FAICP, AIA

\_\_\_\_\_  
Date

ROBIN H MCCAFFREY AIA.FAICP  
11700 PRESTON.RD.STE.660-299  
DALLAS.TX.75230  
PH + 214.535.7484  
[rmccaffrey@mesa-planning.com](mailto:rmccaffrey@mesa-planning.com)



# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

### OFFICE USE ONLY CERTIFICATION OF FILING

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**  
MESA Planning  
Dallas, TX United States

Certificate Number:  
2020-670117

Date Filed:  
09/21/2020

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**  
Town of Westlake, TX

Date Acknowledged:

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**  
Public Art Fund Raising  
Public Art Funding Strategy

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

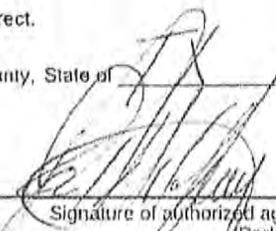
5 Check only if there is NO Interested Party.

**6 UNSWORN DECLARATION**

My name is Robin H. McCaffray, and my date of birth is 5/2/47.  
My address is 7909 County Rd. 4814, Ladonia, TX, 75949, US.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Tarrant County, State of TX, on the 21 day of Sept., 2020.  
(month) (year)

  
\_\_\_\_\_  
Signature of authorized agent of contracting business entity  
(Declarant)

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

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 MESA Planning  
 Dallas, TX United States

**Certificate Number:**  
 2020-670117

**Date Filed:**  
 09/21/2020

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**  
 Town of Westlake, TX

**Date Acknowledged:**  
 09/23/2020

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**  
 Public Art Fund Raising  
 Public Art Funding Strategy

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

**5 Check only if there is NO Interested Party.**

**6 UNSWORN DECLARATION**

My name is \_\_\_\_\_, and my date of birth is \_\_\_\_\_.

My address is \_\_\_\_\_ (street), \_\_\_\_\_ (city), \_\_\_\_\_ (state), \_\_\_\_\_ (zip code), \_\_\_\_\_ (country).

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
 (month) (year)

\_\_\_\_\_  
 Signature of authorized agent of contracting business entity  
 (Declarant)

**TOWN OF WESTLAKE**

**RESOLUTION NO. 20-28**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS, AUTHORIZING THE TOWN MANAGER TO SIGN AN AGREEMENT WITH ROBIN MCCAFFREY TO RAISE FUNDS FOR THE PUBLIC ART PROJECT.**

**WHEREAS**, the Town currently desires to implement components of the Public Art Plan and having selected an artist for the creation and eventual implementation of public art within the Town of Westlake; and

**WHEREAS**, funds are needed to design, construct and install the work proposed by the artist procure the work proposed by the artist; and

**WHEREAS**, the Town desires to enter into an Agreement with Robin McCaffrey to raise funds for this public art project; and

**WHEREAS**, the Town Council finds that the passage of this Resolution is in the best interest of the people 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 of Westlake Town Council hereby authorizes the Town Manager to sign an Agreement with Robin McCaffrey to raise funds to support the public art project.

**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 October 1, 2020.

**PASSED AND APPROVED ON THIS 28<sup>TH</sup> DAY OF SEPTEMBER 2020.**

ATTEST:

\_\_\_\_\_  
Laura Wheat, Mayor

\_\_\_\_\_  
Todd Wood, Town Secretary

\_\_\_\_\_  
Amanda DeGan, Town Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
L. Stanton Lowry, Town Attorney

# Westlake Town Council



## TYPE OF ACTION

Regular Meeting - Consent

## Westlake Town Council Meeting Monday, September 28, 2020

**TOPIC:** Consideration of a Resolution Approving an Economic Development Agreement between the Town of Westlake and the Marriott Dallas/Fort Worth Westlake Hotel.

**STAFF CONTACT:** Debbie Piper, Finance Director  
Ginger Awtry, Administrative Services Director

### Strategic Alignment

<u>Vision, Value, Mission</u>	<u>Perspective</u>	<u>Strategic Theme &amp; Results</u>	<u>Outcome Objective</u>
Fiscal Responsibility	Fiscal Stewardship	Exemplary Service & Governance - We set the standard by delivering unparalleled municipal and educational services at the lowest cost.	Increase Revenue Streams

**Time Line - Start Date:** October 1, 2020

**Completion Date:** September 30, 2021

**Funding Amount:** \$105,000

**Status -** Funded

**Source -** VAF (Hotel Tax)

**Contract:** Yes

**Forms:** Forms 1295 & 2270

### EXECUTIVE SUMMARY (INCLUDING APPLICABLE ORGANIZATIONAL HISTORY)

This proposed twelve (12) month economic development grant agreement includes both the “Shuttle Bus Transportation Cost” as well as the “Incentive Program”. If approved, this would be the eleventh consecutive year the Town has partnered with the Marriott Dallas/Fort Worth Westlake Hotel (“Marriott”) regarding the “Incentive Program”. Prior to this, the Town participated in only the Hotel’s shuttle bus system costs.

Below is a description of both portions of this proposed economic development grant that would disburse hotel/motel occupancy tax funds from the Town to the Marriott.

- **Shuttle Bus Transportation Cost Participation.** An amount of \$80,000 has been proposed in FY 20-21 budget for the Town's participation in a portion of the operating cost of Marriott providing shuttle bus service to its guests. This is the same amount adopted in the prior year. The FY 19-20 budget was reduced to \$40K due to the closure of the hotel; therefore, lack of transportation needs. Marriott management has shared with Council in previous meetings the importance this shuttle bus service has to this property maintaining its competitive position in the local market, particularly competing with the Hilton at Southlake Town Center and the Marriott at the Texas Motor Speedway. Marriott Westlake management has emphasized repeatedly to Council that this shuttle bus service is essential for this property to succeed; both in terms of keeping its existing business bookings and in terms of growing its income stream by marketing to new businesses. In addition to providing shuttle services to and from DFW airport for Marriott guests, this bus service also provides hotel guests with transportation to area shopping/entertainment venues (Southlake Town Center) and corporate training centers.
- **Group Business Incentive Program.** The proposed FY 20-21 budget for this portion is \$25,000. The incentive initiated in the prior year will continue with the added 50-99 actualized total room nights related to the sliding scale noted below. FY 19-20 expenditures for this program totaled \$7,400.

Prior to FY 19-20, the Town was paying a maximum of \$7,500 for each group; 10% of the room night revenue up to a maximum of \$5,000 and 10% of the food and beverage revenue up to a maximum of \$2,500.

Below are the details of the new group and local catering incentive program totaling \$25,000:

- Dollar amount back per room rather than percentage of overall program, based on a sliding scale to assist in closing business
  - 50-99 actualized total room nights - \$8 back per room night
  - 100-200 actualized total room nights - \$10 back per room night
  - 201-349 actualized total room nights - \$12 back per room night
  - 350+ actualized total room nights - \$14 back per room night
  - Friday/Saturday peak with 50 actualized total rooms night - \$10 back per room
  - Groups cannot have hosted an event in last 18-months and the Marriott must be competing against another city and/or home city
  - Funds to cap at \$5,000 per group
- Dollar amount back per person rather than percentage back of overall program, based on a sliding scale to assist in closing business
  - \$4,000 Food and Beverage Minimum Contracted - \$6 back per person
  - \$6,000 Food and Beverage Minimum Contracted - \$8 back per person
  - \$8,000+ Food and Beverage Minimum Contracted - \$10 back per person
  - Groups cannot have hosted an event in the last 18-months and the Marriott must be competing against another city and/or home city
  - Funds to cap at \$2,500 per local group

This proposed grant agreement is a reinvestment in the tourist sector of the Town's economic development efforts (an allowed use under State law for these hotel occupancy tax funds) which will allow the Marriott to more effectively compete in a recovering, but still very competitive hotel market. This proposed agreement continues the requirement for performance measures to be included in required quarterly reports submitted by the Marriott to the Town. These reports will be important for evaluating the success and impact of this economic development grant on: 1.) maintaining this important Town revenue stream and 2.) growing this revenue stream in a challenging and highly competitive economic environment.

It is important to recognize that, under State law, this is a grant of public dollars for economic development purposes. As such, this agreement also includes "claw back" provisions that, should the Town determine that the Marriott has not spent these grant funds for their intended purpose, the Town can require that those funds be repaid with interest. Additionally, if it is determined that the group business program is not achieving its objective, the Staff will notify both the hotel's management and the Council to take steps to address its performance or recommend the program not be renewed upon expiration of the grant agreement, although this has not been the case to date. The Town receives 7% of the 13% hotel/motel occupancy tax allowed by State law.

The FY 19-20 budget was reduced from \$816,700 to \$349,723 due to the closure of the hotel and Deloitte facilities in April because of the COVID-19 pandemic. FY 20-21 contains an estimated receipt of \$378K of which \$350K is likely to be from the Marriott. This represents approximately 97% of the Visitors Association Fund and is derived primarily from the Town's only hotel, the Marriott Westlake. The remaining estimated \$28K is received from Deloitte University. Of the total \$28K, only 50% is retained by the Town due to an economic development agreement.

In the past, the Town has utilized hotel/motel occupancy tax funds for many important programs including funding costs related to special events such as Arbor Day, Car Show, Community Tree Lighting, as well as the MasterWorks outdoor concert series at Westlake. Additionally, because Westlake has broader statutory authority under State law than most cities to spend hotel/motel occupancy tax funds for any municipal purpose, the Town has used these funds to cover costs of various municipal operational costs.

The Town Council adopted an updated economic development policy in 2016 (Resolution 16-30). This proposed agreement comports to that policy. Further, this economic development agreement fits with the Town's Adopted Strategic Plan Vision Points.

### **RECOMMENDATION**

Recommend adoption of the resolution approving this economic development grant agreement

### **ATTACHMENTS**

Resolution  
Marriott Dallas/Fort Worth Westlake Economic Development Agreement  
Forms 2270 and 1295

**Form TGC 2270**  
**VERIFICATION REQUIRED BY TEXAS GOVERNMENT CODE CHAPTER 2270**

Contract identifier: Economic Development Agreement

Department: Administrative

By signing below, Company hereby verifies the following:

1. Company does not boycott Israel; and
2. Company will not boycott Israel during the term of the contract.

SIGNED BY:

Juan Carlos Calderon

Print Name of Person:  
Signing, Title, and  
Company

Juan Carlos Calderon  
General Manager, Marriott DFW Westlake

Date signed:

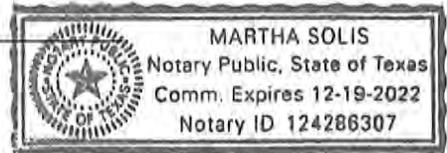
Sep 21<sup>st</sup> 2020

STATE OF TEXAS "Tenant" §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned Notary Public on this day personally appeared Juan Carlos Calderon (Name), on behalf of Marriott Westlake (Company) who being duly sworn, stated under oath that he/she has read the foregoing verification required by Texas Government Code Section 2270.002 and said statements contained therein are true and correct.

SWORN AND SUBSCRIBED TO before me, this 21 day of September, 2020.

Martha Solis  
NOTARY OF PUBLIC,  
FOR THE STATE OF TEXAS



My Commission Expires:  
12/19/2022

Government Code § 2270.002. Provision Required in Contract  
Effective: September 1, 2017

A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:  
(1) does not boycott Israel; and  
(2) will not boycott Israel during the term of the contract.

**The following definitions apply:**  
(1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.  
(2) "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.  
(3) "Governmental entity" means a state agency or political subdivision of this state.

**State law requires verification from a Company for contracts involving goods or services (regardless of the amount) before the City can enter into the contract.**

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.  
Marriott Dallas Fort Worth Westlake  
Westlake, TX United States

Certificate Number:  
2020-670431

Date Filed:  
09/22/2020

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.  
Town of Westlake, Texas

Date Acknowledged:

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.  
FY20-21  
Economic Development Agreement

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.

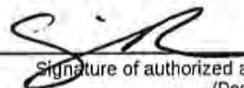
### 6 UNSWORN DECLARATION

My name is Sergio Rosas, and my date of birth is 08/06/1990

My address is 901 W. 14<sup>th</sup> St Houston TX 77008 USA  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Tarrant County, State of Texas, on the 22<sup>nd</sup> day of September, 2020.  
(month) (year)

  
Signature of authorized agent of contracting business entity  
(Declarant)

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Marriott Dallas Fort Worth Westlake  
Westlake, TX United States

Certificate Number:  
2020-670431

Date Filed:  
09/22/2020

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

Town of Westlake, Texas

Date Acknowledged:  
09/22/2020

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

FY20-21  
Economic Development Agreement

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.

**6 UNSWORN DECLARATION**

My name is \_\_\_\_\_, and my date of birth is \_\_\_\_\_.

My address is \_\_\_\_\_ (street) \_\_\_\_\_ (city) \_\_\_\_\_ (state) \_\_\_\_\_ (zip code) \_\_\_\_\_ (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(month) (year)

\_\_\_\_\_  
Signature of authorized agent of contracting business entity  
(Declarant)

**TOWN OF WESTLAKE**

**RESOLUTION 20-29**

**A RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS, APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT WITH THE MARRIOTT DALLAS/FORT WORTH WESTLAKE.**

**WHEREAS**, the Westlake Town Council, in its current Strategic Plan, has identified “Fiscal Responsibility” as a Vision Point as well as “Financial Stewardship” as a Perspective that must be addressed to move the Town towards this Vision Point; and,

**WHEREAS**, the Town of Westlake sales and use taxes are an important revenue source to support its general operations; and,

**WHEREAS**, the Town Council desires to have new and existing businesses that maintain and grow their sales and use tax streams, which in turn, enhances the Town’s financial position and sustainability per its Strategic Plan; and

**WHEREAS**, the Town Council acknowledges that the Town’s Visitors Association Fund is a key component of its financial structure and that an economic development grant to the Marriott Dallas/Fort Worth Westlake Hotel will help solidify and maintain that structure; and,

**WHEREAS**, Town has an updated economic development policy adopted by Resolution 16-30 and that this proposed economic development agreement with the Marriott Dallas/Fort Worth Westlake meets those policy guidelines and meets the requirements of State law for municipalities to grant 380 economic development grants to businesses located in their boundaries; 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 the Town of Westlake, Texas, hereby approves the Economic Development Grant Agreement with the Marriott Dallas/Fort Worth Westlake attached hereto as *Exhibit “A”* and Hotel Support Program as *Exhibit “B”* and further authorizes the Town Manager to execute said agreement on behalf of the Town of Westlake.

**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 28th DAY OF SEPTEMBER 2020.**

ATTEST:

\_\_\_\_\_  
Laura Wheat, Mayor

\_\_\_\_\_  
Todd Wood, Town Secretary

\_\_\_\_\_  
Amanda DeGan, Town Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
L. Stanton Lowry, Town Attorney

**Exhibit “A”**

**ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

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This **ECONOMIC DEVELOPMENT PROGRAM AGREEMENT** (“**Agreement**”) is entered into by and between the **TOWN OF WESTLAKE, TEXAS** (the “**Town**”), a Type-A general law municipal corporation organized under the laws of the State of Texas, and **MARRIOTT HOTEL SERVICES, INC. D/B/A MARRIOTT DALLAS/FORT WORTH WESTLAKE**, (“**Marriott**”), a **Hotel**. The Town and Marriott are collectively referred to as the “**Parties**”.

**RECITALS**

The Town and Marriott hereby agree that the following statements are true and correct and constitute the basis upon which the Town and Marriott have entered into this Agreement:

**A.** Marriott operates a 294 (288 plus 6 suites) room, full-service hotel located at 1301 Solana Blvd. Building #3, Westlake, Texas, (the “**Hotel**”) The Hotel provides a valuable catalyst for visitors, tourism, and economic development to the Town.

**B.** To increase visitors and tourism, and to maximize the economic benefits that the Hotel can bring to the Town, the Town and Marriott desire to enter into this Agreement.

**C.** In accordance with Resolution No. 16-30, adopted by the Town Council on August 22, 2016, the Town has established an economic development incentive policy and program pursuant to which the Town will, on a case-by-case basis, offer economic incentive packages authorized by Chapter 380 of the Texas Local Government Code, Article III, Section 52-a of the Texas Constitution, and other applicable laws, that include monetary loans and grants of public money, as well as the provision of personnel and services of the Town, to businesses and entities that the Town Council determines will promote State or local economic development and stimulate business and commercial activity in the Town in return for verifiable commitments from such businesses or entities to cause specific infrastructure, employment and other public benefits to be made or invested in the Town (the “**380 Program**”).

**D.** The Town Council has determined that by entering into this Agreement, the potential increase of visitors and tourism and economic benefits that will accrue to the Town under the terms and conditions of this Agreement are consistent with the Town’s economic development objectives and the 380 Program and will further the goals for positive economic growth, visitors and tourism in the Town. This Agreement is authorized by Chapter 380 of the Texas Local Government Code and the 380 Program.

**NOW, THEREFORE**, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## AGREEMENT

### 1. INCORPORATION OF RECITALS.

The Town Council has found at a duly-called and legally-noticed public meeting through the adoption of Town Resolution attached hereto as Exhibit “A” and hereby made a part of this Agreement for all purposes, and the Town and Marriott hereby agree, that the recitals set forth above are incorporated herein and true and correct and form the basis upon which the Parties have entered into this Agreement.

### 2. DEFINITIONS.

In addition to terms defined in the body of this Agreement, the following terms shall have the definitions ascribed to them as follows:

**380 Program** has the meaning ascribed to it in Recital C.

**Affiliate** means all entities, incorporated or otherwise, under common control with, controlled by or controlling Marriott. For purposes of this definition, “control” means fifty percent (50%) or more of the ownership determined by either value or vote.

**Program Grants** means the annual allowable economic development grants paid (whether in one or multiple installments) by the Town to Marriott in accordance with this Agreement and as part of the 380 Program.

**Program Source Funds** means an amount of Town funds legally available for inclusion in a Program Grant that is payable to Marriott in a given Program Year, which shall be derived from hotel occupancy taxes generated by the Hotel and received by the Town pursuant to Chapter 351 of the Texas Tax Code, or other legally available funds of the Town.

**Program Year** means the Town’s fiscal year (i.e. October 1 through September 30<sup>th</sup>) in which the Town is obligated pursuant to this Agreement to pay Marriott a Program Grant, beginning with the first fiscal year following the execution of this Agreement.

**Quarterly Report** has the meaning ascribed to it in Section 4.2.

**Records** have the meaning ascribed to it in Section 4.3.

**Term** has the meaning ascribed to it in Section 3.

**Town of Westlake Hotel Support Program** has the meaning ascribed to it in Section 4.1.

### 3. TERM.

This Agreement shall be effective as of the date of execution by the Parties (the “**Effective Date**”) and, unless terminated earlier in accordance with this Agreement, shall expire one (1) year from the Execution Date.

4. **TOWN AND MARRIOTT'S OBLIGATIONS AND COMMITMENTS.**

4.1. **Town of Westlake Hotel Support Program**

The total amount to be granted by the Town to Marriott under the terms of this Agreement for the Town of Westlake Hotel Support Program shall not exceed \$105,000 with said Town of Westlake Hotel Support Program, consisting of the following:

- a. Group Booking Incentives, the requirements for which are attached hereto as Exhibit "C" and hereby made a part of this Agreement for all purposes (the "Hotel Support Agreement") and details the obligations of Marriott to receive, and the Town to grant, the Program Grants from the Program Source Funds during the Program Year related to group bookings at the Hotel. The purpose of this component of the Town's Hotel Support Program shall be to increase new group bookings for the Hotel and to not incur a decrease in overall group meeting business (i.e. all group bookings at the Hotel both of new group business and repeat group business), thus increasing economic development through tourism and business development activity in the Town. The Group Booking Incentives provided by the Town under this Agreement to the Hotel shall not exceed \$25,000 during the term of this Agreement.
- b. Transportation Costs, for which a total sum of \$80,000 shall be provided by the Town under this Agreement to cover a portion of the operating cost for bus transportation services provided by the Marriott for guests of the Hotel. Funds disbursed by the Town under this component of the Town's Hotel Support Program shall be made at the end of each Town fiscal year quarter following submission by Marriott, and acceptance by the Town, of the Quarterly Report for the preceding quarter. The purpose of this component of the Town's Hotel Support Program is to enhance the Marriott's ability to increase room nights and retain existing room nights at the Hotel (as reported in Section 4.2 below), thus increasing economic development through tourism and business development activity in the Town. At all times during the term, the name "Westlake, Texas" shall be visibly reflected and marked on both sides of any shuttle buses or vehicles used by the Hotel.

- 4.2. **Reports and Filings.** On a quarterly basis during the Term, Marriott shall submit a written report to the Town specifically delineating its compliance with this Agreement (the "Quarterly Report"). The Town Manager shall receive the Quarterly Report no later than thirty (30) days from the end of each quarter. Said Quarterly Report will contain, as a minimum, the following performance measure information for the reporting period for the Town to measure the effectiveness of its investment in this grant of public funds to Marriott for this Hotel:

- Total funds paid to date aggregate under this Agreement during the contract term to Marriott regarding group incentives of the Town’s Hotel Support Program described in Section 4.1 of this Agreement
- Total funds spent to date by Marriott for the activities and purposes set out in Section 4.1 of this Agreement
- Increases in average daily occupancy at the Hotel
- Decreases in average daily occupancy at the Hotel
- Number of room nights generated by new group bookings at the Hotel
- Number of room nights generated by repeat group business, bookings at the Hotel, number of bus transportation trips daily to DFW Airport for guests at the Hotel
- The number of new group bookings made for the Hotel during the reporting period and the number of repeat group business bookings made for the Hotel during the reporting period.
- A brief description of marketing/sales efforts made during the reporting period for the Hotel including:
  - the number and type of new group sales prospects identified, targeted, and group sales closed by Marriott sales staff during the reporting period
  - the number and type of new group sales made by contacts from outside the Hotel Marriott
- Average number of bus transportation trips daily to off-premise meeting locations for guests at the Hotel
- Average number of bus transportation trips daily to other off-premise locations (entertainment, shopping, etc.) for guests at the Hotel
- Operating costs incurred by the Hotel during the quarter for shuttle bus transportation services

**4.3. Audits.** Per the requirements of State law and the Town ordinance establishing the Town’s hotel-motel occupancy tax, the Town will have the right throughout the Term to audit any and all financial and business records of Marriott that relate to the performance of this Agreement and any other documents necessary to evaluate Marriott’s compliance with this Agreement or with the goals set forth in this Agreement, including, but not limited to construction documents and invoices (collectively “**Records**”). Marriott shall make all Records available to the Town at the Hotel or at another location in the Town acceptable to both parties following reasonable advance notice by the Town and shall otherwise cooperate fully with the Town during any audit.

**5. DEFAULT, TERMINATION AND FAILURE BY MARRIOTT TO MEET VARIOUS DEADLINES AND COMMITMENTS.**

**5.1. Continuous Operation.** Following the Completion Date, if Marriott fails to continuously operate a full-service hotel at 1301 Solana Blvd. Building #3, Westlake, Texas, 76262, the Town shall have the right to terminate this Agreement

by providing written notice to Marriott without further obligation to Marriott hereunder.

- 5.2. Failure to Pay Town Taxes or Fees.** An event of default shall occur under this Agreement if any legally-imposed Town taxes or fees owed on, or generated by, the hotel become delinquent and Marriott or the Affiliate does not either pay such taxes or follow the legal procedures for protest and/or contest of any such taxes. In this event, the Town shall notify Marriott in writing and Marriott shall have sixty (60) calendar days to cure such default. If the default has not been fully cured by such time, the Town shall have the right to terminate this Agreement immediately by providing written notice to Marriott and shall have all other rights and remedies that may be available to it under the law or in equity.
- 5.3 Violations of Town Code, State or Federal Law.** An event of default shall occur under this Agreement if any written citation is issued to Marriott or an Affiliate due to the occurrence of a violation of a material provision of the Town Code at the Hotel (including, without limitation, any violation of the Town's Building or Fire Codes and any other Town Code violations related to the environmental condition of the Hotel; or to matters concerning the public health, safety or welfare) and such citation is not paid or the recipient of such citation does not properly follow the legal procedures for protest and/or contest of any such citation. An event of default shall occur under this Agreement if the Town is notified by a governmental agency or unit with appropriate jurisdiction that Marriott or an Affiliate, or any successor in interest thereto, any third party with access to the Hotel pursuant to the express or implied permission of Marriott or an Affiliate, or any a successor in interest thereto, is in violation of any material state or federal law, rule or regulation on account of the Hotel, improvements on the Hotel or any operations thereon (including, without limitation, any violations related to the environmental condition of the Hotel; the environmental condition other land or waters which is attributable to operations on the Hotel; or to matters concerning the public health, safety or welfare). Upon the occurrence of such default, the Town shall notify Marriott in writing and Marriott shall have (i) thirty (30) calendar days to cure such default or (ii) if Marriott has diligently pursued cure of the default but such default is not reasonably curable within thirty (30) calendar days, then such amount of time that the Town reasonably agrees is necessary to cure such default. If the default has not been fully cured by such time, the Town shall have the right to terminate this Agreement immediately by providing written notice to Marriott and shall have all other rights and remedies that may be available to under the law or in equity.
- 5.4. Unauthorized Use of Funds and Requirement for Repayment to Town.** If, during an audit by the Town under the provisions of this Agreement, the Town determines that the proceeds of this grant have not been utilized by Marriott for the purposes outlined in this Agreement, Marriott will be given thirty (30) calendar days to cure (following written notice from the Town) and, if Marriott fails to cure per the written notice from the Town, Marriott shall immediately remit to the Town the entire amount under this Agreement paid by the Town to Marriott during the reporting period during which the Town has identified that Marriott was not in compliance

with the terms of this Agreement. If said amount is not remitted to the Town within 30 calendar days from the end of the cure period, that amount demanded for repayment to the Town plus six (6) percent simple interest on the repayment amount shall be due, in full, to the Town. For the purposes of this Section, **Simple Interest**” is defined as a rate of interest applied to the aggregate amount of the Program Grants paid by the Town to Marriott during the reporting period in which Marriott was in violation of this Agreement.

**5.5. Failure to Submit Reports.** Without limiting the application of Section 5.6, if Marriott fails to submit any report required by and in accordance with Section 4.2, the Town’s obligation to pay any Program Grants at the time, if any, shall be suspended until Marriott has provided and is current on all reports.

**5.6. General Breach.** Unless stated elsewhere in this Agreement, Marriott shall be in default under this Agreement if Marriott breaches any term or condition of this Agreement. In the event that such breach remains uncured after thirty (30) calendar days following receipt of written notice from the Town referencing this Agreement (or, if Marriott has diligently and continuously attempted to cure following receipt of such written notice but reasonably requires more than thirty (30) calendar days to cure, then such additional amount of time as is reasonably necessary to effect cure, as determined by both parties mutually and in good faith), the Town shall have the right to terminate this Agreement immediately by providing written notice to Marriott.

**6. NO INDEPENDENT CONTRACTOR OR AGENCY RELATIONSHIP.**

It is expressly understood and agreed that Marriott shall not operate as an independent contractor or as an agent, representative or employee of the Town. Marriott shall have the exclusive right to control all details and day-to-day operations relative to the Hotel Support Program and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees and invitees. Marriott acknowledges that the doctrine of *respondent superior* will not apply as between the Town and Marriott, its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. Marriott further agrees that nothing in this Agreement will be construed as the creation of a partnership or joint enterprise between the Town and Marriott.

**7. INDEMNIFICATION.**

***MARRIOTT, AT NO COST OR LIABILITY TO THE TOWN, AGREES TO DEFEND, INDEMNIFY AND HOLD THE TOWN, ITS OFFICERS, AGENTS, ATTORNEYS, SERVANTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO MARRIOTT’ BUSINESS AND ANY RESULTING LOST PROFITS) AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY***

**RELATE TO, ARISE OUT OF OR BE OCCASIONED BY (i) MARRIOTT' BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT; OR (ii) ANY ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF MARRIOTT, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS (OTHER THAN THE TOWN, OR ITS EMPLOYEES, OFFICERS, AGENTS, ASSOCIATES, CONTRACTORS OR SUBCONTRACTS), OR SUBCONTRACTORS DUE OR RELATED TO OR ARISING FROM OPERATION AND CONDUCT OF THE HOTEL SUPPORT PROGRAM OR OTHERWISE TO THE PERFORMANCE OR OBLIGATIONS OF THIS AGREEMENT.**

**8. NOTICES.**

All written notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid, or by hand delivery:

**Town:**

Town of Westlake  
Attn: Town Manager  
1500 Solana Blvd, Bldg. 7, Suite 7200  
Westlake, Texas 76262

**Marriott:**

Marriott Dallas/Fort Worth Westlake  
Attn: General Manager  
1301 Solana Blvd, Bldg. #3  
Westlake, Texas 76262

**With Copies to (which shall not constitute notice):**

Boyle & Lowry, L.L.P.  
Attn: L. Stanton Lowry  
4201 Wingren Dr., Suite 108  
Irving, Texas 75062

**9. ASSIGNMENT AND SUCCESSORS.**

Marriott may at any time assign, transfer or otherwise convey any of its rights or obligations under this Agreement to an Affiliate without the approval of the Town so long as Marriott, the Affiliate and the Town first execute an agreement approved by the Town Council of the Town of Westlake under which the Affiliate agrees to assume and be bound by all covenants and obligations of Marriott under this Agreement. Otherwise, Marriott may not assign, transfer or otherwise convey any of its rights or obligations under this Agreement to any other person or entity without the prior consent of the Town Council, conditioned on (i) the prior approval of the assignee or successor and a finding by the Town Council that the proposed assignee or successor is financially capable of meeting the terms and conditions of this Agreement and (ii) prior execution by the proposed assignee or successor of a written agreement with the Town under which the proposed assignee or successor agrees to assume and be bound by all covenants and obligations of Marriott under this Agreement. Any attempted assignment without the Town Council’s prior consent shall constitute a breach and be grounds for termination of this Agreement and following receipt of written notice from the Town to Marriott. Any lawful assignee or successor in interest of Marriott of all rights under this Agreement shall be deemed “Marriott” for all purposes under this Agreement.

**10. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.**

This Agreement will be subject to all applicable Federal, State and local laws, ordinances, rules and regulations, including, but not limited to, all provisions of the Town’s codes and ordinances, as amended.

**11. GOVERNMENTAL POWERS.**

It is understood that by execution of this Agreement, the Town does not waive or surrender any of its governmental powers or immunities that are outside of the terms, obligations, and conditions of this Agreement.

**12. NO WAIVER.**

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party’s right to insist upon appropriate performance or to assert any such right on any future occasion.

**13. VENUE AND JURISDICTION.**

If any action, whether real or asserted, at law or in equity, arises based on any provision of this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas – Fort Worth Division. This Agreement shall be construed in accordance with the laws of the State of Texas.

**14. NO THIRD-PARTY RIGHTS.**

The provisions and conditions of this Agreement are solely for the benefit of the Town and Marriott, and any lawful assign or successor of Marriott, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

**15. FORCE MAJEURE.**

It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, or other circumstances which are reasonably beyond the control or knowledge of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such requirement shall be extended for a period of time equal to the period such party was delayed. Notwithstanding anything to the contrary herein, it is specifically understood and agreed that Marriott' failure to obtain adequate financing to complete the Required Improvements by the Completion Deadline shall not be deemed to be an event of force majeure and that this Section 15 shall not operate to extend the Completion Deadline in such an event.

**16. INTERPRETATION.**

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

**17. SEVERABILITY CLAUSE.**

It is hereby declared to be the intention of the Parties that sections, paragraphs, clauses and phrases of this Agreement are severable, and if any phrase, clause, sentence, paragraph or section of this Agreement shall be declared unconstitutional or illegal by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or illegality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Agreement since the same would have been executed by the Parties without the incorporation in this Agreement of any such unconstitutional phrase, clause, sentence, paragraph or section. It is the intent of the Parties to provide the economic incentives contained in this Agreement by all lawful means.

**18. CAPTIONS.**

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

**19. ENTIRETY OF AGREEMENT.**

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the Town and Marriott, and any lawful assign and successor of Marriott, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. Notwithstanding anything to the contrary herein, this Agreement shall not be amended unless executed in writing by both parties and approved by the Town Council of the Town in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

**20. COUNTERPARTS.**

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

**EXECUTED** as of the last date indicated below:

**Town of Westlake:**

**Marriott Dallas/Fort Worth Westlake**

By: \_\_\_\_\_  
Amanda DeGan, Town Manager

By: \_\_\_\_\_  
Juan Calderon, General Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

By: \_\_\_\_\_  
L. Stanton Lowry, Town Attorney

## Exhibit “B”

### TOWN OF WESTLAKE HOTEL SUPPORT PROGRAM

#### **Description:**

A cooperative marketing program designed to assist the Marriott in securing group and convention business. The groups can be new business or groups that have previously met at the hotel but are considering other hotels.

#### **Guidelines:**

Requests for funds shall be submitted at the bid time, not after the group has made their decision to book at the host hotel.

Applications may be submitted for groups/conventions that take place in the current fiscal year (October 1 – September 30) or future years.

- Dollar amount back per room based on a sliding scale to assist in closing business
  - 50-99 actualized total room nights - \$8 back per room night
  - 100-200 actualized total room nights - \$10 back per room night
  - 201-349 actualized total room nights - \$12 back per room night
  - 350+ actualized total room nights - \$14 back per room night
  - Friday/Saturday peak with 50 actualized total rooms night - \$10 back per room
  - Groups cannot have hosted event in last 18-months and the Marriott must be competing against another city and/or home city
  - Funds to be capped at \$5,000 per group
  
- Dollar amount back per person based on a sliding scale to assist in closing business
  - \$4,000 Food and Beverage Minimum Contracted - \$6 back per person
  - \$6,000 Food and Beverage Minimum Contracted - \$8 back per person
  - \$8,000+ Food and Beverage Minimum Contracted - \$10 back per person
  - Groups cannot have hosted an event in the last 18-months and the Marriott must be competing against another city and/or home city
  - Funds to remain capped at \$2,500 per local group
  
- The Town of Westlake shall receive sponsor recognition in all correspondence and at the meeting/convention in an appropriate manner.
- Upon completion of the event or meeting, a completed Post Meeting Summary is required prior to the release of full financial assistance. The report will be used to evaluate the effectiveness of the Town of Westlake Funds participation, as well as review future participation.
- Annually, the Marriott will generate a Town of Westlake Funds report to the Town Manager, or his designee, showing the dollars expended and the direct room nights generated via this important resource.

**Procedures:**

The Application shall include the following information before it will be reviewed:

- Hotel Information: Date of Application, Name of Host Hotel Sales Manager and Phone Number.
- Group Information: Group Name, Contact Name, Address, Phone Number, Program Dates, Estimated Room Nights, Estimated Room Night Revenue, Estimated Catering Revenue, Estimated Outlet Revenue.
- Miscellaneous Information: Additional information pertinent to the group.
- Signatures: The Application shall be signed by the host hotel Sales Manager and Director of Sales prior to it being submitted for approval. The Application shall be approved by the Town of Westlake within ten days providing that all of the requested information is received.

Once the Application has been approved, the signed application will be sent back to the requesting Sales Manager at the host hotel.

The host hotel shall provide the Town of Westlake with a copy of the contract at the time it is signed by the group. Funds shall not be available if this information is not received at least ten days prior to the group/convention. The Town of Westlake may choose to send a welcome letter to the group and offer to provide community brochures or other information to the group/convention attendees.

Since funds are reserved for every Application that is approved, the host hotel shall inform the Town of Westlake with written authorization to release the funds should a group choose another destination.

Submit Application and Correspondence to:  
The Town of Westlake  
Attn: Ginger Awtry, Administrative Services Director  
1500 Solana Blvd., Bldg. 7, Suite 7200  
Westlake, TX 76262  
817 490 5712 Phone  
817 430 1812 Fax

**Disbursement of Funds:**

At the time of invoice, the host hotel shall submit the following information:

1. A computerized report documenting the actual room nights booked by the group and verification of the actual room night revenue. The disbursement of funds may be reduced based on the program guidelines if the group generated less room night revenue than was originally stated on the Application.
2. Samples of the Town of Westlake's sponsor recognition.

# Westlake Town Council

## TYPE OF ACTION

Regular Meeting - Consent



## Westlake Town Council Meeting Monday, September 28, 2020

**TOPIC:** Consideration of a Resolution Appointing and Reappointing Board Members to the Westlake Academy Foundation.

**STAFF CONTACT:** Todd Wood, Town Secretary

### Strategic Alignment

<u>Vision, Value, Mission</u>	<u>Perspective</u>	<u>Strategic Theme &amp; Results</u>	<u>Outcome Objective</u>
Informed & Engaged Citizens / Sense of Community	Municipal & Academic Operations	High Quality Planning, Design & Development - We are a desirable well planned, high-quality community that is distinguished by exemplary design standards.	Encourage Westlake's Unique Sense of Place
<u>Strategic Initiative</u>			
Outside the Scope of Identified Strategic Initiatives			

**Time Line - Start Date:** September 28, 2020      **Completion Date:** June 30, 2021

**Funding Amount:** 0.00      **Status -**  Not Funded      **Source -** N/A

### EXECUTIVE SUMMARY (INCLUDING APPLICABLE ORGANIZATIONAL HISTORY)

The Westlake Academy Foundation currently has four (4) Directors with expiring terms, and each Director has communicated their desire for a three-year reappointment. In addition, two (2) applications have been received indicating interest to serve on the WAF Board of Directors. Upon approval, these applicants would assume unexpired vacancies to ensure that terms remain evenly staggered. Current Directors requiring reappointment are listed in the Resolution with terms expiring in 2023. New applicants are shown with terms expiring in 2021 and 2022.

### RECOMMENDATION

Staff recommends approval of the Resolution.

### ATTACHMENTS

WAF Board Applications  
Resolution



# APPLICATION FOR

# APPOINTMENT *This application and its contents is*

*a Public Record*

Town of Westlake \* 3 Village Circle, Suite 202 \* Westlake Tx 76262

Tel: (817) 430-0941 \* Fax (817) 430-1812

www.westlake-tx.org Email: townhall@westlake-tx.org

## Position Sought (please indicate 1st, 2nd and 3rd choice):

Economic Development Corporation Historical Preservation Society Planning and Zoning

Commission Texas Student Housing Authority Tree City USA Advisory Committee Public Art

Society of Westlake Westlake Academy Foundation Board Other:

## Applicant Information

Applicant's Name: Lindsay McGrath

Address: 5925 Stagecoach Cir

City, State, Zip: Westlake, TX 76262

How Long Have You Lived At This Address? 14 months

Email Address: Lindsay.mcgrath5@gmail.com

Home Phone # : Fax # :

Work Phone # : Cell # : 310-889-4019

**Occupation, Experience/Degrees held:** BA Cinema Television from The University of Southern California, Advertising Executive 2000-2009, working at Publicis, Doremus (Omnicom Agency), and McCann Erickson Relationship Marketing (MRM).

**Why do you want to serve on this committee?** I love and believe in the mission of Westlake Academy. Having been in the administration at a private school, I am well aware of the financial resources required to ensure our students are provided the exceptional educational experience, which is not possible without the significant support through donations. Being on this committee, I will be able to contribute my experience as well as work with the existing members to help continue the generous support of our community and ensure the exceptional education at WA is possible.

**Do you have any political conflicts of interest?** No.

**Do you have any related experience?** Most recently, I served as the Director of Development at Buckner Fanning School at Mission Springs, leading the marketing, fundraising and community engagement efforts for the school.

**What do you feel you have to offer this committee?** I feel my experience in advertising as well as being part of a school administration focused on both the marketing and fundraising for the school, are the ideal

skill set for this role. I am excited at the opportunity to bring my experience and learnings to this role as well as to have the chance to work with such an exceptional group of people with different areas of experience and expertise.

Signature of Applicant:



Dated: September 18, 2020

**Office Use Only**

Received By: Date:

*Application for Appointment 04/2010*



# APPLICATION FOR APPOINTMENT

This application and its contents is a Public Record

Town of Westlake \* 3 Village Circle, Suite 202 \* Westlake Tx 76262

Tel: (817) 430-0941 \* Fax (817) 430-1812

www.westlake-tx.org

Email: townhall@westlake-tx.org

## Position Sought (please indicate 1st, 2nd and 3rd choice):

- |   |  |
|---|--|
| <input type="checkbox"/> Economic Development Corporation             | <input type="checkbox"/> Historical Preservation Society |
| <input type="checkbox"/> Planning and Zoning Commission               | <input type="checkbox"/> Texas Student Housing Authority |
| <input type="checkbox"/> Tree City USA Advisory Committee             | <input type="checkbox"/> Public Art Society of Westlake  |
| <input checked="" type="checkbox"/> Westlake Academy Foundation Board | <input type="checkbox"/> Other: _____                    |

## Applicant Information

Applicant's Name: ROBERT ANDERSON  
 Address: 1802 COPPERFIELD CT  
 City, State, Zip: WESTLAKE TX 76262  
 How Long Have You Lived At This Address? 10 YEARS  
 Email Address: ROB.ANDERSON@KIEWIT.COM  
 Home Phone #: 817-742-1093 Fax #: \_\_\_\_\_  
 Work Phone #: \_\_\_\_\_ Cell #: 817-733-6123

Occupation, Experience/Degrees held: - VICE PRESIDENT, KIEWIT INFRASTRUCTURE  
- B.S. CIVIL ENGINEERING

Why do you want to serve on this committee? TO BOLSTER OUR FLOOD RAISING  
ACTIVITIES FURTHER SUPPORTING WESTLAKE ACADEMY

Do you have any political conflicts of interest? NONE

Do you have any related experience? - METROPORT MEALS ON WHEELS BOARD  
- GLENWYCK HOA PRESIDENT

What do you feel you have to offer this committee? ENERGY, TIME AND DEDICATION  
TO BUILD UPON THE FOUNDATION'S SUCCESS, ALSO A FRESH  
PERSPECTIVE

Signature of Applicant:

Dated: 8/25/2020

## Office Use Only

Received By: \_\_\_\_\_ Date: \_\_\_\_\_

**TOWN OF WESTLAKE**

**RESOLUTION NO. 20-30**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS, APPOINTING AND REAPPOINTING MEMBERS TO THE WESTLAKE ACADEMY FOUNDATION BOARD.**

**WHEREAS**, vacancies currently exist on the Westlake Academy Foundation Board; and,

**WHEREAS**, the Town Council conducts annual board appointments and reappointments; and,

**WHEREAS**, the Town Council has received applications for consideration of appointment or reappointment; 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 following individuals are hereby appointed or reappointed to the Westlake Academy Foundation Board of Directors:

As a result of the appointments or reappointments heretofore stated, the *Westlake Academy Foundation* is represented by the following:

	<u>Term Expiration</u>
Leah Rennhack	June 2021
Wendy Greenwood	June 2021
Laura Lockett	June 2021
Lindsay McGrath – new applicant	June 2021
<b>Vacant</b>	June 2021
Deborah Kraska	June 2022
Meghan Q. Dorr	June 2022
Ahu Sieg	June 2022
Robert Anderson – new applicant	June 2022
<b>Vacant</b>	June 2022

	<u>Term Expiration</u>
Sean Shope	June 2023
Michael Colby	June 2023
Christine Ross	June 2023
<b>Vacant</b>	June 2023
<b>Vacant</b>	June 2023

**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 28<sup>th</sup> DAY OF SEPTEMBER 2020.**

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Laura Wheat, Mayor

ATTEST:

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Todd Wood, Town Secretary

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Amanda DeGan, Town Manager

APPROVED AS TO FORM:

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L. Stanton Lowry, Town Attorney

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# Town Council

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Item #5 – Discussion  
Items

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## **DISCUSSION ITEMS**

- a. Presentation and discussion regarding the Northwest Metroport Chamber of Commerce program and related activities.

# Westlake Town Council



## TYPE OF ACTION

Regular Meeting - Consent

## Westlake Town Council Meeting Monday, September 28, 2020

**TOPIC:** Presentation and discussion regarding the Northwest Metroport Chamber of Commerce program and related activities.

**STAFF CONTACT:** Jon Sasser, Communications Manager with Ms. Sally Aldridge, NWMC President and CEO

### Strategic Alignment

<u>Vision, Value, Mission</u>	<u>Perspective</u>	<u>Strategic Theme &amp; Results</u>	<u>Outcome Objective</u>
Informed & Engaged Citizens / Sense of Community	Citizen, Student & Stakeholder	Exemplary Service & Governance - We set the standard by delivering unparalleled municipal and educational services at the lowest cost.	Preserve Desirability & Quality of Life
<b><u>Strategic Initiative</u></b>			
Outside the Scope of Identified Strategic Initiatives			

**Time Line - Start Date:** June 10, 2019      **Completion Date:** September 28, 2020

**Funding Amount:** N/A      **Status -**  Not Funded      **Source -** N/A

### EXECUTIVE SUMMARY (INCLUDING APPLICABLE ORGANIZATIONAL HISTORY)

Northwest Metroport Chamber of Commerce President & CEO Sally Aldridge will provide a presentation to the Mayor and Town Council regarding the program of activities of the Chamber including the joint economic development marketing and communications efforts that have been underway in recent years with the Chamber's member cities.

### RECOMMENDATION

Listen to the presentation from Northwest Metroport Chamber President & CEO, ask any questions

Council may have, and further discuss, if necessary, the Chamber's program and services presented as it relates to the Town of Westlake and the greater area covering the seven-city membership.

**ATTACHMENTS**

None

# Westlake Town Council



## TYPE OF ACTION

Regular Meeting - Action Item

## Westlake Town Council Meeting Monday, September 28, 2020

**TOPIC:** Consideration of an Ordinance Approving a Negotiated Settlement Between the Atmos Cities Steering Committee (“ACSC”) and Atmos Energy Corporation, Mid-Tex Division (“Company”) regarding the Company’s 2020 Rate Review Mechanism (RRM) Filings; and Approving a Settlement Agreement with Attached Rate Tariffs and Proof of Revenues and Other Documents Connected to these Rate Proceedings.

**STAFF CONTACT:** Jarrod Greenwood, Assistant Town Manager

### Strategic Alignment

<u>Vision, Value, Mission</u>	<u>Perspective</u>	<u>Strategic Theme &amp; Results</u>	<u>Outcome Objective</u>
Fiscal Responsibility	Municipal & Academic Operations	High Quality Planning, Design & Development - We are a desirable well planned, high-quality community that is distinguished by exemplary design standards.	Increase Transparency, Accessibility & Communications
<b><u>Strategic Initiative</u></b>			
Outside the Scope of Identified Strategic Initiatives			

**Time Line - Start Date:** September 28, 2020

**Completion Date:** September 28, 2020

**Funding Amount:** N/A      **Status -**  Not Funded      **Source -** N/A

### EXECUTIVE SUMMARY (INCLUDING APPLICABLE ORGANIZATIONAL HISTORY)

The City, along with 171 other Mid-Texas cities served by Atmos Energy Corporation, Mid-Tex Division (“Atmos Mid-Tex” or “Company”), is a member of the Atmos Cities Steering Committee (“ACSC”). In 2007, ACSC and Atmos Mid-Tex settled a rate application filed by the

Company pursuant to Section 104.301 of the Texas Utilities Code for an interim rate adjustment commonly referred to as a GRIP filing (arising out of the Gas Reliability Infrastructure Program legislation). That settlement created a substitute rate review process, referred to as Rate Review Mechanism (“RRM”), as a substitute for future filings under the GRIP statute.

Since 2007, there have been several modifications to the original RRM Tariff. The most recent iteration of an RRM Tariff was reflected in an ordinance adopted by ACSC members in 2018. On or about March 31, 2020, the Company filed a rate request pursuant to the RRM Tariff adopted by ACSC members. The Company claimed that its cost-of-service in a test year ending December 31, 2019, entitled it to additional system-wide revenues of \$141.2 million. Application of the standards set forth in ACSC’s RRM Tariff required Atmos to reduce its request to \$136.3 million, \$98.7 million of which would be applicable to ACSC members. ACSC’s consultants concluded that the system-wide deficiency under the RRM regime should be \$111.5 million instead of the claimed \$136.3 million. The amount of the \$111.5 million deficiency applicable to ACSC members would be \$80.8 million.

After the Company reviewed ACSC’s consultants’ report, ACSC’s Executive Committee and the Company negotiated a settlement whereby the Company would receive an increase of \$90 million from ACSC Cities, but with a two-month delay in the Effective Date until December 1, 2020. This should save ratepayers approximately \$9 million such that the case is functionally equivalent to ACSC’s consultants’ recommendation of \$80.8 million.

The Executive Committee recommends a settlement at \$90 million. The Effective Date for new rates is December 1, 2020. ACSC members should take action approving the Resolution before November 1, 2020.

Most municipalities have retained original jurisdiction over gas utility rates and services within their corporate limits. The Atmos Cities Steering Committee (“ACSC”) is composed of municipalities, including Westlake, in the service area of Atmos Energy Corporation, Mid-Tex Division regardless of whether original jurisdiction has been retained. Atmos is a monopoly public utility provider of natural gas. Because Atmos has no competitors, regulation of the rates it charges its customers in the only way that cities can ensure that natural gas rates are equitable and competitive. Working as a coalition, via the Atmos Cities Steering Committee, to review the rates charged by Atmos allows cities to accomplish more collectively than each city could do acting alone. Cities have more than 100 years’ experience in regulating natural gas rates in Texas. See attached Staff Report for background on this Atmos rate case.

## **RECOMMENDATION**

Recommend adoption of the proposed ordinance adopting a new RRM tariff for the Company.

## **ATTACHMENTS**

1. Staff Report
2. Proposed rate ordinance
3. Attachments to proposed rate ordinance
4. 2020 RRM Filing Update

August 17, 2020

## **STAFF REPORT**

### **BACKGROUND AND SUMMARY**

The City, along with 171 other Mid-Texas cities served by Atmos Energy Corporation, Mid-Tex Division (“Atmos Mid-Tex” or “Company”), is a member of the Atmos Cities Steering Committee (“ACSC”). In 2007, ACSC and Atmos Mid-Tex settled a rate application filed by the Company pursuant to Section 104.301 of the Texas Utilities Code for an interim rate adjustment commonly referred to as a GRIP filing (arising out of the Gas Reliability Infrastructure Program legislation). That settlement created a substitute rate review process, referred to as Rate Review Mechanism (“RRM”), as a substitute for future filings under the GRIP statute.

Since 2007, there have been several modifications to the original RRM Tariff. The most recent iteration of an RRM Tariff was reflected in an ordinance adopted by ACSC members in 2018. On or about March 31, 2020, the Company filed a rate request pursuant to the RRM Tariff adopted by ACSC members. The Company claimed that its cost-of-service in a test year ending December 31, 2019, entitled it to additional system-wide revenues of \$141.2 million. Application of the standards set forth in ACSC’s RRM Tariff required Atmos to reduce its request to \$136.3 million, \$98.7 million of which would be applicable to ACSC members. ACSC’s consultants concluded that the system-wide deficiency under the RRM regime should be \$111.5 million instead of the claimed \$136.3 million. The amount of the \$111.5 million deficiency applicable to ACSC members would be \$80.8 million.

After the Company reviewed ACSC’s consultants’ report, ACSC’s Executive Committee and the Company negotiated a settlement whereby the Company would receive an increase of \$90 million from ACSC Cities, but with a two-month delay in the Effective Date until December 1,

2020. This should save ratepayers approximately \$9 million such that the case is functionally equivalent to ACSC's consultants' recommendation of \$80.8 million.

The Executive Committee recommends a settlement at \$90 million. The Effective Date for new rates is December 1, 2020. ACSC members should take action approving the Resolution before November 1, 2020.

### **PROOF OF REVENUES**

Atmos generated proof that the rate tariffs attached to the Resolution will generate \$90 million in additional revenues from ACSC Cities. That proof is attached as Attachment 1 to this Staff Report. ACSC consultants have agreed that Atmos' Proof of Revenues is accurate.

### **BILL IMPACT**

The impact of the settlement on average residential rates is an increase of \$5.15 on a monthly basis, or 9.9 percent. The increase for average commercial usage will be \$15.48 or 6.56 percent. A bill impact comparison is attached as Attachment 2.

### **SUMMARY OF ACSC'S OBJECTION TO THE UTILITIES CODE SECTION 104.301 GRIP PROCESS**

ACSC strongly opposed the GRIP process because it constitutes piecemeal ratemaking by ignoring declining expenses and increasing revenues while rewarding the Company for increasing capital investment on an annual basis. The GRIP process does not allow any review of the reasonableness of capital investment and does not allow cities to participate in the Railroad Commission's review of annual GRIP filings or allow recovery of Cities' rate case expenses. The Railroad Commission undertakes a mere administrative review of GRIP filings (instead of a full hearing) and rate increases go into effect without any material adjustments. In ACSC's view, the GRIP process unfairly raises customers' rates without any regulatory oversight. In contrast, the RRM process has allowed for a more comprehensive rate review and annual evaluation of expenses and revenues, as well as capital investment.

## **RRM SAVINGS OVER GRIP**

While residents outside municipal limits must pay rates governed by GRIP, there are some cities served by Atmos Mid-Tex that chose to remain under GRIP rather than adopt RRM. Additionally, the City of Dallas adopted a variation of RRM which is referred to as DARR. When new rates become effective on December 1, 2020, ACSC residents will maintain a slight economic monthly advantage over GRIP and DARR rates. See Attachment 3.

## **EXPLANATION OF “BE IT RESOLVED” PARAGRAPHS:**

1. This section approves all findings in the Resolution.
2. This section adopts the RRM rate tariffs and finds the adoption of the new rates to be just, reasonable, and in the public interest.
3. This section makes it clear that Cities may challenge future costs associated with gas leaks like the explosion in North Dallas or the evacuation in Georgetown.
4. This section finds that existing rates are unreasonable. Such finding is a necessary predicate to establishment of new rates. The new tariffs will permit Atmos Mid-Tex to recover an additional \$90 million from ACSC Cities.
5. This section approves an exhibit that establishes a benchmark for pensions and retiree medical benefits to be used in future rate cases or RRM filings.
6. This section approves an exhibit to be used in future rate cases or RRM filings regarding recovery of regulatory liabilities, such as excess deferred income taxes.
7. This section requires the Company to reimburse the City for expenses associated with review of the RRM filing, settlement discussions, and adoption of the Resolution approving new rate tariffs.
8. This section repeals any resolution or ordinance that is inconsistent with the Resolution.

9. This section finds that the meeting was conducted in compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.
10. This section is a savings clause, which provides that if any section is later found to be unconstitutional or invalid, that finding shall not affect, impair, or invalidate the remaining provisions of this Resolution. This section further directs that the remaining provisions of the Resolution are to be interpreted as if the offending section or clause never existed.
11. This section provides for an effective date upon passage. December 1, 2020 represents a two month delay in the Effective Date established by the RRM tariff.
12. This section directs that a copy of the signed Resolution be sent to a representative of the Company and legal counsel for ACSC.

## **CONCLUSION**

The Legislature's GRIP process allowed gas utilities to receive annual rate increases associated with capital investments. The RRM process has proven to result in a more efficient and less costly (both from a consumer rate impact perspective and from a ratemaking perspective) than the GRIP process. Given Atmos Mid-Tex's claim that its historic cost of service should entitle it to recover \$141.2 million in additional system-wide revenues, the RRM settlement at \$90 million for ACSC Cities reflects substantial savings to ACSC Cities. ACSC's consultants produced a report indicating that Atmos had justified increased revenues for ACSC Cities of at least \$81 million. Settlement at \$90 million (equivalent to \$81 million with a two-month delay) is fair and reasonable. The ACSC Executive Committee consisting of city employees of 18 ACSC members urges all ACSC members to pass the Resolution before November 1, 2020. New rates become effective December 1, 2020.

**Attachment 1 to  
Staff Report**

**2020 RRM**

**Proof of Revenues**

ATMOS ENERGY CORP., MID-TEX DIVISION  
 RRM CITIES RATE REVIEW MECHANISM  
 PROOF OF REVENUES - RRM CITIES  
 TEST YEAR ENDING DECEMBER 31, 2019

Line No.	Customer Class	Current	Proposed	Bills	Ccf/MmBtu	Current Revenues	Proposed Revenues	Increase
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
<b>Residential</b>								
1	Customer Charge	\$ 19.55	\$ 20.25	13,644,834		\$ 266,756,505	\$ 276,307,889	
2	Consumption Charge	0.17423	0.26651		608,491,998	106,017,561	162,169,202	
3	Revenue Related Taxes					26,692,882	31,397,617	
4	Total Class Revenue					\$ 399,466,948	\$ 469,874,708	\$ 70,407,760
<b>Commercial</b>								
5	Customer Charge	\$ 46.50	\$ 54.50	1,115,081		\$ 51,851,267	\$ 60,771,915	
6	Consumption Charge	0.09924	0.11728		398,510,866	39,548,218	46,737,354	
7	Revenue Related Taxes					6,544,757	7,698,315	
8	Total Class Revenue					\$ 97,944,242	\$ 115,207,584	\$ 17,263,342
<b>Industrial &amp; Transportation</b>								
9	Customer Charge	\$ 845.50	\$ 1,014.50	7,272		\$ 6,148,476	\$ 7,377,444	
10	Consumption Charge Tier 1	0.3572	0.4157		7,769,155	2,775,142	3,229,638	
11	Consumption Charge Tier 2	0.2616	0.3044		8,666,094	2,267,050	2,637,959	
12	Consumption Charge Tier 3	0.0561	0.0653		13,696,172	768,355	894,360	
13	Revenue Related Taxes					856,339	1,012,467	
14	Total Class Revenue					\$ 12,815,362	\$ 15,151,868	\$ 2,336,505
<b>Total Excluding Other Revenue</b>								
15						\$ 510,226,552	\$ 600,234,159	\$ 90,007,608
16								
17								
18								
19								
20								
21								
22								
23								
24	<b>Revenue Related Tax Factor</b>		7.1606%					

**Attachment 2  
to 2020 RRM Staff Report**

**Bill Impact**

**ATMOS ENERGY CORP., MID-TEX DIVISION  
AVERAGE BILL COMPARISON - BASE RATES  
TEST YEAR ENDING DECEMBER 31, 2019**

Line No.					Current	Proposed	Change
1	<b>Rate R @ 44.5 Ccf</b>						
2	Customer charge				\$ 19.55		
3	Consumption charge	44.5	CCF	X \$ 0.17423 =	7.75		
4	Rider GCR Part A	44.5	CCF	X \$ 0.17750 =	7.90		
5	Rider GCR Part B	44.5	CCF	X \$ 0.29953 =	13.33		
6	Subtotal				\$ 48.53		
7	Rider FF & Rider TAX			X 0.07161 =	3.48		
8	Total				<u>\$ 52.01</u>		
9							
10	Customer charge					\$ 20.25	
11	Consumption charge	44.5	CCF	X \$ 0.26651 =		11.86	
12	Rider GCR Part A	44.5	CCF	X \$ 0.17750 =		7.90	
13	Rider GCR Part B	44.5	CCF	X \$ 0.29953 =		13.33	
14	Subtotal					\$ 53.34	
15	Rider FF & Rider TAX			X 0.07161 =		3.82	
16	Total					<u>\$ 57.16</u>	\$ 5.15
17							9.90%
18							
19	<b>Rate C @ 357.4 Ccf</b>						
20	Customer charge				\$ 46.50		
21	Consumption charge	357.4	CCF	X \$ 0.09924 =	35.47		
22	Rider GCR Part A	357.4	CCF	X \$ 0.17750 =	63.44		
23	Rider GCR Part B	357.4	CCF	X \$ 0.20954 =	74.89		
24	Subtotal				\$ 220.30		
25	Rider FF & Rider TAX			X 0.07161 =	15.77		
26	Total				<u>\$ 236.07</u>		
27							
28	Customer charge					\$ 54.50	
29	Consumption charge	357.4	CCF	X \$ 0.11728 =		41.91	
30	Rider GCR Part A	357.4	CCF	X \$ 0.17750 =		63.44	
31	Rider GCR Part B	357.4	CCF	X \$ 0.20954 =		74.89	
32	Subtotal					\$ 234.74	
33	Rider FF & Rider TAX			X 0.07161 =		16.81	
34	Total					<u>\$ 251.55</u>	\$ 15.48
35							6.56%



**Attachment 3  
to 2020 RRM Staff Report**

**RRM Monthly Savings Over GRIP and DARR Rates**

**ATMOS ENERGY CORP., MID-TEX DIVISION  
RESIDENTIAL AVERAGE RATE COMPARISON  
TEST YEAR ENDING DECEMBER 31, 2019**

	<b>ACSC Settled</b>	<b>DARR Filing</b>	<b>ATM Filing</b>	<b>Environs Filing</b>
Cust Charge	\$20.25	\$23.75	\$26.40	\$24.60
Monthly Ccf	44.5	44.5	44.5	44.5
Cons Charge	\$0.26651	\$0.19336	\$0.14846	\$0.18653
Average Mo Bill	\$32.11	\$32.35	\$33.01	\$32.90
		<b>-\$0.24</b>	<b>-\$0.90</b>	<b>-\$0.79</b>

## ORDINANCE NO. 915

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS, APPROVING A NEGOTIATED SETTLEMENT BETWEEN THE ATMOS CITIES STEERING COMMITTEE (“ACSC”) AND ATMOS ENERGY CORP., MID-TEX DIVISION REGARDING THE COMPANY’S 2020 RATE REVIEW MECHANISM FILING; DECLARING EXISTING RATES TO BE UNREASONABLE; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT; FINDING THE RATES TO BE SET BY THE ATTACHED SETTLEMENT TARIFFS TO BE JUST AND REASONABLE AND IN THE PUBLIC INTEREST; APPROVING AN ATTACHED EXHIBIT ESTABLISHING A BENCHMARK FOR PENSIONS AND RETIREE MEDICAL BENEFITS; APPROVING AN ATTACHED EXHIBIT REGARDING AMORTIZATION OF REGULATORY LIABILITY; REQUIRING THE COMPANY TO REIMBURSE ACSC’S REASONABLE RATEMAKING EXPENSES; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; ADOPTING A SAVINGS CLAUSE; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND THE ACSC’S LEGAL COUNSEL.**

**WHEREAS**, the Town of Westlake, Texas (“City”) is a gas utility customer of Atmos Energy Corp., Mid-Tex Division (“Atmos Mid-Tex” or “Company”), and a regulatory authority with an interest in the rates, charges, and services of Atmos Mid-Tex; and

**WHEREAS**, the Town is a member of the Atmos Cities Steering Committee (“ACSC”), a coalition of similarly-situated cities served by Atmos Mid-Tex (“ACSC Cities”) that have joined together to facilitate the review of, and response to, natural gas issues affecting rates charged in the Atmos Mid-Tex service area; and

**WHEREAS**, ACSC and the Company worked collaboratively to develop a Rate Review Mechanism (“RRM”) tariff that allows for an expedited rate review process by ACSC Cities as a substitute to the Gas Reliability Infrastructure Program (“GRIP”) process instituted by the Legislature, and that will establish rates for the ACSC Cities based on the system-wide cost of serving the Atmos Mid-Tex Division; and

**WHEREAS**, the current RRM tariff was adopted by the Town in a rate ordinance in 2018; and

**WHEREAS**, on about March 31, 2020, Atmos Mid-Tex filed its 2020 RRM rate request with ACSC Cities based on a test year ending December 31, 2019; and

**WHEREAS**, ACSC coordinated its review of the Atmos Mid-Tex 2020 RRM filing through its Executive Committee, assisted by ACSC’s attorneys and consultants, to resolve issues identified in the Company’s RRM filing; and

**WHEREAS**, the Executive Committee, as well as ACSC's counsel and consultants, recommend that ACSC Cities approve an increase in base rates for Atmos Mid-Tex of \$90 million applicable to ACSC Cities with an Effective Date of December 1, 2020; and

**WHEREAS**, ACSC agrees that Atmos plant-in-service is reasonable; and

**WHEREAS**, with the exception of approved plant-in-service, ACSC is not foreclosed from future reasonableness evaluation of costs associated with incidents related to gas leaks; and

**WHEREAS**, the two month delayed Effective Date from October 1 to December 1 will save ACSC ratepayers approximately \$9 million off new rates imposed by the attached tariffs (Exhibit A), the impact on ratepayers should approximate the reasonable value of the rate filing found by the ACSC Consultants' Report, which was \$81 million; and

**WHEREAS**, the attached tariffs (Exhibit A) implementing new rates are consistent with the recommendation of the ACSC Executive Committee, are agreed to by the Company, and are just, reasonable, and in the public interest; and

**WHEREAS**, the settlement agreement sets a new benchmark for pensions and retiree medical benefits (Exhibit B); and

**WHEREAS**, the settlement agreement establishes an amortization schedule for regulatory liability prepared by Atmos Mid-Tex (Exhibit C); and

**WHEREAS**, the RRM Tariff contemplates reimbursement of ACSC's reasonable expenses associated with RRM applications;

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

**Section 1.** That the findings set forth in this Ordinance are hereby in all things approved.

**Section 2.** That, without prejudice to future litigation of any issue identified by ACSC, the Town Council finds that the settled amount of an increase in revenues of \$90 million for ACSC Cities represents a comprehensive settlement of gas utility rate issues affecting the rates, operations, and services offered by Atmos Mid-Tex within the municipal limits arising from Atmos Mid-Tex's 2020 RRM filing, is in the public interest, and is consistent with the Town's authority under Section 103.001 of the Texas Utilities Code.

**Section 3.** That despite finding Atmos Mid-Tex's plant-in-service to be reasonable, ACSC is not foreclosed in future cases from evaluating the reasonableness of costs associated with incidents involving leaks of natural gas.

**Section 4.** That the existing rates for natural gas service provided by Atmos Mid-Tex are unreasonable. The new tariffs attached hereto and incorporated herein as **Exhibit A**, are just and reasonable, and are designed to allow Atmos Mid-Tex to recover annually an additional \$90 million from customers in ACSC Cities, over the amount allowed under currently approved rates. Such tariffs are hereby adopted.

**Section 5.** That the ratemaking treatment for pensions and retiree medical benefits in Atmos Mid-Tex's next RRM filing shall be as set forth on **Exhibit B**, attached hereto and incorporated herein.

**Section 6.** That subject to any future settlement or decision regarding the balance of Excess Deferred Income Tax to be refunded to ratepayers, the amortization of regulatory liability shall be consistent with the schedule found in **Exhibit C**, attached hereto and incorporated herein.

**Section 7.** That Atmos Mid-Tex shall reimburse the reasonable ratemaking expenses of the ACSC in processing the Company's 2020 RRM filing.

**Section 8.** That to the extent any resolution or ordinance previously adopted by the Council is inconsistent with this Ordinance, it is hereby repealed.

**Section 9.** That the meeting at which this Ordinance was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

**Section 10.** That if any one or more sections or clauses of this Ordinance is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance, and the remaining provisions of the Ordinance shall be interpreted as if the offending section or clause never existed.

**Section 11.** That consistent with the Town Ordinance that established the RRM process, this Ordinance shall become effective from and after its passage with rates authorized by attached tariffs to be effective for bills rendered on or after December 1, 2020.

**Section 12.** That a copy of this Ordinance shall be sent to Atmos Mid-Tex, care of Chris Felan, Vice President of Rates and Regulatory Affairs Mid-Tex Division, Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1862, Dallas, Texas 75240, and to Geoffrey Gay, General Counsel to ACSC, at Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701.

**PASSED AND APPROVED ON THIS 28<sup>TH</sup> DAY OF SEPTEMBER 2020.**

ATTEST:

\_\_\_\_\_  
Laura Wheat, Mayor

\_\_\_\_\_  
Todd Wood, Town Secretary

\_\_\_\_\_  
Amanda DeGan, Town Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
L. Stanton Lowry, Town Attorney

# **Ordinance 915**

## **Exhibit A**

### **Rate Tariffs Effective December 1, 2020**

<b>RATE SCHEDULE:</b>	<b>R – RESIDENTIAL SALES</b>	
<b>APPLICABLE TO:</b>	<b>ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF</b>	
<b>EFFECTIVE DATE:</b>	<b>Bills Rendered on or after 12/01/2020</b>	<b>PAGE:</b>

**Application**

Applicable to Residential Customers for all natural gas provided at one Point of Delivery and measured through one meter.

**Type of Service**

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

**Monthly Rate**

Customer's monthly bill will be calculated by adding the following Customer and Ccf charges to the amounts due under the riders listed below:

<b>Charge</b>	<b>Amount</b>
Customer Charge per Bill	\$ 20.25 per month
Rider CEE Surcharge	\$ 0.05 per month <sup>1</sup>
<b>Total Customer Charge</b>	<b>\$ 20.30 per month</b>
Commodity Charge – All <u>Ccf</u>	\$0.26651 per Ccf

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Weather Normalization Adjustment: Plus or Minus an amount for weather normalization calculated in accordance with Rider WNA.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

**Agreement**

An Agreement for Gas Service may be required.

**Notice**

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

<sup>1</sup>Reference Rider CEE - Conservation and Energy Efficiency as approved in GUD 10170. Surcharge billing effective July 1, 2020.

<b>RATE SCHEDULE:</b>	<b>C – COMMERCIAL SALES</b>	
<b>APPLICABLE TO:</b>	<b>ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF</b>	
<b>EFFECTIVE DATE:</b>	<b>Bills Rendered on or after 12/01/2020</b>	<b>PAGE:</b>

**Application**

Applicable to Commercial Customers for all natural gas provided at one Point of Delivery and measured through one meter and to Industrial Customers with an average annual usage of less than 30,000 Ccf.

**Type of Service**

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

**Monthly Rate**

Customer's monthly bill will be calculated by adding the following Customer and Ccf charges to the amounts due under the riders listed below:

<b>Charge</b>	<b>Amount</b>
Customer Charge per Bill	\$ 54.50 per month
Rider CEE Surcharge	\$ 0.02 per month <sup>1</sup>
<b>Total Customer Charge</b>	<b>\$ 54.52 per month</b>
Commodity Charge – All Ccf	\$ 0.11728 per Ccf

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Weather Normalization Adjustment: Plus or Minus an amount for weather normalization calculated in accordance with Rider WNA.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

**Agreement**

An Agreement for Gas Service may be required.

**Notice**

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

<sup>1</sup> Reference Rider CEE - Conservation and Energy Efficiency as approved in GUD 10170. Surcharge billing effective July 1, 2020.

<b>RATE SCHEDULE:</b>	<b>I – INDUSTRIAL SALES</b>	
<b>APPLICABLE TO:</b>	<b>ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF</b>	
<b>EFFECTIVE DATE:</b>	<b>Bills Rendered on or after 12/01/2020</b>	<b>PAGE:</b>

**Application**

Applicable to Industrial Customers with a maximum daily usage (MDU) of less than 3,500 MMBtu per day for all natural gas provided at one Point of Delivery and measured through one meter. Service for Industrial Customers with an MDU equal to or greater than 3,500 MMBtu per day will be provided at Company's sole option and will require special contract arrangements between Company and Customer.

**Type of Service**

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

**Monthly Rate**

Customer's monthly bill will be calculated by adding the following Customer and MMBtu charges to the amounts due under the riders listed below:

<b>Charge</b>	<b>Amount</b>
Customer Charge per Meter	\$ 1,014.50 per month
First 0 MMBtu to 1,500 MMBtu	\$ 0.4157 per MMBtu
Next 3,500 MMBtu	\$ 0.3044 per MMBtu
All MMBtu over 5,000 MMBtu	\$ 0.0653 per MMBtu

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

**Curtailement Overpull Fee**

Upon notification by Company of an event of curtailement or interruption of Customer's deliveries, Customer will, for each MMBtu delivered in excess of the stated level of curtailement or interruption, pay Company 200% of the midpoint price for the Katy point listed in *Platts Gas Daily* published for the applicable Gas Day in the table entitled "Daily Price Survey."

**Replacement Index**

In the event the "midpoint" or "common" price for the Katy point listed in *Platts Gas Daily* in the table entitled "Daily Price Survey" is no longer published, Company will calculate the applicable imbalance fees utilizing a daily price index recognized as authoritative by the natural gas industry and most closely approximating the applicable index.

<b>RATE SCHEDULE:</b>	<b>I – INDUSTRIAL SALES</b>	
<b>APPLICABLE TO:</b>	<b>ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF</b>	
<b>EFFECTIVE DATE:</b>	<b>Bills Rendered on or after 12/01/2020</b>	<b>PAGE:</b>

**Agreement**

An Agreement for Gas Service may be required.

**Notice**

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

**Special Conditions**

In order to receive service under Rate I, Customer must have the type of meter required by Company. Customer must pay Company all costs associated with the acquisition and installation of the meter.

<b>RATE SCHEDULE:</b>	<b>T – TRANSPORTATION</b>	
<b>APPLICABLE TO:</b>	<b>ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF</b>	
<b>EFFECTIVE DATE:</b>	<b>Bills Rendered on or after 12/01/2020</b>	<b>PAGE:</b>

**Application**

Applicable, in the event that Company has entered into a Transportation Agreement, to a customer directly connected to the Atmos Energy Corp., Mid-Tex Division Distribution System (Customer) for the transportation of all natural gas supplied by Customer or Customer’s agent at one Point of Delivery for use in Customer’s facility.

**Type of Service**

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

**Monthly Rate**

Customer’s bill will be calculated by adding the following Customer and MMBtu charges to the amounts and quantities due under the riders listed below:

<b>Charge</b>	<b>Amount</b>
Customer Charge per Meter	\$ 1,014.50 per month
First 0 MMBtu to 1,500 MMBtu	\$ 0.4157 per MMBtu
Next 3,500 MMBtu	\$ 0.3044 per MMBtu
All MMBtu over 5,000 MMBtu	\$ 0.0653 per MMBtu

Upstream Transportation Cost Recovery: Plus an amount for upstream transportation costs in accordance with Part (b) of Rider GCR.

Retention Adjustment: Plus a quantity of gas as calculated in accordance with Rider RA.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

**Imbalance Fees**

All fees charged to Customer under this Rate Schedule will be charged based on the quantities determined under the applicable Transportation Agreement and quantities will not be aggregated for any Customer with multiple Transportation Agreements for the purposes of such fees.

**Monthly Imbalance Fees**

Customer shall pay Company the greater of (i) \$0.10 per MMBtu, or (ii) 150% of the difference per MMBtu between the highest and lowest “midpoint” price for the Katy point listed in *Platts Gas Daily* in the table entitled “Daily Price Survey” during such month, for the MMBtu of Customer’s monthly Cumulative Imbalance, as defined in the applicable Transportation Agreement, at the end of each month that exceeds 10% of Customer’s receipt quantities for the month.

<b>RATE SCHEDULE:</b>	<b>T – TRANSPORTATION</b>	
<b>APPLICABLE TO:</b>	<b>ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF</b>	
<b>EFFECTIVE DATE:</b>	<b>Bills Rendered on or after 12/01/2020</b>	<b>PAGE:</b>

**Curtailement Overpull Fee**

Upon notification by Company of an event of curtailment or interruption of Customer's deliveries, Customer will, for each MMBtu delivered in excess of the stated level of curtailment or interruption, pay Company 200% of the midpoint price for the Katy point listed in *Platts Gas Daily* published for the applicable Gas Day in the table entitled "Daily Price Survey."

**Replacement Index**

In the event the "midpoint" or "common" price for the Katy point listed in *Platts Gas Daily* in the table entitled "Daily Price Survey" is no longer published, Company will calculate the applicable imbalance fees utilizing a daily price index recognized as authoritative by the natural gas industry and most closely approximating the applicable index.

**Agreement**

A transportation agreement is required.

**Notice**

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

**Special Conditions**

In order to receive service under Rate T, customer must have the type of meter required by Company. Customer must pay Company all costs associated with the acquisition and installation of the meter.

**MID-TEX DIVISION  
ATMOS ENERGY CORPORATION**

<b>RIDER:</b>	<b>WNA – WEATHER NORMALIZATION ADJUSTMENT</b>	
<b>APPLICABLE TO:</b>	<b>ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF</b>	
<b>EFFECTIVE DATE:</b>	<b>Bills Rendered on or after 12/01/2020</b>	<b>PAGE:</b>

Provisions for Adjustment

The Commodity Charge per Ccf (100 cubic feet) for gas service set forth in any Rate Schedules utilized by the cities of the Mid-Tex Division service area for determining normalized winter period revenues shall be adjusted by an amount hereinafter described, which amount is referred to as the "Weather Normalization Adjustment." The Weather Normalization Adjustment shall apply to all temperature sensitive residential and commercial bills based on meters read during the revenue months of November through April. The five regional weather stations are Abilene, Austin, Dallas, Waco, and Wichita Falls.

Computation of Weather Normalization Adjustment

The Weather Normalization Adjustment Factor shall be computed to the nearest one-hundredth cent per Ccf by the following formula:

$$WNAF_i = R_i \frac{(HSF_i \times (NDD-ADD))}{(BL_i + (HSF_i \times ADD))}$$

Where

- $i$  = any particular Rate Schedule or billing classification within any such particular Rate Schedule that contains more than one billing classification
- $WNAF_i$  = Weather Normalization Adjustment Factor for the  $i^{th}$  rate schedule or classification expressed in cents per Ccf
- $R_i$  = Commodity Charge rate of temperature sensitive sales for the  $i^{th}$  schedule or classification.
- $HSF_i$  = heat sensitive factor for the  $i^{th}$  schedule or classification divided by the average bill count in that class
- $NDD$  = billing cycle normal heating degree days calculated as the simple ten-year average of actual heating degree days.
- $ADD$  = billing cycle actual heating degree days.
- $BL_i$  = base load sales for the  $i^{th}$  schedule or classification divided by the average bill count in that class

The Weather Normalization Adjustment for the  $j$ th customer in  $i$ th rate schedule is computed as:

$$WNA_{ij} = WNAF_i \times q_{ij}$$

Where  $q_{ij}$  is the relevant sales quantity for the  $j$ th customer in  $i$ th rate schedule.

**MID-TEX DIVISION  
ATMOS ENERGY CORPORATION**

<b>RIDER:</b>	<b>WNA – WEATHER NORMALIZATION ADJUSTMENT</b>	
<b>APPLICABLE TO:</b>	<b>ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF</b>	
<b>EFFECTIVE DATE:</b>	<b>Bills Rendered on or after 12/01/2020</b>	<b>PAGE:</b>

Base Use/Heat Use Factors

Weather Station	<u>Residential</u>		<u>Commercial</u>	
	Base use <u>Ccf</u>	Heat use <u>Ccf/HDD</u>	Base use <u>Ccf</u>	Heat use <u>Ccf/HDD</u>
Abilene	10.73	0.1545	94.79	0.7284
Austin	9.53	0.1489	211.76	0.9405
Dallas	15.77	0.1792	199.74	0.9385
Waco	9.99	0.1341	145.27	0.7110
Wichita Falls	11.61	0.1402	120.34	0.5747

Weather Normalization Adjustment (WNA) Report

On or before June 1 of each year, the company posts on its website at [atmosenergy.com/mtx-wna](http://atmosenergy.com/mtx-wna), in Excel format, a *Weather Normalization Adjustment (WNA) Report* to show how the company calculated its WNAs factor during the preceding winter season. Additionally, on or before June 1 of each year, the company files one hard copy and an Excel version of the *WNA Report* with the Railroad Commission of Texas' Gas Services Division, addressed to the Director of that Division.

## **Exhibit B**

### **Benchmark for Pensions and Retiree Benefits**

**ATMOS ENERGY CORP., MID-TEX DIVISION  
PENSIONS AND RETIREE MEDICAL BENEFITS FOR CITIES APPROVAL  
TEST YEAR ENDING DECEMBER 31, 2019**

Line No.	Description	Shared Services		Mid-Tex Direct			Adjustment Total
		Pension Account Plan	Post-Employment Benefit Plan	Pension Account Plan	Supplemental Executive Benefit Plan	Post-Employment Benefit Plan	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
1	Proposed Benefits Benchmark - Fiscal Year 2020 Willis Towers Watson Report as adjusted (1) (2) (3)	\$ 3,460,135	\$ 3,695,384	\$ 6,132,704	\$ 280,578	\$ 4,992,449	
2	Allocation to Mid-Tex	43.29%	43.29%	76.59%	100.00%	76.59%	
3	Proposed Benefits Benchmark Costs Allocated to Mid-Tex (Ln 1 x Ln 2)	\$ 1,497,774	\$ 1,599,605	\$ 4,697,072	\$ 280,578	\$ 3,823,744	
4	O&M and Capital Allocation Factor	100.00%	100.00%	100.00%	100.00%	100.00%	
5	Proposed Benefits Benchmark Costs to Approve (Ln 3 x Ln 4) (3)	\$ 1,497,774	\$ 1,599,605	\$ 4,697,072	\$ 280,578	\$ 3,823,744	\$ 11,898,774
6							
7							
8	Summary of Costs to Approve (1):						
9							
10	O&M Expense Factor (WP_F-2.3, Ln 2)	79.55%	79.55%	37.83%	11.67%	37.83%	
11							
12							
13	Total Pension Account Plan	\$ 1,191,410		\$ 1,777,056			\$ 2,968,466
14	Total Post-Employment Benefit Plan		\$ 1,272,412			\$ 1,446,647	2,719,060
15	Total Supplemental Executive Benefit Plan				\$ 32,754		32,754
16	Total (Ln 13 + Ln 14 + Ln 15)	\$ 1,191,410	\$ 1,272,412	\$ 1,777,056	\$ 32,754	\$ 1,446,647	\$ 5,720,280

17  
18 **Notes:**

- 19 1. Studies not applicable to Mid-Tex or Shared Services are omitted.
- 20 2. Mid-Tex is proposing that the Fiscal Year 2020 Willis Towers Watson actuarial amounts shown on WP\_F-2.3 and WP\_F-2.3.1, be approved by the RRM Cities as the
- 21 benchmark amounts to be used to calculate the regulatory asset or liability for future periods. The benchmark amount approved by the RRM Cities for future periods
- 22 includes only the expense amount. The amount attributable to capital is recorded to utility plant through the overhead process as described in the CAM.
- 23 3. SSU amounts exclude cost centers which do not allocate to Mid-Tex for rate making purposes.

# **Exhibit C**

## **Schedule for Amortization for Regulatory Liability**

**ATMOS ENERGY CORP., MID-TEX DIVISION  
RATE BASE ADJUSTMENTS  
TEST YEAR ENDING DECEMBER 31, 2019  
AMORTIZATION OF REGULATORY LIABILITY**

Line No.	Year Ended Dec. 31	Beginning of Year Rate Base Adjustment Amount	Annual Amortization (1)	End of Year Rate Base Adjustment Amount (2)	Corrected Balance for December 31, 2017 (3)
	(a)	(b)	(c)	(d)	(e)
1	2017		\$ -	\$ 292,268,881	\$ 292,268,881
2	2018	292,268,881	12,075,562	280,193,319	
3	2019	280,193,319	12,085,165	268,108,155	
4	2020	268,108,155	11,171,173	256,936,982	
5	2021	256,936,982	11,171,173	245,765,809	
6	2022	245,765,809	11,171,173	234,594,635	
7	2023	234,594,635	11,171,173	223,423,462	
8	2024	223,423,462	11,171,173	212,252,289	
9	2025	212,252,289	11,171,173	201,081,116	
10	2026	201,081,116	11,171,173	189,909,943	
11	2027	189,909,943	11,171,173	178,738,770	
12	2028	178,738,770	11,171,173	167,567,597	
13	2029	167,567,597	11,171,173	156,396,424	
14	2030	156,396,424	11,171,173	145,225,251	
15	2031	145,225,251	11,171,173	134,054,077	
16	2032	134,054,077	11,171,173	122,882,904	
17	2033	122,882,904	11,171,173	111,711,731	
18	2034	111,711,731	11,171,173	100,540,558	
19	2035	100,540,558	11,171,173	89,369,385	
20	2036	89,369,385	11,171,173	78,198,212	
21	2037	78,198,212	11,171,173	67,027,039	
22	2038	67,027,039	11,171,173	55,855,866	
23	2039	55,855,866	11,171,173	44,684,692	
24	2040	44,684,692	11,171,173	33,513,519	
25	2041	33,513,519	11,171,173	22,342,346	
26	2042	22,342,346	11,171,173	11,171,173	
27	2043	11,171,173	11,171,173	(0)	
28					
29	Revenue Related Tax Factor		7.16%	See WP_F-5.1	
	Revenue Related Taxes on Annual Amortization		\$ 799,924	Factor	
30	Amortization		\$ 799,924	Factor	
31	Amortization Including Revenue		<u>\$ 11,971,097</u>	Amortization + Taxes	

32  
33 Notes:

- 34 1. The annual amortization of a 26 year recovery period is based on the  
35 Reverse South Georgia Method.  
36 2. The Regulatory Liability is recorded to FERC Account 253, Sub Account 27909.  
37 3. This is the final Mid-Tex liability balance filing the Fiscal Year 2018 tax return.

# WESTLAKE TOWN COUNCIL



## TYPE OF ACTION

Regular Meeting - Action Item

**Monday, September 28, 2020**

**TOPIC:** Conduct a public hearing and consideration of a resolution approving a Replat of Lot 10R, Block K, Vaquero Phase 1 Residential Addition for an approximately 1.838-acre portion of Planned Development District 3, Planning Area 1 (PD 3-1). The property is more appropriately located on 1718 Wisteria Way.

**STAFF CONTACT:** Nick Ford, Development Coordinator

## Strategic Alignment

Vision, Value, Mission	Perspective	Strategic Theme & Results	Outcome Objective
Planned / Responsible Development	Citizen, Student & Stakeholder	High Quality Planning, Design & Development - We are a desirable well planned, high-quality community that is distinguished by exemplary design standards.	Preserve Desirability & Quality of Life
<b>Strategic Initiative</b>			
Outside the Scope of Identified Strategic Initiatives			

**Time Line - Start Date:** September 21, 2020

**Completion Date:** September 28, 2020

**Funding Amount:** N/A      **Status -**  Not Funded      **Source -** N/A

### EXECUTIVE SUMMARY (INCLUDING APPLICABLE ORGANIZATIONAL HISTORY)

The owners of 1718 Wisteria Way are making a request to subdivide their current lot of 1.838 acres into two lots where one lot will be equal to 0.648 acres (where the current home is located) and the other lot is 1.190 acres (a future home will be located). The subject property was originally platted as three lots and subsequently replatted into one lot.

The plat meets all zoning requirements of the PD3-1 zoning area.

## **PLANNING AND ZONING COMMISSION**

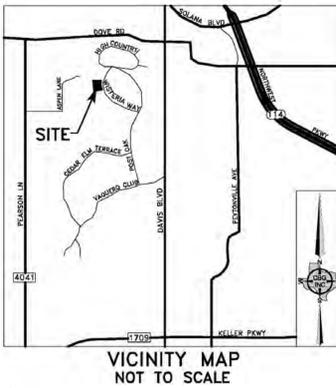
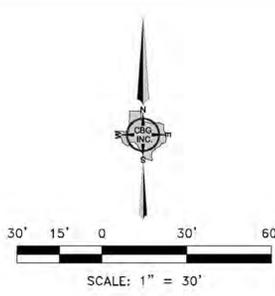
On September 21, 2020, the Planning and Zoning Commission voted to recommend approval of this item by a (3-0) vote.

## **STAFF RECOMMENDATIONS**

Staff recommends approval of this item.

## **ATTACHMENTS**

Replat for consideration  
Resolution



**LEGEND:**

CM	CONTROLLING MONUMENT
IRF	IRON ROD FOUND
MNF	MAG NAIL FOUND
IRS	1/2 INCH IRON ROD SET WITH A PLASTIC YELLOW CAP STAMPED "CBG SURVEYING"
ESMT.	EASEMENT
VOL.	VOLUME
PG.	PAGE
INST. NO.	INSTRUMENT NUMBER
CAB.	CABINET
SQ. FT.	SQUARE FEET
R.O.W.	RIGHT-OF-WAY
D.R.T.C.T.	DEED RECORDS, TARRANT COUNTY, TEXAS
P.R.T.C.T.	PLAT RECORDS, TARRANT COUNTY, TEXAS
O.P.R.T.C.T.	OFFICIAL PUBLIC RECORDS, TARRANT COUNTY, TEXAS

**OWNER'S CERTIFICATE**  
STATE OF TEXAS  
COUNTY OF TARRANT

WHEREAS, Jamie Eden Gottlieb and Michelle Gottlieb, are the sole owners of a tract of land situated in the Leroy Boggess Survey, Abstract Number 196, Tarrant County, Texas, same being all of Lot 10R, Block K, of Vaquero Phase 1 Residential Addition, an addition to the Town of Westlake according to the Plat thereof recorded in Instrument Number D213125275, Official Public Records, Tarrant County, Texas, same being all of that tract of land conveyed to Jamie Eden Gottlieb and Michelle Gottlieb, by General Warranty Deed with Vendor's Lien recorded in Instrument Number D212305058, Official Public Records, Tarrant County, Texas, and by Warranty Deed recorded in Instrument Number D212306618, Official Public Records, Tarrant County, Texas, and by Warranty Deed recorded in Instrument Number D212315113, Official Public Records, Tarrant County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod found for corner, said corner being the West Right-of-Way of Wisteria Way (a 35 feet Right-of-Way), same being the Northeast corner of Lot 9, Block K, Vaquero Phase 1 Residential Addition, an addition to the Town of Westlake according to the Plat thereof recorded in Cabinet A, Page 6380, Plat Record, Tarrant County, Texas;

THENCE South 80 degrees 19 minutes 09 seconds West, along the North line of said Lot 9, a distance of 271.92 feet to a 1/2 inch iron rod with a plastic yellow cap stamped "CBG Surveying" set for corner, said corner being the Northwest corner of said Lot 9, same being on the East line of a tract of land conveyed to The Vaquero Club, INC. according to the deed thereof recorded in Instrument Number D208035699, Official Public Records, Tarrant County, Texas;

THENCE North 05 degrees 29 minutes 37 seconds West, along the East line of said The Vaquero Club, INC., tract, passing by a 5/8 inch iron rod found at a distance of 236.44 feet for witness, and continuing for a total distance of 349.54 feet to a mag nail found for corner, said corner being on the East line said The Vaquero Club, INC., tract, same being the Southwest corner of Lot 11, Block E, of Vaquero Phase 2A Residential Addition, an addition to the Town of Westlake according to the Plat thereof recorded in Cabinet A, Page 7091, Plat Record, Tarrant County, Texas;

THENCE South 89 degrees 10 minutes 00 seconds East, along the South line of said Lot 11, a distance of 267.28 feet to a 5/8 inch iron rod found for corner, said corner being the Southeast corner of said Lot 11, same being the West Right-of-Way line of said Wisteria Way, and same also being the beginning of a non-tangent curve to the right, having a radius of 13.99 feet, a central angle of 38 degrees 08 minutes 52 seconds, and a chord that bears South 01 degrees 26 minutes 01 seconds West, a distance of 9.14 feet;

Said curve to the right, an arc length of 9.31 feet to a 5/8 inch iron rod found for corner, said corner being the beginning of a reverse curve to the left, having a radius of 317.50 feet, a central angle of 54 degrees 35 minutes 52 seconds, and a chord that bears South 06 degrees 48 minutes 03 seconds East, a distance of 291.23 feet;

THENCE said curve to the left, and continuing on the West Right-of-Way line of said Wisteria Way, an arc length of 302.55 feet, to the POINT OF BEGINNING and containing 80,062 square feet or 1.838 acres of land.

**GENERAL NOTES**

- 1) BEARINGS SHOWN ARE BASED ON THE STATE PLANE COORDINATE SYSTEM, TEXAS NORTH CENTRAL ZONE, NAD 83 (2011).
- 2) THE PURPOSE OF THIS PLAT IS TO CREATE 2 LOTS FROM A PORTION OF A PLATTED LOT.
- 3) LOT TO LOT DRAINAGE WILL NOT BE ALLOWED WITHOUT ENGINEERING SECTION APPROVAL.
- 4) ANY STRUCTURE NEW OR EXISTING MAY NOT EXTEND ACROSS NEW PROPERTY LINES.
- 5) COORDINATES SHOWN HEREON ARE TEXAS STATE PLANE COORDINATE SYSTEM, NORTH CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983 ON GRID COORDINATE VALUES, NO SCALE AND NO PROJECTION.

**SURVEYOR'S STATEMENT:**

I, Bryan Connally, a Registered Professional Land Surveyor, licensed by the State of Texas, affirm that this plat was prepared under my direct supervision, from recorded documentation, evidence collected on the ground during field operations and other reliable documentation; and that this plat substantially complies with the Rules and Regulations of the Texas Board of Professional Land Surveying, and Texas Local Government Code, Chapter 212. I further affirm that monumentation shown hereon was either found or placed in compliance with the Town of Westlake Development Code, and that the digital drawing file accompanying this plat is a precise representation of this Signed Final Plat.

Dated this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**RELEASED FOR REVIEW 09/14/2020 PRELIMINARY. THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSES AND SHALL NOT BE USED OR VIEWED OR RELIED UPON AS A FINAL SURVEY DOCUMENT.**

Bryan Connally  
Texas Registered Professional Land Surveyor No. 5513

STATE OF TEXAS  
COUNTY OF DALLAS

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Bryan Connally known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose therein expressed and under oath stated that the statements in the foregoing certificate are true.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Notary Public in and for the State of Texas  
My commission expires:

**OWNER'S DEDICATION**

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That, Jamie Eden Gottlieb and Michelle Gottlieb, does hereby adopt this plat, designating the herein described property as **REPLAT OF LOT 10R, BLOCK K, VAQUERO RESIDENTIAL ADDITION, LOTS 10R1 & 10R2, BLOCK K**, an addition to the Town of Westlake, Tarrant County, Texas, and do hereby dedicate, in fee simple, to the public use forever any streets, alleys, and floodway management areas shown thereon. The easements shown thereon are hereby reserved for the purposes indicated. The utility and fire lane easements shall be open to the public, fire and police units, garbage and rubbish collection agencies, and all public and private utilities for each particular use. The maintenance of paving on the utility and fire lane easements is the responsibility of the property owner. No buildings, fences, trees, shrubs, or other improvements or growths shall be constructed, reconstructed or placed upon, over or across the easements as shown. Said easements being hereby reserved for the mutual use and accommodation of all public utilities using or desiring to use same. All, and any public utility shall have the right to remove and keep removed all or parts of any building, fences, trees, shrubs, or other improvements or growths which in any way may endanger or interfere with the construction, maintenance or efficiency of its respective system on the easements, and all public utilities shall at all times have the full right of ingress and egress to or from the said easements for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining and adding to or removing all or parts of its respective systems without the necessity at any time of procuring the permission of anyone. (Any public utility shall have the right of ingress and egress to private property for the purpose of reading meters and any maintenance or service required or ordinarily performed by that utility).

Water main and wastewater easements shall also include additional area of working space for construction and maintenance of the systems. Additional easement area is also conveyed for installation and maintenance of manholes, cleanouts, fire hydrants, water services and wastewater services from the main to the curb or pavement line, and description of such additional easements herein granted shall be determined by their location as installed.

This plat approved subject to all platting ordinances, rules, regulations, and resolutions of the Town of Westlake.

WITNESS, my hand at the Town of Westlake, Texas, this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

BY: \_\_\_\_\_  
Jamie Eden Gottlieb

STATE OF TEXAS  
COUNTY OF TARRANT

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Jamie Eden Gottlieb known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose therein expressed and under oath stated that the statements in the foregoing certificate are true.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Notary Public in and for the State of Texas  
My commission expires:

WITNESS, my hand at the Town of Westlake, Texas, this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

BY: \_\_\_\_\_  
Michelle Gottlieb

STATE OF TEXAS  
COUNTY OF TARRANT

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Michelle Gottlieb known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose therein expressed and under oath stated that the statements in the foregoing certificate are true.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

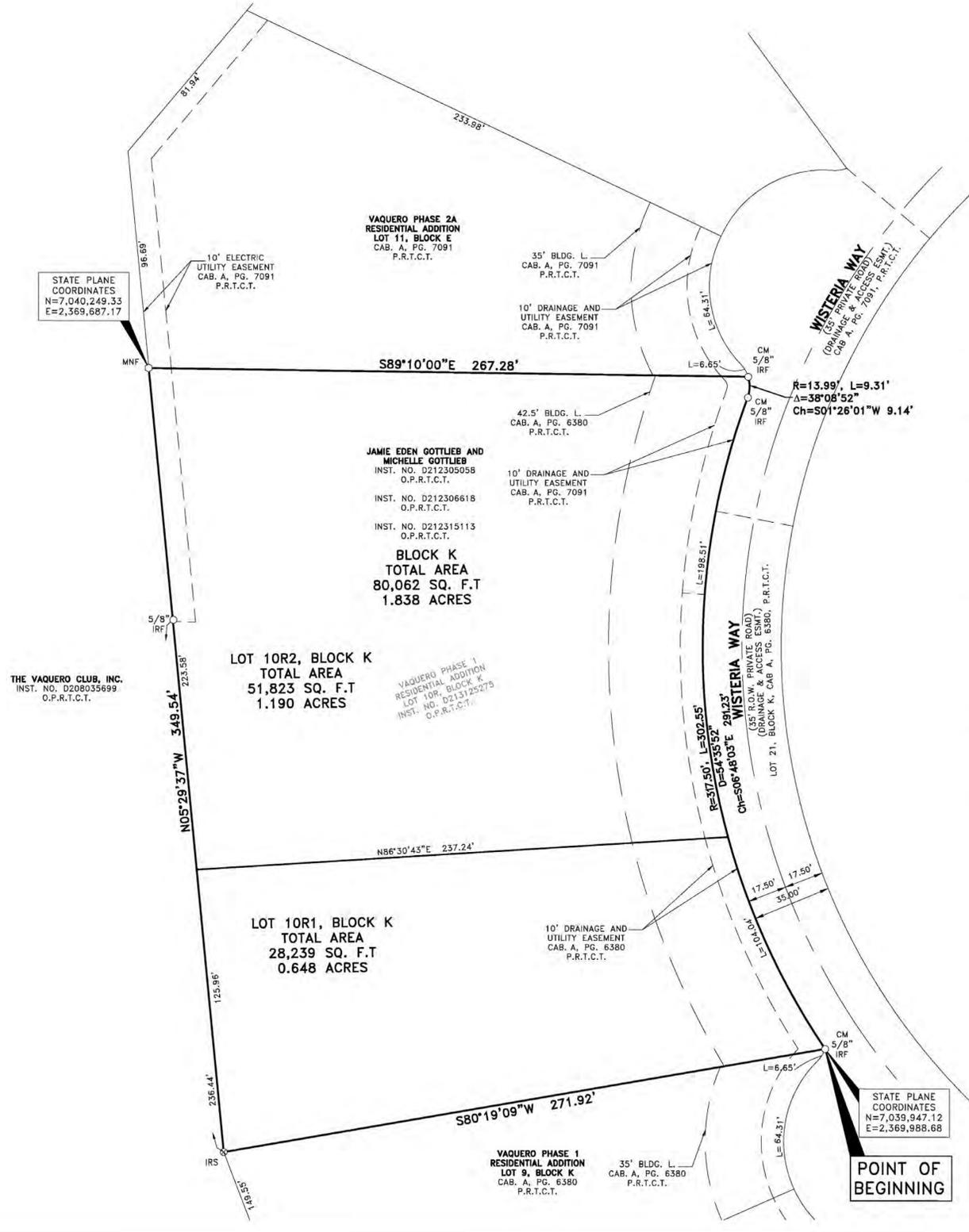
Notary Public in and for the State of Texas  
My commission expires:

Approved by the Town of Westlake Planning and Zoning Commission:

Chairman _____	Date _____
Secretary _____	Date _____
Document No.: _____	Date _____

Approved by the Town of Westlake Town Council:

Mayor _____	Date _____
Secretary _____	Date _____
Document No.: _____	Date _____



**REPLAT**  
**LOT 10R1 & LOT 10R2 BLOCK K**  
**VAQUERO RESIDENTIAL ADDITION**  
80,062 SQ.FT. / 1.838 ACRES

BEING A REPLAT OF LOT 10R, BLOCK K,  
VAQUERO PHASE 1 RESIDENTIAL ADDITION  
RECORDED IN INST. NO. D213125275, O.P.R.T.C.T.  
LEROY BOGESS SURVEY, ABSTRACT NO. 196  
TOWN OF WESTLAKE, TARRANT COUNTY, TEXAS



**OWNER: JAMIE EDEN GOTTLIEB & MICHELLE GOTTLIEB**  
1718 WISTERIA WAY  
WESTLAKE, TEXAS 75262  
PHONE: 574-231-6800  
EMAIL: XXXXX

**TOWN OF WESTLAKE**

**RESOLUTION NO. 20-31**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS APPROVING A REPLAT FOR LOT 10R, BLOCK K, VAQUERO PHASE ONE RESIDENTIAL ADDITION.**

**WHEREAS**, the Planning and Zoning Commission held a public on September 21, 2020 and voted unanimously to recommend approval of the replat; 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 of Westlake Town Council of Westlake, Texas, after considering the recommendation for approval from the Planning and Zoning Commission on September 21, 2020, does hereby approve the replat as found in the attached document 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 28<sup>TH</sup> DAY OF SEPTEMBER 2020.**

ATTEST:

\_\_\_\_\_  
Laura Wheat, Mayor

\_\_\_\_\_  
Todd Wood, Town Secretary

\_\_\_\_\_  
Amanda DeGan, Town Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
L. Stanton Lowry, Town Attorney

**EXHIBITS**

EXHIBIT A Replat of Lot 10R, Block K, Vaquero Phase One Residential Addition

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# Town Council

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## Item # 8 – Executive Session

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### EXECUTIVE SESSION

The Council will conduct a closed session pursuant to Texas Government Code, annotated, Chapter 551, Subchapter D for the following:

- a. Section 551.087 - Deliberation Regarding Economic Development Negotiations (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1) for the following:
  - Front 44
  - Entrada
- b. Section 551.071(2) Consultation with Attorney – to seek advice of counsel on matters in which the duty of the Town Attorney under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code - FM 1938 access for proposed Southlake development.
- c. Section 551.071 Consultation with Attorney - to seek advice of counsel regarding Granada Homeowners' Association matters.

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# Town Council

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Item # 9 – Reconvene  
Council Meeting

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# Town Council

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Item # 10 – Necessary  
Action

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# Town Council

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## Item # 11 – Future Agenda Items

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**FUTURE AGENDA ITEMS:** Any Council member may request at a workshop and / or Council meeting, under “Future Agenda Item Requests”, an agenda item for a future Council meeting. The Council Member making the request will contact the Town Manager with the requested item and the Town Manager will list it on the agenda. At the meeting, the requesting Council Member will explain the item, the need for Council discussion of the item, the item’s relationship to the Council’s strategic priorities, and the amount of estimated staff time necessary to prepare for Council discussion. If the requesting Council Member receives a second, the Town Manager will place the item on the Council agenda calendar allowing for adequate time for staff preparation on the agenda item.

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# Town Council

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Item # 12 – Council Recap /  
Staff Direction

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# Town Council

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Item # 13 – Adjournment

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