

**MURPHY CITY COUNCIL AGENDA
CITY COUNCIL WORK SESSION
COMMUNITY ROOM – 5:00 PM
REGULAR CITY COUNCIL MEETING
MARCH 6, 2012 AT 6:00 PM
206 NORTH MURPHY ROAD
MURPHY, TEXAS 75094**

NOTICE is hereby given of a meeting of the City Council of the City of Murphy, Collin County, State of Texas, to be held on March 6, 2012 at Murphy City Hall for the purpose of considering the following items. The City Council of the City of Murphy, Texas, reserves the right to meet in closed session on any of the items listed below should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

WORK SESSION

- Discussion regarding 2008 Bond Issuance
- Determine funding and planning of park projects

1 CALL TO ORDER

2 INVOCATION & PLEDGE OF ALLEGIANCE

3 ROLL CALL & CERTIFICATION OF A QUORUM

4 PUBLIC COMMENTS

5 PRESENTATIONS & PROCLAMATIONS

- 5.1** • Presentation of check from Collin County by Commissioner Cheryl Williams for Murphy Central Park and the Maxwell Creek Trail expansion project.
- 5.2** • Proclamation for Flood Safety Awareness Week, March 12-16, 2012

6 CONSENT ITEMS

All consent agenda items are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember so requests, in which event the item will be removed from the Consent Agenda and voted on separately.

- 6.1** Consider and/or act upon approval of the Construction Plat for Wal-Mart Real Estate Business Trust on property zoned PD (Planned Development) District Ordinance No. 12-02-905, for Retail uses, on property located at the northwest quadrant of FM 544 and North Murphy Road.
- 6.2** Consider and/or act upon approval of a resolution suspending the effective date of Atmos Mid-Tex's proposed rate increase.
- 6.3** Consider and/or act upon approval of change order for Wall Construction to sod Liberty Ridge Park.

7 ORDINANCE APPROVAL

- 7.1** Consider and/or act upon approval of an ordinance amending the Code of Ordinances regarding the Ethics Policy.
- 7.2** Consider and/or act upon approval of an ordinance amending the Code of Ordinances regarding the Governance Policy.

8 OTHER CONSIDERATION ITEMS

- 8.1 Consider and/or act upon scheduling a Work Session and Special Meeting to complete the Strategic Planning Session.
- 8.2 Consider and/or act upon a request for a rate increase by Waste Management for solid waste services and an increase for recycling rebate.
- 8.3 Consider and/or act upon amending the Murphy Community Center/Murphy Activity Center Rental Rates policy regarding use by non-profit organizations.
- 8.4 Consider and/or act upon approval of the low bid award for the annual City Mowing Contract and authorize the City Manager to execute the contract.
- 8.5 Consider and/or act upon approval of the reallocation of the 2008 bond funds.
- 8.6 Consider and/or act upon approval of final construction plans for Murphy Central Park and the Maxwell Creek Trail Extension Project.

9 DISCUSSION ITEMS

- 9.1 Discussion regarding Timbers Nature Preserve Park.

10 CITY MANAGERS REPORT

11 EXECUTIVE SESSION

The City Council will hold a closed Executive Session pursuant to the provisions of Chapter 551, Subchapter D, Texas Government Code, in accordance with the authority contained in:

- 11.1 §551.074 Personnel Matters – to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the City Engineer.
- 11.2 §551.072. Deliberation regarding real property – to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.

12 RECONVENE INTO REGULAR SESSION

The City Council will reconvene into Regular Session, pursuant to the provision of Chapter 551, Subchapter D, Texas Government Code, to take any action necessary regarding:

- 12.1 §551.074 Personnel Matters – to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the City Engineer.
- §551.072. Deliberation regarding real property – to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.

13 ADJOURNMENT

Proclamation

City of Murphy, Texas

**Flood Safety Awareness Week
March 12-16, 2012**

WHEREAS, Flood Safety Awareness Week is March 12-16, 2012; and

WHEREAS, each year brings the potential for violent weather to Texas; and

WHEREAS, large portions of our state, including Murphy, can be devastated by flooding, tornadoes, hail storms, straight line winds and other severe emergencies; and

WHEREAS, the Texas Division of Emergency Management and the National Weather Service have joined together to urge all citizens to prepare for severe weather events and to educate themselves on safety strategies; and

WHEREAS, Governor Rick Perry has declared the week of March 12-16, 2012, as Flood Safety Awareness Week in Texas; and

WHEREAS, the City Council of Murphy, Texas, wishes to urge everyone in our community to learn more about and to participate in severe weather preparedness activities available in Murphy; and

NOW, THEREFORE, I, Bret Baldwin, Mayor of the City of Murphy, Texas, do hereby proclaim March 12-16 2012

“Flood Safety Awareness Week”

in Murphy, Texas, in official recognition of this statewide event. Proclaimed this 6th day of March, 2012.

*Bret M. Baldwin, Mayor
City of Murphy*

Issue

Consider and/or act upon approval of the Construction Plat for Wal-Mart Real Estate Business Trust on property zoned PD (Planned Development) District Ordinance No. 12-02-905, for Retail uses, on property located at the northwest quadrant of FM 544 and North Murphy Road.

Staff Resource/Department

Kristen Roberts, Director of Economic/Community Development

Summary

The approval of this construction plat will allow for the development of Wal-Mart.

Background

On May 17, 2010, the City Council adopted Ordinance No. 10-05-841, which amended Planned Development District Ordinance No. 05-07-664 (adopted on July 25, 2005) by approving a concept plan and amending the development conditions regarding landscaping and signage.

On May 24, 2011, the City Council adopted Ordinance No. 11-05-881 which further revised the concept plan and amended certain development conditions.

On February 7, 2012, the City Council adopted Ordinance No. 12-02-905 which further revised the concept plan and amended certain development conditions.

Board Discussion/Action:

On February 27, 2012, the Planning & Zoning Commission unanimously approved the construction plat as submitted, 6-0. There was no discussion.

Other Considerations

Public Works/Parks Department had no comments.

Police Department had no comments.

Fire Department had no comments.

Building Official had no comments.

Engineering's comments were addressed.

Action Requested

Motion to approve the Construction Plat for Wal-Mart Real Estate Business Trust on property zoned PD (Planned Development) District Ordinance No. 12-02-905, for Retail uses, on property located at the northwest quadrant of FM 544 and North Murphy Road.

Attachments

Construction Plat

LINE TABLE		LINE TABLE		LINE TABLE	
NO.	BEARING	LENGTH	NO.	BEARING	LENGTH
L1	N84°41'W	6.12	L41	N89°31'W	37.11
L2	N84°41'W	38.02	L42	N89°31'W	38.49
L3	N84°41'W	42.00	L43	N89°31'W	25.31
L4	S84°41'W	28.00	L44	S89°31'W	41.87
L5	N84°41'W	18.49	L45	S89°31'W	1.12
L6	S84°41'W	13.00	L46	N84°41'W	19.31
L7	S84°41'W	26.00	L47	N84°41'W	18.89
L8	N84°41'W	13.00	L48	N84°41'W	19.31
L9	S84°41'W	18.82	L49	N84°41'W	14.82
L10	S84°41'W	6.87	L50	N84°41'W	38.59
L11	N84°41'W	67.07	L51	N84°41'W	68.47
L12	S84°41'W	41.88	L52	S84°41'W	34.89
L13	S84°41'W	6.79	L53	N84°41'W	43.81
L14	N84°41'W	63.00	L54	S84°41'W	42.32
L15	N84°41'W	33.78	L55	N84°41'W	18.00
L16	S84°41'W	67.08	L56	S84°41'W	67.08
L17	N84°41'W	23.71	L57	N84°41'W	68.82
L18	S84°41'W	26.02	L58	S84°41'W	78.82
L19	S84°41'W	24.00	L59	N84°41'W	63.00
L20	N84°41'W	65.04	L60	S84°41'W	19.01
L21	S84°41'W	28.49	L61	S84°41'W	38.59
L22	S84°41'W	6.89	L62	N84°41'W	20.00
L23	N84°41'W	38.59	L63	N84°41'W	49.72
L24	N84°41'W	63.00	L64	N84°41'W	63.00
L25	N84°41'W	23.04	L65	S84°41'W	63.00
L26	S84°41'W	78.32	L66	N84°41'W	39.11
L27	S84°41'W	26.02	L67	N84°41'W	21.07
L28	S84°41'W	38.02	L68	N84°41'W	10.77
L29	S84°41'W	67.88	L69	N84°41'W	28.81
L30	S84°41'W	28.00	L70	S84°41'W	38.00
L31	S84°41'W	77.89	L71	N84°41'W	81.00
L32	S84°41'W	74.89	L72	S84°41'W	67.89
L33	S84°41'W	38.00	L73	N84°41'W	77.89
L34	N84°41'W	42.00	L74	N84°41'W	188.79
L35	S84°41'W	18.82	L75	N84°41'W	1.12
L36	N84°41'W	10.32	L76	N84°41'W	38.32
L37	N84°41'W	18.00	L77	N84°41'W	19.31
L38	S84°41'W	12.02	L78	N84°41'W	34.89
L39	N84°41'W	68.19	L79	N84°41'W	68.19
L40	N84°41'W	68.49	L80	N84°41'W	6.89

CURVE TABLE						CURVE TABLE					
NO.	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD	NO.	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD
C1	87°00'00"	60.00	78.85	S47°30'00"	71.82	C1	87°00'00"	20.00	31.42	S47°30'00"	28.39
C2	87°00'00"	20.00	31.42	S47°30'00"	28.39	C2	87°00'00"	60.00	78.85	S47°30'00"	70.71
C3	87°00'00"	78.85	117.81	S47°30'00"	108.69	C3	21°30'00"	78.85	28.59	S81°28'30"	8.38
C4	21°30'00"	60.00	18.82	N81°28'30"	18.71	C4	21°30'00"	28.60	6.41	S81°28'30"	6.38
C5	21°30'00"	60.00	18.82	S81°28'30"	18.71	C5	21°30'00"	28.60	12.89	N81°28'30"	12.79
C6	21°30'00"	60.00	18.82	N81°28'30"	18.71	C6	21°30'00"	78.85	28.61	S81°28'30"	28.54
C7	21°30'00"	60.00	18.82	S81°28'30"	18.71	C7	87°00'00"	60.00	78.85	N47°30'00"	70.71
C8	87°00'00"	20.00	31.42	S47°30'00"	28.39	C8	87°00'00"	78.85	117.81	S47°30'00"	108.69
C9	87°00'00"	78.85	117.81	S47°30'00"	108.69	C9	87°00'00"	60.00	78.85	N47°30'00"	70.71
C10	87°00'00"	60.00	78.85	S47°30'00"	71.82	C10	87°00'00"	20.00	31.42	S47°30'00"	28.39
C11	87°00'00"	20.00	31.42	S47°30'00"	28.39	C11	87°00'00"	78.85	117.81	S47°30'00"	108.69
C12	87°00'00"	78.85	117.81	S47°30'00"	108.69	C12	21°30'00"	60.00	18.82	N81°28'30"	18.71
C13	87°00'00"	60.00	78.85	S47°30'00"	71.82	C13	87°00'00"	40.00	78.85	N47°30'00"	68.39
C14	87°00'00"	100.00	130.39	N71°28'30"	91.77	C14	S47°30'00"	60.00	49.39	S89°30'00"	49.47
C15	87°00'00"	100.00	130.39	S71°28'30"	91.77						
C16	49°15'00"	100.00	130.39	N49°15'00"	54.89						
C17	49°15'00"	100.00	130.39	S49°15'00"	54.87						
C18	28°30'00"	140.00	183.81	S71°28'30"	103.19						
C19	28°30'00"	140.00	183.81	N71°28'30"	103.40						
C20	87°00'00"	20.00	31.42	S47°30'00"	28.39						
C21	87°00'00"	20.00	31.42	S47°30'00"	28.39						
C22	87°00'00"	20.00	31.42	S47°30'00"	28.39						
C23	87°00'00"	20.00	31.42	S47°30'00"	28.39						
C24	17°00'00"	178.00	343.91	S47°30'00"	164.89						
C25	17°00'00"	178.00	343.91	N47°30'00"	164.89						
C26	87°00'00"	60.00	60.00	S47°30'00"	60.00						
C27	87°00'00"	60.00	60.00	S47°30'00"	60.00						
C28	87°00'00"	60.00	60.00	S47°30'00"	60.00						
C29	87°00'00"	60.00	60.00	S47°30'00"	60.00						
C30	87°00'00"	60.00	60.00	S47°30'00"	60.00						
C31	87°00'00"	60.00	60.00	S47°30'00"	60.00						
C32	87°00'00"	60.00	60.00	S47°30'00"	60.00						
C33	87°00'00"	60.00	60.00	S47°30'00"	60.00						
C34	87°00'00"	60.00	60.00	S47°30'00"	60.00						
C35	87°00'00"	60.00	60.00	S47°30'00"	60.00						
C36	87°00'00"	60.00	60.00	S47°30'00"	60.00						
C37	87°00'00"	60.00	60.00	S47°30'00"	60.00						
C38	87°00'00"	60.00	60.00	S47°30'00"	60.00						
C39	87°00'00"	60.00	60.00	S47°30'00"	60.00						
C40	87°00'00"	60.00	60.00	S47°30'00"	60.00						

STATE OF TEXAS

COUNTY OF COLLIN

WHEREAS WAL-MART REAL ESTATE BUSINESS TRUST, is the owner of a tract of land situated in the George Piegum Survey, Abstract No. 699, City of Murphy, Collin County, Texas, and being all of a tract of land described in Special Warranty Deed to Wal-Mart Real Estate Business Trust, recorded in Instrument No. 201107200207620, Official Public Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a nail found in the north right-of-way line of F.M. 544 (a variable width right-of-way), said point being the southeast corner of Lot 2, Block A, Rio Dinegro PMA Add Addition, an addition to the City of Murphy, Texas according to the plat recorded in Cabinet O, Page 44, Map Records of Collin County, Texas;

THENCE departing said north right-of-way line and with the east line of said Lot 3, North 21° 32' 34" East, at a distance of 335.00 feet, passing a 1/2" iron rod with "N.D.M." cap found at the northeast corner of said Lot 3 and being the southeast corner of Lot 1R, Block A, Walgreens PMA Add Addition, an addition to the City of Murphy, Texas according to the plat recorded in Cabinet O, Page 62, Map Records of Collin County, Texas, continuing, with the east line of said Lot 1R, in all a total distance of 1075.71 feet to a 1/2" iron rod with "P.O.M." cap found at the south line of a tract of land described in Deed to Dallas Area Rapid Transit Acquisition Corporation recorded in Volume 3424, Page 126, Land Records of Collin County, Texas; said point being the beginning of a non-tangent curve to the right having a central angle of 10° 26' 44", a radius of 1835.00 feet, a chord bearing and distance of North 52° 34' 27" East, 244.70 feet;

THENCE with the south line of said Dallas Area Rapid Transit Acquisition Corporation tract, the following courses and distances:

In an easterly direction, with said curve to the right, an arc distance of 334.54 feet to a 1" iron rod found at the end of said curve;
 South 11° 52' 08" East, a distance of 60.00 feet to a "70" cut in concrete found for corner at the beginning of a non-tangent curve to the right having a central angle of 08° 07' 42", a radius of 1785.00 feet, a chord bearing and distance of South 87° 47' 19" East, 233.20 feet;
 In an easterly direction, with said curve to the right, an arc distance of 293.23 feet to a 1/2" iron rod found at the end of said curve;
 South 83° 59' 48" East, a distance of 597.20 feet to a 5/8" iron rod with "NHA" cap found for corner in the west right-of-way line of Murphy Road (F.M. 2201), a variable width right-of-way, said point being the northwest corner of a tract of land described in a deed to the State of Texas recorded in Volume 653, Page 812, Land Records of Collin County, Texas;

THENCE departing said south line and with said west right-of-way line, the following courses and distances:

South 1° 08' 07" West, a distance of 393.61 feet to a "X" cut in concrete found for corner;
 South 4° 18' 07" West, a distance of 197.74 feet to a "70" cut in concrete found for corner;

THENCE with an offset to said west right-of-way line, North 89° 24' 14" West, at a distance of 2.82 feet, passing a 1/2" iron rod with "N.D.M." cap found at the northeast corner of Lot 2, Block A, Walgreens P.M. 544 Addition, an addition to the City of Murphy, Texas according to the plat recorded in Cabinet M, Page 172, Map Records of Collin County, Texas, continuing, departing said west right-of-way line and with the north line of said Lot 2, in all a total distance of 152.76 feet to a 5/8" iron rod with "NHA" cap found for corner, said point being the northwest northeast corner of said Lot 2;

THENCE with the west line of said Lot 2, South 11° 52' 08" West, a distance of 60.79 feet to a 1/2" iron rod with "N.D.M." cap found for corner, said point being an interior corner of said Lot 2;

THENCE with the north line of said Lot 2, North 88° 30' 23" West, at a distance of 68.34 feet, passing a 1/2" iron rod found at the westernmost northwest corner of said Lot 2 and the northeast corner of Lot 1R, Block A, Walgreens P.M. 544 Addition, an addition to the City of Murphy, Texas according to the plat recorded in Cabinet M, Page 872, Map Records of Collin County, Texas, continuing, with the north line of said Lot 1R, Block A, in all a total distance of 221.70 feet to a 5/8" iron rod with "NHA" cap found for corner at the northeast corner of said Lot 1R; from said point, a 1/2" iron rod found bears South 35° 20' East, a distance of 0.6 feet;

THENCE with the west line of said Lot 1R, South 1° 24' 37" West, at a distance of 370.00 feet, passing a 1/2" iron rod with "N.D.M." cap found, continuing in all a total distance of 373.27 feet to a 5/8" iron rod with "NHA" cap found for corner in the east north right-of-way line of F.M. 544; said point being the northeast corner of a tract of land described in Deed to the State of Texas recorded in Clerk's File No. 92-024807, Land Records of Collin County, Texas and the northwest corner of a tract of land described in Deed to the State of Texas recorded in Clerk's File No. 92-003785, Land Records of Collin County, Texas;

THENCE with said north right-of-way line, the following courses and distances:

South 87° 21' 30" West, a distance of 357.00 feet to a 5/8" iron rod with "NHA" cap found for corner at the beginning of a non-tangent curve to the left having a central angle of 0° 08' 16", a radius of 944.00 feet, a chord bearing and distance of South 88° 39' 41" West, 17.15 feet;
 In a southeasterly direction, with said curve to the left, an arc distance of 17.15 feet to a 5/8" iron rod with "NHA" cap found at the beginning of a non-tangent curve to the right having a central angle of 0° 16' 04", a radius of 948.00 feet, a chord bearing and distance of South 88° 44' 38" West, 44.38 feet;
 In a southeasterly direction, with said curve to the right, an arc distance of 44.38 feet to a 5/8" iron rod with "NHA" cap found at the end of said curve in the east line of a tract of land described in Deed to the State of Texas recorded in Clerk's File No. 95-006786, Land Records of Collin County, Texas; said point being the northeast corner of said State of Texas tract recorded in Clerk's File No. 95-040567;
 North 1° 26' 09" East, a distance of 102.11 feet to a 5/8" iron rod with "NHA" cap found for corner at the beginning of a non-tangent curve to the right having a central angle of 2° 22' 30", a radius of 885.00 feet, a chord bearing and distance of South 88° 02' 19" West, 306.13 feet; said point being the northeast corner of said State of Texas tract recorded in Clerk's File No. 95-007698, Land Records of Collin County, Texas; from said point a 1/2" iron rod found bears North 14° 32' West, a distance of 1.1 feet and a 1/2" iron rod found bears North 19° 51" East, a distance of 0.6 feet;
 In a southerly direction with said curve to the right, an arc distance of 356.16 feet to the **POINT OF BEGINNING** and containing 24.094 acres and of 1,049,954 square feet area.

The bearings system for this survey is based on a bearing of North 02° 12' 34" East, according to General Warranty Deed to Wal-Mart Real Estate Business Trust, recorded in Instrument No. 201107200207620, Official Public Records of Collin County, Texas.

RECOMMENDED BY: Planning and Zoning Commission, City of Murphy, Texas

Signature of Chairperson Date of Recommendation _____

Signature of Mayor Date of Approval _____

ATTEST: _____
 City Secretary Date

OWNER:
WAL-MART REAL ESTATE BUSINESS TRUST
 201 S.E. 10TH STREET
 BENTONVILLE, ARKANSAS 72716

SURVEYOR:
 KIMLEY-HORN AND ASSOC., INC.
 FIRM # 101155-00
 12700 PARK CENTRAL DRIVE, SUITE 1800
 DALLAS, TEXAS 75251
 TEL. NO. (972) 770-1300
 FAX NO. (972) 239-3820
 CONTACT: Mark Harris
 mark.harris@kimley-horn.com

ENGINEER:
 KIMLEY-HORN AND ASSOC., INC.
 5750 GENESEE COURT, SUITE 200
 FRISCO, TEXAS 75034
 TEL. NO. (972) 335-3580
 FAX NO. (972) 335-3779
 CONTACT: Mark Harris
 mark.harris@kimley-horn.com

Approved by the City of Murphy for filing at the office of the County Clerk of Collin County, Texas.

Signature of Chairperson Date of Recommendation _____

Signature of Mayor Date of Approval _____

ATTEST: _____
 City Secretary Date

OWNER:
WAL-MART REAL ESTATE BUSINESS TRUST
 201 S.E. 10TH STREET
 BENTONVILLE, ARKANSAS 72716

SURVEYOR:
 KIMLEY-HORN AND ASSOC., INC.
 FIRM # 101155-00
 12700 PARK CENTRAL DRIVE, SUITE 1800
 DALLAS, TEXAS 75251
 TEL. NO. (972) 770-1300
 FAX NO. (972) 239-3820
 CONTACT: Mark Harris
 mark.harris@kimley-horn.com

ENGINEER:
 KIMLEY-HORN AND ASSOC., INC.
 5750 GENESEE COURT, SUITE 200
 FRISCO, TEXAS 75034
 TEL. NO. (972) 335-3580
 FAX NO. (972) 335-3779
 CONTACT: Mark Harris
 mark.harris@kimley-horn.com

Approved by the City of Murphy for filing at the office of the County Clerk of Collin County, Texas.

Signature of Chairperson Date of Recommendation _____

Signature of Mayor Date of Approval _____

ATTEST: _____
 City Secretary Date

OWNER:

Issue

Consider and/or act upon approval of a resolution suspending the effective date of Atmos Mid-Tex's proposed rate increase.

Staff Resource/Department

James Fisher & Linda Truitt/City Manager & Finance

Summary

The City, along with approximately 153 other cities served by Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company"), is a member of the Atmos Cities Steering Committee ("ACSC" or "Steering Committee"). On or about January 31, 2012, Atmos Mid-Tex filed a Statement of Intent to increase rates within the City. The law provides that a rate request made by a gas utility cannot become effective until at least 35 days following the filing of the application to change rates. Atmos has proposed an effective date of March 6, 2012. The law permits the City to suspend the rate change for 90 days after the date the rate change would otherwise be effective. If the City fails to take some action regarding the filing before the effective date, Atmos' rate request is deemed administratively approved. Atmos has been informed that Council is meeting on March 6, 2012, to approve the resolution to suspend the effective date of the proposed rate increase and has approved receiving the resolution on March 7, 2012.

Background/History

In 2003, TXU Gas filed a statewide rate case which became known at the Railroad Commission of Texas ("RRC") as Gas Utilities Docket ("GUD") No. 9400. That same year the Texas Legislature passed legislation referred to as the Gas Reliability Infrastructure Program ("GRIP") which authorized annual piecemeal rate reviews that Texas courts have concluded significantly restrict city jurisdiction, participation, and input. Shortly after GUD No. 9400 was decided in 2004, Atmos Energy purchased TXU Gas and created what is known as Atmos Energy Corp., Mid-Tex Division. The City is within the Atmos Mid-Tex Division.

Atmos Mid-Tex filed four GRIP cases before filing a traditional rate case in September, 2007. As part of Cities' Settlement Agreement with Atmos of the 2007 rate case, ACSC and Atmos created a substitute process for annual piecemeal GRIP cases. That substitute process was called a Rate Review Mechanism ("RRM") and was intended as an expedited but comprehensive rate review that included a number of fixed values and constraints. The RRM was intended as a three-year experiment. Last year, it was extended for a fourth year with some slight modifications to the original formulas. ACSC negotiated with Atmos in the final quarter of last year to further extend the RRM process, but no agreement was reached. Atmos has expressed a desire to reach a settlement of the January 31, 2012 filing that includes a revised RRM process.

Atmos Mid-Tex filed a Statement of Intent on January 31, 2012, seeking to increase system-wide base rates (which exclude the cost of gas) by approximately \$49 million or 11.94%. However, the Company is requesting an increase of 13.6%, excluding gas costs, for its residential customers. Additionally, the application would change the way that rates are

collected, by increasing the residential fixed-monthly (or customer) charge from \$7.50 to \$18.00 and decreasing the consumption charge from \$0.25 per 100 cubic feet (“ccf”) to \$0.07 per ccf.

The law provides that a rate request made by a gas utility cannot become effective until at least 35 days following the filing of the application to change rates. Atmos has proposed an effective date of March 6, 2012. The law permits the City to suspend the rate change for 90 days after the date the rate change would otherwise be effective. If the City fails to take some action regarding the filing before the effective date, Atmos’ rate request is deemed administratively approved. Atmos has been informed that Council is meeting on March 6, 2012, to approve the resolution to suspend the effective date of the proposed rate increase and has approved receiving the resolution on March 7, 2012.

The purpose of the resolution is to extend the effective date of Atmos Mid-Tex’s proposed rate increase to give the City time to review the rate-filing package. The resolution suspends the March 6, 2012 effective date of the Company’s rate increase for the maximum period permitted by law to allow the City, working in conjunction with the other ACSC cities, to evaluate the filing, determine whether the filing complies with law, and if lawful, to determine what further strategy to pursue, including settlement and ultimately to approve reasonable rates.

Financial Considerations

N/A

Other Considerations

N/A

Board Discussion/Action

N/A

Action Requested

Motion to approve the resolution suspending the effective date of Atmos Mid-Tex’s proposed rate increase.

Attachments

Resolution

Frequently Asked Questions

List of Cities Participating in Atmos Cities Steering Committee (ACSC)

Email/letter from Atmos regarding delivery of resolution

RESOLUTION NO. _____

RESOLUTION OF THE CITY OF MURPHY, TEXAS, SUSPENDING THE MARCH 6, 2012, EFFECTIVE DATE OF ATMOS ENERGY CORP., MID-TEX DIVISION (“ATMOS MID-TEX”) REQUESTED RATE CHANGE TO PERMIT THE CITY TIME TO STUDY THE REQUEST AND TO ESTABLISH REASONABLE RATES; APPROVING COOPERATION WITH ATMOS CITIES STEERING COMMITTEE (“ACSC”) AND OTHER CITIES IN THE ATMOS MID-TEX SERVICE AREA TO HIRE LEGAL AND CONSULTING SERVICES AND TO NEGOTIATE WITH THE COMPANY AND DIRECT ANY NECESSARY LITIGATION AND APPEALS; REQUIRING REIMBURSEMENT OF CITIES’ RATE CASE EXPENSES; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND ACSC’S LEGAL COUNSEL

WHEREAS, on or about January 31, 2012, Atmos Energy Corp., Mid-Tex Division (“Atmos Mid-Tex” or “Company”), pursuant to Gas Utility Regulatory Act § 104.102 filed with the City of Murphy, Texas (“City”) a Statement of Intent to change gas rates in all municipalities exercising original jurisdiction within its Mid-Tex Division service area, effective March 6, 2012; and

WHEREAS, the City is a regulatory authority under the Gas Utility Regulatory Act (“GURA”) and under Chapter 104, §104.001 et seq. of GURA has exclusive original jurisdiction over Atmos Mid-Tex’s rates, operations, and services within the City; and

WHEREAS, in order to maximize the efficient use of resources and expertise, it is reasonable for the City to maintain its involvement in the Atmos Cities Steering Committee (“ACSC”) and to cooperate with the more than 150 similarly situated city members of ACSC and other city participants in conducting a review of the Company’s application and to hire and direct legal counsel and consultants and to prepare a common response and to negotiate with the Company and direct any necessary litigation; and

WHEREAS, Atmos Mid-Tex proposed March 6, 2012, as the effective date for its requested increase in rates; and

WHEREAS, it is not possible for the City to complete its review of Atmos Mid-Tex’s filing by March 6, 2012; and

WHEREAS, the City will need an adequate amount of time to review and evaluate Atmos Mid-Tex’s rate application to enable the City to adopt a final decision as a local regulatory authority with regard to Atmos Mid-Tex’s requested rate increase; and

WHEREAS, the Gas Utility Regulatory Act § 104.107 grants local regulatory authorities the right to suspend the effective date of proposed rate changes for ninety (90) days; and

WHEREAS, the Gas Utility Regulatory Act § 103.022 provides that costs incurred by Cities in ratemaking activities are to be reimbursed by the regulated utility.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MURPHY, TEXAS:

1. That the March 6, 2012, effective date of the rate request submitted by Atmos Mid-Tex on January 31, 2012, be suspended for the maximum period allowed by law to permit adequate time to review the proposed changes and to establish reasonable rates.

2. That the City is authorized to cooperate with ACSC and its member cities in the Mid-Tex service area and under the direction of the ACSC Executive Committee to hire and direct legal counsel and consultants, negotiate with the Company, make recommendations to the City regarding reasonable rates, and to direct any necessary administrative proceedings or court litigation associated with an appeal of a rate ordinance and the rate case filed with the City or Railroad Commission.

3. That the City's reasonable rate case expenses shall be reimbursed by Atmos.

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

5. A copy of this Resolution shall be sent to Atmos, care of David Park, Vice President Rates & Regulatory Affairs, at Atmos Energy Corporation, Mid-Tex Division, 5420 LBJ Freeway, Suite 1862, Dallas, Texas 75240, and to Geoffrey Gay, General Counsel to ACSC, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

PASSED AND APPROVED this 6TH day of MARCH, 2012.

Bret M. Baldwin, Mayor

ATTEST:

Aimee Nemer, City Secretary

APPROVED AS TO FORM:

Wm. Andrew Messer, City Attorney

FREQUENTLY ASKED QUESTIONS REGARDING ACSC AND THE RRM RATEMAKING PROCESS

What is the Role of Cities in Ratemaking?

Cities have historically exercised original jurisdiction over the level of gas rates charged within their boundaries. Generally, gas distribution utilities have filed rate cases at the city level and only gone to the Railroad Commission of Texas (“RRC”) with an appeal of city action or if they cannot reach a settlement with cities. If a utility and cities reach an agreement, the utility may then file a case at the RRC to implement the same rates approved by cities in areas outside municipal boundaries.

Once a case is at the RRC, the Commission Staff generally expects cities to intervene and do most of the discovery, sponsor opposing witnesses, and do most of the cross-examination and briefing. There is no consumer advocate at the RRC. If cities do not participate in hearings at the RRC, the request of a regulated utility is likely to be rubber-stamped.

What is the background to the creation of the Atmos Cities’ Steering Committee?

The Atmos pipeline and distribution systems were built, owned and operated by Lone Star Gas (“LSG”) which maintained over 200 rate jurisdictions until it sold its assets to Texas Utilities (“TXU”) in the late 1990’s. That meant that many cities had their own unique distribution rates and that individual cities had to process rate cases at the local level. LSG-Pipeline served all 200-plus distribution systems and pipeline rates were set by the RRC.

From the early 1980’s through the late 1990’s, LSG filed no pipeline or system-wide rate case at the RRC. When LSG was finally brought before the RRC to show cause why its rates should not be reduced, approximately 80 cities intervened and created an *ad hoc* group known as the Steering Committee of Cities Served by Lone Star.

TXU purchased the LSG assets in the late 1990’s and immediately commenced consolidating 200-plus ratemaking jurisdictions into regions. As regional cases were filed, cities within each region created an *ad hoc* committee to form a common strategy and negotiating position. Once TXU had aggregated the cities into five or six jurisdictions, each with a different rate, Texas Utilities Gas Company filed a system-wide case to bring all of the old LSG territory under one common rate. The different city regional committees then united and formed the Allied Coalition of Cities (“ACC”). While the gas utility assets were owned and controlled by TXU, the Steering Committee transformed itself from an *ad hoc* group that came together only in response to rate filings by the utility into a permanent standing committee.

In Gas Utilities Docket (“GUD”) No. 9400 in 2004, TXU’s request for a \$61.6 million system-wide increase was aggressively opposed by ACC. The Company received only a \$2.01 million increase. Unhappy with that result, TXU decided that owning a gas system was neither as fun nor as profitable as the deregulated electric system, and they sold the system to Atmos Energy Corporation (“Atmos” or “Company”). ACC was then transformed into the Steering

Committee of Cities Served by Atmos and then renamed Atmos Cities Steering Committee to obtain an easy to remember acronym, “ACSC”.

What is the Atmos Cities Steering Committee?

ACSC is a coalition of 154 cities that unite in common purpose to address gas utility rate and franchise issues related to Atmos Energy Corporation. Its objectives are to: (1) ensure that gas utility rates charged to cities and their residents are fair and reasonable; (2) maintain reasonable franchise fee revenues for cities; (3) protect cities’ original jurisdiction over rates and services; (4) be a voice for consumers where no state agency assumes such a role; and (5) promote sound ratemaking policy in the public interest.

Cities join the permanent standing committee by passing a resolution and agreeing to support the work of ACSC through modest occasional *per capita* assessments which support ongoing administrative and legislative advocacy and all expenses where cities are not entitled to reimbursement. Each member city designates a representative to ACSC. Member representatives may volunteer to serve on the ACSC Executive Committee or Settlement Committee. The Executive Committee sets policy, hires legal counsel and consultants, directs litigation, establishes a legislative agenda, sets assessments on members as needed and meets quarterly with Atmos executives. The Settlement Committee is directly involved in negotiating resolution of contested matters with Atmos executives.

The list of current members is attached.

What is the benefit of membership in ACSC?

One hundred fifty-four cities speaking as one voice is much more effective in advocacy before the Railroad Commission and legislature than any one city or multiple small groups of cities.

The legislature has given gas utilities a right to an annual increase in rates. Resources (both financial and human) of individual cities are conserved by membership in ACSC. Additionally, membership enhances institutional memory of ratemaking issues, public policy debates, and right-of-way and franchise fee battles.

What has ACSC accomplished recently?

Going into the legislative session, ACSC in December 2010 released a 48-page report, “Natural Gas Consumers and the Texas Railroad Commission.” More than 200 television, newspaper and radio news sites posted information on and a link to the report which may be found on ACSC’s website, TexasGasConsumers.org.

Earlier in 2010, ACSC representatives visited on several occasions with the Sunset Commission Staff, and several ACSC recommendations for reform were included in the Sunset Commission Report on the Railroad Commission, delivered to the legislature’s Sunset Committee prior to public hearings on the agency. Several ACSC member representatives testified before the legislature regarding reforms needed at the Railroad Commission.

During the most recent legislative session, lobbying efforts by ACSC were critical in killing two gas utility bills that would have undermined traditional regulation, deprived cities of certain rights, and led to even greater rate increases.

ACSC has resolved a major issue involving franchise fees. Atmos unilaterally, without notice, ceased inclusion of franchise fees in the calculations of gross receipts regardless of whether specific franchises included such payments. Several cities were willing to pursue the matter through litigation. However, counsel for ACSC was able to negotiate a resolution that allowed each member city to determine whether it desired an increase in franchise fee payments based on inclusion of franchise fees in the calculation of gross receipts. If a city opted for inclusion of fee-on-fee revenues, it had the further option of retroactive payments back to the point in time that Atmos decided to curtail fee-on-fee payments. Each member had these options regardless of the wording of the then valid franchise agreement. This resolution spared significant litigation costs and anxiety and was only possible because of the clout of the ACSC membership.

One of the most significant accomplishments of ACSC occurred in 2007 via a settlement of the then pending system-wide rate case. Approximately 50 ACSC city representatives showed up in Arlington for a meeting with Atmos executives who were shocked at the vocal opposition to Atmos practices, the unfairness of annual Gas Reliability Infrastructure Program (“GRIP”) rate filings that precluded city and citizen review, and the Company’s lack of coordination with cities. That meeting led to the creation of the Rate Review Mechanism (“RRM”) process and greater ongoing communication between the Company and ACSC.

In 2010, ongoing communications between ACSC and the Company led to a workable solution to the need to replace steel service lines in a manner that accommodated city needs to control their rights-of-way, while moderating the rate impact and focusing first on the riskiest service lines based on leak repair histories. This compromise precluded a more onerous (from a city and consumer perspective) program threatened by the RRC.

What is a RRM case?

The concept of a RRM proceeding emerged as a three-year experimental substitute for GRIP cases as part of the settlement of Atmos Mid-Tex’s 2007 system-wide rate case. In 2003, the Texas Legislature added Section 104.301, Interim Adjustment for Changes in Investment, to the Gas Utility Regulatory Act. While not identified as such in the law, § 104.301 was referred to as the Gas Reliability Infrastructure Program or GRIP. The GRIP adjustments allowed gas companies to recover changes to invested capital without a review of whether increased revenues or declining expenses offset the invested capital costs. Both Atmos Pipeline and Atmos Mid-Tex filed GRIP cases as soon as the RRC adopted rules to implement the interim adjustments. As explained below, it quickly became apparent that the GRIP adjustments were terrible public policy.

As an alternative to GRIP, ACSC entered into a negotiated agreement with Atmos in 2007 to establish the RRM process. Unlike GRIP, the RRM provided for an annual review of all portions of Mid-Tex’s cost of service. It fixed an authorized rate of return on equity for the three-year period at 9.6% (which was less than what the RRC would have authorized) and set

caps on the extent to which expenses or investments could increase from one year to the next. More importantly, it allowed cities to make a comprehensive evaluation of all aspects of the utility business—investment, operation and maintenance expenses and revenues—unlike GRIP which only allows consideration of changes to invested capital.

Why is RRM superior to GRIP?

The GRIP cases are one-sided guarantees of a rubber-stamp of the utility’s rate request. ACSC attempted to participate in the first two GRIP proceedings filed by both Atmos Pipeline and Atmos Mid-Tex at the RRC. Not only were cities’ motions to intervene denied, but also, ACSC’s comments were ignored. At the city level, ACSC consultants determined that Atmos was not only including items such as artwork, chairs, computers and meals in interim rate adjustments that were allegedly intended to promote pipeline safety, but also the Company was over-earning its previously authorized rate of return. ACSC attacked the Commission’s rule in court because it denied city participation, denied a hearing on a contested matter, and denied cities’ recovery of any expenses associated with resisting GRIP rate increases. The courts have not been helpful to cities and the Texas Supreme Court has affirmed the denial of cities’ right to participate in GRIP cases at the RRC.

Cities have contended that GRIP is terrible public policy since it authorizes what would from a history of public interest regulation be regarded as unlawful—piecemeal ratemaking. GRIP allows rates to increase if the utility’s invested capital net of depreciation increases year-over-year. An increase in rates is mandated under GRIP if investment increases, even if increasing revenues and declining expenses more than offset the costs associated with increased investment.

The RRM process negotiated by ACSC solves the piecemeal ratemaking problem by providing for a comprehensive review of Atmos’ expenses and revenues. Furthermore, RRM benefits ACSC by: (1) allowing cities participation that would be denied under GRIP; (2) allowing cities to recover, at utility shareholder expense, all their ratemaking costs; and (3) avoiding both litigation and RRC jurisdiction.

The legislature has functionally authorized annual increases in gas utility rates through the GRIP process. Since consumers are otherwise stuck with annual rate increases, it is better to have cities participating in the comprehensive RRM process than unable to participate in a piecemeal process.

What has been the history of the RRM efforts?

In 2010, ACSC, in settling the third RRM proceeding, agreed to a slight modification and extension of the process. A settlement of the fourth annual RRM is now pending before ACSC members. The results of the four RRM proceedings are as follows:

RRM Filing	Year	Atmos Request	ACSC Settlement
#1	2008	\$33.5 million	\$20 million
#2	2009	\$20.2 million	\$2.6 million
#3	2010	\$70.2 million	\$27 million
#4	2011	\$15.7 million	\$6.6 million

These results are better for cities and consumers than would have been authorized by the RRC under the GRIP process.

What is the future of the RRM process?

The settlement of the fourth RRM filing anticipated ACSC and Atmos working between August and December to refine the RRM process. A settlement perpetuating the RRM process was not reached by the end of 2011 which has led to the filing of the January 31, 2012 traditional rate case. Discussions regarding the future of the RRM process will continue as we attempt to resolve the rate case by settlement.

If you have other questions please contact me at (512) 322-5875 and/or ggay@lglawfirm.com.

Geoffrey Gay
ACSC, General Counsel

ACSC Cities (154 Total)

Abilene	Fate	Palestine
Addison	Flower Mound	Pantego
Allen	Forest Hill	Paris
Alvarado	Fort Worth	Parker
Angus	Frisco	Pecan Hill
Anna	Frost	Plano
Argyle	Gainesville	Ponder
Arlington	Garland	Pottsboro
Bedford	Garrett	Prosper
Bellmead	Grand Prairie	Quitman
Benbrook	Grapevine	Red Oak
Beverly Hills	Haltom City	Reno (Parker County)
Blossom	Harker Heights	Richardson
Blue Ridge	Haskell	Richland
Bowie	Haslet	Richland Hills
Boyd	Hewitt	River Oaks
Bridgeport	Highland Park	Roanoke
Brownwood	Highland Village	Robinson
Buffalo	Honey Grove	Rockwall
Burkburnett	Hurst	Roscoe
Burleson	Iowa Park	Rowlett
Caddo Mills	Irving	Royse City
Carrollton	Justin	Sachse
Cedar Hill	Kaufman	Saginaw
Celeste	Keene	Seagoville
Celina	Keller	Sherman
Cisco	Kemp	Snyder
Cleburne	Kennedale	Southlake
Clyde	Kerrville	Springtown
College Station	Killeen	Stamford
Colleyville	Krum	Stephenville
Colorado City	Lakeside	Sulphur Springs
Comanche	Lake Worth	Sweetwater
Coolidge	Lancaster	Temple
Coppell	Lewisville	Terrell
Corinth	Lincoln Park	The Colony
Corral City	Little Elm	Trophy Club
Crandall	Lorena	Tyler
Crowley	Madisonville	University Park
Dalworthington Gardens	Malakoff	Venus
Denison	Mansfield	Vernon
DeSoto	McKinney	Waco
Duncanville	Melissa	Watauga
Eastland	Mesquite	Waxahachie
Edgecliff Village	Midlothian	Westlake
Emory	Murphy	Whitesboro
Ennis	Newark	White Settlement
Euless	Nocona	Wichita Falls
Everman	North Richland Hills	Woodway
Fairview	Northlake	Wylie
Farmers Branch	Oak Leaf	
Farmersville	Ovilla	

From: [Hooker, Jeanne](#)
To: [Linda Truitt](#)
Cc: [Park, David J](#)
Subject: Council Mtg. on Rate Case Suspension
Date: Wednesday, February 22, 2012 1:04:15 PM

Linda,

Per our telephone conversation concerning the March 6 council meeting for the Atmos Energy Rate Case Suspension, Atmos Energy does not have a problem with that date as long as we receive the resolution on March 7. Any questions please contact me.

Jeanne Hooker
Manager, Public Affairs
Atmos Energy
972.964.4104
Jeanne.hooker@atmosenergy.com

Issue

Consider and/or act upon approval of change order for Wall Construction to sod Liberty Ridge Park.

Staff Resource / Department

Kim Lenoir, Director of Parks and Public Works

Key Focus Area

TBD by City Council upon completion of the Strategic Planning Session.

Summary

Due to watering restrictions and drought conditions, a change order in the amount of \$27,900 to the Wall Construction contract for Liberty Ridge Park is requested for the purpose of replacing the compost seeding for the park with sod.

Background/History

City Council approved a contract on December 6, 2011 in an amount not to exceed \$750,000 with Wall Construction for the construction of Liberty Ridge Park, which is currently under construction. The original project included compost seeding. Due to watering restrictions and ongoing drought conditions, a change order is requested to include sod for the park instead of the compost seeding, which would require a variance due to the watering restrictions. Another benefit is the readiness of sod for the park users. Sod takes two to four weeks to establish for pedestrian traffic versus three to four months for compost seeding. This park will be very popular and needs to have established turf as quickly as possible. Currently the schedule is to have finish grading complete in June.

Financial Considerations

This project will be financed by 2008 Bond funds. The amount of the change order is \$27,900.

Other Considerations

City of Murphy Stage 3 watering restrictions are expected to be in effect.

Staff Recommendation Action Requested

City Council is requested to approve a change order in the amount \$27,900 change order to the Wall Construction contract to include common Bermuda sod for the completion of Liberty Ridge Park.

Attachments

N/A

Issue

Consider and/or act upon approval of an ordinance amending the Code of Ordinances regarding the Ethics Policy.

Staff Resource/Department

James Fisher, City Manager and City Attorney

Key Focus Area

TBD by City Council after completion of Strategic Planning Session.

Summary

In November 2010, City Council approved a Governance and Ethics policy. On November 1, 2011, City Council requested the City Attorney's office to clarify both policies. The 11-01-11 Minutes as well as two versions of the Ethics policy are attached for Council review.

Background/History

At the November 1, 2011 Council Meeting, Council considered the following item; "Consider and/or act upon changes to the Governance Policy and Code of Ethics, including personnel matters and clarifying what constitutes an investigation, an inquiry, the scope of access by City Council members to records and information, and setting forth procedures to deal with a violation of such policies."

Councilmember Bradley moved to direct the City Attorney to provide language in the Governance Policy related to Council access of confidential information. Councilmember Daugherty seconded the motion. The motion passed unanimously.

Councilmember Halbert moved to direct the City Attorney to draft language for the Governance Policy to include the ability for Council to censure a Councilmember for violations of the Governance Policy, the Ethics Policy, or the Charter. Ms. Halbert clarified that she would like language for non - ethical violations to be included in the Governance Policy. Councilmember Grant seconded the motion.

A discussion regarding defining an investigation followed the motion. City Manager Fisher pointed out that the recently amended Charter did clarify what constitutes an investigation.

Councilmember Halbert requested the City Attorney to clarify what is not considered an investigation and what actions would be considered as initiating an investigation. The motion passed unanimously.

The City Attorney's office has proposed two versions of the Ethics Policy for consideration. Version 1 specifies that requests by Council Members to review confidential information should be requested to the City Manager with appeals going to the City Council. Version 2 specifies that requests be submitted to the Mayor who shall place the item on the agenda for City Council discussion and action.

Board Discussion/Action

See attached City Council Minutes.

Action Requested

Approve one version of the amended Ethics Policy.

City Manager Comments

The proposed revisions address the concerns expressed by City Council. I would prefer that requests regarding confidential information go directly to the Mayor and let the whole City council determine the need for this information. Otherwise, I think going directly to the city manager is where we are today and it usually results in bad feelings.

Attachments

Ordinance Amending Code of Ethics Version 1

Ordinance Amending Code of Ethics Version 2

11-01-11 Minutes

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MURPHY, TEXAS, AMENDING CHAPTER 2, ARTICLE IX., CODE OF ETHICS, OF THE CODE OF ORDINANCES OF THE CITY OF MURPHY, TEXAS, PROVIDING A CODE OF CONDUCT FOR USE OF CONFIDENTIAL INFORMATION BY THE CITY COUNCIL; PROVIDING SANCTIONS FOR VIOLATIONS OF THE GOVERNANCE POLICY AND RULES OF PROCEDURE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A CUMULATIVE/REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING FOR SAID ORDINANCE TO TAKE EFFECT FROM AND AFTER ITS DATE OF PUBLICATION.

WHEREAS, on November 15, 2010, the City Council of the City of Murphy, enacted a Code of Ethics that sets out the statutory parameters relating to the conduct of public officials and employees for the City of Murphy; and

WHEREAS, the City Council deems it necessary to amend the Code of Ethics to promote personal integrity, honesty and ethical conduct in all activities undertaken by City Officials and employees; and

WHEREAS, the City Council of the City of Murphy, is of the opinion that the recommended changes to the Code of Ethics are in the best interest of the City of Murphy and will promote personal integrity, honesty and ethical conduct in all activities undertaken by City Officials and employees and the health safety and welfare of the citizens of the City of Murphy and the general public;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURPHY, TEXAS, THAT:

Section 1. Findings Incorporated.

The findings set forth above are incorporated into the body of this ordinance as if fully set forth herein.

Section 2. Sections to be Amended in Chapter 2, Article IX., Code of Ordinances.

That Sections 2-501 and 2.502 of Chapter 2, Article IX., entitled *Code of Ethics*, of the Code of Ordinances of the City of Murphy, Texas, are hereby amended, as follows:

Section 2-501. – Definitions.

* * * * *

Confidential Information means any information that a City Council member is entitled to because of his official position but otherwise is not available to the public generally without an open records request pursuant to the provisions of the Texas Public Information Act (the “Act”), Government Code Chapter 552 and/or is not available to the public under the Act.

Official Capacity. A City Council member acts in his or her “official capacity” in performing the duties and exercising the powers of the office of a City Council member as contained and enumerated in the City Charter, Section 3.07, under the laws of the State of Texas, as this term is defined in the TEXAS CIVIL PRACTICES AND REMEDIES CODE, Section 101.053(a), and under other applicable law.

Section 2-502. – Standards of Conduct.

(a) General provisions.

(1) Confidential Information. A City Council member shall not:

- a. Use his or her position to obtain confidential information about any person or entity except in his or her official capacity;
- b. Disclose any confidential information gained through the City Council member’s office or position concerning property, operations, policies, personnel or affairs of the City;
- c. Use such confidential information to advance any economic interest or personal interest of the City Council member or confer any benefit to the City Council member, or their family member.

During an investigation conducted by the City Council as authorized by the City Charter or any other investigation or proceeding regarding whether there has been a violation of the City Charter or Code of Ethics to any investigatory, administrative or judicial authority, City Council members may receive or disclose confidential information.

In the event that a City Council member requests to review, inspect or copy any confidential information, that request shall be made to the City Manager. If the City Manager determines that the request is not relevant to his or her official capacity as a City Council member, then the requesting City Council member may appeal that determination to the City Council, who, by a public majority vote of a quorum of the City Council members present, excluding the member requesting the information, may authorize or deny disclosure of the confidential information.

Under Section 3.07 of the City Charter, the City Council may collectively investigate matters in their official capacity; other than this procedure a City Council member may not individually conduct an investigation.

(13) Compliance with Governance Policy and Rules of Procedure. City Officials shall comply with the Governance Policy and Rules of Procedure, as may be amended from time to time by the City Council.

Section 3. Severability Clause.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or

section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

Section 4. Cumulative/Repealer Clause.

This ordinance shall be cumulative of all provisions of State or Federal law and other ordinances of the City of Murphy, Texas, whether codified or uncodified, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed to the extent of such conflict.

Section 5. Savings Clause.

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

Section 6. Effective Date.

This ordinance shall become effective immediately upon its passage and publication as required by law.

DULY PASSED, APPROVED AND ADOPTED by the City Council of the City of Murphy, Texas, on this the _____ day of _____, 2012.

Bret M. Baldwin, Mayor
City of Murphy

ATTEST:

Aimee Nemer, City Secretary
City of Murphy

APPROVED AS TO FORM:

Wm. Andrew Messer, City Attorney

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MURPHY, TEXAS, AMENDING CHAPTER 2, ARTICLE IX., CODE OF ETHICS, OF THE CODE OF ORDINANCES OF THE CITY OF MURPHY, TEXAS, PROVIDING A CODE OF CONDUCT FOR USE OF CONFIDENTIAL INFORMATION BY THE CITY COUNCIL; PROVIDING SANCTIONS FOR VIOLATIONS OF THE GOVERNANCE POLICY AND RULES OF PROCEDURE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A CUMULATIVE/REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING FOR SAID ORDINANCE TO TAKE EFFECT FROM AND AFTER ITS DATE OF PUBLICATION.

WHEREAS, on November 15, 2010, the City Council of the City of Murphy, enacted a Code of Ethics that sets out the statutory parameters relating to the conduct of public officials and employees for the City of Murphy; and

WHEREAS, the City Council deems it necessary to amend the Code of Ethics to promote personal integrity, honesty and ethical conduct in all activities undertaken by City Officials and employees; and

WHEREAS, the City Council of the City of Murphy, is of the opinion that the recommended changes to the Code of Ethics are in the best interest of the City of Murphy and will promote personal integrity, honesty and ethical conduct in all activities undertaken by City Officials and employees and the health safety and welfare of the citizens of the City of Murphy and the general public;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURPHY, TEXAS, THAT:

Section 1. Findings Incorporated.

The findings set forth above are incorporated into the body of this ordinance as if fully set forth herein.

Section 2. Sections to be Amended in Chapter 2, Article IX., Code of Ordinances.

That Sections 2-501 and 2.502 of Chapter 2, Article IX., entitled *Code of Ethics*, of the Code of Ordinances of the City of Murphy, Texas, are hereby amended, as follows:

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Confidential Information means any information that a City Council member is entitled to because of his official position but otherwise is not available to the public generally without an open records request pursuant to the provisions of the Texas Public Information Act (the “Act”), Government Code Chapter 552 and/or is not available to the public under the Act.

Official Capacity. A City Council member acts in his or her “official capacity” in performing the duties and exercising the powers of the office of a City Council member as contained and enumerated in the City Charter, Section 3.07, under the laws of the State of Texas, as this term is defined in the TEXAS CIVIL PRACTICES AND REMEDIES CODE, Section 101.053(a), and under other applicable law.

Section 2-502. – Standards of Conduct.

(a) General provisions.

(1) Confidential Information. A City Council member shall not:

- a. Use his or her position to obtain confidential information about any person or entity except in his or her official capacity;
- b. Disclose any confidential information gained through the City Council member’s office or position concerning property, operations, policies, personnel or affairs of the City;
- c. Use such confidential information to advance any economic interest or personal interest of the City Council member or confer any benefit to the City Council member, or their family member.

During an investigation conducted by the City Council as authorized by the City Charter or any other investigation or proceeding regarding whether there has been a violation of the City Charter or Code of Ethics to any investigatory, administrative or judicial authority, City Council members may receive or disclose confidential information.

In the event that a City Council member requests to review, inspect or copy any confidential information, that request shall be made to the mayor, who shall place the issue on a City Council agenda for discussion and/or action by the City Council. Under Section 3.07 of the City Charter, the City Council may collectively investigate matters in their official capacity; other than this procedure a City Council member may not individually conduct an investigation.

(13) Compliance with Governance Policy and Rules of Procedure. City Officials shall comply with the Governance Policy and Rules of Procedure, as may be amended from time to time by the City Council.

Section 3. Severability Clause.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

Section 4. Cumulative/Repealer Clause.

This ordinance shall be cumulative of all provisions of State or Federal law and other ordinances of the City of Murphy, Texas, whether codified or uncodified, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed to the extent of such conflict.

Section 5. Savings Clause.

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

Section 6. Effective Date.

This ordinance shall become effective immediately upon its passage and publication as required by law.

DULY PASSED, APPROVED AND ADOPTED by the City Council of the City of Murphy, Texas, on this the _____ day of _____, 2012.

Bret M. Baldwin, Mayor
City of Murphy

ATTEST:

Aimee Nemer, City Secretary
City of Murphy

APPROVED AS TO FORM:

Wm. Andrew Messer, City Attorney

MINUTES
REGULAR CITY COUNCIL MEETING
CITY OF MURPHY
206 North Murphy Road
Murphy, Texas

November 1, 2011
6:00 P.M.

CALL TO ORDER

INVOCATION & PLEDGE OF ALLEGIANCE

ROLL CALL & CERTIFICATION OF A QUORUM

PRESENTATIONS

• Presentation and review of Murphy Maize Days and 5K/Fun Run

Stacy Buckley and Kristen Roberts provided an overview of the events.

PUBLIC COMMENTS

No public comments were submitted.

CONSENT AGENDA

All consent agenda items are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember so requests, in which event the item will be removed from the Consent Agenda and voted on separately.

- A. Approval of the Minutes from the October 18, 2011 Regular City Council Meeting.**
- B. Consider and/or act upon approval of a resolution approving the 2011 tax roll with a total levy of \$8,328,925.99 as certified by Kenneth L. Maun, Tax Assessor Collector of Collin County.**
- C. Consider and / or act upon approval of a Memorandum of Agreement (MOA) with the State of Texas Department of State Health Services (DSHS) for Mutual Aid of Emergency Medical Services for Public Assistance to provide mutual aid in a pending or actual disaster.**

Council Action

Councilmember Halbert requested to remove Item D from the Consent Agenda to be considered individually. Ms. Halbert moved to approve the remaining Consent Items, A-C as presented. Councilmember Daugherty seconded the motion. A vote was taken and passed, 7-0.

- D. Consider and/or act upon approval of a cross-connection backflow ordinance.**

Council Action

After some clarification, Councilmember Halbert moved to approve a cross-connection backflow ordinance amending the last sentence of Section 82-410 (b) to "*This annual registration fee includes the City's verification of the Tester's equipment and tools.*" Councilmember Daugherty seconded the motion. A vote was taken and passed, 7-0.

INDIVIDUAL CONSIDERATION

- 1. Consider and/or act upon authorizing the City Manager to enter into an Interlocal Agreement with the City of Richardson for Phase 1 of a feasibility study for a Multi Agency Recreation Center.**

Council Discussion

Councilmember Halbert recused herself from this discussion and vote. Several Councilmembers indicated that they are not sure if the City needs to partner and fund this type of facility. There was a consensus to go forward with Phase 1 of the study to determine the need and how it meets the City's Master Plan.

Council Action

Councilmember Brandon moved to authorize the City Manager to enter into an Interlocal Agreement with the City of Richardson for Phase 1 of a feasibility study for a Multi Agency Recreation Center not to exceed \$15,000. Councilmember Daugherty seconded the motion. A vote was taken and passed 6-0 with Councilmember Halbert absent for this discussion and motion.

- 2. Consider and/or act upon approval of 9-1-1 address changes.**

Council Action

After some clarification, Councilmember Daugherty moved to approve the 9-1-1 address changes with the Albertson's shopping center designated as the 100 block. Councilmember Halbert seconded the motion and moved to amend the motion to include removing 210 E. FM 544. Councilmember Daugherty seconded the amendment. A vote was taken on the amendment and passed, 7-0. A vote was taken on the main amended motion and passed, 7-0.

- 3. Consider and/or act upon changes to the Governance Policy and Code of Ethics, including personnel matters and clarifying what constitutes an investigation, an inquiry, the scope of access by City Council Members to records and information, and setting forth procedures to deal with a violation of such policies.**

Council Discussion

Councilmember Bradley initiated the discussion regarding confidential information and a councilmember's access to it. He stated that rules needed to be in place to govern this. There was also discussion regarding what is considered an investigation and the role of a councilmember. Councilmember Bradley described a specific incident of a councilmember requesting previous employment information on a mid-level staff person who does not report to Council and the question was asked as to whether this would be considered an investigation.

Councilmember Brandon stated that he would like to see this policy jibe with the many Attorney General Opinions that are related to this subject. Councilmember Brandon also stated that he would love to define what constitutes an investigation because it seems to be a very grey area.

Councilmember Grant stated that he would hesitate to rely solely on Attorney General Opinions because they are very fact specific and specific to certain areas of law and cannot be used as precedence in a court of law. Councilmember Grant stated he would like to make it clear that he did not request the information and said that his personal opinion was that any councilmember can make a request for information to any city in his or her personal capacity as long as that information isn't used in an official capacity. He explained further that if an individual used their official capacity to gain information and it is used in their

official capacity, or; if information was obtained in a councilmember's personal capacity and then later used in their official capacity, then that would rise to the level of an investigation.

Councilmember Halbert read a statement for the record which is attached as *Exhibit A* to the Minutes.

Councilmember Grant requested to see the open records request. Councilmember Brandon said that the City could submit an open records request requesting a copy of the open records request that he initiated. Councilmember Halbert said that it would be embarrassing to the City to request this information. Councilmember Brandon stated that he agreed with Councilmember Grant's assessment that an individual can request information as long as it is not in their official capacity. He went on to say that if an investigation is warranted to see if any city resources were used, he is all for it. Councilmember Halbert stated that you do not get to be a regular citizen 23 hours of the day and a councilmember 1 hour a day. She explained that councilmembers are perceived as councilmembers 24/7. Ms. Halbert stated that she does not want to request a copy of the request but would be fine with initiating an investigation to see if this is an investigation of an employee of the city.

Mayor Baldwin asked what the nature of the inquiry was. Councilmember Brandon stated that he had requested the information but has not looked at it. He explained that he requested the information for a citizen who is considering running for City Council and wanted more information on an employee's background. He stated that this request stemmed from the citizen's dissatisfaction during the budget discussions.

Mayor Baldwin stated to Councilmember Brandon that he hoped that he recognized the difficulties that this situation has presented and the perception to employees knowing that a councilmember is requesting personal information and not knowing what will or won't be done with the information. Mayor Baldwin stated that he hoped he would seriously consider the potential implications before doing something like that again. Councilmember Brandon responded that the point was taken.

Council Action

Councilmember Bradley moved to direct the City Attorney to provide language in the Governance Policy related to Council access of confidential information. Councilmember Daugherty seconded the motion. A vote was taken and passed, 7-0.

Councilmember Halbert moved to direct the City Attorney to draft language for the Governance Policy to include the ability for Council to censure a Councilmember for violations of the Governance Policy, the Ethics Policy, or the Charter. Ms. Halbert clarified that she would like language for non-ethical violations to be included in the Governance Policy. Councilmember Grant seconded the motion. A discussion regarding defining an investigation followed the motion. City Manager Fisher pointed out that the recently amended Charter did clarify what constitutes an investigation. Councilmember Halbert requested the City Attorney to clarify what is *not* considered an investigation and what actions would be considered as initiating an investigation. A vote was taken and passed, 7-0.

CITY MANAGER/STAFF REPORTS

City Manager Fisher reported on the following:

- **Early Voting continues through November 4**
- **Election Day – November 8**
- **Board & Commission applications being accepted**
- **Board & Commission interviews – Nov 14-18**

- Thanksgiving Holiday – Nov 24-25
- Employee Holiday Dinner – Dec 12
- Stage 3 Watering Restrictions –Effective Today
- McCreary Road construction will be delayed until North Murphy Road utility relocations are completed

EXECUTIVE SESSION

The City Council will hold a closed Executive Session pursuant to the provisions of Chapter 551, Subchapter D, Texas Government Code, in accordance with the authority contained in:

- §551.071 Consultation with City Attorney regarding pending litigation or contemplated litigation or settlement offer involving *Michael Cantrell v. City of Murphy, et al.*, Cause No. 6:09-cv-225.
- §551.071 Consultation with City Attorney regarding pending litigation or contemplated litigation or settlement offer involving *Johnny Boles v. City of Murphy, et al.*, Civil Action No. 4:11cv682
- §551.072 Deliberation regarding real property; to deliberate the purchase, exchange, lease, or value of real property.
- §551.074 Personnel Matters – to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Municipal Judge.

Council Action

Council convened into Executive Session at 7:37 p.m.

RECONVENE INTO REGULAR SESSION

The City Council will reconvene into Regular Session, pursuant to the provisions of Chapter 551, Subchapter D, Texas Government Code, to take any action necessary regarding:

- §551.071 Consultation with City Attorney regarding pending litigation or contemplated litigation or settlement offer involving *Michael Cantrell v. City of Murphy, et al.*, Cause No. 6:09-cv-225.
- §551.071 Consultation with City Attorney regarding pending litigation or contemplated litigation or settlement offer involving *Johnny Boles v. City of Murphy, et al.*, Civil Action No. 4:11cv682
- §551.072 Deliberation regarding real property; to deliberate the purchase, exchange, lease, or value of real property.
- §551.074 Personnel Matters – to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Municipal Judge.

Council Action

Council reconvened into Regular Session at 8:28 p.m. Councilmember Halbert moved to authorize City Manager James Fisher and Mayor Pro Tem John Daugherty to attend Cantrell litigation on behalf of the City. Councilmember Bradley seconded the motion. A vote was taken and passed, 7-0.

ADJOURNMENT

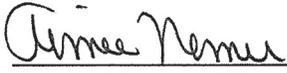
With no further business, the meeting was adjourned at 8:28 p.m.

APPROVED BY:



Bret M. Baldwin, Mayor

ATTEST:



Aimee Nemer, City Secretary



Exhibit A
November 1, 2011 City Council Minutes
Statement from Deputy Mayor Pro Tem Colleen Halbert

Councilmembers do not represent themselves, nor do they represent only those who voted for them, or those who “got them elected.” They represent the entire population of the city of Murphy – all 18,000 or so.

The role of a Councilmember is to serve not only the citizens, but also to serve The City of Murphy in ensuring that the city’s interests are protected. This includes not compromising the integrity of our community, or engaging in personal quests for information that give the appearance of a Council investigation, or attacking individual employees.

As Councilmembers our role is similar to that of a company’s Board of Directors. It is highly unusual for a member of a Board of Directors to begin a solo investigation upon an employee, especially one that is not a direct report. Even our Charter prohibits this sort of investigation and also this sort of delving into day to day operations.

Upon election a Councilmember takes on a new role different from Joe Citizen. While it is acceptable and appropriate for citizens to make certain requests for information, it is ill-advised for a Councilmember to do open records requests from other cities. This can be damaging to the City of Murphy’s reputation, ability to work with other cities, and recruit candidates if it appears that there is a Councilmember acting on behalf of the City to do investigations, especially when personnel matters are involved.

We have this governance policy in place to assist in delineating how communication should flow from staff to Council. If any member of Council has concerns about how that information is flowing than they should bring that to the attention of the full Council. If a majority of Council believes that the concerns are warranted, then the Council should deal directly with the City Manager, as he or she is the direct report tasked with the day to day operations of the city. If the Council then has concerns about the abilities of the City Manager, then they deal with the City Manager through the personnel procedures. At no time is it appropriate for Council, individually or collectively, to involve themselves in personnel matters beyond their direct reports as lined out by the Charter.

If the Council determines that there is no cause for concern about the flow of information, or the functionality of the city, then it is inappropriate for individual Councilmembers to continue by questioning individual staff members, other cities or agencies and working to undermine the work of the City Council or the City Staff.

It seems that if the Charter prohibits solo investigations and Council involvement in the day to day operations, then there should be repercussions for those Councilmembers who violate the Charter before it reaches the level of involving the entire community in divisive and costly recall elections.

Issue

Consider and/or act upon approval of ordinances amending the Code of Ordinances regarding the Governance Policy.

Staff Resource/Department

James Fisher, City Manager and City Attorney

Key Focus Area

TBD by City Council after completion of Strategic Planning Session.

Summary

In November 2010, City Council approved a Governance and Ethics policy. On November 1, 2011, City Council requested the City Attorney's office to clarify both policies. The 11-01-11 Minutes as well as two versions of the Governance policy are attached for Council review.

Background/History

At the November 1, 2011 Council Meeting, Council considered the following item; "Consider and/or act upon changes to the Governance Policy and Code of Ethics, including personnel matters and clarifying what constitutes an investigation, an inquiry, the scope of access by City Council members to records and information, and setting forth procedures to deal with a violation of such policies."

Councilmember Bradley moved to direct the City Attorney to provide language in the Governance Policy related to Council access of confidential information. Councilmember Daugherty seconded the motion. The motion passed unanimously.

Councilmember Halbert moved to direct the City Attorney to draft language for the Governance Policy to include the ability for Council to censure a Councilmember for violations of the Governance Policy, the Ethics Policy, or the Charter. Ms. Halbert clarified that she would like language for non - ethical violations to be included in the Governance Policy. Councilmember Grant seconded the motion.

A discussion regarding defining an investigation followed the motion. City Manager Fisher pointed out that the recently amended Charter did clarify what constitutes an investigation.

Councilmember Halbert requested the City Attorney to clarify what is not considered an investigation and what actions would be considered as initiating an investigation. The motion passed unanimously.

The City Attorney's office has proposed two versions of the Governance Policy for consideration. Version 1 specifies that requests by Council Members to review confidential information should be requested to the City Manager with appeals going to the City Council. Version 2 specifies that requests be submitted to the Mayor who shall place the item on the agenda for City Council discussion and action.

Board Discussion/Action

See attached City Council Minutes.

Action Requested

Approve one version of the amended Governance Policy.

City Manager Comments

The proposed revisions address the concerns expressed by City Council. I would prefer that requests regarding confidential information go directly to the Mayor and let the whole City council determine the need for this information. Otherwise, I think going directly to the city manager is where we are today and it usually results in bad feelings.

Attachments

Governance Policy Version 1

Governance Policy Version 2

11-01-11 Minutes

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MURPHY, TEXAS, AMENDING CHAPTER 2, ARTICLE X., GOVERNANCE POLICY AND RULES OF PROCEDURE, OF THE CODE OF ORDINANCES OF THE CITY OF MURPHY, TEXAS, PROVIDING A POLICY REGARDING ACCESS TO AND USE OF CONFIDENTIAL INFORMATION BY THE CITY COUNCIL; PROVIDING SANCTIONS FOR VIOLATIONS OF THE GOVERNANCE POLICY AND RULES OF PROCEDURE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A CUMULATIVE/REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING FOR SAID ORDINANCE TO TAKE EFFECT FROM AND AFTER ITS DATE OF PUBLICATION.

WHEREAS, on November 15, 2010, the City Council of the City of Murphy (the “City Council”), enacted Ordinance No. 10-11-862 establishing a City Council Governance Policy and Rules of Procedure (the “Governance Policy”) that addresses relations between the City Council and the mayor, and between the City Council and city staff, the City Attorney, the City Engineer, the Municipal Judge and the media and defines the roles, conduct and procedures for City Council meetings; and

WHEREAS, the City Council is of the opinion that the recommended revisions to the Governance Policy are in the best interest of the City of Murphy and will promote the proper discharge of the duties of the City Council and city staff that will benefit the health, safety and welfare of the citizens of the City of Murphy and the general public.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURPHY, TEXAS, THAT:

Section 1. Findings Incorporated.

The findings set forth above are incorporated into the body of this ordinance as if fully set forth herein.

Section 2. Sections To Be Amended in Chapter 2, Article X., Code of Ordinances.

Chapter 2, Article X., entitled *Governance Policy and Rules of Procedure*, of the Code of Ordinances of the City of Murphy, Texas, is hereby amended by adding Sections 2-603(e) and Section 2-613, to read as follows:

SECTION 2-603. - Information.

(e) Confidential Information. In general, a member of the City Council is entitled to review and inspect all records of the City, including confidential information, in their official capacity. A City Council member acts in his or her “official capacity” in performing the duties and exercising the powers of the office of a City Council member as contained and enumerated in the City Charter, Section 3.07, under the laws of the State of Texas, as this term is defined in the TEXAS CIVIL PRACTICES AND REMEDIES CODE, Section 101.053(a), and under other applicable law. If the records contain confidential information, such as certified agendas or tape recordings of closed meetings, then the City Council member will not be entitled to make a copy of the

information. “Confidential information” means any information that a City Council member is entitled to because of his official position but otherwise is not available to the public generally without an open records request pursuant to the provisions of the Texas Public Information Act (the “Act”), Government Code Chapter 552 and/or is not available to the public under the Act. Notwithstanding the foregoing, a City Council member shall not:

1. Use his or her position to obtain confidential information about any person or entity except in his or her official capacity;
2. Disclose any confidential information gained through the City Council member’s office or position concerning property, operations, policies, personnel or affairs of the City;
3. Use such confidential information to advance any economic interest or personal interest of the City Council member or confer any benefit to the City Council member, or their family member.

During an investigation conducted by the City Council as authorized by the City Charter or any other investigation or proceeding regarding whether there has been a violation of the City Charter or Code of Ethics to any investigatory, administrative or judicial authority, City Council members may receive or disclose confidential information.

In the event that a City Council member requests to review, inspect or copy any confidential information, that request shall be made to the City Manager. If the City Manager determines that the request is not relevant to his or her official capacity as a City Council member, then the requesting City Council member may appeal that determination to the City Council, who, by a public majority vote of a quorum of the City Council members present, excluding the member requesting the information, may authorize or deny disclosure of the confidential information.

Under Section 3.07 of the City Charter, the City Council may collectively investigate matters in their official capacity; other than this procedure a City Council member may not individually conduct an investigation.

Section 2-613. - Violations and Sanctions

Any City Council member who violates this article may be subject to sanctions imposed pursuant to Chapter 2, Article IX., Section 2-517, *Code of Ethics*, of the Code of Ordinances of the City of Murphy, Texas.

The following sanctions, as similarly set out in Section 2-517 of the *Code of Ethics*, may be imposed for violations of this article:

- (1) A letter of notification is an appropriate sanction when the violation is clearly unintentional, or when the conduct of the person complained against was done in reliance upon an opinion of the City Attorney.
- (2) A letter of admonition is the appropriate sanction when the Ethics Review Commission (“Commission”) finds the violation is minor and/or may have been unintentional, but calls for a more substantial response than a letter of notification.

(3) A letter of reprimand is the appropriate sanction when the Commission finds a serious violation has been committed intentionally or knowingly or through disregard of this Ordinance.

(4) A letter of censure is the appropriate sanction when the Commission finds that a serious violation has occurred and/or more than one serious violation or repeated serious violations of this Article have been committed by a City Official.

(c) Copies of all sanction letters issued by the Commission under this section shall be sent to the City Council.

Section 3. Severability Clause.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

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This ordinance shall be cumulative of all provisions of State or Federal law and other ordinances of the City of Murphy, Texas, whether codified or uncoded, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed to the extent of such conflict.

Section 5. Savings Clause.

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

Section 6. Effective Date.

This ordinance shall become effective immediately upon its passage and publication as required by law.

DULY PASSED, APPROVED AND ADOPTED by the City Council of the City of Murphy, Texas, on this the _____ day of _____, 2012.

Bret M. Baldwin, Mayor
City of Murphy

ATTEST:

Aimee Nemer, City Secretary
City of Murphy

APPROVED AS TO FORM:

Wm. Andrew Messer, City Attorney

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1. Use his or her position to obtain confidential information about any person or entity except in his or her official capacity;
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Bret M. Baldwin, Mayor
City of Murphy

ATTEST:

Aimee Nemer, City Secretary
City of Murphy

APPROVED AS TO FORM:

Wm. Andrew Messer, City Attorney

MINUTES
REGULAR CITY COUNCIL MEETING
CITY OF MURPHY
206 North Murphy Road
Murphy, Texas

November 1, 2011
6:00 P.M.

CALL TO ORDER

INVOCATION & PLEDGE OF ALLEGIANCE

ROLL CALL & CERTIFICATION OF A QUORUM

PRESENTATIONS

- **Presentation and review of Murphy Maize Days and 5K/Fun Run**
Stacy Buckley and Kristen Roberts provided an overview of the events.

PUBLIC COMMENTS

No public comments were submitted.

CONSENT AGENDA

All consent agenda items are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember so requests, in which event the item will be removed from the Consent Agenda and voted on separately.

- Approval of the Minutes from the October 18, 2011 Regular City Council Meeting.**
- Consider and/or act upon approval of a resolution approving the 2011 tax roll with a total levy of \$8,328,925.99 as certified by Kenneth L. Maun, Tax Assessor Collector of Collin County.**
- Consider and / or act upon approval of a Memorandum of Agreement (MOA) with the State of Texas Department of State Health Services (DSHS) for Mutual Aid of Emergency Medical Services for Public Assistance to provide mutual aid in a pending or actual disaster.**

Council Action

Councilmember Halbert requested to remove Item D from the Consent Agenda to be considered individually. Ms. Halbert moved to approve the remaining Consent Items, A-C as presented. Councilmember Daugherty seconded the motion. A vote was taken and passed, 7-0.

- Consider and/or act upon approval of a cross-connection backflow ordinance.**

Council Action

After some clarification, Councilmember Halbert moved to approve a cross-connection backflow ordinance amending the last sentence of Section 82-410 (b) to "*This annual registration fee includes the City's verification of the Tester's equipment and tools.*" Councilmember Daugherty seconded the motion. A vote was taken and passed, 7-0.

INDIVIDUAL CONSIDERATION

- 1. Consider and/or act upon authorizing the City Manager to enter into an Interlocal Agreement with the City of Richardson for Phase 1 of a feasibility study for a Multi Agency Recreation Center.**

Council Discussion

Councilmember Halbert recused herself from this discussion and vote. Several Councilmembers indicated that they are not sure if the City needs to partner and fund this type of facility. There was a consensus to go forward with Phase 1 of the study to determine the need and how it meets the City's Master Plan.

Council Action

Councilmember Brandon moved to authorize the City Manager to enter into an Interlocal Agreement with the City of Richardson for Phase 1 of a feasibility study for a Multi Agency Recreation Center not to exceed \$15,000. Councilmember Daugherty seconded the motion. A vote was taken and passed 6-0 with Councilmember Halbert absent for this discussion and motion.

- 2. Consider and/or act upon approval of 9-1-1 address changes.**

Council Action

After some clarification, Councilmember Daugherty moved to approve the 9-1-1 address changes with the Albertson's shopping center designated as the 100 block. Councilmember Halbert seconded the motion and moved to amend the motion to include removing 210 E. FM 544. Councilmember Daugherty seconded the amendment. A vote was taken on the amendment and passed, 7-0. A vote was taken on the main amended motion and passed, 7-0.

- 3. Consider and/or act upon changes to the Governance Policy and Code of Ethics, including personnel matters and clarifying what constitutes an investigation, an inquiry, the scope of access by City Council Members to records and information, and setting forth procedures to deal with a violation of such policies.**

Council Discussion

Councilmember Bradley initiated the discussion regarding confidential information and a councilmember's access to it. He stated that rules needed to be in place to govern this. There was also discussion regarding what is considered an investigation and the role of a councilmember. Councilmember Bradley described a specific incident of a councilmember requesting previous employment information on a mid-level staff person who does not report to Council and the question was asked as to whether this would be considered an investigation.

Councilmember Brandon stated that he would like to see this policy jibe with the many Attorney General Opinions that are related to this subject. Councilmember Brandon also stated that he would love to define what constitutes an investigation because it seems to be a very grey area.

Councilmember Grant stated that he would hesitate to rely solely on Attorney General Opinions because they are very fact specific and specific to certain areas of law and cannot be used as precedence in a court of law. Councilmember Grant stated he would like to make it clear that he did not request the information and said that his personal opinion was that any councilmember can make a request for information to any city in his or her personal capacity as long as that information isn't used in an official capacity. He explained further that if an individual used their official capacity to gain information and it is used in their

official capacity, or; if information was obtained in a councilmember's personal capacity and then later used in their official capacity, then that would rise to the level of an investigation.

Councilmember Halbert read a statement for the record which is attached as *Exhibit A* to the Minutes.

Councilmember Grant requested to see the open records request. Councilmember Brandon said that the City could submit an open records request requesting a copy of the open records request that he initiated. Councilmember Halbert said that it would be embarrassing to the City to request this information. Councilmember Brandon stated that he agreed with Councilmember Grant's assessment that an individual can request information as long as it is not in their official capacity. He went on to say that if an investigation is warranted to see if any city resources were used, he is all for it. Councilmember Halbert stated that you do not get to be a regular citizen 23 hours of the day and a councilmember 1 hour a day. She explained that councilmembers are perceived as councilmembers 24/7. Ms. Halbert stated that she does not want to request a copy of the request but would be fine with initiating an investigation to see if this is an investigation of an employee of the city.

Mayor Baldwin asked what the nature of the inquiry was. Councilmember Brandon stated that he had requested the information but has not looked at it. He explained that he requested the information for a citizen who is considering running for City Council and wanted more information on an employee's background. He stated that this request stemmed from the citizen's dissatisfaction during the budget discussions.

Mayor Baldwin stated to Councilmember Brandon that he hoped that he recognized the difficulties that this situation has presented and the perception to employees knowing that a councilmember is requesting personal information and not knowing what will or won't be done with the information. Mayor Baldwin stated that he hoped he would seriously consider the potential implications before doing something like that again. Councilmember Brandon responded that the point was taken.

Council Action

Councilmember Bradley moved to direct the City Attorney to provide language in the Governance Policy related to Council access of confidential information. Councilmember Daugherty seconded the motion. A vote was taken and passed, 7-0.

Councilmember Halbert moved to direct the City Attorney to draft language for the Governance Policy to include the ability for Council to censure a Councilmember for violations of the Governance Policy, the Ethics Policy, or the Charter. Ms. Halbert clarified that she would like language for non-ethical violations to be included in the Governance Policy. Councilmember Grant seconded the motion. A discussion regarding defining an investigation followed the motion. City Manager Fisher pointed out that the recently amended Charter did clarify what constitutes an investigation. Councilmember Halbert requested the City Attorney to clarify what is *not* considered an investigation and what actions would be considered as initiating an investigation. A vote was taken and passed, 7-0.

CITY MANAGER/STAFF REPORTS

City Manager Fisher reported on the following:

- **Early Voting continues through November 4**
- **Election Day – November 8**
- **Board & Commission applications being accepted**
- **Board & Commission interviews – Nov 14-18**

- Thanksgiving Holiday – Nov 24-25
- Employee Holiday Dinner – Dec 12
- Stage 3 Watering Restrictions –Effective Today
- McCreary Road construction will be delayed until North Murphy Road utility relocations are completed

EXECUTIVE SESSION

The City Council will hold a closed Executive Session pursuant to the provisions of Chapter 551, Subchapter D, Texas Government Code, in accordance with the authority contained in:

- §551.071 Consultation with City Attorney regarding pending litigation or contemplated litigation or settlement offer involving *Michael Cantrell v. City of Murphy, et al.*, Cause No. 6:09-cv-225.
- §551.071 Consultation with City Attorney regarding pending litigation or contemplated litigation or settlement offer involving *Johnny Boles v. City of Murphy, et al.*, Civil Action No. 4:11cv682
- §551.072 Deliberation regarding real property; to deliberate the purchase, exchange, lease, or value of real property.
- §551.074 Personnel Matters – to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Municipal Judge.

Council Action

Council convened into Executive Session at 7:37 p.m.

RECONVENE INTO REGULAR SESSION

The City Council will reconvene into Regular Session, pursuant to the provisions of Chapter 551, Subchapter D, Texas Government Code, to take any action necessary regarding:

- §551.071 Consultation with City Attorney regarding pending litigation or contemplated litigation or settlement offer involving *Michael Cantrell v. City of Murphy, et al.*, Cause No. 6:09-cv-225.
- §551.071 Consultation with City Attorney regarding pending litigation or contemplated litigation or settlement offer involving *Johnny Boles v. City of Murphy, et al.*, Civil Action No. 4:11cv682
- §551.072 Deliberation regarding real property; to deliberate the purchase, exchange, lease, or value of real property.
- §551.074 Personnel Matters – to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Municipal Judge.

Council Action

Council reconvened into Regular Session at 8:28 p.m. Councilmember Halbert moved to authorize City Manager James Fisher and Mayor Pro Tem John Daugherty to attend Cantrell litigation on behalf of the City. Councilmember Bradley seconded the motion. A vote was taken and passed, 7-0.

ADJOURNMENT

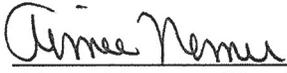
With no further business, the meeting was adjourned at 8:28 p.m.

APPROVED BY:



Bret M. Baldwin, Mayor

ATTEST:



Aimee Nemer, City Secretary



Exhibit A
November 1, 2011 City Council Minutes
Statement from Deputy Mayor Pro Tem Colleen Halbert

Councilmembers do not represent themselves, nor do they represent only those who voted for them, or those who “got them elected.” They represent the entire population of the city of Murphy – all 18,000 or so.

The role of a Councilmember is to serve not only the citizens, but also to serve The City of Murphy in ensuring that the city’s interests are protected. This includes not compromising the integrity of our community, or engaging in personal quests for information that give the appearance of a Council investigation, or attacking individual employees.

As Councilmembers our role is similar to that of a company’s Board of Directors. It is highly unusual for a member of a Board of Directors to begin a solo investigation upon an employee, especially one that is not a direct report. Even our Charter prohibits this sort of investigation and also this sort of delving into day to day operations.

Upon election a Councilmember takes on a new role different from Joe Citizen. While it is acceptable and appropriate for citizens to make certain requests for information, it is ill-advised for a Councilmember to do open records requests from other cities. This can be damaging to the City of Murphy’s reputation, ability to work with other cities, and recruit candidates if it appears that there is a Councilmember acting on behalf of the City to do investigations, especially when personnel matters are involved.

We have this governance policy in place to assist in delineating how communication should flow from staff to Council. If any member of Council has concerns about how that information is flowing than they should bring that to the attention of the full Council. If a majority of Council believes that the concerns are warranted, then the Council should deal directly with the City Manager, as he or she is the direct report tasked with the day to day operations of the city. If the Council then has concerns about the abilities of the City Manager, then they deal with the City Manager through the personnel procedures. At no time is it appropriate for Council, individually or collectively, to involve themselves in personnel matters beyond their direct reports as lined out by the Charter.

If the Council determines that there is no cause for concern about the flow of information, or the functionality of the city, then it is inappropriate for individual Councilmembers to continue by questioning individual staff members, other cities or agencies and working to undermine the work of the City Council or the City Staff.

It seems that if the Charter prohibits solo investigations and Council involvement in the day to day operations, then there should be repercussions for those Councilmembers who violate the Charter before it reaches the level of involving the entire community in divisive and costly recall elections.

Issue

Consider and/or act upon scheduling a Work Session and Special Meeting to complete the Strategic Planning Session.

Staff Resource/Department

James Fisher, City Manager and Joe Gonzalez, Facilitator

Summary

Staff would like to schedule a Work Session date and a Special Meeting so Council can complete the Strategic Planning Session.

Background/History

City Council met with staff and a facilitator February 23-24 for a Strategic Planning Session. Council determined at the end of the session that more time was needed to finalize and detail key focus areas.

Financial Considerations

N/A

Other Considerations

N/A

Board Discussion/Action

Council discussed scheduling additional time for Council to detail the focus areas that were agreed upon at the Strategic Planning Session before implementing the plan with staff.

Action Requested

Staff would like for Council to consider a Work Session on March 20th at 5 p.m. to review the Strategic Planning Session and lay the initial groundwork in preparation for the meeting with the facilitator. Joe Gonzalez has scheduled to meet with Council at a Special Meeting on March 27th at 6 p.m.

City Manager Comments

A lot of work was accomplished at the Strategic Planning Session. We would like to meet as soon as possible so we don't lose momentum. A solid three year plan allowed the City to accomplish a lot during the past three years, and I feel establishing Council priorities will enable the staff to continue on the path to greatness.

Attachments

N/A

Issue

Consider and/or act upon a request for a rate increase by Waste Management for solid waste services and an increase for recycling rebate.

Staff Resource/Department

James Fisher & Linda Truitt/City Manager & Finance

Summary

Waste Management has submitted a letter requesting a rate increase for sanitation services. This requested increase of 4.7% is based on the CPI for trash, water, and sewer services for the period of November 2010 to October 2011. The current residential rate would increase from \$10.27 to \$10.75. The fee for additional carts would increase from \$7.26 to \$7.60. The commercial and industrial rates would also increase by 4.7%. According to Section 9 of the contract, the rate may be adjusted according to the Consumer Price Index (CPI). The City Council may not be unreasonable in denying the rate increase request. This item was postponed from the January 3rd meeting.

Background/History

The Waste Management contract was signed in March 2008 and it is a five year contract with a provision to roll into another 5 years. According to Section 9 of the contract, the rate may be adjusted according to the Consumer Price Index (CPI) each year.

The City granted a rate increase to Waste Management in June 2010; residential rate went from \$9.99 to \$10.27 while the rate for additional carts increased from \$7.06 to \$7.26 a 2.8% increase. The commercial and industrial rates also increased by 2.8%.

The requested increase of 4.7% is based on the CPI for trash, water, and sewer services for the period of November 2010 to October 2011. The current residential rate would increase from \$10.27 to \$10.75. The fee for additional carts would increase from \$7.26 to \$7.60. The commercial and industrial rates would also increase by 4.7%.

This request for an increase was brought before the City Council on January 3, 2012 and postponed to allow Waste Management to research the CPI adjustment for the recycling rebate which should have occurred in June 2010. Staff and Waste Management researched and calculated the amount due to the City for addition. A check for \$534.00 was received from Waste Management for these additional CPI funds due to the City for June, 2010 through November, 2011. The check received for December recycling rebate included the 2.8% increase. Staff reviewed and concurred with the funds received.

Financial Considerations

The FY 2012 budget reflects a 3% overall increase in solid waste. The recycling rebate the City received will also increase by the 4.7% CPI.

Board Discussion/Action

This item was discussed by City Council meeting on January 3, 2012 – the following is the information from the minutes regarding the rate increase requested by Waste Management:

Mr. John Kleiber, representing Waste Management, addressed Council requesting a rate increase based on CPI per the City's contract. Several issues were raised by Council including an audit of the recycling account, instructing staff to opt out of the contract prior to the 2013 renewal, and the CPI adjustment for the recycling rebate. Mr. Kleiber stated he would research these issues and have information by the first meeting in February. Council postponed action on this item to the first meeting in February.

Action Requested

Approval of the requested rate increase of 4.7% CPI for solid waste collection from Waste Management and a 4.7% increase of recycling rebate due to the City effective March 1, 2012.

City Manager Comments

I am recommending that the City Council approve this request. Also, I would recommend in December 2012, that the City notify Waste Management of its intentions to solicit bids for solid waste services and that it is not rolling the contract into an additional term.

Attachments

Letter from Waste Management
Waste Management Solid Waste Contract
Rebate Worksheet



December 19, 2011

Mr. James Fisher
City Manager
City of Murphy
206 N. Murphy Road
Murphy, Texas 75094

Dear Mr. Fisher:

Pursuant to the terms of our Solid Waste Collection and Transportation Agreement, I am submitting this letter to request a rate increase of 4.7%. This is based upon the Consumer Price Index (CPI) for Water, Sewer and Trash collection for the period of November 2010 through October of 2011. While I realize that this is not pleasant news, please understand that our costs have increased, and it has been a year and a half since the last increase.

Based upon the current residential rate of \$10.27 per month, and the new rate will be \$10.75 per month. The charge for additional carts will move from \$7.26 per month to \$7.60 per month. Rates for commercial and industrial services will also increase by 4.7%.

Based upon our discussion last week, I understand you need to review this information, and would like to discuss it more detail in January.

James, it is truly a pleasure to serve as the City's "vendor of choice", and Waste Management appreciates the partnership we have established over the years. I look forward to visiting with you soon.

Sincerely,

A handwritten signature in black ink, appearing to read 'John L. Klaiber'. The signature is written in a cursive style.

John L. Klaiber
Manager – Public Sector Services

Economic News Release



Table 1. Consumer Price Index for All Urban Consumers (CPI-U): U. S. City Average, by expenditure category and commodity and service group

Table 1. Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, by expenditure category and commodity and service group

(1982=84=100, unless otherwise noted)

CPI-U	Relative importance, December 2010	Unadjusted indexes		Unadjusted percent change to Nov. 2011 from-		Seasonally adjusted percent change from-		
		Oct. 2011	Nov. 2011	Nov. 2010	Oct. 2011	Aug. to Sep.	Sep. to Oct.	Oct. to Nov.
Expenditure category								
All items.....	100.000	226.421	226.230	3.4	-0.1	0.3	-0.1	0.0
All items (1967=100).....	-	678.258	677.684	-	-	-	-	-
Food and beverages.....	14.792	230.885	230.656	4.4	-0.1	0.4	0.1	0.1
Food.....	13.742	231.017	230.790	4.6	-0.1	0.4	0.1	0.1
Food at home.....	7.816	230.196	229.380	5.9	-0.4	0.6	0.1	-0.1
Cereals and bakery products.....	1.090	265.433	265.552	6.2	0.0	0.9	0.4	0.3
Meats, poultry, fish, and eggs.....	1.813	227.853	227.583	6.9	-0.1	0.4	0.5	-0.1
Dairy and related products (1).....	.839	219.493	218.767	8.7	-0.3	1.2	0.1	-0.3
Fruits and vegetables.....	1.152	284.269	282.605	4.7	-0.6	0.9	-1.7	-0.6
Nonalcoholic beverages and beverage materials.....	.926	169.137	168.606	4.4	-0.3	0.0	0.5	0.2
Other food at home.....	1.996	201.315	199.924	5.1	-0.7	0.6	0.4	-0.1
Sugar and sweets (1).....	.297	213.602	210.039	4.7	-1.7	1.7	0.1	-1.7
Fats and oils.....	.232	226.216	224.907	11.1	-0.6	0.5	0.3	0.8
Other foods.....	1.466	212.737	211.649	4.3	-0.5	0.4	0.4	0.1
Other miscellaneous foods (1) (2).....	.432	125.461	125.702	4.2	0.2	-0.1	0.3	0.2
Food away from home (1).....	5.926	233.459	234.046	2.9	0.3	0.2	0.2	0.3
Other food away from home (1) (2).....	.329	163.978	164.120	2.3	0.1	-0.1	0.4	0.1
Alcoholic beverages.....	1.051	227.606	227.363	1.3	-0.1	0.0	0.0	0.0
Housing.....	41.460	220.138	219.969	1.9	-0.1	0.2	0.1	0.1
Shelter.....	31.955	253.101	253.312	1.8	0.1	0.1	0.2	0.2
Rent of primary residence (3).....	5.925	255.651	256.367	2.4	0.3	0.2	0.4	0.2
Lodging away from home (2).....	.776	136.551	130.687	3.1	-4.3	-0.7	-1.7	-0.1
Owners' equivalent rent of residences (3) (4).....	24.905	261.034	261.503	1.7	0.2	0.1	0.2	0.1
Owners' equivalent rent of primary residence (3) (4).....	23.310	261.011	261.479	1.7	0.2	0.1	0.2	0.1
Tenants' and household insurance (1) (2).....	.349	128.416	128.777	1.0	0.3	0.3	0.4	0.3
Fuels and utilities.....	5.096	220.450	218.199	3.4	-1.0	0.7	-0.2	-0.3
Household energy.....	4.000	193.058	190.444	3.1	-1.4	0.7	-0.3	-0.4
Fuel oil and other fuels (1).....	.309	335.148	342.823	19.7	2.3	-0.4	0.1	2.3
Energy services (3).....	3.691	193.843	190.572	1.7	-1.7	0.7	-0.4	-0.7
Water and sewer and trash collection services (2).....	1.095	181.916	182.254	4.7	0.2	0.7	0.2	0.2
Household furnishings and operations.....	4.409	125.223	125.073	0.8	-0.1	0.0	0.1	0.0
Household operations (1) (2).....	.772	152.415	152.578	1.6	0.1	-0.1	0.3	0.1
Apparel.....	3.601	127.590	127.285	4.8	-0.2	-1.1	0.4	0.6
Men's and boys' apparel.....	.882	119.506	119.930	6.3	0.4	-0.2	0.6	1.2
Women's and girls' apparel.....	1.520	115.851	115.603	5.3	-0.2	-2.2	0.6	0.9
Infants' and toddlers' apparel.....	.192	118.048	118.775	3.2	0.6	-0.3	-0.8	1.2
Footwear.....	.700	130.886	130.293	0.7	-0.5	0.1	-1.0	-0.3
Transportation.....	17.308	212.127	211.358	8.0	-0.4	1.0	-1.1	-0.8
Private transportation.....	16.082	207.404	206.635	8.2	-0.4	1.0	-1.2	-0.9
New and used motor vehicles (2).....	6.333	100.540	100.021	3.2	-0.5	-0.2	-0.4	-0.3
New vehicles.....	3.513	142.535	142.736	3.3	0.1	0.0	-0.3	-0.3
Used cars and trucks.....	2.055	151.494	149.230	4.9	-1.5	-0.6	-0.6	-0.1
Motor fuel.....	5.079	296.944	294.049	19.9	-1.0	2.9	-3.1	-2.4
Gasoline (all types).....	4.865	295.877	292.486	19.7	-1.1	2.9	-3.1	-2.4
Motor vehicle parts and equipment (1).....	.408	145.308	146.338	5.5	0.7	0.1	-0.2	0.7
Motor vehicle maintenance and repair (1).....	1.172	255.774	255.663	2.3	0.0	0.8	0.2	0.0
Public transportation.....	1.227	269.158	268.478	5.3	-0.3	0.8	0.0	0.1
Medical care.....	6.627	403.430	404.858	3.4	0.4	0.2	0.5	0.4
Medical care commodities (1).....	1.633	325.962	326.624	3.1	0.2	0.2	0.3	0.2
Medical care services.....	4.994	427.467	429.191	3.5	0.4	0.2	0.5	0.5
Professional services.....	2.830	337.257	337.347	2.1	0.0	0.1	0.3	0.2
Hospital and related services.....	1.703	649.496	654.117	5.5	0.7	0.1	0.6	0.7

**MUNICIPAL SOLID WASTE COLLECTION
AND TRANSPORTATION AGREEMENT**

This Municipal Solid Waste Collection and Transportation Agreement (this "Agreement") is entered into as of the 17th day of March, 2008, between the **CITY OF MURPHY, TEXAS** ("City"), acting by and through its duly authorized City Manager, and **WASTE MANAGEMENT OF TEXAS, INC.** ("Contractor"), a Texas corporation, acting by and through its duly authorized representative.

WITNESSETH:

WHEREAS, City desires to grant to Contractor the exclusive right to operate and maintain the service of collection and transportation of residential, commercial and industrial garbage and trash, and residential recycling, over, upon, along and across the present and future streets, alleys, bridges, and public properties of the City, subject to the terms of this Agreement; and

WHEREAS, Contractor desires to operate and maintain the service of collection and transportation of residential, commercial and industrial garbage and trash, and residential recycling, over, upon, along and across the present and future streets, alleys, bridges, and public properties of the City, subject to the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties hereto agree as follows:

1. DEFINITIONS:

- 1.01. **Bag or Bags:** Plastic sacks, designed to store refuse with sufficient wall strength to maintain physical integrity when lifted by the top. Total weight of a Bag and its contents shall not exceed forty (40) pounds.
- 1.02. **Brush:** Any cuttings or trimmings from trees, shrubs, or lawns, and similar materials. The term "Brush" specifically excludes debris resulting from services of a Commercial Service Provider. All Brush must be cut, tied, and placed in Bundles.
- 1.03. **Bulky Waste:** White Goods, furniture, auto parts, and other oversized wastes which are customary to ordinary housekeeping operations of a Residential Unit and whose large size precludes or complicates its handling by normal solid waste collection, processing or disposal methods.
- 1.04. **Bundle or Bundles:** Tree, shrub and brush trimmings or unrecycled newspapers and magazines securely tied together forming an easily handled package, not to exceed four (4) feet in length, six (6) inches in diameter, or fifty (50) pounds in

weight.

- 1.05. **City:** The City of Murphy, Texas.
- 1.06. **Commercial Unit:** All commercial businesses and establishments, including, but not limited to, stores, offices, restaurants, warehouses, and other non-manufacturing facilities, premises, locations or entities, public or private, within the corporate limits of the City.
- 1.07. **Commercial Hand Collect Unit:** A retail or light commercial type of business, which generates no more than one (1) cubic yard of Solid Waste per week.
- 1.08. **Commercial Waste:** All types of Solid Waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, excluding Residential Waste and Industrial Waste.
- 1.09. **Commercial Service Provider:** A commercial business enterprise or commercial service provider.
- 1.10. **Compactor:** Any container, regardless of size, which has a compaction mechanism, whether stationary or mobile.
- 1.11. **Construction and Demolition Debris:** Waste building materials resulting from construction, remodeling, repair, or demolition operations that are directly or indirectly the by-products of construction work or that result from demolition of buildings or other structures, but specifically excluding inert debris, land-clearing debris, yard debris, or used asphalt, asphalt mixed with dirt, sand, gravel, rock, concrete, or similar materials.
- 1.12. Intentionally deleted.
- 1.13. **Contract Administrator:** That person, or his designee, designated by the City to administer and monitor the provisions of this Agreement.
- 1.14. **Contractor:** Waste Management of Texas, Inc.
- 1.15. **Customer:** The owner or tenant of a Residential Unit, Commercial Unit and/or Industrial Unit, as the case may be, located within the City, and identified by the City as being eligible for and in need of the services provided by the Contractor under this Agreement.
- 1.16. **Dead Animals:** Animals or portions thereof that have expired from any cause except those slaughtered or killed for human use.
- 1.17. **Disposal Site:** A duly permitted sanitary landfill selected by Contractor.
- 1.18. **Dumpster:** Metal receptacle designed to be lifted and emptied mechanically for use only at Commercial Units or Industrial Units.

MUNICIPAL SOLID WASTE COLLECTION AND TRANSPORTATION AGREEMENT

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- 1.19. **Garbage:** Solid Waste consisting of putrescible or animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling and sale of produce and other food products, and all Dead Animals of less than ten pounds (10 lbs.) in weight, except those slaughtered for human consumption.
- 1.20. **Hazardous Waste:** Any Solid Waste identified or listed as a hazardous waste by the administrator of the Environmental Protection Agency under the Federal Solid Waste Disposal Act as amended by RCRA, 42 U.S.C. §6901, *et. seq.*, as amended.
- 1.21. **Industrial Unit:** All industrial businesses and establishments, including manufacturing facilities, premises, locations or entities, public or private, within the corporate limits of the City.
- 1.22. **Industrial Waste:** Solid Waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations.
- 1.23. **Medical Waste.** Waste generated by health care related facilities and associated with health care activities, not including Garbage or Rubbish generated from offices, kitchens, or other non-health-care activities. The term includes Special Waste from health care-related facilities which is comprised of animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps as those terms are defined in 25 TAC §1.132 (relating to Definitions). The term does not include medical waste produced on farmland and ranchland as defined in [Agricultural Code, §252.001 (6) (Definitions--Farmland or ranchland)], nor does the term include artificial, nonhuman materials removed from a patient and requested by the patient, including, but not limited to, orthopedic devices and breast implants.
- 1.24. **Polycart:** A rubber-wheeled receptacle constructed of plastic, metal and/or fiberglass, of 95 gallon capacity, designed for automated or semi-automated solid waste collection systems, and having a tight fitting lid capable of preventing entrance into the container by small animals, and to be used for collection of Residential Waste and Waste from a Commercial Hand Collect Unit. The weight of a Polycart and its contents shall not exceed 175 lbs.
- 1.25. **Recyclable Material:** A material that has been recovered or diverted from the non-hazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable Material is not solid waste. However, Recyclable Material may become Solid Waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste, with respect to the party actually abandoning or disposing of such material.
- 1.26. **Recycling Container:** A plastic receptacle, designed for the purpose of curbside

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collection of Recyclable Materials, with a capacity of 95 gallons.

- 1.27. **Refuse:** Same as Rubbish.
- 1.28. **Residential Unit:** A residential dwelling within the service area of the City occupied by a person or group of persons comprising not more than four families. A Residential Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto. A condominium dwelling, whether of single or multi-level construction, consisting of four units, shall be treated as a Residential Unit, except that each single-family dwelling within any such Residential Unit shall be billed separately as a Residential Unit.
- 1.29. **Residential Waste:** All Refuse, Garbage and Rubbish and other Solid Waste generated by a Customer at a Residential Unit.
- 1.30. **Roll-off Bin:** Container provided to a Commercial Unit or Industrial Unit by Contractor measuring 20 cubic yard, 30 yards or 40 cubic yards, intended for high-volume refuse generating Commercial Units or Industrial Units, and capable of pickup and transport to a Landfill by loading of container onto rear of transporting vehicle, but excluding a Compactor.
- 1.31. **Rubbish:** Nonputrescible Solid Waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).
- 1.32. **Solid Waste:** Garbage, Rubbish, Refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:
- a) Solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26;
 - b) Solid, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvement;
 - c) Waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by

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the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, as amended (42 USC, §§6901 *et seq.*), or

d) Unacceptable Waste.

- 1.33. **Special Waste:** Waste that requires special handling and management due to the nature of the waste, including, but not limited to, the following: (A) containerized waste (e.g. a drum, barrel, portable tank, box, pail, etc.), (B) waste transported in bulk tanker, (C) liquid waste, (D) sludge waste, (E) waste from an industrial process, (F) waste from a pollution control process, (G) Residue and debris from the cleanup of a spill or release of chemical, or (H) any other waste defined by Texas law, rule or regulation as "Special Waste".
- 1.34. **Stable Matter:** All manure and other waste matter normally accumulated in or about a stable, or any animal, livestock or poultry enclosure, and resulting from the keeping of animals, poultry, or livestock.
- 1.35. **Unacceptable Waste:** Any waste, the acceptance and handling of which by Contractor would cause a violation of any permit, condition, legal or regulatory requirement, substantial damage to Contractor's equipment or facilities, or present a danger to the health or safety of the public or Contractor's employees, including, but not limited to, Hazardous Waste, Special Waste (except as otherwise provided herein), untreated Medical Waste, Dead Animals weighing ten pounds (10 lbs.) or greater, solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit, soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements.
- 1.36. **Unusual Accumulations:** As to Residential Units, any Waste placed curbside for collection in excess of the volumes permitted by this Agreement, or placed outside a Polycart, and as to Commercial or Industrial Units, any Waste located outside the Dumpster, Roll-off Bin or Compactor regularly used for such collection service.
- 1.37. **Waste:** All Residential Waste, Commercial Waste, and Industrial Waste to be collected by Contractor pursuant to this Agreement. The term "Waste" specifically excludes Unacceptable Waste.
- 1.38. **White Goods:** Refrigerators which have CFCs removed by a certified technician, stoves and ranges, water heaters, freezers, swing sets, bicycles (without tires) scrap metal, copper, and other similar domestic and commercial large appliances.

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2. **GRANT OF EXCLUSIVE FRANCHISE:**

Contractor is hereby granted the exclusive right and privilege within the corporate limits of the City to conduct business for the purpose of collection and disposal of Waste, and collection of Recyclable Materials from Residential Units, subject to the terms hereof, including any tracts, territories and areas hereafter annexed to or acquired by City.

3. **TERM:**

The term of this Agreement shall commence April 1, 2008 ("Commencement Date"), and continue remain in full force and effect for a period of five (5) years; provided, however, the term of this Agreement shall automatically extend without further action of the parties for one (1) additional five (5) year term, unless, not less than ninety (90) days before the termination of the then current term, one party advises the other in writing of its desire to terminate this Agreement at the conclusion of the then current term of the Agreement.

4. **RATES:**

4.01. Contractor is authorized to charge, and shall receive from the City (collectively, the "Base Rates"):

- (i) As to collection of Residential Waste from Residential Units, \$9.99 per Residential Unit, per month, for Residential Units utilizing a 95-gallon Polycart and a 95 gallon Recycling Container. In addition, a Residential Unit Customer may request an additional Cart (Polycart and/or Recycling Container), and Contractor shall be entitled to receive an additional \$7.06 per month, per Residential Unit, per additional Cart.
- (ii) Commercial Units and Industrial Unit Customers shall be as set forth on Schedule "A" attached hereto and incorporated herein by reference (collectively, the "Base Rates").
- (iii) All Base Rates are subject to adjustment as set forth in Section 9 below.

5. **CONTRACTOR SERVICES:**

5.01. **Residential Collection**

(a) **Residential/Commercial Hand Collect Collection:**

- (i) Contractor shall collect Residential Waste generated at a Residential Unit and placed in that Residential Unit's Polycart one (1) time per week during the term of this Agreement. All Residential Waste shall be placed in that Residential Unit's Polycart, and Contractor shall have no obligation to collect any Residential Waste placed outside the Polycart. Notwithstanding the foregoing, Contractor agrees to collect up to seven (7) Bags placed outside the Polycart on the collection day immediately

following Thanksgiving Day, Christmas Day, and New Year's Day.

- (ii) Contractor shall collect Commercial Waste placed in a Polycart from a Commercial Hand Collect Unit one (1) time per week.
 - (iii) Construction Debris generated at a Residential Unit by a Commercial Service Provider shall be deemed Commercial Waste, and shall be collected pursuant to Section 5.03 below. Construction Debris generated at a Residential Unit by the owner or tenant of that Residential Unit, and not utilizing the services of a Commercial Service provided, shall be subject to the Bulky Waste limitations set forth in this Agreement.
- (b) **Bundles/Bulky Waste Collection:** Contractor shall provide a once per week collection service to Residential Units for collection of Bulky Waste and Bundles. Contractor agrees to collect up to, but not to exceed, two (2) cubic yards of Bulky Waste and Bundles per week from each Residential Unit. Contractor shall have no obligation to collect any Bulky Waste or Bundles in excess of the above volumes, unbundled Brush, or any Construction Debris produced by a Commercial Service Provider hired by a Customer and generated and located at that Residential Unit. Bulky Waste and Bundles shall be placed within three (3) feet of the curb, swale, paved surface of the roadway, closest accessible roadway, or other location agreed to by Contractor and Customer, that will provide safe and efficient accessibility to Contractor's collection crew and vehicle.
- (c) **Recyclable Collection:** Contractor shall provide once per week collection of Recyclable Materials placed in Recyclable Containers from Residential Units. Contractor shall not be required to collect any Recyclable Materials that are not placed in a Recycling Container. In addition, Contractor shall not be required to collect Recyclable Materials if the Customer does not segregate the Recyclable Materials from the remainder of the Residential Waste.
- (d) **Carts:**
- (i) Residential Units that have received a Polycart prior to the commencement of this Agreement shall continue to utilize that Polycart. Contractor shall supply to Residential Units at the commencement of this Agreement (i) one (1) Recycling Container, and (ii) a Polycart to a Residential Unit if that Residential Unit does not have a Polycart at the commencement of this Agreement. Polycarts and Recycling Containers (together, the "Carts") shall be placed by the Customer of a Residential Unit in a location that is readily accessible to Contractor and its collection equipment, not to exceed three (3) feet from the curb or edge of the travel portion of

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the street, road or alley, and not to be located in a manner that will block the driveway or mailbox or otherwise inhibit proper servicing. The City shall aid Contractor in resolving problems of Cart location by the Customer. Customers shall not overload Carts, and the Carts shall be loaded such that the lids shall close securely.

- (ii) Contractor shall not be required to collect (i) any Residential Waste that is not placed in a Polycart, except as expressly set forth above, (ii) any Residential Waste from a Polycart that is overloaded, or (iii) a Polycart that is not properly placed curbside.
- (iii) The Carts furnished by the Contractor hereunder shall remain the property of Contractor, and the Customer will have no interest in the Carts. The Carts shall remain at the location of the Residential Unit where delivered by Contractor. The Customer shall be responsible for all loss or damage to the Carts, except for normal wear and tear or for loss or damage resulting from Contractor's handling of the equipment. The Customer shall not overload (by weight or volume) a Polycart, and shall use the Polycart only for its proper and intended purpose. Additional Carts are available for residential Customers at an additional charge to be paid by the Customer. In the event a Cart should be lost or damaged, Contractor agrees to replace such lost or damaged Cart with a new Cart, at a cost of \$55.00 to the Customer.

(e) Twice during a two (2) week period subsequent to Christmas Day, Contractor shall collect Christmas trees placed curbside, for delivery to a recycling center selected by Contractor.

5.02. **Commercial and Industrial Collection:** Contractor shall have the exclusive right to collect and transport Commercial Waste and Industrial Waste from the Commercial Units and Industrial Units, respectively, utilizing Dumpsters, Compactors or Roll Off Bins, at such frequency as shall be reasonably requested by such Commercial Unit Customer or Industrial Unit Customer. The Dumpster, Compactor or Roll Off Bin shall be located on a concrete pad to accommodate equipment and at a location reasonably acceptable to Contractor. Contractor may, at its sole option, require Commercial Customers and Industrial Customers to enter into individual contracts with Contractor, subject to the terms of this Agreement.

5.03. **Unusual Accumulations Collection:** Contractor shall have no obligation to collect Unusual Accumulations, and may charge for the collection of any Unusual Accumulations in accordance with the rates set forth in Schedule "A."

5.04. **Special Waste:** Contractor is not required to accept, transport or manage any Special Waste, unless it is specifically identified in a written agreement between

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Contractor and Customer. Contractor may collect, and will have the right to impose, a surcharge for the transportation and disposal of Special Waste, depending on the quantities and any physical characteristics of the Special Waste and any special handling, regulatory compliance or increased concern for worker safety or environmental protection occasioned by the material.

- 5.05. **Unacceptable Waste:** Contractor shall not be obligated to collect Unacceptable Waste. Title to Unacceptable Waste shall not pass to Contractor, and liability for any unacceptable Waste shall remain with the generator of such Waste.
- 5.06. **Standard Operating Procedures:** In furtherance of Contractor's services to be performed under this Agreement, attached hereto and incorporated herein as Schedule "C" are the "Standard Operating Procedures" (the "SOP's"), detailing specific procedures to be followed by Contractor during performance of such collection services. Contractor and the City agree to annually review the SOP's, and revise the SOP's as may be agreeable to both parties, in each party's sole discretion.

6. **COLLECTION OPERATION:**

- 6.01. **Hours of Operation:** Collection of Residential Waste shall begin no earlier than 7:00 A.M. and shall generally not extend beyond 6:00 P.M. No collection shall be made on Sunday. Collection of Commercial Waste and Industrial Waste shall be collected at such hours as may be determined by Contractor. No collection shall be made on Sunday, unless requested by a Customer and agreed to by Contractor.
- 6.02. **Routes of Collection:** Collection routes shall be established by the Contractor as reasonably approved by City. City shall provide Contractor with maps of the City containing sufficient detail for Contractor to design collection routes. Contractor shall provide to the City route maps for approval by the City, which approval shall not be unreasonably withheld.
- 6.03. **Holidays:** Contractor shall provide service hereunder for all holidays.
- 6.04. **Complaints:** Customer complaints shall be directed by the Customer to the City, and the City shall then direct such complaints to Contractor in writing. Contractor shall promptly resolve such complaint based on the nature of the complaint. Contractor shall be responsible for maintaining a log of complaints based on the information provided to Contractor by the City, and shall provide the City, on a monthly basis, with copies of all complaints indicating the date and hour of the complaint, nature of the complaint, and the manner and timing of its resolution. Any alleged missed pickups will be investigated and, if such allegations are verified, Contractor shall arrange for collection on the next business day after receipt of such complaint. If the missed pickup is a result of Customer related acts or omissions, the City shall take appropriate action to cause such Customer to subsequently properly set out such Waste.

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- 6.05. **Collection Equipment:** Contractor, at its sole cost and expense, agrees to furnish, all trucks, equipment, machines, and labor which are reasonably necessary to adequately, efficiently, and properly collect and transport garbage from Customers serviced by Contractor in accordance with this Agreement. Collection of Solid Waste shall be made using sealed packer-type trucks, and such equipment shall not be allowed to leak nor scatter any waste within the limits of the City nor while in route to the Disposal Site.

All motor vehicles used in performance of the obligations herein created shall be clearly marked with the Contractor's name, telephone number and unit number legible from 150 feet. No advertising shall be permitted on vehicles. All collection equipment shall be maintained in a first class, safe, and efficient working condition throughout the term of this Agreement. Such vehicles shall be maintained and painted as often as necessary to preserve and present a well-kept appearance, and Contractor shall have a regular preventative maintenance program. City may inspect Contractor's vehicles at any time to insure compliance of equipment with this Agreement. Vehicles are to be washed on the inside and sanitized with a suitable disinfectant and deodorant a minimum of once a month. Such vehicles shall be washed and painted or repainted as often as necessary to keep them in a neat and sanitary condition.

- 6.06. **Disposal:** The Contractor shall deliver Waste collected to a duly permitted Disposal Site operated in compliance with rules stipulated by the TCEQ and/or the U.S. Environmental Protection Agency.
- 6.07. **Spillage:** The Contractor shall not be responsible for scattered Refuse unless the same has been caused by Contractor, in which case all scattered Refuse shall be picked up immediately by Contractor.
- 6.08. **Vicious Animals:** Employees of the Contractor shall not be required to expose themselves to the dangers of vicious animals in order to accomplish Refuse collection service. Contractor shall immediately notify the City, in writing, of such condition and of his inability to make collection.
- 6.09. **Protection From Scattering:** Each vehicle shall be equipped with a cover which may be net with mesh not greater than one and one-half (1-1/2) inches, or tarpaulin, or fully enclosed metal top to prevent leakage, blowing or scattering of refuse onto public or private property. Such cover shall be kept in good order and used to cover the load going to and from the Disposal Site, during loading operations, or when parked if contents are likely to be scattered. Vehicles shall not be overloaded so as to scatter Refuse.
- 6.10. **Point of Contact.** All dealings and contacts between Contractor and the City shall be directed between the Municipal Marketing Director of Contractor, or such other individual identified by Contractor, and the Contract Administrator designated by the City.

7. LICENSE AND TAXES:

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Contractor shall obtain at its sole expense all licenses and permits required by the City and the State, and shall maintain same in full force and effect.

8. BILLING:

(a) City shall provide billing and bill collection services for Residential Units during the term of this Agreement. Contractor shall provide billing and bill collection services to Commercial Units and Industrial Units. Within thirty (30) days of the end of each month during which collection services are provided by Contractor hereunder, Contractor shall submit to the City an invoice setting forth sums due by the City to Contractor for services rendered to Residential Units under this Agreement for the prior month. City shall remit to Contractor payment for such services within thirty (30) days after receipt of invoice. Contractor shall provide to the City, on a monthly basis, a report showing the billings to Commercial Units and Industrial Units for the prior month, including the services rendered, and the rate for such service.

(b) The City shall notify Contractor in writing of any Residential Unit Customer that has failed to pay the City for waste collection services, and Contractor, upon written direction from City, shall cease servicing such delinquent Residential Unit until notified by the City. Contractor shall have the right to cease servicing any Commercial Unit or Industrial Unit that is delinquent in payment to Contractor.

(c) Contractor shall add a franchise fee of 4% (four percent) for commercial waste and industrial waste (the "Franchise Fee"). The rates set forth on Schedule "A" are exclusive of the Franchise Fee. The Franchise Fee payments actually received by Contractor shall be paid by the Contractor to the City within thirty (30) days after the last day of the month of Contractor's actual receipt of such monies.

9. MODIFICATION TO RATES:

9.01 **CPI Adjustment.** Base Rates charged by Contractor for services will remain fixed, and will not be adjusted for changes in the CPI (as hereinafter defined), until the first anniversary date of the Commencement Date. Commencing on the first anniversary date of the Commencement Date, and continuing annually on each anniversary date of the Commencement Date of this Agreement, Base Rates for services shall be adjusted by the same percentage as the Consumer Price Index, US City Average for All Urban Consumers, Garbage and Trash Collection, Not Seasonally Adjusted, Base Period December 1983 = 100 (published by the United States Bureau of Labor Statistics, Consumer Price Index) (the "C.P.I.") shall have increased during the preceding twelve months. In the event the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish the C.P.I., the parties hereto agree to substitute another equally authoritative measure of change in the purchasing power of the U.S. dollar as may be then available so as to carry out the intent of this provision. Contractor shall notify City of any change in Base Rates for CPI at least sixty (60) days prior to implementation of such new Base Rates.

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9.02 **Additional Adjustments**. Contractor shall also be entitled to request an increase in Base Rates from time to time during the term of this Agreement, and upon thirty (30) days' written notice to the City, to offset any change in conditions which increase the Contractor's costs, including but not limited to, increases in disposal costs, increases in landfill fees, changes in the ordinances under which the Contractor is to operate, or changes in federal, state or local laws, rules or regulations. Documentation of such increases shall be submitted to the City at its request. The City's approval for an increase in Base Rates pursuant to this Section 9.02 shall not be unreasonably withheld; provided, however, if the City shall fail to grant such increase, Contractor, at its sole election, may terminate this Agreement upon ninety (90) days' written notice to the City.

10. **CITY'S OBLIGATIONS:**

The City agrees to perform all obligations required of the City pursuant to the terms of this Agreement, including, but not limited, the following:

- (a) The City shall designate the Contract Administrator, who shall communicate City decisions to Contractor on a timely basis from time to time as required under this Agreement;
- (b) The City shall notify Contractor of Customers to be added or dropped from Contractor services, or of any change in Customer service;
- (c) The City shall timely pay Contractor pursuant to Section 8 of this Agreement;
- (d) The City shall timely inform Contractor of complaints made by Customers;
- (e) The City shall work with Contractor in good faith to resolve complex Customer service issues; and
- (f) The City shall educate Customers to encourage, promote and obtain proper Waste disposal and recycling as required by this Agreement, including educating Residential Unit Customers to assure proper and timely Cart set out, and proper recycling techniques to minimize commingling.

11. **COMPLIANCE WITH LAWS:**

Contractor, its officers, agents, employees, contractors, and subcontractors, shall abide by and comply with all existing laws and laws which may be enacted by the federal, state, and local governments. It is expressly agreed that nothing in this Agreement shall be construed in any manner to abridge the right of City to pass or enforce necessary police and health regulation for the protection of its inhabitants. It is further agreed and understood that, if the City calls the attention of Contractor to any such violations on the part of the Contractor, its officers, agents, employees, contractors, or subcontractors, then Contractor shall immediately desist from such activity and correct such violation.

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12. **OFFICE:**

Contractor shall maintain an office or such other facility through which it may be contacted by telephone without charge. Such office shall be equipped with sufficient telephones and shall have a responsible person in charge between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

13. **ENFORCEMENT:**

City grants unto Contractor the right to seek an injunction against any third party which is believed to be infringing on the rights of Contractor to this Agreement, including Contractor's exclusive franchise rights granted herein. By granting this right to Contractor, the City in no way reduces its right or obligation to enforce this Agreement or any other City ordinance relating to the collection and disposal of Waste. Furthermore, Contractor shall have all rights and remedies available to it under Texas law to collect delinquent payment of fees by City and/or Commercial Unit and Industrial Unit Customers. The City agrees to take all steps necessary and permitted by law to require Customers to comply with the terms of this Agreement.

14. **TRANSFERABILITY OF AGREEMENT:**

Other than by operation of law, no assignment of the Agreement or any right accruing under the Agreement shall be made in whole or in part by the Contractor without the express written consent of the City, which consent shall not be unreasonably withheld. Upon the assignment, the assignee shall assume the liability of the Contractor. Notwithstanding anything contained herein to the contrary, Contractor shall be permitted to assign this Agreement to an affiliate of Contractor without the City's consent.

15. **LANDFILL CAPACITY:**

Contractor shall have and maintain during the term hereof, adequate disposal capacity for the City's needs.

16. **TERMINATION:**

Except as otherwise provided herein, if either party defaults in the performance of any of the covenants or conditions contained herein, and fails to cure such default within five(5) days as to a default by Contractor, and sixty (60) days as to the City, after the non-defaulting party has given the defaulting party written notice of such default (or if such default is of a nature that it cannot be cured within such cure period, the defaulting party fails to commence the curing of such default within such cure period, and fails to thereafter diligently pursue the curing thereof) (the "Cure Period"), the non-defaulting party may: (a) terminate this Agreement as of any date which the non-defaulting party may select, provided said date is at least thirty (30) days after the expiration of the Cure Period; (b) cure the default at the expense of the defaulting party; and/or (c) have recourse to any other right or remedy to which it may be entitled by law, including, but not limited to, the right to all damages or losses suffered as a result of such termination. In the event either party waives default by the other party, such waiver shall not be construed or determined to be a continuing waiver of the same or any subsequent breach or default.

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17. ARBITRATION:

The parties shall endeavor to settle all disputes under, or relating to, this Agreement by amicable negotiations. Except as otherwise provided herein, any claim, dispute, disagreement or controversy that arises among the parties under or relating to this Agreement that is not amicably settled shall be submitted to mediation. If the parties remain unable to resolve the controversy through mediation, then the claim, dispute, disagreement or controversy shall be resolved by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules as follows:

- (a) An arbitration may be commenced by any party to this Agreement by the service of a written request for arbitration ("Request for Arbitration") upon the other party. Such Request for Arbitration shall summarize the controversy or claim to be arbitrated.
- (b) The arbitration shall be heard in Dallas, Texas before an arbitration panel comprised of three (3) arbitrators. Upon initiation of a Request for Arbitration by either party hereto, each party, within fifteen (15) days of the date of the Request for Arbitration, shall select an arbitrator. The arbitrators selected by the claimant and respondent shall, within ten (10) days of their appointment, select a third neutral arbitrator. In the event the two arbitrators are unable to agree upon a third arbitrator, then the American Arbitration Association ("AAA") shall appoint the third neutral arbitrator. Prior to commencement of hearings, each of the arbitrators appointed shall provide an undertaking of impartiality. In determining the appropriate background of the third arbitrator, the first two arbitrators shall give due consideration to the issues to be resolved.
- (c) All attorneys' fees and costs of the arbitration shall in the first instance be borne by the respective party incurring such costs and fees, but the arbitrator shall have the discretion to award costs and/or attorneys' fees as the arbitrator deems appropriate under the circumstances.
- (d) Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

18. FORCE MAJEURE:

The performance of this Agreement may be suspended and the obligations of either party excused in the event of and during the period that such performance is prevented or delayed by a Force Majeure occurrence. "Force Majeure" shall mean:

- (a) An actual or threatened act of God, including hurricanes, tornadoes, landslides, lightning, earthquakes, weather conditions, fire, flood, explosion, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot, civil disturbance, strike or other labor disturbances, governmental actions or regulations, governmental requests or requisitions for national defense, or breakdown or injury to, or shortage in, facilities used for the handling, processing or transportation of Solid Waste or any other cause beyond the reasonable control of either party;

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(b) The order or judgment of any federal, State, or local court, administrative agency or governmental body (excluding decisions of federal courts interpreting federal tax laws, and decisions of State courts interpreting State tax laws) if it is not also the result of the willful misconduct or negligent action or inaction of the party relying thereon; provided that neither the contesting in good faith of any such order or judgment nor the failure to so contest shall constitute or be construed as a measure of willful misconduct or negligent action or inaction of such party;

(c) The suspension, termination, interruption, denial, or non-renewal of any permit or approval essential to the operation of the Contractor; or

(d) A Change in Law. "Change in Law" means (i) the adoption, promulgation, or modification or reauthorization after the date of this Agreement of any law, regulation, order, statute, ordinance, rule or binding judicial or administrative ruling that was not adopted, promulgated, modified or reissued on or before the date of this Agreement, or (ii) the imposition of any material conditions in connection with the issuance, renewal, or modification of any permit, license, registration, notice of intent or approval after the date of this Agreement, which in the case of either (a) or (b) establishes requirements affecting a party's operation under this Agreement more burdensome than the requirements that are applicable to such party and in effect as of the date of this Agreement. A change in any federal, State, county, or other tax law or workers compensation law shall not be a Change of Law. However, in the event that a federal, State or local entity imposes a fee, charge or tax after the date of this Agreement that applies to a party's operations per se, such fee, charge or tax shall be treated as a Change in Law.

19. EVIDENCE OF INSURANCE:

Contractor shall procure and maintain for the duration of the Agreement, with a carrier reasonably acceptable to City, insurance against claims for injuries to persons or damages to property, which may arise from or in conjunction with the performance of the work hereunder by the Contractor, its agents, representatives, employees, or subcontractors. The policy or policies shall name the City as an additional insured, subject to Contractor's indemnities set forth herein, and shall contain a clause that the insurer will not cancel or decrease the insurance coverage without first giving the City thirty (30) days notice in writing. Annually, on each anniversary date of this Agreement, Contractor shall provide to City evidence of such required insurance. The cost of such insurance shall be borne by the Contractor and a Certificate of Insurance evidencing that such insurance has been procured and is in force will be forwarded to the City before commencement of work hereunder.

Minimum Limits of Insurance:

Type Coverage	Per Occurrence Minimum	Aggregate Minimum
Workers Compensation	As required by law and shall cover all	As required by law.

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	employees including drivers.	
Comprehensive & General Public Liability	\$1,000,000	\$1,000,000
Property Damage	\$1,000,000	\$1,000,000
Comprehensive Auto Liability Bodily Injury	\$1,000,000	
Comprehensive Auto Liability- Property Damage	\$500,000	

20. INDEMNITY:

The Contractor shall indemnify, defend and hold harmless the City, and its officers and employees, from against any claims, actions, legal proceedings, suits, demands, damages, costs, and expenses, including court costs and reasonable attorneys' fees, to the extent caused by Contractor's negligent or willful misconduct in providing the services required by this Agreement. The City shall not be responsible for any negligence, gross negligence, breach of contract, intentional conduct, violation of statute or common law, breach of warranty, product defect or any other conduct whatsoever of contractor, or any of its agents, employees or customers. Upon obtaining knowledge of any matter giving rise to possible indemnification, the City shall notify the Contractor immediately. The Contractor shall have the right to defend or contest any such claim or demand in the name of the City. The City shall provide such cooperation in connection therewith as the Contractor may reasonably request and shall make available to the Contractor or its representatives all records and other materials reasonably required in such defense. So long as the Contractor is contesting or defending any such claim or demand in good faith, no amount shall be deemed to be due hereunder unless the City has been required by order of any court to pay any sum arising from the subject matter of the suit.

21. PERFORMANCE BOND:

The Contractor will furnish a performance bond as security for the faithful performance of this Agreement. Said performance bond must be in an amount equal the full Agreement contract price, reduced pro-rata on an annual basis. The Contractor shall pay premiums for the bonds described above. A certificate from the surety showing that the bond premiums are paid in full shall accompany the bond. Such certificate shall be submitted to the City with the bond on an annual basis. The surety on the bond shall be a duly authorized corporate surety authorized to do business in the State of Texas.

22. OWNERSHIP:

Title to Waste shall pass to Contractor when placed in Contractor's collection vehicle. Title to Unacceptable Waste shall remain with the generator of such Unacceptable Waste.

23. SEVERABILITY:

MUNICIPAL SOLID WASTE COLLECTION AND TRANSPORTATION AGREEMENT

Should any portion of this Agreement be deemed invalid or unenforceable to any extent, the parties hereto agree that such provision shall be amended to the minimum extent necessary to make such provision enforceable, and the remainder of this Agreement shall not be affected thereby.

24. PRIOR AGREEMENTS:

This Agreement contains the entire agreement between the parties hereto with respect to the matter set forth herein. No provision of any other document, including any request for proposal, shall be deemed incorporated herein, it being the intent of the parties that this Agreement sets forth the full agreement of the parties with respect to the services described herein. No change, alteration or amendment will be binding on either party unless set forth in a document duly executed by all parties hereto.

25. RECORDS:

City and Contractor agree to maintain at their respective places of business adequate records relating to the performance of their respective duties under this Agreement. Such records shall be made available at any time during reasonable business hours for inspection by the other party, at the inspecting party's expense, and upon reasonable advance notice; provided, however, only records directly relating to this Agreement and necessary to substantiate invoicing must be disclosed to the other party.

26. ATTORNEY'S FEES AND VENUE:

In the event suit is filed by either party as a result of the performance or non-performance of the terms set forth in this agreement, the prevailing party (as determined by such court) shall recover its attorney fees and court costs, with venue of any such action to be in Collin County, Texas.

27. NOTICES:

All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given (i) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee, or (iv) by prepaid telegram, telex, or facsimile to the addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated place or machine of the intended addressee. Notwithstanding anything contained herein to the contrary, any notice of default under this agreement must be both (i) mailed by Certified Mail, Return Receipt Requested and (ii) faxed to the alleged defaulting party to constitute proper notice hereunder. For purposes of notice, the addresses of the parties shall be as set forth below; provided,

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however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth herein.

If to the City, at: City of Murphy, Texas
206 North Murphy Road
Murphy, Texas 75094
ATTN: City Manager
Email Address: jfisher@murphytx.org

If to the Contractor at: Waste Management of Texas, Inc.
1600 A South Railroad
Lewisville, Texas 75067
Email Address: llantrip@wm.com

with a copy to: Waste Management of Texas, Inc.
9708 Giles Road
Austin, Texas 78754
Attn: Senior Legal Counsel; and
Email Address: rmuelker@wm.com

CT Corporation System
350 North St. Paul Street
Dallas, Texas 75201

or such other addresses as the parties may hereafter specify by written notice delivered in accordance herewith.

28. DISCRIMINATION PROHIBITED:

Contractor, in the execution, performance, or attempted performance of this Agreement, shall not discriminate against any person or persons because of sex, race, religion, color, or national origin. Contractor must be an equal opportunity employer.

29. STORM DEBRIS:

Contractor and City understand and agree that, in the event of a hurricane, tornado, major storm, or natural disaster, Contractor shall have no obligation under this Agreement to collect any storm debris resulting therefrom.

31. ANNUAL CLEAN UPS:

Contractor shall provide a spring cleanup and fall cleanup to each Residential Unit on such two (2) weeks as may be designated by the City by providing to each Residential Unit one (1) collection of unlimited Bulky Waste and Bundles per spring cleanup and fall cleanup.

32. RESIDENTS DISPOSAL AT LANDFILL:

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Residents of the City shall be entitled to free disposal at Contractor's (i) D/FW Landfill located in Lewisville, Texas, and (ii) Skyline Landfill, located in Ferris, Texas, once per month, with a limit of Residential Waste equal to the greater of (i) the amount of Waste placed in the bed of a pick-up truck, or (ii) three (3) cubic yards. The Residential Unit Customer must present a valid driver's license and water bill dated within the preceding sixty (60) days with the same address. The Customer may not use this free dumping privilege for disposal of non-residential or Commercial Waste. Contractor shall have the right to refuse any loads under this free dumping privilege which violates any rules reasonably established by Contractor.

33. DISPOSAL FROM CITY FACILITIES:

Contractor shall provide to the City, at no additional cost to the City, (i) Solid Waste removal at the City facilities set forth on Schedule "B" attached hereto and incorporated herein by this reference for all purposes, pursuant to the size containers, and frequency of collection, as set forth on Schedule "B", and (ii) collection of Recyclable Materials from such City facilities utilizing Recycling Containers.

34. RECYCLING REBATE:

As an incentive to increase recycling within the City, Contractor shall pay to the City, on a monthly basis, a recycling rebate (the "Recycling Rebate") equal to \$14.00 (adjusted annually for CPI pursuant to Section 9.01 above) per ton of Recycling Materials collected by Contractor under this Agreement for each ton in excess of 24.2 pounds per Residential Unit serviced by Contractor under this Agreement per month. The actual average volume of Recycling Materials per Residential Unit per month (the "Actual Average Volume") shall be determined by (i) the total tonnage of Recycling Materials collected by Contractor under this Agreement during such month, (ii) divided by number of Residential Units serviced by Contractor under this Agreement for such month. The difference between the Actual Average Volume per month, minus 24.2 pounds, shall be (i) converted to tons, and (ii) multiplied by \$14.00 per ton to determine the monthly Recycling Rebate payable by Contractor to the City. An example of such Recycling Rebate calculation is attached hereto as Schedule "D" and incorporated herein.

EFFECTIVE AS OF THE 1st DAY OF MARCH, 2008.

CITY:

CITY OF MURPHY, TEXAS



BY:
Mayor

CONTRACTOR:

WASTE MANAGEMENT OF TEXAS, INC.



BY:
ITS: MAGM

ATTEST:



City Secretary,

MUNICIPAL SOLID WASTE COLLECTION AND TRANSPORTATION AGREEMENT

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City of Murphy, Texas

APPROVED:

City Attorney

SCHEDULE "A"
COMMERCIAL AND INDUSTRIAL BASE RATES

A. COMMERCIAL HAND COLLECTION MONTHLY RATES UTILIZING A 95-GALLON POLYCART:

- (i) ONE CART 1 X WEEK.....\$27.67
- (ii) TWO CARTS 1X WEEK.....\$33.21
- (iii) THREE CARTS 1X WEEK.....\$56.13

B. DUMPSTER MONTHLY RATES (frequency is per week):

		1x pr wk	2x pr wk	3x pr wk	4x pr wk	5x pr wk	6x per wk	Extra
(i)	2 cy	\$60.63	\$113.50	\$166.38	\$219.26	\$272.14	\$325.01	\$35.00
(ii)	3 cy	\$67.64	\$125.98	\$184.33	\$242.67	\$301.01	\$359.35	\$40.00
(iii)	4 cy	\$74.66	\$138.46	\$202.27	\$266.08	\$329.89	\$393.69	\$50.00
(iv)	6 cy	\$87.14	\$161.87	\$236.61	\$311.35	\$386.09	\$460.82	\$60.00
(v)	8 cy	\$99.62	\$185.29	\$270.95	\$356.62	\$442.29	\$527.96	\$70.00

- Casters \$8.00 per month
- Locks \$3.00 per collection
- Gates \$3.00 per collection
- Restart fee for non-payment \$35.00

C. ROLL OFF BINS:

- (i) All Roll Off Bins, regardless of size, will be transported to the Landfill for \$255.00 per load, which includes two (2) tons for disposal. Additional tonnage in excess of two (2), or any portion thereof, will be charged at a rate of \$28.00 per ton;
- (ii) Delivery and Exchange and Relocation fee: \$ 89.00;
- (iii) Daily Container Rental \$3.86 per day; and
- (iv) Washing Fee for Compactors \$150.00 per occurrence.

Trips made to service containers wherein the customer has not properly prepared the load for transport - \$75.00 per trip.

D. COMPACTORS:

1. Compactor Rates

- (i) 6 Cubic Yard \$25.00 per empty Compactor plus rental cost; and

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- (ii) 8 Cubic Yard \$30.00 per empty Compactor plus rental cost (applicable only to 8 cubic yard front load compactors existing in the City as of the date of this Agreement).

Compactor fees, where the client does not own their own equipment, will be negotiated with each client, as size, installation and optional equipment will vary.

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SCHEDULE "B"

Services to be provided to the City Facilities at no charge.

DUMPSTERS – Number of pickups may vary seasonally.

NAME	LOCATION	SIZE	RECYCLING	PICKUP
City Hall	206 N. Murphy Road	6 cu yd	95 gallon recycling cart	1x wk
Police & Court Bldg	206 N. Murphy Road	6 cu yd	95 gallon recycling cart	1x wk
Fire Station	206 N. Murphy Road	6 cu yd	95 gallon recycling cart	1x wk
Public Works Building	206 N. Murphy Road	6 cu yd	95 gallon recycling cart	1x wk
City's Pump Station (two bins)	600 Hawthorne Drive	6 cu yd	95 gallon recycling cart	1x wk

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SCHEDULE "C"
SOP

Weekly collection routine

Garbage is to be bagged by the resident prior to placing this material into the Poly Cart that is provided for this material. This will insure that the container remains clean and odor free. Non-putrescible materials can be placed into the cart unbagged.

On collection day, it is the goal of this program to contain all putrescible material (garbage) in bags within the confines of the Poly Cart(s) provided. Acceptable materials that would be outside of the cart on collection day would be defined as Trash (non-putrescible) or Bulk or Brush. There may be instances where the resident has some bags outside of the cart. When this occurs on an irregular basis, the Contractor will collect these bags of putrescible material along with the Trash, the Bulk and the Brush. If the Contractor becomes aware of a repetitive pattern of additional setout at a home, the Contractor will notify the City of the need for an additional Poly Cart for that home. The City will make a good faith effort to contact the resident to make them aware that garbage (putrescible materials) is not to be placed outside of a Poly Cart on a regular basis, and to inform the resident that a second cart will be made available for a small monthly fee.

All materials segregated by the resident for Recycling shall be placed inside of the Cart provided for this purpose. No materials outside of such cart will be collected by the Recycling crew – the solid waste collection crew will collect these materials.

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SCHEDULE "D"
Recycling Rebate Example

Recycling Pounds per Home Stats for 2007

Yearly Tons	675	
Yearly Pounds	1,350,000	
Monthly Pounds	112,500	
House Count	4,671	average
Pounds per Home	24.08	average

**Rebate payment begins after 10% improvement per home
from the beginning baseline point of 24.08**

**The following table is an example
of the rebate calculation monthly**

House Count	Total tons/month	BASELINE		% increase	rebate @ \$14/ton
		lbs/month	lbs/home		
4671	56.3	112500	24.08	0	\$ -
5600	75.6	151200	27.00	12%	\$ 270.90
6600	89.1	178200	27.00	12%	\$ 459.90
7000	112.0	224000	32.00	33%	\$ 780.50
6600	85.8	171600	26.00	8%	\$ -
5600	98.0	196000	35.00	45%	\$ 584.50
4671	93.4	186840	40.00	66%	\$ 520.38
6500	78.3	156520	24.08	0%	\$ -

- 1) determine the amount of recyclable pounds per home per month
- 2) if the amount of increase meets or exceeds a 10% increase of the baseline amount:
subtract the baseline total tonnage amount from the new Total Tons per month
- 3) multiply this number times the rebate per ton amount

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CITY OF MURPHY RECYCLING CATCH UP

	Rebate Amount	# of Tons	Additional Rebate Due	
Jul-10	1,238.58	88.47	35.39	0.028571
Aug-10	859.88	61.42	24.57	0.028571
Sep-10	1,416.24	101.16	40.46	0.028571
Oct-10	826.56	59.04	23.62	0.028571
Nov-10	815.22	58.23	23.29	0.028571
Dec-10	1,741.04	124.36	49.74	0.028571
Jan-11	1,009.82	72.13	28.85	0.028571
Feb-11	796.18	56.87	22.75	0.028571
Mar-11	1,274.70	91.05	36.42	0.028571
Apr-11	1,064.00	76.00	30.40	0.028571
May-11	1,043.98	74.57	29.83	0.028571
Jun-11	1,658.72	118.48	47.39	0.028571
Jul-11	892.22	63.73	25.49	0.028571
Aug-11	898.32	64.17	25.67	0.028571
Sep-11	1,375.22	98.23	39.29	0.028571
Oct-11	993.44	70.96	28.38	0.028571
Nov-11	785.96	56.14	22.46	0.028571
			534.00	

We were supposed to increase recycling rebate by same CPI %.
 In July 2010 we implemented a 2.8% CPI on their service but did not increase their CPI

Issue

Consider and/or act upon amending the Murphy Community Center/Murphy Activity Center Rental Rates policy regarding use by non-profit organizations.

Staff Resource / Department

Kristen Roberts, Recreation - Economic and Community Development

Summary

This item proposes a provision to the Rental Rates policy specific to non-profit organizations. Staff has received concerns from some scout troop contacts including facility availability to after hour rental rates. Staff proposes that any non-profit group associated, chartered or affiliated with the Boy Scouts of America or the Girl Scouts of the USA that serves the City of Murphy will commit community service hours to the City of Murphy in exchange for varying hours, waived rental fees and deposits.

Background

The old city hall/school building renovation is a 2008 Bond project approved by the voters. In January 2010, Murphy was awarded a \$750,000 indoor recreation grant from Texas Parks and Wildlife Department for the renovation of the building to become the Murphy Community Center. Grand opening was held on Saturday, March 3, 2012.

In addition to the Murphy Community Center coming online, the Recreation Department manages the Murphy Activity Center, Recreation Programming (classes), Recreation (Parks) and Room Rentals and Reservations and Community Events. For January 2011 - January 2012, Recreation staff coordinated over 4,300 reservations.

At the October 4, 2011, City Council meeting, hours of operation, membership rates, room rental rates, room reservation policy, and alcohol use liability agreement and catering policy for the Murphy Community Center were discussed. Council requested some edits to the proposed rates. Staff included the increased non-resident membership rate, a resident day pass, a resident family rate and alcohol and catering policies for consideration.

At the November 15, 2011, City Council meeting, clarifications and edits to the alcohol policy, catering policy, and room reservation policy and rental fee sheet were discussed and requested. Staff has made the requested edits.

At the January 3, 2012, City Council meeting, City Council took action and approved hours of operation, membership rates, room rental rates, room reservation policy and catering policy for the Murphy Community Center/Murphy Activity Center.

Following the approval of hours of operation and room rental rates, including separate rates for non-profits, staff sent emails in January to scout troop contacts and scout troops/non-profit contacts detailing the new hours and rates that became effective January 3, 2012.

Non-profit rates as approved on January 3, 2012:

Scout Troops and Non-Profits Serving Murphy

Proposed Administrative Fees

	MultPurp 117	MultPurp 118	Small Meeting	Both MP 117&118	Gymnasium	MAC	Refundable Deposit
Scout Troops/Non-Profit (Serving Murphy)	\$10.00/day	\$10.00/day	\$10.00/day	\$20.00/day	\$50.00/day	\$50.00/day	\$100.00

Other Considerations

There are approximately 17 scout troops that are currently reserved or have made reservations within the past year with the Murphy Recreation Department. These particular reservations range from monthly to as frequent as twice a month. A few of these reservations fall outside of the recently approved hours of operation as well as on days the facilities are closed.

Staff has received concerns from some scout troop contacts including facility availability to after hour rental rates. Staff is recommending amending the current non-profit room rental rate section to include a provision detailed below.

Under the proposed provision, any non-profit group associated, chartered or affiliated with the Boy Scouts of America or the Girl Scouts of the USA that serves the City of Murphy will qualify for the following guidelines and regulations:

- Any non-profit group associated, chartered or affiliated with the Boy Scouts of America or the Girl Scouts of the USA will not be required to pay non-profit room rates for use of the Murphy Activity Center or the Murphy Community Center for meetings and or functions directly related to said groups' sole purpose.
- Reservations will be scheduled upon availability in a space/room that is suitable to the size of the group and their needs.
- If the current Murphy Community Center building operating hours do not meet the needs of any Boy Scout/ Girl Scout group or affiliate group, the Murphy Activity Center will be available between the times between 1pm-5pm on Sundays and up to 9:30pm Monday through Thursday.
- All reservations (including Sunday and after closing hours Monday through Thursday) must be made at least 2 weeks in advance and up to 90 days prior to the scheduled meeting/event.
- A deposit will not be required to secure rooms.
- In exchange for waived room rates and deposits, all group associated, chartered or affiliated with the Boy Scouts of America or the Girl Scouts of the USA will be required to complete one (1) hour of community service per reserved date (time block reservation), not to exceed (with a maximum of) twenty (20) group community service hours per calendar year to be coordinated by the Murphy Recreation Department including Community Events.
- This policy will apply to any non-profit group associated, chartered or affiliated with the Boy Scouts of America or the Girl Scouts of the USA as long as there is no abuse/misuse or

mistreatment of the Murphy Community Center, Murphy Activity Center and any tables, chairs, and any other stationary and moveable equipment owned by the City of Murphy.

- Mistreatment of the facility, space and said equipment is subject to a zero tolerance policy. Any non-profit group associated, chartered or affiliated with the Boy Scouts of America or the Girl Scouts of the USA not in compliance with this policy will no longer qualify for the waived fees in exchange for service policy stated above.

Action Requested

Motion to approve the amendment to the Murphy Community Center/Murphy Activity Center Rental Rates and Policy regarding use by non-profit organizations.

City Manager Comments

Flexibility and City Manager discretion should be included in the policy for situations that may arise that are not addressed in the policy.

Attachments

N/A

Issue

Consider and/or act upon approval of the low bid award for the annual City Mowing Contract and authorize the City Manager to execute the contract.

Staff Resource / Department

Kim Lenoir, Director of Parks and Public Works

Key Focus Area

TBD by City Council upon completion of the Strategic Planning Session.

Summary

This item was postponed from the February 21 Council meeting for additional information. Four bids were collected for the city's annual City Mowing Contract. American Landscape Systems, Inc. (ALS), was the low bidder at \$132,033.00. The 2012 contract will include three new mowing sites, in addition to weeding and spraying all beds in the medians and park mowing sites.

City Council approved a budget of \$100,000 for 2012 contract mowing services. The contract will contain the provision that only completed work will be paid for. If circumstances (such as drought) preclude mowing for one or more cycles, the contractor will not be paid for those cycles. The contract will also include a provision prohibiting the contractor from sub-contracting any work on City of Murphy properties.

Background/History

Due to the additional city property, landscaped medians, and park land that the city was maintaining, the City Council decided to add contract mowing services to the city budget instead of adding additional city park employees and purchasing additional mowing equipment. In 2010, a \$48,000 mowing contract supplemented the annual mowing requirements for the city during the summer months. The City maintains over 250 acres of park land, city facilities, ditches, rights-of-way, trails, and medians. In FY 2012, the City Council approved an annual mowing contract budget of \$100,000 and extended the contract mowing services to an annual service in consideration of the increasing inventory of city facilities, medians, and parks. In 2010 the mowing contract was performed by LMI and in 2011 the contractor was ALS.

On February 6, four (4) bids were received and opened. The bid tabulation is included for review. The low bidder was American Landscape Systems, Inc. (ALS) of Lewisville, Texas, with a bid in the amount of \$132,033.00. ALS is a large company that includes an installation department and a maintenance department. The ALS installation department was the contractor for the Streetscape Median Construction Project in 2010 and the bid included a one year maintenance program that was completed in December 2011. The ALS maintenance department mowed the rights-of-way, medians, and undeveloped park and city land last mowing season, concluding their contract by October 31, 2011. The ALS maintenance department met all requirements and completed work as requested.

The city contract mowing sites are outlined on the attached bid proposal. Mowing sites added this year include the City Park site, Travis Farm Park, and Brentwood Park. The task of weeding and spraying all beds in the medians and the listed parks monthly was added to this year's contract. These additions will address the requested year-round service of weed control for the medians and parks. The contract will codify the agreement on the bid documents that the mowing contractor will be paid per cycle mowed; if the area does not require mowing, the contractor is not paid. The contract will also contain a provision prohibiting the contractor from sub-contracting any of the mowing in Murphy.

Financial Considerations

The FY 2012 budget is \$100,000 for contract mowing. The contract is written so that the contractor is paid only for mowing cycles completed. Therefore, if there is a week of rain or the drought causes turf dormancy, both of which would reduce the need or ability of mowing cycles, then the contractor is not paid for that scheduled mowing.

Other Considerations

If the bids are rejected, another round of bidding will require at least 60 days. Due to current park staffing levels, it takes two to three weeks to maintain a cycle of mowing for all city properties. The city staff alone cannot maintain the grounds in accordance to the city ordinances for tall weeds and grass, especially considering that the growing season has begun.

Action Requested

Staff recommends award of bid for the annual City Mowing Contract to the low bidder, American Landscape Systems, Inc of Lewisville, Texas, in the amount of \$132,033.00 and authorization of the City Manager to execute the required contract agreement. Expenses for FY 2012 will not exceed the budgeted amount of \$100,000.

Attachments

Bid Tabulation

ALS Bid List and Contract Scope

Lockhart Lawn Bid List

Nichols Bid List

Oakgrove Bid List

CITY OF MURPHY, TEXAS BEAUTIFICATION SERVICES

PURPOSE AND CLASSIFICATION

Purpose

The City of Murphy is seeking to obtain an annual agreement with one contractor for mowing, edging, trimming, and cleanup of turf on City properties, parks, medians, and right-of-ways. This is a non-bagged agreement on all sites.

Classification

The landscape maintenance services will be performed at various City of Murphy parks, medians, and other public property.

SCOPE OF WORK

The grounds maintenance services shall be provided as deemed necessary to meet the agreement requirements. The contractor shall provide landscape maintenance services as described herein and shall provide all labor, material, appliances, tools, equipment, transportation, and services necessary for and incidental to performing all operations in connection with the execution of this document.

The schedule of work hours for accomplishment of the maintenance service shall conform to the requirements of the City of Murphy. No weekend or holiday work will be permitted and all work shall be performed Monday through Friday, 8:00 a.m. to 7:00 p.m. A variance from these hours may be approved, with prior written approval of the Parks Superintendent. The Contractor shall in no way interfere with the normal work of City employees.

The contractor shall furnish and maintain all equipment necessary for the proper maintenance of each location. Contractor shall provide an equipment inventory list to be submitted with the quote, identifying all equipment by age and condition to be used in the performance of this agreement. The City of Murphy reserves the right to make inspections of equipment. Should any and all equipment be found to be in poor condition, it must be pulled from service and replaced at the Contractor's expense. Failure to provide suitable equipment for the performance of this agreement will be grounds for the City to terminate the agreement. The Parks Superintendent shall be the undisputed judge as to the condition of the equipment.

Materials and supplies used by the Contractor shall conform to the requirements listed herein. No material shall be used which will damage the turf, trees, shrubs, or fixtures. Where a specific product is specified there shall be no deviation without the express permission of the City of Murphy. In the event a deviation is requested by the contractor, samples of all materials will be submitted prior to approval.

Inclement Weather shall mean rainy weather or when the condition of the soil is such that the rutting of the property will not allow cutting of grass to be accomplished satisfactorily.

Median shall refer to the areas on City streets and thoroughfares. They shall include any and all portions within the streets or intersection of streets such as grass areas, trees, and concrete only areas.

Trash and Litter shall mean any debris within the grounds maintenance area such as paper, bottles, cans, limbs three (3) inches or smaller in diameter, rocks, etc. which is not intended to be present as part of the landscape. Inclusive to the entire area including parks, medians, streets, sidewalks, curbs, hillsides, ditches, etc. Removal of debris will require sweeping of hard surface areas such as sidewalks and curbs. All debris is to be removed at the contractor's expense.

Trimming shall refer to the cutting or removal of any and all plant material immediately adjacent to or under park structures, trees, poles, tables, signs, fences, and shrub bed. Also includes removal of all plant material from expansion joints and any other cracks in curbs, sidewalks, driveways, and any other hard or concrete surface. Any damage to trees, turf, hardscape, building, structures, etc. shall be repaired at the contractor's expense.

Edging shall refer to the vertical removal of any and all plant material that encroaches over onto sidewalks (both sides), curbs, steps, driveways, and pavements.

Chemical Trimming shall refer to the use of an herbicide (such as Roundup or an approved equal) as an alternative to the physical removal or cutting of plant material from areas to be trimmed. Approval for the application of herbicides must be obtained from the Parks Supervisor prior to herbicide application and must be applied by a Certified Applicator.

Scalping shall refer to any action that will result in the mowing of any turf area below a three-inch (3") height down to and including the soil.

Initial



Shrub Beds shall mean any area purposefully planted in domestic or ornamental plant growth.

Foreign Growth shall include all weeds, thickets, and noxious plants.

Fixtures shall include but is not limited to fences, tables, recreational equipment, playgrounds, light poles, signs, etc.

Mulch or Tree Rings shall refer to those areas adjacent to trees, shrub beds, and other purposefully planted landscape areas in which all plant growth is removed physically or chemically.

Time to Complete Work: On the mowing cycle start date, as indicated on the work order, the contractor shall begin work and shall proceed with all reasonable dispatch to completion. The contractor will be required to maintain all project areas assigned to him in the time allotments-maintenance cycles-set for each area. Work within an area must be completed in consecutive days. Inclement weather may result in the cancellation of a mowing cycle only if Parks Superintendent or designated alternate determines that there was an insufficient time period during the entire mowing cycle available for the services described to be performed. If a mowing cycle is cancelled due to inclement weather, the contractor will be compensated for only those areas completed before the inclement weather occurred. It shall be assumed that the contractor can perform said services.

Maintenance Schedule and Liquidated Damages: Failure on the part of the contractor to maintain the required production rate for a project area or in the event the contractor develops difficulty in performing maintenance schedule or meeting contract specifications, the contractor may be assessed two hundred fifty dollars (\$250.00) per day as liquidated damages for incomplete work in the project area until all work is completed (liquidated costs will not exceed the total dollars for project area cycle). Liquidated damages will be withheld from the Contractors monthly payment.

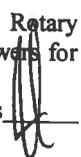
Note: Should it become necessary to penalize a contractor on more than one occasion for failure to meet the grounds maintenance specifications within the prescribed maintenance schedule, the agreement may be terminated with the forfeiture of any performance bond. The project area will then be awarded to an existing alternate contractor of next lowest and best quote.

Assessment of Damages to Trees During Grounds Maintenance Operations:

1. Trees in the contract area will be checked before contract work begins with Contractor and Manager. Any existing damage is to be noted and a copy placed in the file and Contractor.
2. Random checks of the trees will be carried out during the agreement period at the option of the Parks Superintendent.
3. A check of all trees may be made at the end of the agreement period. The inspection will be attended by the City's designated forester or arborist, parks superintendent, and the contractor.
4. Damages shall be documented by memo to the Parks Superintendent with a copy to the agreement file and Contractor.
5. Damages shall be assessed: \$200.00 for any slight damage to trees, this is damage that may heal; \$500.00 for badly damaged trees which in the opinion of the City's designated forester, arborist, or parks supervisor may eventually contribute to the death of the tree.

GROUNDS MAINTENANCE

1. Supplemental mowing may be required on an as needed basis. In some cases, special events may dictate the need for additional mowing in areas designated by the Parks Superintendent. Typically, most sites will only require mowing once per week; however, the Contractor must be capable of providing mowing crews with short notice in case the Parks Superintendent requests a site be mowed for a special event. Mowing will be quoted on a unit basis per site/per mowing. (SEE ATTACHED QUOTE).
2. Mowing shall be at the proper height according to the season and type of grass (Bermuda: 1½"), to keep all turf areas looking crisp, clean, and well groomed. Most sites are planted with Common Bermuda. Height of mowing will be dictated by the time of the season. Mowing heights will vary according to growth rate. The contractor shall be responsible for adjusting mower heights to prevent scalping.
3. City owned right of ways are included and will be mowed at the same frequency as medians.
4. Use of rotary mulching type mowers designed for commercial use is required on medians and right of ways. Rotary mulching mower blades will be kept sharp at all times. The Owner will perform periodic inspections on mowers for blade sharpness.

Initials 

5. All lawns damaged due to negligence of the Contractor will be sodded by the Contractor as necessary to maintain a healthy growth and attractive appearance at all times.

Edging/Trimming

1. All turf perimeters along and around walks (including pavers and tracks), curbs, walls, bed edging, utility poles and other fixtures (including recessed lighting) will be edged/trimmed at each mowing.
2. Sprinkler valve heads will be trimmed as often as necessary to keep them visible.
3. The hard surface areas adjacent to turf will be swept and/or blown and cleaned after each operation.
4. Turf clippings shall not be left in any street and shall be removed before the Contractor leaves the site.
5. Vegetation shall be trimmed out of the cracks on all concrete end caps or medians.

Pond and Creek Areas

1. The Contractor is responsible for mowing, edging, and all lawn maintenance related to retention ponds and all adjacent slopes and banks, to the water line.
2. The Contractor is responsible for removal of trash and debris from all water edges.
3. All ground surfaces around any water areas shall be maintained and cleaned to the water line. Retention ponds and detention areas are to be clean, and have a neatly trimmed and edged appearance at all times.

Litter/Cleanup

1. All debris, trash, limbs, rocks, etc. shall be collected in the turf areas and removed from site by the Contractor prior to and after each mowing.
2. All drives, parking areas, storm drains, ditches, culverts, vaults, valley curbs and any storm drainage structure shall be kept clean of grass clippings, litter, soil and debris. A free flow of water shall be maintained at all time.
3. The Contractor is responsible for cleaning any pavement, structure or other surface of debris, litter, tire markings, or material created by grounds maintenance activity.
4. Contractor shall be responsible for removal of all excess grass clumps or excessively piled grass clippings to prevent smothering of turf. Any excessive grass left after mowing will be raked or vacuumed. Clippings shall not be placed in on-site dumpsters. Contractor shall remove clippings to a legal dumpsite.

INSPECTIONS

1. The Owner will make daily inspections of the entire city related to the appearance of the grounds and the Contractor's performance. The Contractor shall make repairs and adjustments as required by the Owner.
2. Schedule: Prior to beginning work under this agreement, the Contractor will provide the Owner with a detailed maintenance schedule of how he expects to accomplish the work along with a statement of anticipated labor forces in order to maximize production, quality and efficiency. The schedule shall include target dates for all cycle and period work, time estimates for task completion, staffing requirements, equipment requirements, etc. Any time the schedule changes or is anticipated to change; the Contractor will provide the Owner with a revised schedule.
3. The Contractor's authorized representative shall personally contact the Owners designated representative should any unforeseen problems arise or if mowing is not to occur on any given day due to weather or any other reason. The Contractor shall issue written daily work reports on company letterhead or printed company work reports including;
 - a) Date
 - b) All information in ink.
 - c) Signature of employee generating report.
 - d) Debris and trash removal of water areas.
 - e) The number of maintenance people on site.

Initial



- f) All tasks performed.
- g) Equipment employed on each site.
- h) General weather conditions.
- i) General site conditions.
- j) Specific problems or conditions requiring attention, including any property damaged.
- k) Time of entry on and exit from each site.

Site reports are to be filed with the Owners designated representative at the completion of each work day.

- 4. It will be Contractor's responsibility to provide adequate personnel, materials and equipment to meet his participation and commitments to these schedules. Periodic meetings will be held either on-site or in the offices of the Owner to discuss progress made to date and modifications to the schedule required to meet short term as well as long term objectives and goals of the Owner. It is further understood that a representative of the Contractor shall attend all job meetings of this nature.

GENERAL CONDITIONS

- 1. All services herein provided shall be done in a courteous and orderly manner with a minimum of inconvenience to the tenants/residents and Owner's representatives. All maintenance personnel shall be appropriately and neatly dressed, in clearly identifiable uniforms that are the same color and bearing the company logo, at all times while on the property. Shirts must be worn. At all times, gym shorts and halter tops are not appropriate dress.
- 2. The Contractor shall provide an English-speaking supervisor or foreman on-site with each crew at all time during any maintenance activities to be responsible for the progress of the work and the conduct of the Contractor's personnel. Any time the Contractor's work force is divided between 2 or more sites, an English-speaking supervisor will be present at each site. The supervisors/foremen on-site must have read and be familiar with these specifications.
- 3. The personnel performing the services described herein shall be under the sole responsibility and the employ of the Turf Mowing Contractor and shall be constantly supervised and shall be competent, experienced, skilled lawn and plant maintenance-oriented people. All of the Contractor's employees shall be authorized to work in the United States as required by the Immigration Reform and Control Act of 1986.
- 4. All materials and equipment brought to the site are the full responsibility and liability of the Contractor until removed from the site as required. Vehicles on the sites must bear the company logo and be clearly identified.
- 5. While on the site, the Contractor's representative shall take directions from the Owner's designated representative. Each month a schedule of activities and anticipated dates should be provided to the Owner's representative for review. Should the need arise, scheduled grounds-keeping activities may be preempted by the Owner's representative in order to respond to other landscaping priorities. The Contractor shall provide the Owner's representative with a checklist of items completed at the end of each working day (daily work report).
- 6. The Contractor is responsible for notifying the Owner regarding damaged equipment or dry areas, or other problems related to the site irrigation system.
- 7. The Contractor shall supervise and direct the work, using his best skill and attention. The Contractor shall be responsible for all turf maintenance methods, techniques, and procedures and for coordinating all portions of the work under the agreement.
- 8. Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, material, equipment, tools, transportation, and other facilities and services necessary for the proper execution and completion of the work contemplated by the agreement.
- 9. The Contractor shall at all times enforce strict discipline and good order among his employees. The Contractor shall only utilize workmen who are in the opinion of the owner, satisfactory and sufficiently skilled for the efficient performance of all work under this agreement.
- 10. The Contractor shall give all notices and comply with all laws, ordinances, rules, regulation and orders of any public authority in connection with the performance of the work.

Initials



11. The Contractor shall be responsible for the acts and omissions of all his employees, his agents and employees and all other persons performing any of the work under an agreement with the Contractor. The Contractor shall be responsible for initiating, maintaining and supervising appropriate safety precautions and programs in connection with his work. He shall take all reasonable precautions for safety of and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the project and other persons who may be affected thereby, (2) the project and all materials and equipment to be incorporated therein, and (3) other property at the site or adjacent thereto.
12. The contractor shall instruct his employees to use caution while operating mowers, edger's and line trimmers near trees, shrubs and ground cover to prevent damage. Damage to trees, shrubs, or ground cover will not be tolerated. The Owner shall make weekly inspections of each site to inspect for mower or line trimmer damage. Repeated signs of damage to trees by mowers or by line trimmers may be grounds for termination of this contract or a replacement value shall be assessed by the Owner. The Contractor shall be responsible for seeing that his employees are taking every precaution to protect trees, shrubs, and ground cover from damage.
13. Contractor will be responsible for immediate notification of all damage to the property; including, but not limited to the sprinkler system and metal edging, lighting, windows, fences, trees and shrubs of all sites caused by Contractor and/or employees. The Contractor shall be liable for any and all damages to our property or adjacent property while executing the provisions of the agreement.
14. Any labor, services, or materials over and above the scope of this contract must be approved by Owner's designated representative, and may be billed at extra per man hour cost plus cost of any materials (on quote form).
15. Additional sites may be added during the agreement term and the City will negotiate prices for the additional sites with the Contractor.

COMPLIANCE PROCEDURE:

1. Complaints from residents resulting from work done under this agreement will be received and recorded by the Parks Department, City of Murphy. The complaints will then be forwarded to the Contractor. The contractor will make contact with the person or persons registering the complaint within twenty-four (24) hours and do whatever is necessary to investigate the situation and make a sound judgment as to its authenticity. If, in fact, a liability situation does exist, every effort will be taken to insure that the claim is settled as expeditiously as possible. In each case the Parks Department, City of Murphy will be kept informed as to the disposition of complaints.

AVAILABILITY:

1. The agreement must have at least one responsible member of the company on call/available twenty-four (24) hours per day to respond to service and inspection requests from residents of Murphy, Texas. A list of names, titles, addresses and telephone numbers of these responsible individuals will be furnished to the Parks Department.

AGREEMENT TIME AND EXTENSION:

1. This agreement is for one (1) year. However, the agreement may be extended for up to three additional one year periods if mutually agreed to by the Contractor and the City of Murphy. The agreement amount will remain the same as the quote amount unless the contractor can provide proof of increases in labor, material, insurance, etc. which exceeds five (5) percent. Payroll records and/or receipts of materials shall be submitted to the City in order to substantiate increase approvals.

INSURANCE REQUIREMENTS

1. **Commercial General Liability:** \$1,000,000.00 combined single limit per occurrence for Fire Damage, Medical Expenses, Personal & Advertising Injury, General Aggregate and Products – Completed Operations Aggregate. This policy shall have no coverage removed by exclusions.
2. **Automobile Liability:** \$500,000.00 combined single limit per accident for bodily injury and property damage. Coverage should be provided as a "Code 1," any auto.
3. **Worker's Compensation and Employers' Liability:** Statutory. Employers Liability policy limits of \$500,000.00 for each occurrence, \$500,000.00 Aggregate – Disease.

Initials



Other Insurance Provisions

1. The City shall be named as an additional insured on the Commercial General Liability and Automobile Liability Insurance policies. These insurance policies shall contain the appropriate additional insured endorsement signed by a person authorized by the insurer to quote coverage on its behalf.
2. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been provided to the City. If the policy is canceled for non-payment of premium, only ten (10) days notice is required.
3. Insurance is to be placed with insurers with a Best rating of no less than A:VII. The company must also be duly authorized to transact business in the State of Texas.
4. **Workers' Compensation and Employers' Liability Coverage:** The insurer shall agree to waive all rights of subrogation against the City, its officials, employees and volunteers for losses arising from the activities under this agreement.
5. Certificates of Insurance and Endorsements effecting coverage required by this clause shall be forwarded to:

City of Murphy
Kim Lenoir, Director of Parks and Public Works
206 North Murphy Road
Murphy, Texas 75094
6. Insurance Certificate must be submitted and issued with the City listed as the certificate holder.

Cancellation Policy must read as follows:

"Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will mail a 30 days written notice to the certificate holder named to the left."

Initials 

PROPOSAL

The following quote is made for furnishing the materials/services for the City of Murphy, Texas.

The undersigned, in submitting this quote, represents that they are an equal opportunity employer, and will not discriminate with regard to race, religion, color, national origin, age or sex in the performance of this contract.

The undersigned affirms that they are duly authorized to execute this agreement that this company, corporation, firm, partnership or individual and has not prepared this quote in collusion with any other and that the contents of these prices, terms or conditions of said quote have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business.

Respectfully Submitted,

Federal ID Number: 01-0559864

SIGNATURE

DATE

Joseph T. Angelone Vice President
PRINTED NAME TITLE

American Landscape Systems, Inc. John Luttrell - Account Manager
COMPANY NAME CONTACT PERSON (Must have knowledge of Quote)

1780 Midway Road LEWISVILLE TX 75056
BILLING ADDRESS STREET CITY STATE ZIP

MAILING ADDRESS STREET CITY STATE ZIP

469-521-2200 469-521-2206 JEL@AMERICANLANDSCAPESYSTEMS.COM
PHONE NUMBER (metro/toll free) FAX NUMBER E-MAIL ADDRESS

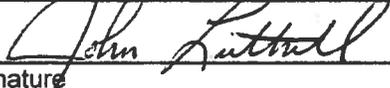
Initials

**CITY OF MURPHY CONTRACT MOWING BID LIST
MARCH 1, 2012 - FEBRUARY 28, 2013**

MURPHY Parks, Beautification, ROW, and Drainage Maintenance Sites	Mowing Frequency	Number of Acres	Trash, Edge, Weed, Mow (unless otherwise noted)	Cycles	Total
PARKS			PRICE/CYCLE		
MURPHY CITY PARK	Weekly	12.4	\$496. ⁰⁰	43	\$21,328. ⁰⁰
BRENTWOOD PARK	Weekly	3	\$120. ⁰⁰	43	\$5,160. ⁰⁰
CACTUS PATH	Weekly	5	\$200. ⁰⁰	43	\$8,600. ⁰⁰
LONESOME DOVE	Weekly	4	\$160. ⁰⁰	43	\$6,880. ⁰⁰
TRAVIS FARM PARK	Weekly	4	\$160. ⁰⁰	43	\$6,880. ⁰⁰
PUBLIC WORKS SITES					
RODEO DR. ELEVATED STORAGE TANK	Weekly	1	\$45. ⁰⁰	43	\$1,935. ⁰⁰
BETSY LN. ELEVATED STORAGE TANK	Weekly	1	\$45. ⁰⁰	43	\$1,935. ⁰⁰
MEDIANS & ROW					
WEST BETSY MEDIAN & ROW	Weekly	6	\$200. ⁰⁰	43	\$8,600. ⁰⁰
HERITAGE PKWY MEDIAN & ROW	Weekly	8	\$320. ⁰⁰	43	\$13,760. ⁰⁰
FM 544/BRAND MEDIANS/ROW	Weekly	2.5	\$200. ⁰⁰	43	\$8,600. ⁰⁰
S. MURPHY RD. MEDIANS/ROW/	Weekly	2.3	\$120. ⁰⁰	43	\$5,160. ⁰⁰
CEMETERY					
EAST BETSY MEDIAN & ROW	Weekly	6.84	\$270. ⁰⁰	43	\$11,610. ⁰⁰
MCCREARY RD. MEDIAN & ROW	Weekly	1	\$40. ⁰⁰	43	\$1,720. ⁰⁰
NORTH MURPHY ROAD	Bi-Weekly	1.1	\$45. ⁰⁰	21	\$945. ⁰⁰
TOM CLEVINGER ROW	Bi-Weekly	2	\$80. ⁰⁰	21	\$1,680. ⁰⁰
MCWHIRTER ROAD	Bi-Weekly	2.77	\$110. ⁰⁰	21	\$2,310. ⁰⁰
MCMILLEN ROAD	Bi-Weekly	1.42	\$60. ⁰⁰	21	\$1,260. ⁰⁰
NORTH MAXWELL ROAD ROW	Bi-Weekly	2.66	\$100. ⁰⁰	21	\$2,100. ⁰⁰
KINNEY ROAD ROW	Bi-Weekly	3.05	\$120. ⁰⁰	21	\$2,520. ⁰⁰
SOUTH MAXWELL CREEK ROAD ROW	Bi-Weekly	0.62	\$40. ⁰⁰	21	\$840. ⁰⁰
DRAINAGE AREAS					
WOODLAKE/SYCAMORE DRAINAGE	Bi-Weekly	2.79	\$125. ⁰⁰	21	\$2,625. ⁰⁰
BLUE FUMAR CT. DRAINAGE	Bi-Weekly	3	\$125. ⁰⁰	21	\$2,625. ⁰⁰
N. MURPHY RD. DRAINAGE (next to Animal Clinic)	Bi-Weekly	1.5	\$80. ⁰⁰	21	\$1,680. ⁰⁰
OPEN SPACE					
HAWTHORNE/544/CITY TREE FOREST	Bi-Weekly	2	\$80. ⁰⁰	21	\$1,680. ⁰⁰
BUNNY RUN PROPERTY	Bi-Weekly	5	\$200. ⁰⁰	21	\$4,200. ⁰⁰
KINNEY OPEN SPACE	Monthly	15	\$600. ⁰⁰	9	\$5,400. ⁰⁰
TOTAL					\$182,033.⁰⁰

COMPLETE MAINTENANCE TO INCLUDE WEEDING BEDS ONCE PER MONTH AND SPRAYING BEDS AS NEEDED FOR WEED CONTROL

NOTE:
City reserved the right to change frequency, cycles, and properties listed above. Bid rate is price per cycle. City pays successful bidder monthly only on cycles completed.



Signature



Printed Names
2/1/2012

Date

**CITY OF MURPHY CONTRACT MOWING BID LIST
MARCH 1, 2012 - FEBRUARY 28, 2013**

MURPHY Parks, Beautification, ROW, and Drainage Maintenance Sites	Mowing Frequency	Number of Acres	Trash, Edge, Weed, Mow (unless otherwise noted)	Cycles	Total
PARKS			PRICE/CYCLE		
MURPHY CITY PARK	Weekly	12.4	682	43	29,326
BRENTWOOD PARK	Weekly	3	165	43	7,095
CACTUS PATH	Weekly	5	275	43	11,825
LONESOME DOVE	Weekly	4	220	43	9,460
TRAVIS FARM PARK	Weekly	4	220	43	9,460
PUBLIC WORKS SITES					
RODEO DR. ELEVATED STORAGE TANK	Weekly	1	55	43	2,365
BETSY LN. ELEVATED STORAGE TANK	Weekly	1	55	43	2,365
MEDIANS & ROW					
WEST BETSY MEDIAN & ROW	Weekly	6	330	43	14,190
HERITAGE PKWY MEDIAN & ROW	Weekly	8	440	43	18,920
FM 544/BRAND MEDIANS/ROW	Weekly	2.5	138	43	5,934
S. MURPHY RD. MEDIANS/ROW/CEMETERY	Weekly	2.3	127	43	5,461
EAST BETSY MEDIAN & ROW	Weekly	6.84	377	43	16,211
MCCREARY RD. MEDIAN & ROW	Weekly	1	55	43	2,365
NORTH MURPHY ROAD	Bi-Weekly	1.1	61	21	1,281
TOM CLEVENGER ROW	Bi-Weekly	2	110	21	2,310
MCWHIRTER ROAD	Bi-Weekly	2.77	153	21	3,213
MCMILLEN ROAD	Bi-Weekly	1.42	79	21	1,659
NORTH MAXWELL ROAD ROW	Bi-Weekly	2.66	147	21	3,087
KINNEY ROAD ROW	Bi-Weekly	3.05	168	21	3,528
SOUTH MAXWELL CREEK ROAD ROW	Bi-Weekly	0.62	35	21	735
DRAINAGE AREAS					
WOODLAKE/SYCAMORE DRAINAGE	Bi-Weekly	2.79	154	21	3,234
BLUE FUMAR CT. DRAINAGE	Bi-Weekly	3	165	21	3,465
N. MURPHY RD. DRAINAGE (next to Animal Clinic)	Bi-Weekly	1.5	83	21	1,743
OPEN SPACE					
HAWTHORNE/544/CITY TREE FOREST	Bi-Weekly	2	110	21	2,310
BUNNY RUN PROPERTY	Bi-Weekly	5	275	21	5,775
KINNEY OPEN SPACE	Monthly	15	825	9	7,425
TOTAL					174,742

COMPLETE MAINTENANCE TO INCLUDE WEEDING BEDS ONCE PER MONTH AND SPRAYING BEDS AS NEEDED FOR WEED CONTROL

NOTE:

City reserved the right to change frequency, cycles, and properties listed above. Bid rate is price per cycle. City pays successful bidder monthly only on cycles completed.

Signature William Larkhart

Printed Names William Larkhart

Date 2/6/12

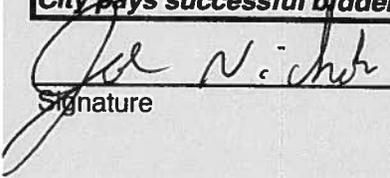
CITY OF MURPHY CONTRACT MOWING BID LIST

MARCH 1, 2012 - FEBRUARY 28, 2013

MURPHY Parks, Beautification, ROW, and Drainage Maintenance Sites	Mowing Frequency	Number of Acres	Trash, Edge, Weed, Mow (unless otherwise noted)	Cycles	Total
PARKS			PRICE/CYCLE		
MURPHY CITY PARK	Weekly	12.4	45 / 558	43	23,994
BRENTWOOD PARK	Weekly	3	50 / 150	43	6,450
CACTUS PATH	Weekly	5	43 / 215	43	9,245
LONESOME DOVE	Weekly	4	60 / 240	43	10,320
TRAVIS FARM PARK	Weekly	4	50 / 200	43	8,600
PUBLIC WORKS SITES					
RODEO DR. ELEVATED STORAGE TANK	Weekly	1	43 / 43	43	1,849
BETSY LN. ELEVATED STORAGE TANK	Weekly	1	43 / 43	43	1,849
MEDIANS & ROW					
WEST BETSY MEDIAN & ROW	Weekly	6	75 / 450	43	19,350
HERITAGE PKWY MEDIAN & ROW	Weekly	8	75 / 600	43	25,800
FM 544/BRAND MEDIANS/ROW	Weekly	2.5	75 / 187.50	43	8,062.50
S. MURPHY RD. MEDIANS/ROW/ CEMETERY	Weekly	2.3	75 / 172.50	43	7,417.50
EAST BETSY MEDIAN & ROW	Weekly	6.84	43 / 294.12	43	12,677.16
MCCREARY RD. MEDIAN & ROW	Weekly	1	43 / 43	43	1,849
NORTH MURPHY ROAD	Bi-Weekly	1.1	43 / 47.30	21	993.30
TOM CLEVENGER ROW	Bi-Weekly	2	43 / 86	21	1,806
MCWHIRTER ROAD	Bi-Weekly	2.77	43 / 119.11	21	2,501.31
MCMILLEN ROAD	Bi-Weekly	1.42	43 / 61.06	21	1,282.26
NORTH MAXWELL ROAD ROW	Bi-Weekly	2.66	50 / 133	21	2,793
KINNEY ROAD ROW	Bi-Weekly	3.05	43 / 131.15	21	2,754.15
SOUTH MAXWELL CREEK ROAD ROW	Bi-Weekly	0.62	43 / 26.66	21	559.86
DRAINAGE AREAS					
WOODLAKE/SYCAMORE DRAINAGE	Bi-Weekly	2.79	120 / 334.80	21	7,030.80
BLUE FUMAR CT. DRAINAGE	Bi-Weekly	3	120 / 360	21	7,560
N. MURPHY RD. DRAINAGE (next to Animal Clinic)	Bi-Weekly	1.5	120 / 180	21	3,780
OPEN SPACE					
HAWTHORNE/544/CITY TREE FOREST	Bi-Weekly	2	65 / 130	21	2,730
BUNNY RUN PROPERTY	Bi-Weekly	5	43 / 215	21	4,515
KINNEY OPEN SPACE	Monthly	15	40 / 600	9	5,400
TOTAL					181,138.84

COMPLETE MAINTENANCE TO INCLUDE WEEDING BEDS ONCE PER MONTH AND SPRAYING BEDS AS NEEDED FOR WEED CONTROL

NOTE:
 City reserved the right to change frequency, cycles, and properties listed above. Bid rate is price per cycle. City pays successful bidder monthly only on cycles completed.


 Signature

Joe Nichols
 Printed Names
 2-6-2012
 Date

**CITY OF MURPHY CONTRACT MOWING BID LIST
MARCH 1, 2012 - FEBRUARY 28, 2013**

MURPHY Parks, Beautification, ROW, and Drainage Maintenance Sites	Mowing Frequency	Number of Acres	Trash, Edge, Weed, Mow (unless otherwise noted)	Cycles	Total
PARKS			PRICE/CYCLE		
MURPHY CITY PARK	Weekly	12.4	\$806.00	43	\$34,658.00
BRENTWOOD PARK	Weekly	3	\$195.00	43	\$8,385.00
CACTUS PATH	Weekly	5	\$300.00	43	\$12,900.00
LONESOME DOVE	Weekly	4	\$240.00	43	\$10,320.00
TRAVIS FARM PARK	Weekly	4	\$240.00	43	\$10,320.00
PUBLIC WORKS SITES					
RODEO DR. ELEVATED STORAGE TANK	Weekly	1	\$55.00	43	\$2,365.00
BETSY LN. ELEVATED STORAGE TANK	Weekly	1	\$55.00	43	\$2,365.00
MEDIANS & ROW					
WEST BETSY MEDIAN & ROW	Weekly	6	\$510.00	43	\$21,930.00
HERITAGE PKWY MEDIAN & ROW	Weekly	8	\$680.00	43	\$29,240.00
FM 544/BRAND MEDIANS/ROW	Weekly	2.5	\$162.50	43	\$6,987.50
S. MURPHY RD. MEDIANS/ROW/	Weekly	2.3	\$149.50	43	\$6,428.50
EAST BETSY MEDIAN & ROW	Weekly	6.84	\$547.20	43	\$23,529.60
MCCREARY RD. MEDIAN & ROW	Weekly	1	\$65.00	43	\$2,795.00
NORTH MURPHY ROAD	Bi-Weekly	1.1	\$71.50	21	\$1,501.50
TOM CLEVINGER ROW	Bi-Weekly	2	\$130.00	21	\$2,730.00
MCWHIRTER ROAD	Bi-Weekly	2.77	\$180.05	21	\$3,781.05
MCMILLEN ROAD	Bi-Weekly	1.42	\$92.30	21	\$1,938.30
NORTH MAXWELL ROAD ROW	Bi-Weekly	2.66	\$172.90	21	\$3,630.90
KINNEY ROAD ROW	Bi-Weekly	3.05	\$198.25	21	\$4,163.25
SOUTH MAXWELL CREEK ROAD ROW	Bi-Weekly	0.62	\$40.30	21	\$846.30
DRAINAGE AREAS					
WOODLAKE/SYCAMORE DRAINAGE	Bi-Weekly	2.79	\$237.15	21	\$4,980.15
BLUE FUMAR CT. DRAINAGE	Bi-Weekly	3	\$195.00	21	\$4,095.00
N. MURPHY RD. DRAINAGE (next to Animal Clinic)	Bi-Weekly	1.5	\$97.50	21	\$2,047.50
OPEN SPACE					
HAWTHORNE/544/CITY TREE FOREST	Bi-Weekly	2	\$130.00	21	\$2,730.00
BUNNY RUN PROPERTY	Bi-Weekly	5	\$200.00	21	\$4,200.00
KINNEY OPEN SPACE	Monthly	15	\$600.00	9	\$5,400.00
			TOTAL		\$214,267.55

COMPLETE MAINTENANCE TO INCLUDE WEEDING BEDS ONCE PER MONTH AND SPRAYING BEDS AS NEEDED FOR WEED CONTROL

NOTE:
City reserved the right to change frequency, cycles, and properties listed above. Bid rate is price per cycle.
City pays successful bidder monthly only on cycles completed.


Signature


Printed Names
2-6-12
Date

Issue

Consider and/or act upon approval of the reallocation of the 2008 bond funds.

Staff Resource / Department

James Fisher, City Manager; Kim Lenoir, Director of Parks and Public Works; and Linda Truitt, Director of Finance

Key Focus Area

TBD by City Council upon completion of the Strategic Planning Session.

Summary

In 2008, the citizens of Murphy approved a \$7.5 million bond for the construction of parks, parkland acquisition, and hike and bike trail improvements. The projects to be completed using this money were Aviary Park, Brentwood Park, Gables Park (North Hill Park), Liberty Ridge Park / Trails, Murphy Central Parks / Trails, Skyline Park (Travis Farm), Timbers Park / Trails, and general trails projects. Funds were also to be used for land acquisition for these projects (including rights-of-way, etc.).

To date, six objectives have been completed, and three more are underway. The Liberty Ridge Park Project bid has been awarded, both Murphy Central Park and Timbers Nature Preserve Park have been master planned, and Timbers Nature Preserve Park is currently in the FEMA and USCOE federal permitting process.

In total, \$4,684,989 of bond funds and the full amount (\$141,000) of park escrow have been spent. Of the bond funds allocated in 2008, \$2,815,011 remains. With design plans for the remaining projects near completion, budgetary needs for each have become more concrete than they were when the City Council originally reallocated funds for these projects in April 2011. Therefore, staff is requesting that the remaining bond funds be reallocated.

Background/History

In 2008, the citizens of Murphy approved a \$7.5 million bond for the construction of parks, parkland acquisition, and hike and bike trail improvements. The projects to be completed using this money were Aviary Park, Brentwood Park, Gables Park (North Hill Park), Liberty Ridge Park / Trails, Skyline Park (Travis Farm), Timbers Park / Trails, and general trails projects. Funds were also to be used for land acquisition for these projects (including rights-of-way, etc.). In 2009, Murphy Central Park / Trails was added to the list of projects.

To date, Aviary Park, Brentwood Park, Gables Park (North Hill Park), Skyline Park (Travis Farm), and a portion of the trails project have been completed, in addition to having acquired necessary land. These projects were completed at a cost of \$3,225,661. Some of the cost of Skyline Park (Travis Farm) was paid by park escrow funds from the developer.

Currently, three more projects are under way and/or already have funds encumbered to assist in their construction. These are Liberty Ridge Park / Trails, Murphy Central Park / Trails, and Timbers Park / Trails. In December 2011 the Liberty Ridge Park Project bid was awarded. Both Murphy Central Park and Timbers Nature Preserve Park have been master planned and need to be constructed. Timbers Nature Preserve Park is currently in the FEMA

and USCOE federal permitting process, which is expected to be complete in summer 2013. The total amount paid and/or encumbered for these three projects is \$1,600,328.

In total, \$4,684,989 of bond funds and the full amount (\$141,000) of park escrow have been spent. Of the bond funds allocated in 2008, \$2,815,011 remains.

With design plans for the remaining projects near completion, budgetary needs for each have become more concrete than they were when the City Council originally reallocated funds for these projects in April 2011. Therefore, staff is requesting that the remaining bond funds (\$2,815,011) be reallocated in the following amounts: \$1,852,115 to the Murphy Central Park / Trail Project, \$600,000 to the Timbers Park / Trail Project, and \$362,896 to general trails projects. Staff also suggests that the MCDC be requested to fund the remaining expense of Murphy Central Park by the issuance of tax notes.

Financial Considerations

The Murphy Central Park / Trail Project is also being assisted by four grants: one each from Collin County (\$400,000), TPWD (\$500,000), 4B 2009 (\$25,000), and 4B 2012 (\$300,000). These funds total \$1,225,000. With regard to this item, the only consideration that needs to be taken as a result of these grant funds is the timeline associated with them. The Collin County trail grant requires that all the money be spent by the expiration of the contract in October 2012. The TPWD grant also requires that all money be spent before the expiration of the three-year contract in January 2013. Once the Murphy Central Park / Trail Project is underway, staff will request a one-year extension of the TPWD contract. However, even with the expected extension, time is still a factor due to the Collin County trail grant and short length of the TPWD extension.

Other Considerations

The 100% sidewalk and crosswalk enhancement funds for the Safe Routes to Schools project has been approved by TxDOT. Maps and contracts are currently under review. TxDOT is estimating that these funds will be released in August 2012, with construction projected for 2013 and 2014. This project will include \$500,000 for sidewalks and \$500,000 for enhanced crosswalks and landscaping with the North Murphy Road expansion project.

Board Discussion/Action

In 2009, MCDC allocated \$25,000 in support of the TPWD grant of \$500,000 for Murphy Central Park and the trail expansion. In the FY 2012 budget, MCDC included \$300,000 for Murphy Central Park for the purpose of laying sod in all three athletic fields and completing the amphitheater. Murphy Central Park construction project is a high priority for the MCDC and for the Parks and Recreation Board.

Action Requested

City Council is requested to reallocate the remaining 2008 park bond funds as follows: \$1,852,115 to the Murphy Central Park / Trail Project, \$600,000 to the Timbers Park / Trail Project, and \$362,896 to general trails projects. Staff also suggests that the MCDC be requested to fund the remaining expense of Murphy Central Park by the issuance of tax notes.

Attachments

Park Bond Fund Report Summary

City of Murphy
2008 Park Bonds and Grants
February 22, 2012

All Funds Summary

Funds Available (Bond Issue)	7,500,000
Park Escrow	141,000
Grant (Collin County)	400,000
Grant (TPWD)	500,000
Grant (4B 2009)	25,000
Grant (4B 2012)	300,000
Total Funds Available:	8,866,000
Completed Projects	Final Cost of Projects
Aviary Park	446,994
Brentwood Park	140,369
Gables Park (North Hill Park)	654,117
Skyline Park (Travis Farm)	423,639
Land Acquisition	1,513,031
Trails Project	47,511
Total Project Expenses:	3,225,661
Current Projects	Current Cost of Projects
Murphy Central Parks / Trails	364,193
Timbers Park / Trails	336,013
Liberty Ridge Park / Trails	900,122
Total Project Expenses:	1,600,328

Remaining Funds to reallocate: **4,040,011**

Proposed Reallocation

Murphy Central Park/Trail Project	3,077,115
Timbers Park/Trail Project	600,000
Trails	362,896
Total recommended reallocation:	4,040,011
Contingency	0

**City of Murphy
2008 Park Bonds
February 22, 2012**

Bond Funds Summary

Funds Available (Bond Issue)	7,500,000
Park Escrow	141,000
Total Funds Available:	7,641,000
Completed Projects	Final Cost of Projects
Aviary Park	446,994
Brentwood Park	140,369
Gables Park (North Hill Park)	654,117
Skyline Park (Travis Farm)	423,639
Land Acquisition	1,513,031
Trails Project	47,511
Total Project Expenses:	3,225,661
Current Projects	Current Cost of Projects
Murphy Central Parks / Trails	364,193
Timbers Park / Trails	336,013
Liberty Ridge Park / Trails	900,122
Total Project Expenses:	1,600,328

Proposed Reallocation

Murphy Central Park/Trail Project	1,852,115
Timbers Park/Trail Project	600,000
Trails	362,896
Total recommended reallocation:	2,815,011

Contingency

0

Remaining Bond Funds to reallocate: **2,815,011**

Issue

Consider and/or act upon approval of final construction plans for Murphy Central Park and the Maxwell Creek Trail Extension Project.

Staff Resource / Department

James Fisher, City Manager and Kim Lenoir, Director of Parks and Public Works

Consultants

Dennis Sims, Dunkin Sims Stoffels (DSS) Landscape Architects and Ron Hobbs, Architect, will be present to review the design, plans, and revised budget with the Council. DSS will report the results of the irrigation/spray ground/water well study and make a recommendation.

Key Focus Area

TBD by City Council upon completion of the Strategic Planning Session.

Summary

August 16, 2011, City Council authorized Dunkin Sims Stoffels (DSS), Park Planners, to proceed with construction documents for the Murphy Central Park and Maxwell Creek Trail project. Construction documents are now 80% complete. As the plans have been developed, some other optional items for the park have been identified such as burying more overhead electric lines, adding a pond/water well, adding lights for two athletic fields, adding plaza lights, and adding a five-space parking lot to access the cemetery. DSS will present the plans to City Council as well as a report and recommendation regarding the irrigation/spray ground/water well study.

Background/History

Dunkin Sims Stoffels (DSS), Park Planners, began working on conceptual plans for this park in early 2009. The TPWD grant was submitted in June 2009 and awarded in January 2010. On December 6, 2010, the City Council approved the purchase of additional PISD property to expand the park design. After numerous public meetings, the Murphy Central Park master plan was approved by City Council on June 13, 2011. On August 16, 2011, City Council authorized Dunkin Sims Stoffels (DSS), Park Planners, to proceed with construction documents for the Murphy Central Park and Maxwell Creek Trail project. The project totaled \$2,777,115 for construction items.

A major component of this 60 acre park is the trail connections (from the municipal complex, the MCC, MAC to the school, a trail loop created from the Maxwell Creek subdivision to Murphy Marketplace, and a direct connection from the complex to the Maxwell Creek trails). The project also includes trails through the park, a trail along North Murphy Road, a trail extension to The Preserve Park connecting to Maxwell Creek Trail system, a trail from Creekside south across the creek to the Murphy Marketplace, and two pedestrian bridges for these trails. Making these trail connections was the major reason for the state and county grant awards.

The other component is the main park area. A spray ground, pavilion, and small playground will be included in the plaza area. The overhead electric line to the loop road along Tom Clevenger will be buried. All three multi-use athletic fields will be finish graded; irrigation/hydromulch is scheduled for two of the three fields. At the August 16, 2012 meeting, City Council agreed to bid as alternate bid items both irrigation/hydromulch for the third athletic field and sod with Common Bermuda for all three athletic fields. Grading, seating grades, and stage pad site construction were included for the amphitheater. The project also includes a restroom / concession building, plans for which Ron Hobbs, Architect, was hired to prepare.

During the FY 2012 budget, MCDC / 4B funds were approved (\$300,000) to add sod for the three athletic fields and stone columns, a steel arch, stone seating, and accent lighting to the amphitheater.

Staff asked DSS to look at storage options for reusing the water from the spray ground and to consider drilling a water well to irrigate the park, due to watering restrictions. DSS found that the \$65,000 storage tank planned for the spray ground would store 10,000 gallons, only a third of the average daily water use of the spray ground. It was determined that the cost of the storage tank was disproportionate to the potential benefit. The three athletic fields and immediate park area in the plaza will require 56,700 gallons a day for irrigation (estimated cost per year \$30,000). The water cost for the spray ground is estimated at \$70 per day, approximately \$18,000 per year. To treat the spray ground water and reuse it on site, it would cost \$150,000 for the facilities and additional maintenance staff. Therefore, staff recommends a pond and water well. Initially, this option will cost more, but it will conserve and reuse water from the spray ground for irrigation in addition to paying for itself within five years.

As more items have been added to the project, it is also recommended that the Council approve building this park in one phase versus phasing (as was previously considered). Primarily, the community is ready for this park to be completed. Existing athletic fields in the city are overused and not sufficient to meet demand. Phasing any park is frustrating for citizens adjacent to the park and citizens trying to use the park. It is also costly for the city with staff time and resources. Extra work and expense is created when phasing a park construction project. For example: North Hill Park was phased over four to five years. Problems included the changing of phase plans, the involvement of several different engineers, contractors, and sub-contractors, and the need to tie-in to previous work. Neighbors are frustrated, and the cost of staff time, mobilizing, bidding, etc., are high. Liberty Ridge Park, however, was much smoother and cost-effective as a six-month, single-phase project. If funding sources can be identified, staff recommends bidding and building this park in one major phase. There will be space identified for a future community built playground to be added, but all other facilities should be included in the initial construction project.

The goal is to have this project ready to bid in late spring with construction starting in early summer. The project is now in the third year of a three year contract with the TPWD grant

of \$500,000, and the one year Collin County trail grant of \$400,000 needs to be completed by October 2012. Once the project is under construction, staff will request from TPWD (and can expect) a one year extension of the grant contract to complete the project. Staff has received one year TPWD grant extensions in the past on such large projects. Once the plans are finalized, TPWD must review and approve, then the project can proceed with public bidding.

Financial Considerations

This project will be financed by a grant from Collin County (\$400,000), a grant from TPWD (\$500,000); MCDC funds, and 2008 Bond funds.

Other Considerations

The park project elements for Murphy Central Park were addressed in the updated *Park, Recreation and Open Space Master Plan* for the City of Murphy. Under the direction/approval of the City Council, grants were submitted and approved by Texas Parks and Wildlife Department (TPWD) in January 2010 and by Collin County in October 2011. This park is a high priority for MCDC/4B and for the Parks and Recreation Board. This project also meets the federal requirements for building a park per the land acquisition regulations for the North Murphy Road widening project. With the location of this park adjacent to the Municipal complex, the PISD complex, the Maxwell Creek Trails, and the expanded six-lane North Murphy Road, it will not only be a major destination for the citizens but also present an economic development opportunity.

Board Discussion/Action

DSS and Ron Hobbs presented the design of this facility to the Parks and Recreation Board on January 9, 2012. The Parks and Recreation Board discussed, reviewed, and recommended the design as presented. The Parks and Recreation Board is reviewing only the design and layout of the park and its facilities; all financial issues are directed to staff and City Council. The irrigation/pond study was not completed until after the Park Board presentation.

Action Requested

City Council is requested to direct DSS to finalize the construction documents as presented and whether or not to include the optional items to be discussed (e.g. burying more overhead electric lines, adding the pond/water well, adding lights for the two athletic fields, adding plaza lights, and adding a five-space parking lot to access the cemetery). If additional items are to be included, additional design fees will be required. The professional services fee and service contract will be on the next council agenda. City Council is also requested to direct staff to move forward with the park construction as a single-phase project, as recommended.

Attachments

Murphy Central Park updated design lay-out
Park Budget update and options



MURPHY CENTRAL PARK

MASTER PLAN

CITY OF MURPHY

FEB. 21, 2012



DUNKIN
SIMS
STOFFELS
INC.

**Construction Cost Summary
MURPHY CENTRAL PARK - PHASE 1 (CONSTRUCTION)
City of Murphy, Texas
February 21, 2012**

I. Approved August 16, 2011

Construction Amount \$ 2,777,115.00

II. October 2011 - Added 4B

Amphitheater Alternate Items and Field Sod \$ 300,000.00

III. Optional

Oncor Aditonal Cost for Underground Electrical from Loop Road to Maxwell Creek Road \$ 200,000.00

IV. Optional/Additional Construction Cost for Consideration

1.5 Acre Pond for Irrigation of Recycled Water (Wetland Habitat)	\$ 150,000.00	
Irrigation Well	\$ 75,000.00	
Irrigation Pumps	\$ 30,000.00	
Storm Sewer and Splash Pad Sewer	\$ 35,000.00	
Lighting of Two Fields	\$ 325,000.00	
Pedestrian Plaza Lights	\$ 50,000.00	
PISD Fence Removal and Replacement for Vehicular Access to Cemetery (5 spaces)	\$ 45,000.00	
Additional Design Services Maximum for all Options	<u>\$ 56,800.00</u>	
		\$ 766,800.00

Associated Engineering Elements

Replace CA Water Line (60's) - Needs to be Replaced	\$ 93,900.00
Extend Road South of Park	\$ 125,000.00
Engineering Fees	<u>\$ 20,795.50</u>

Associated Engineering Elements Total: \$ 239,695.50

GRAND TOTAL: \$ 4,283,610.50

Issue

Discussion regarding Timbers Nature Preserve Park.

Staff Resource/Department

James Fisher, City Manager and Kim Lenoir, Director of Parks and Public Works

Key Focus Area

TBD by City Council upon completion of the Strategic Planning Session.

Summary

This item is placed on the agenda for discussion in relation to the reallocation of bond funds.

Background/History

The Timbers Nature Preserve Park (Bunny Run, City Park and ONCOR trail) is a 2008 Bond funded project now in the design/permitting phase. The master plan was completed in December 2010. HOK was then hired by City Council to proceed with analyzing the drainage issues only. On October 4, 2011, HOK presented the City Council with findings to correct drainage issues, the need for more surveying, study, and a letter of map revision for FEMA to be prepared. To obtain the required federal permits, the process will take up to a year to complete. Council approved the additional work to proceed with permitting the new construction with FEMA and the U.S. Corps of Engineers (USCOE).

On October 4, 2011, City Council authorized HOK to proceed with construction plans for the Project. Council discussed their priorities as being drainage improvements/management, ball fields, and trails. HOK agreed to take that direction and revise the park plans to meet those goals. At the October 10, 2011 Park and Recreation Board meeting, HOK park planners reviewed and received feedback from the Board members and staff on various design revisions and details for the Project. Taking those ideas, the HOK design team returned to present the revised park plans and budget with a phasing proposal to the Park and Recreation Board on January 9, 2012. The Park and Recreation Board reviewed, discussed, and recommended the plans as presented. HOK will present to City Council the revised park plans in April 2012

Financial Considerations

The estimate to construct the master plan exceeds funds available. The City submitted a \$500,000 matching grant for Texas Parks and Wildlife Depratement (TPWD) Local Park Fund Grants in June 2011. In August 2011, only two grants were awarded (\$1 million) statewide due to state funding cuts. Murphy ranked 11th out of 26 applications with a total of \$10.7 million requested. The Murphy project is eligible to be resubmitted in May 2012, but funding may be reduced to \$100,000 versus \$500,000 as in the past. This project will be competitive for TPWD grant funding, but fully funded projects are not projected to be available until 2014. The project would also be competitive for Collin County grants, which could be available in October 2012. If Collin County grant projects are requested, the City should apply for a \$500,000 project.