

MURPHY CITY COUNCIL AGENDA
REGULAR CITY COUNCIL MEETING
FEBRUARY 5, 2013 AT 6:00 P.M.
206 NORTH MURPHY ROAD
MURPHY, TEXAS 75094



Bret Baldwin
Mayor

John Daugherty
Mayor Pro Tem

Colleen Halbert
Deputy Mayor Pro Tem

Dennis Richmond
Councilmember

Scott Bradley
Councilmember

Bernard Grant
Councilmember

Dave Brandon
Councilmember

James Fisher
City Manager

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 February 5, 2013 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.

1. CALL TO ORDER

2. INVOCATION & PLEDGE OF ALLEGIANCE

3. ROLL CALL & CERTIFICATION OF A QUORUM

4. PUBLIC COMMENTS

5. PRESENTATION ITEMS : None

6. 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. Consider and/or act upon the approval of the January 15, 2013 meeting minutes.
- B. Consider and/or act upon approval of an Ordinance ordering a General Election to be held on May 11, 2013, for the purpose of electing Council Members for Place 1, Place 2, Place 4, and Council Member Place 6 to a three (3) year term of office.
(Considerar y/o actuar sobre aprobación de una ordenanza ordenar una elección general que se celebrará el 11 de mayo de 2013, con el propósito de elegir a los miembros del Consejo para el Puesto 1, Puesto 2, Puesto 4, y el Puesto 6 para un período de tres (3) años de mandato.)
- C. Accept Annual Traffic Contact Report for 2012 for the Murphy Police Department (also known as the Racial Profiling Report) in accordance with Article 2.132(b)(7) of the Texas Code of Criminal Procedures.

7. INDIVIDUAL CONSIDERATION

- A. Consider and/or act on authorizing the City Manager to negotiate a contract to provide Solid Waste Collection & Disposal and Recyclable Material Collection & Processing services for the City of Murphy.
- B. Consider and/or act upon approval of the low bid award for the seasonal Median Mowing/Beautification Contract to Weldon's Lawn and Tree for \$40,662 and authorize the City Manager to execute the contract.

- C. Consider and/or act upon updated construction expense for Murphy Central Park and the PSA Murphy Project.
- D. Consider and take action, if any, on Alternate #7, Construct 4 Space Parking Lot and Connector Trail, east of PISD Maintenance Facility for Murphy Central Park, and authorize the City Manager to enter into an Interlocal Agreement with PISD for said parking lot and connector trail.
- E. Consider and/or take appropriate action, if any, on funding provisions provided by the Murphy Municipal Development District to improve the infrastructure at Central Park to accommodate the Plano Sports Authority Murphy Building.
- F. Consider and take action, if any, on the request by Plano Sports Authority to waive the permit fees for PSA Murphy.
- G. Discussion/review of utility capital improvement project for the South Maxwell Creek Trunk Sewer Line.

8. CITY MANAGER/STAFF REPORTS

North Murphy Road Construction Update
McCreary Road Construction Update

9. 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 advice from City Attorney involving:

- a) Susan Kinder-Alessio v. City of Murphy, et. al., Civil Action No. 4:12-CV-000493-RC-ALM
- b) Michael Cantrell v. City of Murphy, et. al, Cause No. 6:09-cv-225.

§551.074 Deliberation regarding the appointment, evaluation, reassignment, duties, discipline or dismissal of City of Murphy Community Development Member.

10. 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 advice from City Attorney involving:

- a) Susan Kinder-Alessio v. City of Murphy, et. al., Civil Action No. 4:12-CV-000493-RC-ALM
- b) Michael Cantrell v. City of Murphy, et. al, Cause No. 6:09-cv-225.

§551.074 Deliberation regarding the appointment, evaluation, reassignment, duties, discipline or dismissal of City of Murphy Community Development Member.

11. ADJOURNMENT

I certify that this is a true and correct copy of the Murphy City Council Meeting Agenda and that this notice was posted on the designated bulletin board at Murphy City Hall, 206 North Murphy Road, Murphy, Texas 75094; a place convenient and readily accessible to the public at all times, and said notice was posted on February 1, 2013 by 5:00 p.m. and will remain posted continuously for 72 hours prior to the scheduled meeting pursuant to Chapter 551 of the Texas Government Code.



Kristi Gilbert, TRMC, CMC, CPM
City Secretary

In compliance with the American with Disabilities Act, the City of Murphy will provide for reasonable accommodations for persons attending public meetings at City Hall. Requests for accommodations or interpretive services must be received at least 48 hours prior to the meeting. Please contact the City Secretary at 972.468.4011 or kgilbert@murphytx.org.

CITY COUNCIL MINUTES
JANUARY 15, 2013 REGULAR CITY COUNCIL MEETING

1. CALL TO ORDER

Mayor Baldwin called the meeting to order at 6:00 p.m.

2. INVOCATION & PLEDGE OF ALLEGIANCE

Mayor Baldwin gave the invocation and led the recitation of the Pledge of Allegiance.

3. ROLL CALL & CERTIFICATION OF A QUORUM

City Secretary, Kristi Gilbert, certified a quorum with the following Councilmembers present:

Mayor Brett Baldwin
Mayor Pro Tem John Daugherty
Deputy Mayor Pro Tem Colleen Halbert
Councilmember Dennis Richmond
Councilmember Scott Bradley
Councilmember Bernard Grant
Councilmember Dave Brandon

Councilmembers absent:
None

4. PUBLIC COMMENTS – No one was signed in to speak.

5. PRESENTATION ITEMS –

Finance Director, Linda Truitt, presented the unaudited investment and finance reports as of September 30, 2012.

6. 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. Consider and/or act upon the approval of the January 15, 2013 meeting minutes.

COUNCIL ACTION:

APPROVED

Deputy Mayor Pro Tem Halbert moved to approve the consent agenda as presented. Mayor Pro Tem Daugherty seconded the motion. For: Unanimous. Against: None. The motion carried by a vote of 7 to 0.

7. INDIVIDUAL CONSIDERATION

A. Consider and take action, if any, upon a proposed resolution approving the City of Murphy Employee Policies and Procedures.

Council held discussions related to the proposed tobacco policy and commented that Staff should review alternatives to the proposed policy prohibiting new hires from using tobacco products. Alternatives discussed included increased health premiums, limited or prohibited use during work hours and the use of designated smoking areas. Council discussed the

financial impacts of the proposed hazardous weather policy and the proposed executive benefit plan. Council asked Staff to bring a revised policy back for consideration at a future meeting.

COUNCIL ACTION:

NO ACTION

No action was taken.

- B. Consider and take appropriate action, if any, on an ordinance amending the FY 2011-2012 revenue and expenditure budgets for the General Fund and the Debt Service Fund and creating a budget for the Murphy Municipal Development District (MDD).

COUNCIL ACTION:

Mayor Pro Tem Daugherty moved to approve an ordinance amending the FY 2011-2012 revenue and expenditure budgets for the General Fund and the Debt Service Fund and creating a budget for the Murphy Municipal Development District (MDD). Councilmember Richmond seconded the motion. For: Unanimous. Against: None. The motion carried by a vote of 7 to 0. (*Assigned Ordinance No. 13-01-943*)

- C. Consider and take action, if any, regarding neighborhood traffic control issues and the City of Murphy Traffic Calming Initiative Policy.

City Manager, James Fisher, presented the proposed Traffic Calming Initiative Policy to the Council. Mr. Fisher stated that Staff had been reviewing the issues on Moonlight Drive since December and expected to bring recommendations to Council in February.

Council held discussions with regard to the proposed policy. Mayor Pro Tem Daugherty asked that Section 4.1.1 of the policy be revised to include streets with a speed limit up to 35 mph. Deputy Mayor Pro Tem Halbert inquired about the difference in charges for speed control versus volume control and asked about dead end streets. Council asked Staff to bring a revised policy back for consideration at a future meeting.

COUNCIL ACTION:

NO ACTION

No action was taken.

- D. Discussion/review of the city sidewalks and future hike and bike trails projects

Director of Parks and Public Works, Kim Lenoir, reviewed the City's sidewalk inventory with the Council and indicated that the areas that were lacking sidewalks were primarily due to new construction or areas with bar ditches. Ms. Lenoir stated that there were approximately 100 locations identified by staff, with resident input, that needed repair at an estimated cost of approximately \$50,000. Ms. Lenoir stated that the Parks and 4B Boards will be looking at plans for future hike and bike trails.

COUNCIL ACTION:

NON-ACTION ITEM

No action was taken.

8. CITY MANAGER/STAFF REPORTS

Mr. Fisher provided the Council with an update on the following items:

North Murphy Road Construction Update – There has been some construction slow down due to weather

McCreary Road Construction Update – Construction is approximately 50% complete.

Regulations Regarding Bee Keeping

Joint Work Session on Animal Shelter – The Work Session has been scheduled for Thursday, January 31st.

Christmas Tree – The Christmas Tree was damaged due to wind last month. The approximate purchase cost was \$29,000 and the City expects to receive approximately \$23,000 from the insurance claim.

Update on Board and Commission Training – Forty one out of 51 board members attended the training on Saturday.

9. EXECUTIVE SESSION

No Executive Session was held

10. RECONVENE INTO REGULAR SESSION

No Executive Session was held.

11. ADJOURNMENT

With no further business, the meeting was adjourned at 7:11 p.m.

APPROVED BY:

Bret M. Baldwin, Mayor

ATTEST:

Kristi Gilbert, City Secretary

City Council Meeting
February 5, 2013

Issue

Consider and/or act upon approval of an Ordinance ordering a General Election to be held on May 11, 2013, for the purpose of electing Council Members for Place 1, Place 2, Place 4, and Council Member Place 6 to a three (3) year term of office.

Background

Pursuant to the City of Murphy Charter, Section 3.01, the City Council shall be composed of a Mayor and six Council Members elected under the place system, with there being Places 1, 2, 3, 4, 5 and 6. The Mayor and each Council Member shall be elected at large, and unless sooner removed under the provisions of this Charter, shall serve for a term of three (3) years, and until their successor has been elected and duly qualified.

Charter Provision: The City Council shall be composed of a Mayor and six (6) Council Members elected under the place system, with there being Places 1, 2, 3, 4, 5 and 6. The Mayor and each of the six (6) Council Members shall be elected at large, and unless sooner removed under the provisions of this Charter, shall serve for a term of three (3) years, and until their successor has been elected and duly qualified. All of the City Council holding office at the time of passage of this Charter or any amendments to this Charter shall continue to hold their respective offices until the respective term for which they were elected expires.

State Law Provision: Texas Election Law prescribes the uniform election date as the second Saturday in May which will be May 11, 2013.

Financial Considerations

The City Secretary's Office has budgeted \$25,000 for election expenses in the FY 2013 Budget. Staff is reviewing the proposed contract with Collin County Elections and Plano ISD that will be presented for Council consideration at the February 19, 2013 Council meeting. The proposed contract price is \$5,913.38, but that will change depending on how many entities cancel their elections. Staff does not anticipate the contracted amount to exceed \$8,500.

Board/Staff Recommendation

Staff recommends approval.

Attachments

- 1) Proposed Ordinance
- 2) Proposed Election Notice

Kristi Gilbert, City Secretary

Submitted By

City Manager Approval

ORDINANCE NO. 11-02-XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MURPHY, TEXAS, ORDERING A GENERAL ELECTION TO BE HELD ON THE ELEVENTH OF MAY, 2013 FOR THE PURPOSE OF ELECTING COUNCIL MEMBER PLACE 1, COUNCIL MEMBER PLACE 2, COUNCIL MEMBER PLACE 4, AND COUNCIL MEMBER PLACE 6 TO A THREE (3) YEAR TERM OF OFFICE; PROVIDING FOR ELECTION OFFICERS; DESIGNATING THE PLACE AND MANNER OF HOLDING SAID ELECTION; DESIGNATING THE EARLY VOTING POLLING PLACE; DESIGNATING THE EARLY VOTING CLERK; PROVIDING FOR THE POSTING AND PUBLICATION OF NOTICE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Texas Election Code establishes May 11, 2013, as the uniform election date for the City of Murphy general election; and

WHEREAS, the Section 3.01(2) of the Home-Rule Charter provides that a general municipal election for Council Member Places 1, 2, 4, and 6 shall be elected at large on the May 11, 2013 uniform election date and that Council Members elected shall serve for three (3) year terms of office; and

WHEREAS, the meeting at which this Ordinance is considered is open to the public as required by law, and public notice of the time, place and purpose of said meeting was given as required by Section 551.043 of the Texas Government Code.

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

Section 1. Election Order; Election Date. That a General Election of the City of Murphy, prescribed by City of Murphy Home-Rule Charter shall be held between the hours of seven o'clock a.m. (7:00 a.m.) and seven o'clock p.m. (7:00 p.m.) on the 11th day of May, 2013.

Section 2. Purpose of Election. For the purpose of a General Election for Council Member Places 1, 2, 4, and 6 with the elected Council Members serving a three (3) year term of office. The candidate for each such office receiving a majority of all votes cast for the office shall be elected to serve such term.

Section 3. Candidate Filing Deadline. That candidates for City Council may file for one of the four (4) places beginning on January 30, 2013 through March 1, 2013 between the hours of 8 a.m. to 5 p.m., Monday through Friday. The deadline for a write-in candidate shall be 5:00 p.m. on March 1, 2013.

Section 4. Voting System. That voting on the date of the Election, and early voting therefore, shall be by the use of a lawfully approved voting system. The preparation of the voting equipment to be used in connection with such voting system and the official ballots for the Election shall conform to the Texas Election Code, as amended, so as to permit the electors to vote for four (4) City Council Members. Said ballots shall have printed therein such provisions, markings, and language as may be required by law and the Candidates shall be set forth on said ballots in substantially the following form and language:

**GENERAL ELECTION
City of Murphy, Texas
May 11, 2013**

OFFICIAL BALLOT

Council Member, Place 1

Council Member, Place 2

Council Member, Place 4

Council Member, Place 6

Section 5. Election Precincts; Polling Places. That the City hereby designates the Election Day polling location for the voters in three (3) Collin County Election Precincts located wholly or partially within the City of Murphy (Precinct Numbers 25, 144, 153 and 166). The Election Day polling place for Precinct Numbers 25 and 166 shall be the Murphy Municipal Complex, 206 North Murphy Road, Murphy, Texas 75094. The Election Day polling place for Precinct Numbers 144 and 153 shall be Miller Elementary School, 5651 Coventry Drive, Richardson, Texas 75082. The Election Day election officials shall be named by the Collin County Elections Administrator.

Section 6. Early Voting; Early Voting Polling Place. The election shall be conducted by Collin County pursuant to a contract for election services between the City of Murphy and Collin County, and Collin County election officials shall serve as officials for said election.

Collin County Election Administrator Sharon Rowe, Collin County Elections Administration Office, 2010 Redbud Blvd., Suite 102, McKinney, Texas 75069, is hereby appointed as the Early Voting Clerk, and Kristi Gilbert, City Secretary for the City of Murphy, is hereby appointed as Deputy Early Voting Clerk.

The early voting locations by personal appearance for the election are attached as *Exhibit "A"*. Early voting shall take place during the following dates and times:

April 29 – May 1,	8:00 a.m. – 5:00 p.m.;
May 2,	8:00 a.m. – 7:00 p.m.;
May 3 and May 4 (Saturday),	8:00 a.m. – 5:00 p.m.; and
May 6 and May 7,	7:00 a.m. – 7:00 p.m.

Section 7. Election Compliance. This election shall be held in accordance with, and shall be governed by, the election laws of the State of Texas. In all City elections, the Mayor, City Secretary or City Council shall perform each act as is required to be performed, in connection with the holding and consummation of such election, and to give effect to the intent of this Ordinance.

Section 8. Voting Qualification; Voting Materials. All registered, qualified voters of the City shall be permitted to vote at the election. In addition, the election materials enumerated in the Texas Election Code, as amended, shall be printed in English and Spanish for use at the polling places and for early voting for the Election.

Section 9. Compensation for Services. The Presiding Judge of the regular election shall be paid the sum of \$12.00 per hour for services provided in conducting the election. The Alternate Judge and each election clerk of the regular election shall be paid the sum of \$10.00 per hour for services provided in conducting the election. Additionally, the Presiding Judge shall be paid \$25.00 for the delivery of the election supplies and results after the polls close.

Section 10. Election Returns. The Collin County Election Administrator shall deliver election returns to the City Secretary. The ballot boxes will be retained by the Collin County Election Administrator and will be available for inspection by the City Council in compliance with the applicable laws of the State of Texas; and the ballots that are properly marked in conformance with the provisions of the Texas Election Code, as amended, for votes cast both during the period of early voting and on the day of the Election shall be counted in the manner required by law.

Section 11. Notice. The Mayor and City Secretary are hereby directed to give notice of the election by:

- (a) Publishing the notice of the election at least once, not more than thirty (30) days nor less than ten (10) days before the election in at least the official newspaper and the official City website;
- (b) Filing with the City Secretary, a copy of the notice of the election; and
- (c) Posting a copy of the notice on the bulletin board used for posting notices of the meetings of the City Council at least twenty-one (21) days before the Election.

The Mayor or City Secretary shall file with the City Secretary a copy of the Publisher's Affidavit, which complies with the Texas Election Code, as amended, that the notice was published, with the name of the newspaper and the dates of publication.

Section 12. Run-Off Election. If a run-off election becomes necessary, the Collin County Election Administrator's office will conduct the run-off election. In the event any candidate for any one of said offices fails to receive a majority of all votes cast for such office, a run-off election is hereby ordered to be held on June 20, 2013, as provided for by the Charter of the City and the Texas Election Code.

Section 13. Severability Clause. If any word, section, article, phrase, paragraph, sentence, clause, or portion of this ordinance or application thereto to any person or circumstance is held to be invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portion of this ordinance; and the City Council hereby declares it would have passed such remaining portions of this ordinance despite such invalidity which remaining portions shall remain in full force and effect.

Section 14. Effective Date. This Ordinance shall take effect from and after its passage.

DULY PASSED AND APPROVED by the City Council of the City of Murphy, Texas on this the 5th day of February, 2013.

Bret M. Baldwin, Mayor
City of Murphy

ATTEST:

Kristi Gilbert, City Secretary
City of Murphy

Exhibit A
Early Voting Locations

Murphy Municipal Complex
206 N. Murphy Road
Murphy, Texas 75094

Collin County Elections Administration Office
2010 Redbud Blvd., Suite 102
McKinney, Texas 75069

Any other location designated by the Collin County Elections Administration Office through an Interlocal Agreement for Election Services.

**NOTICE OF GENERAL ELECTION
(AVISO DE ELECCION GENERAL)**

To the Registered Voters of the City of Murphy, Texas:
(a los votantes registrados del Ciudad de Murphy, Texas:)

Notice is hereby given that the polling places listed below will be open from 7:00 a.m. to 7:00 p.m., on Saturday, May 11, 2013, for voting in a general election to elect four (4) council members: Council Member Place 1, Council Member Place 2, Council Member Place 4, and Council Member Place 6.
(Notifíquese, por las presente, que las casillas electorales sitados abajo se abriran desde las 7:00 a.m. hasta las 7:00 p.m. sabado, el 11 de mayo 2013 para votar en la eleccion general para elegir 4 miembros del Concejo: Puesto 1, Puesto 2, Puesto 4, y Puesto 6.)

**LOCATION OF THE ELECTION DAY POLLING PLACE:
(DIRECCION(ES) DE LAS CASILLAS ELECTORALES)**

Precinct 25 and 166
(Numeros de los Recintos)

Murphy Municipal Complex, 206 North Murphy Road, Murphy, Texas 75094
Complejo Municipal de Murphy, 206 North Murphy Road, Murphy, Texas 75094

Precinct 144 and 153
(Numeros de los Recintos)

Miller Elementary, 5651 Coventry Drive, Richardson, Texas 75082
Escuela Primaria Miller, 5651 Coventry Drive, Richardson, Texas 75082

**EARLY VOTING BY PERSONAL APPEARANCE WILL BE CONDUCTED EACH WEEKDAY AT:
(LA VOTACION ADELANTADA EN PERSONA SE LLEVARA A CABO DE LUNES A VIERNES EN)**

- Murphy Municipal Complex, 206 North Murphy Road, Murphy, Texas 75094;
Complejo Municipal de Murphy, 206 North Murphy Road, Murphy, Texas 75094
- Collin County Elections Office, 2010 Redbud Blvd., Suite 102, McKinney, Texas 75069 (Main Early Voting location); and
Oficina de elecciones del condado de Collin, 2010 Redbud Blvd., Suite 102, McKinney, Texas 75069 (Principal lugar de votación temprana); y
- Any of the additional Early Voting locations open under full contract services with the Collin County Elections Administration. (See Exhibit A)
Cualquiera de los otros lugares de votación temprana en los servicios abiertos total del contrato con la Administración de Elecciones del Condado de Collin. (Vea la prueba instrumental A)

April 29 – May 1	8:00 a.m. – 5:00 p.m.	<i>(el 29 de abril, hasta el 4 de mayo, 8:00 de la mañana hasta las 5:00 de la tarde;)</i>
May 2	8:00 a.m. – 7:00 p.m.	<i>(el 2 de mayo, 8:00 de la mañana hasta las 7:00 de la tarde;)</i>
May 3 -4	8:00 a.m. – 5:00 p.m.	<i>(el 3 de mayo y 4 de mayo, 8:00 de la mañana hasta las 5:00 de la tarde; y)</i>
May 6 -7	7:00 a.m. – 7:00 p.m.	<i>(el 6 y 7 de mayo, 7:00 de la mañana hasta las 7:00 de la tarde)</i>

Applications for ballot by mail shall be mailed to:
(Las solicitudes para boletas que se votaran en ausencia por correo deberan enviarse a :)

Sharon Rowe, Elections' Administrator (Early Voting Clerk)
2010 Redbud Blvd., Suite 102, McKinney, Texas 75069.
(Nombre del Secretario(a) de la Votacion Adelantada)

Applications for ballots by mail must be received no later than the close of business on Friday, April 26, 2013.

(Las solicitudes para boletas que se votaran en ausencia por correo deberan recibirse para el fin de las horas de negocio el 26 de abril, 2013)

Issued this the 5th day of February, 2013.
(Emitada este dia 5 de febrero, 2013.)

Bret M. Baldwin, Mayor
(Firma del Alcalde)

**Murphy City Council
Regular Meeting
February 5, 2013**

Issue

Accept Annual Traffic Contact Report for 2012 for the Murphy Police Department (also known as the Racial Profiling Report) in accordance with Article 2.132(b)(7) of the Texas Code of Criminal Procedures.

Background

The MPD is required to present the findings of its annual traffic contact (racial profiling) analysis report to the Council before March of each year. The Annual Traffic Contact Report for 2012 was prepared by Dr. Alex del Carmen, Del Carmen Consulting, LLC, who develops the report from data provided by MPD records. The city of Murphy is required to collect certain information on vehicle stops. This information is then tabulated at the end of each year. The data is analyzed and formatted into a report that provides an analytical and numerical picture of the enforcement activities of the police officers of the MPD. Furthermore, state law now requires that a report be filed electronically with the Texas Commission on Law Enforcement Standards and Education on a form prescribed by them for that purpose.

The city of Murphy utilizes the U. S. Census Fair Roads Standard for comparison and analysis in developing its report. The city of Murphy is exempt from collecting Tier II data (much more information including pedestrian stops) since it has installed audio and video equipment in all police vehicles routinely utilized for traffic law enforcement.

Financial Considerations

There should be little or no fiscal impact by the receipt of the report. The city has entered into an agreement with Dr. del Carmen that does include an annual fee and is reflected in the annual budget for the MPD.

Other Considerations

The report has been required since 2001 with the passage of SB 1074. This law has since been codified in Articles 2.131 and 2.132 of the Texas Code of Criminal Procedure. In addition, certain standards and requirements have been established by rules of the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) as well as the Texas Transportation Code.

Board/Staff Recommendation

Staff recommends that the Council accept delivery of the report. There is no other action required of City Council.

Recommended Motion

That Council accepts the delivery of the Annual Racial Profiling Report for 2012 for the Murphy Police Department.

Attachments

- 1) Annual Traffic Contact Report for 2012
- 2) TCLEOSE RP Report (Filed with TCLEOSE Electronically)

Chief G. M. Cox

Submitted By

City Manager Approval

**The Murphy Police Department
Annual Contact Report
(2012)**



(I) Introduction

Opening Statement

January 3, 2013

Murphy City Council
205 North Murphy Road
Murphy, Texas 75094

Dear Distinguished Members of the City Council,

In 2001, the Texas Legislature, with the intent of addressing the issue of racial profiling in policing, enacted the Texas Racial Profiling Law. Since 2001, the Murphy Police Department, in accordance with the law, has collected and reported traffic and motor vehicle-related contact data for the purpose of identifying and addressing (if necessary) areas of concern regarding racial profiling practices. In the 2009 legislative session, the Racial Profiling Law was modified and newer requirements are now in place. These most recent requirements have been incorporated by the Murphy Police Department and are being addressed in this report.

In this particular report, you will find three sections that contain information on traffic and motor vehicle- related contact data. In addition, when appropriate, documentation is also a component of this report, aiming at demonstrating the manner in which the Murphy Police Department has complied with the Texas Racial Profiling Law. In section 1, you will find the table of contents in addition to the Texas Senate Bill (SB1074); which later became the Texas Racial Profiling Law. In addition, you will find the Texas HB 3389, which, in 2009, introduced new requirements relevant to racial profiling. Also, in this section, a list of requirements relevant to the Racial Profiling Law as established by TCLEOSE (Texas Commission on Law Enforcement Officer Standards and Education) is included. In addition, you will find, in sections 2 and 3 documentation, which demonstrates compliance by the Murphy Police Department relevant to the requirements as established in the Texas Racial Profiling Law. That is, you will find documents relevant to the implementation of an institutional policy banning racial profiling, the incorporation of a racial profiling complaint process and the training administered to all law enforcement personnel.

The last section of this report provides statistical data relevant to contacts, made during the course of motor vehicle stops, between 1/1/12 and 12/31/12. In addition, this section contains the TCLEOSE Tier 1 form, which is required to be submitted to this particular organization by March 1st of each year. The data in this report has been analyzed and compared to data derived from the U.S. Census Bureau's Fair Roads Standard. The final analysis and recommendations are also included in this report. The findings in this report serve as evidence of the Murphy Police Department's commitment to comply with the Texas Racial Profiling Law.

Sincerely,

Alex del Carmen, Ph.D.
Del Carmen Consulting, LLC

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TCLEOSE GUIDELINES

Guidelines for Compiling and Reporting Data under Senate Bill 1074

Background

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

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

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

Standard 1

Each law enforcement agency has a detailed written directive that:

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

Commentary

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

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

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

Standard 2

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

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

Commentary

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

Standard 3

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

Commentary

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

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

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

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

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

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

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

Tier one reports are made to the governing body of each county or municipality served by the agency an annual report of information if the agency is an agency of a county, municipality, or other political subdivision of the state. Tier one and two reports are reported to the county or municipality not later than March 1 for the previous calendar year beginning March 1, 2003. Tier two reports include a comparative analysis between the race and ethnicity of persons detained to see if a differential pattern of treatment can be discerned based on the disposition of stops including searches resulting from the stops. The reports also include information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling. An agency may be exempt from the tier two reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds [See 2.135 (a)(2) TCCP].

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

Standard 4

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

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

Commentary

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

Standard 5

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

Commentary

None

Standard 6

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

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

Commentary

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

Standard 7

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

Commentary

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

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

The Texas Law on Racial Profiling

AN ACT

relating to the prevention of racial profiling by certain peace officers.

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

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

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

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

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

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

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

(1) clearly define acts constituting racial profiling;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) the person's gender; and

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

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

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

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

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

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

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

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

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED. (a) In this article, "pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

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

body of each county or municipality served by the agency in a manner approved by the agency.

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

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

(A) determine the prevalence of racial profiling by peace officers employed by the agency; and

(B) examine the disposition of traffic and pedestrian stops made by officers employed by the agency, including searches resulting from the stops; and

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

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

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

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

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

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

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

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

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

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

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

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

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT.

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

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

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

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

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

Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

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

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

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

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

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

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

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

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

(3) analyzing and reporting collected information.

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

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

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

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

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

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

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

- (1) the name, address, physical description, including race or ethnicity, date of birth, and driver's license number of the person charged;
- (2) the registration number of the vehicle involved;
- (3) whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;

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

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

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

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

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

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

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

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

SECTION 9. Not later than January 1, 2002:

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

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

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

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

SECTION 12. This Act takes effect September 1, 2001.

President of the Senate

Speaker of the House

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

Secretary of the Senate

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

Chief Clerk of the House

Approved:

Date

Governor

Most Recent Legal Requirements (H.B. 3389)

Amend CSHB 3389 (Senate committee report) as follows:

(1) Strike the following SECTIONS of the bill:

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

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

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

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

(2) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly:

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

(a) In this article:

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

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

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

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

(1) clearly define acts constituting racial profiling;

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

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

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

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

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

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

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

(C) whether the peace officer knew the race or

ethnicity of the individual detained before detaining that individual; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit [to the governing body of each county or municipality served by the agency] an annual report of the information collected under Subdivision (6) to:

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

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

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

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

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

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

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

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

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

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

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

(A) the person's gender; and

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

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

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

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

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

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

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

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

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

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

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

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

(a) In this article:

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

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

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

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

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

(A) evaluate and compare the number of motor

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

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

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

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

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

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

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

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

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

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

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

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

from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

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

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

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

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

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

(b) From money appropriated to the agency for the administration of the agency, the executive director of a state law enforcement agency that intentionally fails to submit the incident-based data as required by Article 2.134 shall remit to the comptroller the amount of \$1,000 for each violation.

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

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

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

(1) involves the operation of a motor vehicle; and
(2) is classified as a moving violation by the Department of Public Safety under Section 708.052, Transportation Code.

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

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

(1) a sentence is imposed on the person;
(2) the person receives community supervision, including deferred adjudication; or
(3) the court defers final disposition of the person's case.

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

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

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

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

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

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

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

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

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

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

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

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

(3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;

(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;

(5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50 [~~\$5~~]; [~~and~~]

(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and

(7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

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

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

Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

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

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

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

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

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

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$4;
- (5) a fee for technology fund on a misdemeanor offense (Art. 102.0173, Code of Criminal Procedure) . . . \$4;
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5;
- (7) a fee on conviction of certain offenses involving issuing or passing a subsequently dishonored check (Art. 102.0071, Code of Criminal Procedure) . . . not to exceed \$30; [~~and~~]
- (8) a court cost on conviction of a Class C misdemeanor in a county with a population of 3.3 million or more, if authorized by the county commissioners court (Art. 102.009, Code of Criminal Procedure) . . . not to exceed \$7; and
- (9) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

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

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

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

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

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

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

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

- (1) this chapter;
- (2) the reporting requirements provided by Articles 2.132 and 2.134, Code of Criminal Procedure; or
- (3) a commission rule.

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

(b) The imposition of a cost of court under Article 102.022, Code of Criminal Procedure, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered

by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

(II) Responding to the Law

Institutional Policy on Racial Profiling



MURPHY POLICE DEPARTMENT
DIRECTIVE

SUBJECT: Racial Profiling

NUMBER: 2.01.1

EFFECTIVE DATE: November 18, 2009

RELATED STANDARDS:

REVIEW DATE: November 18, 2011

APPROVED: _____
Chief G.M. Cox
DATED: 11/18/2009

- I. PURPOSE:** To reaffirm the commitment of the Murphy Police Department's to unbiased policing in the encounter with any person; to reinforce procedures that serve to ensure public confidence and mutual trust through the provision of services in a fair and equitable fashion and to protect our officers from unwarranted accusations of misconduct when they act within the dictates of departmental policy and the law.
- II. POLICY:** It shall be the policy of the Murphy Police Department to police our community in a proactive manner and to aggressively investigate suspected violations of the law. Officers shall actively enforce local, state, and federal laws in a responsible and professional manner, without regard to race, ethnicity, or national origin. Officers are strictly prohibited from engaging in racial profiling as defined in this policy. Racial profiling is an unacceptable patrol tactic and will not be condoned.

This Directive is adopted in compliance with the requirements of Articles 2.131 through 2.136, Texas Code of Criminal Procedure, which prohibits Texas peace officers from engaging in racial profiling.

III. DEFINITIONS:

- A. Racial Profiling – a law enforcement initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity. Racial profiling pertains to persons who are viewed as suspects or potential suspects of criminal behavior. The term is not relevant as it pertains to witnesses, complainants, persons needing assistance, or other citizen contacts.
- B. Race or Ethnicity – persons of a particular descent
- C. Acts Constituting Racial Profiling – acts initiating law enforcement action, such as a traffic stop, a detention, a search, issuance of a citation, or an arrest based solely upon an individual's race, ethnicity, or national origin or on the basis of racial or ethnic stereotypes, rather than upon the individual's behavior, information identifying the individual as having possibly engaged in criminal activity, or other lawful reasons for the law enforcement action.
- D. Pedestrian Stop – an interaction between a peace officer and an individual who is being detained for the purposes of a criminal investigation in which the individual is not under arrest.
- E. Traffic Stop – the stopping of a motor vehicle by a peace officer for an alleged violation of law or ordinance regulating traffic.

IV. DELIVERY PROTOCOL:

A. PROHIBITION:

- a. Officers of the Murphy Police Department are strictly prohibited from engaging in racial profiling in any form. The prohibition against racial profiling does not preclude the use of race, ethnicity or national origin as factors in a detention decision by an officer. Race, ethnicity or national origin may be legitimate factors in such a decision when used as part of a description when used as part of a description of a suspect or witness for whom an officer is searching.

B. COMPLAINT PROCESS:

1. No person shall be discouraged, intimidated or coerced from filing a complaint or be discriminated against because they have filed a complaint.
2. Any person who believes that a peace officer employed by the Murphy Police Department has engaged in racial profiling with respect to that person, may file a complaint in accordance with the provisions in Directive 2.04.1 – Internal Investigations.
 - a. An employee who is contacted regarding a complaint against an officer shall follow the procedures set forth in Directive 2.04.1 – Internal Investigations.
 - b. Citizens who appear in person wishing to file a complaint shall be provided with a departmental brochure, “How to File a Complaint” and a compliant form. Brochures are maintained in the Murphy Police Department lobby and at Murphy City Hall.
3. Any supervisor who becomes aware of an alleged or suspected violation of this Directive shall report the alleged violation in accordance with Directive 2.04.1 – Internal Investigations.
4. Complaints of racial profiling shall be classified as a Level 1 complaint, and shall be investigated by the Chief of Police or his designee.

C. DISCIPLINARY AND CORRECTIVE ACTIONS:

1. Any department officer who is found, after investigation, to have engaged in racial profiling in violation of this Directive may be subject to disciplinary action, up to and including termination. Disciplinary or corrective actions may include diversity, sensitivity or other appropriate training or counseling, as determined by the Chief of Police.

E. PUBLIC EDUCATION:

1. The Murphy Police Department shall provide education to the public concerning the racial profiling complaint process. The primary method of public education shall be through the brochure “How to File a Complaint” which are maintained in the lobby of the Murphy Police Department, and at Murphy City Hall. Other education methods may be utilized to inform the public, including news media, civic presentations, the Internet and/or public meetings.

F. COLLECTION OF INFORMATION AND ANNUAL REPORT WHEN CITATION ISSUED OR ARREST MADE

1. For each traffic stop in which a citation is issued and for each arrest resulting from such traffic stops, an officer involved in the stop shall collect the following information on the citation:
 - a. Information identifying the race or ethnicity of the person detained. The following codes will be used to identify the individual’s race:

- B = Black
- H = Hispanic
- A = Asian
- W = White
- I = Native American / American Indian
- M = Middle Eastern
- O = Other

Note: Officers may not ask the individual to identify their race. If the officer is unable to determine the race or ethnicity of the person contacted, then the race shall be entered as “other” on the citation(s) issued.

- b. Whether a search was conducted;
 - c. If a search was conducted, whether the person detained consented to the search;
 - d. Whether contraband was found;
 - e. Whether the person contacted is a resident or non-resident of the City of Murphy. This shall be reflected on each citation issued, using an (R) for residents or a (NR) for non-resident.
 - f. Whether the peace officer knew the race or ethnicity of the individual detained before detaining the individual.
2. The information collected shall be compiled in an annual report covering the period of January 1 through December 31 of each year, and shall be submitted to the governing body of the City of Murphy no later than March 1 of the following year. The report will include:
 - a) A breakdown of citations by race or ethnicity;
 - b) Number of citations that resulted in a search;
 - c) Number of searches that were consensual;
 - d) Number of citations that resulted in custodial arrests;
 - e) Public education efforts concerning the racial profiling complaint process; and.
 - f) The number of complaints received by the department that officers were racially profiling.
 3. The annual report shall not include identifying information about any individual stopped or arrested, and shall not include indentifying information about any peace officer involved in a stop or arrest.

G. AUDIO AND VIDEO EQUIPMENT

1. Each motor vehicle regularly used by this department to make traffic stops is equipped with a mobile video camera system capable of recording video and audio.
2. Each traffic stop made by an officer of this department that is capable of being recorded by video and audio shall be recorded. In units equipped with mobile video camera systems, both video and audio recordings shall be required.
3. Supervisors and officers shall ensure that mobile video camera equipment, and/or audio equipment, is properly functioning prior to commencing their tour of duty. Police units with malfunctioning or inoperable mobile video camera equipment shall not be utilized, under normal circumstances.
4. Supervisors shall have the authority to assign units with malfunctioning or inoperable mobile video equipment when situations dictate.

5. All in-car video recording boxes shall be locked at all times.
6. All recordings shall be kept for a minimum of ninety (90) days from the date of the recording. This is in compliance with Article 2.135. (2-b) of the Texas Code of Criminal Procedure.
7. All recordings will be kept in a secure location within the police department to prevent loss or tampering. The location will be designated by the Support Services Manager.
8. All recordings must be kept accessible by supervisory staff for review.

H. REVIEW OF VIDEO DOCUMENTATION

1. To ensure the Department meets the standards set forth under the State racial profiling laws, recording reviews shall be conducted. Each video shall be retained for a minimum period of ninety (90) days, unless a complaint is filed alleging that an officer has engaged in racial profiling with respect to a traffic stop. The Field Services Commander shall ensure that all recordings are properly stored and retained in accordance with applicable laws and this Directive.
2. If a complaint is received alleging that an officer has engaged in racial profiling, the tape shall be forwarded to the Chief of Police. The Chief of Police shall retain the recording until final disposition of the complaint has been made.
3. The Field Services Commander or her designee shall review a randomly selected sampling of video and audio recordings, made recently by officers employed by the Department, in order to determine if patterns of racial profiling exist. These reviews shall be conducted weekly and documented on the appropriate form.
 - a. Written documentation shall include:
 - i. The names of the officers whose contacts were reviewed;
 - ii. The date(s) of the tapes reviewed;
 - iii. The date the actual review was conducted; and
 - iv. The name of the person conducting the review.
 - b. The Field Services Commander or their designee shall view thirty (30) minutes of video on each officer every two weeks.
 - c. The recordings that are reviewed may be chosen at random, unless some event requires the review of specific recorded materials.
 - d. The Field Services Commander shall forward the required documentation to the Office of the Chief of Police.
 - e. The Office of the Chief of Police shall maintain a file of all tape review documentation performed, in compliance with this Directive.
4. In reviewing video recordings, the Field Services Commander or her designee, shall seek to determine if the officer(s) reviewed have engaged in a pattern of racial profiling, that includes multiple acts constituting racial profiling for which there is no reasonable, credible explanation based on established police and law enforcement procedures.
 - a. If any material on the recording does not comply with State racial profiling laws or Murphy Police Department Policy, the Field Services Commander or their designee shall insure that appropriate corrective action is taken in compliance with Article 2.132.

(b-5) of the Texas Code of Criminal Procedure.

I. TRAINING

1. Each peace officer employed by the department shall complete the comprehensive education and training program on racial profiling established by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) not later than the second anniversary of the date the officer was licensed, or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. A person who on September 1, 2001, held a TCLEOSE intermediate proficiency certificate, or who had held a peace officer license issued by TCLEOSE for at least two years, shall complete a TCLEOSE training and education program on racial profiling not later than September 1, 2003.
2. The Chief of Police shall, in completing the training required by Section 96.641, Texas Education Code, complete the program on racial profiling established by the Bill Blackwood Law Enforcement Management Institute of Texas (LEMIT), not later than September 1, 2003.

IV. ADMINISTRATIVE REVIEW AND REVISION

- A. *Biennially*, the Chief of Police shall review the organizational structure, making any revisions, as needed.
- B. The Chief of Police reserves the right to amend, modify, or change the agency's organizational chart to reflect the agency's authorized structure by adding or deleting any new positions or functions.
- C. A copy of the agency's organizational chart will be posted in the Briefing Room. In addition, all personnel will be provided a copy of the organizational chart, as part of their individual policy manuals.

V. CLOSING STATEMENT: Violations of this Directive would serve only as grounds for discipline within the Murphy Police Department.

Complaint Process: Informing the Public and Addressing Allegations of Racial Profiling Practices

Informing the Public on the Process of Filing a Racial Profiling Complaint with the Murphy Police Department

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

The police department made available, in the lobby area and on its web site, information relevant to filing a complaint on a racial profiling violation by a Murphy Police officer. It is believed that through these efforts, the community has been properly informed of the new policies and the complaint processes relevant to racial profiling.

Racial Profiling Training

Racial Profiling Training

Since 2002, all Murphy Police officers have been instructed, as specified in the Texas Racial Profiling Law, to adhere to all Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements. To date, all sworn officers of the Murphy Police Department have completed the TCLEOSE basic training on racial profiling. The main outline used to train the officers of Murphy has been included in this report.

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

**Racial Profiling
Course Number 3256
Texas Commission on Law Enforcement
September 2001**

Racial Profiling 3256

Instructor's Note:

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

Abstract

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

Target Population: Licensed law enforcement personnel in Texas

Prerequisites: Experience as a law enforcement officer

Length of Course: A suggested instructional time of 4 hours

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

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

Evaluation Process and Procedures

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

Reference Materials

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

Racial Profiling 3256

1.0 RACIAL PROFILING AND THE LAW

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

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

Racial Profiling Requirements:

Racial profiling CCP 3.05

Racial profiling prohibited CCP 2.131

Law enforcement policy on racial profiling CCP 2.132

Reports required for traffic and pedestrian stops CCP 2.133

Liability CCP 2.136

Racial profiling education for police chiefs Education Code 96.641

Training program Occupations Code 1701.253

Training required for intermediate certificate Occupations Code 1701.402

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

A. Written departmental policies

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

B. Not prima facie evidence

C. Feasibility of use of video equipment

D. Data does not identify officer

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

F. Vehicle stop report

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

G. Compilation and analysis of data

H. Exemption from reporting – audio/video equipment

I. Officer non-liability

J. Funding

K. Required training in racial profiling

1. Police chiefs

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

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

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

1. Motor vehicle search exemption

2. Traffic violation acceptable as pretext for further investigation

3. Selective enforcement can be challenged

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

1. Stop & Frisk doctrine

2. Stopping and briefly detaining a person

3. Frisk and pat down

C. Other cases

1. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977)

2. Maryland v. Wilson, 117 S.Ct. 882 (1997)

3. Graham v. State, 119 MdApp 444, 705 A.2d 82 (1998)

4. Pryor v. State, 122 Md.App. 671 (1997) cert. denied 352 Md. 312, 721 A.2d 990 (1998)

5. Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999)

6. New York v. Belton, 453 U.S. 454 (1981)

2.0 RACIAL PROFILING AND THE COMMUNITY

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

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

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

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

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

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

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

3.0 RACIAL PROFILING VERSUS REASONABLE SUSPICION

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

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

A. Most race-based complaints come from vehicle stops, often since race is used as an inappropriate substitute for drug courier profile elements

B. "DWB" – "Driving While Black" – a nickname for the public perception that a Black person may be stopped solely because of their race (especially with the suspicion that they are a drug courier), often extended to other minority groups or activities as well ("Driving While Brown," "Flying While Black," etc.)

C. A typical traffic stop resulting from racial profiling

1. The vehicle is stopped on the basis of a minor or contrived traffic violation which is used as a pretext for closer inspection of the vehicle, driver, and passengers

2. The driver and passengers are questioned about things that do not relate to the traffic violation

3. The driver and passengers are ordered out of the vehicle
4. The officers visually check all observable parts of the vehicle
5. The officers proceed on the assumption that drug courier work is involved by detaining the driver and passengers by the roadside
6. The driver is asked to consent to a vehicle search – if the driver refuses, the officers use other procedures (waiting on a canine unit, criminal record checks, license-plate checks, etc.), and intimidate the driver (with the threat of detaining him/her, obtaining a warrant, etc.)

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

- A. Drug courier profile (adapted from a profile developed by the DEA)
1. Driver is nervous or anxious beyond the ordinary anxiety and cultural communication styles
 2. Signs of long-term driving (driver is unshaven, has empty food containers, etc.)
 3. Vehicle is rented
 4. Driver is a young male, 20-35
 5. No visible luggage, even though driver is traveling
 6. Driver was over-reckless or over-cautious in driving and responding to signals
 7. Use of air fresheners

B. Drug courier activity indicators by themselves are usually not sufficient to justify a stop

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

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

D. Vehicle interior

1. Rear seat or interior panels have been opened, there are tools or spare tire, etc.
2. Inconsistent items (anti-theft club with a rental, unexpected luggage, etc.)

Resources

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

Web address for legislation 77R-SB1074:

<http://tlo2.tlc.state.tx.us/tlo/77r/billtext/SB01074F.htm>

Report on Complaints

Tables Illustrating Traffic and Motor Vehicle-Related Contacts

Tier 1 Data

(I) Tier 1 Data

Motor Vehicle-Related Contact Information (1/1/12—12/31/12)

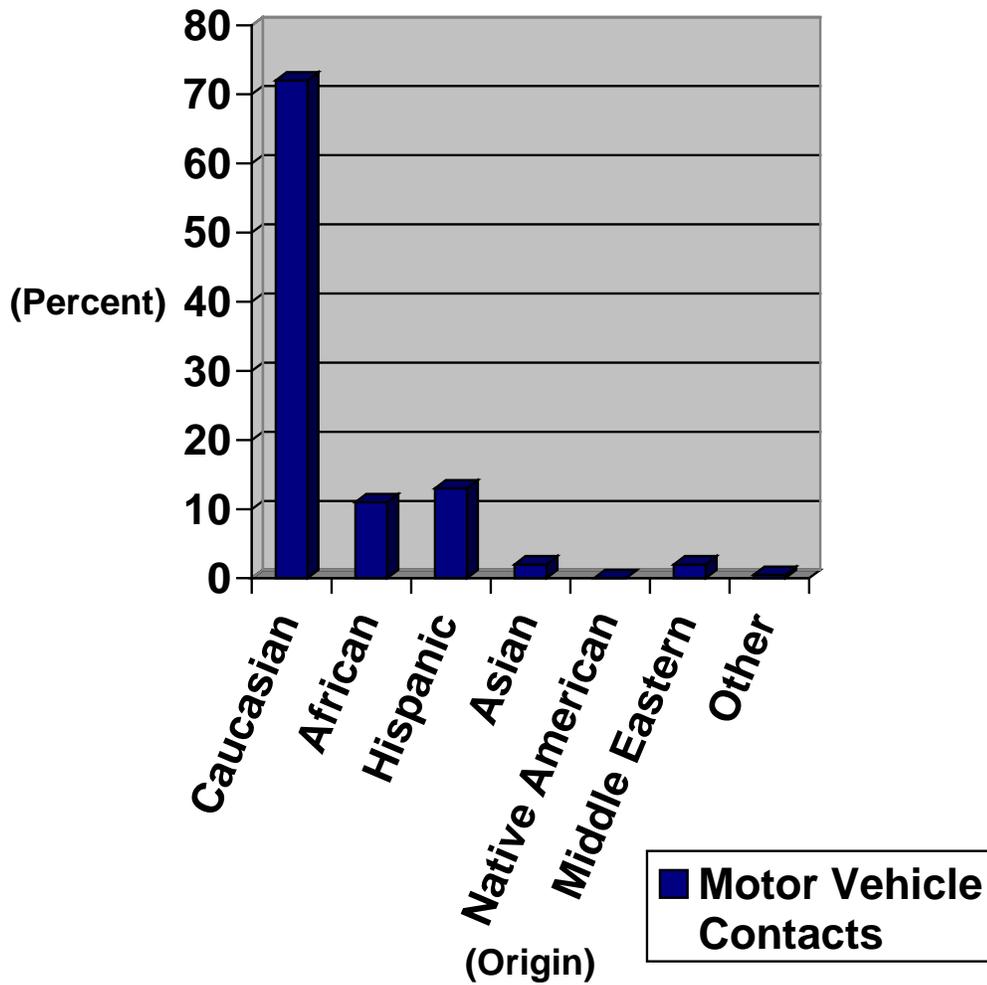
Race/Ethnicity*	Contacts		Searches		Consensual Searches		PC Searches		Custody Arrests	
	N	%	N	%	N	%	N	%	N	%
Caucasian	1,608	53	45	62	17	61	28	62	63	54
African	450	15	11	15	4	14	7	16	28	24
Hispanic	534	17	14	19	5	18	9	20	22	19
Asian	320	10	0	0	0	0	0	0	2	2
Native American	21	.7	1	1	0	0	1	2	1	.9
Middle Eastern	114	4	2	3	2	7	0	0	1	.9
Other	12	.4	0	0	0	0	0	0	0	0
Total	3,059	100	73	100	28	100	45	100	117	100

“N” represents “number” of traffic-related contacts

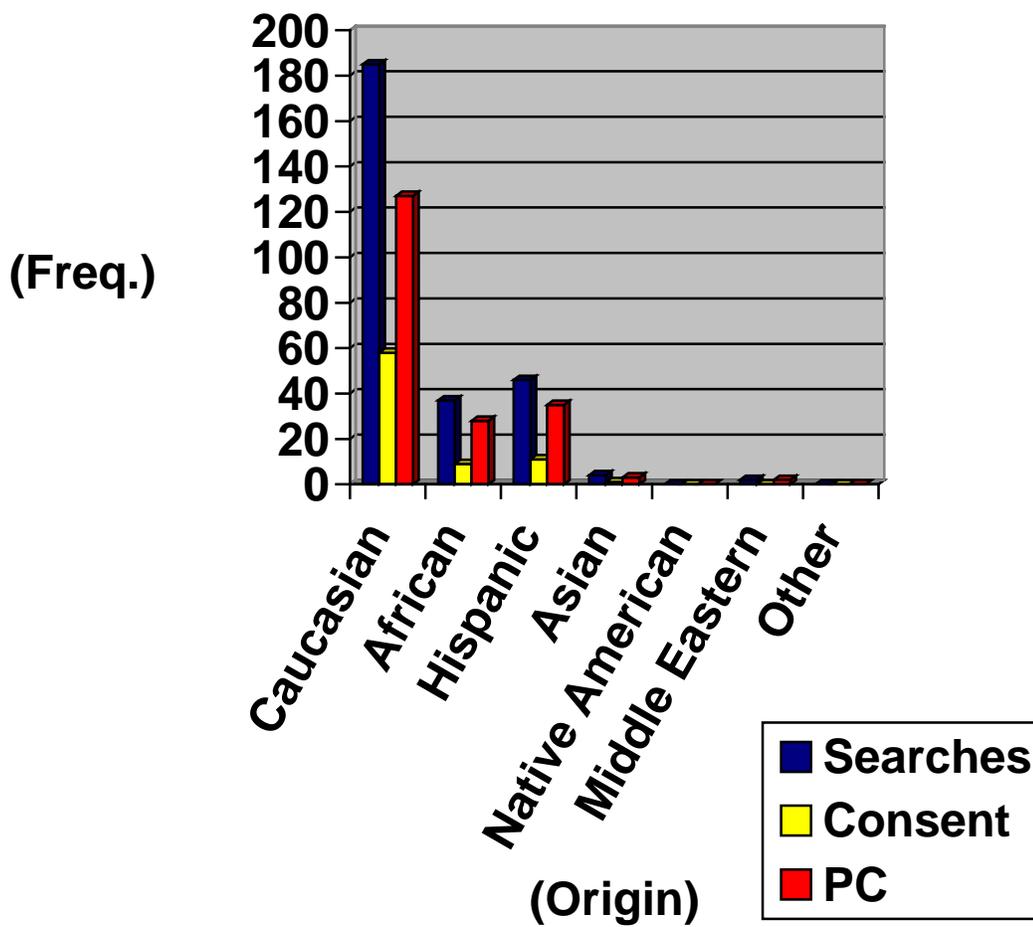
* Race/Ethnicity is defined by Senate Bill 1074 as being of a “particular descent, including Caucasian, African, Hispanic, Asian, Native American or Middle Eastern”.

**Figure has been rounded

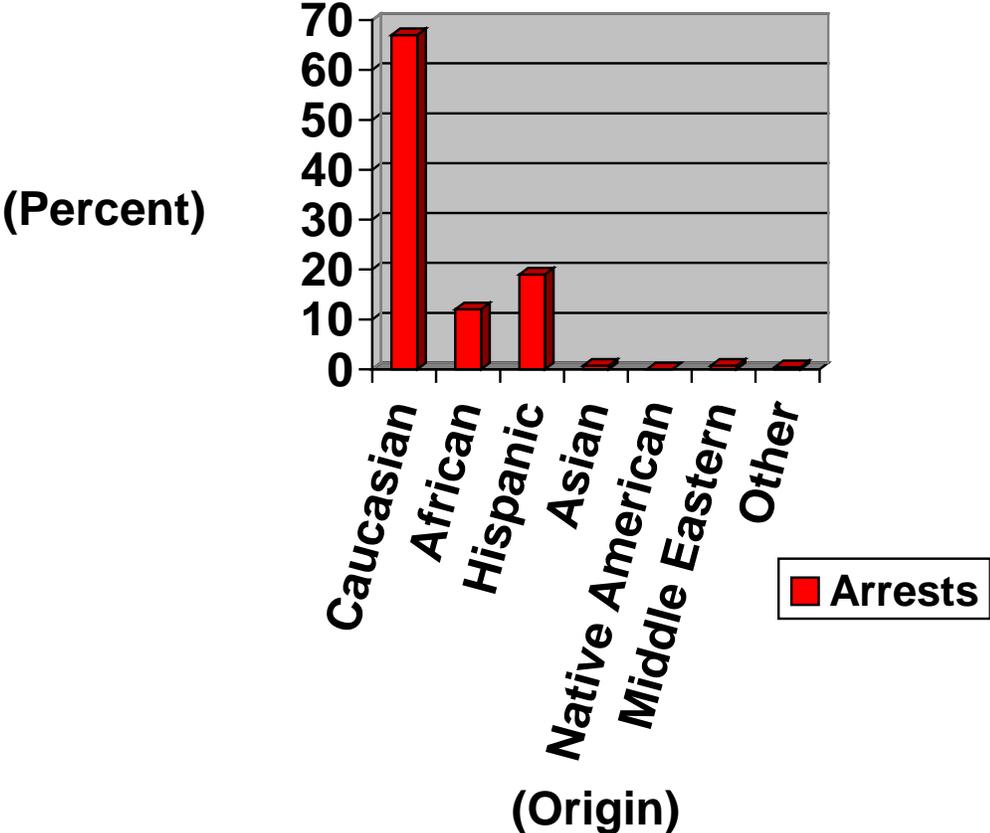
Tier 1 Data (Motor Vehicle Contacts)



Tier 1 Data (Searches)



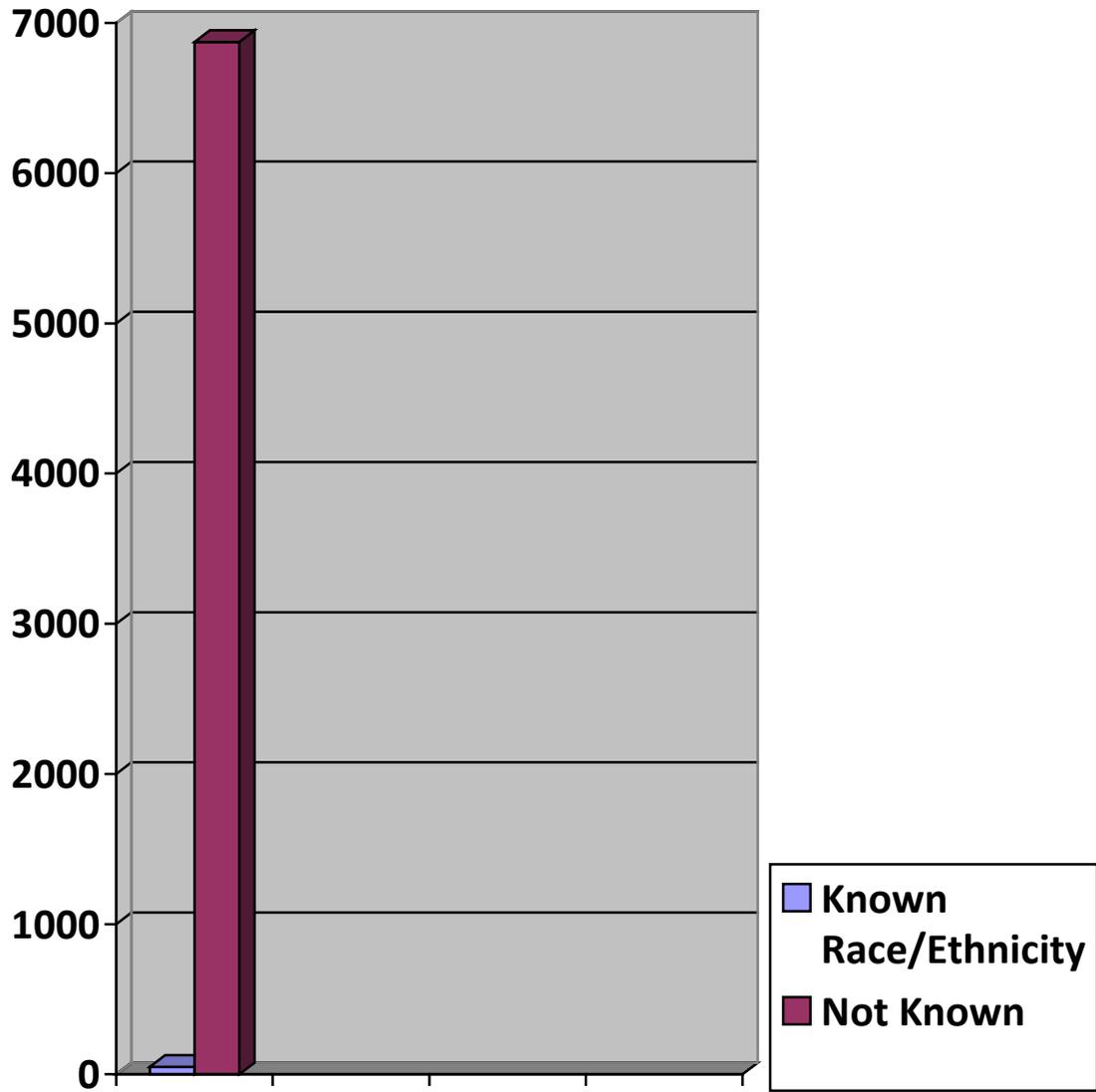
Tier 1 Data (Arrests)



Total Number of Instances where Officers Knew/did not Know Race/Ethnicity of Individuals Before Being Detained (1/1/12--12/31/12)

Total Number of Instances where Officers <u>Knew</u> Race and Ethnicity of Individuals Before Being Detained	Total Number of Instances where Officers <u>Did Not Know</u> the Race and Ethnicity of Individuals Before Being Detained
0	3,059

Known Race/Ethnicity (Frequencies)



Tier 1 (Partial Exemption TCLEOSE Form)

Partial Exemption Racial Profiling Reporting (Tier 1)

Department Name _____

Agency Number _____

Chief Administrator Name _____

Reporting Name _____

Contact Number _____

E-mail Address _____

Certification to Report 2.132 (Tier 1) – Partial Exemption

Policy Requirements (2.132(b) CCP): Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

- (1) clearly define acts constituting racial profiling;
- (2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;
- (3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;
- (4) provide public education relating to the agency's complaint process;
- (5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;
- (6) require collection of information relating to motor vehicle

stops in which a citation is issued and to arrests made as a result of those stops, including information relating to:

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

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

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

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

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

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

These polices are in effect

Chief Administrator Date

Partial Exemption Racial Profiling Reporting

(Tier 1)

Video and Audio Equipment Exemption

Partial Exemption Claimed by (2.135(a) CCP):

all cars regularly used for motor vehicle stops are equipped with video camera and transmitter-activated equipment and each motor stop is recorded and the recording of the stop is retained for at least 90 days after the stop.

OR

In accordance with 2.135(a)(2) the agency has requested and not received funds to install the recording equipment

I claim this exemption

Chief Administrator Date

Partial Exemption Racial Profiling Reporting (Tier 1)

(This is the TCLEOSE recommended form. The form is not mandatory. The information contained in this form, however, is mandatory. You may use your form, but all information must be provided.)

If you claim a partial exemption you must submit a report that contains the following data or use this format to report the data.

Instructions: Please fill out all boxes. If zero, use 0.

1. Total on lines 4, 11, 14, and 17 Must be equal

2. Total on line 20 Must equal line 15

Number of Motor Vehicle Stops:

1. _____ citation only

2. _____ arrest only

3. _____ both

4. _____ Total

Race or Ethnicity:

5. _____ African

6. _____ Asian

7. _____ Caucasian

8. _____ Hispanic

9. _____ Middle Eastern

10. _____ Native American

11. _____ Total

Race or Ethnicity Known Prior to Stop?

12. _____ Yes

13. _____ No

14. _____ Total

Search Conducted:

15. _____ Yes

16. _____ No

17. _____ Total

Was Search Consented?

18. _____ Yes

19. _____ No

20. _____ Total Must Equal # 15

Option to submit required data by utilizing agency report

You must submit your report in PDF format

Electronic Submission of data required by 2.132(b)(6) CCP

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

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

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

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

This report meets the above requirements

Chief Administrator

Date

Send entire documents electronically to this website

www.tcleose.state.tx.us

**Tier 1 Baseline Comparison
(Fair Roads Standard)**

(II) Motor Vehicle-Contacts and Fair Roads Standard

Comparison

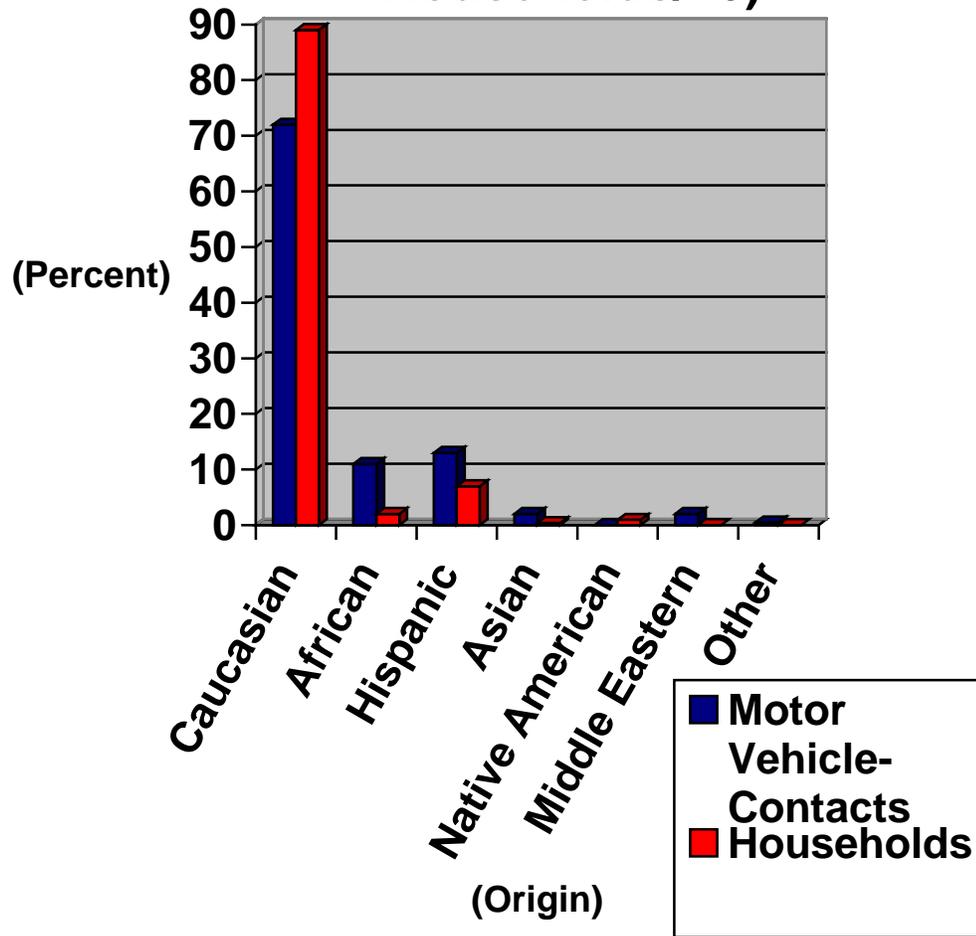
Comparison of motor vehicle-related contacts with households in DFW that have vehicle access (in percentages). (1/1/12—12/31/12)

Race/Ethnicity*	Contacts (in percentages)	Households with vehicle access (in percentages)
Caucasian	53	60
African	15	14
Hispanic	17	19
Asian	10	5
Native American	.7	N/A
Middle Eastern	4	N/A
Other	.4	N/A
Total	100**	98**

* Race/Ethnicity are defined by Senate Bill 1074 as being of a “particular descent, including Caucasian, African, Hispanic, Asian, Native American and Middle Eastern”.

**Represents rounded figure

Tier 1 (Motor Vehicle-Contacts and Households/10)



Tier 1 Data
(Nine-Year Comparative Analysis)
(2004—2012)

(III) Eleven-Year Tier 1 Data Comparison

**Comparison of Eleven-Year Traffic and Motor Vehicle-Related Contact Information
(1/1/02---12/31/12)**

Race/Ethnicity*	Traffic-Related Contacts (in percentages)							
			(04)	(05)	(06)	(07)	(08)	(09)
Caucasian			60	61	61	64	59	56
African			11	12	13	13	14	15
Hispanic			22	18	16	13	14	15
Asian			6	8	7	8	11	13
Native American			1	.4	.2	.2	.02	.03
Other			0	.4	2	2	2	.7
Total			100	100**	100**	100	100	100**

* Race/Ethnicity is defined by Texas Senate Bill 1074 as being of a “particular descent, including Caucasian, African, Hispanic, Asian, or Native American”.

** Figure has been rounded.

Comparison of Eleven-Year Traffic and Motor Vehicle-Related Contact Information

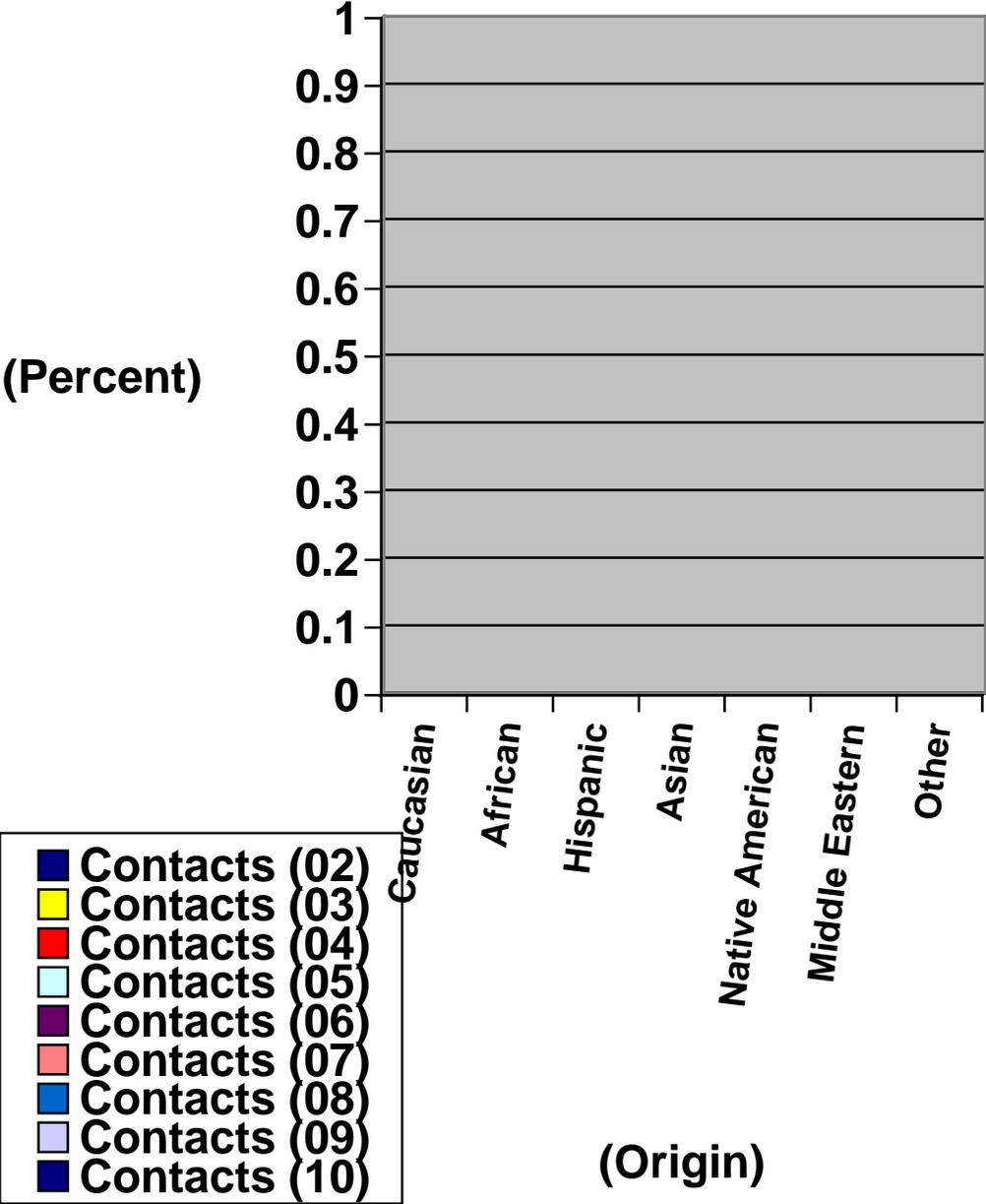
(1/1/02---12/31/12)

Race/Ethnicity*	Motor Vehicle-Related Contacts (in percentages)		
	(10)	(11)	(12)
Caucasian	55	57	53
African	15	15	15
Hispanic	14	14	17
Asian	9	8	10
Native American	.05	.1	.7
Middle Eastern	7	6	4
Other	.5	.04	.4
Total	100**	100	100

* Race/Ethnicity is defined by Texas Senate Bill 1074 as being of a “particular descent, including Caucasian, African, Hispanic, Asian, Native American and Middle Eastern”.

** Figure has been rounded.

Tier 1 Data (Contacts 02-12)



Analysis and Interpretation of Data

Analysis

In 2001, the Texas legislature passed Senate Bill 1074 which became the Texas Racial Profiling Law. That is, the law came into effect on January 1, 2002 and required that all police departments in Texas collect traffic-related data and report this information to their local governing authority by March 1st of each year. In 2009, the racial profiling law was modified to include the collection and reporting of all motor vehicle related contacts where a citation was issued or arrest made. In addition, since 2009, the law requires that all police officers indicate whether or not they knew the race or ethnicity of the individual before detaining them. Further, it is required that agencies report motor vehicle related data to their local governing authority and to the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) by March 1st of each year. The purpose in collecting and presenting this information is to determine if police officers in a particular municipality are engaging in the practice of racially profiling minority motorists.

The Texas Racial Profiling Law requires police departments to interpret motor vehicle-related data. Even though most researchers would probably agree with the fact that it is within the confines of good practice for police departments to be accountable to the citizenry while carrying a transparent image before the community, it is very difficult to determine if police officers are engaging in racial profiling, from a review or analysis of aggregate data. In other words, it is challenging for a reputable researcher to identify specific "individual" racist behavior from aggregate-level "institutional" data on traffic or motor vehicle-related contacts.

In 2009, the Texas Legislature passed House Bill 3389, which modified the existing Racial Profiling Law by adding new requirements; this took effect on January 1st, 2010. These most recent changes include, but are not exclusive of, the re-definition of a contact to include motor vehicles where a citation was issued or an arrest made. In addition, it requires police officers to indicate if they knew the race or ethnicity of the individual before detaining them. Also, the new law requires adding "middle eastern" to the racial and ethnic category and submitting the annual traffic data report to TCLEOSE before March 1st of each year, starting this year. I am pleased to inform you that these new requirements have been addressed by the Murphy Police Department as it is demonstrated throughout this report.

In an effort to comply with The Texas Racial Profiling Law, the Murphy Police Department commissioned the analysis of its 2012 motor vehicle contact data. Thus, three different types of data analyses were performed. The first of these involved a careful evaluation of the 2012 motor vehicle-related data. This particular analysis measured, as required by the law, the number and percentage of Caucasians, African Americans, Hispanics, Asians, Native Americans, Middle Easterners and individuals belonging to the "other" category, that came in contact with the police in the course of a motor vehicle related stop, and were either issued a citation or arrested. Further, the analysis included information relevant to the number and percentage of searches (table 1) while indicating the type of search performed (i.e., consensual or probable cause). Also,

the data analysis included the number and percentage of individuals who, after they came in contact with the police for a traffic-related reason, were arrested.

The additional data analysis performed was based on a comparison of the 2012 motor vehicle contact data with a specific baseline. When reviewing this particular analysis, it should be noted that there is disagreement, in the literature, regarding the appropriate baseline to be used when analyzing motor vehicle-related contact information. Of the baseline measures available, the Murphy Police Department opted to adopt, as a baseline measure, the Fair Roads Standard. This particular baseline is based on data obtained through the U.S. Census Bureau (2010) relevant to the number of households that have access to vehicles while controlling for the race and ethnicity of the heads of households.

It is clear that census data presents challenges to any effort made at establishing a fair and accurate racial profiling analysis. That is, census data contains information on all residents of a particular community, regardless of the fact they may or may not be among the driving population. Further, census data, when used as a baseline of comparison, presents the challenge that it captures information related to city residents only. Thus, excluding individuals who may have come in contact with the Murphy Police Department in 2012 but live outside city limits. In some cases, the percentage of the population that comes in contact with the police but lives outside city limits represents a substantial volume of all motor vehicle-related contacts made in a given year.

Since 2002, several civil rights groups in Texas expressed their desire and made recommendations to the effect that all police departments should rely, in their data analysis, on the Fair Roads Standard. This source contains census data specific to the number of “households” that have access to vehicles. Thus, proposing to compare “households” (which may have multiple residents and only a few vehicles) with “contacts” (an individual-based count). This, in essence, constitutes a comparison that may result in ecological fallacy. Despite this, the Murphy Police Department made a decision that it would use this form of comparison (i.e., census data relevant to households with vehicles) in an attempt to demonstrate its “good will” and “transparency” before the community. Thus, the Fair Roads Standard data obtained and used in this study is specifically relevant to the Dallas Fort Worth (DFW) Metroplex.

The final analysis was conducted while using the 2004--2009 traffic data and the 2010—2012 motor-vehicle related data. Specifically, all traffic-related contacts made in 2009 were compared to similar figures reported in 2004, 2005, 2006, 2007 and 2008. Similarly, motor vehicle contact data was compared while using data from 2010, 2011 and 2012. Although some researchers may not support the notion that in nine years, a “significant” and “permanent” trend can take effect, when considering this analysis, it was determined that comparing nine years of traffic/motor vehicle contact data may highlight possible areas of consistency with regards to traffic and motor vehicle-related contacts. That is, the nine-year comparison has the potential of revealing indicators that a possible trend of traffic and motor vehicle-based contacts with regards to members of a specific minority group, may in fact, develop.

Tier 1 (2012) Motor Vehicle-Related Contact Analysis

When analyzing the Tier 1 data collected in 2012, it was evident that most motor vehicle-related contacts were made with Caucasian drivers. This was followed by Hispanic and African American drivers. With respect to searches, most of them were performed on Caucasian drivers. This was followed by Hispanics and African Americans. It is important to note that the arrest data revealed that Caucasian drivers were arrested the most in motor vehicle-related contacts; this was followed by African Americans and Hispanics.

Fair Roads Standard Analysis

The data analysis of motor vehicle contacts to the census data relevant to the number of “households” in the DFW who indicated, in the 2010 census, that they had access to vehicles, produced interesting findings. Specifically, the percentage of individuals of African American and Asian descent that came in contact with the police was higher than the percentage of African American and Asian households in DFW that claimed, in the 2010 census, to have access to vehicles. With respect to Caucasians and Hispanics, a lower percentage of contacts were detected. That is, the percentage of Caucasian and Hispanic drivers that came in contact with the police in 2012 was lower than the percentage of Caucasian and Hispanic households in DFW with access to vehicles.

Nine-Year Comparison

The nine-year comparison (04-12) of traffic and motor vehicle related-contact data showed some similarities. As illustrated in table 3, the percentage of drivers (from different racial/ethnic groups) that came in contact with the Murphy Police in 2012 was similar to the percentage of drivers, from the same racial/ethnic groups that came in contact with the Murphy Police Department from 2004 to 2011. However, a few differences were noted. When comparing 2012 to the previous years, there was an increase in percentage of contacts among Hispanic and Asian drivers. A decrease in percentage was detected among Caucasians.

Summary of Findings

The comparison of motor vehicle contacts showed that the Murphy Police Department came in contact (in motor vehicle-related incidents) with a smaller percentage of Caucasian and Hispanic drivers than the percentage that resided in DFW and had access to vehicles. Further, the data suggested that the percentage of African American and Asian drivers that came in contact with the police in 2012 was higher than the percentage of African American and Asian households in DFW with access to vehicles. In addition, the data showed that in a large number of instances, officers did not know the race or ethnicity of individuals before detaining them, when compared to instances where officers knew the race/ethnicity of individuals before they were detained.

An examination of the nine-year traffic and motor vehicle-related contact data suggested that the Murphy Police Department has been, for the most part, consistent in the racial/ethnic composition of motorists it comes in contact with during a given year. The consistency of contacts for the past eleven years is in place despite the fact the city demographics may have changed, thus, increasing the number of subjects likely to come in contact with the police.

While considering the findings made in this analysis, it is recommended that the Murphy Police Department should continue to collect and evaluate additional information on motor vehicle contact data (i.e., reason for probable cause searches, contraband detected) which may prove to be useful when determining the nature of the contacts police officers are making with all individuals; particularly with African Americans and Asians. Although this additional data may not be required by state law, it is likely to provide insights regarding the nature and outcome of all motor vehicle contacts made with the public.

As part of this effort, the Murphy Police Department is also encouraged to:

- 1) Perform an independent search analysis on the search data collected in the first quarter of 2013.
- 2) Commission data audits in 2013 in order to assess data integrity; that is, to ensure that the data collected is consistent with the data being reported.

It should be noted that the Department complied with recommendations made last year regarding data audits. Further, the information and analysis provided in this report serves as evidence that the Murphy Police Department has, once again, complied with the Texas Racial Profiling Law.

(III) Summary

Checklist

Checklist

The following requirements **were** met by the Murphy Police Department in accordance with The Texas Racial Profiling Law:

- Clearly defined act or actions that constitute racial profiling
- Statement indicating prohibition of any peace officer employed by the Murphy Police Department from engaging in racial profiling
- Implement a process by which an individual may file a complaint regarding racial profiling violations
- Provide public education related to the complaint process
- Implement disciplinary guidelines for officer found in violation of the Texas Racial Profiling Law
- Collect data (Tier 1) that includes information on
 - a) Race and ethnicity of individual detained
 - b) Whether a search was conducted
 - c) If there was a search, whether it was a consent search or a probable cause search
 - d) Whether a custody arrest took place
- Indicate total number of officers who knew and did not know, the race/ethnicity of individuals before being detained.
- Produce an annual report on police contacts (Tier 1) and present this to local governing body and TCLEOSE by March 1, 2013.
- Adopt a policy, if video/audio equipment is installed, on standards for reviewing video and audio documentation

Contact Information

Contact Information

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

Del Carmen Consulting, LLC
817.681.7840
www.texasracialprofiling.com
www.delcarmenconsulting.com

Disclaimer: The author of this report, Alejandro del Carmen/del Carmen Consulting, LLC, is not liable for any omissions or errors committed in the acquisition, analysis, or creation of this report. Further, Dr. del Carmen/del Carmen Consulting is not responsible for the inappropriate use and distribution of information contained in this report. Further, no liability shall be incurred as a result of any harm that may be caused to individuals and/or organizations as a result of the information contained in this report.

TIER 1 - PARTIAL EXEMPTION RACIAL PROFILING REPORT

Agency Name: MURPHY POLICE DEPT.
Reporting Date: 01/07/2013
TCLEOSE Agency Number: 085216
Chief Administrator: G. M. COX
Agency Contact Information: Phone: 972-468-4200
Mailing Address:
MURPHY POLICE DEPT.
206 N Murphy Road
Murphy, TX 75094

This Agency claims partial racial profiling report exemption because:

Our vehicles that conduct motor vehicle stops are equipped with video and audio equipment and we maintain videos for 90 days.

Certification to This Report 2.132 (Tier 1) – Partial Exemption

Article 2.132(b) CCP Law Enforcement Policy on Racial Profiling

MURPHY POLICE DEPT. has adopted a detailed written policy on racial profiling. Our policy:

- (1) clearly defines acts constituting racial profiling;
- (2) strictly prohibits peace officers employed by the MURPHY POLICE DEPT. from engaging in racial profiling;
- (3) implements a process by which an individual may file a complaint with the MURPHY POLICE DEPT. if the individual believes that a peace officer employed by the MURPHY POLICE DEPT. has engaged in racial profiling with respect to the individual;
- (4) provides public education relating to the agency's complaint process;
- (5) requires appropriate corrective action to be taken against a peace officer employed by the MURPHY POLICE DEPT. who, after an investigation, is shown to have engaged in racial profiling in violation of the MURPHY POLICE DEPT.'s policy adopted under this article;
- (6) require collection of information relating to motor vehicle stops in which a citation is issued and to arrests made as a result of those stops, including information relating to:
 - (A) the race or ethnicity of the individual detained;
 - (B) whether a search was conducted and, if so, whether the individual detained consented to the search; and
 - (C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and

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

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

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

I certify these policies are in effect.

Executed by: **G. M. COX**

Chief Administrator

MURPHY POLICE DEPT.

Date: 01/07/2013

MURPHY POLICE DEPT. Motor Vehicle Racial Profiling Information

Number of motor vehicle stops:

1. 2911 citation only
2. 117 arrest only
3. 19 both
4. 3047 Total (4, 11, 14 and 17 must be equal)

Race or Ethnicity:

5. 450 African
6. 320 Asian
7. 1608 Caucasian
8. 534 Hispanic
9. 114 Middle Eastern
10. 21 Native American
11. 3047 Total (lines 4, 11, 14 and 17 must be equal)

Race or Ethnicity known prior to stop?

12. 0 Yes
13. 3047 No
14. 3047 Total (lines 4, 11, 14 and 17 must be equal)

Search conducted?

15. 73 Yes
16. 2974 No
17. 3047 Total (lines 4, 11, 14 and 17 must be equal)

Was search consented?

18. 28 Yes
19. 45 No
20. 73 Total (must equal line 15)

City Council Meeting
February 5, 2013

Issue

Consider and/or act on authorizing the City Manager to negotiate a contract to provide Solid Waste Collection & Disposal and Recyclable Material Collection & Processing services for the City of Murphy.

Staff Resource / Department

James Fisher, City Manager
Linda Truitt, Finance Director
Kristi Gilbert, City Secretary
Candy McQuiston, Customer Service Manager

Background/History

In March of 2008, a solid waste collection and recycling services contract was awarded to Waste Management for a 5-year period ending March 31, 2013. On November 12, 2012, City Council directed staff to notify Waste Management of non-renewal of contract and to solicit proposals. A letter was sent to Waste Management notifying them of non-renewal on November 20, 2012.

On November 27, Council approved the RFP (Request for Proposals) for Solid Waste Collection and Disposal and Recycling Collection and Processing Services. The week of December 3, staff advertised the sealed competitive RFP in order to locate a contractor to provide solid waste and recycling collection for the City of Murphy. On January 14, 2013, four (4) proposals were received from the various firms. The firms included:

- CWD (Community Waste Disposal)
- WM (Waste Management)
- Allied Waste
- Progressive Waste

Staff read and evaluated each of the 4 proposals. All firms were interviewed the week of January 28, 2013 by the City Manager.

Financial Considerations

Contract services for solid waste and recycling services is funded out of the General Fund. For the current fiscal year, \$701,200 was budgeted.

Action Requested

Staff will complete the review of bids and meetings with the contractors on Friday, February 2, 2013. The recommendation of award will be sent to Council on Monday, February 4, 2013.

Staff recommends that Council authorizes the City Manager to negotiate a contract to provide Solid Waste Collection & Disposal and Recyclable Material Collection & Processing services for the City of Murphy.

Attachments

WM Original Contract
2010 Rate Increase Agenda Item
2012 Rate Increase Agenda Item
2013 Solid Waste Bid Packet (Under separate cover)

**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

MUNICIPAL SOLID WASTE COLLECTION AND TRANSPORTATION AGREEMENT

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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.

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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

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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;

MUNICIPAL SOLID WASTE COLLECTION AND TRANSPORTATION AGREEMENT

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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.

MUNICIPAL SOLID WASTE COLLECTION AND TRANSPORTATION AGREEMENT

	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:

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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

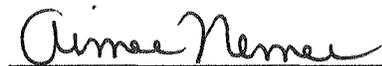
CONTRACTOR:

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	
		lbs/month	lbs/home		@ \$14/ton	
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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Issue

Consider and/or act upon approval of rate increase from Waste Management for residential and commercial solid waste fees.

Background

The City of Murphy and Waste Management entered into an agreement for solid waste collection in March 2008.

Pursuant to that agreement, Section 9. Modification to Rates; base rates for services shall be adjusted by the same percentage as the Consumer Price Index published by the United States Bureau of Labor Statistics.

The City has received a letter from Waste Management dated June 1, 2010 advising of a 2.8% rate increase for both residential and commercial rates.

Financial Considerations

The residential rate increase will be as follows:

Current	New
Residential Charge \$9.99	Residential Charge \$10.27
Additional Cart \$7.06	Additional Cart \$7.26

The 2.8% increase will be applied to commercial rates as well.

Board/Staff Recommendation

Council direction is requested.

Attachments

- 1) Correspondence from Waste Management
- 2) Municipal Solid Waste Collection/Transportation Agreement –Waste Management

James Fisher, City Manager
Submitted By

City Manager Approval



RECEIVED

JUN -2 2010

City Manager's Office

WASTE MANAGEMENT

520 E Corporate Dr Suite 100
Lewisville, TX 75057
PO Box 276
Lewisville, TX 75067
(214) 626-8800
(214) 626-8893 Fax

June 1, 2010

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 advise of a 2.8% rate increase. This adjustment is based upon the data supplied by the Bureau of Labor Statistics for Garbage and Trash Collection for the period of April 2009 through March of 2010. While I realize that a rate increase is not pleasant news, please understand that this is the first rate increase since we entered into a new contract two years ago.

As a result of this rate increase, the residential charge will be \$10.27 per month and the charge for additional carts will be \$7.26 per month. Rates for commercial and industrial services will also increase by 2.8%. In order for the City to make any changes to the billing system, the new residential rates will be reflected in the invoice we send in August for the July service period.

James, it is truly a pleasure to serve as the City's "vendor of choice", and we appreciate the partnership we have established over the years. If you need additional information, or would like me to attend and upcoming City Council meeting, please let me know.

Sincerely,

John L. Klaiber
Manager – Public Sector Services

From everyday collection to environmental protection, Think Green® Think Waste Management.



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Data extracted on: June 2, 2010 (12:08:24 PM)

Consumer Price Index - Urban Wage Earners and Clerical Workers

Series Id: CWUR0000SEHG02
Not Seasonally Adjusted
Area: U.S. city average
Item: Garbage and trash collection
Base Period: DECEMBER 1983=100

Download: .xls

Year	Mar

2009	373.220	÷ = 2.8%
2010	383.791	

April 2009 - March 2010

12-Month Percent Change

Series Id: CWUR0000SEHG02
 Not Seasonally Adjusted
 Area: U.S. city average
 Item: Garbage and trash collection
 Base Period: DECEMBER 1983=100

Download:  .xls

Year	Mar
2009	4.2
2010	2.8

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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 Manage 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 cursive script, appearing to read 'John L. Klaiber'.

John L. Klaiber
Manager – Public Sector Services

Economic News Release

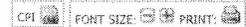


Table 1. Consumer Price Index for All Urban Consumers (CPI-U): U. S. City Average, by expenditure category and commodity and service group

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

City Council Meeting
February 5, 2013

Issue

Consider and/or act upon approval of the low bid award for the seasonal Median Mowing/Beautification Contract to Weldon's Lawn and Tree for \$40,662 and authorize the City Manager to execute the contract.

Staff Resource / Department

Kim Lenoir, Director of Parks and Public Works

Key Focus Area

Economic Development, Community Character

Summary

Award the seasonal contract mowing bid to Weldon's Lawn and Tree at \$40,662.

Background/History

City Council approved a budget of \$61,500 for FY2013 contract mowing services. The contract will contain the provision that only the completed work will be paid. 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.

The City of Murphy does not have the maintenance staff nor equipment to maintain a weekly mowing schedule in the spring and summer of all of the city properties; therefore, seasonal contract mowing has been used the past three (3) summers.

The public bids were opened January 15, 2013 and the city received seven (7) bidders. The four (4) lowest bidders have received intense reference checks by staff.

Financial Considerations

FY 2013 general fund park maintenance budget for contract mowing is \$61,500.

Action Requested

Motion to award the bid to Weldon's Lawn and Tree at \$40,662 and authorize the City Manager to execute the contract.

Attachments

Bid Tabulation

Bid Packet

CITY MOWING CONTRACT - BID OPENING, TUESDAY, JANUARY 15, 2013 / 2:00 PM

COMPANY NAME	CONTACT INFO		Base Bid	Alternate Bid	Total Bid
Weldons Lawn & Tree 633 Eagle Pass Royse City, Texas 75189	Jimmy Weldon	Cashiers Check	\$31,062.00	\$9,600.00	\$40,662.00
	972-979-2342				
	weldonslawnandtree@suddenlink.net				
Mow Time 18127 CR656/PO Box 11 Farmersville, Texas 75442	Lynn McCrary	Bid Bond	\$38,557.80	\$15,482.40	\$54,040.20
	972-978-2455				
	mcmowtime@yahoo.com				
Carruther's Landscape 11593 Goodnight Ln Dallas, Texas 75229	Paul Myers	Cashiers Check	\$35,904.00	\$18,146.00	\$54,050.00
	972-620-9560				
	paul@carrutherslandscaping.com				
Oak Grove Landscape 810 Water / PO Box 3 Farmersville, Texas 75442	Chad Dillard	Cashiers Check	\$38,068.00	\$17,360.00	\$55,428.00
	972-896-2557				
	chad@oakgrovelandscape.com				
Dyna-Mist Landscaping 2808 Capital St. Wylie, Texas 75098	Gorge Calero	Bid Bond	\$47,244.00	\$10,960.00	\$58,204.00
	214-878-8548				
	rplumlee@dyna-mist.net				
American Landscaping 1780 Midway Rd. Lewisville, Texas 75056	Joseph Angelone	Bid Bond	\$50,592.00	\$13,620.00	\$64,212.00
	469-521-2200				
	jta@americanlandscapesystems.com				
J Nichols Construction 3275 Whiteley Rd. Wylie, Texas 75098	Joe Nichols	Bid Bond	\$43,789.36	\$29,213.76	\$73,003.12
	972-412-8000				
	joe@jnicholsconstruction.com				

NOTICE TO CONTRACTORS
MURPHY SEASONAL MOWING CONTRACT
MEDIANS AND RIGHTS-OF-WAYS

Sealed bids addressed to the City Secretary of the City of Murphy, Texas, will be received at the office of the City Secretary, City Hall, Murphy, Texas until **2:00 p.m., Tuesday, January 15, 2013**, and then publicly opened and read, for furnishing all labor, material and equipment, and performing all work required for mowing, edging, trimming, litter pick-up, weeding and maintaining the city medians and rights-of-way.

Murphy City Hall is located at 206 N. Murphy Road (F.M. Highway 2551), Murphy, Texas 75094. Approximately one-third (1/3) mile north of F.M. Highway 544 and five and one-half (5-1/2) miles east of U.S. Highway 75.

Proposals shall be accompanied by a cashier's or certified check upon a national, state bank or savings and loan in an amount not less than five percent (5%) of the total maximum bid price, payable without recourse to the City of Murphy, or a bid bond in the same amount from a reliable surety company, holding a permit from the State of Texas to act as surety, as a guarantee that the bidder will enter into a contract and execute performance bond and payment bond within ten (10) days after notice of award of contract to him. The notice of award of contract will be given by the Owner within thirty (30) days following the opening of bids.

The low bidder must qualify within five working days after bid opening by submitting evidence as the City of Murphy may require to establish the financial responsibility, experience, and possession of such equipment as may be needed to prosecute the work in an expeditious, safe and satisfactory manner. Should the bidder fail to produce evidence satisfactory to the City as stipulated in the specifications on any of the foregoing points, he may be disqualified and the work awarded to the next bidder so qualifying.

The right is reserved, as the interest of the Owner may require, to reject any and all bids, and to waive any informality in bids received.

Bidding documents may be examined on the city website www.murphytx.org or may be picked up at the Public Works Building (Monday-Friday 8:00 am to 5:00 pm), 206 North Murphy Road, Murphy TX.

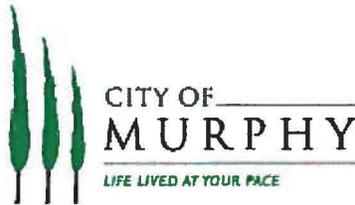
CITY OF MURPHY, TEXAS

By s/ **James Fisher**
James Fisher, City Manager

Advertisement

1st Advertisement: Thursday, December 27, 2012

2nd Advertisement: Thursday, January 3, 2013



MOWING CONTRACT BID / CONTRACT SCHEDULE

Tuesday, December 18, 2012 – Send Ad to Paper (Murphy Monitor)

Thursday, December 27, 2012 – 1st Advertisement

Thursday, January 3, 2013 – 2nd Advertisement

Friday, January 11, 2013, 3:00 pm - Deadline for questions

Tuesday, January 15, 2013, 2:00pm – Bid Opening

Tuesday, February 5, 2013 – City Council Awards Bid

Monday, February 18, 2013 – Sign Contract

Monday, March 4, 2013 – Contract begins

CITY OF MURPHY CONTRACT MOWING BID LIST
MARCH 4, 2013 - SEPTEMBER 30, 2013

MOWING SITE	ACRES	PRICE/CYCLE	FREQUENCY	CYCLES	MAINT. TOTAL
MEDIANS & ROW					
FM 544/Brand Rd.	2.5		Weekly	31	
Hawthorne Drive	1		Weekly	31	
Heritage Parkway	8		Weekly	31	
West Betsy Lane	6		Weekly	31	
Betsy Water Tower	1		Weekly	31	
East Betsy Lane	6.84		Weekly	31	
S. Murphy Road	2.3		Weekly	31	
TOTALS	27.64				

- Complete maintenance to include: mowing, weedeating, weeding beds 1X/month, edging, and removal of trash from mowing area

ALTERNATE BID ITEMS

MEDIANS & ROW					
McWhirter Road	2.77		Bi-Weekly	16	
S. Maxwell Creek Rd.	0.62		Bi-Weekly	16	
Kinney Road	3.05		Bi-Weekly	16	
DRAINAGE AREAS					
Woodlake/Sycamore	3.5		Monthly	8	
Blue Flumar	3		Monthly	8	
SPRAYING					
FM544	2		Monthly	8	
Heritage Pkwy.	3		Monthly	8	
West Betsy Lane	1		Monthly	8	
S. Murphy Road	1.5		Monthly	8	
TOTALS	12.94				

- Spraying to include treatment of ornamental beds*
- Glyphosate on FM 544 unplanted medians*
- Image and Fusilade on all other ornamental areas (Betsy, Heritage, S. Murphy)*

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

Signature

Printed Names

Date

2013 Contract Mowing Area List

FM 544

- Medians from Dublin Road east to McCreary Road
- ROW on south side from Heritage Parkway east to Chase Bank (to power poles)
- ROW on north side from Dublin Road east to RR tracks (to white fence)
- ROW on north side from Kwik Kar east to Sonic (to power poles)
- ROW on north side from Race Trac east to Elevate Church (to power poles)
- ROW on south side from Hawthorne Drive east to McCreary Road (to power poles)

Brand Road

- Medians from FM 544 south to Plano City Limits
- ROW on both sides from FM 544 to Plano City Limits

Heritage Parkway

- Medians from Betsy Lane south to Glen Ridge Drive
- Medians from Michael Drive south to FM 544
- ROW on east side from Dakota Drive south to Mustang Ridge Drive
- ROW on west side from Mockingbird Drive south along rock wall

West Betsy Lane

- ROW in front of Southfork Animal Clinic
- ROW west of Oriole Drive on north side to Parker City Limits
- Vacant lot on south side of farthest west median
- Vacant lot on north side of farthest west median

Betsy Lane Water Tower

East Betsy Lane

- Medians and ROW from North Murphy Road to Cactus Path (to fences or power poles)
- ROW on south side from Cactus Path to McCreary Road
- ROW on north side from McCreary Road west to end of white fence

South Murphy Road

- Medians from FM 544 south to Briar Oak Drive (across from Murphy Road Baptist Church)
- ROW on east side from Albertson's shopping center south to utility easement (including easement)
- ROW on east side from Ridgeview Drive south to beginning of HOA fence for Murphy Farms
- Cemetery on corner of Skyline Drive and South Murphy Road

McWhirter Road

- ROW on south side from North Murphy Road to HOA fence
- ROW on south side from North Hill Lane to McCreary Road (to bottom of ditch)
- Medians from North Murphy Road west to Parker City Limits

South Maxwell Creek Road

- ROW on west side from FM 544 south to end of white pipe fence
- ROW on east and west side from start of red pipe fence to end of road (to power poles or fences)

Kinney Road

- ROW on north and south side from South Maxwell Creek Road to creek
- Open field on north side of road before curve

Drainage Areas

- Vacant lot on southeast corner of FM 544 and Hawthorne Drive (including drainage ditch)
- Drainage area on Shady Timbers Lane between Sycamore Drive and Woodlake Drive east to park
- Drainage ditch behind houses on Blue Flumar Court

STANDARD FORM OF AGREEMENT

STATE OF TEXAS }

COUNTY OF COLLIN }

THIS AGREEMENT, made and entered into this _____ day of _____, A.D. 2013, by and between _____ The City of Murphy, Texas

of the County of _____ Collin _____ and State of Texas, acting through _____ Its City Manager

thereunto duly authorized so to do, Party of the First Part, hereinafter termed OWNER, and _____

of the City of _____, County of _____ and State of _____, Party of the Second Part, hereinafter termed CONTRACTOR.

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

MURPHY BEAUTIFICATION OF MEDIANS, RIGHTS-OF-WAYS, AND DITCHES

and all extra work in connection therewith, under the terms as stated in the General Conditions of the Agreement and at his (or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said maintenance, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Contractors, General and Special Conditions of Agreement, and other drawings and printed or written explanatory matter thereof, and the Specifications, as prepared by City of Murphy herein entitled the OWNER, each of which has been identified by the CONTRACTOR and the OWNER, together with the CONTRACTOR'S written Proposal, the General Conditions of the Agreement, and the Liability Insurance, hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire agreement.

The CONTRACTOR hereby agrees to commence work within five (5) days after the date written notice to do so shall have been given to him, and to substantially complete the same schedule to September 30, 2013 subject to such extensions of time as are provided by the General and Special Conditions.

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

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

City of Murphy, Texas Party of the First Part (OWNER)

Party of the Second Part (CONTRACTOR)

By: James Fisher, City Manger

By:

Attest:

Attest:

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 Superintendent 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
Matt Foster, Parks Superintendent
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: _____

SIGNATURE

DATE

PRINTED NAME TITLE

COMPANY NAME CONTACT PERSON (Must have knowledge of Quote)

BILLING ADDRESS STREET CITY STATE ZIP

MAILING ADDRESS STREET CITY STATE ZIP

PHONE NUMBER (metro/toll free) FAX NUMBER E-MAIL ADDRESS

Initials _____

City Council Meeting
February 5, 2013

Issue

Consider and/or act upon updated construction expense for Murphy Central Park and the PSA Murphy Project.

Staff Resource / Department

James Fisher, City Manager
Linda Truitt, Finance Director
Dennis Sims, Dunkin Sims Stoffels
Kim Lenoir, Director of Parks and Public Works

Key Focus Area

Economic Development, Community Character, Mobility, and 2008 Trail, Street, and Park Bond Projects

Summary

Murphy Central Park and Maxwell Creek Trail Expansion project grading work is complete. Utilities of storm, water, and sewer are underway. Paving of trails, installation of pedestrian bridges is also underway. PSA site area is under construction as well.

Background/History

The park construction contract was awarded on August 7, 2012. The Murphy Development District (MDD) authorized an additional \$1.1 million for this project due to the addition of the PSA Murphy facility. A Lease agreement with PSA was signed on October 30, 2012. Below is the recap of all funding sources, including funds from Plano Sports Authority for additional design/engineering fees:

Funding Sources

Texas Parks and Wildlife Grant	\$ 500,000
Collin County Grant	400,000
2012 Community Development Corp (4B) - Specifically for Amphitheater	300,000
2009 Community Development Corp (4B)	25,000
Community Development Corp (4B) Tax Notes	1,500,000
2008 Trail Bonds - Specifically for trails and trail connectors	179,290
2008 Street Bonds - Specifically for street improvements	227,545
Murphy Municipal Development District (MDD) - \$600k initially released	1,100,000
2008 Park Bonds	947,969
Plano Sports Authority (PSA) - Add'l design/engineering fees for PSA	100,000
Total Funds Available	<u>\$ 5,279,804</u>

Financial Considerations

Expenditures

Design/Engineering

Design/Engineering – Central Park	\$ 397,390
Design/Engineering – Add'l fees for PSA (PSA contributing \$100,000)	155,180
Total Design/Engineering	\$ 552,570

Construction

Dean Electric, Inc. – Base contract bid	\$ 3,955,660
Change Order #1 – Remove Central Park parking lot and value engineering	(415,801)
Change Order #2 – Add'l earthwork for PSA site and Central Park	40,731
Change Order #3A – Utilities for PSA, Central Park and parking lots	285,339
Change Order #3B – City Hall parking lot and sidewalks paving	292,300
Change Order #3C – Paving at Tom Clevenger/City Hall Loop Rd. intersection	43,165
Change Order #4 – Earthwork for PSA foundation	42,000
Total Construction	\$ 4,243,394

Proposed Construction Change Orders

Change Order #5 – Irrigation for PSA, parking lots, and new all-purpose fields	\$ 212,655
Change Order #6 – Landscaping for PSA and parking lots	221,136
Change Order #7 – Electrical Work	264,118
Total Proposed Construction Change Orders	\$ 697,909

Total Proposed Expenditures **\$ 5,493,873**

Total Funds Available	\$ 5,279,804
LESS: Total Proposed Expenditures	5,493,873
Shortage of Funds – Will be covered by delaying items/finding add'l funding	\$ (214,069)

Other Considerations

This project is funded from multiple sources and requires extensive tracking of all dollars spent on the project. The staff and consultants are monitoring all costs very closely, and when an estimate comes in higher than anticipated, it gets additional scrubbing. The Central Park and PSA-Murphy will be very exciting additions to our community that benefit our community, socially and financially, for years to come.

Landscaping of this site and parking lots is one of the greatest challenges. Our project should be the model that we ask all developers to follow in the City. The City should initiate a campaign within the next 60 days to solicit funds for trees, bushes, gardens or other landscape amenities within the park. PSA has agreed to participate in this endeavor. The City should also seek green ribbon funds from TXDOT to address landscaping along North Murphy Road.

City Council Meeting
February 5, 2013

Signage for this complex still needs to be designed and funded. I think that the signs at the Community Center, City Complex, PSA and Central Park should complement one another and help identify the properties.

Action Requested

Staff is reviewing Change Orders #5, #6 and #7 to determine which items could be removed, without compromising the construction contract or contractor, to solicit for bids. Items to be considered are the parking lot lamp poles and wiring and landscaping (trees, bushes and amenities). Once this is determined, it will be brought back to City Council for further review and discussion.

**City Council Meeting
February 5, 2013**

Consider and take action, if any, on Alternate #7, Construct 4 Space Parking Lot and Connector Trail, east of PISD Maintenance Facility for Murphy Central Park, and authorize the City Manager to enter into an Interlocal Agreement with PISD for said parking lot and connector trail.

Staff Resource / Department

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

Key Focus Area

Economic Development, Community Character, and Mobility

Summary

Alternate #7, Construct 4 Space Parking Lot and Connector Trail, east of PISD Maintenance Facility for Murphy Central Park, was not acted upon by the City Council when the bids were considered for approval. This item will provide access and parking to the Decatur/Maxwell/Murphy Cemetery. Traditionally, the cemetery had been accessed from Tom Clevenger Road. However, due to the failing culvert at Maxwell creek and the cost to repair the culvert, staff negotiated the proposed parking lot with PISD. The verbal negotiation has the City moving the fence at the PISD Maintenance facility eastern drive to the inside perimeter, and the moving the gate closer to the PISD Maintenance facility.

Financial Considerations

The estimated cost for Alternate #7 is \$19,570.

Action Requested / Staff Recommendation

Authorize the City Manager to execute Alternate #7 and draft the ILA with PISD to allow for fence moving and the new parking lot.

Attachments

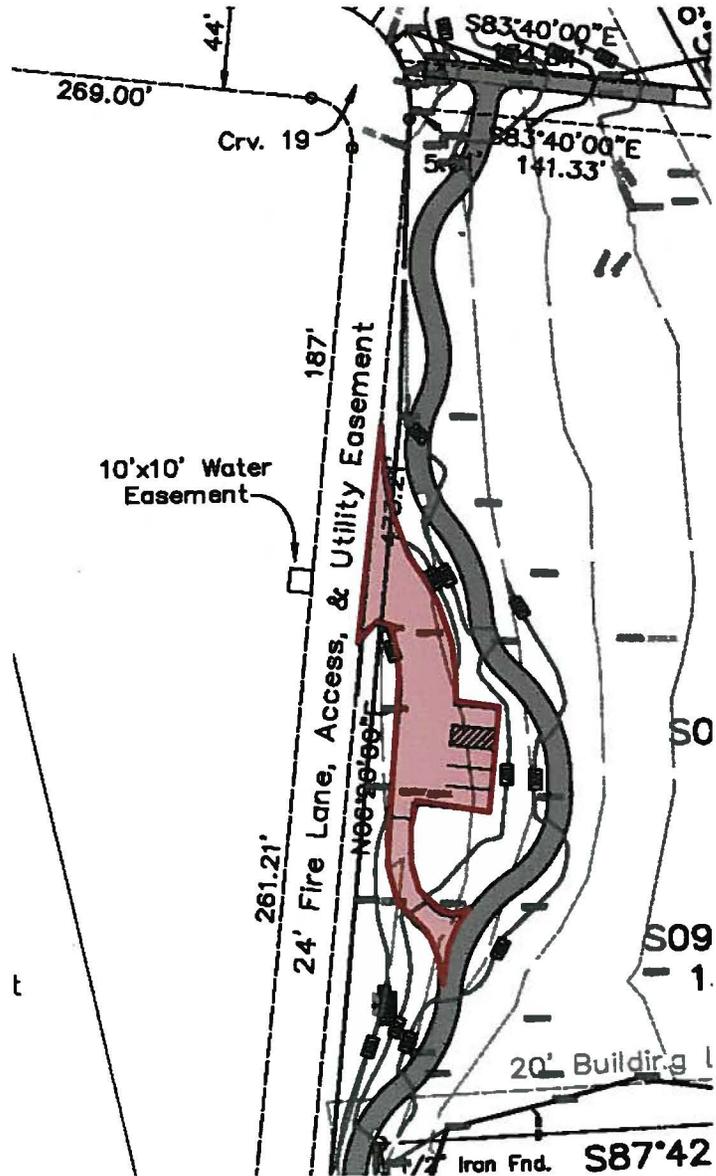
Alternate #7

ALTERNATE #7

ALTERNATE #7
CONSTRUCT 4 SPACE PARKING LOT AND
CONNECTOR TRAIL.

ADD- \$19,570.00

Do Not Accept



City Council Meeting
February 5, 2013

Issue

Consider and/or take appropriate action, if any, on funding provisions provided by the Murphy Municipal Development District to improve the infrastructure at Central Park to accommodate the Plano Sports Authority Murphy Building.

Staff Resource / Department

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

Key Focus Area

Economic Development, Community Character, Mobility, and 2008 Trail, Street and Park Bond Projects

Background/History

The Murphy Central Park master plan was approved by City Council 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. On August 7, 2012, the City Council awarded the construction bid to Dean Construction.

On October 2, 2012, Council approved the Plano Sports Authority (PSA) lease agreement, allowing Murphy Central Park to incorporate a new PSA facility, parking, fire lanes, and access roads. Council also endorsed the Murphy Municipal Development District (MDD) authorizing \$1.1 million from its funds to pay for the necessary infrastructure improvements at Central Park for PSA Murphy. October 16, 2012, Council approved the allocation of \$600,000 of MDD funds for infrastructure improvements for the PSA Murphy building.

PSA Murphy has been integrated into the overall Murphy Central Park development, and the City began major construction in December 2012.

Financial Considerations

Staff is requesting that the additional allocation of \$500,000 of MDD funds for infrastructure improvement for the PSA Murphy building be released to allow this project to continue moving forward (See the Financial Considerations for Item 7D for further explanation of expenditures).

Action Requested

Staff recommends that City Council release the additional \$500,000 allocation from the Murphy Municipal Development District to pay for the necessary infrastructure improvements at Central Park for PSA Murphy.

Attachments

City Council Meeting Minutes - October 16, 2012

CITY COUNCIL MINUTES
OCTOBER 16, 2012 REGULAR CITY COUNCIL MEETING

1. CALL TO ORDER

Mayor Pro Tem Daugherty called the meeting to order at 6:01p.m.

2. INVOCATION & PLEDGE OF ALLEGIANCE

Mayor Pro Tem Daugherty gave the invocation and led the Pledge of Allegiance.

3. ROLL CALL & CERTIFICATION OF A QUORUM

City Secretary, Kristi Gilbert, certified a quorum with the following Councilmembers present:

Mayor Bret Baldwin (arrived at 6:10 p.m.)

Mayor Pro Tem John Daugherty

Deputy Mayor Pro Tem Colleen Halbert

Councilmember Scott Bradley

Councilmember Bernard Grant

Councilmember Dave Brandon

Councilmembers absent:

Councilmember Dennis Richmond

4. PUBLIC COMMENTS

Joe Jaynes, 520 E. Corporate, Lewisville – Mr. James introduced himself as a Collin County Commissioner that serves a precinct other than Murphy and stated that he is also now in government relations for Waste Management. Mr. James promised the ultimate customer service experience with Waste Management as they continue to service the City.

Jerry Roberts, 521 Seminole Trail – Mr. Roberts addressed the Council and asked for consideration in revising the City's ordinances to address bee keeping. Mr. Roberts stated that his neighbor has three bee hives on their shared fence that are preventing him from enjoying the use of his property.

5. PRESENTATION ITEMS

Mayor Pro Tem Daugherty presented the following:

A proclamation presented to Smokey the Bear, designating October 27, 2012 as Murphy Arbor Day;

A proclamation presented to the City's Green Team designating November 15, 2012 as America Recycles Day in Murphy; and,

A proclamation presented to Relay for Life of Wylie/Sachse/Murphy proclaiming October 2012 as Breast Cancer Awareness Month in Murphy.

Martha Wolffe with Relay for Life expressed her gratitude for the proclamation and shared statistics and data on breast cancer and breast cancer awareness.

Mayor Baldwin arrived at the meeting at 6:10 p.m. and assumed the chair.

6. 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. Consider and/or act upon the approval of the minutes from the Regular City Council meeting of October 2, 2012.
- B. Consider and/or act on the Final Plat for Murphy Village Addition, Lot 2R, 4 and 5, Block A on property zoned PD (Planned Development) District No. 09-12-823 and No. 09-12-824 for Retail and Office Uses. This property is located at the southeast quadrant of West FM 544 and Brand Road.
- C. Consider and/or act upon approval of Resolution designating investment officers of the City and approving the investment policies for the investment of municipal funds.
- D. Consider and take appropriate action, if any, on the 2013 City of Murphy Holiday Schedule.

COUNCIL ACTION:

APPROVED

Councilmember Brandon moved to approve the consent agenda as presented. Councilmember Bradley seconded the motion. For: Unanimous. Against: None. The motion carried by a vote of 6 to 0.

7. INDIVIDUAL CONSIDERATION

- A. Consider and/or act on the application of Forestar (USA) Real Estate Group, Inc. requesting approval of a site plan for Emerus Emergency Hospital on property zoned PD (Planned Development) District No. 12-07-917 located at the northeast corner of FM 544 and Heritage Parkway.

Deputy Mayor Pro Tem Halbert excused herself from deliberation due to a standing relationship with Methodist Richardson and left the chambers.

The council discussed monument signs, the existing white fence surrounding the Windy Hills Farms subdivision and the use of meandering sidewalks.

COUNCIL ACTION:

APPROVED

Councilmember Brandon moved to approve the application of Forestar (USA) Real Estate Group, Inc. requesting approval of a site plan for Emerus Emergency Hospital on property zoned PD (Planned Development) District No. 12-07-917 located at the northeast corner of FM 544 and Heritage Parkway. with the following changes: Forestar is to provide a meandering sidewalk on the south side of the property and work with the Windy Hills HOA in an attempt to provide a meandering sidewalk on the west side of the property. Councilmember Bradley seconded the motion. For: Baldwin, Daugherty, Brandon, Bradley and Grant. Against: None. Abstained: Halbert. The motion carried 5-0-1.

- B. Consider and/or act on the application of Forestar (USA) Real Estate Group, Inc. requesting approval of a construction plat for Emerus Emergency Hospital on property zoned PD (Planned Development) District No. 12-07-917 located at the northeast corner of FM 544 and Heritage Parkway.

City Manager James Fisher stated that Deputy Mayor Pro Tem Halbert was continuing to excuse herself.

COUNCIL ACTION:

APPROVED

Councilmember Brandon moved to approve the application of Forestar (USA) Real Estate Group, Inc. requesting approval of a construction plat for Emerus Emergency Hospital on property zoned PD (Planned Development) District No. 12-07-917 located at the northeast corner of FM 544 and Heritage Parkway. Councilmember Bradley seconded the motion. For: Baldwin, Daugherty, Brandon, Bradley and Grant. Against: None. Abstained: Halbert. The motion carried 5-0-1.

Deputy Mayor Pro Tem Halbert resumed her seat on the dais.

- C. Consider and/or act on the application of Gary Hadley, developer, requesting approval of a site plan for IShine Express Car Wash on property zoned PD (Planned Development) District No. 09-12-823 for Retail and Office Uses on property located on FM 544 between Brand Road and Murphy Road.

The Council held discussion related to signage, the process used in washing and detailing the vehicles and the aesthetics of the vacuum bays located in front of the proposed structure.

COUNCIL ACTION:

APPROVED

Councilmember Brandon moved to approve the application of Gary Hadley, developer, requesting approval of a site plan for IShine Express Car Wash on property zoned PD (Planned Development) District No. 09-12-823 for Retail and Office Uses on property located on FM 544 between Brand Road and Murphy Road with the exception that staff and Council have final approval on the signage. Councilmember Bradley seconded the motion.

Deputy Mayor Pro Tem Halbert moved to amend the motion to include moving the vacuum bays to the rear of the property. Councilmember Brandon seconded the motion. For: Halbert and Daugherty. Against: Baldwin, Brandon, Bradley and Grant. The motion failed by a vote of 2 to 4.

The Mayor called for a vote on the primary motion to approve the application with the exception that staff have final approval on the signage. For: Baldwin, Daugherty, Brandon, Bradley and Grant. Against: Halbert. The motion carried by a vote of 5 to 1.

- D. Consider and/or act on the application of Gary Hadley, developer, requesting approval of a construction plat for IShine Express Car Wash on property zoned PD (Planned Development) District No. 09-12-823 for Retail and Office Uses on property located on FM 544 between Brand Road and Murphy Road.

COUNCIL ACTION:

APPROVED

Councilmember Brandon moved to approve the application of Gary Hadley, developer, requesting approval of a construction plat for IShine Express Car Wash on property zoned PD (Planned Development) District No. 09-12-823 for Retail and Office Uses on property located on FM 544 between Brand Road and Murphy Road. Councilmember Bradley seconded the motion. For: Unanimous. Against: None. The motion carried by a vote of 6 to 0.

- E. Consider and take appropriate action, if any, on funding provisions to improve the infrastructure at Central Park to accommodate the Plano Sports Authority Murphy Building.

COUNCIL ACTION:

APPROVED

Deputy Mayor Pro Tem Halbert moved to approve the allocation of \$600,000 of Municipal Development District Funds for infrastructure improvements for the Plano Sports Authority Murphy building. Councilmember Bradley seconded the motion. For: Unanimous. Against: None. The motion carried by a vote of 6 to 0.

- F. Consider and act approval of Amendments to the Code of Ethics of the City of Murphy; Approval of a Confidentiality and Non-Disclosure Agreement; Approval of Ethics Review Commission Complaint Form; and Approval of City Secretary or designee to assist with preparation, posting and delivery of agendas for the Ethics Review Commission Meetings

Assistant City Attorney Ben Wyse suggested that the Council consider both items F and G concurrently as they relate to each other.

Assistant City Attorney Ben Wyse and Ethics Commission Secretary Angie Eisenzopf presented the Commission's proposed amendments to the Code of Ethics to the Council. The Council held discussions relating to whether City employees should be subject to Ethics Commission investigations, as well as the City Secretary's role in receiving and processing complaints and the agenda process.

COUNCIL ACTION:

APPROVED

Deputy Mayor Pro Tem Halbert moved to approve the Ethics Review Commission's recommendations A2, A4 and A5 as presented (attached as *Exhibit "A"*). Mayor Pro Tem Daugherty seconded the motion. For: Unanimous. Against: None. The motion carried by a vote of 6 to 0.

Deputy Mayor Pro Tem Halbert moved to approve the Ethics Review Commission's recommendations A3 (attached as *Exhibit "A"*) to be modified to require all City Officials to receive a copy of the Code of Ethics and sign for it. Mayor Pro Tem Daugherty seconded the motion. For: Unanimous. Against: None. The motion carried by a vote of 6 to 0.

Deputy Mayor Pro Tem Halbert moved to approve the Ethics Review Commission's recommendations A1 (attached as *Exhibit "A"*) with the additional requirement that a request to access the city employees must go through the City Manager's office. Mayor Pro Tem Daugherty seconded the motion. For: Unanimous. Against: None. The motion carried by a vote of 6 to 0.

- G. Consider and act on the proposed Rules and Procedures of the Ethics Review Commission.

COUNCIL ACTION:

NO ACTION

Per the Assistant City Attorney's request, the item was considered in conjunction with item F.

- H. Consider and act on Boards and Commissions, their descriptions and roles and appointment of an interview panel comprised of three council members.

COUNCIL ACTION:

APPROVED

Deputy Mayor Pro Tem Halbert moved to appoint Councilmember Bradley, Councilmember Brandon and Mayor Pro Tem Daugherty. Councilmember Grant seconded the motion. For: Unanimous. Against: None. The motion carried by a vote of 6 to 0.

Deputy Mayor Pro Tem Halbert moved to approve the descriptions of the Boards and Commissions with the addition the last section of the Composition/Terms of the Animal Shelter Advisory Committee to add "each year during the appointment process in November/December". Councilmember Bradley seconded the motion. For: Unanimous. Against: None. The motion carried by a vote of 6 to 0.

- I. Consider and take action, if any, on the 2012 November and December City Council meeting schedule.

COUNCIL ACTION:

APPROVED

Councilmember Grant moved to approve November 13th, November 27th, December 11, 2012 and January 2, 2013 as future council meeting dates. Mayor Pro Tem Daugherty seconded the motion. For: Unanimous. Against: None. The motion carried by a vote of 6 to 0.

8. CITY MANAGER/STAFF REPORTS

City Manager, James Fisher provided the Council with a report on the following:

- North Murphy Road
- October 19th, Planning and Zoning Training work shop;
- October 25th, Ground Breaking for Central Park;
- Early Voting Begins October 22nd - City Hall Community Room;
- October 27th, Murphy Fire and Rescue Open House;
- October 30th, Animal Shelter Work Session;
- November 1st, Boards, Commission and Volunteer Appreciation Dinner at 6 pm, Murphy Community Center;
- November 2nd, Employee Appreciation and Holiday Luncheon, 11am to 2pm, Murphy Community Center;
- November 6th, Election Day

9. EXECUTIVE SESSION

At 8:23 p.m. the Mayor convened the City Council into closed Executive Session pursuant to the provisions of Chapter 551, Subchapter D, Texas Government Code, in accordance with the authority contained in:

§ 551.074 PERSONNEL MATTERS - to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee – City Manager.

10. RECONVENE INTO REGULAR SESSION

The Mayor reconvened the City Council into open session at 8:30 p.m., pursuant to the provisions of Chapter 551, Subchapter D, Texas Government Code, to take any action necessary regarding:

§ 551.074 PERSONNEL MATTERS - to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee – City Manager.

COUNCIL ACTION:

STAFF DIRECTION

Councilmember Brandon moved to direct the City Manager and the City Attorney to develop a policy related to the City Manager roles and the City Secretary roles using the City Secretary's job description as a baseline. Mayor Pro Tem Daugherty seconded the motion. For: Unanimous. Against: None. The motion carried by a vote of 6 to 0.

11. ADJOURNMENT

With no further business, the meeting was adjourned at 8:31 p.m.

APPROVED BY:

Bret M. Baldwin, Mayor

ATTEST:

Kristi Gilbert, City Secretary

Exhibit "A" to the October 16, 2012 City Council Minutes

CITY OF MURPHY
Ethics Review Commission

Recommendations, Requests and Notifications

A. Pursuant to the City of Murphy Code, Chapter 2 – Administration, Article IX – Code of Ethics, Section 2-513 (a)(4)(f), the Ethics Review Commission requests the City Council to consider the following recommendations that were approved by the Commission at its meeting held on Thursday, July 19, 2012:

1. Amend Article IX Code of Ethics, Section 2-513, to require all employees and City officials to answer any inquiries of the Ethics Review Commission.
2. Amend Article IX Code of Ethics, Section 2-501 Definitions, to include the Municipal Development District in the definition of "City Official."
3. Amend Article IX Code of Ethics, Section 2-518, to require all City employees and City officials to receive a copy of the Code of Ethics and to sign for their receipt of their copy. [Not just to make it available.]
4. Approve the Confidentiality and Non-Disclosure Agreement approved by the Ethics Review Commission on July 19, 2012.
5. Approve the Ethics Review Commission Ethics Complaint form.

B. Pursuant to City of Murphy Code, Chapter 2 – Administration, Article IX – Code of Ethics, Section 2-513, the Ethics Review Commission requests the following administrative support from the City:

1. City Secretary or designee to receive requests for agenda items outside of an open meeting and to prepare, post, and deliver the agendas for the meetings of the Ethics Review Commission meeting (in order to avoid potential violations of the Open Meetings Act by members of the Commission).

C. Pursuant to City of Murphy Code, Chapter 2 – Administration, Article IX – Code of Ethics, Section 2-513, the Ethics Review Commission advises the City Council of the resignation of Chairperson Gena Misouria effective at the end of the Commission meeting on July 19, 2012; Chairperson Misouria's term would have continued through December 31, 2013.

City Council Meeting
February 5, 2013

Issue

Consider and take action, if any, on the request by Plano Sports Authority to waive the permit fees for PSA Murphy.

Staff Resource / Department

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

Background/History

Plano Sports Authority (PSA) has requested the City wave the estimated \$151,548.52 permit fees for the construction of their facility. PSA is making a great investment into our community, and would like the Council to not require these fees for them.

Action Requested

Consider waiving all, a percentage, or none of the estimated \$151,548.52 permit fees for PSA Murphy.

Attachments

Fee Checklist for New Commercial Projects – PSA Murphy

Fee Checklist for New Commercial Projects
(Permit Fees are due at Plan Submittal)

Project Name: PLANO SPORTS AUTHORITY

Project Address: 330 N MURPHY ROAD

		<u>Amt. Due</u>	<u>Amt. Pd.</u>	<u>Date Pd.</u>
Total Valuation of project	<u>\$8,000,000</u>			
Total Square Footage of project	<u>87,000</u>			
Certificate of Occupancy		<u>\$75.00</u>	<u>\$0.00</u>	<u> </u>
Health		<u>\$650.00</u>	<u>\$0.00</u>	<u> </u>
Building Permit Fee	valuation of project X \$.010 =	<u>\$80,000.00</u>	<u>\$0.00</u>	<u> </u>
Electrical Permit Fee	based on sq ft of project	<u>\$120.00</u>	<u>\$0.00</u>	<u> </u>
Mechanical Permit Fee	based on sq ft of project	<u>\$120.00</u>	<u>\$0.00</u>	<u> </u>
Plumbing Permit Fee	based on sq ft of project	<u>\$120.00</u>	<u>\$0.00</u>	<u> </u>
Impact Fee for Domestic Water Meter		<u>\$43,443.52</u>	<u>\$0.00</u>	<u> </u>
Impact Fee for Irrigation Water Meter		<u>N/A</u>	<u>\$0.00</u>	<u> </u>
Sewer Tie-In (6" Min for Commercial)	<u>Size</u> <u>6 INCH</u>	<u>\$300.00</u>	<u>\$0.00</u>	<u> </u>
Water Meter - Domestic	<u>3 INCH</u>	<u>\$1,900.00</u>	<u>\$0.00</u>	<u> </u>
Water Meter - Domestic (Deposit on each meter) (2" Min for Commercial)		<u>\$100.00</u>	<u>\$0.00</u>	<u> </u>
Water Meter - Irrigation	<u>N/A</u>	<u>N/A</u>	<u>\$0.00</u>	<u> </u>
Water Meter - Irrigation (Deposit on each meter) (2" Min for Commercial)		<u>N/A</u>	<u>\$0.00</u>	<u> </u>
4% Engineering Inspection Fee		<u>\$18,280.00</u>	<u>\$0.00</u>	<u> </u>
Engineer Plan Review Fee		<u>TBD</u>	<u>\$0.00</u>	<u> </u>
Fire Sprinkler	sq ft of project X \$.035 = (MINIMUM OF \$60.00)	<u>\$3,045.00</u>	<u>\$0.00</u>	<u> </u>
Fire Alarm	sq ft of project X \$.035 = (MINIMUM OF \$60.00)	<u>\$3,045.00</u>	<u>\$0.00</u>	<u> </u>
Miscellaneous	Underground Fire Main	<u>\$50.00</u>	<u>\$0.00</u>	<u> </u>
Miscellaneous	Fire Pump	<u>\$300.00</u>	<u>\$0.00</u>	<u> </u>
Total		<u>\$151,548.52</u>	<u>\$0.00</u>	<u> </u>

**City Council Meeting
February 5, 2013**

Discussion/review of utility capital improvement project for the South Maxwell Creek Trunk Sewer Line.

Staff Resource / Department

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

Key Focus Area

Infrastructure

Summary

Staff will discuss the Sewer revenue/expense budget and projections. Staff will also review and discuss the recommended staging of design, surveying, acquisition of easements, construction, and financing of the required parallel South Maxwell Creek Trunk Sewer Line to the Wylie Treatment plant.

Background/History

On May 25, 2011, Murphy updated the city population, sanitary flow projections, and capital improvement plan with NTMWD. With the subdivision additions of Rolling Ridge Phase 6, Maxwell Creek North and The Gables, the main line sewer service capacity must be expanded to the Wylie Waste Water Treatment Plant.

This project was included in the 2008 Bond Program, but was put on hold. The City wanted to complete the utility relocations on North Murphy Road, lift station improvements, and the elevated storage tank prior to initiating this project. Also, subdivision improvements at Maxwell Creek and Gables had not begun. The budgeted amount for this project is \$2,248,926. However, the available dollars is approximately \$1,200,000.

Staff is proposing to begin preliminary design, survey, and land acquisition for the South Maxwell Creek Trunk Sewer Line project in FY 2013. Once design is underway, survey work will be performed, then exact land acquisition needs will be determined. The city land agent will contact land owners to acquire sewer easements and temporary construction easements. These tasks should take about nine months. Then, in FY 2014, the project can be bid and construction will begin and be completed in 2014.

Financial Considerations

Phase 1 authorization for preliminary design, survey, land acquisition/easements, final design phase, and preparation of construction and bid documents is \$471,350. The estimated construction cost of \$2 million would occur in FY 2014. The funding for this item will need to occur at a Council work session.

Action Requested / Staff Recommendation

Authorize the City Manager to contract the City Engineer to prepare preliminary design, survey, land acquisition and/or easements, final design, construction documents and bid documents for the South Maxwell Creek Trunk Sewer Line.

Attachments

Letters / Proposals
Map for proposed sewer line

BIRKHOFF, HENDRICKS & CARTER, L.L.P.
PROFESSIONAL ENGINEERS

11910 Greenville Ave., Suite 600

Dallas, Texas 75243

Fax (214) 461-8390

Phone (214) 361-7900

MEMORANDUM

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

From: Gary C. Hendricks, P.E.

**Gary C.
Hendricks**

Digitally signed by Gary C. Hendricks
DN: cn=Gary C. Hendricks, o=Birkhoff,
Hendricks and Carter, LLP, ou,
email=ghendricks@bhclip.com, c=US
Date: 2012.12.19 16:48:51 -06'00'

Date: December 18, 2012

Subject: South Maxwell Creek Parallel Trunk Sewer
Projected Cash Flow Schedule

Mr. Fisher:

As your requested, we have projected the engineering, land rights acquisition and constructon cash flow schedule for the South Maxwell Creek Parallel Trunk Sewer. Our evaluation is based on the project as presented in our engineering fee proposal addressed to you and dated October 25, 2012 and assumes an authorization to proceed date of early January 2013.

Please see the tabulation on the following page.

**South Maxwell Creek Paralell Trunk Sewer
 Projected Cash Flow Schedule**

Year	Project Phase	Month	Monthly Expenditure	Accumulated Expenditures	
2013	Preliminary Design Phase	Jan	\$2,350	\$2,350	
		Feb	\$13,550	\$15,900	
		Mar	\$35,200	\$51,100	
	Final Design Phase	Land Rights Acquisition Phase	Apr	\$40,000	\$91,100
			May	\$87,750	\$178,850
	Jun		\$79,550	\$258,400	
	Jul		\$75,050	\$333,450	
	Aug		\$42,750	\$376,200	
	Sep		\$42,750	\$418,950	
	Oct		\$47,450	\$466,400	
	Construction Phase		Nov	\$4,700	\$471,100
			Dec	\$250	\$471,350
Subtotal, 2013			\$471,350	\$471,350	
2014	Construction Phase	Jan	\$206,300	\$677,650	
		Feb	\$202,550	\$880,200	
		Mar	\$301,575	\$1,181,775	
		Apr	\$400,600	\$1,582,375	
		May	\$399,800	\$1,982,175	
		Jun	\$101,025	\$2,083,200	
		Jul	\$101,025	\$2,184,225	
		Aug	\$101,025	\$2,285,250	
		Sep	\$101,025	\$2,386,275	
		Oct	\$105,025	\$2,491,300	
Subtotal, 2014			\$2,019,950	\$2,019,950	
Project Total:			\$2,491,300	\$2,491,300	

EXHIBIT C

