

MURPHY CITY COUNCIL AGENDA
REGULAR CITY COUNCIL MEETING
AUGUST 20, 2013 AT 6:00 P.M.
206 NORTH MURPHY ROAD
MURPHY, TEXAS 75094



NOTICE is hereby given of a meeting of the City Council of the City of Murphy, Collin County, State of Texas, to be held on August 16, 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 :

A. Receive unaudited investment and financial report as of June 30, 2013.

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 meeting minutes:

1. August 2, 2013 special called meeting minutes;
2. August 6, 2013 regular meeting minutes; and,
3. August 8, 2013 special called meeting minutes.

B. Consider and/or act upon proposed resolution authorizing the City Manager to renew the Interlocal Agreement between the City of Murphy and the City of Plano for City of Murphy employees for employee training.

C. Consider and/or act upon authorizing the City Manager to sign an agreement with Collin County for the provision of firefighting and fire protection services.

D. Consider and take action, if any, on authorizing the City Manager to execute the NCTCOG E9-1-1 and equipment Interlocal Agreement.

E. Consider and/or act upon approval of a resolution authorizing the City Manager to sign the contract agreement with NCTCOG Public Works Mutual Aid Agreement.

F. Consider and take action, if any, on the approval of a Resolution authorizing the Mayor to execute a letter to the Attorney General documenting compliance with Chapter 395 of the Texas Local Government Code.

G. Consider and/or act upon authorizing Dunkin, Sims, Stoffels Inc. to bid a landscaping installation contract for Murphy Central Park.

Eric Barna
Mayor

Owais Siddiqui
Mayor Pro Tem

Ben St. Clair
Deputy Mayor Pro Tem

Scott Bradley
Councilmember

Betty Spraggins
Councilmember

Bernard Grant
Councilmember

Rob Thomas
Councilmember

James Fisher
City Manager

- H. Consider and/or act on the application of Dowdey, Anderson and Associates, Inc. requesting approval of the Final Plat for **Maxwell Creek North, Phase 11A** on property zoned PD (Planned Development) District for Single Family Uses (Ordinance No. 00-06-487).

7. INDIVIDUAL CONSIDERATION

- A. Hold a public hearing on the proposed tax rate of \$0.5700 per \$100 valuation.
- B. Hold a public hearing on the proposed fiscal year 2013-2014 City of Murphy budget.
- C. Consider and/or act upon a recommendation by the City Manager regarding the appointment of an auditing firm to perform the annual audit for FY2013 and authorizing the City Manager to negotiate a contract for services.
- D. Consider and take action, if any, on the request by Plano Sports Authority to waive the permit fees for PSA Murphy.
- E. Discuss and take action, if any, on an Ordinance addressing traffic calming measures, including the possible closure, of Moonlight Drive and/or Grant Road.
- F. Discuss City of Murphy watering fines.
- G. Consider, and/or act, on Board and Commission appointments, including establishing an interview panel comprised of three council members.
- H. Consider and/or act upon Ethics Review Commission recommendations:
 - 1. A proposed resolution establishing the Rules and Procedures for the City of Murphy Ethics Commission
 - 2. A proposed ordinance amending Chapter 2, Article IX of the Code of Ordinances entitled Code of Ethics.

8. CITY MANAGER/STAFF REPORTS

North Murphy Road Construction Update
Murphy Central Park Construction Update
ONCOR Hike and Bike Trail and Executive Visit
Update on West Nile Virus cases in surrounding cities
Maize Days – September 28, 2013

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:

- A. § 551.071 Consultation with City Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules

of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings act regarding:

1. Zoning and subdivision regulation issues involving the Ranch/Gables subdivisions;
 2. Traffic calming policies and measures;
 3. Claim against the City for sewer repairs at 415 Moonlight Dr; and,
 4. Personnel matters involving the City Manager.
- B. § 551.087. Deliberation regarding economic development negotiations (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).
- C. §551.074 Deliberation regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the City Manager or to hear a complaint or charge against the City Manager.

10. RECONVENE INTO REGULAR SESSION

The City Council will reconvene into Open Session pursuant to the provisions of Chapter 551, Subchapter D, Texas Government Code, in accordance with the authority contained in:

- A. § 551.071 Consultation with City Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings act regarding:
 1. Zoning and subdivision regulation issues involving the Ranch/Gables subdivisions;
 2. Traffic calming policies and measures;
 3. Claim against the City for sewer repairs at 415 Moonlight Dr; and,
 4. Personnel matters involving the City Manager.
- B. § 551.087. Deliberation regarding economic development negotiations (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).
- C. §551.074 Deliberation regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the City Manager or to hear a complaint or charge against the City Manager.

D. Consider and or act upon any executive session items.

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 August 16, 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.

Notice of Possible Quorum: There may be a quorum of the 4B Community Development Corporation, the Animal Shelter Advisory Committee, the Board of Adjustment, the Building and Fire Code Appeals Board, the Ethics Review Commission the Murphy Municipal Development District Board, the Park and Recreation Board and/or the Planning and Zoning Commission may be present at the meeting, but they will not deliberate on any city business.

**CITY COUNCIL MINUTES
AUGUST 2, 2013 SPECIAL CALLED MEETING**

1. CALL TO ORDER

Mayor Barna called the meeting to order at 6:30 p.m.

2. ROLL CALL & CERTIFICATION OF A QUORUM

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

Mayor Eric Barna
 Mayor Pro Tem Owais Siddiqui
 Deputy Mayor Pro Tem Ben St. Clair
 Councilmember Scott Bradley
 Councilmember Betty Nichols Spraggins
 Councilmember Bernard Grant
 Councilmember Rob Thomas

Councilmembers absent:
 None

3. EXECUTIVE SESSION

The City Council convened into Executive Session at 6:31 p.m. pursuant to the provisions of Chapter 551, Subchapter D, Texas Government Code, in accordance with the authority contained in:

§551.071 Consultation with the City Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act regarding contemplated or pending litigation or matters where legal advice is requested of the City Attorney on personnel matters regarding the City Manager.

§551.074 Deliberations regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the City Manager or to hear a complaint or charge against the City Manager.

4. RECONVENE INTO REGULAR SESSION

The City Council reconvened into Open Session at 7:26 p.m. pursuant to the provisions of Chapter 551, Subchapter D, Texas Government Code, in accordance with the authority contained in:

551.071 Consultation with the City Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act regarding contemplated or pending litigation or matters where legal advice is requested of the City Attorney on personnel matters regarding the City Manager.

§551.074 Deliberations regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the City Manager or to hear a complaint or charge against the City Manager.

A. Consider and act upon any executive session items.

COUNCIL ACTION (4.A.):

ADMINISTRATIVE LEAVE

Councilmember Bradley moved to authorize the Mayor to oversee completion of documents necessary to follow procedures in the Personnel Policy and Procedures Manual for administrative leave during personnel investigations. Councilmember Grant seconded the motion. For: Unanimous. The motion carried by a vote of 7 to 0.

- B. Consider and act upon who will conduct an impartial investigation of complaint or charge against the City Manager.

COUNCIL ACTION (4.B.):

EXECUTE AGREEMENT

Councilmember Bradley moved to authorize the Mayor to execute an engagement agreement for up to \$10,000 with the Law Firm of Strasburger to provide independent investigative services and advice related to the personnel complaint. Councilmember Grant seconded the motion. For: Unanimous. The motion carried by a vote of 7 to 0.

5. ADJOURNMENT

With no further business, the meeting was adjourned at 7:28 p.m.

APPROVED BY:

Eric Barna, Mayor

ATTEST:

Kristi Gilbert, City Secretary

CITY COUNCIL MINUTES
AUGUST 6, 2013 REGULAR CITY COUNCIL MEETING

1. CALL TO ORDER

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

2. INVOCATION & PLEDGE OF ALLEGIANCE

Mayor Barna 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 Eric Barna
Mayor Pro Tem Owais Siddiqui
Deputy Mayor Pro Tem Ben St. Clair
Councilmember Scott Bradley
Councilmember Betty Nichols Spraggins
Councilmember Bernard Grant
Councilmember Rob Thomas

Councilmembers absent:None

4. PUBLIC COMMENTS –

Robert Montgomery, 213 Crepe Myrtle Lane – Mr. Montgomery spoke to Council regarding his concerns related to the electronic message sign regulations.

5. PRESENTATION ITEMS –

- A. Parks Intern Stephanie Killam reviewed the Get Geocaching Challenge program to the Council. Ms. Killam presented the awards to the Get Geocaching Challenger Runner-Up the Heston Family and the Grand Prize winner the Bottlinger Family.
- B. Finance Director Linda Truitt presented the Council with FY 2013-2014 Budget. The presentation included the certified values, average single family home value, the effective rate and the rollback rate.

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 July 16, 2013 Regular Meeting minutes.
- B. Consider and/or act on the Final Plat Application for **Murphy Medical Center Addition** on property zoned PD (Planned Development) District No. 08-11-771 for Office Uses. This property is located at 615 W. FM 544.

COUNCIL ACTION (6.A -6.B.):

APPROVED

Mayor Pro Tem Siddiqui moved to approve the consent agenda as presented. Deputy Mayor Pro Tem St. Clair seconded the motion. For: Unanimous. The motion carried by a vote of 7 to 0.

7. INDIVIDUAL CONSIDERATION

- A. Hold a public hearing and consider and/or act on the application of the Wendy's Corporation, to re-plat Lot 2 - Block A – Walmart Addition on property zoned PD (Planned Development) District No. 12-02-905. This property is located at the northwest corner of FM 544 and Murphy Road.

Ms. Roberts presented staff comments.

Mayor Barna opened the public hearing at 6:26 p.m.

There were no public comments.

Mayor Barna closed the public hearing at 6:26 p.m.

COUNCIL ACTION (7.A.):

APPROVED

Mayor Pro Tem Siddiqui moved to approve the replat as submitted. Deputy Mayor Pro Tem St. Clair seconded the motion. For: Unanimous. The motion carried by a vote of 7 to 0.

- B. Hold a public hearing and consider and/or act on the application of the Walmart Real Estate Business Trust, to re-plat Lot 1 - Block A – Walmart Addition on property zoned PD (Planned Development) District No. 12-02-905. This property is located at the northwest corner of FM 544 and Murphy Road.

Ms. Roberts presented staff comments.

Mayor Barna opened the public hearing at 6:27 p.m.

There were no public comments.

Mayor Barna closed the public hearing at 6:27p.m.

COUNCIL ACTION (7.B.):

APPROVED

Councilmember Bradley moved to approve the replat as submitted. Mayor Pro Tem Siddiqui seconded the motion. For: Unanimous. The motion carried by a vote of 7 to 0.

- C. Consider and/or act on the application of **Masoud E. Najari and Jacquie Nguyen** requesting approval of a Site Plan, Landscape Plan and Building Elevations for Beacon Hill on property zoned NS (Neighborhood Services) located at the northwest corner of FM 544 and Heritage Parkway.

Ms. Roberts stated that the application had been submitted in February 2013 and stated that the Planning and Zoning Commission recommended approval with conditions to be read into the minutes. Ms. Roberts stated that off-street parking deficiencies could potentially limit the owner's ability to lease building space to uses other than office or small retail. Ms. Roberts

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stated that staff has communicated with the applicant that the City would oppose any applications for a median cut on FM 544. Ms. Roberts stated that staff would recommend approval with the following language being read into the minutes:

THE CITY OF MURPHY WILL HAVE NO RESPONSIBILITY TO MAINTAIN, REPAIR OR REPLACE THE PRIVATE SANITARY SEWER LINE WITHIN THE LIMITS OF THE APPLICANT'S PROPERTY. FURTHER, THE CITY OF MURPHY WILL NOT ENTER ONTO THE APPLICANT'S PROPERTY TO MAINTAIN, REPAIR OR REPLACE THE PRIVATE SANITARY SEWER LINE.

Councilmember Thomas expressed concerns regarding median cuts. Councilmember Nichols-Spraggins inquired as to what tenant would be occupying the space.

Bret Flory, Cross Architects, spoke on behalf of the applicants and stated that there were no current tenants

COUNCIL ACTION (7.C.):

APPROVED

Councilmember Bradley moved to approve the site plan, landscape plan and building elevations as proposed with the following contingencies: 1) Off-street parking deficiencies may limit the property owner's ability to lease space within the proposed development absent of a shared parking agreement or the provision of additional off-street parking; 2) The City of Murphy will continue to oppose any TXDOT submittal for a median cut and left turn lane to serve only this property; and, 3) In regards to the sanitary sewer easement: THE CITY OF MURPHY WILL HAVE NO RESPONSIBILITY TO MAINTAIN, REPAIR OR REPLACE THE PRIVATE SANITARY SEWER LINE WITHIN THE LIMITS OF THE APPLICANT'S PROPERTY. FURTHER, THE CITY OF MURPHY WILL NOT ENTER ONTO THE APPLICANT'S PROPERTY TO MAINTAIN, REPAIR OR REPLACE THE PRIVATE SANITARY SEWER LINE. Mayor Pro Tem Siddiqui seconded the motion. For: Barna, Siddiqui, St. Clair, Bradley, Nichols-Spraggins and Grant. Opposed: Thomas. The motion carried by a vote of 6 to 1.

- D. Consider and/or act on the application of **Masoud E. Najari and Jacquie Nguyen** requesting approval of a Construction Plat for Beacon Hill on property zoned NS (Neighborhood Services) located at the northwest corner of FM 544 and Heritage Parkway.

COUNCIL ACTION (7.D.):

APPROVED

Councilmember Bradley moved to approve the construction plat and associated documents with the following contingencies: 1) Off-street parking deficiencies may limit the property owner's ability to lease space within the proposed development absent of a shared parking agreement or the provision of additional off-street parking; 2) The City of Murphy will continue to oppose any TXDOT submittal for a median cut and left turn lane to serve only this property; and, 3) In regards to the sanitary sewer easement: THE CITY OF MURPHY WILL HAVE NO RESPONSIBILITY TO MAINTAIN, REPAIR OR REPLACE THE PRIVATE SANITARY SEWER LINE WITHIN THE LIMITS OF THE APPLICANT'S PROPERTY. FURTHER, THE CITY OF MURPHY WILL NOT ENTER ONTO THE APPLICANT'S PROPERTY TO MAINTAIN, REPAIR OR REPLACE THE PRIVATE SANITARY SEWER LINE. Mayor Pro Tem Siddiqui seconded the motion. For: Barna, Siddiqui, St. Clair, Bradley, Nichols-Spraggins and Grant. Opposed: Thomas. The motion carried by a vote of 6 to 1.

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- E. Consider and/or act upon Resolution approving the 2013 appraisal roll with a taxable value of \$1,614,305,560 as certified by Bo Daffin, Chief Appraiser of the Collin Central Appraisal District, and a protested taxable property value of \$24,392,305 under review by the Appraisal Review Board.

COUNCIL ACTION (7.E.):**APPROVED**

Councilmember Bradley moved to a Resolution approving the 2013 appraisal roll with a taxable value of \$1,614,305,560 as certified by Bo Daffin, Chief Appraiser of the Collin Central Appraisal District, and a protested taxable property value of \$24,392,305 under review by the Appraisal Review Board. Mayor Pro Tem Siddiqui seconded the motion. For: Unanimous. The motion carried by a vote of 7 to 0. *(Assigned Resolution No. 13-R-774)*

- F. Consider and/or act upon a resolution establishing two dates, August 20, 2013 and September 3, 2013, at 6 pm, to conduct a Public Hearing on the City of Murphy proposed tax rate of \$0.5700 per \$100 valuation and establishing two dates, August 20, 2013 and September 3, 2013 at 6 pm, for a Public Hearing on for the proposed 2013-2014 municipal budget.

COUNCIL ACTION (7.F.):**APPROVED**

Mayor Pro Tem Siddiqui moved to establish two dates, August 20, 2013 and September 3, 2013, at 6 pm, to conduct a Public Hearing on the City of Murphy proposed tax rate of \$0.5700 per \$100 valuation and establishing two dates, August 20, 2013 and September 3, 2013 at 6 pm, for a Public Hearing on for the proposed 2013-2014 municipal budget. Deputy Mayor Pro Tem St. Clair seconded the motion.

Mayor Barna:	Aye
Mayor Pro Tem Siddiqui:	Aye
Deputy Mayor Pro Tem Ct. Clair	Aye
Councilmember Bradley	Aye
Councilmember Nichols-Spraggins	Aye
Councilmember Grant	Aye
Councilmember Thomas	Aye

For: Unanimous. The motion carried by a vote of 7 to 0. *(Assigned Resolution No. 13-R-775)*

- G. Discuss and take action, if any, on the proposed Animal Shelter Project, to include approving the Bid Spec Documents and Architectural/Building Plans and authorize staff to put the project out for bid.

Beverly Mueller, 1030 Westminster Ave – Ms. Mueller stated that she was speaking on a personal basis and encouraged Council to approve the building design and authorize going out for bids. Ms. Mueller encouraged one of the Councilmembers to sit on the Animal Shelter Committee.

COUNCIL ACTION (7.G.):**APPROVED**

Councilmember Grant moved to accept the Bid Spec Documents and Architectural/Building Plans for the Animal Shelter and authorize staff to put the project out for bid. Councilmember Nichols-Spraggins seconded the motion. For: Unanimous. The motion carried by a vote of 7 to 0.

- H. Consider and/or act upon Ethics Review Commission recommendations:
1. A proposed resolution establishing the Rules and Procedures for the City of Murphy Ethics Commission
 2. A proposed ordinance amending Chapter 2, Article IX of the Code of Ordinances entitled Code of Ethics.

COUNCIL ACTION (7.H.):**POSTPONE**

Mayor Barna asked that the item be postponed until the August 20, 2013 meeting.

Councilmember Bradley moved to table Item 7H until the August 20, 2013 meeting. Councilmember Nichols-Spraggins seconded the motion. For: Unanimous. The motion carried by a vote of 7 to 0.

EXECUTIVE SESSION

The City Council convened into Executive Session at 6:53 p.m. pursuant to the provisions of Chapter 551, Subchapter D, Texas Government Code, in accordance with the authority contained in:

- A. § 551.071 Consultation with City Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings act regarding:
 1. Zoning and subdivision regulation issues involving the Ranch/ Gables subdivisions;
 2. Traffic calming policies and measures; and,
 3. Personnel matters involving the City Manager.
- B. § 551.087. Deliberation regarding economic development negotiations (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).
- C. § 551.072. Deliberation regarding the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.
- D. §551.074 Deliberation regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the City Manager or to hear a complaint or charge against the City Manager.

RECONVENE INTO REGULAR SESSION

The City Council reconvened into Open Session at 7:50 p.m. pursuant to the provisions of Chapter 551, Subchapter D, Texas Government Code, in accordance with the authority contained in:

MURPHY CITY COUNCIL MINUTES
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- A. § 551.071. Consultation with City Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings act regarding:
1. Zoning and subdivision regulation issues involving the Ranch/ Gables subdivisions;
 2. Traffic calming policies and measures; and,
 3. Personnel matters involving the City Manager.
- B. § 551.087. Deliberation regarding economic development negotiations (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).
- C. § 551.072. Deliberation regarding the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.
- D. §551.074 Deliberation regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the City Manager or to hear a complaint or charge against the City Manager.
- E. Consider and or act upon any executive session items.

No action was taken as a result of executive session items.

- I. Discuss and take action, if any, on implementing traffic calming measures, including the possible closure, of Moonlight Drive and/or Grant Road.

Linda Martin, 142 Moonlight Drive – Ms. Martin stated that she was also speaking on behalf of Greg and Julie Matocha. Ms. Martin expressed her concerns regarding the speed and volume issues on Moonlight Drive.

Don Kirschner, 416 Skyline Drive – Mr. Kirschner stated that the Moonlight issue was not created by current Council or staff. Mr. Kirschner stated he had no problem

COUNCIL ACTION (7.I.):

APPROVED

Councilmember Thomas moved that the City Council direct the City Attorney to prepare an ordinance to close Grant Drive and the City boundary and to work with the City Engineer to prepare a plan to achieve closure. Councilmember Grant seconded the motion. For: Barna, Siddiqui, St. Clair, Bradley, Grant and Thomas. Opposed: Nichols-Spraggins. The motion carried by a vote of 6 to 1.

8. CITY MANAGER/STAFF REPORTS

Chief Cox provided the Council with an update on the following items:

North Murphy Road Construction Update
Murphy Central Park Construction Update
Maize Days – September 28, 2013

9. ADJOURNMENT

With no further business, the meeting was adjourned at 8:01 p.m.

APPROVED BY:

Eric Barna, Mayor

ATTEST:

Kristi Gilbert, City Secretary

**CITY COUNCIL MINUTES
AUGUST 8, 2013 SPECIAL CALLED MEETING**

1. CALL TO ORDER

Mayor Barna called the meeting to order at 6:15 p.m.

2. ROLL CALL & CERTIFICATION OF A QUORUM

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

Mayor Eric Barna
Mayor Pro Tem Owais Siddiqui
Deputy Mayor Pro Tem Ben St. Clair
Councilmember Scott Bradley
Councilmember Betty Nichols Spraggins
Councilmember Bernard Grant
Councilmember Rob Thomas

Councilmembers absent: None

3. EXECUTIVE SESSION

The City Council convened into Executive Session at 6:16 p.m. pursuant to the provisions of Chapter 551, Subchapter D, Texas Government Code, in accordance with the authority contained in:

§551.071 Consultation with the City Attorney and special counsel on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act regarding contemplated or pending litigation or matters where legal advice is requested of the City Attorney on personnel matters regarding the City Manager.

§551.074 Deliberations regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the City Manager or to hear a complaint or charge against the City Manager.

4. RECONVENE INTO REGULAR SESSION

The City Council reconvened into Open Session at 8:16 p.m. pursuant to the provisions of Chapter 551, Subchapter D, Texas Government Code, in accordance with the authority contained in:

§551.071 Consultation with the City Attorney and special counsel on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act regarding contemplated or pending litigation or matters where legal advice is requested of the City Attorney on personnel matters regarding the City Manager.

§551.074 Deliberations regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the City Manager or to hear a complaint or charge against the City Manager.

A. Consider and act upon any executive session items.

B. Consider and act upon results of an impartial investigation of complaint or charge against the City Manager.

COUNCIL ACTION (4.A.):

Councilmember Thomas moved to approve Police Chief GM Cox as interim acting City Manager. Councilmember Nichols-Spraggins seconded the motion. For: Unanimous. The motion carried by a vote of 7 to 0.

5. ADJOURNMENT

With no further business, the meeting was adjourned at 8:16 p.m.

APPROVED BY:

Eric Barna, Mayor

ATTEST:

Kristi Gilbert, City Secretary

Issue

Consider and/or act upon proposed resolution authorizing the City Manager to renew the Interlocal Agreement between the City of Murphy and the City of Plano for City of Murphy employees for employee training.

Background

Training programs are a very important aspect of employee retention and development. By offering effective training programs for all levels of employees, organizations are not only promoting personal and professional development, they are also investing time and money in the employees that will hopefully result in increased commitment and reduced turnover and absenteeism rates.

The City of Plano is well known for its Professional Development Center that offers city employees a variety of training classes and programs, from a very in-depth six month onboarding program for new employees to its very successful 21st Century Leadership Program, a six month training program for supervisors and supervisors-to-be. In order to more effectively serve the citizens while also providing growth opportunities for the employees, the City of Murphy would like to continue our Interlocal Agreement that will allow our employees to participate in training programs offered by Plano's Professional Development Center. The training ILA has been in place since October 2009. The current Agreement shall last one year starting October 1, 2013 and ending September 30, 2014 with the opportunity to extend the term by two (2) additional twelve (12) month periods by giving written notice to Plano.

Financial Considerations

The staff at the City of Plano has proposed to offer their training classes and programs to the City of Murphy at a very affordable price when compared to similar programs offered by professional training organizations. Class and program costs range from \$30 to \$250 for single classes as well as series of courses. In addition to sending employees to Professional Development classes based on training needs, we would like to continue sending winners of our Rising Star award to the Leadership for the 21st Century supervisor program that runs from April through September each year. The cost is \$2,000 per person. Training money is budgeted within the Administration training budget as well as departmental training budgets that can be used for these classes throughout the year.

Other Considerations

N/A

Board/Staff Recommendation

Staff recommends approval.

Attachments

- 1) Resolution
- 2) ILA with City of Plano for Training Servies

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MURPHY, COLLIN COUNTY, TEXAS, AUTHORIZING FOR EMPLOYEE TRAINING BETWEEN THE CITY OF MURPHY, TEXAS AND THE CITY OF PLANO, TEXAS.

WHEREAS, The City of Murphy, Texas desires to enter into an Interlocal Agreement with the City of Plano, Texas to provide employee training services pursuant to the terms in the agreement attached hereto as *Exhibit A*; and

WHEREAS, the participants are authorized by the Interlocal Cooperation Act, V.T.C.A. Government Code, Chapter 791, to enter into joint contracts and agreements for the performance of governmental functions and services.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Murphy that,

the City approves the Interlocal Agreement with the City of Plano to enter into the Interlocal Agreement for Employee Training Services with an effective date of October 1, 2013 and ending on September 30, 2014 with the option to extend the agreement by two (2) additional twelve (12) month periods by giving written notice to Plano.

PASSED AND APPROVED by the City Council of the City of Murphy this 20th day of August, 2013.

APPROVED:

Eric Barna, Mayor

ATTEST:

Kristi Gilbert, City Secretary

**INTERLOCAL AGREEMENT BY AND BETWEEN
THE CITY OF PLANO, TEXAS AND THE CITY OF MURPHY, TEXAS
FOR CITY OF MURPHY EMPLOYEES TO PARTICIPATE IN PLANO PROGRAM
2013-268-I**

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "Plano", and the **CITY OF MURPHY, TEXAS**, a Home-Rule Municipal Corporation hereinafter referred to as "Murphy", as follows:

WITNESSETH:

WHEREAS, Plano and Murphy are political subdivisions within the meaning of Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended (the "Act"); and

WHEREAS, the Act provides authority for entities such as Plano and Murphy to enter into interlocal agreements with each other to perform governmental functions and services as set forth in the Act; and

WHEREAS, City of Plano Professional Development Center offers Business Productivity education courses ("Program") and desires to offer the Program to Murphy employees; and

WHEREAS, Murphy desires to offer its employees the opportunity to attend the Program taught by the City of Plano. The classes in the Program are as shown on the City of Plano Scope of Services, attached hereto and marked **Exhibit "A"**; and

WHEREAS, Murphy has current revenues available to satisfy the fees and/or expenses incurred pursuant to this Agreement; and

NOW, THEREFORE, Plano and Murphy, for and in consideration of the recitals set forth above and terms and conditions below, agree as follows:

**I.
TERM**

This Agreement shall commence on October 1, 2013 and end on September 30, 2014. Murphy shall have the right and option to extend the term hereof by two (2) additional twelve (12) month periods by giving written notice to Plano.

**II.
THE PROGRAM**

The parties agree that Plano shall offer the courses as identified in **Exhibit "A"** attached hereto and incorporated herein by reference. The parties understand and agree that any deviations or modifications in the terms of the Agreement may be authorized from time to time, but said authorization must be made in writing.

III. ROLES AND GENERAL RESPONSIBILITIES OF THE PARTIES

1. Murphy shall designate a program liaison who will manage program details and work with the Plano's program manager in content and logistics planning. Murphy shall provide Plano with required student-employee information for the purpose of registration and documentation. Murphy shall also provide appropriate training facilities and all reasonably necessary equipment, including AV equipment, for any session that is presented within the boundaries of the City of Murphy.

2. Plano shall provide curriculum design, program delivery, assembly of program materials, development of materials for participants, and a program manager to work with Murphy.

IV. CONSIDERATION / FEES

A. Murphy shall pay Plano according to the terms set out in **Exhibit "A"** attached hereto and made a part hereof. Payment shall be made within 30 days of receipt of invoice for services provided. Murphy will pay for the fees and/or expenses incurred pursuant to this Agreement from its current available revenues. Any renewal will be subject to Murphy having the revenues available for that contract term.

B. Plano recognizes that this Agreement shall commence upon the effective date herein and continue in full force and effect until termination in accordance with its provisions.

V. TERMINATION

Either party may terminate this Agreement at any time without cause or penalty by giving thirty (30) days advance written notice. Murphy shall pay all fees and costs, if any, incurred by Plano pursuant to this Agreement through the effective date of termination.

VI. RELEASE AND HOLD HARMLESS

Plano, to the extent authorized under the constitution and laws of the State of Texas, agrees to be responsible for its own acts of negligence and Murphy, to the extent allowed by law and without waiving any rights or protections provided therein, agrees to be responsible for its own acts of negligence which may arise in connection with any and all claims for damages, cost, and expenses to person or persons and property that may arise out of or be occasioned by this Agreement.

In the event of joint and concurrent negligence, Murphy and Plano agree that responsibility shall be apportioned comparatively. This obligation shall be construed for the benefit of the parties hereto, and not for the benefit of any third parties, nor to create liability for the benefit of any third parties, nor to deprive the parties hereto of any defenses each may have as against third parties under the laws and court decisions of the State of Texas.

VII. NOTICE

Any notice provided under this Agreement shall be delivered by mail or personal service to the parties named below:

City of Murphy Representative:

Stacy Buckley
Human Resources Manager
City of Murphy
206 N Murphy Road
Murphy, Texas 75094
T 972-468-4018

City of Plano Representative:

Daryll McCarthy
Human Resources Training Manager
City of Plano
1520 Avenue K
Plano, Texas 75074
T 972-941-5216

VIII. AUTHORITY TO SIGN/CITY COUNCIL AUTHORIZATION

The undersigned officer and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto. Plano has executed this Agreement pursuant to duly authorized action of the Plano City Council. Murphy has executed this Agreement pursuant to the authority granted by its governing body. Each of the parties shall provide written documentation evidencing the grant of approval by its respective governing body.

IX. SEVERABILITY

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Agreement. However, upon the occurrence of such event, either party may terminate this Agreement by giving the other party thirty (30) days written notice.

X. VENUE

This Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. The parties agree that this Agreement shall be enforceable in Collin County, Texas, and, if legal action is necessary, exclusive venue shall lie in Collin County, Texas.

XI. INTERPRETATION OF AGREEMENT

Although this Agreement is drafted by Plano, this is a negotiated document. Should any part of this Agreement be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

**XII.
REMEDIES**

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one (1) or more instances of forbearance by either party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

**XIII.
SUCCESSORS AND ASSIGNS**

The parties each bind themselves, their respective successors, executors, administrators and assigns to the other party to this contract. Neither party will assign, sublet, subcontract or transfer any interest in this Agreement without the prior written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement by signing below.

CITY OF MURPHY, TEXAS

Date: _____

By: _____
Name: James Fisher
Title: CITY MANAGER

APPROVED AS TO FORM:

Andy Messer, CITY ATTORNEY

CITY OF PLANO, TEXAS

Date: _____

By: _____
Diane Palmer-Boeck
PURCHASING MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2013, by **JAMES FISHER**, City Manager, of **CITY OF MURPHY, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2013, by **DIANE PALMER-BOECK**, Purchasing Manager, of **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

Exhibit A

Scope of Services

Training classes to be available to the City of Murphy employees include:

Leadership
Management
Customer Service
Diversity
Desktop Computing
Professional Development

Class pricing per employee will be as follows:

Half day class = \$65.00
Full day class = \$110.00
2 hour class = \$35.00

Special Courses:

Conflict Mediation 40 hour certification course. \$300.00 plus manual cost of \$35.00.

Six month Leadership for the 21st Century = \$1,650.00

7 Habits = \$285.00 plus manual cost of \$125.00

Cancellation Policy:

Class enrollment may be cancelled without billing, by providing 3 business days notification prior to the start of the class. No shows will be billed.

City Council Meeting
August 20, 2013

Issue

Consider and/or act upon authorizing the city manager to sign an agreement with Collin County for the provision of firefighting and fire protection services.

Staff Resource/Department

Mark Lee/Fire Department

Key Focus Area

Public Safety – meeting the expectation of the community. This agreement provides fire and emergency medical assistance in the Murphy Extra Territorial Jurisdiction (ETJ). The agreement establishes a method to pay for that response and protection.

Summary

The City of Murphy fire department has been a participating agency with the Collin County Firefighters Association to provide emergency response into the Murphy ETJ areas. The previous funding model was based upon calls made into the county portion of the assigned fire district. The proposed agreement changes that to be a fire protection agreement instead of the emergency response agreement of previous.

The proposed agreement is based upon population and area of unincorporated property in the county. Then this number is applied to the number of people, and acres protected by Murphy and is to be made in semi-annual installments.

Background/History

The City of Murphy has not submitted runs in the county for payment in the five most recent years. Therefore, there has been no revenue nor reimbursement for services rendered in the county. The City of Murphy has also moved forward with annexation of some of the ETJ. As this changes, Collin County Appraisal District will re-evaluate the unincorporated fire district and base the payments off the most current data in their records.

Financial Considerations

Anticipated revenue for this protection is approximately \$800 per year to be made in two payments.

Other Considerations

N/A

Action Requested

Authorize the city manager to sign an agreement with Collin County for the provision of firefighting and fire protection services.

Attachments

- 1) Agreement for the Provision of Firefighting and Fire Protection Services

COUNTY OF COLLIN §
 §

AGREEMENT FOR THE PROVISION OF FIREFIGHTING AND FIRE PROTECTION SERVICES

Pursuant to the authority granted by Texas Local Government Code, Chapter 352, Collin County, Texas, a political subdivision of the State of Texas (hereinafter referred to as “COUNTY”) and Murphy Fire Department (hereinafter referred to as “AGENCY”), (and jointly referred to as “Parties”) in consideration of the premises and mutual promises contained herein, agree as follows:

RECITALS

WHEREAS, the COUNTY is a duly organized political subdivision of the State of Texas engaged in the administration of county government and related services for the benefit of the residents of Collin County, Texas; and

WHEREAS, AGENCY is a municipal corporation or nonprofit corporation, duly organized and operating under the laws of the State of Texas and engaged in the provision of fire protection and firefighting services and related services; and

WHEREAS, AGENCY is the owner and operator of certain fire protection vehicles, fire suppression equipment and other equipment designed for the extinguishing of fire and prevention of damage to property and injury to persons from fire and works with or employs trained personnel whose duties are related to the use of such vehicles and equipment; and

WHEREAS, COUNTY desires to obtain firefighting and fire protection services from AGENCY for the benefit of an area of the county that is located outside the municipalities in the County; and

WHEREAS, COUNTY and AGENCY mutually desire that AGENCY should continue to provide firefighting and fire protection services to the citizens of AGENCY’S assigned fire district that is located outside the municipalities in the County; and

NOW, THEREFORE, in consideration of the above recitals, the mutual promises that follow and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

I. Incorporation of Recitals. The above recitals, having been found by the Parties to be true and correct in all respects are incorporated into this Agreement by reference.

II. Obligations and Responsibilities of AGENCY

2.1 AGENCY shall provide firefighting services, fire protection services, and related services within its fire district as assigned by Collin County. A map of the fire district assigned to AGENCY by Collin County is appended hereto as "Exhibit A" and is incorporated with this Agreement for all purposes.

2.2 AGENCY shall maintain records of response to emergency calls, including but not limited to date, time, location of emergency, type of emergency, time to respond, and results. AGENCY shall provide up-to-date response data to COUNTY within 30 days of request by COUNTY.

2.3 AGENCY agrees to respond to the Collin County Fire Marshall requests for information and will use best efforts to work with the Collin County Fire Marshall to cooperate and coordinate firefighting and fire protection activities.

2.4 If AGENCY is a nonprofit corporation, AGENCY agrees to maintain its corporate status in good standing with all federal, state, and local rules and regulations applicable to a non-profit corporation. AGENCY shall notify COUNTY if its corporate authority is canceled, terminated, or otherwise lapses.

2.5 AGENCY warrants and promises that it will respond to emergency calls with appropriate equipment and sufficient trained personnel as needed to appropriately address the emergency situation. AGENCY further warrants and promises that it will mandate appropriate training of all personnel and ensure proper certification of all firefighter staff.

2.6 AGENCY warrants and promises that it shall maintain general liability insurance in amounts as are reasonable and customary for firefighting agencies similar to AGENCY. AGENCY shall add Collin County as an additional insured to AGENCY's liability insurance. AGENCY shall provide proof of liability insurance to COUNTY at the beginning of each term of this Agreement and upon request by Collin County.

III. Obligations and Responsibilities of COUNTY.

3.1 COUNTY shall pay a yearly fee to AGENCY according to the following formulas: (1) \$750,000 divided by the total number of persons living in COUNTY's unincorporated areas, as computed by the COUNTY's GIS Department, multiplied by the specific population of the unincorporated area of the AGENCY's fire district as assigned by Collin County; and (2) \$200,000 divided by the total square miles of COUNTY's unincorporated area multiplied by the total square miles of the unincorporated area of the AGENCY's fire district as assigned by Collin County.

3.2 COUNTY shall pay the yearly fee calculated under the formula stated in paragraph 3.1 in semi-annual installments to AGENCY. The first payment to be paid within a reasonable time after COUNTY has approved said fees in COUNTY's yearly budget adopted in September of each year, and the second installment to be paid six months after the first payment to AGENCY. In accordance with Texas Local

Government Code chapter 352, such payments will be made from COUNTY's general fund.

3.3 COUNTY will recalculate the payment formula stated in paragraph 3.1 each year during the term of this Agreement, including each renewal term. The formula stated in paragraph 3.1 is not a guarantee of any specific payment and AGENCY acknowledges that any payments are subject to budgeted appropriations approved by COUNTY's governing board.

IV. Effective Date, Term and Termination.

4.1 The effective date of this Agreement shall be the 1st day of October, 2013, ("Effective Date"), regardless of when this Agreement is executed by the Parties' authorized representatives.

4.2 The term of this Agreement shall begin on the Effective Date, and shall continue for an initial term of one year. This Agreement shall automatically renew for successive one year terms unless the Agreement is terminated or cancelled by either Party as provided by this Agreement.

4.3 Either Party may terminate this Agreement, with or without cause, before the end of the then current term by providing the other Party with thirty (30) days written notice of termination. In the event of termination under this section, COUNTY and AGENCY agree to pay for or reimburse the other Party for overpayment or under payment to the termination date.

4.4 **Nonappropriation.** Notwithstanding paragraph 4.3, if sufficient funds are not appropriated by COUNTY to fund this Agreement in any fiscal year an event of nonappropriation shall be deemed to have occurred and the Agreement shall automatically terminate upon the last date of the term of the Agreement for which funds budgeted for this Agreement have been appropriated. In no event shall COUNTY be obligated to make any payments under this Agreement beyond the then current fiscal year of COUNTY for which funds have been appropriated to satisfy its payment obligations under this Agreement.

V. Miscellaneous

5.1 **Notices.** Any notice required under this Agreement shall be sent to the following:

To COUNTY:
Collin County, Texas
Attn: County Judge, Keith Self
2300 Bloomdale Rd.
McKinney, TX 75071

To AGENCY:
Murphy Fire Department
Attn: Fire Chief, Mark Lee
206 N. Murphy Rd.
Murphy, TX 75094

5.2 Authority and Enforceability. The Parties represent and warrant that this Agreement has been approved and or adopted by the Parties' authorized representatives and that the individual executing this Agreement on behalf of each Party has been duly authorized to do so. Each Party acknowledges and agrees that this Agreement is binding upon such Party and enforceable against such Party in accordance with its terms and conditions.

5.3 Entire Agreement; Severability. This Agreement contains the entire agreement between the Parties and this Agreement supersedes any prior oral or written understandings and agreements. This Agreement shall not be modified or amended except in writing signed by the Parties. The invalidity, in whole or in part, of any paragraph of this Agreement shall not affect the validity of the remainder of the Agreement or paragraph.

5.4 Governing Law. This Agreement shall be governed by the laws of Texas. Any litigation in any way relating to this Agreement shall be brought in State court in Collin County, Texas.

5.5 Non Waiver. Any failure by a Party to insist upon strict performance by another Party of any material provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

5.6 No Third Party Beneficiaries. This Agreement only inures to the benefit of, and may only be enforced by, the Parties. No other person or entity shall have any right, title, or interest under this Agreement or otherwise be deemed to be a third-party beneficiary of this Agreement.

5.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

5.8 Further Documents. Each Party shall, upon request of the other Party, execute and deliver such further documents and perform such further acts as may reasonably be requested to effectuate the terms of this Agreement and achieve the intent of the Parties.

5.9 Dispute Resolution. The Parties agree to use alternative dispute resolution, including mediation to resolve any conflicts which may arise under this Agreement.

5.10 Authority. The undersigned officers of the Parties by executing said document, acknowledge that they and/or their respective governing bodies have reviewed and approved this Agreement in full compliance with their respective bylaws, policies and the

laws of the State of Texas. The persons executing this Agreement represent and warrant they possess the requisite authority to do so on behalf of the persons and entities set forth below.

In WITNESS WHEREOF; the parties hereto have executed this Agreement in multiple counterparts, each of which shall be deemed an original on the dates reflected below.

COUNTY

AGENCY

Collin County, Texas

County Judge, Keith Self
Acting on behalf and by Authority
Of the Collin County Commissioners

Name

Title

Date

Date

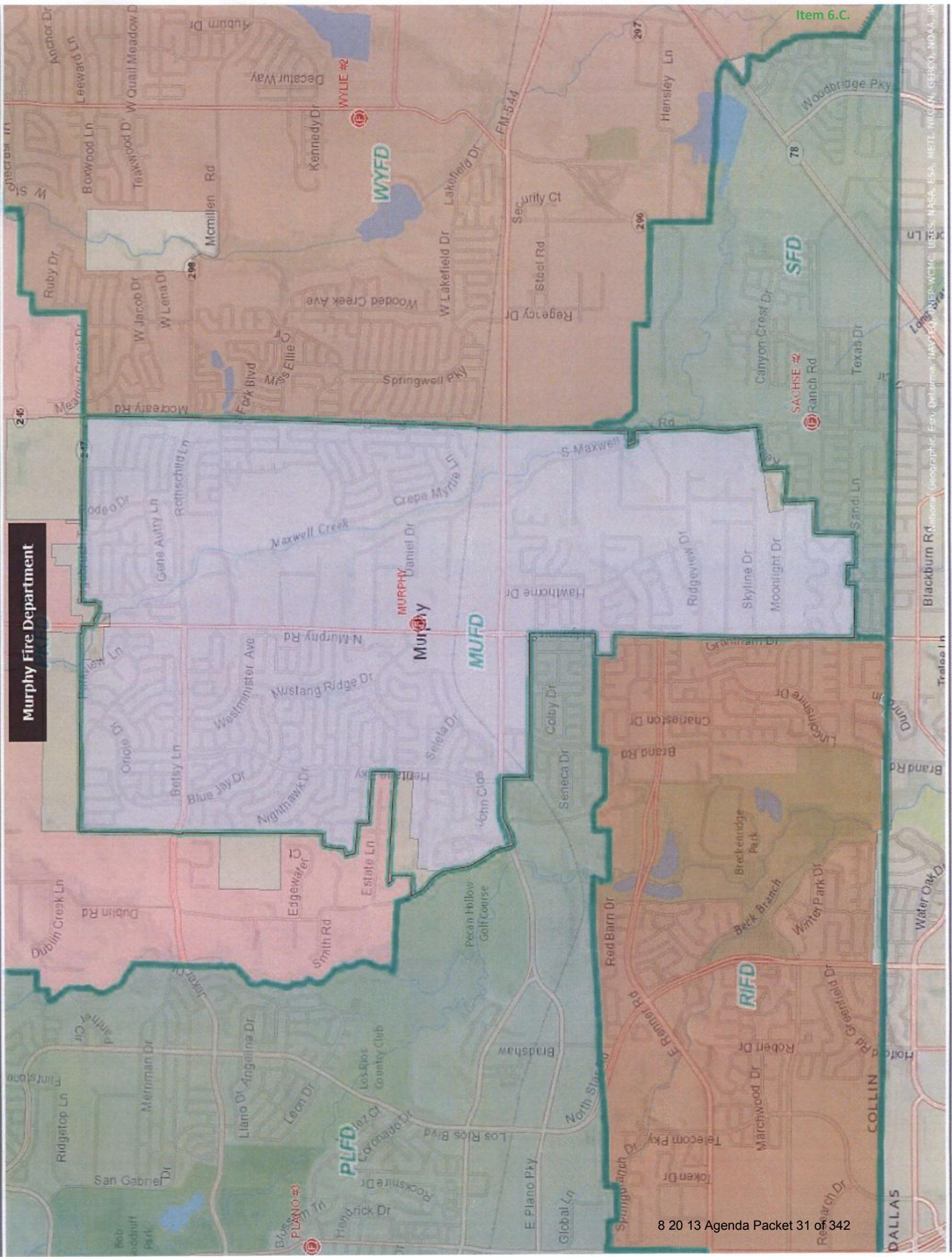
ATTEST:

ATTEST:

Stacey Kemp, County Clerk

EXHIBIT A
MAP OF AGENCY FIRE DISTRICT

Murphy Fire Department



Issue

Consider and take action, if any, on authorizing the city manager/acting city manager to execute the NCTCOG E9-1-1 and equipment Interlocal Agreement.

Background

This is a routine, ministerial process. The agreement is required for the continued operation of the 9-1-1 system that includes our Public Service Answering Point (PSAP).

We have a very short window for returning the signed documents to NCTCOG – August 31, 2013.

Again, this is a routine matter.

Financial Considerations

No financial impacts to the City are expected. The Commission on State Emergency Communications is the funding authority for the designated services.

Other Considerations

None.

Attachments

NCTCOG E9-1-1 ILA

Board/Staff Recommendation

Staff recommends approving the ILA and authorizing the city manager or the acting city manager to sign the ILA.

Chief G. M. Cox and Kim Parker, Support Services Manager

Submitted By

**INTERLOCAL AGREEMENT BETWEEN THE
NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS AND
CITY OF MURPHY
FOR E9-1-1 SERVICE, AND EQUIPMENT**

Article 1: Parties & Purpose

- 1.86 The North Central Texas Council of Governments (hereafter NCTCOG) is a regional planning commission and political subdivision of the State of Texas organized and operating under the Texas Regional Planning Act of 1965, as amended, chapter 391 of the Local Government Code. NCTCOG has developed a Strategic Plan (Plan) to establish and maintain 9-1-1 emergency telephone service in State Planning Region 4, and the Commission on State Emergency Communications (CSEC) has approved its current Plan.
- 1.87 City of Murphy is a local government that operates one or more Public Service Answering Points (PSAPs) that assist in implementing the Plan as authorized by Chapter 771 of the Health and Safety Code.
- 1.88 City of Murphy (hereafter Local Government) is a local government that is authorized to perform addressing activities under the County Road and Bridge Act.
- 1.89 This contract is entered into between NCTCOG and Local Government under Chapter 791 of the Government Code so that Local Government can participate in the enhanced 9-1-1 emergency telephone system in the region and perform database maintenance activities.
- 1.90 The Commission on State Emergency Communications (CSEC or Commission), as authorized by the Health & Safety Code, Chapter 771, is the oversight and funding authority for regional councils implementing 9-1-1 and addressing/addressing maintenance services through local governments.

Article 2: Stipulations

As required by the Contract for 9-1-1 Services executed between NCTCOG and the CSEC, NCTCOG shall execute Interlocal agreements between itself and its member local governments relating to the planning, development, operation, and provision of 9-1-1 services, the use of 9-1-1 funds and adherence to applicable law and the Commission on State Emergency Communications rules. At a minimum, the parties to this agreement agree:

- 2.1 To comply with applicable provisions of the State of Texas Uniform Grant Management Standards (UGMS);
- 2.2 That NCTCOG and/or the Commission may withhold, decrease, or seek the return of or reimbursement of 9-1-1 funds in the event that those 9-1-1 funds were used in noncompliance with applicable law and/or CSEC Rules;
- 2.3 That Local Government shall return or reimburse NCTCOG and/or the Commission, as applicable, any 9-1-1 funds used in noncompliance with applicable law and/or CSEC Rules;
- 2.4 That such return or reimbursement of 9-1-1 funds to NCTCOG and/or the Commission, as applicable, shall be made by the Local Government within 60 days after demand by NCTCOG or Commission, unless an alternative repayment plan is approved by NCTCOG and then submitted to the Commission for approval;
- 2.5 To comply with the Uniform Grant Management Standards (UGMS), applicable law and/or CSEC Rules, in regards to the ownership, transfer of ownership, and/or control of

- equipment acquired with 9-1-1 funds; in connection with the provisions of 9-1-1 service (9-1-1 equipment);
- 2.6 To maintain a current inventory of all 9-1-1 equipment consistent with Uniform Grant Management Standards (UGMS), applicable law and/or CSEC Rules;
 - 2.7 To reimburse NCTCOG and/or Commission for damage to 9-1-1 equipment caused by intentional misconduct, abuse, misuse or negligence by PSAP employees or other persons; or acts of nature or war, though this provision shall not include ordinary wear and tear or ordinary day to day use of equipment;
 - 2.8 That NCTCOG and Local Government shall maintain accurate fiscal records and supporting documentation of all 9-1-1 funds distributed to such Local Government and all 9-1-1 funds spent by such Local Government for 9-1-1 service, with specific detail for 9-1-1 funds received, and consistent with Uniform Grant Management Standards (UGMS), applicable law and/or CSEC Rules, and as approved in NCTCOG's current strategic plan;
 - 2.9 That the Commission or its duly authorized representative and NCTCOG shall have access to and the right to examine all books, accounts, records, files, and/or other papers, or property pertaining to the 9-1-1 service, belonging to or in use by the Local Government or by any other entity that has performed or will perform database maintenance activities;
 - 2.10 To recognize that the Commission reserves the right to perform on-site monitoring of NCTCOG and/or its performing Local Government for compliance with applicable law, and NCTCOG and Local Government agree to cooperate fully with such on-site monitoring;

Article 3: Program Deliverables – 9-1-1 & Database Maintenance

Local Government agrees to comply with all applicable law, CSEC Rules and NCTCOG policies, as they pertain to the 9-1-1 Program administered by NCTCOG, in providing the following deliverables to this contract. To the extent that NCTCOG policies are not consistent with applicable law, the applicable law prevails.

Ownership, Transference & Disposition

- 3.1 NCTCOG shall establish ownership of all 9-1-1 and ancillary equipment procured with 9-1-1 funds as defined herein, and located within the Local Government's jurisdiction. NCTCOG may maintain ownership, or it may transfer ownership to the Local Government. Before any such transfer of ownership, NCTCOG will evaluate the adequacy of controls of Local Government to ensure that sufficient controls and security exist by which to protect and safeguard the equipment procured with 9-1-1 funds for the purpose of delivery of 9-1-1 calls. It is understood that the ancillary equipment identified in paragraph 3.2c below, may or may not be procured by NCTCOG on behalf of Local Government, according to NCTCOG's Strategic 9-1-1 Plan.
- 3.2 The basic equipment categories are:
 - ii. 9-1-1 Equipment
 - xxxv. Customer Premise Equipment (CPE) – telephone equipment located at the PSAPs which may include telephones, integrated workstations, servers, ANI controllers, software, monitors, gateways, routers and any other equipment necessary for 9-1-1 call delivery to the PSAP;

- xxxvi. Telecommunications Device for the Deaf (TDD)/Teletypewriter (TTY)
- jj. Ancillary Equipment
 - xxxv. NCTCOG owned ancillary equipment, if applicable
 - xxxvi. Recorders
- 3.3 Transfer-of-ownership documents shall be prepared by NCTCOG and signed by both parties upon transference of ownership of any ancillary equipment in accordance with UGMS and the State Comptroller of Public Accounts.
- 3.4 The local government shall provide adequate insurance policies on such equipment to provide for the replacement of the equipment in cases of losses due to anything other than daily use and normal wear and tear. The local government shall provide written proof of this insurance to NCTCOG annually.
- 3.5 Local Government is responsible for notifying NCTCOG upon disposition of equipment due to obsolescence, failure, or other planned replacement, transfer documents. Capital Recovery Asset Disposal Notices (as required by CSEC Rule 251.5) shall be prepared by NCTCOG in accordance with UGMS and the State Comptroller of Public Accounts.

Inventory

- 3.6 NCTCOG shall maintain property records, reconciled to the Local Government's general ledger account at least once per year, in accordance with CSEC Rule 251.5, *Guidelines for 9-1-1 Equipment Management, Disposition and Capital Recovery*, UGMS, and the State Property Accounting Policy and Procedures Manual.
- 3.7 The owner of the ancillary equipment, or the party to whom responsibility is assigned, shall cooperate with NCTCOG to provide inventory information for the Annual Certification of 9-1-1 Program Assets, as required by CSEC Rules 251.5, *Guidelines for 9-1-1 Equipment Management, Disposition and Capital Recovery*.
- 3.8 A physical inventory shall be conducted annually by NCTCOG.
- 3.9 Any lost or stolen equipment shall be reported to NCTCOG as soon as possible, and shall be duly investigated by Local Government and NCTCOG immediately.

Security

- 3.10 Local Government will comply with the current Criminal Justice Information Services (CJIS) Security Policy (CJISD-ITS-DOC-08140-5.0) as a minimum-security mandate for Customer Premise Equipment/Integrated or Workstations. A signed copy of the agreement must be available for inspection at all times
- 3.11 Local Government will protect the CPE, ancillary and database Maintenance/GIS equipment by implementing measures that secure the premises (including equipment room) of its PSAPs or addressing office against unauthorized entrance or use.
- 3.12 Local Government will operate within local standard procedures and take appropriate security measures as may be necessary to ensure that non-CSEC approved third-party software applications cannot be integrated into the PSAP(s)' Customer Premise Equipment/Integrated or Workstations as outlined in CSEC Rule 251.7, *Guidelines for Implementing Integrated Services*.
- 3.13 Local Government shall not attach nor integrate any hardware device or software application without prior written approval of NCTCOG. Further, no unauthorized person

- shall configure, manipulate, or modify any hardware device or software application. Such authority can only be granted by NCTCOG.
- 3.14 Local Government will adhere to Health & Safety Code, Section 771.061, Confidentiality of Information, in maintaining all 9-1-1 Addressing databases.
 - 3.15 Local Government mandates each person who is authorized to receive, store, process, and/or transmit Customer Premise Information must have a unique identification login and be logged into such equipment identifying their legitimacy for use.
 - 3.16 Local Governments shall insure that no personnel access the USB ports on the CPE equipment.

Maintenance

- 3.17 NCTCOG shall practice preventive maintenance on all NCTCOG owned or leased CPE, ancillary equipment, software, and databases, including, at a minimum, backing up data as necessary. NCTCOG shall also be responsible for any maintenance costs on the before mentioned equipment.
- 3.18 Local Government will maintain 9-1-1 equipment and areas by ensuring cleanliness.
- 3.19 Local Government shall notify NCTCOG Operation Specialist when there is any scheduled maintenance on commercial power backup generator, at least 48 hours prior to work being done.
- 3.20 Local Government shall immediately notify NCTCOG Operation Specialist of any power or generator outages. If the outage affects the 9-1-1 system, trouble reporting procedures should be followed.
- 3.21 For Local Governments that have administrative telephone system integration with NCTCOG 9-1-1 equipment, NCTCOG requires a contingency plan identifying their back-up solution for the administrative telephone system. If a contingency plan is not provided to NCTCOG within 30 days of contract execution, NCTCOG reserves the right to remove the administrative phone lines from the 9-1-1 equipment.
- 3.22 Local Government shall notify the NCTCOG Technical Team by calling 888-311-3911. In addition, the Local Government may utilize one of the following methods:
 1. via email to support@nct911.org
 2. via the Trouble Ticket System (accessed by using the icon on the toolbar)
 3. <http://tracker.nctcog.org/scc>

Supplies

- 3.23 Local Government will purchase supplies necessary for the continuous operation of its 9-1-1 CPE, and Ancillary equipment (i.e. printer supplies and paper).

Training

Local Government shall:

- 3.24 Provide telecommunicators access to emergency communications equipment training as approved in NCTCOG's Strategic Plan, or as determined by the Local Government.
- 3.25 These telecommunicators shall be scheduled for their 9-1-1 equipment training within 120 days of their hire date.
- 3.26 Ensure that the 9-1-1 telecommunicators receive TDD/TTY training every six months as mandated by the Department of Justice. This can be achieved by completing the on-line TTY refresher modules within 45 days of issuance, or attend the 4 hour TDD/TTY course at NCTCOG, or Local Government hosted training.
- 3.27 Ensure that 9-1-1 PSAP Supervisory personnel or designee attend tri-yearly training/meetings offered at NCTCOG to keep the PSAP updated on current events. A minimum of two meetings per year are required for each PSAP.
- 3.28 Ensure that all telecommunicators have access to the NCTCOG 9-1-1 Training website and abide by TCLEOSE mandated rules and regulations for telecommunicator requirements.
- 3.29 Beginning February 1, 2012, ensure that all telecommunicator attend a 9-1-1 equipment and technology refresher course every 2 years.

Facilities

- 3.30 Local Government shall meet minimum requirement for back room requirements. Must comply with specifications from NCTCOG (See Attachment C). Any expenses associated with this requirement are the responsibility of the PSAP.
- 3.31 Local Government's equipment room and 9-1-1 communications area must maintain a temperature of 65-80 degrees Fahrenheit.
Local Government will maintain 9-1-1 equipment and areas by ensuring cleanliness.
- 3.32 Local Government's 9-1-1 equipment room and communications area shall be in compliance with the American with Disability Act of 1990.
- 3.33 Local Government shall provide updated or current access or security policies to NCTCOG.
- 3.34 NCTCOG staff and contracted vendors shall have access to the 9-1-1 equipment room and communications area on a 24 X 7 X 365 basis without prior notice.

Operations

Local Government shall:

- 3.35 Designate PSAP Supervisory personnel or designee and provide related contact information (to include after hour contact information) as a single point of contact for NCTCOG.
- 3.36 Coordinate with NCTCOG in the planning for, implementation and operation of all 9-1-1 equipment.
- 3.37 Monitor the 9-1-1 equipment and report any failures or maintenance issues immediately to the NCTCOG Technical Team through appropriate trouble reporting procedure.
- 3.38 Test all 9-1-1 and ancillary equipment for proper operation and user familiarity at least once per month.
- 3.39 Power cycles all 9-1-1 equipment at a minimum of 1 time per week.
- 3.40 Test all 9-1-1 TDD/TTYs for proper operation and to maintain user familiarity at least once per month.
- 3.41 Log all TDD/TTY calls, and fax copies to NCTCOG by the first of each month. If logs are not received by the 10th day of the month, documentation requesting the logs will be sent to the chief/sheriff. Copies should also be made available upon request by NCTCOG and Department of Justice.
- 3.42 Limit access to all 9-1-1 equipment and related data to authorized personnel.
- 3.43 Make no changes to 9-1-1 equipment, software, or programs without prior written consent from NCTCOG.
- 3.44 Make no changes or modifications to any configuration, software, or hardware provided by NCTCOG other than adding the agents and editing the auto-dial feature.
- 3.45 Provide a safe and healthy environment for all 9-1-1 telecommunicators, which enhance proper use and maintenance of 9-1-1 equipment.
- 3.46 Provide upon request any testing documentation or applicable paperwork required by CSEC and NCTCOG within 24 hours.
- 3.47 The PSAP shall keep at least one 10-digit emergency telephone number that is not part of an automated system to be used for 9-1-1 transfer calls and default routing. These numbers shall be answered by a live person 24 hours a day, 7 days a week and should have the ability to be call forwarded. Any change in this 10-digit emergency number shall be reported to NCTCOG in writing.
- 3.48 When the verification process produces incorrect ANI/ALI information, the telecommunicator shall make the correction immediately or after the call has been released. If the call has been released, the data will remain for approximately ten minutes or until the next call is received. However, the ALI can be retrieved by going to the released calls in the list module. At which time it is possible to manually fill out the discrepancy form and fax to NCTCOG.
- 3.49 Incomplete ANI/ALI Problem Call Reports returned to PSAP shall be completed and faxed back to NCTCOG within 72 hours.
- 3.50 Test calls to clear ANI/ALI Problem Call Reports shall be made by PSAP within 24 hours. *Problems shall be reported on a new ANI/ALI Problem Call Report and faxed to NCTCOG.*
- 3.51 Medical providers and other agencies that require frequent transfers during 9-1-1 calls must have and utilize a toll free transfer number.
- 3.52 Notification of change in medical, law enforcement or fire responders shall be made in writing to NCTCOG at least 45 days prior to change.
- 3.53 Submit a signed Manual ALI Query form to NCTCOG annually and agree to use ALI lookup feature only in the handling and processing of an emergency telephone call.

- 3.54 Each PSAP shall submit an emergency plan for 9-1-1 communications.
- 3.55 The PSAP shall have documented procedures for the transfer of administration lines where call center evacuation is required.
- 3.56 Comply with NCTCOG policy and procedures for PSAP moves/changes posted on the NCTCOG website.
- 3.57 PSAP Agency should have adequate personnel trained and available to operate the generator.
- 3.58 PSAP Agency shall be able to engage NCTCOG owned UPS bypass switch, where applicable.
- 3.59 PSAP Agency shall test generator at least monthly to ensure that all NCTCOG equipment remains functional. All tests shall be reported monthly to the PSAP Operations Specialist
- 3.60 All telecommunicators shall re-transmit (rebid) all wireless calls to receive most accurate caller location.
- 3.61 PSAP Agency shall keep on file the proper trouble ticketing log, provided by NCTCOG, to document ticketing information when reporting to NCTCOG Tech Support issues with issues on the 9-1-1 equipment. It is not required for the PSAP Agency to turn in this report on a monthly basis, but to keep as a reference at their level. NCTCOG reserves the right to request these trouble logs at any time. Trouble ticket logs must be kept for the duration of the inter local agreement.
- 3.62 The make busy shall only be activated in emergency or evacuation situations.

Performance Monitoring

- 3.63 Local Government agrees to fully cooperate with all monitoring requests from NCTCOG and/or Commission for the purposes of assessing and evaluating Local Government's performance of the deliverables specified in this contract, and as outlined in Program Deliverables noted above.

Article 4: Procurement

- 4.1 NCTCOG may purchase, lease, or otherwise procure, on Local Government's behalf, the 9-1-1 equipment, software, services, and other items described in the current Strategic Plan.
- 4.2 NCTCOG and the Local Government agree to use competitive procurement practices and procedures similar to those required by state law for cities or counties, as well as CSEC Rule 251.8, *Guidelines for the Procurement of Equipment and Services with 9-1-1 Funds*.

Article 5: Database Maintenance

- 5.1 Only applies to counties.

Article 6: Financial

As authorized in Chapter 771 of the Texas Health & Safety Code, Sections 771.055, 771.056, 771.071, 771.072 and 771.075:

- 6.1 NCTCOG shall develop a plan to meet Local Government needs for the establishment and operation of 9-1-1 service throughout the region served, according to standards established and approved by the CSEC.
- 6.2 The provisioning of 9-1-1 service throughout the region shall be funded by emergency service fees and/or equalization surcharge, based upon state appropriations.
- 6.3 Allowable and disallowed expenditures shall be determined by the appropriations, rules, policies and procedures as established by the CSEC, and as provided for the Local Government in NCTCOG's approved Strategic Plan.

Article 7: Records

- 7.1 Local Government agrees to maintain financial and any other 9-1-1 documentation adequate to document its performance, costs, and receipts under this contract. Local Government agrees to maintain these records for the current fiscal year and the previous two (2) fiscal years. Local government may request in writing to maintain these records electronically, if that technology is in place.
- 7.2 For the purpose of reimbursement, Local Government shall maintain sufficient records detailing the significant history of procurement, including the rationale for the method of procurement, the selection of contract type, the contractor selection or rejection, and the basis for the contract price. Local Government agrees to maintain these records for the current fiscal year and the previous two (2) fiscal years.
- 7.3 Local Government agrees to preserve the records for three years after receiving final payment under this contract. If an audit of or information in the records is disputed or the subject of litigation, Local Government agrees to preserve the records until the dispute or litigation is finally concluded, regardless of the expiration or early termination of this contract;
- 7.4 NCTCOG and/or Commission are entitled to inspect and copy, during normal business hours at Local Government's offices, the records maintained under this contract for as long as they are preserved. NCTCOG is also entitled to visit Local Government's offices, talk to its personnel, and audit its applicable 9-1-1 records, all during normal business hours, to assist in evaluating its performance under this contract;
- 7.5 The Commission and the Texas State Auditor have the same inspection, copying, and visitation rights as NCTCOG.
- 7.6 In terms of 9-1-1 records, excluding financial, Local Government shall comply with their own retention schedule, as per state statute.

Article 8: Nondiscrimination and Equal Opportunity

- 8.1 Local Government shall not exclude anyone from participating under this contract, deny anyone benefits under this contract, or otherwise unlawfully discriminate against anyone in carrying out this contract because of race, color, religion, sex, age, disability, handicap, or national origin.

Article 9: Dispute Resolution

- 9.1 The parties desire to resolve disputes arising under this contract without litigation. Accordingly, if a dispute arises, the parties agree to attempt in good faith to resolve the dispute between them. To this end, the parties agree not to sue one another, except to

- enforce compliance with paragraphs 10.1 – 10.4, until they have exhausted the procedures set out in these paragraphs.
- 9.2 At the written request of either party, each party shall appoint one non-lawyer representative to negotiate informally and in good faith to resolve any dispute arising under this contract. The representatives appointed shall determine the location, format, frequency, and duration of the negotiations.
- 9.3 If the representatives cannot resolve the dispute within 30 calendar days after the first negotiation meeting, the parties agree to refer the dispute to a mutually designated legal mediator. Each party shall pay half the cost of the mediation services.
- 9.4 The parties agree to continue performing their duties under this contract, which are unaffected by the dispute, during the negotiation and mediation process.

Article 10: Suspension for Unavailability of Funds

- 10.1 Local Government acknowledges that NCTCOG's sole source of funding for this contract is the 9-1-1 fees collected by service providers and received by the state Comptroller's Office. If fees sufficient to pay Local Government under this contract are not paid to NCTCOG, or if the CSEC does not authorize NCTCOG to use the fees to pay Local Government, NCTCOG may suspend payment of monthly bills for 9-1-1 equipment by giving Local Government notice of the suspension. The suspension is effective 10 calendar days after Local Government's receipt of the notice. Upon suspension of payment, Local Government's obligations under this contract are also suspended until NCTCOG resumes payment.

Article 11: Notice to Parties

- 11.1 Notice under this contract must be in writing and received by the party or his/her representative or replacement, to which the notice is addressed. Notice is received by a party: (1) when it is delivered to the party personally; (2) on the date shown on the return receipt if mailed by registered or certified mail, return receipt requested, to the party's address specified in paragraph 11.2 and signed on behalf of the party; or (3) three business days after its deposit in the United States Mail, with first-class postage affixed, addressed to the party's address specified in paragraph 11.3.
- 11.2 NCTCOG's address is: P. O. Box 5888, Arlington, TX 76005-5888,
Attention: Executive Director.
- 11.3 Local Government's address is:
City of Murphy
206 North Murphy Road
Murphy, TX 75094
Attention: James Fisher
- 11.4 A party may change its address by providing notice of the change in accordance with paragraph 12.1.

Article 12: Effective Date and Term of Contract

- 12.1 This contract takes effect on September 1, 2013 on behalf of NCTCOG and Local Government, and it ends on August 31, 2015. Should for any reason Local Government withdraws from the E9-1-1 Service system prior to the end of the full term of this

contract, in addition to all other remedies available to NCTCOG under state law and this contract, NCTCOG may seek a return of all 9-1-1 equipment purchased with 9-1-1 funds in the possession of Local Government. In the event of such withdrawal, both parties agree to work in good faith to establish a fair and equitable transition plan so as to assure continued emergency services to the citizens of Local Government.

Article 13: Miscellaneous

- 13.1 Each individual signing this contract on behalf of a party warrants that he or she is legally authorized to do so and that the party is legally authorized to perform the obligations undertaken.
- 13.2 This contract states the entire agreement of the parties, and an amendment to it is not effective unless in writing and signed by all parties.
- 13.3 Rules, Program Policy Statements, and Best Practices of CSEC as well as Chapter 771, Health and Safety Code, State Administration of Emergency Communications can be found on the CSEC website: <http://www.911.state.tx.us>. If unable to access, please contact NCTCOG 9-1-1 Program Offices for copies.
- 13.4 The following Attachments are part of this contract:

Contract for 9-1-1 Services between NCTCOG and CSEC (Attachment A)
 Manual ALI Query Request (Attachment B)
 NCTCOG Equipment Room Site Requirement (Attachment C)
 NCTCOG Move, Add and Change Procedures (Posted on www.nctcog.org)
 Text to 9-1-1 Testing Requirements (Attachment D), where applicable

This contract is binding on, and to the benefit of, the parties' successors in interest.

- 13.5 This contract is executed in duplicate originals.

CITY OF MURPHY

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS

 James Fisher
 City Manager



 Mike Eastland
 Executive Director

Date

Date

Attachment A
Contract for Services between the
Commission on State Emergency Commission (CSEC) and
North Central Texas Council of Governments (NCTCOG)

Contract for 9-1-1 Service

Article 1. Parties and Purposes

- 1.1 The Texas Commission on State Emergency Communications ("Commission") is charged by law with the responsibility to oversee the provision of 9-1-1 emergency services throughout the state, and North Central Texas Council of Governments ("RPC") is charged with the responsibility to provide these services in its region. Providing these services requires a partnership among and cooperative efforts by the Commission, the RPC, and the local governments represented on the RPC's governing body.
- 1.2 The Commission and the RPC enter into this Contract for 9-1-1 Service ("Contract") to clarify and better define the rights and duties of each in carrying out their individual and collective responsibilities under the law.

Article 2. Compliance with Applicable Law

- 2.1 The RPC shall comply with all applicable federal and state laws ("applicable law") in carrying out its strategic plan that has been approved by the Commission.
- 2.2 Applicable law includes, but is not limited to, Health and Safety Code Chapter 771; Commission Rules (Title 1, Part 12, Texas Administrative Code) and Program Policy Statements; the biennial state General Appropriations Act; Texas Government Code (including Uniform Grant and Contract Management Standards [UGMS]), Chapter 783 and Title 1, Part 1, Chapter 5, Subchapter A, Division 4, Texas Administrative Code; Preservation and Management of Local Government Records Act, Chapter 441, Subchapter J; and Resolution of Certain Contract Claims Against the State, Chapter 2260); Texas Local Government Code (including Regional Planning Commissions Act, Chapter 391).
- 2.3 The Commission may adopt new policies, procedures and rules and amend its existing policies, procedures and rules subject to applicable law. Any new or amended policy or procedure (other than an adopted rule) shall be enforceable against the RPC 30 days following the date of its adoption, unless the Commission finds and declares that an emergency exists which requires that such policy or procedure be enforceable immediately against the RPC. The Commission shall provide the RPC written notice of all new or amended policies, procedures and interpretations of Commission rules within a reasonable time after same are adopted by the Commission.
- 2.4 The RPC shall repay any allocated and distributed equalization surcharge and 9-1-1 service fees (collectively, "9-1-1 funds") expended by the RPC in noncompliance with applicable law. Such reimbursement shall be made in accordance with established Commission policies and procedures. The RPC shall

advise the Commission in writing of its efforts to recover 9-1-1 funds in accordance with Article 4.1 herein.

- 2.5 In accordance with Health and Safety Code Section 771.078(c)(6), the Commission may withhold disbursement of funds to the RPC for failing to follow a standard imposed by this Contract, a Commission rule and/or policy, or a statute.
- 2.6 The RPC shall maintain, at a minimum, a separate investment account for all 9-1-1 funds received. The RPC shall utilize an accounting system that complies with applicable law, including specifically the requirements in UGMS, Subpart C - Post Award Requirements, Section .20 - Standards for Financial Management Systems - which requires recipients of state funds to maintain records which adequately identify the source and application of funds provided for financially assisted activities. These records must contain information pertaining to grant or sub grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

Article 3. Monitoring Compliance

- 3.1 The RPC recognizes that the Commission reserves the right to perform monitoring of the RPC and/or its performing local governments or Public Safety Answering Points (PSAPs) for compliance with applicable law, and the RPC agrees to cooperate fully with such monitoring.
- 3.2 The RPC recognizes that the Commission reserves the right to monitor RPC financial procedures and validate financial reimbursement requests for compliance with applicable law, accuracy, completeness, and appropriateness, prior to the Commission distributing allocated 9-1-1 funds.

Article 4. Standard Interlocal Agreement with Local Governments

- 4.1 The RPC shall use interlocal agreements between itself and its local governments relating to the planning, development, operation, and provision of 9-1-1 service, the use of 9-1-1 funds and adherence to applicable law. These agreements must, at a minimum, provide for compliance with applicable law by including provisions that:
 - (a) the RPC will provide 9-1-1 funds to the local governments on a cost reimbursement basis using a monitoring process that provides assurance that the reimbursement requests from the local governments are complete, accurate, and appropriate;
 - (b) the RPC may withhold, decrease, or seek reimbursement of 9-1-1 funds in the event that those 9-1-1 funds were used in noncompliance with applicable law;
 - (c) the local governments shall reimburse the RPC and/or the Commission, as applicable, any 9-1-1 funds used in noncompliance with applicable law;

- (d) reimbursement of 9-1-1 funds under subsection (c) shall be made by the local government within 60 days after demand by the RPC, unless an alternative repayment plan is approved by the RPC and the Commission;
- (e) address the RPC's ownership, transfer of ownership, and/or control of equipment acquired with 9-1-1 funds in connection with providing 9-1-1 service ("9-1-1 equipment");
- (f) require the RPC to maintain a current inventory of all 9-1-1 equipment;
- (g) require a control system to be developed by the local government to ensure adequate safeguards to prevent loss, damage, or theft of 9-1-1 equipment;
- (h) require reimbursement to the RPC and/or the Commission for damage to 9-1-1 equipment; other than ordinary wear and tear;
- (i) the local governments will maintain adequate fiscal records and supporting documentation of all 9-1-1 funds reimbursed to such local governments for 9-1-1 service consistent with applicable law and generally accepted accounting principles, and as approved in the RPC's current approved Strategic Plan;
- (j) the Commission or its duly authorized representative shall have access to and the right to examine all books, accounts, records, files, and/or other papers, or property pertaining to the 9-1-1 service, belonging to or in use by the local government, the PSAP, or by any other entity that has performed or will perform activities related to the agreements;
- (k) the local government will provide 9-1-1 service as a condition of the receipt of 9-1-1 funds as prescribed by the RPC strategic plan; and
- (l) funding of 9-1-1 service is contingent on appropriations made to the Commission by the Texas Legislature, and if 9-1-1 funds are not made available to the RPC by the Commission or if legally available 9-1-1 funds are exhausted, then the RPC will not be obligated to provide the reimbursements contemplated by this Contract.

Article 5. Competitive Procurement and Contract Administration

- 5.1 The RPC shall use competitive procurement practices and procedures similar to those required by applicable law in connection with the procurement of any items to be obtained with 9-1-1 funds.

- 5.2 The RPC shall include a specific, detailed statement of work, including appropriate benchmarks to evaluate compliance, in all contracts with vendors, local governments, and PSAPs to be paid from 9-1-1 funds.
- 5.3 The RPC shall implement a contract administration management system that ensures contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- 5.4 The RPC shall maintain sufficient records detailing the history of procurement, including the rationale for the method of procurement, the selection of contract type, the contractor selection or rejection, and the basis for the contract price, as outlined in the records retention requirements in UGMS.

Article 6. Allocation and Use of 9-1-1 Funds

- 6.1 In accordance with applicable law, the Commission shall allocate 9-1-1 funds appropriated to the Commission to the RPC solely for use in carrying out its Commission-approved strategic plan. Funds will be distributed to the RPC quarterly, according to current Commission payment methodology as set forth in Commission policy, unless the RPC is in substantial noncompliance with any applicable law or provision of this Contract. The RPC shall utilize the money allocated only for providing 9-1-1 service within the RPC's jurisdiction.
- 6.2 The Commission shall ensure that no more than \$12,750,000 appropriated to the Commission for the FY 2012-2013 biennium shall be allocated to the RPCs for administration of the statewide 9-1-1 program, according to the General Appropriations Act.
- 6.3 None of the 9-1-1 funds appropriated to the Commission and allocated to the RPC may be used to replace or fund a reserve for future replacement of 9-1-1 equipment.
- 6.4 The RPC shall assist the Commission in creating comprehensive statewide capital replacement plan for submittal to the Legislative Budget Board no later than November 1st of each calendar year.
- 6.5 As provided by Health & Safety Code Section 771.078(d), not more than ten percent (10%) of the money received by the RPC may be used by the RPC for indirect costs. In this subsection, "indirect costs" means costs that are not directly attributable to a single action of the RPC. (Note: In administering this subsection, the governor's office is required to use federal Office of Management and Budget circulars A-87 and A-122 or any rules relating to the determination of indirect costs adopted under Texas Government Code Chapter 783.)
- 6.6 As provided by Health & Safety Code Section 771.078(f), upon request from the RPC, the Commission shall provide the RPC with documentation and financial records of the amount of money collected in its region or of an amount of money

allocated to the RPC in accordance with Health & Safety Code, Section 771.078, and this Contract.

Article 7. 9-1-1 Funds Distribution

- 7.1 As provided by applicable law, a state agency shall distribute grants on a reimbursement basis, or as needed, unless otherwise provided by statute or otherwise determined by the grantor agency to be necessary for the purposes of the grant.
- 7.2 Quarterly disbursement of 9-1-1 funds to the RPC shall be made on a cost reimbursement basis according to applicable law. If the RPC's funding is depleted before the end of a fiscal quarter, a financial emergency funding request may be made by the RPC to the Commission (see Article 8. RPC Emergency Funding).
- 7.3 The Commission has determined that a proper public purpose is served by providing start-up funding, at the beginning of each fiscal year, to the RPC for payment of operating costs of the region's 9-1-1 system. Start-up funding to the RPC from the Commission may be made at the beginning of each fiscal year. The Commission shall provide start-up funds to the RPC according to applicable law. Start-up funding is defined as 9-1-1 funds allocated to the RPC to pay initial fiscal year 9-1-1 program expenses, prior to the first quarterly reimbursement request being received. Any remaining 9-1-1 funds from the prior fiscal year, ending on August 31st, shall be returned to the Commission no later than October 30th of the current fiscal year.

Article 8. RPC Emergency Funding

- 8.1 Notwithstanding the requirements in Article 7, the Commission may distribute in accordance with Commission policy allocated 9-1-1 funds to the RPC upon demonstration and documentation that a financial emergency exists that will compromise the provisioning of 9-1-1 service or impact public safety.
- 8.2 The Commission shall consider a financial emergency as a situation in which the RPC requires additional funding to sustain the current and normal operation of 9-1-1 systems and their administration, as well as to meet contractual obligations as provided for in the RPC's approved strategic plan; and that, without the assistance of these additional funds, would result in a compromise of the 9-1-1 system or impact public safety. A financial emergency would arise, and public safety compromised, if the 9-1-1 system was terminated due to non-payment of invoices.
- 8.3 Emergency 9-1-1 funds may be distributed based upon the documented expenditures creating the need. The provision of emergency 9-1-1 funds will be used for specific operational and administrative expenses identified in the supporting documentation.

- 8.4 The request shall include a narrative description of what the 9-1-1 funds are to be used for, and how these expenditures relate to the RPC's strategic plan.
- 8.5 The Commission will review the request for accuracy and compliance with the current approved strategic plan and applicable law. Upon review and approval of the request, the Commission will disburse the necessary 9-1-1 funds, not to exceed the total allocated to the RPC in its Commission-approved strategic plan.

Article 9. Strategic Planning

- 9.1 In accordance with applicable law, the RPC shall develop a strategic plan for the establishment and operation of 9-1-1 service throughout its region. The 9-1-1 service must meet the standards established by the Commission. A strategic plan must describe how 9-1-1 service is to be administered.
- 9.2 The RPC must update its strategic plan at least once during each state fiscal biennium, and must include the following:
- (a) A description of how money allocated to the region is to be allocated throughout the region served by the RPC;
 - (b) Projected financial operating information for the two state fiscal years following the submission of the plan;
 - (c) Strategic planning information for the five state fiscal years following submission of the plan; and
 - (d) A Historically Underutilized Business (HUB) plan, pursuant to Chapter 2161 of the Government Code.
- 9.3 The RPC shall submit a strategic plan, or amendment to its plan, to the Commission for review and approval or disapproval, as required by Health & Safety Code Section 771.056. The Commission, consistent with applicable law, shall consider the appropriateness of the strategic plan or amendment thereto in satisfying the standards set by the Commission, the cost and effectiveness of the strategic plan or amendment, as well as the appropriateness of the strategic plan or amendment in context with overall statewide 9-1-1 service.
- 9.4 The Commission shall notify the RPC of the approval or disapproval of the strategic plan submission, or amendment to the plan, in accordance with applicable law.
- 9.5 If the strategic plan or amendment thereto is approved, the Commission shall allocate 9-1-1 funds to the RPC in accordance with the terms of this Contract and applicable law.

Article 10. Reporting Requirements

- 10.1 The RPC shall submit financial and performance information and reports regarding 9-1-1 service and administration to the Commission. The RPC shall provide the reporting information in accordance with applicable law and generally accepted accounting principles. The RPC shall submit the following information to the Commission, at least once per quarter of each fiscal year:
- (a) Financial information regarding administrative and program expenses; and
 - (b) Information regarding the current performance, efficiency, and degree of implementation of emergency communications services in the region served by the RPC.
- 10.2 The RPC shall be responsible for collecting and reporting efficiency data on the operation of each of the 9-1-1 answering points within its region. The RPC shall submit such information to the Commission at least once per quarter of each fiscal year, according to applicable law.

Article 11. Use and Creation of Public Safety Answering Points

- 11.1 The RPC shall comply with the minimum standards and guidelines established by Commission Rule 251.1, *Regional Strategic Plans for 9-1-1 Service*, for the use of PSAPs and the creation of PSAPs.

Article 12. Dispute Resolution

- 12.1 The dispute resolution process provided for in Government Code Chapter 2260, Subsection F, shall be used by the Commission and the RPC to attempt to resolve disputes arising under this Contract. Disputes include, but are not limited to, disagreement between the parties about the meaning or application of the RPC's proposed or approved strategic plan, or this Contract.
- 12.2 The parties desire to resolve disputes without litigation. Accordingly, if a dispute arises, the parties agree to attempt in good faith to resolve the dispute between themselves. To this end, the parties agree not to sue one another, except to enforce compliance with this Article 12, until they have exhausted the procedures set out in this Article 12.
- 12.3 At the written request of either party, each party shall appoint one non-lawyer representative to negotiate informally and in good faith to resolve any dispute arising between the parties. The parties agree to appoint their representatives and hold the first negotiating meeting within 15 calendar days of receipt of the request. The representatives appointed shall determine the location, format, frequency, and duration of the negotiations.

- 12.4 If the representatives cannot resolve the dispute within 30 calendar days after the first negotiation meeting, the parties agree to submit the dispute to mediation by an administrative law judge employed by the State Office of Administrative Hearings (SOAH) per Government Code Chapter 2009.
- 12.5 Within 45 calendar days after the effective date of this Contract, the Commission agrees to contract with SOAH to mediate any future disputes between the parties described in Article 12.1. Each party agrees to pay one-half the total fee and expenses SOAH charges for conducting a mediation, and the Commission agrees that the RPC's share of the total is an allowable cost reimbursable to the RPC under this Contract.
- 12.6 The parties agree to continue performing their duties under this Contract, which are unaffected by the dispute, during the negotiation and mediation process.
- 12.7 If the parties are unable to settle their dispute by mediation, either party may request a contested case hearing under Texas Government Code Section 2260.102.
- 12.8 Nothing in this Article 12 shall be considered as a waiver of sovereign immunity.

Article 13. Miscellaneous Provisions

- 13.1 The RPC shall work with the Commission and the local governments to develop, maintain and regularly monitor performance of the operation and the provision of 9-1-1 service and to develop and implement risk assessment processes.
- 13.2 As the RPC becomes aware of the need for additional training or expertise relating to the planning, development, implementation or operation of 9-1-1 service, by the RPC or the local governments in their areas, the RPC shall notify the Commission promptly so that all parties may address the need in a timely manner.
- 13.3 Unless otherwise directed by the Commission, the RPC shall arrange for the performance of an annual financial and compliance audit of its financial statements and internal control environment according to the requirements of UGMS and the Texas Single Audit Circular, as established by the Governor's Office of Budget, Planning, and Policy pursuant to Government Code Chapter 783. The RPC shall be liable to the Commission for any costs disallowed as a result of the audit of its financial statements and internal control environment.
- 13.4 The RPC recognizes the right of the State Auditor's Office to review and/or audit the RPC's documentation and accounts relevant to the state-funded 9-1-1 program as authorized by applicable law. Such an audit or review is considered separate and apart from audits required by UGMS.

- 13.5 A summary of the approved RPC 9-1-1 strategic plan costs and revenue allocations shall be made a part of this Contract by way of Attachment A, *Recipient 9-1-1 Costs Summary*.
- 13.6 The RPC shall provide, at a minimum, the Commission with all reports and/or information as required by applicable law.
- 13.7 In the event of any conflict between any provision in this Contract and an adopted Commission rule or policy, present or future, the Commission rule or policy shall take precedence.
- 13.8 This Contract sets forth all of the representations, promises, agreements, conditions, and understandings between the RPC and the Commission relating to the subject matter of the Contract, and supersedes any prior or contemporaneous representations, promises, agreements, conditions, or understandings, whether oral or written, in any way relating to the subject matter hereof.
- 13.9 Any alterations, additions, or deletions to the terms of this Contract shall be made by amendment hereto in writing and executed by both parties to this Contract.
- 13.10 This Contract takes effect on September 1, 2011, and shall terminate on August 31, 2013.

AGREED TO:



 Paul Mallett
 Executive Director
 Texas Commission on State Emergency Communications
 333 Guadalupe, Suite 2-212
 Austin, Texas 78701-3942

8/18/11

 Date



 Mike Eastland
 Executive Director
 North Central Texas Council of Governments
 P. O. Box 5888
 Arlington, Texas 76005

8/21/11

 Date

North Central Texas Council of Governments

Regional 9-1-1 Program

Manual ALI Request Form

PSAP Name: Murphy Police Department

Date: _____

This letter is to request that the “manual ALI Query” feature be enabled at Murphy Police Department.

The 9-1-1 customer premises equipment (CPE) provided by NCTCOG has been configured to allow manual queries, and is compatible with the manual ALI query protocol of NCTCOG and the database provider. MANUAL ALI QUERY SERVICES WILL ONLY BE USED IN THE HANDLING OF EMERGENCY CALLS. All manual ALI queries must also be documented using the reason feature.

This PSAP and the Telecommunicators with access to 9-1-1 fully understand and agree to comply with the terms and conditions set forth under which this feature may be provided.

The NCTCOG operations staff has access to a statistical report of Manual ALI Query per PSAP. Misuse of the proprietary ALI information may be cause for the termination of this feature for the PSAP.

Please mail, fax or email this form back no later than September 15, 2013 to:

North Central Texas Council of Governments
9-1-1 Program
PO Box 5888
Arlington, Texas 76005-5888

~or~

Fax: 817-640-7492

~or~

Email: hperez@nctcog.org Subject: Interlocal Agreement-Manual ALI Agreement

Acknowledgement signatures by authorized representatives of contracting 9-1-1 agency:

Chief / Sheriff

Date

Communications Supervisor / Manager

Date

Attachment C
NCTCOG Equipment Room Site Requirements

NCTCOG

9-1-1 EQUIPMENT ROOM AND ELECTRICAL REQUIREMENTS SUMMARY

Fire Protection:

- Dry pipe high temperature type systems are recommended if sprinkler heads are to be located in the 9-1-1 equipment room.
- If possible, non-combustible material should be used for the room construction.

Security Precautions:

- You may need to extend and improve existing building security to provide adequate protection for the 9-1-1 equipment.
- Electric locks or push button access code or card readers are not recommended unless you provide a battery backup system.

Temperature and Humidity control:

- A stable ambient operating temperature of 72 degrees Fahrenheit is recommended. Maximum tolerances are from 59 to 86 degrees non-condensing.
- Air conditioning units must be able to handle the heat produced by the back room equipment.
- For estimates on BTU output of the equipment, please consult with onsite installation personnel.

Static Electricity:

Static can damage circuitry permanently, interrupt system operation and cause lost data. To prevent static:

- The equipment room humidity must be constant.
- The room floor should not be carpeted.
- The room floor should be sealed, (preferably tiled), but not waxed.

Lighting:

- Lighting must not be powered from the switch room service panel.

- Lighting should provide 50 to 75 foot-candles measured 30" above the equipment room floor.

Grounding:

- A single point, isolated ground is required unless superceded by local code. The source should be XO of the transformer that feeds the phase conductors to the equipment room electrical service panel.
- Terminations must be accessible for inspection during the life of the installation.
- Conductors must be continuous, with no splices or junctions.
- Conductors must be no load, non-current carrying.

Electrical:

- Electrical service panel should be located in the equipment room.
- Voltage required is 208/120 V three phase; four wire "wye" service or 240/120 single phase 4 wire "delta" service.
- A dedicated transformer is preferred however a shared transformer or distribution is acceptable.
- IGL6-15, 20 or 30 receptacles are required and the ground must terminate on the IG buss.
- All circuit breakers must be clearly labeled.
- Terminal devices located in the equipment room will require local power. These outlets must be wired and fused independently from all other receptacles. They must also be IG type receptacles.

Attachment D
Text to 9-1-1 Service Agreement (If Applicable)

North Central Texas Council of Governments

Regional 9-1-1 Program

Text to 9-1-1 Service Agreement

PSAP Name: Murphy Police Department

Date: _____

This letter is to request that the Text to 9-1-1 service be enabled at the Murphy Police Department.

The 9-1-1 customer premises equipment (CPE) provided by NCTCOG has been configured to allow Text to 9-1-1 service. The PSAP is required to conduct at least twenty (20) test requests for help via text per month. These tests shall be recorded on the monthly reporting form provided by NCTCOG and are due to NCTCOG by the 5th day of each month.

NCTCOG shall provide training, best practice and implementation of this service. NCTCOG shall also assist testing and public education when requested.

The PSAP has been advised that this is an interim solution with limitations and feature will evolve as the service does.

This PSAP and the Telecommunicators with access to 9-1-1 fully understand and agree to comply with the terms and conditions set forth under which this service provided.

Please mail, fax or email this form back no later than September 15, 2013 to:

North Central Texas Council of Governments
9-1-1 Program
PO Box 5888
Arlington, Texas 76005-5888

~or~

Fax: 817-640-7492

~or~

Email: hperez@nctcog.org Subject: Text to 9-1-1 Agreement

Acknowledgement signatures by authorized representatives of contracting 9-1-1 agency:

Chief / Sheriff

Date

Communications Supervisor / Manager

Date

City Council Meeting
August 20, 2013

Issue

Consider and/or act upon approval of a resolution authorizing the City Manager to sign the contract agreement with NCTCOG Public Works Mutual Aid Agreement.

Staff Resource / Department

Kim Lenoir, Director of Parks and Public Works

Key Focus Area

Community Character and Cooperation Agreements

Summary

Murphy belongs to the Public Works Emergency Response Team, which is an advisory group organized under the North Central Texas Council of Governments (NCTCOG) Regional Emergency Preparedness Advisory Committee (REPAC) who will oversee the administration of the North Central Texas Public Works Mutual Aid Agreement and associated requirements.

This agreement enables NCTCOG participating local governments the ability to obtain, or provide, timely aid and assistance for public works related resource needs in the event of an emergency or disaster. The follow cities have approved and/or reviewing the Mutual Aid Agreement for consideration.

<u>City</u>	<u>Approved</u>	<u>Status</u>
City of Grand Prairie	Yes	
City of Midlothian	Yes	
City of Carrollton	Yes	
City of Weatherford	Yes	
City of Allen	Yes	
City of Arlington	Yes	
City of Red Oak	Yes	
City of Farmers Branch	Yes	
City of Lancaster	Yes	
City of Colleyville	Yes	
City of McKinney	Yes	
City of Plano		Reviewing
City of University Park	Yes	
City of Duncanville		Reviewing
City of Frisco		Reviewing

**City Council Meeting
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City of Haltom City	Yes	
City of Burleson		Reviewing
City of Cedar Hill		Reviewing
City of Lucas		Reviewing
City of Rowlett	Yes	
City of Mesquite	Yes	
City of Denton	Yes	
City of Hutchins	Yes	
City of Benbrook		Reviewing
City of Hurst		Reviewing
City of Celina	Yes	
City of Rockwall		Reviewing
City of Little Elm	Yes	
City of Dallas		Reviewing
Tarrant County		Reviewing
Kaufman County	Yes	
City of Murphy		Reviewing
City of Terrell		Reviewing
City of Bedford		Reviewing
City of Richardson		Reviewing
City of Wylie		Reviewing

Financial Considerations

From the agreement:

Section 9: Cost Limitation

A Requesting Party shall not be required to reimburse a Responding Party for costs incurred during the first Operational Period as defined in Section 2 of this Agreement. A Requesting Party shall be required to reimburse a Responding Party for costs incurred after the first Operational Period.

City Council Meeting
August 20, 2013

Section 10: Expending Funds:

A Responding Party that performs services or furnishes aid pursuant to this Agreement shall do so with their own current funds. No Party shall have any liability for the failure to expend funds to provide aid hereunder.

Section 11: Insurance

- A. Worker's Compensation Coverage: Each Party shall be responsible for its own actions and those of its employees and is responsible for complying with the Texas Workers' Compensation Act.
- B. Automobile Liability Coverage: Each Party shall be responsible for its own actions and is responsible for complying with the Texas motor vehicle financial responsibility laws.
- C. To the extent permitted by law and without waiving sovereign immunity, each Party shall be responsible for any and all claims, demands, suits, actions, damages, and causes of action related to or arising out of or in any way connected with its own actions and the actions of its personnel in providing Mutual Aid assistance rendered or performed pursuant to the terms and conditions of this Agreement. Each party agrees to obtain general liability and public official's liability insurance, if applicable, or maintain a comparable self-insurance program.

Action Requested / Staff Recommendation

Approve the resolution to authorize the City Manager to sign the public works mutual aid agreement with NCTCOG.

Attachments

Resolution
MAA agreement
PWERT Information
Power Point Information

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR PUBLIC WORKS MUTUAL AID BY AND BETWEEN THE CITY OF MURPHY AND THE PARTICPATING LOCAL GOVERNMENT AND SPECIAL DISTRICT PARTIES OF NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS, OF THE STATE OF TEXAS FOR THE PURPOSE OF PROVIDNG PUBLIC WORKS SERVICES IN THE EVENT OF AN EMERGENCY, DISASTER AND/OR CIVIL DISASTER. EACH PARTY MAY TERMINATE THE AGREEMENT UPON THIRTY (30) DAYS WRITTEN NOTICE TO THE OTHER PARTICIPATING PARTIES. THIS RESOLUTION ALSO PROVIDES FOR AN EFFECTIVE DATE.

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

Section 1

That the City Manager is hereby authorized to enter into interlocal agreement with the participating Local Government and Special District Parties for Mutual Aid in the protection of life and property from emergencies, disasters and/or civil disasters.

Section 2

That the City Manager is authorized to take those steps reasonable and necessary to comply with the intent of this resolution.

Section 3

That this resolution shall take effect on the date of adoption as indicated on the signature page for each party.

PASSED AND APPROVED on the 20th day of August, 2013.

City of Murphy, Texas
By: _____
Eric Barna, Mayor

Attest:

Kristi Gilbert
City Secretary

**NORTH CENTRAL TEXAS PUBLIC WORKS
MUTUAL AID AGREEMENT**

This mutual aid agreement (“Agreement”) is entered into by, between, and among the North Central Texas Participating Local Governments and/or Public/Political Sub-Divisions located wholly or partially within the State of Texas acting by and through their duly authorized officials. The undersigned Participating Local Governments and any and/or Public/Political Sub-Divisions of the State of Texas adopting this agreement upon a formal order of their respective governing bodies as provided therein may be referred to in this Agreement individually as “Party” and collectively as “Parties.” By signing this document, and sending it to the Public Works Emergency Response Team, at an address maintained by the NCTCOG, the agency has indicated that it consents to be a party to this emergency mutual aid agreement, and acknowledges that it is not necessary to receive copies of the agreement from other agencies that are party to such agreement.

RECITALS

WHEREAS, the Parties recognize the vulnerability of the people and communities located within local governments and public subdivisions to damage, injury, and loss of life and property resulting in emergencies, disasters or civil emergencies and recognize that such incidents may present equipment and personnel requirements beyond the capacity of each individual (governmental entity) (Party); and

WHEREAS, the governing officials of the Parties desire to secure for each Party the benefits of Mutual Aid for the protection of life and property in the event of an emergency, disaster or civil emergency or public works emergency; and

WHEREAS, the Parties *that* wish to make suitable arrangements to provide Mutual Aid are so authorized, and make this Agreement pursuant to *all governmental power inherent in home rule and other municipalities and all statutory authority, including, but not limited to, the Interlocal Cooperation Act Chapter 791 of the Texas Government Code); the Texas Disaster Act of 1975 as amended Chapter 418 of the Texas Government Code including the Texas Statewide Mutual Aid System of the Emergency Management Chapter, set out in Subchapter E-1 of Texas Government Code, Section 418.111 et seq, and any amendments to that authority or other authority that may be set out in the constitution of laws of the State of Texas;*

WHEREAS, it is understood that the creation of this Agreement and the Texas Statewide Mutual Aid System (SB11) under Chapter 418 E-1 does not replace or supersede existing mutual aid agreements or interfere with the ability of municipalities to enter into written mutual aid agreements in the future. It is understood that if a written agreement is entered into by governmental entities or municipalities requesting resources, then the terms *of* that agreement control the rights and responsibilities of the participating parties to the extent the agreement provides terms that differ from the Texas Statewide Mutual Aid System.

WHEREAS, it is expressly understood that any mutual aid extended under this Agreement and the operational plan adopted pursuant thereto, is furnished in accordance with the “Texas Disaster Act” and other applicable provision of law and except as otherwise provided by law, that the responsible local official in whose jurisdiction an incident requiring Mutual Aid has occurred shall remain in charge at such incident including the direction of such personnel and equipment provided him/her through the operation of such Mutual Aid Plans;

**NORTH CENTRAL TEXAS PUBLIC WORKS
MUTUAL AID AGREEMENT**

NOW, THEREFORE, the Parties agree as follows:

Section 1: Incorporation: The above whereas provisions and statements are incorporated as if written word for word below.

Section 2: Purpose: This Agreement is hereby established to provide planning and operating procedures whereby public works related Agencies may request aid and assistance in the form of personnel, equipment, materials and/or other associated services from other public works related agencies. This agreement allows for better coordination of efforts, identifies available resources and helps ensure that timely aid can be provided.

Section 3: Definitions

- A. "Agency" means any municipal public works agency, township road district, county highway departments, or any Public/Political sub-division that performs a public works function that abides by the provisions as found in this Agreement.
- B. "Administrative Agency" means the entity designated by the Parties to be responsible for maintaining the documents associated with this Agreement including distributing Point of Contact and Resource Inventory information.
- C. "Assisting Party" or "Responding Party" means the agency or organization which has received a request to furnish aid and assistance from another Party and has agreed to provide the same.
- D. "Civil Emergency" means an unforeseen combination of circumstances or the resulting consequences thereof within the geographic limits of a given jurisdiction that calls for immediate action or for which there is an urgent need for assistance or relief to protect the general citizenry.
- E. "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including but not limited to fire, flood, earthquake, wind, storm, wave action, winter storm, biological or health hazards, dam or levee break, drought, explosion, riot,, acts of terrorism and other public calamity requiring emergency action or requiring homeland security activity (as that term is defined in Chapter 421 of the Texas Government Code entitled Homeland Security) that is or likely to be, beyond the control of the services personnel equipment and facilities of a Party that requires assistance under this Agreement, but must be coordinated through the appropriate local accredited/certified Emergency Management Agency coordinator.
- F. "Emergency" means any occurrence or threat thereof, whether natural or caused by man, in war or in peace, which results in substantial injury or harm to the population, or substantial damage to or loss of property.
- G. "Homeland security activity means any activity related to the prevention or discovery of, response to, or recovery from a terrorist attack, natural or man-made disaster, hostile military or paramilitary action, or extraordinary law enforcement emergency.
- H. "Mutual Aid" means providing resources such as personnel, equipment, services and supplies. These resources support typical public works missions or tasks such as: removal of debris, restoration of water/wastewater operations, flood control, infrastructure system repairs, standby power, and damage assessment.

**NORTH CENTRAL TEXAS PUBLIC WORKS
MUTUAL AID AGREEMENT**

- I. "National Incident Management System (NIMS)" means a Presidential directive that provides a consistent nationwide approach that allows federal, state, local and tribal governments as well as private sector and nongovernmental organizations to work together to manage incidents and disasters of all kinds.
- J. "Operational Period" shall mean a period of time beginning at the time of the request for Mutual Aid and lasting no longer than thirty six (36) hours. Typically assistance would be given in Twelve (12) hour shifts for operational efficiencies. It is the intention of this mutual aid to be for assistance in the initial response to the emergency and not part of the long term recovery. If assistance is requested beyond the initial 36 hours, then the requesting agency must work with the responding agency directly and put in place a mutual agreeable contract and payment for services rendered. It is also understood that any agency responding under this mutual aid agreement will not receive any reimbursement for their mutual aid assistance up to the first 36 hours, even if the event becomes a declared emergency by the President. After the first 36 hours repayment shall be provided. It is also understood that any agency for any reason may decline to assist or recall their mutual aid at any time.
- K. "Point of Contact" means a person and/or an agency's department/office serving as the coordinator or focal point of information dealing with public works emergency response activities.
- L. "Public Works Emergency Response Team" (PWERT) means a working group of Public Works Officials representing their agencies; whose mission is to develop and maintain a region wide network of public works' related agencies. This teams' principal purpose is to provide mutual aid response and recovery assistance, to each other, when confronted with natural or man-made emergencies or disasters. This Group is designated as the Administrative Agency to manage this Agreement.
- M. "Requesting Party" means the agency or organization receiving aid and assistance from a Assisting Party.
- N. Public/Political Sub-Division means a basic level of independent local government or quasi-government authorized by Section 52 of the Texas Constitution that typically have a specific or limited purpose including Dallas Fort Worth International Airport, Toll Authorities, independent school districts, water or wastewater districts and improvement and economic development districts and exist separately from general purpose local governments such as county, city or townships.

Section 4: Term

This Agreement shall become effective as to each Party on date of adoption as indicated on the signature page for each Party and shall continue in force and remaining binding on each and every Party for twelve (12) months from the effective date. This Agreement shall renew automatically for a period of one year upon the completion of the initial term and each subsequent term unless such time as the governing body of a Party terminates its participation in this Agreement pursuant to Section 4 of this Agreement. Termination of participation in this Agreement by a Party or Parties shall not affect the continued operation of this Agreement between and among the remaining Parties

**NORTH CENTRAL TEXAS PUBLIC WORKS
MUTUAL AID AGREEMENT**

Section 5: Termination

Any Party may at any time by resolution or notice given to all the other Parties decline to participate in the provision of Public Works Mutual Aid. The Governing Body of a Party shall, by Resolution, give notice of termination of participation in this Agreement and submit a copy of such resolution to the Administrative Agency and all other Parties. Such termination shall become effective thirty (30) days after filing of such notice. The termination by one or more of the Parties of its participation in this Agreement shall not affect the operation of this Agreement as between the other Parties hereto.

Section 6: Responsibility of Parties

Provision of Aid: Each Party recognizes that it may be requested to provide aid and assistance at a time when it is necessary to provide similar aid and assistance to the Party's own constituents. This Agreement shall not be construed to impose any unconditional obligation on any Party to provide aid and assistance. A Party may choose not to render aid and assistance at any time for any reason, or to recall aid that has been deployed at any time.

Section 7: Request for Assistance: The request for assistance will:

- A. Be made only with a Declaration of a state of Local Civil Emergency or Declaration of Disaster by a Requesting Party pursuant to Section 418.108, Texas Government Code or after a proclamation of a State of Emergency under Section 433.001, Texas Government Code,
- B. Be made only without a Declaration of a state of Local Civil Emergency or Declaration of Disaster if the requesting agency expects to use the resource(s) for less than one operational period or if the declaration of emergency is expected to be issued during the first operational period.
- C. Be made by the highest ranking authority of Requesting Party available at the time of need,
- D. Be made to the highest ranking authority of the Responding Party available at the time of need, and
- E. Specify to the greatest extent possible the nature of the problem requiring assistance and the resources requested.

Section 8: Procedures for Requests and Provision of Mutual Aid: See Attachment 1

Section 9: Cost Limitation

A Requesting Party shall not be required to reimburse a Responding Party for costs incurred during the first Operational Period as defined in Section 2 of this Agreement. A Requesting Party shall be required to reimburse a Responding Party for costs incurred after the first Operational Period.

**NORTH CENTRAL TEXAS PUBLIC WORKS
MUTUAL AID AGREEMENT**

Section 10: Expending Funds:

A Responding Party that performs services or furnishes aid pursuant to this Agreement shall do so with their own current funds. No Party shall have any liability for the failure to expend funds to provide aid hereunder.

Section 11: Insurance

- A. Worker's Compensation Coverage: Each Party shall be responsible for its own actions and those of its employees and is responsible for complying with the Texas Workers' Compensation Act.
- B. Automobile Liability Coverage: Each Party shall be responsible for its own actions and is responsible for complying with the Texas motor vehicle financial responsibility laws.
- C. To the extent permitted by law and without waiving sovereign immunity, each Party shall be responsible for any and all claims, demands, suits, actions, damages, and causes of action related to or arising out of or in any way connected with its own actions and the actions of its personnel in providing Mutual Aid assistance rendered or performed pursuant to the terms and conditions of this Agreement. Each party agrees to obtain general liability and public official's liability insurance, if applicable, or maintain a comparable self-insurance program.

Section 12: Miscellaneous

- A. Entirety: This Agreement contains all commitments and agreements of the Parties with respect to the Mutual Aid to be rendered hereunder during or in connection with an Emergency, Disaster and/or Civil Emergency. No other oral or written commitments of the Parties with respect to mutual aid under this Agreement shall have any force or effect if not contained herein, except as provided in Section 12E below.
- B. Other Mutual Aid Agreements: This Agreement is not intended to replace or conflict with - local mutual aid agreements for other emergency response needs such as fire and police or for the other purposes
- C. Severability: If a provision contained in this Agreement is held invalid for any reason, the invalidity does not affect other provision of the Agreement that can be given effect without the invalid provision, and to this end the provisions of the Agreement are severable.
- D. Validity and Enforceability: If any current or future legal limitations affect the validity or enforceability of a provision of this Agreement, then the legal limitations are made as part of the Agreement and shall operate to amend this Agreement to the minimum extent necessary to bring this Agreement into conformity with the requirement of the limitations, and so modified, this Agreement shall continue in full force and affect.
- E. Amendment: This Agreement may be amended only by the mutual written consent of the Parties.
- F. Governing Law and Venue: The Laws of the State of Texas shall govern this Agreement. In the event of an Emergency or Disaster physically occurring within the geographical limits of only one county that is a Party hereto, venue shall lie in the county in which the Emergency or Disaster occurred. In the event an Emergency or Disaster physically occurring in more

**NORTH CENTRAL TEXAS PUBLIC WORKS
MUTUAL AID AGREEMENT**

than one county that is a Party thereto, venue shall be determined in accordance with the Texas Rules of Civil Procedure.

G. Signatories: The PWERT shall be the official repository of original pages of the Parties to this Agreement and will maintain an up-to-date list of those Parties. Each Party will retain a copy of their own originally signed document with an additional individual signature page from their Agency to be filed with the PWERT under this Agreement. *PWERT will maintain contact information from all of the parties and provide for a means of communication whenever there is a need to call for mutual aid. This agreement may be signed in multiple copies, and it is only necessary for the agencies to notify the PWERT and keep them informed of the contact information.*

H. PWERT – the Administrative Agency, managing this agreement, provides for one membership seat for each participating agency and one alternate seat. The primary seat should be held by a Public Works Official or designee. The alternate seat should held by a member of the jurisdiction of the Emergency Management Division or designee. The jurisdiction is not required to fill the seats, but, it is strongly recommended, in order to receive information and training for emergency response.

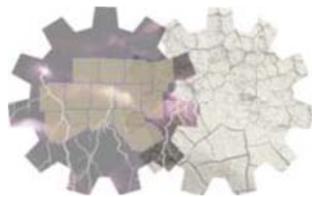
EXECUTED this _____ day of _____, 2013

_____, Texas

By: _____

Printed Name: _____

Title: _____



**PUBLIC WORKS EMERGENCY RESPONSE TEAM (PWERT)
MUTUAL AID PROGRAM
STANDARD OPERATING GUIDELINES (SOG)**

The Public Works Emergency Response Team, an advisory group organized under the North Central Texas Council of Governments (NCTCOG) Regional Emergency Preparedness Advisory Committee (REPAC) will oversee the administration of the North Central Texas Public Works Mutual Aid Agreement and associated requirements.

Section I: Develop a regional mutual aid agreement (MAA)

- A. That enables NCTCOG participating local governments the ability to obtain, or provide, timely aid and assistance for public works related resource needs in the event of an emergency or disaster.
- B. Biennially PWERT will review the MAA with designated members from the participating local governments to update as needed.

Section II: Develop procedures for effective communication and operational linkup between requesting agency and responding agency

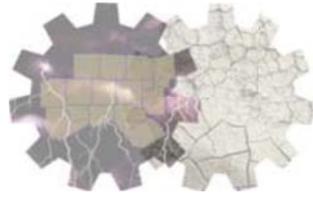
- A. Identify Points of Contact for participating agencies
- B. Provide forms or checklists that expedite and easily identify the aid required and the resources that can be obtained.

Section III: Develop a Regional Incident Resource Inventory System

- A. That enables NCTCOG participating local governments a readily accessible database to find equipment, labor or supplies in an expeditious manner.
- B. That is centrally maintained on the NCTCOG Regional Hazard Assessment Tool (RHAT) System? Or the Dallas County E- Team Emergency Operations Center software?
- C. That facilitates the transition to the National Incident Management System (NIMS) Resource Typing Framework.
- D. That addresses public-private partnerships to enhance the ability to respond to all types of emergencies and disasters.

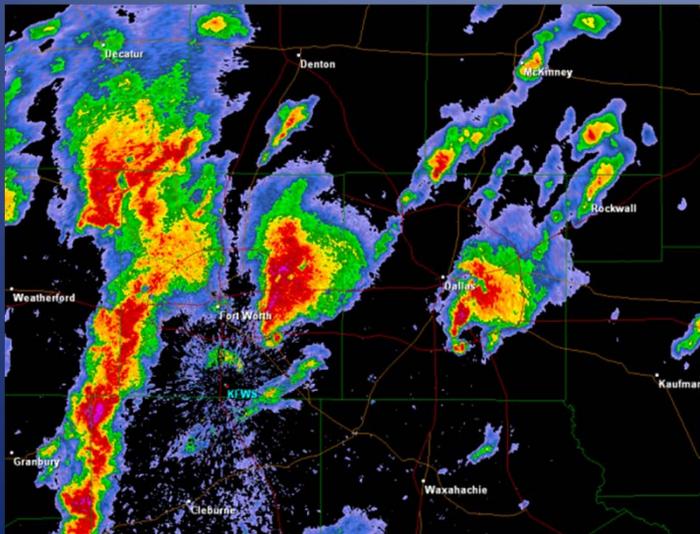
Section IV: Develop other Emergency Preparedness Programs or Projects

- A. As identified by REPAC or PWERT members
- B. Annually develop a work plan to address regional public works/infrastructure programs such as regional interdependency gaps and/or risk assessments for continuity of operations, training exercises and education and other emergency planning needs.



PUBLIC WORKS EMERGENCY RESPONSE TEAM (PWERT)
MUTUAL AID PROGRAM
STANDARD OPERATING GUIDELINES (SOG)

North Central Texas Mutual Aid Agreement



Overview

- Purpose
- Scope
- Process



Purpose

- Enhance the ability to deal with a major emergency beyond existing resources
- A cooperative arrangement that enables jurisdictions to:
 - Simplify/streamline the request/assist process
 - recover quickly
 - Identify available regional resources
 - Work out in advance legal and financial issues



Scope

- Focused on preparedness and initial response & short term recovery
 - Help stabilize the situation
 - Operational Period: 36 hours
- Terms of the agreement:
 - NIMS approach
 - Request for Assistance after Disaster Declaration or without Declaration if resources only needed for first operational period
 - Voluntary support/aid  Your choice and ability



Scope

- Operational Costs: Everybody pays their own way; No reimbursement for the first operational period
- Insurance(workmen's compensation, auto liability): Each party responsible for it's own actions
- Agreement processing: PWERT will facilitate and be the repository of all associated documents



Process

- Signatory Party
- General Procedures:
 - *Requesting Agency* fill out Checklist & Info Form
 - Ask for PEWERT assistance to obtain resources or
 - Locate & contact agencies in the agreement
 - *Responding Agency*:
 - Analyze & Validate resources available
 - Obtain authority to deploy
 - Complete Checklist & Info Form
 - Dispatch Resources



Process

- Other Actions

- Supervision & Control:

- Response operations function under ICS Unified control system

- Responding agency under direct supervision of their designated supervisory

- Maintain all necessary records

- Subject to recall with reasonable notice to Requesting Agency

- Self Sufficiency: unless mutually agreed, responding agency handles own needs from staging area to redeployment

- Requesting agency ensures communication linkage





Questions?



Issue

Consider and take action, if any, on the approval of a Resolution authorizing the Mayor to execute a letter to the Attorney General documenting compliance with Chapter 395 of the Texas Local Government Code.

Staff

Kristi Gilbert, City Secretary

Background

This is a routine, ministerial process.

Financial Considerations

None.

Other Considerations

None.

Board/Staff Recommendation

Staff recommends approval of a Resolution authorizing the Mayor to execute a letter to the Attorney General documenting compliance with Chapter 395 of the Texas Local Government Code.

Attachments

Resolution
Letter to the Attorney General

RESOLUTION NO. 13-R-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MURPHY, TEXAS, AUTHORIZING THE MAYOR OF THE CITY OF MURPHY, TEXAS, TO SIGN A LETTER TO THE TEXAS ATTORNEY GENERAL INDICATING THE CITY OF MURPHY, TEXAS, IS IN COMPLIANCE WITH CHAPTER 395 OF THE TEXAS LOCAL GOVERNMENT CODE REGARDING IMPACT FEES; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, chapter 395 of the Texas Local Government Code provides the authorization for the imposition of impact fees; and

WHEREAS, section 395.082 of the Texas Local Government Code requires the City of Murphy, Texas, to submit to the Texas Attorney General's office written certification verifying compliance with chapter 395 of the Texas Local Government Code; and

WHEREAS, the written certification signed by the presiding officer of the City must be submitted not later than the last day of the City's fiscal year, which is September 30, 2013.

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

Section 1. That the foregoing recitals are hereby found to be true and correct findings of the City of Murphy, Texas, and are fully incorporated into the body of this resolution.

Section 2. That the City Council of the City of Murphy, Texas, authorizes the Mayor to sign a compliance letter, attached hereto as *Exhibit A*, to the Texas Attorney General's office indicating the City of Murphy, Texas, is in compliance with chapter 395 of the Texas Local Government Code, as amended.

Section 3. This resolution shall become effective from and after its passage.

DULY RESOLVED by the City Council of the City of Murphy, Texas, on this the 20th August, 2013.

Eric Barna, Mayor
City of Murphy

ATTEST:

Kristi Gilbert, City Secretary
City of Murphy

Exhibit A

August 20, 2013

The Honorable Greg Abbott
Attorney General
Intergovernmental Relations Division
P.O. Box 12548
Austin, Texas 78711-2548

Y
E

Re: TEXAS LOCAL GOVERNMENT CODE Chapter 395

Dear General Abbott:

The City of Murphy is a political subdivision that imposes an impact fee.

This statement certifies compliance with Chapter 395, TEXAS LOCAL GOVERNMENT CODE.
This verification is being provided at the end of our 2013 fiscal year.

Very truly yours,

Eric Barna, Mayor
City of Murphy

Road
34
org

City Council Meeting
August 20, 2013

Issue

Consider and/or act upon authorizing Dunkin, Sims, Stoffels Inc. to bid a landscaping installation contract for Murphy Central Park.

Staff Resource / Department

Kim Lenoir, Director of Parks and Public Works

Key Focus Area

Beautification, Community and Economic Development

Summary

Dunkin, Sims, Stoffels Inc (DSS), Murphy Central Park design team, have prepared landscaping plans for the park and PSA-Murphy in accordance with the lease agreement.

Background/History

On August 7, 2012, City Council awarded the construction bid to Dean Construction for Murphy Central Park. Due to changes in the park plans to include the PSA-Murphy lease and additional parking, it was agreed to remove landscaping to be redesigned and bid at a later date. The park construction is now 60% complete and the contractors are targeting mid-October to complete their work. PSA-Murphy is also targeting October for completion and have scheduled two major tournaments for November 2013. Planting of trees and shrubs should occur in October/November 2013. To meet this time table, bidding needs to begin, with City Council considering the award of the bid September 17, 2013.

Financial Considerations

\$185,000 was budgeted for landscaping from MDD funds by the City Council on October 12, 2012. DSS estimate the proposed plans at \$150,000.

Action Requested

City Council is requested to authorize Dunkin, Sims, Stoffels Inc to publically bid the landscape installation for Murphy Central Park and the PSA Murphy facilities.

Attachments

- 1) Dunkin, Sims, Stoffels Inc Plans and specifications

CONSTRUCTION PLANS FOR:

Murphy Community Park- Phase I

Landscape Planting

Murphy, Texas

MAYOR
Eric Barna

CITY COUNCIL
Owas Siddiqui, Mayor Pro-Tem
Ben St. Clair, Deputy Mayor Pro-Tem
Scott Bradley
Betty Spraggins
Bernard Grant
Rob Thomas

CITY MANAGER
James Fisher

DIRECTOR OF PARKS & PUBLIC WORKS
Kim Lencir, CPRP

PARKS & RECREATION BOARD
Kenneth Ottmann, Chairman
Julia Baldwin
Sherry Pace
Angella Pinaga
Amy Lawrence
Mark Reed
Kate Westhara

MURPHY COMMUNITY DEVELOPMENT CORP.
Cary Walker
Shawn Balusek
Eric Lopez
Stephen Janiga
Jim Tuskan
Marty Brenner

MURPHY MUNICIPAL DEVELOPMENT DISTRICT BOARD
Joseph Mani
Alain Dermarker
Owas Siddiqui
Jamie Nicholson
Betty Spraggins

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LP-1	landscape planting plan
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LP-3	landscape planting plan
LP-4	landscape planting plan
LP-5	landscape planting plan
CD-1	planting details



issue date:
August 8, 2013

revisions:

THE DESIGN APPEARING ON THIS DOCUMENT IS MY OWN AND ONLY I, ACCOMPANIED BY AN ENGINEER, ARCHITECT OR PROFESSIONAL LANDSCAPE ARCHITECT/PLANNER, HAVE PREPARED OR SUPERVISED THE PREPARATION OF THE SAME. I AM NOT PROVIDING ANY DESIGN SERVICES TO ANY OTHER PARTY. THIS DOCUMENT IS NOT TO BE USED FOR ANY OTHER PROJECT WITHOUT THE WRITTEN CONSENT OF DUNKIN SIMS STOFFELS, INC.

THIS DRAWING IS RELEASED FOR REVIEW AND APPROVAL AND FOR BIDDING UNDER THE AUTHORITY OF ORDER 17, DATED 11/02/09, BY THE BOARD OF ARCHITECTS AND ENGINEERS OF THE STATE OF TEXAS.

PREPARED BY:



DUNKIN SIMS STOFFELS, INC.
LANDSCAPE ARCHITECTS/ PLANNERS
9603 White Rock Trail, Suite 210
Dallas, Texas 75238
phone 214.553.5778 * fax 214.553.5781
www.dssl.com

GENERAL LEGEND/ NOTES:

REF.	REFERENCE, REFER TO
TYP.	TYPICAL
MIN.	MINIMUM
MAX.	MAXIMUM

■■■■ SHEET MATCHLINE

1. CONTRACTOR SHALL COMPLY WITH ALL APPLICABLE GOVERNING REGULATORY REQUIREMENTS. REQUIRED PERMITS SHALL BE OBTAINED BY THE CONTRACTOR.
2. ALL CONSTRUCTION COVERED BY THESE CONTRACT DOCUMENTS SHALL BE IN CONFORMANCE WITH THE LATEST EDITION OF ALL APPLICABLE CITY AND OSHA CODES AND STANDARDS, INCLUDING BUT NOT LIMITED TO THE INTERNATIONAL BUILDING CODE AND AMENDMENTS AS ADOPTED BY COLLIN COUNTY.
3. CONTRACTOR TO VERIFY SITE INFORMATION, INCLUDING PROPERTY LINES, EASEMENTS, BUILDINGS, ROADWAY, CURB AND GUTTERS, UTILITIES AND OTHER INFORMATION AFFECTING THIS SCOPE OF WORK. THE CONTRACTOR SHALL CONTACT THE OWNER'S REPRESENTATIVE FOR DIRECTION ON HOW TO PROCEED IF ACTUAL SITE CONDITIONS VARY FROM WHAT IS SHOWN ON THESE DRAWINGS.
4. CONTRACTOR SHALL NOT PROCEED WITH CONSTRUCTION AS DESIGNED IF OBSTRUCTIONS AND/OR DIFFERENCES EXIST ON SITE THAT WERE NOT APPARENT DURING THE COURSE OF DESIGN AND CONSTRUCTION DOCUMENTATION. SUCH CONDITIONS SHALL BE IMMEDIATELY BROUGHT TO THE ATTENTION OF THE OWNER'S REPRESENTATIVE. THE CONTRACTOR SHALL ASSUME FULL RESPONSIBILITY FOR ALL NECESSARY REVISIONS DUE TO FAILURE TO GIVE SUCH NOTIFICATION.
5. EXCAVATION IN THE VICINITY OF UTILITIES SHALL BE UNDERTAKEN WITH CARE. THE CONTRACTOR BEARS FULL RESPONSIBILITY FOR THIS WORK. THE CONTRACTOR SHALL VERIFY THE LOCATION OF ALL SITE UTILITIES WITH LOCAL AUTHORITIES AND/OR UTILITY OWNER'S REPRESENTATIVE (CONTACT "811") PRIOR TO BEGINNING EXCAVATION. ANY DAMAGES TO UTILITIES SHALL BE REPAIRED IMMEDIATELY AT NO EXPENSE TO THE OWNER.
6. CONTRACTOR SHALL NOTIFY OWNER'S REPRESENTATIVE 48 HOURS PRIOR TO COMMENCEMENT OF WORK TO COORDINATE PROJECT INSPECTION SCHEDULES.
7. CONTRACTOR SHALL COORDINATE MATERIAL STORAGE, PARKING OF VEHICLES AND RESTRICTIONS ON WORK WITH OWNER'S REPRESENTATIVE. PARKING OF VEHICLES AND STORAGE OF MATERIALS SHALL NOT BE PERMITTED BENEATH THE CANOPY OF EXISTING TREES.
8. CONTRACTOR SHALL PROVIDE ALL LABOR, MATERIALS, AND SUPERVISION NECESSARY TO COMPLETE WORK AS SHOWN IN THESE DRAWINGS UNLESS OTHERWISE SPECIFIED.
9. CONTRACTOR(S) IS RESPONSIBLE FOR REMOVAL OF TRASH AND REPAIR OF HAZARDOUS CONDITIONS ON A DAILY BASIS, BY END OF WORK DAY.
10. UPON COMPLETION OF CONSTRUCTION AND PRIOR TO FINAL ACCEPTANCE, CONTRACTOR SHALL THOROUGHLY CLEAN PROJECT SITE OF ALL TRASH, SCRAPS AND DEBRIS. CONTRACTOR SHALL REPAIR ALL DAMAGE TO FINISH GRADE, INCLUDING TAILINGS FROM EXCAVATIONS, WHEEL RUTS, ETC., CAUSED BY CONSTRUCTION.
11. ANY REFERENCE TO DRAWING REVISIONS, EXPRESSED OR IMPLIED, ARE SHOWN FOR INFORMATION AND CONTRACTOR CONVENIENCE ONLY. CONTRACTOR IS RESPONSIBLE FOR REVIEW AND ADHERENCE TO DRAWINGS ISSUED FOR CONSTRUCTION.

LANDSCAPE NOTES:

1. THE CONTRACTOR SHALL VERIFY ALL EXISTING SITE CONDITIONS BY A FIELD INSPECTION BEFORE SUBMITTING A BID.
2. ALL LOGS, STONES, STUMPS, BRANCHES, ROOTS, RUBBISH, OR OTHER OBJECTIONABLE MATERIALS DISCOVERED IN THE SOIL DURING THE GRADING PROCESS SHALL BE REMOVED FROM THE SITE BY THE CONTRACTOR.
3. ANY DAMAGE TO THE EXISTING STREET PAVING, CURBS, OR OTHER EXISTING SITE ELEMENTS SHALL BE REPAIRED AT THE CONTRACTOR'S EXPENSE.
4. THE OWNER'S REPRESENTATIVE SHALL APPROVE THE STAKING OF ALL SITE ELEMENTS BEFORE WORK COMMENCES ON THESE ELEMENTS.
5. IF DIMENSIONS NOTED TO BE FIELD VERIFIED VARY FROM THOSE NOTED ON THE PLAN, CONTACT THE LANDSCAPE ARCHITECT BEFORE PROCEEDING.
6. THE LOCATION OF UNDERGROUND FACILITIES INDICATED ON THE PLANS ARE TAKEN FROM PUBLIC RECORDS. IT IS THE CONTRACTOR'S RESPONSIBILITY TO MAKE ARRANGEMENTS WITH THE OWNERS OF SUCH UNDERGROUND FACILITIES (CONTACT "811") PRIOR TO WORKING IN THE AREA TO CONFIRM THEIR EXACT LOCATION AND TO DETERMINE WHETHER ANY ADDITIONAL FACILITIES OTHER THAN THOSE SHOWN ON THE PLANS MAY BE PRESENT. THE CONTRACTOR SHALL PRESERVE AND PROTECT ALL UNDERGROUND FACILITIES. ANY FACILITIES/ UTILITIES DAMAGED BY THE CONTRACTOR SHALL BE REPLACED AT CONTRACTOR'S EXPENSE.
7. THE CONTRACTOR IS RESPONSIBLE FOR ACQUIRING AND PAYING ALL PERMITS AND INSPECTIONS FROM ALL JURISDICTIONAL AGENCIES AND CORPORATIONS. THE CONTRACTOR WILL NOT BE REQUIRED TO PAY FEES FOR PERMITS ISSUED BY THE CITY.
8. DISCREPANCIES, IF ANY, SHOULD BE BROUGHT TO THE ATTENTION OF THE LANDSCAPE ARCHITECT BEFORE WORK COMMENCES.
9. TREES SHALL NOT BE REMOVED WITHOUT THE SPECIFIC CONSENT OF THE CITY. THE CONTRACTOR WILL BE RESPONSIBLE FOR REPLACING TREES REMOVED WITHOUT RECEIVING PROPER APPROVAL. TREES SHALL BE REPLACED ON A CALIPER INCH PER FOR CALIPER INCH BASIS; THE MINIMUM CALIPER REPLACEMENT TREES SHALL BE 3" CALIPER.
10. THE CONTRACTOR IS RESPONSIBLE FOR THE PROTECTION OF TREES, SHRUBS, AND OTHER PLANT MATERIALS WITHIN THE LIMITS OF WORK. PLANT MATERIALS WHICH ARE DAMAGED SHALL BE REPLACED AT THE CONTRACTOR'S EXPENSE IF THE OWNER'S REPRESENTATIVE DETERMINES THAT DAMAGE COMMITTED BY THE CONTRACTOR AND/OR HIS SUBCONTRACTORS, AGENTS, ETC. PRECLUDES MEASURES TO SAVE THE PLANTS.
11. ALL GRADING SHALL PROVIDE FOR NATURAL RUNOFF OF WATER WITHOUT LOW SPOTS OR POCKETS. FLOW LINES SHALL BE ACCURATELY SET AND SHALL NOT BE LESS THAN 1.0% GRADIENT IN LANDSCAPE AREAS UNLESS OTHERWISE NOTED. CONTRACTOR SHALL BE RESPONSIBLE FOR POSITIVE DRAINAGE IN ALL PLANTING AND TURF AREAS.
12. THE CONTRACTOR SHALL RESTORE ALL AREAS DISTURBED BY CONSTRUCTION TO THEIR ORIGINAL CONDITION OR BETTER. RESTORED AREAS INCLUDE, BUT ARE NOT LIMITED TO TRENCH BACKFILL, SIDE SLOPES, FENCES, CULVERT PIPES, DRAINAGE DITCHES, DRIVEWAYS, PRIVATE YARDS AND ROADWAYS. ALL AREAS DISTURBED BY CONSTRUCTION WILL BE TURFED.
13. ADEQUATE MEASURES SHALL BE TAKEN TO PREVENT EROSION. IN THE EVENT THAT SIGNIFICANT EROSION OCCURS AS A RESULT OF CONSTRUCTION, THE CONTRACTOR SHALL RESTORE THE ERODED AREA TO ORIGINAL CONDITION.
14. THE CONTRACTOR SHALL NOT ALLOW THE DISPOSAL OF ANY WASTE MATERIAL SUCH AS, BUT NOT LIMITED TO PAINT, OIL, SOLVENTS, CONCRETE, MORTAR, TREE BRANCHES, PLANT POTS ETC. WITHIN THE LIMITS-OF-WORK. SUCH MATERIAL SHALL BE LEGALLY DISPOSED AT THE CONTRACTOR'S EXPENSE.



LANDSCAPE ARCHITECTS PLANNERS
9603 White Rock Trail, Suite 210
Dallas, Texas 75238
Phone: (214) 933-5778
Fax: (214) 933-9762



THE SEAL OFFICIAL IN THE SIGNATURE OF THIS PLAN IS ACCURATE AND TRUE TO THE BEST OF HIS KNOWLEDGE AND BELIEF. HE HAS NOT BEEN CONVICTED OF ANY CRIME THAT WOULD DISQUALIFY HIM FROM EXERCISING HIS PROFESSIONAL RIGHTS. THIS SEAL IS VALID FOR CONSTRUCTION PERMITS AND SHALL NOT BE USED FOR ANY OTHER PURPOSES.
THIS SEALING IS VALID FOR REVIEW AND APPROVAL AND FOR BEING UNDER THE AUTHORITY OF ROBERT P. STOFFELS, L.A. #1025 ON August 8, 2013.

**Murphy Community Park Phase I
Landscape Planting**
City of Murphy, Texas

Issue Date:
August 8, 2013

Revisions:

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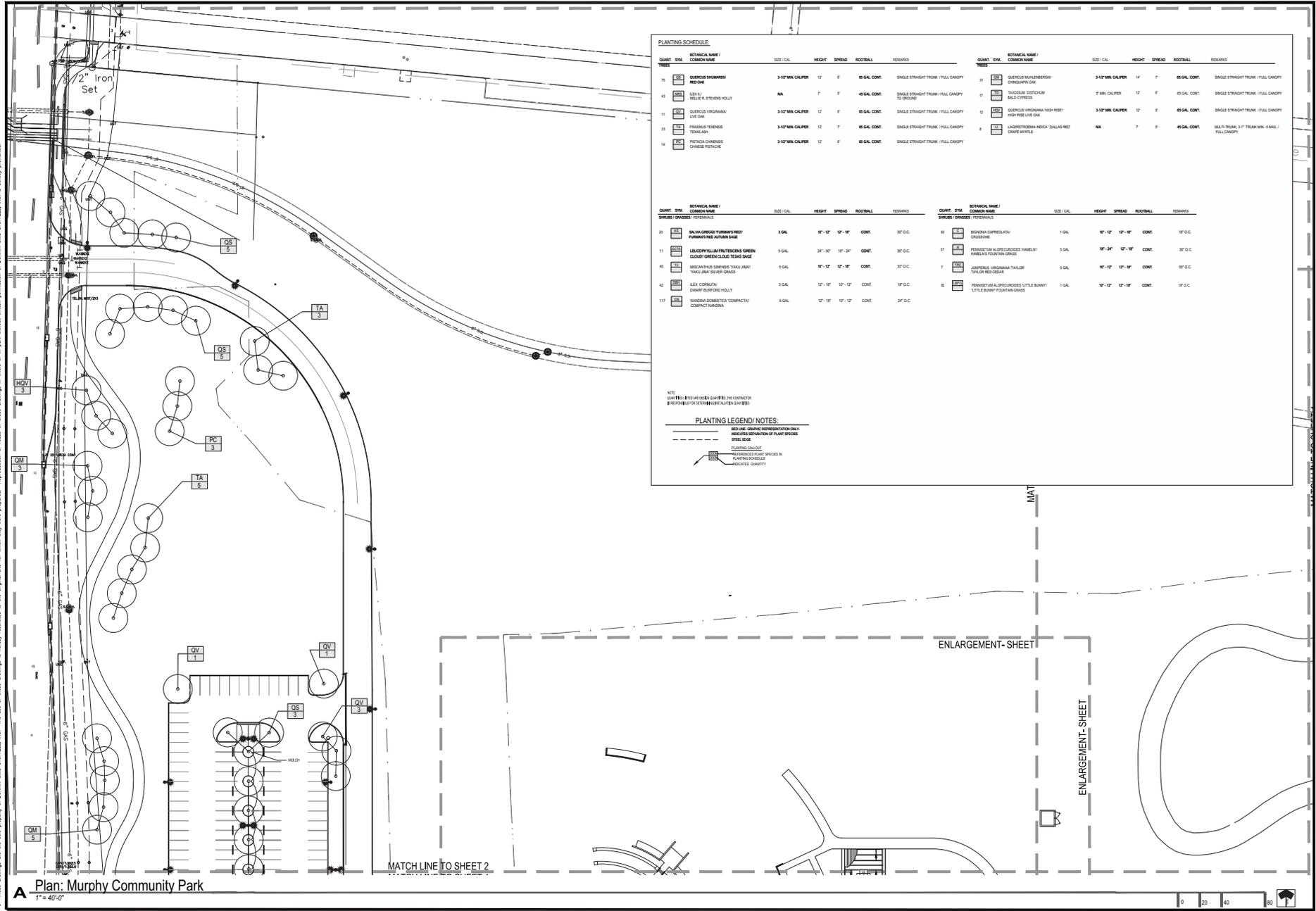
Sheet Title:
General Notes

GN-1

Murphy Community Park - Phase I - Landscape Planting

C. These drawings are the sole property of DUNKIN SIMS STOFFELS, INC. The use of these drawings is hereby restricted to the original site for which they were prepared. Reproduction or reuse of these drawings in whole or in part without written permission of DUNKIN SIMS STOFFELS, INC. is strictly prohibited.

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Murphy Community Park Phase I
Landscape Planting
City of Murphy, Texas

Issue Date:
August 6, 2013

Revisions:
A

SHW Project #: 4112.033.00
Sheet Title:
Landscape Planting

LP-1



9663 White Rock Trail, Suite 210
Dallas, Texas 75238
Phone: (214) 543-5778
Fax: (214) 553-9762



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THIS DRAWING IS PREPARED FOR REVIEW AND APPROVAL AND FOR RECORD UNDER THE AUTHORITY OF ROBERT P. STOFFELS, L.P. (EIT) ON August 6, 2013.

Murphy Community Park Phase I Landscape Planting

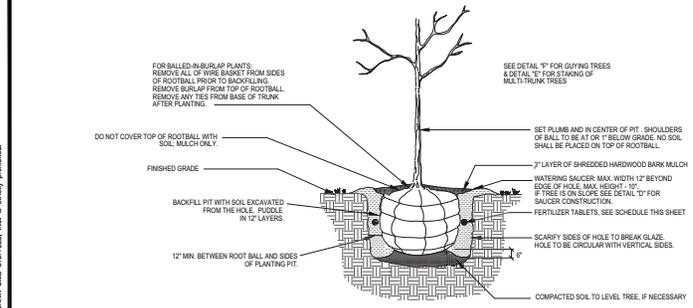
City of Murphy, Texas

Issue Date:
August 8, 2013

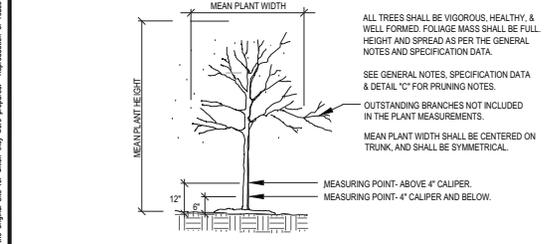
Revisions:
A

Sheet Title:
Construction Details

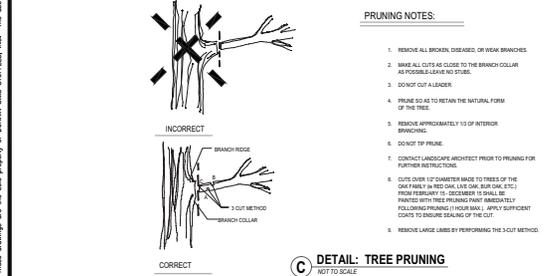
CD-1



A SECTION: TREE PLANTING - B&B, BOX, CONT. NOT TO SCALE



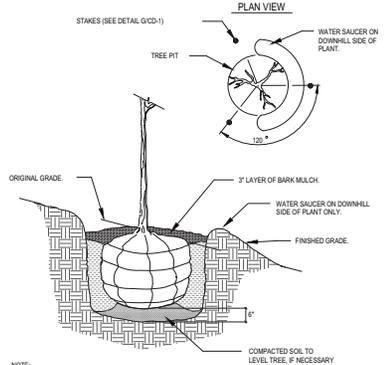
B SECTION: TREE MEASURING NOT TO SCALE



C DETAIL: TREE PRUNING NOT TO SCALE

FERTILIZER SCHEDULE: PLANTING

TREES	SHRUBS AND PERENNIALS:
5-GALLON TREES 2 AGRIFORM "21" GRAM TABLETS	1 GALLON AND SMALLER 1 AGRIFORM "21" GRAM TABLET
15-GALLON TREES 3 AGRIFORM "21" GRAM TABLETS	3 TO 5 GALLON AND B&B MATERIAL WITH SPREADS TO THREE (3) FT.
25-GALLON AND ALL B&B MATERIAL 1 AGRIFORM "21" GRAM TABLET PER EACH ONE-HALF (1/2) INCH OF CALIPER	2 AGRIFORM "21" GRAM TABLETS
SPACE TABLETS EVENLY AROUND ROOT BALL APPROX. 8" BELOW GRADE. PLACE NEXT TO BALL.	PLACE TABLETS AT A DEPTH APPROX. 10" BALL DEPTH AND NEXT TO BALL.
* OR APPROVED EQUAL.	* OR APPROVED EQUAL.



D SECTION: TREE PIT ON SLOPE NOT TO SCALE

Safety Stake Below Ground Model

Product Drawing & Installation Instructions

Free Stake Solutions LLC
jst@freesolutionsllc.com
C. 803.874.6143
D. 713.891.4151

Plant Staking Methods: Contractor shall use "Safety Stake" below grade root ball anchoring system manufactured by Free Stake Solutions as necessary to meet the requirements of the specifications, subject to approval. Refer to details for staking and/or guying requirements.
Contact: Jeff Taylor 953-874-6143 jst@freesolutionsllc.com

A. Items that are not capable of standing upright without falling or leaning shall be staked or guyed. The Contractor is responsible for installed temporary plants and should be able to plant them in the ground under the same conditions through the guarantee period. Tree support shall be performed as outlined below.

B. Rootball, Container and Box size, will determine Safety Stake model to be installed on all trees or shrubs that require staking or guying. Safety Stakes are designed for trees and shrubs that conform with the latest American Standards for Nursery Stock www.ansp.org

C. Place plants vertically using Free Stake Solutions "Safety Stake" Model BG Rootball Anchor. Select correct "Safety Stake" Rootball Anchor using manufacturer's Rootball Sizing Chart. Select anchor large enough to overlap the edge of rootball.

D. Auxiliary tree stakes staked with trees shall be removed after planting.

ITEM #	DESCRIPTION	TABLE LENGTH	COLOR CODE
5-BG-NS	5g or 10" Rootball	3-24" #4 Nail Stakes included	Color Tagged
15-BG-NS	15/11g or 17" Rootball	3-36" #4 Nail Stakes included	Color Tagged
30-BG-NS	25/20g or 22" Rootball	3-48" #4 Nail Stakes included	Color Tagged
45-BG-NS	45g or 27" Rootball	3-48" #4 Nail Stakes included	Color Tagged
65-BG-NS	65g or 30" Rootball	3-48" #4 Nail Stakes included	Color Tagged
100-BG-NS	95/100g or 36" Rootball	3-48" #4 Nail Stakes included	Color Tagged
130-BG-NS	130g or 42" Rootball	3-60" #3 Nail Stakes included	Color Tagged
200-BG-NS	200g or 48" Rootball	3-72" #3 Nail Stakes included	Color Tagged
300-BG-NS	300g or 58" Rootball	3-72" #3 Nail Stakes included	Color Tagged
Custom	Call	Additional Hole	Color Tagged

30 BG-NS 65 BG-NS

30 BG-NS: 3" Stake of Safety Stake, 4" Stake of Safety Stake, 5" Stake of Safety Stake, 6" Stake of Safety Stake, 7" Stake of Safety Stake, 8" Stake of Safety Stake, 9" Stake of Safety Stake, 10" Stake of Safety Stake, 11" Stake of Safety Stake, 12" Stake of Safety Stake, 13" Stake of Safety Stake, 14" Stake of Safety Stake, 15" Stake of Safety Stake, 16" Stake of Safety Stake, 17" Stake of Safety Stake, 18" Stake of Safety Stake, 19" Stake of Safety Stake, 20" Stake of Safety Stake, 21" Stake of Safety Stake, 22" Stake of Safety Stake, 23" Stake of Safety Stake, 24" Stake of Safety Stake, 25" Stake of Safety Stake, 26" Stake of Safety Stake, 27" Stake of Safety Stake, 28" Stake of Safety Stake, 29" Stake of Safety Stake, 30" Stake of Safety Stake.

65 BG-NS: 3" Stake of Safety Stake, 4" Stake of Safety Stake, 5" Stake of Safety Stake, 6" Stake of Safety Stake, 7" Stake of Safety Stake, 8" Stake of Safety Stake, 9" Stake of Safety Stake, 10" Stake of Safety Stake, 11" Stake of Safety Stake, 12" Stake of Safety Stake, 13" Stake of Safety Stake, 14" Stake of Safety Stake, 15" Stake of Safety Stake, 16" Stake of Safety Stake, 17" Stake of Safety Stake, 18" Stake of Safety Stake, 19" Stake of Safety Stake, 20" Stake of Safety Stake, 21" Stake of Safety Stake, 22" Stake of Safety Stake, 23" Stake of Safety Stake, 24" Stake of Safety Stake, 25" Stake of Safety Stake, 26" Stake of Safety Stake, 27" Stake of Safety Stake, 28" Stake of Safety Stake, 29" Stake of Safety Stake, 30" Stake of Safety Stake.

Safety Stake Below Ground Model

Product Drawing & Installation Instructions

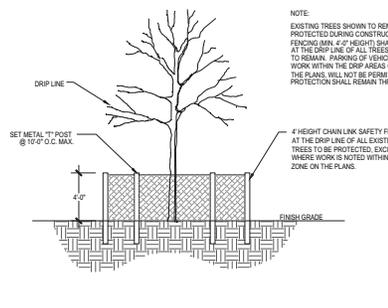
Free Stake Solutions LLC
jst@freesolutionsllc.com
C. 803.874.6143
D. 713.891.4151

1. With tree in straight and upright position, center the appropriate Safety Stake around root ball and bring top against rootball. Hold stake on the outside of ball and bottom of tree. All side stakes should be placed at the rootball or central cut of branch. The top stake or main stake (top stake) may be necessary to prevent side sections of the root ball with the top stake.

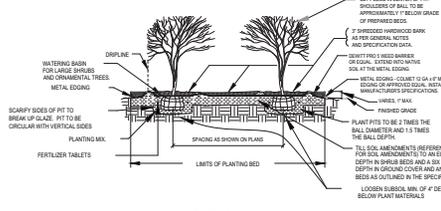
2. Insert 1 of 3 Nail Stakes through each of the three directions. Hold stake on the outside of ball and bring top against rootball. The hole on the outside of ball and bottom of tree. All side stakes should be placed at the rootball or central cut of branch. The top stake or main stake (top stake) may be necessary to prevent side sections of the root ball with the top stake.

3. Nail stakes should be driven straight down into the soil and not into the rootball. The hole on the outside of ball and bottom of tree. All side stakes should be placed at the rootball or central cut of branch. The top stake or main stake (top stake) may be necessary to prevent side sections of the root ball with the top stake.

4. After the tree stake is installed, a layer of mulch can be installed over stake. Safety Stakes are made and are made to be used in a variety of ways. The top stake or main stake (top stake) may be necessary to prevent side sections of the root ball with the top stake.



E SECTION: TREE PROTECTION NOT TO SCALE



F SECTION: SHRUB PLANTING BED NO SCALE

Project Manual

Murphy Community Park Phase I Landscape Planting

**Parks & Recreation Department
Murphy, Texas**

August 2013

Dunkin Sims Stoffels, Inc.
Landscape Architects/Planners

Specifications

for

Murphy Community Park Phase I – Landscape Planting Murphy, Texas

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N/A



Robert P. Stoffels 8/8/13

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N/A

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N/A

DIVISION 6 -- WOOD AND PLASTIC

N/A

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N/A

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N/A

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N/A

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N/A

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N/A

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N/A

Murphy Community Park Phase I - Landscape Planting City of Murphy, Texas

SECTION 00020 -- Advertisement for Bids

Sealed bids, in duplicate, addressed to the Honorable Mayor and City Council of Murphy, Texas, for: Murphy Community Park Phase I – Landscape Planting, Murphy, Texas prepared by Dunkin Sims Stoffels, Inc., 9603 White Rock Trail Suite 210, Dallas, Texas 75238 (phone number 214-553-5778), will be received at the office of **City Secretary** of the **City of Murphy, 206 N. Murphy Road, Murphy, Texas** until **Thursday, September 5, 2013** at **2:00 p.m.** Bids received after 2:00 p.m. on that date will be returned unopened.

The work includes: furnishing and installing landscape plant materials, plant bed preparation, metal edging, finish landscape earthwork in vicinity of plant beds and minor irrigation adjustments to facilitate landscape planting.

All bids will be opened at the City of Murphy, at which time a tabulation will be made for consideration of the Owner in awarding a contract. Any bids received after the closing time will be returned unopened.

The Contractor shall identify his/her bid on the outside of the envelope by writing:
Murphy Community Park Phase I – Landscape Planting

Bids shall be accompanied by a cashier's check or certified check, drawn upon a national or state bank, 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, as a guarantee that the bidder will enter into a contract.

Bidding Documents: A maximum of two sets of Plans, Specifications and other Bidding Documents for this project may be obtained by General Contractors and Primary Sub-Contractors from the office of Dunkin Sims Stoffels, Inc., 9603 White Rock Trail Suite 210, Dallas, Texas 75238, (phone number 214-553-5778), upon receipt of a non-refundable check for \$125.00 per each set of plans, payable to the **City of Murphy**. Partial sets of drawings and specifications will not be available.

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

No officer or employee of the City of Murphy shall have a financial interest, direct or indirect, in any contract with the City of Murphy.

THE CITY OF MURPHY, TEXAS

SECTION 00100 -- Instructions to Bidders**1.01 DEFINITIONS:**

- A. All definitions set forth in the General Conditions of the contract for construction, A.I.A. Document A-201, are applicable to these Instructions to Bidders.
- B. Bidding documents include the Advertisement to Bid, Instructions to Bidders, the Bid Forms and the proposed Contract Documents including any Addenda issued prior to receipt of Bids.
- C. Addenda are written or graphic instruments issued prior to the execution of the Contract which modify or interpret the bidding documents, including Drawings and Specifications, by additions, deletions, clarifications or corrections. Addenda will become part of the Contract Documents when the Construction Contract is executed.

1.02 EXAMINATION OF DOCUMENTS AND SITE:

- A. Each bidder, by making his bid, represents that he has read and understands the bidding documents.
- B. Each bidder, by making his bid, represents that he has visited the site and familiarized himself with the local conditions under which the work is to be performed.

1.03 BIDDING PROCEDURES:

- A. All bids shall be prepared on the forms provided by the Architect and submitted in accordance with the Instructions to Bidders. The Architect will furnish bidders with Bid Forms which will provide for the following Bid Items:
 - 1. A single base bid contract price as detailed and described in these Specifications.
 - 2. Acknowledgement of Addenda.
- B. A bid is invalid if it has not been deposited at the designated location prior to the time and date for the receipt of bids indicated in the Advertisement or Invitation to Bid, or prior to any extension thereof issued to the bidders.
- C. Unless otherwise provided in any supplement to these Instructions to Bidders, no bidder shall modify, withdraw or cancel his bid or any part thereof for sixty days after the time designated for the receipt of bids in the Advertisement or Invitation to Bid.
- D. Prior to the receipt of bids, Addenda will be mailed or delivered to each person or firm recorded by the Architect as having received the bidding documents and will be available for inspection wherever the bidding documents are kept available for that purpose. Addenda issued after receipt of bids will be mailed or delivered only to the selected bidder.

1.04 DISCREPANCIES AND AMBIGUITIES:

Each bidder shall examine the bidding documents carefully and, not later than seven days prior to the date for receipt of bids, shall make written request to the Architect for interpretations or correction of any ambiguity, inconsistency or error therein which he may discover. Any interpretation or correction will be issued as an Addendum by the Architect. Only a written interpretation or correction by Addendum shall be binding. No bidder shall rely upon any interpretation or correction given by any other method.

1.05 SUBSTITUTIONS:

- A. Each bidder represents that his bid is based upon the materials and equipment described in the bidding documents.
- B. No substitution will be considered prior to the date for receipt of bids. Refer to Section 01630.

1.06 QUALIFICATION OF BIDDERS:

- A. Bidders may be required to submit to the Architect a properly executed Contractor's Qualification Statement, A.I.A. Document A-305 and/or other properly documented experience record.
- B. Bidders may be disqualified and their bids not considered for any of the following specific reasons:
 1. Reason for believing collusion exists among bidders.
 2. The bidder being interested in any litigation against the Owner.
 3. The bidder being in arrears on any existing contract or having defaulted on a previous contract.
 4. Lack of competency as revealed by the financial statement, experience and equipment, questionnaires, or qualification statement.
 5. Uncompleted work which in the judgment of the Owner will prevent or hinder the prompt completion of additional work if rewarded.
- C. If required, a bidder shall submit to the Architect a confidential Financial Statement in a sealed envelope.

1.07 BASIS OF BIDS:

The Bidder shall complete all unit cost items and all alternates shown on the Bid Form; failure to comply may be cause for rejection. No segregated bids or assignments will be considered.

1.08 PREPARATION OF BID:

Bidder shall submit his Bid on the forms furnished by the Architect. All blank spaces in forms shall be correctly filled in and the bidder shall state the prices, written in words and in figures. Where there is discrepancy between the price written in words and the price written in figures, the price written in words shall govern. If Bid is submitted by an individual, his name must be signed by him or his duly authorized agent. If the bid is submitted by a firm, association or partnership, the name and address of each member must be given, and the bid must be signed by an official or duly authorized agent. Powers of attorney authorizing agents or others to sign bids must be properly certified and must be in writing and submitted with the bid.

1.09 BID GUARANTY:

- A. No bid will be considered unless it is accompanied by a cashier's check on any State or National Bank in Texas, or acceptable Bid Bond, payable unconditionally to the Owner. The cashier's check or Bid Bond shall be in the amount of not less than five percent (5%) of the total amount of the bid. The bid guaranty is required by the Owner as evidence of good faith and as a guarantee that if awarded the contract, the bidder will execute the contract and furnish the required bonds within ten (10) days after the bid is accepted. Said bonds shall further guarantee that if the bid is withdrawn after the bids have been opened or if the Contractor refuses to execute the contract in accordance with his bid, the Contract and the Surety shall become liable to the Owner for damages incurred. If a bidder's Bond is used, an acceptable

Surety thereon shall designate an agent resident in the local county, to whom requisite notices may be delivered and upon whom service of process may be had.

- B. As soon as possible, prices will be tabulated for comparison of Bids. The Owner may, at his discretion, return the bid guaranties accompanying the bids, which in its judgment, would not be considered in the award; all other bid guaranties will be retained by the Owner until the required contract and bonds have been executed, after which they will be returned. No bid guaranties will be returned until at least two days have elapsed from time of opening bids.

1.10 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND:

- A. With the execution and delivery of the Contract, the Contractor shall furnish and file with the Architect in the amounts herein required, the following Surety Bonds:
1. Performance Bond: A good sufficient construction or performance bond in an amount equal to 100 percent of the approximate total amount of the Contract, as evidenced by the Bid tabulation or otherwise guaranteeing the full and faithful execution of the work and performance of the Contract in accordance with the Contract Documents. This bond shall guarantee the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of one (1) year from date of completion and acceptance of the improvement by the Owner.
 2. Payment Bond: A good and sufficient bond in an amount equal to 100 percent of the approximate total amount of the Contract, as evidenced by the Bid tabulation or otherwise, guaranteeing the full and proper protection of all claimants supplying labor and materials in the prosecution of the work provided for in said Contract and for the use of each such claimant.
- B. No sureties will be accepted by the Owner who are now in default or delinquent on any bonds or who are interested in any litigation against the Owner. All bonds shall be executed by not less than one corporate surety authorized to do business in the State of Texas and acceptable to the Owner. Each bond shall be executed by the Contractor and the Surety. Should any surety on the Contract be determined unsatisfactory at any time by the Owner, notice will be given to the Contractor to that effect, and the Contractor shall immediately provide a new Surety satisfactory to the Owner. The Contract shall not be operative nor will any payments be due or paid until approval of the bonds has been made by the Owner.
- C. The bidder shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney indicating the monetary limit of such power.

1.11 FILING BIDS:

No bid will be considered unless it is filed by the Contractor within the time limit for receiving bids as stated in the Advertisement. Each bid shall be in a sealed envelope, plainly marked with the word "Bid", and the name and description of the project as designated in the Advertisement.

1.12 MODIFICATION AND WITHDRAWAL OF BIDS:

Bids may not be modified after submittal. Bidders may withdraw a bid at any time before opening, but once withdrawn the bid may not resubmitted during that bidding cycle.. No bid may be withdrawn or modified after the bid opening except where the award of the Contract has been delayed beyond 60 days after date of bid.

1.13 OPENING BIDS:

The bids submitted will be opened at the time stated in the advertisement and shall thereafter remain on file with the Owner.

1.14 IRREGULAR BIDS:

Bids will be considered irregular if they show any omissions, alternations of form, additions, or conditions not requested, unauthorized alternate bids or irregularities of any kind. However, the Owner reserves the right to waive any irregularities and to make the award in the best interest of the Owner.

1.15 REJECTION OF BIDS:

The bidder acknowledges the right of the Owner to reject any or all bids and to waive any informality or irregularity in any bid received. In addition, the bidder recognizes the right of the Owner to reject a bid if the bidder failed to furnish any required bid security, or to submit the data required by the bidding documents, or if the bid is in any way incomplete or irregular.

1.16 SUBMISSION OF POST-BID INFORMATION:

A. Upon request by the Architect, the selected bidder shall, within seven days thereafter submit the following:

1. A statement of cost for each major item of work included in the bid.
2. A designation of the work to be performed by the bidder with his own forces.
3. A list of names of the Subcontractors or other persons or organizations (including those who are to furnish materials or equipment fabricated to a special design) proposed for such portions of the work as may be designated, if no portions are so designated, the names of the Subcontractors proposed for the principal portions of the work. The bidder will be required to establish to the satisfaction of the Architect and Owner the reliability and responsibility of the proposed Subcontractor's respective trades. Prior to the award of the Contract, the Architect will notify the bidder in writing if either the Owner or the Architect, after due investigation, has reasonable and substantial objection to any person or organization on such lists. If the Owner or Architect has a reasonable and substantial objection to any person or organization on the list, and refuses in writing to accept such person or organization, the bidder may, at his option, withdraw his bid without forfeiture of bid security, notwithstanding anything to the contrary contained in Article 105, Paragraph C. If the bidder submits an acceptable substitute with an increase in his bid price to cover the difference in cost occasioned by such substitution, the Owner may, at his discretion, accept the increased bid price or he may disqualify the bidder. Subcontractors and other persons and organizations proposed by the bidder and accepted by the Owner and Architect must be used on the work for which they were proposed and accepted and shall not be changed except with the written approval of the Owner and the Architect.

1.17 AWARD OF CONTRACT:

After Bids are opened, the bids will be tabulated for comparison on the basis of the bid prices and quantities shown in the bids. The Owner reserves the right to withhold the award of the Contract for a period of sixty days from the date of opening bids and no award will be made until the Owner is satisfied as to the responsibilities of the low bidders. Until final

award of the Contract, the Owner reserves the right to reject any or all bids or proceed to do the work otherwise in the best interest of the Owner.

1.18 EXECUTION OF CONTRACT:

The person or persons, partnership, company, firm, association or corporation to whom a Contract is awarded shall within ten (10) days after such award, sign the necessary agreements entering into the required Contract with the Owner. No Contract shall be binding on the Owner until it has been executed by the Owner or his duly authorized representative, and delivered to the Contractor.

1.19 FAILURE TO EXECUTE CONTRACT:

The failure of the Bidder to execute the required bonds or to sign the required Contract within ten days after the Contract is awarded, shall be considered by the Owner as abandonment of his bid, and the Owner may annul the award. By reason of the uncertainty of the market prices of materials and labor, and the impracticality and difficulty of determining accurately the amount of damages accruing to the Owner by reason of said Bidder's failure to execute said Bonds and Contract within ten days, the bid guaranty accompanying the bid shall be the agreed amount of damages which the Owner will suffer by reason of such failure to execute the Contract. The filing of a Bid will be considered as an acceptance of this provision.

1.20 EXEMPTION FROM SALES TAX ON MATERIALS:

The Owner qualifies for exemption from State and Local Sales Tax. The Owner will furnish the contractor a Sales Exemption Certificate for the purchasing of eligible materials required for the project. The Contract between the Owner and the Contractor will contain separate amounts, specifically stated, for the following:

- A. Labor, overhead and profit and materials not incorporated into the project.
- B. Materials to be incorporated into the construction project.

The successful bidder shall ascertain the amounts applicable to the above classifications which amounts will be incorporated in the Contract.

1.21 RESERVED

1.22 EQUAL OPPORTUNITY CLAUSE:

- A. The Contractor is required to comply with regulations issued pursuant to the Civil Rights Act of 1964 with respect to nondiscrimination in federally assisted programs of the Department of the Interior.
- B. "During the performance of this contract, the Contractor agrees as follows:
 - 1. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
 - 2. The Contractor will, in all solicitations or advertisements for employees

placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interest of the United States."

(End of Section)

Solid Sod Common Bermuda Grass _____ Dollars per S.Y.
 Solid Sod Tifway 419 Bermuda Grass _____ Dollars per S.Y.

EROSION CONTROL (FURNISH AND INSTALL):

Siltation Fabric Barrier - Perimeter _____ Dollars per L.F.
 Siltation Fabric Barrier – Swale _____ Dollars per L.F.
 Staked Erosion Control Matting _____ Dollars per S.Y.
 Staked Common Bermuda solid sod _____ Dollars per S.Y.

PLANT MATERIALS (FURNISH AND INSTALL):

Shumard Red Oak – 65 Gal Cont. _____ Dollars each
 Live Oak – 65 Gal Cont. _____ Dollars each
 ‘Highrise’ Live Oak – 65 Gal Cont. _____ Dollars each
 Texas Ash – 65 Gal Cont. _____ Dollars each
 Chinese Pistache – 65 Gal Cont. _____ Dollars each
 Chinquapin Oak – 65 Gal Cont. _____ Dollars each
 Bald Cypress – 65 Gal Cont. _____ Dollars each
 ‘Nellie R Stevens’ Holly – 45 Gal Cont. _____ Dollars each
 ‘Furman’s Red’ Autumn Sage – 3 Gal _____ Dollars each
 ‘Green Cloud’ Texas Sage – 5 Gal _____ Dollars each
 ‘Yaku Jima’ Silver Grass – 5 Gal _____ Dollars each
 Dwarf Burford Holly – 3 Gal _____ Dollars each
 ‘Hameln’s’ Fountain Grass – 5 Gal _____ Dollars each
 ‘Little Bunny’ Fountain Grass – 3 Gal _____ Dollars each
 ‘Taylor’ Red Cedar – 5 Gal _____ Dollars each
 Compact Nandina – 5 Gal _____ Dollars each
 Crossvine – 1 Gal _____ Dollars each
 Purple Winter Creeper – 4” Pots _____ Dollars each

BIDDER understands the statements and Owner's objectives contained in SECTION 01010 -- Summary of Work.

ADDENDA:

This will acknowledge receipt of the following addenda which are part of the Bidding Documents:

Addendum No. _____ Addendum No. _____

Addendum No. _____ Addendum No. _____

The undersigned bidder hereby declares that he has visited the site of the work and has carefully examined the Contract Documents pertaining to the work covered by the above bid, and he also agrees to commence work within ten (10) days after date of written notice to do so and to substantially complete the work within _____ calendar days from contract commencement.

The undersigned bidder agrees that his bid shall be good and may not be withdrawn for a period of 60 calendar days after the scheduled closing time for receiving bids.

The undersigned bidder understands that the Owner reserves the right to reject any or all bids and to waive any informalities in the bidding.

BID GUARANTY:

Enclosed with this Bid is a Certified Check for:

_____ DOLLARS (\$ _____),

or a Bid Bond in the sum of

_____ DOLLARS (\$ _____),

which it is agreed shall be collected and retained by the Owner as liquidated damages in the event this Bid is accepted by the Owner within 60 days after the bids are received and the undersigned fails to execute the Contract and the required Bonds with the said Owner within ten (10) days after the date said Bid is accepted; otherwise said check or bond shall be returned to the undersigned upon demand.

Contractor (firm name)

By

*Seal

Address

City, State, ZIP Code

Phone

*If Bidder is a Corporation

(End of Section)

SECTION 00400 - CONTRACT FORMS, BONDS AND CERTIFICATES

PART 1 - GENERAL

1.01 NOTICE:

The following blank spaces in the Contract and Bonds are not to be filled in by the bidder at the time of submitting his bid with the exceptions of the bid bond and the Bidder's Qualification Statement. The bond forms and other miscellaneous forms are submitted at this time to familiarize the bidder with the forms of the Contract and Bonds which the successful bidder will be required to execute.

1.02 FORM OF AGREEMENT:

Form of Agreement will be A.I.A. Document A-101 - Standard Form of Agreement Between the Owner and Contractor - Stipulated Sum, 1997 edition. Copies of the Contract Form may be obtained at the office of the Architect.

1.03 PERFORMANCE BOND FORM:

The Performance Bond Shall be executed on a standard form Statutory Payment Bond, State of Texas.

1.04 PAYMENT BOND FORM:

The Payment Bond shall be executed on a standard form Statutory Payment Bond, State of Texas.

1.05 BIDDER'S QUALIFICATION STATEMENT:

Bidders must submit a completed Bidder's Qualification Statement with the bid package at the time of bid submittal. To be eligible for award of the contract Bidder must satisfy all of the following criteria:

Have successfully completed five landscape planting projects of a similar nature and extent,

Provide proof of successful completion by furnishing pertinent information and client references,

A history of five years of landscape planting projects in which the Bidder has functioned as the General Contractor.

1.06 INDEX OF ENCLOSED FORMS:

A. Bid Bond	00400-3,4
B. Performance Bond	00400-5,6
C. Payment Bond	00400-7,8
D. Certificate of Insurance	00400-9,10
E. Contractor's Affidavit of Bills Paid	00400-11,12
F. Maintenance Bond	00400-13,14
G. Bidder's Qualification Statement	00400-15,18

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BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____
 _____ as
 Principal, and firmly bound unto _____ as owner in
 the sum of \$ _____ as the proper measure of liquidated damages for the payment of
 which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs,
 executors, administrators, successors and assigns.
 Signed, this _____ day of _____, 20____.

The condition of the above obligation is such that whereas the Principal has submitted to
 _____ a certain bid, attached hereto and hereby made a part hereof to
 enter into a contract in writing, for the _____

Now, Therefore,

- (a) If said Bid shall be rejected, or in the alternate,

- (b) If said Bid shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with said Bid) and shall furnish a bond for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said Bid,

then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any breach of condition hereunder shall be in the face amount of this bond and forfeited as a proper measure of liquidated damages.

Bid Bond Form - Page 2

Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year set forth above.

Principal

Surety

By:_____

SEAL

PERFORMANCE BOND

STATE OF TEXAS, COUNTY OF _____}

KNOW ALL MEN BY THESE PRESENTS: That _____ of the City of _____, County of _____, and State of _____, as principal, and _____

_____ authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto _____ (Owner) in the penal sum of _____ Dollars (\$ _____) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the _____ day of _____ 20____, to _____ which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform said Contract and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions and agreements in and by said contract agreed and covenanted by the Principal to be observed and performed, and according to the true intent and meaning of said Contract and the Plans and Specifications hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect;

"PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of (Article 5160 for Public Work)(Article 5472d for Private Work)* of the Revised Civil Statutes of Texas as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Article to the same extent as if it were copied at length herein."

* Not applicable for Federal work. See "The Miller Act," 40 U.S.C. S270

Performance Bond - Page 2

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in anyway affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 20_____.

Principal

Surety

By _____

By _____

Title _____

Title _____

Address _____

Address _____

The name and address of the Resident Agent of Surety is:

PAYMENT BOND

STATE OF TEXAS, COUNTY OF _____ }

KNOW ALL MEN BY THESE PRESENTS: That _____ of the City of _____, County of _____, and State of _____, as principal, and _____

authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto _____ (Owner), in the penal sum of _____ Dollars (\$_____) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, THE Principal has entered into a certain written contract with the Owner, dated the _____ day of _____ 20____, to _____

which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE. THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then, this obligation shall be void otherwise to remain in full force and effect;

PROVIDED HOWEVER, that this bond is executed pursuant to the provisions of Article 5160 of the Revised Civil Statutes of Texas as amended and all liabilities on the bond shall be determined in accordance with the provisions of said Article to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications or drawings accompanying the same, shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

Payment Bond - Page 2

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 20__.

Principal

Surety

By _____

By _____

Title _____

By _____

Address _____

Address _____

The name and address of the Resident Agent of Surety is:

CERTIFICATE OF INSURANCE

TO:
 Date: _____
 Project: _____

THIS IS TO CERTIFY THAT _____ is, at the date of this certificate, insured by this Company with respect to the business operations hereinafter described, for the for the types of insurance and in accordance with the provisions of the standard policies used by this Company, and further, hereinafter described. Exceptions to standard policies used by this Company, and further hereinafter described. Exceptions to standard policies noted on reverse side hereof.

TYPE OF INSURANCE

Policy No.	Effective	Expires	Limit of Liability
Workmans' Compensation			
Public Liability		(1) Person \$ _____ (1) Accident \$ _____	
Contingent Liability			
Property Damage			
Builders Risk			
Automobile			
Other			

The foregoing policies (do) (do not) cover all sub-contractors.

Locations Covered: _____

Descriptions of Operations Covered: _____

Certificate of Insurance - Page 2

The above policies either in the body thereof or by appropriate endorsements provide that they may not be changed or canceled by the insurer in less than thirty (30) days after the insured has received written notice of such change or cancellation.

Where applicable, local laws or regulations require more than five (5) days actual notice of change or cancellation to the assured, the above policies contain such special requirements, whether in the body thereof or by appropriate endorsement thereto attached.

Name of Insurer

By

Title

CONTRACTOR'S AFFIDAVIT OF BILLS PAID

(To be executed prior to acceptance of project)

STATE OF TEXAS
COUNTY OF _____

Personally, before me the undersigned authority, on this day appeared _____
_____, who, being duly sworn, on oath, says that he is a legal
representative of _____

(Full name of Contractor as in contract)

and that the contract for the construction of the project, designated as _____

(Project No.)

_____ has been
satisfactorily completed and that all bills for materials, apparatus, fixtures, machinery, and labor
used in connection with the construction of this project have, to the best of my knowledge and
belief, been fully paid.

(Signature)

(Title)

Sworn to and subscribed before me this _____ day of _____, 20____.

Notary Public in and for

_____ County, Texas

Instructions:

If the contractor is an individual, he shall sign the affidavit. If the contractor is a partnership, any partner may sign the affidavit. If the Contractor is a corporation, a person authorized by the by-laws or by the Board of Directors shall sign the affidavit. If the Contractor is a joint-venture of individuals, any of the individuals may sign the affidavit. If the Contractor is a joint-venture of partnerships, or of individuals and partnerships, the affidavit may be signed by the individual or any partner of any partnership. If the contractor is a joint-venture in which a corporation is a party, separate affidavits must be executed in the name of the joint-venture; one by each corporation and one by each individual or partnership. Signatures for corporations should be by a duly authorized officer. If signature is by another, a showing of authority to sign must accompany the affidavit.

(this page intentionally left blank.....)

MAINTENANCE BOND

THE STATE OF TEXAS §
KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF _____ §

That _____, hereinafter called Contractor, as principal, and _____ themselves to be held and bound to pay unto the City of _____, Texas, the penal sum of _____ Dollars (\$ _____), which is Fifteen percent (15%) of said contract amount in lawful money of the United States, for the payment of which sum well and truly to be made unto said City of _____, Texas, and its successors, said Contractor and Surety do hereby bind themselves, their heirs, executors, administrators and assigns and successors, jointly and severally and firmly by these presents:

This obligation is conditioned, however, that Whereas, said Contractor entered into a written contract on the _____ day of _____, 20____, with the _____ in the City of _____ as provided in said Contract and specifications which are expressly made a part of hereof, as though written herein in full.

Whereas, in said Contract, the Contractor binds itself to use first class materials and workmanship of such kind and quality that for a period of two (2) years from the completion and final acceptance of the improvements by the City the said improvements shall require no repairs, the necessity for which shall be occasioned by defects in workmanship or materials and during the period of two (2) years following the date of final acceptance of the work by the City, the Contractor binds itself to repair or reconstruct the said improvements in whole or part at any time within said period if necessitated within that time by any defect in materials or process employed in the construction of such improvements and that it will upon receiving notice, repair or reconstruct said improvements within such period of time from the date of such notice as the Director of Public Works shall determine to be necessary for the preservation of public health, safety or welfare. If said Contractor does not repair or reconstruct the improvements within the time period designated then the City shall be entitled to have said repairs made and charge said Contractor and/or Surety the cost of same under the terms of this maintenance bond.

Now. Therefore, if said Contractor shall keep and perform its said work and keep the same in repair for the said maintenance period of two years, as provided, then these presents shall be null and void, and have no further effects, but if default shall have full force and effect, and the said City of _____, Texas, shall have and recover from the said Contractor and its Surety, damages in the premises as provided in plans and specifications and contract.

Provide, however, that the Contractor hereby holds harmless and indemnifies said City from any claim or liability for personal injury or property damage caused by and occurring during the performance of said maintenance and repair operation.

MAINTENANCE BOND - PAGE II

IN WITNESS WHEREOF, this instrument executed this _____ day of _____, 20_____.

CONTRACTOR: _____

BY: _____

SURETY: _____

BY: _____

ATTEST:

Secretary

APPROVED AS TO FORM:

City Attorney

Type(s) of Work to be Done by Bidder's Employees (Examples: Concrete Paving, Structural Concrete, Water Lines, Sanitary Sewer Lines, Storm Pipe, Storm Inlets, Excavation, Lime, Bridge Fencing, etc.)

Access to Tools and Equipment: Percent Owned _____ Percent Rented _____

Number of Years in Business as a Contractor on Above Types of Work: _____

Type(s) of Work to be Done by Sub-Contractors:

Include Name, Address, and Phone Number of each Sub-Contractor. (Use Additional Sheets, if needed.)

Table with 2 columns: Type of Work, Sub-Contractor. Includes header row and three empty rows.

List your most current completed projects which are similar to the type of work bid. Provide all information requested in the form. (Use Additional Sheets, if necessary.)

Project: _____

Project Description: _____

Owner/Agency: _____

Year Built: _____ Contract Price: _____

Contact Person: _____ Phone: _____

Project: _____

Project Description: _____

Owner/Agency: _____

Year Built: _____ Contract Price: _____

Contact Person: _____ Phone: _____

Project: _____

Project Description: _____

Owner/Agency: _____

Year Built: _____ Contract Price: _____

Contact Person: _____ Phone: _____

Project: _____

Project Description: _____

Owner/Agency: _____

Year Built: _____ Contract Price: _____

Contact Person: _____ Phone: _____

Project: _____

Project Description: _____

Owner/Agency: _____

Year Built: _____ Contract Price: _____

Contact Person: _____ Phone: _____

Project: _____

Project Description: _____

Owner/Agency: _____

Year Built: _____ Contract Price: _____

Contact Person: _____ Phone: _____

Trade References (List Company, Address, Contact Person, and Phone):

Bank References (List Institution, Address, Contact Person, and Phone):

Financial statements are not required as part of this bid package, However a balance sheet and income statement from the previous fiscal year shall be required from the apparent low bidder to be reviewed and approved by the Finance Director prior to contract award.

Claims and Suits (If the answer to any of the questions is yes, please attach details):

Has your organization ever failed to complete any work awarded to it?

Are there any judgments, claims, arbitration proceedings, or suits pending or outstanding against your organization or its officers?

Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five years?

Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract?

SECTION 00600 -- Supplementary General Conditions

PART 1 - GENERAL

- 1.01 GENERAL CONDITIONS:** The "General Conditions" of the Contract for Construction, AIA Document A201, 1997, Articles 1 through 14 inclusive, is a part of this Contract and is incorporated herein as fully as here set forth.
- 1.02 SUPPLEMENTS:** The following supplements modify, change, delete from or add to the General Conditions. Where any part of the General Conditions is modified or voided by these Articles, the unaltered provisions of that part shall remain in effect.

Article 1: CONTRACT DOCUMENTS:

Add new sub-paragraphs:

"1.1.8 MISCELLANEOUS DEFINITIONS:

1.1.8.1 The term "Product" as used in these Supplementary Documents includes materials, systems and equipment.

1.1.8.2. The term "Project Manual" as used in these Contract Documents includes the bidding documents, Conditions of the Contract and the Specifications.

1.1.8.3. The term "provide" as used in this Project Manual means to furnish and install.

1.1.8.4. The term "architect" as used in these contract documents shall mean either the architect or landscape architect.

1.1.8.5. The term "City" as used in these contract documents shall mean the City referred to in the Advertisement for Bid, Section 00020."

1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

"1.2.1.1. Should the Drawings disagree in themselves or with the Specifications the better quality or the greater quantity of the work or materials shall be estimated upon, and unless otherwise ordered by the Architect in writing, shall be performed or furnished."

"1.2.1.2. The inter-relation of the Specifications, the Drawings and the Schedules is as follows: The specifications determine the nature and setting of the several materials; the Drawings establish the quantities, dimensions and details; and the Schedules give the location."

Article 2: OWNER:

"2.2.3. Delete the first sentence and substitute the following: The Owner will establish lot lines, restrictions and permanent bench marks. All other grades, lines, levels, and bench marks shall be established and maintained by General Contractor, who shall be responsible for same."

Add new sub-paragraphs:

2.2.3.1. Shown or indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to OWNER or ARCHITECT by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

2.2.3.2. OWNER and ARCHITECT shall not be responsible for the accuracy or completeness of any such information or data; and,

2.2.3.3. CONTRACTOR shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the contract documents, for coordination of the work with the owners of such Underground Facilities during construction, for safety and protection thereof and repairing any damage thereto resulting from the work, the cost of all of which will be considered as having been included in the Contract Price.

2.2.3.4. Not Shown or Indicated. If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of, CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work affected thereby, identify the owner of such Underground Facility and give written notice thereof to that owner and to OWNER and will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of.

2.2.3.5. OWNER shall provide engineering survey drawings which describe reference points for construction which in the ARCHITECT's judgment are necessary to enable the CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work (unless otherwise specified in General Conditions), shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to OWNER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

2.2.5. Delete in its entirety and substitute the following:

The Contractor will be furnished free of charge, 3 copies of the drawings and 3 copies of the specifications and will be furnished as many additional copies as he may require, at cost of reproduction and handling.

Article 3: CONTRACTOR:

Add new sub-paragraph:

"3.2.1.1 All elevations shown on the Drawings shall be checked from bench mark and coordinated by Contractor. Discrepancies discovered shall be reported to the Architect for

adjustment before any work begins. No extra charges or compensation will be allowed the Contractor for grade variations or discrepancies except by agreement before construction starts. The Contractor's initiation of the Work will be his verification of having carefully checked all existing grade elevations and accepted them as correct."

Add new sub-paragraph:

"3.6.1.1 The contractor shall pay all consumer, use and other similar taxes required by law. Materials which are incorporated into or become part of the project are exempt from sales tax. A "separated contract" will be issued by the Owner which separates charges for materials incorporated into the project from charges for labor and materials not incorporated into the project. The successful low bidder must provide separate bid amounts for the labor and materials not incorporated into the project and materials incorporated into project and must acquire a sales tax permit issued by the State Comptroller. The Contractor must execute a resale certificate instead of paying sales tax at the time of purchase. The Owner will issue an exemption certificate for the materials which are incorporated into the finished project."

Add new sub-paragraph:

"3.7.1.1 Contractor shall obtain and pay for all foundation permits, building permits, street use permits and like permits applying to the overall project. Contractors for mechanical and electrical work shall pay for inspection fees related to their work."

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES:

3.10.1 Delete sub-paragraph in its entirety. Refer to Specification Section 01310, CONSTRUCTION SCHEDULES, for provisions on this subject. References to Paragraph 3.10.1 elsewhere in Contract Documents shall read as referring to that Section of the Specifications.

3.12 SHOP DRAWINGS PRODUCT DATA AND SAMPLES:

3.12 Delete Paragraph 3.12, SHOP DRAWINGS AND SAMPLES, in its entirety. Refer to Specifications Section 01340, SHOP DRAWINGS, PRODUCT DATA AND SAMPLES, for provisions on this subject. References to Paragraph 3.12 elsewhere in Contract Documents shall read as referring to that Section of the Specifications.

3.14 CUTTING AND PATCHING:

3.14.1 Delete sub-paragraph in its entirety. Refer to Specification Section 01070, CUTTING AND PATCHING, for provisions on this subject. References to Paragraph 3.14.1 elsewhere in Contract Documents shall read as referring to that Section of the Specifications.

3.15 CLEANING UP:

Add to paragraph 3.15.1:

"Remove broken or scratched glass and replace with new glass, remove paint droppings, spots, stains, and dirt from finished surfaces and clean plumbing fixtures, hardware, floors and equipment. Contractor shall keep interior of the building and the entire site free of stored or unattended combustible material." Stains, rubber tire skid marks, etc. on the concrete surfaces must be completely removed.

Article 4: ADMINISTRATION OF THE CONTRACT:

4.3.7 CLAIMS FOR ADDITIONAL TIME:

Add new sub-paragraph:

"4.3.7.3. The Contractor may be granted an extension of time because of inclement weather conditions.

For the purpose of this contract, "inclement weather" will be interpreted as those days on which rainfall exceeds 0.50 inch. Drying days shall be interpreted as "inclement weather" days.

4.6 ARBITRATION

4.6. Delete paragraph 4.6, ARBITRATION, in its entirety. Arbitration is not a means of dispute resolution on this project. Mediation shall be used as delineated within paragraph 4.5. Reference to arbitration within any paragraph or subparagraph within the general conditions shall be voided.

Article 7: CHANGES IN THE WORK:

7.3.6.5 Delete and substitute the following sub-paragraph:

Cost shall be limited to the following; cost of materials including cost of delivery, cost of labor including social security, old age and unemployment insurance and fringe benefits under collective bargaining agreements; workmen's compensation insurance bond premiums and rental value of power tools and equipment. Overhead shall include the following: supervision, superintendence, wages of time keepers, watchmen and clerks, hand tools, incidentals, general office expense and all other expenses not included in 'cost'."

Article 8: TIME:

Add the following paragraph:

"8.3.4 Owner shall have the right to occupy, without prejudice to rights of either party, any completed or largely completed portions of the structure or work, notwithstanding the fact that time for completing entire work, or such portions thereof, may not have expired. Such occupancy and use shall not be an acceptance of work taken or used."

Article 9: PAYMENTS AND COMPLETION:

"9.2 SCHEDULE OF VALUES: Delete Paragraph 9.2. in its entirety. Refer to Specification Section 01370, SCHEDULE OF VALUES, for the provisions on this subject. References to Paragraph 9.2 elsewhere in Contract Document shall read as referring to Section 01370 of the Specifications."

"9.3.1 Add the following sub-paragraph:

"...Contractor shall prepare an original and four copies of Certificate for Payment, AIA Form G703, and Application for Payment, AIA Form G702, and submit to Architect for approval. Certificates shall be for the previous one month period, less the aggregate of previous Certificates."

9.3.1.3 Add the following:

"9.3.1.3 Until final payment, the Owner will pay 90% of the amount due the Contractor on account of progress payments."

9.6.1 Delete this subparagraph and add the following:

"9.6.1 After the Architect has issued a Certificate for Payment, the Owner will pay within twenty days after receipt of the approved Certificate, or on or about the twenty-eighth day of each month ninety percent (90%) of the proportion of the Contract Sum properly allocable to labor, materials and equipment suitably stored at the site or at some other location agreed upon in writing by the parties, up to the first day of that month, less the aggregate of previous payment in each case. Each Progress Payment shall also include a proportionate part of the Contractor's fee."

9.8.2, 9.8.3, 9.8.4, and 9.8.5 Delete these subparagraphs and substitute the following:

"9.8.2 When the Contractor determines that the work, or a designated portion thereof acceptable to the Owner is substantially complete, the Contractor shall notify the Architect in writing that he has inspected the project, prepared a list of items remaining to be completed, and the project is ready for a pre-final inspection to verify substantial completion. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all work in accordance with the Contract Documents. The Architect shall check and add to, if necessary, the Contractor's list of items which, in his opinion, require completion, replacement or correction and will furnish this list to the Contractor.

If, during the course of this pre-final inspection, it becomes apparent in the opinion of the Architect that the project or portions thereof is not ready for such inspection, or the list prepared by the Contractor is incomplete, the Architect may terminate the inspection and inform the Contractor that, in his opinion, the project is not yet ready for such inspection. The Contractor shall then cause the project to be made ready for such inspection and resubmit a complete list of items remaining to be completed, replaced, or corrected. After the pre-final inspection has been completed and the Contractor has completed all the work on all items shown on the list and/or required by the Contract Documents as well as all other items which may subsequently have been discovered, and added by the Architect, he shall notify the Architect that the project is ready for final inspection. The Architect will then make his final inspection as promptly as possible and if the Work is found to be fully completed, will so inform the Owner with the recommendation that the work of the Contractor be accepted."

"9.8.2.1 The Architect will make only one trip of final inspection to the Project. Should it be found on this trip, in the opinion of the Architect, that the project is not ready for such trip or that any items have not been completed and another trip or trips will be required before the Work can be approved for acceptance, the Architect will charge the Owner at his usual hourly billing rates plus any travel, living and other reimbursable expenses for all time required by reason of the Contractor's failure to have the project ready at the time he requested such inspection. Each Contractor, in signing his Contract, agrees to reimburse the Owner for all charges due to the Architect as set forth above, and authorizes the Owner to deduct the cost of reimbursing the Architect from balances due the Contractor."

"9.8.2.2 When the Architect on the basis of his final inspection determines that the work is substantially complete, he will then prepare a Certificate of Substantial Completion which shall establish the date of substantial completion, shall state the responsibilities of the Owner and the Contractor for maintenance, heat, utilities, and insurance and shall fix the time within which the Contractor shall complete the items listed therein. The Certificate of

Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate."

"9.8.2.3 Upon substantial completion of work additional payments to Contractor may be made at discretion of Owner from amount retained under provision of agreement. Final payment will be made thirty (30) days after final acceptance of work."

Add the following sub-paragraphs:

"9.11.1 It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract for the work to be done hereunder are essential conditions of the contract."

"9.11.2 The Contractor agrees that said work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality."

"9.11.3 Should the Contractor fail to complete on time, for each working day that any work remains uncompleted after the time specified in the Proposal and Contract, or the increased time granted by the Owner, or as increased by additional work or materials ordered after the Contract is signed, the sum of Two Hundred Fifty Dollars (\$250) per day shall be paid to the Owner as Liquidated Damages. The Contractor does hereby agree to pay to the Owner the amount specified, not as a penalty but as liquidated damages, for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the contract for completing the Work."

"9.11.4 It is further agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain and said amount shall be retained by the Owner from current Application for Payment."

Article 11: INSURANCE:

11.1.1 In the first line following the word "maintain" insert the words "in a company or companies to which the Owner has no reasonable objection."

Add new sub-paragraphs:

"11.1.1.9 Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

1. Premises - Operation (remove XCU exclusion)
2. Broad Form coverage for Property damage
3. Contractor's Protective
4. Contractual - including specific provision for Contractor's obligations under Paragraph 3.18.
5. Owned, non-owned and hired motor vehicles."

11.1.2 Delete in its entirety and substitute therefore:

"11.1.2 The insurance required by sub-paragraph 11.1.1 shall be written for not less than any limits of liability required by law or by those set forth below, whichever is greater, and shall include contractual liability insurance as applicable to the Contractor's obligations

under Paragraph 3.18.

1. Workmen's Compensation -- Texas Statutory/Employer's Liability - Statutory Limits
See paragraph 11.5
2. Comprehensive General Liability --
 - a. Bodily Injury -- each person/each occurrence \$250,000/\$500,000
 - b. Property Damage -- each occurrence/aggregate \$100,000/\$500,000
3. Comprehensive Automobile Liability -- per person/per occurrence, including coverage of owned, non-owned and hired vehicles.
 - a. Bodily Injury -- \$100,000/\$300,000
 - b. Property Damage -- \$300,000, each occurrence
4. Independent sub-contractors: Same limits as above."

11.1.3 Delete in its entirety and substitute the following:

"11.1.3 Except with respect to Owner's Protective Liability, the Contractor shall arrange for Insurer or Insurers of all required insurance to prepare certificate or certificates in duplicate in favor of Owner, and file them with Architect before exposure to loss may occur, such to provide at least 30 days in advance notice forwarded by certified mail to Owner in event the policy or policies are canceled or changed in such manner to affect the certificate or certificates. The Owner's Protective Liability policy and a certified copy shall be delivered to the Architect before exposure to loss may occur."

11.2.1 Delete in its entirety and substitute the following:

"11.2.1 The Contractor shall be responsible for purchasing and maintaining the Owner's Protective Liability insurance that shall protect the Owner and Architect against claims which may arise from operations under this Contract. The Insurance coverage shall be for the following limits:

1. Bodily Injury, each occurrence/aggregate -- \$500,000/ \$500,000
2. Property Damage, each occurrence/aggregate -- \$500,000/\$500,000."

11.4.1 Delete and substitute the following:

"11.4.1 In addition to the insurance described in 11.1.1, 11.1.2, and 11.2.1, the Contractor shall maintain through the duration of the Project, Property Insurance, 'All Risk' Builder's Risk Insurance, insuring against losses resulting from fire, lightning, windstorm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, vandalism and malicious mischief, in an amount of one hundred percent (100%) completed value basis, including materials delivered and labor performed for the Project. This policy shall be issued jointly in the names of the Contractor, his sub-contractors and the Owner with specific endorsement for this Project. Any non-insured losses shall be the sole responsibility of the Contractor. Furthermore, the contractor agrees to wave any right of subrogation against the Owner and Architect for any such non-insured loss."

"11.4.1.1 If this insurance is written with stipulated amounts deductible under the terms of the policy, the Contractor shall pay the difference attributable to deductions in any payments made by the insurance carrier on claims paid by this insurance."

"11.4.1.2 Included in the policy are such items as labor and materials connected therewith, whether or not adjacent to the structures insured, materials in place or to be used as a part of the permanent construction, including surplus materials, shanties, protective fences, bridges or temporary structures, miscellaneous materials and supplies incident to the work, and such scaffolding, staging, towers, forms and equipment as are not owned or rented by the contractor, the cost of which is included in the cost of the work."

"11.4.1.3 This insurance does NOT cover any tools owned by mechanics, any tools, equipment, scaffolding, staging, towers and forms owned or rented by the contractor, the capital value of which is not included in the cost of the work, or any cook shanties, bunkhouses, or other structures erected for housing the workmen."

"11.4.1.4 The Owner shall not be liable or responsible for any loss or damage whatever to the items excluded in the above paragraph and the Contractor shall indemnify and hold harmless the Owner from any claims or causes of action brought by any persons or parties as a result of loss or damage to such excluded items."

"11.4.1.5 In the event that it is necessary to operate permanently installed equipment on other than a testing basis or in the event it is necessary for the Owner to occupy a part of the entire building additions, the Contractor agrees to have the Builders' Risk Insurance Policy endorsed to permit the same."

Add new paragraph

11.6 Workers' Compensation Insurance Coverage

11.6.1 Definitions

- .1 Certificate of Coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
- .2 Duration of the project - Includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.
- .3 Persons providing services on the project ("subcontractor" in 406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

11.6.2 The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

11.6.3 The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

11.6.4 If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

11.6.5 The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

1. a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
2. no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

11.6.6 The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

11.6.7 The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

11.6.8 The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

11.6.9 The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

1. provide coverage, based on proper reporting classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
2. provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
3. provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
4. obtain from each other person with whom it contracts, and provide to the contractor:
 - a. a certificate of coverage, prior to the other person beginning work on the project; and
 - .b a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
5. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

6. notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
7. contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

11.6.10 By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

11.6.11 The contractor shall post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other commission rules. This notice must be printed with a title in at least 30 point bold type and text in a least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text provided by the commission on the sample notice, without any additional words or changes:

Required Workers' Compensation Coverage

"The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee."

"Call the Texas Workers' Compensation Commission at 512-440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

11.6.12 The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

Article 13: MISCELLANEOUS PROVISIONS:

"13.5.1 In the eighth line of this paragraph change the word "shall" to "may".

"Add the following sub-paragraphs:

"13.5.1.1 Inspection or tests required by codes or ordinances, or by a plan approval authority, and made by a legally constituted authority shall be the responsibility of and paid for by the Contractor."

"13.5.1.2 Inspection or testing performed exclusively for the Contractor's convenience shall be the sole responsibility of the Contractor."

(End of Section)

SECTION 00800 -- Standard Specifications

The Standard Specifications of this contract for construction shall be the STANDARD SPECIFICATIONS FOR PUBLIC WORK CONSTRUCTION, NORTH CENTRAL TEXAS, Latest Edition, as published by the North Central Texas Council of Governments, and is made a part of the Contract Documents to the same extent as if bound herein.

The STANDARD SPECIFICATIONS FOR PUBLIC WORK CONSTRUCTION, NORTH CENTRAL TEXAS shall cover only those items which are not covered by the technical specifications included in Division 1 through Division 16 of the Project Manual.

The City of Murphy has adopted the North Central Texas Standard Specifications with the following exceptions:

Testing and Laboratory Control -- Refer to Section 01400, Testing and Laboratory Control.

Construction Stakes -- The Contractor shall set all grades, lines, and measurements necessary to the proper performance and control of the work.

(End of Section)

SECTION 01010 -- Summary of Work

1.01 WORK COVERED BY CONTRACT DOCUMENTS:

A. Work Includes: furnishing and installing landscape plant materials, plant bed preparation, metal edging, finish landscape earthwork in vicinity of plant beds and minor irrigation adjustments to facilitate landscape planting.

B. Contractor's Duties:

1. Except as specifically noted, provide and pay for:
 - a. Labor, materials and equipment.
 - b. Tools, construction equipment and machinery.
 - c. Water, heat, and utilities required for construction.
 - d. Water for installation, establishment and maintenance of turf.
 - e. Other facilities and services necessary for proper execution and completion of work.
2. Owner is exempt from sales tax on products permanently incorporated into the project.
 - a. **Tax Exemption:** As a result of tax bill 1 H.B. 11 passed during the special session ending August 13, 1991, the following applies to tax exemption status:
 Materials which are incorporated into or become part of the project are exempt from sales tax. A "separated contract" will be issued by the City of Murphy which separates charges for material from charges for labor. The successful low bidder must provide separate bid amounts for the labor and materials aspect of the project and acquire a sales tax permit issued by the State Comptroller. The contractor is expected to execute a resale certificate instead of paying the sales tax at the time of purchase. The City of Murphy will issue an exemption certificate for the materials as long as they are incorporated into the finished project. This procedure may not be used for materials which do not become a part of the finished product (example: equipment rentals, form materials, etc.).
 If contractor does not issue a resale certificate, then the amount of sales tax must be included in the prices quoted. No additional compensation, beyond the prices quoted, is due the contractor for sales tax.
 - b. Obtain sales tax exemption certificate number from Owner.
 - c. Place exemption certificate number on invoices for materials incorporated in work.
 - d. Upon completion of work, file with the Owner a notarized statement that all purchases made under exemption certificate were entitled to be exempt.
 - e. Pay legally assessed penalties for improper use of exemption certificate number.
3. Secure and pay for, as necessary for proper execution and completion of work, and as applicable at time of receipt of bids:
 - a. Government Fees.
 - b. Licenses.
4. The Contractor will not be required to pay for building permits issued by the City of Murphy.
5. Give required notices.
6. Comply with codes, ordinances, rules, regulations, orders and other legal requirements of public authorities which bear on performance of work.

7. Promptly submit written notice to Architect of observed variance of Contract Documents from legal requirements. Assume responsibility for work known to be contrary to such requirements, without notice.

1.02 CONTRACTS:

Construct Work under a stipulated sum contract, including General Construction, Site Work, Mechanical Work and Electrical Work, and any other Required Work.

1.03 SPECIAL REQUIREMENTS:

Contractor shall assume responsibility for the protection of all areas of work and shall protect existing property and trees as required during the construction period. Existing surfaces that are damaged due to construction shall be patched or replaced to original condition.

1.04 CONTRACTOR USE OF PREMISES:

- A. Confine operations at site to areas permitted by Law, Ordinances, Permits, and Contract Documents.
- B. Do not unreasonably encumber site with materials or equipment.
- C. Do not load structure with weight that will endanger.
- D. Assume full responsibility for protection and safekeeping of products stored on premises.
- E. Move any stored products which interfere with operations of Owner or other Contractors.
- F. Obtain and pay for use of additional storage or work areas needed for operations.
- G. Use of site: exclusive and complete, for execution of work, except:
 1. Areas where trees are located.
 2. Areas under construction by others.
- H. Limit use of site for work and storage as follows:
 1. For work related to this project only.

(End of Section)

SECTION 01045 -- Cutting and Patching**PART 1 - GENERAL**

1.01 RELATED REQUIREMENTS SPECIFIED ELSEWHERE:

- A. Cutting and Patching (General Conditions)-----Article 4.14.

1.02 DESCRIPTION:

- A. Execute cutting including excavating, fitting or patching of work required to:
 1. Make several parts fit properly.
 2. Uncover work to provide for installation of ill-timed work.
 3. Remove and replace defective work.
 4. Remove and replace work not conforming to requirements of Contract Documents.
 5. Remove samples of installed work as specified for testing.
 6. Install specified work in existing construction.
- B. In addition to Contract requirements, upon written instructions of Architect:
 1. Uncover work to provide for Architect observation of covered work.
 2. Remove samples of installed materials for testing.
 3. Remove work to provide for alteration of existing work.
- C. Do not endanger any in-place work by cutting or alteration to any part of it.
- D. Do not cut or alter work of another separate Contractor without written consent of Architect/Engineer, General Contractor and of separate Contractor.

1.03 SUBMITTALS:

- A. Prior to cutting which affects structural safety of project, submit written notice to Architect requesting consent to proceed with cutting, including:
 1. Identification of project, description of affected work, necessity for cutting, effect on other work, effect on structural integrity of project, description of proposed work. Designate:
 - a. Scope of cutting and patching.
 - b. Contractor and trades to execute work.
 - c. Products proposed to be used.
 - d. Extent of refinishing.
 2. Alternative to cutting and patching.
 3. Designation of party responsible for cost of cutting and patching.
- B. Prior to cutting and patching done on instruction of Architect, submit cost estimate.
- C. Should conditions of work or schedule indicate change of materials or methods, submit written recommendation to Architect, including:
 1. Conditions indicating change.
 2. Recommendations for alternative materials or methods.
 3. Submittals as required for substitutions.
- C. Submit written notice to Architect designating time work will be uncovered to provide for observation.

1.04 PAYMENT FOR COSTS:

- A. Costs caused by ill-timed or defective work, or work not conforming to Contract Documents, including costs for additional services of Architect: Party responsible for ill-timed, defective or nonconforming work.
- B. Costs to correct damage to existing structures, pavement or any previously finished

- work that is not ill-timed, defective or nonconforming: Party responsible for damage.
- C. Costs to correct damage to existing structures, pavement, or any previously finished work that is not ill-timed, defective or nonconforming when damage is caused by construction methods or procedures adopted by a Contractor or Subcontractor strictly to expedite the completion of his work only: Party responsible for damage.

PART 2 - PRODUCTS

2.01 MATERIALS:

For replacement of work removed, comply with Specifications for type of work to be performed.

PART 3 - EXECUTION

3.01 INSPECTION:

- A. Inspect existing conditions of work, including elements subject to movement or damage during cutting and patching and during excavating and backfilling.
- B. After uncovering work, inspect conditions affecting installation of new products.

3.02 PREPARATION PRIOR TO CUTTING:

- A. Provide shoring, bracing and support as required to maintain structural integrity of project.
- B. Provide protection for other portions of Project.
- C. Provide protection from the elements.

3.03 PERFORMANCE: Ill-timed or nonconforming work.

- A. Execute fitting and adjustment of products to provide finished installation to comply with specified tolerances, finishes.
- B. Execute cutting and demolition by methods which will prevent damage to other work and will provide proper surfaces to receive installation of repairs and new work.
- C. Execute excavating and backfilling by methods which will prevent damage to other work and will prevent settlement.
- D. Restore work which has been cut or removed; install new products to provide completed work in accord with requirements of Contract Documents.
- E. Refinish entire surfaces as necessary to provide an even finish:
1. Continuous surfaces: to nearest intersections.
 2. Assembly: entire refinishing.
- F. No cutouts, access doors or mechanical or electrical devices of any kind shall be installed in finish materials or areas other than within mechanical rooms and shafts without specific prior approval by Architect of location and appearance.

(End of Section)

SECTION 01077 -- Reference Standards**PART 1 - GENERAL**

1.01 SCOPE:

Various sections of specifications contain references to specific standards. Applicable portions of standards listed that are not in conflict with specification requirements are hereby made a part of Contract Documents.

1.02 RELATED WORK SPECIFIED ELSEWHERE:

Testing Laboratory Services-----Section 01410.

1.03 QUALITY ASSURANCE:

- A. Modifications and exceptions to standards shall be considered as amendments and unmodified portions shall remain in effect.
- B. In case of conflict between standards, or between specifications and standards, most stringent requirement shall govern.
- C. Editions of standards shall be latest edition at time of bid opening, or contract award, as applicable, including any supplements or amendments thereto.

PART 2 - MATERIALS

2.01 SCHEDULE OF STANDARDS:

- A. Reference standards are listed in various sections using abbreviations contained below.
- B. Following schedule is partial; additional abbreviations and standards may not appear.

AA - Aluminum Association
 AASHO - American Association of State Highway & Transportation Officials
 ACI - American Concrete Institute
 AIA - American Institute of Architects
 AISC - American Institute of Steel Construction
 AITC - American Institute of Timber Construction
 ANSI - American National Standards Institute
 APA - American Plywood Association
 ASHRAE - American Society of Heating, Refrigeration, & Air-Conditioning Engineers
 ASTM - American Society for Testing & Materials
 AWS - American Welding Society
 AWPA - American Wood Preservers Associations
 AAMA - Architectural Aluminum Manufacturers Association
 AWI - Architectural Woodwork Institute
 BIA - Brick Institute of America
 BHMA - Builders Hardware Manufacturers Association
 CPSC - Consumer Product Safety Commission
 CRA - California Redwood Association
 CTI - Ceramic Tile Institute
 CLFMA - Chain Link Fence Manufacturers Association
 CRSI - Concrete Reinforcing Steel Institute
 FM - Factory Mutual System

FS - Federal Specification
FGMA - Flat Glass Marketing Association
HPMA - Hardwood Plywood Manufacturers Association
MS - Military Specification
NAAMM - National Association of Architectural Metal Manufacturers
NCMA - National Concrete Masonry Association
NEMA - National Electrical Manufacturers Association
NFPA - National Fire Protection Association
NPCA - National Precast Concrete Association
OSHA - Occupational Safety & Health Act
PCA - Portland Cement Association
SMACNA - Sheet Metal & Air Conditioning Contractors National Association
SFPA - Southern Forest Products Association
SDI - Steel Deck Institute
SJI - Steel Joist Institute
TCA - Tile Council of America
UL - Underwriters Laboratories
WCLIB - West Coast Lumber Inspection Bureau
WWPA - Western Wood Products Association

(End of Section)

SECTION 01150 -- Measurement and Payment

PART 1 - GENERAL

1.01 PAYMENT FOR EXTRA WORK:

Refer to General Conditions and Supplementary General Conditions.

1.02 PROGRESS PAYMENTS:

The Owner will make progress payments monthly of amounts due as provided herein. Payments shall be made on a date of the month mutually agreeable with Owner and Contractor. The Contractor shall forward his "Request for Payment" and "Payment Estimate" to the Architect on a mutually agreeable date of the month. The "Payment Estimate" shall be broken down by the same categories as those in the "Schedule of Values and Construction Schedule". Each "Payment Estimate" shall also reflect a total actual percent completion of the Contract. The Architect will verify the "Payment Estimate". If agreement cannot be reached, the "Payment Estimate" will be revised to agree with the Architect's estimate and a statement attached thereto stating the basis for the disagreement. The Architect's certification of "Request for Payment" will be contingent upon the receipt of a properly updated "Construction Schedule". The Contractor will be paid for work in place.

The Architect may, at his discretion, authorize the inclusion of the costs of (a) material delivered to the site, and (b) preparatory work in the "Payment Estimate" and "Request for Payment". It is understood that the monthly estimates and partial payments will be subject to the correlation in the estimate rendered following the discovery of an error in any previous estimate, and such estimate shall not in any respect be taken as an admission of the Owner to the amount of work done or its quality or sufficiency nor as an acceptance of the work or the release of the Contractor from any of his responsibilities under the Contract.

Both applications for payment and certificate for payment shall be submitted at the same time using AIA Forms G702 and G703, in quadruplicate. In making progress payments, ten percent (10%) of the estimated amount will be retained until completion and final acceptance of the work.

1.03 SUBSTANTIAL COMPLETION:

Shall be defined to mean that the entire project or a designated portion shall be completed to such degree that all spaces can be occupied and used by the Owner, for the purposes which they were intended. Corrective work and replacement of defective materials or equipment shall not delay recognition of contract being "substantially complete" unless the extent of work as estimated by the Architect exceed two (2) percent of the Contract amount.

1.04 FINAL COMPLETION AND ACCEPTANCE:

Within five (5) days after the Contractor has given the Architect written notice that the work has been completed, the Architect and the Owner shall inspect the work and within said time, if the work is found to be completed or substantially completed, in accordance with the Contract Documents, the Architect shall issue the Owner and the Contractor a Certificate of Substantial Completion, and thereupon it shall be the duty of the Owner within ten (10) days of acceptance of the project by the City Council to issue a Certificate

of Acceptance of the work to the Contractor.

1.05 FINAL PAYMENT:

Upon issuance of the Certificate of Substantial Completion, the Architect will proceed to make final inspection and prepare final statement of the value of all work performed and materials furnished under the terms of the Contract and shall certify same to the Owner, who shall pay the Contractor within thirty (30) days after the date of the Final Acceptance, the balance due the Contractor under the terms of this Contract, provided he has fully performed his contractual obligations under the terms of this Contract; and said payment shall become due in any event upon said performance by Contractor. Neither the Certificate of Acceptance nor the Final Payment, or any provisions in the Contract Documents, shall relieve the Contractor of the obligation for fulfillment of any warranty which may be required by the specifications. All warranties and guaranties as required by the Specifications shall be delivered to the Owner before final payment is made.

(End of Section)

SECTION 01200 -- Project Meetings**PART 1 – GENERAL****1.01 PRE-CONSTRUCTION MEETING:**

A pre-construction meeting will be held at the site or another location to be determined prior to the beginning of the Work and at a time designated by the Architect, but not later than 10 days after date of Notice to Proceed. Representatives of the Architect, Owner, Contractor, including designated superintendent, and all major subcontractors shall be present. The following shall serve as a minimum agenda: distribute and discuss the list of major subcontractors; tentative construction schedule; critical work sequencing; relation and coordination of prime contractors; designation of responsible personnel; processing of field decisions and Change Orders; submittal of Shop Drawings, Project Data and Samples; procedures for maintaining Record Documents; and Safety and First-Aid Procedures.

1.02 PROGRESS MEETINGS:

Schedule regular monthly progress meetings at the site on a date mutually agreed upon by the Architect, the Contractor and the Owner. Representatives of the Owner, the Architect, Contractor, and necessary Prime Contractors shall be present. Minimum agenda would be as follows: review work progress since last meeting; note field observations, problems, and decisions; review off-site fabrication problems; revise construction schedule as indicated; review submittal schedules, expedite as required to maintain schedule; review changes proposed by the Owner for effect on construction schedule and effect on completion date.

SECTION 01310 -- Construction Schedules**PART 1 - GENERAL****1.01 GENERAL:**

Provide projected construction schedules for entire work, revise every second month.

1.02 RELATED WORK SPECIFIED ELSEWHERE:

- | | | |
|----|---|----------------|
| A. | Shop Drawings, Product Data and Samples | Section 01340. |
| B. | Schedule of Values | Section 01370. |

1.03 FORM OF SCHEDULES:

- A. Bar Chart or other approved form.
- B. Order: Chronological order based upon the beginning of each item of work.
- C. Marking: Identify each item referenced by major specification section number.

1.04 CONTENT OF SCHEDULES:

- A. Provide complete sequence of construction activity.
 - 1. Shop Drawings, Product Data and Samples:
 - a. Submittal dates.
 - b. Dates reviewed copies will be required.
 - 2. Decision dates for:
 - a. Products specified by allowances.
 - b. Selection of finishes.
 - 3. Product procurement and delivery dates.
 - 4. Dates for beginning and completion of each element of construction.
- B. Identify work for separate phases or other logically grouped activities.
- C. Show projected percentage of completion for each item of work as of first day of each month.
- D. Provide separate subschedule, showing submittals, review times, procurement schedules, and delivery dates as required.
- E. Provide subschedules to define critical portions of entire schedule as required.
- F. Include calendar days from date of start of project to date of completion.

1.05 UPDATING:

- A. Indicate changes occurring since previous submission of updated schedule.
- B. Indicate progress of each activity, including completion dates.
- C. Include:
 - 1. Major changes in scope.
 - 2. Activities modified since previous updating.
 - 3. Revised projections due to changes.
 - 4. Other identifiable changes.

1.06 SUBMITTALS:

- A. Submit initial schedules within 15 days after date of Notice to Proceed.
 - 1. Architect will review schedules and return review copy within 10 days after receipt.

2. If required, resubmit within 7 days after return of review copy.
- B. Submit periodically every second month, as a minimum updated schedules accurately depicting progress to the first day of each month.
 - C. Submit number of copies required by Contractor, plus 4 copies to be retained by Architect.

(End of Section)

SECTION 01340 -- Shop Drawings, Product Data and Samples

1.01 GENERAL:

- A. Refer to General Conditions, Article 3.12.
- B. Submit to the Architect shop drawings, product data and samples required by Specification sections.
- C. Prepare and submit, with construction schedule, a separate schedule listing dates for submission and lead dates for reviewed shop drawings, product data and samples for each item.

1.02 SHOP DRAWINGS:

- A. Original drawings, prepared by Contractor, Subcontractor, Supplier, or Distributor, which illustrate some portion of the work, showing fabrication, layout, setting or erection details, prepared by a qualified detailer. Drawings shall be dated and marked to show the name of the Project, Architect, Contractor, originating Sub-contractor, Manufacturer or supplier and separate details as pertinent.
- B. Reproductions for submittals: seven complete sets
Reproduction for shop drawing plan: one reproducible transparency with 3 opaque prints.

1.03 PRODUCT DATA:

- A. Manufacturer's standard schematic drawings:
 - 1. Modify drawings to delete information which is not applicable to Project.
 - 2. Supplement standard information to provide additional information applicable to Project.
- B. Manufacturer's catalog sheets, brochures, diagrams, schedules, performance charts, illustrations and other standard descriptive data: Submittal information which can not be reproduced economically shall be submitted in such quantities as to allow the Architect to retain three (3) copies of each after review.
 - 1. Clearly mark each copy to identify pertinent materials, products or models. Project name, Architect, Contractor, originating Sub-contractor, Manufacturer or Supplier and separate details, if pertinent.
 - 2. Show dimensions and clearances required.
 - 3. Show performance characteristics and capacities.
 - 4. Show wiring diagrams and controls.
 - 5. Identify specification section and locations at which materials or equipment are to be installed.
- C. Reproductions for product data: seven complete sets.

1.04 SAMPLES:

Physical examples to illustrate materials, equipment and workmanship, and to establish standards by which completed work is judged.

1.05 CONTRACTOR RESPONSIBILITIES:

All Shop Drawings required by these Construction Documents are considered as "tools" of construction and not "tools" of design. By submitting Shop Drawings the Contractor acknowledges his understanding and acceptance of this principle. The Contractor shall review Shop Drawings, Project Data and Samples prior to submission to Architect. Contractor's review shall include Contractor's stamp, initialed or signed and dated, certifying to review of submittal,

verification of field dimensions and compliance with Contract Documents. Shop Drawings stamped, signed and dated as approved by the General Contractor but showing evidence that they have not been carefully checked by the Contractor will be returned to the Contractor, rechecked by the Contractor and resubmitted to the Architect.

- A. Verify:
 - 1. Field measurements.
 - 2. Field construction criteria.
 - 3. Catalog numbers and similar data.
- B. Coordinate each submittal with requirements of work of Contract Documents.
- C. Contractor's responsibility for errors and omissions in submittals is not relieved by Architect's review of submittals.
- D. Contractor's responsibility for deviations in submittals from requirements of Contract Documents is not relieved by Architect's review of submittals, unless Architect gives written acceptance of specific deviations.
- E. Notify Architect, in writing at time of submission, of deviations in submittals from requirements of Contract Documents.
- F. Begin no work which requires submittals until return of submittals with Architect's stamp and initials or signature indicating review.
- G. After Architect's review, distribute copies.

1.06 SUBMISSIONS REQUIREMENTS:

- A. Schedule submissions at least 30 days before date reviewed submittals will be needed, in accordance with approved submittal schedule.
- B. Submit one reproducible transparency and five opaque prints of shop drawings, seven complete sets for submittal information, seven copies of product data submittals.
- C. Submit number of samples specified in each of Specification sections.
- D. Accompany submittals with transmittal letter in duplicate containing:
 - 1. Date.
 - 2. Project title and number.
 - 3. Contractor's name and address.
 - 4. The number of each shop drawing, product data and sample submitted.
 - 5. Notification of deviations from Contract Documents.
 - 6. Other pertinent data.

1.07 RESUBMISSION REQUIREMENTS:

- A. Shop Drawings:
 - 1. Revise initial drawings as required and resubmit as specified for initial submittal.
 - 2. Indicate on drawings any changes which have been made, other than those requested by Architect.
- B. Product Data and Samples: Submit new data and samples as required for initial submittal.

1.08 ARCHITECT/ENGINEER DUTIES:

- A. The Architect will review Shop Drawings, Project Data and Samples with reasonable promptness so as to cause no delay, but only for conformance with the design concept of the Project and with the information given in the Contract Documents. The Architect's approval of a separate item shall not indicate approval of an assembly in which the item functions.
- B. The Architects approval of Shop Drawings, Project Data and Samples shall not relieve the Contractor of responsibility of any deviation from the Contract Documents unless the Contractor has informed the Architect in writing of each deviation at the time of submission and the Architect has given written approval to the specific deviation, nor

shall Architect's approval relieve the Contractor from responsibility for errors or omissions in the Shop Drawings, Project Data and Samples.

1.09 DISTRIBUTION OF SUBMITTALS AFTER REVIEW:

- A. Distribute copies of shop drawings and product data which carry Architect's stamp as required for construction, including Contractor's file, job site file, other prime Contractors, Subcontractors, Supplier and Fabricator.
- B. Return 2 sets of prints from approved transparencies to Architect for record.

(End of Section)

SECTION 01370 -- Schedule of Values**PART 1 - GENERAL**

1.01 GENERAL:

- A. Submit to Architect a Schedule of Values within 10 days after date of Notice to Proceed or 20 days prior to submitting first Application for Payment, whichever is the earliest. No payments will be made until Schedule of Values is submitted and reviewed in form outlined below.
- B. List quantities of materials specified under unit price allowance.
- C. Upon request by Architect, support values given with such data that will substantiate their accuracy.
- D. Use Schedule of Values only as basis for Contractor's Applications for Payment.

1.02 FORM OF SUBMITTAL:

- A. Submit typewritten Schedule of Values on AIA form G702A, "Continuation Sheet" of Application and Certificate for Payment.
- B. Use the Table of Contents of this Project Manual as basis of format for listing itemized cost of Divisions 2-16. In general, itemize each division by section titles.
- C. Identify each line item with number and title as listed in the Table of Contents of this Project Manual.

1.03 PREPARING SCHEDULE OF VALUES:

- A. In addition to line item costs of sections in Division 2-16, furnish line item costs for each of the following general cost items:
 - 1. Mobilization
 - 2. Performance Bond and Payment Bond
 - 3. Field Supervision and Layout
 - 4. Temporary Facilities and Controls
 - 5. Contractor's Fee
 - 6. Erosion Control
- B. Include proper share of overhead, profit and labor in each line item in Schedule of Values.
- C. Sum of total costs of all items listed in Schedule shall equal total Contract Sum.
- D. Itemize separate line item cost for work required by each section of this Project Manual.
- E. For each line item which has an installed value of more than \$25,000, break down costs to list major products or operations under each item.

1.04 REVIEW AND SUBMITTAL:

- A. After review by Architect, revise and resubmit Schedule as required.
- B. Resubmit revised Schedule in same manner.

(End of Section)

SECTION 01500 -- Temporary Facilities and Controls**1.01 CONTRACTOR'S BUILDINGS:**

Permissible 50' from street.

1.02 SANITATION:

Provide a portable chemical toilet complying with all building and sanitation ordinances, laws and codes; ensure that all construction personnel use the provided facility.

1.03 USE OF SITE:

The Owner will make the project site and access to the project site available to the Contractor for the operations of the Contract. Should it be necessary for the Contractor to use portions of existing streets and sidewalks for operations, such use shall be strictly in accordance with requirements and approval of the authority having jurisdiction.

1.04 STORAGE OF MATERIALS:

- A. Storage area shall be contained within the limits of the site but not under the canopies of existing trees, in landscaped areas or sidewalks.
- B. Contractor shall provide on the premises where directed suitable storage sheds (substantial and watertight) in which he shall store all materials subject to damage by weather. All storage sheds shall be of sufficient size to hold all materials required on the site at one time and shall have floors raised at least 6" above the ground on heavy joists or sleepers. Storage sheds shall have neat appearance.
- C. Major Subcontractors shall provide such temporary buildings as, in the opinion of the Architect, may be necessary to fully protect their materials, equipment, apparatus, etc., during the progress of the work. Such buildings shall have neat appearance.
- D. Building materials, Contractor's equipment, etc., shall be stored on the premises so that it may be observed at all times by the Architect.
- E. All materials affected by the weather shall be covered and protected and kept free from damage while being transported to the site.
- F. The building shall not be used as storage facilities unless approved by the Architect.
- G. Subcontractors desiring to store materials scheduled for immediate use may do so only in locations as directed by the General Contractor and approved by the Architect.
- H. The Contractor shall make provisions for additional storage at no cost to Owner in the event that additional storage area is required beyond that provided by the project site.
- I. All stored materials shall be available for inspection by Architect and Owner at any time.

1.05 TEMPORARY OFFICES: - Not Required

- A. Provide a separate Field Office for the Contractor and Architect's use. A minimum of 8' X 10' office space with desk and chair, layout table, plan rack, and two drawer file cabinets shall be provided.
- B. The Contractor shall provide one land line telephone for the use of all employed at the project. The Contractor shall pay for the installation, maintenance, removal, and all charges for the use of telephones, except charges for long distance messages which shall be paid by the person making the call. The telephones shall remain until the full completion of the work, and shall be removed when directed by the Architect.

1.06 TEMPORARY ENCLOSURES:

Erect temporary enclosures over openings when weather conditions render such action necessary for proper installation of any portion of the Work.

1.07 UTILITIES FOR TESTING

Any water, gas, or electricity required for testing of equipment installed under this contract shall be the responsibility of this Contractor unless specified differently in specific sections.

1.08 ELECTRICAL ENERGY:

- A. Contractor shall make all necessary applications, pay all fees and charges, obtain necessary permits and provide and maintain electrical energy for power and light and as required for items of construction, and as necessary for providing and maintaining artificial light in the progress of any branch of the work. Contractor shall make arrangements for temporary connection locations and metering charges. He shall also provide all temporary wiring necessary.
- B. When Owner occupies a portion or part of the building prior to substantial completion of the entire project, Owner will pay costs of utility services for that portion or part of the building. Contractor shall provide temporary electrical services to remaining portions of project until substantial completion of entire project.

1.09 TEMPORARY SEWER AND DRAIN CONNECTIONS: (Not required)

1.10 TEMPORARY FIRE PROTECTION:

- A. The Contractor and Subcontractor shall observe and the Contractor shall enforce throughout the work during the whole period of construction all requirements of City, State and Insurance authorities to minimize the fire hazards during the progress of the work.
- B. Combustible refuse shall be removed from building daily.
- C. No salamanders will be permitted.
- D. The Contractor shall provide and maintain fire extinguishers, fire hoses and other equipment as necessary for proper fire protection during construction. Such equipment is to be used for fire protection only.

1.11 TEMPORARY LADDERS, SCAFFOLDS, HOISTS:

Contractor shall furnish and maintain equipment such as temporary ladders, ramps, scaffolds, hoists, runways, derricks, chutes, etc., as required for the proper execution of the work. Such apparatus, equipment, and construction shall meet requirements of the Labor Law, Federal Safety Laws, and other State or Local Laws applicable thereto. Contractor shall provide temporary construction elevator or other suitable means for egress to upper floors for use of all trades.

1.12 PUBLIC CONVENIENCE AND SAFETY:

Materials stored about the work shall be so placed, and the work shall at all times be so conducted as to cause no greater obstruction to the traveling public than is necessary. The Contractor shall make provisions by bridges or otherwise at all sidewalks and driveways for the free passage of pedestrians and vehicles. The materials excavated, the construction materials or plant used in the construction of the work, shall be placed so as not to endanger the work or prevent free access to all fire hydrants, water valves, gas

valves, manholes for telephone, telegraph signal or electrical conduits, sanitary or storm sewers, or fire alarm or police call boxes in the vicinity.

1.13 BARRICADES, FENCE, LIGHTS, AND WATCHMEN:

- A. Where the work is carried on, in or adjacent to any road, parking area or public place, the Contractor shall at his own cost and expense, furnish and erect such barricades, fences, lights, danger signals, and shall provide watchmen and take other such precautionary measures as are necessary for the protection of persons or property.
- B. At the completion of construction, all barricades, fences and all traces thereof shall be removed, holes filled, paving repaired and cleaned, etc.

1.14 TEMPORARY WATER:

All water required in the performance of the Contract shall be provided and paid for by the Contractor. Furnish and install all mains, laterals, branch lines and service piping and fittings to supply temporary water in sufficient quantity at required locations of the building and site. Remove all temporary connections and piping and close all openings at the end of Work.

1.15 TEMPORARY HEAT:

Temporary heat, fuel and service as necessary to protect all work and materials against injury from dampness and cold until final acceptance, Owner shall assume all expenses of heating from date of occupancy. In addition, provide temporary heat as follows:

- A. During placing, setting and curing of concrete, provide sufficient heat to ensure heating of spaces involved to not less than 50 degrees F.
- B. From beginning of application of plaster and during setting and curing period, sufficient heat to produce temperature of not less than 50 degrees F.
- C. During all phases of interior finish work, and until final acceptance or occupancy by Owner, provide sufficient heat to produce a temperature of not less than 70 degrees F.
- D. Before Substantial Completion, all registers, diffusers and filters shall be cleaned or replaced as appropriate.

1.16 TEMPORARY BUILDINGS:

All temporary buildings shall be weather and watertight and maintained in a neat, orderly appearance for the duration of the Work.

- A. Enclosed Storage Areas: Contractor and each subcontractor, for their own use, shall provide and maintain watertight storage sheds for materials which might be damaged by weather. Floors should be raised above ground level. Remove from site at completion of Work.
- B. Temporary Public Protection: Should government, state or local authorities require construction of temporary barricades or covered passageways, they shall be constructed by the Contractor at no additional cost to the Owner, shall be approved by the Architect, and shall be painted and maintained in an orderly, neat appearance at all times and be repainted when necessary and as directed by Architect.
- C. Removal of Temporary Construction: Temporary office facilities, toilets, storage sheds, and other construction of temporary nature shall be removed from the site as soon as, in the opinion of the Architect, the progress of the work will permit; and the portions of the site occupied by same shall be properly reconditioned and restored to a condition acceptable to the Architect.

1.17 PROTECTION FOR WORK IN PLACE:

Work in place that is subject to injury, because of operations carried on adjacent thereto shall be covered or substantially enclosed with adequate protection. Permanent openings used as thoroughfares for the introduction of work or material to the structure shall have heads, jambs and sills well-blocked and boarded. All forms of protection shall be constructed in a manner that, upon completion, the entire Work will be delivered to the Owner in proper, whole and unblemished condition.

1.18 PUMPING AND DRAINAGE:

Surface or subsurface water or other fluids shall not be permitted to accumulate in excavations or in or about the premises and vicinity. Water, or other fluid, shall be controlled and suitably disposed of by means of temporary pumps, piping, drainage lines, or other methods approved by Architect.

1.19 PROTECTION AND WARNING:

Provide and erect all temporary planking, bridges, fences, bracing, shoring, needle pinning, and warning signs and lights required by jurisdictional authorities and/or site conditions to protect persons, streets and adjacent on-site or off-site property. Bidders shall ascertain legal and other requirements.

(End of Section)

SECTION 01630 -- Substitutions

1.01 PRODUCT LIST:

- A. Within 30 days after date of Contract, submit to Architect 5 copies of complete list of products and materials which are proposed for installation.
- B. Prepare list on basis of each Specification section.
- C. For products specified under reference standards, include with listing of each product:
 - 1. Name and address of manufacturer.
 - 2. Trade name.
 - 3. Model or catalog designation.
 - 4. Manufacturer's data, including performance and test data, reference standards.

1.02 CONTRACTOR'S OPTIONS:

- A. For products specified only by reference standards, select any product meeting standards, by any manufacturer.
- B. For products specified by naming several products or manufacturers, select any product and manufacturer named.
- C. For products specified by naming one or more products, but indicating the option of selecting equivalent products by stating "or equal" after specified product, Contractor must submit request, as required for substitutions, for any product not specifically named.
- D. For products specified by naming only one product and manufacturer, there is no option, unless a substitution is approved as specified below.

1.03 SUBSTITUTIONS:

- A. Within 30 days after date of Contract, Architect will consider formal requests from Contractor for substitutions of products in place of those specified. No request for substitutions will be considered after this date. Requests for substitutions shall include data listed in Sections "B" and "C" below.
- B. Submit 5 copies of request for substitution. Include in substitution:
 - 1. Complete data substantiating compliance of proposed substitution with Contract documents. Substantiating data shall be highlighted and cross referenced to the specified product or procedure in such a manner that is easily reviewed and verified.
 - 2. For products:
 - a. Product identification, including manufacturer's name and address.
 - b. Manufacturer's literature, including product description, performance and test data and reference standards. Highlighted and cross referenced to the specific product.
 - c. Samples, if applicable.
 - d. Name and address of similar projects on which product was used and date of installation.
 - 3. For construction methods:
 - a. Detailed written descriptions of proposed method.
 - b. Complete drawings showing revisions required to accommodate substitutions. Drawings shall be prepared by qualified draftsman and shall include new details of all conditions detailed on Drawings as well as any changes required of other products to accommodate the proposed substitution.
 - 4. Itemized comparison of proposed substitution with product or method specified. Pertinent data comparing both or several products shall be highlighted so

- Architect is not required to laboriously extract the information.
5. Data relating to changes in construction schedule.
- C. In making request for substitution, Bidder/Contractor represents:
1. He has personally investigated proposed product or method and determined that it is equal or superior in all respects to that specified.
 2. He will provide same guarantee for substitution as for product or method specified.
 3. He will coordinate installation of accepted substitution into work, making such changes as may be required for work to be complete in all respects.
 4. He waives all claims for additional costs related to substitution which subsequently becomes apparent.
- D. Substitutions will not be considered if:
1. They are indicated or implied on shop drawings or product data submittals without formal request as submitted in accordance with Article 1.03 of this Section.
 2. Acceptance will require substantial revision of Contract Documents.
 3. All conditions affected by the substitution have not been thoroughly redetailed and redrawn by the Contractor as part of the requested substitution.
 4. If pertinent data comparing intended substitution(s) with specified item is not highlighted as outlined above.

(End of Section)

SECTION 01700 -- Project Closeout

PART 1 - GENERAL

1.01 RELATED REQUIREMENTS SPECIFIED ELSEWHERE:

- A. Time of Final Payment: The Agreement
- B. Completion; Waiver of Claims: General Conditions
- C. Liquidated Damages: Supplementary Conditions
- D. Cleaning: Section 01710
- E. Project Record Documents: Section 01720
- F. Operation and Maintenance Data: Section 01740
- G. Closeout Submittals Required of Trades: The respective sections of specifications.
- H. Storm Water Pollution Prevention Plan: Section 01750

1.02 SUBSTANTIAL COMPLETION:

- A. Contractor:
 1. Submit written certification to Architect that Project, or designated portion of Project, is substantially complete.
 2. Submit list of major items to be completed or corrected.
- B. Architect will make an inspection within seven days after receipt of certification, together with Owner's Representative.
- C. Should Architect consider the Work is substantially complete:
 1. Contractor shall prepare, and submit to Architect, a list of items to be completed or corrected, as determined by the inspection.
 2. Architect will prepare and issue a Certificate of Substantial Completion, AIA G704, complete with signatures of Owner and Contractor, accompanied by Contractor's list of items to be completed or corrected, as verified and amended by Architect.
 3. Owner Occupancy of Project or Designated Portion of Project:
 - a. Contractor shall:
 1. Obtain certificate of occupancy.
 2. Perform final cleaning in accordance with Section 01710.
 - b. Owner will occupy Project, under provisions stated in Certificate of Substantial Completion.
 4. Contractor: Complete work listed for completion or correction within designated time.
- D. Should Architect consider that Work is not substantially complete:
 1. He shall immediately notify Contractor, in writing, stating reasons.
 2. Contractor: Complete Work and send second written notice to Architect, certifying that Project or designated portion of Project is substantially complete.
 3. Architect will reinspect Work as provided in the Supplementary General Conditions.

1.03 FINAL INSPECTION:

- A. Contractor shall submit written certification that:
 1. Contract Documents have been reviewed.
 2. Project has been inspected for compliance with Contract Documents.
 3. Work has been completed in accordance with Contract Documents.
 4. Equipment and systems have been tested in presence of Owner's Representative and are operational.
 5. Project is completed, and ready for final inspection.
- B. Architect will make final inspection within seven days after receipt of certification.
- C. Should Architect consider that Work is finally complete in accordance with requirements of Contract Documents, he shall request Contractor to make Project Closeout submittals.

- D. Should Architect consider that Work is not finally complete:
 - 1. He shall notify Contractor, in writing, stating reasons.
 - 2. Contractor shall take immediate steps to remedy the stated deficiencies, and send second written notice to Architect certifying that Work is complete.
 - 3. Architect will reinspect Work.

- 1.04 REINSPECTION COSTS: Should Architect be required to perform second inspections because of failure of Work to comply with original certifications of Contractor, Owner will compensate Architect for additional services, and deduct amount paid from final payment to Contractor as provided in Supplementary General Conditions.

- 1.05 CLOSEOUT SUBMITTALS:
 - A. Project Record Documents: To requirements of Section 01720 and Section 02810.
 - B. Operation and Maintenance Data: To requirements of Section 01740.
 - C. Guarantees and Bonds specified in appropriate sections of specifications.
 - D. Maintenance Bond if required by Contract Documents.
 - E. Keys and Keying Schedule: To requirements of Section 08700, Finish Hardware.
 - F. Deliver evidence of compliance with requirements of governing authorities.
 - 1. Mechanical: Section 15
 - 2. Electrical: Section 16

- 1.06 EVIDENCE OF PAYMENTS AND RELEASE OF LIENS:
 - A. Contractor's Affidavit of Payment of Debts and Claims: AIA G706.
 - B. Contractor's Affidavit of Release of Liens: AIA G706A, with:
 - 1. Consent of Surety to Final Payment: AIA G707.
 - 2. Contractor's release and waiver of liens.
 - 3. Separate releases of waivers of liens for subcontractors, suppliers, and others with lien rights against property of Owner, together with list of those parties (verify with Owner).
 - C. All submittals shall be duly executed before delivery to Architect.

- 1.07 FINAL ADJUSTMENT OF ACCOUNTS:
 - A. Submit final statement of accounting to Architect.
 - B. Statement shall reflect all adjustments
 - 1. Original Contract Sum
 - 2. Additions and deductions resulting from:
 - a. Previous Change Orders
 - b. Cash Allowances
 - c. Unit Prices
 - d. Other Adjustments
 - e. Deductions for Uncorrected Work
 - f. Penalties and Bonuses
 - g. Deductions for Liquidated Damages
 - h. Deductions for Reinspection Payments
 - 3. Total Contract Sum, as adjusted
 - 4. Previous payments
 - 5. Sum remaining due
 - C. Architect will prepare final Change Order, reflecting approved adjustments to Contract Sum not previously made by Change Orders.

- 1.08 FINAL APPLICATION FOR PAYMENT: Contractor shall submit final application in accordance with requirements of General and Supplementary Conditions.

1.09 FINAL CERTIFICATE FOR PAYMENT:

- A. Architect will issue final certificate in accordance with provisions of General Conditions.
- B. Should final completion be materially delayed through no fault of Contractor, Architect may issue a Semi-Final Certificate for Payment, in accordance with provisions of General Conditions.

1.10 POST-CONSTRUCTION INSPECTION:

- A. Prior to expiration of one year from Date of Substantial Completion, Architect will make visual inspection of project in company with Owner and Contractor to determine whether correction of Work is required, in accordance with provisions of General Conditions.
- B. For Guarantees beyond one year, Architect will make inspections at request of Owner, after notification to Contractor.
- C. Architect will promptly notify Contractor in writing of any observed deficiencies.

(END OF SECTION)

SECTION 01710 -- Cleaning Up**PART 1 - GENERAL**

1.01 GENERAL:

- A. Provide necessary cleaning during construction and final cleaning at completion of work.
- B. If the Contractor fails to clean up at the completion of the work, the Owner may do so as provided in Paragraph 3.4 General Conditions and charge the cost thereof to the Contractor.

1.02 RELATED WORK SPECIFIED ELSEWHERE:

Cleaning up required for specific trades or work is specified in Section pertaining to that trade or work.

1.03 REQUIREMENTS OF REGULATORY AGENCIES:

- A. Fire Protection: Store volatile waste in covered metal containers, and remove from premises daily.
- B. Pollution Control: Conduct clean-up and disposal operations to comply with local ordinances and anti-pollution laws.
 - 1. Burning or burying of rubbish and waste materials on the project site is prohibited.
 - 2. Disposal of volatile fluid wastes (such as mineral spirits, oil, or paint thinner) in storm or sanitary sewer systems or into streams or waterways is prohibited.

PART 2 - MATERIALS

2.01 CLEANING MATERIALS:

- A. Use only cleaning materials recommended by manufacturer of surface to be cleaned.
- B. Use cleaning materials only on surfaces recommended by cleaning material manufacturer.

PART 3 - EXECUTION

3.01 DURING CONSTRUCTION:

- A. Oversee cleaning and insure that building and grounds are maintained free from accumulations of waste materials and rubbish.
- B. Sprinkle dusty debris with water.
- C. At not less than every week during progress of work, clean up building and site and dispose of waste materials, rubbish and debris.
- D. Provide dump containers and locate on site for collection of waste materials, rubbish and debris.
- E. Do not allow waste materials, rubbish and debris to accumulate and become an unsightly or hazardous condition.
- F. Remove waste materials, rubbish and debris from the building and site and legally dispose of at public or private dumping areas, off Owner's property.
- G. Vacuum clean interior building areas when ready to receive finish painting and continue vacuum cleaning on an as-needed basis until building is ready for acceptance or occupancy.
- H. Lower waste materials in a controlled manner with as few handlings as possible; do not drop or throw materials from heights.
- I. Schedule cleaning operations so that dust and other contaminants resulting from cleaning process will not fall on wet, newly-painted surface.
- J. Maintain temporary and permanent project signage in a clean and attractive condition.

3.02 FINAL CLEANING:

- A. Use experienced workmen, or professional cleaners, for final cleaning.
- B. At completion of construction and just prior to acceptance or occupancy, conduct a final inspection of exposed interior and exterior surfaces.
- C. Remove grease, dust, dirt, stains, labels, fingerprints, and other foreign materials, from interior and exterior surfaces.
- D. Repair, patch and touch-up marred surfaces to match adjacent finishes.
- E. Broom clean paved surfaces; rake clean other surfaces of grounds.
- F. Replace air conditioning filters if units were operated during construction.
- G. Clean ducts, blowers, and coils if air conditioning units were operated without filters during construction.
- H. Sweep and buff resilient floors and base.
- I. Dust all walls, metal, wood and similar finished materials.
- J. Clean all cabinet and casework.
- K. Dust and wash all plumbing and electrical fixtures.
- L. Wash and buff or polish all non-resilient materials.
- M. Vacuum all floor areas scheduled to receive floor finish by others.

(End of Section)

SECTION 01720 -- Project Record Documents

1.01 RELATED WORK SPECIFIED ELSEWHERE:

- A. Shop Drawings, Product Data and Samples-----Section 01340.
- B. Operations and Maintenance Data-----Section 01740.

1.02 MAINTENANCE OF DOCUMENTS:

- A. Maintain at job site, one copy of the following: Contract Drawings, Specifications Manual, STANDARD SPECIFICATIONS FOR PUBLIC WORK CONSTRUCTION - NORTH CENTRAL TEXAS, THE CITY OF LEWISVILLE GENERAL DESIGN STANDARDS, Latest Edition, Addenda, reviewed shop drawings, Change Orders, other modifications to Contract and field test reports.
- B. Store documents in temporary field office, apart from other documents used for construction.
- C. Provide necessary files and racks for storage of documents.
- D. Do not use record documents for construction purposes.
- E. Make documents available at all times for inspection by Architect and Owner.

1.03 RECORDING:

- A. Label each document "PROJECT RECORD" in one inch (1") high printed letters.
- B. Keep record documents current.
- C. Do not permanently conceal any work until required information has been recorded.
- D. Contract Drawings: Legibly mark to record actual construction:
 1. Depths of various elements of foundation and drilled piers in relation to Finish Grade.
 2. Horizontal and vertical location of underground utilities and appurtenances referenced to permanent surface improvements.
 3. Location of internal utilities concealed in construction referenced to visible and accessible features of structure, if significantly different than that shown on Drawings.
 4. Field changes to dimension and details.
 5. Changes made by Change Order or Field Order.
 6. Details not on original Contract Drawings.
- E. Specifications and Addenda: Legibly mark-up each section to record:
 1. Manufacturer, trade name, catalog number of each product and item of equipment actually installed.
 2. Changes made by Change Order or Supplemental Instructions.
 3. Other matters not originally specified.

1.04 SUBCONTRACTORS AND SUPPLIERS LIST:

Provide a complete list of names, addresses and telephone numbers of all subcontractors and suppliers employed on the project.

1.05 AS-BUILT PLANS:

Upon completion of construction, but prior to final acceptance, the information contained in the project record documents shall be transferred to reproducible formats. Adjustments to plan elements shall be redrafted to reflect construction changes, construction relocations shall be re-dimensioned and the installed locations of items not visible on the surface shall be dimensioned from permanent surface features such as retaining walls, light posts, building facades, etc. As-builts of the plans comprising the construction documents shall be made in AUTOCAD format (AutoCAD 2000 or more recent) and submitted in AutoCAD drawing file, Adobe Acrobat PDF format and on mylar sepias. Changes shall be clouded or denoted in another appropriate manner to ensure that they are easily recognizable. A copy

(in all formats) of the As-Built drawings shall be submitted to the Architect for review and approval. After approval of the As-Built drawings the Contractor shall submit the AutoCAD drawing file, PDF file and a mylar original, as well as, three (3) complete sets of the As-Built drawings to the Architect.

1.05 SUBMITTAL:

- A. At completion of project, deliver record documents to Architect.
- B. Accompany each submittal with transmittal letter in duplicate, containing the following: date, project title and number, Contractor's name and address, title and number of each record document, certification in writing that each document as submitted is complete and accurate and reflects the actual condition at the building/site, signature of Contractor or his authorized representative.

(End of Section)

SECTION 01740 -- Operation and Maintenance Data**PART 1 - GENERAL**

- 1.01 PRIOR TO FINAL PAYMENT: The responsible Prime Contractors shall provide maintenance information and operations instructions for equipment and systems provided under their Contracts. (For jobs that include all work under the General Contract, the responsible subcontractors, under the coordination of the General Contractor, shall provide this information.)
- 1.02 OPERATION MANUALS: Prepare operating and maintenance instructions for all equipment, particularly mechanical and electrical, that will require any adjustment, servicing, or attention for its proper operation. These instructions shall set forth all of the information necessary for Owner to operate and make full and efficient use of equipment, and perform such maintenance and servicing as would ordinarily be done by Owner or his personnel. They shall be written in simple, non-technical language when possible, with sufficient diagrams and explanation where necessary to be readily understandable by average layman. Possible hazards shall be particularly pointed out with instructions cautioning against mistakes in operation that might result in damage or danger to equipment, building or personnel.
- 1.03 APPROVAL: Three copies of instructions shall be submitted to Architect for review and approval, 1 copy of which shall be returned to Contractor approved or with instructions for changes. Upon approval by Architect, three copies of instructions covering all equipment shall be furnished to Architect, who will forward 2 copies to Owner for his information and use.
- 1.04 OPERATION MANUAL SERVICE INDEX: Append to manual the name, address, and telephone number of Contractors and subcontractors; and for mechanical items, provide the name, address and telephone number of companies servicing installed equipment on a 24-hour basis.
- 1.05 OPERATION INSTRUCTION: After submission of the above mentioned written instructions, Contractor shall furnish competent operation engineer or engineers at such time or times as directed by Architect to meet with Owner or his representative, to fully explain instructions and to demonstrate and fully familiarize Owner or his representative with all of equipment and all phases of its operation and maintenance. The amount of time to be devoted to instruction shall be reasonable and consistent with the size of the installation and the complexity thereof. Instructions shall be adequate to the extent that the Owner's personnel may proceed with normal operations in a safe and efficient manner.
- 1.06 ADDITIONAL INFORMATION: In addition to the above mentioned instructions, Contractor shall furnish to Architect 1 copy of manufacturer's literature for each item of mechanical and electrical equipment installed in job. Notation shall be written on literature indicating how particular item was used and its location. This information and literature will be forwarded to Owner by Architect to aid in future servicing of equipment and ordering replacement item or parts, and it shall be in sufficient detail to satisfactorily serve this purpose.

(End of Section)

SECTION 02215 – Fine Grading: Landscape

PART 1 - GENERAL

1.01 SECTION INCLUDES:

- A. Furnish all labor, material, equipment, related services and supervision necessary for or incidental to fine grading all disturbed areas within the limits of work as shown or indicated on the Drawings and/or as specified.

1.02 RELATED DOCUMENTS:

- A. All other Divisions of the Contract Documents. Refer to each Division's specifications and drawings for all requirements, including but not limited to the following:
 1. Landscape Planting – Section 2950

PART 2 - PRODUCTS

2.01 LIMITS OF WORK:

- A. The areas to be fine graded are all those turf and landscape areas as delineated on the construction documents.

2.02 SEQUENCE OF WORK:

- A. Fine grading of returf and landscape areas shall not commence until the Owner's Representative has reviewed the subgrade and granted separate written permission for the placement of the topsoil, if required. Permission to proceed with the placement of the topsoil neither constitutes approval of the subgrade nor alleviates the Contractor of his responsibility.
- B. Fine grading will not be attempted until all construction involving heavy equipment and vehicles is complete.
- C. Fine grading shall be performed in compliance with the specifications. All elevations must be within 0.1 feet of the grades indicated on the plans, if a grading plan is provided. The surface shall have a consistent unwavering slope in all aspects/directions of the plane. Visual dips, depressions, ridges, rills, humps, etc. are not acceptable. The General Contractor, Landscape Architect and Owner's Representative will conduct an on-site visual inspection after the Contractor has indicated that fine grade has been achieved. Any deficiencies noted must be corrected by the Contractor.
- D. After fine grading is accomplished, it shall be the Contractor's responsibility to protect all fine graded areas from vehicular traffic or other disruptive activities. Damages to the fine graded surfaces will be restored to a satisfactory condition as prescribed herein until the job is completed and accepted by the Architect and the Owner.
- E. It is critical that all of the above outlined earthwork procedures be strictly followed to ensure an acceptable surface in the turf and landscape areas; therefore, work progressing without proper approval as delineated for each phase shall be subject to complete removal with no adjustment in price or contract time.

2.03 FINE GRADING OPERATIONS:

- A. The following measures will be executed in the accomplishment of fine grading areas to be planted in turfgrass. The Contractor may elect to use additional or supplemental measures to accomplish fine grading.
 1. Fine grading will be executed with any or all of the following or other appropriate machinery: lightweight road grader, tractor box blade, discing machinery, weighted spike harrow, and weighted drags. Bull Dozer blades or front end loader buckets are not acceptable devices for fine grading operations.

2. It is anticipated that some areas of earth embankment and high traffic areas may become overcompacted and resistant to proper grading. Such areas will be loosened and pulverized with discing machinery and will then be recompact to normal density before fine grading. The use of a watering truck to moisten dried and hardened areas may be necessary.

2.04 ACCEPTABILITY:

- A. The Architect will determine if fine graded areas are acceptable. Areas deemed unacceptable will be corrected and re-graded until they are acceptable. Architect's acceptance of the finish surface does not alleviate the Contractor of his responsibility to comply with the specifications.
- B. Work progressing without proper approval for each phase of the earthwork operations shall be subject to complete removal.

PART 3 - EXECUTION

3.01 INSPECTION:

- A. Examine areas and conditions under which fine grading is to be performed and notify Owner/Architect of conditions detrimental to the proper and timely completion of the work.

3.02 PREPARATION:

- A. Provide adequate protective measures of shoring, bracing, piling, planking and cribbing to protect existing adjacent construction.
 1. Protect all reference points, benchmarks and monuments from dislocation or damage. Replace or repair immediately any points damaged, destroyed, or dislocated.
 2. Sprinkle and dampen all dusty material from the beginning of work to its completion.
 3. Protect and maintain all conduits, drains, inlets, sewers, pipes and wires that are to remain.
 4. Provide, erect and maintain all lights, barricades, warning signs and guards as necessary.
- B. The Contractor shall layout all work required and is responsible for all elevations, dimensions and verification of actual conditions. Refer discrepancies to the Architect for interpretation or required modifications.
- C. Remove grass, weeds, trees, shrubbery, roots and other vegetation from the areas to be fine graded. Tree roots of protected trees shall not be disturbed. Contractor shall remove vegetation and organic matter by hand labor in tree root zone areas. Coordinate work with Architect in tree root zone areas.

3.03 PUMPING AND DRAINAGE:

- A. Keep fine graded areas free from water, ice and snow at all times. Prevent water from interfering with progress or quality of the work.

3.04 RECONDITIONING FINISHED GRADE:

- A. Where approved grades are compacted or disturbed by Contractor's subsequent operations or adverse weather, the finished grades shall be scarified and re-graded as specified herein prior to further construction thereon.

3.05 GRADING:

- A. Establish grades, if grading plan is provided, by means of grade stakes placed as required. Hold down subgrade to allow depths required for approved topsoil and compost placement, if required.
- B. Fine grade to the elevations required by the drawings and specifications.
- C. Imported topsoil, if required, will be furnished by the Contractor and installed in the areas as indicated on the plans.
- D. Finish grade to the elevations required by the drawings and for proper drainage. At intermediate points, for which finish grades are not indicated, the finish grade shall be of uniform level of slope between points for which elevations are given. Provide a smooth gradient transition at any abrupt changes in elevation.

3.06 ADJUSTMENTS AND CLEANING:

- A. Settlement or washing that occurs in fine graded areas prior to acceptance of work shall be repaired and grades re-established to the required elevations and slopes.
- B. Cleanup all debris caused by the work of this section, keep the site clean and neat at all times.

(End of Section)

SECTION 02950 -- Landscape Planting

PART 1 - GENERAL

- 1.01 SCOPE: The work covered by this part of these specifications entitled "Planting Specifications" consists of furnishing all plants and other materials, labor, equipment and appliances, and performing all operations in connection with the planting of trees, shrubs, ground covers, and other such materials in strict accordance with these specifications and the applicable drawings, and subject to the terms and conditions of the Contract.
- 1.02 APPLICABLE STANDARDS:
- A. American Standard for Nursery Stock Edition approved May 2, 1986
 - B. American Joint Committee on Horticulture: Latest Edition of Standardized Plant Names.
- 1.03 CERTIFICATE OF INSPECTION: All necessary Inspection Certificates shall accompany the invoice for each shipment or order of stock, as may be required by law for the necessary transportation, and such certificates shall be filed, prior to the acceptance of such material, at the office of Dunkin Sims Stoffels, Inc.

PART 2 - PRODUCTS

- 2.01 MATERIALS:
- A. COMMERCIAL FERTILIZER: Fertilizer shall be a complete organic fertilizer, uniform in composition, dry and free-flowing. It should be delivered mixed as specified in standard-sized bags showing weight, analysis, and name of manufacturer, and stored in a weatherproof storage area where it will be kept dry. Fertilizer provided shall meet one or more of the following requirements to be approved:
 1. Fifteen percent (15%) Nitrogen, five percent (5%) Phosphorous, ten percent (10%) Potash. Other analysis may be used only upon approval of Owner's Representative.
 - B. SAND: Clean, washed sand; fine to coarse sizes
 - C. PEAT MOSS: Peat Moss is to be of Canadian origin and is to be low in content of woody material and free of minerals harmful to plant life; it shall have a pH of from four (4) to six (6), a moisture content of not more than thirty percent (30%), and a water absorbing capacity from one thousand one hundred to two thousand percent (1100% - 2000%). It may be natural or shredded.
 - D. MULCH: Mulch shall consist of peat moss, composted hardwood, redwood bark, well-rotted cotton seed or cotton boll hulls, free of any spray, residue, or other collected humus, or as specified on planting plan, and shall be of such character as not to be easily displaced by wind. Mulch shall be completely composted and have a pH of 8.2 or higher.
 - E. MATERIALS FOR STAKING: Refer to typical tree planting detail in the provided plans.
 - F. PLANT MATERIALS: The Owner may inspect plants at place of growth but such inspection does not preclude the right to rejection on the site. All plant materials shall meet the approval of the Landscape Architect.
 1. Plant List - A plant list is shown on the planting plan.
 2. Nomenclature - The scientific and common names of plants herein specified conform with the approved names given in "Standardized Plant Names." Names of varieties not included therein conform generally with names accepted in the nursery trade.
 3. Quantities necessary to complete the planting as shown and located on the drawings shall be furnished. Dimensions for ground cover beds have, in many instances, been established from scaled drawings. It is the Contractor's

responsibility to check these dimensions on the site and allow for quantity of plants accordingly.

4. Quality and Size

- a. Plants shall have a habit of growth which is normal for the species and shall be sound, healthy, vigorous, and free from insect pests, plant diseases, injuries, and aftereffects thereof.
- b. All plants shall equal or exceed the measurements specified in the Plant List, which are minimum acceptable sizes. They shall be measured before pruning, with branches in normal position. Any necessary pruning shall be done at the time of planting.
- c. Requirements for the measurement, branching, grading, quality, balling, and burlapping of plants generally follow the code of standards currently recommended by the American Association of Nurserymen, Inc., in the "American Standard for Nursery Stock."

(1) Minimum Ball Sizes for Trees

<u>Tree Size</u>	<u>Ball Depth Minimum</u>	<u>Ball Diameter Minimum</u>
1 1/2" - 2" cal.	20"	24"
2" - 2 1/2" cal.	22"	28"
2 1/2" - 3" cal.	24"	36"
4" cal.	30"	48"
5' - 6' High	18"	30"
6' - 8' High	24"	36"

(2) Tree ball shapes shall be truncated cones.

- d. Plants in containers specified in the Plant List shall have been acclimated to outside conditions.
 - e. Divisions shall be parts of plants suitable for transplanting, guaranteed to grow.
5. Substitutions will be permitted only upon submission of proof that a plant is not reasonably obtainable and authorization by the Landscape Architect of a change directive providing for use of the nearest equivalent obtainable size and variety of plant having the same essential characteristics with an equitable adjustment of contract price.

2.02 DIGGING, WRAPPING AND HANDLING

- A. **BALLED PLANTS:** Plants designated "B&B", balled and burlapped, in the Plant List, shall be adequately balled with firm, natural balls wrapped with burlap. No balled plant shall be planted if the ball is cracked or broken, either before or during the planting process. Any plant which is loose in the ball shall be removed from the site and another plant conforming to the specifications of the plant removed shall be planted in its place at the expense of the Contractor.
- B. **BARE ROOT PLANTS:** Plants designated "BR", bare root, in the Plant List, shall be dug with substantially all the root system intact, but with the soil carefully removed from the roots without injury to the fibrous root system necessary for the full recovery of the plant. Roots shall be covered with a thick coating of mud by puddling, or wrapped in wet straw, moss, or other suitable packing material immediately after they are dug, for

protection until delivery.

- C. CONTAINER-GROWN PLANTS: Plants designated in various size and type containers in the Plant List shall be of a reasonable age and state of development for the size container in which they are specified. They shall have been growing in their containers sufficiently long to develop a good sound root system capable of holding the soil intact after removal from the container, but not so long as to have become pot bound.
- D. OPTION AS TO METHODS: Any plant may be furnished container-grown in lieu of other methods designated in the Plant List if all other requirements are met. Any substitutions shall be made only with the approval of the Landscape Architect and at no change in price.
- E. PROTECTION:
 - 1. All plants shall be handled in such a manner as to avoid unnecessary damages of any kind. Roots shall be especially protected at all times from drying. The balls of balled plants which cannot be planted immediately upon delivery shall be covered with moist soil or mulch, or other protection from drying wind and sun. Bare root plants shall be planted or heeled-in immediately upon delivery. All plants shall receive expert attention and shall be watered as necessary until planted.
 - 2. Do not bind plants with wire or rope so as to damage bark or break branches.
- F. SPECIAL HANDLING OF SPECIMEN PLANTS: Specimen plants, intended for isolated positions in the planting, shall be selected for shape and for branching habit, which at maturity will produce a strong full-foliaged specimen. Particular care should be exercised in the digging, wrapping and binding of such specimen plants to assure safe loading, shipment, and handling for the entire operation of transportation from growing location to the replanting locations shown on the Drawings.

PART 3 - EXECUTION

3.01 GENERAL:

- A. TIME OF PLANTING: Planting operations shall be conducted under favorable weather conditions during the seasons which are normal for such work as determined by accepted practice in the locality. At the option of and on the full responsibility of the Contractor, planting operations may be conducted under unreasonable conditions without additional compensation to the contractor.
- B. PREPARATION FOR PLANTING OPERATIONS: Before planting operations are begun, all existing turf areas which are to be trucked over or upon which soil is to be temporarily stacked, pending its reuse or removal, or turf areas which may be subject to abuse of any other kind shall be covered in a manner which will satisfactorily protect such areas from serious damage. Existing trees, shrubs, and beds that are to be preserved shall be barricaded in a manner, approved by the Landscape Architect, that will effectively protect them during planting operations.
- C. OBSTRUCTION BELOW GRADE OR OVERHEAD:
 - 1. Any nominal size rock or other underground obstruction shall be removed to the depth necessary to permit proper planting according to Plans and Specifications. If underground construction, unusually large rock, or other serious obstructions are encountered in planting areas, other locations for the planting may be selected by the Landscape Architect. Explosives may not be used for the removal of rock or old foundation structures.

2. The Landscape Contractor shall secure from the General Contractor copies of layout drawings showing the location of all underground utility lines and other structures in order to minimize conflict with same during excavation operations. If any such lines or structures are uncovered during operations, the Contractor shall notify the Owner at once so that arrangements may be made either to move the structure or relocate the planting.
3. Slight changes may also be made in plant locations which conflict with overhead utility lines, such relocation is subject to the approval of the Landscape Architect.

3.02 EXCAVATION FOR PLANTING: Excavation shall include stripping and stacking of all acceptable topsoil encountered within the areas to be excavated. All excavated material unacceptable for reuse shall be disposed of off-site.

3.03 MISCELLANEOUS MATERIALS:

A. TOP DRESSING: Completely Composted Hardwood Bark Mulch with a pH of 8.2 or higher.

3.04 SOIL PREPARATION AND FERTILIZING:

A. GENERAL: Inspect all sub-grade conditions and other items of work previously completed and report any deficiencies to Owner's Representative for correction.

B. SHRUB AND GROUNDCOVER BEDS:

1. Install all material in layers as prescribed (no premixing) and obtain the approval of Owner's Representative before tilling.
2. Place all materials in the bed after approval, thoroughly mix to the proper depth and rake smooth to remove all clods.
3. Cover areas to be planted with groundcover with a four inch (4") layer of composted organic matter with a pH of 8.2 or higher, a one inch (1") layer of sand, and fertilizer at the rate of thirty (30) pounds per one thousand (1,000) square feet and till thoroughly to a depth of six inches (6").
4. Cover areas to be planted with shrubs with a four inch (4") depth of composted organic matter with a pH of 8.2 or higher. One inch (1") of sand, and fertilizer at the rate of thirty (30) pounds per one thousand (1,000) square feet and till thoroughly to a depth of eight inches (8").
5. Minimum depth of pits for shrubs and other bedding plants shall be as deep as necessary to allow a minimum of three inches of compacted prepared topsoil under the ball or roots. Minimum diameter of these pits shall be one foot greater than the ball, container, or spread of the roots.
6. For plant boxes, tubs, and all elevated areas, topsoil, peat moss, and fertilizer shall be thoroughly premixed, then placed in six inch (6") layers, each layer being compacted by tamping before the next layer is placed to avoid excessive settlement. Boxes, tubs, etc. shall be filled to within one-half inch (1/2") of top. If early settlement in excess of ten percent (10%) of the fill depth occurs within the guaranty period as a result of a lack of initial compaction, the Contractor shall supply and place additional prepared soil and carefully raise all plants involved to proper grade.

C. TREES:

1. Tree pits shall be backfilled with soil excavated from the planting hole unless rocks are encountered. If large rocks or solid rock is encountered, the holes shall be backfilled with a mixture of topsoil from other portions of the site and material excavated from the hole. Rock material shall not exceed twenty-five percent (25%) of the mixture and rocks shall not exceed three inches in the greatest dimension.
2. Puddle backfill in twelve inch (12") layers.

3.02 INSTALLATION:

A. GENERAL: Provide planting of trees, shrubs and ground cover as indicated on the drawings, including excavation, backfilling, staking and pruning of new plant materials.

B. TREES: Tree pits shall be excavated with vertical sides in accordance with the following instructions for size and placement:

- a. Tree pits shall be at least two feet (2') greater in diameter than the diameter of the ball.
- b. All pits shall be circular in outline. Excavated materials of sub-soil classification or containing extraneous matter shall be removed and disposed of off-site.
- c. Stake tree locations and secure approval of Owner's Representative before starting excavation of same, making any adjustments required.
- d. Set plants in center of pits plumb and vertical and at such a level that after settlement, the crown of the tree ball will be at the finished grade.
- e. Thoroughly compact and water soil around roots of ball. Immediately after plant pit is backfilled, form a shallow basin slightly larger than pit, with a ridge of soil to facilitate watering. Place hardwood mulch on surface of pit within soil ridge to depth indicated in details.

C. SHRUBS AND GROUND COVER:

1. Plant in properly prepared beds as specified in bed preparation.
2. Backfill the plants with prepared bed soil mix and compact the soil lightly.
3. Carefully cover all roots with soil mix.
4. Water all plants thoroughly after planting.
5. After watering, smooth the area to eliminate all uneven ground. Add soil as necessary to finished grade and water.
6. Cover all bed areas with a layer of mulch as previously stated.

D. SETTING PLANTS:

1. General: All plants shall be set one and one half inches (1 ½") to two inches (2") above existing grade so that after settlement they bear the same relation to the finished grade of the surrounding soil that they bore to the grade of the soil from which they were dug.
2. Ground Cover Areas: Plants used as ground cover and spaced less than twenty-four inches (24") o.c. shall be planted in beds of prepared soil as herein before specified. Plants used as ground cover and spaced twenty-four inches (24") o.c. or

greater shall be planted in individual pits as herein before specified; the entire area accommodating such plants, however, shall be roto-tilled and cleared of all grass, weed etc. before pits are dug and sand raked clean of all rocks and other debris.

3. Balled Plants and Container Grown Plants: After pits have been dug as herein before specified a minimum of three inches (3") of compacted prepared soil, or as much more as is needed to allow the ball to rest firmly on such compacted soil at the proper level, shall be placed in the bottom of the pit. Soil shall then be placed around the ball and compacted carefully to avoid injury to roots and to fill all voids. Burlap, rope, wire and other wrapping materials shall be cut away from the top of the ball and removed from the pit, but no burlap shall be pulled from under the ball. All broken or frayed roots shall be cut off clean. When the pit is nearly filled with soil, add water and allow it to soak away. Fill the pit to finished grade. After the ground settles, additional soil shall be filled in the level of the finished grade. Container grown plants shall be set in similar manner and shall remain in their containers until just before setting in place.
4. Bare Root Plants: All broken or frayed roots shall be cut off clean. Set plants at slightly above finished grade, spread roots in a natural soak away. After settlement, add soil as necessary to finished grade and water.
5. Plants in Beds: Carefully insert plants into prepared soil beds at slightly above finished grade. When all plants are in place, rake the entire bed area smooth, water and allow to soak away. After settlement, add soil as necessary to finished grade and water. Place mulch layer as per details.
6. Plants in Boxes, Tubs, and Elevated Areas: Make sure plants in deep fills are resting on well compacted soil to avoid excessive settlement. Set plants as herein before specified, fill boxes and tubs to within one half inch (2") of top water thoroughly.

E. PRUNING:

1. Remove dead wood, suckers and broken or badly bruised branches.
2. Pruning shall be limited to the minimum necessary to remove injured twigs and branches, and to compensate for the loss of roots during transplanting, but never to exceed one-third (1/3) of the branching structure.
3. Perform all pruning with clean, sharp tools.
4. Paint cuts of three-fourths inches (3/4") or greater in diameter with an approved tree paint. Cover all exposed cambium as well as other exposed living tissue. Paint shall be waterproof, adhesive and elastic, antiseptic, free from kerosene, coal tar, creosote of any other material injurious to the life of the tree.

F. MULCHING: Plants shall be mulched within two (2) days after planting. Trees and shrubs shall receive a three inch (3") deep (after settlement) layer of mulch material, entirely covering the area within the planting bed. In case of ground cover areas, the entire bed shall receive a two-inch (2") deep (after settlement) layer of mulch material.

G. SOAKING: All plants to be soaked in with Carl Pool's Root Activator, as suggested by manufacturer, immediately after planting.

H. CLEAN-UP: As planting operations proceed, all rope, wire, burlap, empty containers,

rocks, clods and all other debris shall not be stored on-site. The site shall be kept as tidy as possible at all times.

I. PLANT GUARANTY AND REPLACEMENT:

1. Warranty period begins after inspection and final acceptance of the work by the Owner and continues for a period of one (1) year for all trees, shrubs, ground cover and turf. Acceptance will be given only if plant materials meet specifications and have been installed strictly according to Contract Documents.
2. From planting to final acceptance of the project, the Landscape Contractor shall be responsible for all plant material. Any plant that dies or is not in satisfactory growth prior to final inspection shall be promptly replaced. This replacement will not be considered as a warranty replacement.
3. The Landscape Contractor shall warranty all plantings as stated above except when damaged or killed as a result of hail, wind, lightning, fire, freeze, Owner's neglect.
4. At the option of the Owner, plants which die during the warranty may be replaced before the end of this one year period. The landscape contractor shall be responsible for all plants and their replacements during the one year warranty period. Should the warranty replacement plants die or are not in a satisfactory condition before the end of the warranty replacement period, these plants shall also be replaced. All replacements for which the Landscape Contractor is responsible shall be made with plants of the same size and kind, and in the same manner as specified for original planting and at no additional cost to the Owner.
5. At the end of warranty period, any plant that is dead or has fifty percent (50%) or more of main branch structure dead, or not in satisfactory growth, as determined by the Owner's Representative, shall be removed from the site and shall be replaced as soon as normal conditions for planting permits. Plants which die as no fault of the Landscape Contractor shall be replaced at a price agreed upon with the Owner prior to replacement.
6. Contractor shall replace and/or relocate and reinstall all piping, paving, walls, fences, wiring, lighting, plumbing, planting, or other material he disrupts while making any replacement called for the above warranty.

- J. NOTIFICATION RESPONSE: Response to notification of work to be done under the warranty must be within thirty (30) days from the date of notification and work must be started within this time to repair or replace necessary plants unless prevented by weather. If the Landscape Contractor does not make repairs and acknowledges notification within this time, Owner, without further notice, may provide materials and labor to make needed repairs or replacements at the expense of the Landscape Contractor.

(End of Section)

City Council
August 20, 2013

Issue

Consider and/or act on the application of Dowdey, Anderson and Associates, Inc. requesting approval of the Final Plat for **Maxwell Creek North, Phase 11A** on property zoned PD (Planned Development) District for Single Family Uses (Ordinance No. 00-06-487). This property is located generally southwest of the intersection at McMillan and McCreary.

Considerations

1. After staff review, final plat requirements have been met.
2. Once approved, the final plat can be filed with the County.
3. Submission of the plat mylars, filing fees and other materials necessary to file the plat at the county shall be submitted to the City within 30 calendar days of the final plat approval by the City Council.
4. Building is scheduled to begin of the 72 lots in Maxwell Creek 11A immediately.

Staff Recommendation

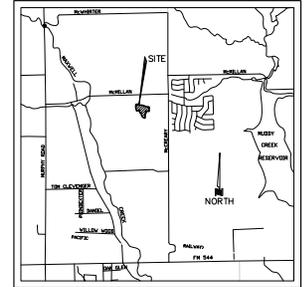
Staff recommends approval of the final plat as submitted.

Attachments

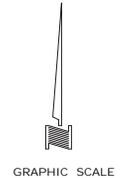
Final Plat

Kristen Roberts, Director of Economic and Community Development

Submitted By



LOCATION MAP NOT TO SCALE



GRAPHIC SCALE
(IN FEET)
1 inch = 100 ft.



LEGEND
 VAM=VISIBILITY, ACCESS & MAINTENANCE EASEMENT
 LAE = LANDSCAPE EASEMENT
 BL = BUILDING LINE
 SE = STREET EASEMENT
 DE = DRAINAGE EASEMENT
 WSSE = WATER & SANITARY SEWER EASEMENT
 HOA = HOMEOWNER'S ASSOCIATION
 SUE = SIDEWALK & UTILITY EASEMENT
 UE = UTILITY EASEMENT
 NAE = NO ACCESS EASEMENT
 D.R.C.C.T. = DEED RECORDS, COLLIN COUNTY, TEXAS
 M.R.C.C.T. = MAP RECORDS, COLLIN COUNTY, TEXAS
 DOC. NO. = DOCUMENT NUMBER
 IRF = IRON ROD FOUND
 IRPF = IRON PIPE FOUND
 ⊕ = DENOTES STREET NAME CHANGE
 ⊙ = 1/2" IRON ROD FOUND W/ RED PLASTIC CAP STAMPED "W.A.L." (UNLESS OTHERWISE NOTED)
 ⊙ = 1/2" IRON ROD SET W/ YELLOW PLASTIC CAP STAMPED "D.A.A." (UNLESS OTHERWISE NOTED)
 VAM = VISIBILITY & MAINTENANCE EASEMENT
 UE = WATER LINE EASEMENT
 FME = FENCE MAINTENANCE EASEMENT
 NAE = NO ACCESS EASEMENT
 SWBE = SOUTHWESTERN BELL TELEPHONE, L.P. EASEMENT
 <CM> = CONTROL MONUMENT
 MIN FF = MINIMUM FINISHED FLOOR ELEVATION

NOTES:
 1) BASIS OF BEARINGS DERIVED FROM THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD83, NORTH CENTRAL ZONE.
 2) ALL LOT CORNERS ARE MONUMENTED WITH A 1/2" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "D.A.A."
 3) "X" CUTS SET IN CONCRETE STREET PAVING AT ALL INTERSECTIONS AND POINTS OF CURVATURE
 4) LOT 3X (3,076 SQ) BLOCK B SHALL BE OWNED AND MAINTAINED BY THE HOA AND SHALL BE FOR LANDSCAPE AND SCREENING PURPOSES.
 5) 186,524 SQUARE FEET OF STREET RIGHT-OF-WAY (HILLTOP DRIVE, LEEWARD DRIVE, & WHITING LANE) IS BEING DEDICATED TO THE CITY OF MURPHY.
 6) NOTICE: SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS IS A VIOLATION OF TOWN ORDINANCE AND STATE LAW AND IS SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING PERMITS.
 7) NO FLOODPLAIN EXISTS ON THE SITE PER FEMA MAP NUMBER 48080001A, MAP REVISED JUNE 2, 2009.
 8) ALL OPEN SPACE LOTS TO BE OWNED AND MAINTAINED BY THE HOA.

LOT LINE TABLE

LINE	BEARING	LENGTH
T1	S88°46'32"W	89.75'
T2	S88°46'32"W	95.00'
T3	S89°49'17"E	73.82'
T4	S86°09'55"E	89.34'
T5	S82°09'59"E	89.34'
T6	S78°08'52"E	89.34'
T7	S74°07'57"E	89.34'
T8	S70°06'50"E	89.34'
T9	S66°05'12"E	89.34'
T10	S64°07'33"E	91.12'
T11	S67°58'15"E	88.16'
T12	S72°05'43"E	88.16'
T13	S76°13'17"E	88.16'
T14	S80°20'40"E	88.16'
T15	S84°28'08"E	88.16'
T16	S88°35'36"E	88.16'
T17	N89°20'40"E	93.71'

ROADWAY LINE TABLE

LINE	BEARING	DISTANCE
T19	S19°27'11"E	129.80'
T20	N88°46'32"E	235.14'
T21	N89°20'40"E	85.21'
T22	N76°54'04"E	25.00'
T23	N88°46'32"E	134.41'
T24	N89°20'40"E	85.21'

ROADWAY CURVE TABLE

CURVE	DELTA	RADIUS	TANGENT	LENGTH	CHORD
C1	27°49'41"	1205.00'	298.44'	585.10'	505°32'34"E 579.37'
C2	28°20'53"	1420.00'	358.63'	702.57'	S77°03'39"E 695.42'
C3	27°46'01"	1080.00'	266.96'	523.42'	S76°46'16"E 518.32'
C4	11°52'28"	250.00'	26.60'	51.81'	N62°50'16"E 51.72'
C5	28°20'53"	1130.00'	265.39'	559.09'	S77°03'39"E 553.40'
C6	27°46'01"	1370.00'	338.64'	663.97'	S76°46'16"E 657.49'

BOUNDARY CURVE TABLE

CURVE	DELTA	RADIUS	TANGENT	LENGTH	CHORD
C7	13°48'23"	330.00'	39.95'	79.52'	S73°33'31"E 79.33'
C8	13°50'59"	1020.00'	16.79'	33.57'	S11°10'29"W 33.57'

FINAL PLAT
 MAXWELL CREEK NORTH
 PHASE 11A
 23.348 ACRES
 72 RESIDENTIAL LOTS
 ZONED PD 00-06-486 & 00-06-487
 AN ADDITION TO THE CITY OF MURPHY
 C A McMILLAN SURVEY, ABSTRACT NO. 588
 COLLIN COUNTY, TEXAS
 JULY 2013 SCALE: 1"=100'

OWNER
 FORESTAR (USA) REAL ESTATE GROUP, INC.
 14755 PRESTON ROAD #710
 DALLAS, TEXAS 75254

ENGINEER
DOWDEY, ANDERSON & ASSOCIATES, INC.
 5225 Village Creek Drive, Suite 200 Plano, Texas 75093 972-931-0694
 STATE REGISTRATION NUMBER F-399

City Council Meeting
August 20, 2013

Issue

Hold a public hearing on the proposed tax rate of \$0.5700 per \$100 valuation.

Staff Resource/Department

James Fisher – City Manager

Linda Truitt – Finance Director

Background/History

Public Hearings on the 2013-2014 budgets are schedule for Tuesday, August 20, 2013 and Tuesday, September 3, 2013 at 6:00 PM in the Council Chambers at 206 North Murphy Road, Murphy, Texas.

The City Council voted to propose a tax rate of \$0.5700 per \$100 valuation for the 2013 tax year. The proposed Maintenance and Operations (M&O) rate is \$0.341521, an increase of \$0.012026, and the debt service rate is \$0.228479, a decrease of \$0.012026 for a total tax rate of \$0.5700 per \$100 valuation.

Financial Considerations

The City is proposing a Maintenance and Operations (M&O) tax rate of \$0.341521 per \$100 valuation. The M&O tax rate funds a large portion of the City's operations, including Parks, Public Safety and Public Works. The second portion of the tax rate is for debt service, which provides funding for the current portion of the long-term debt. This year the debt service tax rate is set at \$0.228479 per \$100 valuation, a decrease from last year's tax rate.

Announce after Public Hearing:

The vote on the proposed tax rate will take place on Tuesday, September 17, 2013 at 6:00 PM in the City Council Chambers at Murphy City Hall, 206 North Murphy Road, Murphy, Texas.

Attachments

- 1) Notice of Public Hearing on Tax Increase

Notice of Public Hearing on Tax Increase

The City of Murphy will hold two public hearings on a proposal to increase total tax revenues from properties on the tax roll in the preceding tax year by 3.35 percent (percentage by which proposed tax rate exceeds lower of rollback tax rate or effective tax calculated under Chapter 26, Tax Code). Your individual taxes may increase at a greater or lesser rate, or even decrease, depending on the change in the taxable value of your property in relation to the change in taxable value of all other property and the tax rate that is adopted.

The first public hearing will be held on August 20, 2013 at 6:00 PM at Murphy Municipal Complex, City Council Chambers, 206 North Murphy Road, Murphy, TX 75094.

The second public hearing will be held on September 3, 2013 at 6:00 PM at Murphy Municipal Complex, City Council Chambers, 206 North Murphy Road, Murphy, TX 75094.

The members of the governing body voted on the proposal to consider the tax increase as follows:

FOR:	Mayor Eric Barna	Mayor Pro Tem Owais Siddiqui
	Deputy Mayor Pro Tem Ben St. Clair	Councilmember Scott Bradley
	Councilmember Betty Spraggins	Councilmember Bernard Grant
	Councilmember Rob Thomas	

AGAINST: None

PRESENT and not voting: None

ABSENT: None

The average taxable value of a residence homestead in City of Murphy last year was \$256,903. Based on last year's tax rate of \$0.570000 per \$100 of taxable value, the amount of taxes imposed last year on the average home was \$1,464.35.

The average taxable value of a residence homestead in City of Murphy this year is \$265,328. If the governing body adopts the effective tax rate for this year of \$0.551520 per \$100 of taxable value, the amount of taxes imposed this year on the average home would be \$1,463.34.

If the governing body adopts the proposed tax rate of \$0.570000 per \$100 of taxable value, the amount of taxes imposed this year on the average home would be \$1,512.37.

Members of the public are encouraged to attend the hearings and express their views.

City Council Meeting
August 20, 2013

Issue

Hold a public hearing on the proposed fiscal year 2013-2014 City of Murphy budget.

Staff Resource/Department

James Fisher – City Manager
Linda Truitt – Finance Director

Background/History

Public Hearings on the 2013-2014 budgets are schedule for Tuesday, August 20, 2013 and Tuesday, September 3, 2013 at 6:00 PM in the Council Chambers at 206 North Murphy Road, Murphy, Texas.

Pursuant to Texas Local Government Code 102.006 and City Charter Section 7.05, the City Council has set dates for the Public Hearing on the municipal budget to be Tuesday, August 20, 2013 at 6:00 PM and a second Public Hearing on Tuesday, September 3, 2013 at 6:00 PM. The date set must be at least 15 days after the date the proposed budget is filed with the City Secretary and before the date the City makes its tax levy. The proposed budget was filed with City Secretary on August 6, 2013.

The City Council is required to provide notice of the date, time and location of the public hearing pursuant to Texas Local Government Code 102.0065.

Financial Considerations

See the fiscal year 2013-2014 budgets provided to City Council on August 6th. The budget is also available on the City's website.

This budget will raise more total property taxes than last year's budget by \$534,480, or 6.08%, and of that amount \$252,911 is tax revenue to be raised from new property added to the roll this year.

Announce after Public Hearing:

The vote on the proposed fiscal year 2013-2014 budget will take place on Tuesday, September 17, 2013 at 6:00 PM in the City Council Chambers at Murphy City Hall, 206 North Murphy Road, Murphy, Texas.

Attachments

- 1) Notice of Public Hearing on Proposed Budget
- 2) Fiscal Year 2012-2013 Budget – previously provided and available online

NOTICE OF PUBLIC HEARING
CITY OF MURPHY
PROPOSED OPERATING BUDGET FISCAL YEAR 2013-2014

The City of Murphy will conduct a Public Hearing on the Proposed Operating Budget for the fiscal year 2013-2014 on Tuesday, August 20, 2013 at 6:00 p.m. and on Tuesday, September 3, 2013 at 6:00 p.m. at the Murphy Municipal Complex, City Council Chambers, 206 North Murphy Road, Murphy, Texas 75094.

This budget will raise more total property taxes than last year's budget by \$534,480, or 6.08%, and of that amount \$252,911 is tax revenue to be raised from new property added to the roll this year.

You have a right to attend the Public Hearing and make comments. A copy of the proposed budget is on file with the City Secretary's Office located at 206 North Murphy Road, Murphy, Texas 75094. It is also available on the City's website at www.murphytx.org.

Dated this 6th day of August, 2013.

Linda Truitt

Finance Director

City of Murphy, Texas

City Council Meeting
August 20, 2013

Issue

Consider and/or act upon a recommendation by the City Manager regarding the appointment of an auditing firm to perform the annual audit for FY2013 and authorizing the City Manager to negotiate a contract for services.

Staff Resource/Department

Linda Truitt – Finance Director

Background/History

The City of Murphy's Charter requires the City to rotate every five years the certified public accountants that perform the annual audit. Conway Company CPAs, PC has performed the City's audit for the past five years. A Request for Proposals was prepared by staff. The public notice requesting proposals from qualified auditing firms of certified public accountants to audit the City's financial statements was published on June 20, 2013 and June 27, 2013. The City sent out 10 requests for proposals to the following auditing firms and posted the information on the City website.

BKD CPAs & Advisors
 BrooksCardiel & Company, PLLC
 Brown Graham & Company, PC
 Evans Pingleton & Howard, PLLC CPAs
 Freemon Shapard & Story CPAs
 Grant Thornton
 Pattillo, Brown & Hill, LLP
 Vail & Knauth, LLP CPAs
 Weaver & Tidwell, LLP
 Whitley Penn CPAs and Professional Consultants

The City Received five proposals, one decline, and no response from the remaining four firms. The offers ranged in price from \$29,000 - \$40,000 in the first year and an estimated \$32,000 – \$45,000 in the fifth year. Interviews were conducted with two firms-BrooksCardiel & Company, PLLC and Pattillo, Brown & Hill, LLP-and references were contacted by staff. Both firms came highly recommended. Neither firm has audited the City's financial statements in previous fiscal years.

Financial Considerations

Because the City of Murphy receives federal grant funds a single audit-aside from the regular audit-is required; Pattillo Brown & Hill will conduct the single audit at no extra charge, while BrooksCardiel & Company would charge an additional \$4,500. The independent audit for FY2013 is estimated to cost \$32,100. Funding for the annual audit and possible additional work has been included in the proposed FY14 budget.

Other Considerations

Section 7.18 of the City Charter requires the City Council to call for an independent audit of all accounts of the City by a certified public accountant at the close of each fiscal year. No more than five consecutive annual audits shall be completed by the same firm. After interviewing the two firms, staff feels that Pattillo, Brown & Hill, LLP is better suited, with a more extensive history and experience to handle the annual audit for the City of Murphy.

Board Discussion/Action

Staff recommends approving Pattillo, Brown & Hill, LLP as the certified public accounting firm to conduct an independent audit of all accounts of the City for FY2013 with the option of auditing its financial statements for each of the four subsequent fiscal years.

Attachments

- 1) Notice of Request for Proposal
- 2) Table of proposed fees
- 3) Proposal- Pattillo, Brown & Hill, LLP
- 4) Proposal- BrooksCardiel & Company

City of Murphy, Texas

REQUEST FOR PROPOSAL FOR PROFESSIONAL AUDITING SERVICES

The City of Murphy, Texas, a home rule city, is requesting proposals from qualified firms of certified public accountants to audit its financial statements for the fiscal year ending September 30, 2013 with the option of auditing its financial statements for each of the four subsequent fiscal years. To receive a copy of the proposal by mail or in an electronic form, please contact Linda Truitt, Director of Finance, at ltruitt@murphytx.org or visit the City website at www.murphytx.org.

To be considered for this engagement, your firm must meet the qualifications and satisfy the requirements set forth in the RFP. Completed proposals must be received at the address listed below by 10:00 a.m. on Monday, July 1, 2013.

Please direct written questions and mail proposals to:

City of Murphy
Linda Truitt, Director of Finance
206 North Murphy Road
Murphy, Texas 75094

Publish Dates:
June 20th
June 27th

<u>Firm</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
BKD CPAs & Advisors	\$ 40,000.00	\$ 41,200.00	\$ 42,400.00	\$ 43,700.00	\$ 45,000.00
BrooksCardiel & Company, PLLC**	\$ 28,975.00	\$ 29,699.38	\$ 30,441.86	\$ 31,202.91	\$ 31,982.98
Evans Pingleton & Howard, PLLC CPAs*	\$ 32,500.00	\$ 33,312.50	\$ 34,145.31	\$ 34,998.95	\$ 35,873.92
Pattillo, Brown & Hill, LLP*	\$ 32,100.00	\$ 32,902.50	\$ 33,725.06	\$ 34,568.19	\$ 35,432.39
Whitley Penn CPAs and Professional Consultants*	\$ 35,000.00	\$ 35,875.00	\$ 36,771.88	\$ 37,691.17	\$ 38,633.45

*No pricing information was provided for years 2-5, an annual estimated 2.5% increase to the quote has been included.

**\$4,500 has been added to the totals for Single Audit fees (Single Audits are required for federal grant funds received by the City.)



Proposal for Professional Audit Services

June 28, 2013

City of Murphy
Attention: Linda Truitt, Finance Director
206 North Murphy Road
Murphy, Texas 75094

MASTER



401 West Highway 6—Waco, Texas 76710

254-772-4901 • www.pbhcpa.com

Established in 1923

Contact: John Manning, CPA



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June 28, 2013

City of Murphy, Texas
 Attention: Linda Truitt, Finance Director
 206 North Murphy Road
 Murphy, Texas 75094

Re: RFP for Professional Auditing Services

Pattillo, Brown and Hill, L.L.P. (PB&H) is pleased to have the opportunity to submit the accompanying proposal to provide professional audit services to the City of Murphy, Texas ("City") for the year ending September 30, 2013, with an option for each of the four (4) subsequent fiscal years.

We believe that our Firm possesses certain unique characteristics that are well-matched to the City's needs.

- We are a regional accounting firm that has been in existence since **1923**.
- Our **primary** business is serving **local governments** in Texas and New Mexico. In addition to our experience with cities, we have extensive experience auditing other forms of local governments such as school districts, councils of government, counties and special districts.
- We are **committed customer service** and developing client relationships. We offer support throughout the year as a part of this engagement and will not charge additional fees for informal consultations.
- Our proposed service team for the City consists of seasoned professionals who **work exclusively on local government engagements**.
- Our firm is known for providing **high quality services** while meeting our client's time constraints, as such, we are committed to performing the engagement within the time parameters mentioned in the proposal.

Outlined in this proposal are key factors that distinguish our Firm from other providers of government services. Among these are the experience level of our service team with audits of cities, our Firm's commitment to providing services to the public sector and our engagement approach. We bring the high level of experience and expertise as larger, national accounting firms, but with the value inherent in local firms.

As engagement partner, I am an authorized representative of the Firm and my signature binds PB&H to the terms and conditions specified in this proposal. This proposal is a firm and irrevocable offer. I can be reached by phone at (254) 772-4901, by email at jkmanning@pbhcpa.com, or by mail at 401 West Highway 6, Waco, Texas 76710.

I am excited about the opportunity to serve the City. Please feel free to contact me should you have any questions regarding this proposal.

John Manning, CPA
 PATTILLO, BROWN & HILL, L.L.P.

jkmanning@pbhcpa.com



GENERAL REQUIREMENTS

APPROPRIATE SIZE

Pattillo, Brown & Hill, L.L.P. was founded in Waco in 1923 and has been in continuous existence since that time. We are a regional certified public accounting firm with offices in Waco, Temple, Brownsville, and Hillsboro, Texas, and Albuquerque, New Mexico.

Our Waco office, from which this engagement would be performed, consists of 10 partners, 10 managers and over 50 other professionals. Our government audit department in the Waco office consists of 4 partners and over 20 other professionals. All of these professionals work exclusively on government engagements.

Our unyielding commitment to client service has resulted in the growth of our client base, positioning Pattillo, Brown & Hill, L.L.P. between the very large national accounting firms and smaller, locally-oriented firms. We are large enough to have the resources and personnel to resolve even the most complex accounting or compliance issue, but small enough to give you the personalized service that our clients deserve.

PB&H has received national recognition from the American Institute of Certified Public Accountants (AICPA) as an official member of the G400. This group recognizes our Firm as one of the 500 largest firms in the United States and provides us with direct access to industry leaders in order to stay informed and involved in the regulatory, legislative and standards-setting landscape.

EXPERIENCE

We have in-depth experience, presently serving over 100 governmental clients, including many cities. Government audits continue to be the fastest growing segment of our client base. We are committed to serving this segment, and continue to expand our department and the scope of services offered to governmental organizations.

Our clients include many governmental organizations as is evidenced by the partial listing included in this proposal. For fiscal year 2012, approximately 50 of these clients were required to have "Single Audits" performed in accordance with OMB Circular A-133. It is noteworthy that our workpapers have been examined in connection with several of these "Single Audits" by representatives of grant and/or cognizant agencies. In all circumstances, our supporting workpapers have earned excellent reviews.

Additionally, many of our clients have elected to pursue the Certificate of Achievement for Excellence in Financial Reporting. In all instances where we have been associated with this pursuit, the GFOA has awarded the organization the certificate. Four members of our governmental audit area are members of the Special Review Committee of the GFOA, including three members of your proposed audit team.





GENERAL REQUIREMENTS

A REPUTATION FOR QUALITY

Pattillo, Brown & Hill, L.L.P. is one of the oldest and most well respected accounting firms in Texas. As an indication of our commitment to quality, we are a member firm of the Public Company Accounting Oversight Board (PCOAB), the National Peer Review Committee (formerly known as the Center for Public Company Audit Firms) Peer Review Program and the AICPA's Governmental Audit Quality Center (GAQC). The GAQC requires member firms to establish policies and procedures specific to the firm's governmental audit practice to comply with the applicable professional standards and Center membership requirements. Additionally, member firms must have its governmental audits selected as part of the firm's peer review reviewed by a peer review team member who is employed by a GAQC member firm.

TIMELINESS AND RESPONSIVENESS

We regard timeliness and responsiveness to be critical elements to providing quality service to our clients. We are committed to delivering reports in advance of established deadlines. We are able to complete our work according to your timetable. Additionally, we are solidly committed to promptly responding to questions as they arise. We encourage our clients to contact us during the year to discuss accounting or regulatory issues.

VALUE AND EFFICIENCY

We recognize that clients expect the services rendered by their professional accounting firm to go beyond the financial statements. We understand the expectations of our clients and welcome the opportunity to serve not only as auditors, but also as advisors. Our approach places substantial emphasis on the need to thoroughly understand your operations. This audit approach allows us to contribute constructive suggestions regarding your internal controls, operating and accounting procedures, and other matters worthy of management's attention.

LEVEL OF ASSISTANCE TO BE PROVIDED

We do not anticipate a significant change in the level of assistance provided by the City of Murphy's personnel from that provided in previous audits. We would anticipate that the City of Murphy's personnel will pull invoices for our testing and prepare all confirmations.





GENERAL REQUIREMENTS

INDEPENDENCE OF PROPOSER

We confirm that we are independent with respect to the City of Murphy, Texas and all of its component units. None of our partners, managers or staff has any direct or indirect financial interest in the City of Murphy, Texas' contracts, and no one assigned to the audit is related within a prohibited degree (as defined by nepotism law) to any employee of the City or to any of the Council or Board Members.

LICENSED TO PRACTICE IN TEXAS

All persons assigned to supervision positions in your audit will be CPAs licensed to practice in Texas. Also, we are not under the terms of a public or private reprimand by the Texas State Board of Public Accountancy and/or licensing boards of other states.

CLAIMS AND SUITS

Pattillo, Brown & Hill has not failed to complete any work that was awarded to it, and there are not any judgments, claims, arbitration proceedings or suits pending or outstanding against PB&H or partners. Additionally, PB&H has not filed any lawsuits or requested arbitrations with regard to contracts within the last five years.

EXTERNAL QUALITY CONTROL REVIEW

As an indication of our commitment to quality, we are a member firm of the Public Company Accounting Oversight Board (PCOAB), the National Peer Review Committee (formerly known as the Center for Public Company Audit Firms) Peer Review Program and the AICPA's Governmental Audit Quality Center (GAQC). Our firm has been a member of the peer review program for well over 20 years. The GAQC requires member firms to establish policies and procedures specific to the firm's governmental audit practice to comply with the applicable professional standards and Center membership requirements. Additionally, member firms must have its governmental audits selected as part of the Firm's peer review .

We are required to undergo peer reviews every three years. We completed our most recent review in 2010 and received a rating of pass. In addition, we also received no "letter of comments," and therefore achieved the highest possible rating, obtained by only a small percentage of accounting firms across the nation. A copy of our most recent peer review report is included in this proposal. The review included a number of specific government engagements.

DESK AND FIELD REVIEWS

Because of the level of audits that we perform that require federal and state single audits and the number of clients that we serve that receive federal and state grant assistance, many of our clients have field and desk reviews performed on their audits at least annually. We are not aware of the specific number of these reviews that have been performed on our audits in the last three years, but there are no unresolved questions or findings resulting from the desk reviews. No disciplinary action has ever been alleged and no action is pending or has been undertaken against the Firm by the SEC, AICPA, Texas State Board of Public Accountancy, other federal or state regulatory agencies, or other professional organizations.



GENERAL REQUIREMENTS

EFFECT OF A MULTIYEAR ENGAGEMENT

Should this become a multi-year engagement, we will be able to place additional audit emphasis on a different audit areas each year, providing more in depth analysis. This will provide the City with an increased review of internal controls and more constructive management letter comments. In addition, we can change scope levels in subsequent years to increase efficiency and maintain a constant level in our fees.

John K. Manning, CPA, will serve as Engagement Partner. Chris Pruitt, CPA, will serve as Concurring Partner, Nicole Bradshaw, CPA, will serve as Manager, and Angela Gonzales, CPA, will be the Audit Senior in charge of the day-to-day audit in the field. We will strive to provide continuing staff on engagements unless rotation is requested. All of the aforementioned personnel are familiar with the activities and accounting procedures associated with a City's operations.

TECHNICAL SUPPORT AND ONGOING CLIENT INVOLVEMENT

We recognize that clients expect the services rendered by their professional accounting firm to go beyond the financial statements. We understand the expectations of our clients and welcome the opportunity to serve not only as auditors, but also as advisors. Our approach places substantial emphasis on the need to thoroughly understand your internal controls, operating and accounting procedures, implementing new and complex accounting standards, and other matters worthy of management's attention. In addition, we will provide technical assistance and advice concerning accounting and auditing issues not only throughout the course of the audit but throughout the entire year.

Our firm is a registered CPE sponsor through the Texas State Board of Public Accountancy. We would be happy to work with the City to provide training or any needed continuing professional education needs.

Customer service and satisfaction is a significant part of our business as a service organization. Our client's request are handled with the upmost importance and, depending on the complexities involved in client requests, our response time can range anywhere from just a matter of minutes to a few days. We offer a full range of accounting services and would be pleased to help the City with a multitude of issues.





PARTNER, SUPERVISORY AND STAFF QUALIFICATIONS AND EXPERIENCE

QUALIFICATIONS OF ASSIGNED PERSONNEL

Our proposed service team has thorough knowledge of government auditing and extensive experience auditing a variety of entities similar to the City. The team brings a wealth of experience in auditing Texas cities, and as such they are well versed in the intricacies of Generally Accepted Government Auditing Standards, and OMB Circular A-133. If awarded the engagement, John K. Manning and a team of experienced professionals will perform the City's audit. As mentioned earlier, our partners are much more actively involved with the performance of engagement procedures than larger national firms. The proposed personnel who will be working on the engagement are as follows:

John K. Manning, CPA, Engagement Partner
Chris Pruitt, CPA, Concurring Partner
Nicole Bradshaw, CPA, Manager
Angela Gonzales, CPA, Senior Auditor
Don Abel, CISSP, MCP, IT Specialist
Staff auditors with experience working on local government audits.

To maintain the highest quality of technical understanding, each member of our government audit staff annually attends at least 40 hours of technical training directly related to auditing and accounting for local governments. With staff members working exclusively in this specialized field, they are properly equipped by attending specific training for this field and gaining experience relevant to audits of local governments.

On the following pages is a summary of the proposed service team members' resumes. All of these professionals are employed on a full-time basis. All key audit professionals are certified to practice in the State of Texas. Furthermore, all of the proposed professionals have significant experience auditing local governments, including Texas cities.



CLIENT RELATIONSHIP TEAM

John K. Manning, CPA, Engagement Partner

John will serve as the Engagement Partner on this engagement, and will supervise and direct all of our services to the City of Murphy. He will serve as the primary client contact for the engagement and will ensure its overall quality. John will ensure appropriate staffing, performance and timely completion of the engagement.

John is a CPA with 18 years of experience auditing local governments in the State of Texas. His practice is solely devoted to servicing local governments, such as cities, counties, school districts, and other governmental entities. John has had partner and management level responsibility for hundreds of local governments in his years of service. He has spoken at regional GFOA meetings statewide, Texas Association of County Auditors Institute and has been a TSCPA School District Annual Conference Committee member.

Sample of Governmental Experience

City of Colleyville
 City of Rosenberg
 City of Deer Park
 City of Sherman
 Town of Flower Mound
 City of Hillsboro
 City of Forest Hill

Kaufman County
 McLennan County
 Williamson County
 City of Rowlett
 Denton County
 Bryan Independent School District
 Hays Consolidated I.S.D.

Educational Background

BBA Accounting

University of Mary Hardin-Baylor

Continuing Professional Education

Below is an example of some of the continuing education:

- New GASB Pension Accounting
- GASB Update
- Single Audit/A-133 Update
- Texas Society of CPAs: Texas School District Accounting and Auditing Conference
- GASB Update: Wait Until You See What is Coming
- AICPA National Governmental Accounting and Auditing Update Conference
- County Auditors Conference
- GFOAT Spring Institute
- Implementing the Clarified SASs in a Governmental Environment
- Improve Sampling in a Single Audit Environment

Professional Organizations

American Institute of Certified Public Accountants
 Texas Society of Certified Public Accountants
 Government Finance Officers Special Review Committee
 Texas Association of School Business Officials



CLIENT RELATIONSHIP TEAM

Chris Pruitt, CPA, Concurring Partner

Chris will serve as the Concurring Partner of your engagement, and will assist in planning and reviewing the audit. He will monitor and address accounting and compliance issues as they might arise.

Chris is a CPA with 16 years of experience auditing local governments in the State of Texas and concentrates exclusively on audits of local governments. He has extensive experience auditing municipalities, counties and school districts. Chris has conducted numerous training seminars within PB&H and for local government organizations across the state.

Sample of Governmental Experience

City of Waco	City of Friendswood
City of San Marcos	City of Beaumont
City of Rosenberg	City of Keller
City of Duncanville	City of Longview
City of Marble Falls	City of Del Rio
City of Cedar Park	City of Kennedale
City of Pearland	City of Hewitt

Educational Background

BBA Accounting	University of Texas at Austin
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Continuing Professional Education

All individuals assigned to audits and attestation engagements subject to the Government Auditing Standards, including planning, directing, performing field work, or reporting, obtain at least 40 hours of CPE each year that directly enhance the auditor's professional proficiency to perform audits and/or attestation engagements in subjects directly related to government auditing, the government environment, or the specific or unique environment in which the audited entity operates.

Below is an example of some of the continuing education:

- Governmental Audit Quality Control Center Annual Webinar
- Single Audit/A-133 Update
- Texas Society of CPAs: Texas School District Accounting and Auditing Conference
- New GASB Pension Accounting
- PPC Audit Risk Assessment Conference
- Yellow Book Update—The General Accounting Standards
- GFOAT Spring Institute
- County Auditors Conference
- A Walk-through of the AICPAs Clarity Audit Standards
- Emerging Issues in Government Accounting and Auditing
- Implementation Issues of Recent GASB Standards

Professional Organizations

American Institute of Certified Public Accountants
 Texas Society of Certified Public Accountants
 Government Finance Officers Special Review Committee
 Texas Association of School Business Officials
 Texas Society of Certified Public Accountants



CLIENT RELATIONSHIP TEAM

Nicole Bradshaw, CPA, Manager

Nicole is a CPA with eight years of experience working solely in the areas of auditing and accounting for governmental entities. She will serve as the manager on the engagement. She is an active member of the Government Finance Officers Association Special Review Committee and has had extensive training on the use and application of data extraction software. Nicole will monitor and assist the senior auditor during the audit process, and will be involved with the day-to-day operations of the engagement.

Sample of Governmental Experience

City of Rosenberg	City of Grapevine
City of Bedford	City of DeSoto
City of North Richland Hills	City of San Marcos
City of Rowlett	City of Huntsville
Collin County	Alamo Area Council of Governments
City of Richland Hills	Houston-Galveston Area Council

Educational Background

BBA Accounting	University of Mary Hardin-Baylor
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Continuing Professional Education

All individuals assigned to audits and attestation engagements subject to the *Government Auditing Standards*, including planning, directing, performing field work, or reporting, obtain at least 40 hours of CPE each year that directly enhance the auditor's professional proficiency to perform audits and/or attestation engagements in subjects directly related to government auditing, the government environment, or the specific or unique environment in which the audited entity operates.

Below is an example of some of the continuing education:

- Annual Governmental Auditing Standards Update
- AICPA—The Clarified Auditing Standards
- Governmental Audit Quality Center Annual Webcast Updates
- Annual Texas Society of CPAs—Texas School District Accounting and Auditing Conferences
- Preventing Common OMB A-133 and Yellow Book Deficiencies
- ACL (Audit Command Language) - Introduction through Intermediate Level
- GFOA—Pension Accounting: A Work in Progress
- GFOA—The Accounting and Auditing Year in Review
- GFOA—Keeping in (Fund) Balance: Implementing GASB Statement No. 54
- Performing Efficient and Effective Single Audits
- Facing Up to Fraud in Challenging Times
- Financial Reporting for Local Governments
- Audit Watch—Level 4
- AICPA—Reviewing Fieldwork Documentation

Professional Organizations

Texas Society of Certified Public Accountants
 American Institute of Certified Public Accountants
 Government Finance Officers Special Review Committee



CLIENT RELATIONSHIP TEAM

Angela Gonzales, CPA, Senior Auditor

A CPA with six years of experience in auditing and accounting for governmental entities, Angela Gonzales will serve as the senior auditor on the engagement. She has conducted training seminars within our Firm on various government accounting and auditing topics. The advantages of having an experienced “in-charge” such as Angela, include the elimination of time spent by your personnel training our staff and a generally more efficient and cost effective audit.

Sample of Governmental Experience

City of DeSoto	Alamo Area Council of Governments
Schertz-Cibolo Universal City I.S.D.	Houston-Galveston Area Council
City of San Marcos	Midway I.S.D.
City of Grapevine	City of Leander
City of La Porte	City of Rowlett
Williamson County	East Texas Council of Governments
Bastrop County	City of Marble Falls

Educational Background

BBA Accounting	University of Texas at Austin
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Continuing Professional Education

All individuals assigned to audits and attestation engagements subject to the Government Auditing Standards, including planning, directing, performing field work, or reporting, obtain at least 40 hours of CPE each year that directly enhance the auditor’s professional proficiency to perform audits and/or attestation engagements in subjects directly related to government auditing, the government environment, or the specific or unique environment in which the audited entity operates.

Below is an example of some of the continuing education:

- Annual GASB Updates
- Internal Controls in a Financial Statement Audit and Single Audit
- Annual Texas Society of CPAs: Texas School District Accounting and Auditing Conferences
- PPC Audit Risk Assessment Conference
- PPC In-House Seminars: Audit Risk Assessment Suite

Professional Organizations

American Institute of Certified Public Accountants
Texas Society of Certified Public Accountants



CLIENT RELATIONSHIP TEAM

Don Abel, CISSP, CISA, CRISC, MCP, IT Specialist

Don Abel is our Director of Information Systems. He has over 16 years of experience in the Information Systems Field – Project Manager for IT projects, Network Administrator, IT consultant specializing in network security and administration, internal auditing, a Programmer Analyst and auditor. Don will serve as part of the audit team to help determine the effect of information technology on the audit, understand the entity’s controls, and design and perform tests of controls and substantive tests. He will assist in determining what we may need from IT staff and their role in the audit and how to leverage IT and risk-based audit procedures to drive audit efficiency.

Certified Information Systems Security Professional

The International Information Systems Security Certification Consortium, commonly known as (ISC), promotes the CISSP certification as the “international gold standard” against which other security certifications are measured.

Educational Background

Business Information Systems

University of Mary-Hardin Baylor



PARTNER, SUPERVISORY AND STAFF QUALIFICATIONS AND EXPERIENCE

COMPETENT, EXPERIENCED PERSONNEL

We consider well-trained and experienced professionals to be the single most important element necessary to providing the highest level of service to a client. We believe that we offer our clients a unique blend of technical expertise and responsiveness that is sometimes unavailable from larger firms who may be focused on more sizable engagements. We have identified for the City of Murphy an experienced and proven service team. As you can see from the resumes included in this proposal, your audit team will have significant experience serving governmental clients, including cities, and are actively involved in professional organizations that allow us to keep abreast of issues facing governmental organizations.



COMMITMENT TO AVAILABILITY OF PARTNERS

Because our client base per partner is much smaller than that of national accounting firms, our partners are much more actively involved with the performance of engagement procedures. Benefits to the City include having more experienced professionals performing the work and greater continuity from year to year. We believe our Firm's foundation is our partner relationships with our clients.

We believe it is essential to make our partners available to our clients at all times during the year. We have found that handling issues throughout the year; instead of only during the audit, makes for a cleaner audit and gives our clients peace of mind to know that the problem or situation has been resolved. Our Firm handles meetings, phone calls, in-house training and other requests from our clients at all times during the year. Our fee proposal is inclusive of all phone calls and conversations during the year. All that we ask is that some advance knowledge of large requests be given in order to accommodate your needs.



PRIOR ENGAGEMENTS WITH THE CITY OF MURPHY

Pattillo, Brown & Hill, L.L.P. has not contracted with the City of Murphy for any engagements within the last 5 years (i.e., audit services, management advisory services, other).



SIMILAR ENGAGEMENTS WITH OTHER GOVERNMENTAL ENTITIES

Below is a sample of Texas city audits performed by our Firm's Waco Office similar to the City of Murphy, Texas. Please feel free to contact any of the below mentioned references as you so desire.

<u>Dates</u>	<u>Audit</u>	<u>Engagement Partner</u>	<u>Contact</u>	<u>Estimated Hours</u>
2008-2012*	City of Grapevine	Todd Pruitt Paula Lowe	Karen Walker Grapevine, Texas 817/410-3113 kwalker@ci.grapevine.tx.us	750
2003-2012*	City of Colleyville	John Manning Chris Pruitt	Terry Leake Colleyville, Texas 817/503-1115 leaket@ci.colleyville.tx.us	600
2008 - 2012*	City of Sherman	John Manning	Mary Lawrence Sherman, Texas 903/892-7218 maryl@ci.sherman.tx.us	600
2001-2012*	Town of Flower Mound	John Manning	Tammy Wilson Flower Mound 972/874-6021 tammy.wilson@flower-mound.com	600
2012*	City of Rosenberg	John Manning	Joyce Vasut Rosenberg, Texas 832/595-3350 joycev@ci.rosenberg.tx.us	500

*Indicates that CAFR received the GFOA's Certificate of Achievement.

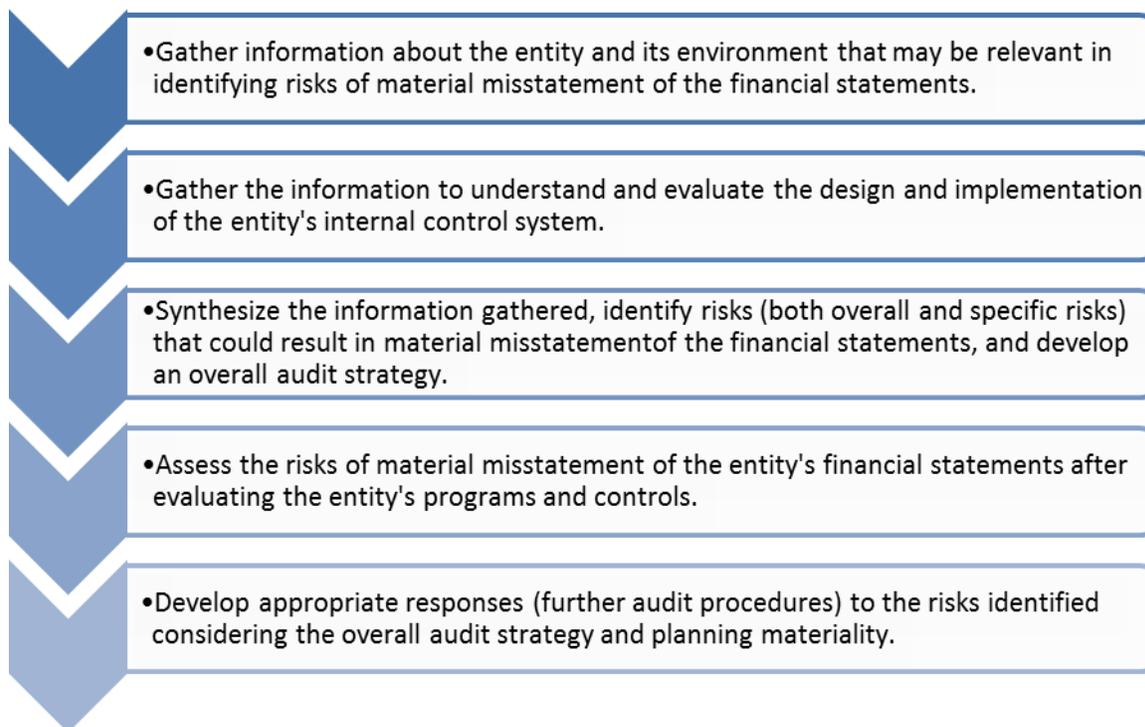


AUDIT APPROACH

We believe that a long-term professional relationship must be mutually beneficial to be of lasting value to either party. In the end, regardless of the amount of the fee, you are paying too much if you are not satisfied with the value or quality of service you received or the individuals who provide that service. Our goal in serving the City of Murphy, Texas will be to deliver timely, responsive service that meets your needs, exceeds your expectations, and produces value that exceeds our fees. We have achieved that goal in serving numerous clients, and we fully expect to achieve it in serving you.

This audit engagement will include an examination of all general operations, programs and grants of the City in accordance with Generally Accepted Government Audit Standards, the provisions of the federal Single Audit Act of 1984 (as amended in 1996), OMB Circular A-133, and, if applicable, the State of Texas Uniform Grant Management Standards. The audit period is October 1, 2012 through September 30, 2013.

Our audit plan will be based on the risk assessment performed and impacted by key processes identified. This audit plan would cover the 2013 audit and would be revised in subsequent years based on changes to the City. An outline of these general procedures is as follows:





AUDIT APPROACH

SPECIFIC WORK PLAN

Our audit approach consists of four key phases: preliminary audit planning, interim fieldwork, audit fieldwork, and final review and audit conclusion.

Preliminary Audit Planning

Preliminary audit planning will be performed each year prior to the beginning of on-site fieldwork. In this phase of the engagement, our firm will perform the following procedures:

- We will establish the terms of the engagement by issuing the City an engagement letter.
- We will review prior year engagement workpapers and financial statements to determine an initial audit strategy.
- Perform an initial assessment of risk based on the City's control environment.
- Determine nature, timing, and extent of risk assessment procedures to be performed during interim fieldwork.
- Determine planning materiality.
- Communicate with the City about engagement details such as audit scheduling and auditor/auditee responsibilities.
- We will communicate with the Audit Committee about our initial audit plan and obtain any information they might provide about identified audit risks and other concerns.

Interim Fieldwork

Interim fieldwork will be performed each year primarily on-site at the City's facilities. We will perform the following procedures in this phase of the engagement:

- We will review and document our understanding of the City's centralized and decentralized accounting processes, and we will also evaluate the City's use of accounting software and overall information technology (IT) framework and internal controls.
- We will gain an understanding of the City's operations by reviewing, documenting, and evaluating internal controls related to significant transaction classes and operating processes.
- We will gain an understanding of the City's significant operating relationships concerning component units and joint ventures, if applicable.
- We will perform a preliminary analysis of the City's federal and state grant awards and gain an understanding of the internal controls the City has in place for compliance with federal and state laws and regulations.
- Perform preliminary analytical procedures and document their effect on the audit plan.
- We will finalize our initial audit strategy and communicate with the City about specific documentation we will require for audit fieldwork.
- We will gain an understanding of the City's significant contractual relationships and evaluate the potential impacts of those contracts on the financial statements.



AUDIT APPROACH

Audit Fieldwork

Audit fieldwork will be performed after year-end closing and will include a majority of the substantive testing to be performed during the engagement, including:

- Perform substantive tests of account balances, tests of controls, if necessary, and detailed analytical procedures.
- Perform tests of controls and compliance over major federal and/or state programs in accordance with OMB Circular A-133 and the State of Texas Uniform Grant Management Standards.
- Complete fieldwork documentation.
- Draft financial statements and other reports, if applicable.
- Discuss audit findings and adjusting entries with Director of Finance.

Final Review and Audit Conclusion

This phase of the engagement will begin as audit fieldwork concludes. Activities to be completed during this phase of the engagement include:

- Perform final analytical review and document effect on audit conclusion.
- Evaluate the effects of passed adjustments.
- Evaluate contingencies, subsequent events, and obtain legal representations.
- Review workpapers including a detailed review by the audit manager, engagement partner, and technical review.
- Provide drafted CAFR, single audit report, and other materials to the Finance Department for review.
- Communicate any significant deficiencies, material weaknesses, or other management comments.
- Have the partner sign the report or transmittal letter.
- Present reports to Audit Committee and City Council.
- Evaluate the staff's performance.
- Maintain the confidentiality, safe custody, integrity, accessibility, and retrievability of the workpapers.
- Assemble and retain the workpapers for a sufficient period of time (subject to monitoring review).



AUDIT APPROACH

PROPOSED STAFF/HOURS FOR EACH SEGMENT

	<u>Partner</u>	<u>Manager</u>	<u>Senior</u>	<u>Staff</u>	<u>Totals</u>
Risk assessment	3	6	20	7	36
Single audit	2	4	18	40	64
Cash and investments	1	2	3	8	14
Receivables	2	3	4	10	19
Inventory	1	2	2	3	8
Capital assets	2	3	10	10	25
Accounts payable	1	2	4	5	12
Accrued liabilities	1	2	4	5	12
Long-term liabilities	2	4	10	2	18
Net assets/fund balance	1	2	3	1	7
Revenues	2	5	30	20	57
Expenditures	<u>2</u>	<u>5</u>	<u>32</u>	<u>29</u>	<u>68</u>
	<u>20</u>	<u>40</u>	<u>140</u>	<u>140</u>	<u>340</u>

AUDIT SAMPLING

Our audit procedures include use of non-statistical sampling. Sampling will be performed for our tests of internal controls, compliance and financial statement amounts, utilizing approaches representative of populations tested. The extent to which we apply detailed audit procedures and sampling is based on materiality, evaluation of audit risks and internal controls, and the characteristics of items comprising the account balance or class of transactions. Because our sample sizes are affected by many variables, a statement about sample sizes cannot be made in absolute terms. However, in practice, sample sizes usually begin with 40 for single audit tests of controls in order to plan the audit to obtain a low level of control risk.

DETERMINING LAWS AND REGULATIONS THAT WILL BE TESTED

Our consideration of audit risk in planning a governmental engagement is essentially an evaluation of the inherent risk of material errors or fraud in the government's financial statements. We will obtain an understanding of the possible financial statement effects of laws and regulations that have a direct and material effect on the determination of financial statement amounts, and assess the audit risk associated with possible violations of such laws and regulations. We will consider laws and regulations that are generally recognized to have a direct and material effect on the determination of financial statement amounts.

Municipalities may be affected by many laws or regulations, including those related to securities trading, occupational safety and health, food and drug administration, environmental protection, equal employment, and price-fixing or other antitrust violations. If specific information comes to our attention that provides evidence concerning the existence of possible illegal acts that could have a material indirect effect on the financial statements, we will apply audit procedures specifically directed to ascertaining whether an illegal act has occurred.



AUDIT APPROACH

PRELIMINARY ANALYTICAL PROCEDURES

Analytical procedures will be used in general planning to improve our understanding of the City's operations and to identify audit areas for increased attention. These procedures will be applied to assist in planning the nature, timing, and extent of other auditing procedures. These procedures will include comparisons of account balances between accounting periods and ratio and trend analysis to improve our understanding of the City and its operations and to identify critical audit areas.

Preliminary analytical procedures will include, at a minimum, a comparison of current account balances to similar amounts in the prior annual period's financial statements and the current period's budget. Additionally, we believe a thoughtful consideration of expected relationships among account balances and periods by an experienced auditor is far more important than a mechanical comparison. We will consider these relationships and bring to bear other knowledge about the City and its operations.



ANALYTICAL PROCEDURES AS SUBSTANTIVE TESTS

Our reliance on substantive tests to achieve an audit objective related to a particular assertion may be derived from tests of details, from analytical procedures, or from a combination of both. For some assertions, analytical procedures are effective in providing the appropriate level of assurance. For other assertions, however, analytical procedures may not be as effective or efficient as tests of details in providing the desired level of assurance. The expected effectiveness and efficiency of an analytical procedure in identifying potential misstatements depends on, among other things, the predictability of the relationship and the availability and reliability of the data used to develop the expectation.

ANALYTICAL PROCEDURES USED IN THE OVERALL REVIEW

The objective of analytical procedures used in the overall review stage of the audit is to assist us in assessing the conclusions reached and in the evaluation of the overall financial statement presentation. The overall review would generally include reading the financial statements and notes and considering the adequacy of evidence gathered in response to unusual or unexpected balances identified in planning the audit or in the course of the audit and unusual or unexpected balances or relationships that were not previously identified. Results of an overall review may indicate that additional evidence may be needed.

PERFORMANCE OF SUBSTANTIVE PROCEDURES

Substantive audit testing will be performed in areas where the effectiveness of process controls does not reduce risk to a relatively low level or where substantive testing is more efficient.



AUDIT APPROACH

IT (INFORMATION TECHNOLOGY) GENERAL COMPUTER CONTROLS

Our Firm is required to gain an understanding of the internal controls the City has over IT and general computer controls. As a critical system impacting the City's processes, it is important to control the IT processes underlying the City's EDP system. The key is to ensure that only managed and authorized changes and access to the functionality and data is allowed. The IT General Computing controls are focused on change management, access-security and computer operations areas. At a high level, the change management process ensures that all changes to the systems go through a standardized process, whereby they are approved and tested by appropriate officials before being deployed in the City's operating environment. The access-security process ensures that only authorized individuals have appropriate access to the systems and underlying data. It also ensures that security layers (database, operating system, application, physical access to the servers, internal and external network layers) are appropriately controlled to avoid unauthorized access. The computer operations process ensures that backend jobs are monitored and controlled. It also ensures that backups and recovery procedures are in place to be able to recover in case of rollback or disaster situations.

To achieve effective monitoring and auditing of the EDP system, with respect to IT General Computing Controls, it is necessary to extract the following from the system:

- System log of changes (application, database, reports)
- System log of access changes (end user, administrative – application and database)

The majority of ERP systems struggle, without an add-on module or third party system, to be able to provide one or more of the details mentioned above. An alternative is to work closely with your IT Department to write custom scripts and extract data for these items.

DATA EXTRACTION SOFTWARE AND COMPUTER EXPERTISE

Our Firm uses a wide range of software including the Microsoft Office Suite, ACL Desktop (data extraction software), Adobe Acrobat, and ProSystems fx Engagement. We also utilize Access databases and other data extraction and evaluation tools.

We have developed significant resources in the areas of computer applications and system analysis to provide a wide range of services to our clients as outlined below:

- We are familiar with and have experience in auditing systems using a wide range of financial application software. We currently have clients who use Incode, SunGard—HTE, STW, Rectrac, Class, Pentamation, Fund Ware, MIP, MAS 90, and many other software systems frequently used by government entities.
- A computer consultant from our Firm will be assigned to your audit to aid in technical areas of system controls and procedures. All personnel assigned will be familiar with computerized accounting systems and controls. All experienced personnel receive training specifically in these areas during their development and progression.
- We also use data extraction software to address any specific areas of risk your City might have. We can use this software to evaluate many automated processes that the City uses such as P-card purchases, journal entry processing, and issues related to data security and integrity.



Audit Approach

IDENTIFICATION OF ANTICIPATED POTENTIAL AUDIT PROBLEMS

For fiscal year ending September 30, 2013, the City of Murphy will be implementing GASB Nos. 60, 61, 62, 63, and 64. Additionally, the audit for fiscal year 2013 will be different for the City because your audit firm will need to implement the AICPA Clarified Auditing Standards and your audit will be performed under the new 2011 revision of Government Auditing Standards "yellow book".

Now, what does all of this mean to the City? Initially, the most significant change is going to be that your auditors are going to require a different level of documentation than what has been required in the past. Additionally, the most significant GASB standards that we would expect to impact the City on the current year audit would be GASB Nos. 61 and 63. GASB 61 will require management and your auditors to reevaluate all of the City's component units based on new criteria explained in the standard. GASB 63 will really only change the appearance of the City's CAFR. All previous references to the term "net assets" will now be replaced with the term "net position". It appears that the City has implemented GASB 63 with the September 30, 2012 audit.

The professionals in our government audit department receive extensive training on standards applicable to governmental entities as well as auditing standards. We are prepared to aid the City in making significant transitions mandated by the standard setting bodies.

MANAGEMENT COMMENTS AND FINDINGS

In preparing management comments and recommendations, we utilize a "bottom-up" review approach to avoid any surprises. This approach allows any draft comments or recommendations to be initially reviewed at the level within the department responsible for the activity and only subsequently discussed at higher levels. Any comments will be communicated in a constructive manner. Our findings will contain a statement of condition describing the problem that needs attention, what should be corrected, and the best course of action to correct the issue. We do not dwell on matters of insignificance; rather, we design our letters to be useful and beneficial for improving the City's performance.





EUBANK & BETTS

A Professional Limited Liability Company

CERTIFIED PUBLIC ACCOUNTANTS

3820 I-55 North, Suite 100 (39211) P.O. Box 16090

Jackson, Mississippi 39236-6090

Telephone 601-987-4300 Fax 601-987-4314

E-mail: firm@eubankbetts.com

Website: www.eubankbetts.com

SYSTEM REVIEW REPORT

September 30, 2010

To the Partners

Pattillo, Brown & Hill, L.L.P.

and the AICPA National Peer Review Committee

We have reviewed the system of quality control for the accounting and auditing practice of **Pattillo, Brown & Hill, L.L.P.** (the firm) applicable to non-SEC issuers in effect for the year ended May 31, 2010. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review. The nature, objectives, scope, limitations of, and the procedures performed in a System Review are described in the standards at www.aicpa.org/prsummary.

As required by the standards, engagements selected for review included engagements performed under *Government Auditing Standards* and audits of employee benefit plans.

In our opinion, the system of quality control for the accounting and auditing practice of **Pattillo, Brown & Hill, L.L.P.** applicable to non-SEC issuers in effect for the year ended May 31, 2010, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. **Pattillo, Brown & Hill, L.L.P.** has received a peer review rating of *pass*.

EUBANK & BETTS, PLLC

PB&H **PATTILLO, BROWN & HILL, L.L.P.**

Certified Public Accountants—Business Consultants



*At Pattillo, Brown & Hill, L.L.P., our people
make the difference.*

With our extensive local government experience, strong regulatory and technical expertise, client-centered approach, and competitive fee structure, PB&H provides an unmatched level of client-service commitment.

Pattillo, Brown & Hill, L.L.P.
401 West Highway 6, Waco, Texas 76710
P. O. Box 20725, Waco, Texas 76702-0725
Phone: 254.772.4901 • Fax: 254.772.4920

City of Murphy, Texas



07.01.2013

Proposal for Professional Audit Services

Presented by

BrooksCardiel, PLLC

1095 Evergreen Circle, Suite 200
The Woodlands, TX 77380
Telephone: 281-907-9223

Contact:

Michael Brooks, CPA
MBrooks@BrooksCardiel.com

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Letter of Transmittal

City of Murphy, Texas
Attn: Linda Truitt
Finance Director
206 North Murphy Road
Murphy, Texas 75094

Dear Ms. Truitt,

On behalf of BrooksCardiel, PLLC, we are pleased to have the opportunity to submit the following proposal and provide professional auditing services to the City. As you will find, we are committed to exceeding our client's expectations and have prepared the following proposal to outline our experience and services to be provided. If selected to be the City's independent auditor for the years noted we will perform the work stated in the following proposal with those services conforming in all aspects to the requirements stated therein.

BrooksCardiel, PLLC was created with the belief that audit services can be provided in a more efficient and cost effective manner by limiting the firm's staff to include only experienced professionals while leveraging the most recent technology. Our partners have extensive experience auditing governments of all sizes with a particular focus on cities similar to the City of Murphy, Texas.

We believe that we are the right choice to be the City's auditor for the following reasons;

- **Timeline** – Our firm focuses solely on performing audits and is not burdened with a tax season, which can often cause delays in the issuance of audit reports. Once we establish a timeframe for your audit, report delivery, and presentation, we honor our commitment. Our firm believes in working the hours necessary to serve our clients and meet the audit schedule as further detailed in this proposal.

- **Experience** - The partners of BrooksCardiel, PLLC have performed approximately 150 audit engagements of approximately 50 different governmental entities including 25 different cities. We understand the challenges governmental entities face and developed our audit approach around these challenges.
- **Quality** - When you engage BrooksCardiel, PLLC, you know that experienced professionals are performing every step of the engagement and that you will have easy access to a decision maker within the firm at all times. No interns or recent college graduates will be performing your audit.
- **Customer Service** - Our customer service based audit approach has allowed us to form long lasting relationships with our clients that often extend well beyond the term of our initial engagement. Unlike larger firms, we pride ourselves on the ability to provide a personal and unique audit experience unmatched by our peers. The City will have direct access to our highest level of expertise throughout the term of the relationship; before, during, and after the audit is complete.

This proposal is a firm and irrevocable offer ending five (5) years subsequent to the date specified for opening the proposals. If you have any questions regarding this proposal please contact Michael Brooks at MBrooks@BrooksCardiel.com.

Sincerely,



Michael Brooks, CPA
Audit Partner
BrooksCardiel, PLLC
1095 Evergreen Circle, Suite 200
The Woodlands, TX 77380
(281) 907-9223

Executive Summary

Firm Profile

BrooksCardiel, PLLC is headquartered in the Woodlands, Texas and was founded by Certified Public Accountants that are dedicated to performing governmental audits. The partners of BrooksCardiel, PLLC have performed approximately 150 audit engagements of approximately 50 different governmental entities, including 25 different cities. Specializing in governmental and not-for-profit auditing, we understand the unique environment and regulatory challenges governments face. We strive for excellence in our methods and operating principles and have built our client relationships on the foundation of quality results.

Why We Are Different

Our firm was created with the belief that our clients deserve exceptional auditing services while still being cost effective. We feel a “traditional” engagement team utilizing inexperienced staff auditors is outdated and ineffective. Unlike most firms, we seek to eliminate the inexperience of the middle man and connect the City with our highest level of expertise in an effort to gain efficiency and increase quality in every engagement. Our partners insist on being involved in every aspect of your audit.

Customer Service

Our goal with every audit is to provide exceptional customer service through accessibility, efficiency, quality and knowledge of our clients on a personal level. At BrooksCardiel, PLLC we believe that establishing and maintaining positive long-term relationships is essential to a successful audit and strive to achieve this in every engagement. We understand that no two governments are the same. With an appreciation for the unique challenges our governmental clients face, we approach every audit with an individual view and tailor our procedures to meet your specific needs.

Our team makes themselves available throughout the year for questions, general or otherwise, that may arise. We understand that a well-informed client is a better client and encourage everyone we do business with to contact us whenever they feel we may be of assistance. Your job does not end when the audit reports are presented and neither does ours.

Quality

Our partner involvement through each step of the audit process allows us to gain a profound understanding of your operations and enables us to provide the finest tailored services and recommendations possible. Unlike larger firms, we seek to eliminate the inexperience of the middle man and connect the City with our highest level of expertise in an effort to streamline every engagement.

The partners at BrooksCardiel, PLLC have dedicated their practice to serving the needs of governments across Texas. We are not the largest firm around, but we consider ourselves to be the best at what we do. Our unique firm structure allows us to go the extra mile and spend the extra time on our clients, ensuring timely delivery of reports and useful recommendations that serve to strengthen the City's internal controls and operations. Our goal is to deliver each and every client with the best audit they've ever received. To us, you are more than a dollar sign, you are our reputation and if we fail you, we fail ourselves.

Above all, we seek to maintain, integrity, quality, and impeccable customer service. These qualities are what we believe make BrooksCardiel, PLLC the right fit for your City's professional auditing needs.

We appreciate your consideration and the opportunity to provide the City with Professional Service with Personal Pride.

Statement of Independence

The Texas State Board of Public Accountancy Rules of Professional Responsibility sec. 501.11 requires auditors to be independent in fact as well as appearance from each of their clients. BrooksCardiel maintains this independence under both Generally Accepted Auditing Standards as well as the U.S. General Accounting Office's Government Auditing Standards and has had no professional relationships with the City of Murphy or its agencies within the past five (5) years that would constitute a conflict of interest.

License to Practice

The firm and all assigned key professional staff of BrooksCardiel, PLLC are properly licensed to practice in the State of Texas.

Firm Qualification and Experience

BrooksCardiel, PLLC was created with the belief that audit services can be provided efficiently while still being cost effective and maintained on a personal level. It is this conviction that sets us apart from our peers. While serving clients throughout Texas, we have performed on audits for numerous governments and have experienced the unique challenges each of our clients face. With an appreciation for these distinct issues, we approach every assignment with an individual view and adapt our methods to meet the specific needs of each of our clients. When you engage BrooksCardiel, PLLC, you can be confident that experienced professionals will perform each step of the audit process, giving you and your staff direct access to our highest level of expertise. We keep overhead low and quality high by eliminating inexperienced staff and connecting the City directly to our partners.

Public Sector and Governmental Experience

BrooksCardiel, PLLC has dedicated professionals knowledgeable in government accounting, audit and financial reporting. With numerous years of experience in the public sector, our auditors possess the knowledge and capability to support your government's auditing and assurance needs. Our support structure, resources and training are devoted to providing governments with accurate, prompt, and efficient audits and financial related services. In addition, BrooksCardiel is a member of AICPA's Government Audit Quality Center which provides added support to our professionals through up-to-date training and resources.

With an in depth knowledge of OMB A-133 audits, the latest GASB pronouncements, Comprehensive Annual Financial Reports and state and federal regulations we aim to provide each of our clients with the most efficient audit and long-term guidance possible. Our focus lies on exceptional customer service which we accomplish through accessibility, efficiency, quality and knowledge.

Single Audit (OMB Circular A-133)

All government and non-profit entities that spend more than \$500,000 a year in federal funds are required by the Office of Management and Budget (OMB) to submit to an A-133 audit. Our partners have extensive experience with (OMB) Circular A-133 and have performed yellow book and single audits for numerous governments on a variety of federal grant programs including, funds received under the American Recovery and Reinvestment Act. ARRA funds include additional compliance requirements increasing the amount of data to be reported and analyzed. We will review the City's accounting records and determine the need for a single audit meeting the criteria noted above. As part of our single audit, we will evaluate the City's internal controls over grant compliance and the financial statements. We will develop a risk based audit program and determine if the City is meeting all compliance and financial requirements associated with their federal grants. Once complete, we will assist the City with the submission of their single audit reporting package to the Federal Audit Clearinghouse or other required authoritative body. We will provide the City with a bound single audit report which will include our findings, schedule of expenditures of federal awards, and Auditor's opinion under Circular A-133, Governmental Auditing Standards.

Continuing Professional Education

Each of our professionals are in compliance with the CPE requirements of the AICPA, Texas State Board of Public Accountancy and Generally Accepted Government Auditing Standards (Yellow Book). Each professional receives a mandatory 40 hours of continued education credits annually with at least 24 hours of governmental specific training. These CPE records are open to our clients for review and will be made available upon request.

Participation in Professional Organizations

We believe that it is essential to participate in professional organizations to stay abreast of industry trends and changes. Our firm's commitment to the public sector is evidenced through our active participation/memberships in the following professional organizations:

- AICPA -American Institute of Certified Public Accountants
- AICPA - Government Audit Quality Center
- TSCPA -Texas Society of Certified Public Accountants
- ACFE -Association of Certified Fraud Examiners
- GFOA -Government Finance Officers Association

In addition, we are members of the GFOA Special Review Committee and encourage and assist local governments to go beyond the minimum requirement of generally accepted accounting principles.

Certificate of Achievement for Excellence in Financial Reporting

As members of the GFOA (Government Finance Officers Association) Special Review Committee, we assist local governments in going beyond the minimum requirements of generally accepted accounting principles to achieve the Certificate of Achievement for Excellence in Financial Reporting. We understand the importance of this highly regarded award and will go to great lengths to work with the City to achieve this on an annual basis. The partners at BrooksCardiel, PLLC will prepare your CAFR and assist in the preparation of the City's response to all GFOA comments, if any.

Services Offered

Audit and assurance services include:

- CAFR preparation
- Yellow Book Audits
- OMB A-133 Audits
- Annual Financial Statement Audits
- Franchise Tax Audits
- Hotel/Motel Tax Audits
- Fraud Examinations/Investigations
- Sales Tax Allocation Audits
- GASB 54 & 63 implementation

Statement of Reprimand and Disciplinary Action

BrooksCardiel, PLLC has never been under terms of a public or private reprimand by the Texas Stated Board of Public Accountancy, SEC, State Society and/or licensing boards of other states nor have we been the object of any disciplinary action.

Quality Control and Peer Review

BrooksCardiel, PLLC participates in the Texas State Board of Public Accounting's peer review program. Firms can receive a rating of pass; pass with deficiency (ies) or fail. The firm underwent peer review according to the Statement on Quality Control Standards No. 8, A Firm's System of Quality Control, effective as of January 1, 2012 in March 2013. BrooksCardiel, PLLC is awaiting formal approval from the Texas Society of CPA's and anticipates that BrooksCardiel, PLLC will receive the highest rating possible under the program.

Partner and Staff Background



Mike Brooks, CPA

Audit Partner

Mbrooks@BrooksCardiel.com

Mike began his career at a regional accounting firm that specializes in auditing governmental and not-for-profit entities. As part of the management team, Mike completed or assisted in the completion of approximately 100 audits for governmental and non-profit clients.

Mike later joined a leading SEC auditing firm where he specialized in public sector clients, small-cap publicly traded companies and other complex accounting issues while leading the firm's public sector practice.

Educational Background

- Certified Public Accountant, State of Texas
- BBA in Accounting, Sam Houston State University

Experience

- 10 years of private sector and public accounting experience
- Completed or assisted with completion of approximately 100 public sector audits
- Completed over 25 single audits in accordance with OMB Circular A-133
- Implementation of GASB 34, 45, 54 and 63

Professional Organizations

- Government Finance Officers Association
- GFOA Special Review Committee
- AICPA

**Anthony Cardiel, CPA, CFE****Audit Partner**Acardiel@BrooksCardiel.com

Anthony began his career at a regional accounting firm based in Texas that specializes in auditing governmental and not-for-profit entities. His experience included governmental entities with over \$250 million dollars in assets and revenues, sovereign nations, and an extensive list of cities, counties, and other governmental entities. Anthony later served as CFO for a leading oil and gas information company and brokerage. In past experience he acted as operations manager for UPS as well as for the United States Army.

Educational Background

- Certified Public Accountant, State of Texas
- Certified Fraud Examiner, State of Texas
- BS in Accounting, Northwest Missouri State

Experience

- Completed or assisted with the completion of approximately 80 public sector audits
- Completed over 25 single audits in accordance with OMB Circular A-133
- Implementation of GASB 34, 45, 54 and 63

Professional Organizations

- Government Finance Officers Association
- GFOA Special Review Committee
- Vice President Association of Certified Fraud Examiners – Houston Chapter
- Houston Entrepreneurs' Forum

**Louis Breedlove****Audit Senior**LBreedlove@BrooksCardiel.com

Louis began his career at a regional accounting firm that specializes in auditing governmental and not-for-profit entities. Louis also has experience auditing public sector clients, small-cap publicly traded companies as well as large Fortune 500 and international companies while employed at PricewaterhouseCoopers.

Educational Background

- BBA in Accounting, Southwestern Assemblies of God University

Experience

- 3 years of private sector and public accounting experience
- Implementation of GASB 45 and 54
- CPE – Yellow Book Compliant

Rouga Omidi**Audit Senior**ROmidi@BrooksCardiel.com

Rouga Omidi has more than 4 years of experience in diverse industries as an auditor supervising interns, staff, experienced staff and senior auditors on a variety of engagements for publicly held companies. She earned a BBA Degree in Accounting and Finance from the University of Houston, completed her MBA in Accounting at the University of St. Thomas and has completed a section of the CPA exam.

Educational Background

- BBA in Accounting and Finance, University of Houston
- MBA in Accounting, University of St. Thomas

Audit Experience

- 4 years of public accounting experience
- Audit & Reviews of SEC registrants, Mergers, Reverse Mergers & Acquisitions.
- Stock-based compensation, warrants, convertible debt, derivative instruments, Investments (Trading & Sale), foreign currency transactions and translations.
- Executed engagements for publicly traded companies in compliance with PCAOB and SEC standards for registration statements, merger and pro-forma filings, form 10s, 10-K and 10-Qs

Commitment to Affirmative Action

During the life of the contract with the City of Murphy, Texas, BrooksCardiel, PLLC shall comply with state regulations and federal laws relating to equal employment opportunities and affirmative action. The company shall continue to work cooperatively with government and community organizations to take affirmative action to ensure equal employment and advancement opportunities.

Similar Engagements with Other Government Entities

Proprietary Information

Gov't Name	Type	Hours	CAFR	Audit Date	Partners	Principal Contact
City of Sachse	Audit	220	Yes	9/30/2012	Mike Brooks & Anthony Cardiel	Teresa Savage Finance Director (469) 429-4760 tsavage@cityofsachse.com
City of Heath	Audit	220	Yes	9/30/2012	Anthony Cardiel & Mike Brooks	Laurie Mays Finance Director (972) 771-6228 lmays@heathtx.com
City of Gonzales	Audit	205	Yes	3/31/2012	Mike Brooks & Anthony Cardiel	Allen Barnes City Manager (830) 672-2815 abarnes@cityofgonzales.org
City of Giddings	Audit	200	N/A	09/30/2012	Mike Brooks & Anthony Cardiel	Clifton Wachsmann Finance Director (979) 540-2710 cwachsmann@giddings.net
City of Parker	Audit	150	N/A	9/30/2012	Mike Brooks & Anthony Cardiel	Johnna Boyd Finance Director (972) 442-6811 jboyd@parkertexas.us

Additional references available upon request.

Specific Audit Approach

Knowledge Based Audit Approach

BrooksCardiel uses a knowledge-based audit methodology to efficiently and effectively perform financial statement audits of governmental entities in accordance with auditing standards generally accepted in the United States of America (GAAS). This is accomplished by obtaining an understanding of the City and its environment to sufficiently assess the risk of material misstatement. Audit procedures are then designed and performed in response to the risk of material misstatement.

All audit procedures performed will be done so by the professionals of BrooksCardiel, PLLC who are dedicated to maintaining a presence throughout the audit process. Their goal in this is to reduce the burden on City staff while adhering to the established budget and timeline. These procedures are more fully detailed in the Audit Approach section of this proposal and will be conducted in accordance with the following standards:

- Generally Accepted Auditing Standards established by the American Institute of Certified Public Accountants.
- Financial Audit Standards established by the General Accounting Office's Government Auditing Standards.
- All provisions of the Single Audit Act and the U.S. Office of Management and Budget Circular (OMB) A-133 audits of states, local governments and not-for-profit organizations.

Audit Segmentation and Staff Hours

Financial Audits	Audit Senior	Partner	Reviewing Partner
Risk Assessment/Planning	15 hours	15 hours	10 hours
Cash	16 hours	8 hours	4 hours
Revenues & Receivables	20 hours	20 hours	10 hours
Capital Assets	16 hours	10 hours	4 hours
Accounts Payable and Expenditures	20 hours	20 hours	10 hours
Long-Term Liabilities	15 hours	15 hours	5 hours
Deferred Revenue	10 hours	5 hours	2 hours
CAFR Review	30 hours	20 hours	5 hours
Total Hours	305 hours		

Planning

The planning phase involves developing the overall audit strategy for the expected activities, organization, and staffing of the audit. We will plan the audit to respond to the assessment of the risk of material misstatement based on our understanding of the City, its environment, and internal controls.

Our understanding of the City and its environment will include the following:

- Industry, regulatory, and other external factors;
- Nature of the City;

- Objectives, strategies and related risks that may cause material misstatement of the financial statements;
- Measurement and review of the City's financial performance;
- Internal controls

Prior to our first day of field work, we will schedule a meeting to discuss the desired timeframe, estimated report delivery, and extent of management and auditor responsibilities as it relates to the audit.

Internal Control Evaluation

Audit standards require that we obtain an understanding of the City sufficient to evaluate the design of the internal controls and to determine whether they have been implemented. Our understanding of the City's internal controls will include the control environment, risk assessment, information and communication systems, control activities, and monitoring controls. Our risk assessment and control evaluation will include:

- Conducting interviews of selected management and staff;
- Evaluating the City's financial reporting and management policies, budget documents and process, and informational systems;
- Documenting our understanding of the City's entity wide control environment and activity level controls;
- Testing the design and implementation of selected key controls by performing a walk-through of the selected transaction class;
- Testing the operating effectiveness of selected controls.

The results of our risk assessment will allow us to identify and assess the risk of material misstatement within the City and design the extent, nature, and timing of our substantive audit procedures and develop our audit plan.

Any control deficiencies identified during the planning phase and interim audit will be communicated to management immediately.

Fieldwork and Substantive Testing

Based on the results of our risk assessment and internal control evaluation, a specific audit plan will be designed to focus expanded procedures on areas with the greatest risk of material misstatement, error, and fraud. We will use tests of details, substantive analytical procedures, or a combination of the two to conclude on the reasonableness of the given transaction class or account balance. Typical substantive procedures include:

- Agreeing the financial statement elements to the underlying accounting records including year-end account balances and transaction activity occurring throughout the year;
- Confirming cash held in bank and investment accounts, accounts receivable, inventory held by others, and material grants;
- Perform specific analytical procedures - considering historical trends and events within the City.

Statistical Sampling and Sample Sizes

The extent to which statistical sampling will be used and related sample sizes will be determined based on the results of our risk assessments.

Electronic Data Processing

BrooksCardiel, PLLC will utilize current technology to complete your audit. Electronic data processing will be used throughout the audit to extract data from your City's accounting software. The data will be processed with our audit software to ensure the efficiency of your audit.

Analytical Procedures

Analytical procedures will be used throughout the engagement in almost every aspect of the audit. Procedures will include comparing balances, activities and ratios to historical data, comparative entities, as well as local and regional trends.

Completion

At the conclusion of every audit, we will decide whether sufficient audit evidence has been accumulated to warrant the conclusion that the financial statements are fairly stated in accordance with generally accepted accounting principles (GAAP). Prior to issuing our audit report we will perform the following procedures:

- Evaluate the sufficiency and appropriateness of audit evidence obtained;
- Perform an overall analytical review;
- Evaluate and conclude on the results of audit procedures, adjustments, and unadjusted misstatements;
- Provide all adjusting entries noted during the audit to the City Council and management;
- Prepare or assist in the preparation of the City's Comprehensive Annual Financial Report;
- Communicate any audit findings and issues with management and those charged with governance.

Compliance with Laws and Regulations Approach to Compliance Testing

Compliance with laws and regulations, including, but not limited to the Public Funds Investment Act, Texas State Government Code and grants received. Compliance testing will be performed as required by Circular A-133 and the Single Audit Act, grant agreements, financing agreements, or any other compliance requirements as applicable.

Expectations from City Staff

We will expect the City to provide commonly requested schedules such as a schedule of receivables due at year end, a schedule of capital assets that includes additions and disposals, a schedule of cash accounts, a schedule of prepaid insurance and a long-term debt schedule as applicable. We will also expect assistance with the preparation of confirmations to banks, attorneys, debt holders, etc.

Proposed Timeline

Financial Statement Audits	Proposed scheduling
Interim Work	Prior to October 31, 2013
Detailed Audit Plan and List of Schedules	Prior to October 15, 2013
Completion of Fieldwork	Prior to December 31, 2013
Draft of Audit Report and Management Letter	Prior to January 31, 2014
Final Reports and Management Letter to Audit Committee	Prior to February 18, 2014
Presentation to City Council	March 4, 2014

Identification of Anticipated Potential Audit Problems

We do not anticipate any potential audit problems during our proposed engagement.

Report Format

The City of Murphy's report will be formatted similar to the Governmental Finance Officers Association's "Blue Book." Examples can be found at:

http://www.heathtx.com/userfiles/file/Finance/2012_CAFR.pdf

<http://www.cityofsachse.com/index.aspx?nid=113>

Proposer Warranties (Appendix D)

- A. Proposer warrants that it is willing and able to comply with the State of Texas laws with respect to foreign (non-state of Texas corporations).
- B. Proposer warrants that it is willing and able to obtain an errors and omissions insurance policy providing prudent amount of coverage for the willful or negligent acts, or omissions of any officers, employees or agents thereof.
- C. Proposer warrants that it will not delegate or subcontract its responsibilities under an agreement without the prior written permission of the City of Murphy.
- D. Proposer warrants that all information provided by it in connection with this proposal is true and accurate.



Name: Michael Brooks, CPA

Title: Audit Partner

Firm: BrooksCardiel, PLLC

Date: June 29, 2013

City Council Meeting
August 20, 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

Background/History

At the February 19, 2013 Council Meeting, the Plano Sports Authority (PSA) requested the City wave the estimated \$151,548.52 permit and impact fees for the construction of their facility. At that meeting, Council authorized the waiver of the impact fees in the amount of \$43,452.52 and moved to delay the collection of the remainder of the permit fees until after June 1, 2013.

As of August 1, 2013, the fees due have changed slightly due to additional inspections and fees paid for the fire suppression system. PSA is requesting a waiver of the remaining fees due in the amount of \$102,015.00. They have generated approximately \$20,000 for trees within Central Park.

The current projected third-party review and inspection fees that the City has incurred as a result of the PSA project are stated below. The total costs to date listed below do not include any soft costs such as staff review, staff preparation, or any additional third-party fees not yet identified. **Please note that the below numbers are estimates which are subject to change.**

Engineering Fees (Birkhoff, Hendricks & Carter)	\$ 7,163.71
Building Plan Review (Bureau Veritas):	\$ 10,798.59
Building Inspections (Bureau Veritas):	\$ 16,595.25
Health Inspections (Scott Andrews):	\$ <u>130.00</u>

Total Hard Costs to Date: \$ 34,687.55

Action Requested

Consider waiving all, a portion, or none of the estimated development fees for PSA Murphy.

Attachments

Fee Checklist for New Commercial Projects – PSA Murphy

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

Project Name: Plano Sports Authority (PSA)		Project Address: 330 N Murphy Road	
Total Valuation of Project	\$8,000,000	Total Square Footage of Project	87,000
Project # 121796			
<i>This is a preliminary estimate of permitting fees only. Please keep in mind this does not reflect contractor registration fees, inspection fees, etc.</i>			
		<u>Amt. Due</u>	<u>Amt. Pd.</u>
			<u>Date Pd.</u>
Certificate of Occupancy		\$75.00	\$0.00
Health Plan Review & Permit Fee		\$650.00	\$0.00
Building Permit Fee	valuation of project X \$.010 =	\$80,000.00	\$0.00
Electrical Permit Fee	based on sq. ft. of project =	\$120.00	\$0.00
Mechanical Permit Fee	based on sq. ft. of project =	\$120.00	\$0.00
Plumbing Permit Fee	based on sq. ft. of project =	\$120.00	\$0.00
Fire Sprinkler (minimum \$60)	sq. ft. of project X \$.035 =	\$3,045.00	\$3,045.00
Fire Alarm (minimum \$60)	sq. ft. of project X \$.035=	\$3,045.00	\$3,045.00
Miscellaneous	underground fire main	\$50.00	\$0.00
Miscellaneous	Fixed Chemical	\$75.00	\$75.00
Miscellaneous fees	Fire Pump	\$300.00	\$0.00
TOTAL PERMIT CHARGES		\$87,600.00	\$6,165.00
			\$81,435.00
4% Engineering Inspection Fee		\$18,280.00	\$0.00
Engineer Plan Review Fee		TBD	\$0.00
TOTAL ENGINEER FEES (not applicable on finish outs)		\$18,280.00	\$0.00
			\$18,280.00
Impact Fee for Domestic Water & Sewer		\$14,134.88	\$0.00
Impact Fee for Irrigation Water		\$43,443.52	\$0.00
TOTAL IMPACT CHARGES (not applicable on finish outs)		\$0.00	\$0.00
			\$0.00
Sewer Tie-In (6" min for commercial)	<u>Size</u> 6"	\$300.00	\$0.00
Domestic Water Meter	<u>Size</u> 3"	\$1,900.00	\$0.00
Domestic Water Meter Deposit (Deposit on each meter)		\$100.00	\$0.00
Irrigation Water Meter	<u>Size</u>	\$0.00	\$0.00
Irrigation Water Meter Deposit (Deposit on each meter)		\$0.00	\$0.00
TOTAL WATER METER CHARGES & SEWER TIE-INS		\$2,300.00	\$0.00
			\$2,300.00
OVERALL TOTALS		\$108,180.00	\$6,165.00
			\$102,015.00

Customer Service Department

206 North Murphy Road • Murphy, Texas 75094 • Tel: 972.468.4100 • Fax 972.468.4127

Email: customerservice@murphytx.org Website: www.murphytx.org

Issue

Discuss and take action, if any, on an Ordinance addressing traffic calming measures, including the possible closure, of Moonlight Drive and/or Grant Road.

Staff Resource / Department

Kristi Gilbert, City Secretary
Andy Messer, City Attorney

Summary

At the August 6, 2013 meeting, Council directed the City Attorney to prepare an ordinance to close Grant Drive and to work with the City Engineer to prepare a plan to achieve closure.

Attachments

Ordinance

ORDINANCE NO: _13-08-_____**AN ORDINANCE PROVIDING FOR THE CLOSURE OF GRANT DRIVE TO VEHICULAR TRAFFIC AND PROVIDING FOR THE TERMS AND CONDITIONS OF CLOSURE.**

WHEREAS, the City Council of the City of Murphy, Texas is authorized pursuant to Tex. Transp. Code Ann. § 311.007 to close in whole or in part a city street such as Grant Drive; and

WHEREAS, the City has determined that the segment of Grant Drive from Mason Lane going East to the city limits of the City of Murphy is subject to the proposed closure and lies entirely within the limits of the City of Murphy, Texas, and consists of the right of way shown on the Grant Drive Survey attached as **Exhibit A** which is incorporated herein for all purposes; and

WHEREAS, extensive studies, research, and public input has been received and reviewed, the City Council deems it advisable to close Grant Drive to motor vehicle traffic and is of the opinion that it is in the best interest and welfare of the public that same shall be closed as hereinafter provided and the right of way shall continue to belong to the City, subject to the conditions, requirements, and restrictions contained herein; and

WHEREAS, the City Council of the City of Murphy finds that the closure of Grant Drive will have no detrimental effect on the public health and safety, including the provision of emergency services.

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

1. The recitals above are incorporated as if fully set forth herein.
2. That portion of Grant Drive located in the City of Murphy, Collin County, Texas, which abuts the City limits of the City of Murphy and the City of Sachse, Texas which street segment is depicted on **Exhibit A** shall be and the same is hereby closed; subject, however, to the conditions, requirements and restrictions hereinafter more fully set out.
3. The City's intention is to close the public motor vehicle access on Grant Drive but not to abandon its public easement in the street and therefore will not sell the property to abutting land owners.
4. The City shall construct a barrier on Grant Drive, said barrier to be at least two to three feet from the City limits of the City of Murphy and to be designed and made from materials to be determined by the City Manager and the City Engineer.

5. The closure provided for herein is made and accepted subject to all present zoning and deed restrictions if the latter exist, and all easements, whether apparent or non-apparent, aerial, surface or underground.
6. That the closure provided for herein shall extend only to the public right, title, easement and interest in using the same as a motor vehicle thoroughfare and shall be construed to extend only to that interest which the governing body for the City of Murphy, Texas may legally and lawfully close.
7. The closure shall be effective upon the execution of this Ordinance.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Murphy, Texas, on this the _____ day of August 2013.

THE CITY OF MURPHY, TEXAS

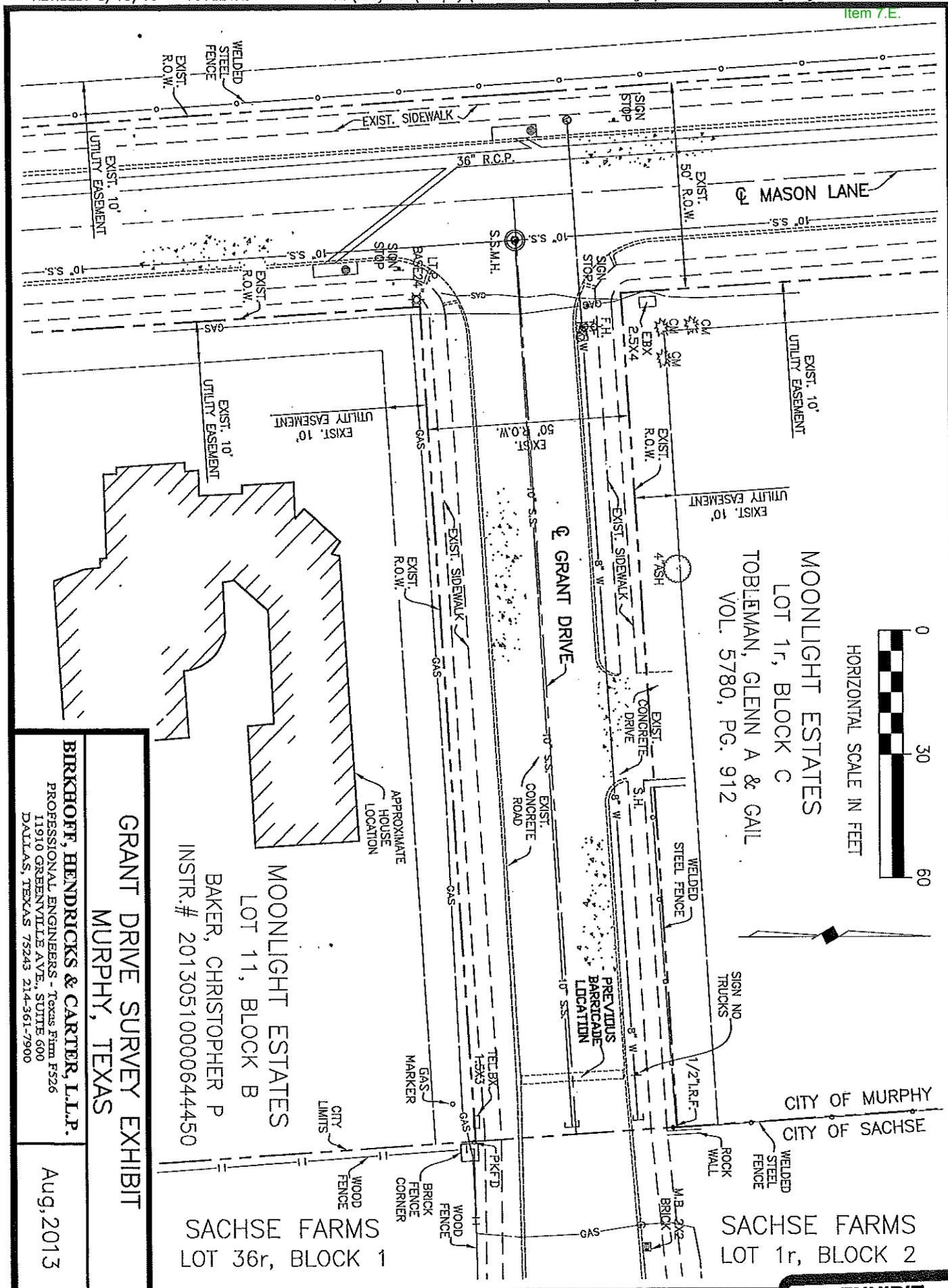
By: Eric Barna
Its: Mayor

ATTEST:

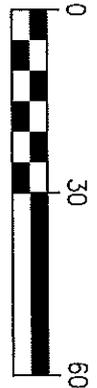
By: Kristi Gilbert
Its: City Secretary

APPROVED AS TO FORM:

Wm. Andrew Messer, City Attorney



HORIZONTAL SCALE IN FEET



MOONLIGHT ESTATES
 LOT 1r, BLOCK C
 TOBLEMAN, GLENN A & GAIL
 VOL. 5780, PG. 912

GRANT DRIVE SURVEY EXHIBIT
 MURPHY, TEXAS

MOONLIGHT ESTATES
 LOT 11, BLOCK B
 BAKER, CHRISTOPHER P
 INSTR. # 20130510000644450

SACHSE FARMS
 LOT 36r, BLOCK 1

SACHSE FARMS
 LOT 1r, BLOCK 2

BIRKHOFF, HENDRICKS & CARTER, L.P.
 PROFESSIONAL ENGINEERS - Texas Firm F526
 11910 GREENVILLE AVE., SUITE 600
 DALLAS, TEXAS 75243 214-561-7900

Aug, 2013

EXHIBIT
 8 20 13 Agenda Packet 240 of 842
A

City Council
August 20, 2013

Issue

Discuss City of Murphy watering fines.

Background

On October 18, 2011, the City Council approved Ordinance 11-10-897 establishing a new drought contingency and water emergency response plan; including establishing mandatory water schedules and prohibited watering hours for Stage 2, Stage 3 and Stage 4.

On June 1, 2013, and in line with North Texas Municipal Water District's implementation of Stage 3, the City of Murphy began enforcement of Stage 3.

Considerations

1. This item was requested for discussion.
2. As noted in Section 82-376 of the Code of Ordinances: Penalty, Enforcement of restrictions; failing to comply with the provision of the plan and/or this ordinance (11-10-897) shall be subject to a fine of up to \$2,000.00 and/or discontinuance of water service by the city.
3. It is anticipated, from communication with North Texas Municipal Water District, that by mid-September we will be in Stage 4.
4. Staff recommends discussion of Stage 4 implementation with City Council in early September.

Staff Recommendation

Discussion and direction, if any.

Attachments

Ordinance 11-10-897 Drought Contingency and Water Emergency Response Plan *(Note: A portion of this ordinance is codified in Section 82-376 of the Code of Ordinance. The actual ordinance is include to reflect the entirety of the Plan)*

Kristen Roberts, Director of Community & Economic Development

Submitted By

ORDINANCE NO. 11-10-897

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MURPHY, TEXAS, AMENDING 11-08-890 TO INCLUDE NOVEMBER 1 TO MARCH 31 STAGE 3 WATERING SCHEDULE; REPEALING ORDINANCE NO. 06-07-699 IN ITS ENTIRETY; REPEALING ORDINANCE NO. 06-08-703 IN ITS ENTIRETY; REPEALING ORDINANCE NO. 11-03-875 IN ITS ENTIRETY; REPEALING CHAPTER 82, ARTICLE IX., SECTIONS 82-371 THROUGH 82-377 OF THE CITY OF MURPHY CODE OF ORDINANCES IN ITS ENTIRETY; AMENDING THE CITY OF MURPHY CODE OF ORDINANCES BY AMENDING CHAPTER 82, ARTICLE IX, TO ESTABLISH A NEW DROUGHT CONTINGENCY AND WATER EMERGENCY RESPONSE PLAN; ESTABLISHING MANDATORY WATERING SCHEDULE FOR STAGE 2, INCLUDING PROHIBITED WATERING HOURS; ESTABLISHING MANDATORY WATERING SCHEDULE FOR STAGE 3, INCLUDING PROHIBITED WATERING HOURS; ESTABLISHING A WATER RATE SURCHARGE FOR STAGE 4; ESTABLISHING PROCEDURES FOR GRANTING VARIANCES; ESTABLISHING PENALTIES FOR VIOLATING THE RESTRICTIONS AND PROVISIONS FOR ENFORCEMENT OF THESE RESTRICTIONS; PROVIDING FOR MANDATORY PROVISIONS IN WHOLESALE WATER CONTRACTS; PROVIDING FOR FILING OF THE PLAN WITH THE TCEQ; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A CUMULATIVE/REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Murphy, Texas (the “City”), recognizes that the amount of water available to its water customers is limited; and

WHEREAS, the City recognizes that due to natural limitations, drought conditions, system failures and other acts of God which may occur, the City cannot guarantee an uninterrupted water supply for all purposes at all times; and

WHEREAS, the Water Code and the regulations of the Texas Commission on Environmental Quality (the “Commission”) require that the City adopt a Drought Contingency and Water Emergency Response Plan; and

WHEREAS, the City has determined an urgent need in the best interest of the public to adopt a Drought Contingency and Water Emergency Response Plan; and

WHEREAS, pursuant to Chapter 54 of the Local Government Code, the City is authorized to adopt such Ordinances necessary to preserve and conserve its water resources; and

WHEREAS, the City Council of the City of Murphy desires to adopt the North Texas Municipal Water District (the “NTMWD”) Model Drought Contingency and Water Emergency Response Plan as official City policy for the conservation of water.

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

SECTION 1. FINDINGS INCORPORATED.

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

SECTION 2. AMENDMENT OF CHAPTER 82, ARTICLE IX., CODE OF ORDINANCES.

That Chapter 82, Article IX., Sections 82-371 through 82-377 of the Code of Ordinances of the City of Murphy, Texas are hereby repealed and Chapter 82, Article IX., is hereby amended to adopt a new Drought Contingency and Water Emergency Response Plan to read as follows:

“Sec. 82-371. Adoption of Plan.

The City Council hereby approves and adopts the NTMWD Model Drought Contingency and Water Emergency Response Plan, as modified for the City of Murphy (the “Plan”), attached hereto as Addendum A, as if recited verbatim herein. The City commits to implement the requirements and procedures set forth in the adopted Plan.

Sec. 82-372. Mandatory Watering Schedule for Stage 2; Prohibited Hours.

In the event the City Manager declares Stage 2, customers shall comply with the following schedule for irrigation of existing landscape areas with hose-end sprinklers or irrigation systems:

- A. Schedule:
 - a) Residential Street addresses ending in odd numbers (1,3,5,7,9) may water on Mondays and Thursdays only.
 - b) Residential Street addresses ending in even numbers (0,2,4,6,8) may water on Wednesdays and Saturdays only.
 - c) Public Schools, All Non-Residential Businesses, City and HOA entries/medians may water on Fridays and Tuesdays only.
- B. Prohibited Watering Hours. All watering is prohibited during the hours of 10:00 a.m. – 6:00 p.m.

Sec. 82-373. Mandatory Watering Schedule for Stage 3; Prohibited Hours.

In the event the City Manager declares Stage 3, all of the requirements of Stages 1 and 2 remain in effect during Stage 3, except customers shall comply with the following

schedule for irrigation of existing landscape areas with hose-end sprinklers or irrigation systems:

- A. Schedule between April 1 and October 31:
 - a) Residential Street addresses ending in odd numbers (1,3,5,7,9) may water on Mondays only.
 - b) Residential Street addresses ending in even numbers (0,2,4,6,8) may water on Wednesdays only.
 - c) Public Schools, All Non-Residential Businesses, City and HOA entries/medians may water on Fridays only.
- B. Schedule between November 1 and March 31:
 - a) Limit landscape watering with sprinklers or irrigation systems between November 1 and March 31 to once every two weeks. All water customers using sprinklers or irrigation systems may only operate those systems on Thursdays, if needed. Specific dates will be published on the city website of designated watering days for designated service zones and water customers.
- C. Prohibited Watering Hours. All watering is prohibited during the hours of 10:00 a.m. – 6:00 p.m.

Sec. 82-374. Water Rate Surcharge.

In the event the City Manager declares Stage 4, all of the requirements of Stages 2 and 3 remain in effect during Stage 4 with the same mandatory irrigation schedule listed in Stage 3 and, in addition, a customer will be charged a water rate surcharge for water usage as follows:

<u>Gallons</u>	<u>Rate</u>
0 – 15,000	1.25 times the regular rate
15,001-30,000	2 times the regular rate
30,001 – 45,000	2.5 times the regular rate
45,001 +	3 times the regular rate

The regular rate shall be established pursuant to the City's fee ordinance on an annual basis.

Sec. 82-375. Variances to the Plan.

- (a) Customers may water new planting of grass within the first thirty (30) days up to four (4) hours a day by any means. Watering is prohibited from 10:00 a.m. to 6:00 p.m.
 - (1) Prior to the first day of the thirty (30) day watering period, residents or businesses must provide the following information to the City:
 - i. Address;
 - ii. Company name;
 - iii. Superintendent name;
 - iv. Superintendent contact number;

- v. First day of thirty (30) day watering period;
- vi. Expiration date of thirty (30) day watering period; and
- vii. Starting and ending time of watering period.

(2) Customers are required to have a weather proof sign, capable of lasting the full thirty (30) day watering period, posted in the front yard. The sign shall be separate and not attached to any other signs. In addition, a window sign shall be posted on the inside of a window, on the front of the building. The sign shall be legible from the street on neon colored paper with black print. Window signs shall include the following information:

- i. Company name;
- ii. Address;
- iii. Approved thirty (30) day watering period;
- iv. Approved day of the week, as specified in Stage 3 Restrictions;
- v. Starting date and ending date of thirty (30) day water period; and
- vi. Starting and ending time of watering period.

(b) The City Manager or his/her designee may, in writing, grant a temporary variance of existing water uses otherwise prohibited under the Plan if the City Manager or his/her designee determines that the failure to grant such a variance would cause an emergency condition adversely affecting the public health, safety or welfare, or the person requesting the variance would suffer an undue hardship and the person demonstrates that:

- (1) Compliance with the Plan cannot be technically accomplished during the duration of the water supply shortage or other condition for which the Plan is in effect; or
- (2) Alternative methods can be implemented which will achieve a similar level of compliance.

(c) Plan or a particular drought response stage has been initiated. A petition for a variance must include the following:

- (1) The name and address of petitioners;
- (2) The purpose of the intended water use;
- (3) The specific requirement of the Plan from which the petitioner is requesting relief;
- (4) A detailed statement as to how the specific requirement creates a hardship unique to the petitioner or adversely affects the petitioner, and a statement as to what damage or harm will occur to the petitioner or others if the petitioner complies with this article;
- (5) A description of the relief requested;
- (6) The period of time for which the variance is sought; and
- (7) A description of what alternative water use restrictions or other measures the petitioner is taking or proposes to take in order to meet the intent of this Plan.

- (d) Unless waived or modified in writing by the City Manager or his/her designee, a variance granted under this section shall include a timetable for compliance and shall contain a condition terminating the variance if the petitioner fails to meet a specified requirement of the variance.
- (e) A variance expires when a particular Drought Response Stage is no longer in effect. No variance will be retroactive or otherwise justify any violation of this Plan that occurs prior to the issuance of the variance.

Sec. 82-376. Penalty; Enforcement of Restrictions.

- (a) Any customer, defined pursuant to 30 Tex. Admin. Code Chapter 291, failing to comply with the provisions of the Plan and/or this ordinance shall be subject to a fine of up to two thousand dollars (\$2,000.00) and/or discontinuance of water service by the City. Proof of a culpable mental state is not required for a conviction of an offense under this section. Each day a customer fails to comply with the Plan is a separate violation. The City's authority to seek injunctive or other civil relief available under the law is not limited by this section.
- (b) Each day that one or more of the provisions in the Plan and/or this ordinance are violated shall constitute a separate offense. If a customer is convicted of three (3) or more distinct violations of the Plan and/or this ordinance, the City Manager or his/her designee shall, upon due notice to the customer, be authorized to discontinue water service to the premises where such violations occur. Services discontinued under such circumstances shall be restored only upon payment of a re-connection charge, hereby established at \$50, and any other costs incurred by the City in discontinuing service. In addition, suitable assurance must be given to the City Manager or his/her designee that the same action shall not be repeated while the Plan and/or this ordinance is in effect. Compliance with this Plan and/or this ordinance may also be sought through injunctive relief in the district court.
- (c) Any person, including a person classified as a customer of the City, in apparent control of the property where a violation occurs or originates shall be presumed to be the violator, and proof that the violation occurred on the person's property shall constitute a rebuttable presumption that the person in apparent control of the property committed the violation, but any such person shall have the right to show that he/she did not commit the violation. Parents shall be presumed to be responsible for violations of their minor children and proof that a violation, committed by a child, occurred on property within the parents' control shall constitute a rebuttable presumption that the parent committed the violation, but any such parent may be excused if he/she proves that he/she had previously directed the child not to use the water as it was used in violation of the Plan and that the parent could not have reasonably known of the violation.
- (d) Any employee of the city, police officer, or other employee designated by the City Manager, may issue a citation to a person he/she reasonably believes to be in violation of the Plan and/or this ordinance. The citation shall be prepared in duplicate and shall contain the name and address of the alleged violator, if known, the offense charged, and shall direct him/her to appear in the municipal court on the date shown on the citation for

which the date shall not be less than three (3) days nor more than five (5) days from the date the citation was issued. The alleged violator shall be served a copy of the citation. Service of the citation shall be complete upon delivery of the citation to the alleged violator, to an agent or employee of a violator, or to a person over eighteen (18) years of age who is a member of the violator's immediate family or is a resident of the violator's residence. The alleged violator shall appear in municipal court to enter a plea of guilty or not guilty for the violation of the Plan. If the alleged violator fails to appear in municipal court, a warrant for his/her arrest may be issued. A summons to appear may be issued in lieu of an arrest warrant. These cases shall be expedited and given preferential setting in municipal court before all other cases.

Sec. 82-377. Mandatory Provisions in Wholesale Water Contracts.

All wholesale water contracts entered into or renewed after adoption of the Plan and/or this ordinance, including contract extensions, shall include a provision that requires all wholesale water customers of the City to comply with the provisions of the Plan and/or this ordinance.”

SECTION 3. Filing of Plan.

The City Manager or his designee is hereby directed to file a copy of the Plan and this Ordinance with the Commission in accordance with Title 30, Chapter 288 of the Texas Administrative Code.

SECTION 4. Severability Clause.

If any word, section, article, phrase, paragraph, sentence, clause or portion of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect, for any reason, the validity of the remaining portions of this ordinance and the remaining portions shall remain in full force and effect.

SECTION 5. Cumulative/Repealer Clause.

This ordinance shall be cumulative of all provisions of State or Federal law and other ordinances of the City of Murphy, Texas, including the Plan attached hereto as Addendum A, whether codified or uncodified, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed to the extent of such conflict. Notwithstanding the foregoing, this ordinance repeals, in their entirety, Ordinance Nos. 06-07-699, 06-08-703 and 11-03-875.

SECTION 6. Savings Clause.

All rights and remedies of the City of Murphy, Texas, are expressly saved as to any and all violations of the provisions of this ordinance or any other ordinance which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or

not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 7. Effective Date.

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

DULY PASSED, APPROVED AND ADOPTED by the City Council of the City of Murphy, Texas, on this the 18th day of October, 2011.



Bret M. Baldwin, Mayor
City of Murphy

ATTEST:



Aimee Nemer, City Secretary
City of Murphy



APPROVED AS TO FORM:

Wm. Andrew Messer, City Attorney

ADDENDUM A

**City of Murphy
Drought Contingency and
Water Emergency Response Plan
AS A North Texas Municipal Water District Customer**

**City of Murphy
Drought Contingency and
Water Emergency Response Plan
AS A North Texas Municipal Water District Customer**

1. INTRODUCTION AND OBJECTIVES

This plan addresses all of the current TCEQ requirements for a drought contingency plan. .

The measures included in this drought contingency and water emergency response plan are intended to provide short-term water savings during drought or emergency conditions. Water savings associated with ongoing, long-term strategies are discussed in the *Model Water Conservation Plan for North Texas Municipal Water District Member Cities and Customers*.²

The purpose of this drought contingency and water emergency response plan is as follows:

- To conserve the available water supply in times of drought and emergency
- To maintain supplies for domestic water use, sanitation, and fire protection
- To protect and preserve public health, welfare, and safety
- To minimize the adverse impacts of water supply shortages
- To minimize the adverse impacts of emergency water supply conditions.

The NTMWD supplies treated water to its Customers. This plan was developed by NTMWD in consultation with its Member Cities. In order to adopt this plan, each NTMWD Customer will need to adopt ordinance(s) or regulation(s) implementing the plan, including the determination of fines and enforcement procedures. The plan calls for Customers to adopt drought stages initiated by NTMWD during a drought or water supply emergency. NTMWD Customers may also adopt more stringent drought or water emergency response stages than NTMWD if conditions warrant.

A drought is defined as an extended period of time when an area receives insufficient amounts of rainfall to replenish the water supply, causing water supply sources, in this case reservoirs, to be depleted. In the absence of drought response measures, water demands tend to increase during a drought due to the need for additional outdoor irrigation. The severity of a drought depends on the degree of depletion of supplies and on the relationship of demand to available supplies. The NTMWD considers a drought to end when all of its supply reservoirs refill to the conservation storage pool.

2. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY RULES

The TCEQ rules governing development of drought contingency plans for public water suppliers are contained in Title 30, Part 1, Chapter 288, Subchapter B, Rule 288.20 of the

Texas Administrative Code, a current copy of which is included in Appendix B. For the purpose of these rules, a drought contingency plan is defined as “a strategy or combination of strategies for temporary supply and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies.”¹

Minimum Requirements

TCEQ’s minimum requirements for drought contingency plans are addressed in the following subsections of this report:

- 288.20(a)(1)(A) – Provisions to Inform the Public and Provide Opportunity for Public Input – Section 3.1
- 288.20(a)(1)(B) – Provisions for Continuing Public Education and Information – Section 3.2
- 288.20(a)(1)(C) – Coordination with the Regional Water Planning Group – Section 3.7
- 288.20(a)(1)(D) – Criteria for Initiation and Termination of Drought Stages – Section 3.3
- 288.20(a)(1)(E) – Drought and Emergency Response Stages – Section 3.4
- 288.20(a)(1)(F) – Specific, Quantified Targets for Water Use Reductions – Section 3.4
- 288.20(a)(1)(G) – Water Supply and Demand Management Measures for Each Stage – Section 3.4
- 288.20(a)(1)(H) – Procedures for Initiation and Termination of Drought Stages – Section 3.3
- 288.20(a)(1)(I) - Procedures for Granting Variances – Section 3.5
- 288.20(a)(1)(J) - Procedures for Enforcement of Mandatory Restrictions – Section 3.6
- 288.20(a)(3) – Consultation with Wholesale Supplier – Sections 1, 3.3, and 3.4
- 288.20(b) – Notification of Implementation of Mandatory Measures – Section 3.3
- 288.20(c)– Review and Update of Plan – Section 3.8

3. DROUGHT CONTINGENCY AND WATER EMERGENCY RESPONSE PLAN

3.1 Provisions to Inform the Public and Opportunity for Public Input

City of Murphy will provide opportunity for public input in the development of this drought contingency and water emergency response plan by the following means:

- Providing written notice of the proposed plan and the opportunity to comment on the plan by newspaper, posted notice, and notice on the City’s web site.
- Making the draft plan available on the City’s web site.
- Providing the draft plan to anyone requesting a copy.
- Holding a public meeting.

3.2 Provisions for Continuing Public Education and Information

City of Murphy will inform and educate the public about the drought contingency and water emergency response plan by the following means:

- Preparing a bulletin describing the plan and making it available at city hall and other appropriate locations.
- Making the plan available to the public through the City's web site.
- Including information about the drought contingency and water emergency response plan on the City's web site.
- Notifying local organizations, schools, and civic groups that staff are available to make presentations on the drought contingency and water emergency response plan (usually in conjunction with presentations on water conservation programs).

At any time that the drought contingency and water emergency response plan is activated or the drought stage or water emergency response stage changes, City of Murphy will notify local media of the issues, the drought response stage or water emergency response stage (if applicable), and the specific actions required of the public. The information will also be publicized on the City's web site. Billing inserts will also be used as appropriate.

3.3 Initiation and Termination of Drought or Water Emergency Response Stages

Initiation of a Drought or Water Emergency Response Stage

The City Manager, or official designee may order the implementation of a drought or water emergency response stage when one or more of the trigger conditions for that stage is met. The following actions will be taken when a drought or water emergency response stage is initiated:

- The public will be notified through local media and the City's web site as described in Section 3.2.
- The NTMWD will be notified by e-mail with a follow-up letter or fax that provides details of the reasons for initiation of the drought/water emergency response stage.
- If any mandatory provisions of the drought contingency and water emergency response plan are activated, City of Murphy will notify the Executive Director of the TCEQ and the Executive Director of the NTMWD within 5 business days.

Drought contingency and water emergency response stages imposed by NTMWD action must be initiated by Member Cities and Customers. For other trigger conditions internal to City of Murphy, the City Manager, or official designee may decide not to order the implementation of a drought response stage or water emergency even though one or more of the trigger criteria for the stage are met. Factors which could influence such a decision include, but are not limited to, the time of the year, weather conditions, the anticipation of replenished water supplies, or the anticipation that additional facilities will become available to meet needs. The reason for this decision should be documented.

Termination of a Drought or Water Emergency Response Stage

The City Manager or official designee may order the termination of a drought or water emergency response stage when the conditions for termination are met or at their discretion. The following actions will be taken when a drought or emergency response stage is terminated:

- The public will be notified through local media and the City's web site as described in Section 3.2.

- The NTMWD will be notified by e-mail with a follow-up letter or fax. If any mandatory provisions of the drought contingency and water emergency response plan that have been activated are terminated, City of Murphy will notify the Executive Director of the TCEQ and the Executive Director of the NTMWD within 5 business days. The City Manager or official designee may decide not to order the termination of a drought or water emergency response stage even though the conditions for termination of the stage are met. Factors which could influence such a decision include, but are not limited to, the time of the year, weather conditions, or the anticipation of potential changed conditions that warrant the continuation of the drought stage. The reason for this decision should be documented.

3.4 DROUGHT CONTINGENCY AND WATER EMERGENCY RESPONSE STAGES AND MEASURES

STAGE 1

Initiation and Termination Conditions for Stage 1

- The NTMWD has initiated Stage 1, which may be initiated due to one or more of the following:
 - The NTMWD Executive Director, with the concurrence of the NTMWD Board of Directors, finds that conditions warrant the declaration of Stage 1.
 - Water demand is projected to approach the limit of the permitted supply.
 - The storage in Lavon Lake is less than 65 percent of the total conservation pool capacity.
 - NTMWD's storage in Jim Chapman Lake is less than 65 percent of NTMWD's total conservation pool capacity.
 - The Sabine River Authority has indicated that its Upper Basin water supplies used by NTMWD (Lake Tawakoni and/or Lake Fork) are in a Mild drought.
 - NTMWD has concern that Lake Texoma, the East Fork Raw Water Supply Project, or some other NTMWD source may be limited in availability in the next 6 months.
 - NTMWD water demand exceeds 90 percent of the amount that can be delivered to customers for three consecutive days.
 - Water demand for all or part of NTMWD's delivery system approaches delivery capacity because delivery capacity is inadequate.
 - NTMWD's supply source becomes contaminated.
 - NTMWD's water supply system is unable to deliver water due to the failure or damage of major water system components.
- City's water demand exceeds 90 percent of the amount that can be delivered to customers for three consecutive days.
- City's water demand for all or part of the delivery system approaches delivery capacity because delivery capacity is inadequate.
- Supply source becomes contaminated.
- City's water supply system is unable to deliver water due to the failure or damage of major water system components.
- City's individual plan may be implemented if other criteria dictate.

Stage 1 may terminate when NTMWD terminates its Stage 1 condition or when the circumstances that caused the initiation of Stage 1 no longer prevail.

Goal for Use Reduction and Actions Available under Stage 1

Stage 1 is intended to raise public awareness of potential drought or water emergency problems. The goal for water use reduction under Stage 1 is a two percent reduction in the amount of water produced by NTMWD. The City Manager or official designee may order the implementation of any of the actions listed below, as deemed necessary:

- Request voluntary reductions in water use by the public.
- Increase public education efforts on ways to reduce water use.
- Review the problems that caused the initiation of Stage 1.
- Intensify efforts on leak detection and repair.
- Reduce non-essential city government water use. (Examples include street cleaning, vehicle washing, operation of ornamental fountains, etc.)
- Notify major water users and work with them to achieve voluntary water use reductions.
- Reduce city government water use for landscape irrigation.
- Ask the public to follow voluntary landscape watering schedules.

STAGE 2

Initiation and Termination Conditions for Stage 2

- The NTMWD has initiated Stage 2, which may be initiated due to one or more of the following:
 - The NTMWD Executive Director, with the concurrence of the NTMWD Board of Directors, finds that conditions warrant the declaration of Stage 2.
 - Water demand is projected to approach the limit of the permitted supply.
 - The storage in Lavon Lake is less than 55 percent of the total conservation pool capacity.
 - NTMWD's storage in Jim Chapman Lake is less than 55 percent of NTMWD's total conservation pool capacity.
 - The Sabine River Authority has indicated that its Upper Basin water supplies used by NTMWD (Lake Tawakoni and/or Lake Fork) are in a Mild drought.
 - NTMWD has concern that Lake Texoma, the East Fork Raw Water Supply Project, or some other NTMWD source may be limited in availability in the next 3 months.
 - NTMWD water demand exceeds 95 percent of the amount that can be delivered to customers for three consecutive days.
 - NTMWD water demand for all or part of the delivery system equals delivery capacity because delivery capacity is inadequate.
 - NTMWD's supply source becomes contaminated.
 - NTMWD's water supply system is unable to deliver water due to the failure or damage of major water system components.
- City's water demand exceeds 95 percent of the amount that can be delivered to customers for three consecutive days.

- City's water demand for all or part of the delivery system equals delivery capacity because delivery capacity is inadequate.
- Supply source becomes contaminated.
- City's water supply system is unable to deliver water due to the failure or damage of major water system components.
- City's individual plan may be implemented if other criteria dictate.

Stage 2 may terminate when NTMWD terminates its Stage 2 condition or when the circumstances that caused the initiation of Stage 2 no longer prevail.

Goal for Use Reduction and Actions Available under Stage 2

The goal for water use reduction under Stage 2 is a five percent reduction in the amount of water produced by NTMWD. If circumstances warrant or if required by NTMWD, the City Manager, or official designee can set a goal for greater water use reduction. The City Manager, or official designee may order the implementation of any of the actions listed below, as deemed necessary. Measures described as "requires notification to TCEQ" impose mandatory requirements on customers. The City must notify TCEQ and NTMWD within five business days if these measures are implemented:

- Continue or initiate any actions available under Stage 1.
- Initiate engineering studies to evaluate alternatives should conditions worsen.
- Further accelerate public education efforts on ways to reduce water use.
- Halt non-essential city government water use. (Examples include street cleaning, vehicle washing, operation of ornamental fountains, etc.)
- Encourage the public to wait until the current drought or emergency situation has passed before establishing new landscaping.
- **Requires Notification to TCEQ** – Limit landscape watering with sprinklers or irrigation systems to no more than two days per week. An exception is allowed for landscape associated with new construction that may be watered as necessary for 30 days from the date of the certificate of occupancy. An exemption is also allowed for registered and properly functioning ET/Smart irrigation systems and drip irrigation systems, which do not have restrictions to the number of days per week of operation.
- **Requires Notification to TCEQ** – Restrict landscape and lawn irrigation from 10 AM to 6 PM beginning April 1 through October 31 of each year.
- **Requires Notification to TCEQ** – Prohibit planting of cool season grasses (such as rye grass or other similar grasses) that intensify cool season water requirements.

STAGE 3

Initiation and Termination Conditions for Stage 3

- The NTMWD has initiated Stage 3, which may be initiated due to one or more of the following:
 - The NTMWD Executive Director, with the concurrence of the NTMWD Board of Directors, finds that conditions warrant the declaration of Stage 3.
 - Water demand is projected to approach or exceed the limit of the permitted supply.
 - The storage in Lavon Lake is less than 45 percent of the total conservation pool capacity.

- NTMWD's storage in Jim Chapman Lake is less than 45 percent of NTMWD's total conservation pool capacity.
 - The Sabine River Authority has indicated that its Upper Basin water supplies used by NTMWD (Lake Tawakoni and/or Lake Fork) are in a Moderate drought. (Measures required by SRA under a Moderate drought designation are similar to those under NTMWD's Stage 3.)
 - The supply from Lake Texoma, the East Fork Raw Water Supply Project, or some other NTMWD source has become limited in availability.
 - NTMWD water demand exceeds 98 percent of the amount that can be delivered to customers for three consecutive days.
 - NTMWD water demand for all or part of the delivery system exceeds delivery capacity because delivery capacity is inadequate.
 - NTMWD's supply source becomes contaminated.
 - NTMWD's water supply system is unable to deliver water due to the failure or damage of major water system components.
- City's water demand exceeds 98 percent of the amount that can be delivered to customers for three consecutive days.
 - City's water demand for all or part of the delivery system exceeds delivery capacity because delivery capacity is inadequate.
 - Supply source becomes contaminated.
 - City's water supply system is unable to deliver water due to the failure or damage of major water system components.
 - City's individual plan may be implemented if other criteria dictate.

Stage 3 may terminate when NTMWD terminates its Stage 3 condition or when the circumstances that caused the initiation of Stage 3 no longer prevail.

Goals for Use Reduction and Actions Available under Stage 3

The goal for water use reduction under Stage 3 is a reduction of ten percent in the amount of water obtained from NTMWD. If circumstances warrant or if required by NTMWD, the City Manager, or official designee can set a goal for a greater water use reduction.

The City Manager or official designee must implement any action(s) required by NTMWD. In addition, the City Manager, or official designee may order the implementation of any of the actions listed below, as deemed necessary. Measures described as "requires notification to TCEQ" impose mandatory requirements on customers. The City must notify TCEQ and NTMWD within five business days if these measures are implemented:

- Continue or initiate any actions available under Stages 1 and 2.
- Implement viable alternative water supply strategies.
- **Requires Notification to TCEQ** – Initiate mandatory water use restrictions as follows:
 - Prohibit hosing of paved areas, buildings, or windows. (Pressure washing of impervious surfaces is allowed.)
 - Prohibit operation of all ornamental fountains or other amenity impoundments to the extent they use treated water.
 - Prohibit washing or rinsing of vehicles by hose except with a hose end cutoff nozzle.
 - Prohibit using water in such a manner as to allow runoff or other waste.

- **Requires Notification to TCEQ** – Limit landscape watering with sprinklers or irrigation systems at each service address to once every seven days. Exceptions are as follows:
 - Foundations, new landscaping, new plantings (first year) of shrubs, and trees may be watered for up to 2 hours on any day by a hand-held hose, a soaker hose, or a dedicated zone using a drip irrigation system.
 - Golf courses may water greens and tee boxes without restrictions.
 - Public athletic fields used for competition may be watered twice per week.
 - Locations using other sources of water supply for irrigation may irrigate without restrictions.
 - Registered and properly functioning ET/Smart irrigation systems and drip irrigation systems may irrigate without restrictions.
- **Requires Notification to TCEQ** – Limit landscape watering with sprinklers or irrigation systems between November 1 and March 31 to once every two weeks. An exception is allowed for landscape associated with new construction that may be watered as necessary for 30 days from the date of the certificate of occupancy, temporary certificate of occupancy, or certificate of completion.
- **Requires Notification to TCEQ** – Prohibit hydroseeding, hydromulching, and sprigging.
- **Requires Notification to TCEQ** – Existing swimming pools may not be drained and refilled (except to replace normal water loss).
- **Requires Notification to TCEQ** - Initiate a rate surcharge as requested by NTMWD.
- **Requires Notification to TCEQ** - Initiate a rate surcharge for all water use over a certain level.
- **Requires Notification to TCEQ** – Prohibit watering of golf courses using treated water, except as needed to keep greens and tee boxes alive.

STAGE 4

Initiation and Termination Conditions for Stage 4

- The NTMWD has initiated Stage 4, which may be initiated due to one or more of the following:
 - The NTMWD Executive Director, with the concurrence of the NTMWD Board of Directors, finds that conditions warrant the declaration of Stage 4.
 - Water demand is projected to approach or exceed the limit of the permitted supply.
 - The storage in Lavon Lake is less than 35 percent of the total conservation pool capacity.
 - NTMWD's storage in Jim Chapman Lake is less than 35 percent of NTMWD's total conservation pool capacity.
 - The Sabine River Authority has indicated that its Upper Basin water supplies used by NTMWD (Lake Tawakoni and/or Lake Fork) are in a severe drought or emergency.
 - The supply from Lake Texoma, the East Fork Raw Water Supply Project, or some other NTMWD source has become severely limited in availability.

- NTMWD water demand exceeds the amount that can be delivered to customers.
- NTMWD water demand for all or part of the delivery system seriously exceeds delivery capacity because the delivery capacity is inadequate.
- NTMWD's supply source becomes contaminated.
- NTMWD's water supply system is unable to deliver water due to the failure or damage of major water system components.
- City's water demand exceeds the amount that can be delivered to customers.
- City's water demand for all or part of the delivery system seriously exceeds delivery capacity because the delivery capacity is inadequate.
- Supply source becomes contaminated.
- City's water supply system is unable to deliver water due to the failure or damage of major water system components.
- City's individual plan may be implemented if other criteria dictate.

Stage 4 may terminate when NTMWD terminates its Stage 4 condition or when the circumstances that caused the initiation of Stage 4 no longer prevail.

Goals for Use Reduction and Actions Available under Stage 4

The goal for water use reduction under Stage 4 is a reduction of whatever amount is necessary in the amount of water obtained from NTMWD. If circumstances warrant or if required by NTMWD, the City Manager, or official designee can set a goal for a greater water use reduction.

The City Manager or official designee must implement any action(s) required by NTMWD. In addition, the City Manager, or official designee may order the implementation of any of the actions listed below, as deemed necessary. Measures described as "requires notification to TCEQ" impose mandatory requirements on member cities and customers. The City must notify TCEQ and NTMWD within five business days if these measures are implemented.

- Continue or initiate any actions available under Stages 1, 2, and 3.
- Implement viable alternative water supply strategies.
- **Requires Notification to TCEQ** – Prohibit the irrigation of new landscaping using treated water.
- **Requires Notification to TCEQ** – Prohibit washing of vehicles except as necessary for health, sanitation, or safety reasons.
- **Requires Notification to TCEQ** – Prohibit commercial and residential landscape watering, except that foundations and trees may be watered for 2 hours on any day with a hand-held hose, a soaker hose, or a dedicated zone using a drip irrigation system. ET/Smart controllers and drip irrigation systems are not exempt from this requirement.
- **Requires Notification to TCEQ** – Prohibit golf course watering with treated water except for greens and tee boxes.
- **Requires Notification to TCEQ** – Prohibit the permitting of private pools. Pools already permitted may be completed and filled with water. Existing private and public pools may add water to maintain pool levels but may not be drained and refilled.
- **Requires Notification to TCEQ** – Require all commercial water users to reduce water use by a percentage established by the City Manager, or official designee.

- **Requires Notification to TCEQ** - Initiate a rate surcharge for all water use over normal rates for all water use.

3.5 Procedures for Granting Variances to the Plan

The City Manager or official designee may grant temporary variances for existing water uses otherwise prohibited under this drought contingency and water emergency response plan if one or more of the following conditions are met:

- Failure to grant such a variance would cause an emergency condition adversely affecting health, sanitation, or fire safety for the public or the person or entity requesting the variance.
- Compliance with this plan cannot be accomplished due to technical or other limitations.
- Alternative methods that achieve the same level of reduction in water use can be implemented.

Variances shall be granted or denied at the discretion of the City Manager or official designee. All petitions for variances should be in writing and should include the following information:

- Name and address of the petitioners
- Purpose of water use
- Specific provisions from which relief is requested
- Detailed statement of the adverse effect of the provision from which relief is requested
- Description of the relief requested
- Period of time for which the variance is sought
- Alternative measures that will be taken to reduce water use
- Other pertinent information.

3.6 Procedures for Enforcing Mandatory Water Use Restrictions

Mandatory water use restrictions may be imposed in Stage 2, Stage 3 and Stage 4 drought contingency and water emergency response stages. The penalties associated with the mandatory water use restrictions will be determined by City Ordinance.

3.7 Coordination with the Regional Water Planning Group and NTMWD

The City will send a draft of its ordinance(s) or other regulation(s) implementing this plan to NTMWD for their review and comment. The City will also send the final ordinance(s) or other regulation(s) to NTMWD.

3.8 Review and Update of Drought Contingency and Water Emergency Response Plan

As required by TCEQ rules, the City of Murphy must review the drought contingency and water emergency response plan every five (5) years. The plan will be updated as appropriate based on new or updated information.

APPENDIX A
LIST OF REFERENCES

APPENDIX A LIST OF REFERENCES

- (1) Title 30 of the Texas Administrative Code, Part 1, Chapter 288, Subchapter B, Rule 288.20, downloaded from <http://www.tnrcc.state.tx.us/oprd/rules/pdflib/288a.pdf>, July 2007.
- (2) Freese and Nichols, Inc.: North Texas Municipal Water District Water Conservation and Drought Contingency and Water Emergency Response Plan, prepared for the North Texas Municipal Water District, Fort Worth, March 2008.

The following conservation and drought contingency plans and related documents were reviewed in the development of this plan. References marked with a * were used heavily in the development of this plan.

- (3) City of Austin Water Conservation Division: "City of Austin Water Drought Contingency Plan, Developed to Meet Senate Bill 1 Regulatory Requirements," Austin, August 1999.
- (4) City of Austin Water Conservation Division: "City of Austin Water Conservation Plan, Developed to Meet Senate Bill 1 Regulatory Requirements," Austin, August 1999.
- (5) Upper Trinity Regional Water District: "Water Conservation Plan and Emergency Water Demand Management Plan," adopted by the Board of Directors, Lewisville, August 5, 1999.
- (6) Upper Trinity Regional Water District: "Water Conservation Plan and Emergency Water Demand Management Plan (2002 Amended)," adopted by the Board of Directors, Lewisville, February 2002.
- (7) *City of Dallas Water Utilities Department: "City of Dallas Water Management Plan," adopted by the City Council, Dallas, September 1999.
- (8) Updates to City of Dallas Water Management Plan found at <http://www.dallascityhall.com> in September 2003.
- (9) *City of Dallas Water Utilities Department: "City of Dallas Water Conservation Plan," adopted by the City Council, Dallas, September 1999.
- (10) *City of Fort Worth: "Water Conservation plan for the City of Fort Worth," Fort Worth, August 1999.
- (11) Updates to the City of Fort Worth water conservation plan found at <http://ci.fort-worth.tx.us> in September 2003.
- (12) *City of Fort Worth: "Emergency Water Management Plan for the City of Fort Worth," Fort Worth, August 19, 2003.
- (13) HDR Engineering, Inc.: "Water Conservation and Emergency Demand Management Plan," prepared for the Tarrant Regional Water District, Austin, February 2000.
- (14) Freese and Nichols, Inc.: "Water Conservation and Drought Contingency Plan," prepared for Brown County Water Improvement District No. 1, Fort Worth, August 1999.
- (15) Freese and Nichols, Inc.: "Water Conservation and Drought Contingency Plan," prepared for the Sabine River Authority of Texas, Fort Worth, September 1994.
- (16) HDR Engineering, Inc.: "Water Conservation and Emergency Demand Management Plan," prepared for the Tarrant Regional Water District, Austin, June 1998.
- (17) HDR Engineering, Inc.: "Water Conservation Plan for the City of Corpus Christi," adopted by the City of Corpus Christi City Council, August 24, 1999.
- (18) City of Houston's water conservation plan downloaded September 2003 from <http://www.cityofhouston.gov>
- (19) City of Houston: "Ordinance N. 2001-753, Amending Chapter 47 of the Code of Ordinances Relating to Water Emergencies," Houston, August 2001.
- (20) City of Houston: "Ordinance No. 98-764, Relating to Water Conservation," Houston, September 1998.

- (21) City of Houston: "Water Conservation Plan," 1998.
- (22) City of Houston: "Water Emergency Response Plan," Houston, July 15, 1998.
- (23) City of Lubbock: "Water Conservation Plan," ordinance number 10177 adopted by the City Council in August 1999.
- (24) City of El Paso Water Conservation Ordinance downloaded August 14, 2003 from <http://www.epwu.org/ordinance.html>
- (25) San Antonio Water System: "Water Conservation and Reuse Plan," San Antonio, November 1998 with June 2002 updates.
- (26) North Texas Municipal Water District: "District Policy No. 24 Water Conservation Plan Containing Drought Contingency Plan," adopted August 1999.
- (27) GDS Associates, Inc.: "Water Conservation Study," prepared for the Texas Water Development Board, Fort Worth, 2002.
- (28) A & N Technical Services, Inc.: "BMP Costs & Savings Study: A Guide to Data and Methods for Cost-Effectiveness Analysis of Urban Water Conservation Best Management Practices," prepared for The California Urban Water Conservation Council, Santa Monica, California, July 2000.
- (29) *City of Dallas: "City of Dallas Ordinances, Chapter 49, Section 21.1," Dallas, October 1, 2001.

APPENDIX B

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY RULES ON
DROUGHT CONTINGENCY PLANS**

APPENDIX B
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY RULES ON
DROUGHT CONTINGENCY PLANS

Texas Administrative Code

<u>TITLE 30</u>	ENVIRONMENTAL QUALITY
<u>PART 1</u>	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
<u>CHAPTER 288</u>	WATER CONSERVATION PLANS, DROUGHT CONTINGENCY PLANS, GUIDELINES AND REQUIREMENTS
<u>SUBCHAPTER B</u>	DROUGHT CONTINGENCY PLANS
RULE §288.20	Drought Contingency Plans for Municipal Uses by Public Water Suppliers

-
- (a) A drought contingency plan for a retail public water supplier, where applicable, must include the following minimum elements.
- (1) Minimum requirements. Drought contingency plans must include the following minimum elements.
- (A) Preparation of the plan shall include provisions to actively inform the public and affirmatively provide opportunity for public input. Such acts may include, but are not limited to, having a public meeting at a time and location convenient to the public and providing written notice to the public concerning the proposed plan and meeting.
- (B) Provisions shall be made for a program of continuing public education and information regarding the drought contingency plan.
- (C) The drought contingency plan must document coordination with the regional water planning groups for the service area of the retail public water supplier to ensure consistency with the appropriate approved regional water plans.
- (D) The drought contingency plan must include a description of the information to be monitored by the water supplier, and specific criteria for the initiation and termination of drought response stages, accompanied by an explanation of the rationale or basis for such triggering criteria.
- (E) The drought contingency plan must include drought or emergency response stages providing for the implementation of measures in response to at least the following situations:
- (i) reduction in available water supply up to a repeat of the drought of record;
 - (ii) water production or distribution system limitations;
 - (iii) supply source contamination; or
 - (iv) system outage due to the failure or damage of major water system components (e.g., pumps).

- (F) The drought contingency plan must include the specific, quantified targets for water use reductions to be achieved during periods of water shortage and drought. The entity preparing the plan shall establish the targets. The goals established by the entity under this subparagraph are not enforceable.
- (G) The drought contingency plan must include the specific water supply or water demand management measures to be implemented during each stage of the plan including, but not limited to, the following:
- (i) curtailment of non-essential water uses; and
 - (ii) utilization of alternative water sources and/or alternative delivery mechanisms with the prior approval of the executive director as appropriate (e.g., interconnection with another water system, temporary use of a non-municipal water supply, use of reclaimed water for non-potable purposes, etc.).
- (H) The drought contingency plan must include the procedures to be followed for the initiation or termination of each drought response stage, including procedures for notification of the public.
- (I) The drought contingency plan must include procedures for granting variances to the plan.
- (J) The drought contingency plan must include procedures for the enforcement of any mandatory water use restrictions, including specification of penalties (e.g., fines, water rate surcharges, discontinuation of service) for violations of such restrictions.
- (2) Privately-owned water utilities. Privately-owned water utilities shall prepare a drought contingency plan in accordance with this section and incorporate such plan into their tariff.
- (3) Wholesale water customers. Any water supplier that receives all or a portion of its water supply from another water supplier shall consult with that supplier and shall include in the drought contingency plan appropriate provisions for responding to reductions in that water supply.
- (b) A wholesale or retail water supplier shall notify the executive director within five business days of the implementation of any mandatory provisions of the drought contingency plan.
- (c) The retail public water supplier shall review and update, as appropriate, the drought contingency plan, at least every five years, based on new or updated information, such as the adoption or revision of the regional water plan.

Source Note: The provisions of this §288.20 adopted to be effective February 21, 1999, 24 TexReg 949; amended to be effective April 27, 2000, 25 TexReg 3544; amended to be effective October 7, 2004, 29 TexReg 9384.

APPENDIX C
LETTERS TO REGION C AND REGION D
WATER PLANNING GROUPS

Sample letter to

Date

Region C Water Planning Group
c/o North Texas Municipal Water District
P.O. Box 2408
Wylie, TX 75098

Dear Sir:

Enclosed please find a copy of the updated Drought Contingency and Water Emergency Response Plan for City of Murphy of the North Texas Municipal Water District. I am submitting a copy of this plan to the Region C Water Planning Group in accordance with the Texas Water Development Board and Texas Commission on Environmental Quality rules. The Board of the North Texas Municipal Water District adopted the updated model plan on March 2008.

Sincerely,

James Fisher, City Manager
City of Murphy

Sample letter by NTMWD

Date

Mr. Jim Thompson
Chair, Region D Water Planning Group
P.O. Box 1107
Atlanta, TX 75551

Dear Mr. Thompson:

Enclosed please find a copy of the recently updated Drought Contingency and Water Emergency Response Plan for City of Murphy of the North Texas Municipal Water District. I am submitting a copy of this plan to the Region C Water Planning Group in accordance with the Texas Water Development Board and Texas Commission on Environmental Quality rules. The Board of the North Texas Municipal Water District adopted the updated model plan on -----date.

Sincerely,

James M. Parks, Executive Director
North Texas Municipal Water District

APPENDIX D
ORDINANCE ADOPTING DROUGHT CONTINGENCY
AND WATER EMERGENCY RESPONSE PLAN

Issue

Consider, and/or act, on Board and Commission appointments, including establishing an interview panel comprised of three council members.

Staff Resource / Department

Kristi Gilbert, City Secretary
 GM Cox, Acting City Manager/Police Chief

Summary

Staff began advertising in July for applicants to fill five unexpired terms as listed below. The deadline to submit applications is September 6, 2013. Staff suggests the appointment of an interview panel comprised of three council members. Staff would recommend conducting interviews the week of September 9th with appointments being recommended at the September 17th Council meeting.

Staff begins advertising for all board and commission positions beginning in October. This year there will be 25 positions up for reappointment. Council may wish to have the interview panel appointed to serve not only to fill the unexpired terms, but to conduct the regular interviews in November, as well.

It is recommended that the Council appoint Support Services Manager Kim Parker as the City Official to the Animal Shelter Advisory Committee as she currently attends and is involved with the Committee.

Staff has advertised for the following positions:

<u>Position</u>	<u>Term Expiration</u>
4B Community Development Corporation Board Member	December 31, 2014
Municipal Development Corporation Board Member	December 31, 2013
Municipal Development Corporation Board Member	December 31, 2014
Board of Adjustment, Alternate Board Member	December 31, 2014

Staff Recommendation

Staff recommends the appointment of an Interview Panel comprised of three councilmembers to conduct interviews for the September unexpired terms and for the regular terms up for appointment in January.

Staff recommends the appointment of Kim Parker as the City Official designated to serve on the Animal Shelter Advisory Committee effective immediately with a term expiring December 31, 2014.

Attachments

Board and Commission Member List
 Board/Commission Description

2013 Boards & Commissions

4B COMMUNITY DEVELOPMENT CORPORATION

Kristen Roberts, Staff Liaison 972/468-4006 kroberts@murphytx.org

PLACE	BOARD MEMBER NAME	CURRENT TERM
1	Vacant	2013-2014
2	Cary Walker	2012-2013
3	Stephen Janiga	2013
4	Jennifer Berthiaume	2013-2014
5	Marty Brenner	2013-2014
6	Shawn Balusek	2013-2014
7	Eric Lopez	2012-2013

ANIMAL SHELTER ADVISORY COMMITTEE

Kim Parker, Staff Liaison 972/468-4235 kparker@murphytx.org

PLACE	BOARD MEMBER NAME	CURRENT TERM
1	Tammy Drake, ACO	
2	<i>City Official - Vacant</i>	2013-2014
3	Lorraine Chalkley	2013-2014
4	Buddy Russell	2013-2014
5	Stephanie Pennington, Chair	2010-2013
6	Beverly Mueller	2010-2013

BOARD OF ADJUSTMENT

Kristen Roberts, Staff Liaison 972/468-4006 kroberts@murphytx.org

PLACE	BOARD MEMBER NAME	CURRENT TERM
1	Scott Holden	2013-2014
2	Christine Johnson	2013-2014
3	Mahendra Parikh	2013-2014
4	Frank Steckler	2012-2013
5	David Grice	2012-2013
6	Lindy Martin	2012-2013
7	Sharon Kindall	2013
8	Beverly Gaither, Alternate	2013-2014
9	Robert Thomas, Alternate	2013-2014
10	Clint Pingleton, Alternate	2013-2014
11	Kenneth Tatsch, Alternate	2012-2013

BUILDING AND FIRE CODE APPEALS BOARD

Mark Lee, Staff Liaison 972/468-4303 mlee@murphytx.org

PLACE	BOARD MEMBER NAME	CURRENT TERM
1	Christine Johnson	2012-2013
2	Donald Decker	2013-2014
3	Scott Marin	2013-2014
4	John Hardy	2012-2013
5	Mahendra Parikh	2012-2013

ETHICS REVIEW COMMISSION

Andy Messer, City Attorney, Staff Liaison

PLACE	BOARD MEMBER NAME	CURRENT TERM
1	Drew Swanfeldt	2013-2014
2	Andrew Chase	2013-2014
3	Thomas McDade	2013-2014
4	Maggie Whitt	2013-2014
5	Barbara Harless	2012-2013

MURPHY MUNICIPAL DEVELOPMENT DISTRICT BOARD

James Fisher, City Manager 972/468-4007 jfisher@murphytx.org

PLACE	BOARD MEMBER NAME	CURRENT TERM
1	Betty Spraggins	2013
2	Joseph Mani	2013
3	Alain Dermarkar	2013
4	Owais Siddiqui	2013-2014
5	Jamie Nicholson	2013-2014

PARK & RECREATION BOARD

Kim Lenoir, Staff Liaison 972/468-4068 klenoir@murphytx.org

PLACE	BOARD MEMBER NAME	CURRENT TERM
1	Sherry Pace	2013-2014
2	Julia Baldwin	2013-2014
3	Mark Reed	2013-2014
4	Angelia Pinaga	2013-2014
5	Amy Lawrence	2012-2013
6	Katie Westhara	2012-2013
7	Kenneth Oltmann	2012-2013

PLANNING & ZONING COMMISSION

Kristen Roberts, Staff Liaison 972/468-4006 kroberts@murphytx.org

PLACE	BOARD MEMBER NAME	CURRENT TERM
1	Steve Levy	2012-2013
2	Eric Hemphill	2013-2014
3	Mathew Thekkil	2013-2014
4	Ty Holcomb	2013-2014
5	John Johnson	2012-2013
6	Jon King	2013-2014
7	Camille Hooper	2012-2013
8	Donald Rhea, Alternate	2013
9	Greg Mersch, Alternate	2013

City Council
August 20, 2013

Issue

Consider and/or act upon Ethics Review Commission recommendations:

1. A proposed resolution establishing the Rules and Procedures for the City of Murphy Ethics Commission
2. A proposed ordinance amending Chapter 2, Article IX of the Code of Ordinances entitled Code of Ethics.

Staff Resource / Department

James Fisher, City Manager
Kristi Gilbert, City Secretary
Andy Messer, City Attorney

Background

The Ethics Review Commission was established in 2012 and held several meetings in order to appoint its officers, review, consider and discuss the Code of Ethics of the City of Murphy and the Commission's duties and responsibilities in this regard, and to discuss, prepare and adopt its proposed Rules and Procedures for submission to the City Council for consideration and action. On July 19, 2012, the Commission approved its proposed Rules and Procedures and also approved certain recommendations, requests and notifications to be presented to the City Council.

Council took action at their October 16th and November 11th meetings providing direction for the proposed changes.

Four new members were appointed to the Ethics Review Commission in December of 2012. The Commission held meetings in February and April to review the proposed changes with the Assistant City Attorney. The attached includes the resulting documents after final attorney review.

Attachments

1. Proposed Resolution establishing the Rules and Procedures – Clean Version
2. Proposed Resolution establishing the Rules and Procedures – Blackline Version
3. Proposed Ordinance amending the Code of Ethics – Clean Version
4. Proposed Ordinance amending the Code of Ethics – Blackline Version

RESOLUTION NO. 13-R-774

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MURPHY, TEXAS, ADOPTING CERTAIN RULES AND PROCEDURES FOR THE ETHICS REVIEW COMMISSION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 8.01 of the City of Murphy, Texas Home-Rule Charter authorizes the City Council to create committees deemed desirable by the City Council and those which may be necessary to carry out the functions and obligations of the City; and,

WHEREAS, Ordinance 10-11-863 created the Ethics Review Commission; and

WHEREAS, Article VIII, Section 8.01 of the City of Murphy, Texas Home-Rule Charter also provides that the City Council shall by ordinance or resolution prescribe the purpose, composition, function, duties, accountability and tenure of each board, commission and committee where such are not prescribed by law or City Charter.

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

Section 1. That the foregoing recitals are hereby found to be true and correct findings of the City of Murphy, Texas, and are fully incorporated into the body of this resolution.

Section 2. Purpose and Intent. Recognizing that every legislative body needs a systematic way of conducting its business, this Resolution is to provide for the orderly conduct of business City of Murphy Ethics Review Commission.

Section 3. The Rules and Procedures attached as Exhibit “A” are hereby adopted as the official Rules and Procedures for the Ethics Review Commission.

Section 4. This resolution shall become effective from and after its passage.

DULY RESOLVED by the City Council of the City of Murphy, Texas, on this the 16th day of July, 2013.

Owais Siddiqui, Mayor Pro Tem
City of Murphy

ATTEST:

Kristi Gilbert, City Secretary
City of Murphy

APPROVED AS TO FORM:

Wm. Andrew Messer, City Attorney
City of Murphy

Exhibit "A"

**CITY OF MURPHY
ETHICS REVIEW COMMISSION****RULES AND PROCEDURES****SECTION 1. INTRODUCTION**

(a) The Ethics Review Commission (the "Commission") is an advisory body of the City of Murphy, Texas, having jurisdiction over ethics complaints as described in Chapter 2, Article IX of the Code of Ordinances of the City of Murphy, Texas. The Commission is responsible for its performance of its duties and responsibilities. The development of these rules and procedures is designed to ensure effective and efficient application of these rules and procedures.

(b) These rules and procedures address Commission relations among Commission members, and with City employees and officials. By adopting these rules and procedures, we, as members of the Commission, acknowledge our responsibility to each other, to City staff and to the public. These rules and procedures will be reviewed as necessary.

SECTION 2. MISSION

(a) The Commission will provide for the fair and equal review of all ethics complaints.

(b) In order to ensure proper consideration of all matters brought before the Commission, members of the Commission will display behavior that demonstrates independent and impartial review of all matters addressed by them, and be duly responsible to the City Council, citizens of the City of Murphy and to each other.

SECTION 3. INFORMATION

(a) The Complaint Process will be followed as outlined in Article IX, Section 2-514, as amended.

(b) All Commission members shall have access to the same information with which to make decisions in the hearing and sanctions process. When one Commission member has an information request, the response may be shared with all members of the Commission so that each member may be equally informed.

(c) All correspondence or communications shall be copied to the City Attorney.

SECTION 4. ROLES

- (a) The Chairperson shall preside at meetings of the Commission, and shall be recognized as head of the Ethics Review Commission for all purposes. The Chairperson may participate in the discussion of all matters coming before the Commission. The Chairperson shall be entitled to vote as a member thereof unless prohibited by law, and shall have no power of veto.
- (b) The Commission shall elect from among the Commission members a Vice Chairperson who shall act as Chairperson during the absence, conflict or disability of the Chairperson.
- (c) The Chairperson shall preserve order and decorum and shall require Commission members engaged in debate to limit discussion to the question under consideration.
- (d) The Chairperson is the spokesperson for the Commission on all official positions taken unless absent, at which time the Vice Chairperson or other designee will assume the role.
- (e) The Chairperson will encourage all Commission members to fully participate in Commission discussion before an item is brought to vote.
- (f) The Chairperson may appoint a subcommittee made up of Commission members and City staff as deemed necessary by the Commission to recommend direction to the full Commission. City staff may only be used upon approval by the City Manager.
- (g) The Chairperson or designee shall act as the appointed liaison to the City Council.

SECTION 5. MEETINGS

- (a) **Annual Meeting** – The Commission shall meet at least once a year as outlined in Article IX, Section 2-513(b)(3) as amended.
- (b) **Special Meetings** – Special Meetings may be held on any day of the week to consider items that require action prior to the annual meeting and may be called at the request of the Chairperson, or any two (2) members of the Commission as outlined in Article IX, Section 2-513(b)(3) as amended. Special meetings will be open to the public in accordance with the Texas Open Meetings Act.
- (c) **Work sessions** – Work sessions shall be held as needed. Work sessions will be open to the public in accordance with the Texas Open Meetings Act.
- (d) **Executive Sessions** – The Commission may meet in executive session in compliance with the Texas Open Meetings Act. All final actions, decisions or votes on any matter deliberated in an executive session shall be made in open session for which proper notice has been provided. All discussions in executive session shall remain confidential. Executive sessions are not open to the public in accordance with the Texas Open Meetings Act.
- (e) **Confidentiality and Nondisclosure Agreement** – Each Commission member shall sign a confidentiality and non-disclosure agreement the earlier of, thirty (30) days following

appointment by the City Council or prior to receiving any information regarding an ethics complaint.

(f) **Attendance** - Commission members are expected to attend all meetings and stay in attendance during each meeting. No member shall leave a meeting without advising the Chairperson.

(g) The Commission may create a subcommittee of two Commission members as necessary.

(h) **Punctuality and Recess** – Members of the Commission are expected to arrive at meetings at or before the scheduled time for the meeting to begin and shall advise the Chairperson or Secretary if there is an expectation that the Commission member will be delayed in attending the meeting or may need to leave the meeting before it is adjourned. At the beginning of each meeting, the Chairperson shall announce those members that are absent and shall announce the arrival time of any member arriving after the beginning of any meeting. The Chairperson may at any time, upon his or her own motion, or upon the request of a Commission member, declare a recess of the meeting. The time period of the recess shall be strictly followed.

(i) **Conflict of Interest** – A Commission member prevented from voting due to a conflict of interest shall leave the room during the debate, shall not vote on the matter, and shall otherwise comply with the state law and the Charter and ordinances concerning conflicts of interest. Any Commission member filing a conflict of interest affidavit on an item shall not thereafter confer with staff, or Commission members regarding that matter. The City Attorney may provide assistance to a Commission member in determining whether or not a conflict of interest exists.

(k) **Conduct of Meetings and Work Sessions**

1) During Commission meetings and work sessions, Commission members shall assist in preserving order and decorum and shall neither by conversation or otherwise delay or interrupt the proceedings nor refuse to obey the rules of the Commission.

2) A Commission member shall confine discussion to the question under debate, avoid the discussion of personalities and the use of inappropriate language, and refrain from personal attacks or from publicly criticizing a citizen, a City Councilmember, a member of any board, commission or committee of the City, an individual employee, or an operational issue. Questioning facts or the opinion of staff is allowed.

3) When there is more than one witness during a final hearing who is called to address the matter, Commission Members may delay their comments until after all witnesses on the subject have been heard.

4) The Chairperson shall state all questions submitted for a vote and announce the result.

(l) **Citizens and Visitors**

(1) Everyone attending a meeting will refrain from private conversations and turn mobile phones to silent or vibrate while the Commission is in session.

(2) Citizens and visitors attending Commission meetings, work sessions and hearings shall observe the same rules of propriety, decorum and good conduct applicable to members of the Commission. Any person making personal, impertinent, disruptive, profane or defamatory remarks or who becomes boisterous while addressing the Commission or while attending the meeting, work session or hearing, shall be removed from the room if so directed by the Chairperson. Such person shall be barred from further audience before the Commission during that session. If the Chairperson fails to act, any member of the Commission may move to require enforcement of the rules, and the affirmative vote of a majority of the Commission shall require the Chairperson to act.

(4) Unauthorized remarks from the audience, stamping of feet, whistles, yells and similar demonstrations shall not be permitted by the Chairperson, who may direct the removal of offenders from the room. In case the Chairperson shall fail to act, any member of the Commission may move to require enforcement of the rules and the affirmative vote of a majority of the Commission shall require the Chairperson to act.

(5) No placards, banners, or signs will be permitted in the Commission meeting room or in any other room in which the Commission is meeting. Exhibits, displays and visual aids used in connection with presentations, however, are permitted.

(m) **Motions At Meetings**

(1) At a meeting, the Commission may discuss an agenda item prior to a motion being made. This allows a motion to be crafted that will incorporate the issues discussed.

(2) A motion made and seconded will be considered the main motion. Any Commission member may make a motion to amend a motion. The amendment must receive a second before it may be discussed and must be voted on prior to voting on the main motion.

(3) A motion may be withdrawn or modified by its mover without asking permission until the motion is voted upon. If the mover modified the motion, the Commission member who seconded the motion may withdraw the second.

(4) A motion to reconsider any action of the Commission must be made no later than prior to the conclusion of the next regularly scheduled meeting of the Commission. Such a motion may only be made by a Commission member who voted with the prevailing side. The motion to reconsider may be seconded by any member. No issue shall be twice reconsidered except by unanimous vote of the Commission.

(i) If a motion to reconsider is made at the same meeting at which the matter was acted upon, the motion may be heard and voted upon and the original action on the matter is set aside. Deliberation may then resume on the matter at that same meeting.

- (ii) If a motion to reconsider is made at the next meeting after the matter was acted upon the motion to reconsider may be heard and voted upon and the original action on the matter is not set aside. Deliberation may not resume on the matter, but it shall be placed on the next available agenda for deliberation and action.
- (n) **Suspension of Rules** – Any provision of these rules not governed by the City Charter, City Code, State or Federal law may be temporarily suspended by a majority vote of the members of the Commission present. The vote on any such suspension shall be taken by yeas and nays and entered upon the record.
- (o) **Amendment of Rules** – These rules may be amended or new rules adopted, by a majority vote of the members of the Commission and approved by the Commission and then recommended to City Council for final approval.
- (p) **Failure to Comply** - A failure to comply with these rules does not invalidate any otherwise lawful act of the Commission.
- (q) **Tabling** – An item under consideration may be tabled until a later point in the same meeting.
- (r) **Postponement** – An item may be postponed until a future meeting, a specific future date, or until a specific outside action occurs. Items may also be postponed indefinitely, which means the item is dead and cannot be brought back before the Commission.
- (s) **Retention Policy** - The document retention policy of the Commission shall be the same as that of the City.

SECTION 6. PUBLIC CONTACT / MEDIA RELATIONS

The Commission shall refer all media inquiries to the City Manager or his or her designee as the City's official representative to the media.

RESOLUTION NO. 13-R-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MURPHY, TEXAS, ADOPTING CERTAIN RULES AND PROCEDURES FOR THE ETHICS REVIEW COMMISSION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 8.01 of the City of Murphy, Texas Home-Rule Charter authorizes the City Council to create committees deemed desirable by the City Council and those which may be necessary to carry out the functions and obligations of the City; and,

WHEREAS, Ordinance 10-11-863 created the Ethics Review Commission; and

WHEREAS, Article VIII, Section 8.01 of the City of Murphy, Texas Home-Rule Charter also provides that the City Council shall by ordinance or resolution prescribe the purpose, composition, function, duties, accountability and tenure of each board, commission and committee where such are not prescribed by law or City Charter.

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

Section 1. That the foregoing recitals are hereby found to be true and correct findings of the City of Murphy, Texas, and are fully incorporated into the body of this resolution.

Section 2. Purpose and Intent. Recognizing that every legislative body needs a systematic way of conducting its business, this Resolution is to provide for the orderly conduct of business City of Murphy Ethics Review Commission.

Section 3. The Rules and Procedures attached as Exhibit "A" are hereby adopted as the official Rules and Procedures for the Ethics Review Commission.

Section 4. This resolution shall become effective from and after its passage.

DULY RESOLVED by the City Council of the City of Murphy, Texas, on this the _____ day of _____, 2013.

Eric Barna, Mayor

City of Murphy

ATTEST:

Kristi Gilbert, City Secretary
City of Murphy

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APPROVED AS TO FORM:

Wm. Andrew Messer, City Attorney
City of Murphy

Exhibit "A"

CITY OF MURPHY
ETHICS REVIEW COMMISSION

RULES AND PROCEDURES

SECTION 1. INTRODUCTION

(a) The Ethics Review Commission (the "Commission") is an advisory body of the City of Murphy, Texas, having jurisdiction over ethics complaints as described in Chapter 2, Article IX of the Code of Ordinances of the City of Murphy, Texas. The Commission is responsible for its ~~own development, discipline, and~~ performance of its duties and responsibilities. The development of ~~these rules and procedures is policy~~ is designed to ensure effective and efficient application of these rules and procedures.

(b) ~~These rules and procedures is policy~~ addresses Commission relations among Commission members, and with ~~Ceity~~ employees and officials. By adopting ~~these rules and procedures is policy~~, we, as members of the Commission, acknowledge our responsibility to each other, to City staff and to the public. ~~These rules and procedures is policy~~ will be reviewed as necessary.

SECTION 2. MISSION

(a) The Commission will provide for the fair and equal ~~resolution review~~ of all ethics complaints brought forth for its review ~~in order to determine whether or not it should impose a sanction per Section 2-517 of the Code of Ethics.~~

(b) In order to ensure proper ~~resolution review~~ consideration of all matters brought before the Commission, members of the Commission will display behavior that demonstrates independent and impartial review of all matters addressed by them, and be duly responsible to the City Council, citizens of the City of Murphy and to each other.

SECTION 3. INFORMATION

(a) The Complaint Process will be followed as outlined in Article IX, Section 2-514, as amended.

(b) All Commission members shall have access to the same information with which to make decisions in the hearing and sanctions process. When one Commission member has an information request, the response may be shared with all members of the Commission so that each member may be equally informed.

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- (c) All correspondence or communications shall be copied to the City Attorney.

SECTION 4. ROLES

- (a) The Chairperson shall preside at meetings of the Commission, and shall be recognized as head of the Ethics Review Commission for all purposes. The Chairperson may participate in the discussion of all matters coming before the Commission. The Chairperson shall be entitled to vote as a member thereof unless prohibited by law, and shall have no power of veto.
- (b) The Commission shall elect from among the Commission members a Vice Chairperson who shall act as ~~Chairperson~~~~Presiding Officer~~ during the absence, conflict or disability of the Chairperson.
- (c) The Chairperson shall preserve order and decorum and shall require Commission members engaged in debate to limit discussion to the question under consideration.
- (d) The Chairperson is the spokesperson for the Commission on all official positions taken unless absent, at which time the Vice Chairperson or other designee will assume the role.
- (e) The Chairperson will encourage all Commission members to fully participate in Commission discussion before an item is brought to vote.
- (f) The Chairperson may appoint a subcommittee made up of Commission members and City staff as deemed necessary by the Commission to recommend direction to the full Commission. City staff may only be used upon approval by the City Manager.
- (g) The Chairperson or designee shall act as the appointed liaison to the City Council.

SECTION 5. MEETINGS

- (a) **Annual Meeting** – The Commission shall meet at least once a year as outlined in Article IX, Section 2-513**(b)(3)**~~(subsection 3)~~ as amended.
- (b) **Special Meetings** – Special Meetings may be held on any day of the week to consider items that require action prior to the annual meeting and may be called ~~upon~~ at the request of the Chairperson, or any two (2) members of the Commission as outlined in Article IX, Section 2-513(b)(3) as amended~~Vice Chairperson or City Manager~~. Special meetings will be open to the public in accordance with the Texas Open Meetings Act.
- (c) **Work sessions** – Work sessions shall be held as needed ~~and used to allow the Commission to discuss procedures~~. Work sessions will be open to the public in accordance with the Texas Open Meetings Act.
- (d) **Executive Sessions** – The Commission may meet in executive session in compliance with the Texas Open Meetings Act. All final actions, decisions or votes on any matter

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deliberated in an executive session shall be made in open session for which proper notice has been provided. All discussions in executive session shall remain confidential. Executive sessions are not open to the public in accordance with the Texas Open Meetings Act.

(e) ~~Each member shall sign a n~~**Confidentiality and Nondisclosure Agreement.** – ~~Each~~ Commission member shall sign a confidentiality and non-disclosure agreement the earlier of, thirty (30) days following appointment by the City Council or prior to receiving any information regarding an ethics complaint.

(f) **Attendance** - Commission members are expected to attend all meetings and stay in attendance during each meeting. No member shall leave a meeting without advising the ~~Chairperson~~Presiding Officer.

(g) The Commission may create a subcommittee of two Commission members as necessary.

(h) **Punctuality and Recess** – Members of the Commission are expected to arrive at meetings at or before the scheduled time for the meeting to begin and shall advise the Chairperson or Secretary if there is an expectation that the Commission member will be ~~tardy~~ delayed in attending the meeting or may need to leave the meeting before it is adjourned. At the beginning of each meeting, the ~~Chairperson~~Presiding Officer shall announce those members that are absent and shall announce the arrival time of any member arriving after the beginning of any meeting. The ~~Chairperson~~Presiding Officer may at any time, upon his or her own motion, or upon the request of a Commission member, declare a recess of the meeting. The time period of the recess shall be strictly followed.

(i) **Conflict of Interest** – A Commission member prevented from voting due to a conflict of interest shall leave the room during the debate, shall not vote on the matter, and shall otherwise comply with the state law and the Charter and ordinances concerning conflicts of interest. Any Commission member filing a conflict of interest affidavit on an Executive Session item shall not thereafter confer with staff, or Commission members regarding that matter. The City ~~A~~ttorney may provide assistance to a Commission member in determining whether or not a conflict of interest exists.

Process of Ethics Hearing: Complaint Hearing Process:

~~The City Attorney shall perform an initial review of the submitted complaint for conformity with the requirements of Section 2-514 of the Code of Ethics. If the complaint is found to be insufficient, the City Attorney shall notify the complainant that the complaint is deficient and the matter shall be closed without prejudice to subsequent re-filing. If the complaint is found to be sufficient, it shall be forwarded to the City Manager, the Chairperson of the Ethics Review Commission, the City Secretary and the complainee, and a preliminary hearing shall be scheduled with proper notice being provided to the complaint and complainee. Complaints against the City Attorney shall be forwarded to the Municipal Judge.~~

~~An initial meeting will be held to discuss the filed complaint. The complainant and the complainee may attend the initial meeting preliminary hearing and each shall be~~

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~~allowed to make a presentation to the Commission and, but the . The complainant and the complaine must be allowed to make a presentation at the initial meeting, but the Commission may not limit the time for the presentation to no fewer than five (5) minutes.~~

~~A majority vote of the full Commission shall will be required for the Commission to continue its investigation of the complaint; otherwise, the matter will be closed.~~

~~The Chairperson or authorized designee shall send written notice following the preliminary hearing of the initial review and its outcome to both the complainant and the complaine within a reasonable amount of time five (5) business days after the initial review preliminary hearing decision is has been made made by the Commission.~~

~~The Commission will may then exercise its powers as outlined in Article IX, Section 2-5132 516 to investigate, request and gather evidence as necessary to determine if an ethics violation has occurred.~~

~~If the Commission determines that there are reasonable grounds to believe that a violation of Article IX has occurred, it shall schedule a final hearing. Otherwise, the complaint may be dismissed.~~

~~The complainant and the complaine may attend the final hearing and each shall be allowed to make a presentation to the Commission. The complainant and the complaine must be allowed to make a presentation at the final hearing and, but the Commission may not limit the time for the presentation to no fewer than five (5) minutes.~~

~~Sanctions may be imposed in accordance with Article IX, Section 2 517 as amended, by majority vote of the full Commission.~~

~~All actions of the Commission are immediately appealable by complaine only to a committee comprised of the Mayor, the City Attorney, and the Municipal Judge or with an alternate city official being appointed by a majority of the City Council official in the case of a conflict of interest. This committee shall have the authority to affirm, dismiss or remand the decision of the Commission with instructions.~~

(k) **Conduct of Meetings and Work Sessions**

- 1) During Commission meetings and work sessions, Commission members shall assist in preserving order and decorum and shall neither by conversation or otherwise delay or interrupt the proceedings nor refuse to obey the rules of the Commission.
- 2) A Commission member shall confine discussion to the question under debate, avoid the discussion of personalities and the use of inappropriate language, and refrain from personal attacks or from publicly criticizing a citizen, a City Councilmember, a member of any board, commission or committee of the City, an individual employee, or an operational issue. ~~QCriticism is differentiated from~~ questioning facts or the opinion of staff ~~is allowed.~~
- 3) When there is more than one ~~witnessspeaker~~ during a final hearing who is called to address the matter, Commission Members ~~mayshall~~ delay their comments until after all ~~witnessspeakers~~ on the subject have been heard.

4) The Chairperson shall state all questions submitted for a vote and announce the result.

(1) **Citizens and Visitors**

(1) Everyone attending a meeting will refrain from private conversations and turn mobile phones to silent or vibrate while the Commission is in session.

(2) Citizens and visitors attending Commission meetings, work sessions and hearings shall observe the same rules of propriety, decorum and good conduct applicable to members of the Commission. Any person making personal, impertinent, disruptive, profane or defamatory remarks or who becomes boisterous while addressing the Commission or while attending the meeting, work session or hearing, shall be removed from the room if so directed by the Chairperson Presiding Officer. Such person shall be barred from further audience before the Commission during that session. If the Chairperson Presiding Officer fails to act, any member of the Commission may move to require enforcement of the rules, and the affirmative vote of a majority of the Commission shall require the Chairperson Presiding Officer to act.

(4) Unauthorized remarks from the audience, stamping of feet, whistles, yells and similar demonstrations shall not be permitted by the Chairperson Presiding Officer, who may direct the removal of offenders from the room. In case the Chairperson Presiding Officer shall fail to act, any member of the Commission may move to require enforcement of the rules and the affirmative vote of a majority of the Commission shall require the Chairperson Presiding Officer to act.

(5) No placards, banners, or signs will be permitted in the Commission meeting room or in any other room in which the Commission is meeting. Exhibits, displays and visual aids used in connection with presentations, however, are permitted. ~~Video presentations requested by a citizen or visitor as visual aids will not be broadcast over any city public access cable channel.~~

~~(m)~~ **Agenda**

~~(1) The Chairperson and/or alternatively Vice Chairperson shall set the agenda. Any Commission member may request an item be placed on a future agenda at a meeting.~~

~~(2) Agenda item requests made outside of an open meeting shall be submitted to the City Secretary.~~

~~(m)~~ **Motions At Meetings**

(1) At a meeting, ~~t~~The Commission may discuss an agenda item prior to a motion being made. This allows a motion to be crafted that will incorporate the issues discussed.

(2) A motion made and seconded will be considered the main motion. Any Commission member may make a motion to amend a motion. The amendment must receive a second before it may be discussed and must be voted on prior to voting on the main motion.

(3) A motion may be withdrawn or modified by its mover without asking permission until the motion is voted upon. If the mover modified the motion, the Commission member who seconded the motion may withdraw the second.

(4) A motion to reconsider any action of the Commission must be made no later than prior to the conclusion of the next regularly scheduled meeting of the Commission. Such a motion may only be made by a Commission member who voted with the prevailing side. The motion to reconsider may be seconded by any member. No issue/question shall be twice reconsidered except by unanimous vote of the Commission.

(i) If a motion to reconsider is made at the same meeting at which the matter was acted upon, the motion may be heard and voted upon and the original action on the matter is set aside. Deliberation may then resume on the matter at that same meeting.

(ii) If a motion to reconsider is made at the next meeting after the matter was acted upon, ~~with the exception of any final determination of the Commission,~~ the motion to reconsider may be heard and voted upon and the original action on the matter is not set aside. Deliberation may not resume on the matter, but it shall be placed on the next available agenda for deliberation and action.

(n) **Suspension of Rules** – Any provision of these rules not governed by the City Charter, City Code, State or Federal law may be temporarily suspended by a majority vote of the members of the Commission present. The vote on any such suspension shall be taken by yeas and nays and entered upon the record.

(o) **Amendment of Rules** – These rules may be amended or new rules adopted, by a majority vote of the members of the Commission and approved by the Commission and then recommended to City Council for final approval.

(p) **Failure to Comply** - A failure to comply with these rules does not invalidate any otherwise lawful act of the Commission.

(q) **Tabling** – An item under consideration may be tabled until a later point in the same meeting.

(r) **Postponement** – An item may be postponed until a future meeting, a specific future date, or until a specific outside action occurs. Items may also be postponed indefinitely, which means the item is dead and cannot be brought back before the Commission ~~unless there is a change~~.

(s) **Retention Policy** - The document retention policy of the Commission shall be the same as that of the City.

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SECTION 6. PUBLIC CONTACT / MEDIA RELATIONS

~~(a) All reporters may receive an agenda in advance and will be furnished supporting materials needed for clarification if requested.~~

(b) The Commission shall refer all media inquires to the City Manager or his or her designee as the City's official representative to the media.

ORDINANCE NO. 13--07-

AN ORDINANCE OF THE CITY OF MURPHY, TEXAS, AMENDING CHAPTER 2 OF THE CITY OF MURPHY'S CODE OF ORDINANCES, AMENDING ARTICLE IX CODE OF ETHICS FOR CITY OFFICIALS AND EMPLOYEES, INCLUDING REGULATIONS RELATED TO STANDARDS OF CONDUCT; GIFTS AND HONORARIUMS; CONFLICTS OF INTEREST; CONFLICT DISCLOSURE STATEMENTS; INTEREST IN PROPERTY ACQUIRED WITH PUBLIC FUNDS; NEPOTISM; BRIBERY; CITY RECORDS; MISUSE OF OFFICIAL INFORMATION; ABUSE OF OFFICIAL CAPACITY; AND OFFICIAL OPPRESSION; CREATING AN ETHICS REVIEW COMMISSION; PROVIDING A COMPLAINT PROCESS FOR VIOLATIONS OF THE CODE OF ETHICS; PRESCRIBING THE ROLE OF THE CITY ATTORNEY IN THE COMPLAINT PROCESS; PROVIDING A HEARING PROCESS; PROVIDING SANCTIONS FOR VIOLATIONS OF THE CODE OF ETHICS; AND PROVIDING FOR DISTRIBUTION AND PROOF OF COMPLIANCE; AND PROVIDING FOR AN EFFECTIVE DATE, PROPER NOTICE AND MEETING; SEVERABILITY CLAUSE AND REPEALER CLAUSE.

WHEREAS, statutory provisions governing the ethical conduct of public officials and employees are found in various codes including the Texas Local Government Code, the Texas Government Code and the Texas Penal Code; and

WHEREAS, the City Council finds it desirable and necessary to adopt a comprehensive ethics ordinance that sets out the parameters relating to the conduct of public officials and employees in one easily accessible location; and

WHEREAS, the City Council believes that a position in government is a position of public trust that demands a high standard of behavior, and

WHEREAS, each employee and official of the City of Murphy should uphold the Constitution, laws and regulations of the United States and the State of Texas and the Charter and ordinances of the City of Murphy; and

WHEREAS, the City of Murphy seeks to promote personal integrity, honesty and ethical conduct in all activities undertaken by City Officials and employees through the adoption of this Ordinance; and

WHEREAS, the City of Murphy seeks to inspire public confidence and trust in City of Murphy officials and employees through the adoption of this "Code of Ethics";

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

SECTION 1. RECITALS

The City Council hereby finds that the statements set forth in the recitals of this Ordinance are true and correct, and the City Council hereby incorporates such recitals as part of this Ordinance.

SECTION 2. ADOPTION OF CODE OF ETHICS

Chapter 2, Administration, of the Code of Ordinances of the City of Murphy is hereby amended by amending Article IX, Code of Ethics:

Article IX, Code of Ethics attached hereto as Exhibit "A" and incorporated herein for all purposes is hereby enacted.

SECTION 3. Effective Date

This Ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

SECTION 4. Proper Notice and Meeting

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code and as required by Chapter 552 of the Texas Local Government Code.

SECTION 5. Severability

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

SECTION 6. Repealer

The provisions of this Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent that such inconsistency is apparent.

PASSED AND APPROVED by the City Council of the City of Murphy, Texas this 16th day of July, 2013.

Owais Siddiqui, Mayor Pro Tem
City of Murphy

ATTEST:

Kristi Gilbert, City Secretary
City of Murphy

APPROVED AS TO FORM:

Wm. Andrew Messer, City Attorney
City of Murphy

EXHIBIT “A”

**ARTICLE IX
CODE OF ETHICS**

Section 2-501. Definitions.

The terms used in this Article shall have the following meanings:

Business Entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

Candidate. This term has the meaning assigned by section 251.001, Election Code.

City Council means the mayor and six (6) council members elected to serve as the governing body of the City.

City Employee means any person employed by the City, including those individuals that are employed on a part-time or temporary basis and employees of any corporation created by the City, but such term shall not be extended to apply to any independent contractor.

City Attorney means the City Attorney appointed by the City Council pursuant to the City Charter.

City Engineer means the City Engineer appointed by the City Manager.

City Manager means the City Manager appointed by the City Council pursuant to the City Charter.

City Official means every member of the City Council, the City Manager, City Secretary, the City Attorney, the Municipal Judge, the City Engineer and all members of any board, commission, or committee appointed by the City Council, including the board members of the Murphy Municipal Development District (MDD), the Murphy Economic Development Corporation (4A) (“MEDC”) and the 4B Murphy Community Development Corporation (“MCDC”), and the executive directors of the MEDC and the MCDC.

City Secretary means the City Secretary appointed by the City Council pursuant to the City Charter.

Confidential Information means any information that a City Official would be privy to because of the official’s position but otherwise is not available to the public under the provisions of the Texas Public Information Act (Tex. Gov’t Code Ch. 552).

Conflict Disclosure Statement means the disclosure statement form adopted by the Texas Ethics Commission required by Chapter 176 of the Local Government Code.

Conflict of Interest Questionnaire means the conflicts of interest form adopted by the Texas Ethics Commission required by Chapter 176 of the Local Government Code.

Economic Benefit means any taxable income or any money, real or personal property, contract rights, sale, lease, option, credit, loan, discount, service, or other tangible or intangible thing of value, whether similar or dissimilar to those enumerated.

Economic Interest means a legal or equitable interest in real or personal property or a fiduciary obligation to such property or contractual right in such property that is more than Two Thousand Five Hundred Dollars (\$2500.00). Service by a City Official or City Employee as an officer, director, advisor, or otherwise active participant in an educational, religious, charitable, fraternal, or civic organization does not create an Economic Interest in the property of that organization. Ownership of an interest in a mutual or common investment fund that holds securities or other assets is not an Economic Interest in the securities or other assets unless the City Official or City Employee participates in the management of the fund. A City Official or City Employee does not have an Economic Interest in a matter if the economic impact on the City Official or City Employee is indistinguishable from the impact on the public or on the particular group affected by the matter.

Family Member means a person related to a City Official in the first degree of consanguinity or affinity, as described by Subchapter B, Chapter 573 of the Government Code, except that the term does not include a person who is considered to be related to a City Official by affinity only as described by Section 573.024(b) of the Government Code. This definition would include children, spouses, parents, step-children and parents-in-law or children-in-law, except that relationships by affinity would end upon divorce.

Gift means a favor, hospitality, or economic benefit other than compensation but which does not include campaign contributions reported as required by state law, gifts received from a relative if given on account of kinship, or any value received by will, intestate succession, or as a distribution from an *inter vivos* or testamentary trust.

Municipal Judge means the Municipal Judge or alternate Municipal Judge appointed by the City Council pursuant to the City Charter.

Permissible Gift means a thing of nominal value given (not to exceed \$100.00 in value), and not given to request a specific favor, special treatment, or influence a City Official or City Employee. Marketing advertisement items of nominal value, or certificates or plaques having no intrinsic value, are considered permissible gifts or gratuities. The purchase of meals of nominal value, provided there is a rotation of purchasing, is considered a permissible gift. The provision of training/education programs of a general nature is considered a permissible gift or gratuity. Items that exceed \$100.00 in value, if divided (e.g. holiday food or sporting event tickets distributed by lot) or donated for a City-sponsored function, are considered permissible gifts and/or gratuities.

Qualified Voter means a person who meets the qualifications of Section 11.002 of the Texas Election Code to vote in City elections.

Second Degree by Affinity is defined by Subchapter B., Chapter 573 of the Government Code and examples of such relationship are set out in the Chart attached hereto as Exhibit “1.”

Substantial Interest means the interest that a City Official and/or a Family Member has in a business or business entity or in real property as described below:

- (a) The City Official and/or a Family Member owns ten percent (10%) or more of the voting stock or shares of the business entity; or
- (b) The City Official and/or a Family Member owns ten percent (10%) or more or \$15,000.00 or more of the fair market value of the business entity; or
- (c) Funds received by the City Official and/or a Family Member from the business entity exceed ten percent (10%) of the person's gross income for the previous year;
- (d) The City Official and/or Family Member has a Substantial Interest in real property if the interest is an equitable or legal interest with a fair market value of \$2,500 or more.

Third Degree by Consanguinity is defined by Subchapter B., Chapter 573 of the Government Code and examples of such relationship are set out in the Chart attached hereto as Exhibit “1.”

Section 2-502. Standards of Conduct

(a) General Provisions

- (1) No City Official or City Employee may disclose any Confidential Information gained through the City Official’s or City Employee’s office or position concerning property, operations, policies, or affairs of the City, or use such Confidential Information to advance any Economic Interest of the City Official or City Employee, confer any Economic Benefit to the City Official or City Employee, or their Family Member. This Subsection shall not preclude disclosure of such Confidential Information in connection with any investigation or proceeding regarding whether there has been a violation of this Code of Ethics to any investigatory, administrative or judicial authority.
- (2) No City Official or City Employee may use his or her office or position or City owned facilities, equipment, supplies, or resources of the City to advance any Economic Interest of the City Official or City Employee, confer any Economic Benefit to the City Official or City Employee, for a political campaign of the City Official or City Employee, or for any of the City Official’s or City Employee’s Family Members. Notwithstanding the foregoing, City owned facilities, equipment, supplies or resources may be used by City Officials or City Employees to the extent such uses are customary, incidental or lawfully available to the public.

- (3) No City Official shall knowingly represent, directly or indirectly, any person, group or business entity:
- (A) Before the City Council or the board, commission or committee of which he or she is a member;
 - (B) Before a board or commission which has appellate jurisdiction over the board, commission or committee of which he or she is a member;
 - (C) In any action or proceeding against the interests of the City or in any litigation in which the City or any department, agency, board, commission or committee is a party; or
 - (C) In any action or proceeding in the municipal court(s) of the City which was instituted by a City Official or City Employee in the course of his or her official duties, or a criminal proceeding in which any City Official or City Employee is a material witness for the prosecution.
- (4) The restrictions contained in Subsection (3) do not prohibit the following:
- (A) A City Official, or his or her spouse, appearing before the City Council or a City board, commission or committee to represent himself or herself in a matter affecting his or her property; provided, however, that no such person, or his or her spouse, shall personally appear before the City Council, board, commission or committee of which he or she is a member and must submit their case through an authorized representative;
 - (B) A City Official or City Employee appearing before the City Council or a City board, commission or committee to address employment matters;
- (5) No City Official may act as surety for any person or business entity that has work, business, or a contract with the City, or act as a surety on any bond required by the City for a City Official.
- (6) No City Official or City employee shall default or refuse to answer any questions pertinent to the proceedings before the City Council, or fail or refuse to obey any subpoena, or to produce any books, papers or other material issued by the City Council.
- (7) No City Official or City Employee shall deny, abridge or compromise equality of rights under state and federal law with respect to appointment to or removal of any appointed position with the City as prohibited by Sec. 14.02 of the City Charter.
- (8) No City Official or City Employee who seeks appointment or promotion with respect to any City appointed position shall, directly or indirectly, give, render or pay any money, service or other valuable thing to any person for, or in connection with, his or her test,

appointment or promotion with respect to any City position as prohibited by Sec. 14.03 of the City Charter.

- (9) No City Official or City Employee shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification, appointment or promotion with respect to any City position, or attempt to commit any fraud preventing the impartial execution of the personnel provisions, rules and regulations of the City Charter as prohibited by Sec. 14.04 of the City Charter.
- (10) No City Official, who holds any compensated, non-elective City position, or City Employee shall use their official title or position with the City to solicit any contribution or endorse the candidacy of any Candidate for public office in the City as prohibited by Sec. 14.05 of the City Charter. Any such person shall have the right to exercise his/her legal rights to participate in the election process when he/she is not on duty, in a City building, City provided uniform or attire, or using a City vehicle or equipment.
- (11) Members of the City Council shall not in any way dictate the appointment, removal or discipline of the City Officials or City Employees appointed by the City Manager or any of the City Manager's subordinates as prohibited by Sec. 3.08(2) of the Charter. Notwithstanding the foregoing, the City Council, at a meeting called for that purpose, may express its views and fully and freely discuss with the City Manager anything pertaining to the appointment and removal of such City Officials and City Employees.
- (12) Except for the purpose of inquiries and investigations provided by the Charter, the City Council shall interact with City Officials and City Employees who are subject to the direction and supervision of the City Manager in accordance with the Governance Policy adopted by the City Council. The City Council shall not give orders to any such City Official or City Employee, either publicly or privately, except as otherwise provided in the Charter.

SECTION 2-503. Gifts and Honorariums

(a) Prohibition:

- (1) No City Official or City Employee may solicit or accept any Gift, favor or privilege, that is offered or given with the intention of influencing the judgment or discretion of the City Official or City Employee; or given in consideration of the favorable exercise of the City Official's or City Employee's judgment or discretion in the past.
- (2) A City Employee performing regulatory functions or conducting inspections or investigations shall not solicit, accept, or agree to accept any benefit from a person the

City Employee knows to be subject to regulation, inspection, or investigation by the City Employee or the City.

- (3) A City Employee having custody of prisoners shall not solicit, accept, or agree to accept any benefit from a person the City Employee knows to be in his custody or the custody of the City.
- (4) A City Employee or a City Official who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of the City shall not solicit, accept, or agree to accept any benefit from a person the City Employee or City official knows is interested in or likely to become interested in any contract, purchase, payment, claim or transaction involving the exercise of his discretion.
- (5) A City Employee or City Official who has judicial or administrative authority, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision shall not solicit, accept, or agree to accept any Economic Benefit from a person the City Employee or City Official knows is interested in or likely to become interested in any matter before the City Employee or City Official or tribunal.
- (6) A City Official is prohibited from soliciting, accepting, or agreeing to accept an honorarium in consideration for services that the City Official would not have been requested to provide but for the City Official's official position or duties.

(b) Donation of Unsolicited Gift

A City Employee or City Official who receives an unsolicited Gift that the City Employee or City Official is prohibited from accepting under this section may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

(c) Exceptions

The prohibitions set out in this section do not apply to:

- (1) a fee prescribed by law to be received by a City Employee or City Official or any other benefit to which the City Employee or City Official is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a City Employee or City Official;
- (2) a Gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient; or

- (3) a benefit to a City Employee or City Official required to file a statement under Chapter 572, Government Code, or a report under Title 15, Election Code, that is derived from a function in honor or appreciation of the recipient if:
 - (A) the benefit and the source of any benefit in excess of \$50 is reported in the statement; and
 - (B) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are non-reimbursable by the state or the City;
- (4) a political contribution as defined by Title 15, Election Code;
- (5) a Permissible Gift as defined in this Ordinance, excluding cash or a negotiable instrument as described by Section 3.104, Business & Commerce Code;
- (6) an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity;
- (7) food, lodging, transportation, or entertainment accepted as a guest and, if the donor is required by law to report those items, reported by the donor in accordance with that law;
- (8) any Gift or benefit otherwise excepted under section 36.10, Penal Code; or
- (9) This section does not prohibit a City Official from accepting (1) transportation expenses, (2) lodging expenses or (3) meals in connection with a conference or similar event in which the City Official renders services, such as addressing an audience or engaging in a seminar to the extent that those services are more than merely perfunctory.

SECTION 2-504. Conflict of Interest; Recusal.

- (a) Conflict of Interest. No City Official may vote on or participate in any decision-making process on a matter concerning property or a business entity if the official has a Substantial Interest in the real property or business entity.
- (b) Recusal.
 - (1) A City Official shall disclose the existence of any Substantial Interest in any business entity or real property involved in any decision pending before such City Official, or the body of which he or she is a member. To comply with this Subsection, a City Official shall, prior to any discussion or determination of the matter, either file an affidavit of disclosure as required by Local Government Code § 171.004 or, if not so required, shall publicly disclose in the official records of the City to the City Secretary

the nature of the interest. To further comply with this Subsection, a City Official shall notify the City Manager, or if the City Official is the City Manager, shall notify the City Secretary, in writing of the nature of any Substantial Interest he or she may have in a Business Entity or real property which would be affected by an exercise of discretionary authority by the City Official and the City Manager or City Secretary shall assign the matter to another employee. In disclosing a Substantial Interest in a Business Entity, a City Official shall not be required to disclose the dollar amount of any income that he or she receives from the Business Entity.

- (2) The City Council shall take a separate vote on any budget item specifically dedicated to a contract with a Business Entity in which a member of the Council has a Substantial Interest. The member of the City Council that has the Substantial Interest may not participate in the separate vote.
- (3) In addition to complying with the requirements of Chapter 171 of the Local Government Code, to avoid the appearance and risk of impropriety, a City Official should abstain from participation in, discussion of, and any vote on a matter involving a person or Business Entity that the official knows is likely to affect the Economic Interest of, or confer an Economic Benefit on:
 - (i) The City Official's parent, child, step-child, spouse, or other family member within the second degree of consanguinity or affinity as defined by Chapter 573 of the Government Code, or a client of the City Official;
 - (ii) An employer of the City Official, the City Official's parent, child, step-child, or spouse;
 - (iii) A Business Entity for which the City Official serves as an officer or director or serves in any policy-making position;
 - (iv) A person or Business Entity from whom, within the past twelve months, the City Official or the official's spouse, directly or indirectly, received an Economic Benefit; or
 - (v) A person or Business Entity from whom, within the past twelve months, the City Official or the official's spouse, directly or indirectly, engaged in negotiations pertaining to business opportunities.

SECTION 2-505. Conflict Disclosure Statements.

- (a) A City Official shall file a sworn Conflicts Disclosure Statement with the City Secretary whenever a City Official or a Family Member (i) is receiving taxable income from an employment or other business relationship with a person or Business Entity who has contracted with the City for the sale or purchase of real property, goods or services or that is

considering contracting with the City for the sale or purchase of real property, goods or services that exceeds \$2,500.00 (not including investment income) during the twelve (12) month period preceding the date that the City Official became aware of the contract, or (ii) has received Gifts with a value of more than \$250.00 during the twelve (12) month period preceding the date that the City Official became aware of the contract from a person or Business Entity that contracts with the City for the sale or purchase of real property, goods or services or that the City is considering doing business with such person or Business Entity. The City Official shall file the Conflicts Disclosure Statement with the City Secretary no later than 5:00 p.m. on the seventh business day after the date the City Official becomes aware of the facts that require the filing of the Statement.

- (b) A City Official commits an offense if the City Official knowingly fails to file the Conflicts Disclosure Statement. An offense under the above Subsection is a Class C misdemeanor.
- (c) The City Secretary shall accept and file any and all City Official Conflict Disclosure Statements and any Vendor Conflict of Interest Questionnaires.
- (d) The City Secretary shall maintain a list of City Officials and shall make that list available to the public and any person who may be required to file a Conflict of Interest Questionnaire. The City Secretary shall maintain copies of the Conflict Disclosure Statements and Conflict Questionnaires on the City's website.
- (e) City Officials shall abstain from participation in, discussion of, and any vote on a matter involving a person or Business Entity, if, within the 12 months preceding the date of the vote, the City Official has filed, or should have filed, a Conflicts Disclosure Statement under Chapter 176 of the Local Government Code.

SECTION 2-506. Interest in Property Acquired with Public Funds

(a) Disclosure of Interest in Property

A City Official who has a legal or equitable interest in real property that is to be acquired with public funds shall file an affidavit within 10 days before the date on which the property is to be acquired by purchase or condemnation.

(b) Affidavit

The affidavit must:

- (1) State the name of the City Official;
- (2) State the City Official's office, public title, or job designation;
- (3) Fully describe the property;
- (4) Fully describe the nature, type, and amount of interest in the property, including the percentage of ownership interest;

- (5) State the date when the person acquired an interest in the property;
- (6) Include a verification as follows: “I swear that the information in this affidavit is personally known by me to be correct and contains the information required by Section 553.002, Government Code”; and
- (7) Contain an acknowledgement of the same type required for recording a deed in the deed records of the county.

The affidavit must be filed with the records administrator for the City.

SECTION 2-507. Nepotism

(a) Prohibition:

- (1) A City Official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from City funds or fees of office if:
 - (A) the individual is related to the City Official within the Third Degree by Consanguinity or the Second Degree by Affinity; or
 - (B) the City Official holds the appointment or confirmation authority as a member of a state or local Council, the legislature, or a court and the individual is related to another member of that Council, legislature, or court within the Third Degree by Consanguinity or the Second Degree by Affinity.
- (2) A City Official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position in which the individual’s services are under the City Official’s direction or control and that is to be compensated directly or indirectly from City funds or fees of office if:
 - (A) The individual is related to another City Official within the Third Degree by Consanguinity or the Second Degree by Affinity; and
 - (B) the appointment, confirmation of the appointment, or vote for appointment or confirmation of the appointment would be carried out in whole or partial consideration for the other City Official appointing, confirming the appointment, or voting for the appointment or confirmation of the appointment of an individual who is related to the first City Official within the Third Degree by Consanguinity or the Second Degree by Affinity.

(b) Exceptions

- (1) The prohibitions in Section 2-507 do not apply to:

- (A) an appointment to the office of a notary public or to the confirmation of that appointment;
 - (B) an appointment or employment of a personal attendant by a City Official for attendance on the City Official who, because of physical infirmities, is required to have a personal attendant; or
 - (C) any other appointment excepted under Chapter 573, Government Code.
- (2) The prohibition in Section 2-507 does not apply to an appointment, confirmation of an appointment, or vote for an appointment or confirmation of an appointment of an individual to a position if:
- (A) the individual is employed in the position immediately before the election or appointment of the City Official to whom the individual is related in a prohibited degree; and
 - (B) that prior employment of the individual has been continuous for at least six (6) months.
- (3) If, under Subsection (b)(2), an individual continues in a position, the City Official to whom the individual is related in a prohibited degree may not participate in any deliberation or vote on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of the individual if that action applies only to the individual and is not taken regarding a bona fide class or category of employees.

SECTION 2-508. Bribery.

(a) Prohibition:

A City Official or City Employee shall not:

- (1) intentionally or knowingly offer, confer, or agree to confer on another person, or solicit, accept or agree to accept from another person:
 - (A) any benefit or consideration for the City Official's or City Employee's decision, vote, recommendation, or other exercise of official discretion as a City Official or City Employee;
 - (B) any benefit as consideration for the City Official's or City Employee's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding;

- (C) any benefit as consideration for a violation of a duty imposed by law on a City Official or City Employee; or
- (D) any benefit that is a political contribution as defined by Title 15, Election Code, or that is an expenditure made and reported in accordance with Chapter 305, Government Code, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit; notwithstanding any rule of evidence or jury instruction allowing factual interference in the absence of certain evidence, direct evidence of the express agreement shall be required in any prosecution under this Subsection.

(b) No Defense

- (1) It is no defense to prosecution under this Section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or he lacked jurisdiction or for any other reason.
- (2) It is no defense to prosecution under this Section that the benefit is not offered or conferred or that the benefit is not solicited or accepted until after:
 - (A) the decision, opinion, recommendation, vote, or other exercise of discretion has occurred; or
 - (B) the City Official or City Employee ceases to be a public servant.

(c) Exceptions

- (1) It is an exception to the application of Subsections (a)(1)(A), (B) and (C) that the benefit is a political contribution as defined by Title 15, Election Code, or an expenditure made and reported in accordance with Chapter 305, Government Code.

SECTION 2-509. City Records

(a) Prohibition:

A City Official or City Employee shall not:

- (1) knowingly make a false entry in, or false alteration of, a City record;
- (2) make, present, or use any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine City record;
- (3) intentionally destroy, conceal, remove, or otherwise impair the verity, legibility, or availability of a City record;

- (4) possess, sell, or offer to sell a City record or a blank City record form with intent that it be used unlawfully;
- (5) make, present, or use a City record with knowledge of its falsity; or
- (6) possess, sell, or offer to sell a City record or a blank City record form with knowledge that it was obtained unlawfully.

(b) Exception

It is an exception to the application of Subsection (a)(3) of this Section that the governmental record is destroyed pursuant to legal authorization or transferred under Section 441.204, Government Code. With regard to the destruction of a local government record, legal authorization includes compliance with the provisions of Subtitle C, Title 6, Local Government Code.

Section 2-510. Misuse of Official Information

(a) Prohibition

- (1) A City Employee or City Official shall not misuse information to which he or she has access by virtue of his or her office or employment and that has not been made public, and shall not:
 - (A) acquire, attempt to acquire or aid another to acquire or attempt to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information;
 - (B) speculate or aid another to speculate on the basis of the information; or
 - (C) as a City Official or City Employee coerce another into suppressing or failing to report that information to a law enforcement agency.
- (2) A City Employee or City Official shall not with intent to obtain a benefit or with intent to harm or defraud another, disclose or use information for a nongovernmental purpose that:
 - (A) the City Official or City Employee has access to by means of his office or employment; and
 - (B) has not been made public.

In this section, “information that has not been made public” means any information to which the public does not generally have access, and/or that is prohibited from disclosure under Chapter 552, Government Code.

SECTION 2-511. Abuse of Official Capacity

(a) Prohibition:

- (1) A City Official or City Employee commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:
 - (A) violates a law relating to the City Official's or City Employee's office or employment; or
 - (B) misuses City property, services, personnel, or any other thing of value belonging to the City that has come into the City Official's or City Employee's custody or possession by virtue of the City Official's or City Employee's office or employment.

(b) Exceptions:

- (1) A discount or award given for travel, such as frequent flyer miles, rental car or hotel discounts, or food coupons, are not things of value belonging to the City for purposes of this Section due to the administrative difficulty and cost involved in recapturing the discount or award for the City.

SECTION 2-512. Official Oppression

(a) Prohibition:

- (1) A City Official or City Employee acting under color of his office or employment commits an offense if he:
 - (A) intentionally subjects another person to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;
 - (B) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing the conduct is unlawful; or
 - (C) intentionally subjects another to sexual harassment.

(b) For purposes of this Section, a City Official or City Employee acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported activity.

(c) In this Section, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power or immunity, either explicitly or implicitly.

Section 2-513. Ethics Review Commission

- (a) There is hereby created an Ethics Review Commission (the “Commission”) an advisory commission having jurisdiction over ethics complaints as described in this Article involving City Officials. All ethics complaints against a City Employee who is not a City Official as defined in Section 2-501 must be filed in the manner prescribed in Chapter 7 of the City of Murphy Personnel Policies and Procedures Manual, as may be amended from time to time.
- (b) The Commission is to be composed of five (5) members each serving a two (2) year term. The City Council shall appoint each member (a “Commissioner”) to the Commission. If a vacancy occurs on the Commission, the City Council shall appoint a person to fill the unexpired term. Each Commissioner shall take an oath of office comparable to that taken by Council members. Commissioners shall serve without compensation, but shall be eligible to be reimbursed for actual expenses in accordance with the City’s reimbursement policy.
- (1) Terms of Commissioners. Beginning January 1, 2013, the Commission shall be comprised of five (5) members each serving a two (2) year term. Thereafter, all members’ terms shall be two (2) years appointed to a term commencing in January of odd-numbered years. The Council may, at its discretion, extend the terms of the outgoing Commissioners for up to one hundred and eighty (180) days in order to resolve any pending complaints. The Commission members shall serve at the pleasure of the City Council and may be removed at the discretion of the City Council. Any Commissioner who misses three (3) consecutive meetings within a twelve (12) month time period or one-third (1/3) of all regular meetings shall be deemed to have automatically vacated his/her position on the Commission. Any Commissioner who applied for and received an excused absence from the Commission chairperson prior to the meeting(s) at issue shall not be considered absent for purposes of this Subsection. Any Commissioner who no longer resides within the corporate boundaries of the City is deemed to have automatically vacated his/her position on the Commission. A Commissioner appointed to serve on the Ethics Commission is not eligible to serve as an appointed official on another City board or commission, including, but not limited to, any development districts until the term has ended.
- (2) Commission Officers; quorum. From among its members the Commission shall elect its officers, those being the Chairperson, Vice-Chairperson, and Secretary. Officers shall be elected for terms of one (1) year. The Chairperson shall preside over all meetings and may vote. If the Chairperson fails or refuses to act, the Vice-Chairperson shall perform the duties of the Chairperson. If the Chairperson and Vice-Chairperson are absent, any Commissioner may be appointed by the remaining members of the Commission to preside over the meeting. Three (3) or more Commissioners present at a meeting shall constitute a quorum, but no action of the Commission shall be of any force or effect unless it is adopted by the favorable votes of three (3) or more of its members.

- (3) Meetings. The Commission shall have such meetings as may be necessary to fulfill its responsibilities. The Commission shall meet at least once a year. The date of the annual meeting shall be in September as set by the Commission. The Chairperson or any two (2) members of the Commission may call a meeting provided that reasonable notice is given to each Commissioner and written notice is posted in accordance with the provisions of the Texas Open Meetings Act. The Commission shall comply with the provisions of the Texas Open Meetings Act when conducting any meetings and/or hearings under this Article.
- (4) Qualifications.
- (A) Commissioners must be Qualified Voters who are residents of the City of Murphy.
 - (B) No Commissioner may be a City Official, a City Employee, an Appointed Board or Commission member or a Family Member of a City Official or City Employee.
 - (C) Commissioners shall maintain objectivity and be free of conflicts of interest in discharging their duties. Commissioners shall be independent in fact and appearance when hearing matters brought before the Commission. When a Commissioner has any reason to believe that he or she cannot be impartial, intellectually honest and free of conflicts of interest in discharging any of the duties of the Commission, such Commissioner shall disclose the facts and circumstances which create the conflict and shall not vote or otherwise participate in consideration of the matter.
 - (D) The Commission shall have the authority to review and investigate complaints filed in accordance with this Article and issue a written finding of the Commission's determination when appropriate.
 - (E) Service on the Commission does not preclude a member from filing a complaint with the Commission. The Commission member filing the complaint must recuse himself/herself from the Commission procedure.
 - (F) The Commission may make recommendations to the City Council regarding revisions and changes to this Ordinance.
 - (G) The Commission may seek any necessary assistance or resources from the City Council and City Manager regarding support needed to carry out the Commission's duties.
 - (H) The Commission shall determine its rules and procedures which shall be submitted in writing and recommended for approval of the Council. The Commission shall establish, amend and rescind its procedures and maintain

proper records of its proceedings and its opinions, subject to City Council approval.

- (I) The Commission shall have the power to investigate, request, and gather evidence necessary to determine if a violation has occurred. The Commission must request access to employees through the City Manager prior to interviewing an employee as a possible witness in a complaint. The Commission shall have the power to enforce the provisions of this Ordinance, including recommending to the City Council the prosecution of alleged violators. Nothing in this Article shall be construed, however, to prevent complainants, including the City, from instituting direct legal action on their own behalf through the appropriate judicial authority.
- (J) The Commission shall receive from the City such administrative support as reasonably necessary to carry out the duties of the Commission and shall assist the Commission with maintenance of its records in compliance with the City's records retention schedule.

Section 2-514. Complaint Process

(a) Filing

- (1) Any City Official, City Employee, or Qualified Voter of the City who believes that there has been a violation of this Ordinance may file a sworn complaint. A complaint alleging a violation of this Ordinance must meet the requirements herein and must be filed with the City Secretary. A complaint alleging a violation of this Article by the City Attorney must also be filed with the persons named in Section 2-515(f). A complaint must be filed within six (6) months from the date of the alleged violation. Please refer to Section 2-515 City Attorney (c).
- (2) Required Contents of a Complaint. A complaint must be in writing, filed on the official complaint form approved by the City, under oath and must set forth in simple, concise, and direct statements the following:
 - (A) The name of the complainant;
 - (B) The street or mailing address and the telephone number of the complainant;
 - (C) The name of the person who allegedly committed the violation;
 - (D) The position or title of the person who allegedly committed the violation;
 - (E) The nature of the alleged violation, including, if possible, the specific rule or provision of this Article alleged to have been violated;

- (F) A statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred; and must contain the following:
- (i) Documents or other material available to the complainant relevant to the allegation;
 - (ii) A list of all documents or other material relevant to the allegation and available to the complainant, but that are not in the possession of the complainant, including the location of the documents; if known, and
 - (iii) A list of all documents or other material relevant to the allegation, but unavailable to the complainant, including the location of the documents, if known.
- (G) If the complaint is based on information and belief, the complaint shall state the source and basis of the information and belief.

- (3) The complaint must be accompanied by an affidavit stating that the information contained in the complaint is either true and correct or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of this Ordinance.
- (4) Upon request, the City Secretary shall provide information to persons about the requirements of a complaint and the process for filing a complaint.

(b) Confidentiality and Ex Parte Communications

- (1) No City Official or City Employee may reveal information relating to the filing or processing of a complaint except as required for the performance of official duties.
- (2) All documents relating to a pending complaint are confidential, unless they are required to be disclosed under the Texas Public Information Act (Tex. Gov. Code Ch. 552).
- (3) After a complaint has been filed, and during the consideration of a complaint by the Commission, a member of the Commission may not communicate directly or indirectly with any party or person about any issue of fact or law regarding the complaint, except at a meeting of the Commission. This provision does not prevent a member of the Commission from consulting with the City Attorney, or its independent legal counsel selected by the City Council regarding procedural and legal issues.
- (4) City Council approval shall be required for legal fees, cost, and related expenses of \$5,000 or more.

(c) Notification

- (1) A copy of a complaint shall be promptly forwarded by the City Secretary to the City Attorney and to the person charged in the complaint.
- (2) The person alleged in the complaint to have violated this Article shall be provided with a copy of this Code of Ethics and informed that:
 - (A) Within fourteen (14) days of receipt of the complaint, a sworn response must be filed with the City Secretary;
 - (B) Failure to file a response does not preclude the City Attorney from processing the complaint.
- (3) City Officials and City Employees have a duty to cooperate with the City Attorney, pursuant to this Section. All requests for access to City Employees throughout the course of an investigation shall be submitted to the City Manager in writing.
- (4) All members of the Commission shall receive copies of the complaint, any background documentation, and any responses at least seven (7) days before a hearing on the matter.

Section 2-515. Role of the City Attorney

- (a) The City Attorney serves as legal counsel to the Ethics Review Commission. When complaints are filed against members of the City Council, the City Manager, or the City Attorney, independent legal counsel may be utilized to advise the Commission and take part in its proceedings, subject to approval of the fee arrangement by the City Council.
- (b) The City Attorney serves as Ethics Advisor to City Officials. As Ethics Advisor, the City Attorney is available to respond to inquiries relating to the Ethics Ordinance (this Article) and may render advisory opinions on potential conflicts of interest or violation of this section at the request of a City Official or City Employee. The advisory opinion in any subsequent charges concerning the matter may be used as a defense to an alleged violation of this section unless material facts were omitted or misstated by the person requesting the opinion.
- (c) The City Attorney shall receive all sworn complaints and, if found sufficient, shall provide a copy and a preliminary review of the complaint to the Commission for action. The City Attorney shall, within fifteen (15) days of receiving the complaint and the response of the accused person, if any, provide a written report to the Commission. The report shall state whether, in the City Attorney's opinion, the written complaint: (1) was filed timely; (2) alleges misconduct by a person whose conduct is regulated under this Code; (3) alleges the occurrence of conduct that might reasonably constitute a violation of this Article; and (4) is signed and sworn to by the person filing the complaint.
- (d) The City Attorney shall also advise the Commission whether the City Attorney has issued a written opinion or opinions to the accused person that relate to the conduct at issue and

whether, in the City Attorney's opinion, the conduct was undertaken in good faith reliance on a written opinion that concluded the conduct was not in violation of this Article. Where the City Attorney concludes that the conduct was undertaken in good faith reliance on a written opinion, the City Attorney shall recommend that the Commission dismiss the complaint following the preliminary hearing.

- (e) The City Attorney's recommendation that the Commission conduct further proceedings does not mean that any of the allegations of the complaint are true or false or that any City Official or City Employee has violated or not violated this Article.
- (f) If a complainant alleges a violation by the City Attorney, the complaint must be filed with the City Secretary, and be forwarded to the Municipal Judge, with a copy to the Mayor and the City Manager. The Municipal Judge will follow the procedures in this Section.

Section 2-516. Hearing Process

(a) Preliminary Hearing

- (1) After the City Attorney, or independent legal counsel selected by the Commission as set out in Sec. 2-515(a) above, has found that a complaint is not defective as to form nor is insufficient (for example, because it does not allege the existence of reasonable grounds to believe that a violation of this Ordinance has occurred), the Commission, as soon as reasonably possible, but in no event later than sixty (60) days after receiving a complaint, shall conduct a Preliminary Hearing. The purpose of the Preliminary Hearing is to make an initial determination as to whether or not a violation of this Ordinance has occurred.
- (2) The complainant and the City Official named in the complaint have the right of representation by legal counsel.
 - (B) The City may pay for legal fees, cost, and related expenses for representation of the City Official, as decided by the City Council. .
- (3) Statements at a Preliminary Hearing shall be under oath, but there shall be no cross examination or requests for persons or evidence issued for the hearing. The Commission members may ask open-ended questions. No public comments are allowed in a preliminary hearing.
- (4) The person filing a complaint shall state the alleged violation and describe in narrative form the testimony and other evidence which are presented to prove the alleged violation as stated in the written complaint.
- (5) The City Official named in the complaint shall have the opportunity to respond but is not required to attend or make any statement. The City Official may describe in narrative form the testimony and other evidence presented to disprove the alleged violation. If the

City Official agrees that a violation has occurred, the Commission may consider the appropriate sanction.

- (6) Only members of the Commission may question the complainant, the independent counsel for the Commission, or the City Official named in the complaint.
- (7) At the conclusion of the Preliminary Hearing one of the following actions shall be taken:
 - (A) If the Commission does not determine that there are reasonable grounds to believe that a violation of this Article has occurred, the complaint shall be dismissed.
 - (B) If the Commission determines that there are reasonable grounds to believe that a violation of this Article has occurred, it shall schedule a final hearing.
 - (C) If the City Official has agreed that a violation has occurred, the Commission may proceed to determine the appropriate sanction without the necessity of a final hearing and state its findings pursuant to Subsection (b)(4) below.

(b) Final Hearing

- (1) Except as provided by Subsection 2-516(a)(7)(C) above, a final hearing shall be held as expeditiously as possible following the determination by the Commission that there are reasonable grounds to believe that a violation of this Article has occurred, but in no event shall it be held more than thirty (30) days after said determination. The Commission may grant up to two postponements, not to exceed fifteen (15) days each, upon the request of the City Official named in the complaint.
- (2) If a complaint proceeds to a final hearing, the Commission may request witnesses to attend and testify, administer oaths and affirmations, take evidence and request the production of books, papers, records, or other evidence needed for the performance of the Commission's duties or exercise of its powers, including its powers of investigation. No public comments are allowed during the final hearing.
- (3) The complainant and the City Official named in the complaint have the right of representation by legal counsel.
- (4) The issue at a final hearing is whether a violation of this Article has occurred. The Commission shall make its determination based on the preponderance of the evidence in the record. All witnesses shall make their statements under oath. Witnesses may be cross-examined. If the Commission determines that a violation has occurred, it shall state its findings in writing, identify the particular provision(s) of this Article which have been violated, and within five (5) working days deliver a copy of the findings to the complainant, the person accused in the complaint, and the City Secretary. The City

Secretary shall deliver a copy of the findings to the Council, the City Manager and the City Attorney.

Section 2-517. Sanctions for Violations

- (a) If the Commission determines that a violation of this Article has occurred, it shall consider appropriate sanctions. The Commission may receive additional testimony or statements before considering sanctions, but is not required to do so.
- (b) If the Commission determines that a violation has occurred, it may impose the following sanctions.
 - (1) A letter of notification is an appropriate sanction when the violation is clearly unintentional, or when the conduct of the person complained against was done in reliance upon an opinion of the City Attorney. The letter of notification shall advise the City Official of any steps to be taken to avoid future violations.
 - (2) A letter of admonition is the appropriate sanction when the Commission finds the violation is minor and/or may have been unintentional, but calls for a more substantial response than a letter of notification.
 - (3) A letter of reprimand is the appropriate sanction when the Commission finds a serious violation has been committed intentionally or knowingly or through disregard of this Ordinance. A written reprimand directed to a City Official who also serves as a City Employee shall be included in the employee's personnel file.
 - (4) A letter of censure is the appropriate sanction when the Commission finds that a serious violation has occurred and/or more than one serious violation or repeated serious violations of this Article have been committed by a City Official.
- (c) Copies of all sanction letters issued by the Commission under this section shall be sent to the City Council.
- (d) In addition, if the violation is found by the Commission to be done willfully and the seriousness of the violation warrants, the Commission may recommend to the City Council the suspension or removal from office of any official serving in a City-appointed position.
- (e) Except with regard to violations of Chapters 171 and 176 of the Texas Local Government Code, violations of the Penal Code, or violations of the Government Code, a violation by any City Official or City Employee as designated herein of one or more of the provisions of this Article shall not be deemed to be a Class C misdemeanor under the laws of the State of Texas.

Section 2-518. Distribution and Proof of Compliance

The City Secretary shall provide each new City Official designated in this Article, a copy of the text of this Ordinance; Chapter 171 and Chapter 176 of the Texas Local Government Code pertaining to conflicts of interest; the Texas Open Meetings Act (Tex.Gov. Code Ch. 551); the Texas Public Information Act (Tex. Gov. Code Ch. 552) Chapter 573 of the Texas Government Code; Texas Penal Code Sections 36.02, 37.10, 39.02, 39.03 and 39.06 (collectively referred to in this section as the “Ethics Statutes”) with a signature receipt of all said documents.

EXHIBIT "1"

Consanguinity and Affinity

Affinity Kinship (Marriage) Relationships

1 st Degree	2 nd Degree
Father-in-Law	Spouse's Grandfather
Mother-in-Law	Spouse's Grandmother
Son-in-Law	Spouse's Brother (Brother-in-Law)
Daughter-in-Law	Spouse's Sister (Sister-in-Law)
Spouse	Spouse's Grandson
	Spouse's Granddaughter
	Brother's Spouse (Sister-in-Law)
	Sister's Spouse (Brother-in-Law)

Consanguinity (Blood) Relationships

1 st Degree	2 nd Degree	3 rd Degree
Father	Grandfather	Great-Grandfather
Mother	Grandmother	Great-Grandmother
Son	Brother	Nephew
Daughter	Sister	Niece
	Grandson	Great-Grandson
	Granddaughter	Great-Granddaughter
		Uncle
		Aunt

ORDINANCE NO. 13--07-

AN ORDINANCE OF THE CITY OF MURPHY, TEXAS, AMENDING CHAPTER 2 OF THE CITY OF MURPHY'S CODE OF ORDINANCES, ~~TO ESTABLISH~~ AAMENDING ARTICLE IX CODE OF ETHICS FOR CITY OFFICIALS AND EMPLOYEES, INCLUDING REGULATIONS RELATED TO STANDARDS OF CONDUCT; GIFTS AND HONORARIUMS; CONFLICTS OF INTEREST; CONFLICT DISCLOSURE STATEMENTS; INTEREST IN PROPERTY ACQUIRED WITH PUBLIC FUNDS; NEPOTISM; BRIBERY; CITY RECORDS; MISUSE OF OFFICIAL INFORMATION; ABUSE OF OFFICIAL CAPACITY; AND OFFICIAL OPPRESSION; CREATING AN ETHICS REVIEW COMMISSION; PROVIDING A COMPLAINT PROCESS FOR VIOLATIONS OF THE CODE OF ETHICS; PRESCRIBING THE ROLE OF THE CITY ATTORNEY IN THE COMPLAINT PROCESS; PROVIDING A HEARING PROCESS; PROVIDING SANCTIONS FOR VIOLATIONS OF THE CODE OF ETHICS; AND PROVIDING FOR DISTRIBUTION AND PROOF OF COMPLIANCE; AND PROVIDING FOR AN EFFECTIVE DATE, PROPER NOTICE AND MEETING; SEVERABILITY CLAUSE AND REPEALER CLAUSE.

WHEREAS, statutory provisions governing the ethical conduct of public officials and employees are found in various codes including the Texas Local Government Code, the Texas Government Code and the Texas Penal Code; and

WHEREAS, the City Council finds it desirable and necessary to adopt a comprehensive ethics ordinance that sets out the ~~statutory~~ parameters relating to the conduct of public officials and employees in one easily accessible location; and

WHEREAS, the City Council believes that a position in government is a position of public trust that demands a high standard of behavior, and

WHEREAS, each employee and official of the City of Murphy should uphold the Constitution, laws and regulations of the United States and the State of Texas and the Charter and ordinances of the City of Murphy; and

WHEREAS, the City of Murphy seeks to promote personal integrity, honesty and ethical conduct in all activities undertaken by City Officials and employees through the adoption of this Ordinance; and

WHEREAS, the City of Murphy seeks to inspire public confidence and trust in City of Murphy officials and employees through the adoption of this "Code of Ethics";

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

SECTION 1. RECITALS

The City Council hereby finds that the statements set forth in the recitals of this Ordinance are true and correct, and the City Council hereby incorporates such recitals as part of this Ordinance.

SECTION 2. ADOPTION OF CODE OF ETHICS

Chapter 2, Administration, of the Code of Ordinances of the City of Murphy is hereby amended by amending Article IX, Code of Ethics:

Article IX, Code of Ethics attached hereto as Exhibit "A" and incorporated herein for all purposes is hereby enacted.

SECTION 3. Effective Date

This Ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

SECTION 4. Proper Notice and Meeting

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code and as required by Chapter 552 of the Texas Local Government Code.

SECTION 5. Severability

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

SECTION 6. Repealer

The provisions of this Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent that such inconsistency is apparent.

PASSED AND APPROVED by the City Council of the City of Murphy, Texas this ____
day of _____, 2013.

Eric Barna, Mayor
City of Murphy

ATTEST:

Kristi Gilbert, City Secretary
City of Murphy

APPROVED AS TO FORM:

Wm. Andrew Messer, City Attorney
City of Murphy

EXHIBIT “A”

**ARTICLE IX
CODE OF ETHICS**

Section 2-501. Definitions.

The terms used in this Article shall have the following meanings:

Business Entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

Candidate. This term has the meaning assigned by section 251.001, Election Code.

City Council means the mayor and six (6) council members elected to serve as the governing body of the City.

City Employee means any person employed by the City, including those individuals that are employed on a part-time or temporary basis and employees of any corporation created by the City, but such term shall not be extended to apply to any independent contractor.

City Attorney means the City Attorney appointed by the City Council pursuant to the City Charter.

City Engineer means the City Engineer appointed by the City Manager.

City Manager means the City Manager appointed by the City Council pursuant to the City Charter.

City Official means every member of the City Council, the City Manager, City Secretary, the City Attorney, the Municipal Judge, the City Engineer and all members of any board, commission, or committee appointed by the City Council, including; the board members of the Murphy Municipal Development District (MDD), the Murphy Economic Development Corporation (4A) (“MEDC”) and the 4B Murphy Community Development Corporation (“MCDC”), and the executive directors of the MEDC and the MCDC.

City Secretary means the City Secretary appointed by the City Council pursuant to the City Charter.

Confidential Information means any information that a City Official would be privy to because of the official’s position but otherwise is not available to the public under the provisions of the Texas Public Information Act (Tex. Gov’t Code Ch. 552).

Conflict Disclosure Statement means the disclosure statement form adopted by the Texas Ethics Commission required by Chapter 176 of the Local Government Code.

Conflict of Interest Questionnaire means the conflicts of interest form adopted by the Texas Ethics Commission required by Chapter 176 of the Local Government Code.

Economic Benefit means any taxable income or any money, real or personal property, contract rights, sale, lease, option, credit, loan, discount, service, or other tangible or intangible thing of value, whether similar or dissimilar to those enumerated.

Economic Interest means a legal or equitable interest in real or personal property or a fiduciary obligation to such property or contractual right in such property that is more than Two Thousand Five Hundred Dollars (\$2500.00). Service by a City Official or City Employee as an officer, director, advisor, or otherwise active participant in an educational, religious, charitable, fraternal, or civic organization does not create an Economic Interest in the property of that organization. Ownership of an interest in a mutual or common investment fund that holds securities or other assets is not an Economic Interest in the securities or other assets unless the City Official or City Employee participates in the management of the fund. A City Official or City Employee does not have an Economic Interest in a matter if the economic impact on the City Official or City Employee is indistinguishable from the impact on the public or on the particular group affected by the matter.

Family Member means a person related to a City Official in the first degree of consanguinity or affinity, as described by Subchapter B, Chapter 573 of the Government Code, except that the term does not include a person who is considered to be related to a City Official by affinity only as described by Section 573.024(b) of the Government Code. This definition would include children, spouses, parents, step-children and parents-in-law or children-in-law, except that relationships by affinity would end upon divorce.

Gift means a favor, hospitality, or economic benefit other than compensation but which does not include campaign contributions reported as required by state law, gifts received from a relative if given on account of kinship, or any value received by will, intestate succession, or as a distribution from an *inter vivos* or testamentary trust.

Municipal Judge means the Municipal Judge or alternate Municipal Judge appointed by the City Council pursuant to the City Charter.

Permissible Gift means a thing of nominal value given (not to exceed \$100.00 in value), and not given to request a specific favor, special treatment, or influence a City Official or City Employee. Marketing advertisement items of nominal value, or certificates or plaques having no intrinsic value, are considered permissible gifts or gratuities. The purchase of meals of nominal value, provided there is a rotation of purchasing, is considered a permissible gift. The provision of training/education programs of a general nature is considered a permissible gift or gratuity. Items that exceed \$100.00 in value, if divided (e.g. holiday food or sporting event tickets distributed by lot) or donated for a City-sponsored function, are considered permissible gifts and/or gratuities.

Qualified Voter means a person who meets the qualifications of Section 11.002 of the Texas Election Code to vote in City elections.

Second Degree by Affinity is defined by Subchapter B., Chapter 573 of the Government Code and examples of such relationship are set out in the Chart attached hereto as Exhibit “1.”

Substantial Interest means the interest that a City Official and/or a Family Member has in a business or business entity or in real property as described below:

- (a) The City Official and/or a Family Member owns ten percent (10%) or more of the voting stock or shares of the business entity; or
- (b) The City Official and/or a Family Member owns ten percent (10%) or more or \$15,000.00 or more of the fair market value of the business entity; or
- (c) Funds received by the City Official and/or a Family Member from the business entity exceed ten percent (10%) of the person's gross income for the previous year;
- (d) The City Official and/or Family Member has a Substantial Interest in real property if the interest is an equitable or legal interest with a fair market value of \$2,500 or more.

Third Degree by Consanguinity is defined by Subchapter B., Chapter 573 of the Government Code and examples of such relationship are set out in the Chart attached hereto as Exhibit “1.”

Section 2-502. Standards of Conduct

(a) General Provisions

- (1) No City Official or City Employee may disclose any Confidential Information gained through the City Official's or City Employee's office or position concerning property, operations, policies, or affairs of the City, or use such Confidential Information to advance any Economic Interest of the City Official or City Employee, confer any Economic Benefit to the City Official or City Employee, or their Family Member. This Subsection shall not preclude disclosure of such Confidential Information in connection with any investigation or proceeding regarding whether there has been a violation of this Code of Ethics to any investigatory, administrative or judicial authority.
- (2) No City Official or City Employee may use his or her office or position or City owned facilities, equipment, supplies, or resources of the City to advance any Economic Interest of the City Official or City Employee, confer any Economic Benefit to the City Official or City Employee, for a political campaign of the City Official or City Employee, or for any of the City Official's or City Employee's Family Members. Notwithstanding the foregoing, City owned facilities, equipment, supplies or resources may be used by City Officials or City Employees to the extent such uses are customary, incidental or lawfully available to the public.

- (3) No City Official shall knowingly represent, directly or indirectly, any person, group or business entity:
- (A) Before the City Council or the board, commission or committee of which he or she is a member;
 - (B) Before a board or commission which has appellate jurisdiction over the board, commission or committee of which he or she is a member;
 - (C) In any action or proceeding against the interests of the City or in any litigation in which the City or any department, agency, board, commission or committee is a party; or
 - (C) In any action or proceeding in the municipal court(s) of the City which was instituted by a City Official or City Employee in the course of his or her official duties, or a criminal proceeding in which any City Official or City Employee is a material witness for the prosecution.
- (4) The restrictions contained in Subsection (3) do not prohibit the following:
- (A) A City Official, or his or her spouse, appearing before the City Council or a City board, commission or committee to represent himself or herself in a matter affecting his or her property; provided, however, that no such person, or his or her spouse, shall personally appear before the City Council, board, commission or committee of which he or she is a member and must submit their case through an authorized representative;
 - (B) A City Official or City Employee appearing before the City Council or a City board, commission or committee to address employment matters;
- (5) No City Official may act as surety for any person or business entity that has work, business, or a contract with the City, or act as a surety on any bond required by the City for a City Official.
- (6) No City Official or City employee shall default or refuse to answer any questions pertinent to the proceedings before the City Council, or fail or refuse to obey any subpoena, or to produce any books, papers or other material issued by the City Council pursuant to Sec. 3.17 of the City Charter.
- (7) No City Official or City Employee shall deny, abridge or compromise equality of rights under state and federal law with respect to appointment to or removal of any appointed position with the City as prohibited by Sec. 14.02 of the City Charter.
- (8) No City Official or City Employee who seeks appointment or promotion with respect to any City appointed position shall, directly or indirectly, give, render or pay any money,

service or other valuable thing to any person for, or in connection with, his or her test, appointment or promotion with respect to any City position as prohibited by Sec. 14.03 of the City Charter.

- (9) No City Official or City Employee shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification, appointment or promotion with respect to any City position, or attempt to commit any fraud preventing the impartial execution of the personnel provisions, rules and regulations of the City Charter as prohibited by Sec. 14.04 of the City Charter.
- (10) No City Official, who holds any compensated, non-elective City position, or City Employee shall use their official title or position with the City to solicit any contribution or endorse the candidacy of any Candidate for public office in the City as prohibited by Sec. 14.05 of the City Charter. Any such person shall have the right to exercise his/her legal rights to ~~participate campaign or solicit participate~~ in the election process when he/she is not on duty, in a City building, City provided uniform or attire, or using a City vehicle or equipment.
- (11) Members of the City Council shall not in any way dictate the appointment, removal or discipline of the City Officials or City Employees appointed by the City Manager or any of the City Manager's subordinates as prohibited by Sec. 3.08(2) of the Charter. Notwithstanding the foregoing, the City Council, at a meeting called for that purpose, may express its views and fully and freely discuss with the City Manager anything pertaining to the appointment and removal of such City Officials and City Employees.
- (12) Except for the purpose of inquiries and investigations provided by the Charter, the City Council shall interact with City Officials and City Employees who are subject to the direction and supervision of the City Manager in accordance with the Governance Policy adopted by the City Council. The City Council shall not give orders to any such City Official or City Employee, either publicly or privately, except as otherwise provided in the Charter.

SECTION 2-503. Gifts and Honorariums

(a) Prohibition:

- (1) No City Official or City Employee may solicit or accept any Gift, favor or privilege, that is offered or given with the intention of influencing the judgment or discretion of the City Official or City Employee; or given in consideration of the favorable exercise of the City Official's or City Employee's judgment or discretion in the past.
- (2) A City Employee performing regulatory functions or conducting inspections or investigations shall not solicit, accept, or agree to accept any benefit from a person the

City Employee knows to be subject to regulation, inspection, or investigation by the City Employee or the City.

- (3) A City Employee having custody of prisoners shall not solicit, accept, or agree to accept any benefit from a person the City Employees knows to be in his custody or the custody of the City.
- (4) A City Employee or a City Official who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of the City shall not solicit, accept, or agree to accept any benefit from a person the City Employee or City official knows is interested in or likely to become interested in any contract, purchase, payment, claim or transaction involving the exercise of his discretion.
- (5) A City Employee or City Official who has judicial or administrative authority, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision shall not solicit, accept, or agree to accept any Economic Benefit from a person the City Employee or City Official knows is interested in or likely to become interested in any matter before the City Employee or City Official or tribunal.
- (6) A City Official is prohibited from soliciting, accepting, or agreeing to accept an honorarium in consideration for services that the City Official would not have been requested to provide but for the City Official's official position or duties.

(b) Donation of Unsolicited Gift

A City Employee or City Official who receives an unsolicited Gift that the City Employee or City Official is prohibited from accepting under this section may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

(c) Exceptions

The prohibitions set out in this section do not apply to:

- (1) a fee prescribed by law to be received by a City Employee or City Official or any other benefit to which the City Employee or City Official is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a City Employee or City Official;
- (2) a Gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient; or

- (3) a benefit to a City Employee or City Official required to file a statement under Chapter 572, Government Code, or a report under Title 15, Election Code, that is derived from a function in honor or appreciation of the recipient if:
 - (A) the benefit and the source of any benefit in excess of \$50 is reported in the statement; and
 - (B) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or the City;
- (4) a political contribution as defined by Title 15, Election Code;
- (5) a Permissible Gift as defined in this Ordinance, excluding cash or a negotiable instrument as described by Section 3.104, Business & Commerce Code;
- (6) an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity;
- (7) food, lodging, transportation, or entertainment accepted as a guest and, if the donee~~or~~ is required by law to report those items, reported by the donee~~or~~ in accordance with that law;
- (8) any Gift or benefit otherwise excepted under section 36.10, Penal Code; or
- (9) This section does not prohibit a City Official from accepting (1) transportation expenses, (2) lodging expenses or (3) meals in connection with a conference or similar event in which the City Official renders services, such as addressing an audience or engaging in a seminar to the extent that those services are more than merely perfunctory.

SECTION 2-504. Conflict of Interest; Recusal.

- (a) Conflict of Interest. No City Official may vote on or participate in any decision-making process on a matter concerning property or a business entity if the official has a Substantial Interest in the real property or business entity.
- (b) Recusal.
 - (1) A City Official shall disclose the existence of any Substantial Interest in any business entity or real property involved in any decision pending before such City Official, or the body of which he or she is a member. To comply with this Subsection, a City Official shall, prior to any discussion or determination of the matter, either file an affidavit of disclosure as required by Local Government Code § 171.004 or, if not so required, shall publicly disclose in the official records of the City to the City Secretary

the nature of the interest. To further comply with this Subsection, a City Official shall notify the City Manager, or if the City Official is the City Manager, shall notify the City Secretary, in writing of the nature of any Substantial Interest he or she may have in a Business Entity or real property which would be affected by an exercise of discretionary authority by the City Official and the City Manager or City Secretary shall assign the matter to another employee. In disclosing a Substantial Interest in a Business Entity, a City Official shall not be required to disclose the dollar amount of any income that he or she receives from the Business Entity.

- (2) The City Council shall take a separate vote on any budget item specifically dedicated to a contract with a Business Entity in which a member of the Council has a Substantial Interest. The member of the City Council that has the Substantial Interest may not participate in the separate vote.
- (3) In addition to complying with the requirements of Chapter 171 of the Local Government Code, to avoid the appearance and risk of impropriety, a City Official should abstain from participation in, discussion of, and any vote on a matter involving a person or Business Entity that the official knows is likely to affect the Economic Interest of, or confer an Economic Benefit on:
 - (i) The City Official's parent, child, step-child, spouse, or other family member within the second degree of consanguinity or affinity as defined by Chapter 573 of the Government Code, or a client of the City Official;
 - (ii) An employer of the City Official, the City Official's parent, child, step-child, or spouse;
 - (iii) A Business Entity for which the City Official serves as an officer or director or serves in any policy-making position;
 - (iv) A person or Business Entity from whom, within the past twelve months, the City Official or the official's spouse, directly or indirectly, received an Economic Benefit; or
 - (v) A person or Business Entity from whom, within the past twelve months, the City Official or the official's spouse, directly or indirectly, engaged in negotiations pertaining to business opportunities.

SECTION 2-505. Conflict Disclosure Statements.

- (a) A City Official shall file a sworn Conflicts Disclosure Statement with the City Secretary whenever a City Official or a Family Member (i) is receiving taxable income from an employment or other business relationship with a person or Business Entity who has contracted with the City for the sale or purchase of real property, goods or services or that is

considering contracting with the City for the sale or purchase of real property, goods or services that exceeds \$2,500.00 (not including investment income) during the twelve (12) month period preceding the date that the City Official became aware of the contract, or (ii) has received Gifts with a value of more than \$250.00 during the twelve (12) month period preceding the date that the City Official became aware of the contract from a person or Business Entity that contracts with the City for the sale or purchase of real property, goods or services or that the City is considering doing business with such person or Business Entity. The City Official shall file the Conflicts Disclosure Statement with the City Secretary no later than 5:00 p.m. on the seventh business day after the date the City Official becomes aware of the facts that require the filing of the Statement.

- (b) A City Official commits an offense if the City Official knowingly fails to file the Conflicts Disclosure Statement. An offense under the above Subsection is a Class C misdemeanor.
- (c) The City Secretary shall accept and file any and all City Official Conflict Disclosure Statements and any Vendor Conflict of Interest Questionnaires.
- (d) The City Secretary shall maintain a list of City Officials and shall make that list available to the public and any person who may be required to file a Conflicts of Interest Questionnaire. The City Secretary shall maintain copies of the Conflict Disclosure Statements and Conflict Questionnaires on the City's ~~internet~~ website.
- (e) City Officials shall abstain from participation in, discussion of, and any vote on a matter involving a person or Business Entity, if, within the 12 months preceding the date of the vote, the City Official has filed, or should have filed, a Conflicts Disclosure Statement under Chapter 176 of the Local Government Code.

SECTION 2-506. Interest in Property Acquired with Public Funds

(a) Disclosure of Interest in Property

A City Official who has a legal or equitable interest in real property that is to be acquired with public funds shall file an affidavit within 10 days before the date on which the property is to be acquired by purchase or condemnation.

(b) Affidavit

The affidavit must:

- (1) State the name of the City Official;
- (2) State the City Official's office, public title, or job designation;
- (3) Fully describe the property;
- (4) Fully describe the nature, type, and amount of interest in the property, including the percentage of ownership interest;

- (5) State the date when the person acquired an interest in the property;
- (6) Include a verification as follows: “I swear that the information in this affidavit is personally known by me to be correct and contains the information required by Section 553.002, Government Code”; and
- (7) Contain an acknowledgement of the same type required for recording a deed in the deed records of the county.

The affidavit must be filed with the records administrator for the City ~~county clerk of the county in which the City Official resides and the county clerk of each county in which the property is located.~~

SECTION 2-507. Nepotism

(a) Prohibition:

- (1) A City Official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from City funds or fees of office if:
 - (A) the individual is related to the City Official within the Third Degree by Consanguinity or the Second Degree by Affinity; or
 - (B) the City Official holds the appointment or confirmation authority as a member of a state or local Council, the legislature, or a court and the individual is related to another member of that Council, legislature, or court within the Third Degree by Consanguinity or the Second Degree by Affinity.
- (2) A City Official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position in which the individual’s services are under the City Official’s direction or control and that is to be compensated directly or indirectly from City funds or fees of office if:
 - (A) The individual is related to another City Official within the Third Degree by Consanguinity or the Second Degree by Affinity; and
 - (B) the appointment, confirmation of the appointment, or vote for appointment or confirmation of the appointment would be carried out in whole or partial consideration for the other City Official appointing, confirming the appointment, or voting for the appointment or confirmation of the appointment of an individual who is related to the first City Official within the Third Degree by Consanguinity or the Second Degree by Affinity.

(b) Exceptions

- (1) The prohibitions in Section 2-507 do not apply to:

- (A) an appointment to the office of a notary public or to the confirmation of that appointment;
 - (B) an appointment or employment of a personal attendant by a City Official for attendance on the City Official who, because of physical infirmities, is required to have a personal attendant; or
 - (C) any other appointment excepted under Chapter 573, Government Code.
- (2) The prohibition in Section 2-507 does not apply to an appointment, confirmation of an appointment, or vote for an appointment or confirmation of an appointment of an individual to a position if:
- (A) the individual is employed in the position immediately before the election or appointment of the City Official to whom the individual is related in a prohibited degree; and
 - (B) that prior employment of the individual has been continuous for at least six (6) months.
- (3) If, under Subsection (b)(2), an individual continues in a position, the City Official to whom the individual is related in a prohibited degree may not participate in any deliberation or vote on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of the individual if that action applies only to the individual and is not taken regarding a bona fide class or category of employees.

SECTION 2-508. Bribery.

(a) Prohibition:

A City Official or City Employee shall not:

- (1) intentionally or knowingly offer, confer, or agree to confer on another person, or solicit, accept or agree to accept from another person:
 - (A) any benefit or consideration for the City Official's or City Employee's decision, vote, recommendation, or other exercise of official discretion as a City Official or City Employee;
 - (B) any benefit as consideration for the City Official's or City Employee's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding;

- (C) any benefit as consideration for a violation of a duty imposed by law on a City Official or City Employee; or
- (D) any benefit that is a political contribution as defined by Title 15, Election Code, or that is an expenditure made and reported in accordance with Chapter 305, Government Code, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit; notwithstanding any rule of evidence or jury instruction allowing factual interference in the absence of certain evidence, direct evidence of the express agreement shall be required in any prosecution under this Subsection.

(b) No Defense

- (1) It is no defense to prosecution under this Section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or he lacked jurisdiction or for any other reason.
- (2) It is no defense to prosecution under this Section that the benefit is not offered or conferred or that the benefit is not solicited or accepted until after:
 - (A) the decision, opinion, recommendation, vote, or other exercise of discretion has occurred; or
 - (B) the City Official or City Employee ceases to be a public servant.

(c) Exceptions

- (1) It is an exception to the application of Subsections (a)(1)(A), (B) and (C) that the benefit is a political contribution as defined by Title 15, Election Code, or an expenditure made and reported in accordance with Chapter 305, Government Code.

SECTION 2-509. City Records

(a) Prohibition:

A City Official or City Employee shall not:

- (1) knowingly make a false entry in, or false alteration of, a City record;
- (2) make, present, or use any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine City record;
- (3) intentionally destroy, conceal, remove, or otherwise impair the verity, legibility, or availability of a City record;

- (4) possess, sell, or offer to sell a City record or a blank City record form with intent that it be used unlawfully;
- (5) make, present, or use a City record with knowledge of its falsity; or
- (6) possess, sell, or offer to sell a City record or a blank City record form with knowledge that it was obtained unlawfully.

(b) Exception

It is an exception to the application of Subsection (a)(3) of this Section that the governmental record is destroyed pursuant to legal authorization or transferred under Section 441.204, Government Code. With regard to the destruction of a local government record, legal authorization includes compliance with the provisions of Subtitle C, Title 6, Local Government Code.

Section 2-510. Misuse of Official Information

(a) Prohibition

- (1) A City Employee or City Official shall not misuse information to which he or she has access by virtue of his or her office or employment and that has not been made public, and shall not:
 - (A) acquire, attempt to acquire or aid another to acquire or attempt to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information;
 - (B) speculate or aid another to speculate on the basis of the information; or
 - (C) as a City Official or City Employee coerce another into suppressing or failing to report that information to a law enforcement agency.
- (2) A City Employee or City Official shall not with intent to obtain a benefit or with intent to harm or defraud another, disclose or use information for a nongovernmental purpose that:
 - (A) the City Official or City Employee has access to by means of his office or employment; and
 - (B) has not been made public.

In this section, “information that has not been made public” means any information to which the public does not generally have access, and/or that is prohibited from disclosure under Chapter 552, Government Code.

SECTION 2-511. Abuse of Official Capacity

(a) Prohibition:

- (1) A City Official or City Employee commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:
 - (A) violates a law relating to the City Official's or City Employee's office or employment; or
 - (B) misuses City property, services, personnel, or any other thing of value belonging to the City that has come into the City Official's or City Employee's custody or possession by virtue of the City Official's or City Employee's office or employment.

(b) Exceptions:

- (1) A discount or award given for travel, such as frequent flyer miles, rental car or hotel discounts, or food coupons, are not things of value belonging to the City for purposes of this Section due to the administrative difficulty and cost involved in recapturing the discount or award for the City.

SECTION 2-512. Official Oppression

(a) Prohibition:

- (1) A City Official or City Employee acting under color of his office or employment commits an offense if he:
 - (A) intentionally subjects another person to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;
 - (B) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing the conduct is unlawful; or
 - (C) intentionally subjects another to sexual harassment.

(b) For purposes of this Section, a City Official or City Employee acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported activity.

(c) In this Section, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power or immunity, either explicitly or implicitly.

Section 2-513. Ethics Review Commission

- (a) There is hereby created an Ethics Review Commission (the “Commission”)—~~is~~ an advisory commission having jurisdiction over ethics complaints as described in this Article involving City Officials ~~and City Employees~~. All ethics complaints against a City Employee ~~that who~~ is not a ~~charter designated~~ City Official ~~as defined in Section 2-501~~ must be filed in the manner prescribed in Chapter 7 of the City of Murphy Personnel Policies and Procedures Manual, as may be amended from time to time.
- (b) The Commission is to be composed of five (5) members each serving a two (2) year term. The City Council shall appoint each member (a “Commissioner”) to the Commission. If a vacancy occurs on the Commission, the City Council shall appoint a person to fill the unexpired term. Each Commissioner shall take an oath of office comparable to that taken by Council members. Commissioners shall serve without compensation, but shall be eligible to be reimbursed for actual expenses in accordance with the City’s reimbursement policy.
- (1) Terms of Commissioners. Beginning January 1, 2013, the Commission shall be comprised of five (5) members each serving a ~~single,~~ two (2) year term. ~~At the City Council meeting which creates the Commission, two (2) Commissioners shall be selected to serve an initial one (1) year term and three (3) Commissioners shall be selected to serve an initial two (2) year term.~~ Thereafter, all members’ terms shall be two (2) years appointed to a term commencing in January of odd-numbered years. The Council may, at its discretion, extend the terms of the outgoing Commissioners for up to one hundred and eighty (180) days in order to resolve any pending complaints. The Commission members shall serve at the pleasure of the City Council and may be removed at the discretion of the City Council. Any Commissioner who misses three (3) consecutive meetings within a twelve (12) month time period or one-third (1/3) of all regular meetings shall be deemed to have automatically vacated his/her position on the Commission. Any Commissioner who applied for and received an excused absence from the Commission chairperson prior to the meetings(s) at issue shall not be considered absent for purposes of this Subsection. Any Commissioner who no longer resides within the corporate boundaries of the City is deemed to have automatically vacated his/her position on the Commission. A Commissioner appointed to serve on the Ethics Commission is not eligible to serve as an appointed official on another City board or commission, including, but not limited to, any development districts until the term has ended.
- (2) Commission Officers; quorum. From among its members the Commission shall elect its officers, those being the Chairperson, Vice-Chairperson, and Secretary. Officers shall be elected for terms of one (1) year. The Chairperson shall preside over all meetings and may vote. If the Chairperson fails or refuses to act, the Vice-Chairperson shall perform the duties of the Chairperson. If the Chairperson and Vice-Chairperson are absent, any Commissioner may be appointed by the remaining members of the Commission to preside over the meeting. Three (3) or more Commissioners present at a

meeting shall constitute a quorum, but no action of the Commission shall be of any force or effect unless it is adopted by the favorable votes of three (3) or more of its members.

- (3) Meetings. The Commission shall have such meetings as may be necessary to fulfill its responsibilities. The Commission shall meet at least once a year. The date of the annual meeting shall be in September as set by the Commission. The Chairperson or any two (2) members of the Commission may call a meeting provided that reasonable notice is given to each Commissioner and written notice is posted in accordance with the provisions of the Texas Open Meetings Act. The Commission shall comply with the provisions of the Texas Open Meetings Act when conducting any meetings and/or hearings under this Article.
- (4) Qualifications.
- (A) Commissioners must be Qualified Voters who are residents of the City of Murphy.
 - (B) No Commissioner may be a City Official, a City Employee, an Appointed Board or Commission member or a Family Member of a City Official or City Employee.
 - (C) Commissioners shall maintain objectivity and be free of conflicts of interest in discharging their duties. Commissioners shall be independent in fact and appearance when hearing matters brought before the Commission. When a Commissioner has any reason to believe that he or she cannot be impartial, intellectually honest and free of conflicts of interest in discharging any of the duties of the Commission, such Commissioner shall disclose the facts and circumstances which create the conflict and shall not vote or otherwise participate in consideration of the matter.
 - (D) The Commission shall have the authority to review and investigate complaints filed in accordance with this Article and issue a written finding of the Commission's determination when appropriate.
 - (E) Service on the Commission does not preclude a member from filing a complaint with the Commission. The Commission member filing the complaint must recuse himself/herself from the Commission procedure.
 - (F) The Commission may make recommendations to the City Council regarding revisions and changes to this Ordinance.
 - (G) The Commission may seek any necessary assistance or resources from the City Council and City Manager regarding support needed to carry out the Commission's duties.

- (H) The Commission shall determine its rules and procedures which shall be submitted in writing and recommended for approval of the Council. The Commission shall establish, amend and rescind its procedures and maintain proper records of its proceedings and its opinions, subject to City Council approval.
- (I) The Commission shall have the power to investigate, request, and gather evidence necessary to determine if a violation has occurred. The Commission must request access to employees through the City Manager prior to interviewing an employee as a possible witness in a complaint. The Commission shall have the power to enforce the provisions of this Ordinance, including recommending to the City Council the prosecution of alleged violators. Nothing in this Article shall be construed, however, to prevent complainants, including the City, from instituting direct legal action on their own behalf through the appropriate judicial authority.
- (J) The Commission shall receive from the City such administrative support as reasonably necessary to carry out the duties of the Commission and shall assist the Commission with maintenance of its records in compliance with the City's records retention schedule.

Section 2-514. Complaint Process

(a) Filing

- (1) Any City Official, City Employee, or Qualified Voter of the City who believes that there has been a violation of this Ordinance may file a sworn complaint. A complaint alleging a violation of this Ordinance must meet the requirements herein and must be filed with the City Secretary. A complaint alleging a violation of this Article by the City Attorney must also be filed with the persons named in Section 2-515(f). A complaint must be filed within six (6) months from the date of the alleged violation. Please refer to Section 2-515 City Attorney (c).
- (2) Required Contents of a Complaint. A complaint must be in writing, filed on the official complaint form approved by the City. ~~An ethics complaint must be in writing and~~ under oath and must set forth in simple, concise, and direct statements the following:
 - (A) The name of the complainant;
 - (B) The street or mailing address and the telephone number of the complainant;
 - (C) The name of the person who allegedly committed the violation;
 - (D) The position or title of the person who allegedly committed the violation;

- (E) The nature of the alleged violation, including, if possible, the specific rule or provision of this Article alleged to have been violated;
 - (F) A statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred; and must contain the following:
 - (i) Documents or other material available to the complainant relevant to the allegation;
 - (ii) A list of all documents or other material relevant to the allegation and available to the complainant, but that are not in the possession of the complainant, including the location of the documents; if known, and
 - (iii) A list of all documents or other material relevant to the allegation, but unavailable to the complainant, including the location of the documents, if known.
 - (G) If the complaint is based on information and belief, the complaint shall state the source and basis of the information and belief.
- (3) The complaint must be accompanied by an affidavit stating that the information contained in the complaint is either true and correct or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of this Ordinance.
 - (4) Upon request, the City Secretary shall provide information to persons about the requirements of a complaint and the process for filing a complaint.
- (b) Confidentiality and Ex Parte Communications
- (1) No City Official or City Employee may reveal information relating to the filing or processing of a complaint except as required for the performance of official duties.
 - (2) All documents relating to a pending complaint are confidential, unless they are required to be disclosed under the Texas Public Information Act (Tex. Gov. Code Ch. 552).
 - (3) After a complaint has been filed, and during the consideration of a complaint by the Commission, a member of the Commission may not communicate directly or indirectly with any party or person about any issue of fact or law regarding the complaint, except at a meeting of the Commission. This provision does not prevent a member of the Commission from consulting with the City Attorney, or its independent legal counsel selected by the City Council regarding procedural and legal issues.

- (4) City Council approval shall be required for legal fees, cost, and related expenses of \$5,000 or more.

(c) Notification

- (1) A copy of a complaint shall be promptly forwarded by the City Secretary to the City Attorney and to the person charged in the complaint.
- (2) The person alleged in the complaint to have violated this Article shall be provided with a copy of this Code of Ethics and informed that:
- (A) Within fourteen (14) days of receipt of the complaint, a sworn response must be filed with the City Secretary;
- (B) Failure to file a response does not preclude the City Attorney from processing the complaint.
- (3) City Officials and City Employees have a duty to cooperate with the City Attorney, pursuant to this Section. All requests for access to City Employees throughout the course of an investigation shall be submitted to the City Manager in writing.
- (4) All members of the Commission shall receive copies of the complaint, any background documentation, and any responses at least seven (7) days before a hearing on the matter.

Section 2-515. Role of the City Attorney

- (a) The City Attorney serves as legal counsel to the Ethics Review Commission. When complaints are filed against members of the City Council, the City Manager, or the City Attorney, independent legal counsel may be utilized to advise the Commission and take part in its proceedings, subject to approval of the fee arrangement by the City Council.
- (b) The City Attorney serves as Ethics Advisor to City Officials ~~and City Employees~~. As Ethics Advisor, the City Attorney is available to respond ~~confidentially~~ to inquiries relating to the Ethics Ordinance (this Article) and may render advisory opinions on potential conflicts of interest or violation of this section at the request of a City Official or City Employee. The advisory opinion in any subsequent charges concerning the matter may be used as a defense to an alleged violation of this section unless material facts were omitted or misstated by the person requesting the opinion.
- (c) The City Attorney shall receive all sworn complaints and, if found sufficient, shall provide a copy and a preliminary review of the complaint to the Commission for action. The City Attorney shall, within fifteen (15) days of receiving the complaint and the response of the accused person, if any, provide a written report to the Commission. The report shall state whether, in the City Attorney's opinion, the written complaint: (1) was filed timely; (2) alleges misconduct by a person whose conduct is regulated under this Code; (3) alleges the

occurrence of conduct that might reasonably constitute a violation of this Article; and (4) is signed and sworn to by the person filing the complaint.

- (d) The City Attorney shall also advise the Commission whether the City Attorney has issued a written opinion or opinions to the accused person that relate to the conduct at issue and whether, in the City Attorney's opinion, the conduct was undertaken in good faith reliance on a written opinion that concluded the conduct was not in violation of this Article. Where the City Attorney concludes that the conduct was undertaken in good faith reliance on a written opinion, the City Attorney shall recommend that the Commission dismiss the complaint following the preliminary hearing.
- (e) The City Attorney's recommendation that the Commission conduct further proceedings does not mean that any of the allegations of the complaint are true or false or that any City Official or City Employee has violated or not violated this Article.
- (f) If a complainant alleges a violation by the City Attorney, the complaint must be filed with the ~~Chairperson of the Commission~~ City Secretary, and be forwarded to the Municipal Judge, with a copy to the Mayor and the City Manager. The Municipal Judge will follow the procedures in this Section.

Section 2-516. Hearing Process

(a) Preliminary Hearing

- (1) ~~When~~ After the City Attorney, or independent legal counsel selected by the Commission as set out in Sec. 2-515(a) above, has ~~rendered an opinion~~ found that a complaint is not defective as to form nor is insufficient (for example, because it does not allege the existence of reasonable grounds to believe that a violation of this Ordinance has occurred), the Commission, as soon as reasonably possible, but in no event later than sixty (60) days after receiving a complaint, shall conduct a Preliminary Hearing. The purpose of the Preliminary Hearing is to make an initial ~~determination~~ as to whether or not ~~there are reasonable grounds to believe that~~ a violation of this Ordinance has occurred.
- (2) The complainant and the City Official ~~or City Employee~~ named in the complaint have the right of representation by legal counsel.
 - (A) ~~The complainant shall pay for complainant's legal fees, cost, and related expenses. If the City Official or Employee is finally found to be in violation of this Ordinance, the City shall reimburse the complainant for his or her reasonable legal fees, costs and related expenses and the City Official or Employee shall reimburse the City for the amount paid to complainant for complainant's legal fees, costs and related expenses.~~

- (B) The City ~~may shall~~ pay for legal fees, cost, and related expenses for representation of the City Official, as decided by the City Council. ~~or Employee.~~
- (3) Statements at a Preliminary Hearing shall be under oath, but there shall be no cross examination or requests for persons or evidence issued for the hearing. The Commission members may ask open-ended questions. No public comments are allowed in a preliminary hearing.
- (4) The person filing a complaint shall state the alleged violation and describe in narrative form the testimony and other evidence which are presented to prove the alleged violation as stated in the written complaint.
- (5) The City Official ~~or City Employee~~ named in the complaint shall have the opportunity to respond but is not required to attend or make any statement. The City Official ~~or City Employee~~ may describe in narrative form the testimony and other evidence presented to disprove the alleged violation. If the City Official ~~or City Employee~~ agrees that a violation has occurred, the Commission may consider the appropriate sanction.
- (6) Only members of the Commission may question the complainant, the independent counsel for the Commission, or the City Official ~~or City Employee~~ named in the complaint.
- (7) At the conclusion of the Preliminary Hearing one of the following actions shall be taken:
- (A) If the Commission does not determine that there are reasonable grounds to believe that a violation of this Article has occurred, the complaint shall be dismissed.
- (B) If the Commission determines that there are reasonable grounds to believe that a violation of this Article has occurred, it shall schedule a final hearing.
- (C) If the City Official ~~or City Employee~~ has agreed that a violation has occurred, the Commission may proceed to determine the appropriate sanction without the necessity of a final hearing and state its findings pursuant to Subsection (b)(4) below.

(b) Final Hearing

- (1) Except as provided by Subsection 2-516(a)(7)(C) above, a final hearing shall be held as expeditiously as possible following the determination by the Commission that there are reasonable grounds to believe that a violation of this Article has occurred, but in no event shall it be held more than thirty (30) days after said determination. The Commission may grant up to two postponements, not to exceed fifteen (15) days each, upon the request of the City Official ~~or City Employee~~ named in the complaint.

- (2) If a complaint proceeds to a final hearing, the Commission may request witnesses to attend and testify, administer oaths and affirmations, take evidence and request the production of books, papers, records, or other evidence needed for the performance of the Commission's duties or exercise of its powers, including its powers of investigation. No public comments are allowed during the final hearing.
- (3) The complainant and the City Official ~~or City Employee~~ named in the complaint have the right of representation by legal counsel.
- (4) The issue at a final hearing is whether a violation of this Article has occurred. The Commission shall make its determination based on the preponderance of the evidence in the record. All witnesses shall make their statements under oath. Witnesses may be cross-examined. If the Commission determines that a violation has occurred, it shall state its findings in writing, identify the particular provision(s) of this Article which have been violated, and within five (5) working days deliver a copy of the findings to the complainant, the person accused in the complaint, and the City Secretary. The City Secretary shall deliver a copy of the findings to the Council, the City Manager and the City Attorney.

Section 2-517. Sanctions for Violations

- (a) If the Commission determines that a violation of this Article has occurred, it shall consider appropriate sanctions. The Commission may receive additional testimony or statements before considering sanctions, but is not required to do so.
- (b) If the Commission determines that a violation has occurred, it may impose the following sanctions.
- (1) A letter of notification is an appropriate sanction when the violation is clearly unintentional, or when the conduct of the person complained against was done in reliance upon an opinion of the City Attorney. The letter of notification shall advise the City Official ~~or City Employee~~ of any steps to be taken to avoid future violations.
- (2) A letter of admonition is the appropriate sanction when the Commission finds the violation is minor and/or may have been unintentional, but calls for a more substantial response than a letter of notification.
- (3) A letter of reprimand is the appropriate sanction when the Commission finds a serious violation has been committed intentionally or knowingly or through disregard of this Ordinance. A written reprimand directed to a City ~~Employee-Official~~ that-who also serves as an-employee- a City Employee shall be included in the employee's personnel file.

- (4) A letter of censure is the appropriate sanction when the Commission finds that a serious violation has occurred and/or more than one serious violation or repeated serious violations of this Article have been committed by a City Official.
- (c) Copies of all sanction letters issued by the Commission under this section shall be sent to the City Council.
- (d) In addition, if the violation is found by the Commission to be done willfully and the seriousness of the violation warrants, the Commission may recommend to the City Council the suspension or removal from office of any official serving in a City-appointed position.
- (e) Except with regard to violations of Chapters 171 and 176 of the Texas Local Government Code, violations of the Penal Code, or violations of the Government Code, a violation by any City Official or City Employee as designated herein of one or more of the provisions of this Article shall not be deemed to be a Class C misdemeanor under the laws of the State of Texas.

Section 2-518. Distribution and Proof of Compliance

The City Secretary shall ~~make available to~~ provide each new City Official designated in this Article, a copy of the text of this Ordinance; Chapter 171 and Chapter 176 of the Texas Local Government Code pertaining to conflicts of interest; the Texas Open Meetings Act (Tex.Gov. Code Ch. 551); the Texas Public Information Act (Tex. Gov. Code Ch. 552) Chapter 573 of the Texas Government Code; Texas Penal Code Sections 36.02, 37.10, 39.02, 39.03 and 39.06 (collectively referred to in this section as the “Ethics Statutes”) with a signature receipt of all said documents.

EXHIBIT "1"

Consanguinity and Affinity

Affinity Kinship (Marriage) Relationships

1 st Degree	2 nd Degree
Father-in-Law	Spouse's Grandfather
Mother-in-Law	Spouse's Grandmother
Son-in-Law	Spouse's Brother (Brother-in-Law)
Daughter-in-Law	Spouse's Sister (Sister-in-Law)
Spouse	Spouse's Grandson
	Spouse's Granddaughter
	Brother's Spouse (Sister-in-Law)
	Sister's Spouse (Brother-in-Law)

Consanguinity (Blood) Relationships

1 st Degree	2 nd Degree	3 rd Degree
Father	Grandfather	Great-Grandfather
Mother	Grandmother	Great-Grandmother
Son	Brother	Nephew
Daughter	Sister	Niece
	Grandson	Great-Grandson
	Granddaughter	Great-Granddaughter
		Uncle
		Aunt