



Eric Barna
Mayor

Scott Bradley
Mayor Pro Tem

Owais Siddiqui
Deputy Mayor Pro Tem

Jennifer Berthiaume
Councilmember

Betty Spraggins
Councilmember

Sarah Fincanon
Councilmember

Don Reilly
Councilmember

Mike Castro
City Manager

Susie Quinn
City Secretary

MURPHY CITY COUNCIL AGENDA
REGULAR CITY COUNCIL MEETING
DECEMBER 6, 2016 AT 6:00 PM
206 NORTH MURPHY ROAD
MURPHY, TEXAS 75094

NOTICE is hereby given of a meeting of the City Council of the City of Murphy, Collin County, State of Texas, to be held on December 6, 2016 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.

WELCOME Reception to Meet Fire Chief Del Albright

5:30 pm until 5:59 pm in the City Hall Lobby

1. CALL TO ORDER

2. INVOCATION & PLEDGE OF ALLEGIANCE

3. ROLL CALL & CERTIFICATION OF A QUORUM

4. PUBLIC COMMENTS

5. CITY MANAGER/STAFF REPORTS

- A. Radio Systems
- B. Sidewalk Rehabilitation Program
- C. South Maxwell Creek Sewer Line
- D. North Murphy Road
- E. Safe Routes to School
- F. FM544 Traffic Safety Update
- G. Department Director Vacancies
- H. Upcoming Events

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 to approve the November 15, 2016 Regular Council meeting minutes. *Susie Quinn, City Secretary*
- B. Consider and/or act to approve the November 17, 2016 Special Council meeting minutes. *Susie Quinn, City Secretary*

7. INDIVIDUAL CONSIDERATION

- A. Hold a public hearing and consider and/or approve Ordinance Number 16-12-1027 for the rezoning application by Mary Pat Elledge, agent for owner Mr. Baugh, for a 1.258 acre parcel at the southeast corner of North Murphy Road and Betsy Lane from Single Family Residential 20 (SF20) to Neighborhood Services (NS). *Kelly Carpenter, Interim Director of Community and Economic Development*
- B. Consider and/or act on the staff request to hire Marsh Darcy Partners as a consultant to provide assistance in analysis of the Chapter 380 Agreement proposal of Philips Edison and assistance in negotiating a Chapter 380 Agreement with Philips Edison as warranted. MDD will consider this at its December 5, meeting so their recommendation will be provided at the December 6, 2016 City Council meeting. *Kelly Carpenter, Interim Director of Community and Economic Development*
- C. Consider and/or act on the request by Boomerjack's Murphy, LLC to forgive the final loan payment of \$20,400 that was part of an incentive agreement entered into between the City of Murphy, Murphy Economic Development Corporation and Boomerjack's Murphy, LLC. MDD will consider this at its December 5, meeting so their recommendation will be provided at the December 6, 2016 City Council meeting. *Kelly Carpenter, Interim Director of Community and Economic Development*
- D. Consider and/or act on a request for payment to developer related to an incentive agreement between the City of Murphy, Murphy Municipal Development District and Developer (Allen & Loucks Venture, LP; Murphy Four Venture, LP; Champion Langford Partners; Persimmon Trail Venture, Ltd.) for a one time Design Fee Grant related to construction of Dunkin' Donuts in the Murphy Marketplace. MDD will consider this at its December 5, meeting so their recommendation will be provided at the December 6, 2016 City Council meeting. *Kelly Carpenter, Interim Director of Community and Economic Development*
- E. Consider and/or act on a request for payment to developer related to an incentive agreement between the City of Murphy, Murphy Municipal Development District and Developer (Allen & Loucks Venture, LP; Murphy Four Venture, LP; Champion Langford Partners; Persimmon Trail Venture, Ltd.) for a one time Design Fee Grant related to construction of Nothing Bundt Cakes in the Murphy Marketplace. MDD will consider this at its December 5, meeting so their recommendation will be provided at the December 6, 2016 City Council meeting. *Kelly Carpenter, Interim Director of Community and Economic Development*

8. EXECUTIVE SESSION

In accordance with Texas Government Code, Chapter 551, Subchapter D, the City Council will now recess into Executive Session (closed meeting) to discuss the following:

- A. §551.071. Consultation with the attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter. Regarding Special Election Deadlines.
- B. §551.072 A governmental body may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.
- C. §551.087 A governmental body may conduct a closed meeting to
 - (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or
 - (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).

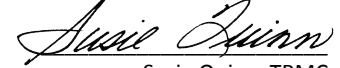
9. RECONVENE INTO REGULAR SESSION

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

- A. §551.071. Consultation with the attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter. Regarding Special Election Deadlines.
- B. §551.072 A governmental body may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.
- C. §551.087 A governmental body may conduct a closed meeting to
 - (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or
 - (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).
- D. Take Action on any Executive Session Items.

10. 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 December 2, 2016 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.



Susie Quinn, TRMC
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 squinn@murphytx.org.

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

**City Council Meeting
December 6, 2016**

Issue

Upcoming Events

Staff Resource/Department

Mike Castro, City Manager

Summary

- Boards and Commission Appreciation Dinner – Thursday, December 8, 2016 6:30 pm until 9 pm at the Community Center – 205 North Murphy Road, Murphy, Texas
- Tour of the City with the Capital Project Advisory Committee – Saturday, December 10, 2016 from 9:00 am until 1:00 pm beginning at the Murphy City Hall Community Room, 206 North Murphy Road, Murphy, Texas
- Capital Project Advisory Committee Orientation – Tuesday, December 13, 2016 from 6:00 pm until 9:00 pm at the Murphy City Hall Community Room
- Boards and Commission Training – Saturday January 7, 2017 from 8:30 am until Noon at the Murphy Activity Center, 205 North Murphy Road, Murphy Texas

CITY COUNCIL MINUTES
REGULAR CITY COUNCIL MEETING
NOVEMBER 15, 2016 AT 6:00 PM

1. CALL TO ORDER

Mayor Barna called the meeting to order at 6:01 pm.

2. INVOCATION AND PLEDGE OF ALLEGIANCE

Mayor Barna gave the invocation and led the Pledge of Allegiance.

3. ROLL CALL & CERTIFICATION OF A QUORUM

City Secretary, Susie Quinn, certified a quorum with the following Councilmembers present:

Mayor Eric Barna
Mayor Pro Tem Scott Bradley
Councilmember Betty Nichols Spraggins
Councilmember Sarah Fincanon
Councilmember Don Reilly

Councilmembers Absent:

Deputy Mayor Pro Tem Owais Siddiqui
Councilmember Jennifer Berthiaume

4. PRESENTATIONS/RECOGNITIONS

Presentation of financial report and investment report as of October 31, 2016. *Steven Ventura, Interim Director of Finance.*

Interim Director of Finance Steven Ventura explained the financial report for month ending October 31st with interest rate slightly increased at 0.37%. The General Fund/MDD/CDC Sales tax for month of October at 14% and for the year at 13%. General Fund Revenues Permits & licenses increased due to high contractor registration within the city and Other Revenue \$105,000 of total is due to insurance proceed repairs for facilities. General Fund Expenditures at 8% of the budget, departments with a significant percentage of the budget are Administration due to salaries and Information Technology due to annual software agreements. Annual payment of software agreements for every department are paid from the Information Technology budget instead of each department budgeting the funds. Utility Fund Revenue total percentage of budget at 8% and on track. Utility Fund Expenditures Wastewater collection increased due to year end true up with North Texas Municipal Water District.

Council and Staff discussed the format of the financial report and investment report. Suggestions were made to make changes in order to compare the fluctuations for patterns to be reflected from year to year.

5. PUBLIC COMMENTS

No Public Comments were presented.

6. CITY MANAGER/STAFF REPORTS

- A. Radio Systems – Chief Cotten addressed Council that furniture has been delivered and installed. The equipment contractor will now be able to begin installation. On Monday, Plano will be programming all portables, the only item that has not arrived are the lapel mics.
- B. Sidewalk Rehabilitation Program – **Murphy Farms** subdivision is completed and next subdivision will be **The Ranch**. Before work begins in **The Ranch**, staff will be addressing some minor street repairs. Overall seventy-one (71) of one hundred four (104) sidewalk repairs have been completed to date on the current program.
- C. South Maxwell Creek Sewer Line – Project is rained out and that stopped the project from making progress, maybe only one hundred (100) to one hundred twenty (120) feet. Contractor is working under McCreary Road to install pipe and completed fifty (50) feet out of one hundred ten (110) feet. It is dry enough now, to begin laying pipe again.
- D. North Murphy Road – Small punch list items to complete that include installing some weep holes and retaining wall at Wagon Wheel on North Murphy Road. Project should be completed by end of this week and for certain prior to Thanksgiving.
- E. Safe Routes to School – Working with the engineer on a solution to the lettering problem as it is difficult to read on the monuments. Staff has provided some mockups of different coloring schemes and have submitted to the city engineer. Crosswalk flashers at northern section are inoperable and a warranty issue, working on having it repaired with the contractor. Punch list items are not to be completed by the city until the project is formally closed out with the contractor.
- F. FM544 Traffic Safety Update – Staff has met with TXDOT twice to discuss the matter and the City will forward the City Engineer's recommendations on to TXDOT for their feedback. Also have provided an update to Ms. Hill on the status of the FM544 safety issue.
- G. Upcoming Events
 - Christmas in the Park – Thursday, December 1, 2016 5 pm until 8pm at the front of City Hall – 206 North Murphy Road, Murphy, Texas
 - Boards and Commission Appreciation Dinner – Thursday, December 8, 2016 6:30 pm until 9 pm at the Community Center – 205 North Murphy Road, Murphy, Texas
 - Tour of the City with the Capital Project Advisory Committee – Saturday, December 10, 2016 from 9:00 am until 1:00 pm beginning at the Murphy City Hall Community Room, 206 North Murphy Road, Murphy, Texas
 - Boards and Commission Training – Saturday January 7, 2017 from 8:30 am until Noon at the Murphy Activity Center, 205 North Murphy Road, Murphy Texas

7. CONSENT AGENDA

- A. Consider and/or act to approve the November 1, 2016 Regular Council meeting minutes. *Susie Quinn, City Secretary*

- B. Consider and/or act upon the Alcohol Policy for the Murphy Community Center and Murphy Activity Center. *Susie Quinn, City Secretary*

COUNCIL ACTION (7.A. & 7.B.):

APPROVED

Mayor Pro Tem Bradley moved to approve the consent agenda as presented. Councilmember Reilly seconded the motion. For: Unanimous. The motion carried by a vote of 5-0 (Deputy Mayor Pro Tem Siddiqui and Councilmember Berthiaume were absent).

8. INDIVIDUAL CONSIDERATION

- A. Consider and/or act upon the recommendations from the Council Interview Panel regarding appointing board members to the Planning and Zoning Commission, Board of Adjustments, Murphy Municipal Development District, Murphy 4B Community Development District, the Ethics Review Commission, and the Building and Fire Code Board of Appeals. This item may be discussed in executive session before action is taken. *Susie Quinn, City Secretary*

COUNCIL ACTION (8.A.):

APPROVED

Councilmember Reilly moved to approve the following appointments:

Board of Adjustment

- Kenneth Tatsch and Dr. Rajan Subra, who are currently serving as alternates with a term ending on December 31, 2017 be appointed to a two year term as a full member of the Board of Adjustment commencing January 1, 2017 and ending December 31, 2018.
- Daniel Mares be appointed to the Board of Adjustment as an alternate to fill the unexpired term of *Kenneth Tatsch*, ending December 31, 2017.
- Laura Deel be reappointed to the Board of Adjustment for a two year term commencing January 1, 2017 and ending December 31, 2018.

The following be appointed to the Board of Adjustment as alternates for a two year term commencing January 1, 2017 and ending on December 31, 2018:

- Revis Smith
- Jim Farrell

Building and Fire Code Appeals Board

The following members be removed from the Building and Fire Code Appeals Board:

- Christine Johnson
- Greg Mersch
- Laurel Clement

The following be appointed to the Building and Fire Code Appeals Board to fill the unexpired terms of *Christine Johnson, Greg Mersch, and Laurel Clement* ending on December 31, 2017:

- Joe Clever
- Galon Jones
- Thomas K. Powell
- Donald Decker be reappointed to the Building and Fire Code Appeals Board for a two year term commencing January 1, 2017 and ending December 31, 2018.

- David Grice be appointed to the Building and Fire Code Appeals Board for a two year term commencing on January 1, 2017 and ending December 31, 2018.

Ethics Review Commission

- Andrew Chase be reappointed to the Ethics Review Commission for a two year term commencing January 1, 2017 and ending December 31, 2018.
- Sophia Dookran be appointed to the Ethics Review Commission for a two year term commencing January 1, 2017 and ending December 31, 2018.

Murphy Community Development Corporation (4B)

- Laurel Clement be reappointed the Murphy Community Development Corporation Board for a two year term commencing January 1, 2017 and ending December 31, 2018.

The following be appointed to the Murphy Community Development Corporation Board for a two year term commencing on January 1, 2017 and ending December 31, 2018:

- Malcolm Hardy
- Gayathri Nagarajan

Murphy Municipal Development District Board

- Jamie Nicholson be reappointed to the Murphy Municipal Development District Board for a two year term commencing January 1, 2017 and ending December 31, 2018.
- Chi Egwuekwe be appointed to the Murphy Municipal Development District Board for a two year term commencing January 1, 2017 and ending December 31, 2018.

Planning and Zoning Commission

The following be reappointed to the Planning and Zoning Commission for a two year term commencing January 1, 2017 and ending December 31, 2018:

- Christine Johnson
- Lloyd Jones
- Greg Mersch
- Julie Kamm

And that Chris George be reappointed to serve as an alternate member of the Planning and Zoning Commission for a two year term commencing January 1, 2017 and ending December 31, 2018.

Councilmember Fincanon seconded the motion. The motion carried by a vote of 5-0 (Deputy Mayor Pro Tem Siddiqui and Councilmember Berthiaume were absent).

- B. Consider and/or act upon the recommendations from the Council Interview Panels regarding appointing board members to the Animal Shelter Advisory Committee, the Parks and Recreation Board and the Capital Project Advisory Committee. *Susie Quinn, City Secretary*

COUNCIL ACTION (8.B.):

APPROVED

Councilmember Reilly moved to approve the following be reappointed to the Animal Shelter Advisory Committee for a two year term commencing January 1, 2017 and ending December 31, 2018: Dr. Lorraine Chalkley and Buddy Russell. And to the Parks and Recreation Board (Tree Preservation Board) for a two year term commencing January 1, 2017 and ending December 31, 2018: Julie Pancake, Amit Kohli and Carol Long. And Councilmember Reilly moved to approve the Ad Hoc members of the Capital Project Advisory Committee be appointed as presented. Mayor Pro Tem Bradley seconded the motion. The motion carried by a vote of 5-0 (Deputy Mayor Pro Tem Siddiqui and Councilmember Berthiaume were absent).

Note: the seven appointees to the Capital Project Advisory Committee are: Kevin McGillis, John Wideman, Chris Holloway, Wilson Pierce, Greg Matocha, Frederick Olison and Chris George.

9. EXECUTIVE SESSION

In accordance with Texas Government Code, Chapter 551, Subchapter D, the City Council recessed into Executive Session (closed meeting) at 6:24pm to discuss the following:

- A. §551.074 Deliberation regarding the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee:
 - a. City of Murphy Planning and Zoning Commissioners;
 - b. Board of Adjustment Board Members;
 - c. Murphy Municipal Development District Members;
 - d. Murphy Community Development Members;
 - e. Ethics Review Commission Members;
 - f. Building and Fire Code Board of Appeals Members.

10. RECONVENE INTO REGULAR SESSION

The City Council reconvened into Regular Session at 6:36 pm, pursuant to the provisions of Chapter 551, Subchapter D, Texas Government Code, to take any action necessary regarding:

- A. §551.074 Deliberation regarding the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee:
 - a. City of Murphy Planning and Zoning Commissioners;
 - b. Board of Adjustment Board Members;
 - c. Murphy Municipal Development District Members;

- d. Murphy Community Development Members;
- e. Ethics Review Commission Members;
- f. Building and Fire Code Board of Appeals Members.

A. Take Action on any Executive Session Items.

Action was taken on items 8.A. and 8.B. following Executive Session.

11. ADJOURNMENT

With no further business, the Council meeting adjourned at 6:43 pm.

APPROVED BY:

Eric Barna, Mayor

ATTEST:

Susie Quinn, City Secretary

CITY COUNCIL MINUTES
SPECIAL CITY COUNCIL MEETING
NOVEMBER 17, 2016 AT 6:00 PM

1. CALL TO ORDER

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

2. ROLL CALL & CERTIFICATION OF A QUORUM

City Secretary, Susie Quinn, certified a quorum with the following Councilmembers present:

Mayor Eric Barna
Mayor Pro Tem Scott Bradley
Councilmember Sarah Fincanon
Councilmember Don Reilly

Councilmembers Absent:

Deputy Mayor Pro Tem Owais Siddiqui
Councilmember Jennifer Berthiaume
Councilmember Betty Nichols Spraggins

3. INDIVIDUAL CONSIDERATION

- A. Consider and act upon approval of Ordinance Number 16-11-1025 canvassing and declaring the election results of the November 8, 2016 Special Election.

COUNCIL ACTION (3.A.):

APPROVED

Mayor Pro Tem Bradley moved to approve Ordinance Number 16-11-1025 canvassing and declaring the election results of the November 8, 2016 Special Election. Councilmember Fincanon seconded the motion. For: Unanimous. The motion carried by a vote of 4-0 (Deputy Mayor Pro Tem Siddiqui, Councilmember Berthiaume and Councilmember Spraggins were absent).

- B. Consider and act upon approval of Ordinance Number 16-11-1026 adopting the amendments to the charter as a result of the November 8, 2016 Special Election and adopting the charter as amended.

COUNCIL ACTION (3.B.):

APPROVED

Mayor Pro Tem Bradley moved to approve Ordinance Number 16-11-1026 adopting the amendments to the charter as a result of the November 8, 2016 Special Election and adopting the charter as amended. Councilmember Fincanon seconded the motion. For: Unanimous. The motion carried by a vote of 4-0 (Deputy Mayor Pro Tem Siddiqui, Councilmember Berthiaume and Councilmember Spraggins were absent).

4. ADJOURNMENT

With no further business, the Council meeting adjourned at 6:01:29 pm.

APPROVED BY:

Eric Barna, Mayor

ATTEST:

Susie Quinn, City Secretary

**City Council Meeting
December 6, 2016**

Issue

Hold a public hearing and consider and/or approve Ordinance Number 16-12-1027 for the rezoning application by Mary Pat Elledge, agent for owner Mr. Baugh, for a 1.258 acre parcel at the southeast corner of North Murphy Road and Betsy Lane from Single Family Residential 20 (SF20) to Neighborhood Services (NS).

Staff Resource/Department

Kelly Carpenter, AICP, Interim Director of Economic and Community Development

Summary

Please see the signed Final Report from the Planning and Zoning Commission.

Board Discussion/Action

Staff recommends following Planning and Zoning's recommendation on November 28, 2016.

Attachments

- 1) Ordinance Number 16-12-1027
- 2) Signed Final Report from Planning and Zoning
- 3) Aerial Photo of Proposed Project Site
- 4) Comprehensive Plan Future Land Use Map

ORDINANCE NO. 16-12-1027

AN ORDINANCE OF THE CITY OF MURPHY, COLLIN COUNTY, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE AND MAP, CHAPTER 30 OF THE CITY OF MURPHY CODE OF ORDINANCES, AS AMENDED, BY CHANGING THE ZONING CLASSIFICATION ON APPROXIMATELY 10 ACRES OF LAND LOCATED AT 1010 NORTH MURPHY ROAD, MURPHY MCMILLAN SURVEY, TRACT 1 IN THE CITY OF MURPHY, COLLIN COUNTY, TEXAS, FROM SINGLE FAMILY RESIDENTIAL-20 (SF-20) TO NEIGHBORHOOD SERVICES (NS) DISTRICT FOR NEIGHBORHOOD SERVICES PROVIDING A CUMULATIVE/ REPEALER CLAUSE, A SEVERABILITY CLAUSE, A PENALTY CLAUSE, A SAVINGS CLAUSE, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the landowner of approximately 1.258 acres of land located at 1010 North Murphy Road, McMillan Survey, tract 1 in the City of Murphy, Collin County, Texas, have requested a change in the zoning for the property described in this ordinance from Single Family Residential-20 (SF-20) to Neighborhood Services (NS) consistent with the Comprehensive Plan; and

WHEREAS, the Planning and Zoning Commission and the City Council of the City of Murphy, in compliance with the laws of the State of Texas, have given the requisite notices by publication and otherwise, and have held due hearings and afforded full and fair hearings to all property owners generally and to all persons interested in this regard; and

WHEREAS, the Planning and Zoning Commission and the City Council of the City of Murphy, in considering the application for a change in zoning of the property to a neighborhood services district, have determined that the proposed use and development is consistent and compatible with the goals and objectives of the City of Murphy and is in the best interest of the health, safety, morals and general welfare of the City of Murphy, and, accordingly, the City Council of the City of Murphy is of the opinion and finds that said zoning change is in the public interest and should be granted and that the Comprehensive Zoning Ordinance should be amended accordingly as set forth herein.

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

Section 1. That all of the above recitals are found to be true and correct and are incorporated into the body of this ordinance as if fully set forth herein.

Section 2. That the Comprehensive Zoning Ordinance and Map of the City of Murphy, Texas, be, and the same are hereby amended so as to change the zoning (designation) from Single Family Residential- 20 (SF-20) to Neighborhood Services (NS) being an approximately 1.258 acre tract of land located at 1010 N. Murphy Road, McMillan Survey Tract 1 in the City of Murphy, Collin County, Texas, and more particularly described in ***Exhibit A***, attached hereto and incorporated herein by reference.

Section 3. That Chapter 30 of the City of Murphy Code of Ordinances, as amended, shall be and remain in full force and effect save and except as amended by this ordinance, and that said property shall in all other respects be subject to all applicable regulations of the City of Murphy.

Section 4. Cumulative/Repealer Clause. This ordinance shall be cumulative of all provisions of state or federal law and all ordinances of the City of Murphy, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such other ordinances, in which event the conflicting provisions of such ordinances are hereby repealed to the extent of such conflict.

Section 5. 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 or the Comprehensive Zoning Ordinance, Chapter 30 of the City of Murphy Code of Ordinances, and the remaining portions shall remain in full force and effect.

Section 6. Penalty Clause. Any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction, in the municipal court of the City of Murphy, Texas, shall be punished by a fine not to exceed the sum of two thousand dollars (\$2,000.00) for each offense, and each and every day any such violation shall continue shall be deemed to constitute a separate offense.

Section 7. Effective Date. This ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and City Charter in such cases provide.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Murphy, Texas, on this 6th day of December, 2016.

ATTEST:

Eric Barna, Mayor
City of Murphy

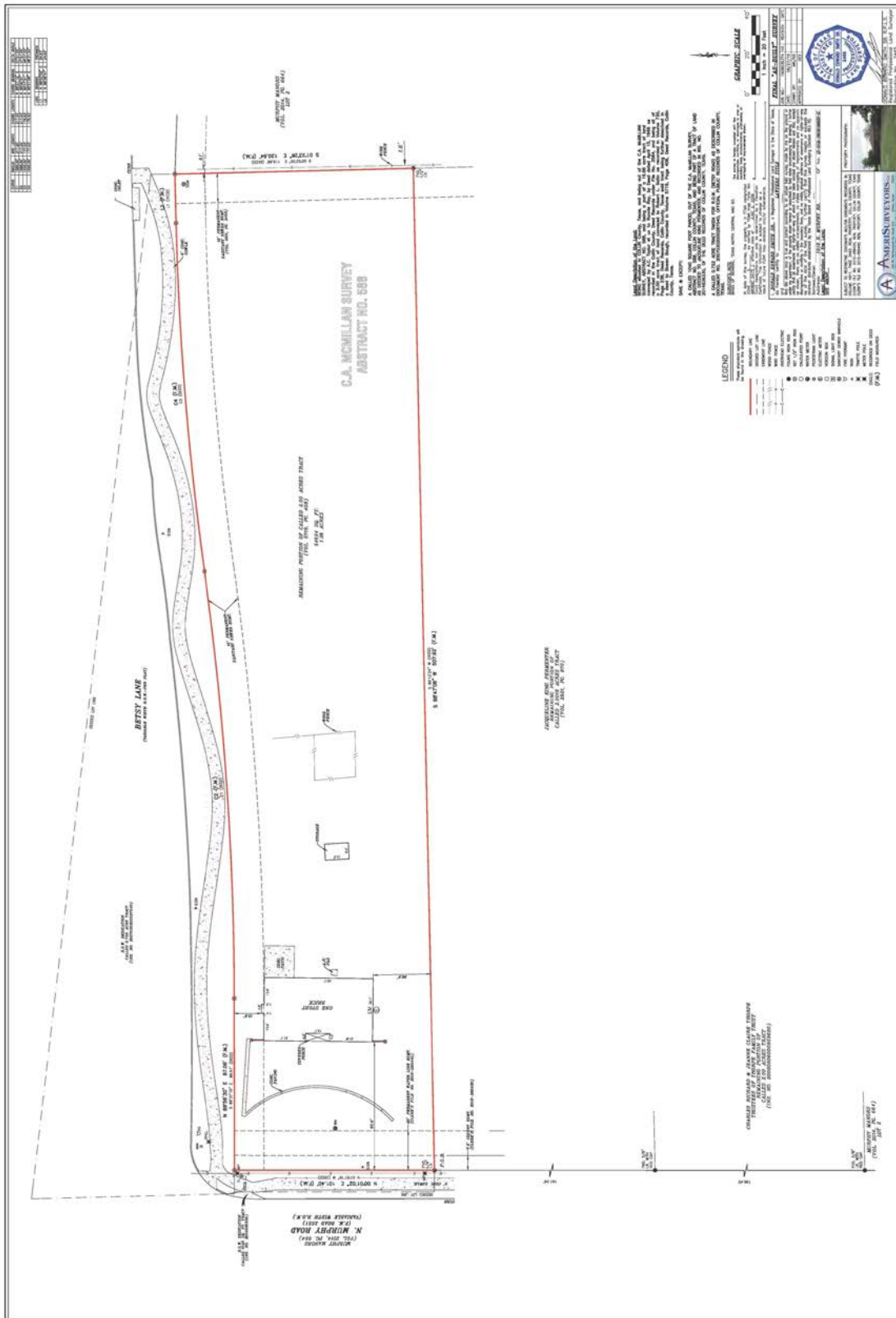
Susie Quinn, City Secretary

APPROVED AS TO FORM:

Wm. Andrew Messer, City Attorney

EXHIBIT A

(LEGAL DESCRIPTION: McMillan Survey Tract 1, 1.258 Acres)



Planning and Zoning Commission 11.28.16**Issue**

This is the final report of the Planning and Zoning Commission. The Commission held a public hearing on 11.28.16 and acted on the rezoning application by Mary Pat Elledge, agent for owner Mr. Baugh, for a 1.258 acre parcel at the southeast corner of North Murphy Road and Betsy Lane from Single Family Residential 20 (SF20) to Neighborhood Services (NS)

Staff Resource/Department

Kelly Carpenter, AICP, Interim Director of Economic and Community Development

Summary

This is the final report of the Planning and Zoning Commission. This rezoning will result in the southeast corner of North Murphy Road and Betsy Lane having Neighborhood Services (NS) zoning. The following uses surround this parcel:

Location	Current Zoning	Comprehensive Plan Future Land Use Map designation
North – Betsy Road	Planned Development - Office	Neighborhood Services
South	Neighborhood Services	Neighborhood Services
East	Planned Development – Residential (SF9)	Neighborhood Services
West – Murphy Road (State Highway 2551)	Planned Development - Retail	Retail with Neighborhood Services

The Comprehensive Plan Future Land Use Map designates this property as a Neighborhood Services land use.

A public hearing notification for this zoning change request was published in the newspaper and notification was mailed to the property owners within the required 200 feet notification radius. To date no reply forms have been received in reference to this application.

Planning and Zoning Commission Recommendation

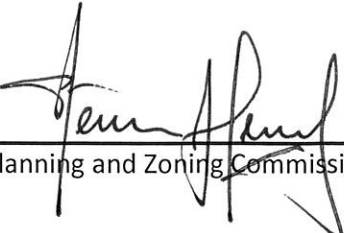
The Planning and Zoning Commission recommend approval of this zoning change.

Staff Recommendation

Staff recommends the rezoning from Single Family Residential 20 (SF20) to Neighborhood Services (NS).

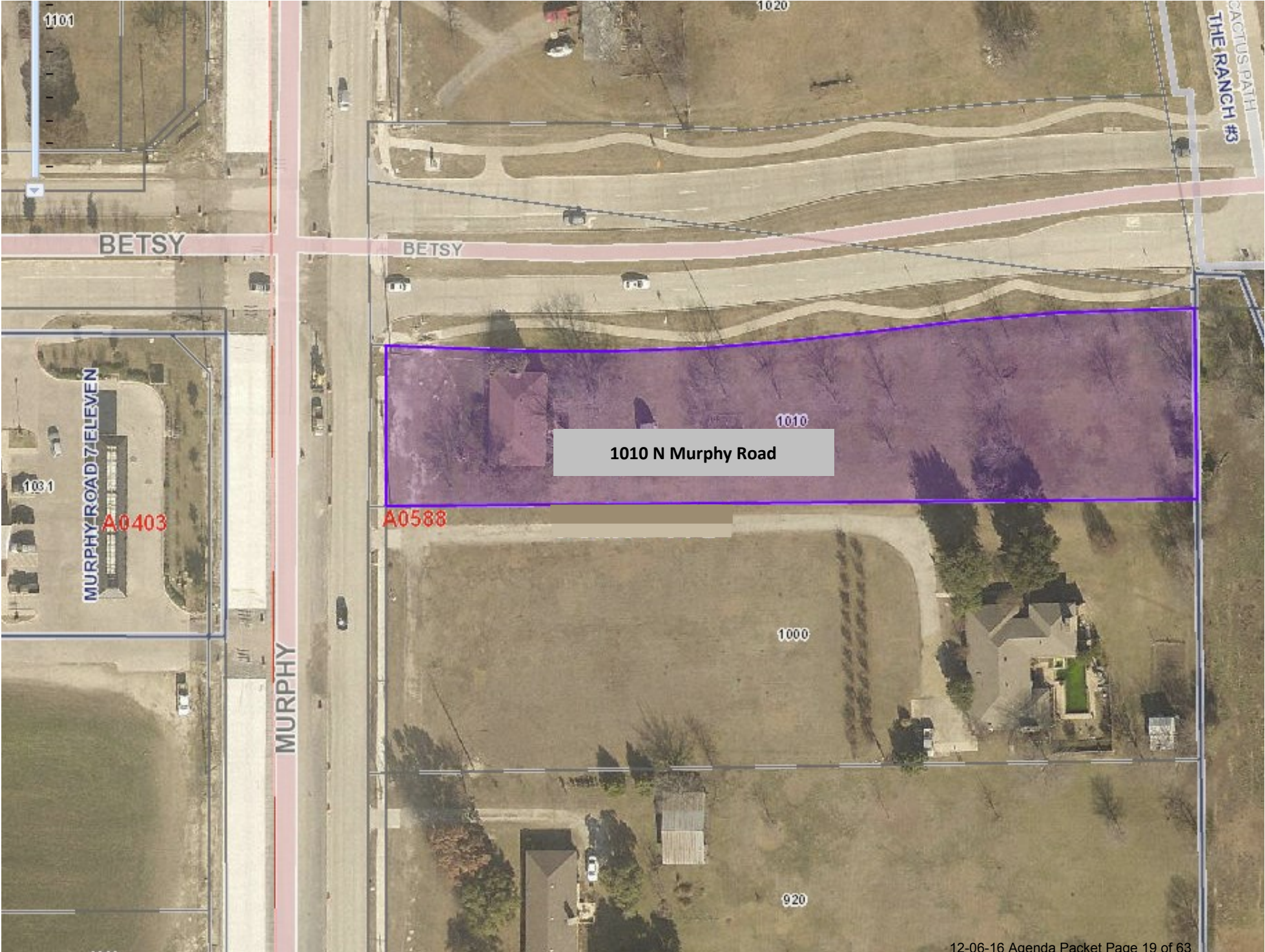
Attachments

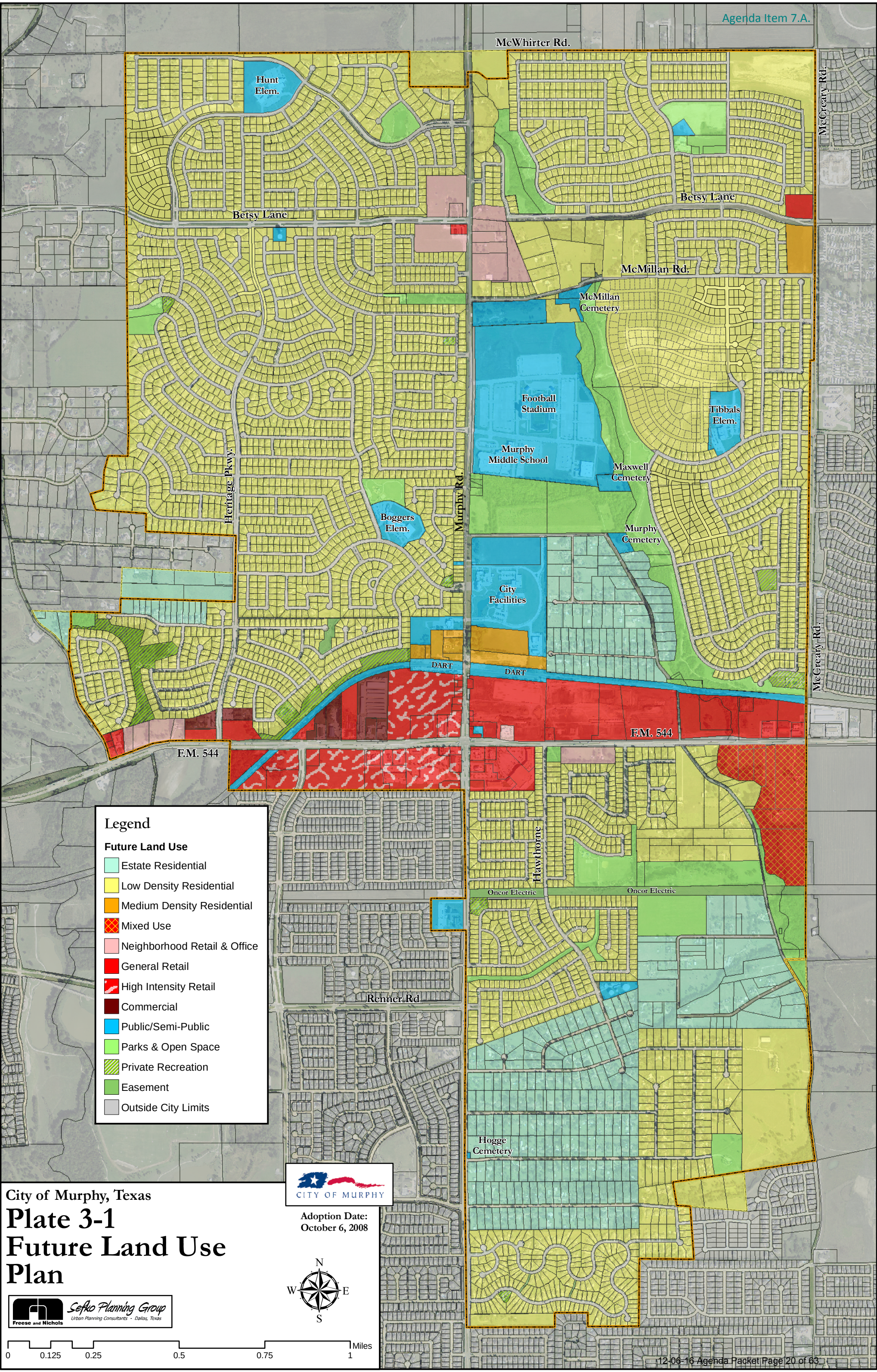
Aerial Photo of Proposed Project Site
Comprehensive Plan Future Land Use Map
Property survey



Chair, Planning and Zoning Commission

11/28/2016
11.28.16





Legend

Future Land Use

- Estate Residential
- Low Density Residential
- Medium Density Residential
- Mixed Use
- Neighborhood Retail & Office
- General Retail
- High Intensity Retail
- Commercial
- Public/Semi-Public
- Parks & Open Space
- Private Recreation
- Easement
- Outside City Limits

City of Murphy, Texas

Plate 3-1 Future Land Use Plan



Adoption Date:
October 6, 2008



0 0.125 0.25 0.5 0.75 1 Miles

City Council Meeting
December 6, 2016

Issue

Consider and/or act on the staff request to hire Marsh Darcy Partners as a consultant to provide assistance in analysis of the Chapter 380 Agreement proposal of Philips Edison and assistance in negotiating a Chapter 380 Agreement with Philips Edison as warranted. MDD will consider this at its December 5, meeting so their recommendation will be provided at the December 6, 2016 City Council meeting.

Staff Resource/Department

Kelly Carpenter, AICP, Interim Director of Economic and Community Development
Tina Stelnicki, Community Development Coordinator

Summary

The intent of this request is to enter into agreement for consulting services from Marsh Darcy Partners to analyze the Chapter 380 Agreement Proposal of Philips Edison and assist in negotiating a Chapter 380 Agreement with Philips Edison as warranted.

The City of Murphy has previously entered into a Chapter 380 agreement with Langford Partners for the development of Murphy Marketplace. The initial agreement was consummated in 2007 and was set to expire in 2018. In 2016, Murphy Marketplace was sold to Phillips Edison. The transfer of the property to Phillips Edison terminated the initial Chapter 380 agreement with Langford Partners. Stated differently, the city is currently under no agreement to provide economic development assistance to Murphy Marketplace.

Phillips Edison has come to the city to request consideration of a modified version of the previous Langford agreement. The new agreement varies significantly from the previous in terms of scope and potential remuneration. In staff's initial review of the proposed agreement, we have concerns regarding several provisions.

The City has paid out over \$2.5 Million in sales tax rebates to the Murphy Marketplace (under its now expired 380 Agreement). In the pending proposal of Philips Edison, in addition to the grants in the original 380 Agreement, an incentive of construction grants is proposed which could add hundreds of thousands in repayment dollars to Philips Edison. The complexity of the proposal (and any new proposals the city could present), the dollar amounts of incentives and rebates, and the effect of the proposals on the tax base, taken together set the stage for the assistance of experts on finalizing this new agreement, as warranted.

Marsh Darcy Partners have specific experience reviewing / developing Chapter 380 agreements for shopping centers. Given the potential financial commitment from the city, we believe there is significant advantage / benefit to soliciting the experience and advice of a consultant in this regard.

Staff Recommendation

Staff recommends the approval of the request for the city to enter into a consulting contract with Marsh Darcy, Partners.

Attachments

- 1) Marsh Darcy consulting proposal

Attachment 1

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

This Agreement for Professional Consulting Services ("Agreement") is made this ____ day of _____, 2016, between Marsh Darcy Partners, Inc., a Texas Corporation ("MDP") and the City of Murphy, a Texas municipal corporation ("Client"). In consideration of the mutual promises set forth herein, the parties agree as follows:

SCOPE OF SERVICES / PROJECT OBJECTIVES

MDP will provide professional consulting services more fully described in the Scope of Work, Attachment A, attached hereto and made a part of this Agreement.

TERMS AND CONDITIONS

FEES

The fee rates to be charged for work to be performed in accordance with the Scope of Services are described in Attachment B, the Fee Schedule.

REIMBURSABLE EXPENSES

In addition to the labor fees above, the Client agrees to pay MDP monthly for all standard reimbursable expenses incurred by MDP while providing services. Reimbursable expenses incurred by MDP will include, but not be limited to: printing, copying, postage, long distance calls, and mileage (maximum allowable IRS rates apply).

BILLING/PAYMENT

MDP will invoice monthly based on the hourly fee rates in the Fee Schedule attached. The Client hereby agrees to pay within thirty (30) days receipt of such invoice.

TERMINATION

This Agreement may be terminated at any time by MDP or Client by giving thirty (30) days written notice by such termination by registered mail to the either party's principal place of business. If this Agreement is terminated, MDP shall be paid in accordance with the provisions of this Agreement for all work performed up to the date of termination, including all reimbursable expenses and reasonable termination expenses.

DISPUTE RESOLUTION

Any claim or dispute between the Client and MDP shall be submitted to non-binding mediation, subject to the parties agreeing to a mediator(s). This Agreement shall be governed by the laws of Harris County, Texas.

ENTIRE AGREEMENT

This written Agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties regarding this Agreement. This Agreement may not be amended or modified unless approved in writing by both parties.

ACCEPTANCE

When executed by both parties this Agreement shall evidence the entire agreement between MDP and Client. This document is being executed in two (2) counterpart originals, each of which has the full force and effect of an original.

AGREED AND ACCEPTED THIS ____ DAY OF _____, 2016

Marsh Darcy Partners, Inc.

Sue Darcy

Name: Sue Darcy
Title: President

City of Murphy

Name: Mike Castro
Title: City Manager

Attachment "A" (Scope of Work)

Attachment "B" (Fee Schedule)

Attachment “A”

SCOPE OF WORK

PROJECT OBJECTIVES/DESCRIPTION: The City of Murphy (the “City”) is retaining Marsh Darcy Partners (“MDP”) to provide consulting services regarding an economic development proposal from Murphy Marketplace Station LLC.

SERVICES/DELIVERABLES: The services to be provided by MDP may include, but are not limited to, the following:

- a) reviewing and evaluating prior economic development agreements and current proposals,
- b) financial and/or fiscal impact analysis of proposed projects,
- c) analysis and evaluation of options for economic development assistance and/or reimbursement,
- d) assistance in negotiating appropriate contracts and development financing agreements,
- e) conference calls, briefings, and meetings with city staff, as needed.

SCHEDULE: To be determined by the City.

FEES: MDP will invoice on an hourly basis in accordance with the fee schedule attached. MDP estimates that the fees for this proposed Scope of Work, may range from \$9,500 to \$12,500. MDP will not exceed \$12,500 without Client’s written approval to do so.

Attachment B

FEE SCHEDULE

Effective Date: January 1, 2016

Consultation, Research, and Analysis Hourly Rate per below

Additional Services, as authorized Hourly Rate per below

Reimbursable Expenses

Sub-Contract work	Cost + 10%
All non-labor expenses	Cost + 10%
Photocopies (black and white)	\$0.05 per page
Photocopies (color) 8.5"x11"	\$0.40 per page
Photocopies (color) over 8.5"x11"	\$0.75 per page
Art Supply Fee, if applicable	1% of Labor Fee as Invoiced
Vehicle travel per mile	Maximum 2016 IRS allowable rate - \$0.54/mile

Hourly Rate

President/Vice President	\$215/hour
Project Manager	\$195/hour
Senior Planner	\$180/hour
Planner/Analyst	\$150/hour
Planner Associate	\$110/hour
Special District Coordinator	\$95/hour
Administrative	\$80/hour

City Council Meeting
December 6, 2016

Issue

Consider and/or act on the request by Boomerjack's Murphy, LLC to forgive the final loan payment of \$20,400 that was part of an incentive agreement entered into between the City of Murphy, Murphy Economic Development Corporation and Boomerjack's Murphy, LLC. MDD will consider this at its December 5, meeting so their recommendation will be provided at the December 6, 2016 City Council meeting.

Details

Boomerjack's Murphy, LLC received a loan of \$100,000 in January 2011 and a grant of \$107,000.

The repayment schedule on the loan is as follows:

<u>Installment</u>	<u>Installment Payments Due Date</u>	<u>Amount of Installment Payments</u>
First	02/01/2012	\$ 22,000 (\$ 20,000 + (2% of \$ 100,000))
Second	02/01/2013	\$ 21,600 (\$ 20,000 + (2% of \$ 80,000))
Third	02/01/2014	\$ 21,200 (\$ 20,000 + (2% of \$60,000))
Fourth	02/01/2015	\$ 20,800 (\$ 20,000 + (2% of \$40,000))
Fifth	02/01/2016	\$ 20,400 (\$ 20,000 + (2% of \$20,000)); plus any additional Loan repayment amounts due (including interest).
Anticipated Total		\$106,000 (plus additional Loan repayment amounts)

Note: (The term "additional loan repayment amounts" is in reference to Grant funds that were provided. If the Grant funds were not used as referenced in the agreement, the developer would have been obligated to repay those funds. There are no "additional Loan repayment amounts" due.)

Considerations

Per City of Murphy Finance Department payments received are as follows:

Year ended 9/2012 : \$20,000 (amount due, including interest was \$22,000)

Year ended 9/2013 : \$21,600

Year ended 9/2014 : \$20,000 (amount due, including interest was \$21,200)

Year ended 9/2015 : \$20,000 (amount due, including interest was \$20,800)

City Council Meeting
December 6, 2016

Final payment was due by Boomerjack's to the Murphy Development District by February 2016. No payment was made in February so City staff contacted the owner. When the owner, Brent Tipps, was contacted in May concerning the status of the payment, he stated he believed the last payment would be forgiven if the first four were made on time.

City staff (Interim City Manager, Mr. Shipp; Interim Director of Community and Economic Development, Ms. Carpenter; and Community Development Coordinator, Ms. Stelnicki) met with owner, Brent Tipps, in July to discuss the situation. He was asked to send a letter to staff requesting that the final payment be forgiven. The letter from the owner requesting forgiveness of the final loan payment was received by the city on September 13, 2016.

There is a provision in the agreement that states: "if the first four payments have been made on time and have been in compliance with the agreement, the Murphy Economic Development Corporation with the City's approval may waive some or all of the final payment on the Loan Repayment Schedule if the Restaurant continues to operate and remain open at the Premises for five (5) successive years through February 1, 2016".

As part of the agreement, the developer's additional obligations include:

"Developer shall participate directly in sponsorship in two (2) annual City-held community events in an amount of no less than \$500 and no more than \$2500 per event which may include in-kind contributions (e.g. good and beverage, including alcohol), and Developer shall host a minimum of one (1) annual community event... If the city does not hold or sponsor one or more events, Developer is exempt from sponsorship of such event".

"Developer shall become a continuing member in the Murphy Chamber of Commerce for no less than five (5) years after the Effective Date and shall provide proof of its membership to the City and Murphy Economic Development Corporation upon written request by the City or the Murphy Economic Development Corporation".

Boomerjack's has never paid Chamber membership dues.

Here is what Boomer Jack's has done in the way of sponsorship of city hosted events since 2012:

- 2012 – Participated in (1 event) Murphy Maize Days: Sponsor - \$2,500
- 2013 – Participated in (1 event) Murphy Maize Days: Sponsor - \$2,000 + 2 cheese and cracker platters + Drinks in VIP area
- 2014 – Participated in (1 event) Murphy Maize Days: Sponsor - \$2,000 + 75 drink coupons + 1 Sandwich wrap platter. Boomer Jack's invoiced us for \$990 in extra beverages.
- 2015 – Participated in (1 event) Murphy Maize Days: Sponsor - \$2,000 + 75 drink coupons + 1 Sandwich wrap platter. Boomer Jack's invoiced us for \$365 in extra beverages.
- 2016 – Participated in (1 event) Murphy Maize Days: Sponsor - \$1000 + 200 (approx.) drink coupons + 1 cheese platter (they did not bill for any VIP beverages)

They have never participated in 2 events per year.

**City Council Meeting
December 6, 2016**

Staff Recommendation:

Final payment should be made by the owner of Boomerjack's Murphy, LLC to the City of Murphy in the amount of \$20,400.

Attached

- 1) Signed agreement
- 2) Letter from Brent Tipps

**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT
BETWEEN AND AMONG THE CITY OF MURPHY, THE MURPHY
ECONOMIC DEVELOPMENT CORPORATION
AND BOOMERJACK'S MURPHY, LLC**

This ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT ("Agreement") is made and entered into as of the date last executed below ("Effective Date") by BOOMERJACK'S MURPHY, LLC ("Developer"), a Domestic Limited Liability Company, and by the CITY OF MURPHY (the "City"), a home-rule municipality created, existing and organized under the laws of the State of Texas and the City's home-rule charter, situated in the County of Collin, State of Texas, and by the MURPHY ECONOMIC DEVELOPMENT CORPORATION (the "MEDC"), a non-profit Corporation created and organized under the laws of the State of Texas, particularly Vernon's Texas Civil Statutes, Article 5190.6, Section 4A, as amended, and subsequently recodified in Chapters 501 and 504 of the Texas Local Government Code (the "Act"), and the Texas Non-Profit Corporation Act, Article 1396-1.01, *et seq.*, V.T.C.S., as amended (the "Non-Profit Act"), for the purpose of establishing certain public improvements.

WHEREAS, the City and the MEDC recognize the importance of economic growth and development consistent with community values and needs; and

WHEREAS, Developer is the owner and operator of a restaurant called BoomerJack's Grill & Bar ("Restaurant") and is the Lessee of certain real property for the Restaurant located at 158 W. FM 544 #136, Murphy, Texas 75094 (SWC of Murphy Rd and FM 544 in Murphy Village Center)("Premises"), which will require related improvements for the Premises as set forth in this Agreement, which will encourage increased economic development in the City and create and thereafter maintain an annual average of 50 jobs; and

WHEREAS, investment by Developer in developing and establishing the Restaurant at the Premises is estimated to be approximately \$100,000, and Developer has applied to the City and the MEDC for economic and other assistance and financial incentives related to such development and for improvements which are described in this Agreement; and

WHEREAS, the MEDC is authorized by the Act, the Non-Profit Act, and other applicable laws to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City and the MEDC wish to provide certain incentives to Developer, as referenced in this Agreement, to assist in the economic development in the City, pursuant to the City's and MEDC's authority to make loans and/or grants of public and economic development corporation funds for the purpose of promoting local economic development and stimulating business and commercial activity in the City;

WHEREAS, the City and the MEDC finds and determines that this Agreement clearly promotes economic development in the City of Murphy, Texas, that the expenditures set out herein are required and/or suitable for targeted infrastructure improvements necessary to promote or develop new or expanded business enterprises pursuant to Section 501.103 of the Local Government Code, and are in the best interest of the City of Murphy; and

WHEREAS, Developer agrees and understands that this Agreement shall not be effective until the City Council has approved this Agreement at a City Council meeting called and held for this purpose.

NOW THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the City, the MEDC and Developer (collectively "Parties" and each individually "Party") agree to the following:

Section 1.00 Developer's Obligations

IT IS AGREED and understood by the Parties hereto that:

1. Developer shall perform certain construction, reconstruction and/or and related improvements ("Improvements") which are generally described below as follows and more particularly described in **Exhibit "A"** attached and incorporated herein fully by reference as if set out verbatim:

New space improvements consisting of: construction of a walk-in cooler, shelving, and door; and, existing space improvements consisting of: demolition of the existing bar, refinishing of the floor, construction of a new patio bar with roll up doors, painting, installation of HVAC, installation of permanent outdoor signage, and installation of permanent audio/video equipment.

2. Developer shall diligently, continually and faithfully pursue final completion of the Improvements in a good and workmanlike manner, and the construction of same will be in accordance with all applicable federal, state and local laws and regulation, and in accordance with the Schedule set forth in **Exhibit "A."**
3. Developer shall achieve substantial completion of the Improvements within **120 days** after the date the City issues a permit to construct the Improvements.
4. Developer shall thereafter be required to timely achieve final completion of the Improvements and shall obtain a certificate of occupancy from the City within **150 days** after the date the City issues a permit to construct the Improvements.

5. Developer shall submit to the MEDC, within **150 days** from the date the City issues a permit to construct the Improvements, prior to the issuance of a certificate of occupancy, a statement of costs incurred in connection with the construction of the Improvements, and other costs identified in **Exhibit "A,"** together with the submission of copies of invoices and sufficient proof of expenditures for the Improvements and costs identified in **Exhibit "A"** which statements, invoices and proofs are acceptable to the MEDC. The City shall not issue a certificate of occupancy for the Premises to Developer without the MEDC having received from Developer statements, invoices and proofs which are acceptable to the MEDC.
6. If Developer does not provide statements, invoices and proofs which are acceptable to the MEDC for the Grant Improvements (defined hereinbelow), then the amount of grant funds, for which the Developer does not provide statements, invoices and proofs which are acceptable to the MEDC for the Grant Improvements, shall be added to the amount of the Loan to be repaid to the MEDC by Developer and such amount shall incur interest at two percent (2%) interest compounded annually.
7. Developer shall hire and maintain for the Restaurant a minimum of 50% of its employees from and among persons who reside within a five (5) mile radius of the City ("Local Hires"); and, Developer shall provide to the City and to the MEDC quarterly hiring reports upon written request demonstrating compliance with this section.
8. Developer shall continuously lease (or own) and occupy the Premises and shall continue to maintain and operate the Restaurant at the Premises for five (5) years beginning on date of lease commencement. Within five (5) days of the Effective Date, Developer shall provide a copy of the executed lease agreement (and any amendments thereto) for the Premises to the City and the MEDC.
9. Developer shall participate directly in sponsorship in two (2) annual City-held community events, in an amount of no less than \$500 and no more than \$2,500 per event which may include in-kind contribution (e.g., food and beverage, including alcohol), and Developer shall host a minimum of one (1) annual community event as set forth in **Exhibit "B"** which is attached to this Agreement and incorporated herein fully by reference as if set forth verbatim. If the City does not hold or sponsor one or more events, Developer is exempt from sponsorship of such event.
10. Developer shall become a continuing member in the Murphy Chamber of Commerce for no less than five (5) years after the Effective Date, and shall provide proof of its membership to the City and the MEDC upon written request by the City or the MEDC.

11. Developer shall receive from the MEDC \$107,000 in grant funds ("Grant") and \$100,000 in loan funds ("Loan") which shall be used solely by Developer for costs of Improvements and other obligations of Developer as set forth herein.

Funds from the Grant shall be used for the following Improvements ("Grant Improvements"): construction of a walk-in cooler, shelving for new space, a door for new space improvements, demolition of the existing bar and refinishing of the floor, construction of a new patio bar with roll up doors, painting of existing space, and for Grand Opening promotions with band and radio station coverage.

12. Developer shall repay the entire amount of the Loan, plus accrued interest, no later than **February 1, 2016**, and shall make annual payments to the MEDC on or before **February 1, 2012**, and on or before each successive **February 1**, in an amount not less than \$20,000 plus two percent (2%) interest (compounded annually) on the then outstanding balance owed by the Developer to the MEDC, until the debt is paid in full. The Loan repayment schedule ("Loan Repayment Schedule") shall be as follows (but does not reflect or include additional Loan repayment amounts which may also become an additional Loan repayment obligation as set forth above in this section arising from Grant Improvements obligations):

<u>Installment</u>	<u>Installment Payments Due Date</u>	<u>Amount of Installment Payments</u>
First	02/01/2012	\$ 22,000 (\$ 20,000 + (2% of \$ 100,000))
Second	02/01/2013	\$ 21,600 (\$ 20,000 + (2% of \$ 80,000))
Third	02/01/2014	\$ 21,200 (\$ 20,000 + (2% of \$60,000))
Fourth	02/01/2015	\$ 20,800 (\$ 20,000 + (2% of \$40,000))
Fifth	02/01/2016	\$ 20,400 (\$ 20,000 + (2% of \$20,000)); plus any additional Loan repayment amounts due (including interest).
Anticipated Total		\$106,000 (plus additional Loan repayment amounts)

If the first four payments have been made on time and have been in compliance with the agreement, the MEDC with the City's approval may waive some or all of the final payment on the Loan Repayment Schedule if the Restaurant continues to operate and remain open at the Premises for five (5) successive years through **February 1, 2016**.

Section 2.00 Job Creation, Developer Investment, Requirement for Continuation of Operations of Business and Repayment Obligation

1. An Employment Impact Report which includes a schedule of payroll or jobs (including Local Hires) to be created or retained by Developer as consideration for direct incentives to be provided by the MEDC under this Agreement is attached hereto as **Exhibit "C"** and incorporated herein fully by reference as if set out verbatim. If Developer fails to create and maintain the required number of jobs (including Local Hires), the Developer shall be obligated to repay the Grant to the MEDC as provided for in **Exhibit "C."**
2. A Developer Investment Report which includes a schedule of expenditures and other investments to be made by Developer as consideration for direct incentives to be provided by the MEDC under this Agreement is attached hereto as **Exhibit "D"** and incorporated herein fully by reference as if set out verbatim. If Developer fails to make the required expenditures and investments as required by this Agreement as set out in **Exhibit "D,"** the Developer shall be obligated to repay the Grant to the MEDC as provided for in **Exhibit "D."**
3. If the lease for (and the right to operate the Restaurant at) the Premises is terminated within five (5) years from and after the earlier of either the date of execution of the lease agreement for the Premises or January 31, 2011, Developer shall be obligated to repay the Grant and the outstanding Loan balance plus accrued interest to the MEDC as set forth in this Agreement.

Section 3.00 MEDC's Obligations

IT IS FURTHER AGREED and understood by the Parties hereto that in exchange for the performance of Developer's Obligations as set forth herein, the MEDC hereby agrees to the following:

1. The MEDC shall fund \$107,000 in Grants and \$100,000 in Loans in financial assistance to Developer toward Developer's actual costs for the Improvements and other obligations of Developer set forth in Section 1.00 herein. The MEDC shall release the Grant funds to Developer within the latter of ten (10) days from the Effective Date of this Agreement and receipt by the City of a copy of the executed lease agreement for the Premises. The MEDC staff will process the request within one (1) business day and shall release Loan funds to Developer within fifteen (15) to thirty (30) days of submittal including approval by the MEDC (or designee of the MEDC) for each invoice, statement of costs and/or

proof of expenditures provided by Developer for costs and expenses as set forth herein.

2. The MEDC shall not, and in no event, grant or loan to Developer more than the maximum sum of \$207,000.00.
3. The MEDC Loan repayment period shall not exceed five (5) years. The interest rate of the loan shall be two percent (2%) which shall be compounded annually on the amount of the outstanding balance due under this Agreement. The Loan shall be repaid according to the Loan Repayment Schedule.
4. The MEDC shall fund Developer only for the actual costs for Improvements and other obligations set forth in this Agreement, which shall also include costs for promotional purposes of up to \$9,000 for a grand opening of the Restaurant at the Premises which may include the hiring of a band and providing radio station coverage as approved by the City Manager.

Section 4.00 City's Obligations

IT IS FURTHER AGREED and understood by the Parties hereto that in exchange for the performance of Developer's Obligations set forth hereinabove, the City does hereby agree to the following:

1. To approve and authorize the funding of \$107,000 in Grants and \$100,000 in Loans in financial assistance solely from the MEDC to Developer for Developer's actual costs and expenses for the Improvements and other obligations of Developer set forth in Section 1.00 herein.
2. The City shall additionally waive all City fees related to permitting and construction.
3. If needed and upon request by the Developer, the City shall allow Developer use of City facilities for training, temporary office(s), and hiring and scheduled at a time and place which is mutually acceptable by the City and Developer.

Section 5.00 Default by Developer.

Each of the following shall constitute a default by Developer under this Agreement ("Default"):

1. **Default by Developer.** Developer's failure to perform or comply with any term, obligation, covenant or condition contained in this Agreement.
2. **Timely Completion of Improvements.** Developer's failure to timely complete construction of any Improvement.

3. **Timely Pay for Improvement.** Developer's failure to timely pay for any Improvement.
4. **Hire and Maintain Local Hires.** Developer's failure to create and thereafter maintain an annual average of 50 jobs at the Restaurant, and/or comply with the employment terms in **Exhibit "C."**
5. **Timely Obtain a Certificate of Occupancy.** Developer's failure to timely obtain a certificate of occupancy.
6. **False Statements.** Any written warranty, representation or statement made or furnished to the City or the MEDC by Developer under this Agreement or any document(s) related hereto furnished to the City or the MEDC which is false or misleading in any respect, either now or at the time made or furnished, or if Developer obtains actual knowledge that any such warranty, representation or statement has become false or misleading after the time that it was made, and Developer fails to provide written notice to the City and the MEDC of the false or misleading nature of such warranty, representation or statement within ten (10) days after Developer learns of its false or misleading nature.
7. **Insolvency.** The dissolution or termination of Developer's existence as a going business or concern, Developer's insolvency, appointment of receiver for any part of Developer's portion of the Property, any assignment of all or substantially all of the assets of Developer for the benefit of creditors of Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer.

Section 6.00 Remedies of the City.

1. If any Default by Developer occurs, then the City or the MEDC shall deliver a ten-day notice of default and right-to-cure. If the Default is not cured within the ten-day period, the City or the MEDC may terminate this Agreement upon written notice to the other Parties, and the City's and the MEDC's obligations, including financial obligations, shall terminate when written notice of termination is provided.
2. Within thirty (30) days after written notice of termination of this Agreement is provided to Developer by the City and/or the MEDC, Developer shall repay to the MEDC the amount of the Grant funds disbursed to Developer and the amount of the outstanding balance of the Loan plus accrued interest.
3. If Developer fails to repay to the MEDC any amounts due under this Agreement, Developer shall be obligated to pay all legal costs and reasonable attorney's fees of the MEDC associated with the enforcement of this Agreement and/or recovering any unpaid amounts due under this Agreement.

4. The failure of the City and/or the MEDC to declare a breach shall not be construed as a waiver of that default or breach of Developer.

Section 7.00 Remedies of Developer.

If the City or the MEDC are in default under this Agreement, then Developer shall be entitled to seek specific performance and injunctive relief only: Developer shall only be entitled to terminate this Agreement by mutual agreement pursuant to Section 12.00 of this Agreement.

Section 8.00 Inspection of the Premises

The City and the MEDC shall be able to inspect the Premises at any time and shall coordinate timing of inspection(s) with the management of the Restaurant.

SECTION 9.00 INDEMNITY

THE CITY, THE MEDC AND ANY OFFICER, OFFICIAL, EMPLOYEE, AGENT OR BOARD MEMBER THEREOF SHALL NOT BE LIABLE FOR ANY INJURY TO PERSONS OR PROPERTY OCCASIONED BY REASON OF THE ACTS OR OMISSIONS OF DEVELOPER, ITS AGENTS, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS IN THE PERFORMANCE OF THIS AGREEMENT OR CONSTRUCTION ON OR IMPROVEMENTS OF THE PREMISES. DEVELOPER FURTHER AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, THE MEDC, AND THEIR OFFICERS, OFFICIALS, BOARDS AND COMMISSIONS, AND MEMBERS THEREOF, AGENTS AND EMPLOYEES, CONTRACTORS AND SUBCONTRACTORS IN THE PERFORMANCE OF THIS AGREEMENT INCLUDING FOR SUCH CLAIMS, DEMANDS, CAUSES OF ACTIONS, LIABILITY, OR LOSS ARISING OUT OF THE NEGLIGENCE OF THE CITY, THE MEDC, AND THEIR OFFICIALS, BOARDS, COMMISSIONS, THE MEMBERS THEREOF, AGENTS, AND EMPLOYEES, INCLUDING ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LIABILITY, OR LOSS BECAUSE OF, OR ARISING OUT OF, IN WHOLE OR IN PART, THIS AGREEMENT AND THE DESIGN OR CONSTRUCTION ON OR IMPROVEMENTS OF THE PREMISES.

Section 10.00 Insurance

Developer shall obtain, and maintain throughout the period of construction at the Premises, at its sole expense, policies of general liability insurance covering any and all damages or claims for damages for injuries to persons (including death) or property in an amount not less than \$1,000,000 for any one person, and, subject to the same limit for each person, in an amount not less than \$1,000,000 on account of one incident, and in an amount not less than \$300,000 for property damage. Such policies shall be in form and

substance satisfactory to the City and the MEDC and shall contain provisions that prohibit cancellation or lapse without thirty (30) days written notice first having been delivered to the City and the MEDC. Developer shall name the City and the MEDC as co-insureds under these policies and Developer shall provide a copy of the declaration sheet of these policies to the City and the MEDC upon written request.

Section 11.00 Term.

The term of this Agreement shall commence on the date last executed below by the Parties and shall continue until the obligations of the Parties have been fully performed or terminated as provided for herein.

Section 12.00 Termination of the Agreement without Default

The City, the MEDC and the Developer may terminate this Agreement without an event of default by mutual agreement of the Parties in writing.

Section 13.00 Notice.

Any formal notices or other communications required to be given by this Agreement shall be given in writing addressed to the Party to be notified at the address set forth hereinbelow for such Party, (a) by delivering the same in person, (b) by depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified; or (c) by depositing the same with a nationally recognized courier service guaranteeing "next day delivery" addressed to the Party to be notified. Notice given in any other manner shall be effective only if and when received by the Party to be notified.

To: Developer:

BOOMERJACK'S MURPHY, LLC
Attn: J. Brent Tipps
P.O. Box 767
Bedford, Texas 76095-0767

To the City:

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

To the MEDC:

City of Murphy
Murphy Economic Development Corporation

Attn: Kristen Roberts, Economic Development Manager
206 N. Murphy Road
Murphy, Texas 75094

The Parties shall have the right to change their respective addresses and to specify as its address any other address within the United States of America by giving at least ten (10) days written notice to the other Party.

Section 14.00 Time.

Time is of the essence in all things pertaining to the performance of this Agreement.

Section 15.00 Severable Provisions.

If any provision of this Agreement is illegal, invalid, or unenforceable in whole or in part for any reason, under present or future laws, then and in that event, it is the intention of the parties hereto that the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected.

Section 16.00 Waiver.

Any failure by a Party hereto to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such Party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

Section 17.00 Applicable Law and Venue.

The construction and validity of this Agreement shall be governed by the laws of the State of Texas. Venue shall only be in Collin County, Texas.

Section 18.00 Further Documents.

The Parties agree that at any time after execution of this Agreement, they will, upon request of another Party, execute and deliver such further documents and perform such further acts as the other Party reasonably request in order to effectuate the terms of this Agreement.

Section 19.00 Incorporation of Exhibits and Other Documents by Reference.

All Exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference for the purposes set forth in this Agreement.

Section 20.00 Effect of State and Federal Laws.

Notwithstanding any other provision of this Agreement, Developer shall comply with all applicable statutes or regulations of the United States and the State of Texas, as well any City ordinances not in conflict with this Agreement, and any rules implementing such statutes or regulations.

Section 21.00 Authority for Execution.

The City hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with all applicable City ordinances. The MEDC hereby certifies, represent and warrants that the execution of this Agreement is duly authorized and adopted in conformity the articles of incorporation and bylaws of the MEDC. The Developer hereby certifies, represents, and warrants that the individual executing this Agreement on behalf of Developer is duly authorized and has full authority to execute this Agreement and bind Developer to the same.

Section 22.00 Headings or Captions.

The headings or captions used in this Agreement are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Agreement.

Section 23.00 Counterparts.

This Agreement may be executed in several counterparts, each of which, when so executed, shall be deemed to be an original, and such counterparts shall, together, constitute and be one and the same instrument.

Section 24.00 Beneficiaries.

Developer's rights, benefits and obligations under this Agreement are not assignable or transferable to any third party.

Section 25.00 No Joint Venture.

Nothing contained in this Agreement shall be deemed or construed to create the relationship of principal and agent or of partnership or joint venture or of any association whatsoever between the Parties.

Section 26.00 Entire and Final Agreement.

This Agreement encompasses the entire agreement of the Parties and terminates and supersedes all prior understandings and agreements on the subject matter hereof, whether written or oral. The Parties hereby acknowledge and represent, by affixing their signatures hereto, that the Parties have not relied on any representation, assertion, guarantee, warranty, collateral contract or other assurance, except those set out in this Agreement. The Parties hereby waive all rights and remedies, at law or in equity, arising

or which may arise as the result of a Party's reliance on such representation, assertion, guarantee, warranty, collateral contract or other assurance. This Agreement may be modified only by a further writing that is duly executed by the Parties.

Section 27.00 No Rule of Construction

The Parties acknowledge that this Agreement was prepared by the City solely as a convenience and that all Parties hereto, and their counsel, have read and fully negotiated all the language used in this Agreement. The Parties acknowledge that no rule of construction shall apply to this Agreement which construes ambiguous or unclear language in favor or against any Party because such Party drafted this Agreement.

Section 28.00 Good Faith and Fair Dealing.

The Parties to this Agreement agree to renegotiate, in good faith, any term, condition or provision of this Agreement that any court of competent jurisdiction determines to be in contravention of any federal, state or local regulation or law.

Section 29.00 Disputes and Dispute Resolution.

If the Agreement is terminated, the Parties shall attend non-binding mediation with any mediator at Burdin Mediations, located at 4514 Cole Avenue, Dallas, Texas 75205-5453, telephone 214-528-1411, before bringing suit. It shall be the obligation and responsibility of the Parties to equally share the cost for such mediation. Mediation shall be scheduled within thirty (30) days of written request by a Party.

Except for seeking immediate injunctive relief, the Parties expressly agree that the dispute resolution provisions specified herein shall be a condition precedent to the filing of suit. If any Party initiates any legal action to enforce or interpret any of the terms or provisions of this Agreement without first following the express provisions of this Section, that Party expressly waives its claims against the other Parties.

Section 30.00 Governmental Powers; Waivers of Immunity.

By execution of this Agreement, the City and the MEDC do not waive or surrender any of their governmental powers, immunities, or rights. Nothing in this Agreement shall be construed as creating or giving rise to any rights in any third parties or any persons other than the Parties hereto. Nothing in this Agreement is intended to delegate or impair the performance by the City and the MEDC of their governmental functions.

Section 31.00 Force Majeure.

Each Party shall use good faith, due diligence and reasonable care in the performance of its respective obligations under this Agreement; however, in the event that a Party is unable, due to strike, lockout, inability to procure labor or materials, failure of power, riots, insurrection, war, adverse weather conditions, fire or other casualty (a "Force

Majeure”), to perform its obligations under this Agreement, then the obligations affected by such Force Majeure shall be temporarily suspended. Within three (3) business days after the occurrence of a Force Majeure, the Party claiming the right to temporarily suspend its performance, shall give written notice to all the Parties, including a detailed explanation of the Force Majeure, a description of the action that will be taken to remedy or mitigate the Force Majeure, and resume full performance at the earliest possible time. The term “Force Majeure” shall also include events or circumstances that are not within the reasonable control of the Party whose performance is suspended and that could not have been avoided by such Party with the good faith exercise of due diligence and reasonable care. The term “Force Majeure” does not include acts by the City or the MEDC.

/ The remainder of this page is intentionally left blank. /

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date last set forth below:

BOOMERJACK'S MURPHY, LLC

BY: WMTW Inc., Manager

BY: [Signature]

NAME: J. Brent Tipps

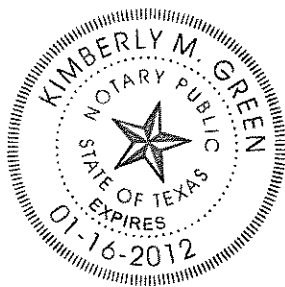
TITLE: WMTW INC., MANAGER

DATE: 1/14/2011

STATE OF TEXAS §

COUNTY OF COLLIN §

This instrument was acknowledged before me on the 14 day of JANUARY, 2011, by J. BRENT TIPPS, WMTW INC. MANAGER of **BOOMERJACK'S MURPHY, LLC** on behalf of **BOOMERJACK'S MURPHY, LLC**.



Kimberly M. Green
Notary Public in and for the State of Texas

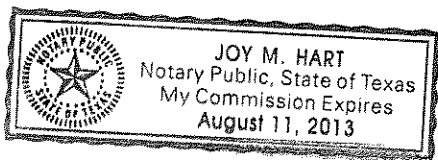
KIMBERLY M. GREEN
Name printed or typed
My commission expires: 2012/1/14

CITY OF MURPHY, TEXAS:

BY: Bret Baldwin
 NAME: Bret Baldwin
 TITLE: Mayor
 DATE: January 18, 2011

STATE OF TEXAS §
 §
 COUNTY OF COLLIN §

This instrument was acknowledged before me on the 18th day of January, 2011, by **Bret M. Baldwin**, Mayor of the **City of Murphy, Texas**, on behalf of the **City of Murphy, Texas**.



Joy M. Hart
 Notary Public in and for the State of Texas

Joy M. Hart
 Name printed or typed
 My commission expires: August 11, 2013

ATTEST:

BY: Aimee Nemer
 Aimee Nemer, City Secretary, City of Murphy, Texas

DATE: January 18, 2011

APPROVED AS TO FORM:

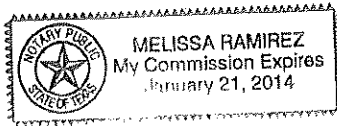
BY: _____
 City Attorney

MURPHY ECONOMIC DEVELOPMENT CORPORATION:

BY: Michael C. Smith
 NAME: Mike Smith
 TITLE: MEDC President
 DATE: 1/18/2011

STATE OF TEXAS §
 §
 COUNTY OF COLLIN §

This instrument was acknowledged before me on the 18th day of January, 2011, by Michael C. Smith MEDC President, of the Murphy Economic Development Corporation, on behalf of the Murphy Economic Development Corporation.



Melissa Ramirez
 Notary Public in and for the State of Texas
Melissa Ramirez
 Name printed or typed
 My commission expires: 1/21/2014

ATTEST:

BY: KM Roberts
Kristen Roberts Econ Development Mgr
 DATE: 1/18/2011

ATTACHMENTS AND EXHIBITS

(See Attached)

- Exhibit “A” - Schedule of Improvements, Costs for Training of Staff and Management, and Promotional Costs**
- Exhibit “B” - Developer Participation in City-held Community Events**
- Exhibit “C” - Employment Impact Report**
- Exhibit “D” - Developer Investment Report**

Exhibit “A”
Schedule of Improvements, Costs for Training of Staff
and Management, and Promotional Costs

<u>Improvement</u>	<u>Estimated Cost of Improvement</u>	<u>Actual Completion Date</u>	<u>Tracking Method</u>	<u>Fund Source</u>
Construction of walk-in cooler	\$30,000	__/__/2011	Invoices, Statement of Costs, and Proof of Expenditures	Grant
Shelving for new space	\$1,000	__/__/2011	Invoices, Statement of Costs, and Proof of Expenditures	Grant
Door for new space improvements	\$2,000	__/__/2011	Invoices, Statement of Costs, and Proof of Expenditures	Grant
Demolition of the existing bar and refinishing of floor	\$5,000	__/__/2011	Invoices, Statement of Costs, and Proof of Expenditures	Grant
Construction of new patio bar with roll up doors	\$50,000	__/__/2011	Invoices, Statement of Costs, and Proof of Expenditures	Grant
Painting of existing space	\$10,000	__/__/2011	Invoices, Statement of Costs, and Proof of Expenditures	Grant
Installation of HVAC adequate for Restaurant use	\$10,000	__/__/2011	Invoices, Statement of Costs, and Proof of Expenditures	Loan
Installation of permanent outdoor signage	\$15,000	__/__/2011	Invoices, Statement of Costs, and Proof of Expenditures	Loan
Installation of permanent audio/video equipment	\$35,000	__/__/2011	Invoices, Statement of Costs, and Proof of Expenditures	Loan
Sub Total	\$158,000			
Substantial Completion Deadline for all Improvements		05/31/2011		
Final Completion Deadline for all Improvements and issuance of C.O.		06/30/2011		

<u>Training and Promotional Costs</u>	<u>Estimated Cost</u>	<u>Actual Completion Date</u>	<u>Tracking Method</u>	<u>Fund Source</u>
Management Training	\$25,000	___/___/2011	Invoices, Statement of Costs, and Proof of Expenditures	Loan
Staff Training	\$15,000	___/___/2011	Invoices, Statement of Costs, and Proof of Expenditures	Loan
Grand Opening promotions with band and radio station coverage	\$9,000	___/___/2011	Invoices, Statement of Costs, and Proof of Expenditures	Grant
Deadline for all Training and Promotional Costs		06/30/2011		
Sub Total	\$49,000			
TOTAL	\$207,000			

Exhibit “B”
Developer Participation in City-held Community Events

Developer shall participate directly in sponsorship in two (2) annual City-held community events, in an amount of no less than \$500 and no more than \$2,500 per event which may include in-kind contribution (*e.g.*, food and beverage, including alcohol), and Developer shall host a minimum of one (1) annual community event. If the City does not hold or sponsor one or more events, Developer is exempt from sponsorship of such event.

Exhibit “C”

Employment Impact Report

Employment Requirements and Reporting

Developer shall create and maintain an annual average of at least 50 jobs (collectively “Jobs” and each individually “Job”) at the Restaurant located at the Premises. At all times, Developer shall ensure that fifty percent (50%) of the employees filling the Jobs (“Hires”) will be from persons who reside within five (5) miles of the City (“Local Hires”). A Hire must remain employed by the Restaurant at the Premises for at least six-weeks during any quarterly period and be paid for an average of 120 hours during such quarter to qualify as a Local Hire during any quarterly period.

The MEDC staff will notify Developer in writing of due reports and Developer shall provide an initial employment report on or before **June 30, 2011**, and thereafter provide quarterly employment reports which shall detail the information included above. The quarterly reports will each cover three (3) calendar months of the year beginning on **October 5, 2011**. Quarterly Reports shall be due and delivered to the City and the MEDC on or before each January 5, April 5, July 5, and October 5 for the preceding quarter.

If after **June 30, 2011**, Developer maintains an annual average of at least 50 Jobs and at least fifty percent (50%) of its total employees at the Premises at all times who are Local Hires, then Developer shall not be subject to repayment for failing to maintain its minimum amount of Jobs and Local Hires.

Developer shall be required to reimburse Grant funds to the MEDC if the required minimums as given above are not met and maintained. A reimbursement of Grant funds shall be due annually if Developer does not maintain for at least six weeks during each quarter (thirteen-week period) the required minimums based on an annual average. In no event shall Developer be required to reimburse Grant funds in excess to the amount of the Grant.

The following repayment schedule may apply if the total number of Jobs or Local Hires at the Premises falls below the required number:

Repayment Rate for Underemployment

Developer shall reimburse to the MEDC on an annual basis one percent (1%) of the total amount of the Grant funds provided to Developer for each of the 50 Jobs which has not been staffed by a Hire on an annually averaged basis for any quarterly reporting period. Developer shall also reimburse to the MEDC on an annual basis an additional one percent (1%) of the total amount of the Grant funds provided to Developer for each of one half of the Jobs (*i.e.*, 25 Jobs) which has not been staffed by a Local Hire on an annually averaged basis for any quarterly reporting period.

Example:Annual Repayment for Underemployment:

<u>Job Type</u>	<u>Required Averaged Number</u>	<u>Actual Averaged Number</u>	<u>Reimbursement %</u>	<u>Reimbursement Amount</u>
All Hires	50	48	2% (2 x 1%)	\$ 2,140 (2% x \$107,000)
Local Hires	25	24	1% (1 x 1%)	\$ 1,070 (1% x \$107,000)
Total			3%	\$ 3,210

Result:

3 % of \$107,000 = \$3,210 Annual "Clawback" Reimbursement

Sample Local Hire Chart

<u>Employee</u>	<u>Hire Date</u>	<u>Termination Date</u>	<u>Residence</u>	<u>Within 5 mile Radius of City</u>	<u>Qualifying Employee</u>	<u>Qualifying Local Hire</u>
A	11/01/10	n/a	Murphy, TX	Y	Y	Y
B	11/01/10	12/10/10	Dallas, TX	N	N	N
C	11/01/10	03/15/10	Murphy, TX	Y	Y	Y
D	11/01/10	n/a	Frisco, TX	N	Y	N
E	11/15/10	12/15/10	Plano, TX	Y	N	N
F	11/15/10	n/a	Denton, TX	N	Y	N
G	11/15/10	n/a	Wylie, TX	Y	Y	Y
H	11/15/10	n/a	Coppell, TX	N	Y	N
I	11/30/10	n/a	Richardson, TX	Y	Y	Y

Exhibit “D”

Developer Investment Report

Developer Investment

Within **150 days** from the date City issues a permit to construct the Improvements, Developer shall invest at the Premises no less than **\$100,000** in non-capital expenditures, business personal property and improvements other than those listed in Exhibit “A” (the “Developer Investment”) which shall include costs for items such as labor, point-of-sale equipment, furniture, misters, heaters, TVs, kitchen equipment, and for other expenditures and property.

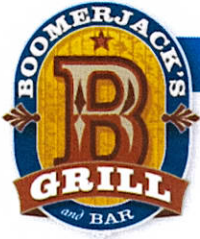
Developer shall submit to the City and the MEDC within **150 days** from the date the City issues a permit to construct the Improvements, prior to the issuance of a certificate of occupancy, a statement of costs, invoices and/or proof of expenditures demonstrating that the Developer Investment has been met. If the demonstrated amount of the Developer Investment is less than **\$100,000** as of **150 days** from the date the City issues a permit to construct the Improvements, prior to the issuance of a certificate of occupancy, Developer shall reimburse to the MEDC **30 days** thereafter, a portion of the Grant funds. The reimbursement shall be calculated by: 1) the difference between the Development Investment and the investment actually expended; 2) the difference shall be put into a percentage of the Development Investment; and 3) the percentage shall be multiplied by the Grant amount.

Example:

Developer Investment required:	= \$ 100,000
Developer Investment actually expended:	= \$ 90,000
The difference:	= \$ 10,000 (= 10% of the required Developer Investment)

A proportional reimbursement of **10%** of the \$107,000 (Amount of Grant) which is equal to \$10,700 must be repaid to the MEDC.

In no event shall Developer be required to reimburse Grant funds in excess to the amount of the Grant.



August 31st, 2016

Kelly Carpenter
Interim Community and Economic Development Director
Murphy Economic Development

RE: Economic Development Incentive Agreement (1/18/2011)

Ms Carpenter,

I have been notified of default on the Economic Development Incentive Agreement due to non-payment of the fifth payment of \$20,400. I feel this default is in error and does not conform with the intentions of the agreement between the City of Murphy, Murphy Economic Development Corporation and Boomerjack's Murphy, LLC.

The fifth payment is the final payment as referenced on the Loan Repayment Schedule as found in Section 1.00 Developer's Obligations under paragraph 12. The previous four scheduled payments have been made in accordance with the agreement. In addition, Boomerjack's Murphy, LLC has been in compliance with the other obligations of the agreement and has performed in good faith.

Included in Section 1.00 Paragraph 12 (page 5), is the following statement outlining an understanding between the parties to waive the final payment.

If the first four payments have been made on time and have been in compliance with the agreement, the MEDC with the City's approval may waive some or all of the final payment on the Loan Repayment Schedule if the Restaurant continues to operate and remain open at the Premises for five (5) successive years thru February 1, 2016.

Boomerjack's Murphy, LLC has continually operated the restaurant per the agreement and has provided support the community with tax revenue, local employment and local events. In fact, the success of the restaurant has warranted a commitment to remain in the community for another five years with an extension of the existing property lease. In addition, further improvements to the property are being currently considered including a \$50,000 remodel of the outdoor patio as the result of feedback from local patrons.

I would request for the fifth and final payment to be waived as provided in the agreement as a sign of good faith for the contributions Boomerjack's Murphy has made to the City of Murphy.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Brent Tipps', is written over a horizontal line.

Brent Tipps
Boomerjacks Murphy, LLC

City Council Meeting
December 6, 2016

Issue

Consider and/or act on a request for payment to developer related to an incentive agreement between the City of Murphy, Murphy Municipal Development District and Developer (Allen & Loucks Venture, LP; Murphy Four Venture, LP; Champion Langford Partners; Persimmon Trail Venture, Ltd.) for a one time Design Fee Grant related to construction of Dunkin' Donuts in the Murphy Marketplace MDD will consider this at its December 5, meeting so their recommendation will be provided at the December 6, 2016 City Council meeting.

Details

Dunkin' Donuts opened on December 16, 2015 in Murphy Marketplace.

Mr. Eric Langford submitted a request for payment of Design Fee Grant related to Dunkin' Donuts construction. Design Fee Grants are a portion of an incentive agreement.

The original request for payment was submitted to department director in December 2015; however, the request did not include all required documents per the signed agreement. In the period since November 2015:

- The developer was provided a checklist that was prepared by city staff to assist in compiling the proper documents for submittal.
- Numerous attempts by staff to assist the developer took place.
- Staff met in person with the developer's designee in April 2016 to discuss the submittal. Staff was to receive more materials related to the submittal.
- Staff received more materials related to the submittal, August 1, 2016.
- Materials were reviewed and staff consulted with city attorney to determine that materials submitted are in order as required by the terms of the agreement.

Considerations

The amount requested for reimbursement is \$30,145.73 payable over 5 years.

Staff Recommendation

All required materials are in order. Staff recommends that developer be paid.

Attachments

- 1) Developer checklist
- 2) Developer summary letter

Economic Development Murphy Marketplace Incentive Agreement
Effective September 2014 - Signed November 2015

DEVELOPER CHECKLIST

The following is a checklist to be used by the developer to aide in submittal of reimbursement requests per the Murphy Marketplace Incentive Agreement

DESIGN FEE INCENTIVE GRANT PROCESS:

Submittal date: 7-25-16

*Amount of Incentive Grant will be determined by the MDD within 45 days after receipt of applicable request
per Section 3, Item 1a

- _____ Economic Development will Check the date of the Certificate of Occupancy
If date of grant request is greater than 90 days from date of Certificate of Occupancy
MDD has no obligation *per Section 2, Item 2*
- _____ Economic Development will Confirm this is a new tenant in a space that has not previously been leased
per section 2, Item 4

The developer will provide, for each Design Fee incentive grant claim, the following:

- ☒ a summary letter that includes:
- _____ The specific tenant should be listed
- _____ The square footage for the tenant
- _____ Provide verification that tenant will generate, collect, and remit sales tax by providing tax id of new tenant
- ☒ A copy of the lease *per Section 2, Item 4*
- _____ Ensure that square footage is included to verify summary letter
- _____ Verify that the space leased is greater than 1800 sq. ft.
- _____ Verify that the space being leased has not previously been leased
- _____ been leased
- _____ Verify that the lease term is not less than 5 years
- _____ and not terminable
- ☒ Tenant financial information and information to show payment guarantees adequate to secure tenant's ability to comply with all provision of the lease.
per Section 2, Item 4

Inspection:

Responsibility to confirm: Economic Development

- _____ Inspection of the tenant space by City Manager
per Section 2, Item 4
- _____ Date of inspection _____

Economic Development Murphy Marketplace Incentive Agreement
Effective September 2014 - Signed November 2015

DEVELOPER CHECKLIST

Payments:

Amount paid will be equal to the lesser of the aggregate amount of Design Fees or the product of the amount of floor space occupied by the new tenant multiplied by the applicable incentive per square foot.

per table in Section 3, Item 1

- Developer shall ensure that adequate description of services rendered is included (ex: "monies owed" is not a sufficient description)
per Section 2, Item 3
 - Ensure that invoices submitted include the tenant name referenced in the summary letter
- _____ Verify that the tenant is a sales tax generating business *per Section 2, Item 4*
- _____ Review calculations for amount based on Floor Space of New Tenant Space
per Section 3, Item 1a

<u>Floor Space of New Tenant Space</u>	<u>Incentive Amount</u>
Less than 2,000 sq. ft.	\$15.00/sq. ft.
2,000 sq. ft. - 10,000 sq. ft.	\$20.00/sq. ft.
More than 10,000 sq. ft.	\$25.00/sq. ft.

\$42,400 \$ amount based on calculations per sq. ft.

\$30,145.73 \$ amount based on receipts submitted

\$30,145.73 \$ amount to submit to MDD for approval

_____ Is the amount due from receipts over \$100,000 (cannot exceed \$300,000)
per Section 3, Item 1a

_____ Yes

✓ No

If yes, MDD Board approval is required

_____ Economic Development will confirm:

_____ \$ amount based on calculations

_____ \$ amount based on receipts submitted

_____ \$ amount to submit to MDD for approval

****NOTE**

Economic Development will submit to Finance a request for payment for 20% of the amount listed above within 5 business days after determination of the amount of the Incentive Grant
per Section 3, Item 1b

MDD shall pay the second, third, fourth and fifth payments on the anniversary date of such payment date of the first payment each calendar year thereafter so long as such payment is to be made the New Tenant is continuing to lease and operate the Leased space and to generate, collect and remit sales tax.
per Section 3, Item 1b

December 12, 2015

City of Murphy
Economic Development
206 North Murphy Road
Murphy, Texas 75094

Invoice

Incentive Agreement by and between
City of Murphy and Persimmon Trail Venture
Tenant Dunkin Donuts 54% of total building

Maximum Possible Initial Incentive	2,120 SF x \$20.00 PSF = \$42,400.00
Supporting Expenditures attached	\$55,825.43 x 54% of total invoiced = \$30,145.73

Thank you.

Please remit to:
Eric Langford
Langford Realty Management Company
5924 Twin Coves
Dallas, Texas 75248

EIN – 20-8667570

Eric Langford
Langford Property Company
Langford Realty Management Company
214-668-5330
eric@langfordco.com

December 12, 2015

City of Murphy
Economic Development
206 North Murphy Road
Murphy, Texas 75094

Invoice

Incentive Agreement by and between
City of Murphy and Persimmon Trail Venture
Tenant Dunkin Donuts 54% of total building

Maximum Possible Initial Incentive	2,120 SF x \$20.00 PSF = \$42,400.00
Supporting Expenditures attached	\$55,825.43 x 54% of total invoiced = \$30,145.73

Thank you.

Please remit to:
Eric Langford
Langford Realty Management Company
5924 Twin Coves
Dallas, Texas 75248

EIN – 20-8667570

Eric Langford
Langford Property Company
Langford Realty Management Company
214-668-5330
eric@langfordco.com

MDD Meeting
December 5, 2016

Issue

Consider and/or act on a request for payment to developer related to an incentive agreement between the City of Murphy, Murphy Municipal Development District and Developer (Allen & Loucks Venture, LP; Murphy Four Venture, LP; Champion Langford Partners; Persimmon Trail Venture, Ltd.) for a one time Design Fee Grant related to construction of Nothing Bundt Cakes in the Murphy Marketplace. MDD will consider this at its December 5, meeting so their recommendation will be provided at the December 6, 2016 City Council meeting.

Details

Nothing Bundt Cakes opened in September, 2015 in Murphy Marketplace.

Mr. Eric Langford submitted a request for payment of Design Fee Grant related to construction of Nothing Bundt Cakes. Design Fee Grants are a portion of an incentive agreement.

The original request for payment was submitted to department director in December 2015; however, the request did not include all required documents per the signed agreement. In the period since November 2015:

- The developer was provided a checklist that was prepared by city staff to assist in compiling the proper documents for submittal.
- Numerous attempts by staff to assist the developer took place.
- Staff met in person with the developer's designee in April 2016 to discuss the submittal. Staff was to receive more materials related to the submittal.
- Staff received more materials related to the submittal, August 1, 2016.
- Materials were reviewed and staff consulted with city attorney to determine that materials submitted are in order as required by the terms of the agreement.

Considerations

The amount requested for reimbursement is \$25,679.70 payable over 5 years.

Staff Recommendation

All required materials are in order. Staff recommends that developer be paid.

Attachments

- 1) Developer checklist
- 2) Developer summary letter

Economic Development Murphy Marketplace Incentive Agreement
Effective September 2014 - Signed November 2015

DEVELOPER CHECKLIST

The following is a checklist to be used by the developer to aide in submittal of reimbursement requests per the Murphy Marketplace Incentive Agreement

DESIGN FEE INCENTIVE GRANT PROCESS:

Submittal date: 7-25-16

*Amount of Incentive Grant will be determined by the MDD within 45 days after receipt of applicable request
per Section 3, Item 1a

- _____ Economic Development will Check the date of the Certificate of Occupancy
If date of grant request is greater than 90 days from date of Certificate of Occupancy
MDD has no obligation per Section 2, Item 2
- _____ Economic Development will Confirm this is a new tenant in a space that has not previously been leased
per section 2, Item 4

The developer will provide, for each Design Fee incentive grant claim, the following:

- ✓ _____ a summary letter that includes:
- _____ ✓ The specific tenant should be listed
 - _____ ✓ The square footage for the tenant
 - _____ ✓ Provide verification that tenant will generate, collect, and remit sales tax by providing tax id of new tenant
- _____ A copy of the lease per Section 2, Item 4
- _____ ✓ Ensure that square footage is included to verify summary letter
 - _____ ✓ Verify that the space leased is greater than 1800 sq. ft.
 - _____ ✓ Verify that the space being leased has not previously been leased
been leased
 - _____ ✓ Verify that the lease term is not less than 5 years
and not terminable
- ✓ _____ Tenant financial information and information to show payment guarantees adequate to secure tenant's ability to comply with all provision of the lease.
per Section 2, Item 4

Inspection:

Responsibility to confirm: Economic Development

_____ Inspection of the tenant space by City Manager
per Section 2, Item 4

_____ Date of inspection _____

Economic Development Murphy Marketplace Incentive Agreement
Effective September 2014 - Signed November 2015

DEVELOPER CHECKLIST

Payments:

Amount paid will be equal to the lesser of the aggregate amount of Design Fees or the product of the amount of floor space occupied by the new tenant multiplied by the applicable incentive per square foot.

per table in Section 3, Item 1

- Developer shall ensure that adequate description of services rendered is included (ex: "monies owed" is not a sufficient description)
per Section 2, Item 3
- Ensure that invoices submitted include the tenant name referenced in the summary letter
- ✓ Verify that the tenant is a sales tax generating business *per Section 2, Item 4*
- _____ Review calculations for amount based on Floor Space of New Tenant Space
per Section 3, Item 1a

<u>Floor Space of New Tenant Space</u>	<u>Incentive Amount</u>
Less than 2,000 sq. ft.	\$15.00/sq. ft.
2,000 sq. ft. - 10,000 sq. ft.	\$20.00/sq. ft.
More than 10,000 sq. ft.	\$25.00/sq. ft.

\$ 27,495 \$ amount based on calculations per sq. ft.

\$ 25679⁷⁰ \$ amount based on receipts submitted

\$ 25679⁵⁰ \$ amount to submit to MDD for approval

_____ Is the amount due from receipts over \$100,000 (cannot exceed \$300,000)
per Section 3, Item 1a

_____ Yes

_____ ☒ No

If yes, MDD Board approval is required

_____ Economic Development will confirm:

_____ \$ amount based on calculations

_____ \$ amount based on receipts submitted

_____ \$ amount to submit to MDD for approval

****NOTE**

Economic Development will submit to Finance a request for payment for 20% of the amount listed above within 5 business days after determination of the amount of the Incentive Grant
per Section 3, Item 1b

MDD shall pay the second, third, fourth and fifth payments on the anniversary date of such payment date of the first payment each calendar year thereafter so long as such payment is to be made the New Tenant is continuing to lease and operate the Leased space and to generate, collect and remit sales tax.
per Section 3, Item 1b

December 12, 2015

City of Murphy
Economic Development
206 North Murphy Road
Murphy, Texas 75094

Invoice

Incentive Agreement by and between
City of Murphy and Persimmon Trail Venture
Tenant Nothing Bundt Cakes 46% of total building

Maximum Possible Initial Incentive	1,833 SF x \$15.00 PSF = \$27,495.00
Supporting Expenditures attached	\$55,825.43 x 46% of total invoiced = \$25,679.70

Thank you.

Please remit to:
Eric Langford
Langford Realty Management Company
5924 Twin Coves
Dallas, Texas 75248

EIN – 20-8667570

Eric Langford
Langford Property Company
Langford Realty Management Company
214-668-5330
eric@langfordco.com

December 12, 2015

City of Murphy
Economic Development
206 North Murphy Road
Murphy, Texas 75094

Invoice

Incentive Agreement by and between
City of Murphy and Persimmon Trail Venture
Tenant Nothing Bundt Cakes 46% of total building

Maximum Possible Initial Incentive	1,833 SF x \$15.00 PSF = \$27,495.00
Supporting Expenditures attached	\$55,825.43 x 46% of total invoiced = \$25,679.70

Thank you.

Please remit to:
Eric Langford
Langford Realty Management Company
5924 Twin Coves
Dallas, Texas 75248

EIN – 20-8667570

Eric Langford
Langford Property Company
Langford Realty Management Company
214-668-5330
eric@langfordco.com