



MURPHY CITY COUNCIL AGENDA
SPECIAL JOINT MEETING
MURPHY CITY COUNCIL
MURPHY MUNICIPAL DEVELOPMENT DISTRICT
MURPHY COMMUNITY DEVELOPMENT DISTRICT
(COMMUNITY ROOM)
MARCH 29, 2016 AT 6:00 PM
206 NORTH MURPHY ROAD
MURPHY, TEXAS 75094

Eric Barna
Mayor

Scott Bradley
Mayor Pro Tem

Owais Siddiqui
Deputy Mayor Pro Tem

Ben St. Clair
Councilmember

Betty Spraggins
Councilmember

Sarah Fincanon
Councilmember

Rob Thomas
Councilmember

John Daugherty
President, MDD

Alex Acuña
MDD Board Member

Alain Dermarker
MDD Board Member

Michael Loftus
MDD Board Member

Jamie Nicholson
MDD Board Member

Jennifer Berthiaume
President, MCDC

Sri Alapati
MCDC Board Member

Shawn Balusek
MCDC Board Member

Karan Chetal
MCDC Board Member

Lequita Davenport
MCDC Board Member

Maria Reilly
MCDC Board Member

Amanda Turner
MCDC Board Member

NOTICE is hereby given of a meeting of the City Council, the MDD Board, and the MCDC Board of the City of Murphy, Collin County, State of Texas, to be held on March 29, 2016 at Murphy City Hall for the purpose of considering the following items. The City Council, the MDD Board, and the MCDC Board of the City of Murphy, Texas, reserves the right to meet in closed session on any of the items listed below should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

1. CALL TO ORDER

2. ROLL CALL & CERTIFICATION OF A QUORUM

- A. City Council
- B. Murphy Municipal Development District (MDD)
- C. Murphy Community Development Corporation (MCDC)

3. INDIVIDUAL CONSIDERATION

- A. Consider and/or authorize the execution of the contract by City Council, Murphy Municipal Development District (MDD) and Murphy Community Development Corporation (MCDC) for the Central Park Parking Lot Expansion/Food Truck Court.

4. 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 March 24, 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 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, MMDD and MCDC Special Joint Meeting
March 29, 2016**

Issue

Consider and/or authorize the execution of the contract by City Council, Murphy Municipal Development District (MDD) and Murphy Community Development Corporation (MCDC) for the Central Park Parking Lot Expansion/Food Truck Court.

Staff Resource/Department

Bill Shipp, Interim City Manager
Linda Truitt, Finance Director

Summary

This item was brought before the MDD as a joint venture with the City and Community Development Corporation in October 2015. The MDD is going to take the lead in moving this project forward, especially financially. The City and Community Development Corporation each will pay one third of the project cost beginning in FY 18 and stretching into FY 20.

Below is a listing of the estimates by dates and the final project costs:

Estimates		
August 25, 2015		
Construction	484,364.00	
Contingency & Design	<u>163,696.48</u>	
Total Project		<u>648,060.48</u>
Allocation Amount per entity	220,000.00	Based on total of \$660,000
October 27, 2015		
Construction	584,364.00	Added Water line & Fire Hydrant
Contingency & Design	<u>193,311.30</u>	
Total Project		<u>777,675.30</u>
Revised Allocation Amount per entity	259,225.10	
December 3, 2015		
Construction	644,364.00	Added Parking lot lights
Contingency & Design	<u>133,311.30</u>	Reduced pre-construction contingency
Total Project		<u>777,675.30</u>
Revised Allocation Amount per entity	259,225.10	

**City Council, MDD and MCDC Special Joint Meeting
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March 1, 2016
Construction Bid Approved by
City Council

Construction	793,251.00	Added 3 Pedestrian Lights, cost of concrete increased
Alt #1 Pedestrian Guardrail	<u>15,600.00</u>	
Total Construction Bid	<u>808,851.00</u>	
Funding Contract Amount submitted to MMDD & MCDC for approval	<u>808,851.00</u>	Design not included
Proposed Funding Contract Total Construction Bid	808,851.00	
Design	<u>74,097.14</u>	No pre-construction contingency
Total Proposed Funding Contract	<u>882,948.14</u>	
Revised Allocation Amount per entity	<u>294,316.05</u>	
Revise Annual Allocation Amount per entity	<u>98,105.35</u>	

The first project estimate dated August 25, 2015 was \$648,060.48 which included the construction and contingency and design. Using this number the allocation per entity was \$220,000 which allowed for a contingency of \$11,939.

On October 27, 2015 a revised estimate of \$777,675.30 was presented which included the addition of a water line and fire hydrant.

On December 3, 2015 a revised estimate of \$777,675.30 was presented which include the addition of parking lot lights and the reduction of pre-construction contingency while maintaining the same total project cost presented in October 27, 2015.

At the March 1, 2016 meeting City Council approved a construction bid of \$793,251 with Alt. #1 of \$15,600 for a total of \$808,851 to Cole Construction.

The funding contract was prepared in the amount of \$808,851 for MMDD and MCDC approval which only included the construction amount.

A new funding contact has been prepared in the amount of \$882,948 which includes the construction costs and the design fees without any contingency. Each entity share is \$294,316 or \$98,105 annually beginning in FY 2018 and ending FY 2020.

**City Council, MDD and MCDC Special Joint Meeting
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There have been several additions to the construction portion of this project since it was proposed in August, 2015. A water line and fire hydrant, parking lot lights and three pedestrian lights were added to the construction project.

The following are comments from Dennis Sims, Landscape Architect regarding the increase of the construction portion of the project:

- 1 *Based on unit prices, \$5.50/S.F. was used in the preliminary cost estimate for the concrete paving. The unit price submitted by Cole Construction was \$6.50/S.F. This accounts for approximately \$47,000 of the cost overrun.*
- 2 *The site was rough graded during Phase I construction of Central Park. Once final grades of the parking were completed we had to haul off-site an estimated 1,100 C.Y. of dirt which was not included in cost estimates.*
- 3 *The three (3) pedestrian lights were added to the Food Court, totaling to approximately \$17,000.*
- 4 *A small retaining wall was required for the hike and bike trail, in the parking lot, in order to meet ADA guidelines.*
- 5 *There was significant earthwork required on the north end of the amphitheater in order to meet ADA guidelines for the trail connection.*

In addition to these items, overall construction and labor cost have also escalated over the last year and continue to rise.

An example of this would be concrete cost. Concrete cost for Central Park was at \$35.00/C.Y., as of last week, concrete costs are \$128.00/C.Y.

Action Requested

Approve the contract as presented.

Attachments

Letter from Dennis Sims
Funding Contract



March 23, 2016

Mr. Bill Shipp
Intern City Manager
City of Murphy
206 N. Murphy Road
Murphy, Texas 75094

Re: Central Park Parking Lot Expansion / Food Truck Court

Dear Mr. Shipp:

The following items contributed to the project overrun for the Food Court Project.

1. Based on unit prices, \$5.50/S.F. was used in the preliminary cost estimate for the concrete paving. The unit price submitted by Cole Construction was \$6.50/S.F. This accounts for approximately \$47,000.00 of the cost overrun.
2. The site was rough graded during Phase I construction of Central Park. Once final grades for the parking were completed we had to haul off-site an estimated 1,100 C.Y. of dirt which was not included in our cost estimate.
3. The three (3) pedestrian lights were added to the Food Court, totaling to approximately \$17,000.00.
4. A small retaining wall was required for the hike and bike trail, in the parking lot, in order to meet ADA guidelines.
5. There was significant earthwork required on the north end of the amphitheater in order to meet ADA guidelines for the trail connection.

In addition to these items, overall construction and labor cost have also escalated over the last year and continue to rise.

An example of this would be concrete cost. Concrete cost for Central Park was at \$35.00/C.Y., as of last week, concrete cost are \$128.00/C.Y.

If you have any questions please give me a call.

Sincerely,

Dennis Sims, RLA

DEVELOPMENT FUNDING AND PARTICIPATION AGREEMENT
Murphy City Hall Food Truck Court and Central Park Parking

This DEVELOPMENT FUNDING AND PARTICIPATION AGREEMENT (this “Agreement”) is made and entered into as of _____, 2016, (“Effective Date”) 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, the MURPHY MUNICIPAL DEVELOPMENT DISTRICT (the “MDD”), a political subdivision of the State of Texas and of the City of Murphy, Texas, created and organized under the laws of the State of Texas, and MURPHY COMMUNITY DEVELOPMENT CORPORATION (the “MCDC”) a Texas non-profit corporation,

RECITALS

WHEREAS, the City, the MDD, and the MCDC desire to develop and install additional parking at Central Park as well as a food truck court (the “Project”) on land located within the corporate limits of the City of Murphy, Texas, such tract of land and Project plans being depicted in Exhibit A (the “Property”) attached hereto and incorporated herein for all purposes; and

WHEREAS, it is anticipated that development of the Project shall conform generally with the depiction attached hereto as Exhibit A or as otherwise approved by the City; and

WHEREAS, the MDD and the MCDC have determined that participating in the funding in accordance with this Agreement will further the objectives of MDD and MCDC, will benefit the MDD and the MCDC and the City and the City’s inhabitants, will promote local economic development, and provide and retain employment, business and commercial activity in the City; and

WHEREAS, the anticipated costs for completion of the Project are described in Exhibit B (the “Project Costs”) attached hereto and incorporated herein for all purposes and the City, the MDD and the MCDC will each pay for one-third of the Project Costs including any amount in excess of the Project Costs required to complete the Project in accordance with the terms of this Agreement; and

WHEREAS, commencement of development of the Project is dependent on economic assistance from the City, the MDD and the MCDC; and

WHEREAS, the MDD and the MCDC are authorized to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the MDD and the MCDC wish to provide certain incentives as stated in this Agreement, to assist in the economic development in the City, pursuant to

the authority of the MDD and the MCDC to make grants of public and corporation funds for the purpose of promoting local economic development and stimulating business and commercial activity in the City; and

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

Section 1.00 MDD Obligations

IT IS AGREED and understood by the Parties hereto that:

1. The MDD shall fund and pay the Project Costs with funds available to the MDD (the “Project Funds”) in the amount of Eight Hundred Eighty Two Thousand Nine Hundred Forty-Eight Dollars (\$882,948.00) (the “MDD Payment”) as described in Exhibit B for construction of the Project. If the Project Costs exceed the MDD Payment, the MDD shall fund any additional payment amounts necessary to fund the completion of the Project up to an amount equal to Nine Hundred Thousand Dollars (\$900,000.00) upon receipt of a request from the City for such additional payment.
2. The MDD shall be reimbursed for 2/3rds of the Project Funds paid by the MDD from the City and the MCDC in accordance with Section 2 and Section 3 of this Agreement.
3. MDD shall not have an ownership interest in the Project or the Property.

Section 2.00 City Obligations

IT IS FURTHER AGREED and understood by the Parties hereto that in exchange for and conditioned upon the timely performance of MDD’s obligations set forth hereinabove, the City does hereby agree to the following:

1. City shall use commercially reasonable efforts to initiate design and construction, of the Project by April 1, 2016, and complete construction, as evidenced by final approval and acceptance, by December 31, 2016. The City shall administer any payments of Project Funds for construction the Project and determine the Project Costs after the Project is completed. The City shall provide records to the MDD and the MCDC documenting the Project Costs. The City shall determine the amount of the City Contribution, as hereinafter defined, and the MCDC Contribution as hereinafter defined and provide this information to the MDD and the MCDC after the Project is completed.
2. City shall use the Project Funds received from the MDD to pay for construction of the Project.

3. City shall pay the MDD for 1/3 of the Project Funds (the “City Contribution”). Subject to appropriations budgeted annually by the City Council of the City, the City shall transfer to the MDD the City Contribution in three annual installment payments beginning in fiscal year 2018 and ending in fiscal year 2020. The first annual installment of the City Contribution shall be in the amount of 1/3 of the City Contribution and transferred from the City to the MDD on or before September 30, 2018. The second annual installment of the City Contribution shall be in the amount of 1/3 of the City Contribution and transferred from the City to the MDD on or before September 30, 2019. The third and final annual installment of the City Contribution shall be in the amount of 1/3 of the City Contribution and transferred from the City to the MDD on or before September 30, 2020.
4. City owns and controls the Project and the Property and the MDD and the MCDC shall not acquire any ownership interest in the Project or Property.

Section 3.00 MCDC Obligations

IT IS FURTHER AGREED and understood by the Parties hereto that in exchange for and conditioned upon the timely performance of MDD’s obligations set forth hereinabove, the MCDC does hereby agree to the following:

1. The MCDC shall pay the MDD in the amount of 1/3 of the Project Funds (the “MCDC Contribution”). Subject to appropriation by the MCDC Board of Directors, the MCDC shall transfer to the MDD the MCDC Contribution in three annual installment payments beginning in fiscal year 2018 and ending in fiscal year 2020. The first annual installment of the MCDC Contribution shall be in the amount of 1/3 of the MCDC Contribution and transferred from the MCDC to the MDD on or before September 30, 2018. The second annual installment of the MCDC Contribution shall be in the amount of 1/3 of the MCDC Contribution and transferred from the MCDC to the MDD on or before September 30, 2019. The third and final annual installment of the MCDC Contribution shall be in the amount of 1/3 of the MCDC Contribution and transferred from the MCDC to the MDD on or before September 30, 2020.

Section 4.00 Default

A Party’s failure to perform or comply with any term, obligation, covenant or condition contained in this Agreement shall constitute a default under this Agreement.

Section 5.00 Remedies upon Default

If any default by a Party occurs, then another Party shall deliver a ten-day notice of default and right-to-cure. If the default is not cured within the ten-day period, a Party may (i) terminate this Agreement upon written notice to the other Parties, and the Parties’ obligations, excluding financial obligations of the City and the MCDC if the MDD

previously transferred Project Funds to the City, shall terminate when written notice of termination is provided; and/or (ii) bring suit against another Party;

Section 6.00 Limitation of Liability

Except for the MDD's payment of Project Funds to the City, the City Contribution, and the MCDC Contribution as set forth in this Agreement, the City, the MDD, and the MCDC and their past, present and future officers, employees, contractors and agents assume no responsibilities or liabilities to another Party, or any third parties in connection with the Project. It is acknowledged and agreed by the Parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the Parties. The Parties acknowledge and agree that there shall be no personal recourse to the directors, officers, employees or agents of the City, the MDD, or the MCDC, who shall incur or assume no liability in respect of any claims based upon or relating to this Agreement. It is understood and agreed between the Parties that each Party in agreeing to the conditions of this Agreement, has acted independently, and each Party assumes no responsibilities or liabilities to third parties in connection with these actions.

Section 7.00 Term

The term of this Agreement is five years and shall commence on the Effective Date. This Agreement shall remain in full force and effect during the term unless sooner terminated as provided for herein. The term of this Agreement may be shortened if all Parties have performed their obligations under this Agreement.

Section 8.00 Miscellaneous Provisions

1. Time is of the essence in all things pertaining to the performance of this Agreement.
2. Severability. 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 that the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected.
3. 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.
4. 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.

5. 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 as the other Party reasonably requests in order to effectuate the terms of this Agreement.
6. Incorporation by Reference. All exhibits and other documents attached to this Agreement are incorporated herein by reference.
7. Compliance with Law. Notwithstanding any other provision of this Agreement, the Parties shall comply with all applicable statutes or regulations of the United States and the State of Texas, as well all City ordinances and regulations, as amended, not in conflict with this Agreement, and any rules implementing such statutes, ordinances or regulations.
8. Authority for Execution. The City hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized. The MDD hereby certifies, represents and warrants that the execution of this Agreement is duly authorized. The MDD hereby certifies, represents and warrants that the execution of this Agreement is duly authorized. .
9. 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.
10. 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.
11. Beneficiaries. Each Party's rights, benefits and obligations under this Agreement are not assignable or transferable to any third party without the written consent of the other Parties.
12. 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.
13. 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 written agreement that is duly executed by the Parties.

14. Good Faith. The Parties to this Agreement agree to renegotiate, in good faith, any term, condition or provision of this Agreement should any court of competent jurisdiction determine to be in contravention of any federal, state or local regulation or law.
15. Dispute and Dispute Resolution. The Parties shall attend non-binding mediation with a mediator chosen by the Parties before filing 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 and must be completed within one (1) year. If mediation is not completed within one (1) year of initiation, any Party to this Agreement may file suit in an appropriate court.

Except for seeking immediate injunctive relief, the Parties expressly agree that the dispute resolution provisions specified in this Section 15 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, including attorney's fees.

16. Governmental Powers; Waivers of Immunity. By execution of this Agreement, the City, the MDD, and the MCDC do not waive or surrender any of their governmental powers, immunities, or rights. The Parties agree that this Agreement does not constitute a contract for goods or services under Chapter 271 of the Texas Local Government Code. 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, the MDD, and the MCDC of their governmental functions.
17. 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 due to a Force Majeure, 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, the MDD, or the MCDC.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the Effective Date.

CITY

City of Murphy, Texas
a Texas home rule municipality

Eric Barna, Mayor
Approved at the March 1, 2016 Council Meeting

ATTEST:

BY: _____
Susie Quinn, City Secretary

MDD

Murphy Municipal Development District
a Texas political subdivision

John Daugherty, President, Murphy Municipal Development District

ATTEST:

BY: _____
_____, _____

MCDC

Murphy Community Development Corporation
a Texas non-profit corporation

Jennifer Berthiaume, President, Murphy Community Development Corporation

ATTEST:

BY: _____
_____, _____

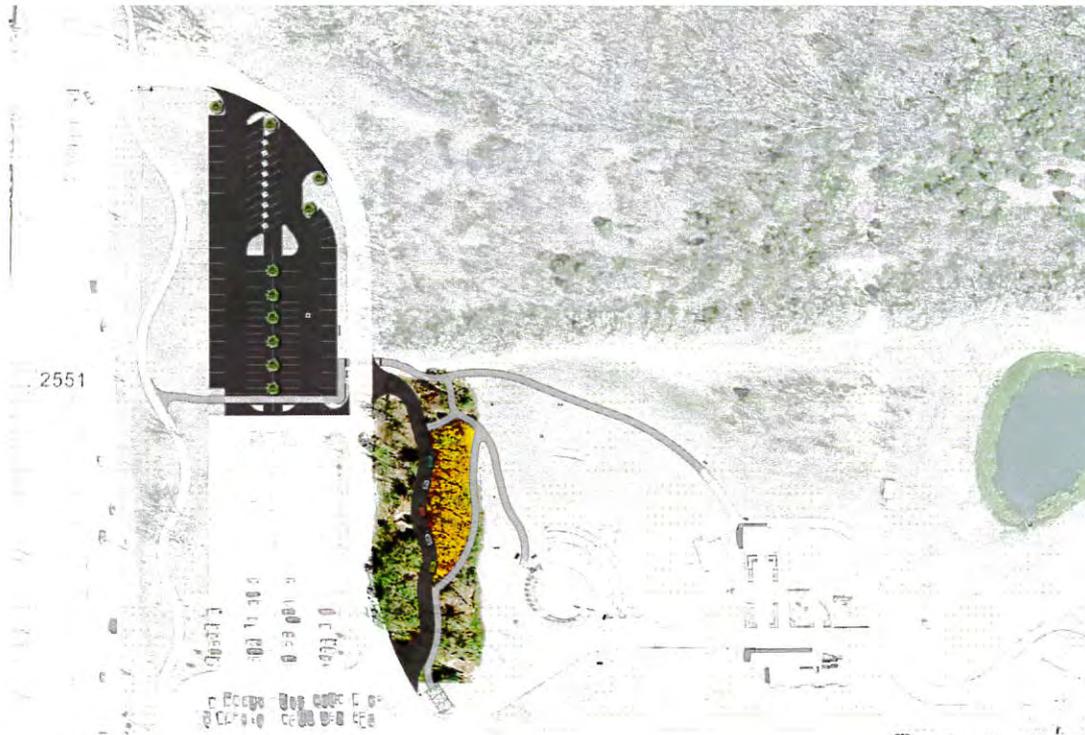
Exhibit A



elevation



enlargement



master plan



Consultant:
DUNKIN SIMS STOFFELS, INC.
LANDSCAPE ARCHITECTS/PLANNERS



Date:
JANUARY 29, 2016

Sheet Title:
SITE CONCEPT PLAN



Project:
**MURPHY CENTRAL PARK
PARKING LOT EXPANSION
FOODTRUCK COURT**

EXHIBIT B

Base Bid

Materials	\$ 388,000.00
Labor	\$ 405,251.00

Alternate #1

Materials	\$ 8,120.00
Labor	\$ 7,480.00

Total Construction \$ 808,851.00

Design, Testing and Fees \$ 74,097.00

TOTAL PROJECT COSTS \$ 882,948.00