

## What almost happened on Monday, October 3, 2016 in Hobbs City Hall?

“Three in favor. Four against. The motion fails.” - Mayor Cobb ([VIEW TRANSCRIPT](#)) ([WATCH VIDEO](#))

The Devil is in the details. How many of the Commission did a careful side-by-side comparison of Murphy’s [current employment agreement](#) with his [proposed employment agreement](#)? Did you discover all of the proposed changes that weren’t [disclosed before](#) or [during public discussion](#) prior to Monday’s vote?

I present the undisclosed changes that *almost happened on Monday, October 3, 2016 by a split no vote*:

1. Under the proposed agreement, the City Commission would lose the right to negotiate all or a portion of Murphy’s severance upon the time of his retirement or resignation.

<p style="text-align: center;"><b>BEFORE</b></p> <p>c. Resignation: In the event City Manager voluntarily resigns or retires from his position, City Manager shall give City thirty (30) days written notice in advance, unless the parties otherwise agree. City Manager shall not be entitled to the above Severance upon retirement or resignation unless all or a portion of the severance is specifically approved by City Commission at that time.</p> <p style="text-align: center;"><b>AFTER</b></p> <p>d. Resignation: In the event Murphy voluntarily resigns or retires from his position as City Manager prior to June 1, 2017, Murphy shall give City thirty (30) days written notice in advance, unless the parties otherwise agree.</p>
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2. The proposal would allow the Mayor to unilaterally approve the "travel and subsistence expenses for Murphy's professional and official travel, meetings and occasions adequate to continue his professional development in his role as City Manager." This is modified from City Commission approval.

<p style="text-align: center;"><b>BEFORE</b></p> <p>e. City agrees to budget and to pay for the travel and subsistence expenses of City Manager for professional and official travel, meetings and occasions adequate to continue the professional development of City Manager. It is anticipated by the parties that these expenses shall include the Annual Conference of the International City Manager's Association, the Annual Conference of the New Mexico Municipal League, and such other national, regional, state and local governmental groups in which City Manager serves as a member and which <u>the City Commission approves.</u></p> <p style="text-align: center;"><b>AFTER</b></p> <p>e. City agrees to budget and to pay for the travel and subsistence expenses for Murphy's professional and official travel, meetings and occasions adequate to continue his professional development in his role as City Manager. It is anticipated by the parties that these expenses shall include the Annual Conference of the International City Manager's Association, the Annual Conference of the New Mexico Municipal League, and such other national, regional, state and local governmental groups in which City Manager serves as a member and which <u>the Mayor approves.</u></p>
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3. In a similar fashion as above, the proposal would enable the Mayor to unilaterally approve the "travel, subsistence and registration expenses of Murphy for such educational courses, institutes, and seminars that are necessary for his professional development and arise out of or are related to his duties performed on behalf of the City." This is modified from City Commission approval.

### BEFORE

- f. City agrees to budget and to pay for the travel, subsistence and registration expenses of City Manager for such educational courses, institutes, and seminars that are necessary for his professional development and arise out of or are related to his duties performed on behalf of the City, which are approved in advance by the City Commission.

### AFTER

- f. City agrees to budget and to pay for the travel, subsistence and registration expenses of Murphy for such educational courses, institutes, and seminars that are necessary for his professional development and arise out of or are related to his duties performed on behalf of the City, which are approved in advance by the Mayor. Any expenses as defined in this paragraph and paid by the City for courses occurring after Murphy's last day of employment as City Manager, Murphy shall reimburse said expenses.

4. In the proposed agreement, the City would be required to reimburse up to \$5,000 in legal fees to Murphy as "certain expenses of a generally job-affiliated nature are incurred by Murphy".

### BEFORE

- g. City recognizes that certain expenses of a non-personal and generally job-affiliated nature are incurred by City Manager, and hereby agrees to reimburse or to pay said general expenses upon receipt of duly executed expense or petty cash vouchers, receipts, statements, subject to said business and job related expenses having been properly budgeted prior to their being incurred by City Manager, and further subject to City Manager's compliance with all audit procedures of the City used to verify City Manager's claimed general expenses.

### AFTER

- g. City recognizes that certain expenses of a generally job-affiliated nature are incurred by Murphy and hereby agrees to reimburse or to pay such expenses upon receipt of duly executed expense or petty cash vouchers, receipts, statements, subject to business and job related expenses having been properly budgeted prior to their being incurred by Murphy, and further subject to Murphy's compliance with all audit procedures of the City used to verify his claimed general expenses. As part of these reimbursements, City agrees to reimburse up to \$5,000 in legal fees, for purposes of this Agreement.

5. Section 7(j) from the current agreement is removed entirely from the proposed agreement. The section once read: “Sections e, f, g, and h of paragraph 7 of this employment agreement are subject to the limits of the related line items in the annual budget approved by the City Commission.” Apparently, the City Commission would be losing more authority in the contract.

<p><b>BEFORE</b></p> <p>j. Sections e, f, g, and h of paragraph 7 of this employment agreement are subject to the limits of the related line items in the annual budget approved by the City Commission.</p> <p><b>AFTER</b></p> <p><b>MISSING</b></p>
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6. **SIGNIFICANT INCREASE IN LEGAL BENEFITS:** Section 8 of the current agreement is titled *Insurance*. The proposed agreement would have retitled Section 8 as *Indemnification, Insurance, and Litigation Expenses*.

6a. **Indemnification** – Under the proposed agreement, beyond that required under Federal, State or Local Law, the City shall defend, save harmless and indemnify Murphy against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Murphy’s work on behalf of the City or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct.

The proposal continues: legal representation provided by the City for Murphy shall extend until a final determination of the legal action including any appeals brought by either party. The City shall indemnify Murphy against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney’s fees, and any other liabilities incurred by or imposed on Murphy in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his duties.

6b. **Insurance** – Insurance would still be provided to Murphy as-is with no substantial modifications.

6c. **Litigation Expenses** – Under the proposed terms, the City agrees to pay all reasonable litigation expenses of Murphy throughout the pendency of any litigation to which Murphy is a party, witness or advisor to the City; not matters between the parties. Such expense payments shall continue beyond Murphy’s service to the City as long as litigation is still pending. In the event that the litigation continues after Murphy’s service under this Agreement is complete, the City agrees to pay Murphy travel expenses when Murphy serves as a witness, advisor or consultant to the City regarding pending litigation. In the event Murphy is required to attend litigation related events in New Mexico, as a result of litigation not between the parties, and has to take time off at a new place of employment after his service to the City is complete, he shall be compensated his current hourly rate at up to eight (8) hours per day.

6d. **Undisclosed Settlement between Murphy and City** – The proposed agreement would additionally consider Murphy and the City as having agreed “to release any claims that they may have against one another for events occurring prior to the Effective Date [October 3, 2016]. Murphy agrees not to bring any claims against any employee, official or agent of the City for events that have arisen or occurred prior to the Effective Date of this Agreement. The City agrees not to bring any claims against Murphy for any events that have arisen or occurred prior to the Effective Date of this Agreement.”

### A Proposed Settlement Agreement:

As additional consideration for this Agreement, the parties agree to release any claims that they may have against one another for events occurring prior to the Effective Date. Murphy agrees not to bring any claims against any employee, official or agent of the City for events that have arisen or occurred prior to the Effective Date of this Agreement. The City agrees not to bring any claims against Murphy for any events that have arisen or occurred prior to the Effective Date of this Agreement.

Finally, “In the event either party incurs legal expenses to enforce any provision of this Agreement in a court of law, those expenses shall be borne by the party seeking enforcement during the pendency of any such action. However, the prevailing party in such a dispute will be entitled to recover legal expenses, including reasonable attorney’s fees and costs, in addition to any other relief to which the prevailing party may be entitled.”

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The paper claimed on Sunday, October 9, 2016: “Love him or hate him, the problem in Hobbs' city government isn't Murphy - it's those seven elected officials, many of whom were on the board when Murphy was hired and all of whom were there Monday night when they couldn't agree on letting Murphy go in a move that will cost the city nearly \$106,000 more than if they'd have agreed. The vote failed 4-3.”

“...will cost the city nearly \$106,000 more than if they'd have agreed”?

Really now? In the event that Murphy miraculously remains employed with Hobbs until August of 2017?

I suspect the paper’s arithmetic is a little fuzzy.

Truly, the problem with Hobbs’ city government lies with JJ Murphy’s leadership of City Staff, the City Commission’s failure (or refusal) to ask hard questions, and an apathetic citizenry.

Nick Maxwell  
citizen, Hobbs, NM

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# The "Common" Murphy Version of Indemnification

## "Contractor" Murphy (Failed Proposal October 2016):

8. Indemnification, Insurance and Litigation Expenses: With respect to claims brought against the City and/or Murphy arising out of his work for the City, the parties agree as follows:

The City shall insure Murphy through its comprehensive public liability insurance coverage against any tort or professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of any alleged act of omission occurring in the course and scope of the performance of Murphy's duties for City, with the exception of actions brought on behalf of the City. City shall pay for any attorney's fees, court costs or other litigation related expenses incurred in connection with the defense of the claim, demand or lawsuit.

Beyond that required under Federal, State or Local Law, the City shall defend, save harmless and indemnify Murphy against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Murphy's work on behalf of the City or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct.

Legal representation provided by the City for Murphy shall extend until a

## To Compare:

## "Contractor" Eric Honeyfield (2013)

15. General Provisions.

- A. Indemnification. Contractor agrees to and shall indemnify, defend and hold the City, the City Commission of the City of Hobbs, its individual Commissioners, its officers, employees and agents harmless from any and all causes of action, suits, claims, judgments, losses, costs, expenses, and liens of every kind and nature, including but not limited to court costs and attorney's fees, arising or alleged to have arisen out of Contractor's performance of the contract, Contractor's negligent provision of services or failure to render services, or any breach of this contract.
- B. Entire Agreement. The foregoing constitutes the entire agreement between the parties hereto and may be modified only in writing by the parties hereto.
- C. This contract is not valid until the document is approved by the legal counsel at New Mexico Public Employees Retirement Association.