DATE: May 9, 2023

TO: Mayor and Councilmembers

FROM: City Attorney’s Office

SUBJECT: Funding Agreement with Murphy’s Bowl LLC to Fund the Legal Services of Burke Williams & Sorensen LLP and Kane, Ballmer & Berkman, a Professional Corporation

RECOMMENDATION:
It is recommended that the Mayor and Council Members approve a Funding Agreement with Murphy’s Bowl LLC (the “Developer”), in the amount of $3,620,000, to fund specialized legal services provided by the law firms of Burke Williams & Sorensen, LLP (BWS) and Kane Ballmer & Berkman, a Professional Corporation (KBB), provided on behalf of the City with regard to the development of a National Basketball Association Arena and Associated Facilities (Project) located at the Intersection of Prairie Avenue and Century Boulevard.

BACKGROUND:
On August 15, 2017, the City of Inglewood (the “City”), the City of Inglewood as Successor Agency to the Inglewood Redevelopment Agency, a public body, corporate and politic, the Inglewood Parking Authority, a public body, corporate and politic, and Developer entered into that certain Amended and Restated Exclusive Negotiation Agreement (“Amended ENA”) for the purpose of engaging in exclusive negotiations for the proposed development of the Project.

On July 28, 2020, the City and the Developer entered into that certain Development Agreement (“DA”) specifically detailing the respective obligations of the parties in furtherance of the development of the Project.

On September 17, 2020, the City and the Developer entered into that certain Disposition and Development Agreement (“DDA”) specifically detailing the respective obligations of the parties with respect to certain acquisition, disposition, and other related activities in furtherance of the development of the Project.

DISCUSSION:
The City has a customary practice of requiring developers who are seeking City assistance on a proposed development project within the City to absorb all costs associated with and incurred by the City in performing and taking various and necessary City actions associated with the development. In this regard, both the Amended ENA, DA and the DDA (collectively, “Public Documents”) for the Project, specifically provide for the Developer to fund all of the City’s legal costs associated with the implementation and development of the Project. Said costs include, but
Mayor and Council Members

Funding Agreement with Murphy's Bowl LLC

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are not limited to, certain eminent domain litigation services, as well as certain transactional-related legal services required of the City (collectively, the "Legal Services"), pursuant to which, the City has contracted with various law firms (including BWS and KBB) to provide these Legal Services on its behalf.

The Public Documents specifically contemplate and provide for Developer funding of all Legal Services performed on or after July 1, 2022, on the behalf of the City, in the form of a reimbursement to the City for certain payments previously made by the City towards these Legal Services ("Previous Payments"), and in the form of an advance of funds to the City for payment of ongoing legal costs incurred by the City for the Legal Services ("Ongoing Payments").

Consistent with the funding requirements of the Developer, as contemplated by and set forth in the Public Documents relating to the BWS and KBB legal services, the parties desire to enter into the proposed Agreement for the sole purpose of providing for the Developer's reimbursement obligation to the City with regard to the Previous Payments, and its advance of funds obligation to the City with regard to the City's payment of the Ongoing Payments, with respect to Legal Services performed by BWS and KBB on and after July 1, 2022.

The Developer's reimbursement obligation to the City for Legal Services occurring prior to July 1, 2022, shall be specifically provided in a separate and subsequent agreement by and between the Parties.

FINANCIAL/FUNDING ISSUES AND SOURCES:
Upon City Council approval of the proposed Funding Agreement, Murphy's Bowl LLC will deliver funds, in the amount of $3,620,000, to the City for deposit into Fund Account Code No. 300.31110, under which the funds will be used by the City to offset legal expenses incurred by the City for the Legal Services required for the implementation of the Project. Consultant invoices will be paid from Account Code No. 300.100.A003.44860 (Advanced Funds-Capital Projects-Murphy's Bowl-Development-Contract Services-Public Works-Contract Services).

DESCRIPTION OF ANY ATTACHMENTS:
Attachment No. 1 – Funding Agreement

PREPARED BY:
Kenneth R. Campos, City Attorney

COUNCIL PRESENTER:
Kenneth R. Campos, City Attorney
APPROVAL VERIFICATION SHEET

DEPARTMENT HEAD APPROVAL: 
Kenneth R. Campos, City Attorney

CITY MANAGER APPROVAL: 
Artie Fields, City Manager
ATTACHMENT NO. 1
AGREEMENT NO.: _____

THIS FUNDING AGREEMENT ("Agreement") is made and entered into this ________
day of ___________, 2023 (the "Effective Date"), by and between the CITY OF INGLEWOOD
(hereinafter referred to as the "City"), a municipal corporation, whose address is One
Manchester Boulevard, Inglewood, California 90301; and MURPHY'S BOWL LLC, a Delaware
limited liability company (hereinafter referred to as the "Developer"), whose address is P.O.
Box 1558, Bellevue, WA 98009-1558.

Initially capitalized terms not defined herein have the same meaning as such terms
have and are defined in the Disposition and Development Agreement, executed on or about
September 15, 2020, by and between the City and the Developer.

RECITALS

WHEREAS, on August 15, 2017, the City, the City of Inglewood as Successor Agency to
the Inglewood Redevelopment Agency, a public body, corporate and politic, the Inglewood
Parking Authority, a public body, corporate and politic, and Developer entered into that
certain Amended and Restated Exclusive Negotiation Agreement ("Amended ENA") for the
purpose of engaging in exclusive negotiations for the proposed development of NBA
professional basketball facility as part of the Inglewood Basketball and Entertainment Center
(the "Project"); and

WHEREAS, on July 28. 2020, the City and the Developer entered into that certain
Development Agreement ("DA") specifically detailing the respective obligations of the parties
in furtherance of the development of the Project; and

WHEREAS, on September 17. 2020, the City and the Developer entered into that
certain Disposition and Development Agreement ("DDA") specifically detailing the respective
obligations of the parties in furtherance of the development of the Project; and

WHEREAS, recognizing and acknowledging the City's customary practice of causing
developers seeking City's assistance on a proposed development project within the City to
absorb all costs associated with and incurred by the City in performing various and necessary
City obligations associated with the development of projects within the City, both the
Amended ENA, DA and the DDA (collectively, “Public Documents”), consistent with this customary practice, specifically provide for the Developer to fund all of City’s legal costs associated with the development of the Project by the Developer, including but not limited to, certain eminent domain litigation services, as well as certain transactional-related legal services required of the City (collectively, the “Legal Services”); and

WHEREAS, the Public Documents contemplate that such Developer funding for the Legal Services may be provided to the City as a reimbursement to the City for certain legal costs attributable to the Legal Services previously incurred and paid by the City and/or the advancement of funds to the City for payment of certain prospective legal costs attributable to Legal Services that will be incurred by the City; and

WHEREAS, it is the sole purpose of this Agreement to establish the Developer’s funding obligation to the City with respect to the reimbursement and advancement of funds to the City in order for the City to timely meet its payment obligations attributable to the Legal Services requested by the Developer and performed on and after July 1, 2022, pursuant to such requests.

NOW THEREFORE, the City and the Developer (hereinafter referred to individually as “Party” and collectively as the “Parties”) hereto mutually agree as follows:

ARTICLE 1 – FUNDING FOR LEGAL SERVICES

1. As a necessary and indispensable part of its fact-finding and other processes relating to the Development, the City has retained the legal services of BURKE WILLIAMS & SORENSEN LLP. a California Limited Liability Partnership (hereinafter referred to as “BSW”) as set forth in this Agreement to provide certain of the Legal Services as the City may deem necessary in its discretion with respect to the development of the Project.

2. Pursuant to the retention of BWS by the City, the Developer hereby agrees to deliver funds to the City in the amount of Two Million Three Hundred Thirty-Seven Thousand Five Hundred ($2,337,500) (the “BWS Fee”) to be specifically used by the City for the payment of Legal Services performed on and after July 1, 2022, by BWS and completed
in accordance with the Scope of Services attached to this Agreement as Exhibit “A,”
which by this reference is fully incorporated herein by this reference.

3. As an additional necessary and indispensable part of its fact-finding and other
processes relating to the Development, the City has also retained the legal services of
Kane Ballmer & Berkman, a Professional Corporation (hereinafter referred to as the
“KBB”) as set forth in this Agreement to provide certain Legal Services as the City may
decem necessary in its discretion.

4. Pursuant to the City’s retention of KBB, the Developer hereby agrees to deliver funds
to the City in the amount of up to One Million Two Hundred Eighty-Two Thousand Five
Hundred Dollars ($1,282,500)(the “KBB Fee”) for the payment of the Legal Services
performed on and after July 1, 2022, by KBB and completed in accordance with the
Scope of Services attached to this Agreement as Exhibit “B,” which by this reference is
fully incorporated herein by this reference.

ARTICLE 2 – PAYMENT OF FUNDS

1. The Developer hereby agrees to provide and deliver funds to the City in the total
maximum amount of Three Million Six Hundred Twenty Thousand Dollars ($3,620,000,
the “Funds”) for payment by the City of the BWS Services and KBB Services performed
on and after July 1, 2022, and completed in accordance with this Agreement as more
specifically identified in Exhibit “A” and Exhibit “B,” respectively.

2. The City has determined that the amount of the Funds requested for the payment of
Legal Services performed by BWS and KBB on and after July 1, 2022: (i) accurately
reflects the estimated costs of the Legal Services required of the City to implement its
legal obligations pursuant to the DA and DDA; and (ii) is absolutely necessary for the
City to timely pay all legal costs attributable to the Legal Services without delay and/or
otherwise causing an adverse impact or hardship on the City’s general fund. The
Developer shall timely deposit the Funds ($3,620,000) with the City within five (5)
business days of the Effective Date of this Agreement. Upon receipt of the Funds, the
City shall be authorized to expend the Funds as follows: (a) to pay for all City-
requested BWS Services in an amount up to the BWS Fee amount; and (b) to pay for all City-requested KBB Services in an amount up to the KBB Fee amount.

3. Prior to any proposed amendment requesting additional legal costs for the Legal Services in excess of the amount of the Fund to the BWS Scope of Services and KBB Scope of Services, as provided in Exhibits "A," and "B," respectively, the City shall consult with and obtain prior written approval from the Developer, which approval shall not be unreasonably withheld, delayed or conditioned. In such event, the Developer’s approval of such proposed amendment and the Excess Costs/Funds shall be contingent upon the City providing the Developer with written notice of the proposed amendment and estimate of the Excess Costs/Funds. Developer shall respond in writing as to whether such proposed amendment and Excess Costs/Funds are acceptable or not. If such proposed amendment and Excess Costs/Funds are acceptable to the Developer, then the Developer shall add to the Fund amount an amount equal to the approved Excess Costs/Funds. If the proposed amendment and Excess Costs/Funds are not acceptable to Developer, then the Developer shall specify in writing the reason[s] for not approving the proposed budget and accepting the Excess Costs/Funds. In such event, the Parties shall meet and confer with respect to the Excess Costs/Funds.

ARTICLE 3 – FUNDS REQUIREMENTS

1. The Developer’s duty to timely deposit the amount of the Fund with the City shall not be contingent upon the City’s subsequent approval or disapproval of any modifications to the Project, or upon the result of any action taken or not taken by the City.

2. After the termination of this Agreement by the Developer pursuant to Article 6 below, the City shall refund to the Developer any unused amount of the Funds and Excess Costs/Funds, as applicable, within thirty (30) days following the written request of the Developer.

ARTICLE 4 – REPORTING

Upon the written request of the Developer, the City shall provide to the Developer with
written documentation substantiating the billings and costs associated with the Legal Services
provided by BSW and KBB (collectively referred to herein as “Consultants”) with respect to
this Agreement.

ARTICLE 5 – TERM

The Term of this Agreement shall commence on the Effective Date of this Agreement as
provided above and unless sooner terminated pursuant to Article 6, shall terminate when all
work required of the City pursuant to the Public Documents is completed.

ARTICLE 6 – TERMINATION OF AGREEMENT

In the event the Developer chooses to terminate this Agreement prior to the end of the
Term, as set forth in Article 5 above, the Developer shall provide 30-days written notice to the
City. The City shall notify the Consultants in writing, within five (5) days of receipt of such
notice, and direct the Consultants to cease all Legal Services associated with the Project.
ARTICLE 7 – NOTICES

Any notice given pursuant to this Agreement shall be deemed received and effective on the date personally delivered or, if mailed, five (5) days after deposit of the same in the custody of the United States Postal Service, when properly addressed, postage pre-paid and deposited in the United States mail addressed to the respective parties as follows:

CITY:
Aisha L. Thompson, City Clerk
City of Inglewood
One Manchester Boulevard
Inglewood, CA 90301-1750

WITH COPY TO:
Kenneth R. Campos, City Attorney
City of Inglewood
One Manchester Boulevard
Inglewood, CA 90301

WITH COPY TO:
Wilson Meany
Four Embarcadero Center, Suite 3330
San Francisco, CA 94111
Attention: Chris Meany

WITH COPY TO:
Artie Fields, City Manager
City of Inglewood
One Manchester Boulevard
Inglewood, CA 90301

DEVELOPER:
Murphy's Bowl LLC
P.O. Box 1558
Bellevue, WA 98009-1558
Attention: Brandt A. Vaughan

WITH COPY TO:
Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154
Attention: Mark Rising, Esq.

ARTICLE 8 – CHANGES, AMENDMENTS, AND MODIFICATIONS

No change, amendment, or modification to this Agreement shall be effective unless in writing and signed by the Parties hereto.

ARTICLE 9 – SEVERABILITY

In the event that any condition or covenant herein is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained as long as the invalid provision does not render the Agreement meaningless with regard to a material term in which event the entire Agreement shall be void. If such condition, covenant, or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent the scope or breadth is permitted by law.
ARTICLE 10 – WAIVER

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or a violation of any provision of this Agreement.

ARTICLE 11 – ENTIRE AGREEMENT

This Agreement (inclusive of Exhibits “A” and “B”) is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed therein and supersedes all other Agreements or understandings, whether oral or written, entered into between the Developer and the City prior to the execution of this Agreement. No statements, representations or other Agreements, whether oral or written, made by any Party which are not embodied herein shall be valid and binding unless in writing and duly executed by the Parties or their authorized representatives.

ARTICLE 12 – GOVERNING LAW; VENUE

This Agreement shall be interpreted, construed, and governed according to the laws of the State of California. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of Los Angeles, Superior Court, Southwest District, located at 825 Maple Avenue, Torrance, California 90503-5058. In the event of litigation in the United States District Court, venue shall lie exclusively in the Central District of California, in Los Angeles.

ARTICLE 13 – MISCELLANEOUS

1. The Parties waive any benefits from the principle of contra proferentem and interpreting ambiguities against drafters. No Party shall be deemed to be the drafter of this Agreement, or of any particular provision or provisions, and no part of this Agreement shall be construed against any Party on the basis that the particular Party is the drafter of any part of this Agreement.

2. This Agreement may be executed in counterparts, and when each Party hereto has
signed and delivered at least one such counterpart, each counterpart shall be deemed an original and, when taken together with the other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties hereto.

3. Article titles, paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year first above written representing the Effective Date.

CITY OF INGLEWOOD

______________________________
James T. Butts, Jr.,
Mayor

______________________________
Aisha L. Thompson,
City Clerk

MURPHY'S BOWL LLC,

______________________________
Brandt A. Vaughan,
Manager

APPROVED AS TO FORM:

______________________________
Kenneth R. Campos,
City Attorney