

MUNICIPAL ORDER 12-2024

A MUNICIPAL ORDER AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A MEMORANDUM OF AGREEMENT WITH MURPHY'S INVESTMENTS, LLC PROVIDING THAT THE CITY SHALL REIMBURSE MURPHY'S INVESTMENTS, LLC FIFTY PERCENT (50%) OF THE TOTAL AD VALOREM (EXCLUDING SCHOOL TAX), GENERAL FUND NET PROFITS, AND GENERAL FUND OCCUPATIONAL TAX REVENUES DERIVED FROM PROPERTY LOCATED AT 2808 WEST PARRISH AVENUE CONTAINING 13.747 ACRES, MORE OR LESS, OVER A DESIGNATED FIVE (5) YEAR PERIOD.

WHEREAS, Murphy's Investments, LLC is the owner of real property consisting of 13.747 acres, more or less, located at 2808 West Parrish Avenue (hereafter "the Property"); and

WHEREAS, on November 21, 2023, the Property was annexed into the City by Ordinance 27-2023; and

WHEREAS, Murphy's Investments, LLC intends to develop the Property for commercial purposes, which will have substantial benefit to the citizens of Owensboro, and the City desires to provide an incentive for Murphy's Investments, LLC to commercially develop the Property.

NOW, THEREFORE, BE IT ORDERED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:

Section 1. That the Mayor be, and he hereby is authorized and directed to execute a Memorandum of Agreement with Murphy's Investments, LLC providing that the City will reimburse Murphy's Investments, LLC in the amount of fifty percent (50%) of the total ad valorem (excluding school tax), general fund net profits, and general fund occupational tax revenues derived from the Property

over a designated five (5) year period. A copy of said Memorandum of Agreement is attached hereto and incorporated by reference herein.

**INTRODUCED, PUBLICLY READ AND FINALLY APPROVED ON ONE
READING**, this the 7th day of May, 2024.

Thomas H. Watson, Mayor

ATTEST:

Beth Davis, City Clerk

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made and entered into this _____ day of _____, 2024, by and between CITY OF OWENSBORO, KENTUCKY, a municipality of the home rule class, 101 East Fourth Street, P. O. Box 10003, Owensboro, Kentucky 42302-9003, (hereafter referred to as “City”), and Murphy’s Investments, LLC, 2601 West Fourth Street, Owensboro, KY 42301, (hereafter referred to as “Developer”). City and Developer are each a “Party” and collectively the “Parties”.

RECITALS

WHEREAS, Developer is the owner of a certain tract of real property consisting of approximately 13.747 acres, more or less, which is located at 2808 West Parrish Avenue, Owensboro, KY (hereinafter referred to as “Subject Property”); and

WHEREAS, the City annexed the Subject Property on November 21, 2023, by Ordinance 27-2023 and the Subject Property will benefit from various municipal services; and

WHEREAS, Developer intends to develop the Subject Property for commercial purposes, which will have substantial benefit to the citizens of Owensboro; and

WHEREAS, the City of Owensboro desires to provide an incentive for Developer to commercially develop the Subject Property; and

WHEREAS, the social and economic wellbeing of the City is directly related to, and in many respects dependent upon, the growth of the City and its tax revenue base through development of annexed properties; and

WHEREAS, as an incentive to Developer to develop the Subject Property, the Parties enter into an agreement by which the City will reimburse the Developer in the amount of fifty percent (50%) of the total ad valorem (excluding school tax), general fund net profits, and general fund occupational tax revenues derived from any property located therein, over a designated five (5) year period.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions contained herein, the Parties agree as follows:

SECTION 1. ANNEXATION: Subject Property has been annexed into the City pursuant to KRS 81A.412. Upon construction, City shall accept and assume maintenance of all streets; in all other respects, Subject Property shall remain a private development, including alleys, curbs, gutters, bicycle/pedestrian trails, and public infrastructure (including sanitary sewers, stormwater drains, inlets, and retention basins, and common areas), on the final development plan and the final subdivision plat approved by the Owensboro Metropolitan Planning Commission and filed of record in the Office of the Daviess County Clerk.

SECTION 2. INCENTIVES; CALCULATION OF TAX REVENUES; LIMITATIONS.

(A) Under the terms of this Agreement, the City will reimburse the Developer in the amount of fifty percent (50%) of the total ad valorem (excluding school tax), general fund net profits, and general fund

occupational tax revenues derived from any property located therein, over a designated five (5) year period (the "Reimbursement Term"). The five (5) year Reimbursement Term shall begin one (1) year following completion of all of the roads and other infrastructure, or two (2) years after the date of this Agreement, whichever is earlier.

(B) Expenses to be reimbursed by City to Developer under this Agreement shall be paid solely from all real and personal property, general fund occupational, and general fund net profits tax/fee revenues (excluding school taxes/fees, franchise bank deposit taxes, any and all in lieu of present or future taxes/fees, and any taxes levied and restricted to a specific purpose) derived by the City, hereafter referred to as "Tax Revenues," over ~~a maximum period of five (5) years~~ (the "Reimbursement Term"). The City's obligation to reimburse Developer shall commence on the first day of the next fiscal quarter after the Reimbursement Term begins.

(C) It is understood that all reimbursements provided in this Agreement shall be made solely to the present Developer and not to any subsequent developer, purchasers, tenants, or other interests present or future.

(D) Accounting:

(1) The Director of Finance and Support Services is authorized and directed to collect and deposit all Tax Revenues derived by the City from Subject Property, in a separate, dedicated account established for the Subject Property. To assist the Finance Department in tracking Tax

Revenues derived from the development, sale, and/or lease of real and personal property within Subject Property, Developer shall, at its own expense, promptly provide the City with a copy of the final subdivision plat approved by the Owensboro Metropolitan Planning Commission and filed in the Office of the Daviess County Clerk, any deeds of conveyance, and the names and mailing addresses of any person, firm or corporation with a leasehold interest in any portion of Subject Property.

(E) It is agreed that in the event the Developer sells, transfers and/or leases any part of Subject Property, Developer shall continue to receive the incentive payments as defined in this Agreement. It is understood that the incentive payments are to be paid directly to the Developer regardless of who owns and/or leases the property provided the Developer is in compliance with all terms of this Agreement.

(F) Payment under this Agreement is contingent upon those entities or persons from whom such Tax Revenues were derived, properly reporting such to the City of Owensboro. In the event that an entity or person does not properly report such Tax Revenues in a sufficient format to enable the City to attribute those Tax Revenues to Subject Property, the payment will be withheld until a proper reporting has been received and processed. City and Developer agree that both shall immediately utilize any and all available means or authority to require those entities or persons to immediately and properly report such Tax Revenues so as not to delay further payment to Developer.

(G) Limitation on Reimbursement of Expenses: The City's maximum liability to Developer for reimbursement shall not exceed fifty percent (50%) of the total verified sum of all Tax Revenues collected by the City over the five (5) year Reimbursement Term.

SECTION 3. TERM: This Agreement shall commence upon its execution by both Parties and in the absence of a default by either Party, shall remain in full force and effect for the duration of the five (5) year Reimbursement Term.

SECTION 4. DEFAULT; REMEDIES: This Agreement may be terminated by the City, by written notice, in the event Developer breaches any one or more of the terms and conditions set forth herein, including failure to timely complete all public improvements as per applicable ordinances, Planning and Zoning requirements, and the City's Private Development Policy which is incorporated herein by reference as Exhibit A, and fails to cure said breach within a reasonable time after written notice thereof. This Agreement may be terminated by Developer in the event the City fails to reimburse Developer on the terms and conditions set forth herein, and fails to cure said breach within a reasonable time after written notice thereof by Developer.

Upon a material breach of this Agreement by either Party, the non-breaching Party shall be entitled to all remedies at law or equity, including but not limited to, specific performance or mandatory injunctive relief, rescission, or compensatory and consequential damages arising therefrom; provided, however, the City's total liability shall not exceed fifty percent (50%) of the total verified sum of all Tax Revenues collected by the City from Subject Property.

SECTION 5. NOTICES: Any written notices or requests required under the terms of this Agreement shall be given to the following:

CITY:

City of Owensboro
Attention: City Manager
P. O. Box 10003
101 East 4th Street
Owensboro, Kentucky 42302-9003

OWNER/DEVELOPER: ———Murphy's Investments, LLC
c/o Gary Martin Murphy and Angela Kathryn Murphy
2601 West Fourth Street
Owensboro, KY 42301

SECTION 6. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements, promises, communications, representations, whether oral or written, by any employee, officer, or representative of either Party hereto. There are no promises, representations, covenants, undertakings, restrictions, or conditions, other than those expressly set forth herein. Any subsequent amendment hereto shall be in writing and executed by authorized representatives of both Parties. This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns, provided, however, that this Agreement shall not be transferred or assigned at any time by Developer without the express written consent of the City.

SECTION 7. SEVERABILITY: The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason, other provisions herein may be invalid or unenforceable, in whole or in part. If a

court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable as written, a court may interpret, construe, rewrite or revise such provision, to the fullest extent allowed by law, so as to make it valid and enforceable consistent with the intent of the Parties. In the event a court of competent jurisdiction finally determines that any portion of this Agreement is invalid or unenforceable as written, neither Party shall have any liability to the other as a result thereof.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Agreement as of the day and year first hereinabove written.

CITY OF OWENSBORO:

By: _____
Thomas H. Watson, Mayor

ATTEST:

Beth Davis, City Clerk

~~OWNER~~DEVELOPER:

Murphy's Investments, LLC

By: _____
Gary Martin Murphy, Member

By: _____
Angela Kathryn Murphy, Member