RESOLUTION_____

Approving Development Agreement with R.L. Fridley Theaters, Inc. and Fridley Properties, LLC, Authorizing Tax Increment Payments and Pledging Certain Tax Increment Revenues to the Payment of the Agreement

WHEREAS, the City of Muscatine, Iowa (the "City"), pursuant to and in strict compliance with all laws applicable to the City, and in particular the provisions of Chapter 403 of the Code of Iowa, has adopted an Urban Renewal Plan for the Consolidated Muscatine Urban Renewal Area (the "Urban Renewal Area"); and

WHEREAS, this City Council has adopted an ordinance providing for the division of taxes levied on taxable property in the Urban Renewal Area pursuant to Section 403.19 of the Code of Iowa and establishing the fund referred to in Subsection 2 of Section 403.19 of the Code of Iowa (the "Urban Renewal Tax Revenue Fund"), which fund and the portion of taxes referred to in that subsection may be irrevocably pledged by the City for the payment of the principal and interest on indebtedness incurred under the authority of Section 403.9 of the Code of Iowa to finance or refinance in whole or in part projects in the Urban Renewal Area; and

WHEREAS, an agreement between the City and R.L. Fridley Theaters, Inc. and Fridley Properties, LLC (collectively, the "Developer") has been prepared (the "Agreement"), pursuant to which the Developer has agreed to develop a commercial movie theater complex and adjacent out lots in the Urban Renewal Area (the "R.L. Fridley Theaters, Inc. Project") and the City has agreed to provide tax increment payments in a total amount not exceeding $3,000,000; and

WHEREAS, this City Council, pursuant to Section 403.9 of the Code of Iowa, has published notice, has held a public hearing on the Agreement on April 19, 2012, and has otherwise complied with statutory requirements for the approval of the Agreement; and

WHEREAS, Chapter 15A of the Code of Iowa ("Chapter 15A") declares that economic development is a public purpose for which a City may provide grants, loans, tax incentives, guarantees and other financial assistance to or for the benefit of private persons; and

WHEREAS, Chapter 15A requires that before public funds are used for grants, loans, tax incentives or other financial assistance, a City Council must determine that a public purpose will reasonably be accomplished by the spending or use of those funds; and

WHEREAS, Chapter 15A requires that in determining whether funds should be spent, a City Council must consider any or all of a series of factors;

NOW, THEREFORE, It Is Resolved by the City Council of the City of Muscatine, Iowa, as follows:

Section 1. Pursuant to the factors listed in Chapter 15A, the City Council hereby finds that:

(a) The R.L. Fridley Theaters, Inc. Project will add diversity and generate new opportunities for the Muscatine and Iowa economies;

(b) The R.L. Fridley Theaters, Inc. Project will generate public gains and benefits, particularly in the creation of new jobs, which are warranted in comparison to the amount of the proposed financial incentives.

Section 2. The City Council further finds that a public purpose will reasonably be accomplished by entering into the Agreement and providing the incremental property tax payments to the Developer.

Section 3. The Agreement is hereby approved and the Mayor and City Clerk are hereby authorized and directed to execute and deliver the Agreement on behalf of the City, in substantially the form and content in which the Agreement has been presented to this City Council, and such officers are also authorized to make such changes, modifications, additions or deletions as they, with the advice of bond counsel, may believe to be necessary, and to take such actions as may be necessary to carry out the provisions of the Agreement.

Section 4. As provided and required by Chapter 403 of the Code of Iowa, the City's obligations under the Agreement shall be payable solely from a subfund (the "R.L. Fridley Theaters, Inc. Subfund") which is hereby established, into which shall be paid that portion of the income and proceeds of the Urban Renewal Tax Revenue Fund attributable to property taxes derived from the property described as follows:

(1) Theatre Property: Lot 1 of Fridley Subdivision in the City and County of Muscatine, Iowa, according to the recorded plat thereof. Owner: R. L. Fridley Theatres, Inc.; and

(2) Out Lots: Lots 2, 3, 4, 5, and 6 of Fridley Subdivision in the City and County of Muscatine, Iowa, according to the recorded plat thereof. Owner: Fridley Properties, LLC.

Section 5. The City hereby pledges to the payment of the Agreement the R.L. Fridley Theaters, Inc. Subfund and the taxes referred to in Subsection 2 of Section 403.19 of the Code of Iowa to be paid into such Subfund.

Section 6. After its adoption, a copy of this resolution shall be filed in the office of the County Auditor of Muscatine County to evidence the continuing pledging of the R.L. Fridley Theaters, Inc. Subfund and the portion of taxes to be paid into such Subfund and, pursuant to the direction of Section 403.19 of the Code of Iowa, the Auditor shall allocate the taxes in accordance therewith and in accordance with the tax allocation ordinance referred to in the preamble hereof.

Section 7. All resolutions or parts thereof in conflict herewith are hereby repealed.

Passed and approved this 21st day of June, 2012.

Mayor

Attest:

City Clerk

• • • • •

On motion and vote the meeting adjourned.

Mayor

Attest:

City Clerk

STATE OF IOWA
COUNTY OF MUSCATINE SS:
CITY OF MUSCATINE

I, the undersigned, Clerk of the City of Muscatine, hereby certify that the foregoing is a true and correct copy of the minutes of the Council of the City relating to adopting a resolution to approve a Development Agreement.

WITNESS MY HAND this ___ day of ____________________, 2012.

____
City Clerk

STATE OF IOWA
SS:
COUNTY OF MUSCATINE

I, the undersigned, County Auditor of Muscatine County, in the State of Iowa, do hereby certify that on the ___ day of ______________________, 2012, the City Clerk of the City of Muscatine filed in my office a certified copy of a resolution of the City shown to have been adopted by the City Council and approved by the Mayor thereof on June 21, 2012, entitled: "Resolution Approving Development Agreement with R.L. Fridley Theaters, Inc. and Fridley Properties, LLC, Authorizing Tax Increment Payments and Pledging Certain Tax Increment Revenues to the Payment of the Agreement", and that I have duly placed the copy of the resolution on file in my records.

WITNESS MY HAND this ___ day of ______________________, 2012.

____
County Auditor

DEVELOPMENT AGREEMENT

This Agreement is entered into by and among the City of Muscatine, Iowa (the "City"), R.L. Fridley Theatres, Inc. and Fridley Properties, LLC (collectively the "Developer") as of the ___ day of ___________, 2012 (the "Commencement Date").

WHEREAS, the City has established the Consolidated Muscatine Urban Renewal Area (the "Urban Renewal Area"), and has adopted a tax increment ordinance for the Urban Renewal Area; and

WHEREAS, the Developer has acquired certain real property which is situated in the City, lies within the Urban Renewal Area and is more specifically described on Exhibit A hereto (the "Property"); and

WHEREAS, the assessed valuation of the Property as of January 1, 2011 was $151,590; and

WHEREAS, the Developer intends to develop a commercial multiplex theatre facility (the "Facility") on a portion of the Property (the "Theatre Site"); and

WHEREAS, the Developer intends to promote the future commercial development of the portion of the Property comprising the out lots (the "Out Lots"); and

WHEREAS, the Developer has agreed to bear the costs of constructing certain public infrastructure improvements (the "Infrastructure Project") in connection with the development of the Property; and

WHEREAS, the Developer anticipates that business demands in connection with its use of the completed Facility will require a minimum of 20 jobs with an annual payroll of not less than $175,000 (the "Minimum Jobs Requirement"); and

WHEREAS, the Developer has requested that the City provide financial assistance in the form of incremental property tax payments to be used by the Developer in paying the costs of constructing, using and maintaining the Facility; and

WHEREAS, Chapter 15A of the Code of Iowa authorizes cities to provide grants, loans, guarantees, tax incentives and other financial assistance to or for the benefit of private persons;

NOW THEREFORE, the parties hereto agree as follows:

A. <u>Developer's Covenants.</u>

1. <u>Facility Construction.</u> The Developer agrees to construct the Facility on the Theatre Site as described on Exhibit A hereto. Furthermore, the Developer agrees to invest not less than Four Million Dollars ($4,000,000) into capital improvements for the Facility, including construction work and equipment acquisition. The Developer anticipates beginning construction of the Facility on or around June 25, 2012, with an anticipated completion date on or around January 15, 2012.

2. <u>Infrastructure Construction.</u>

a. <u>Construction.</u> The Developer agrees to construct the Palms Drive street improvements, the street lighting improvements, the Mulberry Avenue taper-lane improvements and the sanitary sewer, water main and storm sewer extensions and improvements in accordance with the timeline and details set forth on Exhibit B hereto.

Prior to beginning construction of the Infrastructure Project, the Developer will subdivide the Property in accordance with applicable ordinances and regulations and will provide copies of all engineering documents related to the Infrastructure Project to the City. The City may request reasonable changes in such documents, to ensure compliance with any applicable ordinances or regulations. The Infrastructure Project is expected to be completed on or about December 31, 2012. Upon completion of the Infrastructure Project, provided that such improvements are of the type ordinarily dedicated to the City in connection with commercial development projects, and after the City confirms to the Developer in writing that such Infrastructure Project meets City requirements and the City accepts such Infrastructure Project in accordance with State law, the Developer will provide the City with either a deed or permanent easement to the improvements and related right-of-way comprising the Infrastructure Project, which shall thereafter be maintained by the City. The City shall retain all rights to inspect the Infrastructure Project for quality of work and full compliance with City Code. Nothing in this subsection shall be interpreted as limiting the City's rights <u>not</u> to accept the work if the Infrastructure Project is not completed to the satisfaction of the City.

b. Costs. Upon completion of the Infrastructure Project, the Developer agrees to provide documentation, in such form as may be requested by the City, of the costs incurred in the completion thereof (the "Infrastructure Project Costs"). Such costs may include all infrastructure-related land acquisition costs, cost of designing and constructing the public improvements, landscaping and grading all land for public improvements, interest expense and other costs of financing, and other reasonably related costs of carrying out the Infrastructure Project, including legal fees as provided for in this Agreement. The Infrastructure Project Costs shall not include such cost as are incurred in the completion of the Facility or the development of the Out Lots.

Each documentation of the Infrastructure Project Costs made under this Section will be accompanied by invoices, and such other documentation as is reasonably requested by the City, confirming that the costs detailed in such documentation were in fact incurred in the installation of the Infrastructure Project, and that such costs are of an amount reasonably to have been expected with respect to such installation. Upon acceptance of such demonstrated costs, the City shall record a summary of the date, amount and nature of the costs on the Infrastructure Project Costs Summary attached hereto as Exhibit C, and such summary shall be the official record of the Infrastructure Project Costs.

3. <u>Trees in Right-of-way and green-space buffer.</u> The Developer agrees to develop a plan for the placement of trees in the public right-of-way in accordance with the site plan (the "Site Plan") attached hereto as Exhibit D. Furthermore the Developer agrees to cause the creation of a green space buffer between the Property and the neighboring residential retirement facility as set forth on the Site Plan.

4. **Out Lot Development.** The Developer agrees to use its best efforts to promote the development and use of the Out Lots for their highest and best commercial use.

5. **Property Taxes.** The Developer agrees to ensure timely payment of all property taxes as they come due with respect to the Property with the completed Facility thereon throughout the Term, as hereinafter defined, and to submit a receipt or cancelled check in evidence of each such payment.

6. **Employment Levels.** The Developer agrees to establish and maintain employment levels in connection with the operations of the Facility in accordance with the terms set forth herein. The Developer agrees to submit documentation to the satisfaction of the City by no later than November 1 of each year during the Term, commencing November 1, 2013, demonstrating its compliance with the Minimum Jobs Requirement, such submissions to include the (1) total number of employees then-employed in connection with the Developer's operations of the Facility; and (2) the total annual payroll associated with the operation of the Facility in the 12 months immediately preceding the certification date.

7. **Remedy.** The Developer hereby acknowledges that failure to comply with the requirements of this Section A, will result in the City having the right to withhold Payments under Section B of this Agreement at its reasonable discretion.

8. **Legal Fees.** The Developer agrees to pay to the City an amount equal to the legal fees incurred by the City with respect to the drafting of this Agreement and the establishment of the Tax Increment Financing District up to the maximum amount of $5,000 prior to the receipt of the first Payment under this Agreement.

9. **Out Lot Certifications.**

a. **Out Lot Certification #1.** The Developer agrees to certify (the "Out Lot Certification #1") to the City its intent for the First Out Lot Payments, as hereinafter defined, to commence. The Out Lot Certification #1 shall include the legal description of the taxable parcels (the "First Out Lots") to be included in such certification and shall be made by no later than October 1 of the year immediately preceding the fiscal year in which the Developer intends for the First Out Lot Payments to be made. Furthermore, the Company agrees to certify to the City by no later than November 1 of each year, commencing November 1 of the year in which the Out Lot Certification #`1 is made, an amount equal to 50% of the estimated Incremental Property Tax Revenues anticipated to be paid with respect to the First Out Lots relative to new value added as a result of improvements constructed thereon, in the fiscal year immediately following such certification (the "First Out Lots TIF Estimate"). The City reserves the right to review and request revisions to each such estimate to ensure the accuracy of the figures submitted. For purposes of this Agreement, Incremental Property Tax Revenues are produced by multiplying the consolidated property tax levy (city, county, school, etc.) times the incremental valuation of the Out Lots, then subtracting debt service levies of all taxing jurisdictions, subtracting the school district physical plant and equipment levy, the school instructional support levy and subtracting any other levies which may be exempted from such calculation by action of the Iowa General Assembly.

b. Out Lot Certification #2. The Developer agrees to certify (the "Out Lot Certification #2") to the City its intent for the Second Out Lot Payments, as hereinafter defined, to commence. The Out Lot Certification #2 shall include the legal description of the taxable parcels (the "Second Out Lots") to be included in such certification and shall be made by no later than October 1 of the year immediately preceding the fiscal year in which the Developer intends for the Second Out Lot Payments to be made. Furthermore, the Company agrees to certify to the City by no later than November 1 of each year, commencing November 1 of the year in which the Out Lot Certification #2 is made, an amount equal to 50% of the estimated Incremental Property Tax Revenues anticipated to be paid with respect to the Second Out Lots relative to new value added as a result of improvements constructed thereon, in the fiscal year immediately following such certification (the "Second Out Lots TIF Estimate"). The City reserves the right to review and request revisions to each such estimate to ensure the accuracy of the figures submitted.

c. Out Lot Certification #3. The Developer agrees to certify (the "Out Lot Certification #3") to the City its intent for the Third Out Lot Payments, as hereinafter defined, to commence. The Out Lot Certification #3 shall include the legal description of the taxable parcels (the "Third Out Lots") to be included in such certification and shall be made by no later than October 1 of the year immediately preceding the fiscal year in which the Developer intends for the Third Out Lot Payments to be made. Furthermore, the Company agrees to certify to the City by no later than November 1 of each year, commencing November 1 of the year in which the Out Lot Certification #3 is made, an amount equal to 50% of the estimated Incremental Property Tax Revenues anticipated to be paid with respect to the Third Out Lots relative to new value added as a result of improvements constructed thereon, in the fiscal year immediately following such certification (the "Third Out Lots TIF Estimate") (collectively hereinafter the First Out Lots TIF Estimate, the Second Out Lots TIF Estimate and the Third Out Lots TIF Estimate shall hereinafter be referred to as the "Aggregate Out Lots TIF Estimates"). The City reserves the right to review and request revisions to each such estimate to ensure the accuracy of the figures submitted.

10. Notice of Delay of Theatre Payments. In the event that the full taxable valuation of the completed Facility does not go on the property tax rolls as of January 1, 2013, the Developer will notify the City in writing by no later than November 1, 2013 of the Developer's intent to have the Theatre Payments, as hereinafter defined, begin either in (i) the 2014-2015 fiscal year of the City; or (ii) the 2015-2016 fiscal year of the City.

B. City's Obligations

1. Theatre Payments. In recognition of the Developer's obligations set out above, the City agrees to make economic development tax increment payments (the "Theatre Payments") to the Developer for 15 fiscal year during the term of this Agreement, pursuant to Chapters 15A and 403 of the Code of Iowa, provided however that the aggregate, total amount of the Payments shall not exceed One Million Five Hundred Thousand Dollars ($1,500,000).

The Theatre Payments shall not constitute general obligations of the City, but shall be made solely and only from Incremental Property Tax Revenues received by the City from the Muscatine County Treasurer which are attributable to the Theatre Site with the completed Facility thereon.

The Theatre Payments will be made semiannually on each December 1 and June 1 of each fiscal year, beginning on the first December 1 for which Incremental Property Tax Revenues become available with respect to the Theatre Site, and continuing for a total of fifteen (15) fiscal years.

This Agreement assumes that the full taxable value of the Facility for the Theatre Site will go on the property tax rolls as of January 1, 2013. Accordingly, Theatre Payments will be made on December 1 and June 1 of each fiscal year, beginning December 1, 2014, and continuing through and including June 1, 2029, or until such earlier date upon which total Theatre Payments equal to $1,500,000 have been made. Each Theatre Payment shall be in an amount which represents the Incremental Property Tax Revenues available to the City with respect to the Theatre Site and the completed Facility during the Six (6) months immediately preceding each Theatre Payment date factored by an annual percentage (the "Annual Percentage") as hereinafter set forth . The annual percentages effective from time to time shall be as follows:

Fiscal Year	Effective Annual Percentage	Fiscal Year	Effective Annual Percentage
2014-2015	95%	2022-2023	60%
2015-2016	95%	2023-2024	60%
2016-2017	90%	2024-2025	55%
2017-2018	90%	2025-2026	50%
2018-2019	85%	2026-2027	50%
2019-2020	85%	2027-2028	50%
2020-2021	80%	2028-2029	50%
2021-2022	80%		

If the Developer notifies the City of its intent to begin the Theatre Payments in the 2015-2016 fiscal year of the City in accordance with Section A.10 above, then the payment process assumed in this Section for the Theatre Payments will be delayed by one year in order to accommodate a delay in the accrual of the new taxable valuation of the Facility on the property tax rolls. In the event of such a delay, then all payment dates and annual percentages outlined in this Section B.1 shall be adjusted forward by one year to account for such delay.

2. **Out Lot Payments.** Furthermore, in recognition of the Company's obligations set out above, and subject to the conditions set forth below, the City agrees to make additional economic development tax increment payments (collectively the "Out Lot Payments") to the Company in each fiscal year during the Term as hereinafter set forth, pursuant to Chapters 15A and 403 of the Code of Iowa, provided however that the aggregate, total amount of the Out Lot Payments shall not exceed One Million Five Hundred Thousand Dollars ($1,500,000), and all Out Lot Payments under this Agreement shall be subject to annual appropriation by the City Council.

The Out Lot Payments will be divided into three streams as follows:

a. **First Out Lot Payments**. The First Out Lot Payments will be made semiannually on each December 1 and June 1 of each fiscal year, beginning on December 1 of the fiscal year immediately succeeding the year in which the Out Lot Certification #1 was made, and continuing for a total of ten (10) fiscal years.

For example, assuming the Out Lot Certification #1 is made October 1, 2014, then Out Lot Payments will be made on December 1 and June 1 of each fiscal year, beginning December 1, 2015, and continuing through and including June 1, 2025, or until such earlier date upon which total Out Lot Payments equal to $1,500,000 have been made.

Each First Out Lot Payment shall be in an amount which represents 50% of the Incremental Property Tax Revenues received by the City with respect to the First Out Lots during the 6 months immediately preceding each First Out Lot Payment date.

The First Out Lot Payments shall not constitute general obligations of the City, but shall be made solely and only from Incremental Property Tax Revenues received by the City from the Muscatine County Treasurer which are attributable to the First Out Lots with the improvements thereon.

b. **Second Out Lot Payments**. The Second Out Lot Payments will be made semiannually on each December 1 and June 1 of each fiscal year, beginning on December 1 of the fiscal year immediately succeeding the year in which the Out Lot Certification #2 was made, and continuing for a total of ten (10) fiscal years.

For example, assuming the Out Lot Certification #2 is made October 1, 2015 then Out Lot Payments will be made on December 1 and June 1 of each fiscal year, beginning December 1, 2016and continuing through and including June 1, 2026 or until such earlier date upon which total Out Lot Payments equal to $1,500,000 have been made.

Each Second Out Lot Payment shall be in an amount which represents 50% of the Incremental Property Tax Revenues received by the City with respect to the Second Out Lots during the 6 months immediately preceding each Second Out Lot Payment date.

The Second Out Lot Payments shall not constitute general obligations of the City, but shall be made solely and only from Incremental Property Tax Revenues received by the City from the Muscatine County Treasurer which are attributable to the Second Out Lots with the improvements thereon.

c. **Third Out Lot Payments**. The Third Out Lot Payments will be made semiannually on each December 1 and June 1 of each fiscal year, beginning on December 1 of the fiscal year immediately succeeding the year in which the Out Lot Certification #3 was made, and continuing for a total of ten (10) fiscal years.

For example, assuming the Out Lot Certification #3 is made October 1, 2016 then Out Lot Payments will be made on December 1 and June 1 of each fiscal year, beginning December 1, 2017 and continuing through and including June 1, 2027 or until such earlier date upon which total Out Lot Payments equal to $1,500,000 have been made.

Each Third Out Lot Payment shall be in an amount which represents 50% of the Incremental Property Tax Revenues received by the City with respect to the Third Out Lots during the 6 months immediately preceding each Third Out Lot Payment date.

The Third Out Lot Payments shall not constitute general obligations of the City, but shall be made solely and only from Incremental Property Tax Revenues received by the City from the Muscatine County Treasurer which are attributable to the Third Out Lots with the improvements thereon.

3. **Annual Appropriation of Out Lot Payments.** Each Out Lot Payment shall be subject to annual appropriation by the City Council. Prior to December 1 of each year following the submission of a First Out Lots TIF Estimate, a Second Out Lots TIF Estimate and/or a Third Out Lots TIF Estimate, the City Council of the City shall consider the question of obligating for appropriation to the funding of the Out Lot Payments due in the following fiscal year, an amount of Incremental Property Tax Revenues to be collected in the following fiscal year equal to or less than the most recently submitted Aggregate Out Lots TIF Estimates (the "Appropriated Amount").

In any given fiscal year, if the City Council determines to not obligate the then-considered Appropriated Amount, then the City will be under no obligation to fund the Out Lot Payments scheduled to become due in the following fiscal year, and the Company will have no rights whatsoever to compel the City to make such Out Lot Payments or to seek damages relative thereto or to compel the funding of such Out Lot Payments in future fiscal years. A determination by the City Council to not obligate funds for any particular fiscal year's Out Lot Payments shall not render this Agreement null and void, and the Company shall make the next succeeding submission of the Out Lots TIF Estimate as called for in Section A.9 above, provided however that no Out Lots Payment shall be made after June 1, 2034.

4. **Certification of Payment Obligation.** The City Clerk will certify by no later than December 1, 2013 to the Muscatine County Auditor an amount of Incremental Property Tax Revenues to be claimed for the funding of the Payments hereunder equal to $1,500,000 with further instructions that the Annual Percentages from time to time in effect be applied against the respective annual distributions of Incremental Property Tax Revenues for the funding of Payments hereunder.

Furthermore, in any given fiscal year, if the City Council determines to obligate some or all of the then-considered Appropriated Amount for future Out Lot Payments, as set forth in

Section B.3 above, then the City Clerk will certify by December 1 of each such year to the Muscatine County Auditor an amount equal to the most recently obligated Appropriated Amount.

5. **Waiver of Connection Fees.** The City agrees to waive the right to impose sewer connection fees against the portion of the Property comprising the public right-of-way and the storm water detention lot.

6. **Future Agreements for Out Lots.** To the extent that the Developer submits requests to the City with respect to the provision of additional economic development assistance for future development of the Out Lots, the City hereby expresses its intent to consider and negotiate in good faith entering into additional development agreement(s) with the Developer with respect to such development. The City's commitments under this Section B.6 are subject to the authorizing acts of the sitting City Councils at the time of the negotiations for the future agreements. Furthermore, the provision of additional economic development assistance will not be approved unless the proposed future development of the Out Lot(s) involves the construction of high-end commercial facilities such as hotels, corporate office facilities or other facilities the assessed valuation of which will result in the production of Incremental Property Tax Revenues

C. Administrative Provisions

1. **Amendment and Assignment.** This Agreement may not be amended or assigned by any party without the written consent of the other parties, provided however that the City hereby gives its permission that the Developer's rights to receive the Payments hereunder may be assigned by the Developer to a private lender, as security on a credit facility taken with respect to the Facility, without further action on the part of the City.

2. **Successors.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

3. **Term.** The term (the "Term") of this Agreement shall begin on the Commencement Date and end on the date on which the last Payment is made by the City to the Developer under Section B above.

4. **Choice of Law.** This Agreement shall be deemed to be a contract made under the laws of the State of Iowa and for all purposes shall be governed by and construed in accordance with laws of the State of Iowa.

The City and the Developer have caused this Agreement to be signed, in their names and on their behalf by their duly authorized officers, all as of the Commencement Date first written above.

CITY OF MUSCATINE, IOWA

By: ______________________

DeWayne Hopkins, Mayor

Attest:

____

Gregg Mandsager, City Clerk

R.L. FRIDLEY THEATRES, INC.

By: ______________________

Brian Fridley, Vice President

FRIDLEY PROPERTIES, LLC

By: ______________________

Brian Fridley, General Manager

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Certain real property situated in the City of Muscatine, County of Muscatine, State of Iowa more particularly described follows:

Theatre Property: Lot 1 of Fridley Subdivision in the City and County of Muscatine, Iowa, according to the recorded plat thereof. Owner: R. L. Fridley Theatres, Inc.

Out Lots: Lots 2, 3, 4, 5, and 6 of Fridley Subdivision in the City and County of Muscatine, Iowa, according to the recorded plat thereof. Owner: Fridley Properties, LLC.

<u>EXHIBIT B</u>

TIMELINE AND DETAILS FOR INFRASTRUCTURE IMPROVEMENTS

June 25, 2012	Anticipated commencement of construction
December 31, 2012	Anticipated completion of construction

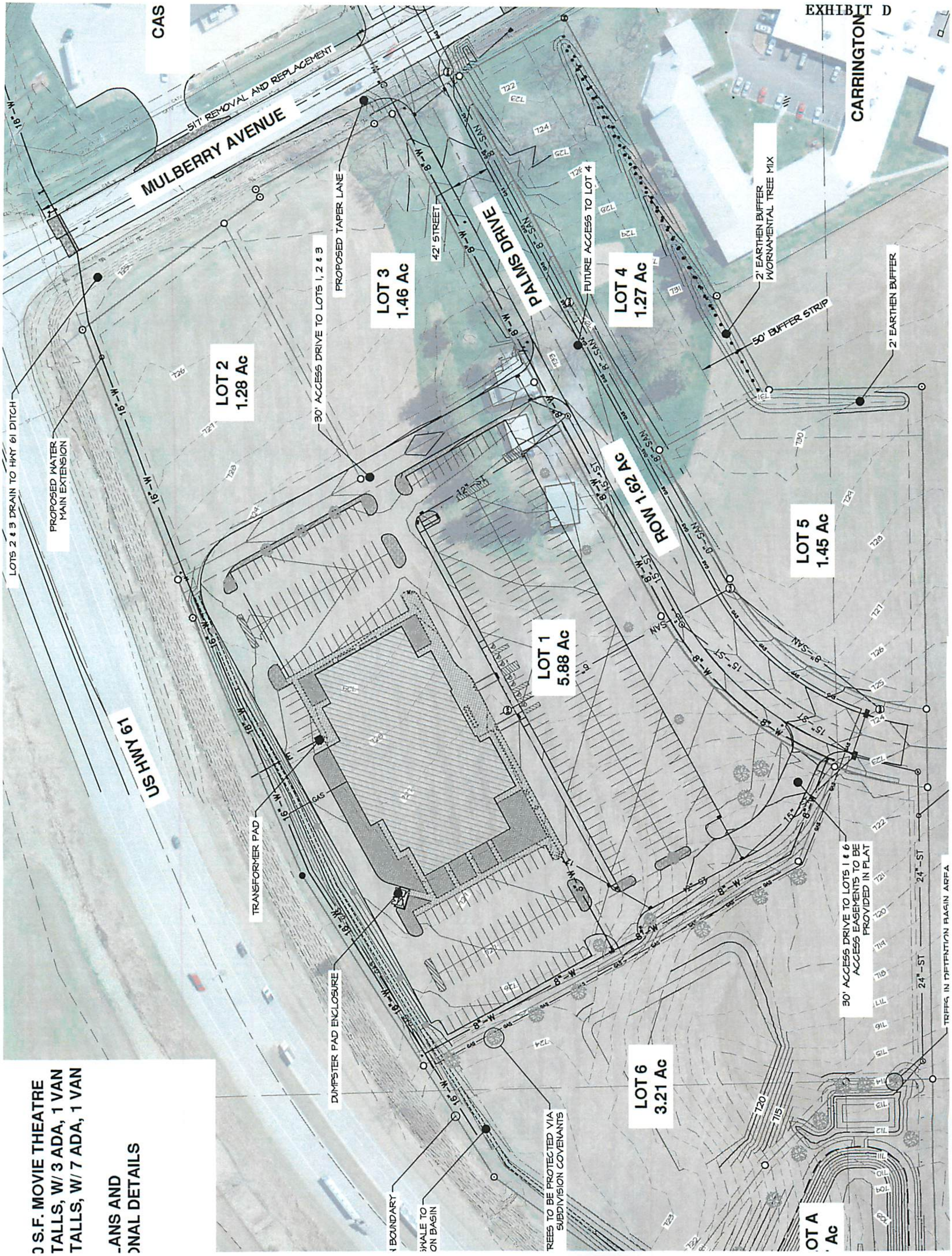
FRIDLEY THEATRES AT MUSCATINE-PUBLIC INFRASTRUCTURE COSTS 06/21/12

TABLE 1, EXPECTED BASE BID QUANTITIES

ITEM NO	DESCRIPTION	ESTIMATED QUANTITY	UNITS	UNIT COST	TOTAL COST
1	MOBILIZATION	1	L.S.	$ 52,800.00	$ 52,800.00
2	CLEARING AND GRUBBING	1	L.S.	3,500.00	3,500.00
3	REMOVAL OF EXISTING BUILDINGS	1	L.S.	9,700.00	9,700.00
4	PLUGGING OF EXISTING WELLS	1	L.S.	2,000.00	2,000.00
5	SWPPP MANAGEMENT	1	L.S.	1,500.00	1,500.00
6	STABILIZED CONSTRUCTION ENTRANCE	1	L.S.	17,500.00	17,500.00
7	TRAFFIC CONTROL	1	L.S.	5,000.00	5,000.00
				SUBTOTAL	$ 92,000.00
DIVISION B-GENERAL SITE IMPROVEMENTS (SITE GRADING, SWPPP, STORMWATER IMPROVEMENTS)					
8	CLASS 10 EARTHWORK	19440	C.Y.	$ 2.50	$ 48,600.00
9	STRIP, STOCKPILE AND SPREAD TOPSOIL	2000	C.Y.	2.50	5,000.00
10	DETENTION BASIN AREA IMPROVEMENTS	1	L.S.	25,000.00	25,000.00
11	EROSION STONE	100	TON	32.00	3,200.00
12	SILT FENCING	1340	L.F.	2.50	3,350.00
13	PERMANENT SEED, MULCH & FERTILIZE, TYPE 1	1500	SQUARE	5.50	8,250.00
14	PERMANENT SEED, MULCH & FERTILIZE, TYPE 2	1500	SQUARE	5.50	8,250.00
15	TEMPORARY SEEDING	15	ACRE	440.00	6,600.00
16	ROLLED EROSION CONTROL PRODUCTS (RECP)	80	SQUARE	6.60	528.00
17	DUST CONTROL	1	L.S.	3,000.00	3,000.00
18	SINGLE GRATE INTAKE W/MANHOLE (SW-503)	2	EACH	4,750.00	9,500.00
19	SINGLE GRATE INTAKE (SW-501)	2	EACH	4,750.00	9,500.00
20	CIRCULAR STORM MANHOLE (SW-401)	4	EACH	2,940.00	11,760.00
21	12" CLASS 2000D RCP STORM SEWER	142	L.F.	16.80	2,385.60
22	15" CLASS 2000D RCP STORM SEWER	465	L.F.	29.00	13,485.00
23	18" CLASS 2000D RCP STORM SEWER	42	L.F.	41.00	1,722.00
24	24" CLASS 2000D RCP STORM SEWER	369	L.F.	40.80	15,055.20
25	24" RCP APRON	1	EACH	500.00	500.00
26	12" RCP APRON	1	EACH	500.00	500.00
27	VEGETATIVE BUFFER STRIP	1	L.S.	10,538.00	10,538.00
28	SITE LANDSCAPING	1	L.S.	By Owner	
				SUBTOTAL	$ 186,723.80
DIVISION C-ROADWAY IMPROVEMENTS (IMPROVEMENTS FOR PUBLIC STREET)					
29	SUBGRADE PREPARATION	4611	S.Y.	$ 1.50	$ 6,916.50
30	COREOUT EXCAVATION	461	S.Y.	3.00	1,383.00
31	SUBGRADE TREATMENT	0	S.Y.	36.50	-
32	8" P.C.C. PAVEMENT	4182	S.Y.	41.00	171,462.00
33	GRANULAR SUBBASE	1540	TON	17.50	26,950.00
34	4" SUBDRAIN	1700	L.F.	8.98	15,266.00
35	4" P.C.C. SIDEWALK	774	S.Y.	31.50	24,381.00
36	R3-B TRAFFIC BARRICADE	1	EACH	500.00	500.00
37	PAVEMENT MARKINGS	1	L.S.	1,300.00	1,300.00
				SUBTOTAL	$ 248,158.50
DIVISION D-PARKING LOT IMPROVEMENTS					
	Not Included				
DIVISION E-MULBERRY AVENUE IMPROVEMENTS					
60	9" P.C.C. PAVEMENT W/CD BASKETS	2516	S.Y.	$ 55.40	$ 139,386.40
61	8" P.C.C. PAVMENT W/CD BASKETS	272	S.Y.	52.50	14,280.00
62	7" P.C.C. PAVEMENT	196	S.Y.	44.00	8,624.00
63	P.C.C. DRIVEWAY REPLACEMENT	90	S.Y.	54.00	4,860.00
64	GRANULAR SUBBASE	1020	TON	17.50	17,850.00
65	REMOVE EXISTING PAVEMENT	2880	S.Y.	10.00	28,800.00
66	SUBGRADE PREPARATION	3074	S.Y.	1.50	4,611.00
67	PAVEMENT MARKINGS ON MULBERRY AVENUE	1	L.S.	1,500.00	1,500.00
68	4" SUBDRAIN	1046	L.F.	8.98	9,393.08
69	GRANULAR SHOULDER	758	L.F.	11.00	8,338.00
70	PERMANENT SEEDING	100	SQUARE	5.50	550.00

				SUBTOTAL	$ 238,192.48
DIVISION F-WATER MAIN IMPROVEMENTS					
71	MOBILIZATION	1	L.S.	$ 1,500.00	$ 1,500.00
72	16" WATER MAIN	2458	L.F.	62.00	152,396.00
73	8" WATER MAIN	1378	L.F.	29.00	39,962.00
74	6" WATER MAIN (PRIVATE MAIN)	259	L.F.	16.00	
75	24" TAPPING SLEEVE & VALVE	1	L.S.	16,500.00	16,500.00
76	16" VALVE W/BOX	3	Each	4,500.00	13,500.00
77	8" VALVE W/BOX	3	Each	1,290.00	3,870.00
78	6" POST INDICATOR VALVE	1	Each	1,725.00	
79	16" X 16" DIP CROSS	2	Each	2,500.00	5,000.00
80	16" X 6" DIP TEE	1	Each	1,350.00	1,350.00
81	6" TAPPING SLEEVE & VALVE	1	Each	3,750.00	3,750.00
82	8" TAPPING SLEEVE & VALVE	1	Each	3,800.00	3,800.00
83	16" WATER MAIN W/ CASING	56	L.F.	385.00	21,560.00
84	8" WATER MAIN W/CASING	67	L.F.	230.00	15,410.00
85	16" X 8" DIP REDUCER	1	Each	700.00	700.00
86	8" X 6" DIP TEE	1	Each	380.00	
87	8" X 8" DIP TEE	1	Each	400.00	400.00
88	FIRE HYDRANT	8	Each	3,500.00	28,000.00
89	REMOVE & REPLACE EXISTING P.C.C. PARKING	590	S.Y.	37.00	21,830.00
90	PERMANENT SEEDING	380	Square	5.50	2,090.00
				SUBTOTAL	$ 331,618.00
DIVISION G-SANITARY SEWER IMPROVEMENTS					
91	SANITARY SEWER MANHOLE P-1	1	Each	$ 6,100.00	6,100.00
92	SANITARY SEWER MANHOLE P-2	1	Each	7,000.00	7,000.00
93	SANITARY SEWER MANHOLE P-3	1	Each	7,000.00	7,000.00
94	SANITARY SEWER MANHOLE P-4	1	Each	6,500.00	6,500.00
95	SANITARY SEWER MANHOLE P-5	1	Each	5,700.00	5,700.00
96	SANITARY SEWER MANHOLE (PROP. SITE MANHOLE)	1	Each	4,000.00	
97	CONNECTION TO EXISTING MANHOLE	1	Each	1,000.00	1,000.00
98	8" PVC TRUSS PIPE	1450	L.F.	61.50	89,175.00
99	6" PVC SEWER SERVICE PIPE	262	L.F.	28.00	
100	4" PVC SEWER SERVICE W/WYE	19	L.F.	20.00	380.00
101	MAN SAND BACKFILL	100	TON	16.80	1,680.00
				SUBTOTAL	$ 124,535.00
	PUBLIC CONSTRUCTION TOTAL				**$ 1,221,227.78**
A	CONSTRUCTION CONTINGENCY (Unforseen Costs)			5%	$ 61,000.00
B	CONSTRUCTION ENGINEERING (Observation, Meetings, Payment Processing, Change Orders, etc)			5%	61,000.00
C	CONSTRUCTION STAKING (Setting paving, grading and utility stakes)			2.5%	31,000.00
D	CONSTRUCTION TESTING (CIVIL ONLY-SEE TERRACON ESTIMATE)			0.50%	6,000.00
E	PUBLIC WORKS ENGINEERING DESIGN (M&W)			8%	98,000.00
F	STREET LIGHTING COSTS (EIL&P ESTIMATE)				25,000.00
G	LAND COSTS				45,000.00
H	LEGAL COSTS				5,000.00
I	**ADDITIONAL COST TOTALS**				**$ 332,000.00**
	ESTIMATED PUBLIC CONSTRUCTION TOTAL PHASE TOTAL				**$ 1,553,227.78**

EXHIBIT D



MULBERRY AVENUE
51' REMOVAL AND REPLACEMENT
US HWY 61
PALMS DRIVE
CARRINGTON
CAS
LOT 1
5.88 Ac
LOT 2
1.28 Ac
LOT 3
1.46 Ac
LOT 4
1.27 Ac
LOT 5
1.45 Ac
LOT 6
3.21 Ac
ROW 1.62 Ac
42' STREET
PROPOSED TAPER LANE
30' ACCESS DRIVE TO LOTS 1, 2 & 3
FUTURE ACCESS TO LOT 4
2' EARTHEN BUFFER W/ORNAMENTAL TREE MIX
50' BUFFER STRIP
2' EARTHEN BUFFER
LOTS 2 & 3 DRAIN TO HWY 61 DITCH
PROPOSED WATER MAIN EXTENSION
TRANSFORMER PAD
DUMPSTER PAD ENCLOSURE
TREES TO BE PROTECTED VIA SUBDIVISION COVENANTS
30' ACCESS DRIVE TO LOTS 1 & 6 ACCESS EASEMENTS TO BE PROVIDED IN PLAT
TREES IN DETENTION BASIN AREA
0 S.F. MOVIE THEATRE
TALLS, W/ 3 ADA, 1 VAN
TALLS, W/ 7 ADA, 1 VAN
ANS AND
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DEVELOPMENT AGREEMENT

This Agreement is entered into by and among the City of Muscatine, Iowa (the "City"), R.L. Fridley Theatres, Inc. and Fridley Properties, LLC (collectively the "Developer") as of the ___ day of ____________, 2012 (the "Commencement Date").

WHEREAS, the City has established the Consolidated Muscatine Urban Renewal Area (the "Urban Renewal Area"), and has adopted a tax increment ordinance for the Urban Renewal Area; and

WHEREAS, the Developer has acquired certain real property which is situated in the City, lies within the Urban Renewal Area and is more specifically described on Exhibit A hereto (the "Property"); and

WHEREAS, the assessed valuation of the Property as of January 1, 2011 was $151,590; and

WHEREAS, the Developer intends to develop a commercial multiplex ~~theater~~theatre facility (the "Facility") on a portion of the Property (the "~~Theater~~Theatre Site"); and

WHEREAS, the Developer intends to promote the future commercial development of the portion of the Property comprising the out lots (the "Out Lots"); and

WHEREAS, the Developer has agreed to bear the costs of constructing certain public infrastructure improvements (the "Infrastructure Project") in connection with the development of the Property; and

WHEREAS, the Developer anticipates that business demands in connection with its use of the completed Facility will require a minimum of 20 new jobs with an annual payroll of not less than $175,000 (the "Minimum Jobs Requirement"); and

WHEREAS, the Developer has requested that the City provide financial assistance in the form of incremental property tax payments to be used by the Developer in paying the costs of constructing, using and maintaining the Facility; and

WHEREAS, Chapter 15A of the Code of Iowa authorizes cities to provide grants, loans, guarantees, tax incentives and other financial assistance to or for the benefit of private persons;

NOW THEREFORE, the parties hereto agree as follows:

A. Developer's Covenants.

1. Facility Construction. The Developer agrees to construct the Facility on the ~~Theater~~Theatre Site as described on Exhibit A hereto. Furthermore, the Developer agrees to invest not less than Four Million Dollars ($4,000,000) into capital improvements for the Facility, including construction work and equipment acquisition. The Developer anticipates beginning construction of the Facility on or around ~~April 20,~~June 25, 2012, with an anticipated completion date on or around January 15, 2012.

2. Infrastructure Construction.

a. Construction. The Developer agrees to construct the Palms Drive street improvements, the street lighting improvements, the Mulberry Avenue taper-lane improvements and the sanitary sewer, water main and storm sewer extensions and improvements in accordance with the timeline and details set forth on Exhibit B hereto.

Prior to beginning construction of the Infrastructure Project, the Developer will subdivide the Property in accordance with applicable ordinances and regulations and will provide copies of all engineering documents related to the Infrastructure Project to the City. The City may request reasonable changes in such documents, to ensure compliance with any applicable ordinances or regulations. The Infrastructure Project is expected to be completed on or about December 31, 2012. Upon completion of the Infrastructure Project, provided that such improvements are of the type ordinarily dedicated to the City in connection with commercial development projects, and after the City confirms to the Developer in writing that such Infrastructure Project meets City requirements and the City accepts such Infrastructure Project in accordance with State law, the Developer will provide the City with either a deed or permanent easement to the improvements and related right-of-way comprising the Infrastructure Project, which shall thereafter be maintained by the City. The City shall retain all rights to inspect the Infrastructure Project for quality of work and full compliance with City Code. Nothing in this subsection shall be interpreted as limiting the City's rights ~~to~~ not to accept the work if the Infrastructure Project is not completed to the satisfaction of the City.

b. Costs. Upon completion of the Infrastructure Project, the Developer agrees to provide documentation, in such form as may be requested by the City, of the costs incurred in the completion thereof (the "Infrastructure Project Costs"). Such costs may include all infrastructure-related land acquisition costs, cost of designing and constructing the public improvements, landscaping and grading all land for public improvements, interest expense and other costs of financing, and other reasonably related costs of carrying out the Infrastructure Project, including legal fees as provided for in this Agreement. The Infrastructure Project Costs shall not include such cost as are incurred in the completion of the Facility or the development of the Out Lots.

Each documentation of the Infrastructure Project Costs made under this Section will be accompanied by invoices, and such other documentation as is reasonably requested by the City, confirming that the costs detailed in such documentation were in fact incurred in the installation of the Infrastructure Project, and that such costs are of an amount reasonably to have been expected with respect to such installation. Upon acceptance of such demonstrated costs, the City shall record a summary of the date, amount and nature of the costs on the Infrastructure Project Costs Summary attached hereto as Exhibit C, and such summary shall be the official record of the Infrastructure Project Costs.

3. Trees in Right-of-way and green-space buffer. The Developer agrees to develop a plan for the placement of trees in the public right-of-way in accordance with the site plan (the "Site Plan") attached hereto as Exhibit D. Furthermore the Developer agrees to cause the creation of a green space buffer between the Property and the neighboring residential retirement facility as set forth on the Site Plan.

4. **Out Lot Development.** The Developer agrees to use its best efforts to promote the development and use of the Out Lots for their highest and best commercial use.

5. **Property Taxes.** The Developer agrees to ensure timely payment of all property taxes as they come due with respect to the Property with the completed Facility thereon throughout the Term, as hereinafter defined, and to submit a receipt or cancelled check in evidence of each such payment.

6. **Employment Levels.** The Developer agrees to establish and maintain employment levels in connection with the operations of the Facility in accordance with the terms set forth herein. The Developer agrees to submit documentation to the satisfaction of the City by no later than November 1 of each year during the Term, commencing November 1, 2013, demonstrating its compliance with the Minimum Jobs Requirement, such submissions to include the (1) total number of employees then-employed in connection with the Developer's operations of the Facility; and (2) the total annual payroll associated with the operation of the Facility in the 12 months immediately preceding the certification date.

7. **Remedy.** The Developer hereby acknowledges that failure to comply with the requirements of this Section A, will result in the City having the right to withhold Payments under Section B of this Agreement at its reasonable discretion.

8. **Legal Fees.** The Developer agrees to pay to the City an amount equal to the legal fees incurred by the City with respect to the drafting of this Agreement and the establishment of the ~~Urban Renewal Area~~Tax Increment Financing District up to the maximum amount of $~~3500~~5,000 prior to the receipt of the first Payment under this Agreement.

9. **Out Lot Certifications.**

~~A~~a. **Out Lot Certification #1.** The Developer agrees to certify (the "Out Lot Certification #1") to the City its intent for the First Out Lot Payments, as hereinafter defined, to commence. The Out Lot Certification #1 shall include the legal description of the taxable parcels (the "First Out Lots") to be included in such certification and shall be made by no later than October 1 of the year immediately preceding the fiscal year in which the Developer intends for the First Out Lot Payments to be made. Furthermore, the Company agrees to certify to the City by no later than November 1 of each year, commencing November 1 of the year in which the Out Lot Certification #`1 is made, an amount equal to 50% of the estimated Incremental Property Tax Revenues anticipated to be paid with respect to the First Out Lots relative to new value added as a result of improvements constructed thereon, in the fiscal year immediately following such certification (the "First Out Lots TIF Estimate"). The City reserves the right to review and request revisions to each such estimate to ensure the accuracy of the figures submitted. For purposes of this Agreement, Incremental Property Tax Revenues are produced by multiplying the consolidated property tax levy (city, county, school, etc.) times the incremental valuation of the Out Lots, then subtracting debt service levies of all taxing jurisdictions, subtracting the school district physical plant and equipment levy, the school instructional support levy and subtracting any other levies which may be exempted from such calculation by action of the Iowa General Assembly.

~~B~~b. **Out Lot Certification #2.** The Developer agrees to certify (the "Out Lot Certification #2") to the City its intent for the Second Out Lot Payments, as hereinafter defined, to commence. The Out Lot Certification #2 shall include the legal description of the taxable parcels (the "Second Out Lots") to be included in such certification and shall be made by no later than October 1 of the year immediately preceding the fiscal year in which the Developer intends for the ~~First~~Second Out Lot Payments to be made. Furthermore, the Company agrees to certify to the City by no later than November 1 of each year, commencing November 1 of the year in which the Out Lot Certification #2 is made, an amount equal to 50% of the estimated Incremental Property Tax Revenues anticipated to be paid with respect to the Second Out Lots relative to new value added as a result of improvements constructed thereon, in the fiscal year immediately following such certification (the "Second Out Lots TIF Estimate"). The City reserves the right to review and request revisions to each such estimate to ensure the accuracy of the figures submitted.

~~C~~c. **Out Lot Certification #3.** The Developer agrees to certify (the "Out Lot Certification #3") to the City its intent for the Third Out Lot Payments, as hereinafter defined, to commence. The Out Lot Certification #3 shall include the legal description of the taxable parcels (the "Third Out Lots") to be included in such certification and shall be made by no later than October 1 of the year immediately preceding the fiscal year in which the Developer intends for the ~~First~~Third Out Lot Payments to be made. Furthermore, the Company agrees to certify to the City by no later than November 1 of each year, commencing November 1 of the year in which the Out Lot Certification #3 is made, an amount equal to 50% of the estimated Incremental Property Tax Revenues anticipated to be paid with respect to the Third Out Lots relative to new value added as a result of improvements constructed thereon, in the fiscal year immediately following such certification (the "Third Out Lots TIF Estimate") (collectively hereinafter the First Out Lots TIF Estimate, the Second Out Lots TIF Estimate and the Third Out Lots TIF Estimate shall hereinafter be referred to as the "Aggregate Out Lots TIF Estimates"). The City reserves the right to review and request revisions to each such estimate to ensure the accuracy of the figures submitted.

10. Notice of Delay of Theatre Payments. In the event that the full taxable valuation of the completed Facility does not go on the property tax rolls as of January 1, 2013, the Developer will notify the City in writing by no later than November 1, 2013 of the Developer's intent to have the Theatre Payments, as hereinafter defined, begin either in (i) the 2014-2015 fiscal year of the City; or (ii) the 2015-2016 fiscal year of the City.

B. City's Obligations

1. **~~Theater~~Theatre Payments**. In recognition of the Developer's obligations set out above, the City agrees to make economic development tax increment payments (the "~~Theater~~Theatre Payments") to the Developer ~~in each~~for 15 fiscal year during the term of this Agreement, pursuant to Chapters 15A and 403 of the Code of Iowa, provided however that the

aggregate, total amount of the Payments shall not exceed One Million ~~Six~~Five Hundred Thousand Dollars ($1,500,000).

The ~~Theater~~Theatre Payments shall not constitute general obligations of the City, but shall be made solely and only from Incremental Property Tax Revenues received by the City from the Muscatine County Treasurer which are attributable to the ~~Theater~~Theatre Site with the completed Facility thereon.

The ~~Theater~~Theatre Payments will be made semiannually on each December 1 and June 1 of each fiscal year, beginning on the first December 1 for which Incremental Property Tax Revenues become available with respect to the ~~Theater~~Theatre Site, and continuing for a total of fifteen (15) fiscal years.

This Agreement assumes that the full taxable value of the Facility for the ~~Theater~~Theatre Site will go on the property tax rolls as of January 1, 2013. Accordingly, ~~Theater~~Theatre Payments will be made on December 1 and June 1 of each fiscal year, beginning December 1, 2014, and continuing through and including June 1, 2029, or until such earlier date upon which total ~~Theater~~Theatre Payments equal to $1,500,000 have been made. Each ~~Theater~~Theatre Payment shall be in an amount which represents the Incremental Property Tax Revenues available to the City with respect to the ~~Theater~~Theatre Site and the completed Facility during the Six (6) months immediately preceding each ~~Theater~~Theatre Payment date factored by an annual percentage (the "Annual Percentage") as hereinafter set forth . The annual percentages effective from time to time shall be as follows:

Fiscal Year	Effective Annual Percentage	Fiscal Year	Effective Annual Percentage
2014-2015	95%	2022-2023	60%
2015-2016	95%	2023-2024	60%
2016-2017	90%	2024-2025	55%
2017-2018	90%	2025-2026	50%
2018-2019	85%	2026-2027	50%
2019-2020	85%	2027-2028	50%
2020-2021	80%	2028-2029	50%
2021-2022	80%		

If the Developer notifies the City of its intent to begin the Theatre Payments in the 2015-2016 fiscal year of the City in accordance with Section A.10 above, then the payment process assumed in this Section for the Theatre Payments will be delayed by one year in order to accommodate a delay in the accrual of the new taxable valuation of the Facility on the property tax rolls. In the event of such a delay, then all payment dates and annual percentages outlined in this Section B.1 shall be adjusted forward by one year to account for such delay.

2. Out Lot Payments. Furthermore, in recognition of the Company's obligations set out above, and subject to the conditions set forth below, the City agrees to make additional economic development tax increment payments (collectively the "Out Lot Payments") to the Company in each fiscal year during the Term as hereinafter set forth, pursuant to Chapters 15A and 403 of the Code of Iowa, provided however that the aggregate, total amount of the Out Lot Payments shall not exceed One Million ~~Four~~Five Hundred Thousand Dollars ($1,500,000), and all Out Lot Payments under this Agreement shall be subject to annual appropriation by the City Council.

The Out Lot Payments will be divided into three streams as follows:

~~A~~a. First Out Lot Payments. The First Out Lot Payments will be made semiannually on each December 1 and June 1 of each fiscal year, beginning on December 1 of the fiscal year immediately succeeding the year in which the Out Lot Certification #1 was made, and continuing for a total of ten (10) fiscal years.

For example, assuming the Out Lot Certification #1 is made October 1, 2014, then Out Lot Payments will be made on December 1 and June 1 of each fiscal year, beginning December 1, 2015, and continuing through and including June 1, 2025, or until such earlier date upon which total Out Lot Payments equal to $1,500,000 have been made.

Each First Out Lot Payment shall be in an amount which represents 50% of the Incremental Property Tax Revenues received by the City with respect to the First Out Lots during the 6 months immediately preceding each First Out Lot Payment date~~, it being the intention of the City and the Company that such amounts shall equal 50% of the Incremental Property Tax Revenues available from the First Out Lots~~.

The First Out Lot Payments shall not constitute general obligations of the City, but shall be made solely and only from Incremental Property Tax Revenues received by the City from the Muscatine County Treasurer which are attributable to the First Out Lots with the improvements thereon.

~~B~~b. **Second Out Lot Payments**. The Second Out Lot Payments will be made semiannually on each December 1 and June 1 of each fiscal year, beginning on December 1 of the fiscal year immediately succeeding the year in which the Out Lot Certification #2 was made, and continuing for a total of ten (10) fiscal years.

For example, assuming the Out Lot Certification #2 is made October 1, ~~2014,~~2015 then Out Lot Payments will be made on December 1 and June 1 of each fiscal year, beginning December 1, ~~2015,~~ 2016and continuing through and including June 1, ~~2025,~~2026 or until such earlier date upon which total Out Lot Payments equal to $1,500,000 have been made.

Each Second Out Lot Payment shall be in an amount which represents 50% of the Incremental Property Tax Revenues received by the City with respect to the Second Out Lots during the 6 months immediately preceding each Second Out Lot Payment date~~, it being the intention of the City and the Company that such amounts shall equal 50% of the Incremental Property Tax Revenues available from the Second Out Lots~~.

The Second Out Lot Payments shall not constitute general obligations of the City, but shall be made solely and only from Incremental Property Tax Revenues received by the City from the Muscatine County Treasurer which are attributable to the Second Out Lots with the improvements thereon.

~~C~~c. **Third Out Lot Payments**. The Third Out Lot Payments will be made semiannually on each December 1 and June 1 of each fiscal year, beginning on December 1 of the fiscal year immediately succeeding the year in which the Out Lot Certification #3 was made, and continuing for a total of ten (10) fiscal years.

For example, assuming the Out Lot Certification #3 is made October 1, ~~2014,~~2016 then Out Lot Payments will be made on December 1 and June 1 of each fiscal year, beginning December 1, ~~2015,~~2017 and continuing through and including June 1, ~~2025,~~2027 or until such earlier date upon which total Out Lot Payments equal to $1,500,000 have been made.

Each Third Out Lot Payment shall be in an amount which represents 50% of the Incremental Property Tax Revenues received by the City with respect to the Third Out Lots during the 6 months immediately preceding each Third Out Lot Payment date~~, it being the intention of the City and the Company that such amounts shall equal 50% of the Incremental Property Tax Revenues available from the Third Out Lots~~.

The Third Out Lot Payments shall not constitute general obligations of the City, but shall be made solely and only from Incremental Property Tax Revenues received by the City from the Muscatine County Treasurer which are attributable to the Third Out Lots with the improvements thereon.

3. **Annual Appropriation of Out Lot Payments.** Each Out Lot Payment shall be subject to annual appropriation by the City Council. Prior to December 1 of each year following the submission of a First Out Lots TIF Estimate, a Second Out Lots TIF Estimate and/or a Third Out Lots TIF Estimate, the City Council of the City shall consider the question of obligating for appropriation to the funding of the Out Lot Payments due in the following fiscal year, an amount of Incremental Property Tax Revenues to be collected in the following fiscal year equal to or less than the most recently submitted Aggregate Out Lots TIF Estimates (the "Appropriated Amount").

In any given fiscal year, if the City Council determines to not ~~to~~ obligate the then-considered Appropriated Amount, then the City will be under no obligation to fund the Out Lot Payments scheduled to become due in the following fiscal year, and the Company will have no rights whatsoever to compel the City to make such Out Lot Payments or to seek damages relative thereto or to compel the funding of such Out Lot Payments in future fiscal years. A determination by the City Council to not obligate funds for any particular fiscal year's Out Lot Payments shall not render this Agreement null and void, and the Company shall make the next succeeding submission of the Out Lots TIF Estimate as called for in Section A.9 above, provided however that no Out Lots Payment shall be made after June 1, 2034.

4. **Certification of Payment Obligation.** The City Clerk will certify by no later than December 1, 2013 to the Muscatine County Auditor an amount ~~equal~~ of Incremental Property Tax Revenues to be claimed for the funding of the Payments hereunder equal to $1,500,000 with further instructions that the Annual Percentages from time to time in effect be applied against the respective annual distributions of Incremental Property Tax Revenues for the funding of Payments hereunder.

Furthermore, in any given fiscal year, if the City Council determines to obligate some or all of the then-considered Appropriated Amount for future Out Lot Payments, as set forth in Section B.3 above, then the City Clerk will certify by December 1 of each such year to the Muscatine County Auditor an amount equal to the most recently obligated Appropriated Amount.

5. **Waiver of Connection Fees.** The City agrees to waive the right to impose sewer connection fees against the portion of the Property comprising the public right-of-way and the storm water detention lot.

6. **Future Agreements for Out Lots.** To the extent that the Developer submits requests to the City with respect to the provision of additional economic development assistance for future development of the Out Lots, the City hereby expresses its intent to consider and negotiate in good faith entering into additional development agreement(s) with the Developer with respect to such development. The City's commitments under this Section B.6 are subject to the authorizing acts of the sitting City Councils at the time of the negotiations for the future agreements. Furthermore, the provision of additional economic development assistance will not be approved unless the proposed future development of the Out Lot(s) involves the construction of high-end commercial facilities such as hotels, corporate office facilities or other facilities the assessed valuation of which will result in the production of Incremental Property Tax Revenues

C. Administrative Provisions

1. **Amendment and Assignment.** This Agreement may not be amended or assigned by any party without the written consent of the other parties, provided however that the City hereby gives its permission that the Developer's rights to receive the Payments hereunder may be assigned by the Developer to a private lender, as security on a credit facility taken with respect to the Facility, without further action on the part of the City.

2. **Successors.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

3. **Term.** The term (the "Term") of this Agreement shall begin on the Commencement Date and end on the date on which the last Payment is made by the City to the Developer under Section B above.

4. **Choice of Law**. This Agreement shall be deemed to be a contract made under the laws of the State of Iowa and for all purposes shall be governed by and construed in accordance with laws of the State of Iowa.

The City and the Developer have caused this Agreement to be signed, in their names and on their behalf by their duly authorized officers, all as of the Commencement Date first written above.

CITY OF MUSCATINE, IOWA

By: ______________________
DeWayne Hopkins, Mayor

Attest:

____
Gregg Mandsager, City Clerk

R.L. FRIDLEY THEATRES, INC.

By: ______________________
Brian Fridley, Vice President

FRIDLEY PROPERTIES, LLC

By: ______________________
Brian Fridley, General Manager

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Certain real property situated in the City of Muscatine, County of Muscatine, State of Iowa more particularly described follows:

Theatre Property: Lot 1 of Fridley Subdivision in the City and County of Muscatine, Iowa, according to the recorded plat thereof. Owner: R. L. Fridley Theatres, Inc.

Out Lots: Lots 2, 3, 4, 5, and 6 of Fridley Subdivision in the City and County of Muscatine, Iowa, according to the recorded plat thereof. Owner: Fridley Properties, LLC.

EXHIBIT B

TIMELINE AND DETAILS FOR INFRASTRUCTURE IMPROVEMENTS

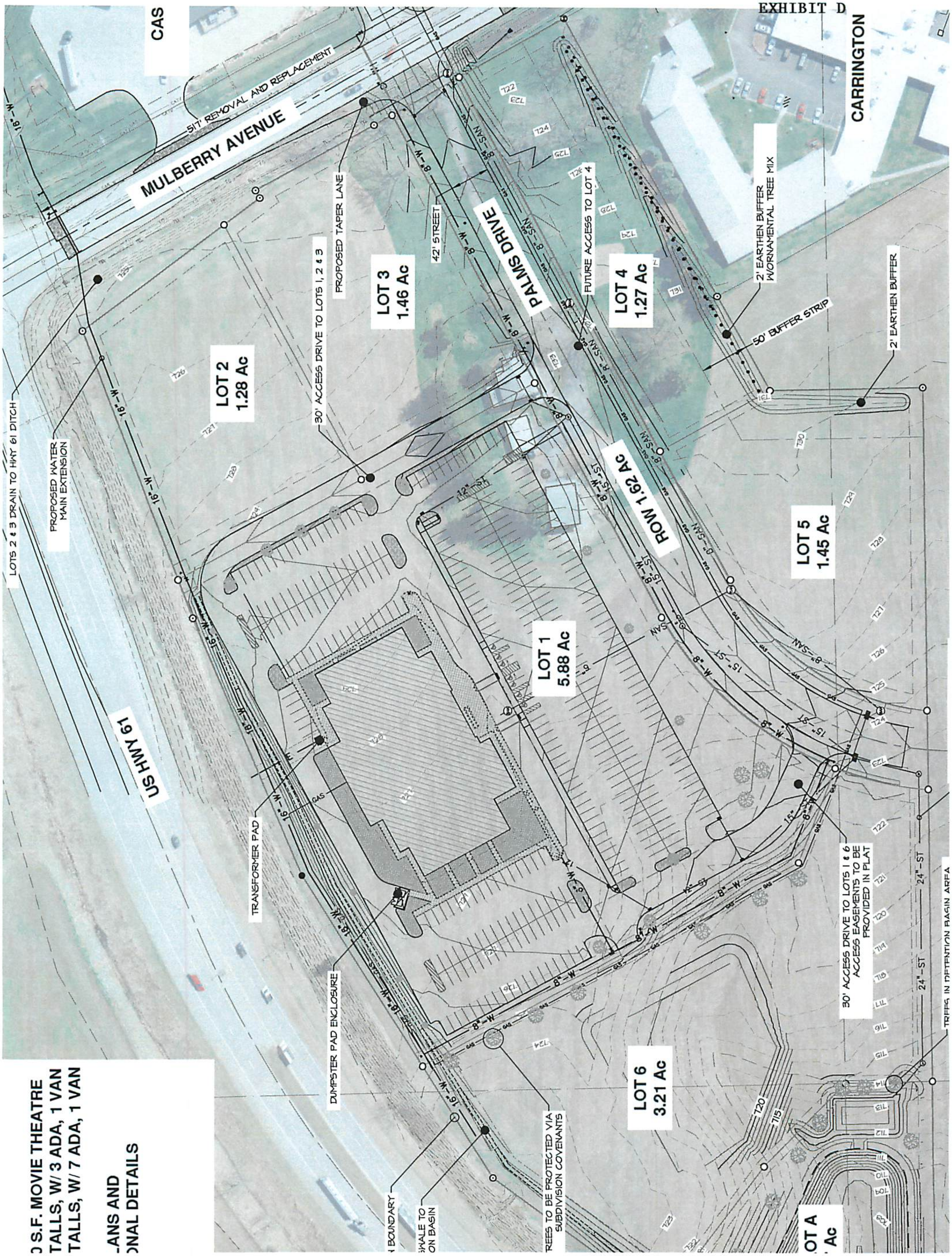
June 25, 2012 Anticipated commencement of construction

December 31, 2012 Anticipated completion of construction

FRIDLEY THEATRES AT MUSCATINE-PUBLIC INFRASTRUCTURE COSTS 06/21/12					
TABLE 1, EXPECTED BASE BID QUANTITIES					
ITEM NO	DESCRIPTION	ESTIMATED QUANTITY	UNITS	UNIT COST	TOTAL COST
1	MOBILIZATION	1	L.S.	$ 52,800.00	$ 52,800.00
2	CLEARING AND GRUBBING	1	L.S.	3,500.00	3,500.00
3	REMOVAL OF EXISTING BUILDINGS	1	L.S.	9,700.00	9,700.00
4	PLUGGING OF EXISTING WELLS	1	L.S.	2,000.00	2,000.00
5	SWPPP MANAGEMENT	1	L.S.	1,500.00	1,500.00
6	STABILIZED CONSTRUCTION ENTRANCE	1	L.S.	17,500.00	17,500.00
7	TRAFFIC CONTROL	1	L.S.	5,000.00	5,000.00
				SUBTOTAL	$ 92,000.00
DIVISION B-GENERAL SITE IMPROVEMENTS (SITE GRADING, SWPPP, STORMWATER IMPROVEMENTS)					
8	CLASS 10 EARTHWORK	19440	C.Y.	$ 2.50	$ 48,600.00
9	STRIP, STOCKPILE AND SPREAD TOPSOIL	2000	C.Y.	2.50	5,000.00
10	DETENTION BASIN AREA IMPROVEMENTS	1	L.S.	25,000.00	25,000.00
11	EROSION STONE	100	TON	32.00	3,200.00
12	SILT FENCING	1340	L.F.	2.50	3,350.00
13	PERMANENT SEED, MULCH & FERTILIZE, TYPE 1	1500	SQUARE	5.50	8,250.00
14	PERMANENT SEED, MULCH & FERTILIZE, TYPE 2	1500	SQUARE	5.50	8,250.00
15	TEMPORARY SEEDING	15	ACRE	440.00	6,600.00
16	ROLLED EROSION CONTROL PRODUCTS (RECP)	80	SQUARE	6.60	528.00
17	DUST CONTROL	1	L.S.	3,000.00	3,000.00
18	SINGLE GRATE INTAKE W/MANHOLE (SW-503)	2	EACH	4,750.00	9,500.00
19	SINGLE GRATE INTAKE (SW-501)	2	EACH	4,750.00	9,500.00
20	CIRCULAR STORM MANHOLE (SW-401)	4	EACH	2,940.00	11,760.00
21	12" CLASS 2000D RCP STORM SEWER	142	L.F.	16.80	2,385.60
22	15" CLASS 2000D RCP STORM SEWER	465	L.F.	29.00	13,485.00
23	18" CLASS 2000D RCP STORM SEWER	42	L.F.	41.00	1,722.00
24	24" CLASS 2000D RCP STORM SEWER	369	L.F.	40.80	15,055.20
25	24" RCP APRON	1	EACH	500.00	500.00
26	12" RCP APRON	1	EACH	500.00	500.00
27	VEGETATIVE BUFFER STRIP	1	L.S.	10,538.00	10,538.00
28	SITE LANDSCAPING	1	L.S.	By Owner	
				SUBTOTAL	$ 186,723.80
DIVISION C-ROADWAY IMPROVEMENTS (IMPROVEMENTS FOR PUBLIC STREET)					
29	SUBGRADE PREPARATION	4611	S.Y.	$ 1.50	$ 6,916.50
30	COREOUT EXCAVATION	461	S.Y.	3.00	1,383.00
31	SUBGRADE TREATMENT	0	S.Y.	36.50	-
32	8" P.C.C. PAVEMENT	4182	S.Y.	41.00	171,462.00
33	GRANULAR SUBBASE	1540	TON	17.50	26,950.00
34	4" SUBDRAIN	1700	L.F.	8.98	15,266.00
35	4" P.C.C. SIDEWALK	774	S.Y.	31.50	24,381.00
36	R3-B TRAFFIC BARRICADE	1	EACH	500.00	500.00
37	PAVEMENT MARKINGS	1	L.S.	1,300.00	1,300.00
				SUBTOTAL	$ 248,158.50
DIVISION D-PARKING LOT IMPROVEMENTS					
	Not Included				
DIVISION E-MULBERRY AVENUE IMPROVEMENTS					
60	9" P.C.C. PAVEMENT W/CD BASKETS	2516	S.Y.	$ 55.40	$ 139,386.40
61	8" P.C.C. PAVMENT W/CD BASKETS	272	S.Y.	52.50	14,280.00
62	7" P.C.C. PAVEMENT	196	S.Y.	44.00	8,624.00
63	P.C.C. DRIVEWAY REPLACEMENT	90	S.Y.	54.00	4,860.00
64	GRANULAR SUBBASE	1020	TON	17.50	17,850.00
65	REMOVE EXISTING PAVEMENT	2880	S.Y.	10.00	28,800.00
66	SUBGRADE PREPARATION	3074	S.Y.	1.50	4,611.00
67	PAVEMENT MARKINGS ON MULBERRY AVENUE	1	L.S.	1,500.00	1,500.00
68	4" SUBDRAIN	1046	L.F.	8.98	9,393.08
69	GRANULAR SHOULDER	758	L.F.	11.00	8,338.00
70	PERMANENT SEEDING	100	SQUARE	5.50	550.00

				SUBTOTAL	$ 238,192.48
DIVISION F-WATER MAIN IMPROVEMENTS					
71	MOBILIZATION	1	L.S.	$ 1,500.00	$ 1,500.00
72	16" WATER MAIN	2458	L.F.	62.00	152,396.00
73	8" WATER MAIN	1378	L.F.	29.00	39,962.00
74	6" WATER MAIN (PRIVATE MAIN)	259	L.F.	16.00	
75	24" TAPPING SLEEVE & VALVE	1	L.S.	16,500.00	16,500.00
76	16" VALVE W/BOX	3	Each	4,500.00	13,500.00
77	8" VALVE W/BOX	3	Each	1,290.00	3,870.00
78	6" POST INDICATOR VALVE	1	Each	1,725.00	
79	16" X 16" DIP CROSS	2	Each	2,500.00	5,000.00
80	16" X 6" DIP TEE	1	Each	1,350.00	1,350.00
81	6" TAPPING SLEEVE & VALVE	1	Each	3,750.00	3,750.00
82	8" TAPPING SLEEVE & VALVE	1	Each	3,800.00	3,800.00
83	16" WATER MAIN W/ CASING	56	L.F.	385.00	21,560.00
84	8" WATER MAIN W/CASING	67	L.F.	230.00	15,410.00
85	16" X 8" DIP REDUCER	1	Each	700.00	700.00
86	8" X 6" DIP TEE	1	Each	380.00	
87	8" X 8" DIP TEE	1	Each	400.00	400.00
88	FIRE HYDRANT	8	Each	3,500.00	28,000.00
89	REMOVE & REPLACE EXISTING P.C.C. PARKING	590	S.Y.	37.00	21,830.00
90	PERMANENT SEEDING	380	Square	5.50	2,090.00
				SUBTOTAL	$ 331,618.00
DIVISION G-SANITARY SEWER IMPROVEMENTS					
91	SANITARY SEWER MANHOLE P-1	1	Each	$ 6,100.00	6,100.00
92	SANITARY SEWER MANHOLE P-2	1	Each	7,000.00	7,000.00
93	SANITARY SEWER MANHOLE P-3	1	Each	7,000.00	7,000.00
94	SANITARY SEWER MANHOLE P-4	1	Each	6,500.00	6,500.00
95	SANITARY SEWER MANHOLE P-5	1	Each	5,700.00	5,700.00
96	SANITARY SEWER MANHOLE (PROP. SITE MANHOLE)	1	Each	4,000.00	
97	CONNECTION TO EXISTING MANHOLE	1	Each	1,000.00	1,000.00
98	8" PVC TRUSS PIPE	1450	L.F.	61.50	89,175.00
99	6" PVC SEWER SERVICE PIPE	262	L.F.	28.00	
100	4" PVC SEWER SERVICE W/WYE	19	L.F.	20.00	380.00
101	MAN SAND BACKFILL	100	TON	16.80	1,680.00
				SUBTOTAL	$ 124,535.00
	PUBLIC CONSTRUCTION TOTAL				**$ 1,221,227.78**
A	CONSTRUCTION CONTINGENCY (Unforseen Costs)			5%	$ 61,000.00
B	CONSTRUCTION ENGINEERING (Observation, Meetings, Payment Processing, Change Orders, etc)			5%	61,000.00
C	CONSTRUCTION STAKING (Setting paving, grading and utility stakes)			2.5%	31,000.00
D	CONSTRUCTION TESTING (CIVIL ONLY-SEE TERRACON ESTIMATE)			0.50%	6,000.00
E	PUBLIC WORKS ENGINEERING DESIGN (M&W)			8%	98,000.00
F	STREET LIGHTING COSTS (EIL&P ESTIMATE)				25,000.00
G	LAND COSTS				45,000.00
H	LEGAL COSTS				5,000.00
I	**ADDITIONAL COST TOTALS**				**$ 332,000.00**
	ESTIMATED PUBLIC CONSTRUCTION TOTAL PHASE TOTAL				**$ 1,553,227.78**

EXHIBIT D


MULBERRY AVENUE
51' REMOVAL AND REPLACEMENT
PALMS DRIVE
42' STREET
PROPOSED TAPER LANE
30' ACCESS DRIVE TO LOTS 1, 2 & 3
FUTURE ACCESS TO LOT 4
LOT 2
1.28 Ac
LOT 3
1.46 Ac
LOT 4
1.27 Ac
LOT 1
5.88 Ac
LOT 5
1.45 Ac
LOT 6
3.21 Ac
ROW 1.62 Ac
US HWY 61
CARRINGTON
CAS
2' EARTHEN BUFFER W/ORNAMENTAL TREE MIX
50' BUFFER STRIP
2' EARTHEN BUFFER
LOTS 2 & 3 DRAIN TO HWY 61 DITCH
PROPOSED WATER MAIN EXTENSION
TRANSFORMER PAD
DUMPSTER PAD ENCLOSURE
TREES TO BE PROTECTED VIA SUBDIVISION COVENANTS
30' ACCESS DRIVE TO LOTS 1 & 6 ACCESS EASEMENTS TO BE PROVIDED IN PLAT
0 S.F. MOVIE THEATRE
TALLS, W/ 3 ADA, 1 VAN
TALLS, W/ 7 ADA, 1 VAN
LANS AND
ONAL DETAILS
OT A
' Ac