



City of Muscatine



AGENDA ITEM SUMMARY

DATE: 03/18/21

STAFF

Carol Webb, City Administrator
Nancy Lueck, Finance Director

SUBJECT

Resolution Approving an Amended Development Agreement with R.L. Fridley Theatres, Inc. and Fridley Properties, LLC.

EXECUTIVE SUMMARY

The purpose of this item is to consider a resolution amending the development agreement with R.L. Fridley Theatres, Inc. and Fridley Properties, LLC to temporarily amend the minimum job requirements set forth in the original agreement and to extend by one additional year the timeline for tax increment payments for development of the adjacent Out Lots. These changes are requested due to the economic impacts of the COVID-19 pandemic on the theatre industry.

STAFF RECOMMENDATION

Staff recommends approval of the Resolution.

BACKGROUND/DISCUSSION

The City Council approved the original Development Agreement with Fridley Theatres, Inc. and Fridley Properties, LLC ("the Developer") on June 21, 2012. The City and the Developer now propose to amend the original agreement as follows:

1. Minimum Job Requirements

The original development agreement required that the Developer create a minimum of 20 new jobs with an annual payroll of not less than \$175,000. Due to the COVID-19 pandemic, the Developer is currently unable to meet the minimum job requirements and may also be hindered in doing so in the near term given the prolonged economic impacts of COVID-19.

The City and the Developer are consequently proposing the following amended agreement terms:

- a. Temporarily suspend the Minimum Job Requirements while the Iowa Governor's Proclamation of Public Health Disaster Emergency related to the COVID-19 pandemic (initially proclaimed by the Governor on March 17, 2020) remains in effect.
 - b. Upon the final expiration of the COVID-19 Proclamation, the Developer shall have two years, beginning on the expiration date of the COVID-19 Proclamation and ending on the two-year anniversary date of such expiration date, to ramp up to the Minimum Jobs Requirement.
 - c. During the two-year recovery period, employee headcount and payroll shall be not less than 50% of the amounts specified in this Agreement.
2. Extend by one additional year the timeline for tax increment payments for development of the adjacent Out Lots.

The original agreement allowed for tax increment payments to the Developer for development of the Out Lots adjacent to the Facility on the Theatre site and states that no Out Lot Payments shall be made after June 1, 2034. The Developer has requested that the deadline for Out Lot Payments be extended to the degree allowed by Iowa law, which is one year, or June 1, 2035.

3. Additional minor edits are proposed to various sections of the Agreement to reflect the actual timing of completion of the Theatre Facility.

CITY FINANCIAL IMPACT

There is not a negative financial impact to the City associated with the proposed changes. Providing some flexibility to the Developer will support the ongoing operation of the Theatre through the COVID-19 pandemic.

ATTACHMENTS

Resolution
Amended Development Agreement

APPROVE AMENDED DEVELOPMENT
AGREEMENT

(R.L. Fridley Theatres, Inc./Fridley
Properties, LLC)

421464-34

Muscatine, Iowa

March 18, 2021

A meeting of the City Council of the City of Muscatine, Iowa, was held at Seven o'clock p.m., on March 18, 2021, pursuant to the rules of the Council.

The City Council met electronically via GoToMeeting, which was accessible at the following:

<https://global.gotomeeting.com/join/489477325>

The City Council conducted this meeting electronically due to federal and state government recommendations in response to COVID-19 pandemic conditions. Electronic access information was included in the posted agenda of this public meeting.

The Mayor presided and the roll was called, showing members present and absent as follows:

Present: _____

Absent: _____.

Council Member _____ introduced the resolution next hereinafter set out and moved its adoption, seconded by Council Member _____; and after due consideration thereof by the Council, the Mayor put the question upon the adoption of said resolution, and the roll being called, the following named Council Members voted:

Ayes: _____

Nays: _____.

Whereupon, the Mayor declared said resolution duly adopted, as follows:

RESOLUTION 2021-0098

Resolution Approving Amended Development Agreement with R.L. Fridley Theatres, Inc. and Fridley Properties, LLC

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, the City has previously entered into a certain development agreement (the "Original Agreement") with R.L. Fridley Theatres, Inc. and Fridley Properties, LLC (collectively the "Developer") in connection with the development of a commercial multiplex theatre facility and certain out lots adjacent thereto (the "Project") on certain real property in the Urban Renewal Area; and

WHEREAS, under the Agreement, the City would provide annual appropriation tax increment payments (the "Payments") to the Developer in a total amount not exceeding \$3,000,000; and

WHEREAS, the City and the Developer now propose to amend the Original Agreement in order to (1) make certain changes to the Minimum Jobs Requirement (as defined in the Original Agreement); (2) adjust the time period during which the annual appropriation tax increment payments will be made to the Developer; and (3) make other related changes; and

WHEREAS, an amended agreement (the "Amended Agreement") has been prepared to set forth the new understanding between the City and the Developer; 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; and

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 Council hereby reaffirms that:

(a) The Project will add diversity and generate new opportunities for the Muscatine and Iowa economies;

(b) The 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 property tax incentives.

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

Section 3. The Amended Agreement is hereby approved, and the Mayor and City Clerk are hereby authorized and directed to execute and deliver the Amended Agreement on behalf of the City, in substantially the form and content in which the Amended 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 Amended Agreement.

Section 4. All payments by the City under the Amended Agreement shall continue to be subject to annual appropriation by the City Council, in the manner set out in the Amended Agreement. As provided and required by Chapter 403 of the Code of Iowa, the City's obligations under the Amended Agreement shall be payable solely from a subfund (the "R.L. Fridley Theaters, Inc. Subfund") which was established by prior resolution of the City Council, 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:

Certain real property situated in the City of Muscatine, County of Muscatine, State of Iowa more particularly described 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 Amended 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, provided, however, that no payment will be made

under the Amended Agreement unless and until monies from the R.L. Fridley Theaters, Inc. Subfund are appropriated for such purpose by the City Council.

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 on March 18, 2021.

Mayor

Attest:

City Clerk

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On motion and vote the meeting adjourned.

Mayor

Attest:

City Clerk

STATE OF IOWA
MUSCATINE COUNTY
CITY OF MUSCATINE

I, the undersigned, City Clerk of the aforementioned City, 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 an Amended Development Agreement.

WITNESS MY HAND hereto affixed this ____ day of _____, 2021.

City Clerk



March 11, 2021

Via Email

Carol Webb
City Administrator/City Hall
Muscatine, IA

Re: R.L. Fridley Theatres, Inc./Fridley Properties, LLC Amended Development
Agreement
File No. 421464-34

Dear Carol:

Attached please find proceedings covering the adoption of a resolution approving the Amended Development Agreement with R.L. Fridley Theatres, Inc. and Fridley Properties, LLC.

We would appreciate receiving one fully executed copy of these proceedings as soon as they are available.

Please contact John Danos, Severie Orngard, or me if you have questions.

Kind regards,

Amy Bjork

Attachments

cc: Nancy Lueck
Andrew Fangman
Jodi Royal-Goodwin
Cinda Hilger

AMENDED DEVELOPMENT AGREEMENT

This Amended Development 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 _____, 2021 (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 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, the City and the Developer entered into a Development Agreement (the "Original Agreement") dated June 21, 2012, pursuant to which the Developer agreed to comply with the Minimum Jobs Requirement, undertake the Infrastructure Project and undertake the development of the Theater Site and the Out Lots; and the City agreed to provide financial assistance to the Developer in the form of incremental property tax payments; and

WHEREAS, due to the impact of the Novel Coronavirus 2019 pandemic, the City has agreed to make certain changes to the Minimum Jobs Requirement set forth in the Original Agreement; and

WHEREAS, the City and the Developer have agreed to adopt this Amended Development Agreement (the "Agreement") to reflect the mutual understanding of the City and the Developer with respect to the Minimum Jobs Requirement; and

WHEREAS, this Agreement will replace the Original Agreement; 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 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, 2013.

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 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.

**A Proclamation of Public Health Disaster Emergency related to the COVID-19 pandemic (the "COVID-19 Proclamation"), was initially proclaimed by the Governor of Iowa on March 17, 2020, and has subsequently been extended multiple times. While the COVID-19 Proclamation remains in effect, the Minimum Jobs Requirement, in terms of both numbers of employees that are employed in connection with the Developer's operations of the Facility and the total annual payroll, is suspended. Upon the final expiration of the COVID-19 Proclamation, the Developer shall have two years, beginning on the expiration date of the COVID-19 Proclamation and ending on the two-year anniversary date of such expiration date, to ramp up to the Minimum Jobs Requirement. During the two-year recovery period, employee headcount and payroll shall be not less than 50% of the amounts specified in this Agreement, and the Developer shall comply with the reporting requirements set forth in this Section A.6. The Developer hereby acknowledges*

that failure to comply with this Section A.6 will result in the City having the right to withhold Payments under Section B of this Agreement at its sole discretion.

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 agreed to pay to the City an amount equal to the legal fees incurred by the City with respect to the drafting of the Original 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 the Original Agreement.

The Developer hereby agrees to cover the legal fees and administrative costs incurred by the City in connection with the drafting, negotiation and authorization of this Agreement up to an amount not in excess of \$3,000. The Developer further agrees to remit payment to the City within 30-days of the submission of reasonable documentation by the City to the Developer evidencing such costs.

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 Developer 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 Developer 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 Developer 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 went on the property tax rolls as of January 1, 2014. Accordingly, Theatre 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, 2030, 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
2015-2016	95%	2023-2024	60%
2016-2017	95%	2024-2025	60%
2017-2018	90%	2025-2026	55%
2018-2019	90%	2026-2027	50%
2019-2020	85%	2027-2028	50%
2020-2021	85%	2028-2029	50%
2021-2022	80%	2029-2030	50%
2022-2023	80%		

2. Out Lot Payments. Furthermore, in recognition of the Developer’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 Developer 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 is made, and continuing for a total of ten (10) fiscal years.

For example, assuming the Out Lot Certification #1 is made October 1, 2022, then Out Lot Payments will be made on December 1 and June 1 of each fiscal year, beginning December 1, 2023, and continuing through and including June 1, 2033, 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 six (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, 2023, then Out Lot Payments will be made on December 1 and June 1 of each fiscal year, beginning December 1, 2024, and continuing through and including June 1, 2034, 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 six (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, 2024, then Out Lot Payments will be made on December 1 and June 1 of each fiscal year, beginning December 1, 2025 and continuing through and including June 1, 2035, 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 Developer 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 Developer 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, 2035.

4. Certification of Payment Obligation. The City Clerk will certify by no later than December 1, 2014, 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: _____
Mayor

Attest:

City Clerk

R.L. FRIDLEY THEATRES, INC.

By: _____
[Name, Title]

FRIDLEY PROPERTIES, LLC

By: _____
[Name, Title]

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

EXHIBIT C

SUMMARY OF ACCEPTED INFRASTRUCTURE COSTS

EXHIBIT D

SITE PLAN