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COMMUNITY DEVELOPMENT

MEMORANDUM

Planning,
Zoning,
Building Safety,
Construction Inspection Services,
Public Health,
Housing Inspections,
Code Enforcement

To: Mayor and City Council Members
Cc: Gregg Mandsager, City Administrator
From: Steven Boka, Director of Community Development
Date: July 30, 2012
Re: Pre-Annexation Agreement – Ripley's Development Corp. & Ripley's, Inc.

INTRODUCTION: In 2009, the City voluntarily annexed two parcels of property referred to as the Bermel/Ripley property. As a part of the pre-annexation agreement with the owners, the City agreed to assist the owners in their efforts to extend sanitary sewer to serve the Ripley's Mobile Home Park. To that end, the city has participated in discussions with the IDNR, secured a planning & design funding through the SRF, participated in the submission of 2 separate CDBG applications, and evaluated the construction of a force main sewer or a gravity sewer to serve a larger area.

BACKGROUND: The discussions have progressed to a point where the sewer project has grown beyond serving only the Ripley's property, to a point where the construction of a gravity sewer that would serve a much larger area of approximately 1,200 acres. The design and installation costs are expected to be retired through the one-time up-front payment of \$400,000.00 by Ripley's, development of a benefit district that will require future connections to pay a connection fee based on the acreage served, taxes generated by the voluntary annexation of Ripley's to the City of Muscatine, additional road use taxes generated by the increase in population, and the donation of easement necessary to build the sewer. Preliminary discussion with property owners that are directly affected by the sewer extension has resulted in their informal agreement to voluntarily annex to their property into the city and donate the easements necessary for the construction of the property. Those negotiations are continuing and will be formally presented to the City for approval as a part of the voluntary annexation of Ripley's in accordance with the pre-annexation agreement. Any future requests to connect to the sanitary sewer will be tied to voluntarily annexation.

RECOMMENDATION/RATIONALE: It is recommended that the City Council approve the Pre-Annexation with Ripley's as attached hereto.

BACKUP INFORMATION:

1. Pre-Annexation Agreement.

PREANNEXATION AGREEMENT

This Preannexation Agreement is entered into this 16th day of July, 2012, by and among Ripley Development Corp., an Iowa Corporation and Ripley Inc., an Iowa Corporation ("Ripley's"), and the City of Muscatine, Iowa (the "City").

WHEREAS, Ripley's owns certain real property more specifically described on Exhibit "A", and shown on Exhibit "B", located in unincorporated Muscatine County, Iowa, and being immediately adjacent to the corporate limits of the City; and

WHEREAS, Ripley's desires to voluntarily annex their respective properties into the City; and

WHEREAS, Ripley's Property is currently zoned **M-1 and C-1** under the Muscatine County Zoning Ordinance; and

WHEREAS, Ripley's intends to continue the existing use on its properties; and

WHEREAS, Ripley's requests appropriate zoning with the City under the applicable City ordinance for Manufactured Homes and Highway Commercial; and

WHEREAS, the parties hereto desire to enter into this Agreement to clarify and define their respective rights and responsibilities.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements set forth below, the parties hereto agree as follows:

1. **Annexation.** The City agrees to assist Ripley's to annex their property into the City upon the terms and conditions set forth in this Agreement.

2. **Requirement to Annex.** Ripley's shall within thirty (30) days following the approval of this Agreement, petition the City for voluntary annexation of their property into the City pursuant to applicable Iowa Code and City Ordinance Sections. Ripley's will not resist the annexation of their property, appearing on Exhibit "A", and hereto, out of Muscatine County and into the City. All costs associated with Ripley's request for voluntary annexation shall be the responsibility of Ripley's, including annexation filing fees, document production, and recording fees. Each party shall be responsible for their own attorney's fees, if any.

3. **Code Compliance.** Ripley's agrees to comply with all existing or amended building codes, with the understanding that all existing infrastructure, structures and setbacks existing as of the date of this agreement will be "grandfathered" in and no changes will be required to existing.

4. **Ripley's Obligations.** Ripley's shall assume the following obligations under this Agreement:

- (1) Payment of a one-time fee of \$400,000, payable to the City for use towards the infrastructure necessary to provide sanitary sewer service to Ripley's property. Said payment shall be due and payable to the City on, or before the execution of the contract to construct the sanitary sewer.
- (2) Donate all easements necessary to accommodate the permanent installation of the City's proposed infrastructure as shown on Exhibit C.
- (3) Ripley's agrees to pay a maximum of \$7,500.00 for all reasonable costs associated with the acquisition of easements needed by the city for the construction of the sanitary sewer as shown on Exhibit C.
- (4) Payment of "normal" City fees for sanitary sewer and garbage collection.

5. **City obligations.** The City shall assume the following obligations under this Agreement:

- (1) The City agrees to design, construct and/or pay for any infrastructure costs required by the City or others to provide adequate sanitary sewer service to Ripley's property.
- (2) The City will allow the Ripley's to be billed as a "single source" user.
- (3) The City will assume all responsibilities for maintenance, upkeep, repair and replacement of the sewer line constructed to the metering pit located in the donated easement provided by Ripley's. Ripley's shall be responsible for all infrastructure beyond that point.
- (4) The City agrees to continue to work with Muscatine Power & Water to extend municipal water to a metering point where Ripley's will use a stand-alone water distribution system, so long as the system complies with all state and local requirements. If municipal water is extended as herein provided, Ripley's will not be assessed any additional fees with respect to the water extension. Ripley's will be charged at the metered rate in accordance with applicable Muscatine Power & Water usage rates.
- (5) The City will allow the Ripley's Development Property to be zoned R-4 and C-1 upon its annexation to the City.
- (6) The City agrees to allow Ripley's to pay 75% of City portion of its property tax until municipal water is extended to a metering point intended to serve the property, or for a period not to exceed forty-eight (48) months from the date of annexation, whichever comes first. After that 100% of City portion of property taxes will be paid by Ripley's.
- (7) The City agrees to provide "normal" city services to Ripley's.
- (8) The City agrees to work diligently to complete the sanitary sewer infrastructure in a timely manner and will coordinate their schedule with the Iowa DNR.

6. Sewer Hookup Fees.

a. Ripley's and the City agree that the Ripley's mobile home park will connect to the sanitary sewer system of the City and the water system of Muscatine Power and Water's upon its extension to Ripley's Property. The City will charge Ripley's the City's standard city-wide rate, based on flow readings, for the usage sanitary sewer system. The City's standard rate is currently \$1.95 per 100 c.f. for sanitary sewer. The City agrees that it will continue to charge Ripley's for sanitary sewer system based on flow rates until such time as municipal water service becomes available at a distribution pit. Ripley's agrees to connect to the public water supply once it becomes available at the normal commercial rates as established by Muscatine Power & Water. Garbage collection will be based on the rate structure used by the City for residential customers.

7. Assignment. Except as provided below, this Agreement may not be assigned by any party without the express written permission of the other parties. However, the City hereby gives its permission that (i) Ripley's may assign its rights in this Agreement to a successor entity for development purposes, and The City further agrees that Ripley's, and their heirs, successors or assigns may assign their rights in this Agreement to a private lender, as security, without further action by the City.

8. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, legal representatives and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto, and their respective heirs, successors, legal representatives and permitted assigns, any rights, remedies, liabilities or obligations under or by reason of this Agreement.

9. Governing Law. All rights and obligations arising out of or related to this Agreement, and the application and interpretation hereof, shall be governed by and construed in accordance with the laws of the State of Iowa.

10. Dispute Resolution.

a. All disputes, controversies and questions directly or indirectly arising under, out of, in connection with or in relation to this Agreement or its subject matter, including without limitation, all disputes, controversies and questions relating to the validity, negotiation, interpretation, construction, performance, termination and enforcement of the Agreement shall be resolved finally and conclusively in accordance with this section, which shall be the sole and exclusive procedure for the resolution of any dispute.

b. The parties shall attempt in good faith to resolve any dispute promptly by negotiation. If the matter has not been resolved within twenty days after a party's request for negotiation, any party may initiate a request for mediation.

c. If mediation does not resolve the dispute, the disputing parties will agree on an independent arbitrator within ten days of notification by either party of request for formal arbitration. An arbitrator will be selected by agreement of the parties and an arbitration meeting will be set within thirty days, with all remaining disputes submitted to the arbitrator. All disputes will be finalized by the decision of the arbitrator.

d. Nothing in this paragraph shall prohibit either party from seeking injunctive relief.

e. Each party shall be required to pay their own attorney's fees

11. **Recitals Inclusive.** The above listed recitals are incorporated into this Agreement except that this Agreement is subject to Ripley's receiving clear and marketable title to this property.

12. **Execution of Documents.** All parties agree to execute and deliver whatever documents or assurances as may be reasonably necessary to implement the terms and conditions of this Agreement and effectuate the intent hereof. The parties hereto will cooperate fully

13. **Entire Agreement.** This Agreement, the exhibits attached and the documents delivered and recorded pursuant hereto constitute the entire agreement and understanding among the parties and supersede and revoke any prior agreements or understandings relating to the subject matter of this Agreement.

14. **Amendments.** No change, amendment, termination, or attempted waiver or variation of the terms and conditions of this Agreement shall be valid unless the same follows applicable statutes.

15. **Captions.** The headings, captions or titles of articles, sections and paragraphs of this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement, and such titles or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions.

16. **Severability.** In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid, legal and enforceable. In the event any provision of this Agreement is held to be invalid, illegal or unenforceable as written, but valid, legal and enforceable if modified, then such provision shall be deemed to be amended to such extent as shall be necessary for such provision to be valid, legal and enforceable and it shall be enforced to that extent. Any finding of invalidity, illegality or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

17. **Counterparts.** This Agreement may be executed by one or more of the parties hereto on any number of separate counterparts (including by facsimile transmission), and all of said counterparts taken together shall be deemed to constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this 16th day of July, 2012.

RIPLEY DEVELOPMENT CORP., AN IOWA CORPORATION
AND
RIPLEY INC., AN IOWA CORPORATION

By: David Ripley
David Ripley, President

CITY OF MUSCATINE

[SEAL OF CITY OF MUSCATINE, IOWA]

By: _____
DeWayne Hopkins, Mayor

ATTESTED TO:

By: _____
Gregg Mandsager, City Clerk