



Date January 11, 2021

RESOLUTION APPROVING CHAPTER 28E AGREEMENT BETWEEN CITY OF DES MOINES AND CITY OF URBANDALE TO ESTABLISH A JOINT BOARD TO SUPPORT THE CREATION OF A REINVESTMENT DISTRICT FOR THE MERLE HAY MALL CAMPUS

WHEREAS, Des Moines and Urbandale desire to establish an Iowa Code Chapter 15J reinvestment district in furtherance of new development in the vicinity of Merle Hay Mall, and recent amendments to Chapter 15J allow for the establishment of a reinvestment district within combined City boundaries by a joint board or other legal entity established by contiguous cities pursuant to an Iowa Code Chapter 28E Agreement ("Joint Board"); and

WHEREAS, the creation of the Joint Board will allow for application to the Iowa Economic Development Authority, with submission deadline in February 2021, for reinvestment of certain State hotel and motel and sales and use tax revenues into the Merle Hay Mall campus if designated as a reinvestment district; and

WHEREAS, any reinvested State tax revenue funds are proposed to be used within the Merle Hay Mall campus solely for the redevelopment of the previous Younkers store building into a 3,500-seat multi-purpose ice hockey arena for relocation of the Des Moines Buccaneers and redevelopment of the original Kohl's store and food court into a 70,000-square foot ice facility, which reinvestment and redevelopment is anticipated to encourage other development on the Merle Hay Mall campus and the sustained economic viability of said campus; and

WHEREAS, the proposed Joint Board will be comprised of five members, including two from Des Moines, two from Urbandale and one from Polk County, and will be responsible for approving the reinvestment district plan for submission to IEDA, making all submissions required to IEDA of the plan, applications, and elements thereof, receiving and allocating the reinvestment district funds held in a special City of Urbandale account in the name of the Joint Board to support the eligible projects (ice arena and training center), and completing other administrative functions, all as more fully described in the Council Communication filed herewith; and

WHEREAS, the creation of the Joint Board, and the Board's duties and obligations, are set forth in the Chapter 28E Agreement negotiated by staff from the cities of Des Moines and Urbandale and in form on file in the office of the City Clerk.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

- 1. The Chapter 28E Agreement by and between the City of Des Moines, Iowa and City of Urbandale to Establish a Joint Board to Support the Creation of a Reinvestment District for the Merle Hay Campus is hereby approved, and the Mayor and City Clerk are hereby authorized and directed to execute and attest said Agreement, respectively.

★ Roll Call Number

21-0024

Agenda Item Number

22

Date January 11, 2021

- 2. The City Manager and designee(s) are hereby authorized and directed to administer the terms of said 28E Agreement on behalf of the City.

(Council Communication No. 21-012)

MOVED by Gray to adopt.

FORM APPROVED:

/s/ Glenna K. Frank
Glenna K. Frank
Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, GRAY, MANDELBAUM, VOSS, WESTERGAARD, and TOTAL (7).

MOTION CARRIED APPROVED
J. M. Franklin Cownie
Mayor

CERTIFICATE

I, P. KAY CMELIK, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

[Signature of P. Kay Cmelik]

City Clerk

**CHAPTER 28E AGREEMENT BETWEEN THE CITY OF DES MOINES,
IOWA AND THE CITY OF URBANDALE, IOWA REGARDING
ESTABLISHMENT OF A JOINT BOARD TO SUPPORT THE CREATION
OF A REINVESTMENT DISTRICT FOR THE MERLE HAY MALL
CAMPUS**

This Chapter 28E Agreement (hereinafter “Agreement”) is made and entered into by and among the City of Des Moines, Iowa (“Des Moines”) and the City of Urbandale, Iowa (“Urbandale”) (each a “Party” or “City” and collectively “the Parties” or “the Cities”) as of the dates set forth below.

PREAMBLE

WITNESSETH:

WHEREAS, Des Moines and Urbandale desire to enter into an Agreement pursuant to Iowa Code Chapter 28E (“Chapter 28E”) to pursue the revitalization of the Merle Hay Mall campus as depicted in Exhibit A (“Reinvestment District” or “District”), which District is located within the boundaries of both Des Moines and Urbandale; and

WHEREAS, Iowa Code Chapter 15J (“Reinvestment Act”) allows for the creation of a reinvestment district that includes property within the boundaries of two contiguous cities where those cities create a joint board or other legal entity pursuant to Chapter 28E to manage the district and its projects; and

WHEREAS, Des Moines and Urbandale desire to jointly and cooperatively create a joint board to establish and administer a reinvestment district under the Reinvestment Act to support the redevelopment of the Merle Hay Mall campus.

NOW THEREFORE, in consideration of the mutual undertakings hereby provided, Des Moines and Urbandale hereby agree as follows:

Part I – Establishment of a Joint Board

1. Purpose. Pursuant to Chapter 28E, the Parties agree the purpose of this Agreement is to create a joint board which shall take those actions necessary for the creation and administration of the Reinvestment District pursuant to Iowa Code Chapter 15J. The purpose of the Reinvestment District is to facilitate the redevelopment of the Merle Hay Mall campus.

2. Establishment of a Joint Board.

a. No separate legal or administrative entity shall be created by this Agreement. Rather, this Agreement establishes a “Joint Board” which shall function as a “Municipality” as defined in Section 2(7)(c) of the Reinvestment Act. For the avoidance of doubt, the Joint Board shall not be a municipality for any purpose other than taking those actions allowed or required by the Reinvestment Act.

- b. The Joint Board shall be comprised of the following five (5) members:
 - (1) A member of the economic development department staff from the City of Urbandale, as appointed by the Urbandale City Manager.
 - (2) A member of the finance department staff from the City of Urbandale, as appointed by the Urbandale City Manager.
 - (3) A member of the office of economic development staff from the City of Des Moines, as appointed by the Des Moines City Manager.
 - (4) A member of the finance department staff from the City of Des Moines, as appointed by the Des Moines City Manager.
 - (5) A representative of Polk County, Iowa, as appointed by the Polk County Administrator.

A member may be removed and/or replaced by the same official who appointed the member.

c. Each member of the Joint Board shall have one vote. The Joint Board shall only act pursuant to an affirmative vote of a majority (at least 3 out of 5) of all of the members of the Joint Board.

d. The Joint Board shall hold a regular meeting no fewer than two times per calendar year, on a date and at a time and place to be determined by the Administrator under this 28E Agreement as identified below. Other regular meetings of the Joint Board shall be held as determined necessary by the Administrator and/or by the Joint Board for performance of the duties and obligations set forth herein, on such dates and at such times and places as may be designated from time to time by the Administrator under this 28E Agreement as identified below.

3. Joint Board Powers. Except as expressly limited in this 28E Agreement, the Joint Board shall be empowered to take all actions required of a Municipality under the Reinvestment Act to create, oversee, and administer the Reinvestment District, including but not limited to the following:

a. Approve by resolution the proposed reinvestment district plan and any amended or revised district plan (collectively the “Plan”) prior to its submission to the Iowa Economic Development Authority (“IEDA”) as and to the extent set forth in Section 4(2) of the Reinvestment Act.

b. Submit a copy of the Joint Board’s resolution authorizing the Plan, the Plan, and all accompanying materials to the IEDA as and to the extent set forth in Section 4(3) of the Reinvestment Act.

c. Upon receiving approval from the IEDA, adopt a resolution establishing the Reinvestment District consistent with Section 4(4) of the Reinvestment Act, and notify the director of revenue of the District’s commencement date established by the IEDA and the information required by Section 4(4)(b) of the Reinvestment Act.

- d. Take all actions and adopt all resolutions necessary to amend an approved Plan as and to the extent set forth in Section 4(5) of the Reinvestment Act.
- e. Request an extension of the Reinvestment District pursuant to Section 8(3) of the Reinvestment Act.
- f. Dissolve the Reinvestment District by resolution pursuant to Section 8 of the Reinvestment Act and take all actions required by Section 8 following such dissolution.

Part II – Representations and Duties of the Parties.

1. Scope of Reinvestment District. The Parties acknowledge and agree the Reinvestment District to be created and administered by the Joint Board shall be that portion of each respective City depicted in Exhibit A. With respect to such property, the Cities represent and acknowledge:

- a. the property is suitable for development;
- b. the property consists only of parcels of real property that will be directly and substantially benefited by development in the Reinvestment District;
- c. the portion of the property in each City is part of an existing urban renewal area in that City;
- d. the property is contiguous and does not exceed seventy-five acres in total;
- e. the property does not include the entire incorporated area of either City; and
- f. the property is not included in another reinvestment district.

2. Creation of the Reinvestment District Plan and Associated Studies. The Parties acknowledge and agree that:

- a. The City of Urbandale shall be solely responsible for causing and paying for the completion of the reinvestment district plan, the feasibility study, and the economic impact study for the Reinvestment District as described in Section 4(2) of the Reinvestment Act, as well as any amendment to said documents as described in Section 4(5) of the Reinvestment Act.
- b. The completed Plan and associated studies, and any amendments thereto, are subject to approval by the Joint Board before submission to the IEDA as set forth in Section I.3. of this 28E Agreement.
- c. The projects to be pursued in the Reinvestment District and to be identified and described in the Plan as required by Section 4(2)(d) of the Reinvestment Act, may include, but are not limited to:
 - (1) New 3,500-seat Multi-use Arena;
 - (2) Sports Training and Competition Center;
 - (3) Multi-story Hotel; and

(4) Major improvements to Merle Hay Mall transitioning the area into a shopping and entertainment destination.

3. Reinvestment Project Fund. The Parties acknowledge and agree that:

- a. All funds disbursed by the State of Iowa from the state reinvestment district fund for the Reinvestment District shall be disbursed to the City of Urbandale on behalf of the Joint Board. The City of Urbandale shall deposit the funds received from the State of Iowa into a Reinvestment Project Fund in the name of the Joint Board and such funds shall be invested in accordance with the City of Urbandale's written investment policies.
- b. Subject to the restrictions set forth in this Agreement or any amendments hereto, the City of Urbandale shall have full authority to use all of the funds in the Reinvestment Project Fund to fund those projects within the City of Urbandale and the Reinvestment District as and to the extent provided for in Section 7 of the Reinvestment Act and in a manner strictly in accordance with the approved Plan, the resolution establishing the Reinvestment District and any other actions of the Joint Board setting out terms for allocation and disbursement of said funds.
- c. The City of Urbandale shall maintain a written record of Fund balances and all disbursements in to and out of the Reinvestment Project Fund and provide the Joint Board with a written report of all such balances and transactions on a quarterly basis.
- d. Neither Party shall contribute any other moneys into the Reinvestment Project Fund pursuant to Section 7(2) of the Reinvestment Act absent an amendment to this 28E Agreement.

4. Administrator. The Parties acknowledge and agree the Finance Director for the City of Urbandale shall be the Administrator under this 28E Agreement. The Administrator shall, in addition to other functions requested by affirmative action of the Joint Board:

- a. Maintain the records for the Reinvestment Project Fund and respond to any audits related thereto, including but not limited to the City of Urbandale's annual municipal audit reviewing said Fund. The Parties acknowledge and agree that including the Fund in the City of Urbandale's annual municipal audit shall be sufficient to satisfy this provision with respect to auditing the Fund; provided, however, that if the Fund cannot be included in the City's annual municipal audit for any reason, the Administrator shall ensure that the Fund is subject to a separate audit on an annual basis. The Parties agree the Administrator shall also send a copy of any audit results for the Fund to the Joint Board for its information.
- b. Remit any remaining funds in the Reinvestment Project Fund upon dissolution of the Reinvestment District consistent with Section 7(5) of the Reinvestment Act.

- c. Prepare and submit to the IEDA by October 1 of each year the annual report required by Section 4(6) of the Reinvestment Act. The Parties agree the Administrator shall also send a copy of this report to the City Council of each Party for its information (no approval is necessary from either City Council before the report is filed with the IEDA by the Administrator).
- d. Prepare and file the reports with the Secretary of State as and to the extent required by Iowa Code Section 28E.8.
- e. Take reasonable measures to ensure compliance with Iowa Code Chapters 21 and 22 with respect to the meetings of the Joint Board and its records, provided the Joint Board and its members act in a manner consistent with the direction/recommendation of the Administrator related thereto.
- f. Assist the State of Iowa Department of Revenue in identifying new retail establishments in the Reinvestment District collecting state sales tax and new lessors in the Reinvestment District collecting state hotel and motel tax.
- g. With respect to any obligation of the Joint Board under the Reinvestment Act, assist in providing the State of Iowa with sales information for new retail establishments and new lessors in the Reinvestment District and work with the State of Iowa to protect the confidentiality of each business' individual sales information to the greatest extent allowed by law.

Each Party shall otherwise separately administer its own activities.

- 5. Cooperation. The Parties agree:
 - a. To assist and cooperate with the Administrator in undertaking his/her obligations in Section 4(f-g) of this Part.
 - b. To coordinate their respective master planning efforts to the extent reasonably necessary to advance the projects identified in the Plan approved by the Joint Board
 - c. The City Council for each Party shall act to consider any Plan or amendment thereto, as well as any pre-application or application to be submitted to the IEDA, prior to the published deadlines for submitting applications to the IEDA and before the Joint Board submits the same to the IEDA.
 - d. The Joint Board and the members representing each Party on the Joint Board shall be expected to act in a manner consistent with Iowa Code Chapters 21 and 22 as and to the extent set forth in Iowa Code Section 28E.6.
- 6. Real Property. It is not contemplated that the Joint Board or either City will acquire, hold or dispose of any real property as part of this undertaking.

Part III - General Provisions.

1. Effective Date. Pursuant to Iowa Code Section 28E.8, the Parties agree this Agreement shall be effective upon its approval and execution by all Parties and its filing with the Iowa Secretary of State (the "Effective Date").

2. Term. This Agreement shall commence on the Effective Date and shall terminate on the earlier of: (a) five (5) years have elapsed from the Effective Date and the Reinvestment District has not been established under the Reinvestment Act; (b) when the Reinvestment District has been dissolved and all funds in the Reinvestment Project Fund, if any, are dispersed according to this Agreement; or (c) in the event of termination pursuant to Section 17 of this Part III. The Administrator shall file a statement of termination after such date with the Iowa Secretary of State.

3. Indemnification. Each Party ("Indemnifying Party"), to the fullest extent permitted by law, hereby agrees to indemnify, defend, pay on behalf of, and hold harmless the other Party, and its elected officials, its appointed officials, agents, employees and volunteers, and others working on behalf of such Party ("Indemnities"), against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys' fees and court costs, that may be asserted or claimed against, recovered from or suffered by the Indemnities by reason of any injury or loss arising out of any wrongful act or omission of the Indemnifying Party, including, but not limited to, bodily injury or death, property damage, including loss of use thereof, and economic damages that arise out of or are in any way connected to this Agreement. No Party shall have any right of indemnity for damages or claims proximately caused by its own negligent or intentionally wrongful acts. Each Party's agreements and obligations as set forth in this Paragraph are applicable for the duration of and following expiration or termination of this Agreement, regardless of the manner of termination, and notwithstanding other provisions of this Agreement.

4. Insurance. Each Party agrees in taking any action on behalf of the Joint Board under this Agreement, the Party's employees are acting on behalf of that Party in the employees' official capacities and such employees are covered by that Party's insurance policies or self-insurance obligations, as applicable, to the same extent as if the employees were taking action directly on behalf of the Party. Each Party shall be solely authorized to supervise, direct, and manage its own activities and the activities of its employees and agents hereunder.

5. Notices and Invoices. All notices which the parties are authorized or required to give one another pursuant to this Agreement shall be in writing and may be personally delivered or sent by ordinary mail to the addresses hereafter provided. Mailed notices shall be deemed to be received by the Party to whom directed when they are postmarked. Such notices and invoices shall be delivered or mailed to the following persons at the addresses listed:

Notices to Des Moines:
City Manager
City of Des Moines
400 Robert D. Ray Drive

Des Moines, Iowa 50309

Notices to Urbandale:

City Manager
City of Urbandale
3600 - 86th Street
Urbandale, IA 50322

6. Interpretation. If any section, provision or article of this Agreement shall be found to be invalid or unconstitutional, such finding shall not affect the validity of the Agreement as a whole or any section, provision or article thereof not found to be invalid or unconstitutional.

7. Entire Agreement. This Agreement represents the entire agreement between the Parties related to the establishment of the Joint Board and the creation and administration of the Reinvestment District. Any subsequent change or modification to the terms of this Agreement shall be in the form of a duly approved and executed amendment to this Agreement signed by both Parties and filed with the Iowa Secretary of State in accordance with Iowa Code Section 28E.8.

8. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Iowa.

9. Counterparts. This Agreement may be executed in multiple counterparts, each of which so executed shall be deemed to be an original.

10. No Assignment. Neither of the parties shall assign this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld.

11. Compliance. Each Party agrees it will comply with federal and state laws and regulations applicable to its performance under this Agreement.

12. Waiver. The failure of either of the Parties to enforce any right or provision under this Agreement will not constitute a waiver of such right or provision unless acknowledged and agreed to by such Party in writing. In addition, no waiver of a Party's right or remedy will affect the other provisions of this Agreement.

13. Force Majeure. Notwithstanding anything contained in this Agreement to the contrary, neither Party will be liable to the other for failure to comply with any obligation under this Agreement if such Party is prevented from doing so by reason of events beyond the reasonable control of the Party.

14. No Third Party Beneficiaries. This Agreement is entered into by and between the Parties hereto for their benefit. There is no intent by any Party to create, imply, or establish a third party beneficiary or status or rights in any person except as expressly set forth in this Agreement, and no such third party will have any right to enforce any benefit created or established under this Agreement.

15. Construction. The Parties agree this Agreement was prepared by the combined efforts of the Parties and their attorneys and the Agreement shall not be construed against any Party as the drafter of the Agreement.

16. Declaration of Default and Notice.

a. Each Party shall have the right to enforce compliance with the terms and obligations of this Agreement by the other Party and/or the Joint Board.

b. In the event that any Party determines that the other Party and/or the Joint Board has defaulted in the performance of its obligations hereunder, the aggrieved Party may declare that default has occurred and give notice thereof to the defaulting Party/Joint Board, as applicable. Notice of default shall be given in writing, shall specify the nature of the default and the provision of the Agreement involved, and shall specify what action is required of the defaulting Party and/or Joint Board to correct the default. The defaulting Party and/or Joint Board, as applicable, shall have thirty (30) calendar days from the date of its receipt of the notice of default to correct the default. If at the end of said thirty (30) calendar-day period the default has not, in the opinion of the aggrieved Party, been corrected, the aggrieved Party may enforce its interest in the Agreement, as provided in Section 17 of this Agreement.

17. Enforcement of Agreement; Termination.

a. Any Party may institute such legal proceedings as may be necessary or desirable, at its discretion, to cure or remedy any uncured default(s) following notice and right to cure as set forth in Section 16 of this Part, including, but not limited to, proceedings to compel specific performance by the non-complying Party and/or Joint Board, and for any damages arising out of said default and/or breach of this Agreement.

b. If the Parties hereto abide by this Agreement but the Parties and/or Joint Board are unable to complete the projects funded by the Plan for reasons beyond their respective control, and/or if approval and/or funding for the Plan is revoked, withheld or withdrawn for any reason by IEDA or a similar entity or agency, then either Party may terminate this Agreement in its entirety by providing written notice to the other Party. Such termination shall be effective on the thirtieth (30th) calendar day following the giving of notice, and subject to resolution by the Joint Board to dissolve the Reinvestment District pursuant to Section 8 of the Reinvestment Act which resolution shall be completed no later than the thirtieth (30th) calendar day following the giving of notice. The parties agree that upon such termination, this Agreement and all obligations of the parties hereunder will terminate and cease; provided, however, that the obligations of the Joint Board to dissolve the Reinvestment District by resolution pursuant to Section 8 of the Reinvestment Act and take all actions required by Section 8 following such dissolution, and of the Administrator to remit any remaining funds in the Reinvestment Project Fund upon dissolution of the Reinvestment District consistent with Section 7(5) of the Reinvestment Act, shall all survive such termination.

CITY OF URBANDALE, IOWA

By: [Signature]
Robert D. Andeweg, Mayor

Attest: [Signature]
Nicole Lunders, City Clerk

Date: JANUARY 12, 2021

APPROVED AS TO FORM:

/s/ Robert Laden
Robert Laden, City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 12th day of January, 2021, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared Robert D. Andeweg and Nicole Lunders, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Urbandale, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Urbandale, Iowa, by authority of its City Council, as contained in the Resolution adopted by City, Robert D. Andeweg and Nicole Lunders acknowledged the execution of the instrument to be the voluntary act and deed of City of Urbandale, Iowa, by it and by them voluntarily executed.

[Signature]
Notary Public in the State of Iowa

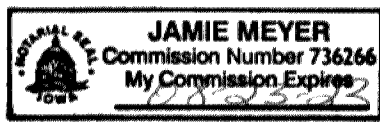
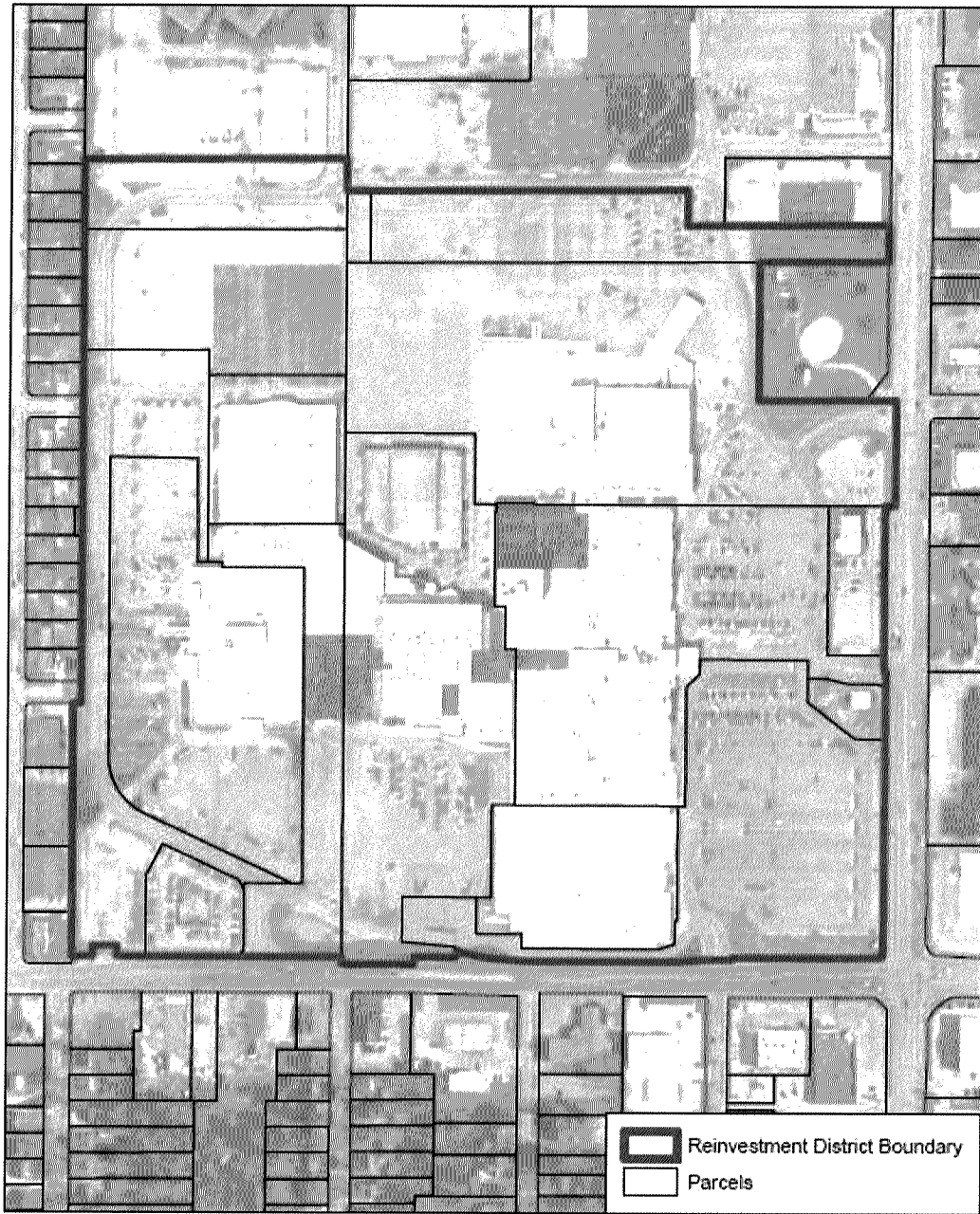
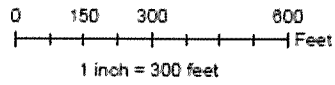


EXHIBIT A
Reinvestment District



Proposed Merle Hay Reinvestment District
District Size = 74.67 acres



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