Cinergy Entertainment Amarillo, INC
Summary

Project Goal:

Cinergy Entertainment Amarillo, INC received financial assistance to construct and develop a 90,000 ft^2 multi-use entertainment center at the intersection of Time Square and Chatham Square.

Incentive Details:

Agreement Start Year: 2021
Agreement End Year: 2030

Developer's Obligations:

- Invest a minimum of $25,000,000 in capital investment in the Center
- Establish a minimum of one hundred (100) full-time equivalent jobs with 45 days
- Receive a building permit and necessary government approvals within one hundred eighty (180) days after purchase or lease of Property
- Receive a certificate of occupancy with eighteen (18) months after building permit issuance

City Obligations:

- Annually pay the Company a Program Grant Payment until the expiration of the Agreement as follows:
    - Fifty percent (50%) of the net amount of the one percent (1%) of Municipal Sales Tax that is paid to the City by the Comptroller from the Center.

Benefit to City:

1. Enhances and diversifies economic and industrial base of Amarillo area.
2. Contributes to the retention and expansion of primary employment.
3. Attracts major investment that will be of benefit to the City.
4. Contributes to the economic development of the City.

AMENDMENT TO

CITY OF AMARILLO, TEXAS
AND
CINERGY ENTERTAINMENT AMARILLO, INC

CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AGREEMENT

This CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT is hereby amended as follows:

SECTION 5. OBLIGATIONS OF COMPANY.

The Company covenants and agrees with the City that, while this Agreement is in effect, it shall comply with the following terms and conditions:

(1) <u>Completion of Improvements</u>. The Company agrees that the Improvements must receive a building permit and necessary governmental approvals no later than **September 1, 2017**; Company further agrees that the Improvements will be completed and receive a Certificate of Occupancy no later than **November 30, 2018**. If requested in writing by the Company, the City will extend these deadlines, if in the City's reasonable discretion the City determines that an extension is warranted upon (a) an event of Force Majeure that suspends construction of the Improvements for a period of time such as to prevent the Improvements from receiving the Certificate of Occupancy by November 1, 2018; (b) disruption due to construction of infrastructure improvements by the City for a period of time such as to prevent the Improvements from receiving the Certificate of Occupancy by _____________, 201X; or (c) Company and City mutually agree to one (1) extension period of not more than 90 days. Failure to complete the Improvements as herein required, including the minimum capital investment, shall be considered an Event of Default under this agreement.

. . . .

All remaining provisions of the Agreement remain unchanged and enforceable.

CITY OF AMARILLO, TEXAS

By: ____________________
Jared Miller
City Manager

Date: 04/05/2017

CINERGY ENTERTAINMENT AMARILLO, INC
A business corporation

By: ______________________
Its: President

By: ______________________________

_________________, President

Date: ______________________________

DRAFT

CITY OF AMARILLO, TEXAS
AND
CINERGY ENTERTAINMENT AMARILLO, INC.

CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AGREEMENT

This CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (the "Agreement") is made and entered into by and between the CITY OF AMARILLO, TEXAS, a Texas home rule municipality ("City"), and CINERGY ENTERTAINMENT AMARILLO, INC., a Texas corporation ("Company"), each of which may be singularly referred to as "Party" and jointly referred to as "Parties," for the purposes and considerations stated below.

WHEREAS, the Company has applied to the City for financial assistance to construct and develop a multi-use entertainment center to be located at the intersection of Time Square and Chatham Square, Amarillo, Texas ("Center"); and

WHEREAS, the City has the authority under Article 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code ("Chapter 380") to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City; and

WHEREAS, the City desires to provide, pursuant to Chapter 380, an incentive to the Company to construct and develop the multi-use entertainment center; and

WHEREAS, the City has determined that a grant of funds to the Company will serve the public purpose of promoting local economic development, and stimulating business and commercial activity within the City, and creating and retaining jobs.

NOW THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the Parties.

SECTION 2. PROGRAM APPROVED.

The City Council of the City hereby establishes a Chapter 380 economic development program (the "Program") to facilitate the construction and development of the Center and determines that this Agreement will effectuate the purposes of the Program, and that the Company's performance of its obligations herein will promote local economic development and stimulate business and commercial activity in the City.

SECTION 3. TERM.

This Agreement shall be effective as of the Effective Date and shall terminate when all terms and conditions of this Agreement have been fulfilled, unless terminated earlier pursuant to the terms of this Agreement.

SECTION 4. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement:

"Agreement" means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.

"City" means the City of Amarillo, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 509 S.E. 7th Avenue, Amarillo, Texas 79101.

"Company" means Cinergy Entertainment Amarillo, Inc., a Texas business corporation, authorized to do business in Texas, whose address for the purposes of this Agreement is 5720 LBJ Freeway, Suite 625, Dallas, Texas 75240

"Effective Date" means the last date this Agreement is signed by either Party.

"Event of Default" means and includes any of the Events of Default set forth below in the section entitled "Events of Default."

"Force Majeure" means any act of God or the public enemy, war, riot, civil commotion, fire, explosion or flood, and strikes or other act beyond the reasonable control of the Parties, but not including lack of funds.

"Certificate of Occupancy" means an approval issued by the City after final inspection reflecting that construction of the Improvements has been completed in conformance with all appropriate City codes and requirements.

"Improvements" means: (1) the complete construction of the multi-purpose entertainment center to be located at the intersection of Chatham Square and Time Square on a +/- 11 acre site and a constructed facility of approximately ninety thousand (90,000) square feet, as shown on the Concept Plan attached as Exhibit C. The minimum capital investment in the Center will be Twenty Five Million Dollars ($25,000,000.00).

"Jobs" means a full-time job requiring a minimum of 2080 hours of work per year, including allowance for vacation and sick leave. Salary or wages must equal at least the federal minimum wage. Total hours of all part-time employees shall be combined and divided by 2080 to determine the number of full-time jobs to be provided by part-time employees. Includes only employment jobs at the Center and not independent contractors unless specifically provided for in this Agreement. The term Jobs shall include employees of Cinergy Entertainment Amarillo, Inc., Cinergy Entertainment Group, Inc. and their affiliates and subsidiaries, janitorial type workers, or other contractors working for independent contractors approved by the City Manager, providing such employees work at the Center under contracts with Cinergy Entertainment Amarillo, Inc, or Cinergy Entertainment Group, Inc. and meeting any other qualifications required by this Agreement, including the provision of documentation sufficient to audit such jobs.

"Program Grant" or "Program Grant Payment" means the economic development grants paid by the City to the Company in accordance with this Agreement.

"Property" means that real property on which the Center is to be located and being more particularly described on the attached Exhibit B.

"Sales Tax" means the City's municipal sales and use tax, currently at the rate of one percent (1.0%), pursuant to Section 321.103 of the Texas Tax Code, as amended, generated from the Center and received by the City; provided, should the Texas Legislature amend the applicable tax code provision to increase or decrease the amount of allowed municipal sales and use tax, then in the event of a decrease, Sales Tax shall mean the actual amount of sales and use tax received by the City, and in the event of an increase, the Sales Tax shall mean one percent (1.0%). Sales taxes specifically excluded from this definition include any present or future sales tax that, on account of their designation or commission to a specific purpose or entity pursuant to state or local law, are not retained by the City for general use.

"Sales Taxes Paid" means Sales Tax paid to and received by the City net of any fees charged by the State Comptroller, generated by the Center.

"Sales Tax Report" has the meaning set forth in Section 5(5).

"Center" means the multi-purpose entertainment center to be located at the intersection of Time Square and Chatham Square, Amarillo, Texas.

"Tenants" means the tenants or other occupants operating businesses within the Center

SECTION 5. OBLIGATIONS OF COMPANY.

The Company covenants and agrees with the City that, while this Agreement is in effect, it shall comply with the following terms and conditions:

(1) Completion of Improvements. The Company agrees that the Improvements must receive a building permit and necessary governmental approvals no later than one-hundred eighty (180) days after the purchase or lease by the Company of the Property; Company further agrees that the Improvements will be completed and receive a Certificate of Occupancy within eighteen months (18) from above. If requested in writing by the Company, the City will extend these deadlines, if in the City's reasonable discretion the City determines that an extension is warranted upon (a) an event of Force Majeure that suspends construction of the Improvements for a period of time such as to prevent the Improvements from receiving the Certificate of Occupancy within eighteen (18) months;

(b) disruption due to construction of infrastructure improvements by the City for a period of time such as to prevent the Improvements from receiving the Certificate of Occupancy within said 18-months; or (c) Company and City mutually agree to one (1) extension period of not more than 90 days. Failure to complete the Improvements as herein required, including the minimum capital investment, shall be considered an Event of Default under this Agreement.

(2) Creation of Employment Opportunities. The Company agrees that as a part of the development, new employment opportunities are to be created. The Company agrees to establish a minimum of One Hundred (100) full time equivalent Jobs within 45 days following the opening of the Center for business with the public. The minimum number of full time equivalent Jobs shall be maintained for the entire term of this agreement.

(3) Performance. The Company agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between the Company and the City.

(4) Undocumented Workers. The Company certifies that the Company does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended, in carrying out its obligations under this Agreement. If during the Term of this Agreement, the Company is convicted of a violation under 8 U.S.C. § 1324a (f), Company will repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of the prime rate published in the *Wall Street Journal on the date of the conviction* plus two percent (2%) per annum, not later than the 120th day after the date the City notifies the Company of the violation .

(5) Sales Tax Reports. The Company shall authorize or use its reasonable efforts to cause the Tenants to authorize the State Comptroller to issue Sales Tax Reports to the City for the total taxable sales consummated at the Center on an annual basis, but only to the extent that the City does not have access to such Sales Tax Reports. The City's obligations to make Program Grant Payments are contingent upon receipt of (or access to) the Sales Tax Reports or the tax information contemplated in the next succeeding sentence. In the event such Sales Tax Reports are not available from the State Comptroller, the Company shall use its reasonable efforts to provide the City with information to verify taxable sales from the Center before any Program Grant Payment will be made.

(6) Taxes. During the term of the Agreement, the Company shall timely pay all ad valorem taxes and other charges due by the Company to the City (to the extent not being contested in good faith), failure to do so shall constitute a default of this Agreement by the Company. Additionally, the Company, upon the City's request, will furnish evidence reasonably satisfactory to the City, on or before the first March 1 following issuance of the Certificate of Occupancy for the Improvements, and on or before March 1 of each year thereafter during the Term of this Agreement, that there are no delinquent Sales Taxes, City utility charges or fees, or ad valorem taxes due and owing as to the Property and that all such taxes for the preceding calendar year have been paid in full (to the extent not being contested in good faith).

SECTION 6. OBLIGATIONS OF CITY.

Program Grant Payments shall be paid according to the following terms:

(1) Sales Tax Rebate.

(a) Program Grant Payment. Upon the satisfaction of the Company's obligations under Section 5, and so long as the Company remains in compliance with the provisions of Section 5, the City agrees to pay the Company a Program Grant Payment equal to fifty percent (50%) of the net amount (gross amount less 2% for Comptroller's Service fee) of the 1% of Municipal Sales Tax that is paid to the City by the Comptroller from the Center, which payment shall be made as provided in Subsection (b) immediately below. The Program Grant Payment shall continue for a period of ten (10) years commencing on the date the first Program Grant Payment is paid to the Company.

(b) Grant Paid Annually. The City will pay the Program Grant Payment on an annual basis, based on the Sales Tax Report from the State Comptroller or the verified tax information received by the City during each calendar year (sales tax reporting periods include November – October). The City will remit the Program Grant Payment to the Company by March 31st of the year following such calendar year.

(c) Partial Compliance. In the event that Company has not complied with the Jobs requirements for a particular year, the annual payment to Company will be reduced in the manner herein described. Once the approved reduced Program Grant Payment is made for a particular year, Company will be considered to have satisfied the requirements for jobs for that year, if in compliance with all other conditions of this Agreement, and to have earned the incentive for that year under this Section 6; and City will be considered to have satisfied its grant requirement for that year.

(i) At 80 to 89 Jobs, Company shall receive a reduced payment equivalent to 50% of the authorized Program Grant Payment; 90 to 99 Jobs would qualify for 75% of the authorized Program Grant Payment; and at least 100% Jobs would qualify for the full authorized Program Grant Payment. The adjusted Program Grant Payment for one year and the acceptance of partial performance for that year shall not waive any other requirements of this Agreement except for the Jobs and grant amounts for that year. If the number of Jobs is less than 80, this section shall not apply and the Company shall not receive any Program Grant Payment for that year nor be considered to have satisfied the Jobs requirement for that year.

SECTION 7. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

(1) Default. Failure of the Company or the City to comply with or to perform any term, obligation, covenant or condition contained in this Agreement (except as to the requirement for Jobs) or in any related documents, and the Company or the City fails to cure such failure within thirty (30) days after written notice from the City or the Company, as the case may be, describing such failure, or if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if the Company or the City fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure.

(2) False Statements. Any written warranty, representation or statement made or furnished to the City by the Company, or the City to the Company under this Agreement or any document(s) related hereto furnished by the Company or the City to the receiving Party is/are false or misleading in any material respect, either now or at the time made or furnished, and the furnishing Party fails to cure same within thirty (30) days after written notice from the receiving Party describing the violation, or if such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if the furnishing Party fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such violation, or if the furnishing Party obtains actual knowledge that any such warranty, representation or statement has become false or misleading after the time that it was made, and the furnishing Party fails to provide written notice to the receiving Party of the false or misleading nature of such warranty, representation or statement within ten (10) days after the furnishing Party learns of its false or misleading nature.

(3) Insolvency. The dissolution or termination of the Company's existence as a going business or concern, the Company's insolvency, appointment of receiver for any part of the Company's property, any assignment of all or substantially all of the assets of the Company for the benefit of creditors of the Company, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Company unless, in the case of involuntary proceedings, such proceedings are discharged within ninety (90) days after filing.

SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

(1) Notice and Remedies. In the event of default under this Agreement, including without limitation, Section 7, the non-defaulting Party shall give written notice to the defaulting Party of any default, and the defaulting Party shall have the period provided in Section 7 to cure said default. Should said default remain uncured as of the last day of the applicable cure period and the non-defaulting Party is not otherwise in default, the non-defaulting Party shall have the right to immediately terminate this Agreement. In the event the City terminates this Agreement as a result of the foregoing, it will have no further obligation to make any remaining Program Grant Payment, including that of the current year, nor the preceding years. Additionally, the Company will immediately owe the City repayment of the previous Program Grant Payments made to the Company, plus interest at the rate of the prime rate published in the *Wall Street Journal* on the date of termination plus two percent (2%) per annum. The Company shall pay such funds to the City within sixty (60) days of termination.

(2) Damage Limitation. Under no circumstances shall the Company be liable to the City under this Agreement for damages in excess of the aggregate amount of funds paid by the City to the Company pursuant to this Agreement. Neither party shall be liable to the other party for indirect, special or consequential damages except as provided for in Section 5.

SECTION 9. ADDITIONAL SALES TAX PROVISIONS

The following additional sales tax provisions are a part of this Agreement:

(1) Legislative or Judicial Changes. In the event of any legislative or judicial interpretation that limits or restricts the City's ability to pay the general sales and use tax rebates herein provided or otherwise extracts or imposes any penalty or other restriction upon the payment of same, such rebate will cease as of the effective date of such limitation or restriction and be of no further force, effect or consequence in which event the City shall be under no further obligation to the Company as of the effective date of such limitation or restriction. However, the City and the Company agree to modify the rebate provided for herein to the extent permitted by such legislative or judicial action to the fullest extent then authorized without penalty or other restriction upon the City for the payment of same.

(2) Erroneously Paid Sales Tax. In the event the State Comptroller determines, for any reason, that any sales and use taxes were erroneously paid to the City from the sales provided for herein and the City shall be required to rebate or repay any portion of such taxes, the amount of such rebate or repayment shall be deducted from the calculation of the Sales Taxes Paid, and in the event the calculation of Sales Taxes Paid for a Program Grant Payment shall reflect an overpayment by the City to the Company, the Company agrees to immediately reimburse the City the amount of such overpayment. Notification of any such required adjustment will be provided to the Company at the earliest practical date.

SECTION 10. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

(1) Amendments. At any time, the City and the Company may determine that this Agreement should be amended for the mutual benefit of the Parties, or for any other reason, including an amendment to induce the Company to continue development and commercial activities in the City when this Agreement could otherwise be terminated. The City and the Company agree to consider reasonable requests for amendments to this Agreement which may be made by any of the Parties hereto, lending institutions, bond counsel or financial consultants. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of both the City and the Company.

(2) Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Randall County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Potter County, Texas.

(3) Assignment. This Agreement may not be assigned without the written consent of the other Party, which consent shall not be unreasonably withheld.

(4) Binding Obligation. This Agreement shall become a binding obligation on the Parties upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. The Company warrants and represents that the individual executing this Agreement on the Company's behalf has full authority to execute this Agreement and bind it to the same.

(5) Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

(6) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

(7) Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties as to the matters set forth in this Agreement. No other understanding, oral or otherwise, in direct conflict with this Agreement shall be deemed to exist or to bind any of the Parties hereto. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Agreement. Neither Party is relying on any statement, representation, or warranty of the other Party not expressly set out in this Agreement. Each of the undersigned authorized representatives of the Parties, warrants and represents and does hereby state and represent that no promise or agreement which is not herein expressed has been made to him or her in executing this Agreement, and that neither of the signatories is relying upon any statement or representation of any agent of the Parties. Each Party is relying on his or her own judgment and each Party has been represented by independent counsel of its choosing. This Agreement shall not be construed against the drafter hereof, but shall be construed as if all Parties drafted the same.

(8) Force Majeure. It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of Force Majeure, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such Party was delayed. This section does not affect the Company's obligations or the City's discretion described in Section 5(1).

(9) Further Acts and Releases. The City and the Company each agrees to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder.

(10) Governmental Powers; Waiver of Immunity. By execution of this Agreement, the City does not waive or surrender any of its governmental powers, immunities or rights.

(11) No Third Party Beneficiaries. The performance of the respective obligations of the City and the Company under this Agreement are not intended to benefit any Party other than the City or the Company, except as expressly provided otherwise herein. No person or entity not a signatory to this Agreement shall have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement, except as expressly provided otherwise herein.

(12) Notices. Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by hand, or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, or (iii) upon deliver via a delivery service, Federal Express or any other nationally recognized overnight courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof, and addressed as follows:

If to Company:	Cinergy Entertainment Amarillo, Inc 5720 LBJ Freeway, Suite 625 Dallas, Texas 75240 ATTN: Jeff Benson, CEO
With a copy to:	Law Office of Douglas C. Peter 11910 Greenville Ave., Suite 400 Dallas, TX 75243 ATTN: Douglas C. Peter, Esq.
If to the City:	City of Amarillo 509 S.E. 7th Avenue Amarillo, Texas 79101 ATTN: City Manager

(13) Right of Offset. The City may, at its option, after prior written notice and a 30 day period to cure, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due and owing to the City from the Company, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

(14) Relationship of Parties. The Parties shall not be deemed in a relationship of partners or joint ventures by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement.

(15) Severability. The City and the Company declare that the provisions of this Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then such term, condition or provision shall be severed from this Agreement and the remainder of the Agreement enforced in accordance with its terms.

(16) Time is of the Essence. Time is of the essence in the performance of this Agreement.

(17) Attorneys' Fees. In the event that either Party hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, the prevailing Party in that action or proceeding shall be entitled to have and recover from the non-prevailing Party all such fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing Party may suffer or incur in the pursuit or defense of such action or proceeding.

CITY OF AMARILLO, TEXAS

By: W. J. Atkinson
W. Jarrett Atkinson
City Manager

Date: 10/29/15

CINERGY ENTERTAINMENT AMARILLO, INC., a Texas business corporation

By: Jeffrey P. Benson
Name: Jeffrey P. Benson
Title: Chief Executive Officer

Date: October 28, 2015

EXHIBIT "A"

Table: Sample Sales Tax Amounts Paid to the City

TABLE: Sample Sales Tax Amounts Paid to the CITY

Month	2014	2016
January	$10	$15
February	$15	$20
March	$10	$15
April	$15	$20
May	$10	$15
June	$10	$15
July	$15	$20
August	$10	$15
September	$10	$15
October	$5	$10
November	$10	$15
December	$10	$20
Total	$130	$195

Rebate Calculations based on issuance of Certificate of Occupancy:

Full Year

Issued January 1, 2016 the Sales Tax Paid = $195.
Full Year Rebate = (Actual 2016 of $195) x 50% = $97.50 Rebate.

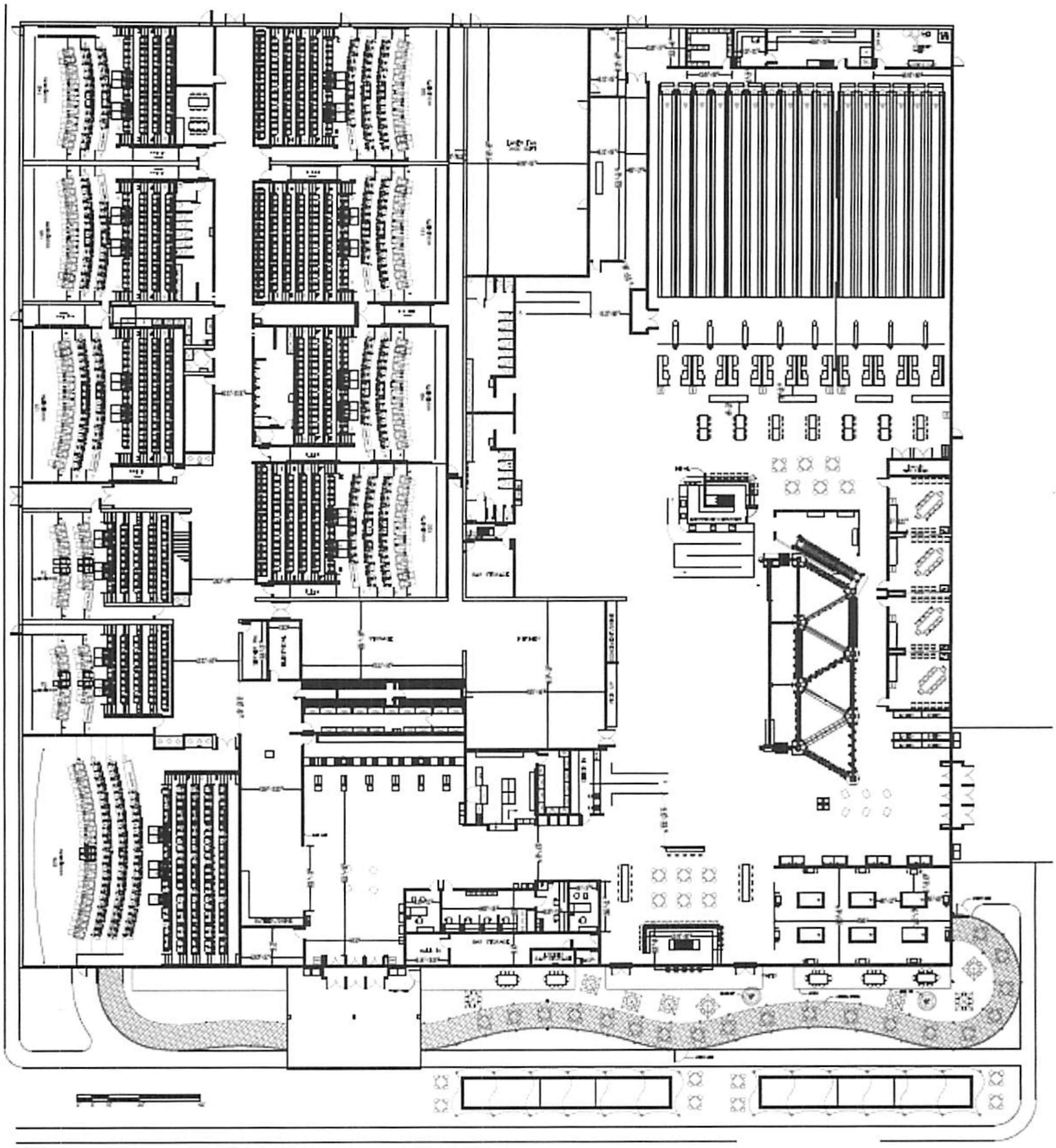
EXHIBIT "B"

Legal Description of the Center

Company to provide legal description of the property within 90 days of the date of execution of this agreement

EXHIBIT "C"

Concept Plan



CITY OF AMARILLO, TEXAS
AND
CINERGY ENTERTAINMENT AMARILLO, INC.

CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AGREEMENT

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WHEREAS, the Company has applied to the City for financial assistance to construct and develop a multi-use entertainment center to be located at the intersection of Time Square and Chatham Square, Amarillo, Texas ("Center"); and

WHEREAS, the City has the authority under Article 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code ("Chapter 380") to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City; and

WHEREAS, the City desires to provide, pursuant to Chapter 380, an incentive to the Company to construct and develop the multi-use entertainment center; and

WHEREAS, the City has determined that a grant of funds to the Company will serve the public purpose of promoting local economic development, and stimulating business and commercial activity within the City, and creating and retaining jobs.

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SECTION 2. PROGRAM APPROVED.

The City Council of the City hereby establishes a Chapter 380 economic development program (the "Program") to facilitate the construction and development of the Center and determines that this Agreement will effectuate the purposes of the Program, and that the Company's performance of its obligations herein will promote local economic development and stimulate business and commercial activity in the City.

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"Jobs" means a full-time job requiring a minimum of 2080 hours of work per year, including allowance for vacation and sick leave. Salary or wages must equal at least the federal minimum wage. Total hours of all part-time employees shall be combined and divided by 2080 to determine the number of full-time jobs to be provided by part-time employees. Includes only employment jobs at the Center and not independent contractors unless specifically provided for in this Agreement. The term Jobs shall include employees of Cinergy Entertainment Amarillo, Inc., Cinergy Entertainment Group, Inc. and their affiliates and subsidiaries, janitorial type workers, or other contractors working for independent contractors approved by the City Manager, providing such employees work at the Center under contracts with Cinergy Entertainment Amarillo, Inc, or Cinergy Entertainment Group, Inc. and meeting any other qualifications required by this Agreement, including the provision of documentation sufficient to audit such jobs.

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"Property" means that real property on which the Center is to be located and being more particularly described on the attached Exhibit B.

"Sales Tax" means the City's municipal sales and use tax, currently at the rate of one percent (1.0%), pursuant to Section 321.103 of the Texas Tax Code, as amended, generated from the Center and received by the City; provided, should the Texas Legislature amend the applicable tax code provision to increase or decrease the amount of allowed municipal sales and use tax, then in the event of a decrease, Sales Tax shall mean the actual amount of sales and use tax received by the City, and in the event of an increase, the Sales Tax shall mean one percent (1.0%). Sales taxes specifically excluded from this definition include any present or future sales tax that, on account of their designation or commission to a specific purpose or entity pursuant to state or local law, are not retained by the City for general use.

"Sales Taxes Paid" means Sales Tax paid to and received by the City net of any fees charged by the State Comptroller, generated by the Center.

"Sales Tax Report" has the meaning set forth in Section 5(5).

"Center" means the multi-purpose entertainment center to be located at the intersection of Time Square and Chatham Square, Amarillo, Texas.

"Tenants" means the tenants or other occupants operating businesses within the Center

SECTION 5. OBLIGATIONS OF COMPANY.

The Company covenants and agrees with the City that, while this Agreement is in effect, it shall comply with the following terms and conditions:

(1) Completion of Improvements. The Company agrees that the Improvements must receive a building permit and necessary governmental approvals no later than one-hundred eighty (180) days after the purchase or lease by the Company of the Property; Company further agrees that the Improvements will be completed and receive a Certificate of Occupancy within eighteen months (18) from above. If requested in writing by the Company, the City will extend these deadlines, if in the City's reasonable discretion the City determines that an extension is warranted upon (a) an event of Force Majeure that suspends construction of the Improvements for a period of time such as to prevent the Improvements from receiving the Certificate of Occupancy within eighteen (18) months;

(b) disruption due to construction of infrastructure improvements by the City for a period of time such as to prevent the Improvements from receiving the Certificate of Occupancy within said 18-months; or (c) Company and City mutually agree to one (1) extension period of not more than 90 days. Failure to complete the Improvements as herein required, including the minimum capital investment, shall be considered an Event of Default under this Agreement.

(2) Creation of Employment Opportunities. The Company agrees that as a part of the development, new employment opportunities are to be created. The Company agrees to establish a minimum of One Hundred (100) full time equivalent Jobs within 45 days following the opening of the Center for business with the public. The minimum number of full time equivalent Jobs shall be maintained for the entire term of this agreement.

(3) Performance. The Company agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between the Company and the City.

(4) Undocumented Workers. The Company certifies that the Company does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended, in carrying out its obligations under this Agreement. If during the Term of this Agreement, the Company is convicted of a violation under 8 U.S.C. § 1324a (f), Company will repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of the prime rate published in the *Wall Street Journal on the date of the conviction* plus two percent (2%) per annum, not later than the 120th day after the date the City notifies the Company of the violation .

(5) Sales Tax Reports. The Company shall authorize or use its reasonable efforts to cause the Tenants to authorize the State Comptroller to issue Sales Tax Reports to the City for the total taxable sales consummated at the Center on an annual basis, but only to the extent that the City does not have access to such Sales Tax Reports. The City's obligations to make Program Grant Payments are contingent upon receipt of (or access to) the Sales Tax Reports or the tax information contemplated in the next succeeding sentence. In the event such Sales Tax Reports are not available from the State Comptroller, the Company shall use its reasonable efforts to provide the City with information to verify taxable sales from the Center before any Program Grant Payment will be made.

(6) Taxes. During the term of the Agreement, the Company shall timely pay all ad valorem taxes and other charges due by the Company to the City (to the extent not being contested in good faith), failure to do so shall constitute a default of this Agreement by the Company. Additionally, the Company, upon the City's request, will furnish evidence reasonably satisfactory to the City, on or before the first March 1 following issuance of the Certificate of Occupancy for the Improvements, and on or before March 1 of each year thereafter during the Term of this Agreement, that there are no delinquent Sales Taxes, City utility charges or fees, or ad valorem taxes due and owing as to the Property and that all such taxes for the preceding calendar year have been paid in full (to the extent not being contested in good faith).

SECTION 6. OBLIGATIONS OF CITY.

Program Grant Payments shall be paid according to the following terms:

(1) Sales Tax Rebate.

(a) Program Grant Payment. Upon the satisfaction of the Company's' obligations under Section 5, and so long as the Company remains in compliance with the provisions of Section 5, the City agrees to pay the Company a Program Grant Payment equal to fifty percent (50%) of the net amount (gross amount less 2% for Comptroller's Service fee) of the 1% of Municipal Sales Tax that is paid to the City by the Comptroller from the Center, which payment shall be made as provided in Subsection (b) immediately below. The Program Grant Payment shall continue for a period of ten (10) years commencing on the date the first Program Grant Payment is paid to the Company.

(b) Grant Paid Annually. The City will pay the Program Grant Payment on an annual basis, based on the Sales Tax Report from the State Comptroller or the verified tax information received by the City during each calendar year (sales tax reporting periods include November – October). The City will remit the Program Grant Payment to the Company by March 31st of the year following such calendar year.

(c) Partial Compliance. In the event that Company has not complied with the Jobs requirements for a particular year, the annual payment to Company will be reduced in the manner herein described. Once the approved reduced Program Grant Payment is made for a particular year, Company will be considered to have satisfied the requirements for jobs for that year, if in compliance with all other conditions of this Agreement, and to have earned the incentive for that year under this Section 6; and City will be considered to have satisfied its grant requirement for that year.

(i) At 80 to 89 Jobs, Company shall receive a reduced payment equivalent to 50% of the authorized Program Grant Payment; 90 to 99 Jobs would qualify for 75% of the authorized Program Grant Payment; and at least 100% Jobs would qualify for the full authorized Program Grant Payment. The adjusted Program Grant Payment for one year and the acceptance of partial performance for that year shall not waive any other requirements of this Agreement except for the Jobs and grant amounts for that year. If the number of Jobs is less than 80, this section shall not apply and the Company shall not receive any Program Grant Payment for that year nor be considered to have satisfied the Jobs requirement for that year.

SECTION 7. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

(1) Default. Failure of the Company or the City to comply with or to perform any term, obligation, covenant or condition contained in this Agreement (except as to the requirement for Jobs) or in any related documents, and the Company or the City fails to cure such failure within thirty (30) days after written notice from the City or the Company, as the case may be, describing such failure, or if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if the Company or the City fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure.

(2) False Statements. Any written warranty, representation or statement made or furnished to the City by the Company, or the City to the Company under this Agreement or any document(s) related hereto furnished by the Company or the City to the receiving Party is/are false or misleading in any material respect, either now or at the time made or furnished, and the furnishing Party fails to cure same within thirty (30) days after written notice from the receiving Party describing the violation, or if such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if the furnishing Party fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such violation, or if the furnishing Party obtains actual knowledge that any such warranty, representation or statement has become false or misleading after the time that it was made, and the furnishing Party fails to provide written notice to the receiving Party of the false or misleading nature of such warranty, representation or statement within ten (10) days after the furnishing Party learns of its false or misleading nature.

(3) Insolvency. The dissolution or termination of the Company's existence as a going business or concern, the Company's insolvency, appointment of receiver for any part of the Company's property, any assignment of all or substantially all of the assets of the Company for the benefit of creditors of the Company, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Company unless, in the case of involuntary proceedings, such proceedings are discharged within ninety (90) days after filing.

SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

(1) Notice and Remedies. In the event of default under this Agreement, including without limitation, Section 7, the non-defaulting Party shall give written notice to the defaulting Party of any default, and the defaulting Party shall have the period provided in Section 7 to cure said default. Should said default remain uncured as of the last day of the applicable cure period and the non-defaulting Party is not otherwise in default, the non-defaulting Party shall have the right to immediately terminate this Agreement. In the event the City terminates this Agreement as a result of the foregoing, it will have no further obligation to make any remaining Program Grant Payment, including that of the current year, nor the preceding years. Additionally, the Company will immediately owe the City repayment of the previous Program Grant Payments made to the Company, plus interest at the rate of the prime rate published in the *Wall Street Journal* on the date of termination plus two percent (2%) per annum. The Company shall pay such funds to the City within sixty (60) days of termination.

(2) Damage Limitation. Under no circumstances shall the Company be liable to the City under this Agreement for damages in excess of the aggregate amount of funds paid by the City to the Company pursuant to this Agreement. Neither party shall be liable to the other party for indirect, special or consequential damages except as provided for in Section 5.

SECTION 9. ADDITIONAL SALES TAX PROVISIONS

The following additional sales tax provisions are a part of this Agreement:

(1) Legislative or Judicial Changes. In the event of any legislative or judicial interpretation that limits or restricts the City's ability to pay the general sales and use tax rebates herein provided or otherwise extracts or imposes any penalty or other restriction upon the payment of same, such rebate will cease as of the effective date of such limitation or restriction and be of no further force, effect or consequence in which event the City shall be under no further obligation to the Company as of the effective date of such limitation or restriction. However, the City and the Company agree to modify the rebate provided for herein to the extent permitted by such legislative or judicial action to the fullest extent then authorized without penalty or other restriction upon the City for the payment of same.

(2) Erroneously Paid Sales Tax. In the event the State Comptroller determines, for any reason, that any sales and use taxes were erroneously paid to the City from the sales provided for herein and the City shall be required to rebate or repay any portion of such taxes, the amount of such rebate or repayment shall be deducted from the calculation of the Sales Taxes Paid, and in the event the calculation of Sales Taxes Paid for a Program Grant Payment shall reflect an overpayment by the City to the Company, the Company agrees to immediately reimburse the City the amount of such overpayment. Notification of any such required adjustment will be provided to the Company at the earliest practical date.

SECTION 10. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

(1) Amendments. At any time, the City and the Company may determine that this Agreement should be amended for the mutual benefit of the Parties, or for any other reason, including an amendment to induce the Company to continue development and commercial activities in the City when this Agreement could otherwise be terminated. The City and the Company agree to consider reasonable requests for amendments to this Agreement which may be made by any of the Parties hereto, lending institutions, bond counsel or financial consultants. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of both the City and the Company.

(2) Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Randall County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Potter County, Texas.

(3) Assignment. This Agreement may not be assigned without the written consent of the other Party, which consent shall not be unreasonably withheld.

(4) Binding Obligation. This Agreement shall become a binding obligation on the Parties upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. The Company warrants and represents that the individual executing this Agreement on the Company's behalf has full authority to execute this Agreement and bind it to the same.

(5) Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

(6) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

(7) Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties as to the matters set forth in this Agreement. No other understanding, oral or otherwise, in direct conflict with this Agreement shall be deemed to exist or to bind any of the Parties hereto. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Agreement. Neither Party is relying on any statement, representation, or warranty of the other Party not expressly set out in this Agreement. Each of the undersigned authorized representatives of the Parties, warrants and represents and does hereby state and represent that no promise or agreement which is not herein expressed has been made to him or her in executing this Agreement, and that neither of the signatories is relying upon any statement or representation of any agent of the Parties. Each Party is relying on his or her own judgment and each Party has been represented by independent counsel of its choosing. This Agreement shall not be construed against the drafter hereof, but shall be construed as if all Parties drafted the same.

(8) Force Majeure. It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of Force Majeure, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such Party was delayed. This section does not affect the Company's obligations or the City's discretion described in Section 5(1).

(9) Further Acts and Releases. The City and the Company each agrees to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder.

(10) Governmental Powers; Waiver of Immunity. By execution of this Agreement, the City does not waive or surrender any of its governmental powers, immunities or rights.

(11) No Third Party Beneficiaries. The performance of the respective obligations of the City and the Company under this Agreement are not intended to benefit any Party other than the City or the Company, except as expressly provided otherwise herein. No person or entity not a signatory to this Agreement shall have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement, except as expressly provided otherwise herein.

(12) Notices. Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by hand, or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, or (iii) upon deliver via a delivery service, Federal Express or any other nationally recognized overnight courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof, and addressed as follows:

If to Company:	Cinergy Entertainment Amarillo, Inc 5720 LBJ Freeway, Suite 625 Dallas, Texas 75240 ATTN: Jeff Benson, CEO
With a copy to:	Law Office of Douglas C. Peter 11910 Greenville Ave., Suite 400 Dallas, TX 75243 ATTN: Douglas C. Peter, Esq.
If to the City:	City of Amarillo 509 S.E. 7th Avenue Amarillo, Texas 79101 ATTN: City Manager

(13) Right of Offset. The City may, at its option, after prior written notice and a 30 day period to cure, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due and owing to the City from the Company, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

(14) Relationship of Parties. The Parties shall not be deemed in a relationship of partners or joint ventures by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement.

(15) Severability. The City and the Company declare that the provisions of this Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then such term, condition or provision shall be severed from this Agreement and the remainder of the Agreement enforced in accordance with its terms.

(16) Time is of the Essence. Time is of the essence in the performance of this Agreement.

(17) Attorneys' Fees. In the event that either Party hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, the prevailing Party in that action or proceeding shall be entitled to have and recover from the non-prevailing Party all such fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing Party may suffer or incur in the pursuit or defense of such action or proceeding.

CITY OF AMARILLO, TEXAS

By: W. Jarrett Atkinson

W. Jarrett Atkinson
City Manager

Date: 10/29/15

CINERGY ENTERTAINMENT AMARILLO, INC., a Texas business corporation

By: Jeffrey P. Benson
Name: Jeffrey P. Benson
Title: Chief Executive Officer

Date: October 28, 2015

EXHIBIT "A"

Table: Sample Sales Tax Amounts Paid to the City

TABLE: Sample Sales Tax Amounts Paid to the CITY

Month	2014	2016
January	$10	$15
February	$15	$20
March	$10	$15
April	$15	$20
May	$10	$15
June	$10	$15
July	$15	$20
August	$10	$15
September	$10	$15
October	$5	$10
November	$10	$15
December	$10	$20
Total	$130	$195

Rebate Calculations based on issuance of Certificate of Occupancy:

Full Year

Issued January 1, 2016 the Sales Tax Paid = $195.
Full Year Rebate = (Actual 2016 of $195) x 50% = $97.50 Rebate.

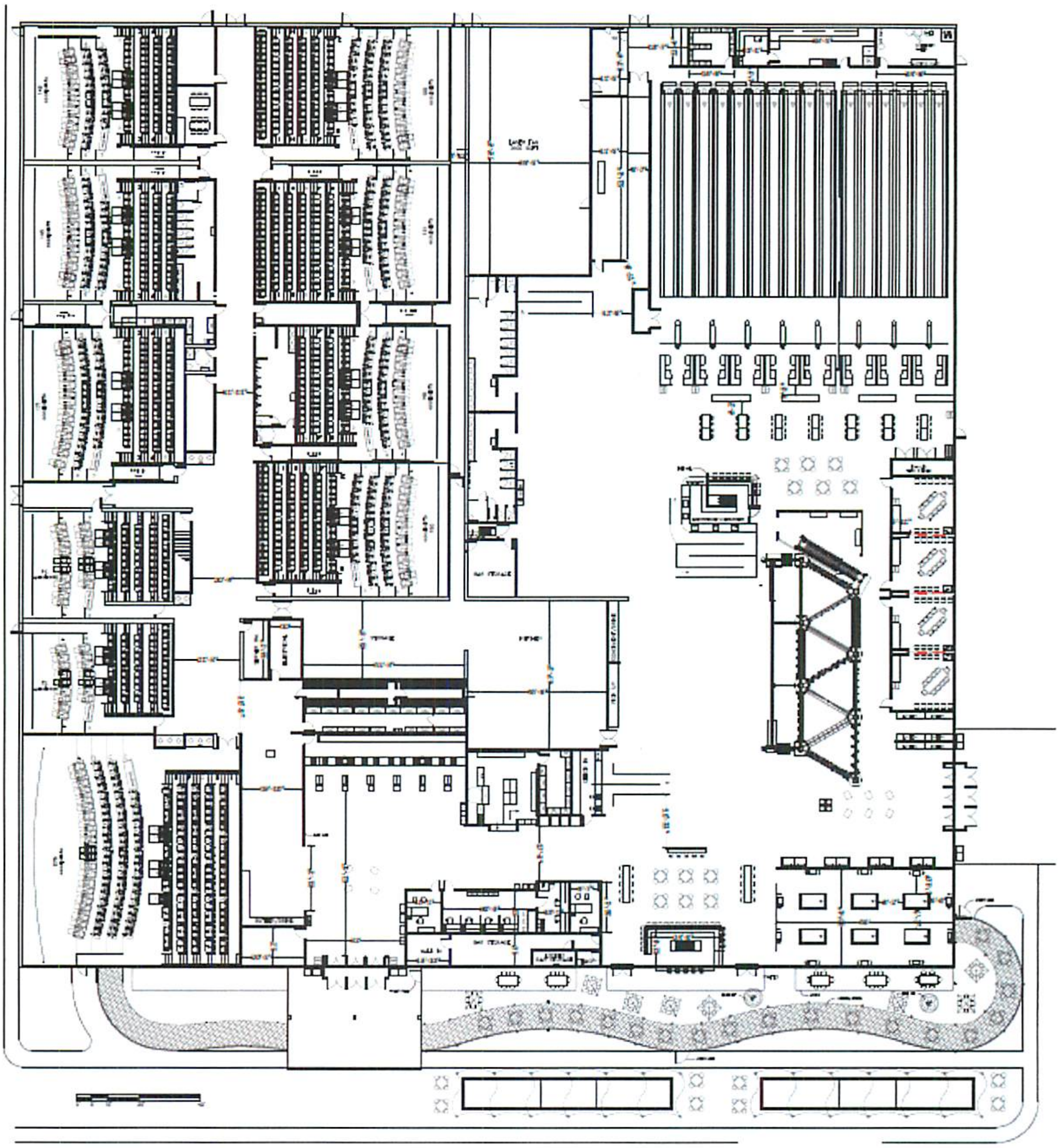
EXHIBIT "B"

Legal Description of the Center

Company to provide legal description of the property within 90 days of the date of execution of this agreement

EXHIBIT "C"

Concept Plan



LSO
It's all in the delivery

Airbill No. Z2516938

Lone Star Overnight
1-800-800-8984
www.lso.com

SHIP TO:
W. JARRETT ATKINSON
CITY OF AMARILLO
509 SE 7TH AVENUE
AMARILLO, TX 79101
8063783011

From:
JEFF BENSON
CINERGY CINEMAS
5720 LBJ FREEWAY
SUITE 625
DALLAS, TX 75240
2147506607

B **AMA**

LSO PRIORITY NEXT DAY
10:30 IN MOST CITIES
LATER IN REMOTE CITIES

PRINT DATE: 10/29/2015
QUICKCODE: WEIGHT: 0.50LBS
REF 1: CH. 380 ECONOMIC DEV. PROGRAM AGREEMENT 1D00V.0000

Fold on above line and place shipping label in pouch on package. Please be sure the barcodes and addresses can be read and scanned.
Shipping Instructions

1. Fold this page along the horizontal line above.
2. Place this Airbill in the shipping label pouch on the package you are shipping. Please be sure the barcodes and addresses can be read and scanned.
3. To locate a drop box near you, click on **Find A Drop Box** from the home page main menu.
4. To schedule a pickup, click on **Request Pickup**.

WARNING: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your Lone Star Overnight account number.
This label is valid for use for 3 months from the date printed. Use of expired labels may result in delayed billing and / or additional research charges. LIMIT OF LIABILITY: We are not responsible for claims in excess of $100 for any reason unless you: 1) declare a greater value (not to exceed $25,000); 2) pay an additional fee; 3) and document your actual loss in a timely manner. We will not pay any claim in excess of the actual loss. We are not liable for any special or consequential damages. Additional limitations of liability are contained in our current Service Guide. If you ask us to deliver a package without obtaining a delivery signature, you release us of all liability for claims resulting from such service. NO DELIVERY SIGNATURE WILL BE OBTAINED FOR 8:30 AM DELIVERIES OR RESIDENTIAL DELIVERIES.

SECOND AMENDMENT TO

CITY OF AMARILLO, TEXAS
AND
CINERGY ENTERTAINMENT AMARILLO, INC.

CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AGREEMENT

The CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT entered into by and between the CITY OF AMARILLO, TEXAS and CINERGY ENTERTAINMENT AMARILLO, INC. on the effective date of October 28, 2015 is hereby amened as follow:

SECTION 6. OBLIGATIONS OF CITY.

Program Grant Payments shall be paid according to the following terms:

(1) Sales Tax Rebate.

(a) Program Grant Payment. Upon the satisfaction of the Company's obligations under Section 5, and so long as the Company remains in compliance with the provisions of Section 5, the City agrees to pay the Company a Program Grant Payment equal to fifty percent (50%) of the net amount (gross amount less 2% for Comptroller's Service fee of the 1% of Municipal Sales Tax that is paid to the City by the Comptroller from the Center, which payment shall be made as provided in Subsection (b) immediately below. There shall be a total of ten (10) Program Grant Payments, which shall continue for a period of eleven~~ten~~ (11~~0~~) years commencing on the date the first Program Grant Payment is paid to the Company, provided that there shall be no Program Grant Payment made in the second year..

CITY OF AMARILLO, TEXAS

By: ______________________
Jared Miller
City Manager

Date: 08/11/2021

CINERGY ENTERTAINMENT AMARILLO, INC., a Texas business corporation

By: Jeffrey P. Benson

Name: Jeffrey P. Benson

Title: Chief Executive Officer

Date: 8/15/2021