

RESOLUTION NO. 56-2008

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY; AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH CAMELOT SPORTS AND ENTERTAINMENT, LLC, FOR SUCH PURPOSES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes municipalities to establish and provide for the administration of programs that promote economic development and stimulate business and commercial activity in the City of Mesquite (the "City"); and

WHEREAS, the City Council has been presented with a proposed agreement by and between the City and Camelot Sports and Entertainment, LLC, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (the "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Agreement will assist in implementing a program whereby economic development will be promoted and business and commercial activity will be stimulated in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City Council finds that the terms of the proposed agreement by and between the City of Mesquite (the "City") and Camelot Sports and Entertainment, LLC ("Camelot"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (the "Agreement"), will promote economic development and stimulate business and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code.

SECTION 2. That the City Council hereby adopts an economic development program whereby the City will make economic development program payments to Camelot and take other specified actions, in accordance with the terms outlined in the Agreement.

SECTION 3. That the terms and conditions of the Agreement, having been reviewed by the City Council and found to be acceptable and in the best interest of the City and its citizens, are hereby approved.

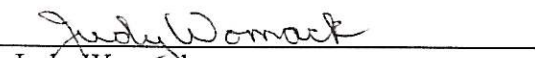
SECTION 4. That the City Manager is hereby authorized to finalize and execute the Agreement and all other documents in connection therewith on behalf of the City substantially according to the terms and conditions set forth in the Agreement.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 15th day of December, 2008.



John Monaco
Mayor

ATTEST:



Judy Womack
City Secretary

APPROVED:



B. J. Smith
City Attorney

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT
(Chapter 380 Agreement)

This Economic Development Program Agreement ("Agreement") is made and entered into by and between the City of Mesquite, Texas (the "City"), and Camelot Sports and Entertainment LLC (the "Company"), for the purposes and considerations stated below:

WITNESSETH:

WHEREAS, on December 15, 2008, the City adopted Resolution No. _____ - 2008 establishing an Economic Development Program pursuant to Section 380.001 of the Texas Local Government Code ("Section 380.001") and authorizing this Agreement as part of the Economic Development Program established by City Council Resolution (the "Program"); and

WHEREAS, the Company desires to participate in the Program by entering into this Agreement; and

WHEREAS, the existence of a rodeo has been a major tourism attraction for Mesquite citizens for many years; and

WHEREAS, the existence of a rodeo has been an international tourism attraction for many years; and

WHEREAS, Mesquite was designated by the Texas Legislature as the Official Rodeo Capital of Texas as a result of being home of the Mesquite Championship Rodeo; and

WHEREAS, the Company desires to buy the Mesquite Championship Rodeo and the Mesquite Arena and expand its presence as a tourism anchor within the community by installing new video display boards and expanding the utilization of the Arena; and

WHEREAS, the City Council finds and determines that this Agreement will effectuate the purposes set forth in 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.

NOW, THEREFORE, in consideration of the mutual benefits and premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Authorization.

The City has concluded that this Agreement is authorized by Section 380.001, and is authorized by Resolution of the City. The City has determined that substantial economic benefit and the creation of new opportunities of employment will accrue to the City as a result of the Company's development and operation of the Project as hereinafter defined.

This development will increase the taxable value of the Property and will increase the sales tax generated for the City and the value of the benefits of the Project will outweigh the amount of expenditures required of the City under this Agreement.

2. **Definitions.** The following definitions shall apply to the terms used in this Agreement:

“City” means the City of Mesquite, Texas.

“Company Affiliate” means any Person directly or indirectly controlling, controlled by, or under common control with the Company. As used in the definition of “Affiliate,” the term “control” means, directly or indirectly, the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“Complaining Party” has the meaning set forth in Section 10 of this Agreement.

“Defaulting Party” has the meaning set forth in Section 10 of this Agreement.

“Effective Date” means the date that all parties have executed this Agreement.

“Force Majeure” means any contingency or cause beyond the reasonable control of OWNER including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or defacto governmental action (unless caused by acts or omissions of Owner), fire, explosion or flood, and strikes.

“Initial Construction” means any construction of any phase of the Project, upon the Premises for which a building permit is required, but does not include any renovation, remodeling, retrofitting, or reconfiguration of any building or structure upon the Premises.

“Owner” means Camelot Sports and Entertainment LLC.

“Person” means an individual or a corporation, partnership, trust, estate, unincorporated organization, association or other entity.

“Premises” means that certain tract of real property located at 1818 Rodeo Drive, Mesquite, Dallas County, Texas, consisting of approximately 23.98 acres and a structure of approximately 92,500 square feet, more or less, as more particularly described on Exhibit “A” hereto.

“Project” means the installation of three video display boards and the operation of said establishment as the Mesquite Championship Rodeo and the Mesquite Arena.

“Program” has the meaning set forth in the recitals to this Agreement.

“Program Payment” means the payments to be made by the City pursuant to Section 4 of this Agreement.

“Section 380.001” has the meaning set forth in the recitals to this Agreement.

“Term” has the meaning set forth in Section 3 of this Agreement.

3. Term.

This Agreement shall be effective as of the date of execution by all parties. This Agreement will terminate upon the provision of \$1,400,000 to the Company, estimated to be 4 years from the execution of this Agreement.

4. City’s Development Program Incentives.

For all Initial Construction by Company upon the Premises during the term of this Agreement, the City shall grant Company the following incentives:

Rodeo City Tax Increment Reinvestment Financing Zone (RCTIF) Incentive. To the extent funds are available from RCTIF and the Company has met the performance criteria set out in this Agreement, the City shall reimburse to the Company from proceeds received into the RCTIF fund an amount equal to:

a. 75 percent of the total cost of the video display boards, such total cost including the actual cost of the video display boards as well as costs arising from applicable taxes, installation and interest. Only the RCTIF fund is to be used to reimburse the Company. The reimbursement described in this paragraph shall be paid in annual installments beginning March 2009. City’s obligation to make the reimbursements described in this paragraph is contingent upon fund availability in RCTIF. It is estimated that \$400,000 per year shall be available for reimbursement to the Company.

b. 25 percent of the cost of the video display boards upon the Company:

(i.) increasing the sales and customer service departments dedicated to marketing and servicing the Mesquite Arena to a minimum of ten (10) employees within one (1) year following the date of this Agreement; and maintaining the increased level of staffing during the Agreement Term;

(ii.) The Company investing in capital improvements to the Mesquite Arena for updates and renovation to the suite areas and to additional entertainment areas by June, 2010; and,

(iii.) The Company increasing the number of non-rodeo events held at Mesquite arena in calendar year 2009 by eight (8) events per year.

c. The City shall have a "marquee video board sign" installed at a mutually agreeable location within 18 months of the date of this agreement contingent upon the Company's compliance with items set out in Paragraph 4.b. of this agreement. City's obligation to install a "marquee video board" is contingent upon City's ability to obtain property upon which to erect the "marquee video board" the location and cost of which is satisfactory to City in its sole discretion. City and Company further agree and acknowledge that the "marquee video board" is an on premises sign utilizing an electronic display screen and as such the advertising appearing on same is subject to City' Ordinance Numbers 3922 amended on December 12, 2007, and 3744 amended on June 6, 2005. The marquee video board sign will be comparable in size, technology and functionality to the example included in Exhibit B to this agreement.

d. Under no circumstances shall the amount of the above incentives collectively total more than \$1,400,000. Should the maximum incentive of \$1,400,000 be achieved prior to the end of the term of this agreement then this agreement shall be considered satisfied for all parties.

e. The "video display boards" described in paragraphs 4.a. and 4.b. shall become, and must remain, fixed assets of Mesquite Arena. In the event that the Company ceases operations, sells Mesquite Arena, sells or conveys more than fifty (50) percent ownership interest in Company, seeks protection under any chapter of the United States of America Bankruptcy Code, or any state insolvency law, ceases operations for more than thirty (30) consecutive calendar days, or fails to comply with the terms of this Agreement, ownership of the "video display boards" shall revert to City upon the City's fulfillment of all monetary obligations under this agreement. Company further agrees that it shall not permit any lien, either contractual or by operation of law, to attach to the "video display boards".

5. Company Covenants.

In consideration of the City's incentives under this Agreement (including the payment of monies to the Company), the Company agrees to:

- (a) Install 3 video display boards, as represented in Exhibit C, in the Mesquite Arena within 6 months of the date of the executed agreement.
- (b) Operate the "marquee video board sign" and be the exclusive agent for the selling of all advertising on the sign in conformance with all City regulations and ordinances. The Company shall also retain a minimum of twenty percent of the video portion of the sign as available for use by the City or those whom the City shall designate, so long as those uses do not conflict with the Company's promotions or commercial relationships.
- (c) Reserve 3,000 square feet of mutually agreeable space in the Mesquite Arena for use by the Mesquite Convention and Visitor's Bureau. The option shall be reserved for 5 years from the date of this agreement.
- (d) The Company shall agree to release management control of the Exhibit Hall upon the City's request and upon an agreement for a first-class, full service

restaurant to build within the Rodeo Center. This option shall expire 5 years from the date of this agreement.

- (e) The Company shall allow access to the Mesquite Arena for use by the City and the Mesquite Independent School District for mutually agreeable dates and events for the duration of this agreement.
- (f) The Company shall allow the City and its designee's access to the Mesquite Arena suites for a mutually agreeable number of event dates each year for the duration of this agreement, so long as those uses do not conflict with the Company's promotions or commercial relationships.
- (g) Take all reasonable steps to cause all Construction Sales to occur in the City in order to generate city sales tax revenue to the extent feasible; and
- (h) Comply with all applicable federal, state and local laws in the operation of the Project.

6. Restrictions on Use of Incentives to Employ Undocumented Workers.

The Company certifies that it does not and will not knowingly employ an undocumented worker and that if, after receiving any incentive set forth in Section 4 of this Agreement, it is convicted of a violation of the Immigration Laws found under 8 U. S. C. Section 1324a(f), the Company shall be required to notify the City of such conviction. Upon notification of conviction by Company, or if City should discover such conviction on its own and notifies Company of same, the Company shall repay an amount equal to the total amount of incentives received hereunder with interest, at the rate and according to the terms provided in Section 10(b) of this Agreement not later than the 120th day after the date of such notification.

7. Mutual Assistance.

The City and the Company shall take all reasonable measures, which are necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

8. Covenants Running with the Land.

The Company's rights, covenants, restrictions, burdens, privileges and charges, set forth in this Agreement shall exist at all times as long as this Agreement is in effect, among all parties having any right, title or interest in any portion of all the Property, but which covenants shall absolutely expire without further action by any person upon termination of this Agreement as provided herein.

9. Representations and Warranties.

The City represents and warrants to the Company that the Program and this Agreement are within the scope of its authority and the provisions of its charter and that it is duly authorized and empowered to establish the Program and enter into this Agreement. The

Company represents and warrants to the City that it has the requisite authority to enter into this Agreement.

10. Default.

- (a) If either party should default (the "Defaulting Party") with respect to any of its obligations hereunder and should fail, within 30 days after delivery of written notice of such default from the other party (the "Complaining Party") to cure such default, the Complaining Party, by action or proceeding at law or in equity, may be awarded its damages for such default. Notwithstanding anything to the contrary contained herein, any Program Payments from the City which are not timely paid by the City shall incur interest at the highest rate per annum allowed by applicable law from the date such Program Payment is due until paid.
- (b) The Company agrees, that upon an event of default of Section 10 hereunder, and upon receipt of notice from the City, to remit to the City a sum equal to the total of all incentives granted by the City to the Company pursuant to this Agreement, plus interest at the highest rate per annum allowed by applicable law from the date payments were made, until paid.

11. Indemnification.

THE COMPANY IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT IS ACTING INDEPENDENTLY, AND THE CITY ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE PREMISES OR IMPROVEMENTS. THE COMPANY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST CLAIMS SUITS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION AND LIABILITY OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS AND ATTORNEYS FEES WHICH MAY ARISE DUE TO ANY DEATH OR INJURY TO A PERSON OR THE LOSS OF USE OF OR DAMAGE TO PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE OF THIS AGREEMENT, INCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES, PROVIDED HOWEVER THAT THIS INDEMNIFICATION SHALL NOT APPLY IF A COURT OF COMPETENT JURISDICTION FINDS THAT THE DAMAGE OR LIABILITY ARISES FROM THE SOLE NEGLIGENCE OF THE CITY, ITS OFFICERS OR EMPLOYEES.

12. Miscellaneous Matters.

- (a) Section or Other Headings. Section or other headings contained in this

Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

- (b) Attorneys Fees. In the event any legal action or proceeding is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its reasonable attorneys' fees and expenses incurred by reason of such action.
- (c) Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the transactions contemplated herein.
- (d) Amendment. This Agreement may only be amended, altered or revoked by written instrument signed by the Company and the City.
- (e) Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. The Company may assign all or part of its rights and obligations hereunder (a) to any Affiliate effective upon written notice to the City, or (b) to any Person other than an Affiliate with the prior written approval of the City, which approval shall not be unreasonably withheld.
- (f) Notice. Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

Company:

City:

Mayor
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

- (g) Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.
- (h) Applicable Law. This Agreement is made, and shall be construed and

interpreted under the laws of the State of Texas and venue shall lie in Dallas County, Texas.

- (i) Severability. In the event any provision of this Agreement is illegal, invalid or unenforceable under present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- (j) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.
- (k) Company's rights and obligations under this Agreement may not be assigned to any third party without the express prior written consent of City, which will not be unreasonably withheld.

THE CITY OF MESQUITE

By: _____
John Monaco, Mayor

ATTEST:

City Secretary

CAMELOT SPORTS AND
ENTERTAINMENT LLC

By: _____

APPROVED AS TO FORM AND LEGALITY:

City Attorney or his Designee

Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared John Monaco, Mayor of the CITY OF MESQUITE, a municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he was duly authorized to perform the same by appropriate resolution of the City Council of the City of Mesquite and that he executed the same as the act of the said City for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2008.

Notary Public in and for the State of Texas

Notary's Printed Name

My Commission Expires: _____

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that said instrument was signed on behalf of said partnership, and said _____ acknowledged said instrument to be his free act and deed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE in said County and State this _____ day of _____, 2008.

Notary Public in and for the State of Texas

Notary's Printed Name

My Commission Expires: _____

EXHIBIT "A"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Description of Premises

EXHIBIT "A"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT



Dallas Central
Appraisal District
www.dallascad.org

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EXHIBIT "A"
TO

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

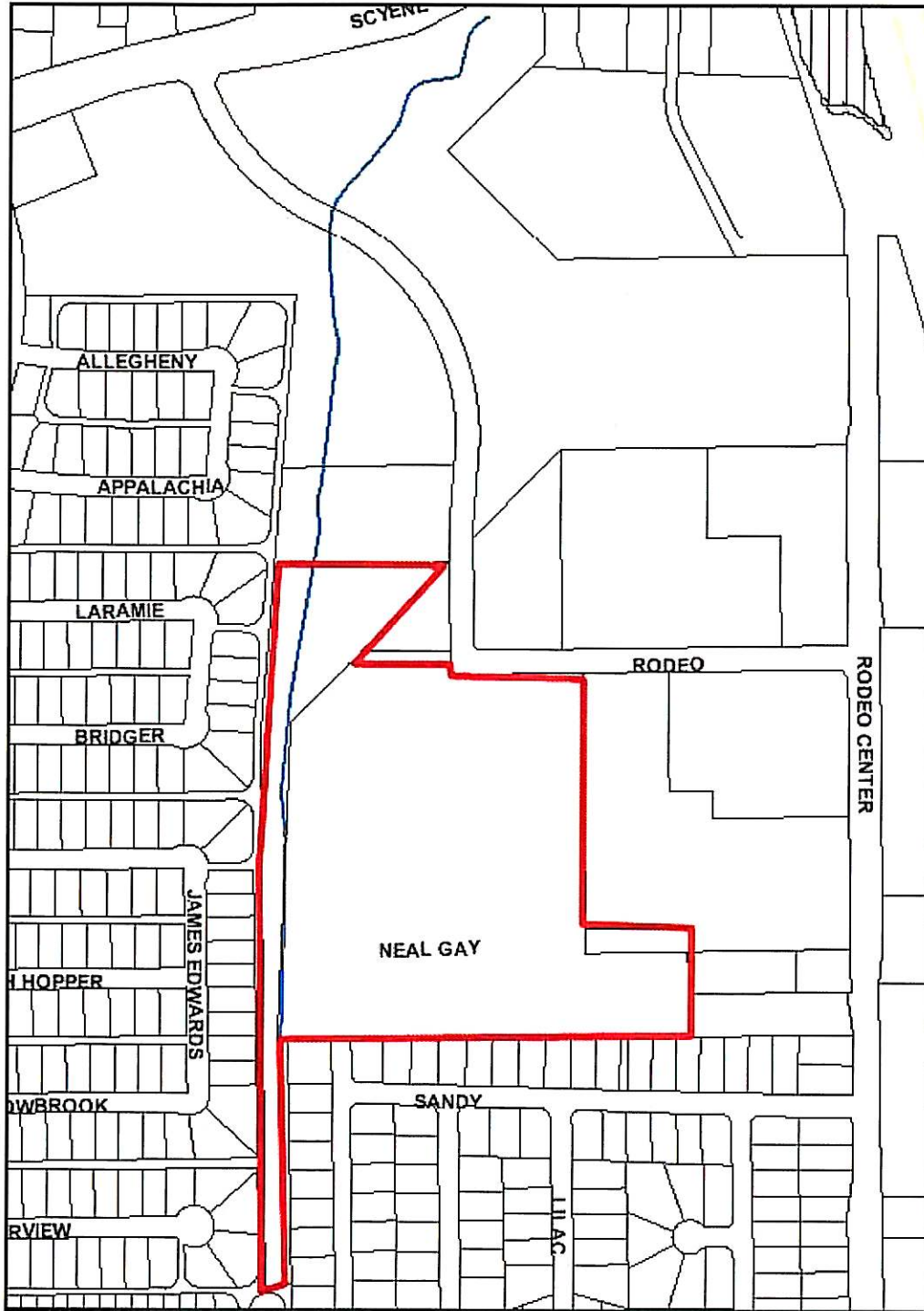


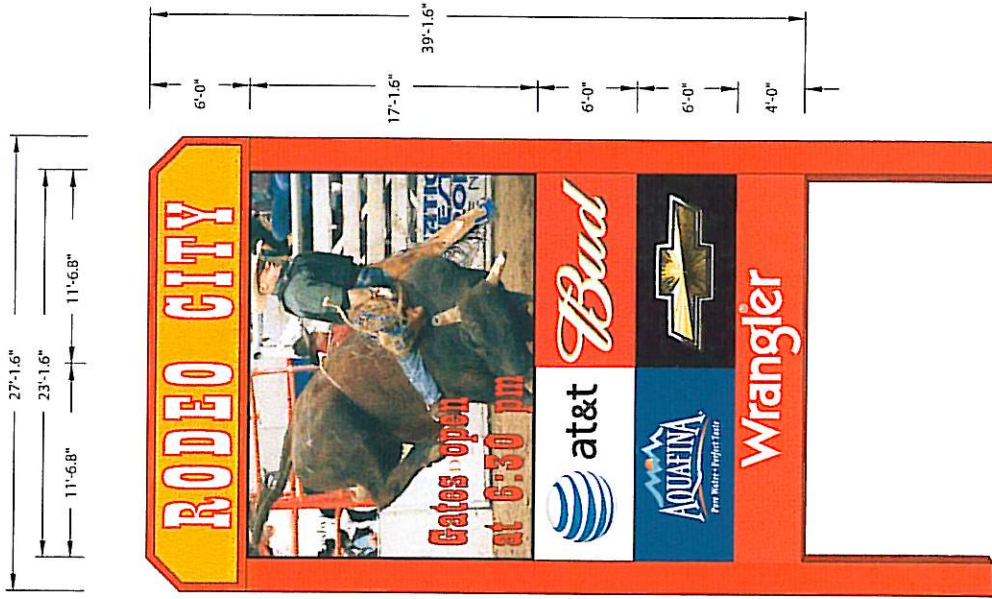
EXHIBIT "B"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Marquee Video Board Description

EXHIBIT "B"

TO

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT



- Overall Dimensions
27'1.6" x 39'1.6"
- Daktronics ProStart® Video Display
PS-23MA-224x304
- Daktronics Backlit Sponsor Display
- Daktronics Backlit Identification Display
- Non Backlit Sponsor Display

Mesquite Rodeo Mesquite, Texas

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