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MEMORANDUM **Downtown Redevelopment – Council Memo ED14-017**

DATE: MAY 23, 2014

TO: MAYOR AND CITY COUNCIL

THRU: RICH DLUGAS, CITY MANAGER RD
MARSHA REED, ASSISTANT CITY MANAGER MR
CHRISTINE MACKAY, ECONOMIC DEVELOPMENT DIRECTOR CM

FROM: KIM MOYERS, DOWNTOWN REDEVELOPMENT MANAGER KM

SUBJECT: RESOLUTION NO. 4775 APPROVING THE ENHANCED MUNICIPAL SERVICES DISTRICT AGREEMENT FOR FISCAL YEAR 2014-2015 BETWEEN THE CITY OF CHANDLER AND THE DOWNTOWN CHANDLER COMMUNITY PARTNERSHIP AND THE CITY'S VOLUNTARY CONTRIBUTION TO THE EMSD IN THE AMOUNT OF $83,804 ($118,804 MINUS $35,000 FOR STAGE CONSTRUCTION CONTRIBUTION).

RECOMMENDATION: Staff recommends that City Council approve Resolution No. 4775 approving the Enhanced Municipal Services District (EMSD) Agreement for Fiscal Year 2014-2015 between the City of Chandler and the Downtown Chandler Community Partnership and the City's voluntary contribution to the EMSD in the amount of $83,804 ($118,804 minus $35,000 for Stage Construction Contribution).

BACKGROUND: At the City Council meetings on April 24, 2014, and May 22, 2014, the Mayor and City Council took all actions necessary to renew the Downtown Chandler Enhanced Municipal Services District. Currently staff is requesting approval of an Enhanced Municipal Services District Agreement with the Downtown Chandler Community Partnership (DCCP). Through this action, the DCCP is designated as the entity that will manage and operate programs in the District.

The primary functions of representing District rate payers, developing the annual District budget and work plan, and monitoring the performance and provision of District services

have been retained. The working committees continue and the agreement outlines the general responsibilities of each committee.

This agreement also details the City's participation in the District. From a financial perspective, the $118,804 represents the amount the City voluntarily contributes to the District. The contract also identifies how payments will be made from the City to the DCCP, both for City funds and for funds obtained through the assessment of private property owners through the Maricopa County Assessor's Office. Finally, the agreement outlines the baseline of City provided services that will be delivered during the term of the agreement.

The DCCP participated in the development of the agreement, including providing a budget and developing a work plan for the coming year. The DCCP Executive Board has officially approved the content of this agreement and looks forward to continuing as the administrator of the District.

DISCUSSION: If Mayor and Council approve the Resolution, Staff will proceed to process a check to the DCCP in order to provide them with the first $41,902 City voluntary payment prior to July 15, 2014, as specified by the contract.

FINANCIAL IMPLICATIONS: Assessments for privately owned property in the District total $124,990. Staff has forwarded the Assessment Roll to Maricopa County for inclusion in the Fall property tax bills. The City's voluntary contribution of $83,804 plus $35,000 for Stage Construction Contribution have been included in the Downtown Redevelopment budget for Fiscal Year 2014-2015. The total amount of the District budget for Fiscal Year 2014-2015 is $243,794

PROPOSED MOTION: Move City Council approve Resolution No. 4775 approving the Enhanced Municipal Services District (EMSD) Agreement for Fiscal Year 2014-2015 between the City of Chandler and the Downtown Chandler Community Partnership and the City's voluntary contribution to the EMSD in the amount of $83,804 ($118,804 minus $35,000 for Stage Construction Contribution).

Attachments: Resolution No. 4775
EMSD Agreement Fiscal Year 2014-15

RESOLUTION NO. 4775

RESOLUTION APPROVING THE ENHANCED MUNICIPAL SERVICES AGREEMENT FOR FISCAL YEAR 2014-2015 BETWEEN THE CITY OF CHANDLER AND THE DOWNTOWN CHANDLER COMMUNITY PARTNERSHIP AND THE CITY'S VOLUNTARY CONTRIBUTION TO THE EMSD IN THE AMOUNT OF $83,804

WHEREAS, the Mayor and Council of the City of Chandler, Arizona (the "City"), initiated a district known as City of Chandler, Arizona, Downtown Chandler Enhanced Municpal Services District (the "District") by the adoption of Resolution No. 3905 (the "Resolution of Intention"); and

WHEREAS, the Mayor and Council did make an annual statement and estimate of the expenses of the District for the fiscal year commencing July 1, 2014 and ending June 30, 2015; and did assess the total sum upon the several lots within the District; and

WHEREAS, Mayor and Council adopted Resolution No. 4772 approving the 2014-2015 annual assessment for the Downtown Chandler Enhanced Municipal Services District; and

WHEREAS, the Downtown Chandler Community Partnership is designated the entity to manage and operate programs in the District through the annual renewal of the Agreement; and

WHEREAS, the Enhanced Municipal Services District functions of representing district ratepayers, developing the annual District budget and work plan, and monitoring performance and provision of District services have been maintained; and

WHEREAS, said Agreement has been modified from the prior year contract to change how reserves are accounted for, and how unused funds from the prior year are programmed; and

WHEREAS, said Agreement describes a work program to be performed by the District and City maintained baseline service levels for the period beginning July 1, 2014 and ending June 30, 2015; and

WHEREAS, said Agreement pledges the City's commitment to pay a voluntary contribution to the District and identifies two equal installments to be made to the DCCP on or before July 15, 2014 and January 15, 2015; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AS FOLLOWS:

Section 1. The annual Downtown Chandler Enhanced Municipal Services Agreement for Fiscal Year 2014-2015 is approved.

Section 2. The City Clerk shall certify the fact and date of such approval on the duplicate copies of the Downtown Chandler Enhanced Municipal Services Agreement.

PASSED AND ADOPTED by the Mayor and Council of the City of Chandler, Arizona, on _____, 2014.

_____
Jay Tibshraeny, Mayor

ATTEST:

_____
Marla Paddock, City Clerk

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4775 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the _____ day of _____, 2014, and that a quorum was present thereat.

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

DOWNTOWN CHANDLER ENHANCED MUNCIPAL SERVICES AGREEMENT FOR FISCAL YEAR 2014-2015

THIS AGREEMENT is entered into effective July 1, 2014, by and between the CITY OF CHANDLER, a Arizona municipal corporation (the "City"), and DOWNTOWN CHANDLER COMMUNITY PARTNERSHIP, an Arizona non-profit corporation (the "DCCP").

RECITALS

WHEREAS, the City desires to obtain certain enhanced municipal services for a portion of the downtown area of Chandler, and, pursuant to the authority granted under Section 48-575 of the Arizona Revised Statutes, has established the Downtown Chandler Enhanced Municipal Services District by Resolution No. 3905 to fund such services within the geographic area described therein and depicted in attached Exhibit "A" (the "District"), and has established an assessment for properties within the District to fund such enhanced services; and

WHEREAS, the DCCP is willing and able and desires to provide such enhanced municipal services for the District;

NOW, THEREFORE, in consideration of the recitals and the mutual obligations of the parties contained herein, each of them does hereby covenant and agree with the other as follows:

SECTION 1
SCOPE OF SERVICES

1.1. **Purpose.** The purpose of this Agreement is to establish and carry out a strategy for providing enhanced municipal services within the District, including management, promotion and security services, so as to increase the economic and civic value of the downtown area of Chandler.

1.2. **Description of Services.** During the term of this Agreement and in order to further the purpose of this Agreement, the DCCP shall perform the enhanced municipal services described in attached Exhibit "B", which at a minimum shall include the services described in Sections 1.3 through 1.5 below.

1.3. **Marketing and Promotions.** The DCCP shall promote the District, including all of its individual market and geographic segments, through the development and implementation of a total promotional campaign and marketing plan, including but not limited to: publications; facilitating the production by others of special events and festivals; and an advertising and publicity campaign.

1.4. **Safety and Beautification.** The DCCP shall develop programs that improve the physical environment of the District and enhance public safety services. In addition, the DCCP shall provide supplemental streetscape and public area maintenance services within the District to ensure cleanliness, litter control, debris removal and weed control of sidewalks, alleyways, and public areas, through a maintenance program and communication with private property and business owners and the City.

1.5. **Downtown Management Assistance.** The DCCP or its staff shall be the point of contact on a daily basis for issues affecting District ratepayers so that issues can be resolved expeditiously.

1.6. **Compliance with Laws.** In providing any and all of the services described in this Agreement, the DCCP shall comply with all applicable laws, ordinances and codes of the United States, the State of Arizona, and the City of Chandler.

1.7. **General Administration.** The DCCP shall maintain high standards in the conduct of its internal and external business affairs, and shall maintain a high public integrity.

1.8. **Coordination With The City.** In order that this Agreement may be considered for renewal for fiscal year 2014-2015, the DCCP shall:

a. Provide, for approval by the City, (i) any recommended modifications to the description of the scope of services described in attached Exhibit "B" or otherwise described in this section 1 of this Agreement, (ii) a detailed operating budget that meets the modified scope of services, (iii) an accounting of anticipated and existing carryforward and how it will be utilized during the timeframe of this agreement. The proposed modifications and the operating budget including carryforward shall be submitted to the City by April 20, 2014 and the City shall take action on both items prior to June 28, 2014.

b. Provide, for the term of this Agreement, quarterly progress reports to the City within thirty (30) days following the months of September, December, March and June, and such additional reports as may be reasonably requested by the City.

c. Provide monthly financial statements and an independent audit report of expenditures and program compliance within one hundred twenty (120) days following the end of the fiscal year covered by this Agreement and within ninety (90) days following the termination of this Agreement. The City may also choose to perform its own audit. The financial statements and audit shall utilize fund accounting and distinguish between restricted and unrestricted revenues per the Financial Accounting Standards Board Accounting Standards Codification (ASC) 958 as follows:

1. *Unrestricted Net Assets:* Those funds that have no donor or contributor stipulations. These include member dues and prior savings from pre-District fundraising done by DCCP. If this contract is not renewed, all funds in this category are retained by the DCCP.

2. *Temporarily Restricted Net Assets*: Those funds that have donor-imposed restrictions that can be fulfilled in one of two ways – passage of a defined period of time (time restricted) or by performing defined activities (purpose restricted). This includes assessment revenues, the voluntary City contribution, sponsorships, and event income for those events funded and/or staffed by the District. Temporarily restricted assets may only be used for District purposes in line with the duties outlined in Sections 1.3 through 1.5, not general DCCP purposes. Any monies carried forward in to the next fiscal year from this category, will remain in this classification. If this contract is not renewed, all funds in this category must be returned to the City.

3. *Permanently Restricted Net Assets*: Those funds that are donated for a specific and restricted use, such as an endowment. Currently, no such assets exist in the District and disposition of any funds secured during the term of this contract will be decided between the parties.

d. Provide assistance to the Maricopa County Assessor, the Maricopa County Treasurer, and the City in the assessment of the District. DCCP shall be responsible for maintaining an accurate roll of land use and property ownership information, the development of proposed assessment lists, and the scheduling of events leading to assessment hearings and other appropriate public hearings and notifications to be conducted during the fiscal year covered by this Agreement for the next fiscal year.

1.9. **Continuance of City Service Levels.** The City shall continue to provide within the District the same level of municipal services as described in attached Exhibit "C".

SECTION 2
EFFECTIVE DATE

2.1. **Term.** This Agreement shall be for the City's fiscal year beginning July 1, 2014 and ending June 30, 2015.

SECTION 3
COMPENSATION

3.1. **Remittance of Assessments.** The City agrees to remit to the DCCP, for the services to be rendered by it under this Agreement, an amount equal to the annual assessment of the Chandler Enhanced Municipal Services District as collected and distributed by the Maricopa County Treasurer for fiscal year 2014-2015. Payments by the City shall be made to the DCCP when received by the City from the Maricopa County Treasurer.

3.2. **Voluntary Contribution.** The City shall pay to the DCCP a voluntary contribution of $83,804 (Eighty three thousand eight hundred four dollars) in two equal installments, the first on or before July 15, 2014, and the second on or before January 15, 2015.

3.3 **Reserve Fund.** The DCCP shall establish a contingency fund as a reserve to use as operating funds for fiscal year 2014-2015. The reserve will be sufficient enough to use as operating funds until such time that the City receives assessment funds from Maricopa County. The DCCP Board may set and carry a reserve level not to exceed 20% of that years' assessment. If the DCCP Board wishes to accumulate funds for a specific project in addition to the 20% reserve, a written proposal may be submitted to the City for consideration. Upon City approval, Temporarily Restricted Funds may be earmarked for the project; however, if the project does not move forward in the agreed upon timeframe, the monies will be returned to the general Temporarily Restricted Funds and the reserve spent down.

SECTION 4
INSURANCE AND INDEMNIFICATION

4.1 **Indemnification:** The DCCP agrees to indemnify, defend and save harmless the City, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively; from all losses, claims, suits, actions, payments and judgments, demands, expenses, attorney's fees, defense costs or actions of any kind and nature resulting from personal injury (including bodily injury and death) to any person, including employees of the DCCP or any subcontractor or

consultant of the DCCP employed by the DCCP, or damage to any property, arising or alleged to have arisen out of the negligent performance of the DCCP for the work to be performed hereunder, except any such injury or damages arising out of the sole negligence of the City, its officers, agents or employees. It is the intention of the parties to this contract that the City, its Mayor and Council, appointed boards and commissions, officials, officers and employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property.

4.2 **Insurance:** The DCCP shall provide insurance coverage in the amount and type, and subject to the conditions, as set forth in attached Exhibit "D".

SECTION 5
TERMINATION

5.1. **Automatic Termination.** This Agreement shall terminate automatically if either of two conditions applies:

a. At the end of the fiscal year covered by this Agreement if the DCCP budget is not approved and/or renewal of the Agreement is not approved by the Chandler City Council.

b. The DCCP ceases to exist.

5.2. **Optional Termination.** Either party may terminate this Agreement during its term upon giving the other party at least sixty (60) days written notice of such desired termination.

5.3. **Effect of Early Termination.** Upon early termination of this Agreement, the assets of the DCCP shall become the assets of the City, with the exception of the verified Unrestricted Net Assets, and the City's voluntary contribution shall be terminated immediately.

SECTION 6
MISCELLANEOUS PROVISIONS

6.1. **Binding Agreement; Assignment:** This Agreement shall be binding upon the successors and assigns of the parties. However, no party shall have the right to assign this Agreement or any interest in this Agreement without the prior written consent of the other party.

6.2. **Notices:** Any notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, return receipt requested, pre-paid to the parties as specified below.

If to the City:

City of Chandler
City Manager's Office
Mail Stop 605
P.O. Box 4008
Chandler, AZ 85244-4008

City of Chandler
Economic Development Division
Mail Stop 416
P.O. Box 4008
Chandler, AZ 85244-4008

If to the DCCP: Downtown Chandler Community Partnership
PO Box 3356
Chandler, 85244

6.3. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been made and entered into in Maricopa County, Arizona.

6.4. **Waiver.** No waiver by either party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

6.5. **Attorney's Fees.** In the event of any actual litigation between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorney's fees, which shall be determined by the court and not by the jury.

6.6. **Exhibits.** The exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

6.7. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

IN WITNESS WHEREOF, the City has caused this agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and DCCP has signed the same on or as of the day and year first written above.

CITY OF CHANDLER, an Arizona municipal corporation

By: _____
Jay Tibshraeny, Mayor

ATTEST:

_____City Clerk

APPROVED AS TO FORM:

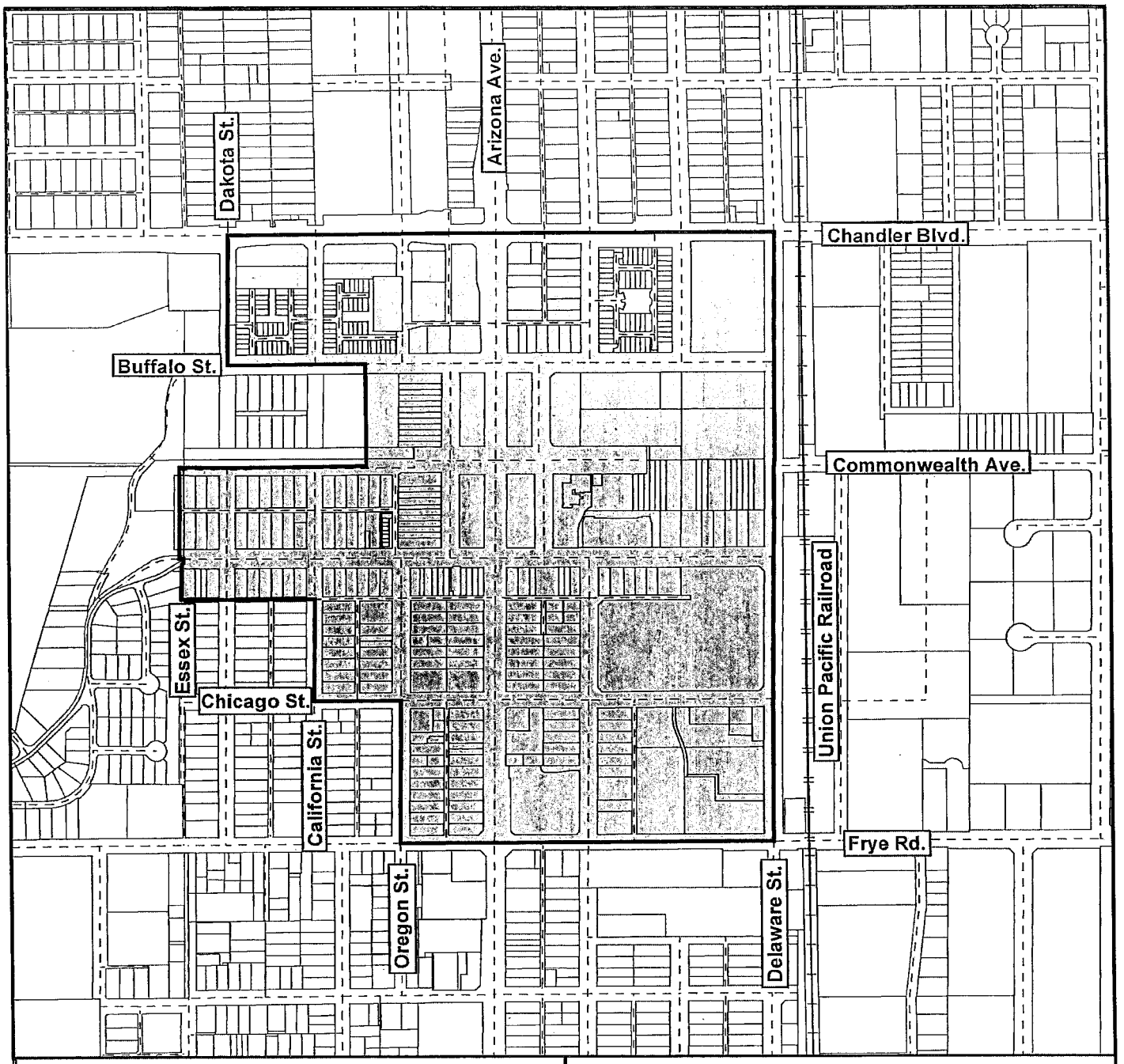
_____ KB
, City Attorney

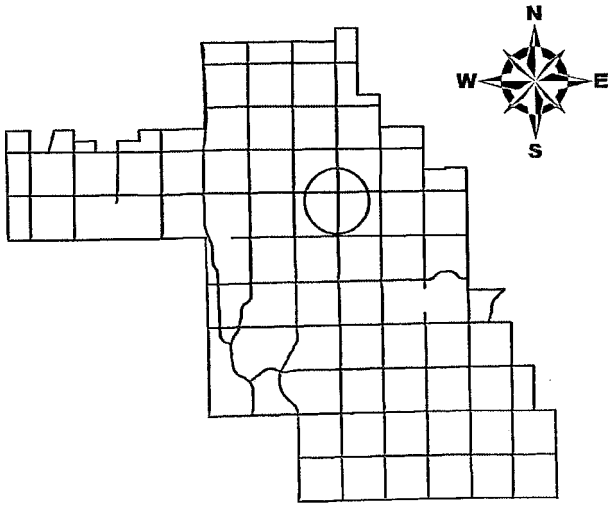
DOWNTOWN CHANDLER COMMUNITY PARTNERSHIP, an Arizona non-profit corporation

By: _____
Derek Neighbors, President

ATTEST:

_____





Boundary Map

Exhibit A

City of Chandler Enhanced Municipal Services District

Parcels

Streets

Railroad

0 225 450 900 1,350 1,800 Feet

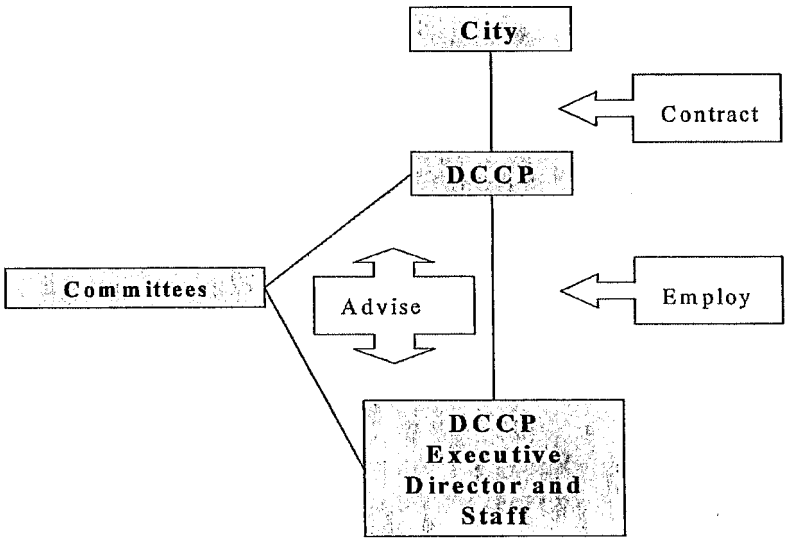
City of Chandler 2/14/2014

EXHIBIT B

DOWNTOWN CHANDLER ENHANCED MUNICIPAL SERVICES DISTRICT OPERATING PLAN FISCAL YEAR 2014-2015

(1) **Organizational Structure**: The primary activities to be undertaken in the Enhanced Municipal Services District include Marketing and Promotions, Enhanced Public Safety and Downtown Management. The Downtown Chandler Community Partnership (DCCP) will maintain the existing Marketing, Business Development and Ambassadors committees to further efforts to provide a multifaceted unified downtown organization.

Downtown EMSD



(2) **Accountability:** The DCCP will maximize accountability to downtown property and business owners through active working committees that will provide advice and ideas with DCCP Board input. The DCCP will:

- Develop and recommend an annual District budget and work plan to the DCCP board. DCCP will then present the budget and work plan to the City of Chandler.
- Serve as a liaison between downtown property and business owners and the DCCP board.
- Monitor the performance and provision of District services.

- Provide input into the annual personnel evaluations of the DCCP-employed Executive Director and Special Events Coordinator.

(3) **Board Governance:** The DCCP shall represent all ratepayers within the District. A mix of large and small property and/or business owners will be sought, as well as different use types including office, retail, hotel, restaurants, services, *etc*, to serve on the various committees. The Vice President of District Relations serves on the DCCP board to specifically represent the constituents of the EMSD.

Planned Activities for FY2014/15: A weekly newsletter is sent out to merchants and property owners to notify them on upcoming meetings/events and ongoing project updates. Quarterly merchant meetings and property owners meetings are held throughout the year. In addition, an online calendar of all committee, board and special event meetings is updated throughout the year and sent out to merchant/property owners.

(4) **Annual Meetings, Surveys and Financial Audit:** In order to maximize accountability to assessment payers, the District shall utilize at a minimum the following communications procedures that are common to enhancement districts generally:

- An annual meeting which presents the proposed work program and budget for the upcoming year;
- An annual assessment payer satisfaction survey to determine areas of strength, weakness and opportunity within the work program;
- An annual independent audit of the use of District funds.
- Planned Activities for FY2014/15: An annual audit will be completed in line with contract requirements. Surveys for various events throughout the year will be sent to merchants after they take place for feedback.

(5) **District Programs:** The Downtown Chandler Community Partnership (DCCP) will provide the following programs for the term of this contract. The DCCP may amend program activities in subsequent years within the general categories authorized by state law and in the annual operating plan and budget. Based upon feedback from Downtown stakeholders, the following programs will be undertaken for the Downtown Chandler Enhanced Municipal Services District:

- ***Marketing, Promotions and Special Events***: Initiatives will be undertaken to enhance the overall image and marketability of Downtown Chandler to attract a wide array of consumers and promote Downtown shops, restaurants, lodging, recreation and other attractions. The District will set annual priorities for marketing projects. Projects will include:

- Public relations to raise regional awareness of Downtown and its unique restaurants, shops, and attractions.

- Map and Directory to help consumers find their way around Downtown and to locate specific venues.

- Collaborative marketing among the various merchants and vendors Downtown in order to leverage marketing funds and resources.

- Downtown website that maintains current information on Downtown businesses, special events and contact information for Downtown personnel and services.

- Ongoing research to better understand who is shopping in Downtown Chandler and what shops, services, restaurants and events are gaining the biggest consumer draw.

- Communications including the publication of a periodic newsletter and annual stakeholder surveys to determine the overall satisfaction with and effectiveness of District programs.

- Promotional support for special events that attract consumers and convey a positive image for Downtown.

- Business support activities to help existing businesses to understand market opportunities improve merchandising and succeed in Downtown.

- Marketing, design and financing initiatives to improve the availability of parking for employees, customers and visitors.

- Planned Activities for FY2014/15: The Marketing Committee will continue to raise awareness about Downtown Chandler and the new DC brand through social media and advertising. Billboards, banners, direct mail and various other marketing strategies will be implemented. In addition, the DCCP will maintain the new signage kiosks along Arizona Ave including a map directory and event listing.

- ***Business Development:*** The committee has been renamed to Business Development to refer to all the activities and outreach the committee undertakes to help Downtown businesses succeed. To improve perceptions and the general experience of for Downtown visitors, business and property owners, the Business Development Committee will work to improve the physical environment in Downtown. The Committee will explore services beyond those currently provided by the City including:

- Communications: The District will maintain ongoing communications with law enforcement as well as with Downtown business and property owners and other constituents to enhance the level of safety in Downtown.

- Improve Physical Environment: Working with the City, the Committee with look for opportunities to improve lighting, make temporary parking lots more functional, and look for opportunities to improve common areas. This includes additional efforts to keep Downtown clean and beautiful beyond the City provided services.

- Beautification: The Committee will explore ideas for increasing the beauty of Downtown through art and other improvements. Ideas may include cosmetic improvements that make Downtown more visually attractive, including the installation of directional/way finding signage and public art with City approvals.

- Planned Activities for FY2014/15: The Business Development committee will continue to collaborate with City staff on matters related to the development and operations of a stage to be located in the municipal complex. This committee will also continue to explore the potential expansion of the district and continue to make Downtown Chandler a clean and safe area.

- ***Ambassadors:*** The Ambassador Committee will continue to improve the Ambassador program to share information about Downtown. This will be accomplished by providing a uniformed presence at special events, handing out brochures and being available to answer public questions. As Ambassadors are volunteers, DCCP will provide ongoing training to ensure they are knowledgeable and aware of relevant safety procedures.

- ***Downtown Management:*** In order to manage and implement the preceding marketing and promotions, Business Development and Ambassador services, the DCCP has hired an Executive Director to serve as full-time District Manager to direct District programs. The Executive Director will be responsible for:

  - Direct and provide creative input into marketing strategies and programs to promote Downtown as a destination;

  - Manage and support District programs and personnel;

  - Be a point of contact for assessment payers so that District issues can be addressed as they arise. The Executive Director would also undertake ongoing outreach with assessment payers to communicate the District's mission effectively.

  - Communicate with assessment payers through periodic newsletters and faxes, web page enhancements, frequent and regular in-store visits, and meetings and forums to keep assessment payers apprised of the District's activities.