

#22  
JUN 12 2014



**Chandler • Arizona**  
*Where Values Make The Difference*

**MEMORANDUM**

**Economic Development – Council Memo ED14-011**

**DATE:** MAY 27, 2014

**TO:** MAYOR AND 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:** COST SHARING AGREEMENT WITH THE DOWNTOWN CHANDLER  
COMMUNITY PARTNERSHIP RELATING TO THE CONSTRUCTION OF  
AN OUTDOOR STAGE IN DOWNTOWN CHANDLER

**RECOMMENDATION:** Staff recommends City Council approve the Cost Sharing Agreement with the Downtown Chandler Community Partnership (DCCP) relating to the construction and management of an outdoor stage on Commonwealth Street east of Arizona Place, and authorize the City Manager or his designee to sign the Cost Sharing Agreement and all related documents as approved by the City Attorney; and authorizing a not to exceed contribution amount of \$250,000.

**BACKGROUND/DISCUSSION:** Staff began discussions with the DCCP a number of years ago relating to the construction of a stage in Downtown that could be a signature draw to bring more events and traffic into the area. As the discussions progressed it was decided that a number of events should take place to determine the best location for the potential stage including stakeholder meetings and a design charrette with both the City and the DCCP. J2 Engineering & Environmental Design, the firm that designed the Arizona Avenue improvements, offered to create conceptual designs and presentation pro bono for the DCCP. Once these were done, the DCCP hosted three stakeholder meetings to present the concept locations for potential stage sites. These stakeholder meetings were noticed to DCCP membership and Downtown stakeholders, and were held on April 2, April 11, and April 16, 2013, to ensure that ample opportunity was given for input. Further, the DCCP created a web site that allowed for those unable to attend a public meeting to view the presentation at their convenience. At the end of this process, it was determined that Zone “E”, located on the north side of Commonwealth Street east of

Arizona Place, was the best location for a stage of the magnitude being discussed. The site provides for easy access, significant parking on the east side of Arizona Avenue, and provides for a space large enough for 20,000 plus attended events. Further, the surrounding grass area creates a cohesive area for attendees to view the performances. Staff at Chandler Center for the Arts provided input on the production needs for the stage, including the sound requirements, to make certain that the venue would be adequate for national performers.

The stage will be constructed, scheduled, and managed by the City, and events will be required to make application to the City's Special Events Committee, per the agreement, to ensure that all aspects of the event are covered. Except for City events and DCCP produced events, a rental rate as adopted by City Council will be charged for the use of the Stage Area. This fee will become part of the Citywide Fee Schedule beginning in FY 2015-2016.

Design of the Stage will take place in partnership with the DCCP. The City will contribute a not to exceed amount of \$250,000. The DCCP will contribute up to \$100,000 of the total design and construction costs, with a lump sum of \$35,000 to be paid in FY2013-2014 and an additional lump sum of \$35,000 will be withheld from the City's \$118,804 voluntary contribution to the Enhanced Municipal Services District (District) in July 2014. The balance of the DCCP's contribution will be paid back to the City over a five-year period through future City voluntary contributions to the District. If the total project costs are in excess of the amounts identified in the agreement, the City and the DCCP will work together to review the overall project to identify cost savings to complete the project within the identified budget. If cost savings cannot be reached, the DCCP will pay 100% of the costs over the Estimated Cost, with the payback time to the City to be negotiated but not to exceed an additional five-years. Further, either party can cancel the agreement if the construction bid costs from the design come back higher than the Estimated Cost with the design costs split 75% to the City and 25% to the DCCP.

In return for the DCCP investment, the City will pay 25% of all Stage rental fees back to the DCCP for a period of 10 years. This revenue stream will assist the DCCP in marketing the Stage and bringing in new festivals.

**FINANCIAL IMPLICATIONS:**

Cost:	\$250,000
Fund Name:	Parks Capital
Program Name:	Downtown Campus Improvements
Funding Source:	401.4580.6611.0000.6PR637

**PROPOSED MOTION:** Move City Council approve the Cost Sharing Agreement with the Downtown Chandler Community Partnership (DCCP) relating to the construction and management of an outdoor stage on Commonwealth Street east of Arizona Place, and authorize the City Manager or his designee to sign the Cost Sharing Agreement and all related documents as approved by the City Attorney; and authorizing a not to exceed contribution amount of \$250,000.

Attachment: Cost Sharing Agreement

## COST SHARING AGREEMENT

This Cost Sharing Agreement (this “**Agreement**”) is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2014 (the “**Effective Date**”), by and between the City of Chandler, an Arizona municipal corporation (“**City**”), and Downtown Chandler Community Partnership, Inc., an Arizona nonprofit corporation (“**DCCP**”).

### Recitals

A. City owns various public properties in the downtown area of Chandler, Arizona, located North of Frye Road, South of Chandler Boulevard, West of Delaware Street and East of Dakota Street and the San Marcos Golf Course (the “**City Center**” or, alternatively, “**Downtown Chandler**”). The public properties include, without limitation: (i) A.J. Chandler Park, a public park abutting both sides of Arizona Avenue between Buffalo Street and Boston Street (the “**Park**”); (ii) common areas located within the Municipal Complex that abuts and surrounds Commonwealth Avenue east of Arizona Avenue (the “**Municipal Complex**”); and some, but not all, of the buildings and structures bordering the Municipal Complex. The Municipal Complex is depicted in the Diagram attached hereto as Exhibit A and incorporated herein by this reference.

B. City, from time to time, makes the use of the Park and portions of the Municipal Complex available for special civic events. An event sponsor, promoter, producer and/or operator must obtain a special event license from City following procedures and requirements set out in Chapter 32 of the Chandler City Code. Upon request, City may allocate City resources for use in connection with such a special event, and one such resource has been a portable, covered stage or “showmobile” made available for rental through the City’s Community Services Department.

C. DCCP is comprised of members of the business community and commercial landowners in Downtown Chandler and has a significant interest in the commercial viability of Downtown Chandler. Periodically, DCCP has supported, sponsored and/or promoted various special civic events in Downtown Chandler.

D. Pursuant to A.R.S. §48-575, City has established an Enhanced Municipal Services District (the “**District**”) to provide funding for extra or upgraded municipal services benefitting the portion of the City Center located within the District. DCCP administers the District pursuant to an annual agreement with City. The District funds are used for services addressing (i) marketing and promotions, (ii) safety and beautification, and (iii) downtown management assistance. Planning is a permitted activity for which District funds can be expended, but capital construction is not. The District funds come from assessments made against commercial properties in the District. City-owned properties are not subject to the assessment, but, historically, City has agreed with DCCP to make an annual voluntary contribution to the District, which, since 2010, been in the sum of \$118,804.00.

E. City and DCCP desire to have established a fixed location where a permanent stage can be erected for use in connection with special civic events held in Downtown Chandler, and both desire to share the cost-burden of doing so.

### Agreement

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein, including the above-stated Recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and DCCP hereby agree as follows:

1. **Stage Construction.** City shall cause to be designed, constructed and installed, as a permanent structure, a performance stage (the “**Stage**”), which will be located in a portion of the common area in the Municipal Complex denoted in Exhibit A as “Zone E.” The remaining portion of Zone E shall be a plaza area available for watching performances on the Stage (the “**Plaza Area**”). The Stage and the Plaza Area are collectively denoted herein as the “**Stage Area**”.

1.1. The Stage will be covered, and will be designed in substantial conformance with the stage design schematic provided by J2 Engineering attached as Exhibit B , and will be provided electrical service. Based on the final design cost of the overall project, City and DCCP reserve the right to adjust the design to meet the available funding identified in Section 2.2 and 2.3.

1.2 DCCP shall be required to select an individual to participate on its behalf in all design and construction meetings. That individual shall be present at all meetings and will provide an update to DCCP on a regular basis on all aspects of Stage design and construction.

1.3 Both DCCP and City shall jointly review and approve any and all change orders requested on the construction of the Stage, but the City will have ultimate authority on all approvals.

1.4. City shall comply with all state and local laws applicable to procurement of construction services by an Arizona municipality.

1.5. The Plaza Area may be improved to the extent the City, in its sole discretion, considers it appropriate to do so.

1.6 The design work shall commence immediately upon full execution of this agreement. The work related to the construction of the Stage and related improvements to the Plaza Area shall commence upon completed design documents and all applicable City permits being obtained.

2. Shared Financing. The cost of the Stage and related improvements, if any, to the Plaza Area shall be shared by City and DCCP as follows:

2.1. City and DCCP estimate that the estimated cost for the design and construction work is \$350,000.00 (the “**Estimated Cost**”).

2.2. City shall contribute an amount not to exceed \$250,000 of the Estimated Cost.

2.3. DCCP shall contribute an amount not to exceed \$100,000 of the Estimated Cost.

a. DCCP shall make a lump sum payment of \$35,000.00 to City on or before June 30, 2014 or the date upon which the construction work commences, whichever is earlier. The source of this payment shall be District funds assessed for fiscal year 2013-14. The entire payment shall be applied by City solely to payment of costs related to the design work and no portion shall be applied to the construction work.

b. City shall reduce the amount of the voluntary contribution made by City to the District for fiscal year 2014-2015 from \$118,804.00 to \$83,804.00, and will apply the differential of \$35,000.00 to the cost of the construction work. The City shall provide to the DCCP an invoice representing this transaction for recordkeeping purposes.

c. Additional payments required by DCCP to meet the contribution identified in Section 2.3 shall be in the form of a reduction of the City’s voluntary contribution to the District in subsequent fiscal years after FY 2014-2015. The deduction from the voluntary contribution for the subsequent years, after FY2014-2015, shall take place semi-annually with half of the deduction taking place in July and half of the deduction taking place in January, and for a period of not more than five (5) years. The City shall provide to the DCCP invoices representing these transactions for recordkeeping purposes.

2.4. If the actual total cost for the design and construction work exceeds the Estimated Cost, City and DCCP shall:

a. Jointly review the overall design of the project to identify cost savings based on design modification and overall project scope.

If cost overage will still occur, above the Estimated Cost, the DCCP shall contribute 100% of the additional amount necessary to complete the stage based on the total design and construction work agreed to by both parties but, in such event, any contribution by DCCP shall be in the form of a reduction of the City’s contribution to the District in subsequent fiscal years after the 5-year repayment period identified in Section 2.3(c). The deduction from the voluntary contribution for the subsequent years, shall take place semi-annually with half of the deduction taking place in July and half of the deduction taking place in January. The length

of the additional repayment period following the initial 5-year repayment period shall be mutually agreed upon by both the City and the DCCP based on the amount of cost overage upon the completion of construction, but at no time shall the total repayment period exceed 10 years. The additional annual repayment amounts shall be similar to the annual repayment amount during the initial 5-year repayment period. Should the EMSD be dissolved or otherwise not continued, the DCCP shall be responsible for the semi-annual repayments directly to the City for the remainder of the period until the overage amount is paid in full.

b. If the cost of the design and construction work exceeds the Estimated Cost, and both parties cannot agree to design modifications to bring the project in line with the Estimated Costs, either party may cancel this Agreement, prior to the start of construction. However, both parties agree that all costs to the point of cancellation will be divided as to 75% as to the City's share and 25% as to the DCCP's share..

2.5. If the actual total cost for the design and construction work is less than the Estimated Cost, City and DCCP shall participate in the following manner; 75% as to the City share and 25% as to the DCCP share, but, in such event, the refund to DCCP shall be in the form of an increase in the City's contribution to the District for the next fiscal year.

3. Management. City shall be responsible for the management, operation and maintenance of the Stage Area. Without limiting the generality of the foregoing, City shall:

3.1. Schedule use of the Stage and Stage Area, subject to DCCP's priority rights set out in Section 5 below.

3.2. Under take routine maintenance and upkeep of the Stage and Stage Area as needed when the Stage Area is not in use for an authorized special event.

3.3. Assure that electric utility service is available to the Stage as needed for use in connection with authorized special events.

3.4. Subject to Section 8 below, City shall have the right to charge a rental or similar fee for use of the stage in accordance with rates approved by the City's governing body, i.e. City Council. Such rates shall be reviewed annually to determine: (i) if the rates are comparable to rates charged by other similar venues in the general area (including areas outside the limits of Chandler, Arizona); and (ii) if the rates are at least adequate to cover the costs incurred by City in operating and maintaining the Stage and Stage Area.

4. Special Event Permit Requirement. The Stage shall be made available by City for large *special events* that are *civic events*, as those terms are defined in Chapter 32 of the Chandler City Code, only if the sponsor, promoter, producer and/or operator of the special event has obtained a special event permit as required by and in accordance with Chapter 32.

4.1. An application for a special event permit that proposes to use the Stage and Stage Area will be treated like other applications proposing to use public property within the City Center and shall be distributed to DCCP for review, comment and suggestions concerning conditions to lesson impacts on City Center businesses.

4.2. An application for a large special event that proposes use of the Stage and Stage Area must be approved by City's Special Events Committee.

4.3. The Stage shall be made available by the City for smaller special events, based on the terms and conditions identified in Section 5. An application to use the Stage Area for a smaller special event will need to be completed, and may be required to obtain a special event permit as determined by the City Manager or his Designee.

5. Scheduling Priority. In scheduling use of the Stage and Stage Area for special events, City shall comply with the following specific criteria:

5.1. The following dates are "blackout dates" in which the stage is only available for use by City, DCCP or for large events of more than 2,000 attendees:

- Friday & Saturday of Martin Luther King Jr. holiday weekend
- Third Friday & Saturday in February
- Fourth Saturday in February
- Every weekend in March
- First Friday & Saturday and the last weekend in April
- Saturday closest to May 5<sup>th</sup>
- Last Saturday in September
- First Saturday in October
- Friday closest to Halloween
- Veteran's Day weekend in November
- First Saturday in December

5.2. For weekends (Friday, Saturday, and Sunday) in which no blackout dates are designated in subsection 5.1 above, only City, DCCP or large events of more than 2,000 attendees will be allowed.

5.3. For the period of twelve (12) months immediately following the Completion Date, only DCCP may book new weekend events. Thereafter, DCCP has a right of first refusal up until six (6) months prior to a proposed event date, after which any such event date becomes available on a first-come first-serve basis.

5.4. For weekday events (M–Th), DCCP has right of first refusal up until six (6) months prior to a proposed event date, after which any such event date becomes available on a first-come first-serve basis.

5.5. In September and October, all bookings must be coordinated with City's overseeding program.

6. Reservations. A reservation or booking of the Stage automatically includes the entire Stage Area and the east side of the Park, all of which will be treated as a single reservation area, in order to reduce conflicts that might otherwise arise if separate events were held at each location. However, the east side of the Park may be reserved alone if the Stage is not scheduled to be used on the date and time for which the east side of the Park is reserved. These reservations are subject to the terms in 5.3 and 5.4 of this Agreement.

7. Amending Community Center Contracts. City will have all rental contracts for the Community Center modified to notify the renter when large festivals or events may be taking place and that noise and parking challenges may be presented.

8. Stage Rentals.

8.1. Stage rental fees shall be in an amount sufficient to cover collectively the use of the Stage, the Stage Area and the eastside of the Park.

8.2. City shall waive the rental fee only for those special events directly produced by DCCP, such as, for example, "Rock the Block." If it is an issue, the City Manager or a designee shall make the final determination as to whether the special event is deemed to be one directly produced by DCCP.

8.3. Existing agreements between City and DCCP that provide fee waivers in connection with the use of other public properties in Downtown Chandler, such as, but not limited to, the Park, where the use does not include the Stage or Stage Area, will continue to remain in effect.

8.4. Notwithstanding the above, costs of services or "in-kind" assistance provided by City's Police Department or Fire Department at DCCP's request are not waived; DCCP must apply for and pay charges imposed by the respective departments for such services or assistance.

8.5. Notwithstanding the above, DCCP shall be responsible for meeting all requirements, including without limitation, insurance and indemnity requirements related to the securing of a special event permit for those specific events directly produced by DCCP.

8.6. City will pay 25% of all Stage rental fees received by City during the term of this Agreement to DCCP in consideration for DCCP marketing the City Center area, promoting special events and bringing in new special events. City shall make payments to the DCCP on a quarterly basis.

9. Mutual cooperation. City will include DCCP in all meetings relating to the design of the Stage. However, the authority to make final decisions on such matters lies solely with City.

10. Term of the Agreement. The term of this Agreement shall be for the period of ten (10) years commencing on the Effective Date of the Agreement and expiring on or before May 31, 2025, unless otherwise extended or lessened by mutual written agreement of the parties, or unless otherwise earlier terminated or cancelled in accordance with the provisions of this Agreement.

11. No Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party.

12. Relationship of the Parties. Each party shall be entirely and solely responsible for its acts and the acts of its agents, employees, and subcontractors, if any. Neither party is a partner, employee, agent, or legal representative of the other party for any purpose whatsoever, nor does this Agreement constitute a joint venture or partnership between the parties, nor does either party have any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the party, or to bind the other party in any manner. Each party is not to make any representations on the other party's behalf of any kind to any, including but not limited to, investors, governmental authorities, or any other third parties. The parties hereby acknowledge that employees of each party shall not be deemed to be employees of the other party by virtue of this Agreement or actions of such employees in furtherance of it.

13. Default.

13.1. City shall be in default under this Agreement if City fails: (a) to have the construction work, and including installation of electrical utility service to the Stage, completed so that the Stage is unavailable for use; or (b) to provide the priority scheduling pursuant to Section 5 above. In either event, DCCP, as its remedy, may seek early termination of this Agreement by giving written notice of the failure to City and a period of forty-five (45) days to cure the failure. Additionally, in the event that notice and an opportunity to cure a default under 13.1(a) is made, but no cure effected, DCCP shall be entitled to reimbursement of the lump sum payment that it may have made pursuant to subsection 2.2 above.

13.2. DCCP shall be in default under this Agreement if DCCP fails to timely submit to City the lump sum payment required pursuant to subsection 2.3 above. In such event, City, as its sole remedy, may seek early termination of this Agreement by giving written notice of the failure to DCCP and a period of forty-five (45) days to cure the failure.

13.3. A violation of any of the requirements or conditions associated with the issuance of a special event permit allowing for use of the Stage and/or Stage Area shall not constitute an event of default under this Agreement.

14. Notices. All notices given pursuant to this Agreement shall be in writing and shall be given by (i) personal delivery, (ii) United States mail (certified, return receipt requested), (iii) United States express mail or other established express delivery service (such as Federal Express, DHL and United Parcel Service), or (iv) facsimile, with any postage or delivery charges prepaid, addressed to the person and address specified below:

If to City:                      City of Chandler  
Economic Development Division  
175 South Arizona Avenue  
5<sup>th</sup> Floor  
Chandler, Arizona 85225  
Attention: Christine Mackay  
Facsimile: 480-782-3040

City of Chandler  
Community Services Department  
175 South Arizona Avenue  
4<sup>th</sup> Floor  
Chandler, Arizona 85225  
Attention: Mark Eynatten  
Facsimile: 480-782-2713

With a copy to:                Chandler City Attorney's Office  
Mail Stop 602  
P.O. Box 4008  
Chandler, Arizona 85244  
Attention: Glenn A. Brockman  
Facsimile: 480-782-4652

If to DCCP:                      Downtown Chandler Community Partnership  
P.O. Box 3356  
Chandler, Arizona 85244  
Attention: Jennifer Lindley

Either party may change the addresses from time to time by serving notice as provided above.

15. Miscellaneous.

a. This Agreement constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document signed by authorized representatives for each party.

b. This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

c. The failure of either party to insist upon strict adherence to any term or provision of this Agreement will not be considered a waiver or deprive the party afterwards of the right to insist upon the strict adherence to that term of the Agreement.

d. Each party will retain, for inspection and audit at all reasonable times by the other party, all books, accounts, reports, files and other records relating to this Agreement for a period of five (5) years after termination or expiration of this Agreement. Upon request of a party, a legible copy of all such records will be produced by the other party, and the cost to copy such requested documents/records shall be the responsibility of the requesting party. The original of all such records also will be available and produced for inspection and audit when needed to verify the authenticity of a copy.

e. This Agreement is subject to Section 38-511, Arizona Revised Statutes. This Agreement may be cancelled if any person significantly involved in the initiating, negotiating, securing, drafting or creating this Agreement on behalf of City is or becomes an employee, consultant, or agent of DCCP during the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CITY OF CHANDLER, an Arizona  
municipal corporation

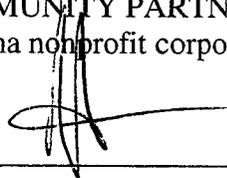
Approved as to form:

\_\_\_\_\_  
City Attorney G A B

By: \_\_\_\_\_

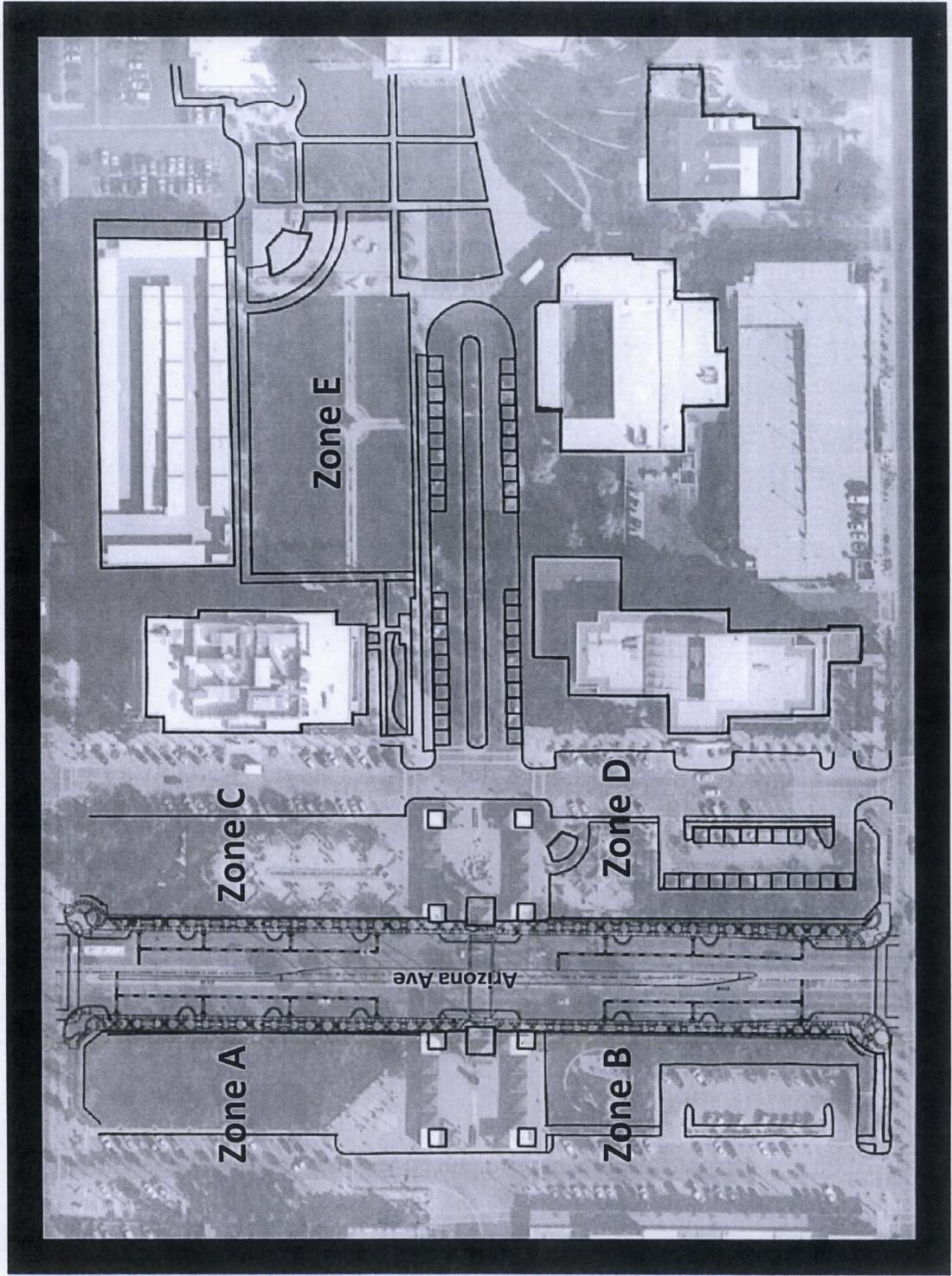
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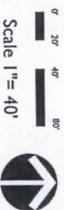
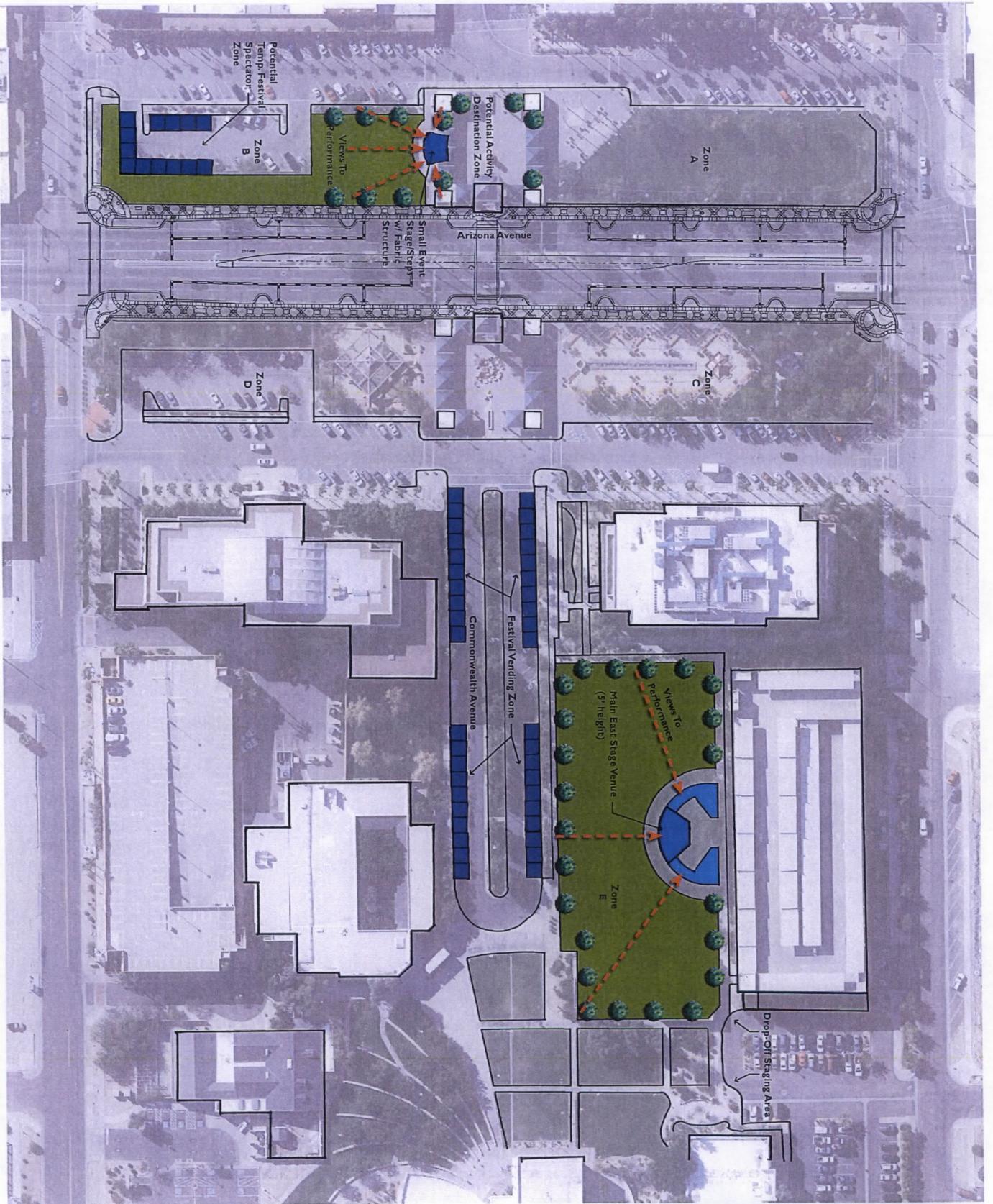
DOWNTOWN CHANDLER  
COMMUNITY PARTNERSHIP, INC., an  
Arizona nonprofit corporation

By:  \_\_\_\_\_

Its: President \_\_\_\_\_

EXHIBIT A  
DOWNTOWN OPEN SPACE ZONES A THROUGH E





# EXHIBIT B

