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MEMORANDUM Community Services Department Council Memo No. CS15-009

DATE: JULY 8, 2014

TO: MAYOR AND COUNCIL

THRU: MARSHA REED, ACTING CITY MANAGER *ML*
NACHIE MARQUEZ, ASSISTANT CITY MANAGER *NM*

FROM: MARK M. EYNATTEN, COMMUNITY SERVICES DIRECTOR *MME*

SUBJECT: AGENDA ITEM 16: DESERT BREEZE PARK RAILWAY AGREEMENT

As part of the July 7, 2014 City Council Study Session, Councilmember Weninger requested a copy of the contractual agreement with Chandler Amusements, LLC as backup information for Agenda Item 16. That item involved a recommendation to approve an amendment renewing the agreement to provide amusement train ride and concession services at the Desert Breeze Park Railway facility for a period of ten years.

The following documents are attached related to Councilmember Weninger's request:

- City Council Agenda Item 29: Meeting Date of August 12, 2004.
- Memorandum of Agreement signed August 16, 2004.
- Technical Specifications Amusement Train Ride and Concession RFP No. CS4-961-2081.
- Amendment to Agreement signed September 3, 2004.

Should you have any questions regarding this information, please contact me at 782-2661.



PURCHASING ITEM FOR COUNCIL AGENDA

1. Agenda Item Number:

2. Council Meeting Date:
August 12, 2004

TO: MAYOR & COUNCIL

3. Date Prepared: July 26, 2004

THROUGH: CITY MANAGER

4. Requesting Department: Community Services

5. SUBJECT: Award Amusement Train and Concession agreement to Encanto Amusements, Ltd.

6. RECOMMENDATION: Approve a Memorandum of Agreement with Encanto Amusements, Ltd. to provide amusement train ride and concession facilities at the Desert Breeze Railway facility for a period of ten (10) years with one ten (10) year renewal period to be mutually agreed upon by both parties.

7. BACKGROUND/DISCUSSION: In 1992, the City solicited "Request for Proposals" for a private firm to construct and operate a miniature train concession in Desert Breeze Park. The Desert Breeze Railroad Company was selected and invested over a half million dollars in the construction of the concession facility, the installation of the track and related improvements to the park. They operated for 11 years under a lease agreement with the City. The company ceased operation and filed for bankruptcy in January 2003. The City of Chandler took possession of the concession facility and permanent improvements to the park in June of 2003. Following the settlement of the bankruptcy action, the City sent out a Request for Proposals from vendors experienced in providing amusement train ride and concession services. Two vendors responded.

The attached agreement and the bidder's proposal will govern the operation of the concession. The term of the agreement is for ten years with an option for one ten-year renewal to be mutually agreed upon by both parties. The Contractor will pay the City a percentage of the gross revenue based upon the following schedule:

Year one – 2%

Year two – 4%

Year three and the remainder of the agreement term – 8%

The agreement allows for additional amusement type services in the park as mutually agreed upon by both parties.

The miniature train was a popular attraction at the park and the Community Services Department has received a great number of calls asking when it would be operating again. If the agreement is approved, the vendor plans to be operational by October 2004.

8. EVALUATION: Request For Proposals were solicited from vendors experienced in providing amusement train-ride and concession services. The following vendors responded: Encanto Amusements, Ltd. and Southwest Manufacturing.

The selection process was conducted in accordance with established City policies and procedures. The evaluation committee included: Glenda Shackelford, Procurement Officer; Dave McDowell, Asst. Community Services Director; Tyrone Allen, Special Events Coordinator; Gene Hagerty Parks Board Member.

An agreement was negotiated with Encanto Amusements, Ltd. due to their experience, qualifications and understanding of the services requested.

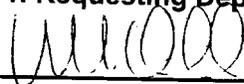
9. FINANCIAL IMPLICATIONS: NA

10. PROPOSED MOTION: Move to approve a Memorandum of Agreement with Encanto Amusements, Ltd. to provide amusement train ride and concession facilities at the Desert Breeze Railway facility for a period of ten (10) years with one ten (10) year renewal period to be mutually agreed upon by both parties.

ATTACHMENTS: Memorandum of Agreement, Location Map

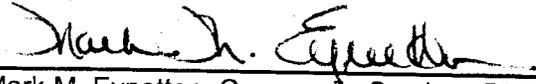
APPROVALS

11. Requesting Department

 FOR DEM

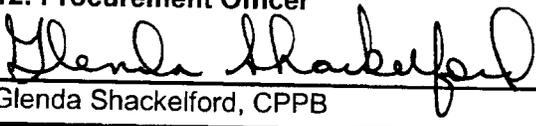
David E. McDowell, Assistant Community Services Director

13. Department Head



Mark M. Eynatten, Community Services Director

12. Procurement Officer



Glenda Shackelford, CPPB

14. City Manager



W. Mark Pentz

MEMORANDUM OF AGREEMENT
City of Chandler
Chandler, Arizona

PROPOSAL NO.: CS4-9612081
SUBJECT MATTER: Amusement Train Ride & Concession Services
OPENING DATE & TIME: May 12, 2004 - 4:00 p.m./M.S.T.

This contract made and entered into by and between the City of Chandler, Arizona, a municipal corporation, hereinafter called the "City", and Encanto Amusements, Ltd., hereinafter called "the Contractor".

WITNESSETH:

THAT WHEREAS, the Mayor and City Council/City Manager of the City are authorized and empowered by the provisions of the City Charter to execute contracts for professional services.

NOW THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter contained, it is agreed by and between the City and the Contractor, as follows:

SECTION I - DESCRIPTION OF PROJECT

This project consists of a ten year contract, with option to an additional ten year period to provide the City of Chandler with an amusement train ride and concession services.

The Contractor shall provide services as outlined in the RFP and agreed upon services between the City and the Contractor.

SECTION II - CONTRACT DOCUMENTS

The contract is comprised of the following: Request for Proposal, Advertisement, General Terms & Conditions, Instructions to Vendors, Standard Terms & Conditions, Special Terms & Conditions, Technical Specifications, Contractor's offer, Deviations from Specifications, No Collusion Affidavit, Amendment, if any, and proposal as accepted by the Mayor and Council or City Manager, Certification of Insurance and Change Orders, if any, are by this reference made a part of this contract to the same extent as if set forth herein in full.

SECTION III - GENERAL TERMS AND CONDITIONS

- a. This Agreement sets forth the terms and conditions under which Contractor shall provide professionally qualified personnel to perform professional services as agreed by and between the City and the Contractor.
- b. This Agreement shall commence when Contractor is notified to proceed with agreed services.
- c. The Contractor shall provide a performance bond and proper insurance coverage as called for in the proposal document.

SECTION IV - CHANGES

The City and the Contractor have agreed upon the following:

- a. The City and the Contractor will agree upon an operating schedule and update as needed throughout the term of the contract.
- b. The term of the contract will be ten years with one ten year renewal option to be mutually agreed between the City and the Contractor. If the contract is extended for the second ten year period, at the end of the twenty year agreement the City and the Contractor will have the option of negotiating a new contract or end the contract with the City reserving the option to rebid the services.

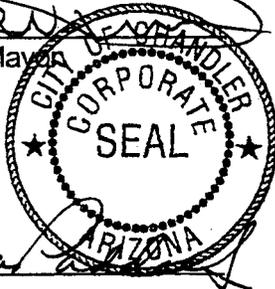
- c. The City and the Contractor will discuss and come to an agreement on additional amusement type services at the park, i.e. carousel, pedal boats, picnics, and amusement rides.
- d. Contractor may have exclusive rights to use the Name DESERT BREEZE RAILROAD for this contract as long as the contract is in existence. Once the contract is ended the Contractor has **no** entitlement to the name.
- e. The City and Contractor will agree upon the miscellaneous sporting events that are allowed to bring in food and beverages for resale for fund raisers and other special events.
- f. The City will maintain the major building systems including exterior painting.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this 14 day of Aug, 2004.

CITY OF CHANDLER

BY: [Signature]

Mayor



ATTEST:

BY: [Signature]

City Clerk

CONTRACTOR:

BY: [Signature]

President

Title

ATTEST:

BY: [Signature]

Karen L. Capell

Name

APPROVED AS TO FORM (SEAL)

BY: [Signature]

City Attorney

**TECHNICAL SPECIFICATIONS
AMUSEMENT TRAIN RIDE & CONCESSION
RFP NO. CS4-961-2081**

A. Scope of Work

1. The City has an existing concession facility and track layout. A map of the train layout is provided as Attachment A. This request calls for Contractor to provide a Train and Concession services. An optional proposal is included for concession services at City pool locations.
2. The Contractor shall provide manpower needed for the operation and public enjoyment of the railroad layout and concession.
3. The Contractor shall publish and enforce safety rules with regard to members, operators of motive power and the public, in cooperation with the City. The Contractor shall abide by the rules of the Parks & Recreation Division and all terms and conditions now contained in writing and as may be from time to time amended. The Contractor shall have no authority over the premises of Desert Breeze Park, and shall not use the area outside of the fenced concession area without prior approval.
4. The Contractor must keep the City's premises in good order and repair. The Contractor shall keep the premises clean and pick-up and remove litter from park area around the concession stand.
5. For special events sponsored by the City or co-sponsored by the City and Contractor special discount pricing for admissions and concession items will be agreed upon by the City and the Contractor.
6. All rates and charges will be determined during negotiations.
7. The Contractor must submit with their RFP submittal, admission and concession prices and concession items. Any change in prices must be approved by the Community Services Director or designee. The City has the right to restrict the sale of certain concession items.
8. The Contractor shall not commit any waste on the City's premises, nor shall it maintain or commit, or permit the commission of any nuisance on the Contractor's premises, or use the City's premises for any unlawful purpose.

B. Responsive Proposal Offerors

1. Must be established and experienced in the amusement train/concession stand business as an owning or corporation or owning proprietor. References must be provided!

2. Must provide a proposed concession menu complete with all retail prices offered to the public. The providing of alcoholic beverages WILL NOT BE PERMITTED.
3. Must provide information regarding the food quality and supply sources.
4. Must provide a plan for evaluating services and customer satisfactory on an on-going basis.
5. Must provide information concerning measures to comply with applicable federal, state, county and local health and safety codes.
6. Must provide resume information detailing the experience of the owner, manager and full-time support staff of proposed food concession service.
7. Must provide information as to employee dress and grooming standards to be employed in a concession environment.
8. Must provide information concerning employee training and employee customer service programs.
9. Must be financially stable and be able to demonstrate proof of stability to establish and maintain a concession facility by providing copies of the most recent financial statement, audit or annual report.

NOTE: Any prospective Proposers wishing to inspect the facilities must contact Dave McDowell -at (480) 782-2744 to schedule and confirm an exact time to tour the facility.

C. Facility Maintenance

1. The Contractor shall furnish at his own expense all equipment, furniture, fixtures, supplies, etc. needed for the operation.
2. The Contractor will provide and maintain, at his own expense, all "rolling stock" necessary for the operation. This would include locomotive, tender, and cars to run on 16" track.
3. The Contractor is solely responsible for damages to the concession facilities and equipment OWNED BY THE CITY through negligence on the Contractor's part, employees, subcontractors, or by his customers. The City will have final determination as to where the responsibility lies. It is further understood that the Contractor is responsible for repairs to his own equipment.
4. The Contractor must maintain train track, track structures, bridges, crossings, and keep track bed grass and weed free. The Contractor must maintain the concession facility and fenced area. Contractor must provide for the removal of all trash generated by or as a result of use of the daily concession service or area. All areas and facilities impacted by either function shall remain clean, attractive and inviting to the public at all

times. All paper and other debris in and around concession facility must be picked up or hosed down daily. If the premises are not kept in satisfactory condition, the Parks Division has the authority to clean the area and charge actual cost to Contractor. At the termination of this contract, the Contractor shall leave the facilities and equipment in good condition.

5. Any additions, modifications, or changes to the facility must be approved in advance by the Community Services Director or their designee.
6. Any modifications or changes must meet applicable City and State codes and work must be performed by a properly licensed Contractor.
7. The Contractor shall be responsible for repairs to his/her own equipment. Any equipment furnished to the Contractor in fulfilling concession operation may not leave the facilities at any time (except when service is required).
8. The Contractor must maintain a service agreement for the fire protection system in accordance with state and local law.

D. Utilities

The Contractor will pay for all utilities and water. Contractor will be responsible for all telephone installation, equipment, maintenance and use expenses located in the concession facility. For the purpose of scheduling birthday parties, placing orders, etc., Contractor will be required to install a phone or provide cellular phone service.

E. Personnel

It is very important to the City that park guests using City parks and facilities are treated in a cordial, courteous and polite manner. Contractor is responsible for his actions and those of his employees, subcontractors, volunteers. Inappropriate conduct toward the public will be deemed a material breach of this contract.

The Contractor must implement and consistently administer a program to monitor and evaluate customer satisfaction in a manner and method approved by the Community Services Director or their designee.

Contractors' employees must be dressed in uniforms to distinguish their employees from City employees. The Contractor must provide information as to employee dress and grooming standards and employee training programs.

F. Concession Operation

Contractor will be expected to manage concession operation in a competitive, cost conscious and customer service minded manner.

Concession hours of operation and/or changes need to be developed in concert with, and approved by the Community Services Director or their designee. The Contractor shall not install or keep on premises any vending machines, without prior written approval.

Contractor must keep facility clean and sanitary. The Contractor shall advise the City of any defective condition noticed at this facility.

G. Other

The Community Services Director or their designee must approve all signage i.e. hours of operation, menu, food, and drink prices etc.

The Contractor must provide phone number to be published and distributed for information. Phone calls must be returned in a timely manner year-round.

Prices established for food and beverages in the Concession Facility will be part of the evaluation criteria outlined on page 20, #29b. Once approved any and all increases must be approved by the Community Services Director or designee.

The Contractor may provide birthday party packages for groups. If the Contractor does not provide a birthday package that includes a cake, customers that purchase a birthday package have the option of bringing a cake. The cake option only applies to customers who have purchased the birthday party package.

H. Rent Payment Procedures

1. Time and place of payment. All payments must be made payable to the City of Chandler and mailed or delivered to the Chandler Community Services Department, Attn: Community Services Director or designee, P.O. Box 4008, Stop 501 Chandler, Arizona 85244. The place of payment may be changed at any time by City upon thirty (30) days written notice to Contractor. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, in which case the payment shall be deemed paid upon actual receipt by the City. Contractor assumes all risk of loss and responsibility for late payment charges if payments are made by mail.
2. Payment to the City will be agreed upon during negotiations. The Contractor shall pay the City on annual gross income from the admissions and concession sales. Payments shall be agreed upon during negotiations

I. Gross Income

Gross income or receipts as used in this contract shall include all income resulting from the operation at the Amusement Train Ride, concessions and from whatever source derived whether received or to become due. Provided, however, gross income shall not include federal, state or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated

to the consumer as a separate charge) and paid over periodically by Contractor to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by Contractor in computing gross income. Gross income shall not include refunds for goods returned for resale on the premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of Contractor. The percentage rent shall be calculated and paid by Contractor on the basis of said gross income whether the income is received by Contractor or by any sub-lessee, permittee or licensee, or their agents.

1. The Contractor shall provide the City with a correct statement together with a payment on all applicable gross receipts in a form selected by the City. The statement will be signed by the Contractor or its authorized agent, attesting to the accuracy thereof, which shall be legally binding upon the Contractor. Each statement will indicate or include:
 - a) A statement of total gross receipt for each quarter, itemized as to business categories for which percentage are established. A gross receipts breakdown of each business conducted on the premises must be included when a reported category shows gross income to be from more than one business operation.
 - b) A statement of the percentage due city, computed and totaled.
 - c) A statement of the accumulated total of all percentages previously paid.

2. The Contractor shall be solely responsible for the safekeeping of all assets, along with monies collected and/or maintained on the premises and shall remove all monies from premises at the close of the business day each day. The City shall not be responsible for Contractor's daily sales revenues. Therefore, it is required that contractor provide a safe or daily control sales revenues. The Contractor shall pay the agreed upon gross percentage to the City on any stolen, lost, etc. monies. Contractors must provide their own cash register.

The City shall inspect and audit books and accounts of the Contractors operation, including cash receipts, annually.

J. Competent Management

Throughout the term of this Contract, the Contractor shall provide competent management of the train and concession to the satisfaction of the Community Services Director or designee. For the purpose of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of the train and concession and related activities in a fiscally responsible manner.

K. Audit Cost

The full cost of City's audit(s) will be borne by the City unless one or both of the following conditions exists, in which case Contractor hereby agrees to pay City's cost of audit(s):

1. The audit(s) reveal an underpayment of more than five percent (5%), or more than \$10,000 whichever is less between the rent due as reported and paid by the Contractor pursuant to this contract and rent due as determined by the audit(s); or
2. Contractor has failed to maintain complete and true books, records, accounts and supporting source documents in strict accordance with this section hereof.

Contractor shall pay any deficiency determined by the audit(s) plus interest on such amount as defined in Paragraph N, Delinquent Rent and Audit(s) Fees, hereof, within

3. thirty (30) days of notice thereof by City. City will credit any overpayment against income rents. Any overpayment determined after the end of this contract will be refunded by the City within thirty (30) days of confirmation by the Community Services Director or their designee of the audit(s) findings.

L. Operation of Facilities

A regular schedule of days and hours of operation shall be established by Contractor and the City to best serve the public. Any changes in this schedule shall be subject to the prior written approval of the Community Services Director or designee, such approval shall not be unreasonably withheld. Contractor shall diligently and in a creditable manner furnish services to the public in conformity with all applicable rules and regulations of the City of Chandler.

M. Default

Contractor's failure to keep complete and accurate records by means of double entry bookkeeping and make them available for City inspection is, like all other failures to comply with covenants of this contract, a breach of this contract and cause for termination.

N. Delinquent Rent and Audit(s) Fees

If contractor fails to pay the rent when due, Contractor will pay in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of the fifteen (15) days, Contractor shall pay an additional five (5%) {being a total of ten (10%) percent} which is hereby mutually agreed by the parties hereto to be appropriate to compensate the City for any loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

O. Inspection of Records

1. Records. Contractor shall, at all times during the lease term, keep or cause to be kept true and complete books, records and accounts of all financial transactions in the operation of all business activities conducted

upon and financial transactions resulting from the use of the premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices or other documents as necessary to allow the City to easily determine the total gross income.

2. Any retail sales or charges will be recorded by means of cash registers or other comparable devices, which display to the customer the amount of the transaction and automatically issues a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day.
3. In the event of admission charges or rentals, Contractor shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of such tickets, as well as a record of un-issued tickets.
4. All retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided, such system is approved by the City.

P. Inspection / Improvements / Alterations / Repairs

1. Entry and Inspection. The City reserves and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to inspect the operations conducted thereon. In the event that such entry or inspection by the City discloses that said premises are not in a decent, safe, healthy, and sanitary condition, the City shall have the right, after ten (10) days written notice to the Contractor, to have any necessary maintenance work done at the expense of the Contractor, and Contractor agrees to pay promptly any and all costs incurred by the City in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition, the City may at its sole option, without additional notice, require Contractor to file with the City a faithful performance bond to assure prompt correction of any condition which is not decent, safety healthy and sanitary. Said bond shall be in an amount adequate in the opinion of the City to correct the said unsatisfactory condition. The Contractor shall pay the cost of said bond. The rights reserved in this section shall not create any obligations elsewhere in this contract imposed on the City. The rights reserved herein are exclusive to the City and shall not extend to any other agency, body, committee, or any other party not officially authorized to act for or on behalf of the City or as the City's duly appointed agent or representative unless otherwise permitted by the Contractor at the City's request.
2. Restoration / Maintenance. The Contractor agrees to assume full responsibility and cost for the restoration, operation and maintenance of the premises including all improvements and structures thereon throughout the term. The Contractor will make all repairs and replacements necessary to maintain and preserve the premises in a

decent, safe, healthy, and sanitary condition satisfactory to the City and with all applicable laws.

3. Improvements / Alterations. Notwithstanding the aforesaid restoration and maintenance, no improvements, structures, or installations shall be constructed on the premises, and the Contractor may not alter the premises without proper written approval by the Community Services Director or their designee. Further, the Contractor agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the Community Services Director or their designee and that such approval shall not be unreasonably withheld. This provision shall not relieve the Contractor of any obligation under this contract to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. The City shall not be obligated by this contract to make or assume any expense for any improvements or alterations.

CITY OF CHANDLER
AMENDMENT TO AGREEMENT
AMUSEMENT TRAIN RIDE AND CONCESSION SERVICES
PROJECT NO. CS4-961-2081

It is mutually agreed by and between the City of Chandler, hereinafter called CITY, and ENCANTO AMUSEMENTS, LTD., hereinafter called CONTRACTOR, that the AGREEMENT for Services for Amusement Train Ride and Concession Services, Project No. CS4-961-2081, dated May 12, 2004, is hereby amended as follows:

- a. Encanto Amusements, Ltd. has transferred and assigned all interest and obligations to the following entity:

Chandler Amusements, LLC
1202 W. Encanto Blvd.
Phoenix, AZ 85007

Chandler Amusements, LLC is owned 100% by William D. Capell Jr. and Karen L. Capell owner and President of Encanto Amusements, Ltd.

All terms and conditions in the original Agreement not specifically amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names this 3rd day of September, 2004.

CITY OF CHANDLER

BY: [Signature]
Mayor



ATTEST:

[Signature]
City Clerk

APPROVED AS TO FORM: (SEAL)

[Signature]
City Attorney

CONTRACTOR

BY: [Signature]
President
~~Managing Member~~
Title

ATTEST:

BY: [Signature]
[Signature]
Name



**PURCHASING ITEM
FOR
COUNCIL AGENDA
CS14-138**

1. Agenda Item Number:

16

2. Council Meeting Date:
July 10, 2014

TO: MAYOR & COUNCIL

3. Date Prepared: April 24, 2014

THROUGH: CITY MANAGER

4. Requesting Department:
Community Services

5. SUBJECT: Agreement Amendment for Amusement Train Ride and Concession Services at Desert Breeze Park

6. RECOMMENDATION: Approval of Amendment No. 2 to Memorandum of Agreement; Proposal No. CS4-961-2081 with Chandler Amusements, LLC to provide amusement train ride and concession services at the Desert Breeze Park Railway facility for a renewal period of ten (10) years.

7. HISTORICAL BACKGROUND/DISCUSSION: In 1992, the City solicited Request for Proposals for a private firm to construct and operate a miniature train concession in Desert Breeze Park. The Desert Breeze Railroad Company was selected and invested over a half million dollars in the construction of the concession facility, the installation of the track and related improvements to the park. They operated for 11 years under a lease agreement with the City. The company ceased operation and filed for bankruptcy in January 2003. The City of Chandler took possession of the concession facility and permanent improvements to the park in June of 2003. Following the settlement of the bankruptcy action, the City sent out a Request for Proposals from vendors experienced in providing amusement train ride and concession services.

8. EVALUATION PROCESS: In August 2004 an award was made to Chandler Amusements, LLC, successor to Encanto Amusements, LTD, for amusement train ride and concession services for a ten year period, August 16, 2004 through August 15, 2014, with the option to renew for one additional ten-year period. Staff has been satisfied with the quality of service provided by Chandler Amusements and recommends renewal of the Agreement for an additional ten year term, August 16, 2014 through August 15, 2024. There have been no issues with Chandler Amusements, LLC, and they continue to submit their quarterly "rent" payments, which is 8% of their revenue, to the City in a timely manner.

9. FINANCIAL IMPLICATIONS: N/A

10. PROPOSED MOTION: Move to approve Amendment No. 2 to Memorandum of Agreement; Proposal No. CS4-961-2081 with Chandler Amusements, LLC to provide amusement train ride and concession services at the Desert Breeze Park Railway facility for a renewal period of ten (10) years.

ATTACHMENT: Amendment No. 2

APPROVALS

11. Requesting Department

Mickey Ohland, Park Development & Operations Manager

12. Department Head

Mark M. Eynatten, Community Services Director

13. Procurement Officer

Raquel McMahon, CPPB

14. City Manager

Rich Dlugas

**AMENDMENT NUMBER TWO
TO MEMORANDUM OF AGREEMENT
PROPOSAL NO.: CS4-961-2081**

This Amendment TWO to that certain Agreement Between the City of Chandler (CITY) and Chandler Amusements, LLC, successor to Encanto Amusements, LTD, hereinafter called CONTRACTOR, for Services for Amusement Train Ride and Concession Services, dated May 12, 2004 and executed August 16, 2004, is hereby amended as follows:

WHEREAS, CITY and Encanto Amusements, LTD entered into Memorandum of Agreement dated May 12, 2004, whereby Encanto Amusements, LTD would provide services for amusement and ride and concession services, and

WHEREAS, in an Amendment to the Agreement dated September 3rd of September, 2004, the City agreed to the transfer and assignment of all interest and obligations of this Agreement to Chandler Amusements, LLC, and

WHEREAS, the Agreement provided for an option to renew the Agreement upon mutual agreement of the parties for an additional ten year term, and

WHEREAS, the Parties wish to extend the Agreement for one additional 10 year term with an option for each party to terminate the Agreement by giving the other party sixty (60) day notice and to comply with the requirements of A.R. S. §41-4401.

NOW THEREFORE, the parties agree as follows:

1. The Agreement is amended to extend the term of the Agreement for another ten year term from August 16, 2014 through August 15, 2024.
2. The Agreement is amended to comply with the requirements of A.R.S. § 41-4401. As required by this provision of Arizona state law, a "Contractor Immigration Warranty" is attached as Exhibit A to this Amendment No. TWO and the Agreement is amended to add the following language:

"Pursuant to the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to the City that the Contractor and each of its subcontractors ('Subcontractors') will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter 'Contractor Immigration Warranty').

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.

The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.

The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors

~~Immigration Warranty. The Contractor agrees to assist the City in performing any such random verification.~~

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the offeror does not have scrutinized business operations in Iran.

In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the offeror does not have scrutinized business operations in Sudan.

- 3. All other terms and conditions of the above referenced Agreement shall remain unchanged and in full force and effect. All terms and conditions in the original Agreement and any Amendments not specifically amended herein shall be incorporated by reference in its entirety and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this _____ day of _____, 2014.

CITY OF CHANDLER:

By: _____
Mayor

CONTRACTOR:

By: *William Lyrell J*
Title: *Member*

APPROVED AS TO FORM:

City Attorney *pkw*

ATTEST: (If corporation)

Secretary

ATTEST:

City Clerk

WITNESS: (If individual or Partnership)

[SEAL]

EXHIBIT A

Contractor Immigration Warranty
To Be Completed by Contractor Prior to Execution of Contract

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

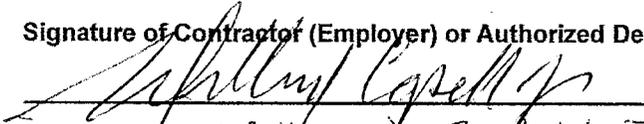
By completing and signing this form the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number: CS4-961-2081			
Name (as listed in the contract): Chandler Amusements, LLC			
Street Name and Number: 2820 N Pinal Rd., Suite 12 – Box 437			
City: Casa Grande	State: AZ	Zip Code: 85222	

I hereby attest that:

1. The contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

Signature of Contractor (Employer) or Authorized Designee:


Printed Name: William D. CAPELL Jr
Title: Member
Date (month/day/year): 5/6/14