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JUN 1 1 2009



**MEMORANDUM**                      **Downtown Redevelopment – Council Memo DT09-22**

**DATE:**            June 1, 2009

**TO:**                MAYOR AND CITY COUNCIL

**THRU:**            W. MARK PENTZ, CITY MANAGER  
                         RICH DLUGAS, ASSISTANT CITY MANAGER RD

**FROM:**            TERI KILLGORE, DOWNTOWN REDEVELOPMENT MANAGER TPK

**SUBJECT:**        RESOLUTION NO. 4308 APPROVING THE ENHANCED  
                         MUNICIPAL SERVICES AGREEMENT FOR FISCAL YEAR 2009-  
                         2010 BETWEEN THE CITY OF CHANDLER AND THE DOWNTOWN  
                         CHANDLER COMMUNITY PARTNERSHIP IN THE AMOUNT OF  
                         \$132,004

RECOMMENDATION: Staff recommends that City Council approve the Enhanced Municipal Services Agreement for 2009-2010 between the City of Chandler and the Downtown Chandler Community Partnership and approve Resolution No. 4308 authorizing payment to be made in the amount of \$132,004.

BACKGROUND: At the City Council meetings on April 23, 2009 and May 28, 2009, the Mayor and City Council took all actions necessary to renew the Downtown Chandler Enhanced Municipal Services District (EMSD). Currently staff is requesting approval of an Enhanced Municipal Services 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.

Based on discussions with the DCCP, the Agreement remains very similar to the FY08-09 agreement. 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. The Agreement also describes a clear work program to be performed by the District for the period beginning July 1, 2009 and ending June 30, 2010, and insurance coverage the DCCP needs to carry related to District activities.

The changes made for Fiscal Year 2009-2010 include changing the way reserves are calculated, addressing the method for programming unused funds at year end and clarifying police coverage to be provided.

This Agreement also details the City's responsibilities to the District. From a financial perspective, the \$132,004 represents the amount the City would pay into the District as a property owner during the fiscal year. 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 City provided services that will be provided for the term of the agreement.

The DCCP participated in the development of the agreement, including providing a budget, developing a work plan and reviewing all proposed changes. The DCCP Executive Board has officially approved the content of this agreement and is excited about continuing as the administrator of the District.

DISCUSSION: If Mayor and Council approve the Agreement with the DCCP and related Resolution, staff will proceed to process a check for the DCCP in order to provide them with the first \$66,002 payment prior to July 15, 2009, as specified by the contract.

FINANCIAL IMPLICATIONS: Assessments for privately owned property in the District total \$142,474. Staff will forward the assessment roll to Maricopa County for inclusion in the fall property tax bills. The City's voluntary contribution of \$132,004 has been included in the Downtown Redevelopment budget for FY2009-2010. The total amount of the District budget for FY2009-2010 is \$274,478.

PROPOSED MOTION: Move to approve the Enhanced Municipal Services Agreement for 2009-2010 between the City of Chandler and the Downtown Chandler Community Partnership and Resolution No. 4308 authorizing payment in the amount of \$132,004.

Attachments:

Resolution No. 4308

EMSD Agreement

**RESOLUTION NO. 4308**

**RESOLUTION APPROVING THE ENHANCED MUNICIPAL SERVICES AGREEMENT FOR FISCAL YEAR 2009--2010 BETWEEN THE CITY OF CHANDLER AND THE DOWNTOWN CHANDLER COMMUNITY PARTNERSHIP IN THE AMOUNT OF \$132,004**

**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 Municipal 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, 2009 and ending June 30, 2010; and did assess the total sum upon the several lots within the District; and

**WHEREAS**, Mayor and Council adopted Resolution No. 4297 approving the 2009-2010 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, how unused funds from the prior year are programmed, and how police coverage will be provided; 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, 2009 and ending June 30, 2010; 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, 2009 and January 15, 2010; 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 2009-2010 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 \_\_\_\_\_, 2009.

\_\_\_\_\_  
Boyd Dunn, Mayor

**ATTEST:**

\_\_\_\_\_  
Marla Paddock, City Clerk

**CERTIFICATION**

**I HEREBY CERTIFY** that the above and foregoing Resolution No. 4308 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, and that a quorum was present thereat.

\_\_\_\_\_  
Marla Paddock, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Mary Wade, City Attorney

*MW*

# **DOWNTOWN CHANDLER ENHANCED MUNICIPAL SERVICES AGREEMENT FOR FISCAL YEAR 2009-2010**

THIS AGREEMENT is entered into effective July 1, 2009, 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 2009-2010, 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 March 15, 2009 and the City shall take action on both items prior to June 15, 2009.

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 an independent audit report of expenditures and program compliance within ninety (90) 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.

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, 2009 and ending June 30, 2010.

**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 2009-2010. 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 ONE HUNDRED THIRTY-TWO THOUSAND FOUR DOLLARS AND NO/100 (\$132,004.00) in two equal installments, the first on or before July 15, 2009, and the second on or before January 15, 2010.

3.3. **Reserve Fund.** The DCCP shall establish a contingency fund as a reserve to use as operating funds for fiscal year 2009-2010. 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. Any monies held in carryforward for specific projects must be agreed to separate from the Reserve.

**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 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

If to the DCCP:                      Downtown Chandler Community Partnership  
   100 W. Boston Street, Suite 1  
   Chandler, AZ 85225

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: \_\_\_\_\_  
Boyd W. Dunn, Mayor

**ATTEST:**

\_\_\_\_\_  
Marla Paddock, City Clerk

**APPROVED AS TO FORM:**

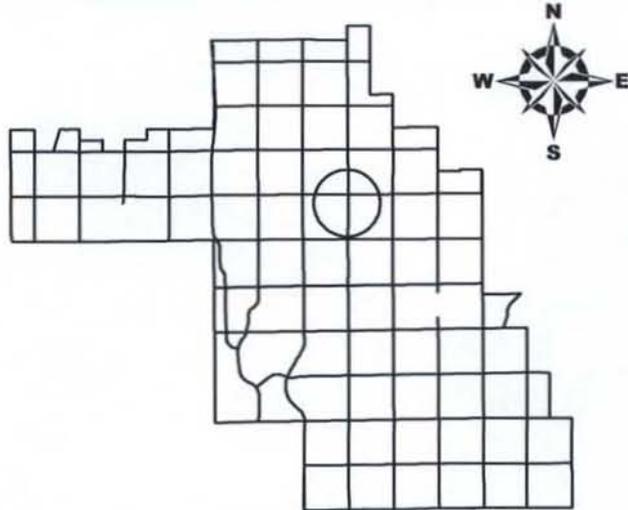
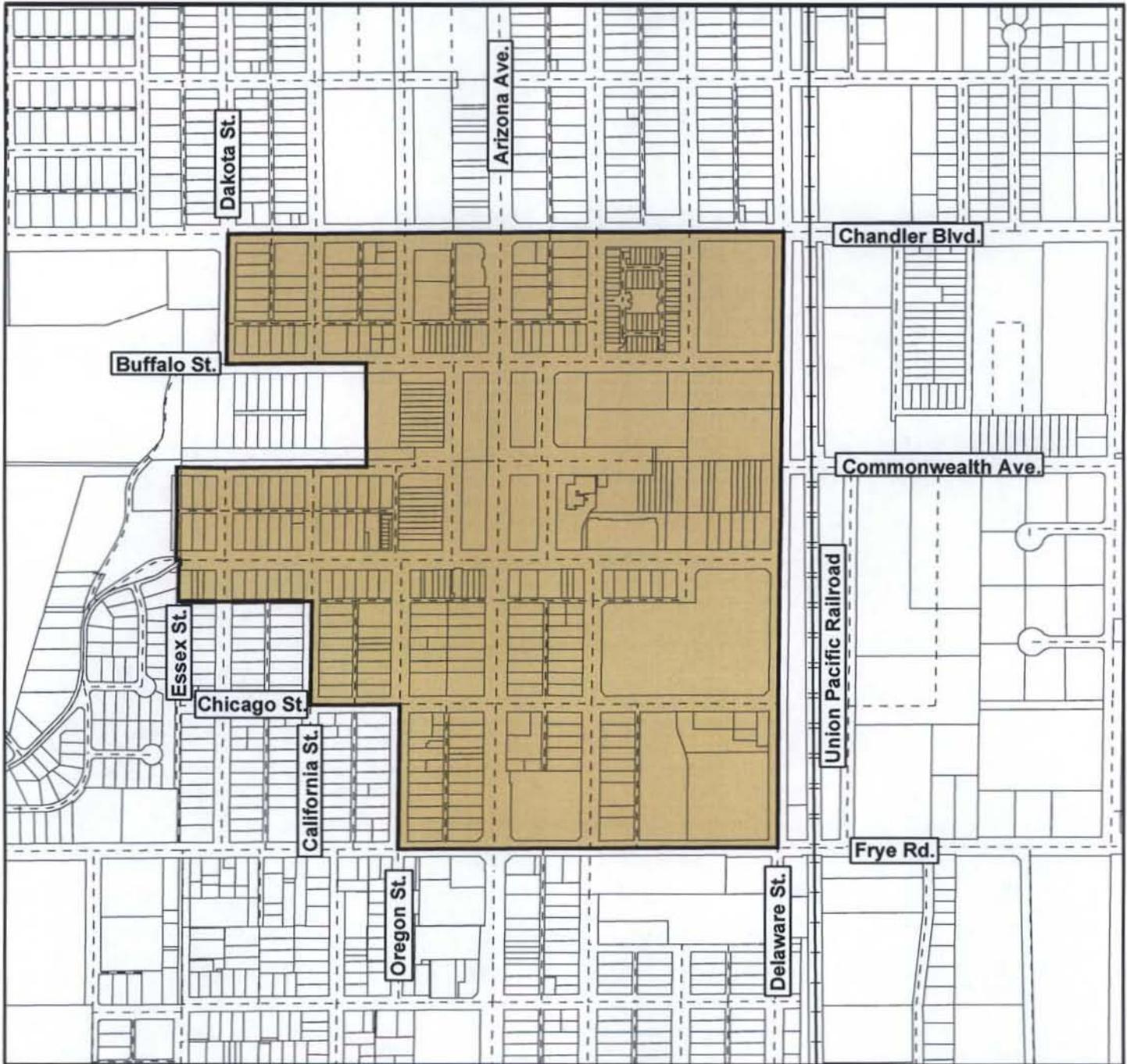
\_\_\_\_\_  
Mary Wade, City Attorney *MWB*

**DOWNTOWN CHANDLER COMMUNITY PARTNERSHIP**, an Arizona non-profit corporation

By: \_\_\_\_\_  
Patti Bruno, President

**ATTEST:**

\_\_\_\_\_



# Boundary Map

## Exhibit A

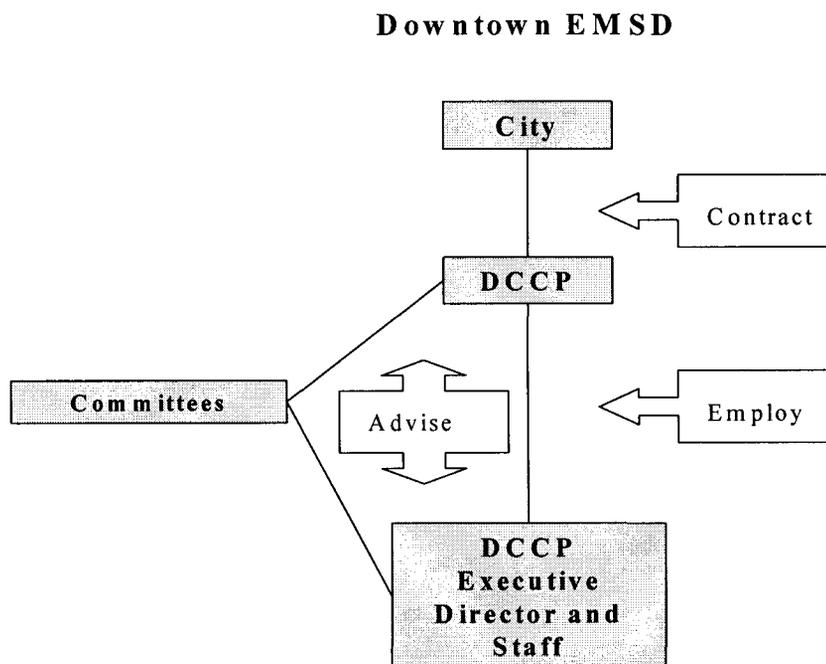
-  City of Chandler Enhanced Municipal Services District
-  Parcels
-  Streets
-  Railroad



## EXHIBIT B

### DOWNTOWN CHANDLER ENHANCED MUNICIPAL SERVICES DISTRICT OPERATING PLAN FISCAL YEAR 2009-2010

**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, Safety and Beautification, and Ambassadors committees to further efforts to provide a multifaceted unified downtown organization.



**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.

**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. A Vice President of District Relations position will be created on the DCCP board to specifically represent the constituents of the EMSD.

**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.

**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 and Promotions:** 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.

***Safety and Beautification:*** To improve perceptions and the general experience of for Downtown visitors, business and property owners, the Safety and Beautification 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 will 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.

***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, Safety and Beautification 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.
- Represent the District in policy and advocacy issues that affect Downtown.
- Leverage assessment dollars by generating additional program revenues, including grants, sponsorships, memberships and earned income.

The DCCP has hired a Special Events coordinator to manage the design and implementation of events and promotions in the Downtown.

**EXHIBIT C**  
**FY2009-2010**

**City Services to Be Provided to Downtown**

**Downtown Redevelopment Staff**

- Assist City staff in the development of Development Agreements for downtown redevelopment projects
- Facilitate the coordination of downtown redevelopment projects between city staff and developers
- Monitor development agreements with downtown developers to help insure timely project completion
- Assist City staff in the development and marketing of Request for Proposals seeking developers for large scale redevelopment projects
- Recruit new businesses to Historic Downtown Chandler
- Manage the Downtown Improvement Fund (DIF), Façade Loans and Colonnade Sign Grants to potential and current users
- Initiate and implement the various projects and activities of the City's Downtown program including capital improvement projects and ongoing property management and maintenance.
- Attend trade shows to market Historic Downtown Chandler to potential developers

**City of Chandler Police Department**

- Traditional-type patrol officers are assigned to the area in marked police cars to respond to routine calls for service.
- The bicycle team is available for enforcement in Historic Downtown Chandler.
- Crime prevention personnel are available to offer advice regarding crime prevention through environmental design and/or business practice.
- Specialized enforcement as needed for criminal activity.

**City of Chandler Public Works Department**

- Perform street sweeping weekly
- Inspect storm drains and inlets twice annually and clean as needed
- Perform concrete and asphalt repairs as needed
- Inspect pavement markings once per year and redo as needed
- Repair traffic signs as needed

## **City of Chandler Downtown Maintenance Costs Chandler Park Maintenance/Building and Facilities**

### **Downtown Storefront Maintenance Costs**

- Sidewalk cleaning including cleaning of walk with mechanical sweepers, emptying trashcans, and cleaning trash can lids twice per week.. Pick up trash once per week.

### **Landscaping Behind San Marcos Place Storefronts**

- Maintenance tasks including cleaning of walk with mechanical sweepers, emptying trashcans twice per week.. Pick up trash twice per week
- Prune shrubs six times per year

### **Breezeway Opening & Cleaning**

- Maintenance tasks including cleaning of walk with mechanical sweepers, emptying trashcans.
- Pick up trash twice per week.
- Opening gates every day except for Christmas.

### **Sidewalk Flower Pots**

- Maintenance tasks including re-planting, weeding and fertilizing twice per year.
- City provides water for all pots on the Parks irrigation system. City provided pots without an automatic watering system will be watered by the store owner adjacent to the pots.

### **Downtown Period Lights**

- Pay for annual electrical APS utility costs on existing lighting.

### **Colonnade Lighting Repairs**

- Perform colonnade lighting repairs including light bulb, ballast, lenses, breaker repair and replacement on existing lighting.

### **Colonnade Sweeping**

- Sweeping colonnades and parking courts with motor sweeper bimonthly.

### **Scrubbing Sidewalks**

- Clean sidewalks twice per month with a mechanical scrubber.

### **A.J. Chandler Park**

- Maintain A.J. Chandler Park including mowing, fertilizing and watering of grass, maintenance of trees and other plant material and cleaning open space ramada areas including maintenance of landscaped medians.

## **EXHIBIT D**

### **I. INSURANCE REQUIREMENTS**

1. DCCP, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of B++6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
2. Policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.
3. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.
4. If any of the insurance policies are not renewed prior to expiration, payments to the DCCP may be withheld until these requirements have been met, or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the DCCP.
5. All insurance policies, except Workers' Compensation and Professional Liability required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
6. DCCP's insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
7. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of DCCP's acts, errors, mistakes, omissions, work or service.
8. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of DCCP. DCCP shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require DCCP to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/designee.

9. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.
10. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the DCCP with reasonable promptness in accordance with the DCCP's information and belief.
11. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the DCCP until such time as the DCCP shall furnish such additional security covering such claims as may be determined by the CITY.

## **II. PROOF OF INSURANCE - CERTIFICATES OF INSURANCE**

1. Prior to commencing work or services under this Agreement, DCCP shall furnish to CITY Certificates of Insurance, issued by DCCP's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates.
2. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Chandler five (5) days prior to the expiration date.
3. All Certificates of Insurance shall identify the policies in effect on behalf of DCCP, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the contract documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.
4. CITY reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise DCCP of any deficiencies in such policies and endorsements, and such receipt shall not relieve DCCP from, or be deemed a waiver of CITY's right to insist on, strict fulfillment of DCCP's obligations under this Agreement.

## **III. REQUIRED COVERAGE**

1. Such insurance shall protect DCCP from claims set forth below which may arise out of or result from the operations of DCCP under this Contract and for which DCCP may be legally liable, whether such operations be by the DCCP or by a Sub-DCCP or subcontractor or by anyone directly or indirectly employed by any of them, or by anyone

for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

2. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
3. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
4. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
5. Claims for damages insured by usual personal injury liability coverage;
6. Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
7. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "I" "any auto" policy form CA00011293 or equivalent thereof.
8. Claims for bodily injury or property damage arising out of completed operations;
9. Claims involving contractual liability insurance applicable to the Contractor's obligations under the Indemnification Agreement;
10. Claims for injury or damages in connection with one's professional services;
11. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

#### **A. Commercial General Liability - Minimum Coverage Limits**

The Commercial General Liability insurance required herein shall be written for not less than \$1,000,000 limits of liability or ten percent (10%) of the Contract Price, whichever coverage is greater. Any combination between general liability and excess general liability alone amounting to a minimum of \$1,000,000 per occurrence (or 10% per occurrence) and an aggregate of \$2,000,000 (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc.'s (ISO) Additional Insured, Form B, CG 20101001, and shall include coverage for DCCP's operations and products, and completed operations.

## **B. General Liability - Minimum Coverage Limits**

The General Liability insurance required herein, including, Comprehensive Form, Premises-Operations, Explosion and Collapse, Underground Hazard, Products/Completed Operations, Contractual Insurance, Broad Form Property Damage, Independent Contractors, and Personal Injury shall be written for Bodily Injury and Property Damage Combined shall be written for not less than \$1,000,000 or 10% of the contract cost and with a \$2,000,000 aggregate.

## **C. Automobile Liability**

DCCP shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the DCCP's work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards if hazardous substances, materials or wastes are to be transported and a MCS 90 endorsement shall be included with coverage limits of \$5,000,000 per accident for bodily injury and property damage. If DCCP does not provide a vehicle, this provision does not apply. In the event the DCCP does not own any vehicles, they will insure for hired and non-owned vehicles.

## **D. Worker's Compensation and Employer's Liability**

DCCP shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over DCCP's employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit.

In case any work is subcontracted, DCCP will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of DCCP.

## **E. Indemnification**

The City agrees to indemnify and save DCCP harmless against and from any and all claims made by or on behalf of any person or persons, firm or firms, corporation or corporations which arise from or out of the negligence of the City, its agents, servants, and employees, where such negligence is found to be the sole cause of the injury or harm for which any such claim is made, and such indemnity includes, but is not limited to, any costs, attorney's fees, and expenses incurred in or arising from any such claim action or cause of action brought thereon, in the event of which such claim, action or cause of action is being brought against DCCP.