



20 E Main St Suite 820  
PO Box 1466  
Mesa, Arizona 85211-1466

Date: May 13, 2013

To: Audit, Finance & Enterprise Committee

From: Jennifer Ruttman, City Auditor

Subject: Audit Report – Downtown Mesa Association (DMA) Agreements

cc: Bill Jabjiniak, Economic Development Department Director  
Natalie Lewis, Assistant to the City Manager

Pursuant to the Council-approved Audit Plan, the City Auditor's office has completed an audit of the City's agreements with the Downtown Mesa Association. The final report is attached. The report includes several recommendations with responses from management. We will perform a follow-up review in approximately 12 months. Please feel free to contact me you have any questions.

## AUDIT REPORT

CITY AUDITOR

---

<b>Report Date:</b>	<b>May 13, 2013</b>
<b>Department:</b>	<b>Economic Development</b>
<b>Subject:</b>	<b>Downtown Mesa Association (DMA) Agreements</b>
<b>Lead Auditor:</b>	<b>Bill D'Elia</b>

---

### **OBJECTIVE**

This audit was conducted to determine whether the City and the DMA are operating in compliance with the terms of the current Parking and Special Improvement District #228 (SID) Agreements.

### **SCOPE & METHODOLOGY**

To accomplish our objective, we:

- Reviewed contracts and other relevant documents from the current & prior fiscal years
- Interviewed City and DMA staff members
- Performed other tests and procedures as necessary to meet the audit objective

### **BACKGROUND**

The Downtown Mesa Association (DMA) was established more than 28 years ago and provides an array of benefits to businesses and property owners in the downtown area. They also provide several services on behalf of the City of Mesa, including but not limited to parking management, parking enforcement, and downtown promotion, and public space management. A subsidiary organization, Ultimate Imaginations, Inc. was established to conduct special events and promotions to benefit downtown Mesa and to assist businesses in the area.

DMA's funding comes from their contracts with the City and from the Special Improvement District #288 (SID) Agreement, which provides funding through annual assessments paid by District property owners, the largest of which is the City itself. Parking fees collected by the DMA are remitted directly to the City of Mesa – they are not retained by the DMA.

### **CONCLUSION**

In our opinion, except as noted below, the City and the DMA have substantially complied with the parking and SID agreements. A summary of key observations and recommendations is presented below. For additional details, please see the attached corrective action plans (CAPs).

### **SUMMARY OF OBSERVATIONS & RECOMMENDATIONS**

1. The City has not critically evaluated the DMA's funding requirements. The DMA has accumulated excessive cash reserves which have not been re-budgeted to meet current program needs or otherwise reinvested to benefit the City. We recommend that City staff

work with the DMA to determine the appropriate use for these excess funds. Consideration should be given to re-budgeting the funds for the next contract year, which may provide some temporary relief to the City's General Fund. In the future, City staff should regularly monitor the DMA's revenues and expenditures to ensure that any excess funds are re-budgeted or otherwise used in the best interest of the City.

2. Controls related to parking revenue collection have not been enforced. To ensure revenues are safeguarded from loss, the agreements contain requirements designed to ensure internal controls over parking revenue collections are adequate. We recommend that the City either enforce these requirements or modify the agreements to include alternative controls to ensure City funds are safeguarded from loss.
3. Insurance documentation provided by the DMA has not been closely reviewed to verify compliance with City requirements. The documents on file indicated that the DMA had not maintained the amounts and types of insurance coverage required by the agreements; however, additional documents were later obtained showing the required coverage was in place. We recommend that management require the DMA to provide current and complete certificates of insurance each year; and that City staff review those certificates to verify compliance with the agreements.
4. Agreements do not reflect current expectations. The agreements between the City and the DMA contain inconsistencies and outdated terms, which the City has not enforced and which do not reflect the intent or expectations of the parties. Management should determine which contract terms are important and which ones are not, and should modify future agreements accordingly.

**CAP#1: The City has not critically evaluated the DMA's funding requirements.**

**Observations:** Payments to the DMA were not based on expenses, but instead were made at the maximum allowable amounts. As a result, in FY 2011/2012, the DMA retained a surplus of \$153,986 or 19% of their revenue. As of June 30, 2012, the DMA had accumulated a cash balance of \$685,586, which is more than 10 times the cash reserve amount listed on their financial statements for that year.

**Criteria:** The Parking Agreement between the City and the DMA states:

*"DMA agrees to do the following... Provide necessary labor and supplies to be billed to the CITY in an amount not to exceed TWO HUNDRED FOURTEEN THOUSAND SEVEN HUNDRED FORTY-SEVEN DOLLARS AND NO CENTS (\$214,747.00) for FY 2012-2013 in order to adequately administer the Downtown Parking Management program.*

*... Provide necessary labor, equipment and supplies to be billed to the City not to exceed EIGHTY-TWO THOUSAND TWO HUNDRED TWENTY DOLLARS AND NO CENTS (\$82,220.00) for F/Y 2011-12 [sic] in order to adequately administer the Parking Field Enforcement Program. ..."*

The Special Improvement District #228 Agreement between the City and the Downtown Mesa Association states:

*"... DMA agrees to establish a contingency fund as a reserve to use as operating funds for the next fiscal year. The reserve will be sufficient to use as operating funds until such time that assessment funds are received by the CITY from the County Treasurer. ..."* [Note: According to the DMA's FY 2011/2012 Financial Statements, the required contingency reserve for that year was \$61,697.]

*... The total of the private property owner-funded Improvement District Budget is \$263,993, the CITY funded Public Space Management budget totals \$237,288 and \$9,500 for the Downtown Banner and Kiosk Program management for a total of \$510,781 in payments in addition of up to \$10,000 in value in roll-off containers provided by the City. ..."*

**Comments:** The parking agreements indicate that the DMA is to bill the City, up to the applicable "not to exceed" amounts, for expenses incurred to provide services. However, in reality, the City has been invoiced for the maximum amounts each year, without regard to the actual costs incurred by the DMA.

Due to repeated years with surplus funding, and rather than using these funds to further their stated goals, the DMA has accumulated a cash balance of over \$685K. Since most of the program funds are remitted to the DMA at the start of each quarter, there is no need to retain such a large cash balance; and only about one tenth of that amount is needed to float the delay in receiving the SID funds. Furthermore, since the retained funds are not included in subsequent years' budgets, there is no process in place to ensure they are ultimately used in the best interest of the City.

The following data are from DMA's FY 2011/2012 Audited Financial Statements:

<b>Source/(Use) of Funds</b>	<b>Revenues</b>	<b>Expenses</b>	<b>Surplus</b>
Parking Contracts / (Parking Management & Enforcement)	\$ 296,967	\$ (258,182)	\$ 38,785
SID Assessments / (Downtown Promotion)	\$ 267,654	\$ (211,122)	\$ 56,532
City Assessments / (Public Space Management)	\$ 256,788	\$ (198,119)	\$ 58,669
<b>Total:</b>	<b>\$ 821,409</b>	<b>\$ (667,423)</b>	<b>\$ 153,986</b>

- Recommendations:**
- 1-1. Management should require City staff to regularly monitor the DMA's revenues and expenditures, to ensure that future agreements do not provide significantly more funds than are needed to provide the services.
  - 1-2. Management should work with the DMA on an annual basis to determine the appropriate disposition of funds accumulated by DMA in excess of established reserves. Consideration should be given to re-budgeting the funds for the next contract year, which may provide some relief to the City's General Fund.

**Management Response:**

- 1-1. Agree  
Implementation plan: City staff will regularly monitor DMA's revenues and expenditures for all services.  
 City staff will work with DMA to review and adjust the agreements in a manner which more accurately reflect services and expectations.  
Implementation date: 7/1/2013
- 1-2. Agree  
Implementation plan: City staff will continue working with DMA to determine uses for the funds which closely align with the City's original intent based on the agreements and DMA's core mission.  
 Please note, the board recently approved and allocated approximately \$120,000 for new banners and brackets, an updated parking plan, vehicle and equipment maintenance and replacement, and a plan for a way-finding signage program.  
Implementation date: 7/1/2013

**CAP#2: Controls related to parking revenue collection have not been enforced.**

**Observations:** While the DMA does obtain an independent financial statement audit annually, it has been many years since an audit of the parking program was performed. In addition, DMA's cash collection and accounting procedures have not recently been reviewed by the City's Financial Services Department.

**Criteria:** The Parking Agreement between the City and the DMA states:  
*"... An independent audit of the parking program will be furnished to the City Auditor within ninety (90) days following each fiscal year end. ...  
... DMA agrees to do the following ... Establish procedures satisfactory to the City Financial Services Department for collecting and accounting for all funds to be collected by DMA pursuant to this agreement. ..."*

**Comments:** Unlike a financial statement audit, the purpose of the required program audit is to ensure that adequate internal controls are in place to protect City revenues from loss. In FY 2011/2012, \$389,387 in parking revenue was remitted to the City by the DMA. However, since the revenue collection process has not been audited, and the DMA's procedures were not reviewed by Financial Services staff, it is unknown whether adequate internal controls were in place to ensure all funds collected by the DMA were received by the City.

**Recommendations:** 2-1. The City should require the DMA to obtain an audit of the parking program collections and accounting procedures each year; or should modify the agreement to include alternative controls to ensure City funds are safeguarded from loss. If an audit is required, the report should be submitted to the Economic Development Department rather than to the City Auditor.  
2-2. The City should require the DMA to submit its revenue collection and accounting procedures to the City's Financial Services Department for review and approval; and Economic Development should coordinate with Financial Services to ensure this is done.

**Management Response:** 2-1. Agree  
Implementation plan: City staff will work with DMA to obtain a review and approval of the parking program collections and accounting procedures. We will also modify the agreement to include alternative controls in order to safeguard City funds.

City staff will review the established procedures annually.

Implementation date: 7/1/2013

2-2. Agree  
Implementation plan: City staff will work with DMA and the City's

Financial Services Department to formally review and approve the revenue collection and accounting procedures. A copy of the policy and procedures manual will be provided to the economic development staff annually.

Implementation date: 7/1/2013

**CAP#3: Insurance documentation was not reviewed to verify compliance.**

**Observations:** The insurance documents on file for the DMA indicated that they had not maintained the amounts and types of insurance coverage required by the agreements. They indicated that general and automobile liability limits were \$1M instead of the required \$3M; and that the general liability policy did not contain the required advertising injury and contractual liability coverage. However, the DMA was later able to provide additional documents showing that an umbrella policy was in place for the required coverage.

**Criteria:** The Parking Agreement between the City and the DMA states:

*" ... The DMA will carry comprehensive general liability insurance policy coverage of a minimum of \$3,000,000 per occurrence for each incident and a minimum of \$3,000,000 in the aggregate, pertaining to bodily injury and property damage and inclusive of personal/advertising injury and contractual liability. DMA will maintain such policy in full force and effect during the entire term of the Agreement. ...*

*The DMA will carry an Automobile Liability insurance policy coverage of a minimum of \$3,000,000 per occurrence for each incident and a minimum of \$3,000,000 in the aggregate. DMA will maintain such policy in full force and effect during the entire term of the Agreement. ..."*

**Comments:** City staff had not closely reviewed the insurance documentation provided by the DMA to ensure all of the required coverage was in place. Verifying insurance policies is an important part of contract monitoring, because failure to maintain the required coverage exposes the City to increased risk of loss.

**Recommendations:** 3-1. Management should require the DMA to provide current and complete certificates of insurance each year; and should carefully review those certificates to verify compliance with all agreements.

**Management Response:** 3-1. DMA has maintained and currently carries the required amounts of insurance in accordance with the City's Agreement.  
City staff will ensure appropriate certificates of insurance are on file each year. They will also verify that the insurance complies with the agreements.  
Annually, city staff will review the current insurance coverage with the City's risk manager.

**CAP#4: Agreements do not reflect current expectations.**

**Observations:** The agreements between the City and the DMA contain inconsistencies and outdated terms, which the City has not enforced and which do not reflect the intent or expectations of the parties.

**Criteria:** To serve and protect the interests of all parties, the terms of any contract between them should accurately reflect the intent of those parties, and those terms should be actively enforced.

**Comments:** The issues noted during this audit, along with various minor inconsistencies and outdated terms found in the agreements, indicate that the DMA agreements need to be critically evaluated and updated to ensure that they accurately reflect the intent of all parties.

**Recommendations:** 4-1. Management should determine which contract terms are important and which ones are not, and should modify future agreements accordingly. Additional care should be taken to ensure the agreements are consistent throughout and contain only those terms the parties intend to enforce.

**Management Response:** 4-1. DMA staff agrees that the formats and agreements should be updated to reflect the new format.  
  
City staff will work with DMA and legal services to update and modify the agreements to more accurately reflect the expectations as well as obtain consistency in the agreements.