

AGREEMENT NO. _____

**FIESTA-DOWNTOWN CHANDLER
TRANSIT CORRIDOR STUDY AGREEMENT BETWEEN
THE CITY OF CHANDLER, THE CITY OF MESA,
AND
VALLEY METRO RAIL, INC.**

THIS FIESTA-DOWNTOWN CHANDLER TRANSIT CORRIDOR STUDY AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2014, by and between the City of Chandler (hereinafter referred to as "COC"), City of Mesa (hereinafter referred to as "COM"), municipal corporations duly organized and existing under the laws of the State of Arizona, and Valley Metro Rail, Inc. (hereinafter referred to as "METRO"), a non-profit corporation, duly organized and existing under the laws of the State of Arizona. COC, COM and METRO are sometimes hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

RECITALS

WHEREAS, METRO was formed to plan, design, build, operate and maintain the Light Rail Transit System ("LRT" or the "System"); and,

WHEREAS, METRO has entered into a Program Agreement to serve as the lead agency for the Regional Public Transportation Authority (RPTA) and be responsible for the planning, design, construction, operation and maintenance of high capacity Light Rail Transit (LRT) segments in the region; and,

WHEREAS, COC and COM desire that METRO perform the FIESTA-DOWNTOWN CHANDLER TRANSIT CORRIDOR STUDY ("Corridor Study") along a corridor located within the COC, COM and Town of Gilbert; and,

WHEREAS, the Parties agree that the work specified herein is for a Corridor Study to identify, and document where already identified, potential transit investments and any land use adjustments appropriate in the short-, mid-, and long-term to meet public transportation demand, recognizing that the long term assessment will include the potential for a High Capacity Transit solution, such as Bus Rapid Transit (BRT) or Light Rail Transit (LRT).; and,

WHEREAS, the Parties agree the Corridor Study provides tangible benefits to both COC and COM by, among other things, evaluating the need, determining the feasibility, evaluating alignment options, estimating the costs, identifying constraints, establishing requirements and developing land use plan alternatives for a future high capacity transit line within the Transit Corridor; and,

WHEREAS, the City Manager of COC is authorized and empowered by the Chandler City Council to execute contracts; and,

WHEREAS, the City Manager of COM is authorized and empowered by provisions of the Mesa City Charter to execute contracts; and,

WHEREAS, COC and COM have collectively agreed to expend a sum not to exceed SIX HUNDRED EIGHTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$687,500 .00) for METRO's expenses incurred in conducting the Corridor Study ("Project Cost"); and,

WHEREAS, the COC has agreed to pay METRO for the Project Cost of the Corridor Study; and,

WHEREAS, the COM has agreed to reimburse the COC for FORTY-SIX and NINE TENTHS PERCENT (46.90%) of the Project Cost of the Corridor Study; and,

WHEREAS, the purpose of this Agreement, among other things, is to establish the Parties' duties and responsibilities with respect to the transfer of dollars from COC to METRO to fund the Project Cost of the Corridor Study; and,

WHEREAS, the purpose of this Agreement, among other things, is to establish the Parties' duties and responsibilities with respect to the transfer of dollars from COM to COC to reimburse COC for the COM Share of the Project Cost of the Corridor Study; and ,

WHEREAS, COC and COM have been authorized by their City Councils to proceed with this Agreement and METRO has been authorized by its Board of Directors to proceed with this Agreement;

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual covenants and considerations herein contained, it is agreed by the Parties as follows:

SECTION 1. DEFINITIONS

The following capitalized terms shall have the following meaning when used in this Agreement, unless a different meaning is clearly intended:

"METRO" means Valley Metro Rail, Inc., a non-profit corporation, duly organized and existing under the laws of the State of Arizona.

"COC" means the City of Chandler, a political subdivision of the State of Arizona.

"COM" means the City of Mesa, a political subdivision of the State of Arizona.

"Force Majeure" means any event which: (i) causes any Party to be unable to perform under this agreement; and (ii) is outside the reasonable control of the Party unable to perform and could not be avoided by such Party through the exercise of due care. Force Majeure events include, without limitation: terrorists, earthquakes, fires, floods, tornadoes, wars, labor strikes, or similar accidents, disputes or similar events.

SECTION 2. SCOPE OF WORK

METRO shall oversee and manage the work of the planning consultants and any other consultants under contract by METRO in performing tasks assigned to the consultant as indicated in Exhibit "A", attached hereto and incorporated herein by reference. METRO shall timely complete all tasks pursuant to the schedule listed in Exhibit "A". All work to be performed and identified on Exhibit "A" shall be performed by METRO's own employees and/or by competent and professional consultants and/or sub-consultants and included within the Project Cost for METRO's expenses incurred in conducting the Corridor Study.

The Project Cost of the Corridor Study is being funded by COC using local funds as compensation for METRO's expenses incurred in conducting the Corridor Study. The COM will reimburse COC for the COM Share of the Project Cost of the Corridor Study as described herein.

SECTION 3. COMPENSATION

As soon as reasonably practicable after the effective date of this Agreement, COC shall send by wire transfer, to the account listed in the wiring instructions provided by METRO, an amount representing the full Project Cost to METRO, and METRO shall hold these funds in an escrow account to pay expenses related to this Agreement as those expenses are incurred from time to time. Subsequently, and until the expiration of this Agreement or completion of the Corridor Study (whichever occurs first), METRO shall submit a written monthly progress report to COC and COM. METRO shall amend its current annual budget, if necessary, to include this Corridor Study as an item therein and shall include the remainder of the Corridor Study costs in its future annual budgets. Upon completion of the Corridor Study, all remaining funds, if any, shall be promptly returned to COC. If funds are returned to COC, then the COM Share shall be reduced to FORTY-SIX AND NINE TENTHS PERCENT (46.90%) of the amount that COC actually pays to METRO for the Corridor Study. COC and COM agree to pay Project Costs not to exceed SIX HUNDRED EIGHTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$687,500.00).

SECTION 4. METRO'S OBLIGATIONS

A. METRO shall be responsible for proper accounting, internal control, disbursement and financial reporting of any and all funds received from COC to METRO and any and all funds disbursed by METRO in connection with the Corridor Study .

B. METRO shall: (a) maintain such books and records as may be necessary to provide a complete and accurate understanding of all expenditures pertaining to this Corridor Study; (b) provide sufficient documentation to support and assure accurate accounting and appropriate expenditures; (c) keep and maintain all such books and records in accordance with generally accepted accounting principles; and, (d) provide proper internal oversight of this Corridor Study and of the expenses chargeable to it.

C. By the last business day of each month after work on the Corridor Study begins, METRO agrees to submit Monthly Progress and Financial Reports to the COC and COM for approval. The Monthly Progress and Financial Reports should set forth: (a) both Corridor Study progress and an itemization of expenditures for the prior month/interval; and, (b) both projected project progress and projected itemized expenditures for the current month/interval and for the upcoming month/interval.

D. If, at any time during the planning or execution of the Corridor Study, METRO believes or determines that requested services go beyond those in the Project Scope, or that the Project Cost of SIX HUNDRED EIGHTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$687,500.00) will be exceeded, METRO will give COC and COM advance written notice of the potential for an increase in the Project Cost. The Parties may agree, by amendment to this Contract, to share in any increased Project Costs of which METRO gives written notice.

E. Within sixty (60) days after the completion of the Corridor Study, METRO shall complete a Project Completion Report, which includes a reconciliation of Project Costs and the project budget, and a summary of the Corridor Study phase and finances. The report shall also contain a statement that all Corridor Study work has been completed to METRO's, COC's and COM's satisfaction and in compliance with all rules, regulations and laws.

F. METRO shall cooperate with the COC, COM and the Town of Gilbert as appropriate and reasonably necessary during and throughout the Corridor Study and reasonably follow the agreements outlined in the project management plan .

SECTION 5. COC OBLIGATIONS

A. As soon as reasonably practicable after the effective date of this Agreement, COC shall provide to METRO the Project Cost.

B. COC shall review and approve monthly financial reports within fifteen (15) calendar days of receiving the report, after which, METRO will be able to withdraw from the account containing the Project Cost funds transferred by COC and referenced in Section 3 above .

C. COC shall reasonably cooperate with METRO throughout the study and reasonably follow the agreements outlined in the project management plan .

SECTION 6. COM OBLIGATIONS

A. If a countywide transportation sales tax beyond Proposition 400 passes, the COM shall reimburse the COC an amount equal to FORTY SIX and NINE TENTHS PERCENT (46.90%) of the total Project Cost on or before January 1, 2027. If a countywide transportation sales tax does not pass the COM shall reimburse the COC an amount equal to 46.90% of the total Project Cost on or before January 1, 2034.

B. COM shall review and approve monthly financial reports provided by METRO within fifteen (15) calendar days of receiving the report.

C. COM shall reasonably cooperate with METRO throughout the study and reasonably

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follow the agreements outlined in the project management plan .

D. Under no circumstances shall COM be obligated to pay more than forty-six and nine tenths percent (46.90%) of the Project Cost.

SECTION 7. TERM OF AGREEMENT

This Agreement shall be operative as between METRO and COC and COM until June 30, 2017, or the completion of the Corridor Study, whichever is the first to occur. This Agreement shall remain operative as between COC and COM until such time as the payments of the COM Share of the Project Cost of the Corridor Study to COC have been completed, or until January 1, 2034, whichever is the first to occur. The Parties do not intend that the term of this Agreement shall exceed any limitation imposed by law, including, without limitation, the laws of the State of Arizona, and agree to comply with any applicable requirements of such laws in connection with any renewal of the term of this Agreement.

SECTION 8. EFFECTIVE DATE

This Agreement shall take effect only after it has been approved by COC's City Council, approved by COM's City Council, approved by the METRO Board of Directors, executed by the duly authorized officials of each of the Parties, approved by the Parties' respective counsel and filed with the COC and COM City Clerk. The Effective Date of this Agreement is the date first set forth above.

SECTION 9. TERMINATION

This Agreement may be terminated for the convenience of the Parties upon thirty (30) days prior written notice delivered to each of the non-terminating Parties . Any Party may terminate for default immediately after the conclusion of the notice period as set forth in Section 12.

SECTION 10. AGREEMENT NON-ASSIGNABLE

METRO may not assign or otherwise transfer any of its rights or obligations hereunder to a third Party without the express prior written consent of COC and COM, which may be granted or withheld by COC and COM in their sole and absolute discretion. Any assignment or transfer without such prior written consent shall be void.

SECTION 11. INDEMNIFICATION

Except for claims arising solely and exclusively from the negligent or willful acts or omissions of COC and COM, their officers, officials, agents or employees (hereinafter referred to as "Indemnitee"), to the fullest extent of the law METRO shall indemnify, defend, save and hold the Indemnitee harmless from and against any and all claims, actions, liabilities, damages, losses, expenses and costs (including court costs, attorneys' fees and costs of claim processing, primary loss investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), loss or damage to tangible property and economic or financial loss of any character or any nature: (1) arising under this Agreement, or (2) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of METRO or any of its owners, officers, directors, agents, contractor or employees.

It is the specific intent of the Parties to this contract that the Indemnitee shall, in all instances except for loss or damage resulting from the sole and exclusive negligence of the Indemnitee, be indemnified against all liability, loss or damage of any nature whatever for or on account of any injuries to or the death of any person or damages to or the destruction of property belonging to any person, or for economic or financial losses arising out of or in any way connected with the performance of this Agreement.

It is agreed that METRO will be responsible for all costs associated with any primary loss investigation, defense and judgment.

SECTION 12. INSURANCE

METRO will maintain in force the insurance program approved the by METRO Member Cities' Risk Managers and included in METRO's fiscal year budgets.

SECTION 13. DEFAULT

Any Party shall be deemed in default under this Agreement upon the failure of such Party to observe or perform any material covenant, condition or agreement on its part to be observed or performed hereunder, and the continuance of such failure for a period of thirty (30) days after written notice by either of the other Parties, as required herein. Such notice shall specify the failure and request it be remedied, unless the Party giving notice agrees in writing to an extension of the time period prior to its expiration. However, if the failure stated in the notice cannot be corrected within the applicable period, it will not give rise to a default {00132625.1}

hereunder if corrective action is instituted within the applicable period and diligently pursued until the failure is corrected. In the event of a default hereunder, the non-defaulting Party(ies) may have a breach of contract claim and remedy against the other(s) in addition to any remedy provided or permitted by law; provided, however, that no remedy that would have the effect of amending any provisions of this Agreement shall become effective without the formal amendment of this Agreement.

SECTION 14. ISSUE RESOLUTION

Any dispute arising out of the interpretation of any provision of this Agreement, any policy matter or the determination of an issue of fact, which dispute is not resolved at staff level, shall be referred to METRO's Chief Executive Officer and a representative designated by the COC City Manager and COM City Manager. If, after good faith negotiations aimed at reaching an amicable solution, a dispute cannot be resolved, the dispute shall be presented to the METRO Board of Directors for resolution. If not resolved at this level, the dispute may be brought before a court of competent jurisdiction in Maricopa County, Arizona.

SECTION 15. AUDIT

All books, accounts, reports, files and other records relating to this Agreement under the custody or control of METRO or its contractors shall be subject, at all reasonable times, to inspection and audit by COC and COM for five (5) years after completion of this Agreement. Such records shall be produced at METRO offices as and when requested by COC or COM .

SECTION 16. NOTICE

Any notice, consent or other communication ("Notice") required or permitted under this Agreement shall be in writing and either delivered in person, sent by facsimile transmission; sent by email as a PDF attachment; deposited in the United States mail, postage paid, registered or certified mail, return receipt requested; or deposited with any commercial air courier or express service addresses as follows:

If intended for METRO:

Valley Metro Rail, Inc.
Attention: General Counsel
101 N. 1st Avenue, Suite 1300
Phoenix, AZ 85003
Fax: 602-262-2682

Email: mladino@valleymetro.org

and to:

Valley Metro Rail, Inc.
Attention: Director of Finance and Administration
101 N. 1st Avenue, Suite 1300
Phoenix, AZ 85003
Fax: 602-262-2682
Email: jmccormack@valleymetro.org

If intended for COC:

City of Chandler, Arizona
City Manager's Office
Mail Stop 605
P.O. Box 4008
Chandler, AZ 85244-4008
Fax: 480-782-2209
Email: rich.dlugas@chandleraz.gov

and to:

City of Chandler, Arizona
Transportation and Development Department
215 East Buffalo Street
Chandler, AZ 85244-4008
Fax: 480-782-3495
Email: dan.cook@chandleraz.gov

If intended for COM:

City of Mesa, Arizona
Christopher J. Brady, City Manager
PO Box 1466
Mesa, AZ 85211-1466
Email: Chris.Brady@mesaaz.gov

and to:

City of Mesa, Arizona
Office of Transit Services
PO Box 1466
Mesa, AZ 85211-1466
Email: Jodi.Sorrell@mesaaz.gov

Notice shall be deemed received at the time it is personally served or, on the day it is sent by facsimile transmission or email, on the second day after its deposit with any commercial air courier or express service, if mailed, three (3) days after the notice is deposited in the United States mail as provided. Any time period stated in a Notice shall be computed from the time the Notice is deemed received. Any Party may change its mailing address, FAX number, email address or the person to receive notice by notifying the other Party as provided in this Section.

Notice sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address. The requirement for duplicate notice is not intended to change the effective date of the Notice sent by facsimile transmission.

SECTION 17. AMENDMENT

This Agreement may be modified or amended only by a written document executed by METRO, COC, and COM approved as to form by both City Attorneys, and filed with both City Clerks. Such document shall expressly state that it is intended by the Parties to amend specifically identified terms and conditions of this Agreement.

SECTION 18. APPLICABLE LAW AND LITIGATION

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arizona. Any and all litigation between the Parties arising from this Agreement shall be litigated solely in the appropriate state court located in Maricopa County, Arizona.

SECTION 19. NON-WAIVER

No covenant or condition of this Agreement may be waived by any Party, unless done so in writing. Forbearance or indulgence by any Party in any regard whatsoever shall not constitute a waiver of the covenants or conditions to be performed by the other.

SECTION 20. SEVERABILITY

Any provision of this Agreement that is prohibited or unenforceable under the laws of the State of Arizona shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

SECTION 21. BENEFIT AND BINDING EFFECT

The terms and provisions of this Agreement shall inure to the benefit of and are binding on METRO, COC, and COM and their respective successors and permitted assigns.

SECTION 22. SURVIVAL

The indemnifications and limitations on liability provided in this Agreement shall have full force and effect notwithstanding any other provisions of this Agreement and shall survive any termination or expiration thereof.

SECTION 23. FURTHER ASSURANCES

The Parties hereto shall execute such other documents and take such other actions as may be reasonably necessary or proper to achieve the intent and purposes hereof.

SECTION 24. CONFLICTS OF INTEREST

All Parties hereto acknowledge that this Agreement is subject to cancellation by COC or COM pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

SECTION 25. RELATED AGREEMENTS

This Agreement, together with the exhibits, instruments and other documents required to be executed and delivered in connection herewith is intended to be read in conjunction with any and all prior agreements and understandings of the Parties with regard to the subject matter hereof.

SECTION 26. CONSTRUCTION AND INTERPRETATION OF AGREEMENT

This Agreement, and each of its provisions, exhibits, terms and conditions, has been reached through negotiations between the Parties. Accordingly, each of the Parties expressly acknowledges and agrees that this Agreement shall not be deemed to have been authored, prepared or drafted by any particular Party, and that the rule of construction that resolves ambiguities against the drafting party shall not be employed in the interpretation of this Agreement.

SECTION 27. THIRD-PARTY BENEFICIARIES

This Agreement is intended to benefit the corporate and municipal interests of METRO, COC and COM alone, and no other person shall claim any implied right, benefit or interest in

such services. The Parties do not intend to create rights in or remedies to any third party as a beneficiary of this Agreement or of any duty, covenant, obligation or undertaking established under this Agreement.

SECTION 28. POLICE POWER

The Parties acknowledge the right vested in COC and COM pursuant to general law to exercise their police power for the protection of the health, safety and welfare of their constituents and their properties. Nothing in this Agreement shall be construed as precluding COC and COM from exercising such powers in connection with the subject matter hereof.

SECTION 29. COMPLIANCE WITH THE IMMIGRATION REFORM AND CONTROL ACT of 1986 (IRCA) and with A.R.S. § 23-211-§23-214

METRO understands and acknowledges the applicability of IRCA and of § 23-211 through § 23-214, Arizona Revised Statutes (A.R.S.), to it. METRO shall comply with RCA and with A.R.S. § 23-211 through § 23-214 in performing under this Agreement. To ensure that METRO and its subcontractors are complying with the provisions of this Section, COC and COM shall have the right to inspect the personnel and related records and papers of METRO and of its subcontractors pertaining to individuals performing work under this Agreement.

Further, COC and COM are prohibited by A.R.S. § 41-4401 from awarding an Agreement to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). For this reason, METRO shall ensure that both it and each of its subcontractors are in compliance with the requirements of A.R.S. § 23-214(A). In addition, both METRO and each of METRO's subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214(A).

A breach of any of the provisions of this Section shall be deemed a material breach of this Agreement and is subject to penalties up to and including termination of the Agreement.

SECTION 30. COUNTERPARTS.

This Agreement may be executed in any number of duplicate originals, photocopies and telecopies, all of which (once each of the Parties has executed at least one such duplicate original, photocopy or telecopy) will constitute one and the same document.

SECTION 31. INCORPORATION OF EXHIBITS

This Agreement in its entirety includes Exhibit "A", which is, by this reference, incorporated herein and made part hereof as though fully set forth. The Exhibit "A" of this Agreement is as follows:

EXHIBIT "A": Scope of Work

[Signatures appear on following page]

IN WITNESS WHEREOF, the Parties have each executed this Amendment as of the date first set forth above.

VALLEY METRO RAIL, INC. (METRO)
Stephen R. Banta, Chief Executive Officer

CITY OF CHANDLER
Rich Dlugas, City Manager

APPROVED AS TO FORM:

By: _____
Michael J. Ladino
General Counsel

APPROVED AS TO FORM:

By: _____
Kay Bigelow K SM
City Attorney

CITY OF MESA
Christopher J. Brady, City Manager

APPROVED AS TO FORM:

By: _____
Deborah Spinner
City Attorney

EXHIBIT A - SCOPE OF WORK

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