

## **EXHIBIT “B”**

### **CENTRAL MESA LIGHT RAIL EXTENSION MORRIS PLAZA LICENSE AGREEMENT**

**LICENSE AGREEMENT  
FOR THE USE OF PUBLIC RIGHT OF WAY  
AND CONSTRUCTION OF A TRACTION POWER SUBSTATION AT  
MORRIS PLAZA**

This License Agreement for the Use of Public Right of Way and Development of Morris Plaza (this "Agreement"), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Mesa, an Arizona municipal corporation, ("City" or "Mesa"), and Valley Metro Rail, Inc., a non-profit corporation, duly organized and existing under the laws of the State of Arizona ("Licensee"). City and Licensee may be referred to jointly as "Parties," and each separately may be referred to as a "Party."

**RECITALS**

WHEREAS, the Parties entered into that certain Public Way Use Agreement for the Metro Light Rail Transit System, Amended and Restated, as of September 21, 2011 (the "Public Way Use Agreement") that allows Licensee to use improvements associated with the light rail passenger system in the public right of way;

WHEREAS, City owns and controls public right-of-way known as Morris Street located within Maricopa County, Mesa, Arizona;

WHEREAS, Licensee desires to construct a Traction Power Substation (TPSS) as part of the Metro Light Rail Transit Plan near the intersection of Morris Street and Main Street, Maricopa County, Mesa, Arizona;

WHEREAS, the City is willing to allow the Licensee to construct and operate the TPSS in a portion of the City's right-of-way as part of reconfiguring the right-of-way to include a public plaza at the intersection of Morris Street and Main Street (the "Morris Plaza");

WHEREAS, the Parties agree that this Agreement is intended to be substantially similar to the Public Way Use Agreement except for the term of this Agreement, Licensee will pay a license fee for the Licensed Premises, and as otherwise changed herein;

WHEREAS, the Parties agree that the operations and maintenance of the TPSS and the Licensed Property is subject to compliance with that certain Operations and Maintenance Agreement for the Metro Light Rail Transit System by and between Valley Metro Rail, Inc., and the City of Mesa as Amended and Restated June, 2013, and as may be amended or restated from time to time (the "Operations and Maintenance Agreement");

WHEREAS, the Parties desire to enter into this Agreement to license a certain portion of the right-of-way for the use of the TPSS in a manner that is consistent with the future uses of Morris Plaza.

**AGREEMENT**

In consideration of the foregoing recitals, which are incorporated herein, and the terms and conditions of this Agreement, the Parties agree as follows:

## SECTION 1 LICENSED PREMISES

1.01 Licensed Premises. The City hereby grants Licensee a license to use on a non-exclusive basis the Licensed Premises, which is described and depicted in the attached Exhibit "A," to construct, operate, and maintain a TPSS as part of the Metro Light Rail Project and for no other uses without an amendment to this Agreement executed by both Parties. Licensee's use of the Licensed Property shall be strictly limited to the terms, conditions, limitations, and restrictions contained in this Agreement and subject to the authority of the City Council.

The construction of the TPSS improvements, including but not limited to any screen wall and landscaping, and any future modifications or additional improvements is subject to the prior review and written approval of the City. Licensee acknowledges and understands the aesthetics of this TPSS is important to City given that the location of the TPSS is adjacent to the future Morris Plaza, and Licensee's design and construction of the TPSS will involve and reflect the need to be of the same quality and character of the Morris Plaza improvements (this is not intended to require the currently approved and permitted plans to go back through the design approval process).

The City reserves its prior superior right to the public right of way, and to other City property together with all of its rights to such property under law.

The specific location and size of the Licensed Property is shown in Exhibit A, but may be modified by the actual construction of the TPSS. If necessary, the Parties agree to execute, acknowledge, and record such documentation as may be necessary to evidence the actual Licensed Property.

1.02 Condition of Licensed Premises. Licensee acknowledges and agrees that the Licensed Premises are being provided "AS IS," and Licensee is not relying on any statement or representation of City about the nature, condition, or size of the Licensed Premises. Licensee is solely relying upon its own inspection and investigation of the Licensed Premises.

1.03 Records. Licensee shall keep accurate installation records and furnish said documents to the City upon request. Licensee shall cooperate with the City to furnish such information in an electronic format compatible with the current City electronic format. Upon completion of construction, Licensee shall provide the City with installation records in an electronic format compatible with the current City format showing the location of the underground, and above ground facilities. Licensee agrees to furnish the location information, including a hard-copy of as-built record drawings, in a timely manner, but in no event longer than thirty (30) days after the completion of the as-built process.

## SECTION 2 USE OF LICENSED PREMISES

2.01 Permitted Uses. Licensee may only use the Licensed Premises for the construction and operation of the TPSS as part of the Metro Light Rail System. Licensee shall not use the Licensed Premises for any other uses without prior written approval from the Mesa City Manager or his designee.

2.02 Conduct of Activities. Licensee shall use the Licensed Premises and conduct its activities in a manner that will in no way interfere or detract from the value of the Licensed Premises or Morris Plaza.

2.03 Nuisance Prohibited. Licensee shall not use the Licensed Premises in any way which would create, or cause to be created, nuisances or hazards to the public health or safety and

also not to use or permit any use of the Licensed Premises for any illegal or immoral purposes. Licensee agrees that the use of the Licensed Premises shall be conducted in such a manner that does not interfere with the quiet enjoyment of the neighboring properties and Morris Plaza.

2.04 Compliance with Laws. Licensee, Licensee's employees, agents, and contractors shall comply with all provisions of this Agreement, along with any and all codes, ordinances, resolutions, standards, laws and policies that may affect the Licensed Premises or Morris Plaza, and further shall comply with all requirements of Maricopa County.

### SECTION 3 TERM AND TERMINATION

3.01 Term. The term of this Agreement shall be for a period of Fifty (50) Years (the "Term"), commencing on January 1, 2014 (the "Commencement Date") and ending on December 31, 2064 (the "Expiration Date") unless otherwise canceled or terminated as provided herein and subject to termination in the event either Metro Light Rail ceases being operable or the Licensed Premises are not being used in the operation of the Metro Light Rail. If after the Term of this Agreement Licensee will need the use of the Licensed Premises for the TPSS, City and Licensee agree to work in good faith prior to the expiration of the Term to negotiate a new license agreement for the continued use of the Licensed Premises upon such terms and conditions as the Parties may agree to, provided that such new license agreement is subject to the approval of each Party in its sole discretion.

3.02 Default and Termination for Cause. Either Party shall be deemed in default under this Agreement upon the failure of such Party to observe or perform any 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 the giving of written notice by the other Party, as required herein. Such notices shall specify such failure and request that it be remedied, unless the Party giving such notice shall agree in writing to an extension of such time period prior to its expiration. However, if the failure stated in such notice cannot be corrected within the applicable period, it shall not give rise to a default hereunder if corrective action is instituted within the applicable period and diligently pursued until such failure is corrected. In the event of a default hereunder, the non-defaulting Party shall have a breach of contract claim and remedy against the other and the ability to terminate this Agreement in addition to any other remedies 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.

3.03 Continuing Obligations. Expiration or termination of this Agreement does not terminate Licensee's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or events leading to or occurring before termination. By way of example, and without limiting the foregoing, Licensee's obligations to restore the Licensed Premises as provided in this Agreement shall survive the expiration or any termination of this Agreement.

3.04 No Liability for Termination. City shall incur no expense or liability for terminating the Agreement as permitted by the Agreement. Further, if this Agreement is terminated, Licensee shall not be entitled to any refund or proration to the License Fees.

### SECTION 4 FEES AND TAXES

4.01 License Fees. Licensee agrees to pay to City, upon execution of this Agreement, a one-time, lump sum payment of ninety-four thousand seven hundred (\$94,700.00) dollars. Notwithstanding any other provisions of this Agreement, no additional License Fee will be due from Licensee in connection with any extension of the Term.

4.02 Taxes. If and to the extent applicable to Licensee, in addition to the License Fees, Licensee shall pay all taxes and assessments imposed by any governmental unit on or for the use of the Licensed Premises, or that arises out of or is related to the Agreement.

## SECTION 5 IMPROVEMENTS

5.01 Improvements by Licensee. Licensee shall not make any temporary or permanent improvements (including all future additions, changes, alterations, modifications, or replacements) to or on the Licensed Premises without the prior written consent of City. Licensee shall submit to City plans and specifications covering all such improvements, whether such improvements are to be constructed or installed by Licensee or others. Such plans and specifications shall be prepared in such detail as City may require, and Licensee agrees not to commence any such work upon any portion of the Licensed Premises until City has approved such plans and specifications.

5.02 Improvements, Construction and Maintenance. All Improvements shall be constructed and/or maintained in a good and workmanlike manner in compliance with all laws, code, rules, regulations, and orders of all governmental authorities having jurisdiction thereof. Licensee shall, at Licensee's own expense, promptly remove from the Licensed Premises all trash and debris which may accumulate in connection with any work in or on the Licensed Premises. Licensee shall, at all times during the full term of this Agreement and at Licensee's sole cost and expense, maintain the Licensed Premises and all Improvements thereon or appurtenances thereto, in good order, condition and repair and in a safe, sanitary, and neat condition. Licensee shall indemnify and hold harmless City against liability for all claims arising from any failure to maintain, or repair, the Licensed Premises and the improvements thereon, or from any construction, alteration or repair of the Licensed Premises or from the non-observance of any law, ordinance, or regulation applicable to such construction, alteration or repair.

## SECTION 6 MECHANICS LIENS

6.01 Mechanics Liens. Licensee agrees to keep the Licensed Premises free of any mechanics' or materialman's liens or other liens of any kind or nature for work done, labor performed, or material furnished thereon at the instance or occasion of Licensee, and Licensee further agrees to indemnify and hold harmless City from and against any and all claims, liens, demands, costs and expenses of whatsoever nature for any such work done, labor performed, or materials furnished by Licensee, its agents, employees or contractors.

6.02 No Agency. Licensee is not an agent of the City, nor an employee of the City, nor is Licensee, its agents, employees or contractors authorized to act for or on behalf of City as its agent, employee, representative, or otherwise, for the purpose of constructing any improvements at the Licensed Premises, or for any other purpose, and neither City nor City's interest in the Licensed Premises shall be subject to any obligations incurred by Licensee.

## SECTION 7 UTILITIES

7.01 Utilities. Licensee shall be responsible for all electric, gas, water, sewer, and waste disposal services and fees for Licensee's use of the Licensed Premises. Licensee shall install separate meters for its utility use. City shall not be liable for any loss, claims, or damage due to interruptions in the utility services provided. Additionally, telephone installation (if applicable) and all associated fees, monthly use, or other charges shall be the responsibility of Licensee.

## SECTION 8 MAINTENANCE AND REPAIRS

8.01 Maintenance and Repairs. Licensee, at its sole cost and expense and at all times, shall maintain the Licensed Property in a clean, safe and orderly manner. Further, the Parties agree that the operations and maintenance of the TPSS and the Licensed Property is subject to compliance with the Operations and Maintenance Agreement. A default under the Operations and Maintenance Agreement shall be deemed to be a default under this Agreement.

In no event shall the City be liable to or responsible for any accident or damage that may occur in the operation, or maintenance by Licensee of the TPSS or the Light Rail System, and the acceptance of this authorization to use the public way shall be deemed an agreement on the part of Licensee to indemnify the City and hold it harmless from and against any and all liability, loss, costs, legal fees, damage or any other expense that may be imposed on the City by reason of the acts or omissions of Licensee in the use, design, construction, operation, and/or maintenance of the TPSS and the Licensed Property.

8.02 Neat Condition. Licensee shall maintain the Licensed Property, at all times, in a neat, clean and orderly condition. Without limiting the foregoing, Licensee shall keep the Licensed Property free of weeds, trash, garbage, and unsightly or deleterious objects or structures, and shall keep the Licensed Property free from graffiti.

## SECTION 9 INSURANCE

9.01 Insurance. Licensee shall maintain insurance coverage consistent with the risk program established by Valley Metro Member Cities.

## SECTION 10 INDEMNIFICATION

10.01 Indemnity, Duty to Defend. Except for Claims (defined below) arising solely and exclusively from the negligence or willful acts or omissions of the Indemnitees (defined below), Licensee shall indemnify, defend save and hold harmless the City and its officers, officials, agents, and employees (collectively, the “Indemnitees”) from and against any and all claims, actions, liabilities, damages, losses, expensed, and costs, including court costs, attorneys’ fees, and costs of claim processing, primary loss investigation, and litigation (collectively, “Claims”) for bodily injury or personal injury (including death), loss or damage to tangible or intangible property: (1) arising out of the use of the Licensed Property or the construction, design, or use of the TPSS including, but not limited to, any and all construction or design claims related to the TPSS (including claims from Valley Metro’s contractor, subcontractor, material suppliers, or third parties), and claims related to the use, maintenance, or condition of the Licensed Premises; or (2) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Licensee or any of its owners, officers, directors, agents, or employees, including “loaned” employees from the City while working for and under the supervision and direction of Licensee.

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

This indemnity includes, but is not limited to, any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of Licensee to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree.

It is agreed that Licensee will be responsible for primary loss investigation, defense, and judgment costs. Licensee agrees to waive all rights of subrogation against the Indemnites.

## SECTION 11 ENVIRONMENTAL INDEMNIFICATION

11.01 No Hazardous Materials and Indemnity. Licensee shall not bring onto the Licensed Premises any chemical or other substance that is considered a hazardous waste, under the Arizona Hazardous Waste Management Act, A.R.S. § 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq., or the Toxic Substances Control Act, 15 U.S.C. 2601, et seq., or any other federal, state, county, or local law pertaining to hazardous waste or toxic substances (collectively "Hazardous Substances"). In addition to and without limitation of any other indemnities or obligations in this Agreement, Licensee shall pay, indemnify, defend and hold City and its officers, officials, agents, and employees harmless against any loss or liability incurred by reason of any Hazardous Substance on or affecting the Licensed Premises to the extent attributable to or caused by Licensee, its employees, agents, contractors, or anyone acting on Licensee's behalf.

## SECTION 12 ENTRY BY CITY

12.01 Entry by City. City reserves the absolute right to enter upon or have its employees, or agents enter the Licensed Premises at any time, for any reason, with 24 hour notice (except in the event of an emergency, no notice is required), without interference from Licensee, and without abatement of the License Fees due hereunder.

## SECTION 13 NON-DISCRIMINATION & DRUG FREE WORK PLACE

13.01 Non-Discrimination. Licensee, for itself, its personal representative, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (a) no person on the grounds of race, color, national origin, or disability, age, or familial status shall be excluded from participation, denied the benefits of, or be otherwise subject to unlawful discrimination in the use of the Licensed Premises; (b) that in the construction of any improvements on the Licensed Premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, or disability shall be excluded from participation in, denied the benefits of, or otherwise be subject to unlawful discrimination.

13.02 Drug Free Work Place. Licensee shall require a drug free workplace for all employees working at the Licensed Premises. Specifically, all Licensee employees who are working at the Licensed Premises or under this Agreement shall be notified in writing by the Licensee that they are prohibited from the manufacture, distribution, dispensation, possession or unlawful use of a controlled substance in the workplace. Licensee agrees to prohibit the use of intoxicating substances by all employees and shall ensure that employees do not use or possess illegal drugs while in the course of performing their duties.

## SECTION 14 NO ASSIGNMENT OR ENCUMBRANCES

14.01 No Assignment. Licensee may not assign this Agreement (in whole or part) and may not sublet, transfer, assign, mortgage, pledge, hypothecate, or encumber the Licensed Premises or any part thereof without City's prior written approval, which may be granted or denied in City's sole discretion. Any such transfer or encumbrance without City's prior written approval shall be void.

14.02 Assumption of Obligations. Any transfer or assignment of this Agreement that is approved by the City shall include the agreement to perform all of the obligations of Licensee under this Agreement.

## SECTION 15 ISSUE RESOLUTION

15.01 Any issue regarding the construction or interpretation of any provision of this Agreement, or regarding any policy matter or the determination of an issue of fact, which dispute is not resolved at staff level, shall be referred to Licensee's Director of Design and Construction and the City's City Engineer. If, after good faith negotiations aimed at reaching an amicable solution, a dispute cannot be resolved, the issue shall be referred to Licensee's Chief Executive Officer and the City's City Manager. If not resolved at this level, the dispute may then be brought before a court of competent jurisdiction in Maricopa County, Arizona.

## SECTION 16 SURRENDER AND RESTORATION OF THE LICENSED PREMISES

16.01 Surrender and Restoration of the Premise. Upon expiration or termination of this Agreement, Licensee's right to occupy the Licensed Premises and exercise the privileges and rights granted under this Agreement shall cease and Licensee shall surrender the Licensed Premises. Licensee shall remove all improvements and restore the Licensed Premises to a condition consistent with the then current condition of adjoining streets or other public facilities with respect to grade, appearance, quality, finish, and type of construction, at the sole cost and expense of Licensee; except the City's City Manager, in his sole discretion, may agree in writing to allow certain, or all, improvements to remain in the Licensed Premises. Restoration shall be performed within ninety (90) days of such expiration or termination, or such longer period as shall be required by the nature of the work and as agreed to in writing by the City. If Licensee fails to restore the Licensed Property as required herein, the City may perform such work after thirty (30) days prior written notice to Licensee, and Licensee hereby agrees to pay all costs of the City in connection with such work, including any collection costs and attorney's fees.

16.02 Trade Fixtures and Equipment. All trade fixtures, equipment, and other personal property installed or placed by Licensee on the Licensed Premises which is not permanently affixed thereto shall remain the property of Licensee, and Licensee shall have the right at any time during the term of this Agreement to remove the same from the Licensed Premises, and that Licensee shall repair, at its sole expense, any damage caused by such removal. Any property not removed by Licensee before the termination or expiration of this Agreement shall, at City's election, either: (i) become a part of the Licensed Premises, and ownership thereof shall vest in the City; or (ii) may be disposed of by City (if Licensee fails to dispose of such and restore the Licensed Premises) at Licensee's sole cost, and Licensee shall reimburse City within 30 days of invoice for such costs.



## SECTION 17 SIGNAGE

17.01 Signage. All signage and all changes or modifications to the signage shall comply with the Mesa City Zoning Code and the Mesa City Code; and, in addition to complying with the Zoning Code and obtaining all approvals required by the Mesa City Code, Licensee shall obtain the prior written approval from City for all signage and all changes or modifications to signage on the Licensed Premises.

## SECTION 18 GENERAL PROVISIONS

18.01 E-Verify Compliance. As required by A.R.S. § 41-4401 and 23-214, Licensee represents and warrants compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements of A.R.S. 23-214(A). Breach of the above-mentioned warranty shall be deemed a breach of the Agreement and may result in the termination of the Agreement by City. City retains the legal right to randomly inspect the papers and records of any employee who works under this Agreement to ensure compliance with the above-mentioned laws

18.02 Partial Invalidity. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

18.03 Notices. All notices given, or to be given, by either Party to the other, shall be given in writing and shall be addressed to the Parties at the addresses hereinafter set forth or at such other address as the parties may hereafter designate. Notices and payments to City, and notices to Licensee shall be deemed properly served when sent by certified or registered mail or hand delivered to the addresses as follows:

To "City":                      City of Mesa  
                                        Real Estate Services  
                                        20 E. Main Street  
                                        P.O. Box 1466  
                                        Mesa, AZ 85211-1466

To "Licensee":                Valley Metro Rail, Inc.  
                                        Attn: General Counsel  
                                        101 N First Avenue, Suite 1300  
                                        Phoenix, AZ 85003

18.04 Successors. The covenants herein contained shall, subject to the provisions limiting assignments, apply to and bind the heirs, successors, executors, administrators and assigns of all the parties hereto.

18.05 Time of the Essence. Time is of the essence with respect to the obligations to be performed under this Agreement.

18.06 A.R.S. § 38-511 Notice. This Agreement may be subject to cancellation pursuant to A.R.S. § 38-511.

18.07 No Agency. Each Party shall at all times be an independent operator and shall not at any time purport to act as an agent of any other Party, or any of its officers or agents.

18.8 Modification. Any modification of this Agreement shall only be effective if it is in writing and approved by the Parties.

18.9 Authority. The person executing this Agreement on behalf of, or as a representative for Licensee warrants that he is duly authorized to execute and deliver this Agreement on behalf of Licensee and that this Agreement is binding upon Licensee in accordance with the terms and conditions herein.

18.10 Governing Law, Venue, and Jurisdiction. This Agreement shall be governed by the laws of Arizona. A Party shall only bring an action related to a dispute arising out of this Agreement in a court of appropriate venue and jurisdiction in Maricopa County, State of Arizona.

18.11 No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties. Nothing set forth in this Agreement, or in any presentation, report, or other document is intended to create, or shall create, any rights in any third parties. There shall be no third party beneficiaries to this Agreement.

18.12 Construction. The terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings. The Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

18.13 Surviving Provisions. All warranties, representations, and duties to indemnify, defend, and hold harmless shall survive the termination, cancellation, or expiration of this Agreement. Additionally, all obligations to restore the Licensed Premises shall survive the termination or expiration of this License as well as any other section which reasonably should survive shall survive.

[Signatures on the following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year first written above.

CITY OF MESA

VALLEY METRO RAIL, INC.

\_\_\_\_\_  
Christopher J. Brady  
City Manager

\_\_\_\_\_  
Stephen R. Banta  
CEO

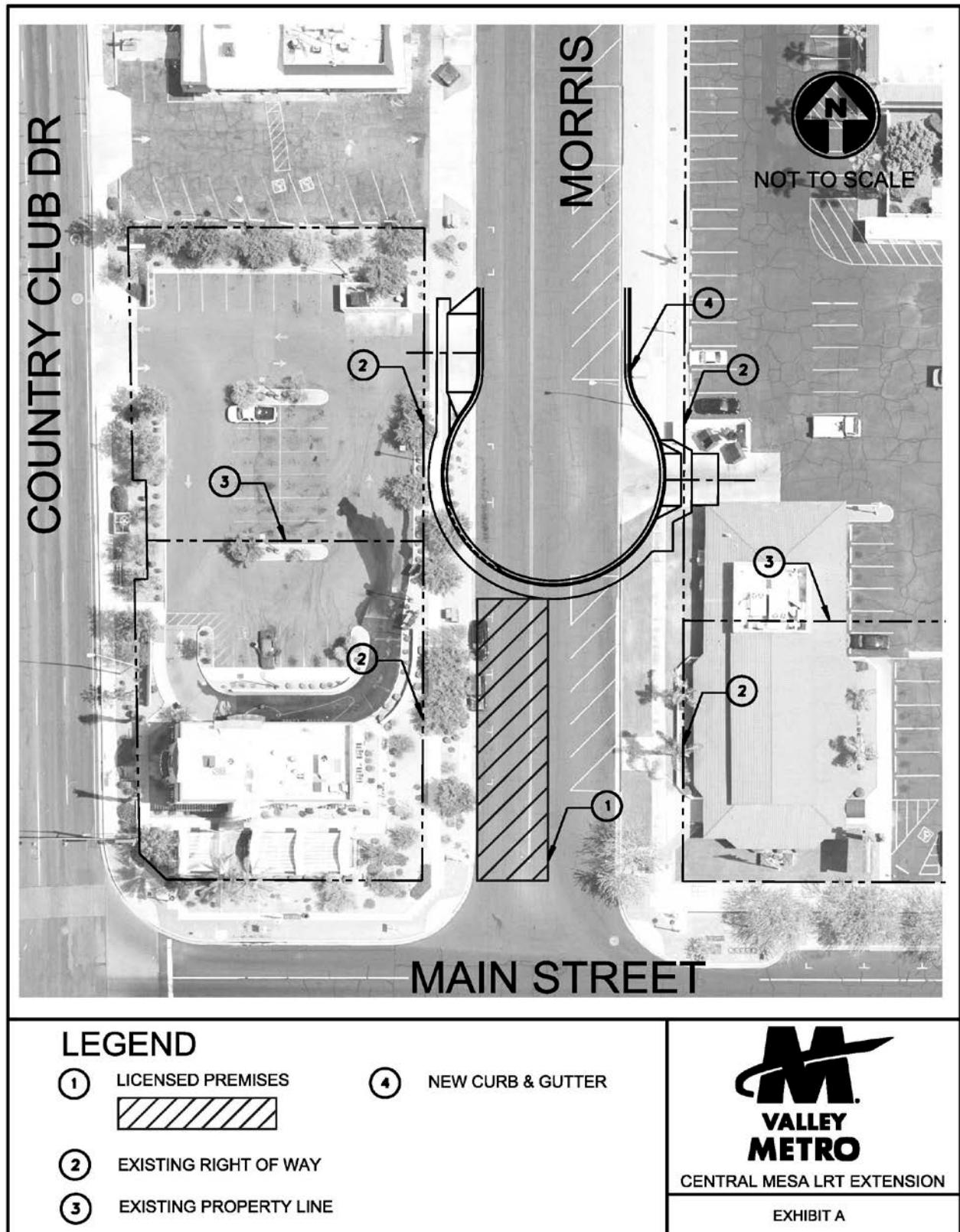
Approved as to Form

Approved as to Form

\_\_\_\_\_  
James Smith  
Deputy City Attorney

\_\_\_\_\_  
Mike Ladino  
General Counsel

**Exhibit "A"**  
**(Depiction of the Licensed Premises)**



12-22-2014