

**FIRST AMENDMENT**  
**to the**  
**AMENDED AND RESTATED OPERATIONS AND MAINTENANCE AGREEMENT**

This First Amendment to the Amended and Restated Operations and Maintenance Agreement (this "First Amendment") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2016 by and between City of Mesa, an Arizona municipal corporation ("City"), and Valley Metro Rail, Inc., an Arizona non-profit corporation ("Valley Metro"). City and Valley Metro are sometimes referred to in this First Amendment collectively as the "Parties," or individually as a "Party." All capitalized words and phrases used in this First Amendment shall have the same meanings as set forth in the Amended and Restated Operations and Maintenance Agreement, unless a different definition is set forth in this First Amendment.

**RECITALS**

- A. City and Valley Metro entered into that certain Amended and Restated Operations and Maintenance Agreement dated June, 2013, (the "O&M Agreement").
- B. As the name of the agreement implies, the O&M Agreement describes and sets forth the Parties' operation and maintenance responsibilities for Valley Metro light rail System. More specifically, the O&M Agreement applies to the portions of Valley Metro's light rail System within the City that are in Revenue Operations and for all extensions of such System as they go into Revenue Operations.
- C. The Parties desires to replace certain exhibits and add a new exhibit all of which depict certain improvements and property that a Party is to operate and maintain. These replacement exhibits and the new exhibit are intended to provide greater clarity for each Party's responsibility for operation and maintenance. Accordingly, the Parties desire to amend certain exhibits, add a new exhibit, and to make such other amendments as set forth in this First Amendment.

**AGREEMENT**

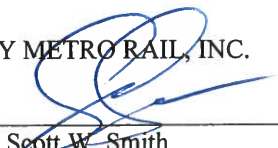
IN CONSIDERATION of the foregoing recitals and representations and the mutual covenants and agreements and conditions in this First Amendment, the Parties agree as follows:

- 1. Replacement of Exhibits E1 and E6, and adding Exhibit E8. The Parties desire to replace Exhibits E1 and E6, and add a new exhibit, to the O&M Agreement with updated exhibits, and a new exhibit, to show each Party's operation and maintenance responsibilities for the improvements and property depicted in each exhibit. Accordingly, the Parties hereby agree to the following: the attached Exhibit E1(revised) hereby replaces Exhibit E1; the attached Exhibit E6(revised) hereby replaces Exhibit E6; the attached Exhibit E8 is hereby added to the O&M Agreement.
- 2. Revision to Exhibit C, Section 5.0. The Parties hereby agree to the following amendment to Exhibit C, Section 5.0, entitled "Safety": the sentence that reads "Certificates are valid for one year" is hereby amended to "Certificates are valid for two years."
- 3. Severability. In the event any term or provision of this First Amendment is held to be invalid or unenforceable, the validity of the other provisions shall not be affected, and this First Amendment shall be construed and enforced as if it did not contain the particular term or provision that is deemed to be invalid or unenforceable.
- 4. Governing Law, Venue, and Jurisdiction. This First Amendment shall be governed by the laws of Arizona. A Party may only bring any action related to a dispute arising out of this First Amendment in a court of appropriate venue and jurisdiction in Maricopa County, State of Arizona.

5. Statutory Notice Requirement. The Parties acknowledge that this First Amendment is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.
6. Incorporation of Recitals. The recitals set forth herein are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.
7. Merger. The O&M Agreement as amended by this First Amendment shall remain the same in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this First Amendment to the Amended and Restated Operations and Maintenance Agreement as of the date written above.

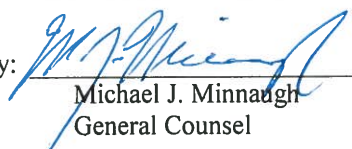
VALLEY METRO RAIL, INC.

By:   
Scott W. Smith  
Interim Chief Executive Officer

CITY OF MESA

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

APPROVED AS TO FORM

By:   
Michael J. Minnaugh  
General Counsel

APPROVED AS TO FORM

By: \_\_\_\_\_  
James N. Smith  
City Attorney



