

**FIRST AMENDMENT
TO THE AMENDED AND RESTATED TRANSPORTATION
PROJECT ADVANCE AGREEMENT AMONG
THE CITY OF MESA, THE
CITY OF PHOENIX,
VALLEY METRO RAIL, INC.
AND
THE MARICOPA ASSOCIATION OF GOVERNMENTS**

This First Amendment to the Amended and Restated Transportation Project Advancement Agreement (this “First Amendment”) is entered into as of _____, 2018, by and among the CITY OF MESA, ARIZONA (“Mesa”), the CITY OF PHOENIX, ARIZONA (“Phoenix”), VALLEY METRO RAIL, INC., an Arizona nonprofit corporation and governmental instrumentality of its constituent municipalities (“VMR”), and the MARICOPA ASSOCIATION OF GOVERNMENTS, an Arizona nonprofit corporation (“MAG”); all of which are collectively referred to herein as the “Parties” or individually as a “Party.”

RECITALS

A. Mesa is authorized by A.R.S. §§ 9-500.17, 11-952, and 28-7692, and the Mesa Charter Article I, Section 101 to enter into this First Amendment, and has authorized the undersigned to execute this First Amendment on behalf of Mesa.

B. Phoenix is authorized by A.R.S. §§ 9-500.17, 11-952 and 28-7692, and the Phoenix Charter Chapter 2, Article 2 to enter into this First Amendment and has authorized the undersigned to execute this First Amendment on behalf of Phoenix.

C. VMR is authorized by its Articles of Incorporation to enter into this First Amendment and has approved this First Amendment and/or its Board of Directors has authorized the undersigned to execute this First Amendment on behalf of VMR.

D. MAG is authorized by A.R.S. §§ 28-6308, 28-6353 and 28-7692 to enter into this First Amendment and the MAG Regional Council has authorized the undersigned to execute this First Amendment on behalf of MAG.

E. Mesa has requested and Phoenix, VMR and MAG agree that it is in the best interest of the public to accelerate the design and construction of the 1.9 mile light rail transit extension on Main Street from Mesa Drive to Gilbert Road in Mesa and accelerate the acquisition of Right-of-Way and light rail vehicles related to such light rail transit extension (the “Project”).

F. In order to finance the Project, the Parties entered into that certain Amended and Restated Transportation Project Advancement Agreement dated December 31, 2015 (the “TPAA”), which provides the terms, conditions, and authority to advance funding for the Project through transportation project advancement notes and advancements of federal funds (e.g., CMAQ and STP funds).

G. The Project, to date, has been funded through advancements of federal funds without the need of issuing transportation project advancement notes. Funding the Project through these advancements has resulted in significant savings for the Project because it eliminated the issuance and carrying costs on the notes.

H. In order to save additional money, Mesa has determined that it is no longer necessary to issue transportation project advancement notes. For the remaining Project Costs, up to \$20.3 million, the Parties agree that Mesa will advance its funds for the Project and all such advancements (less 5.7% for Mesa's local match requirement) will be repaid to Mesa as further described in this First Amendment. The funding advanced by Mesa will be subject to the same terms and conditions of the TPAA as the advanced federal funds except as otherwise provided in this First Amendment.

I. The Parties now desire to amend the TPAA in this First Amendment to (i) allow and authorize Mesa to advance up to \$20.3 million for Project Costs, (ii) require repayment of the funds advanced by Mesa for the Project (less Mesa's match requirement), and (iii) incorporate Exhibit "A" that shows the revised Reprogrammed Funding Payment Schedule which shows the \$32.4 million advance to the Project in 2015 and the adjustments to the MAG ALCP funding programmed for the project; and incorporate Exhibit "B", Project Financial Analysis, that projects monthly Project expenditures, funds available, grant awards, City advances and reimbursements to Mesa. Exhibits "A" and "B" are attached hereto and incorporated herein by this reference.

NOW, THEREFORE, in consideration of the foregoing recitals, which are a substantive part of this First Amendment, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Definitions and Amended Definition of Other Federal Funds. All capitalized words and phrases used in this First Amendment shall have the same meanings as set forth in the TPAA, unless a different definition is set forth in this First Amendment. The definition of "Other Federal Funds" is hereby amended to add to, but not to replace or otherwise modify, the following after the existing definition in the TPAA: And also means any funding from the Fixing America's Surface Transportation Act signed into law December 4, 2015 (the FAST Act), and any other eligible funding from federal transportation funds that may be used for Project Costs.

2. Mesa's Advance Funds. The Parties agree that Mesa may advance City of Mesa funds for the Project and all such advancements (less 5.7% for Mesa's local match requirement) will be repaid to Mesa; accordingly, the Parties agree to amend the TPAA by adding a new Section 3.1.1 that provides as follows:

3.1.1 Mesa's Advance Funds.

- A. If STP, CMAQ, and Other Federal Funds programmed for the Project are not available, and only after all such funding has been expended or otherwise obligated for Project Costs by VMR, Mesa may (in lieu of issuing TPANs) advance City of Mesa funds (the "Mesa Advance") for Project Costs up to a total of \$20.3 million (this "Cap Amount" includes the 5.7% local match amount); 94.3% of the Mesa Advance shall be reimbursable and is the

“Reimbursable Mesa Advance” and 5.7% of the Mesa Advance shall be the local match Mesa is required to fund for the Project.

- B. Phoenix and VMR agree to repay Mesa the Reimbursable Mesa Advance from STP, CMAQ, Other Federal Funds, any other available federal funds legally allowable to make such repayment, and such other funds provided under any successor or comparable federal transportation programs pursuant to the estimated payment schedule as set forth in the attached Exhibit B. Repayments are expressly contingent upon such funds being received by Phoenix and/or VMR. If the available funds for repayment are higher or lower than expected and as shown on the attached Exhibit B, the repayment of the Reimbursable Mesa Advance will be subject to acceleration or delay based on the availability of such funds. Further, Exhibit B does not include additional federal funds that are anticipated to become available through the MAG federal funding closeout process in 2019 and subsequent years that the Project requires funding (or other STP, CMAQ, or Other Federal Funds that may become available) that would affect the expenditures and revenues shown on Exhibit B. The Parties agree that so long as payments are due for the repayment of the Reimbursable Mesa Advance, the repayment of the Reimbursable Mesa Advance has first priority (except in the event TPANs are issued, TPANs shall have priority over payment to the Reimbursable Mesa Advance) for payment from any available funds to the extent legally permissible.
- C. To the extent permitted by the regulations for the federal funds and applicable law, Mesa shall be entitled to reimbursement on the interest Mesa would have earned on the Reimbursable Mesa Advance if such funds had not been advanced (the “Lost Interest”), and the Lost Interest shall be considered part of, and added to, the Reimbursable Mesa Advance amount. The Lost Interest will be calculated monthly by Mesa staff using the month’s weighted average return on all Mesa investments and cash; and this weighted average return will then be multiplied by the average daily balance of both the Reimbursable Mesa Advance not yet reimbursed and the previously accrued interest not yet reimbursed; provided, further, however, Mesa and VMR may agree in writing to another method of calculating the Lost Interest if the regulations for the federal funds or applicable law require a different method of calculation.
- D. The Mesa Advance will not be subject to the requirements of setting up an Advance Account as provided in Section 3.2 of the TPAA. Instead, after the STP, CMAQ, and Other Federal Funds are expended or otherwise obligated to Project Costs (but no sooner than January 1, 2019), VMR shall invoice Mesa for Project Costs every month until the Project is completed or the Cap Amount is reached. VMR and Mesa shall agree (by separate agreement or process) to the invoicing details, process, and payment in a manner that provides for appropriately detailed invoices that can be promptly paid with an expedited resolution process. The Mesa Advance to pay the invoices will be made directly to VMR.

- E. If additional advance funds (e.g., additional STP, CMAQ, or Other Federal Funds) become available for the Project, Mesa may elect to have such additional funds either: (i) be used by VMR to pay Project Costs (and thereby reduce the amount Mesa will need to advance), or (ii) be used to repay the Reimbursable Mesa Advance.
- F. The Parties acknowledge and agree to execute such documents and to perform such acts as are necessary to comply with the terms and conditions of this First Amendment and applicable federal funding requirements.
- G. All payments, invoices, and documents related to the Mesa Advance shall be subject to the inspection, retention, and audit provisions of Section 6.4.
- H. This Agreement shall remain in full force and effect until the Project Closeout and Phoenix and/or VMR has repaid Mesa the Reimbursable Mesa Advance.

3. Reimbursable Mesa Advance is an Advance. Except as otherwise provided for or inconsistent with the terms of this First Amendment, the Reimbursable Mesa Advance shall be considered an “Advance” as that term is defined and used in the TPAA.

4. Reprogrammed Funding. Adjustments to the funding for the Project to repay the Reprogrammed Funding is shown in the attached Exhibit A, which shows the \$32.4 million advance to the Project in 2015 and the adjustments to the MAG ALCP funding programmed for the Project beginning in 2019. These adjustment to the Project funding repay the \$32.4 million over a six year period, which is already reflected in the MAG ALCP.

5. Severability. In the event any term or provision of this First Amendment is held to be invalid or unenforceable: (i) 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; and (ii) the Parties will negotiate diligently in good faith for an amendment to the TPAA to achieve the original intent of this First Amendment to the fullest extent such an amendment is legally permissible.

6. Statutory Notice Requirement. The Parties acknowledge that this First Amendment is subject to the provisions of A.R.S. § 38-511.

7. Incorporation. The Parties agree the terms and conditions of this First Amendment are hereby incorporated in and made a part of the TPAA. All other terms and conditions of the TPAA, unless expressly replaced, amended or modified herein by this First Amendment, shall remain in full force and effect are hereby ratified and confirmed. In the event of any conflict between the terms of the TPAA and those of this First Amendment, the terms of this First Amendment shall control. The Parties agree all other terms and conditions of the TPAA, unless expressly replaced or modified herein, shall remain in full force and effect.

8. No Pledge of Credit. The payment obligations in this First Amendment do no create an indebtedness or pledge of the credit of any of the Parties within the meaning of any constitutional, charter or statutory provision relating to the incurring of debt or a pledge of the full faith and credit of any of the Parties.

[Signatures on following pages]

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the day and year first above written.

CITY OF MESA, ARIZONA
Christopher J. Brady, City Manager

By: _____
Christopher J. Brady
City Manager

ATTORNEY APPROVAL FORM FOR THE CITY OF MESA

I have reviewed the above-referenced First Amendment between the City of Mesa, Arizona, City of Phoenix, Arizona, Valley Metro Rail, Inc. and Maricopa Association of Governments pursuant to Arizona Revised Statutes § 11-951 through § 11-954 and declare this First Amendment to be in proper form and within the powers and authority granted to the City of Mesa, Arizona under the laws of the State of Arizona.

No opinion is expressed as to the authority of the City of Phoenix, Arizona, Valley Metro Rail, Inc. or the Maricopa Association of Governments to enter into this First Amendment.

Dated this ____ day of _____, 2018.

City Attorney - MESA

CITY OF PHOENIX, ARIZONA
Ed Zuercher, City Manager

By: _____
Jesus Sapien
Public Transit Director

ATTEST:

City Clerk – PHOENIX

APPROVED AS TO FORM:

City Attorney - PHOENIX

ATTORNEY APPROVAL FORM FOR THE CITY OF PHOENIX

I have reviewed the above-referenced First Amendment between the City of Mesa, Arizona, City of Phoenix, Arizona, Valley Metro Rail, Inc. and Maricopa Association of Governments pursuant to Arizona Revised Statutes § 11-951 through § 11-954 and declare this First Amendment to be in proper form and within the powers and authority granted to the City of Phoenix, Arizona under the laws of the State of Arizona.

No opinion is expressed as to the authority of the City of Mesa, Arizona, Valley Metro Rail, Inc. or the Maricopa Association of Governments to enter into this First Amendment.

Dated this _____ day of _____, 2018.

City Attorney - PHOENIX

VALLEY METRO RAIL, INC.
Scott Smith, Chief Executive Officer

By: _____
Scott Smith
Chief Executive Officer

ATTORNEY APPROVAL FORM FOR VALLEY METRO RAIL, INC.

I have reviewed the above-referenced First Amendment between the City of Mesa, Arizona, City of Phoenix, Arizona, Valley Metro Rail, Inc. and Maricopa Association of Governments and declare this First Amendment is within the powers and authority granted to the Valley Metro Rail, Inc. under the laws of the State of Arizona, the Joint Powers Agreement, its Articles of Incorporation and Bylaws.

No opinion is expressed as to the authority of the City of Mesa, Arizona, the City of Phoenix, Arizona or the Maricopa Association of Governments to enter into this First Amendment.

Dated this _____ day of _____, 2018.

General Counsel, Valley Metro Rail, Inc.

**MARICOPA ASSOCIATION OF
GOVERNMENTS**

Eric Anderson, Executive Director

By: _____
Eric Anderson
Executive Director

**ATTORNEY APPROVAL FORM FOR THE
MARICOPA ASSOCIATION OF GOVERNMENTS**

I have reviewed the above-referenced First Amendment between the City of Mesa, Arizona, City of Phoenix, Arizona, Valley Metro Rail, Inc. and Maricopa Association of Governments and declare this First Amendment is within the powers and authority granted to the Maricopa Association of Governments under the laws of the State of Arizona, its Articles of Incorporation and Bylaws.

No opinion is expressed as to the authority of the City of Mesa, Arizona, the City of Phoenix, Arizona or Valley Metro Rail, Inc. to enter into this First Amendment.

Dated this _____ day of _____, 2018.

Maricopa Association of Governments

EXHIBIT A**REPROGRAMMED FUNDING PAYMENT
SCHEDULE**

	I	II	III
Federal Fiscal Year	Federal Funds Programmed to Mesa by MAG Prior to Reprogramming ("Programmed Funds")	Reprogrammed Federal Funds Advanced to GRE/Future Reprogrammed Federal Funds (Reimbursement)	Federal Funds Programmed to Mesa by MAG after Reprogramming
Prior to 2016 Allocation	\$5,414,500	\$32,400,000	\$37,814,500
2016 Allocation	34,001,383	0	34,001,383
2017 Allocation	51,007,760	0	51,007,760
2018 Allocation	22,818,531	0	22,818,531
2019 Allocation	8,124,144	-5,486,800	2,637,344
2020 Allocation	18,224,295	-5,486,800	12,737,495
2021 Allocation	15,651,696	-5,486,800	10,164,896
2022 Allocation	5,486,775	-5,486,775	0
2023 Allocation	6,334,125	-6,334,125	0
2024 Allocation	4,118,700	-4,118,700	0
Total	\$171,181,909	\$0	\$171,181,909
ALCP federal fund savings	\$4,573,527	0	\$4,573,527

Exhibit B
Estimated GRE Expenditures and Revenues by Month

(\$thousands)

<u>Expenditures</u>		<u>Tracking of available funds (federal and local)</u>						
		<u>Revenues</u>						
		<u>Mesa Local</u>	<u>Federal Share</u>	<u>Federal Funds</u>	<u>New Federal</u>	<u>Mesa</u>	<u>Mesa Local</u>	
<u>Month</u>	<u>Monthly Cost</u>	<u>Match</u>		<u>Available</u>	<u>Award</u>	<u>Federal Draw</u>	<u>Financing</u>	<u>Match</u>
Aug 2018	\$108,018.5	\$6,157.1	\$101,861.5	\$134,664.0	\$0.0	\$101,861.5	\$0.0	\$6,157.1 Actuals through August 2018
Sep 2018	\$6,760.4	\$385.3	\$6,375.1	\$32,802.5	\$0.0	\$6,375.1	\$0.0	\$385.3
Oct 2018	\$14,857.4	\$846.9	\$14,010.5	\$26,427.4	\$0.0	\$14,010.5	\$0.0	\$846.9
Nov 2018	\$8,865.5	\$505.3	\$8,360.2	\$12,416.9	\$10,978.2	\$8,360.2	\$0.0	\$505.3 FFY18 funds in grant
Dec 2018	\$7,689.1	\$438.3	\$7,250.8	\$15,034.9	\$0.0	\$7,250.8	\$0.0	\$438.3
Jan 2019	\$4,810.6	\$274.2	\$4,536.4	\$7,784.2	\$0.0	\$4,536.4	\$0.0	\$274.2
Feb 2019	\$2,091.4	\$119.2	\$1,972.2	\$3,247.7	\$0.0	\$1,972.2	\$0.0	\$119.2
Mar 2019	\$2,792.7	\$159.2	\$2,633.6	\$1,275.5	\$0.0	\$1,275.5	\$1,358.0	\$159.2
Apr 2019	\$7,511.6	\$428.2	\$7,083.5	\$0.0	\$0.0	\$0.0	\$7,083.5	\$428.2
May 2019	\$660.2	\$37.6	\$622.5	\$0.0	\$0.0	\$0.0	\$622.5	\$37.6
Jun 2019	\$440.6	\$25.1	\$415.5	\$0.0	\$2,637.3	\$415.5	\$0.0	\$25.1 FFY19 funds in grant (early flex)
Jul 2019	\$188.9	\$10.8	\$178.1	\$2,221.8	\$0.0	\$178.1	\$0.0	\$10.8
Aug 2019	\$1,410.0	\$80.4	\$1,329.6	\$2,043.7	\$0.0	\$1,329.6	\$0.0	\$80.4
Sep 2019	\$2,860.3	\$163.0	\$2,697.3	\$714.1	\$0.0	\$714.1	\$1,983.2	\$163.0
Oct 2019	\$2,860.3	\$163.0	\$2,697.3	\$0.0	\$0.0	\$0.0	\$2,697.3	\$163.0
Nov 2019	\$2,860.3	\$163.0	\$2,697.3	\$0.0	\$0.0	\$0.0	\$2,697.3	\$163.0
Dec 2019	\$2,860.3	\$163.0	\$2,697.3	\$0.0	\$0.0	\$0.0	\$2,697.3	\$163.0
Jun 2020		\$0.0	\$0.0	\$0.0	\$12,737.5	\$10,633.7	-\$10,633.7	\$0.0 FFY20 funds in grant (early flex)
Jul 2020	\$837.8	\$47.8	\$790.0	\$2,103.8	\$0.0	\$790.0	\$0.0	\$47.8 Vehicle milestone payment
Apr 2021	\$1,393.2	\$79.4	\$1,313.8	\$1,313.8	\$0.0	\$1,313.8	\$0.0	\$79.4 Vehicle milestone payment
Jun 2021		\$0.0	\$0.0	\$0.0	\$11,560.7	\$8,505.3	-\$8,505.3	\$0.0 FFY21 funds in grant (early flex)
Jul 2021	\$1,466.5	\$83.6	\$1,383.0	\$3,055.3	\$0.0	\$1,383.0	\$0.0	\$83.6 Vehicle milestone payment
Jun 2022		\$0.0	\$0.0	\$1,672.4	\$3,177.7	\$0.0	\$0.0	\$0.0 FFY22 funds in grant (early flex)
Jul 2023	\$293.3	\$16.7	\$276.6	\$4,850.1	\$0.0	\$276.6	\$0.0	\$16.7 Vehicle milestone payment
Control Total	\$181,529.1	\$10,347.2	\$171,181.9				\$0.0	Control total excludes transit center and finance costs

Exhibit B reflects current estimated Project expenditures and revenues for GRE as provided by METRO R:

Estimated expenditures and revenues may vary as actuals are recorded over time

Reimbursements to City of Mesa scheduled for June 2020 (\$10,633,700) and June 2021 (\$8,505,300) as indicated in Mesa Financing column above