

**SECOND AMENDMENT TO THE
GILBERT ROAD LIGHT RAIL TRANSIT EXTENSION AGREEMENT
BETWEEN THE CITY OF MESA AND
VALLEY METRO RAIL, INC.**

Agreement No. 12-175
Amendment No. 2

This Second Amendment to the Gilbert Road Light Rail Transit Extension Agreement (this "Second Amendment") is entered into as of this _____ day of _____, 2014, by and between the City of Mesa ("City") and Valley Metro Rail, Inc. ("METRO"). City and METRO may be referred to collectively as the "Parties" or individually as a "Party."

RECITALS

A. The Parties entered into that certain Gilbert Road Light Rail Transit Extension Environmental Assessment Agreement dated July 20, 2012 (the "EA Agreement") wherein METRO agreed to perform the Environmental Assessment for a light rail transit extension project within the City of Mesa commonly known as the Gilbert Road Light Rail Transit Extension (the "Project").

B. The Parties also entered into a First Amendment to the Gilbert Road Light Rail Transit Extension Environmental Assessment Agreement dated June, 3, 2013 (the "First Amendment") wherein METRO completed the environmental assessment for the Project and performed preliminary engineering for the Project. The EA Agreement and the First Amendment are collectively referred to as the "Agreement."

C. The Agreement started as an environmental assessment agreement and through the amendments now deals primarily with design and construction; and consequently the use of the phase environmental assessment that was used in the title of the EA Agreement and First Amendment is being dropped in this Second Amendment to avoid the misimpression that this Second Amendment involves the Environmental Assessment.

D. The Parties now desire to amend the Agreement to include the next phases of the Project, more specifically, to have METRO procure the services of a design consultant, CM@Risk contractor, and artist; and to commence final design and pre-construction services, progress real estate acquisition, and perform project management activities.

E. The Project's funding will come from two sources: (i) 94.3% of the funding (up to \$3,900,000) will come from the federal Congestion Mitigation Air Quality ("CMAQ") funds from the Maricopa Association of Governments that is reimbursed through the City of Phoenix, and (ii) 5.7% of the funding (up to \$235,737) is matching funds from the City of Mesa for a total cost of \$4,135,737.

F. METRO will obtain the CMAQ funds from the City of Phoenix; Mesa will provide matching funds of 5.7% up to \$235,737.

G. The Parties desire to complete the additional work for the Project as described in this Second Amendment and the attached Scope of Work, and to make other amendments as provided herein.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

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

“City Representative” means the City’s single point of contact that METRO is to use for all Project coordination. The City Representative shall be the City’s Engineering Department Project Manager.

“METRO Representative” means METRO’s single point of contact that the City is to use for all Project coordination. The METRO Representative shall be METRO’s Project Manager.

2. Term. The Parties desire to amend Section 6 of the Agreement (Term of Agreement) to extend the term as follows: The term of the Agreement shall extend until, and terminate upon, the earlier of (i) METRO’s completion of the work set forth in the Scope of Work attached hereto as Exhibit A or (ii) December 31, 2015.
3. Termination. City may terminate this Agreement upon thirty (30) days prior written notice to METRO that the City has decided, in its sole discretion, not to issue TPANs or otherwise has elected to not proceed with the Project; and the City shall not incur any costs or liability for such a termination, except City shall pay METRO’s (including its contractors’) costs incurred up to the date of termination. METRO shall include language in its solicitations and its contracts with designers, contractors, and all other consultants and professionals that METRO shall have the right to terminate its contracts with such professionals upon such same or lesser notice and that METRO shall not incur any costs or liability for such a termination. If City terminates this Agreement, METRO shall terminate its contracts with its designers, contractors, and all other consultants and professionals that are under contract for the work, or being funded, under this Agreement.
4. METRO’s Obligations. The Parties desire to amend Section 4 of the Agreement (METRO’s Obligations) to amend and expand METRO’s obligations as follows: METRO shall complete all of the work described in the Scope of Work attached hereto as Exhibit A within the schedule and within the costs budgeted in the Scope of Work. METRO’s obligations in the Scope of Work includes, but is not limited to, the following work:
 - a. METRO completing Task 1, which includes completing the procurement process for construction services, final design services, and artist services. Prior to finalizing the procurement documents, METRO will send them to the City to review and revise, if necessary, to ensure compliance with the Transportation Project Advance Agreement.
 - b. METRO completing Task 2, which includes the approval by the Federal Transit Administration’s required Project Control Plan, Real Estate Acquisition Plan, Operations and Maintenance Plan, Quality Assurance Plan, and Document Control Plan.
 - c. METRO completing Task 3, which includes the initiation of final design, completion of a traffic analysis, development of preliminary real estate needs such as title reports, and project management.

- d. METRO completing Task 4, which includes initiating pre-construction services with a contractor under contract to evaluate alternative technical concepts to reduce costs of the project.
 - e. METRO completing Task 5, which includes continuing Public Involvement Outreach.
5. City's Obligations. The Parties desire to amend Section 5 of the Agreement (COM Obligations) to include the following obligations:
- a. City completing Task 3c, which includes preparing the real estate data sheet and title reports for parcels to be acquired for the Project. Appraisals and environmental investigations will be initiated if design progressed and allowance funds are available.
 - b. City shall be responsible to provide matching funds in the amount of 5.7% of the actual Project costs, and such matching funds shall be capped at TWO HUNDRED THIRTY-FIVE THOUSAND SEVEN HUNDRED AND THIRTY-SEVEN DOLLARS (\$235,737).
 - c. City's 5.7% matching funds may take the form of costs incurred by City or work performed by City for the Project if reasonably determined by City and METRO to be in compliance with applicable rules and regulations.
6. Project Management Team. The Project Management Team is composed of the following individuals: METRO's Chief Engineer, Project Manager, Manager of Design, Manager of Construction and Utilities, Project Controls Manager, Chief Operations Officer, Chief of Safety and Security, Manager of Quality, Contracts Administrator, and the City's Project Manager, Transit Services Director, and Deputy City Engineer. The City Representative shall be the point of contact with the City and the METRO Representative shall be the focal point of interface with METRO. The Project Management Team's focus shall be on any issue associated with budget, schedule, project scope, and quality. All decisions and approvals made by the Project Management Team require the concurrence of the METRO Chief Engineer and the City Representative. The Project Management Team's approval shall be obtained for all material and significant aspects of the Project.
7. Design Coordination. The METRO Representative shall coordinate with the City Representative for all matters on the Project. The METRO Representative is responsible for resolving conflicting information received from Valley Metro departments. The City Representative is responsible for resolving conflicting information received from City departments.
8. Project Budget, METRO Personnel, Compensation.
- a. METRO shall coordinate, and ensure compliance with, all requirements for obtaining and using all funding under this Agreement for the Project, including but not limited to compliance with all federal and state laws and regulations.
 - b. Project Budget. METRO shall establish and maintain a Project Budget (the "Project Budget") for the work described in the Scope of Work; and METRO shall work with the City in establishing the Project Budget. METRO will update and report monthly to the City the status of the Project Budget, with such update due on or before the 20th of each month or such other date mutually agreed to between the City and METRO.

- i. The estimated costs for the CM@Risk Contractor, Design Consultant, and Artist are estimates developed by METRO; after these services are procured, budget allocations may need to be adjusted based on negotiated costs.
- ii. METRO and the City shall have the flexibility to move monies between project tasks/subtasks as outlined in the scope as required. These changes to the task/subtask budgets shall be documented in the monthly progress reports and invoices. For allocation of the allowance funds, see Section 9.
- iii. Within thirty (30) days of entering into this Agreement, METRO shall provide to City a Project Budget Cost Report that includes, but is not limited to, columns and rows with the budget broken down into each deliverable and each subtask for each consultant, METRO, and City position. METRO shall provide to City with the same Project Budget Cost Report for the designer, CM@Risk, and artist once their services have been procured.
- iv. METRO shall provide with each monthly progress report and invoice, copies of receipts or invoices for direct expenses that include, but are not limited to: food and beverage, outside printing, travel, and facility rentals.
- v. The City has provided METRO a budget detailing City positions and anticipated costs for the City's effort for this scope. The City budget includes sufficient funding for full reimbursement of the City's direct costs. The City is in the process of preparing a Cost Allocation Plan that would allow for the reimbursement of indirect costs associated with the project. At which time the City receives approval of the Cost Allocation Plan, the City may request use of the identified allowance funds to reimburse these indirect costs.

c. Invoices and Expenditure Reports.

- i. Invoices, Expenditures Incurred Report, Disbursement Request Summary, and Invoice Copies. With each invoice submitted to City under subsection "iii" below, METRO shall include Expenditures Incurred Report, a Disbursement Request Summary, and a summary of invoices. Additionally, METRO shall provide a monthly progress report that identifies what percentage of the deliverable is complete for which compensation is being sought.

Prior to submitting any invoices to City, METRO shall meet with the City to agree upon the format for these documents that shall accompany each invoice.

METRO must keep receipts for all costs for which it seeks reimbursement.

- ii. Federal CMAQ Funding. METRO shall be solely responsible for obtaining the 94.3% funding for the Project from the CMAQ funds.

METRO shall follow the procedure currently in place for all reimbursement requests for FTA funds and use the forms required by Phoenix, acting as Designated Recipient. Records are available for inspection by Phoenix or City as needed, in accordance with FTA Circular 5010.1D or succedent circular.

- iii. City Funding. METRO shall submit a monthly invoice—along with an Expenditures Incurred Report, a Disbursement Request Summary, and a summary of expenses that support each invoice—to the City for the City of Mesa's 5.7% funding of the Project costs. With any reimbursement request for direct expenses (including, but not limited to, food & beverage, printing, travel, and facility rentals) METRO shall make available all records of these expenses for City to review. As soon as reasonably practicable thereafter, City shall review METRO's invoice and accompanying documentation and reimburse METRO for the 5.7% matching amount. City is not obligated to make any payment until the accompanying Expenditures Incurred Report, Disbursement Request Summary, and summary of expenses are provided by METRO.
9. Allowance. The Project Budget shall include an "Allowance" in the amount of \$698,000. The Project Team shall also have the flexibility to use the Allowance for any new task(s) that are deemed necessary and agreed to by both Parties. Any use of the Allowance shall require the preparation of a Request for Change and a Finding of Fact. All use of the Allowance will require the review and recommendation by the TRAC Committee. Final approval of the Use of the Allowance will require Approval by the Metro Project Manager and the COM project Manager.
10. Design and Constructions Agreement. City and METRO are in the process of drafting a Design and Construction Agreement for the Gilbert Road Light Rail Transit Extension Project (the "Design and Construction Agreement"). The Design and Construction Agreement will provide greater detail regarding each party's requirements for the design and construction of the Project. City and METRO agree that when the parties enter into the Design and Construction that the terms of that agreement, to the extent then applicable, will be applied to any work to be completed under this Agreement. Until the parties enter into the Design and Construction Agreement, City and METRO—in addition to complying with this Agreement—will act in good faith to comply with the intent of that agreement as the parties work to finish negotiating and drafting it.
11. Audit. All books, accounts, reports, files, and other records relating to this Agreement and the Project that are under the custody or control of METRO shall be subject, at all reasonable times, to inspection and audit by the City consistent with the rights of a Valley Metro Member City as established in Article XII – Records of the VMR By-Laws.
12. Merger. The Agreement, as amended by this Second Amendment, shall remain in full force and effect.

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 MESA
Christopher J. Brady, City Manager

By: _____

By: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Michael J. Ladino
General Counsel

By: _____
James N. Smith
Assistant City Attorney

EXHIBIT A – SCOPE OF WORK

SCOPE OF WORK

BACKGROUND

METRO is currently finishing the Preliminary Engineering (PE) for the 1.9-mile Main Street Gilbert Road Light Rail Transit (LRT) Extension. As METRO progresses, additional efforts are necessary to enter into the final design stage including, the solicitation for both the contractor and the final designer, and any public involvement support necessary for beginning final design.

Additionally, Federal Transit Administration (FTA) required project management plans need to be developed which include the Project Control Plan, Real Estate Acquisition and Management Plan, Operations and Maintenance Plan, Quality Assurance Plan, and the Document Control Plan. These plans are also essential in providing a process and guidance to advance this project through design and construction.

PURPOSE

The purpose of this scope of work is to outline tasks METRO will complete by December 31, 2015. METRO will:

- Complete tasks for the advertisement, selection, and award of contracts for final design, construction manager at risk and artists;
- Update the various FTA required project management plans necessary to begin final design;
- Include METRO staff management of the project;
- Commence the final design activities to a sufficient detail to begin real estate acquisition;
- Commence the final design of private utility relocation;
- Commence the pre-construction services for the contractor to coordinate and provide input to the designer; and
- Continue the Public Involvement activities necessary to get public input and coordinate future public meetings.

SCOPE OF WORK OUTLINE

The scope of METRO's work is divided into five tasks: Task 1 is the Solicitation of Professional Services; Task 2 is the development of FTA required Plans; Task 3 provides for METRO Project Management including final design and real estate; Task 4 provides for preconstruction services; and Task 5 commences the Public Involvement activities. All these tasks are necessary to advance the project.

TASK 1: PROCUREMENT SERVICES - CONSTRUCTION, FINAL DESIGN, AND ARTIST SOLICITATION AND AWARD OF SERVICES

The purpose of this task is to solicit for the construction, final design, and artist services to begin final design activities. Solicitation of services will be performed through a Request for Qualification and/or a Request for Proposal. This will be followed by interviews and finally award of the selected teams through the Valley Metro Board.

Subtask 1a: Construction Services Solicitation and Award

As required through a Construction Manager at Risk (CM@Risk) project delivery method the contractor's services are acquired early to work hand-in-hand with the designer. This will be done through a Request for Qualification and Request for Proposal solicitation.

This scope includes development of Division 1 Specifications, General Provisions, Special Provisions, bid package, an independent construction cost estimate, and advertisement in local, state, and national publications.

Subtask 1b: Final Design Services Solicitation and Award

Final design services will be procured through a Request for Qualifications solicitation.

This task includes development of a detailed scope of work, and independent design-cost estimate.

Subtask 1c: Artist Services Solicitation and Award

The purpose of this task is to solicit the services of artists for the project. It is anticipated that a minimum of 3 and a maximum of 5 artists will be secured for the project. This includes artwork at the stations, park and ride, and TPSS sites. Artist selections will be through the Regional Rail Arts Committee (RRAC) who will interview each potential artist. The City of Mesa will have participants in this process to secure the best artist for each site. This process will be a 5 to 6 month process. Upon approval of the RRAC and concurrence from the City of Mesa, contract awards will be made to the top finalists.

METRO Deliverables:

- Three Solicitation Packages
- Final Designer, CM@Risk Contractor, and Artists under Contract

TASK 2: FTA PROJECT MANAGEMENT PLANS

The purpose of this task is to finalize the initial project management plans required for this project and to provide updates accordingly to satisfy FTA's requirements. The plans provide staff guidance on the procedures and level of effort to be performed by METRO and City of Mesa Staff in getting this project complete according to FTA requirements. The FTA required plans assure all involved to conform to FTA approved procedures. The plans also identify responsibilities of key staff on the project.

METRO Deliverables:

- Program Management Plan
- Project Management Plan
- Safety/Security Management Plan
- Quality Assurance/Quality Control Plan
- Rail Fleet Management Plan
- Operations and Maintenance Plan
- Project Delivery Analysis
- Real Estate Acquisition Plan
- Finance Plan
- Document Control Plan

TASK 3: PROJECT DEVELOPMENT ACTIVITIES

The purpose of this task is to identify the necessary activities to begin final design and provide METRO and City of Mesa staff time to manage these activities. This task will include the services of METRO staff and the final design services consultant.

Subtask 3a: Project Management

This task will include all activities necessary to begin the final design, which includes resource management and administration activities. METRO will identify its Project Manager and necessary technical support staff to begin the design. Administration of the contract will include schedule development, progress payments, a risk register development and maintenance, providing consultant staff access to SharePoint and Primavera Contract Manager. In addition, staff attendance of all meetings will be covered by this task, which includes the monthly Schedule Roadmap, weekly coordination, public involvement, public meeting, technical resolution and other meetings, as needed. Prior preparation will be required for all meetings.

The Project Manager is responsible for gathering information developed during the Environmental Assessment and the PE process. This information will be distributed to the final designer. The information generally includes reports, CADD files, and meeting notes. METRO staff will attend coordination and information meetings. Staff will finalize agreements including the Design and Construction (D&C), TPAA, Public Way use, and utility permits/agreements. In addition, other meetings will be attended to gather background information and address technical issues. METRO will review and comment on all reports submitted with each deliverable.

METRO Deliverables:

- Letter of No Prejudice
- Monthly progress reports and invoices
- Updated Schedule
- Cost Information
- Risk Register
- Meeting Notes
- Quality Assurance/Quality Control Manual
- Design and Construction Agreement
- Transportation Project Advance Agreement
- Public Way Use Agreement
- Utility Permits/Agreements

City of Mesa Deliverable:

- Real Estate Data Sheet

Subtask 3b: Final Design Services

The purpose of this task is to commence final engineering and design that will conclude with final plans and specifications. The following subtasks are considered necessary to begin and support final design activities:

Task	Responsibilities
<i>A - Project Supervision</i>	<ul style="list-style-type: none"> • Oversees the allocation and delegation of authorized work • Manage the day-to-day activities
<i>B – Project Control</i>	<ul style="list-style-type: none"> • Develops design schedule and cost tracking system • Issues monthly progress reports • Development and payment of invoices
<i>C - Track Plan and Typical Sections</i>	<ul style="list-style-type: none"> • Finalize the track alignment and coordinate with roadway alignment
<i>D - Roadway Plans</i>	<ul style="list-style-type: none"> • Finalize the roadway alignment and coordinate with track alignment and drainage design
<i>E - Traffic Analysis</i>	<ul style="list-style-type: none"> • Update the traffic counts and turning movements • Perform traffic analysis of track and roadway traffic
<i>F - Utilities</i>	<ul style="list-style-type: none"> • Finalize the utility base files with available record and measured data • Identify relocation corridors and potential potholing locations. No potholing is to be performed by this task. • Identify any utility relocations or additions that will need easements. Identify any existing and proposed SRP irrigation relocations and show USA Fee right-of-way existing and proposed. • Begin private utility designs • Perform a video analysis of all sewer lines not previously videoed
<i>G – System Wide Electrical (Street Lighting)</i>	<ul style="list-style-type: none"> • Develop preliminary street light locations and perform a photometric analysis. Identify any easements on the right-of-way sheets.
<i>H– Survey and Mapping</i>	<ul style="list-style-type: none"> • Verify the information provided through PE and provide any additional temporary control and survey any revisions from the PE Mapping.
<i>I – Geotechnical Investigation</i>	<ul style="list-style-type: none"> • Development preliminary test hole locations • Perform field investigation to obtain boring material, and perform lab testing
<i>J – Right-of-Way Maps</i>	<ul style="list-style-type: none"> • Development a base map with existing properties identified
<i>K - Drainage Evaluation Study</i>	<ul style="list-style-type: none"> • Review the PE Drainage technical memo. Supplement the information for storm drain capacities; identify preliminary drainage layouts. • Evaluate the condition of the main trunk line storm drain through video, visual, and coring samples, develop offset manhole preliminary locations, and identify any sewer drain conflicts • Review of existing system based on proposed concept. This subtask does not include development of drainage plans.

Tasks A through K listed in the table above will be done by the project consultant with Valley Metro's oversight and review of each task.

METRO Deliverables:

- Traffic Analysis Report
- Utility Base Maps with Conflict Identification and Pothole Locations
- Sewer Line Video Analysis
- Geotechnical Investigation Report
- Large Diameter Storm Drain Study Report

Subtask 3c: Real Estate

The purpose of this task is to identify existing parcel utility easements and to identify needed legal descriptions. Exhibits and title reports are required for each parcel that has proposed right-of-way acquisitions, Public Utility and Facility Easements (PUFEs) and Temporary Construction Easements (TCEs). It is anticipated that up to 90 parcels will be impacted.

METRO Deliverables:

- Legal description for USA Fee Property and full take properties.

City of Mesa Deliverables:

- Title Reports
- If design progresses, allowance funds may be used for appraisals and Environmental Investigations – Phases 1 and 2

Subtask 3d: Public Art Design

The purpose of this task is to develop approved public art designs that will be integrated into the Gilbert Road project at the stations and park-and-ride facility.

METRO Deliverables:

- Integrated public art design.

TASK 4: PRE-CONSTRUCTION SERVICES

The CM@Risk Contractor will evaluate Alternative Technical Concepts to improve the project. They will work with the designer to address constructability, lessons learned from past projects and identify construction cost savings for the project. The CM@Risk Contractor will be available to address technical questions, assist in the development of costs and help develop a risk mitigation plan.

METRO Deliverable:

None

TASK 5: PUBLIC INVOLVEMENT

The procurement activities and project development activities identified above will require extensive Public Involvement activities through December 31, 2015.

- The PI activities include the following: Coordinate all PI activities with Project Management Team
 - Execute public meetings (CM @ Risk Introduction/30% Design review/Etc.)
 - Develop/Finalize meeting notice, ppt, boards, collateral for public meeting
 - Presentations to various neighborhood associations/business associations

- Update PIP for Design/Construction phase
 - Review and incorporate comments received for draft PIP ; manage review process
 - Finalize PIP
- Stakeholder database maintenance (SMS)
 - Weekly Reports
- General PMT meetings attendance
 - Attend special event as needed (Celebrate Mesa/Celebration of Freedom)
- Field/respond to stakeholder inquiries
- Maintain and develop appropriate VM website content
- Develop GRE Project Updates as needed
- Draft/Update Project FAQ document

METRO Deliverables:

- Announcement and introduction of the successful CM@Risk contractor, the design team and artist.
- 30 percent design public meeting
- Begin Business Assistance program development
- Revise the Public Involvement Plan for Overall Project

SCHEDULE

This scope of work is projected to be completed in approximately fifteen (15) months from the notice to proceed. The solicitation services will begin June of 2014. The final design work will commence January 2015. The following milestone dates are assumed:

- Estimated Solicitation of Services Start – June 2014
- Estimated FTA Project Plans Start – June 2014
- Estimated Project Management Start – June 2014
- Estimated Final Design Start – January 2015
- Estimated Pre-Construction Start – February 2015
- Estimated PI Start – June 2014

COST

Task	Estimated Cost			Total
	Consultant	Valley Metro	City of Mesa	
Task 1a: Construction Services Solicitation	\$0	\$52,505	\$17,000	\$69,505
Task 1b: Design Services Solicitation	\$0	\$44,868	\$17,000	\$61,868
Task 1c: Artist Services Solicitation	\$0	\$28,162	\$3,000	\$31,162
Task 2 FTA Project Plans	\$0	\$93,077	\$43,000	\$136,077
Task 3a: Project Management	\$245,000	\$124,103	\$111,000	\$480,103
Task 3b: Final Design Services	\$1,404,383	\$110,261	\$31,000	\$1,545,644
Task 3c: Real Estate	\$0	\$120,285	\$142,000	\$262,285
Task 3d: Public Art Design	\$120,000	\$31,503	\$5,000	\$156,503
Task 4: Pre-Construction Services	\$429,200	\$42,004	\$12,000	\$483,204
Task 5: Public Involvement	\$150,000	\$19,093	\$6,000	\$175,093
Direct Expense*	\$0	\$33,293	\$3,000	\$36,293
Allowance				\$698,000
Subtotal Cost	\$2,348,583	\$699,154	\$390,000	
Total Cost				\$4,135,737

*Direct expense includes, but not limited to the following: printing, advertisements, food, beverages, interpreters, facility rentals, etc.

Scope of Work does not include:

The scope of work does not include all final design work. A follow-up agreement or amendment to this agreement will be required to complete the final design.