

City Contract 30003242

**DESIGN AND CONSTRUCTION FUNDING AGREEMENT BETWEEN  
CITY OF PORTLAND AND THE TRI-COUNTY METROPOLITAN  
TRANSPORTATION DISTRICT OF OREGON REGARDING PORTLAND-  
MILWAUKIE LIGHT RAIL TRANSIT PROJECT /  
PORTLAND STREETCAR  
EASTSIDE STREETCAR "CLOSE THE LOOP" BETTERMENT PROJECT**

**TRIMET CONTRACT NO.** GH130434 B3C

This Design and Construction Funding Agreement for the Eastside Streetcar Close the Loop Project ("Agreement"), dated as of the Effective Date, which is defined below, is by and between the City of Portland, acting through its Bureau of Transportation ("City"), and the Tri-County Metropolitan Transportation District of Oregon ("TriMet"). The City and TriMet may collectively be referred to in this Agreement as the "Parties," or each individually as a "Party."

**A. Recitals**

1. In 1988, the City of Portland Central City Plan created a vision for an "Internal Transit Loop," which would create a public transportation system that connects in a continuous loop the west and east sides of the City of Portland over the Willamette River. Since then, the City, Metro, and TriMet have been cooperatively pursuing the vision of completing this transit loop.
2. TriMet is constructing the Portland-Milwaukie Light Rail Transit Project ("Project"), a 7.3-mile alignment extending from Portland State University, through the South Waterfront District, across the River, through Southeast Portland, City of Milwaukie, and ending in unincorporated Clackamas County. The Project includes a new bridge across the Willamette River for use by transit vehicles, buses, cyclists, and pedestrians.
3. The design of the bridge and its connections anticipates and allows for use by the Streetcar network. Adding Streetcar to the bridge will "close the loop" across the Willamette River by providing the necessary infrastructure on the southeast and southwest sides of the River to operate a complete route circling the central city. TriMet has supported the "Close the Loop" Streetcar effort by incorporating the necessary track and civil elements that fall within the Project operating envelope on both sides of the River. In cooperation with Metro, the City, and PSI, the Project's National Environmental Policy Act documentation reflects the addition of Close the Loop.
4. On May 22, 2012, TriMet received a Full Funding Grant Agreement from the Federal Transit Administration ("FTA") for the Project, which agreement authorizes full construction of the Project. The City has secured funding for the westside portion of Close the Loop through local funds, and it is under construction. However, the City is still finalizing its financing for the eastside portion of Close the Loop, including pursuing federal funding ("Eastside Streetcar Close the Loop"). This pursuit is anticipated to

continue into calendar year 2015 before it is finalized. In preparation for this, TriMet has submitted a request for a Letter Of No Prejudice ("LONP") including Pre-Award Authority for FTA approval. This authorization will allow construction activities associated with the Eastside Close the Loop planned for early 2013 to be eligible for future federal funding.

5. In September 2012, the City began service on the Streetcar Loop Extension from SW Market Street to the Oregon Museum of Science and Industry ("OMSI"). This service provides the northerly Streetcar Loop crossing of the Willamette River and provides service to the eastside of Portland in preparation for full loop service.
6. To advance the Eastside Streetcar Close the Loop work in the most cost effective manner, subject to FTA LONP approval, TriMet is prepared to begin construction of the Eastside Streetcar Close the Loop scope elements as soon as the full City eastside betterment funding has been committed, in writing. It is anticipated that long-lead materials will need to be procured and construction of the civil and track improvements will start in February 2013, and installation of the systems elements will start in October 2013.

NOW, THEREFORE, in consideration of the foregoing Recitals, each of which is incorporated into this Agreement, and in consideration of the terms, covenants, and conditions set forth below, the Parties agree as follows:

#### **B. Terms of Agreement**

##### **1. Eastside Streetcar Close the Loop Betterment Scope**

The scope of Eastside Streetcar Close the Loop project is a betterment to the City and the elements covered in this Agreement are identified in Exhibit A, which is attached hereto and incorporated by this reference. The base scope consists of the reconfiguration of the OMSI Station platform, including the construction of a new retaining wall in SE 2nd Place, the construction of the track, overhead catenary system, Automatic Train Stop equipment, and signal connections on and off the east end of the Project bridge. The base scope also includes flagging, temporary traffic control, and any bus bridging (temporary bus service) required if Portland Streetcar service is disrupted.

##### **2. Eastside Streetcar Close the Loop Betterment Cost**

The total estimated cost for the Eastside Streetcar Close the Loop project is \$3,887,578. This cost includes, but is not limited to, design, construction, project management, and inspection, and is further described on Exhibit B, which is attached hereto and incorporated by this reference. This cost includes a 3.25% CM/GC fee, and a 6% allowance for Project Management, Change Order Risk and Interest. The City is seeking

50% federal funding for the Eastside Streetcar Close the Loop, or approximately \$1,943,789. The City expects to provide the remaining 50% (approximately \$1,943,789) through local funds. The City's 50% local fund contribution is referred to in this Agreement as the "Initial Local Match Contribution."

3. City Obligations

- a. The City shall, with the assistance of TriMet, continue to diligently pursue additional Eastside Streetcar Close the Loop project funding from available regional, state, and federal funding resources.
- b. If the City changes the base scope of the betterment, as shown in Exhibit A, and that scope change results in a cost increase, the City shall reimburse TriMet for the entire cost of that scope change.
- c. The City shall provide to TriMet the entire Initial Local Match Contribution (which will be no less than \$1,943,789) in a lump sum by wire transfer within 90 days after receiving an invoice from TriMet, but in no event not later than December 31, 2013. If the cost to design and construct the betterment is less than \$3,887,578, the City shall still pay the entire Initial Local Match Contribution (which will be no less than \$1,943,789) to TriMet, and TriMet may retain any excess funds. The City's obligations in this subparagraph 3(c) apply regardless of whether the City is able to secure additional funding.
- d. The Parties expect that any additional funds that comprise the remaining 50% (approximately \$1,943,789) will be either directly provided to TriMet, or will be directly provided to the City. For any additional funds that are directly provided to the City, the City shall promptly, but in no event not later than 30 days after the City's receipt of the additional funds, transmit the funds to TriMet by wire transfer. The Parties agree that TriMet will not need to submit an invoice for these additional funds.
- e. By December 31, 2014, if no additional funds, or fewer funds than expected, are committed by others the City shall promptly advise TriMet in writing. The City shall then pay to TriMet a Final Reimbursement for any and all costs incurred up to the date TriMet receives the written notice, up to a combined total Initial Local Match Contribution and Final Reimbursement amount of \$3,887,578, plus any City-directed change orders. The City shall make this payment, in a single lump sum, within 90 days after receipt of a proper invoice from TriMet, but in no event not later than June 30, 2015. The City shall reimburse TriMet by wire transfer.
- f. The City will provide project coordination for the Eastside Streetcar Close the Loop betterment through the City Project Manager or other assigned staff through the existing Intergovernmental Agreement with TriMet for design and construction Management Services for the Portland-Milwaukie Light Rail Transit Project (Contract No. 30001514).

- g. The City will verify compatibility of the Eastside Close the Loop betterment with the existing Streetcar system design, customer accommodations, safety requirements, and operational standards. Neither the City nor its contractors will operate on any facilities installed as part of the Project without receiving TriMet's advance written permission.

4. TriMet Obligations

- a. TriMet shall continue to diligently assist the City and PSI in the pursuit of additional Eastside Close the Loop project funding from available regional, state, and federal funding resources.
- b. TriMet shall continue to pursue, consistent with its construction packages, the appropriate steps required to design and construct the improvements necessary to support the Eastside Close the Loop project. These steps include, but are not limited to, pursuing the steps required under the Project construction management/general contractor, design-build, and systems contracts.
- c. TriMet shall procure the long-lead items necessary to support the Eastside Close the Loop project, including specialty track and overhead catenary poles.
- d. TriMet shall construct the scope as defined in Paragraph 1 and as shown in Exhibit A. The date construction will begin will be determined based on the Project's East Segment construction staging planning. TriMet shall complete construction of the Close the Loop project elements by the start of Project revenue service, which is anticipated to be in September 2015.
- e. TriMet shall coordinate the construction of the Close the Loop project with the City and PSI. TriMet shall notify the City and PSI at least 72 hours prior to any disruption in Streetcar service.
- f. If TriMet changes the base scope of the betterment, as shown in Exhibit A, and that scope change results in a cost increase, TriMet shall be responsible for the cost of that scope change.
- g. At least 90 days prior to the date TriMet expects the City to provide the \$1,943,578 Initial Local Match Contribution reimbursement to TriMet, but in no event not earlier than June 30, 2013, TriMet shall provide to the City a proper invoice, including all supporting documentation. TriMet shall submit the invoices to

Art Pearce.  
Project Manager  
Portland Bureau of Transportation  
1120 SW 5<sup>th</sup> Avenue, Suite 800  
Portland, Oregon 97204

Email: Art.Pearce@PortlandOregon.gov  
Phone: 503-823-7791

- h. At least 90 days prior to the date TriMet expects the City to provide the Final Reimbursement, but in no event not earlier than December 31, 2014, TriMet shall provide to the City a proper invoice, including all supporting documentation. TriMet shall submit the invoice to

Art Pearce  
Project Manager  
Portland Bureau of Transportation  
1120 SW 5<sup>th</sup> Avenue, Suite 800  
Portland, Oregon 97204  
Email: Art.Pearce@PortlandOregon.gov  
Phone: 503-823-7791

- i. TriMet shall keep and maintain appropriate documentation to evidence that the funding obligations under this Agreement have been properly applied toward the construction of the Eastside Close the Loop project including evidence that costs are eligible for Transportation System Development Charge funding.

### C. General Provisions

1. Effective Date and Term.

This Agreement is effective, subject to any conditions listed, when executed by all of the Parties, and terminates when the obligations agreed to by the Parties have been fully performed.

2. Indemnity.

Subject to the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through ORS 30.300, as the same may be amended from time to time, each Party shall hold harmless, indemnify, and defend the other Party and its respective officers, employees, and agents from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent acts or omissions of the indemnitor, its officers, employees, or agents.

3. Early Termination of Agreement.

The Parties, by mutual written agreement, may terminate this Agreement at any time.

Either Party may terminate this Agreement in the event of a breach of the Agreement by the other Party. Prior to such termination, however, the Party seeking the

termination shall give the other Parties written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within 30 calendar days after the notice, then the Party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

4. Oregon Law; Mediation; Litigation; Remedies.

The Parties, prior to any litigation, shall attempt to settle any dispute arising out of this Agreement, or the breach thereof, through mediation in the City of Portland, Oregon. The Parties will attempt to agree on a single mediator. The cost of mediation must be shared equally. If the parties agree on a mediator, the mediation must be held within 60 days of selection of the mediator unless the Parties otherwise agree to a different schedule. If, within a commercially reasonable period of time, the Parties cannot agree on a mediator, or the matter is not settled during mediation, the Parties will have all other remedies available at law or in equity.

This Agreement must be construed according to the laws of the State of Oregon, without regard to its conflict of laws principles.

Any litigation between the Parties arising under or related to this Agreement or out of work performed under this Agreement must occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.

The remedies provided under this Agreement are not exclusive. The Parties are also entitled to any other equitable and legal remedies that are available.

5. Authority.

The representatives signing on behalf of the Parties certify they are duly authorized by the Party for whom they sign to make this Agreement.

6. Project Manager and Notices

All routine correspondence and communication regarding this Agreement must be between the Project Managers:

City

Art Pearce  
Project Manager  
Portland Bureau of Transportation  
1120 SW 5<sup>th</sup> Avenue, Suite 800  
Portland, Oregon 97204

Email: Art.Pearce@PortlandOregon.gov  
Phone: 503-823-7791

**TriMet**

Rob Barnard  
Project Director, PMLR  
TriMet  
Harrison Square  
1800 SW 1<sup>st</sup> Avenue  
Suite 300  
Portland, OR 97201

The Project Managers are authorized to approve invoices, to give notices, to execute amendments to this Agreement that do not increase the compensation, to terminate this Agreement, and to carry out any other act referred to herein.

**7. Section Headings and Other Titles.**

The Parties agree that the section headings and other titles used in this Agreement are for convenience only, and are not to be used to interpret this Agreement. The Parties having had the opportunity to consult an attorney regarding the provisions of this Agreement, the Parties agree to waive the principle of contract interpretation that an ambiguity will be construed against the Party that drafted the ambiguous provision.

**8. Waiver and Nonwaiver.**

A waiver by one Party of a right to a remedy for breach of this Agreement by the other Party will not be deemed to waive the right to a remedy for a subsequent breach by the other Party. Except as otherwise expressly provided in the Agreement, the signing and execution of this Agreement does not waive any of the legal rights of either Party.

**9. Severability/Survivability.**

If any of the provisions contained in this Agreement are held by a court of law or arbitrator to be illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired, and the Parties shall negotiate an equitable adjustment of this Agreement so that the purposes of this Agreement are effected.

**10. Assignment and Subcontracting.**

No Party may assign any of its rights under this Agreement without the prior written consent of the other Parties. Any attempted assignment of rights or delegation of duties by a Party without the written consent of the other Parties will be void.

11. No Third-Party Beneficiaries.

The Parties listed in the preamble are the only parties to this Agreement and as such are the only parties entitled to enforce its terms. Nothing in this Agreement gives or may be construed to give or provide any benefit, direct, indirect or otherwise to third-parties unless third-persons are expressly described as intended to be beneficiaries of its terms.

12. Entire Agreement; Amendments.

This Agreement, including the Recitals and all exhibits incorporated herein, constitutes the final and exclusive agreement between the Parties. There are no understandings, agreements, or oral or written representations not specified herein regarding this Agreement. No amendment, consent, or waiver of terms of this Agreement may bind either Party unless in writing and signed by all Parties. Any such amendment, consent, or waiver will be effective only in the specific instance and for the specific purpose given. The Parties, by the signatures of their authorized representatives below, acknowledge having read and understood the Agreement and agree to be bound by its terms and conditions.

13. No Other Representations.

The Parties acknowledge that no other party, nor agent, nor attorney of any other party, has made any promised, representation or warranty, express or implied not contained in this Agreement concerning the subject matter of this Agreement to induce this Agreement, and the Parties acknowledge that they have not executed this Agreement in reliance upon any such promise, representation, or warranty not contained in this Agreement.

14. Further Assurances.

Each of the Parties shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent and agreements of the Parties.

15. Compliance with Laws.

The parties recognize that funds provided by the Federal Transit Administration (FTA) will be used to pay for a portion of the Project. Each party agrees to comply with all local, state, and federal laws and regulations and fully understands and agrees to comply with all applicable requirements governing the work of FTA contractors.

16. Federal Funding Limitation.



To the extent applicable to each of the respective Parties, this Agreement is subject to all federal provisions prescribed for third-party contracts by the federal grant agreement.

17. Covenants binding on Successors and Assigns.


All of the terms, conditions, and covenants of this Agreement must inure to the benefit of and be binding upon the successors and assigns of the respective Parties.

18. Counterparts.

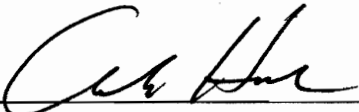
This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute only one agreement.

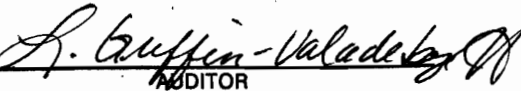
**AGREED AND ACCEPTED**

**TRIMET**

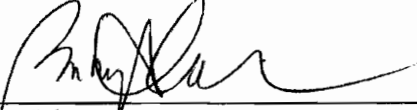
By:   
Daniel W. Blocher, PE  
Executive Director, Capital Projects

**CITY**

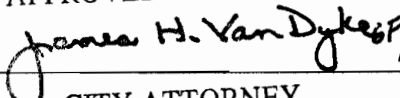
By:   
Charlie Hales, Mayor

By:   
AUDITOR

**APPROVED AS TO FORM FOR TRIMET**

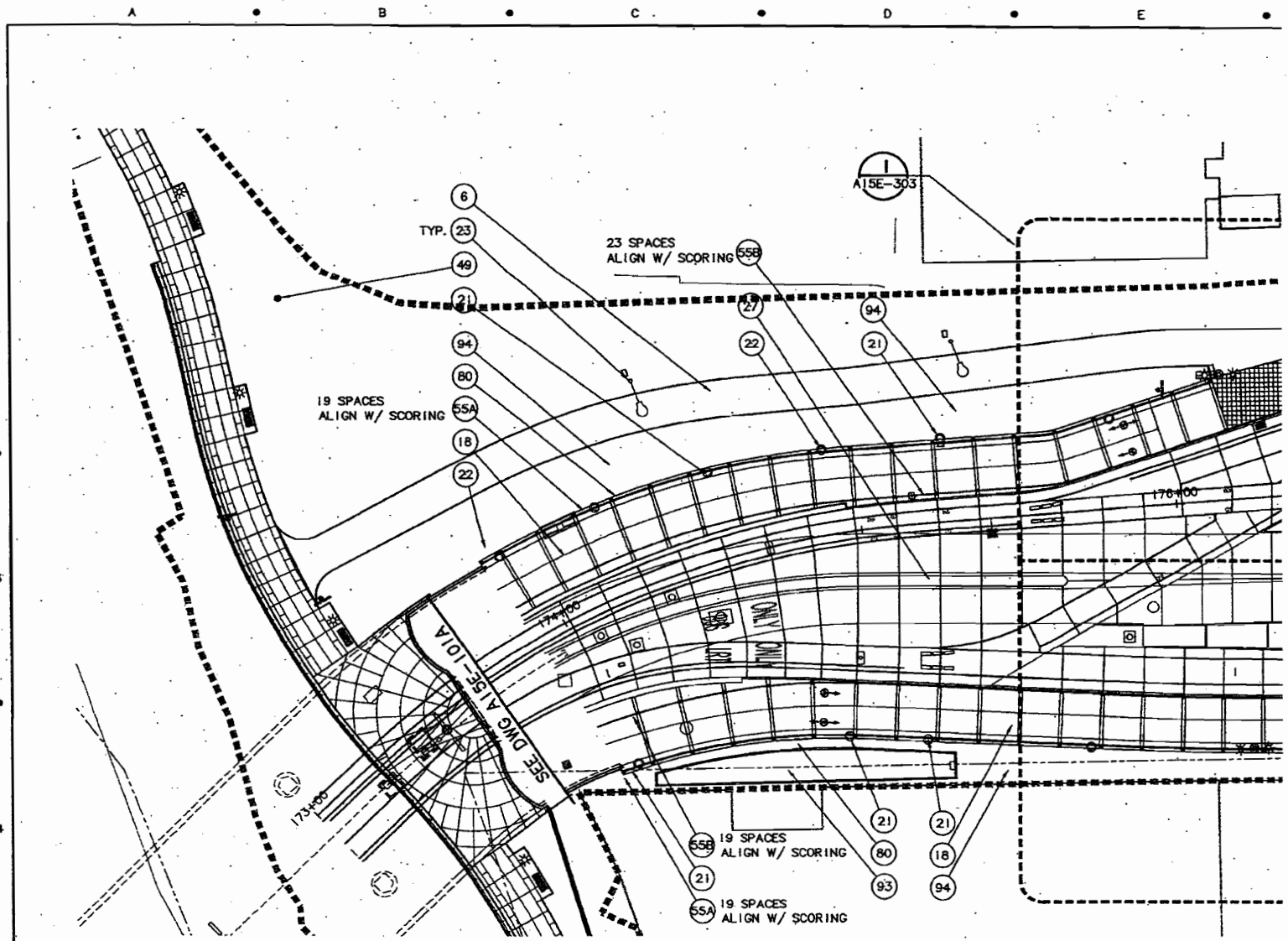
  
Britney Colton  
Deputy General Counsel  
TriMet

**APPROVED AS TO FORM FOR CITY**  
**APPROVED AS TO FORM**

 4/19/13  
CITY ATTORNEY

**EXHIBIT A:**

**PMLRT PLAN SHEETS (SAMPLE) ILLUSTRATING EASTSIDE  
STREETCAR CLOSE THE LOOP BETTERMENT PROJECT  
SCOPE.**

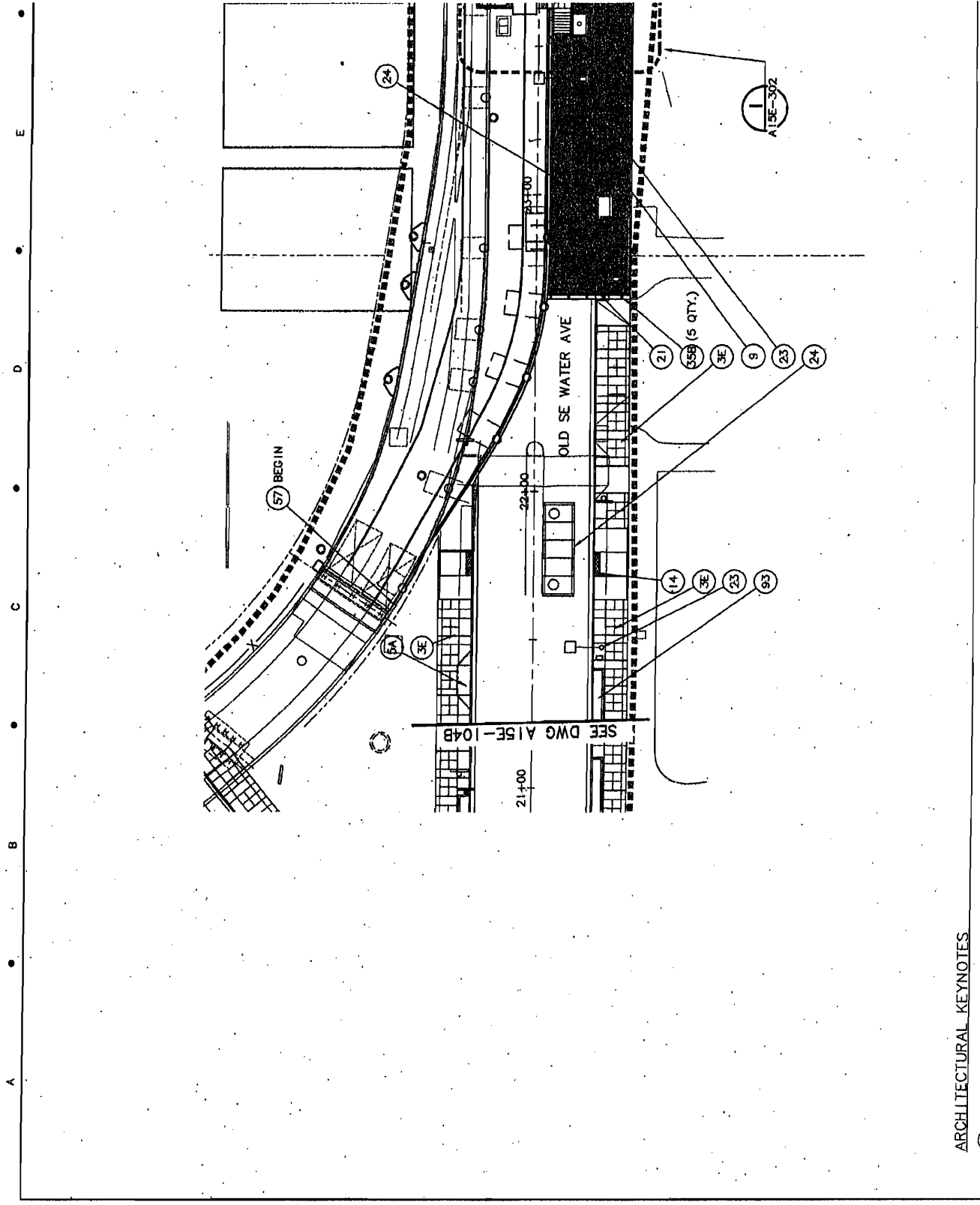


**ARCHITECTURAL KEYNOTES**

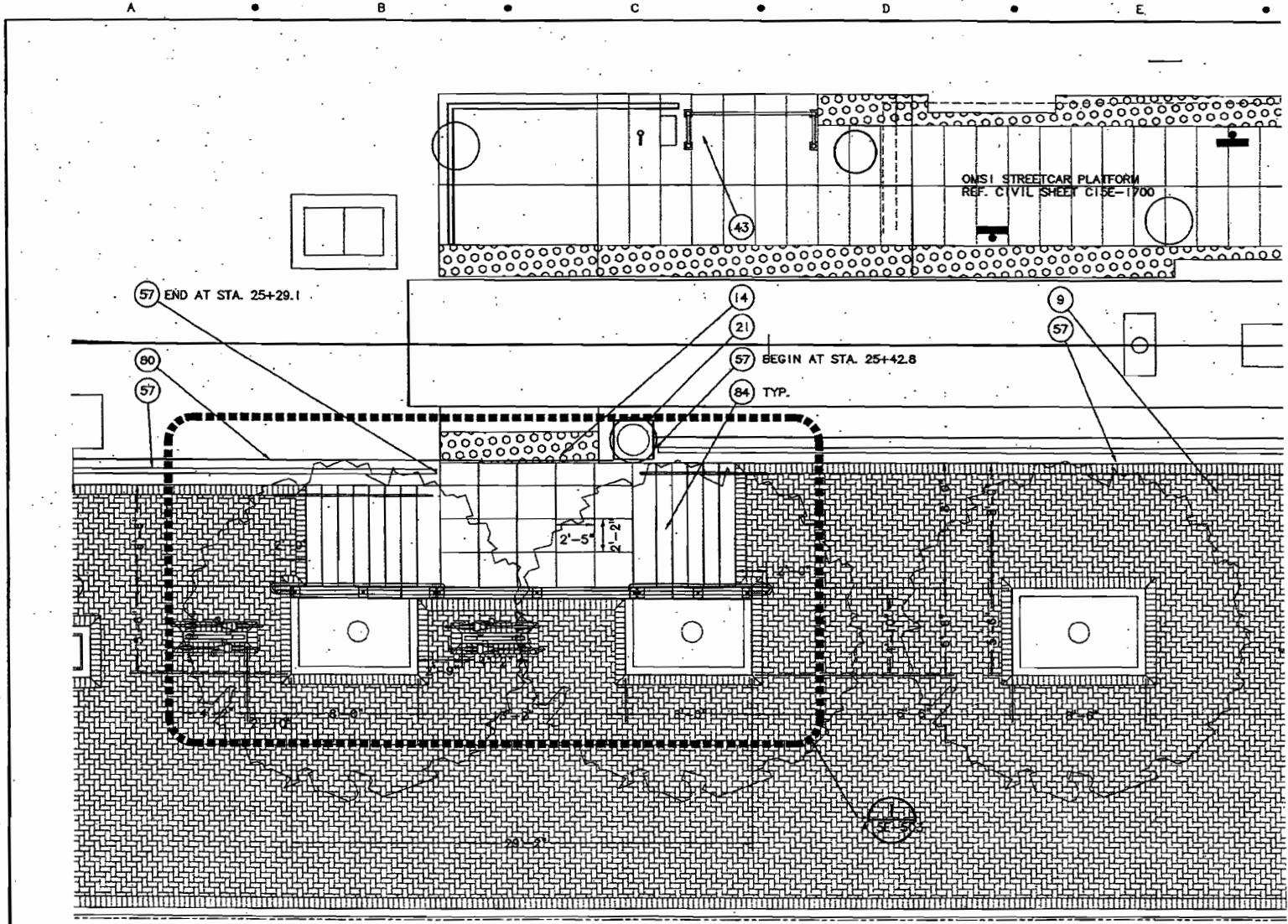
- (2A) P.C.C. ROADWAY, HEAVY TINED FINISH
- (3E) P.C.C. SIDEWALK, OMSI STD. REF. 2/A15E-523

- (23) LIGHT, REF. ELECTRICAL
- (27) P.C.C. TRAFFIC MEDIAN, SCORE PER PLANS

- (55A) RAILING - PMLRTB PED
- (55B) RAILING - PMLRTB PED RAILING REF. A15E-55:



ARCHITECTURAL KEYNOTES

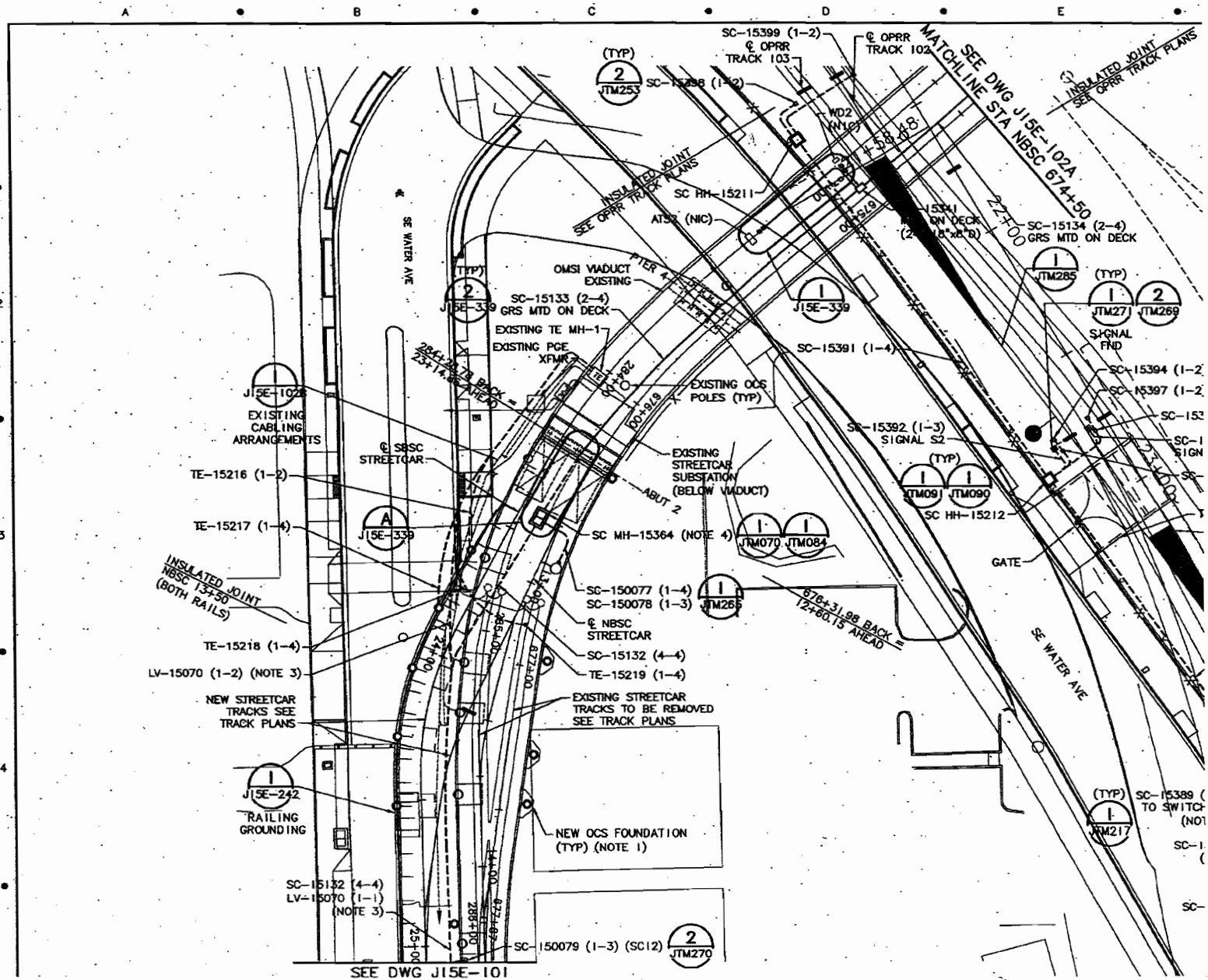


**ENLARGED PLAN - STREETCAR STATION** 1  
 SCALE: 1/4" = 1'-0"

**ARCHITECTURAL KEYNOTES**

- PRECAST CONCRETE UNIT PAVES - TYPE 3 - 8 CM
- ONE DAY SET CONCRETE PAVES (SEE) REF. CIVIL SHEET
-



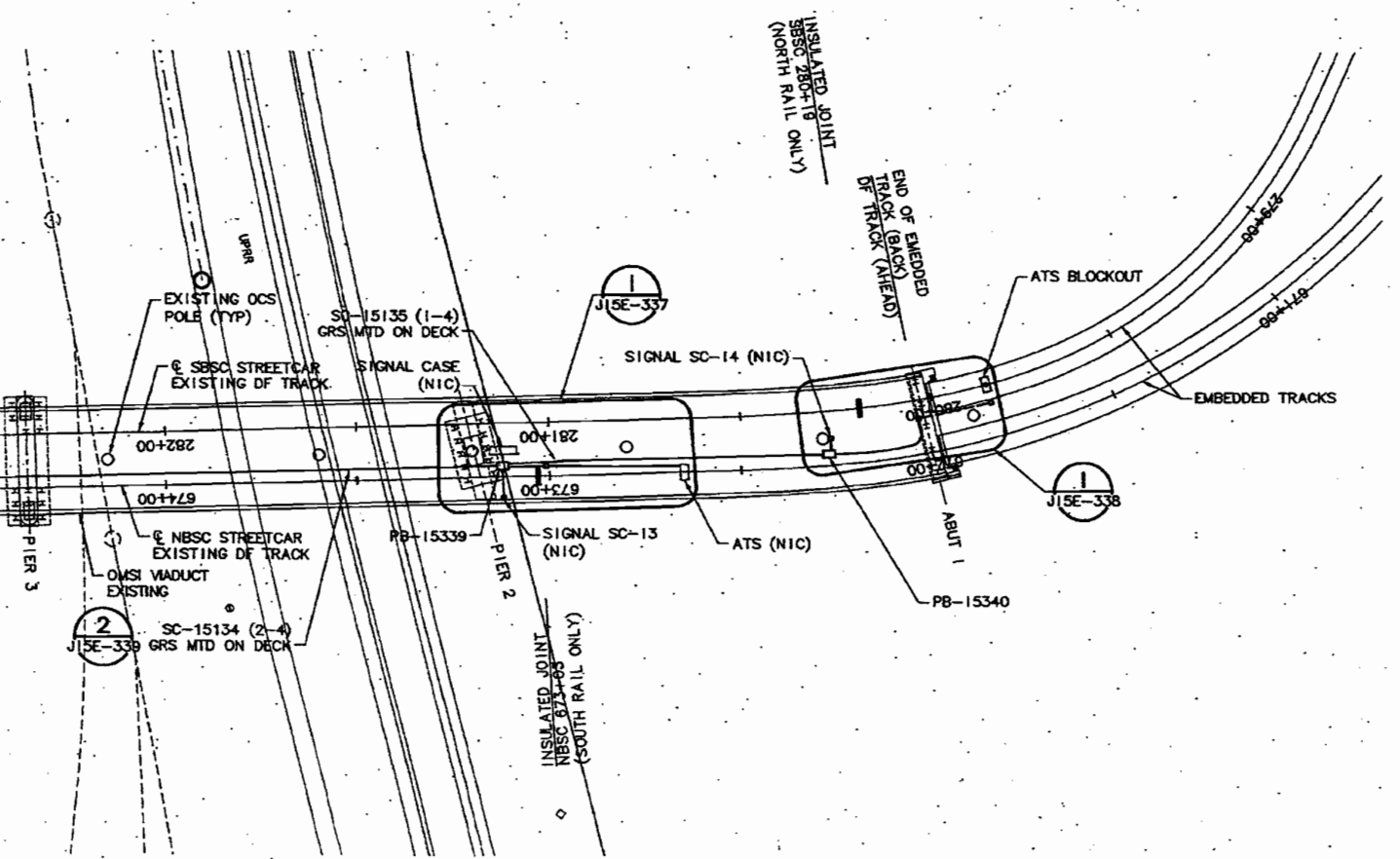


**Exhibit A**

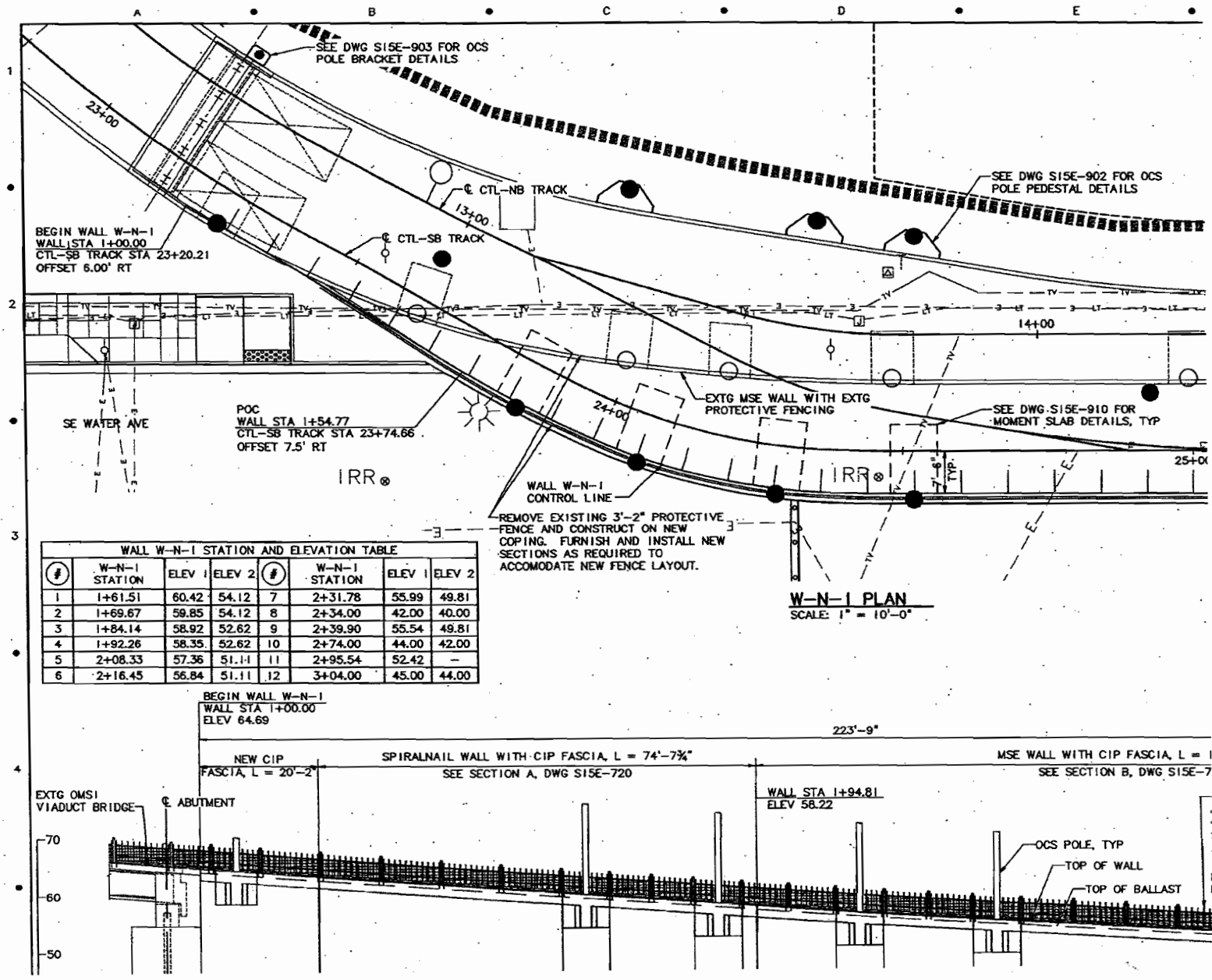
A B C D E

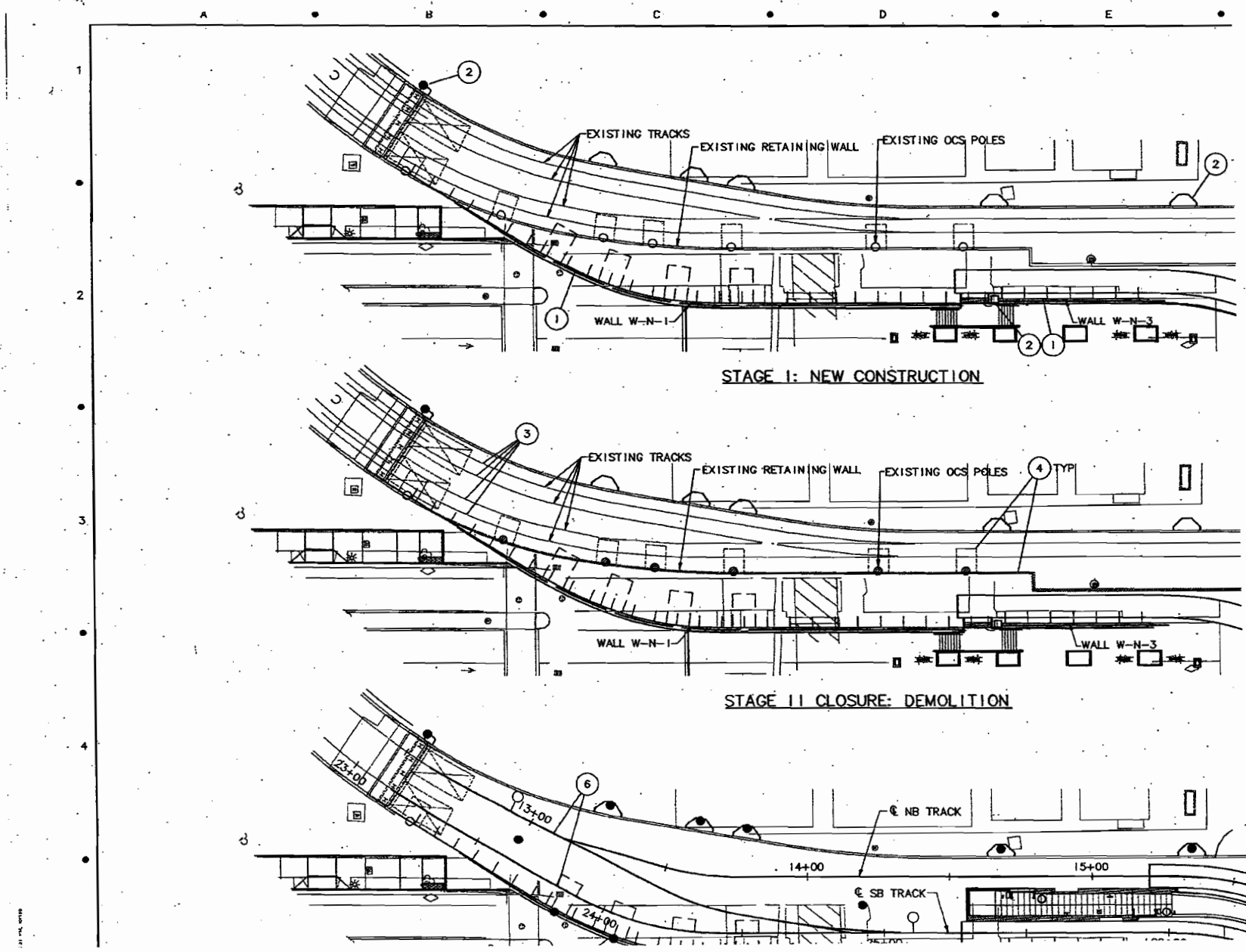
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MATCH LINE STA NBSC 674+50  
SEE DWG J15E-102









**EXHIBIT: B**

**Portland - Milwaukie Light Rail  
Street Car Close the Loop Betterment Cost - East Side**

East Segment Civil and Track (Stacy Witbeck)	\$1,974,845.00
Owner Furnished Track Material	\$74,032.00
East Segment Systems Contract (Siemens)*	\$1,238,878.00
Design Costs	\$267,000.00
ATS System Design - LTK Contract Mod	\$50,000
Bus Bridge and Temp Rest Station	\$90,000.00
<b>Sub Total</b>	<b>\$3,694,755.00</b>
Project Management, Change Order Risk and Interest	\$192,823.00
<b>Grand Total</b>	<b>\$3,887,578.00</b>
<b>Funding</b>	
Initial Local Match Payment (50%)	\$1,943,789.00
Final Reimbursement (If no additional funding is secured)	<u>\$1,943,789.00</u>
<b>Total</b>	<b>\$3,887,578.00</b>

\*Includes \$500,000 in Automatic Train Stop Equipment Cost

11/26/2012