

**OPERATING LICENSE AGREEMENT**

**FOR THE**

**M-1 RAIL STREETCAR SYSTEM**

**BY AND AMONG**

**M-1 RAIL AND M-2 RAIL**

**AND THE**

**CITY OF DETROIT**

**DECEMBER 27, 2013**

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EXHIBIT A – DEPICTION OF STREETCAR SYSTEM (INCLUDING STATIONS,  
TRACTION POWER SUBSTATIONS AND WIRING)

EXHIBIT B – DEPICTION OF OCCUPIED CITY PROPERTY

## OPERATING LICENSE AGREEMENT

This OPERATING LICENSE AGREEMENT dated as of December 27, 2013, is hereby entered into by and among two corporations, specifically, M-1 RAIL ("M-1 RAIL") and M-2 RAIL ("M-2 RAIL"), each corporation having been formed under the Michigan Nonprofit Street Railway Act (Act 35 of 1867, as amended, MCL §472.1 *et seq.*) and the Michigan Nonprofit Corporation Act (Act 162 of 1982, as amended, MCL §450.2101 *et seq.*), and the CITY OF DETROIT (the "CITY"), a municipal corporation duly organized and existing under the laws of the State of Michigan.

### RECITALS:

WHEREAS, the CITY has jurisdiction over Woodward Avenue from the southern terminus thereof to Adams Avenue, with jurisdiction over Woodward Avenue north of Adams being with the Michigan Department of Transportation ("MDOT"); and

WHEREAS, M-1 RAIL and M-2 RAIL are both Michigan nonprofit corporations organized under the Nonprofit Street Railway Act, MCL 472.1 *et seq.*, Act 35 of the Public Acts of 1867, as amended (the "Nonprofit Street Railway Act"); and

WHEREAS, M-1 RAIL and M-2 RAIL are affiliated corporations, with M-1 RAIL being recognized by the United States Internal Revenue Service ("IRS") as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), while M-2 RAIL has been formed as a supporting organization of M-1 RAIL and is applying to the IRS for recognition as an organization described in Section 501(c)(3) of the Code; and

WHEREAS, M-1 RAIL and M-2 RAIL propose to own, construct, furnish, equip, complete, operate, improve and maintain a public circulator streetcar system (the "Streetcar System") running within the public right-of-way of Woodward Avenue from Larned Street, the southern terminus, to north of Grand Boulevard, the northern terminus. Specifically, M-2 RAIL will construct and own the Streetcar System and will lease the Streetcar System to MDOT; MDOT will sublease the Streetcar System to M-1 RAIL; and M-1 RAIL will operate the Streetcar System for the term of the lease/sublease agreements, whereupon it is anticipated that ownership of the Streetcar System will be transferred to M-1 RAIL and M-1 RAIL will continue to operate the Streetcar System until it is donated or transferred to a regional transit authority or other entity consistent with federal laws and regulations; and

WHEREAS, the Streetcar System, including the configuration and station locations thereof, is more particularly described in attached Exhibit A. The Streetcar System includes rail tracks, streetcars, stations, catenary, traction power substations, wiring, conduits, switching and related apparatus; and

WHEREAS, the southern portion of the Streetcar System (i.e., from Larned Street to Adams Avenue) will be located principally on the CITY's Woodward Avenue right-of-way; and

WHEREAS, M-1 RAIL and M-2 RAIL wish to enter into an Operating License Agreement under the Nonprofit Street Railway Act to own, construct, furnish, equip, complete, operate, improve and maintain the Streetcar System, including the parts of the Streetcar System that will be located on or over the real property (including streets and improvements thereto) owned or controlled by the CITY, including the parts of the Streetcar System that are to be physically occupied by rail tracks, streetcars, stations, catenary or related improvements in the CITY's rights-of-way as depicted in Exhibit B, as the location of the same may be modified as described in Sections 2.1 and 2.2 hereof (such real property being the "Occupied City Property"); and

WHEREAS, M-1 RAIL and M-2 RAIL are acquiring licenses in, on and over the Occupied City Property, as well as the sidewalks that form a part of the Woodward Avenue right of way and in, on and over certain intersecting public roads under the jurisdiction of the CITY pursuant to the terms and conditions of a Construction, Operations and Maintenance Agreement of even date by and among M-1 RAIL, M-2 RAIL and the CITY (as the same may be amended or supplemented from time to time, the "Construction, Operations and Maintenance Agreement"); and

WHEREAS, M-1 RAIL and M-2 RAIL, subject to concurrence by the City, are entering into a similar Operating License Agreement over, and will be obtaining similar operating licenses in regard to, MDOT's Woodward Avenue right-of-way from Adams Avenue to the northern terminus of the Streetcar System; and

WHEREAS, M-1 RAIL and M-2 RAIL are obtaining certain licenses in, on and under MDOT's right-of-way over Woodward Avenue from Adams Avenue to the northern terminus of the Streetcar System pursuant to a separate Construction, Operations and Maintenance Agreement by and among M-1 RAIL, M-2 RAIL and MDOT; and

WHEREAS, the CITY desires by this Agreement to grant an operating license to M-1 RAIL and M-2 RAIL under the Nonprofit Street Railway Act, and to document the terms and conditions upon which the Occupied City Property may be used by M-1 RAIL and M-2 RAIL to own, construct, furnish, equip, complete, operate, improve and maintain the applicable part of the Streetcar System.

NOW, THEREFORE, the Parties agree as follows:

## **SECTION 1.0 DEFINITIONS**

The following capitalized terms shall have the following meanings when used in this Agreement:

“Agreement” means this Operating License Agreement by and among M-1 Rail, M-2 Rail and the CITY, as it may be amended restated or supplemented.

“CITY” has the meaning ascribed to it in the Preamble.

“Claims” has the meaning ascribed to it in Section 9.0 hereof.

“Construction, Operations and Maintenance Agreement” means that certain Construction, Operations and Maintenance Agreement for the Detroit Nonprofit Street Railway System (Contract No. \_\_\_\_\_) entered into by and among the CITY, M-1 RAIL and M-2 RAIL, dated as of the date hereof, which document sets forth additional terms and conditions applicable to the design, construction, operation and maintenance of the Streetcar System.

“Contractor” means any Contractor who executes a contract with M-1 RAIL, or M-2 RAIL for the design, construction or operation of the Streetcar System.

“DPW” has the meaning ascribed to it in Section 5.0 hereof.

“Effective Date” means the date on which the M-1 RAIL and M-2 RAIL Use Rights granted hereunder become operative, as specified in Section 3.0 hereof.

“Force Majeure” means any event which: (i) causes M-1 RAIL and M-2 RAIL to be unable to exercise the M-1 RAIL and M-2 RAIL Use Rights or to complete a specified obligation hereunder; and (ii) is outside the reasonable control of M-1 RAIL and M-2 RAIL and could not be avoided by M-1 RAIL and M-2 RAIL through the exercise of due care. Force Majeure events include, without limitation: acts of terrorists, earthquakes, fires, floods, tornadoes, wars, labor strikes and similar accidents, disputes or similar events.

“MDOT” has the meaning ascribed to it in the Recitals.

“M-1 RAIL” has the meaning ascribed to it in the Preamble, and includes its respective successors and permitted assigns.

“M-1 RAIL and M-2 RAIL Use Rights” means the use rights granted to M-1 RAIL and M-2 RAIL pursuant to Section 2.2 hereof.

“M-2 RAIL” has the meaning ascribed to it in the Preamble, and includes its respective successors and permitted assigns.

“Occupied City Property” has the meaning ascribed to it in the Recitals.

“Party” means M-1 RAIL, M-2 RAIL or the CITY, and the “Parties” means those entities collectively, as governed by the context in which such word is used.

“Plans and Specifications” means the minimum specifications required with respect to the design and construction of the System, which specifications are defined and/or incorporated into the Construction, Operations and Maintenance Agreement.

“Project” means the planning, design, financing, construction and installation of the System as set forth in this Agreement and in the Construction, Operations and Maintenance Agreement. At the commencement of Revenue Operations, the Project becomes the System.

“Project Submittals” means all design drawings, shop drawings, product data, test data, specifications, design and construction submittals, construction schedules, fabrication drawings, erection drawings, “as-built” drawings or similar documents that are produced by or on behalf of M-1 RAIL or M-2 RAIL during the design and construction of the Project, which relate to System improvements on the Occupied City Property or which otherwise affect the interest of the CITY under this Agreement or the Construction, Operations and Maintenance Agreement, and which are to be reviewed by the CITY according to the procedures and standards set forth in the Construction, Operations and Maintenance Agreement.

“Revenue Operations” means the operations of the Project such that it is providing passenger service as a streetcar system.

“System” or “Streetcar System” means the streetcar public transportation system to be owned, constructed, furnished, equipped, completed, operated improved and maintained by M-1 RAIL and M-2 RAIL within the System Alignment, including all rail tracks, stations, light rail vehicles, track drainage, catenary, wiring, conduits, electrical lines, traction power poles, traction power substations, cross-band wires, street railway traffic equipment, electric current protection

equipment, and other functionally related equipment and facilities. “Streetcar System” excludes facilities and improvements not required to operate and maintain a public transportation system.

“System Alignment” means the alignment for the System agreed to by the Parties in Exhibit A of this Agreement and the Construction, Operations and Maintenance Agreement. The System Alignment is subject to adjustment pursuant to the Construction, Operations and Maintenance Agreement to reflect minor changes made during the design and construction process and to reflect “as built” conditions.

“Transfer Date” means the date on which the Streetcar System is transferred to a regional transit authority, MDOT or other entity consistent with federal laws and regulations.

## **SECTION 2.0 M-1 RAIL AND M-2 RAIL LICENSE; USE OF CITY PROPERTY**

### **2.1 License**

The CITY hereby grants to M-1 RAIL and M-2 RAIL an operating license pursuant to the terms of this Agreement under the Nonprofit Street Railway Act to own, construct, furnish, equip, complete, operate, improve and maintain the Streetcar System in the CITY, including the portion thereof which is over, on and under the Occupied City Property. Uses of the Occupied City Property hereunder shall be without charge by the CITY except as provided in this Agreement or the Construction, Operations and Maintenance Agreement. The operating license shall be deemed to grant to M-1 RAIL and M-2 RAIL all of the rights and privileges allowable under the Nonprofit Street Railway Act, subject to the terms of this Agreement and the Construction, Operations and Maintenance Agreement.

### **2.2 Property**

The specific location and course of the System Alignment has been determined in the preliminary design phase of the Project, subject to adjustment pursuant to the Construction, Operations and Maintenance Agreement to reflect minor changes made during the design and construction process and to reflect “as built” conditions. If necessary, the Parties agree to execute, acknowledge and record such documentation as may be necessary to evidence the M-1 RAIL and M-2 RAIL Use Rights.

M-1 RAIL and M-2 RAIL are hereby authorized to use, on a non-exclusive basis, the Occupied City Property (including surface, subsurface and air space) as shall be necessary to accommodate the construction, operation and maintenance of the System. M-1 RAIL’s and M-2

RAIL's use of the Occupied City Property shall be strictly limited to the terms, conditions, limitations and restrictions contained in this Agreement and in the Construction, Operations and Maintenance Agreement.

The location and extent of the Occupied City Property, and the use thereof by M-1 RAIL and M-2 RAIL, shall be governed by this Agreement, the Construction, Operations and Maintenance Agreement and the Project Submittals.

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, subject to the rights of M-1 RAIL and M-2 RAIL under this Agreement and the Construction, Operations and Maintenance Agreement.

### **2.3 Records**

M-1 RAIL and M-2 RAIL shall keep accurate installation records of the location of all facilities in the public right-of-way under the CITY's jurisdiction that are installed or relocated by M-1 RAIL or M-2 RAIL and furnish as-built documents to the CITY compatible with MicroStation V8 within ninety (90) days of Revenue Operations. M-1 RAIL and M-2 RAIL shall cooperate with the CITY to furnish such information in an electronic format compatible with the current CITY electronic format. Upon completion of any additional relocation of underground facilities in the public right-of-way, M-1 RAIL and M-2 RAIL shall provide the CITY with installation records in an electronic format compatible with the current CITY electronic format showing the new location of the underground and above ground facilities within ninety (90) days of the completion of such additional relocation.

### **SECTION 3.0 EFFECTIVE DATE; TERM; RENEWAL**

The M-1 RAIL and M-2 RAIL Use Rights granted herein shall not become operative until the Effective Date, which shall be the date on which this Agreement is approved by the appropriate governmental entity or official on behalf of the CITY to make it enforceable against the CITY.

Beginning on the Effective Date, this Agreement and the M-1 RAIL and M-2 RAIL Use Rights herein granted shall be operative for thirty (30) years from the Effective Date, with two (2) renewal options of thirty (30) years each upon mutual agreement.



Except as provided in Section 8.0 below, this Agreement is not transferable to any other entity, agency or enterprise without the prior written consent of the CITY.

#### **SECTION 4.0 CONSIDERATION**

In consideration for the M-1 RAIL and M-2 RAIL Use Rights granted by the CITY to M-1 RAIL and M-2 RAIL hereunder, M-1 RAIL and M-2 RAIL agree as follows:

If the System is completed by M-1 RAIL and M-2 RAIL, M-1 RAIL and M-2 RAIL agree that from the commencement of Revenue Operations until the Transfer Date, the System will be used to provide regular System service to the general public for the term of this Agreement, subject to suspensions or reductions in service due to or resulting from repairs, replacements or Force Majeure Events. The foregoing covenant shall not impair or diminish the right of M-1 RAIL and M-2 RAIL to establish and modify schedules and levels or frequencies of service to take into account ridership demand and other generally recognized transit considerations.

#### **SECTION 5.0 OPERATIONS**

The CITY agrees to allow M-1 RAIL and M-2 RAIL to construct and operate the System, including the parts located on or over the Occupied City Property, in accordance with the terms, conditions and requirements of this Agreement and the Construction, Operations and Maintenance Agreement. M-1 RAIL and M-2 RAIL agree that in operating the System they will use commercially reasonable efforts to ensure that reasonable traffic progression is maintained along CITY streets sharing the streetcar line and along major cross streets where the CITY maintains traffic coordination systems. M-1 RAIL and M-2 RAIL shall participate in any Special Event Team Meeting process that is conducted by the CITY, as well as in any Technical Review Committee/Project Management Team Meeting process conducted by the CITY. Operational disputes between M-1 RAIL and M-2 RAIL and the CITY shall be resolved jointly as described in the Construction, Operations and Maintenance Agreement. M-1 RAIL and M-2 RAIL shall coordinate all special events with the Traffic Engineering Division of the Department of Public Works (“DPW”). M-1 RAIL and M-2 RAIL and the CITY may agree to additional operating conditions at the completion of the Project.

## **SECTION 6.0 TRAFFIC REGULATIONS**

System vehicles traveling on the Occupied City Property shall be subject to all current and future traffic control ordinances, statutes and regulations of general applicability, although the CITY agrees to cooperate with M-1 RAIL, M-2 RAIL and MDOT to ensure coordinated traffic signalization so as to allow an efficient flow of traffic by both vehicles and System streetcars.

## **SECTION 7.0 DESIGN APPROVAL**

M-1 RAIL and M-2 RAIL agrees that the CITY shall have the right, after completion of the Project and during the term of this Agreement, to review and approve, conditionally approve, or deny all future additions, changes and alterations to and modifications and replacements of any System improvements on Occupied City Property that would materially change the System or alter the Plans and Specifications provided in this Agreement or in the Construction, Operations and Maintenance Agreement, in a manner that has a material adverse effect on the CITY. Any such approval shall be granted by the CITY unless the CITY determines, within a reasonable time and in the exercise of reasonable judgment, that the addition, change, alteration or modification of or to the applicable System improvements on Occupied City Property would have a material adverse effect on the CITY.

## **SECTION 8.0 ASSIGNMENT**

M-1 RAIL AND M-2 RAIL may not assign or otherwise transfer any of its rights or obligations hereunder to a third party without the express prior written consent of the CITY, which may be granted or withheld by the CITY in its sole and absolute discretion. Any assignment or transfer without such prior written consent shall be void. Notwithstanding the foregoing, either M-1 RAIL or M-2 RAIL or both, upon notice to (but not the consent of) the CITY, may: (i) collaterally assign its or their rights and interests under this Agreement, and the operating license granted herein, to a third party providing financing for the ownership, construction, installation, equipping or operation of the Streetcar System or any part thereof, with the assignee having the right to realize upon such collateral assignment if there is a default under the applicable financing agreements and to further assign such rights to a party that will operate the System, and/or (ii) assign its or their rights and interests under this Agreement, and the Construction, Operations and Maintenance Agreement, to and/or from MDOT in connection

with a lease or sublease of the System as referred to in the Recitals, with (in the case of the sublease) MDOT having the right to assign its rights and interests under this Agreement to M-1 RAIL, and/or (iii) in connection with the donation or other transfer of the Streetcar System or applicable part thereof, assign its or their rights and interest under this Agreement and the operating license granted herein to a regional transit authority, MDOT or other entity consistent with federal laws and regulations, and/or (iv) engage or retain an operations and/or maintenance vendor or like third party to operate and/or maintain the Streetcar System on behalf of M-1 RAIL and M-2 RAIL. In connection with any assignment (collateral or otherwise) of the nature referred to in clauses (i) through (iv) above, the CITY agrees to execute an estoppel certificate or non-disturbance agreement confirming such information with regard to this Agreement or the status thereof, and containing customary protections to the lender (including notice of default and an opportunity to cure), as the lender or assignee may reasonably request. Any such non-disturbance agreement shall include, without limitation, provisions granting any lender or other beneficiary thereof with the right to receive notice of any breach of the obligations of M-1 RAIL and M-2 RAIL under this Agreement, including under the second paragraph of Section 4.0 above, and the right to cure such breaches within a reasonable time following a foreclosure or other realization on the System. Furthermore, and notwithstanding the foregoing, M-2 RAIL shall have the right to assign and transfer all of its right, title and interest in and under this Agreement to M-1 RAIL.

## **SECTION 9.0 INDEMNIFICATION AND INSURANCE**

Except for claims arising solely and exclusively from the negligence or willful acts or omissions of the indemnitee, M-1 RAIL and M-2 RAIL, jointly and severally, shall indemnify, defend, save and hold harmless the CITY and its officers, officials, agents and employees (each to the extent they are acting for the CITY in the stated capacity) (hereinafter referred to as "indemnitee") from and against any and all claims, actions, liabilities, damages, losses, expenses and costs (including court costs, attorneys' fees, and costs of primary loss investigation, claim processing and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death) or loss or damage to real or personal property: (1) arising out of the work done under the terms of this Agreement, (2) or caused, or alleged to be caused, in whole or in part, by the negligence or willful acts or omissions of M-1 RAIL and/or M-2 RAIL or any of

its owners, officers, directors, agents, or employees (each to the extent they are acting for M-1 RAIL or M-2 RAIL in the stated capacity).

It is the specific intent of the Parties to this Agreement that the indemnitee shall, in all instances except for loss or damage resulting from the sole and exclusive negligence of the indemnitee, be indemnified against all liability, loss or damage on account of any injuries to or death of any person or damages to or destruction of real or personal property belonging to any third person arising out of or in any way connected with the performance of this Agreement, regardless of whether or not the liability, loss or damages were caused by, or alleged to be caused in part by the negligence, gross negligence or fault of the indemnitee to the fullest extent permitted under Michigan law.

This indemnity includes, but is not limited to, any claim or amount of the nature described in the preceding paragraph arising out of or recovered under the Workers' Compensation Law or arising out of the failure of M-1 RAIL and M-2 RAIL to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree.

It is agreed that M-1 RAIL and M-2 RAIL will be responsible for the cost of primary loss investigation, defense and any judgment and will provide insurance coverage as required from time to time in the Construction, Operations and Maintenance Agreement.

#### **SECTION 10.0 DUTY TO RESTORE**

Upon the expiration of the term or earlier termination of the M-1 RAIL and M-2 RAIL Use Rights or this Agreement, including any extension thereof, or in the event of the breach of the obligation of M-1 RAIL and M-2 RAIL under Section 4.0 to provide regular service to the public that continues for more than one hundred fifty (150) days after written notice thereof to M-1 RAIL and M-2 RAIL without cure (or commencement of cure and diligent prosecution thereof to completion), which breach results in a termination of this Agreement as provided in Section 11.0 below, all System improvements located on Occupied City Property as to which M-1 RAIL and M-2 RAIL Use Rights have been terminated shall, at the option of the CITY or M-1 RAIL and M-2 RAIL, be removed, and the Occupied City Property shall be restored to a condition consistent with the then current condition of the adjoining streets or other public facilities with respect to grade, appearance, quality, finish and type of construction, at the sole cost and expense of M-1 RAIL and M-2 RAIL. All restoration work shall be conducted in

accordance with the Michigan Department of Transportation Standard Specification for Construction. If the CITY elects to require M-1 RAIL and M-2 RAIL to restore the Occupied City Property, 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 the CITY elects to require M-1 RAIL and M-2 RAIL to restore the Occupied City Property, and M-1 RAIL and M-2 RAIL fail to restore the Occupied City Property as required herein, the CITY may perform such work after thirty (30) days prior written notice to M-1 RAIL AND M-2 RAIL given after expiration of the aforementioned time within which to complete such work, and M-1 RAIL AND M-2 RAIL hereby agree to pay all costs reasonably incurred by the CITY in connection with such work, including any collection costs and attorneys' fees.

#### **SECTION 11.0 DEFAULT AND REVOCATION**

In accordance with Section 13 of the Nonprofit and Street Railway Act, no attempt by the CITY to terminate or revoke this Agreement shall be made unless or until M-1 RAIL AND M-2 RAIL have been afforded procedural due process with respect to the events giving rise to such termination or revocation. Notwithstanding the foregoing, the CITY agrees that in the event of a default under this Agreement, the CITY may not terminate this Agreement except for a failure of M-1 RAIL and M-2 RAIL to operate the Streetcar System as required in the second paragraph of Section 4.0 above for a period of one hundred fifty (150) days, exclusive of suspensions due to repairs, replacements or Force Majeure events, after the CITY has provided written notice of such failure. Such right of termination shall be the sole and exclusive remedy of the CITY for a breach by M-1 RAIL and M-2 RAIL of the obligations set forth in the second paragraph of Section 4.0 above. In regard to any other event of default, the CITY's remedies shall be to: (a) seek specific performance of the applicable obligation that is the subject of a default, (b) elect to cure or perform the applicable obligation that is the subject of the default and to receive reimbursement for all reasonable costs associated with such cure or performance as set forth in the Agreement, and/or (c) to seek compensatory damages for such default; provided, in no event shall M-1 RAIL or M-2 RAIL be liable for punitive, exemplary, consequential or other indirect damages for any breach of this Agreement. In the event that the CITY terminates this Agreement upon the terms as provided for above, then M-1 RAIL and M-2 RAIL shall have the right to remove any and all tracks, equipment and improvements constructed or installed by M-1

RAIL and M-2 RAIL which constitute any portion of the Streetcar System and shall have the obligation, at the option of the CITY, to remove any and all such tracks, equipment and improvements that are located on or over the Occupied City Property.

**SECTION 12.0 NOTICE**

Any notice, consent or other communication (“Notice”) required or permitted under this Agreement shall be in writing and either delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air carrier or other overnight express service addressed as follows:

If intended for M-1 RAIL and/or M-2 RAIL:

Chief Executive Officer  
M-1 RAIL and M-2 RAIL  
Suite 1740, 600 Renaissance Center  
Detroit, Michigan 48243  
Telephone: (313) 566-8250  
FAX: (313) 259-6393

With a copy to:

Dykema Gossett PLLC  
Attn: Cameron H. Piggott  
400 Renaissance Center  
Detroit, Michigan 48243  
Telephone: (313) 568-6575  
FAX: (313) 568-6701

If intended for the CITY:

Director, Department of Public Works  
City of Detroit  
Coleman A. Young Municipal Center  
2 Woodward Ave.  
8<sup>th</sup> Floor  
Detroit, Michigan 48226  
Telephone: (313) 224-3901  
FAX: (313) 224-1464

Copy to:

Law Department  
Attn: Corporation Counsel

City of Detroit  
Coleman A. Young Municipal Center  
2 Woodward Ave.  
5<sup>th</sup> Floor  
Detroit, Michigan 48226  
Telephone: (313) 224-1352  
FAX: (313) 224-5505

A Notice shall be deemed received at the time it is personally served or, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air carrier or express service or, if mail, ten (10) days after the Notice is deposited in the United States mail as above provided. Any time period stated in a Notice shall be computed from the time the Notice is deemed received. Either Party may change its mailing address, fax number, or the person to receive Notices by notifying in writing the other Party as provided in this Section.

Notices sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address. This requirement for duplicate Notice is not intended to change the effective date of a Notice sent by facsimile transmission.

#### **SECTION 13.0 GOVERNING DOCUMENT**

In the event that there is a conflict between the terms of this Agreement and the terms of the Construction, Operations and Maintenance Agreement, the term of this Agreement shall govern. However, it is the intent of the parties that the terms of this Agreement and the terms of the Construction, Operations and Maintenance Agreement be construed as being consistent with one another to the extent it is reasonable to do so.

#### **SECTION 14.0 OPERATING LICENSE AGREEMENT WITH MDOT**

The Parties acknowledge that the Project will require an additional Operating License Agreement with MDOT covering that part of the Project that will be constructed on the Section of Woodward Avenue that is a State trunkline highway. It is agreed that the CITY is a Road Authority (as defined in the Nonprofit Street Railway Act) as to the Project since it will operate within the boundaries of the CITY and it is further agreed that M-1 RAIL and M-2 RAIL will not enter into any Operating License Agreement with MDOT regarding operation within the CITY unless the CITY has agreed to that Operating License Agreement; provided, the CITY shall not have any right to approve any amendment or modification of an executed Operating License

Agreement with MDOT unless such amendment or modification has a material adverse effect on the rights of the CITY (if any) thereunder.

#### **SECTION 15.0 AMENDMENT**

This Agreement may be modified or amended only by a written instrument executed by the Parties and/or all of their successors or assigns, as applicable and will not be in effect until approved by the appropriate governmental entity or official necessary to render this Agreement enforceable against the CITY.

#### **SECTION 16.0 GOVERNING LAW**

This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of Michigan.

#### **SECTION 17.0 NON-WAIVER**

No covenant or condition of this Agreement may be waived by any party other than in writing. Forbearance or indulgence by any Party in any regard whatsoever shall not constitute a waiver of the covenants or conditions to be performed by the other.

#### **SECTION 18.0 SEVERABILITY**

If any provision of this Agreement shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

#### **SECTION 19.0 BINDING AGREEMENT; STATUS OF M-2 RAIL**

This Agreement shall be binding upon all of the assigns, grantees and successors in interest to each of the Parties, and shall remain in full force and effect until amended as provided herein. In no event shall any non-Party be deemed to be a third party beneficiary of this Agreement or otherwise be entitled to seek enforcement of the terms of this Agreement.

The Parties acknowledge that it is contemplated that M-2 RAIL may transfer all of its direct or indirect interest in the Streetcar System to M-1 RAIL. If it does so, all references in this Agreement to "M-1 RAIL and M-2 RAIL" shall be deemed to refer to M-1 RAIL only.



**SECTION 20.0 SURVIVORSHIP**

Provisions of this Agreement which by their nature are intended to continue in force beyond the Term of this Agreement will survive any termination of this Agreement.

**SECTION 21.0 FURTHER ASSURANCES**

The Parties hereto shall execute such other documents and take such other actions as may be reasonably necessary or proper to achieve the intent and purposes hereof.

**SECTION 22.0 INCORPORATION OF EXHIBITS**

This Agreement in its entirety includes Exhibits A and B, each of which is incorporated herein and made a part hereof. The Exhibits of this Agreement are as follows:

- Exhibit A      System Map
- Exhibit B      Depiction of Occupied City Property

*Signature Pages Follow*

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

WITNESSES:

**M-1 RAIL**, a Michigan nonprofit corporation

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
By: Matthew P. Cullen  
Its: Chief Executive Officer

\_\_\_\_\_  
Print Name:

**M-2 RAIL**, a Michigan nonprofit corporation

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
By: Paul Childs  
Its: Chief Executive Officer

\_\_\_\_\_  
Print Name:

The City, by and through its authorized officers and representatives, have executed this Agreement as follows:

WITNESSES:

**CITY OF DETROIT**  
Department of Public Works

\_\_\_\_\_  
Print Name:

By: \_\_\_\_\_  
Ron Brundidge

\_\_\_\_\_  
Print Name:

Its: Director

THIS AGREEMENT WAS APPROVED  
BY THE CITY COUNCIL ON:

APPROVED BY LAW DEPARTMENT  
PURSUANT TO § 7.5-206 OF THE  
CHARTER OF THE CITY OF DETROIT:

Date: \_\_\_\_\_, 2014

\_\_\_\_\_  
Purchasing Director                      Date

\_\_\_\_\_  
Corporation Counsel                      Date

\_\_\_\_\_  
Print name:

\_\_\_\_\_  
Print name:

THIS AGREEMENT IS NOT VALID OR AUTHORIZED UNTIL APPROVED BY  
RESOLUTION OF THE CITY COUNCIL, APPROVED BY THE EMERGENCY MANAGER  
AND SIGNED BY THE PURCHASING DIRECTOR.

**M-1 RAIL AND M-2 RAIL ACKNOWLEDGEMENTS**

STATE OF MICHIGAN     )  
                                  ) SS.  
COUNTY OF WAYNE     )

The foregoing instrument was executed before me this \_\_\_\_\_ day of December, 2013, by Matthew P. Cullen, Chief Executive Officer of M-1 RAIL, a Michigan nonprofit corporation, on behalf of said nonprofit corporation.

\_\_\_\_\_  
Notary Public \_\_\_\_\_  
State of Michigan, County of Wayne  
My commission expires: \_\_\_\_\_  
Acting in Wayne County

STATE OF MICHIGAN     )  
                                  ) SS.  
COUNTY OF WAYNE     )

The foregoing instrument was executed before me this \_\_\_\_\_ day of December, 2013, by Paul Childs, Chief Executive Officer of M-2 RAIL, a Michigan nonprofit corporation, on behalf of said nonprofit corporation.

\_\_\_\_\_  
Notary Public \_\_\_\_\_  
State of Michigan, County of Wayne  
My commission expires: \_\_\_\_\_  
Acting in Wayne County

## **RESOLUTION OF M-1 RAIL**

**NOVEMBER 12, 2013**

The following resolutions are adopted on behalf of M-1 RAIL, a Michigan nonprofit corporation (the "Corporation"), by the Board of Directors of the Corporation:

RESOLVED, that the Corporation enter into and execute the Operating License Agreement by and among the Corporation, M-2 RAIL, a Michigan nonprofit corporation, and the City of Detroit, a Michigan municipal corporation, in the form provided to the Board of Directors, subject to such changes as may be approved pursuant to the resolutions below (the "Operating License Agreement"); and

FURTHER RESOLVED, that the Chief Executive Officer of the Corporation be, and is hereby, authorized in the name and on behalf of the Corporation, and under seal or otherwise, to negotiate, execute and deliver the Operating License Agreement, with such changes as the Chief Executive Officer may deem necessary or desirable, and to cause the Corporation to perform its obligations under the Operating License Agreement; and

FURTHER RESOLVED, that the Operating License Agreement be valid, conclusive, binding on and enforceable against the Corporation when executed and delivered in the manner aforesaid; and

FURTHER RESOLVED, that the Secretary of the Corporation be, and is hereby, authorized to execute and deliver such confirmations or certificates in such form as the Secretary shall determine appropriate for the purpose of confirming the due and valid authorization and execution of the Operating License Agreement by the Corporation or for the purpose of supporting any legal opinion to such effect to be delivered in connection with the Operating License Agreement.

## **RESOLUTION OF M-2 RAIL**

**DECEMBER 12, 2013**

The following resolutions are adopted on behalf of M-2 RAIL, a Michigan nonprofit corporation (the "Corporation"), by the Board of Directors of the Corporation:

RESOLVED, that the Corporation enter into and execute the Operating License Agreement by and among the Corporation, M-1 RAIL, a Michigan nonprofit corporation, and the City of Detroit, a Michigan municipal corporation, in the form provided to the Board of Directors, subject to such changes as may be approved pursuant to the resolutions below (the "Operating License Agreement"); and

FURTHER RESOLVED, that the Chief Executive Officer of the Corporation be, and is hereby, authorized in the name and on behalf of the Corporation, and under seal or otherwise, to negotiate, execute and deliver the Operating License Agreement, with such changes as the Chief Executive Officer may deem necessary or desirable, and to cause the Corporation to perform its obligations under the Operating License Agreement; and

FURTHER RESOLVED, that the Operating License Agreement be valid, conclusive, binding on and enforceable against the Corporation when executed and delivered in the manner aforesaid; and

FURTHER RESOLVED, that the Secretary of the Corporation be, and is hereby, authorized to execute and deliver such confirmations or certificates in such form as the Secretary shall determine appropriate for the purpose of confirming the due and valid authorization and execution of the Operating License Agreement by the Corporation or for the purpose of supporting any legal opinion to such effect to be delivered in connection with the Operating License Agreement.

**CITY ACKNOWLEDGMENT**

STATE OF MICHIGAN     )  
  ) SS.  
COUNTY OF WAYNE     )

The foregoing Agreement was acknowledged before me the \_\_\_\_\_ day of December, 2013, by Ron Brundidge, the Director of the Department of Public Works of the City of Detroit, on behalf of the City.

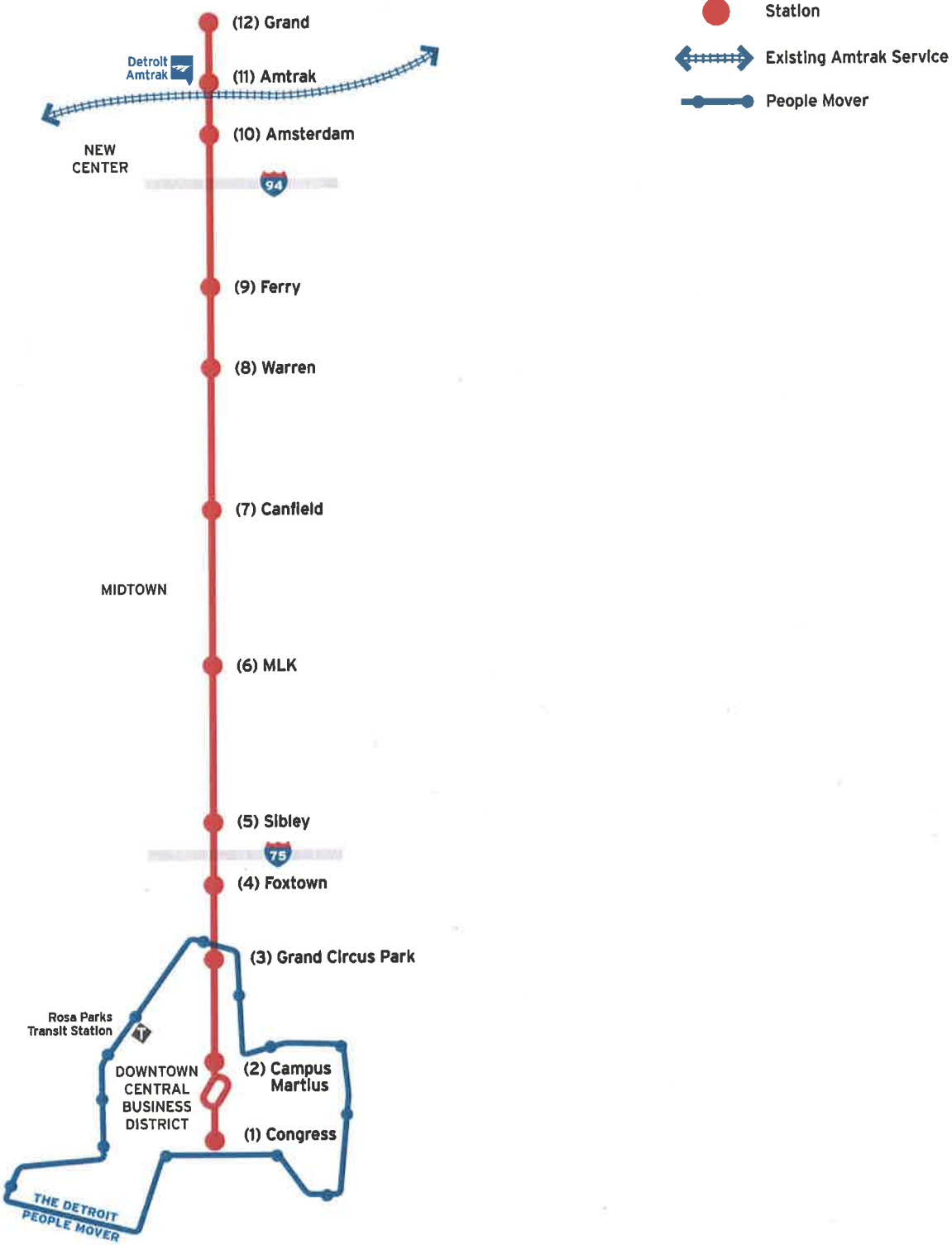
\_\_\_\_\_  
Notary Public \_\_\_\_\_  
State of Michigan, County of Wayne  
My commission expires: \_\_\_\_\_  
Acting in Wayne County

Drafted by and when recorded return to:

Cameron H. Piggott  
Dykema Gossett PLLC  
400 Renaissance Center  
Detroit, Michigan 48243-1668  
(313) 568-6575

DET02\482842.5  
ID\CHP - 105486\0001

# EXHIBIT A

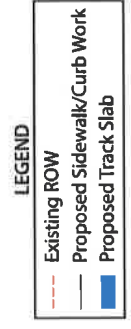






FORT

MICHIGAN



CADILLAC SQUARE

CADILLAC SQUARE

CADILLAC SQUARE

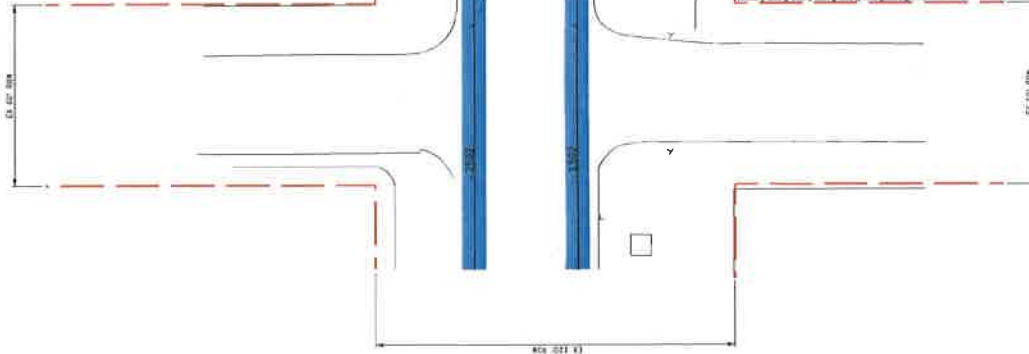
MONROE

FINAL ROW	FILE REVISIONS	1	SUBMITAL	DATE	DESCRIPTION		
NO.	DATE	AUTH.	DESCRIPTION	NO.	DATE	AUTH.	DESCRIPTION
CS 87400	DATE 10/8/2013	FILED 155042	M-1 31000n.dgn				
DATE	10/8/2013	SCALE	HORIZ (FT) 40				
M-1 RAIL			STREETCAR PROJECT				
CONSTRUCTION SHEET			DRAWING SHEET				
NB TRACK - STA 1310+00 TO STA 1316+00			M-1 CON				
SB TRACK - STA 2410+00 TO STA 2414+00			SEC 1				
			2				

OLA Exhibit B



STATE



WOODWARD

WOODWARD

LEGEND

- Existing ROW
- Proposed Track Slab

OLA Exhibit B

REV.	DATE	BY	DESCRIPTION

M-1 RAIL

CS 82400  
JMS 11/3/17  
FILED:156040\_M-1\_5602.dwg

DATE: 10/18/2013

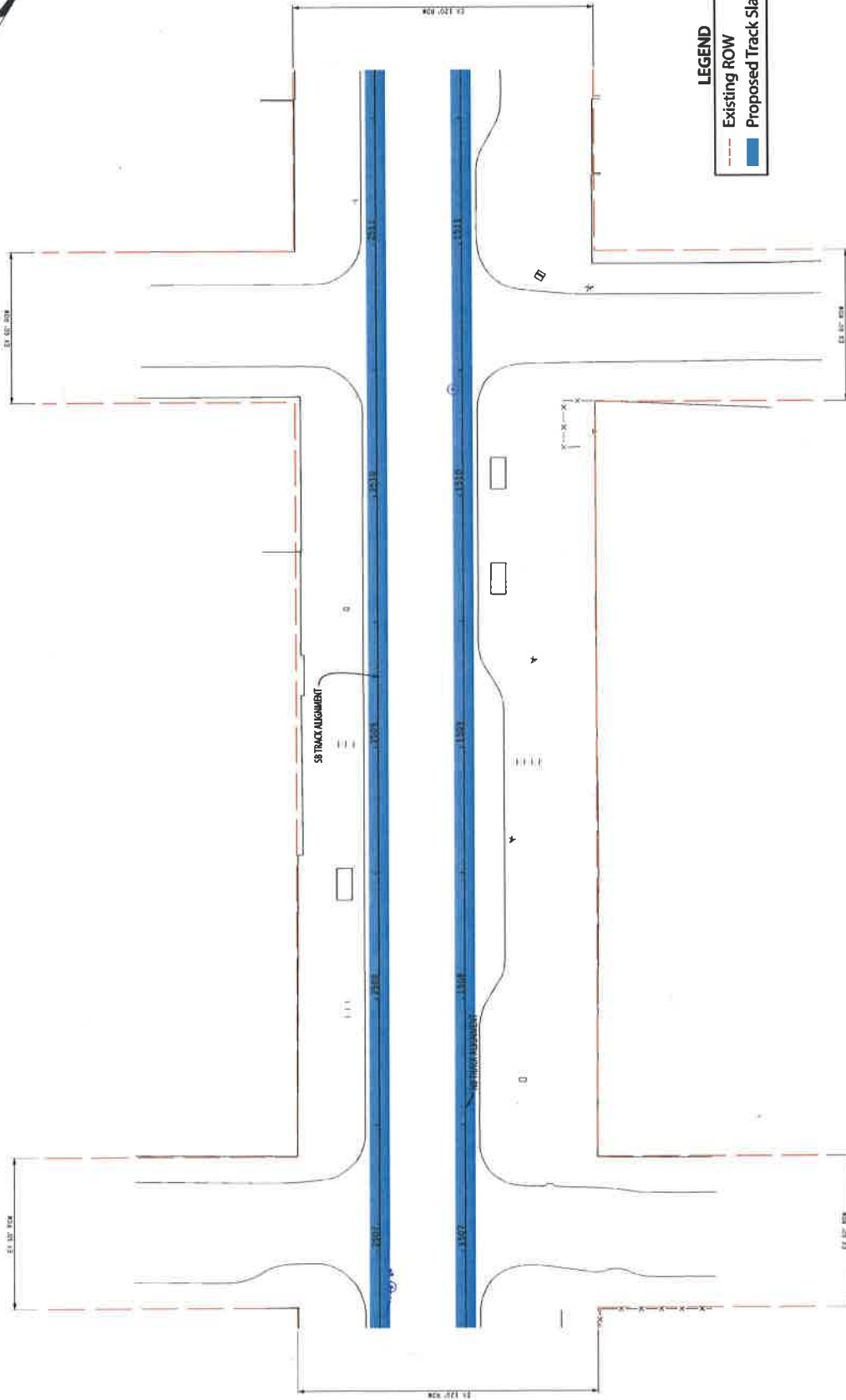
M-1 RAIL STREETCAR PROJECT

CONSTRUCTION SHEET	CON	NO.	1
NB TRACK - STA 1502+00 TO STA 1507+00	CON	NO.	1
SB TRACK - STA 2502+00 TO STA 2507+00	CON	NO.	1

WRAPING SHEET

W GRAND RIVER

CLIFFORD



WOODWARD

WOODWARD

**LEGEND**

- - - Existing ROW
- █ Proposed Track Slab

E GRAND RIVER

JOHN R

OLA Exhibit B

NO.	DATE	BY	DESCRIPTION

**M-1 RAIL**

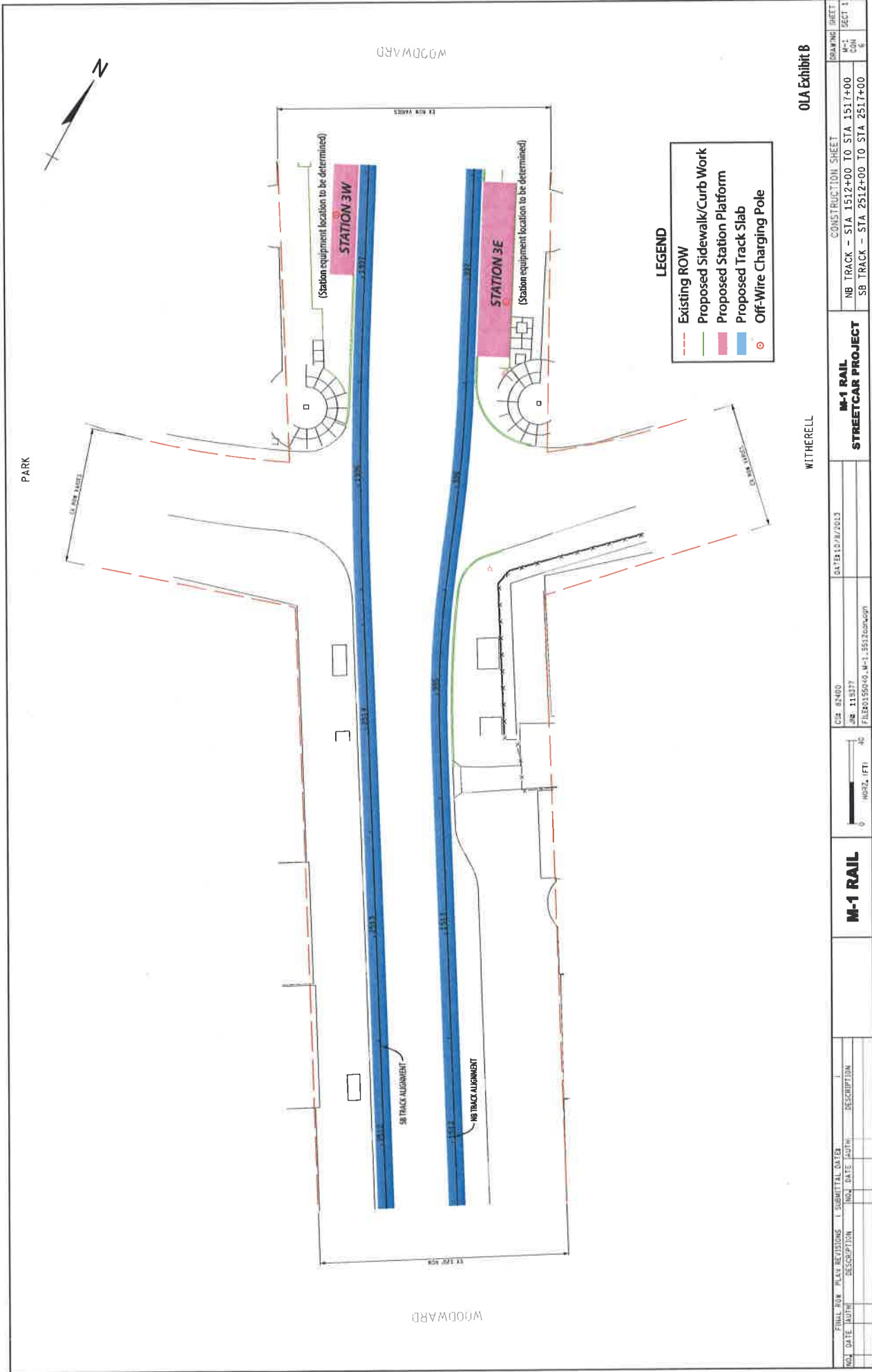
CS# 81400  
 J# 119177  
 FILE# 155640\_M-1\_5507CON.PGN

DATE 10/8/2013

**M-1 RAIL STREETCAR PROJECT**

CONSTRUCTION SHEET  
 NB TRACK - STA 1507+00 TO STA 1512+00  
 SB TRACK - STA 2507+00 TO STA 2512+00

DRAWING SHEET	CON.	NO.	SECTION



WITHERELL

OLA Exhibit B

FULL ROW PLAN REVISIONS		DATE	DESCRIPTION	BY	CHK	APP	DATE	DESCRIPTION

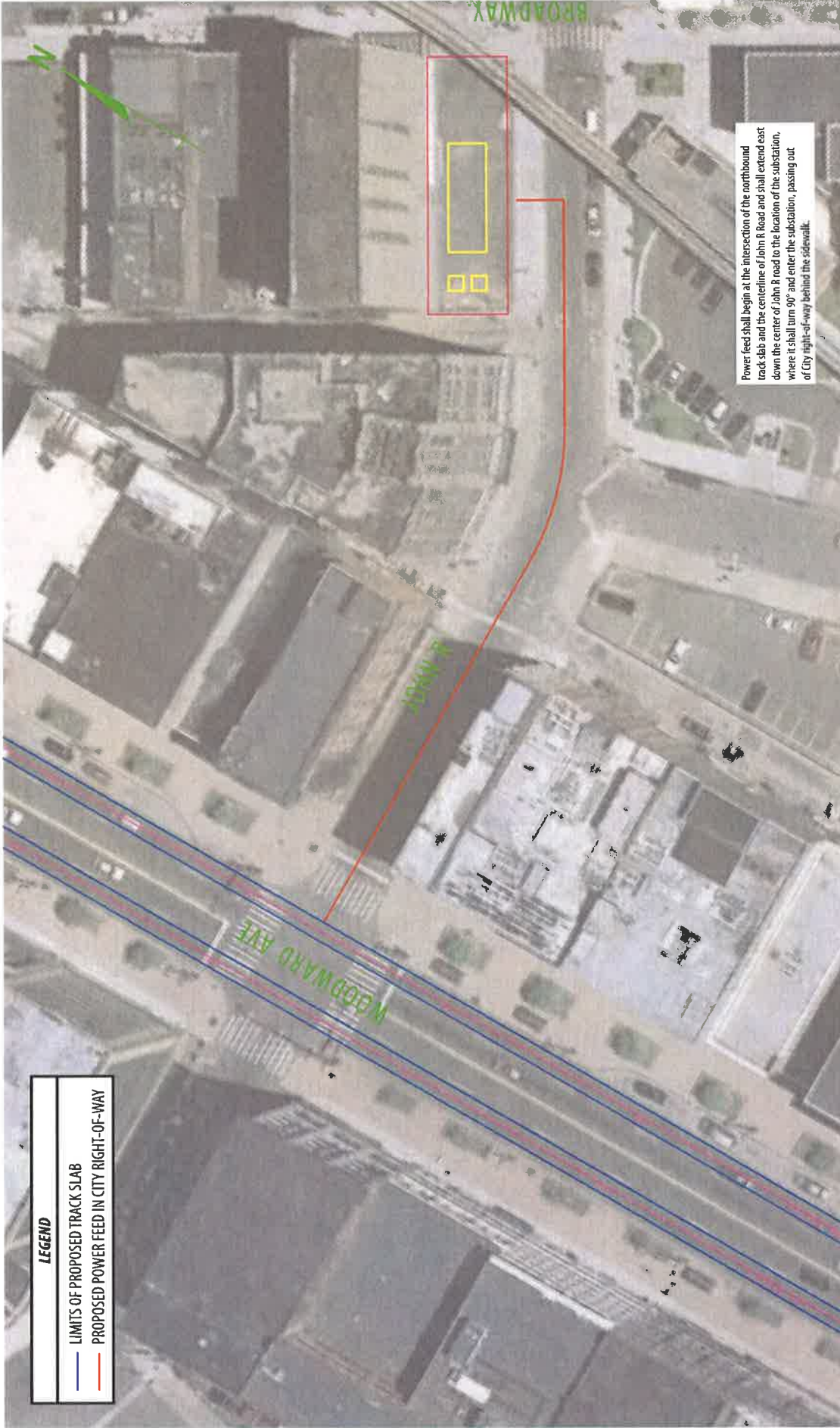
CS# 01400	DATE 11/17/2013	CONSTRUCTION SHEET	DRAWING SHEET
JUN 11 2013	FILED 1550140, M-1, 1551200000	NB TRACK - STA 1512+00 TO STA 1517+00	M-1 SECT 1
FILED 1550140, M-1, 1551200000		SB TRACK - STA 2512+00 TO STA 2517+00	CON 1

ADAMS



OLA Exhibit B

FINAL REV. PLAN REVISIONS	1. SUBMITTAL DATES	CONSTRUCTION SHEET	DRAWING SHEET
NO. DATE (AUTH)	NO. DATE (AUTH)	MB TRACK - STA 1517+00 TO STA 1519+00	MB TRACK - STA 1517+00 TO STA 1519+00
		SB TRACK - STA 2517+00 TO STA 2519+00	SB TRACK - STA 2517+00 TO STA 2519+00
M-1 RAIL		M-1 RAIL	
STREETCAR PROJECT		STREETCAR PROJECT	
DATE: 04/18/10/8/2013	DATE: 04/18/10/8/2013		
FILE: 0155940_M-1_1517-2519.rvt	FILE: 0155940_M-1_1517-2519.rvt		
0	40		
HORIZ. (FT)			
M-1 RAIL		M-1 RAIL	
STREETCAR PROJECT		STREETCAR PROJECT	



LEGEND	
	LIMITS OF PROPOSED TRACK SLAB
	PROPOSED POWER FEED IN CITY RIGHT-OF-WAY

Power feed shall begin at the intersection of the northbound track slab and the centerline of John R Road and shall extend east down the center of John R road to the location of the substation, where it shall turn 90° and enter the substation, passing out of City right-of-way behind the sidewalk.



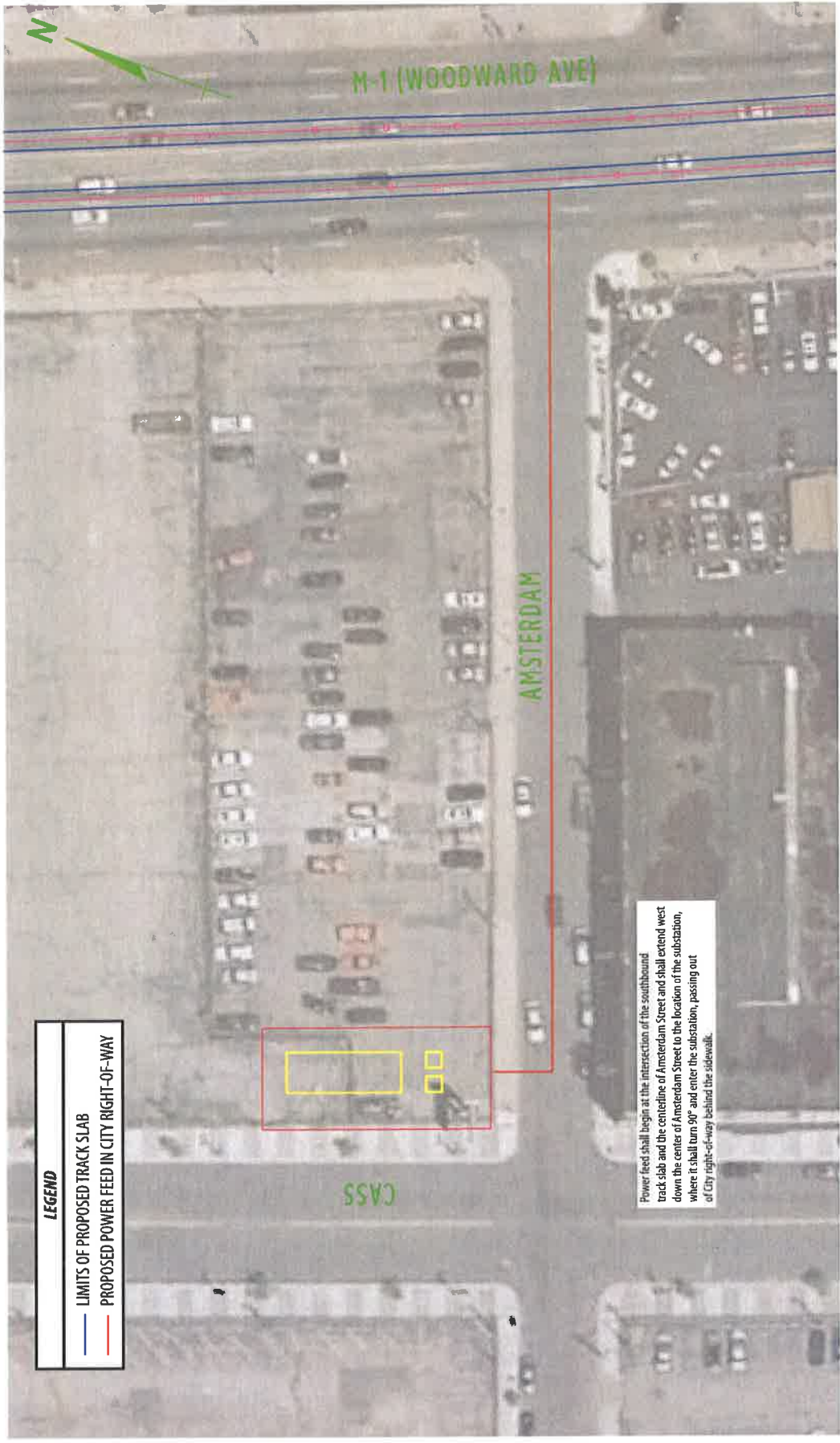


LEGEND	
	LIMITS OF PROPOSED TRACK SLAB
	PROPOSED POWER FEED IN CITY RIGHT-OF-WAY

Power feed shall begin at the intersection of the southbound track slab and the centerline of Willis Street and shall extend west down the center of Willis Street to the location of the substation, where it shall turn 90° and enter the substation, passing out of City right-of-way behind the sidewalk.

OLA Exhibit B


DATE: 10/01/10	PREFERRED SUBSTATION SITE	PLANNING SHEET
	TPSS SITE 2	
 100 FT		
<b>M-1 RAIL</b>		

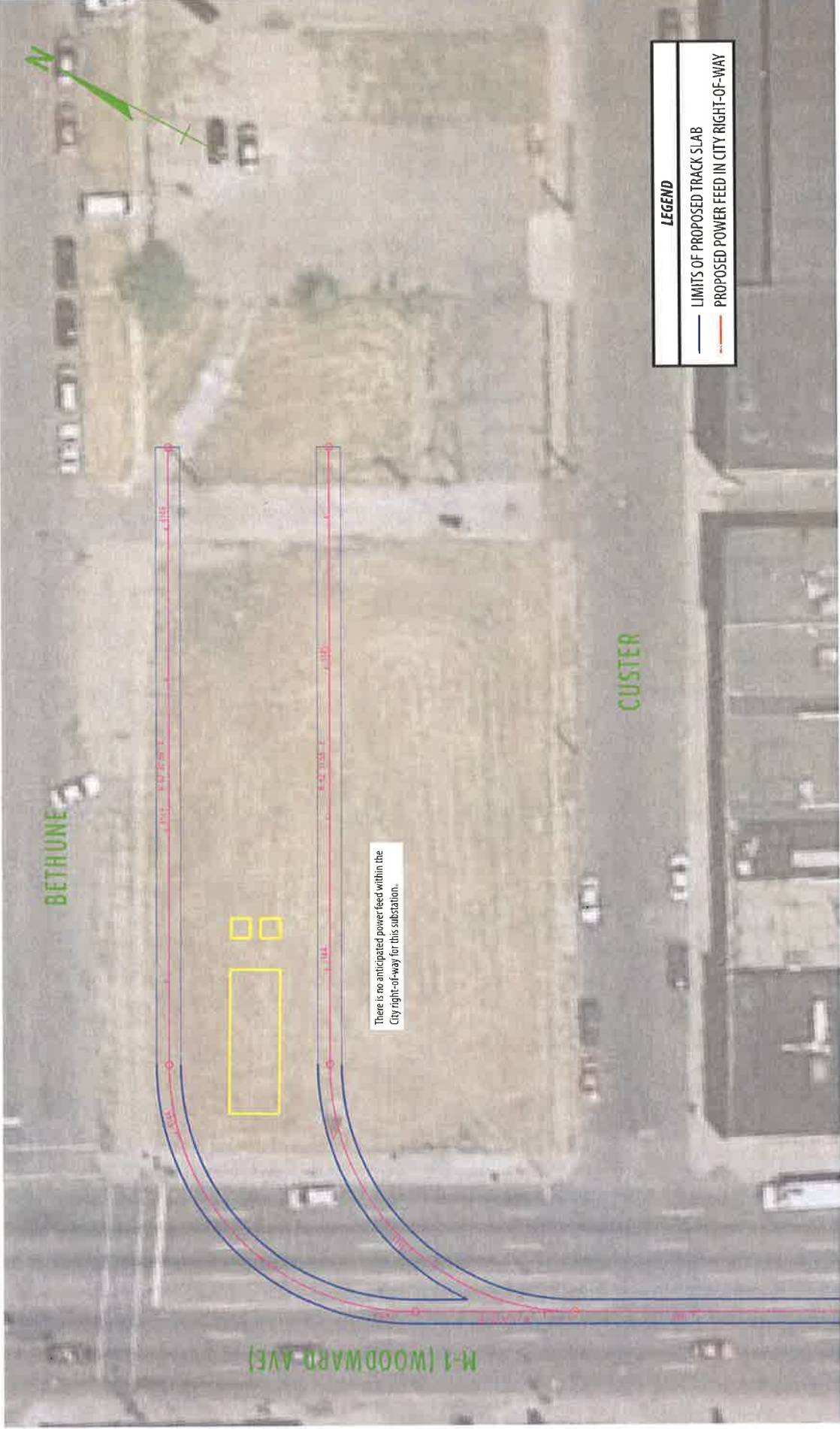


LEGEND	
	LIMITS OF PROPOSED TRACK SLAB
	PROPOSED POWER FEED IN CITY RIGHT-OF-WAY

Power feed shall begin at the intersection of the southbound track slab and the centerline of Amsterdam Street and shall extend west down the center of Amsterdam Street to the location of the substation, where it shall turn 90° and enter the substation, passing out of City right-of-way behind the sidewalk.

OLA Exhibit B

		DATE: 10/20/13	DRAWING: _____	SHEET: _____
		PREFERRED SUBSTATION SITE TPSS SITE 3		
<b>M-1 RAIL</b>				



LEGEND	
<span style="color: blue;">—</span>	LIMITS OF PROPOSED TRACK SLAB
<span style="color: red;">—</span>	PROPOSED POWER FEED IN CITY RIGHT-OF-WAY

There is no anticipated power feed within the City right-of-way for this substation.

0.L.A Exhibit B

<b>M-1 RAIL</b>	DATE: MONTH	PREFERRED SUBSTATION SITE	DATE
		TPSS SITE 4 / JSRF	
	 <small>0 10 20 FT.</small>		

**Exhibit B LEGEND**

-  Parcel Line
-  Limits of Proposed VSMF Site
-  City ROW to be Vacated

