TOWN OF NEW CASTLE, COLORADO
RESOLUTION NO. 2014-23

A RESOLUTION OF THE NEW CASTLE TOWN COUNCIL APPROVING A MAINTENANCE AGREEMENT WITH COLORADO DEPARTMENT OF TRANSPORTATION REGARDING THE PEDESTRIAN BRIDGE CROSSING.

WHEREAS, the Town of New Castle ("Town") is pursuing the construction of a new pedestrian bridge near the I-70 interchange to connect County Road 335 on the South side of the Colorado River to Highway 6&24 on the North side of the Colorado River (the "Project"); and

WHEREAS, as part of the Project, the new bridge will cross I-70, which is maintained by the Colorado Department of Transportation ("CDOT");

WHEREAS, the new bridge will also cross the existing railroad tracks owned and controlled by Union Pacific Railroad Company ("UPRC");

WHEREAS, a separate agreement with UPRC was adopted under Resolution No. 2014-25 to further the Project; and

WHEREAS, the Town Council desires to approve a Maintenance Agreement with CDOT regarding maintenance obligations in furtherance of the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF NEW CASTLE, COLORADO:

1. Recitals. The foregoing recitals are incorporated herein as findings and determinations of the Town Council.

2. Agreement Approved. The Maintenance Agreement attached hereto as Exhibit 1 (the "Agreement") is hereby approved by the Town Council, and the Mayor and Town Clerk are authorized to execute the Agreement, subject to the provisions of this Resolution.

3. Colorado Law Savings Clause. All provisions of the Agreement and the exhibits thereto are subject to and governed by Colorado law. Nothing herein nor in the Agreement shall be deemed a waiver of any provision of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, nor of any provision of the Colorado Constitution. Nothing herein shall be deemed or construed to be a multiple-fiscal year direct or indirect debt or financial obligation within the meaning of Section 20, Article X of the Colorado Constitution, and any multiple-fiscal year financial obligations of the Town are always subject to budgeting and appropriation by separate action of the Town Council in the time and manner prescribed by law. Nothing herein nor in the Agreement shall be deemed a waiver of the Town's tax-exempt status. To the extent that anything in this Resolution or in the Agreement shall be declared illegal, invalid, or unenforceable by a court of competent jurisdiction, such determination shall not invalidate the remaining provisions of this Resolution or the Agreement, which are declared to be severable.

SO RESOLVED at a duly-noticed public meeting of the New Castle Town Council this 5th day of August, 2014.

Bob Gordon, Mayor

Attest:

Melody Harrison, Town Clerk

($0.00 Maintenance and Operations)
Project N/A
Regional Transportation District
REGION 3 – wma/cjf

SAP # 351001045

FOR CDOT TRACKING PURPOSES
(subject to change).

MAINTENANCE AGREEMENT

THIS CONTRACT is made this 29th day of August 2014 by and between the State of Colorado for the use and benefit of the COLORADO DEPARTMENT OF TRANSPORTATION ("State" or "CDOT"), and the Town of New Castle ("Local Agency") PO Box 90, New Castle, CO, 81647, CDOT Vendor #: 2000329, which may also be referred to herein individually, as a "Party" and collectively as the "Parties."

RECITALS

1. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.

2. The Parties desire to enter into this Contract to delineate each ones responsibilities for maintenance of a pedestrian bridge (F-06-N) at the interchange of I-70 and the Town of New Castle, detailed in **Exhibit A and Exhibit C**;

3. The Parties will execute **Special Use Permit # 3140157-S** to be signed in conjunction with this Contract.

4. The State and the Local Agency have the authority, as provided in Sections 29-1-203, 43-1-106, 43-2-103, 43-2-104, and 43-2-144 CRS, as amended, and in applicable ordinance or resolution duly passed and adopted by the Local Agency, to enter into this Contract with the Local Agency for the purpose of maintaining the improvements constructed on the pedestrian bridge under Project (F-06-N); and

5. The Parties have the resources to perform the desired maintenance of the pedestrian bridge, once completed.

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work

The Parties listed in this Agreement are in partnership to construct improvements at the pedestrian bridge at the I-70 and New Castle interchange. The maintenance responsibilities have been agreed to and are detailed in **Exhibit A** and **Exhibit C**.

The Local Agency and CDOT will be responsible for maintaining various aspects of the completed improvements and structures of the interchange as detailed in **Exhibit A** and **Exhibit C**.

Section 2. Order of Precedence

In the event of conflicts or inconsistencies between this Contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Special Provisions contained in Section 21 of this Contract
2. This Contract
3. **Exhibit A** (Scope of Work)
4. **Exhibit C** (Map)
5. Special Use Permit # 3140157-S

Section 3. Term

This Contract shall be effective upon approval of the Chief Engineer. The term of this Contract shall run in perpetuity or until it is modified or terminated in writing by both parties.

Section 4. State and Local Agency Commitments

A. CDOT and the Local Agency shall be responsible for "highway maintenance and operations" for specific structures, systems and highway segments described herein. Such responsibilities are detailed in **Exhibit A**.

B. CDOT and the Local Agency shall perform maintenance and operations under this Contract in accordance with State policies and procedures. ("Maintenance" does not include reconstruction of portions of the highways destroyed by major disasters, fires, floods, or Acts of God. Provided, however, that the Local Agency shall give the State immediate notice of the existence of any such conditions on the highways.)

C. CDOT and the Local Agency shall perform all maintenance and operations responsibilities on an annual basis. CDOT and the Local Agency's performance of such responsibilities shall comply with the standards that are currently used by the State. Any standards/directions provided by the State's representative to the Local Agency concerning the maintenance and operations services shall be in writing.

D. The Local Agency shall perform maintenance and operations projects in accordance with the terms of this Contract.

Section 5. Permission to Enter

The State grants, bargains and conveys to the Local Agency and its agents permission to enter, occupy, then exit the State's ROW as necessary for the purpose of maintaining the areas, structures and facilities described in **Exhibit A and Exhibit C** to ensure their proper working condition as provided herein.

Section 6. Record Keeping

The Local Agency shall maintain a complete file of all records, documents, communications, and

other written materials, which pertain to the maintenance and operations plans under this Contract. The Local Agency shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the State to inspect the project and to inspect, review and audit maintenance and operations project records.

Section 7. Termination Provisions

CDOT, at its sole discretion, may terminate this agreement if it is determined to no longer be in the State's interest.

Section 8. Legal Authority

Both Parties hereto warrant that they possess the legal authority to enter into this Contract and that they have taken all actions required by their respective procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatories to execute this Contract and to bind their respective entities to its terms. The person(s) executing this Contract on behalf of each Party warrants that such person(s) has full authorization to execute this Contract.

Section 9. Representatives and Notice

The State will provide liaison with the Local Agency through the State's Region 3 Director, 222 South 6th Street, #308, Grand Junction 81501. Said Region Director will also be responsible for coordinating the State's activities under this Contract. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Transportation Region and the Local Agency. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either party may from time to time designate in writing new or substitute representatives.

If to State:
Daniel Roussin
R3 Permit Manager
222 South 6th Street, #100
Grand Junction, CO 81501
970-683-6284
daniel.roussin@state.co.us

If to the Local Agency:
Tom Baker
Town Administrator
PO Box 90
New Castle, CO 81647
970-984-2311
tbaker@newcastlecolorado.org

Section 10. Successors

Except as herein otherwise provided, this Contract shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

Section 11. Third Party Beneficiaries

The waiver of any breach of a term, provision, or requirement of this Contract shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

Section 12. Governmental Immunity

Notwithstanding any other provision of this Contract to the contrary, no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, CRS, as now or hereafter amended. The Parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, the Local Agency and their respective departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of §24-10-101, *et seq.*, CRS, as now or hereafter amended and the risk management statutes, §§24-30-1501, *et seq.*, CRS, as now or hereafter amended.

Section 13. Severability

To the extent that this Contract may be executed and performance of the obligations of the Parties may be accomplished within the intent of the Contract, the terms of this Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

Section 14. Waiver

The waiver of any breach of a term, provision, or requirement of this Contract shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

Section 15. Entire Understanding

This Contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved by both parties.

Section 16. Survival of Contract Terms

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms

and conditions of this Contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the Contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to comply by the Local Agency.

Section 17. Modification and Amendment

A. This Contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this Contract shall be effective unless agreed to in writing by both Parties in an amendment to this Contract that is properly executed and approved in accordance with applicable law.

B. Either party may suggest renegotiation of the terms of this Contract, provided that the Contract shall not be subject to renegotiation more often than annually, and that neither Party shall be required to renegotiate. If the Parties agree to change the provisions of this Contract, the renegotiated terms shall not be effective until this Contract is amended/modified accordingly in writing.

Section 18. Disputes

Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the Contract in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals will be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Section 19. Does not supersede other agreements

This Contract is not intended to supersede or affect in any way any other contract (if any) that is currently in effect between the State and the Local Agency for other "maintenance and operations services" on State Highway rights-of-way within the jurisdiction of the Local Agency.

Section 20. Sub-Local Agencies

The Local Agency may enter into a subcontract for any part of the performance required under this

Contract, subject to advance written notice to the State. The State understands that the Local Agency may intend to perform some or all of the services required under this Contract through a Sub-contract. The Local Agency agrees not to assign this Contract without the express, written consent of the State which shall not be unreasonably withheld. Except as herein otherwise provided, this Contract shall inure to the benefit of and be binding only upon the parties hereto and their respective successors and assigns.

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Section 21. Colorado Special Provisions apply to all Contracts except where noted in *italics*

1. **CONTROLLER'S APPROVAL. CRS §24-30-202(1).** This Contract shall not be valid until it has been approved by the Colorado State Controller or designee.

2. **FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. **GOVERNMENTAL IMMUNITY.** No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

4. **INDEPENDENT LOCAL AGENCY.** Local Agency shall perform its duties hereunder as an independent Local Agency and not as an employee. Neither Local Agency nor any agent or employee of Local Agency shall be deemed to be an agent or employee of the State. Local Agency and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Local Agency or any of its agents or employees. Unemployment insurance benefits will be available to Local Agency and its employees and agents only if such coverage is made available by Local Agency or a third party. Local Agency shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Local Agency shall not have authorization, express or implied, to bind the State to any contract, liability or understanding, except as expressly set forth herein. Local Agency shall **(a)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(b)** provide proof thereof when requested by the State, and **(c)** be solely responsible for its acts and those of its employees and agents.

5. **COMPLIANCE WITH LAW.** Local Agency shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

6. **CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Contract, to the extent capable of execution.

7. **BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contact or incorporated herein by reference shall be null and void.

8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Local Agency hereby certifies and warrants that, during the term of this Contract and any extensions, Local Agency has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Local Agency is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Local Agency has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Local Agency's services and Local Agency shall not employ any person having such known interests.

10. ***VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.[Not Applicable to intergovernmental contracts]*** *Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for:* ***(a)*** *unpaid child support debts or child support arrearages;* ***(b)*** *unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.;* ***(c)*** *unpaid loans due to the Student Loan Division of the Department of Higher Education;* ***(d)*** *amounts required to be paid to the Unemployment Compensation Fund; and* ***(e)*** *other unpaid debts owing to the State as a result of final agency determination or judicial action.*

11. ***PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.[Not Applicable to contracts relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental contracts, or information technology services or products and services]*** *Local Agency certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Local Agency shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a Contract with a sub-Local Agency that fails to certify to Local Agency that the sub-Local Agency shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Local Agency* ***(a)*** *shall not use E-Verify Program or Department program procedures to undertake preemployment screening of job applicants while this Contract is being performed,* ***(b)*** *shall notify the sub-Local Agency and the contracting State agency within three days if Local Agency has actual knowledge that a sub-Local Agency is employing or contracting with an illegal alien for work under this Contract,* ***(c)*** *shall terminate the subcontract if a sub-Local Agency does not stop employing or contracting with the illegal alien within three days of receiving the notice, and* ***(d)*** *shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Local Agency participates in the Department program, Local Agency shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Local Agency has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Local Agency fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Local Agency shall be liable for damages.*

12. **PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.** Local Agency, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she **(a)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(b)** shall comply with the provisions of CRS §24-76.5-101 et seq., and **(c)** has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Contract.

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Section 22. SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

*** Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.**

LOCAL AGENCY:	**STATE OF COLORADO** **JOHN W. HICKENLOOPER, GOVERNOR**
Town of New Castle Vendor #2000329 Bob Gordon Signature of Authorized Officer Bob Gordon Print Name of Authorized Officer Mayor Title of Authorized Officer Date: August 5, 2014	Joshua Laipply By: Scott McDaniel, PE, Acting Chief Engineer for Donald E. Hunt, Executive Director Date: 8/29/2014

LOCAL AGENCY: (A Local Agency attestation is required.) Attest (Seal) By (Town/City/County Clerk)

Melody Harmon
TOWN CLERK

TOWN OF NEW CASTLE
GARFIELD SEAL COUNTY
COLORADO

(Place Local Agency seal here, if available)

EXHIBIT A – SCOPE OF WORK

Scope of Work
CDOT Region 3
New Castle Pedestrian Bridge-Maintenance

April 2014

Maintenance Responsibilities - between CDOT and Town of New Castle for the Pedestrian Bridge (F-06-N) adds the following responsibilities:

Town of New Castle to Maintain:

- Repair and/or replacement of lighting, landscaping, special signage, all curb and gutter, trail paving, pedestrian bridge and handi-cap ramps.
- Snow removal inherent to the appurtenances and peculiarities of the pedestrian facilities, including curbs, drainage structures, trail and bridges beyond the traveled way for vehicles.
- Town of New Castle shall take ownership of the pedestrian bridge upon completion. This shall include all appurtenances of the structure of the bridge.
- Town of New Castle shall do a bridge structure report and submit it to Staff Bridge every 24 months.

CDOT to maintain:

- All Lanes and shoulders of I-70 and the I70 Spur (New Castle Interchange)
- Long term I-70 and the I70 Spur (New Castle Interchange) pavement maintenance including capital improvements
- Signing and striping of I-70 and the I70 Spur (New Castle Interchange)
- Guardrails along or adjacent to I-70 and the I70 Spur (New Castle Interchange)
- Snowplowing I-70 and the I70 Spur (New Castle Interchange)
- Maintain and mow per Maintenance Level of Service, all un-irrigated landscaping (CDOT approved seed mix only, 3:1 slope or shallower).

Upon the closure of the project the above responsibilities take effect.
The above delineations apply only to new construction produced by the project. Existing unaltered appurtenances will continue to be maintained as they are currently.

TOWN OF NEW CASTLE, COLORADO
RESOLUTION NO. 2014-23

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WHEREAS, a separate agreement with UPRC was adopted under Resolution No. 2014-25 to further the Project; and

WHEREAS, the Town Council desires to approve a Maintenance Agreement with CDOT regarding maintenance obligations in furtherance of the Project.

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SO RESOLVED at a duly-noticed public meeting of the New Castle Town Council this 5th day of August, 2014.

Bob Gordon, Mayor

Attest:

Melody Harrison, Town Clerk

TOWN OF NEW CASTLE
GARFIELD
SEAL
COUNTY
COLORADO

EXHIBIT C – MAP

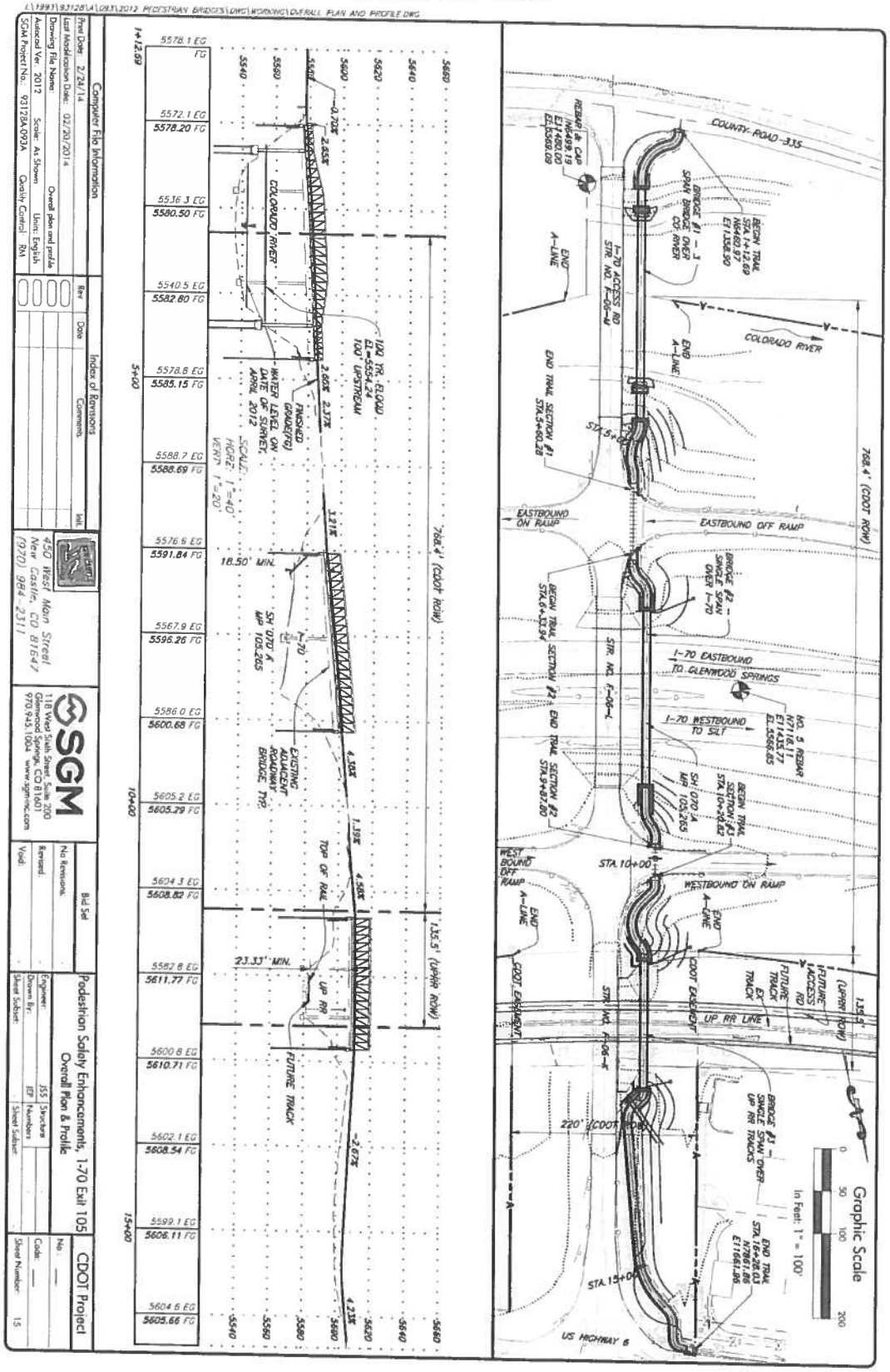

Exhibit C