

Property Management #: 100732

BIKE/PEDESTRIAN TRAIL LICENSE

THIS LICENSE, made this 11 day of SEPTEMBER, 2009 by and between the State of Colorado for the use and benefit of THE DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "State", and **THE CITY OF GRAND JUNCTION, a Colorado home rule municipality**, hereinafter referred to as the "Local Agency",

WHEREAS, required approval, clearance and coordination has been accomplished from and with the appropriate agencies; and

WHEREAS, the State owns certain property as shown on the map attached as Exhibit A, hereinafter referred to as the "State's Right of Way" which is used for **SH Highway 340** right of way; and

WHEREAS, the Local Agency has planned and anticipates a project for the construction appurtenances to a non-motorized trail, as defined by Section 33-11-103(4), C.R.S., as amended; and

WHEREAS, the Local Agency desires to construct a bike/pedestrian path within the State's Right of Way (the "path") as part of the **Highway 340 No Thoroughfare Trail** Improvements and as a connecting trail link underneath **Highway 340 Bridge Structures H-02-S and H-02-GC at approximate Mile Post 12.610**; and

WHEREAS, the Local Agency has requested permission to construct the path to allow for non-motorized trail traffic to enter, occupy, and then exit the State's Right of Way as shown on the attached plans ("the Trail Project"); and

WHEREAS, the State desires to allow the Local Agency to use the State's Right of Way for construction and use of a trail, as described herein, subject to the terms and conditions of this contract; and

WHEREAS, the Local Agency recognizes that the State must retain the superior right to use the State's Right of Way for highway purposes, and the Local Agency desires to agree to relinquish the use of such right of way without any cost or liability to the State, pursuant to the terms of this contract; and

WHEREAS, the Trail Project is to be specifically described in the plans and specifications ("the Plans"), which Plans shall be provided by the Local Agency; and

WHEREAS, the Local Agency desires to pay for the cost of the Trail Project; and

WHEREAS, the State desires to review the design and construction of the proposed Trail Project to ensure the integrity of the State's right of way in the project area; and

WHEREAS, the State and Local Agency consider it to be in their mutual interest to cooperate in and to agree upon certain responsibilities with regard to performance of the Trail Project; and

WHEREAS, this contract is executed by the State pursuant to the provision of Sections 43-2-103 and 43-2-144, C.R.S., as amended; and

WHEREAS, the Local Agency has executed this contract under the appropriate authority.

NOW, THEREFORE, it is hereby agreed that:

- A. The Local Agency shall be responsible for the preparation of the Plans and for the accuracy and completeness of the Plans. The Plans are made a part of this contract by this reference. Use of the trail will be limited to bicycles, pedestrians, wheelchairs, and other non-motorized users. No motorized vehicle use will be permitted, with the exception of motorized vehicles necessary for maintenance of the trail, motorized wheelchairs, and emergency vehicles and emergency access.
- B. The Local Agency shall be responsible for the construction of the Trail Project in accordance with the Plans and intends to retain an independent contractor (the "Contractor") to construct the Project. The Local Agency shall administer and provide technical direction to the Contractor concerning such construction, as provided herein.
- C. The State shall review the Plans for the Trail Project, the Local Agency's contract with the Contractor, and review construction of the Trail Project as described herein, so that construction of the Trail Project by the Local Agency will meet Federal and State standards, the provisions of this contract and the Local Agency's construction contract.
- D. The Local Agency shall be solely responsible for all costs of the Trail Project including, but not limited to, costs of design and construction of the Trail Project.
- E. The Local Agency shall be solely responsible for any and all damage to the State's roadway, structures and/or associated facilities caused by the construction, operation, or

maintenance of the Trail Project within the State's Right of Way, except for damage caused by the State or its agents. Any such damage shall be corrected in accordance with the State's standards at the Local Agency's sole expense.

F. The Local Agency shall be solely responsible and liable for any and all claims, damages, liability and court awards including costs, expenses and attorney fees, which arise as a result of the acts of its employees or agents or their acts of omission, if any, in constructing, operating, or maintenance of the Trail Project within the State's Right of Way. Nothing in this contract shall be construed as a waiver by the State or the Local Agency of the provisions and protections of the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as now enacted or hereafter amended.

G. The State will provide liaison with the Local Agency through the State Region Transportation Director, Region 3, located at 222 South 6th Street, Grand Junction, Colorado 81501. Said Region Transportation Director is responsible for coordinating the State's activities under this contract.

H. The Local Agency will provide:

1. Preliminary engineering, design services and preparation of construction plans, and special provisions.
2. Design worksheets used in design of the Trail Project.

I. The Local Agency will comply with the following:

1. The Local Agency will be responsible for the plans being accurate and complete.
2. Notwithstanding any review or consents given by the State for said plans or the performance by the State of the construction review services, the State will not be liable or responsible in any manner for the design details, or construction of the Trail Project.

J. The State will review The Local Agency's construction plans and special provisions and indicate those changes necessary to assure compliance with State and FHWA requirements.

The Local Agency will afford the State 10 business days to review the construction plans and special provisions as changed, and said plans shall be considered final when accepted

by the parties hereto. In the event the State does not object to the construction plans and special provisions within 10 business days after the date of mailing by the Local Agency, the construction plans and special provisions shall be deemed accepted by the State.

K. The Local Agency shall not start construction of the Trail Project on State Right of Way, nor authorize the Contractor to start construction, until the State issues a written notice to proceed to the Local Agency, which notice shall not be unreasonably withheld or unduly delayed. In the event the Local Agency contracts for construction of the Trail Project, the Local Agency shall provide final assembly of construction contract documents, advertise the call for bids, receive and open bid proposals, award the construction contract, administer the construction contract and prepare and issue any contract amendments. All such documents and procedures, including award of the construction contract, shall substantially comply with standard State construction specifications and legal requirements and shall be subject to review by the State. The construction contract between the Local Agency and the Contractor shall be subject to prompt review and concurrence by the State, which concurrence shall be evidenced by a letter from the Region Transportation Director. In the event the State does not object to the construction contract within 10 business days after the date of mailing by the Local Agency, the construction contract shall be deemed accepted by the State. Such construction contract between the Local Agency and the Contractor shall contain provisions to protect the interests of the State, including, but not limited to:

1. The Local Agency shall procure from the Contractor certificates of insurance and shall deliver copies of the same directly to the State. The types and limits of insurance shall be at a minimum as follows:

2. Workers' Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all employees acting within the course and scope of their employment and work on the activities authorized by this License in Paragraph 4.

3. Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering Premises operations, fire damage, independent Consultants, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

1. \$1,000,000 each occurrence;
2. \$2,000,000 general aggregate;
3. \$50,000 any one fire.

If any aggregate limit is reduced below, \$1,000,000 because of claims made or paid, the Local Agency, or as applicable, its Contractor, shall immediately obtain additional insurance to restore the full aggregate limit and furnish to CDOT a certificate or other document satisfactory to CDOT showing compliance with this provision.

4. If any operations are anticipated that might in any way result in the creation of a pollution exposure, Local Agency, or as applicable, its contractor, shall also provide Pollution Legal Liability Insurance with minimum limits of liability of \$1,000,000 Each Claim and \$1,000,000 Annual Aggregate. CDOT shall be named as an Additional Insured to the Pollution Legal Liability policy. The Policy shall be written on a Claims Made form, with an extended reporting period of at least two year following finalization of the License.

5. Umbrella or Excess Liability Insurance with minimum limits of \$1,000,000. This policy shall become primary (drop down) in the event the primary Liability Policy limits are impaired or exhausted. The Policy shall be written on an Occurrence form and shall be following form of the primary. The following form Excess Liability shall include CDOT as an Additional Insured.

6. CDOT shall be named as Additional Insured on the Commercial General Liability Insurance policy. Coverage required by the License will be primary over any insurance or self-insurance program carried by the State of Colorado.
7. The Insurance shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to CDOT by certified mail to the address contained in this document.
8. The insurance policies related to the License shall include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against CDOT, its agencies, institutions, organizations, officers, agents, employees and volunteers.
9. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to CDOT.
10. In order for this License to be executed, the Local Agency, or as applicable, their Contractor, shall provide certificates showing insurance coverage required by this License to CDOT prior to the execution of this License. No later than 30 days prior to the expiration date of any such coverage, the Local Agency or Contractor shall deliver to the Notice Address of CDOT certificates of insurance evidencing renewals thereof. At any time during the term of this License, CDOT may request in writing, and the Local Agency or Contractor shall thereupon within 10 days supply to CDOT, evidence satisfactory to CDOT of compliance with the provisions of this section. Insurance coverage must be in effect or this License is in default.
11. Notwithstanding subsection (a.) of this section, if the Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act CRS 24-10-101, et seq., as amended ("Act"), the Local Agency shall at all times during the term of this License

maintain only such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by CDOT, the Local Agency shall show proof of such insurance satisfactory to CDOT. Public entity Local Agencies are not required to name CDOT as an Additional Insured.

12. If the Local Agency engages a Contractor to act independently from the Local Agency on the Premises, that Contractor shall be required to provide an endorsement naming CDOT as an Additional Insured on their Commercial General Liability, and Umbrella or Excess Liability policies.

13. To the extent authorized by law, the Contractor shall indemnify, save and hold harmless the State and the Local Agency, their employees and agents, against any and all claims, damages, liability, and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

L. The State hereby grants a license to the Local Agency to use a section of the State's Right of Way as described in Exhibit A, attached hereto and made a part hereof. The sole purpose of the license is for the construction and maintenance of a recreational trail to allow for non-motorized traffic (as defined in paragraph A of this License) to enter State Right of Way, travel within State Right of Way as shown on the Plans, and then exit the State's Right of Way.

M. The Local Agency recognizes that the State must retain the superior right to use the State's Right of Way for highway purposes and that the Local Agency's use of the State Right of Way, as described in Exhibit A, is at all times subordinate to and subject to any and all current and future roadway operations, maintenance and State highway needs and purposes, as determined by the State in its sole discretion. The Local Agency agrees that this license is limited in scope, use, and time, as described herein. The license granted herein is a personal

right of the Local Agency, and vests no property interest in the State Right of Way to the Local Agency. The Local Agency agrees that this license is revocable by the State at no expense to the State pursuant to the following provisions:

1) The State may revoke this license, and the Local Agency shall relinquish all use of the State Right of Way without any cost or liability to the State whenever the State, in its sole discretion, determines that the State Right of Way is required for any emergency state highway purpose. The State has the right, if it determines that an emergency situation exists, to terminate this license, to stop construction of the Trail Project, or to close the Trail Project, at any time to protect public safety, to facilitate transportation activities, or for other highway purposes.

2) In non-emergency situations, the State may revoke this license and, in that event, the Local Agency shall relinquish the use of the State Right of Way without any cost or liability to the State within 180 days after receipt of written notice from the State that such right-of-way is needed for current or future roadway operations, maintenance, or other State highway needs and purposes.

N. The Local Agency will be responsible for acquiring any additional rights of way required for the completion of the Trail Project, including any necessary construction easements. Prior to the commencement of construction, the Local Agency must certify in writing to the State that all additional right of way has been secured or that no additional right of way is required.

O. The Local Agency shall obtain any required proper clearance or approval from any utility company or ditch company, which may become involved in this project, by separate agreement between the Local Agency and such other entity, if necessary, as determined by the Local Agency. Prior to the Trail Project being advertised for bids, the Local Agency must certify in writing to the State that all such necessary clearances have been obtained.

P. For the Trail Project:

1. a. The State will review and inspect the construction of the Trail Project within or affecting State Right of Way to ensure that it meets Federal and State standards and the

Plans.

1. b. Except for emergencies, or in the event an immediate threat to public safety exists, the State's Inspector will not have direct contact with the Contractor but will notify the Local Agency's Project Representative, as identified in the construction contract documents, of any State directions concerning proposed construction contract modifications, and will coordinate such modifications and its construction review services with the Local Agency. After consultation of the State's Inspector and the Local Agency's Project Representative, the State's directions will be implemented. In the event that the Local Agency project representative fails to concur in any State construction direction, then the matter will be referred to the State's Region 3 West Program Engineer for resolution.

1. c. The State's Inspector may, in writing, suspend the construction of those portions of the Trail Project within or affecting State Right of Way, wholly or in part due to the failure of the Local Agency or the Contractor to correct conditions unsafe for the workmen or the general public; for failure to carry out provisions of this contract or the construction contract including construction modifications or directions required by the State; for such periods as the State's Inspector may deem necessary due to unsuitable weather; for conditions considered unsuitable for the prosecution of the work or for any other condition or reason deemed to be in the public interest. The State shall notify the Local Agency and provide opportunity to correct such conditions prior to any suspension. The Local Agency shall include this provision in its contract with the Contractor.

1. d. The inspections done by CDOT's Inspector shall only be visual, and does not constitute an acceptance of the workmanship or materials used in the work done by the Local Agency's contractor on the Trail Project. Inspection by CDOT's Inspector does not confer any liability for the work of the Trail Project on CDOT's Inspector or CDOT.

2. a. The Local Agency shall provide construction engineering during the construction of all elements of the Trail Project. Said construction engineering will include field and office engineering, land survey controls, inspection and material testing and control by qualified

personnel.

2. b. The Local Agency shall be responsible for the administration of and payment to its contractor of all costs incurred for project construction under the construction contract with the Contractor.

Q. Upon satisfactory completion of construction of the Trail Project, the Local Agency will issue to the State a Certificate of Final Completion showing the date of final completion and certifying that the Trail Project has been constructed according to the approved plans and specifications. Determination of satisfactory completion of the Trail Project shall be made by the State in accordance with the following procedures:

1. Upon due notice from the Local Agency's project representative of presumptive completion of the Trail Project, the State's Inspector will participate in an inspection of the Trail Project with the Local Agency and the Contractor.

2. If construction of those portions of the Trail Project, within or affecting State Right of Way is found completed to the satisfaction of the State's Inspector, that inspection shall constitute the final inspection and the State's Inspector will notify the Local Agency in writing of the State's acceptance of the Trail Project as of the date of the final inspection.

3. If the inspection discloses any work, in whole or in part as being unsatisfactory, the State's Inspector will give the Local Agency directions for correction of same, and the Local Agency shall direct its contractor to implement the State's directions subject to the provisions of paragraph P.1.b. of this contract.

4. Upon correction of the work, another inspection will be made which shall constitute the final inspection provided the work has been satisfactorily completed. In such event, the State's Inspector will notify the Local Agency in writing of the State's acceptance of the Trail Project as of the date of the final inspection.

5. Final acceptance by the State under this paragraph does not waive any State legal rights contained herein.

R. The State shall not be precluded or estopped by acceptance of the Trail Project work from

showing at a later time that the Project work as constructed does not in fact conform to the approved as-built Plans. The State shall not be precluded or estopped by acceptance of the Trail Project work from recovering from the Local Agency such damage as the State may sustain by reason of the Local Agency's failure to comply with the terms of this contract. Neither acceptance by the State of the Trail Project work nor any possession of the constructed Trail Project facilities by the State, shall operate as a waiver of any portion of this contract or of any power herein reserved, or of any right to damages. A waiver of any breach of this contract shall not be held to be a waiver of any other or subsequent breach.

- S. Within 120 days after Local Agency issuance and State acceptance of the Certificate of Final Completion, the Local Agency shall prepare and deliver to the State the final sets of plans and specifications (the "As-built" plans) for the Trail Project, based upon field notes maintained by the Local Agency. A copy of said plans shall be made a part of this contract by reference.
- T. The Local Agency will maintain and operate the improvements constructed under this contract, at its own cost and expense during their useful life, in a manner satisfactory to the State, and will make ample provision for such maintenance each year. Additionally, the Local Agency shall be responsible for mowing weeds and grasses in those areas, between the Trail and the edge of the State's Right of Way where such mowing needs to be performed by walking lawn mower, rather than a tractor-type lawn mower. The parties shall meet to determine the location of these areas. Such maintenance and operations shall be in accordance with all applicable statutes and ordinances, and regulations promulgated thereunder, which define the Local Agency's obligation to maintain such improvements. The State may make periodic inspections of the Trail Project to verify that such improvements are being adequately maintained with respect to protection of the State's Right of Way. In the event that the Trail Project is not maintained in an appropriate manner, as determined by the State, the State reserves the right to notify the Local Agency, and if such maintenance remains deficient for a period of thirty (30) days after such written notice, to perform maintenance actions deemed necessary by the State and to be reimbursed by the Local Agency for the costs of such

maintenance actions. Additionally, if at any time the Trail Project is determined to be obsolete, unnecessary, or a threat to the safety of the traveling public, the parties hereto shall immediately negotiate the most appropriate and mutually desirable course for removing or covering the trail. The Local Agency shall be responsible for the cost of any such removal or coverage.

- U. In the event the portion of State highway adjacent to or over the improvements constructed under the Trail Project is widened, the Local Agency shall take all reasonable actions to provide the funding necessary for any required relocation or reconstruction of the trail. The State will provide the Local Agency the opportunity to review and comment on State plans for widening.
- V. The State hereby reserves the right to revoke the use of State Right of Way by the Local Agency in the event the Trail Project is not used as intended or if the Trail Project is found to be detrimental to the highway or its structures.
- W. Notwithstanding any review and concurrence with the Trail Project design plans or acceptance of the final constructed Trail Project, the State shall not have any liability for the construction, maintenance, or use of the Trail Project or for any act or omission by the Local Agency or the Contractor.
- X. The parties hereto agree that this contract is contingent upon all funds designated for the work herein being appropriated and made available from the Local Agency. Should the Local Agency fail to provide necessary funds as agreed upon herein, this contract may be terminated by either party. Any party terminating its interest and obligation herein shall not be relieved of any financial obligations which existed prior to the effective date of such termination. After the construction contract has been awarded and the construction contract is fully executed, this contract may not be terminated by the Local Agency until the construction of the Trail Project is completed and final bills are paid in full, unless the Local Agency restores the project site to its prior condition or completes the Project to the extent necessary to ensure public safety and to comply with the State's obligations under the state

highway system.

- Y. The term of this contract, except for provisions regarding maintenance, shall continue through the completion and final acceptance of the Trail Project by the Local Agency with concurrence from the State. The covenants with regard to maintenance of the improvements constructed under this contract shall remain in effect in perpetuity or until such time as the Local Agency is, by law or otherwise, relieved of such responsibility.
- Z. As between the parties hereto, each of them shall be responsible for its own negligence, if any, and that of its servants and employees, consistent with the provisions of the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq. Nothing in this Agreement shall be construed as a waiver by the State or the Local Agency of the respective rights and protections of either under said Act.
- AA. This contract shall inure to the benefit of and be binding upon the parties, their successors and assigns.
- AB. The term of this license shall be for a period of seven (7) years from the date first written above. The license shall be deemed fully executed when it has been signed by the State.
- AC. The Local Agency represents and warrants that it has taken all actions that are necessary or that are required by its procedures, bylaws, or applicable law, to legally authorize the undersigned signatory to execute this contract on behalf of the Local Agency and to bind the Local Agency to its terms.
- AD. The enforcement of the terms and conditions of this Agreement and all rights of actions relating to such enforcement, shall be strictly reserved to the Local Agency and the State and nothing contained in this agreement shall give or allow any claim or right of action whatsoever by any other or third person. It is the express intent of the parties to this contract that any person receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.
- AE. Permission to cross over the access control line (a-line) of the Colorado Department

of Transportation FOR THE PURPOSE OF **N/A** within the interstate right of way known as **N/A** of the Local Agency's Project Number **N/A**, more clearly described by the attached Exhibit "B" ("the property and associated a-line").

The Local Agency, in accepting this license agrees to all terms and conditions stated herein. The use of equipment on the Property and adjacent frontage road areas is subject to a Department approved traffic control plan. A temporary fence or other access control barrier must be erected during all times that work is not taking place. No equipment shall be left in the interstate right of way overnight or unattended, except for the erosion control and temporary barrier fencing. A permanent fence meeting the Department's standards and specifications must be installed upon completion of the work. All areas disturbed will be restored to CDOT's satisfaction including stockpiling of existing topsoil to be replaced at the completion of the project, finish grading to restore proper drainage, re-seeding, application of certified weed-free mulch, application of an organic mulch tackifier, and the removal of all appurtenances required to support the operation of the contractor. Ingress and egress to the parcel being re-graded is limited to access from the local road only. No ingress or egress from or to the parcel will be allowed from main lanes or shoulder areas of the road..

This agreement constitutes a bare license, conferring no enforceable right on Local Agency and creating no property interest. It is a mere personal privilege, non-transferable and revocable at will. This non-transferable permission shall be valid and remain in effect from _____ to _____, or until the conditions are met in full as determined by a CDOT representative. This permission may be terminated earlier in writing by either party. This permission shall not be considered a commitment by State nor in any way authorizes or guarantees any continuing use of the Property. Local Agency assumes liability for the maintenance, operation, and use of both the temporary access and the re-grading area and agrees to defend, indemnify, and hold harmless the grantor and any employees, agents contractors, or other

representatives of the State against any and all damages, claims, liability, loss, or expenses, including attorney's fees and litigation costs, arising from or in any way related to the maintenance, operation, or use of the access or the issuance or use of this license. Upon the expiration or cancellation of the license, the Local Agency shall close the access to the interstate right of way and restore the highway property to the satisfaction of the State. This permission to cross the A-line automatically expires when, and if; the Local Agency ceases as an organization or fails to perform the above maintenance responsibilities during the effective time of this license. This Permission to cross is not a State Highway Access Permit.

IN WITNESS WHEREOF, the parties hereto have executed this contract the day and year first above written.

**Department of Transportation
State of Colorado**

ATTEST:

By *[Signature]* For:
Chief Clerk for Right of Way

By *[Signature]*
Pamela Hutton, PE
Chief Engineer

LOCAL AGENCY

ATTEST:

By *[Signature]*
Title *[Signature]*
Assistant

By *[Signature]*
Title *[Signature]*
Deputy City Manager

GRAND RIVER SUBDIVISION		
Parcel No.	Owner	Location
13, 13A, B, 13B	City of Grand Junction, a municipal Corporation	All of Block's 3 B 4
14 & 16	City of Grand Junction	All Street's B Alley's
15	George E. Fortune & Paul Britton	Part of Lots 2 B 4, Lot's 6-14 of Block 5

RIGHT OF WAY GRAND JUNCTION-WEST		
CARPENTER'S SUBDIVISION NO. 2		
Parcel No.	Owner	Location
20	Dorothy L. Brown	Lot's 18-29 of Block 7
19 & 21	City of Grand Junction	All Street's & Alley's
22	Marvin R. Dersham, Jr.	South 25' of Lot's 1-5 of Block
23	Planned Credit, Inc. an Oklahoma Corporation	North 100' of Lot's 1-3 of Block

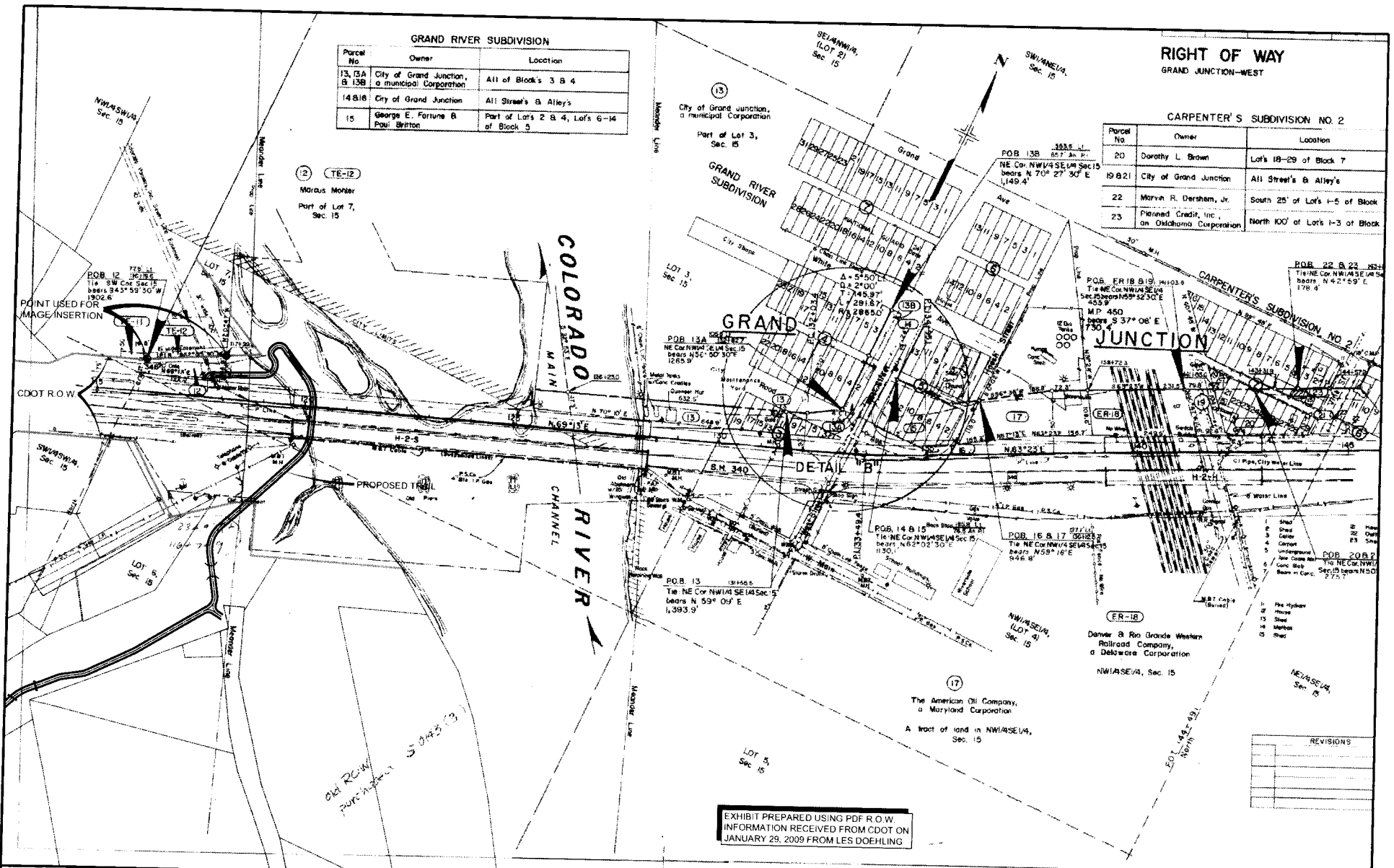
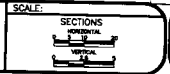


EXHIBIT PREPARED USING PDF R.O.W. INFORMATION RECEIVED FROM CDOT ON JANUARY 29, 2009 FROM LES DOEHLING

REVISION	DESCRIPTION	DATE	DRAWN BY	DATE	SCALE
REVISION			JAH	4/2009	SECTIONS
REVISION			JAH/CMB	4/2009	NONPLOT
REVISION					TOPIC
REVISION					DATE



PUBLIC WORKS AND UTILITIES ENGINEERING DIVISION

NOTHUROUGHFARE PEDESTRIAN TRAIL CDOT R.O.W. EXHIBIT