




HISTORIC
FRANKLIN
TENNESSEE

ITEM #20
BOMA
08/14/2012

MEMORANDUM

August 9, 2012

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator 
David Parker, City Engineer/CIP Executive
Paul Holzen, Director of Engineering

SUBJECT: **Consideration of Proposed Tennessee Department of Transportation (TDOT) Contract No 110369, PIN 106269.04/116326.00 (COF Contract No 2012-0070) for Roadway Improvements Along Goose Creek By-Pass (SR 248), Berry Farms Crossing and Five Mile Crossing.**

Purpose

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) with information to consider the proposed Tennessee Department of Transportation (TDOT) Contract No 110369, PIN 106269.04/116326.00 (COF Contract No 2012-0070) for roadway improvements along Goose Creek By-Pass (SR 248), Berry Farms Crossing and Five Mile Crossing.

Background

The Tennessee Department of Transportation (TDOT) is currently widening Interstate 65 (I-65) to relieve congestion levels and improve safety. The specific project limits are from North of State Route (SR) 840 to north of State Route (SR) 96, a total of 6.5 miles. In addition, the project scope will include the significant modification of the interchange at SR 248 (Goose Creek By-Pass) and widening of the SR 248 (Goose Creek By-Pass). As identified in the Interchange Modification Study, the proposed design will include an 8-lane bridge over I-65 to provide opposing dual left turns and 3 through lanes in each direction. SR 248 (Goose Creek Bypass) shall be widened from 2 lanes to a 4 lane median divided facility with bike lanes.

Due to Federal Highway Administration (FHWA) requirements, TDOT is required to restrict access within a certain distance from the interchange along SR 248 (Goose Creek By-Pass) and Peytonsville Road. In order to meet this restricted access requirement on the west side of I-65, TDOT has to cul-de-sac Old Peytonsville Road prior to its intersection with SR 248. An alternate access to the area north of SR 248 is required due to the cul-de-sac and this is to be accomplished through a connection of Old Peytonsville Road to the west across Five Mile Creek into the Berry Farms Development property (see attached Exhibit – estimated cost of \$2,061,858.00) with an extension of the proposed Five Mile Crossing roadway that is a part of the Berry Farms Development. Since the Berry Farms Development is required to construct the roadway system within their Development, TDOT has requested that the portion of Five Mile Crossing within the Development and Berry Farms Crossing (roadway that provides connection from Five Mile Crossing to SR 248) be funded by the City (see attached Exhibit – estimated cost of \$1,630,945.65). Due to these roadways within the Development needing multiple utilities within their ROW and to better allow for coordination of the construction of these roadways with the other portions of the Development, staff has worked with Boyle's staff to come to an



understanding that these roadways will be constructed by the Development with a completion time frame that will allow for the completion of the TDOT projects in a timely manner. A separate agreement between Boyle Investment Company and the City for this work will be presented to BOMA for approval in the near future.

On the eastern side of I-65 TDOT will be required to construct a new intersection (relocated Long Lane) that will provide access to the TA Travel Center. The relocation of Long Lane is being completed in accordance with City Standards and per the City's preliminary design completed in 2007. TDOT and FHWA requirements to restrict access are resulting in the ROW acquisition and construction of the Long Lane Relocation to be the responsibility of TDOT. The cost of this improvement is estimated to be approximately \$3,271,164.35 (See Attached Exhibit).

During the design process it was recognized that the proposed improvements on SR 248 (Goose Creek By-Pass) ended approximately 1,300 LF short of Lewisburg Pike. Boyle Investment Company is currently improving the intersection of Lewisburg Pike (SR 106, US 431) and Goose Creek By-Pass (SR 248) as part of the Berry Farm's Development. These two improvements projects will result in a small section of the Goose Creek By-Pass unimproved at the time of completion of the two projects. TDOT has estimated that the ROW acquisition and construction for this small section will cost approximately \$1,213,980 (see attached Exhibit). Given the amount of funding that TDOT is committed to spend for ROW and construction of local City Streets, TDOT has requested that the City of Franklin cover this additional cost to allow for this small section of roadway to be included in the design and construction plans for the proposed Interchange Modifications at I-65 and SR 248 (Goose Creek By-Pass). It is important to note that, in accordance with the approval by the City of the Development, Phase D of the Berry Farms Development cannot begin until Goose Creek By-Pass along the frontage of the Development is improved and the interchange construction (I-65 @ SR 248 (Goose Creek By-Pass)) has started.

Financial Impact

TDOT is requesting the City to cover the estimated cost associated with the construction of the presently unfunded section of SR 248 (Goose Creek By-Pass). The financial impact to the City will be \$1,213,980.00 (Based on TDOT's Estimate). It is recommended that this cost be allocated to the Road Impact Fund, which would allow for recovery from development benefitting from this roadway improvement. It is recommended that this payment be made to TDOT as a reimbursement.

Recommendation

If funding is available staff recommends approval of the proposed TDOT Contract No 110369, PIN 106269.04/116326.00 (COF Contract No 2012-0070) for Roadway Improvements along Goose Creek By-Pass (SR 248), Berry Farm's Crossing and Five Mile Crossing. Since there are still questions as to the exact language to be included in the proposed Contract, approval of this Contract should be contingent upon contract language approval by the City Engineer, City Attorney and City Administrator.

Agreement Number: 110369

Project Identification Number: 106269.04/ 116326.00

Federal Project Number: STP- 248(13)

**State Project Number: 940005-2212-14
940005-3212-14**

State of Tennessee Department of Transportation

LOCAL AGENCY PROJECT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20____ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and City of Franklin (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

Roadway improvements along SR 248 (Goose Creek By-Pass) between Interstate 65 (I-65) and SR 106 (Lewisburg Pike) associated with Interchange Modifications at I-65 and SR-248 (Goose Creek By-Pass), Berry Farms Crossing from SR 248 (Goose Creek By-Pass) through its intersection with Five Mile Crossing and Five Mile Crossing east approximately from 536.5 feet from the intersection of Berry Farms Crossing / Five Mile Crossing all as depicted in Exhibit B.

The Department has agreed to develop right-of-way and construction plans for SR 248 (Goose Creek By-Pass) from proposed ~~i~~Interchange ~~m~~Modifications at I-65 and SR-248 (Goose Creek By-Pass) to SR 106 (Lewisburg Pike), a distance of approximately 1300 feet. as depicted in red in Exhibit B.

The Department has agreed to include as a part of the proposed ~~i~~Interchange ~~m~~Modifications for I-65 at SR-248 the realignment of Long Lane and driveways serving the Travel Centers of America truck stop east of I-65 as indicated in the approved Interchange Modification Report for the subject interchange location as depicted in green in Exhibit B.

The Department has agreed to include as part of the proposed ~~i~~Interchange ~~m~~Modifications for I-65 the new alignment for ~~both Berry Farms Crossing and Five Mile Crossing~~ which serves to connect Old Peytonsville Road to SR 248 ~~from both the right-of-way and construction plans~~ as depicted in yellow in Exhibit B.

The Agency has agreed to reimburse the Department for all expenditures associated with ~~design,~~ right-of-way acquisition, utility coordination and construction of the extension of ~~SR 248 (Goose Creek By-Pass)~~ between from the proposed Interchange Modifications at Interstate 65 (I-65) ~~and to~~ SR 106 (Lewisburg Pike), a distance of approximately 1300 feet.

The Agency has agreed to provide to the Department the completed portion of Berry Farms Crossing from SR 248 (Goose Creek By-Pass) through its intersection with Five Mile Crossing and Five Mile Crossing from its intersection with Berry Farms Crossing east approximately 536.5 feet to that portion of Five Mile Crossing being a part of the Department's obligation as depicted in blue on Exhibit B within twelve (12) months from the issuance of the Notice to Proceed for construction of the Interchange Modifications at I-65 and SR 248.

A. PURPOSE OF AGREEMENT

A.1 Purpose:

- a) The purpose of this Agreement is to provide for the Department's participation in the project as further described in Exhibit A and Exhibit B attached hereto and by this reference made a part hereof (hereinafter called the "Project") and state the terms and conditions as to the manner in which the Project will be undertaken and completed.

A.2 Modifications and Additions:

- a) Exhibit(s) are attached hereto and by this reference made a part hereof.

B. ACCOMPLISHMENT OF PROJECT

B.1 General Requirements:

a)

	Responsible Party	Funding Provided by Agency or Project.
Environmental Clearance by:	Department	Department
Preliminary Engineering by:	Department	Agency Department
Right-of-Way by:	Department	Agency
Utility Coordination by:	Department	Agency
Construction by:	Department	Agency

B.2 Completion Date:

- a) The Department is responsible for establishing the completion date for subject improvements.

B.3 Environmental Regulations:

- a) The Department will obtain environmental documents necessary for the completion of said project.

B.4 Plans and Specifications

- a) The Department will be responsible for the Preliminary Engineering in Section B.1.(a) of this Agreement, ~~with the Agency providing reimbursement for all expenditures incurred by the Department.~~

B.5 Right-of-Way

- a) The Department shall acquire all right-of-way necessary for the construction of the proposed action. The Agency shall reimburse the Department for ~~an~~ estimated cost associated with right-of-way acquisition necessary for the construction of the ~~proposed action~~ extension of SR 248 (Goose Creek By-Pass) from the proposed Interchange Modifications at Interstate 65 (I-65) to SR 106 (Lewisburg Pike), a distance of approximately 1300 feet.

B.6 Approval of the Construction Phase

- a) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement, when the construction phase begins, the Agency may make such periodic visits to the Project site as necessary to familiarize itself generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Construction Agreement. If there is any perceived failure, the Agency shall give prompt written notification to the Department's Resident Engineer in charge.

B.7 Detours

- a) If the Department deems a detour to be necessary to maintain traffic during a road closure, then the Department shall select, sign, and maintain the detour route in strict accordance with the Departments Final Construction Plan Notes and the Manual on Uniform Traffic Control Devices.

B.8 Utilities

- a) In the event that the Department is made responsible for the Construction phase in Section B.1(a) of this Agreement, the Department shall also be responsible for the

Utilities phase. The Agency shall reimburse the Department for ~~all~~the estimated expenditures cost incurred by the Department for Utility Coordination.

C. PAYMENT TERMS AND CONDITIONS

C.1 Total Cost:

a) The Agency agrees to reimburse the Department for eligible and appropriate Project expenditures, provided that the maximum liability of the Agency shall be as set forth in Exhibit A for the 1300 Ft. gap section on SR 248 (Goose Creek By-Pass).

a) — b) The Agency is responsible for ensuring the completion of the Berry Farms Crossing from SR 248 (Goose Creek By-Pass) through its intersection with Five Mile Crossing and the section of Five Mile Crossing east approximately 536.5 feet from the intersection of Berry Farms Crossing/Five Mile Crossing. The Agency may either contract for this work through its own procurement procedures or entering into an agreement with the developer of the Berry Farms Development.

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C.2 Eligible Costs:

a) Only Project costs incurred by the Department for each phase are eligible for Agency reimbursement.

C.3 Payment Methodology:

a) The Department shall submit a request for reimbursement to the Agency upon completion of each project phase. Each such reimbursement request (invoice) shall be accompanied by all necessary supporting documentation of allowable cost for reimbursement and proof of payment in the form of a canceled check or other means acceptable to the Agency.

b) The payment of an invoice by the Agency shall not prejudice the Agency's right to object to or question any invoice or matter in relation thereto. The Department's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Agency not to constitute allowable costs. Any payment may be reduced for overpayment or increased for under-payments on subsequent invoices.

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~~a)~~ c) Should a dispute arise concerning appyments due and owing to the Department under this Agreement, the Agency reserves the right to withhold said disputed amounts pending final resolution of the dispute.

D. STANDARD TERMS AND CONDITIONS

D.1 Appropriations of Funds:

- a) This Agreement is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Department reserves the right to terminate the Agreement upon thirty (30) days written notice to the Agency. Said termination shall not be deemed a breach of agreement by the Department. Should such an event occur, the Department shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Department shall have no right to recover from the Agency any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.2 Department and Agency Not Obligated to Third Parties:

- a) The Department and Agency shall not be obligated hereunder to any party other than the parties to this Agreement.

D.3 Independent Contractor:

- a) The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Agreement shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- b) The Agency, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101, et seq, and all other applicable laws.

D.4 Maintenance:

- a) Nothing contained herein shall be construed as changing the maintenance responsibility of either party for any part of the referenced project that lies on its system of highways. If the project funded hereunder results in the installation of any traffic signal, lighting or other electrically operated device(s), then the Agency shall be solely responsible for and pay all costs associated with maintenance and operation of all electrically operated devices together with the related equipment, wiring and other necessary appurtenances, and the Agency shall furnish electrical current to all such devices which may be installed as part of the project. Additionally, the Agency shall be solely responsible for and pay all costs associated with the maintenance and operation of solar-powered devices, including, but not limited to, replacement of solar panels, batteries, lights and lenses.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement and to the extent that the Department is responsible for accomplishing the construction of the project, the Department will notify the Agency when Construction phase of the project has been completed; provided however, that failure to notify the Agency shall not relieve the Agency of its maintenance responsibilities. The Agency shall have the right, in coordination with the Department, to inspect the construction of such traffic control devices, lighting or other electrically operated device(s) prior to the Department's acceptance; provided, however, that the decision to accept the devices shall remain solely with the Department.

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D.5 Conflicts of Interest:

- a) The Agency warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement.
- b) The Agency shall insert in all agreements entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its Contractors to insert in each of it's subcontracts, the following provision:

Comment [DP1]: This is an agreement TDOT is wanting. Shouldn't the Department be warranting against conflicts of interest to the City of Franklin.

- 1) "No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement."

D.6 Interest of Members of or Delegates to, Congress (applies to federal aid projects):

- a) No member of or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

D.7 Restrictions on Lobbying (applies to federal aid projects):

The Agency certifies, to the best of its knowledge and belief, that:

- a) No federally appropriated funds have been paid or will be paid, by or on behalf of the Agency, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.
- b) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The Agency shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

D.8 Termination for Convenience:

- a) The ~~parties agree that either party~~Department may terminate this agreement without cause for any reason. Said termination shall not be deemed a breach of agreement by the ~~terminating party~~Department. The ~~terminating party~~ Department shall give the ~~other party~~Agency at least thirty (30) days written notice before the effective termination date. ~~The final decision as to the amount for which the Department is liable shall be determined by the Department. Should the Department exercise this provision, the Agency shall not have any right to any actual general, special,~~

~~incidental, consequential, or any other damages whatsoever of any description or amount.~~

D.9 Termination for Cause:

- a) If the either party Agency fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the either party Agency violates any terms of this Agreement, the other party Department shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services. ~~Notwithstanding the above, the Agency shall not be relieved of liability to the Department for damages sustained by virtue of any breach of this Agreement by the Agency.~~
- ~~b) In the event that the Project herein described includes Federal funds, the Agency understands that if the Federal Highway Administration (FHWA) determines that some or all of the cost of this project is ineligible for federal funds participation because of failure by the Agency to adhere to federal laws and regulations, the Agency shall be obligated to repay to the Department any federal funds received by the Agency under this agreement for any costs determined by the FHWA to be ineligible.~~

b) D.10 How Agreement is Affected by Provisions Being Held Invalid:

- a) If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

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D.11 Agreement Format:

- a) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

D.12 Certification Regarding Third Party Contracts:

- a) The Agency certifies by its signature hereunder that it has no understanding or contract with a third party that will conflict with or negate this Agreement in any manner whatsoever.

D.13 Amendment:

- a) This Agreement may be modified only by a written amendment, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement.

D.14 State Liability:

- a) The Department shall have no liability except as specifically provided in this Agreement.

D.15 Agency Liability:

- a) ~~The Agency shall have no liability except as specifically provided in this Agreement.~~

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D.156 Force Majeure:

- a) The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

D.176 Required Approvals:

- a) The Department is not bound by this Agreement until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.187 Estimated Cost:

- a) The parties recognize that the estimated costs contained herein are provided for planning purposes only. They have not been derived from any data such as actual bids.
- b) In the event that the Department is made responsible in section B.1.(a) of this Agreement for the management of the herein described Project, the parties understand that more definite cost estimates will be produced during project development. These more reliable estimates will be provided to the Agency by the Department as they become available, however, as stated in section C.1 a) of this Agreement, the Agency's maximum liability for this Project is as set forth in Exhibit A.

D.18 Deposits:

- a) ~~Required deposits and any other costs for which the Agency is liable shall be made available to the Department, whenever requested.~~

D.19 Nondiscrimination:

- a) The parties agree, warrant, and assure that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices of the parties on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The parties shall show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.



-COF Contract No 2012-0070-DRAFT

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION

By: _____ Date _____ By: John C. Schroer _____ Date _____
Mayor Commissioner

APPROVED AS TO FORM AND LEGALITY APPROVED AS TO FORM AND LEGALITY
By: _____ Date _____ By: John Reinbold _____ Date _____
Attorney General Counsel

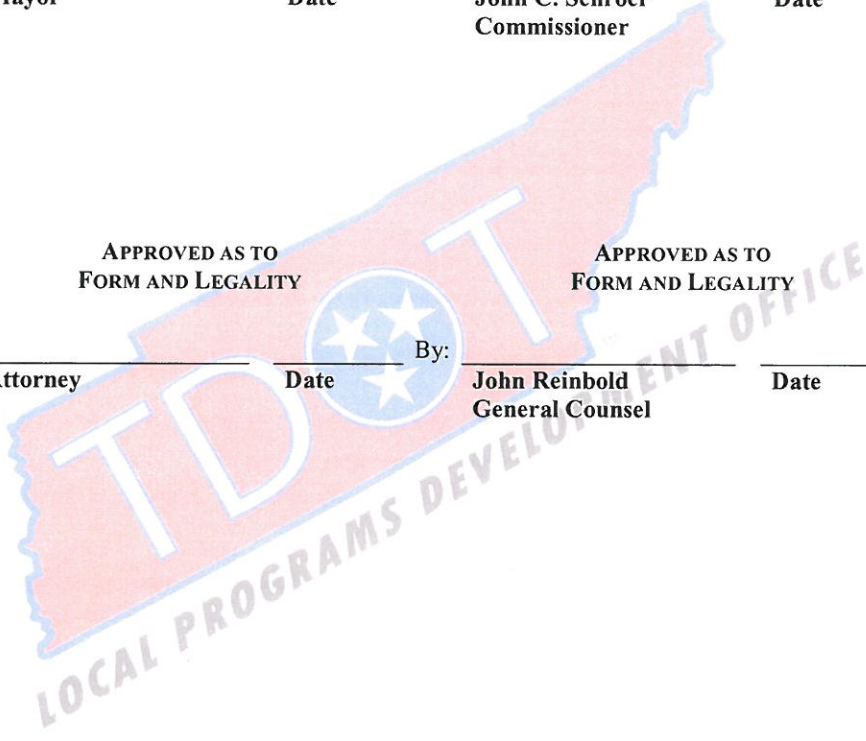


EXHIBIT "A"

CONTRACT NO.: 110369
 PROJECT IDENTIFICATION NO.: 106269.02/116326.00
 FEDERAL AID PROJECT NO.: IM/HPP-65-2(89)

PROJECT DESCRIPTION: Roadway improvements along SR 248 (Goose Creek By-Pass) between Interstate 65 (I-65) and SR 106 (Lewisburg Pike) associated with Interchange Modifications at I-65 and SR-248 (Goose Creek By-Pass), Berry Farms Crossing from SR 248 ~~to the through its~~ intersection with Five Mile Crossing and a section of Five Mile Crossing approximately 55036.5 feet from the intersection of Berry Farms Crossing / Five Mile Crossing as depicted in blue in Exhibit B..

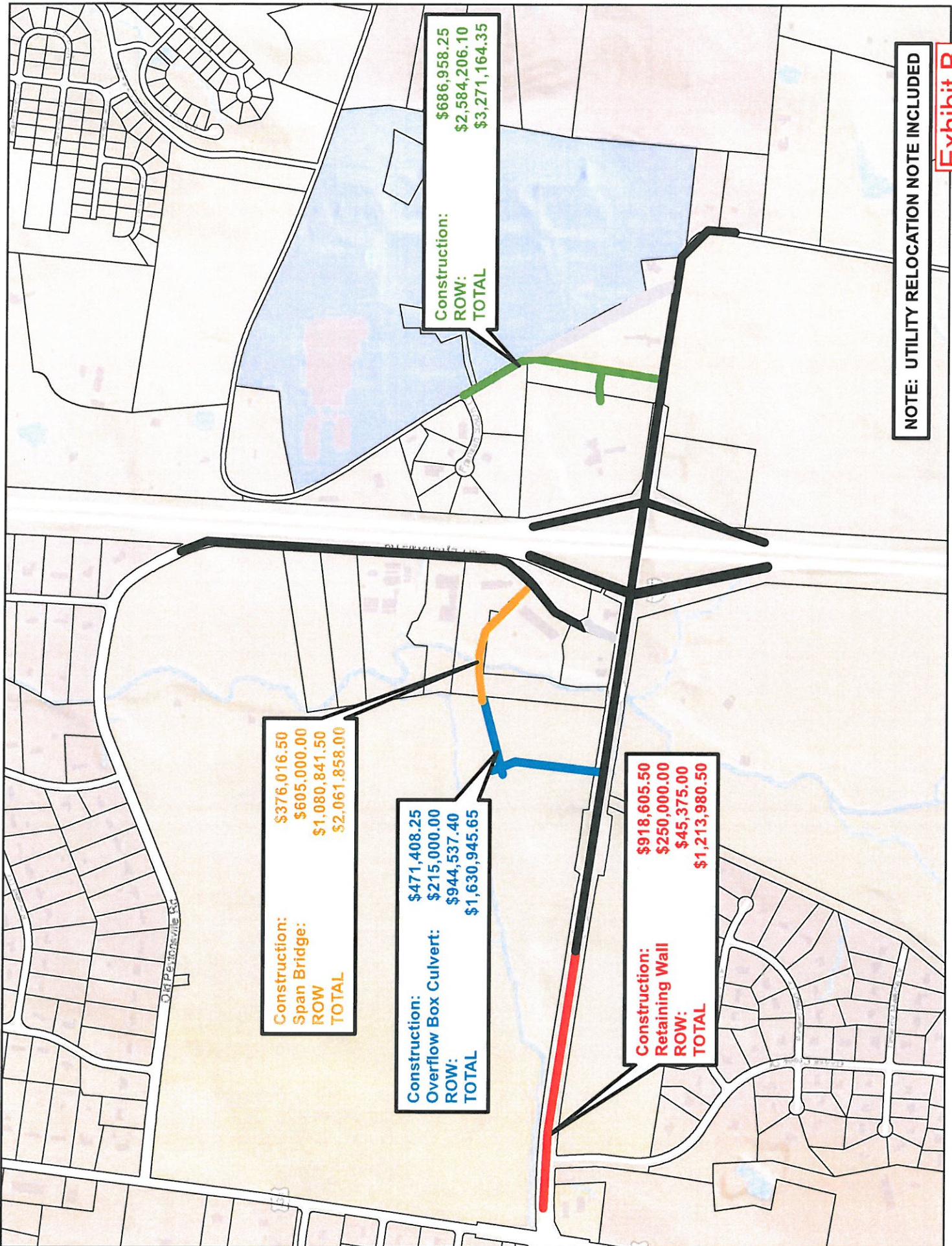
CHANGE IN COST: Cost hereunder is controlled by the figures shown in the TIP and any amendments, adjustments or changes thereto.

TYPE OF WORK: ROADWAY IMPROVEMENTS

PHASE	FUNDING SOURCE	FED %	STATE %	AGENCY %	ESTIMATED COST
<u>BERRY FARMS –FIVE MILE CROSSING LOCAL ROADS (AGENCY TO PROVIDE THESE COMPLETED IMPROVEMENTS)</u>					
PE	AGENCY	0	0	100	\$326,190.00
ROW/UTILITY	AGENCY	0	0	100	\$944,537.00
CONSTRUCTION	AGENCY	0	0	100	\$686,408.00
1300 FT GAP SECTION ON SR-248 (GOOSE CREEK BYPASS)					
PE	AGENCY	0	<u>100</u>	<u>100</u>	\$242,796.00
ROW/UTILITY	AGENCY	0	0	100	\$45,375.00
CONSTRUCTION	AGENCY	0	0	100	\$1,168,605.00

LIABILITY: The Agency understands the above are estimated cost for the preliminary engineering, right-of-way, utility coordination, and construction cost of the Project. The Agency understands that the Agency will payreimburse the Department, as herein provided, the actual estimated cost incurred for the preliminary engineering, right-of-way and construction phases for the 1300 ft gap section on SR 248 (Goose Creek By-Pass). The Agency shall be responsible for all cost of the Berry Farms-Five Mile Crossings Local Roads and agrees that this work shall be completed within 12 months of the Notice to Proceed for the construction of the Interchange Modifications at I-65 and SR 248.

INELIGIBLE COST: One hundred percent (100%) of the actual estimated cost will be paid from Agency funds.



Construction: \$376,016.50
Span Bridge: \$605,000.00
ROW: \$1,080,841.50
TOTAL: \$2,061,858.00

Construction: \$471,408.25
Overflow Box Culvert: \$215,000.00
ROW: \$944,537.40
TOTAL: \$1,630,945.65

Construction: \$918,605.50
Retaining Wall: \$250,000.00
ROW: \$45,375.00
TOTAL: \$1,213,980.50

Construction: \$686,958.25
ROW: \$2,584,206.10
TOTAL: \$3,271,164.35

NOTE: UTILITY RELOCATION NOTE INCLUDED

Exhibit B