



HISTORIC
FRANKLIN
TENNESSEE

ITEM #6
WRKS
08/27/13

MEMORANDUM

July 2, 2013

TO: Board of Mayor and Alderman (BOMA)

FROM: Eric S. Stuckey, City Administrator
David Parker, P.E.; CIP Executive/City Engineer
Paul Holzen, P.E.; Director of Engineering

SUBJECT: Consideration Of Agreement (COF Contract 2012-0009) Between The City Of Franklin And Boyle Investment Company For The Construction Of The Five Mile Crossing And Berry Farms Crossing

Purpose

The purpose of this memorandum is to provide information to the BOMA on an agreement for the construction of the Five Mile Crossing and Berry Farms Crossing Roadways.

Background

The Tennessee Department of Transportation (TDOT) is currently widening Interstate 65 to relieve congestion levels and improve safety. The specific project limits are from North of State Route 840 to north of State Route 96, a total of 6.5 miles. The project scope will also include the modification of the interchange at State Route 248 (Goose Creek) and widening of State Route 248. 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.

As part of this project TDOT is required by Federal requirements to restrict access within a certain distance from the interchange. To restrict access TDOT is required to cul-de-sac Old Peytonsville Road. In conjunction with the cul-de-sac they are connecting Old Peytonsville Road to the west across Five Mile Creek into the Berry Farms Development property allowing access to SR248. 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 our preliminary design completed back in 2007. TDOT and FHWA requirements to restrict access are resulting in the construction and Right-of-Way acquisition for City Roadways estimated to cost approximately \$5,333,022 (See Attached Exhibit).

During the design process it was recognized that the proposed improvements on SR 248 (Goose Creek) ended approximately 1,500LF short of Lewisburg Pike. Boyle is currently improving the intersection of Lewisburg Pike and Goose Creek as part of the Berry Farm's Development. Both of these improvements would result in a small section of Goose Creek unimproved. In August of 2012 the BOMA approved an agreement (COF Contract No 2012-0070) with the Tennessee Department of Transportation for roadway improvement along Goose Creek By-Pass (SR 248), Berry Farms Crossing and Five Mile Crossing. This approval provided the necessary funds (\$1,213,980) to design and construct a 1,500 LF GAP section on Goose Creek By-Pass between Lewisburg and the interchange.



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This agreement between the City of Franklin and Boyle Investment Company will require the developer to build and construct a portion of Five Mile Crossing and Berry Farms Crossing into the Berry Farms Development property allowing access to SR248.

Financial Impact

No Financial Impact

Recommendation

Staff recommends approval of the agreement (COF Contract 2012-0009) between the City of Franklin and Boyle Investment Company for the construction of Five Mile Crossing and Berry Farms Crossing. This agreement is currently in draft format and being reviewed by the developer and would be subject to approval by the City Administrator, City Engineer and City Attorney.

AGREEMENT
CITY OF FRANKLIN, TENNESSEE
COF Contract No 2012-0009
Revised 8/21/2013

This **AGREEMENT** is made and entered into on this the ____ day of _____, 20__, by and between the **City of Franklin, Tennessee** ("City") and **RURAL PLAINS PARTNERSHIP** ("Developer").

WHEREAS, the Developer submitted and had approved by the City a Concept Plan for the Berry Farms Rural Plains Tract; and

WHEREAS, said approval for the Concept Plan for the Rural Plains Tract had attached certain conditions related to the construction of off-site infrastructure that included the construction of improvements to Lewisburg Pike, Goose Creek By-Pass and the Goose Creek By-Pass/I-65 Interchange; and

WHEREAS, the Developer has begun the roadway improvements of Lewisburg Pike and the Lewisburg Pike/Goose Creek By-Pass Intersection to provide for the present and near future traffic needs for the area; and

WHEREAS, the Tennessee Department of Transportation (TDOT) is providing the planning, design and construction for the widening of Interstate 65 (I-65), the reconstruction of the I-65/Goose Creek By-Pass Interchange, widening of Goose Creek By-Pass and associated local street re-alignments/improvements required to provide for maximum capacity of the Interchange, all of which are depicted in bold black, bold green, bold red and bold orange on attached **Exhibit A**; and

WHEREAS, TDOT desires to include the widening of the portion of Goose Creek By-Pass as depicted in bold red on Exhibit A to eliminate a restriction of capacity on Goose Creek By-Pass and the safety concerns inherent with a short length of a narrow roadway between wider sections of the same roadway; and

WHEREAS, the Developer as a part of the approved development plan for Rural Plains is committed to construct the roadways (Five Mile Crossing and Berry Farms Crossing) as depicted in bold blue on Exhibit A and to dedicate to the City these improvements along with the rights-of-way necessary for them to be made a part of the City's public street system; and

WHEREAS, the completion of the local public streets sections within the Rural Plains development tract as depicted in bold blue on Exhibit A are

necessary for the completion of the proposed TDOT improvements to Goose Creek By-Pass and the Goose Creek/I-65 Interchange; and

WHEREAS, the Developer has previously submitted and had approved by the City the construction plans for the Five Mile Crossing and Berry Farms Crossing improvements per the City approved plans for Section 4 of Berry Farms Town Center (COF #2539) dated October 3, 2012; and

WHEREAS, the Developer and TDOT have come to a mutual understanding that TDOT shall include as a part of the design and construction of the Goose Creek By-Pass Improvements the installation of traffic signalization at the intersections along Goose Creek By-Pass as agreed on in the Partnering Agreement (Interchange Area Management Plan of June 2005) between TDOT and the City; and

WHEREAS, if any of the approved signals are not activated by TDOT as part of the project, and following the one year warranty period provided by TDOT's contractors, then Developer shall be responsible for the signal activation following the appropriate warrants as described in the Manual of Uniform Traffic Control Devices (MUTCD), subject to the City having previously approved and accepted the signals from TDOT before the expiration of the one year warranty period. Upon activation of any of the traffic signals not originally activated by TDOT, then the Developer shall provide a one (1) year maintenance surety for said traffic signals; and

NOW, THEREFORE, in consideration of these premises and the mutual promises contained herein, the City and the Developer, their successors and assigns, do hereby agree as follows:

1. The foregoing recitals are incorporated into this Agreement and made a part thereof.
2. The Developer agrees to construct and dedicate all right-of-way and easements for the portions of the Five Mile Crossing and the Berry Farms Crossing improvements, as depicted in bold blue on Exhibit A, within the Rural Plains Tract of the Berry Farms Development. Five Mile Crossing and the Berry Farms Crossing shall be open to public use and be accepted by the City of Franklin within twelve (12) months from the issuance by TDOT of the Notice to Proceed for construction of the Goose Creek By-Pass and the Goose Creek/I-65 Interchange Improvements Projects. Following the "Notice to Proceed" for construction TDOT will review and approve a construction schedule and phasing schedule for the Goose Creek/I-65 Interchange Improvements Project. Additional time shall be granted if it is determined by TDOT that the portions of

Five Mile Crossing and the Berry Farms Crossing improvements are not needed within the time specified above. Additional time granted will be based on the actual construction schedule approved by TDOT and any unforeseeable cause beyond the control and without the fault or negligence of the Developer, including but not restricted to, acts of God or of the public enemy, fires, floods, epidemics quarantine restrictions, strikes, freight, embargoes, and unusually severe weather. The Developer shall notify the City within (30) days from the beginning of such delay.

3. The Developer shall be required to dedicate all Right-of-way/easements and post a surety or letter of credit for the construction of Five Mile Crossing and Berry Farms Crossing as depicted in bold blue on Exhibit A. The surety or letter of credit shall be in the amount of **One Million Six Hundred Thirty Thousand Nine Hundred Forty-Six and No/100 Dollars (\$1,630,946.00)**. The Right-of-way/easement dedication, surety and performance agreement shall be finalized the earlier of; the recordation of the plat or within (12) months prior to the improvements being necessary as indicated on the approved TDOT construction schedule for the Goose Creek/I-65 Interchange Improvements Project. The surety or letter of credit can be reduced based on actual bids provided by the developer and subject to approval from the Director of Engineering or the City Engineer.

4. TDOT's contractor shall provide a guarantee on all traffic signal systems as specified in the *Tennessee Department of Transportation Standard Specifications for Road and Bridge Construction*. The Developer shall be responsible for the signal activation of all signals constructed to serve the Berry Farms Development that are not activated prior to the expiration of the Guarantee as outlined in the *Tennessee Department of Transportation Standard Specifications for Road and Bridge Construction*. Signal activation shall be based on the appropriate warrants as described in the Manual of Uniform Traffic Control Devices (MUTCD). The Developer shall provide a one (1) year maintenance surety for all traffic signals activated by the Developer.

5. The Developer shall not receive any Road Impact Fee Offsets or Credits resulting from the work as provided for in this Agreement.

6. Time of the Essence. The parties agree that TIME IS OF THE ESSENCE with respect to the parties' performance of all provisions of the Agreement.

7. Applicable Law; Choice of Forum/Venue. This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to any state's choice-of-law rules. The choice of forum and venue shall be exclusively in the Courts of Williamson County, TN.

8. Entire Agreement. This Agreement together with its exhibit(s) supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of the entire Agreement. The terms and conditions of this Agreement may not be changed except by an amendment expressly referencing this Agreement by section number and signed by an authorized representative of each party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates as indicated.

Approved by the Franklin Board of Mayor and Aldermen on _____, 201_.

RURAL PLAINS PARTNERSHIP, a Tennessee general partnership

By: **BNB-WCO INVESTORS, LLC**, a Tennessee limited liability company, as Managing General Partner

By: _____

Print Name: _____

Title: _____

Date: _____

STATE OF TENNESSEE)
)
COUNTY OF _____)

Before me, _____, a Notary Public of said County and State, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged _self to be _____ (or other officer authorized to execute the instrument) of *BNB-WCO Investors, L.L.C.*, a Tennessee limited liability company, which is a partner of *Rural Plains Partnership*, a Tennessee general partnership, and that _____ as such _____

executed the foregoing instrument for the purposes therein contained, by personally signing the name of the company by _____ self as _____.

Witness my hand and seal, at Office in _____, Tennessee, this ____ day of _____, 20__.

Notary Public
My Commission Expires: _____

ATTEST:

CITY OF FRANKLIN, TENNESSEE:

By: _____
Eric S. Stuckey
City Administrator/Recorder

By: _____
Dr. Ken Moore
Mayor

Date: _____

Date: _____

STATE OF TENNESSEE)
)ss:
COUNTY OF WILLIAMSON)

Before me, the undersigned Notary Public of said County and State, personally appeared **Dr. Ken Moore** and **Eric S. Stuckey**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged themselves to be the Mayor and City Administrator, respectively, of the City of Franklin, Tennessee, the within named bargainer, a municipality, and that as such Mayor and City Administrator executed the foregoing instrument for the purposes therein contained, by signing the name of the municipality by themselves as Mayor and City Administrator.

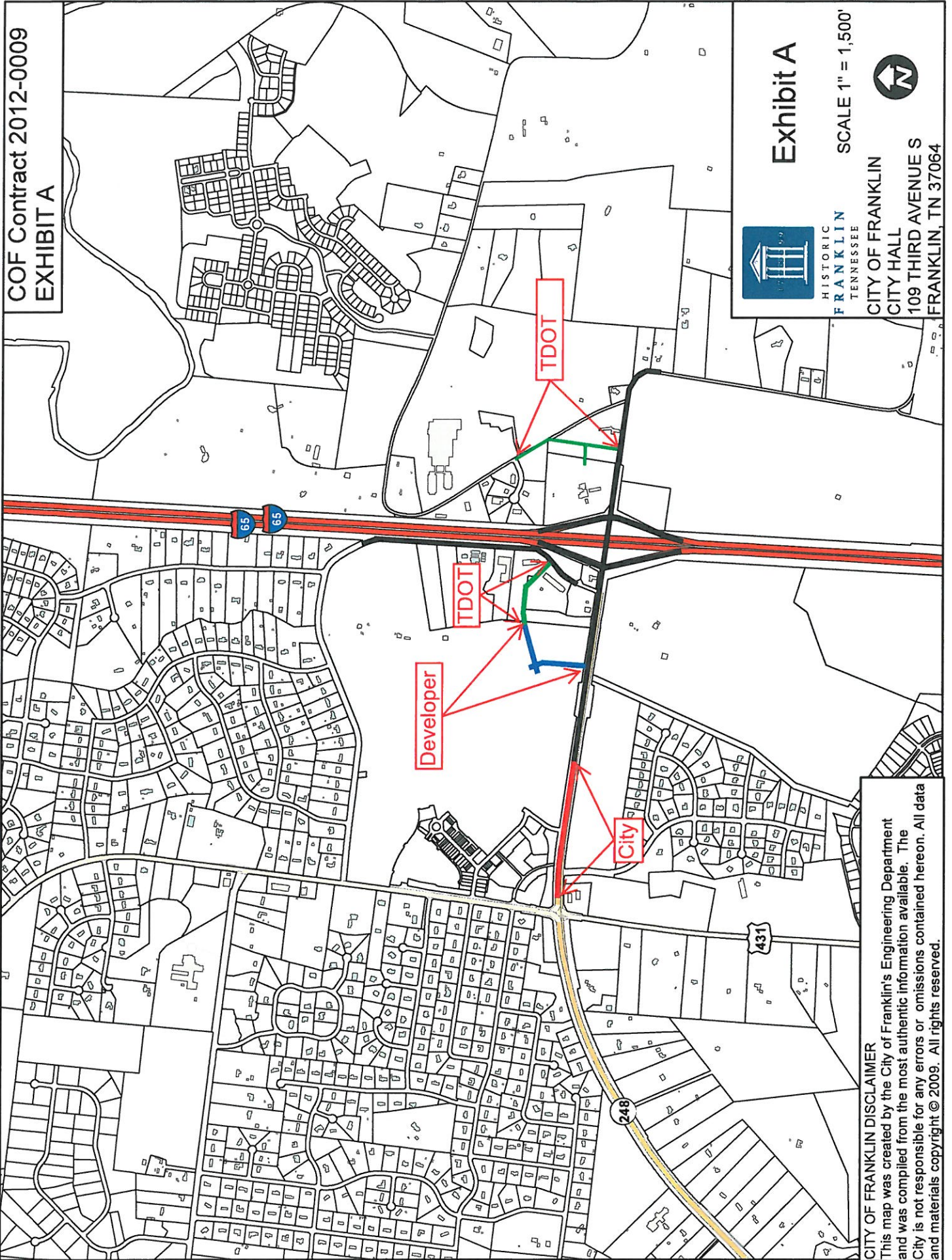
Witness my hand and seal this ____ day of _____, 201__.

Notary Public
My Commission Expires: _____

Approved as to form by:

Shauna R. Billingsley, City Attorney

DRAFT



HISTORIC
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Exhibit A

SCALE 1" = 1,500'



CITY OF FRANKLIN
CITY HALL
109 THIRD AVENUE S
FRANKLIN, TN 37064

CITY OF FRANKLIN DISCLAIMER
This map was created by the City of Franklin's Engineering Department and was compiled from the most authentic information available. The City is not responsible for any errors or omissions contained hereon. All data and materials copyright © 2009. All rights reserved.

**COF Contract 2012-0009
EXHIBIT B**

