



# Contract Review Sheet

PW-5814-24

Intergovernmental Agreement #: PW-5814-24 Amendment #: \_\_\_\_\_

Contact: Alicia Henry Department: Public Works Department

Phone #: 503-373-4320 Date Sent: Tuesday, January 23, 2024

Title: ODOT 73000-00018017 - I:5: Aurora - Donald Interchange (Exit 278), Phase 2

Contractor's Name: Oregon Department of Transportation

Term - Date From: December 27, 2023 Expires: October 11, 2041

Original Contract Amount: \$ \_\_\_\_\_ - Previous Amendments Amount: \$ \_\_\_\_\_ -

Current Amendment: \$ \_\_\_\_\_ - New Contract Total: \$ \_\_\_\_\_ - Amd% 0%

Incoming Funds  Federal Funds  Reinstatement  Retroactive  Amendment greater than 25%

Source Selection Method: 50-0010 General Exemptions (IGAs and QRFs) Department Department

### Description of Services or Grant Award

IGA with ODOT for Phase 2 of their I-5 project at Ehlen Road.  
  
Phase 2 will reconfigure to a diverging diamond interchange and improve and/or realign Ehlen Road NE and Dolores Way NE. Construction is anticipated to begin the summer of 2024.  
  
ODOT will be responsible for all construction costs as well as maintenance costs and access control between Bents Road and Dolores Way. Marion County will be responsible for maintenance costs for new infrastructure constructed outside city limits.

Desired BOC Session Date: 1/31/2024 Files submitted in CMS for Approval: 1/10/2024

Agenda Planning Date: 1/18/2024 Printed packets due in Finance: 1/16/2024

Management Update: 1/16/2024 BOC upload / Board Session email: 1/17/2024

BOC Session Presenter(s) Lani Radke

### FOR FINANCE USE

Date Finance Received: \_\_\_\_\_ Date Legal Received: \_\_\_\_\_

Comments: Y

### REQUIRED APPROVALS

Finance - Contracts \_\_\_\_\_ Date \_\_\_\_\_ Contract Specialist Alicia Henry Date 1/23/24

Legal Counsel \_\_\_\_\_ Date \_\_\_\_\_ Chief Administrative Officer \_\_\_\_\_ Date \_\_\_\_\_



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 1/31/24
Department: Public Works

Title: I-5: Aurora-Donald Interchange (Exit 278) Improvements Project, Intergovernmental Agreement No. 73000-00018017

Agenda Planning Date: 1/25/24 Management Update/Work Session Date: 12/5/23 Audio/Visual aids [ ]

Time Required: 5 min Contact: Lani Radtke, PE Phone: 503-949-5489

Requested Action: Approve ODOT Intergovernmental Agreement No. 73000-00018017 for Phase 2 of the I-5: Aurora-Donald Interchange (Exit 278) Improvements Project.

Issue, Description & Background: ODOT has secured funding for Phase 2 construction of the I-5: Aurora-Donald Interchange Project. Phase 2 will reconfigure to a diverging diamond interchange and improve and/or realign Ehlen Road NE and Dolores Way NE. Construction is anticipated to begin the summer of 2024. Under this agreement, ODOT will be responsible for all construction costs as well as maintenance costs and access control between Bents Road and Dolores Way. Marion County will be responsible for maintenance costs for new infrastructure constructed outside of these limits.

Financial Impacts: This agreement results in new maintenance costs. This agreement does not impact any other Marion County departments.

Impacts to Department & External Agencies: Marion County Public Works will be responsible for the long term maintenance costs of new infrastructure located outside of the new interchange limits, which includes a new traffic signal, two new stormwater facilities, and realigned segments of Bents Road and Dolores Way. This agreement does not result in impacts to any other Marion County departments.

List of attachments: Intergovernmental Agreement No. 73000-00018017

Presenter: Lani Radtke, PE, Marion County Engineering

Department Head Signature: [Signature]

**INTERGOVERNMENTAL AGREEMENT**  
**I-5: Aurora – Donald Interchange (Exit 278)**  
Marion County

**THIS AGREEMENT** is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" and MARION COUNTY, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. By the authority granted in ORS 810.210, State is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where State deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than State, except with its written approval.
3. Interstate 5 (I-5), is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Ehlen Road, Dolores Way, Bents Road and Bents Court are under the jurisdiction and control of Agency. The frontage road in the NE quadrant of the interchange (NCR 3183) is also under Agency jurisdiction. While under the jurisdiction of Agency, Dolores Way and NCR 3183 are local access roads and as such are subject to the provisions of ORS 368.031.
4. State, by ORS [366.220](#), is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes. By the authority granted by ORS 373.020, the jurisdiction extends from curb to curb, or, if there is no regular established curb, then control extends over such portion of the right of way as may be utilized by State for highway purposes. Responsibility for and jurisdiction over all other portions of a county road remains with the Agency.
5. The I-5: Aurora-Donald interchange (Exit 278) area has experienced capacity deficiencies and extensive motor vehicle queuing for many years and does not meet current design and operational standards. This Agreement will address short, medium and long-term improvements to the Interchange to increase safety and improve traffic flow.

**NOW THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

### **TERMS OF AGREEMENT**

1. Under such authority, State and Agency agree to State performing the I-5: Aurora-Donald Interchange (Exit 278) project, hereinafter referred to as "Project." Specific elements of the Project include, but are not limited to:
  - a. constructing the full diverging diamond interchange;
  - b. replacing the existing I-5 bridges with one new bridge;
  - c. reconstructing I-5 travel lanes to align with new bridge;
  - d. lengthening and widening both southbound ramps;
  - e. lengthening and widening the northbound on-ramp;
  - f. constructing new Dolores Way;
  - g. relocating the Dolores Way and Ehlen Road intersection to the east;
  - h. realigning new Ehlen Road to two lanes of traffic, relocating the new Bents Road and new Ehlen Road intersection;
  - i. constructing three new traffic signals at the following locations:
    - A. one signal at the new Bents Road and new Ehlen Road intersection;
    - B. one signal at the I-5 southbound ramp termini; and
    - C. one signal at the I-5 northbound ramp termini;
  - j. new accesses to I-5 ramps,

and other related improvements such as retaining walls, drainage facilities, curb ramps, sidewalks, and landscaping as shown in the attached "Exhibit A," by this reference made a part hereof. Maintenance responsibilities are generally shown in "Exhibit B," by this reference made a part hereof.

2. State is responsible for all costs of Project construction. State and Agency shall share maintenance and power responsibilities as set forth in the Agency Obligations and State Obligations sections below.
3. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance and power responsibilities for the useful life of the facilities constructed as part of the Project. The useful life for the roadway elements of the Project is defined as twenty (20) calendar years. The useful life for the bridge elements of the Project is defined as seventy-five (75) years. The Project shall be completed within four (4) calendar years following the date of final execution of this Agreement by both Parties. All maintenance and power responsibilities shall survive termination of this Agreement.

### **AGENCY OBLIGATIONS**

1. Agency is, at its own expense, responsible for the maintenance of Project elements outside the ODOT limits shown in Exhibit B and as described below:

- a. the storm water facilities including pipes, inlets, manholes, sub-drains, outlet protections (rip rap), water quality treatment ponds, swales, and biofiltration strips;
  - b. pavement, curbs, and shoulders, and
  - c. signing and pavement markings.
2. Agency grants State use of roadways needed as detour routes for traffic during construction of Project. Said detour routes will be determined by State and Agency prior to use as detour routes. State agrees said detour routes will be restored to like or better condition upon completion of Project.
3. Agency agrees to State acquiring all right of way needed for construction of the Project. Agency shall, upon completion of Project, accept jurisdiction and control over new Dolores Way, new Ehlen Road, new Bents Road, and Bents Court. Agency shall maintain said roads with the exception of new Ehlen Road within the area shown in Exhibit B. Agency shall use the transferred right of way for public road purposes as long as needed for the service of persons living thereon or for a community served thereby. If right of way acquired by State for purposes of this Project is no longer used for public road purposes, it shall revert to State.
4. Agency delegates, and the State accepts, the Agency's authority pursuant to ORS 758.010, ORS 758.025 and all relevant common law, statutes, ordinances, permits, and agreement terms, to cause to be relocated or reconstructed, all privately and publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portion of the Project upon lands within the Agency's jurisdiction.
5. Agency shall, upon Project completion, be responsible for and perform maintenance responsibilities as follows:
  - a. Agency shall maintain new Dolores Way; Ehlen Road with the exception of the areas to be maintained by State identified in Exhibit B, Bents Road, Bents Court, and all improvements constructed or installed on Agency right of way at Agency's own expense; and
  - b. Signal maintenance at new Ehlen Road and new Bents Road will be performed by State at Agency's expense.
6. Agency shall be financially responsible for the maintenance and power responsibilities associated with the signal at Ehlen Road and Bents Road, as shown in Exhibit B. Agency shall upon receipt of invoice from State for maintenance of the signal, reimburse State for one hundred (100) percent of the costs associated with said maintenance. Agency shall remit payment within forty-five (45) days to State's Financial Services, 355 Capital Street, Salem, Oregon 97301. Agency shall have the power company send bills directly to Agency.

7. Agency agrees to consent and allow State to restrict access control beyond State right of way along Ehlen Road, between new Bents Road and new Dolores Way, to preserve the integrity of the Aurora-Donald Interchange.
8. Agency shall contact State's District 3 Permits Office seven (7) working days prior to the commencement of maintenance activities that may impact travel lanes or ramps of I-5. No lane restrictions are permitted unless State's District 3 Manager, or designee, provides prior written approval.
9. Agency acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of Agency.
10. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
11. Agency shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
12. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.
13. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment or completion of Project. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
14. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
15. Agency's Project Manager for this Project is Brian Nicholas, Public Works Director, Marion County, 5155 Silverton Road, Salem, Oregon 97305; telephone: (503) 588-5036; email: [bnicholas@co.marion.or.us](mailto:bnicholas@co.marion.or.us), or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## STATE OBLIGATIONS

1. State is, at its own expense, responsible for the maintenance of Project elements within the limits shown in Exhibit B as ODOT's to maintain, and as described below:
  - a. Pavement, curb, islands, signing and pavement markings in new Ehlen Road;
  - b. retaining walls;
  - c. the storm water facilities including pipes, inlets, manholes, sub-drains, outlet protections (rip rap), water quality treatment ponds, swales, and biofiltration strips; and
  - d. remain responsible for I-5 structures, I-5 ramps, interchange signals, illumination, ITS equipment, signs, and pavement markings.
2. State agrees that access control will be retained by State between new Bents Road and new Dolores Way, to preserve the integrity of the Aurora-Donald Interchange. All access control between the new Bents Road intersection and the new Dolores Way intersection up to 1,320 feet from the ramp terminals shall remain and continue to be maintained by State.
3. State shall maintain the signal at new Bents Road and new Ehlen Road and send an invoice to Agency for State's costs associated with the maintenance of the signal. State shall submit said invoice to Agency's Project Manager.
4. State will conduct all right of way activities in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, Federal-Aid Policy Guide, Code of Federal Regulations (CFR) and the ODOT Right of Way Manual, and Title 23 CFR Part 710 and Title 49 CFR Part 24.
5. Upon Project completion, State shall transfer to Agency any ownership interests State may have obtained along Agency's facilities still used for public road purposes. The method of conveyance will be determined by the Parties at the time of transfer and will be coordinated by the State's Region 2 Right of Way Manager.
6. State shall cause to be relocated or reconstructed, all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portions of the Project which are on State and Agency systems.
7. State grants Agency the right to enter onto State right of way for the performance of duties as set forth in this Agreement. Maintenance activities impacting travel lanes or ramps of I-5 require Agency to contact State's District 3 Permits seven (7) working days prior to request permission for such work prior the commencement of work. No lane restrictions are permitted unless prior approval from State's District 3 Manager, or designee, is provided.

8. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
9. State's Project Manager for this Project is Paul Welch, Transportation Project Manager, ODOT, Region 2, 455 Airport Road SE, Building B, Salem, Oregon, 97301; Telephone: (503) 302-8926; email: [Paul.Welch@odot.oregon.gov](mailto:Paul.Welch@odot.oregon.gov), or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.
10. State's contact for Agency maintenance permit purposes is Cole Mullis, District 3 Manager, 455 Airport Road SE, Building P, Salem, Oregon 97301; telephone (503) 986-2600; email: [Cole.F.Mullis@odot.state.or.us](mailto:Cole.F.Mullis@odot.state.or.us), or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## GENERAL PROVISIONS

### 1. Americans with Disabilities Act Compliance:

- a. When the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the Parties shall:
  - i. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
  - ii. Follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
  - iii. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:  
  
<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>; and
- b. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout



the useful life of the Project. This includes, but is not limited to, Agency ensuring that:

- i. Pedestrian access is maintained as required by the ADA,
  - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
  - iii. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
  - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
  - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- c. Maintenance obligations in this section shall survive termination of this Agreement.
2. This Agreement may be terminated by mutual written consent of both Parties.
3. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
- a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
  - c. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.

4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
6. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
7. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

8. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
9. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
10. This Agreement and attached exhibits and Agreement No. 73000-00003754 constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2021-2024 Statewide Transportation Improvement Program (STIP), (Key #22505) that was adopted by the Oregon Transportation Commission on July 15, 2020 (or subsequently by amendment to the STIP).

**Signature Page Follows**

**MARION COUNTY**, by and through its  
elected officials

By \_\_\_\_\_  
Commissioner

By \_\_\_\_\_  
Commissioner

By \_\_\_\_\_  
Commissioner

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Director of Public Works                      Date

By \_\_\_\_\_  
Chief Administrative Officer                      Date

**APPROVED AS TO FORM**

By \_\_\_\_\_  
Marion County Contracts                      Date

By \_\_\_\_\_  
Marion County Legal Counsel                      Date

**Agency Contact:**

Brian Nicholas, Public Works Director  
Marion County  
5155 Silverton Road NE  
Salem, Oregon 97305  
503.588.5036  
[bnicholas@co.marion.or.us](mailto:bnicholas@co.marion.or.us)

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Delivery & Operations Division  
Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 2 Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

**State Contact:**

Paul Welch, Transportation Project Manager  
ODOT, Region 2, Area 3  
455 Airport Road SE, Building B  
Salem, Oregon 97301  
503.302.8926 (cell)  
[Paul.Welch@odot.oregon.gov](mailto:Paul.Welch@odot.oregon.gov)

EXHIBIT A

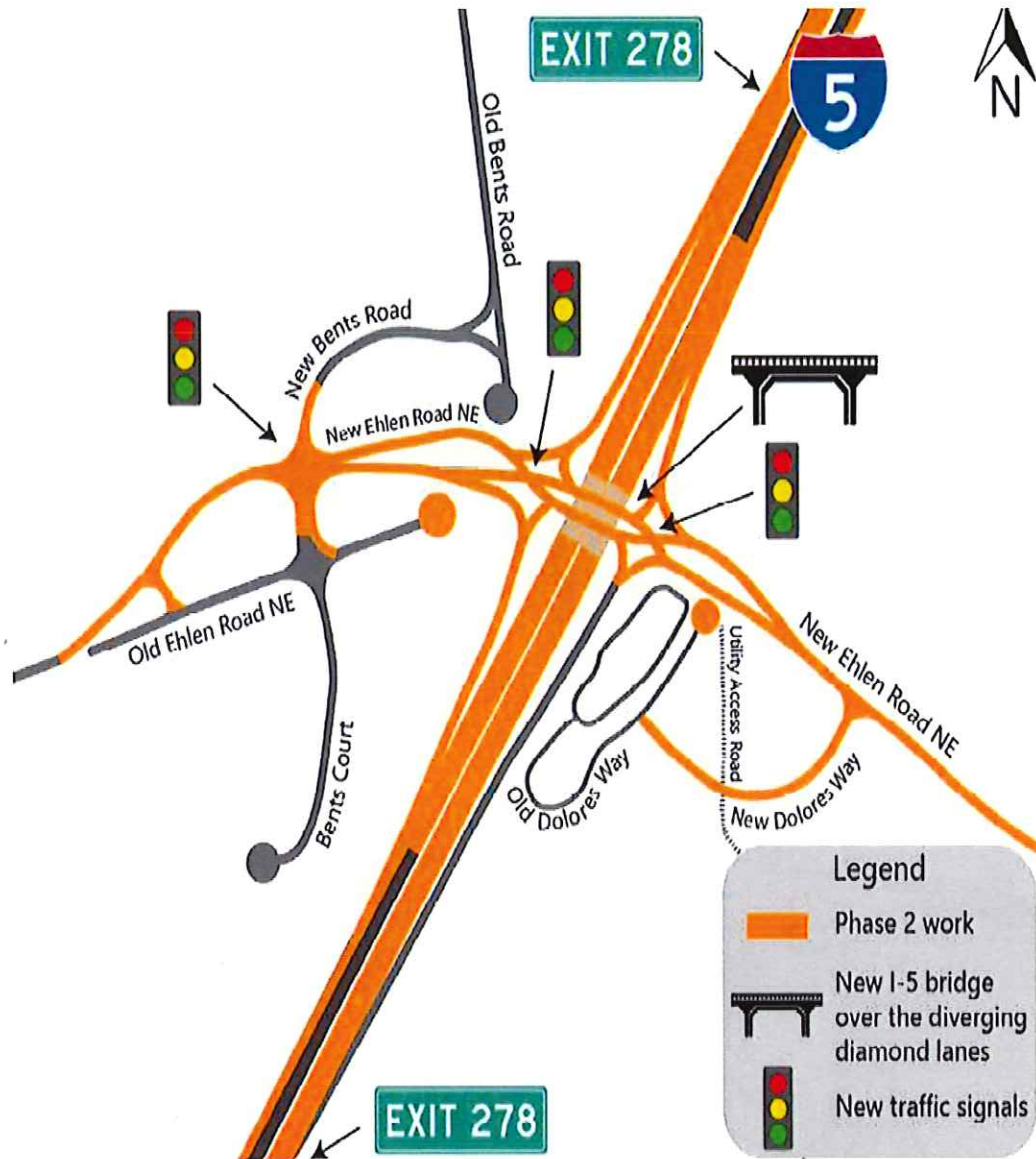


Exhibit B

