

**CITY OF WASILLA
RESOLUTION SERIAL NO. 04-04**

**A RESOLUTION OF THE WASILLA CITY COUNCIL AUTHORIZING THE
ADMINISTRATION TO EXECUTE A MEMORANDUM OF AGREEMENT WITH THE
ALASKA DEPARTMENT OF TRANSPORTATION FOR THE SOUTH MACK DRIVE
GRADE SEPARATED RAILING CROSSING**

WHEREAS, the City received a federal Section 330 Earmark AK025 funds in the amount of \$1million for a grade separated railroad crossing at South Mack Drive, and

WHEREAS, the funding is eligible for all development phases including preliminary engineering, design, utility relocation, right-of-way acquisition and construction, and

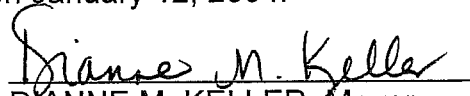
WHEREAS, additional funds will likely be required to complete the project, and

WHEREAS, the memorandum of agreement needs to be executed by the City in order to receive the federal funding, and


WHEREAS, the State of Alaska share of the federal earmark for administration services and coordination with the Alaska Railroad is \$225,000.

NOW THEREFORE BE IT RESOLVED by the Wasilla City Council that the administration is hereby authorized to execute the memorandum of agreement with the Alaska Department of Transportation for a grade separated railroad crossing at South Mack Drive; formerly South Church Road, ADOT Project No. HDP-0001(308)/54987.

ADOPTED by the Wasilla City Council on January 12, 2004.


DIANNE M. KELLER, Mayor

ATTEST


KRISTIE L. SMITHERS, CMC
City Clerk

[SEAL]

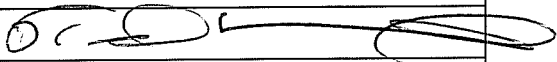


**CITY OF WASILLA
LEGISLATION STAFF REPORT**

**RE: Resolution Serial No. 04-04; Memorandum of Agreement South Mack Drive
Grade Separated Railing Crossing.**

Agenda of: January 12, 2004
Originator: Archie Giddings, City Engineer

Date: January 6, 2004

Route to:	Department	Signature/Date
	Police	
	Recreational and Cultural Services Library, Museum	
	Public Works Planning	
X	Finance *signature required	
X	Clerk	

REVIEWED BY MAYOR DIANNE M. KELLER: _____

FISCAL IMPACT: yes **\$775,000** or no
Account name/number: 110-4320-432.45-13
Attachments: Memorandum of Agreement

Funds Available yes no

SUMMARY STATEMENT: This resolution authorizes administration to execute the memorandum of agreement with the State of Alaska Department of Transportation and accompanies Ordinance Serial No. 04-08 which appropriates a federal earmark in the amount of \$775,000 for the South Mack Drive grade separated railroad crossing.

The total current federal appropriation is in the amount of \$1 million. Alaska DOT will receive \$225,000 of the \$1 million for administration services and coordination with the Alaska Railroad. Additional funding will be needed to complete the project that will be sought through state and federal sources when the final design and cost estimate are complete. The total project cost is estimated between \$3-3.5 million.

Draft (11/6/03)

Memorandum of Agreement

Between

The State of Alaska Department of Transportation and Public Facilities

Central Region and

The City of Wasilla

for the

South Church Road Railroad Crossing

Project No. HDP-0001(308) / 54987

This Agreement is effective upon execution by the parties: the State of Alaska, Department of Transportation and Public Facilities, hereinafter called the DEPARTMENT, and the City of Wasilla, hereinafter called the CITY.

The DEPARTMENT and the CITY do hereby agree to the following:

1. SCOPE OF WORK

This project, hereinafter called the PROJECT, will consist of all development phases including Preliminary Engineering, Design Development, Utilities Relocation, Right of Way Acquisition, and Construction for a grade-separated crossing of the Alaska Railroad. The crossing location is on South Church Road (also known as Mack Drive) just south of the Parks Highway. The PROJECT objective is to improve safety by eliminating the current at-grade crossing, thus ending conflicts between railway traffic and roadway traffic.

The CITY will provide Preliminary Engineering including Environmental Documentation and Permitting, Design Studies, and Design Plans, Specifications, & Cost Estimate (PS&E). The CITY will also provide any required Utility Relocation Agreements, Alaska Railroad Corporation Agreements, and Right of Way acquisition. The DEPARTMENT will provide Construction of the PROJECT. The CITY will own and maintain the completed grade-separated crossing.

The parties recognize that current funding for the PROJECT may only be sufficient to complete initial PROJECT development phases. Current funding consists of federal Section 330 Earmark AK025 funds in the total amount \$1,000,000. Additional funds will likely be required to complete the PROJECT.

The CITY will assign a Project Manager to administer the work, assisted as needed by CITY employees and consultants with expertise in the required areas. The DEPARTMENT will assign a coordinator to coordinate PROJECT documents for Federal Highway Administration (FHWA) approval and provide guidance, approval and concurrence as needed to maintain conformance with FHWA and other applicable requirements. Specific work items and responsibility for actions are listed in Appendix A. All other unspecified actions that are required for the completed PROJECT will be handled through a similar division of work.

2. MAINTENANCE AND OPERATIONS

The CITY agrees to maintain and operate the PROJECT in perpetuity.

The CITY agrees to maintain and operate the PROJECT consistent with 23 CFR 1.27, the Alaska Highway Maintenance and Operations Manual (HMOM), and the applicable rules and regulations of the CITY.

The CITY shall perform its maintenance and operations activities under this agreement at its sole cost and expense and without reimbursement from the DEPARTMENT.

3. PROPERTY MANAGEMENT

The CITY agrees that its management of the right of way is subject to the provisions of 23 CFR §1.23 in perpetuity.

The CITY may not allow any encroachment within the right of way of the PROJECT without the prior consent of the FHWA. The CITY may not sell any portion of the right of way without the prior consent from the FHWA and the ALASKA RAILROAD CORPORATION.

4. FUNDING

A. The CITY acknowledges that the transfer of FHWA funds is accomplished on a reimbursable basis. This requires that the CITY provide the initial funds necessary to sustain the PROJECT costs until payment requests are processed for reimbursement.

B. The CITY and the Federal Government shall pay the total cost of the PROJECT, including all PROJECT chargeable review and engineering costs and other expenses incurred by the DEPARTMENT. The Federal Government shall pay in accordance with the Transportation Equity Act for the 21st Century, Title 23, United States Code. Nothing in this agreement shall be construed as a promise by the DEPARTMENT as to the amount or nature of federal participation in this PROJECT.

The Federal Government will determine the federal aid participation rate in this PROJECT. The parties expect that it will be 100 percent of the PROJECT's costs. The parties agree that if the expected rate of participation is revised by the federal government, the parties may by mutual agreement terminate the PROJECT or renegotiate this agreement after all outstanding obligations of the respective parties have been paid.

C. In the event costs incurred by the CITY are determined to be non-reimbursable by the Federal Government, the DEPARTMENT shall immediately notify the CITY of that determination and the actions required of the CITY to change the determination.

D. Federal funds which are to be obligated for the PROJECT may not exceed the amount shown on Line m, Column 3 of the chart set forth in Appendix B, Project Budget, without written authority by the DEPARTMENT, subject to the approval of the FHWA. Any costs required to be incurred for the completion of the PROJECT in excess of the obligated amount will be paid by the CITY.

5. BILLING

A. The CITY will bill the DEPARTMENT using Form 25A591 not more than once per month. The Billing will include supporting documentation consisting of:

- A summary of the names of each CITY and consultant employee charging time during the billing period, their title or classification, their hourly billable rate, and their total hours and cost.
 - Overhead is to be included in the hourly billable rate, and is not to be listed separately.
 - Reimbursable miscellaneous expenses will be those customarily not included in standard overhead rates, and will be itemized in enough detail to identify what the charges are and if they are appropriate.
- B. Following receipt of the invoice from the CITY, the DEPARTMENT shall bill the Federal Government, as applicable, for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this PROJECT.
- C. The DEPARTMENT will reimburse the CITY for those costs up to the amounts allowed in the Federal aid Project Agreement between the DEPARTMENT and the FHWA (line m, Column 3 of Project Budget, Appendix B), to the extent that such costs are directly attributable and properly allocable to this PROJECT.

6. AVAILABILITY OF RECORDS

The CITY shall retain all PROJECT records that document all costs incurred and actual expenditures in accordance with accepted accounting practice, procedures of the U.S. Department of Transportation, and the DEPARTMENT. The records shall be open to inspection by the State and Federal Government at all reasonable times and shall be retained and made available for such inspection for a period of not less than three years from the final payment of any federal aid funds to the CITY. Copies of any of these records shall be furnished to the State or Federal Government upon request.

7. FUNDING AUTHORIZATION AND PHASES

The CITY shall not incur any costs eligible for federal participation on any classification of work on this PROJECT until authorized in writing by the DEPARTMENT for each classification. The classifications of work for projects are:

1. Preliminary Engineering up to and including environmental document approval;
2. Preparation of Plans, Specifications, and Estimates (PS&E);
3. Right-of-way acquisition (if required);
4. Utility Relocation (if required) and
5. Construction.

8. AUDIT OF PROJECT

A. State and Federal Single Audit Requirements

The CITY shall provide an audit meeting state (2 AAC 45.010 - .090) and federal (OMB Circular A-133, Audits of States, Local Governments and Non-profits) requirements for a single audit of the CITY's books and records covering their annual operations or this agreement specifically if \$300,000 or more of State or federal financial assistance is received during the fiscal year. An audit prepared under this paragraph shall be performed by an

independent CPA firm, or at the CITY's option, by the DEPARTMENT's Auditor, at the CITY's expense, using generally accepted government auditing standards. One audit covering both State and Federal requirements is acceptable. The audit should be completed within one year after the close of the CITY's fiscal year for which the audit is required. The report should be in the CITY's files and available to both State and Federal representatives. Under applicable regulations additional copies are required for the Governor's Office and the Federal Government.

B. Consultant Audit Requirements

The CITY shall perform an audit of a consultant's rates, including, but not limited to, overhead, salaries, rent, equipment rates, and vehicle use rates, prior to approving a consultant contract in accordance with the DEPARTMENT's Professional Service Agreement (PSA) Manual.

C. Local Agency Indirect Rates

If the CITY charges an indirect cost rate (overhead rate) to this agreement, the rate is subject to audit and shall meet the requirements of OMB Circular A-87 to be eligible for reimbursement.

D. Other

Any overpayments to the CITY or ineligible costs charged to the DEPARTMENT or the FHWA identified during these audits, or from not using proper procedures, are the responsibility of the CITY to reimburse to the DEPARTMENT as appropriate. Any costs associated with audits required under this section are the CITY's responsibility and a PROJECT expense eligible for reimbursement under this agreement. The DEPARTMENT also reserves the right to conduct its own audit of the PROJECT records at any time.

9. PROJECT STANDARDS

The CITY agrees to comply with the terms and conditions set forth in:

- (1) Title 23, U.S. Code Highways, and applicable provisions of Titles 19, 35, and 36 of the Alaska Statutes
- (2) the regulations issued pursuant thereto,
- (3) Office of Management and Budget Circular A-102,
- (4) the DEPARTMENT manuals listed below:
 - Highway Preconstruction Manual
 - Alaska Construction Manual
 - Standard Drawings Manual
 - Right of way Manual
 - Utilities Manual
 - Standard Specifications for Highway Construction
 - Professional Services Agreement (PSA) Manual
- (5) The Alaska Railroad Corporation documents listed below:
 - _____ ? _____
 - _____ ? _____

10. INDEMNIFICATION

The CITY shall indemnify, defend and hold harmless the DEPARTMENT, its officers, agents, employees and contractors for any claims or suits arising out of any local assumption of planning,

design, maintenance, and property management responsibilities to the extent the CITY has assumed those responsibilities.

11. PERMITS

The CITY shall coordinate all regulatory agency review and obtain all necessary written approvals from regulatory agencies.

12. COMPLIANCE WITH LAWS

The CITY, and any contractor engaged by the CITY, shall comply with the provisions of any affirmative action plan applicable to the PROJECT, AS 35, AS 36, AS 44.27.060, and 17 AAC and all applicable environmental laws in constructing public works.

13. CONTRACT PROVISIONS REGARDING NONDISCRIMINATION

- A. The CITY agrees that it will include in any advertised bid proposal and in each contract the provisions of Appendix A of 23 CFR Part 230, Subpart A (2001).
- B. The CITY agrees it will comply with the requirements of 23 CFR §230.101 to §230.121 during the performance of any contract executed to complete the PROJECT.

14. TERMINATION FOR PUBLIC CONVENIENCE

The Commissioner of the Alaska Department of Transportation and Public Facilities may terminate this agreement if:

- 1. the requisite federal funding becomes unavailable through failure of appropriation;
- 2. a contractor is prevented from proceeding with the work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense, or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources;
- 3. a contractor is prevented from proceeding with the work by reason of a preliminary temporary restraining order, special, or permanent injunction of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts or omissions of persons or agencies other than the contractor; or
- 4. the Commissioner of the Department of Transportation and Public Facilities determines that such termination is in the best interests of the State.

15. DISPUTE RESOLUTION

- 1. If a dispute arises under this agreement between the CITY and the DEPARTMENT, and the parties cannot resolve the matter between them within 45 days after notice is given by the aggrieved party to the other party, the aggrieved party may request that the matter be resolved by arbitration.
- 2. Each party shall appoint an arbitrator to hear the dispute. The two arbitrators acting together shall select a third arbitrator to join them on the arbitration panel. The three arbitrators shall hear the matter under such rules and procedures, as they deem necessary

to conduct the proceedings.

3. Each party shall pay the expenses of the arbitrator it appoints. The party against whom a decision is rendered shall pay the costs of the arbitrator selected by the arbitrators appointed by the parties, and all expenses incurred in the conduct of any hearing on the dispute.
4. Except when the provisions of this paragraph provide otherwise, an arbitration under this paragraph is subject to AS 09.43.010 - 09.43.180, the Uniform Arbitration Act.
5. A decision by the Federal Government denying, or limiting, federal participation in PROJECT costs may not be arbitrated under this agreement. The CITY may only pursue such claims under federal law and procedure.

16. FHWA PROJECT AGREEMENT PROVISIONS

The CITY accepts and will comply with the provisions of 23 CFR 630.307 Agreement Provisions.

17. WAIVER OF PROVISIONS

The failure of either party to insist upon strict performance by the other party of any provision in this Agreement is not a waiver or relinquishment of the provision for the future. Any waiver of a provision in this Agreement cannot be enforced or relied upon by the waiver unless the waiver is in writing and signed by both parties.

18. NOTICE TO PROCEED

The DEPARTMENT will notify the CITY in writing, after the agreement is fully executed, when reimbursement for the work described herein may begin.

19. AMENDMENT OF AGREEMENT

This agreement may only be modified or amended by written agreement on the prescribed Supplemental Agreement forms signed by both parties.

20. PROJECT COORDINATORS

The project coordinator for the DEPARTMENT is:

Gerry Kintz, P.E.
P.O. Box 19600
4111 Aviation Avenue
Anchorage, AK 99519-6900

The project coordinator for the CITY is:

____ Who?? ____
____ Who's Address ____

21. AGREED:

CITY OF WASILLA

ALASKA DEPARTMENT OF
TRANSPORTATION AND PUBLIC
FACILITIES

Mayor, City of Wasilla

Preconstruction Engineer

Dated: _____

Dated: _____

ACKNOWLEDGMENTS:

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by _____ Mayor of the City of Wasilla, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public for State of Alaska
My Commission Expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by _____, Pre-Construction Engineer, Alaska Department of Transportation and Public Facilities, for and on behalf of the Department.

Notary Public for State of Alaska
My Commission Expires: _____

Appendix A Delegation Matrix

Category	Activity/Item	City Action	DOT&PF Action	FHWA Action
	Financial Submittals (PR 37)	Provide Information	Prepare	Approve
Finance	Phase Authority to Proceed		Prepare	Approve
	Memorandum of Agreement	Approve	Prepare/Approve	
Consultant	RFP Scope of Work	Prepare	Approve	
	RFP Advertisement	Prepare	Approve	
	Consultant Selection	Prepare	Approve	
	Consultant Contract	Prepare	Approve	
Environment	Programmatic Categorical Exclusions	Prepare	Approve	
	Documented Categorical Exclusion	Prepare	Concur	Approve
	Environmental Assessment	Prepare	Concur	Approve
	Finding of no Significant Impact (FONSI)	Prepare	Concur	Approve
	Environmental Impact Statement	Prepare	Concur	Approve
	Record of Decision	Prepare	Concur	Approve
	Reassessment of Previous Determination	Prepare	Concur	Approve
Design	Design Designation	Prepare	Approve	
	Design Criteria	Prepare	Approve	
	Design Study Report	Prepare	Approve	
	Design Waiver	Prepare	Approve	
	PS&E Assembly	Prepare	Approve	
	FHWA Certification	Prepare	Approve	
	Section 100 Contract Specification – Special Provision	Prepare	Approve	
	Public Interest Findings	Prepare	Approve	
	Waiver of Buy America Steel	Prepare		Approve
	Geotechnical Reports	Prepare		
	Utility Agreement	Prepare	Approve	
	Utility Certification	Prepare	Approve	
	DBE Goals	Prepare	Approve	

NA: Not appropriately delegated for this project, or not anticipated to be relevant to this project's development. In the event these activities become relevant, this agreement may be amended.

Prepare: Primary responsibility for means, methods, content, and results.

Concur: Agree with content and recommendation for FHWA approval, or otherwise find the preparation acceptable.

Approve: Final approval authority.

Information: Receives a courtesy copy of activity documentation.

Appendix B Project Budget, (initial)

<i>Type of Work</i>		<i>Estimate of Funding</i>		
		(1) Estimated Total Project Funds	(2) Estimated Borough Funds	(3) Estimated Federal Funds
Preliminary Engineering				
a.	City Work			\$ 775,000
b.	Other			
c.	State Services (4.4% ICAP + Reviews)			\$ 75,000
d.	Total PE Cost Estimate (a+b+c)			\$
Utilities				
e.	City Work	0	0	0
f.	Other	0	0	0
g.	State Services (ARR Agreement, etc)	0	0	\$ 150,000
h.	Total Utility Cost Estimate (e+f+g)	0	0	0
Right of Way		0	0	0
Construction				
i.	City Work	0	0	0
j.	Other	0	0	0
k.	State Forces	0	0	0
l.	Total Construction Cost Estimate (i+j+k)	0	0	0
m.	Total Project Cost Estimate (d+h+l)			\$1,000,000

The federal-aid participation rate in this project will be determined by the Federal Government. The parties expect that it will be 100 percent; however, it is understood that the rate may vary. The parties agree that if the expected rate of participation is revised by the federal government, the parties may renegotiate this agreement. All costs not reimbursed by the Federal Government shall be the responsibility of the Borough.

Attachment 4-B



**Supplement to
Memorandum of Agreement
Between State of Alaska and
City of Wasilla**

City:	AKSAS Project No.
Date:	Federal Aid Project No.
	Supplemental Agreement No.

The City _____ desires to supplement the agreement entered into and executed on _____. Except as expressly modified by this supplement, all provisions in the basic agreement remain in effect.

Description and Reason for Supplement:

Type of Work	Estimate of Funding				
	(1) Previous Agree./ Suppl. Total Project Funds	(2) This Supplement	(3) Estimated Total Project Funds	(4) Estimated Borough Funds	(5) Estimated Federal Funds
Preliminary Engineering					
a. City Work					
b. Other					
c. State Services					
d. Total PE Cost Estimate (a+b+c)					
Utilities					
e. City Work					
f. Other					
g. State Services					
h. Total R/W Cost Estimate (e+f+g)					
Right of Way					
Construction					
i. City Work					
j. Other					
k. State Forces					
l. Total Construction Cost Estimate (i+j+k)					
m. Total Project Cost Estimate (d+h+l)					

The City further stipulates that pursuant to said Title 23 regulations and policies and procedures, and as a condition to payment of the federal funds obligated, it accepts and will and comply with the applicable provisions.

City of Wasilla

Department of Transportation and Public Facilities

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____