

Prepared by: Attorney
Requested by: Public Works
Meeting Date: November 22, 2004
Postponed on November 22, 2004 to December 13, 2004
Persons to be Heard: December 13, 2004
Postponed on December 13, 2004 to January 24, 2005
Amended: January 24, 2005
Adopted: January 24, 2005
Vote: Cox, Lowe, & O'Neil in favor; Ewing, Sande & Straub opposed
Mayor Keller broke tie in the affirmative

**CITY OF WASILLA
RESOLUTION SERIAL NO. 04-45(AM)**

**A RESOLUTION OF THE WASILLA CITY COUNCIL AUTHORIZING THE
EXECUTION OF AN INTERSECTION COST AGREEMENT WITH LOWE'S HIW, INC.**

WHEREAS, Lowe's HIW, Inc. ("Lowe's") has constructed a home improvement store (the "Home Improvement Center") in the City of Wasilla (the "City"); and

WHEREAS, The State of Alaska Department of Transportation and Public Facilities, Central Region ("DOT/PF"), the City, and Lowe's desire that a traffic signal and related intersection improvements be constructed at the intersection of the Parks Highway, Hermon Road, and Sun Mountain Avenue right-of-way (the "Work") to improve access to the Home Improvement Center and other property; and

WHEREAS, Lowe's and the City desire to share the cost of the Work in the manner set forth in the Intersection Cost Agreement ("Agreement") that has been presented to this meeting; and

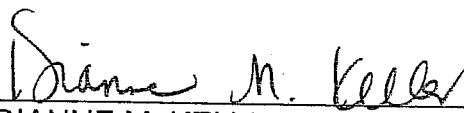
WHEREAS, The construction and operation of the Work pursuant to the Agreement is in the best interest of the City and the health, safety, morals and welfare of its taxpayers and residents and will further the goals and objectives of the City.

NOW, THEREFORE, BE IT RESOLVED by the Wasilla City Council that the form and content of the Agreement hereby are in all respects authorized, approved and

confirmed, provided that the amount payable by the city shall be \$150,000 with the terms to be 10-years interest free payback, and the Mayor hereby is authorized, empowered and directed to execute and deliver the Agreement to Lowe's on behalf of the City, in substantially the form and content now before this meeting but with such changes, modifications, additions and deletions therein as she shall deem necessary, desirable or appropriate, the execution thereof to constitute conclusive evidence of approval of any and all changes, modifications, additions or deletions therein from the form and content of said document now before this meeting, and from and after the execution and delivery of said document, the Mayor hereby is authorized, empowered and directed to do all acts and things and to execute all documents as may be necessary to carry out and comply with the provisions of the Agreement as executed.

This resolution shall take effect upon adoption by the Wasilla City Council.

ADOPTED by the Wasilla City Council on January 24, 2005.



DIANNE M. KELLER, Mayor

ATTEST:



KRISTIE SMITHERS, MMC
City Clerk

[SEAL]



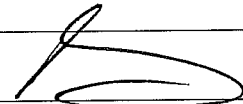
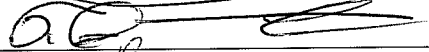
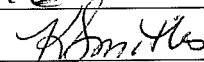
**CITY OF WASILLA
LEGISLATION STAFF REPORT**

RE: RESOLUTION SERIAL NO. 04-45

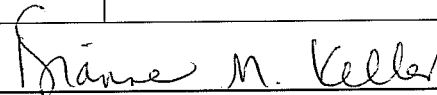
A RESOLUTION OF THE WASILLA CITY COUNCIL AUTHORIZING THE EXECUTION OF AN INTERSECTION COST AGREEMENT WITH LOWE'S HIW, INC.

Agenda of: November 22, 2004
Originator: Public Works Director

Date: November 12, 2004

Route to:	Department	Signature/Date
	Police	
	Recreational and Cultural Services Library, Museum	
X	Public Works Planning	 11/12/04
X	Finance *signature required	
X	Clerk	

REVIEWED BY MAYOR DIANNE M. KELLER:



FISCAL IMPACT: yes or no \$350,000

Funds Available yes no

Account name/number:

Attachments: Agreement

SUMMARY STATEMENT: This agreement allows the City to share in the cost of the traffic signal in an amount not to exceed \$350,000 using sales tax generated by Lowe's. The current estimated cost for the traffic signal is \$676,000. Lowe's will pay for the total cost of construction upfront, and the agreement allows Lowe's to be reimbursed for one-half of the cost using 20 percent of the sales tax generated by their business. The agreement specifies quarterly payments to Lowe's until the City's share is paid back.

The administration lobbied heavily with DOT for a Parks Highway traffic signal at Hermon Road even prior to Lowe's considering a development at this location. The administration believes the partnership with Lowe's is necessary to improve public safety and business access along this portion of the Parks Highway.

INTERSECTION COST AGREEMENT

This Intersection Cost Agreement ("Agreement") dated as of _____, 2004 for reference and identification purposes only, is between Lowe's HIW, Inc., a Washington corporation ("Lowe's"), and the City of Wasilla ("City"), an Alaska municipal corporation.

Recitals:

A. Lowe's is the owner of the "Lowe's Parcel," as shown on the "Site Plan" attached hereto as Exhibit A. The Legal description of the Lowe's Parcel is attached hereto as Exhibit B. Lowe's intends to construct a home improvement store (the "Home Improvement Center") on the Lowe's Parcel.

B. The State of Alaska Department of Transportation and Public Facilities, Central Region ("DOT/PF"), the City, and Lowe's desire that a traffic signal and related intersection improvements be constructed at the intersection of the Parks Highway, Hermon Road, and Sun Mountain Avenue right-of-way (the "Work") to improve access to the Lowe's Parcel and other property. The parties acknowledge that the Work is not required for Lowe's development of the Home Improvement Center, but is desirable to DOT/PF, the City, and Lowe's .

C. Lowe's and the City desire to share the cost of the Work in the manner set forth in this Agreement.

D. The construction and operation of the Work pursuant to this Agreement is in the best interest of the City and the health, safety, morals and welfare of its taxpayers and residents and is in accordance with the public purposes set forth in federal, state and local law and regulations. Implementation of this Agreement will further the goals and objectives of the City.

AGREEMENT

1. **DESIGN AND CONSTRUCTION.**

- a. **Design and Construction Agreement with DOT/PF.** Lowe's agrees to enter into an agreement with DOT/PF in substantially the form attached hereto as Exhibit C (the "Design and Construction Agreement") for the design and construction of the Work. Lowe's shall perform its obligations under the Design and Construction Agreement, including but not limited to design of the Work and payments to DOT/PF and/or contractors for construction of the work.
- b. **Scope of Work.** The "Work" means the design, review and approval, and construction of both a temporary and a permanent traffic signal, right turn lanes, left turn lanes, driveways and modifications to improve access to property along the Parks Highway and Sun Mountain Avenue as needed to mitigate traffic

impacts identified in the accepted Traffic Impact Analysis dated March 2004, and amended by the DOT/PF's acceptance letter dated April 14, 2004.

- c. **Lowe's Cost of Work.** "Lowe's Cost of Work" means all out-of-pocket amounts paid by Lowe's for the Work, including costs of design, costs paid directly to DOT/PF, and costs paid to contractors, and other costs payable by Lowe's under the Design and Construction Agreement, but not including any cost for Lowe's employees.
- d. **Records of Lowe's Cost of Work.** Following completion of the Work, Lowe's shall provide the City with copies of all invoices, checks, vouchers, records, contracts and other documents and data necessary or appropriate to calculate and verify Lowe's Cost of Work. Prior to completion of the Work, Lowe's may deliver interim statements of Lowe's Cost of Work ("Lowe's Interim Cost of Work"). Lowe's shall maintain, for two (2) years following completion of the Work, all records and supporting documentation relating to the computation of Lowe's Cost of Work. The City shall have the authority upon reasonable prior notice to audit the records of Lowe's at the location of the records for the purpose of verifying the accuracy of the computation of Lowe's Cost of Work.

2. **REIMBURSEMENT.**

- a. **Partial Reimbursement of Lowe's by City.** The City agrees to reimburse Lowe's for the lesser of (i) one-half of Lowe's Cost of Work or (ii) Three Hundred Fifty Thousand Dollars (\$350,000.00). The obligation to pay the reimbursement is subject to annual appropriation by the City Council. Until the City's reimbursement obligation hereunder has been satisfied in full, the City hereby covenants to include in each annual budget presented to the City Council an expenditure line item for such reimbursement obligation in an amount sufficient to perform such reimbursement obligation as it comes due. However, notwithstanding the benefit to the City from the construction of the Work, the timing of the City's obligation to make reimbursement payments to Lowe's shall be limited by the receipt of sales tax revenue by the City. Subject to sub-sections b through f below, payments on the City's obligation to reimburse Lowe's shall be limited to an amount equal to twenty percent (20%) of the sales tax revenues actually paid to the City that are generated by and remitted from the Home Improvement Center or any other business operating in the Home Improvement Center building on the Lowe's Parcel, whether operated by Lowe's, a tenant or transferee from Lowe's, or any other third party.
- b. **Time of Payments.** Any payments due Lowe's will be paid by the City to Lowe's within thirty (30) days following the end of each calendar year quarter. Prior to completion of the Work, the City shall reimburse Lowe's for the Lowe's Interim Cost of Work pursuant to the most recent interim statement. Payments shall be calculated on a cumulative basis as provided in d below.

- c. **City Statement.** The City shall provide a quarterly statement to Lowe's showing the amount due under this Agreement at the end of each quarter, the amount of each payment credited and the ending balance remaining.
- d. **Computation of Payment Amount.** The amount of each quarterly reimbursement payment due to Lowe's under this Agreement shall be calculated based upon the sales tax rate existing at the date of the execution of this Agreement for the City, which is two and one-half percent (2.5%). If the sales tax rate should be increased or decreased, or if the sales tax should be eliminated, the amount of the quarterly reimbursement payment due to Lowe's shall continue to be calculated based upon the present two and one-half percent sale tax rate. Each quarterly payment shall be calculated on a cumulative basis, with the quarterly payment equal to (i) twenty percent (20%) of the cumulative total of sales tax revenue from the Home Improvement Center or any other business operating in the Home Improvement Center building on the Lowe's Parcel, whether operated by Lowe's, a tenant or transferee from Lowe's, or any other third party (calculated as set forth above in this section 2.d), reduced by (ii) the cumulative amount of prior reimbursements paid to Lowe's; provided, however, in no event shall the quarterly payment exceed the unpaid balance of the Lowe's Cost of Work, or, if applicable, the then current Lowe's Interim Cost of Work.
- e. **Right of Prepayment.** The City reserves the right to prepay the outstanding balance due to Lowe's, without penalty, interest, fee or additional charge.
- f. **The City and Lowe's' Administration Expenses.** The City and Lowe's agree to pay their respective administrative expenses and costs in relation to this Agreement. Neither party will charge or claim any right of reimbursement from the other with respect to their administration of the Agreement.

3. MISCELLANEOUS.

- a. **Time Of The Essence.** Time is of the essence with respect to this Agreement.
- b. **Relationship Of Parties.** Nothing contained in this Agreement shall be deemed or construed, either by the parties hereto or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture or other association between the City and Lowe's .
- c. **No Obligation To Continuously Operate.** Lowe's , including any successors and assigns, is not obligated to continuously operate a business on the Lowe's Parcel and, specifically, is not obligated to open, continuously operate or operate for any specific period of time a Lowe's building supply or home improvement retail warehouse or any store or business on the Lowe's Parcel. Nothing contained in this Agreement shall be construed, interpreted or otherwise read to require Lowe's to operate a business on the Lowe's Parcel or to prevent Lowe's from closing its business on the Lowe's Parcel.

- d. **Incorporation of Exhibits.** Each exhibit attached to and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein. The recitals are incorporated herein by reference as matters of contract and not mere recital.
- e. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.
- f. **Headings.** Headings used in this Agreement are for convenience only and shall not be considered in construing the meaning of the content or meaning of any section or article.
- g. **Binding Agreement:** This Agreement shall become a binding obligation of the parties only upon the complete execution and unconditional delivery thereof by both parties.
- h. **Modification.** This Agreement may not be modified in any respect whatsoever, in whole or in part, except in a writing signed by both parties.
- i. **Notices.** Any notice or invoice required or permitted to be given under this Agreement shall be in writing. Notice shall be deemed to have been given: (a) five (5) business days after deposit with the United States Mail as Certified Mail, Return Receipt Requested and postage prepaid; or (b) one (1) business day after deposit with a nationally recognized overnight delivery service which provides delivery tracking, with payment made by the sending party; or (c) on the date of personal delivery. Notices shall be addressed to the Party being notified at the address given below (or such other address which any Party may designate for itself from time to time hereafter by written notice to the other Party(ies)):

CITY OF WASILLA:

LOWE'S HIW, INC.:

Prior to completion
of the Work:

Lowe's HIW, Inc.
1530 Faraday Avenue, Suite 140
Carlsbad, CA 92008
Attn: Roger Bernstein
Telephone: (760) 918-0132
Fax: (760) 918-9112

With copies to: Lowe's HIW, Inc.

1530 Faraday Avenue, Suite 140
Carlsbad, CA 92008
Attn: Rob Doane
Telephone: (760) 918-0132
Fax: (760) 918-9112

And to: Paul M. Harman
Jones Waldo Holbrook & McDonough
170 South Main Street, Suite 1500
Salt Lake City, Utah 84101
Telephone (801-521-3200
Fax: (801) 328-0537

After completion
Of the Work:

Lowe's HIW, Inc.
Box 1111
North Wilkesboro, NC 28659
(For Overnight Delivery:
Highway 268 East – East Dock (28659)
North Wilkesboro, NC 28659
Attention: Property Management Dept. (REO)
Telephone: (336) 658-4553
Fax: (336) 658-3262

And to: Lowe's HIW, Inc.
Box 1111
North Wilkesboro, NC 28659
(For Overnight Delivery:
Highway 268 East – East Dock (28659)
North Wilkesboro, NC 28659
Attention: Legal Department
Telephone: (336) 658-4553
Fax: (336) 658-3262

With copies to: Lowe's HIW, Inc.
101 Andover Park E Suite 200
Tukwila, Washington 98188
Attention: Tax Dept.
Telephone:
Fax:

- j. **Waiver.** The failure of a person to insist upon strict performance of any of the restrictions contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the restrictions contained herein by the same or any other person.

- k. **Attorney's Fees.** In the event any party initiates or defends any legal action or proceeding in **any** way connected with this Agreement, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's fees (including, without limitation, its reasonable costs and attorney's fees on any appeal). All such costs and attorney's fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.
- l. **Severability.** If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, then such term or provision shall be to that extent stricken or disregarded and the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.
- m. **No Third Party Beneficiary Rights.** This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto.
- n. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.
- o. **Governing Law.** This Agreement shall be interpreted and governed by Alaska law. This Agreement shall be enforceable by any action in law or equity, including without limitation specific performance and injunctive relief.
- p. **Binding on Successors and Assigns.** All the terms, covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of the parties and their successors and assigns. "City," as used in this agreement, includes the City of Wasilla and any assignee of or successor to its rights, powers and responsibilities. "Lowe's" as used in this Agreement, includes Lowe's HIW, Inc. and any permitted nominee, assignee or successor of Lowe's.

Exhibit A: Site Plan

Exhibit B: Legal Description of Lowe's Parcel.

Exhibit C: Design and Construction Contract.

LOWE'S HIW, Inc.

Signature: _____ Date: _____

Name:

Title:

CITY OF WASILLA

Signature: _____ Date: _____

Name: Dianne M. Keller

Title: Mayor



	Presented
Action taken	
Other:	
Verified by:	

WASILLA CITY COUNCIL INFORMATIONAL MEMORANDUM

IM No. 04-17

TITLE: Hermon Road Traffic Signal

Agenda of: December 13, 2004
 Originator: Public Works Director

Date: December 8, 2004

Route to:	Department	Signature/Date
	Police	
	Recreational and Cultural Services Library, Museum	
X	Public Works Planning	<i>Fonda Hardy</i>
X	Finance *signature required	<i>[Signature]</i>
X	Clerk	<i>[Signature]</i>
X	Economic Development	<i>[Signature]</i>

REVIEWED BY MAYOR DIANNE M. KELLER: *Dianne M. Keller*

FISCAL IMPACT: yes \$ or no Funds Available yes no

Account name/number:

- Attachments:
- Wasilla Resolution Serial No. 04-08
 - Planning Commission Resolution Serial No. 04-08AM
 - Planning Commission Minutes for March 23, 2004
 - Draft of Incentives and Economic Development Policies

SUMMARY STATEMENT:

Background on Signal at Parks and Hermon

Prior to the announcement that Lowe's was locating on East Sun Mountain Avenue and Hermon Road, the City of Wasilla had identified the need for a traffic signal at the Parks Highway and Hermon Road intersection to serve the existing businesses (Mat-Su Cinema, boat sales, Nye, strip mall, etc.), City residents, and the 21,113 (DOT 2003) vehicles traveling along the Parks each day. The City administration and staff were recommending installation of this signal because of the growing transportation safety problems at the Parks/Hermon intersection. Between 1998 and 2002, eighteen accidents were reported at this intersection (AK DOT traffic Safety Division data). Of these accidents, 39% were accidents with injuries and property damage was reported in 61% of the accidents. Additionally, City Police reported 13 accidents along this section of the Parks Highway in 2003.

As a result of the growing average daily counts on the Parks Highway and concerns for the safety issues resulting from the increased traffic, the City had already tentatively programmed \$250,000 from the City's CIP budget for AK DOT to expand their Parks Highway upgrade project to include installation of this traffic signal. DOT's original plans for the Parks upgrade included preliminary engineering design and installation of electrical conduit for a signal at this intersection but did not include the signal light.

The recommendation to have the signal installed is not just the result of Lowe's coming to Wasilla. It represents the need to serve nearby Wasilla businesses, Wasilla residents and visitors, as well as the 21,113 vehicles per day traveling along this section of the Parks Highway.

In recognition of the need to ease the pressure at Parks and Hermon, on February 23, 2004, the City Council passed Resolution 04-08 approving the concept of the City developing an alternative access route for East Sun Mountain Avenue which would allow the community to reach Lowe's and other businesses along the north side of the Parks Highway from Seward Meridian Parkway. The development of this option would have cost up to \$750,000 in City CIP funds without any reimbursement from Lowe's.

AK DOT indicated it was prepared to modify the Parks Highway project then underway to accommodate the new frontage road's connection with the current frontage road system east of Seward Meridian Parkway. Since the City was not able to secure the right-of-way for the proposed East Sun Mountain access, we will not move forward with this road project. This brings us back to the community's need for a traffic signal at Hermon and the Parks to control turning movements in to and out of all the businesses along this section of the highway.

Planning Commission Condition

Planning Commission Resolution 04-08AM on the Lowe's CUP states that Lowe's "shall continue to work with AK DOT to install a traffic signal at Hermon and the Parks". Lowe's actual access is off of East Sun Mountain Avenue. East Sun Mountain is the frontage road on the north side of the Parks Highway that is connected to the Parks Highway by Hermon Road.

Cost to City for Reimbursement Agreement with Lowe's

Under the terms in the proposed agreement with Lowe's, the Finance Department projects that the City would rebate approximately \$50,000 a year in sales tax to Lowe's. Based on DOT's actual projected cost of \$676,000 for the traffic signal with our total contribution being \$338,999, the present value of our share would be approximately \$294,495. For an alternative based on Wasilla contributing \$350,000, the present value of the contribution would be \$303,995. Therefore, the estimated range of our true cost is \$294,495 to \$303,995.

	<u>Cost Share</u>	<u>Present Value Cost</u>
Alt. 1	\$338,999	\$294,495
Alt 2	\$350,000	\$303,995

During the estimated 6 to 8 year term of the Lowe's reimbursement agreement, Lowe's employees will have earned and brought approximately \$16 to \$24 million in wages into the local economy. If Wasilla looks beyond the projected 6 to 8 year reimbursement time line for this agreement, the benefits to the community far outweigh the cost especially if you add in the long term increase in sales tax revenue and increased revenue from the City's 0.4 mills in property tax revenue.

Lowe's has hired 120 employees, mostly from this area. If only 80% live in the Wasilla area and their average wage is \$13/hour, these new employees represent the addition of \$2.7 million per year into the Wasilla economy.

Benefit to Wasilla Economy During Reimbursement Period:

	<u>6 Year Reimbursement Period</u>	<u>8 Year Reimbursement Period</u>
Wage Income \$13/hour (\$2.7 Million/year)	\$16,224,000	\$21,632,000
Wage Income@ \$15/hour (\$3.7 Million/year)	\$18,720,000	\$24,960,000

General Statement on Economic Development

Cities that are successful in growing beyond the status of a being a bedroom community to a larger more economically powerful city do so by deciding to take an active role in bringing jobs to their residents. They invest in economic development. While the Lowe's agreement may not be classed as an economic incentive, it is a valid economic development strategy.

Another example of active economic development strategy was the willingness of both City of Palmer and the City of Wasilla to do whatever Triad needed in the way of infrastructure development when they were thinking of building a new hospital. Wasilla competed for that project and each city was willing to spend city funds to bring the hospital's new jobs and wages to their community. Wasilla is still in competition with Palmer, and with Eagle River, and with every other Alaska community that wants to provide jobs for its residents. To win this competition, we need to be able to see and explain to our residents the long term benefits of investing today's tax dollars in a wide range of new ways to win the jobs and the dollars for all our tomorrows.

One suggestion is to earmark a set percentage of each annual CIP budget for economic development. These funds would then be available to the Economic Development Director for a variety of incentive programs or projects. Other economic strategies need to be developed as part of Wasilla's economic development efforts.

In any economic development effort, momentum is important. Right now, Wasilla has momentum. We can be seen by state and out of state companies as being a community that helps companies come into the area or a community that may or may not welcome a new company.

Impact of New Business, Why Assisting Businesses is Good for a Community

One way to visualize the economic benefit of having a new business opening in Wasilla would be to look at the impact Lowe's will have on this community. The best estimate we have right now in terms of a multiplier on wages alone is approximately 1.5. That means for every dollar earned [see the table above], \$0.50 cents is spent elsewhere in the community.

There will be a higher economic benefit to the community on sales (the multiplier in Alaska is usually between 4 and 7). We will need to have more information on sales at the Wasilla Lowe's before we can make a more specific prediction on this multiplier effect. This is because each new business will acquire some goods or services from other local businesses (for example, when the new business purchases office supplies, phone services, internet service, or pays for local newspaper or radio advertisements). In addition, there is a cascading effect as the new business's local suppliers are able to prosper and expand the number of their employees, generating increased worker income, some of which will be spent at other local retailers, causing those businesses to expand.

In addition to the economic benefits, Wasilla reaps social benefits when new jobs come here. Some societal benefits include the opportunity for community youth to find work locally as they graduate from school, workers gain an opportunity to work close to home rather than commuting, and families of former commuters gain two or more hours per day of direct parental supervision of young children. Also, bringing more businesses into Wasilla provides opportunities for the youth who graduate from high school here to remain in this community rather than graduating then leaving. Providing more jobs at various skill levels to allow young persons to enter the work force while completing their education and then remain in Wasilla work their way up in one of the local companies should be one of the City's economic development goals.

Setting Precedent

In the proposed agreement with Lowe's, the percentage of reimbursement is based on public benefit beyond that of the development. In this case, at least 50 percent of the traffic demand for the traffic signal was present prior to Lowe's selecting this site for their Wasilla store. Lowe's provides the balance of traffic needed to trigger the Federal Warrant to justify the signal. Therefore, the administration believes it is appropriate to fund 50 percent of this signal. Otherwise, Lowe's is expected to carry the burden for the entire area.

The City of Wasilla included the traffic signal at Hermon and the Parks Highway in its discussions with DOT during our reviews of the both the preliminary and final designs of

the Parks highway project. While DOT was willing to include some of the electrical conduit work in their final design, we were not able to get the actual traffic signal included in the Parks Highway upgrade because it did not meet DOT criteria for a signal.

The administration fully intends to develop an economic development program that can be used for future developments. Some key points in the proposed agreement with Lowe's that can form the basis for future agreements are:

- 1) City reimburses up to 50 percent for infrastructure improvements.
- 2) Reimbursement is based on 20 percent of sale tax generated.
- 3) Reimbursement is limited to sale tax that can be generated over 10 years.

Future developments will be viewed on a case-by-case basis. This type of partnership is self-limiting since it is based on the sales tax that can be generated by any particular business and it is limited with a 10-year cap.

The administration believes this can be applied to other projects with minimal impact on future capital improvements.

Recommendation

Participating in the proposed reimbursement agreement with Lowe's is not a traditional economic development incentive. It is however an excellent example of a public safety improvement that is also proactive economic development. Staff respectfully recommends that the Council authorize the Mayor to enter into this agreement with Lowe's.

Requested by: Public Works
Prepared by: Public Works
Adopted: February 23, 2004
Vote: Unanimous

CITY OF WASILLA
RESOLUTION SERIAL NO. 04-08

A RESOLUTION OF THE WASILLA CITY COUNCIL APPROVING THE CONCEPT OF AN EAST SUN MOUNTAIN AVENUE EXTENSION TO SEWARD MERIDIAN PARKWAY TO PROMOTE LOCAL BUSINESS DEVELOPMENT BY PROVIDING ALTERNATE ACCESS TO THE PARKS HIGHWAY AND PALMER-WASILLA HIGHWAY.

WHEREAS, the State of Alaska Department of Transportation is in the planning stage for Seward Meridian Parkway Improvements, and

WHEREAS, local input for Seward Meridian Parkway will enable the State incorporate the City's desire for better access along East Sun Mountain Avenue into the Seward Meridian Parkway Improvement Project, and

WHEREAS, the local business district is in support of an alternative access route to the Parks Highway and Palmer-Wasilla Highway from East Sun Mountain Avenue, and

WHEREAS, an alternate access for East Sun Mountain Avenue will allow the community to access the business district in a manner that eases congestion at Hermon Road and reduces traffic impact to the neighboring residential area along Whispering Woods Drive.

NOW THEREFORE BE IT RESOLVED that the Wasilla City Council approves that the concept of an East Sun Mountain Avenue Extension to Seward Meridian Parkway, and that this alternate access is in the best interest of the community.

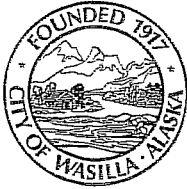
ADOPTED by the Wasilla City Council on February 23, 2004.

ATTEST:


DIANNE M. KELLER, Mayor


KRISTIE L. SMITHERS, CMC
City Clerk

[SEAL]



CITY OF WASILLA
LEGISLATION STAFF REPORT

RE: Resolution Serial No. 04-08

Agenda of: February 23, 2004
Originator: Public Works Director

Date: February 13, 2004

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

REVIEWED BY MAYOR DIANNE M. KELLER:

[Handwritten Signature: Dianne M Keller]

FISCAL IMPACT: yes\$ or no

Funds Available yes no

Account name/number:

Attachments: none

SUMMARY STATEMENT:

This Resolution will help DOT with the design for Seward Meridian Improvements that are currently in the planning stage. The Administration has been working with the local business district and has identified the need for an alternate access for East Sun Mountain Avenue to promote local business development and ease congestion at Hermon Road.

At a minimum, DOT will be able to fund intersection improvements at Seward Meridian that may include a traffic signal for an East Sun Mountain Avenue extension, with the approval of this resolution. The City is seeking local support to proceed with the road extension as a City project.

**WASILLA PLANNING COMMISSION
RESOLUTION SERIAL NO. 04-08 AM**

A RESOLUTION OF THE WASILLA PLANNING COMMISSION TO APPROVE A CONDITIONAL USE PERMIT FOR CONSTRUCTION OF A 135,000 SF RETAIL BUSINESS WITH 31,000 SF GARDEN CENTER, ON LOT 3A MOUNTAIN VILLAGE PLAZA, AND LOT 1 OF SUN PLAZA INTO ONE APPROXIMATE 12.4-ACRE PARCEL, ZONED C—COMMERCIAL.

WHEREAS, Tom Adams, PE, with Lounsbury and Associates, Inc, for Lowe's Home Improvement Warehouse, Inc, submitted a conditional land use permit application on February 25, 2004 for construction of a 135,000 square foot commercial retail business with a 31,000 square foot garden center on parcels, Lot 3A, Mountain Village Plaza, and Lot 1, Sun Plaza; and

WHEREAS, Tom Adams, or Lounsbury and Associates, Inc, representing Lowe's HIW, Inc has responded to requirements listed in WMC 16.16.050 of the Wasilla Development Code and addressed the criteria therein by letter dated February 25, 2004 consisting of a total of five pages; and

WHEREAS, a Conditional Use permit is required within a commercial zone as the proposed project exceeds 10,000 square feet of gross floor area, (GFA); and

WHEREAS, Wasilla Planning Office has posted public notices for the request for a conditional use permit in accordance with Wasilla Municipal Code; and

WHEREAS, Wasilla Planning Office mailed out notices for the initial request to property owners within 1200 radial feet of the proposed development; and

WHEREAS, the public hearing date and time has been publicly advertised; and

WHEREAS, the applicant anticipates that the landscaping will be delayed due to seasonal reasons, and has requested occupancy prior to landscape installation, and

WHEREAS, the applicant has requested to exceed the height of thirty-five at the main entry parapet, and

WHEREAS, the Wasilla Planning Commission deliberated on this request taking into account the information submitted by the applicant, the evaluation and recommendations of staff contained in the staff report, public testimony - both written and verbal comments, the applicable provisions of the Wasilla Comprehensive Plan, and other pertinent information brought before them; and

WHEREAS, the Wasilla Planning Commission has adopted Findings of Fact to summarize the basic facts and reasoning of the commission;

NOW, THEREFORE BE IT RESOLVED, that the Wasilla Planning Commission approves Conditional Use Permit C04-89 for construction of a 135,000 square foot commercial retail business with 31,000 square foot garden center on parcels 3A, Mountain Village Plaza and Lot 1, Sun Plaza with landscaping to be installed by September 30, 2005 and with authorization to exceed thirty-five feet at the main entry parapet with the following conditions:

1. Lowe's shall continue to work with the AK DOT &PF to install a traffic signal at Hermon Road and the Parks Highway.
2. A drainage plan must be approved by the Wasilla Public Works Director that will control runoff during and after construction and which will demonstrate that grading will be performed per the Wasilla Public Works requirements and will be consistent with standard drainage and hydraulic design practices.

BE IT FURTHER RESOLVED that the Wasilla City Planning Commission approves Conditional Use Permit C04-89 after due consideration and with the Findings of Fact attached as Exhibit A and incorporated herein.

ADOPTED by the Wasilla Planning Commission on March 23, 2004.

APPROVED:



Stan Tucker, Chairman

ATTEST:



Sandra Garley, City Planner

[seal]

Wasilla Planning Commission Resolution 04-08

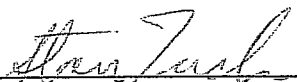
Findings of Fact

1. The property owner, Lowe's Home Improvement Warehouse, Inc., is represented by Tom Adams. PE of Lounsbury & Associates Inc.
2. Lowe's has requested a Conditional Use Permit to construct a 135,000 s.f. retail business with 31,000 s.f. garden center & replat 2 lots into one.
3. The property is located at 2551 E. Sun Mountain Avenue, north of the Parks Highway and is the site now occupied by Homesteaders Hardware.
4. The parcel is approximately 12.3- acres in size.
5. The adjacent properties to the east, west, and south are zoned Commercial and developed as Commercial, and while the adjacent properties to the north are developed as residential, they are outside the city limits and therefore are not zoned.
6. The parcel in question is not part of an existing neighborhood plan.
7. Seventy-three notices were mailed to property owners within 1200 feet, and the only comment received back was in support of the application.
8. This area is shown in the 1996 Comprehensive Plan as Commercial and is projected to remain Commercial.
9. The special provisions under 16.16.060 do not apply as the requested use is not one of the uses listed in this section of the Wasilla Land Development Code.
10. Jack Krill, Chief of the Central Mat-Su fire Department, has reviewed the site plans and has found the proposed access ways, driveways, fire lanes, fire hydrant placement, fire flow requirements, fire department connections, and other emergency response, fire and life safety issues to be adequately addressed.
11. Primary access to the property is from a highway frontage road, East Sun Mountain Avenue, with a connection to the Parks Highway via Hermon Road.
12. Traffic will enter the site from two driveways on Sun Mountain Avenue and an additional two driveways on Alpine Street.
13. A Traffic Impact Analysis (TIA) was submitted to Alaska Department of Transportation for review and approval.
14. The proposed traffic mitigation plan in the TIA includes installation of a traffic signal at the Parks Highway/Hermon Road intersection.
15. The proposed building meets all setback requirements of section 16.24.030.
16. The proposed main entry parapet may exceed the 35' height limit pursuant

to 16.24.030A(6) under the provisions of an approved permit.


17. The applicant has met the required minimum parking requirement for 447 parking spaces and 11,175 s.f. snow storage as required under 16.24.040.
18. This property is adequately served by city water and sewer, electric, natural gas and telephone utilities.
18. The provisions for internal traffic circulation provide for safe movement of vehicles on and off site.
19. The Traffic Impact Analysis indicates that the proposed use will not result in significantly different peak use characteristics than surrounding commercial uses on the frontage road or on the Parks Highway.
20. The proposed use will not generate excessive noise, vibration, dust, litter, odor, glare, radio or television interference, or line voltage fluctuations off premises.
21. Parking lot light fixtures direct light down not up or to the side.
22. A Landscaping plan has been submitted for 84 trees (12 Paper Birch, 56 Amur Chokecherry, 16 Colorado Green Spruce) and 168 shrubs (11 Amur Maple, 44 Peking Cotoneaster, 40 Bush Cinquefoil, 73 Common Ninebark) which exceeds the minimum requirements.
23. A proposed pedestrian access will connect to the multi-use path along the north side of the Parks Highway to be constructed by DOT this year.
24. The proposed building is similar to other commercial structures in the vicinity while the residential uses to the north are separated from the commercial use by an 8' change in elevation.
25. Existing commercial uses in the surrounding area and volume of traffic along the Parks Highway do not support dedication of a portion of the property as public open space.
26. There is no significant historic cultural resource on the proposed site.
27. Existing building and parking have not significantly increased impact on surrounding area from glaciation or drifting snow.

APPROVED:



Stan Tucker, Chairman

ATTEST:



Sandra Garley, City Planner

[seal]

CALL TO ORDER

The regular meeting of the Wasilla Planning Commission was held on Tuesday, March 23, 2004, in Council Chambers of City Hall, Wasilla, Alaska. Stan Tucker, Chairman, called the meeting to order at 7:00 p.m.

ROLL CALL

Planning Commissioners present and establishing a quorum were:

Ms. Dorothy Hamilton, Seat B
Mr. Gregory Koskela, Seat C
Ms. Jessie Elkins, Seat D
Mr. Stan Tucker, Seat E
Mr. William McCain, Seat G

Commissioners McCarthy and Vinette were absent, excused.

Members of the staff in attendance were:

Ms. Sandra Garley, City Planner
Ms. Jill Carricaburu, Planning Clerk

PLEDGE OF ALLEGIANCE

Commissioner McCain led in the Pledge of Allegiance.

APPROVAL OF AGENDA

Chairman Tucker asked to add, 'Election of Officers' to the agenda prior to 'Reports', pursuant to the requirements of WMC 2.60.020(B).

GENERAL CONSENT: The agenda as amended was approved without objection.

ELECTION OF OFFICERS

NOMINATION: Commissioner Hamilton moved to re-elect Stan Tucker as Chairman.

Hearing no other nominations for Chairman, Mr. Tucker asked for nominations for Vice-Chairman.

NOMINATION: Chairman Hamilton nominated Mr. McCain for Vice-Chairman. Mr. McCain respectfully declined the nomination.

NOMINATION: Chairman McCain nominated Mr. Koskela as Vice-Chairman.

Hearing no other nominations for Vice-Chair, Mr. Tucker closed nominations.

VOTE: The vote was unanimous in favor of confirming Commissioner Tucker as Chairman and Commissioner Koskela as Vice-Chairman.

Commissioner Tucker thanked his fellow commissioners for their electing him chairman.

REPORTS

- City Council

Ms. Garley reported that:

- the City Council, at the previous night's meeting, reviewed items focusing on the budget; and
- Council introduced the rezone request for property north of the Parks Hwy submitted by Mr. Baker. A public hearing will be held on April 12 by Council to consider Planning Commission's recommendation to deny the rezone.

CONSENT AGENDA

Minutes of Preceding Meeting: March 9, 2004

GENERAL CONSENT: The consent agenda was approved without objection.

PUBLIC HEARING

- A. **Resolution 04-08** – For approval of Conditional Use permit for Lowe's Home Improvement Warehouse.

Ms. Garley gave an overview of the project.

Commissioner Tucker invited Tom Adams, project manager with Lounsbury and Associates to come forward to give an overview.

Mr. Adams introduced himself offering details of the proposed retail center. He noted that the two lots will not be combined into one. However, he has submitted a preliminary plat to the Borough to vacate portions of rights-of-way and some utility easements.

He stated that Lounsbury is working with ADOT&PF to coordinate the installation of signalization at the intersection of Hermon Road and the Parks Hwy. The landscape plan submitted is by Landscape North and commission approval is necessary to allow landscaping to be completed after the opening of the store due to seasonal constraints.

Discussion followed.

Chairman Tucker opened the public hearing.

With no one present wishing to speak, the public hearing was closed.

MOTION: Commissioner McCain moved to adopt resolution 04-08 as presented.

MOTION: Commissioner McCain offered a primary amendment to the motion by striking the word, 'combined,' in the fifth paragraph of page 2, and to delete condition number one in its entirety.

VOTE: Voting on the primary amendment, it passed unanimously.

VOTE: Voting on the main motion, it passed unanimously.

PERSONS TO BE HEARD

There were no persons to be heard.

UNFINISHED BUSINESS

A. Hazard Mitigation Plan – Draft

Ms. Garley stated that she took the commissioners comments from the last meeting and incorporated them into the Hazard Mitigation Plan, (HMP). She reviewed the objectives and actions pertinent to each identified specific goal for earthquakes, severe weather, and wildfire.

Ms. Garley requested that commissioner's think about possible goals and objectives regarding volcanic ash fall, erosion, and floods for next meeting and asked them to call the planning office with any ideas that they may have on these items that may be included in the plan.

Discussion followed.

NEW BUSINESS

A. Resolution 04-09 – Appreciation of the services of Verdie Bowen.

Chairman Tucker requested that the Clerk read Resolution 04-09 into the record.

MOTION: Commissioner Hamilton moved to adopt Resolution 04-09 as presented.

VOTE: Voting on the motion, it passed unanimously.

Chairman Tucker added that he wished Mr. Bowen well in his new endeavor for the City.

COMMUNICATION

- Calendar Review March/April

Chairman Tucker commented that Commissioner McCarthy will represent the Commission at one of the April Council meetings. He reminded Commissioners of the joint work-session to be held on April 8, at the multi-use sports complex at 7:00 PM.

He stated that Commissioner McCain is scheduled to represent the Commission at one of the May Council meetings.

- Permit Log Update
- Enforcement Log

No comments were made regarding the permit log update or the enforcement log.

- Joint Work-Session April 8, 2004 – Draft Agenda

AUDIENCE COMMENTS

Jon Dewar stated that it is very difficult to receive an audible signal for the NOAA weather frequency. He has called and notified them about it numerous times to no avail. Apparently cell phone usage interferes with the signal. The Alaska Emergency Broadcast on TV and radio seems to work okay.

He is concerned whether there is room for emergency vehicles at the site condos located near him.

Mr. Dewar commented that he is not in favor of another traffic light to be located at Hermon Road.

STAFF COMMENTS

Ms. Garley commented that:

- she is working on a possible tax incentive for businesses and individuals willing to participate in hazard mitigation measures;
- she is working with the Chief of Police to develop a list of people and businesses that may be willing to offer their services during an emergency event.

COMMISSIONER COMMENTS

Commissioner Hamilton:

- welcomed Ms. Elkins stating that it is nice to be 'seven' again, having a full commission;
- stated that Lowe's will be a welcome addition to the City.

Commissioner McCain:

- welcomed Ms. Elkins to the Commission;
- stated that Jon Dewar looks good without a beard;
- inquired about emergency shelter signs.

Chairman Koskela:

- welcomed Ms. Elkins to the Commission;
- agreed that Lowe's will be a welcome addition to the city.

Commissioner Elkins:

- stated that she's happy to be a member of the Planning Commission;
- commented she served for three terms on the Borough Platting Board and is anxious to be involved with the city in which she lives.


Commissioner Tucker:

- thanked Ms. Elkins for her willingness to serve and appreciates her giving of her time;
- thanked those present for attending the meeting.

ADJOURNMENT

The regular meeting adjourned at 8:05 PM.

ATTEST:


STAN TUCKER, Chairman


JILL CARRICABURU
Planning Clerk

Adopted by the Wasilla Planning Commission April 13, 2004.

Incentives and Economic Development Policies

It probably goes without saying that the overall strategy for communities interested in economic growth involve the following: business retention and expansion, new business attraction, and small business development.

The primary factors involved in a location decisions made by a new business involve transportation costs, the market demographics, labor supply, and overall management goals and objectives. Secondary factors become more local: government incentives, quality of life, and the quality of education.

When the subject turns to new business attraction, most cities and states almost always look to offering economic development incentives. Officials at the local and state levels of government feel that it is easier to compete, not just at the local and state level, but internationally as well, if they have an array of financial and other incentives to offer to company executives

The use of economic development incentives

The use of incentives is often to “level the playing field”. Or in other words, the competition for business is to make local development less expensive than another location. Also, incentives often show that the host community is willing to work hand-in-hand in a public/private partnership in order to provide jobs, private investment, and tax revenues to the local community.

Economic development policy and strategy.

There is no specific ‘recipe’ or policy for a strategy to induce the greatest employment gain (the standard of achievement in economic growth), or tax revenue growth. Traditional policy strategies used by local government to attract development are tax benefits, low interest loans, labor force training programs, assistance with cost of infrastructure development, the establishment of incentive districts, lower costs for the sale or lease of public lands, and other miscellaneous strategies.

Rather than using one policy or incentive in business attraction, it is best to have at your fingertips an assortment of tools a community can use in economic development as every project is distinct.

The benefits of economic development investment.

One rationale for public subsidy of economic development is the potential fiscal benefits to the community. New jobs will result in increased local profits, wages, sales, and property values, all of which will enhance local tax revenue. Also consider the increase in public services and infrastructure that is directly required by new and/or expanded businesses. It is not uncommon that a new or expanded business will generate more local and state taxes than the public expenditure it requires.

About two thirds of local incentives for development are financial resource (tax incentives, loans, grants). The other third is geared toward job training and infrastructure improvements.

A trend in incentives in the past ten years has been tax increment financing (TIF) which can be either a financial incentive or an infrastructure incentive. Under tax increment financing, the increased taxes on a developed parcel of land are not put into the general fund, but instead are devoted to special services related to the designated improvement district. One common use of the TIF is to pay off bonds for infrastructure development in the TIF district. Another good advantage of using the TIF is that the sponsoring local government can capture all of the increased taxes that would have accrued to the overlapping tax districts, such as school districts, the state, or borough governments.

In summary, local economic development policy should focus on providing employment and fiscal benefits to local residents, while preserving or enhancing the quality of life. An economic development strategy should focus on business attraction, business retention, small/new business startup, and even lands with special usage concerns (i.e. Brownfield sites).

Economic development policy, including incentives, should be targeted on businesses that are more likely to provide significant employment and fiscal benefits. Local programs should also look at addressing training programs for the business community – programs that address the needs of the business community and the unemployed as well.

Local government can also subsidize the local business community with useful information that improves business survival and effectiveness.

There is no one best strategy for successful local economic development. Each local area is different, with its own unique economic conditions and needs.

Essentially, a local economic development policy need not be complex and overwhelming. It should stress the goals, objectives and desires of the local community.

LAW OFFICES

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December 10, 2004

via EMAIL ONLY

Mayor and Members of the
City Council
City of Wasilla
290 East Herning Avenue
Wasilla, Alaska 99654

RECEIVED

DEC 10 2004

CLERK'S OFFICE
CITY OF WASILLA

Re: Intersection Cost Agreement between the City of Wasilla and Lowe's HIW, Inc.

Ladies and Gentlemen:

At its November 22, 2004 meeting, the City Council of the City of Wasilla (the "City") postponed action on Resolution Serial No. 04-45 approving an Intersection Cost Agreement (the "Agreement") between the City and Lowe's HIW, Inc. ("Lowe's"), pending resolution of issues concerning the rights and obligations of the parties to the Agreement related to the installation of a traffic signal at the intersection of Hermon Road and the Parks Highway. The Council requested that I address two questions. First, is the City legally obligated to provide a traffic signal at this intersection? Second, is Lowe's legally obligated to provide a traffic signal at this intersection? I conclude that neither the City nor Lowe's is legally obligated to provide the traffic signal.¹

1. Introduction.

Lowe's is constructing a 135,000 square foot retail store and a 31,000 square foot garden center (the "Project") near the northeast corner of the intersection of Sun Mountain Avenue and Hermon Road.² Access to the Project site is by driveways to Sun Mountain Avenue and Alpine Road.³ Sun Mountain Avenue intersects Hermon Road a short distance north of the

¹ This conclusion is based on the documents cited below and on my review of the audio tape recording of the March 23, 2004 meeting of the Wasilla Planning Commission (the "Commission").

² Commission Resolution Serial No. 04-08 AM

³ Traffic Impact Analysis for Lowe's of Wasilla, dated March 2004 ("TIA"), Executive Summary, p. i.

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intersection of Hermon Road and the Parks Highway.⁴ The Project site is located in the City and is zoned C Commercial.

2. *Is the City Obligated to Provide a Traffic Signal at the Intersection of Hermon Road and the Parks Highway?*

I have not found any provision of law that would require the City to provide a traffic signal at the intersection of Hermon Road and the Parks Highway. The intersection lies within the Parks Highway right-of-way. The Parks Highway is a state highway, and construction within its right-of-way is subject to the control of the State of Alaska Department of Transportation and Public Facilities ("DOT").⁵ DOT will be reconstructing the intersection as part of its program to improve the Parks Highway east of Wasilla. DOT is exclusively responsible for the design and reconstruction of the intersection, including the placement of any traffic control devices at the intersection.⁶

3. *Is Lowe's Obligated to Provide a Traffic Signal at the Intersection of Hermon Road and the Parks Highway?*

A. *Introduction.*

Two sources have been suggested for Lowe's legal obligation to provide a traffic signal at the intersection of Hermon Road and the Parks Highway. The first suggested source is DOT regulations that provide for the operation and control of the Parks Highway. The second source is the Commission resolution that imposes conditions on the conditional use permit for the Project. I conclude that neither of these sources imposes a legal obligation on Lowe's to provide a traffic signal at the intersection of Hermon Road and the Parks Highway.

B. *DOT Regulations Do Not Require Lowe's to Provide the Traffic Signal.*

The Parks Highway is part of the State Highway System. DOT regulations require that a property owner apply for a permit to construct a driveway or approach road connecting to a state highway.⁷ If a development for which a driveway or approach road permit is required will generate more than 100 trips per day, or generate traffic that will detract from the

⁴ TIA, Figure 2.

⁵ AS 19.05.010.

⁶ *Id.*

⁷ 17 AAC 10.020(d).

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safety of the highway, the applicant must perform a traffic impact analysis.⁸ The traffic impact analysis must identify where road improvements are required to mitigate traffic impacts of the proposed development.⁹ The proposed mitigation measures are subject to approval by DOT,¹⁰ and must be completed by the applicant before DOT issues the driveway or approach road permit to the applicant.¹¹

An engineering firm retained by Lowe's prepared the TIA. The TIA states that, "Alaska Administrative Code (17 AAC 10.060(c)) requires this Traffic Impact Analysis be completed to identify adverse impacts upon the state highway system and the risks presented to the traveling public by the proposed development."¹² The TIA's principal conclusions are (i) "the proposed Lowe's will require offsite street improvements to maintain acceptable levels-of-service (LOS) and safety on the surrounding transportation system,"¹³ and (ii) "[a] traffic signal is recommended at the Parks Highway/Hermon road intersection."¹⁴ At the public hearing before the Commission on the conditional use permit application for the Project, the engineer representing Lowe's stated that that DOT acknowledged that a traffic signal was warranted at the intersection of Hermon Road and the Parks Highway.

However, it does not appear that Lowe's needs to obtain a DOT permit to construct a driveway or approach road for the Project, because the Project has no direct access to the Parks Highway. DOT regulations define a driveway or approach road as an area within the right-of-way [referring to a state highway right-of-way] that is used to provide access to adjacent property.¹⁵ The City owns Sun Mountain Avenue and Alpine Road, the streets where the Project has driveway access.¹⁶ Because Lowe's would not need to obtain a driveway or approach road permit for the Project, DOT's regulations would not require Lowe's to provide a traffic signal at

⁸ 17 AAC 10.060(c).

⁹ 17 AAC 10.070(f).

¹⁰ 17 AAC 10.070(g).

¹¹ 17 AAC 10.080(b).

¹² TIA, p. 1.

¹³ TIA, Executive Summary, p. i.

¹⁴ TIA, Executive Summary, p. ii.

¹⁵ 17 AAC 10.990(3).

¹⁶ TIA, p. 1.

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the intersection of Hermon Road and the Parks Highway, regardless of the TIA's conclusion that a traffic signal is warranted.

DOT appears to have acknowledged that its regulations do not require Lowe's to provide the traffic signal. Although earlier correspondence from DOT to Lowe's stated that Lowe's was required to pay the cost of designing and constructing a traffic signal at the intersection of Hermon Road and the Parks Highway, the latest draft of a Memorandum of Agreement between Lowe's and DOT that has been provided to the City recites that Lowe's is not required to provide the traffic signal, but that the traffic signal is "desirable."¹⁷ This conclusion also is consistent with the statements of the engineer representing Lowe's at the public hearing on the conditional use permit for the Project, that Lowe's commissioned the TIA to persuade DOT that a traffic signal was warranted at the intersection of Hermon Road and the Parks Highway, but that responsibility for the cost of constructing the traffic signal was to be negotiated between Lowe's and DOT.

C. The City's Conditional Use Permit Does Not Require Lowe's to Provide the Traffic Signal.

Because the Project contains a building with a gross floor area greater than 10,000 square feet, the Project requires a conditional use permit from the Commission.¹⁸ On March 23, 2004, the Commission adopted Resolution Serial No. 04-08 AM granting Lowe's a conditional use permit for the Project. One of the two conditions of approval of the conditional use permit in Resolution Serial No. 04-08 AM was that "Lowe's shall continue to work with the AK DOT&PF to install a traffic signal at Hermon Road and the Parks Highway."

This condition does not require Lowe's to install a traffic signal at the intersection of Hermon Road and the Parks Highway, or to pay for the installation of a traffic signal. Both the testimony of the engineer who represented Lowe's before the Commission, and the comments of Commission members, support this conclusion. The engineer representing Lowe's stated that his firm had prepared the TIA for Lowe's to demonstrate to DOT that a traffic signal was warranted at the intersection of Hermon Road and the Parks Highway. In addition, the engineer stated that DOT acknowledged that a traffic signal was warranted at that intersection. However, the engineer also stated clearly that Lowe's and DOT still were negotiating what contribution Lowe's would make to the cost of installing the traffic signal. While reviewing the conditional use application, the Commission asked the Planning Director to prepare a resolution for action at the Commission's next meeting, encouraging DOT to provide a traffic signal at the

¹⁷ Draft Memorandum of Agreement dated September 8, 2004.

¹⁸ WMC 16.20.020.

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intersection, thus indicating the Commission's understanding that Lowe's was not required to pay for the installation of the traffic signal.

4. *Conclusion.*

Based on the foregoing, I conclude that neither the City nor Lowe's is legally obligated to provide the traffic signal.

Please let me know if you have any questions concerning this matter.

Yours truly,

BIRCH, HORTON, BITTNER and CHEROT



Thomas F. Klinkner

INTERSECTION COST AGREEMENT

This Intersection Cost Agreement ("Agreement") dated as of _____, 2004 for reference and identification purposes only, is between Lowe's HIW, Inc., a Washington corporation ("Lowe's"), and the City of Wasilla ("City"), an Alaska municipal corporation.

Recitals:

A. Lowe's is the owner of the "Lowe's Parcel," as shown on the "Site Plan" attached hereto as Exhibit A. The Legal description of the Lowe's Parcel is attached hereto as Exhibit B. Lowe's intends to construct a home improvement store (the "Home Improvement Center") on the Lowe's Parcel.

B. The State of Alaska Department of Transportation and Public Facilities, Central Region ("DOT/PF"), the City, and Lowe's desire that a traffic signal and related intersection improvements be constructed at the intersection of the Parks Highway, Hermon Road, and Sun Mountain Avenue right-of-way (the "Work") to improve access to the Lowe's Parcel and other property. The parties acknowledge that the Work is not required for Lowe's development of the Home Improvement Center, but is desirable to DOT/PF, the City, and Lowe's .

C. Lowe's and the City desire to share the cost of the Work in the manner set forth in this Agreement.

D. The construction and operation of the Work pursuant to this Agreement is in the best interest of the City and the health, safety, morals and welfare of its taxpayers and residents and is in accordance with the public purposes set forth in federal, state and local law and regulations. Implementation of this Agreement will further the goals and objectives of the City.

AGREEMENT

1. DESIGN AND CONSTRUCTION.

- a. **Design and Construction Agreement with DOT/PF.** Lowe's agrees to enter into an agreement with DOT/PF in substantially the form attached hereto as Exhibit C (the "Design and Construction Agreement") for the design and construction of the Work. Lowe's shall perform its obligations under the Design and Construction Agreement, including but not limited to design of the Work and payments to DOT/PF and/or contractors for construction of the work.
- b. **Scope of Work.** The "Work" means the design, review and approval, and construction of both a temporary and a permanent traffic signal, right turn lanes, left turn lanes, driveways and modifications to improve access to property along the Parks Highway and Sun Mountain Avenue as needed to mitigate traffic

impacts identified in the accepted Traffic Impact Analysis dated March 2004, and amended by the DOT/PF's acceptance letter dated April 14, 2004.

- c. **Lowe's Cost of Work.** "Lowe's Cost of Work" means all out-of-pocket amounts paid by Lowe's for the Work, including costs of design, costs paid directly to DOT/PF, and costs paid to contractors, and other costs payable by Lowe's under the Design and Construction Agreement, but not including any cost for Lowe's employees.
- d. **Records of Lowe's Cost of Work.** Following completion of the Work, Lowe's shall provide the City with copies of all invoices, checks, vouchers, records, contracts and other documents and data necessary or appropriate to calculate and verify Lowe's Cost of Work. Prior to completion of the Work, Lowe's may deliver interim statements of Lowe's Cost of Work ("Lowe's Interim Cost of Work"). Lowe's shall maintain, for two (2) years following completion of the Work, all records and supporting documentation relating to the computation of Lowe's Cost of Work. The City shall have the authority upon reasonable prior notice to audit the records of Lowe's at the location of the records for the purpose of verifying the accuracy of the computation of Lowe's Cost of Work.

2. REIMBURSEMENT.

- a. **Partial Reimbursement of Lowe's by City.** The City agrees to reimburse Lowe's for the lesser of (i) one-half of Lowe's Cost of Work or (ii) Three Hundred Fifty Thousand Dollars (\$350,000.00). The obligation to pay the reimbursement is subject to annual appropriation by the City Council. Until the City's reimbursement obligation hereunder has been satisfied in full, the City hereby covenants to include in each annual budget presented to the City Council an expenditure line item for such reimbursement obligation in an amount sufficient to perform such reimbursement obligation as it comes due. However, notwithstanding the benefit to the City from the construction of the Work, the timing of the City's obligation to make reimbursement payments to Lowe's shall be limited by the receipt of sales tax revenue by the City. Subject to sub-sections b through f below, payments on the City's obligation to reimburse Lowe's shall be limited to an amount equal to twenty percent (20%) of the sales tax revenues actually paid to the City that are generated by and remitted from the Home Improvement Center or any other business operating in the Home Improvement Center building on the Lowe's Parcel, whether operated by Lowe's, a tenant or transferee from Lowe's, or any other third party.
- b. **Time of Payments.** Any payments due Lowe's will be paid by the City to Lowe's within thirty (30) days following the end of each calendar year quarter. Prior to completion of the Work, the City shall reimburse Lowe's for the Lowe's Interim Cost of Work pursuant to the most recent interim statement. Payments shall be calculated on a cumulative basis as provided in d below.

- c. **City Statement.** The City shall provide a quarterly statement to Lowe's showing the amount due under this Agreement at the end of each quarter, the amount of each payment credited and the ending balance remaining.
- d. **Computation of Payment Amount.** The amount of each quarterly reimbursement payment due to Lowe's under this Agreement shall be calculated based upon the sales tax rate existing at the date of the execution of this Agreement for the City, which is two and one-half percent (2.5%). If the sales tax rate should be increased or decreased, or if the sales tax should be eliminated, the amount of the quarterly reimbursement payment due to Lowe's shall continue to be calculated based upon the present two and one-half percent sale tax rate. Each quarterly payment shall be calculated on a cumulative basis, with the quarterly payment equal to (i) twenty percent (20%) of the cumulative total of sales tax revenue from the Home Improvement Center or any other business operating in the Home Improvement Center building on the Lowe's Parcel, whether operated by Lowe's, a tenant or transferee from Lowe's, or any other third party (calculated as set forth above in this section 2.d), reduced by (ii) the cumulative amount of prior reimbursements paid to Lowe's; provided, however, in no event shall the quarterly payment exceed the unpaid balance of the Lowe's Cost of Work, or, if applicable, the then current Lowe's Interim Cost of Work.
- e. **Right of Prepayment.** The City reserves the right to prepay the outstanding balance due to Lowe's, without penalty, interest, fee or additional charge.
- f. **The City and Lowe's' Administration Expenses.** The City and Lowe's agree to pay their respective administrative expenses and costs in relation to this Agreement. Neither party will charge or claim any right of reimbursement from the other with respect to their administration of the Agreement.

3. MISCELLANEOUS.

- a. **Time Of The Essence.** Time is of the essence with respect to this Agreement.
- b. **Relationship Of Parties.** Nothing contained in this Agreement shall be deemed or construed, either by the parties hereto or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture or other association between the City and Lowe's .
- c. **No Obligation To Continuously Operate.** Lowe's , including any successors and assigns, is not obligated to continuously operate a business on the Lowe's Parcel and, specifically, is not obligated to open, continuously operate or operate for any specific period of time a Lowe's building supply or home improvement retail warehouse or any store or business on the Lowe's Parcel. Nothing contained in this Agreement shall be construed, interpreted or otherwise read to require Lowe's to operate a business on the Lowe's Parcel or to prevent Lowe's from closing its business on the Lowe's Parcel.

- d. **Incorporation of Exhibits.** Each exhibit attached to and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein. The recitals are incorporated herein by reference as matters of contract and not mere recital.
- e. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.
- f. **Headings.** Headings used in this Agreement are for convenience only and shall not be considered in construing the meaning of the content or meaning of any section or article.
- g. **Binding Agreement:** This Agreement shall become a binding obligation of the parties only upon the complete execution and unconditional delivery thereof by both parties.
- h. **Modification.** This Agreement may not be modified in any respect whatsoever, in whole or in part, except in a writing signed by both parties.
- i. **Notices.** Any notice or invoice required or permitted to be given under this Agreement shall be in writing. Notice shall be deemed to have been given: (a) five (5) business days after deposit with the United States Mail as Certified Mail, Return Receipt Requested and postage prepaid; or (b) one (1) business day after deposit with a nationally recognized overnight delivery service which provides delivery tracking, with payment made by the sending party; or (c) on the date of personal delivery. Notices shall be addressed to the Party being notified at the address given below (or such other address which any Party may designate for itself from time to time hereafter by written notice to the other Party(ies)):

CITY OF WASILLA:

LOWE'S HIW, INC.:

Prior to completion
of the Work:

Lowe's HIW, Inc.
 1530 Faraday Avenue, Suite 140
 Carlsbad, CA 92008
 Attn: Roger Bernstein
 Telephone: (760) 918-0132
 Fax: (760) 918-9112

With copies to: Lowe's HIW, Inc.

1530 Faraday Avenue, Suite 140
Carlsbad, CA 92008
Attn: Rob Doane
Telephone: (760) 918-0132
Fax: (760) 918-9112

And to: Paul M. Harman
Jones Waldo Holbrook & McDonough
170 South Main Street, Suite 1500
Salt Lake City, Utah 84101
Telephone (801-521-3200
Fax: (801) 328-0537

After completion
Of the Work:

Lowe's HIW, Inc.
Box 1111
North Wilkesboro, NC 28659
(For Overnight Delivery:
Highway 268 East – East Dock (28659)
North Wilkesboro, NC 28659
Attention: Property Management Dept. (REO)
Telephone: (336) 658-4553
Fax: (336) 658-3262

And to: Lowe's HIW, Inc.
Box 1111
North Wilkesboro, NC 28659
(For Overnight Delivery:
Highway 268 East – East Dock (28659)
North Wilkesboro, NC 28659
Attention: Legal Department
Telephone: (336) 658-4553
Fax: (336) 658-3262

With copies to: Lowe's HIW, Inc.
101 Andover Park E Suite 200
Tukwila, Washington 98188
Attention: Tax Dept.
Telephone:
Fax:

- j. **Waiver.** The failure of a person to insist upon strict performance of any of the restrictions contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the restrictions contained herein by the same or any other person.

- k. **Attorney's Fees.** In the event any party initiates or defends any legal action or proceeding in **any** way connected with this Agreement, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's fees (including, without limitation, its reasonable costs and attorney's fees on any appeal). All such costs and attorney's fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.
- l. **Severability.** If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, then such term or provision shall be to that extent stricken or disregarded and the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.
- m. **No Third Party Beneficiary Rights.** This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto.
- n. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.
- o. **Governing Law.** This Agreement shall be interpreted and governed by Alaska law. This Agreement shall be enforceable by any action in law or equity, including without limitation specific performance and injunctive relief.
- p. **Binding on Successors and Assigns.** All the terms, covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of the parties and their successors and assigns. "City," as used in this agreement, includes the City of Wasilla and any assignee of or successor to its rights, powers and responsibilities. "Lowe's" as used in this Agreement, includes Lowe's HIW, Inc. and any permitted nominee, assignee or successor of Lowe's.

Exhibit A: Site Plan

Exhibit B: Legal Description of Lowe's Parcel.

Exhibit C: Design and Construction Contract.

LOWE'S HIW, Inc.

Signature: _____ Date: _____

Name:

Title:

CITY OF WASILLA

Signature: _____ Date: _____

Name: Dianne M. Keller

Title: Mayor

Kristie Smithers

From: Archie Giddings
Sent: Monday, December 13, 2004 3:59 PM
To: Mayor Keller; Mary Bixby; Kristie Smithers
Subject: FW: Signed Memo of Agreement LOWES for tonight's reference, and timeline



Final Memo of Agreement 9-27-0...
Lowes History.doc (24 KB)



-----Original Message-----

From: Scott Thomas [mailto:scott_thomas@dot.state.ak.us]
Sent: Monday, December 13, 2004 3:48 PM
To: Archie Giddings
Cc: Brad Sworts; GORDON KEITH; sgarley@ci.wasilla.ak.us
Subject: Signed Memo of Agreement LOWES for tonight's reference, and timeline

Archie, Sandra,

As promised in our phone call, attached is the signed version of our Agreement with Lowe's. Also is a timeline of meetings and documentation on getting to this agreement. Please refer to these as DOT's records when you have a meeting at the City.

The signal is anticipated to be ready to turn on in green/yellow/red mode tomorrow.

One comment from a councilmember I spoke with is that they are hearing in some meetings that DOT made a mistake in estimating this at \$250,000. There have been no low estimates in this project. Since we met with Lowe's from the beginning, our Department has not given out \$250,000 as the cost of this signal. We were very careful to put together an estimate first, and that has always been over \$600,000 until recently. \$584,000 is as low as we have gotten in our agreement. The costs are simply high, especially when the work was unanticipated prior to the developer, and was finally authorized late in September, with a December completion target.

I did give several examples of City and developer partnerships at other major developments to the councilmember I spoke with.

Scott

Wasilla Lowe's History Outline

DOT/PF Traffic Records

10/3/03	Lounsbury letter to DOT. Retained to do Lowe's TIA
Nov 2003	TIA submitted by Lounsbury to DOT
12/3/03	DOT Comments on TIA completed
2/11/04	Meeting between Lowe's, Lounsbury, City of Wasilla, Mat-Su Borough, and DOT.
March 2004	Revised TIA submitted by Lounsbury to DOT
4/14/04	DOT letter to Lounsbury accepting TIA signal warrants. Concern about Quiet Circle, lack of internal street connection. Lowe's to provide design, funding for construction, get permits. DOT to own and operate signal.
6/4/04	Letter to Lounsbury with Draft Memorandum of Agreement. Funding required estimated at \$691,600.
6/18/04	Charge codes developed for Lowe's review. AKSAS #57582
7/13/04	Meeting between Lowe's, Lounsbury, and DOT. Discuss draft Memorandum of Agreement. Concern over using our contractor or theirs, as an impact on total costs.
9/16/04	Conference call Lowe's and DOT Traffic to review differences on Memorandum of Agreement.
9/23/04	Lounsbury submitted Temporary Signal Plans for review.
9/27/04	DOT returned comments on Temporary Signal Plans for revisions via email to Lounsbury.
9/27/04	Fax from Lowe's of signed Memorandum of Agreement. Funding total from Lowe's is \$584,000 per refined DOT estimates.
9/29/04	DOT received original signed Memorandum of Agreement from Lowe's. Signed by DOT that day.
10/7/07	DOT Approved Temporary Signal Plans.
10/8/04	Internal transmittal of Temp Signal Plans to Construction Section for RFP to QAP for their price estimate.
10/17/04	Check rec'd from Lowe's for \$20,000 to cover plan reviews and start plan approvals.
10/28/04	Letter from QAP responding to Construction RFP. Est. Cost for Temp Signal is \$175,548 combined including traffic control and other non-signal pay items.
11/2/04	Letter from DOT to Lowe's. Price estimate for Temp Signal installation. \$119,865 for temp signal completion, \$55,682 towards permanent signal. Also \$125,000 to date towards lanes and wiring. Remaining work estimated to make the signal permanent is about \$225,000, less than or equal to agreed upon \$584,000 in total.
11/5/04	Email from Lowe's to DOT. Approves Temp Signal completion costs.
11/24/04	Permanent Signal Design plans submitted by Lounsbury to DOT.

LOWE'S

Companies, Inc.

Kevin D. Bennett
Vice President
Assistant General Counsel

RECEIVED

September 27, 2004

SEP 29 004

VIA FAX & UPS OVERNIGHT EXPRESS

JTB

Mr. Scott Thomas
Regional Traffic Engineer
State of Alaska Central Region DOT/PF
4111 Aviation Avenue
Anchorage, AK 99519-6900

Re: Wasilla, AK

Dear Mr. Thomas:

Per the instructions of Ken Jones at Jones Waldo, please find enclosed two (2) executed original copies of the Memorandum of Agreement (regarding traffic impact mitigation-traffic signal) for the Wasilla, Alaska project. Please return an original copy to me for my records once this document has been fully executed.

Please do not hesitate to contact me should you have any questions.

Yours very truly,



Kevin D. Bennett
Vice President and
Assistant General Counsel

KDB/sm
Enclosures



MEMORANDUM OF AGREEMENT
STATE OF ALASKA
Department of Transportation and Public Facilities

Region: Central Region

Agreement No.: 57582

Project: LOWE'S Traffic Impact Mitigation, Wasilla, Alaska

THIS AGREEMENT is made by and between **LOWE'S HIW, INC.**, a Washington corporation ("LOWE'S"), whose mailing address is 1530 Faraday Avenue, Suite 140, Carlsbad, CA 92008 and **STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES, CENTRAL REGION** ("DOT/PF"), whose mailing address is 4111 Aviation Drive, Anchorage, Alaska 99519. This agreement is to remain in effect until final completion of the Work as defined in this Agreement, or until mutually rescinded through negotiations by both parties.

AGREEMENT

WHEREAS, LOWE'S is the owner of a parcel of property adjacent to the Parks Highway, Hermon Road, and Sun Mountain Avenue right-of-way on which LOWE'S presently intends to construct a LOWE'S Home Improvement Warehouse (the "LOWE'S Parcel"). The plat of record for the LOWE'S Parcel is attached to this Agreement as Attachment 3; and

WHEREAS, DOT/PF, the City of Wasilla, and LOWE'S desire that improvements be constructed at the intersection of the Parks Highway, Hermon Road, and Sun Mountain Avenue right-of-way to improve access to the Parks Highway from adjacent property, including the LOWE'S Parcel; and

WHEREAS, The parties acknowledge that the Work contemplated in this agreement is required in part due to LOWE'S development of its home improvement warehouse and the resulting traffic impacts at the Parks Highway and Hermon Road, as per 17 AAC 10.060.

WHEREAS, Pursuant to a separate agreement between LOWE'S and the City of Wasilla, the City of Wasilla is reimbursing LOWE'S for a portion of the costs to LOWE'S pursuant to this Agreement. (The separate agreement shall not modify the rights and obligations of the DOT/PF and LOWE'S between themselves under this Agreement).

The parties do hereby agree as follows:

A. SCOPE OF WORK.

1. **Work.** The "Work" means the construction of both a temporary and a permanent traffic signal, right turn lanes, left turn lanes, driveways and modifications to

improve access to property along the Parks Highway and Sun Mountain Avenue as needed to mitigate traffic impacts identified in the accepted Traffic Impact Analysis dated March 2004, and amended by the DOT/PF's acceptance letter dated April 14, 2004.

2. **Responsibility of LOWE'S.** LOWE'S will provide the design of the Work, provide funding for the Work, and perform other obligations as provided herein.
3. **Responsibility of DOT/PF.** DOT/PF's authority and responsibilities will be concisely limited to that portion of the Work occurring in the DOT/PF Right-of-Way (ROW) or impacting the safety of the public within that ROW, as indicated on the attached diagram (*Attachment 1*) and to DOT/PF's other obligations set forth in this Agreement.
4. **Conformance to Quality Standards.** All scope of Work within the DOT/PF ROW shall conform to standards of Alaska Department of Transportation & Public Facilities Standard Specifications for Highway Construction, 1998 [Metric], consistent with the current DOT/PF Parks Highway project, from Seward Meridian Road to Crusey Street.

B. OVERALL RESPONSIBILITY.

1. **Construction Responsibility.** Except for any LOWE'S Work as provided in Section G and H below, DOT/PF will be responsible for construction of the Work, and for contracting for the same and for overseeing necessary improvements to connect the Work to the state and City of Wasilla roadways.
2. **Oversight and Engineering Inspection.** DOT/PF will provide oversight and engineering inspection services as needed to ensure conformance to quality standards are met. DOT/PF is responsible for all Contract enforcement activities.
3. **Funding.** LOWE'S will provide a bond or cash funds to cover the DOT/PF's actual costs for Utilities Permitting, Driveway Permitting, Design Review, Construction of the temporary and permanent improvements, and Maintenance Acceptance as shown in *Attachment 2*.
4. **Reviews.** DOT/PF will perform Utilities Permitting, 95% Design Review, and final acceptance reviews of Construction and Maintenance of the project. Estimated costs for this Work are shown in *Attachment 2*.
5. **Release.** DOT/PF will release LOWE'S from providing for any further physical improvements and from any liability regarding the Work or the Lowe's Work regarding the temporary traffic signal once the Final Design Plans for the temporary traffic signal are completed, the temporary traffic signal is constructed, and an interim Letter of Final Acceptance regarding the temporary traffic signal is issued for the construction of the temporary traffic signal. After the interim Letter of Final Acceptance for the construction of the Work or the Lowe's Work

regarding the temporary traffic signal is issued, DOT/PF shall indemnify Lowe's from all claims arising from or related to the design, construction; and operation of the temporary traffic signal. DOT/PF will release LOWE'S from providing for any further physical improvements and from any liability regarding the Work or the Lowe's Work once the Final Design Plans are completed, constructed, and a Letter of Final Acceptance is issued for the construction. After the Letter of Final Acceptance for the construction of the Work and the Lowe's Work is issued, DOT/PF shall indemnify Lowe's from all claims arising from or related to the design, construction, and operation of the Work.

C. DESIGN REQUIREMENTS.

1. **Temporary Signal.** LOWE'S will provide the design of a generic, isolated, temporary signalized intersection, utilizing two lane approaches in all directions, and left turn bays on the Parks Highway, (the "temporary traffic signal"). The design shall use anchored wood poles and span-wire installation with video or another form of short-term detection.
2. **Intersection Improvements and Permanent Signal.** LOWE'S will provide the design of (i) a new permanent full-actuated traffic signal using steel poles with mast arms, located at Hermon Road, Old Matanuska Road, and the Parks Highway (the "permanent traffic signal") and (ii) intersection lane improvements modifying the improvements which are currently being constructed by DOT/PF (the "lane modifications").

The permanent design will include:

- Signal interconnect and junction boxes to tie into interconnect conduit currently under construction by DOT/PF.
 - Single left turn lanes on the Parks Highway, defined by 1.2 meter raised median dividers, with adequate length for queue storage and deceleration.
 - A right turn lane for westbound approach traffic on the Parks Highway into the signal.
 - Separate right, left, and thru lanes on Hermon Road.
 - Auxiliary lanes on the Old Matanuska Road approach to remain as designed by DOT/PF.
 - Pedestrian crossings
 - Signal equipment and detection consistent with DOT/PF practice for permanent installations, as outlined in the Municipality of Anchorage Signal Design Manual
3. **Design Approval.** LOWE'S will submit a substantially (95%) complete plan, specifications, and estimate package to the DOT/PF's Contracts Engineer for temporary traffic signal, permanent traffic signal, and lane modification approval.

Plans will be in the current LANDesk format used by the DOT/PF, and plans for the permanent traffic signal and lane modifications will include:

- A title sheet,
- Typical sections
- Drainage sheets and engineering details,
- Erosion and sediment control plans
- Plan and profile with slope limits
- Driveway details
- Traffic sheets including signing, striping, illumination, and signalization,
- Signal sheets patterned after the DOT/PF's typical plan, details and summary tables,
- Utilities sheets
- Right of way plans

Specifications will be in Microsoft Word format, and will reference DOT/PF's 1998 [Metric] Standard Specifications for Highway Construction [Metric], along with the DOT/PF's latest Special Provisions package for metric projects. Special Provisions will be customized to the project for this site.

A confidential Engineer's Estimate will be included with the Plans and Specifications, to demonstrate the estimated expense of construction. The estimate should be developed using standard pay items used by the DOT/PF. DOT/PF will require up to two weeks to conduct a review of the (95% complete) plans, specifications, and estimate (the "PS&E package"). DOT/PF will review this 95% PS&E package for consistency with DOT/PF standards and practices and return written comments to LOWE'S. The (95% complete) PS&E package shall be deemed approved if DOT/PF does not return written comments within two weeks. LOWE'S will review and return answers to DOT/PF's comments along with resubmittal of a final (100% complete) PS&E package. Upon receipt of LOWE'S reply and a 100% PS&E package which responsively addresses DOT/PF comments, DOT/PF will accept or reject the package for construction within five (5) working days. The (100% complete) PS&E package shall be deemed approved if DOT/PF does not return written comments within five (5) working days. Upon acceptance of the 100% complete PS&E package by DOT/PF, LOWE'S shall have no responsibility or liability thereafter regarding the PS&E package (except Lowe's obligations to pay the cost of preparing the PS&E package as provided in this Agreement).

D. RIGHT-OF-WAY REQUIREMENTS.

No additional right-of-way requirements are anticipated. If the design of the Work requires additional right-of-way, LOWE'S shall at its option either (i) use reasonable efforts to acquire the necessary right-of-way so that the total cost of the Work and the additional right of way do not exceed one hundred ten percent (110%) of the estimate of the total cost of the Work set forth in Attachment 2, or (ii) cause the PS&E package to be redesigned to not require additional right of way. If additional right-of-way is required, at LOWE'S request, DOT/PF shall utilize its condemnation powers to acquire additional right-of-way, and the

cost of the additional right-of-way shall be part of the cost of the Work which is Lowe's responsibility.

E. BIDDING PROCESS.

The Work shall be separately bid for the temporary traffic signal, the permanent traffic signal, and the lane modifications. In addition to submitting the Work for bidding to contractors selected by DOT/PF, DOT/PF shall submit the Work for bidding to Hickel Construction ("LOWE'S Contractor"), whom DOT/PF acknowledges is qualified to perform the Work. When DOT/PF receives the bids for construction of the Work, LOWE'S shall have the right to be present at the opening of the bids and to review the submitted bids. DOT/PF and LOWE'S shall then jointly decide which bids will be accepted (and accordingly, which general contractor will be awarded the contract) for construction of each portion of the Work (the "General Contractor(s)"); provided, however, that in the event DOT/PF and LOWE'S cannot agree as to the same, each portion of the Work shall be awarded to the lowest bidder.

Notwithstanding the above, to expedite the completion of temporary traffic signal, the DOT/PF shall initially obtain a bid solely from its contractor presently working on the Parks Highway project and shall immediately notify Lowe's of that bid. Lowe's will approve or reject that bid within 2 days thereafter. If Lowe's fails to approve or reject the bid within the two day period, the bid shall be deemed approved by Lowe's if equal to or less than one hundred ten percent (110%) of the price estimated for the temporary traffic signal set forth in Attachment 2, and the bid shall be deemed rejected if greater than one hundred ten percent (110%) of the price estimated for the temporary traffic signal set forth in Attachment 2. If the bid is rejected by Lowe's, the provisions of the prior paragraph shall apply.

F. CAP ON BIDS.

If the lowest bid for any portion of the Work exceeds one hundred ten percent (110%) of the price estimated for that portion of the Work in Attachment 2, then DOT/PF and Lowe's shall consult and coordinate with each other, and use their respective best efforts to cause the price for that portion of the Work to be reduced to the lowest possible amount. Methods available for reducing the price shall include, but are not limited to, redesign of the Work and bidding the Work to additional contractors. The fees of DOT/PF shall not increase as a result of bids in excess of the estimated price for the Work shown in Attachment 2. If the combined amount of the lowest bid for each portion of the Work and the amounts payable by LOWE'S to DOT/PF pursuant to this Agreement exceeds the total estimate shown on Attachment 2, then LOWE'S shall provide the increased difference in funding to DOT/PF if DOT/PF performs all the Contracting, or LOWE'S shall provide the increased funding to their own Contractor if they perform the Contracting.

G. CONTRACTING

The contracts for the Work shall be between DOT/PF and the respective general contractor for that portion of the Work, provided, however, that if LOWE'S Contractor is receiving the

contract for either the temporary or permanent signal, LOWE'S may elect to be responsible for construction of that portion of the Work (the "Lowe's Work"), and to contract directly with LOWE'S Contractor for the Lowe's Work. The Lowe's Work shall not include construction of the lane improvements, and if Hickel Construction is awarded the bid for the lane improvements, the contract shall be between DOT/PF and Hickel Construction.

H. LOWE'S WORK. The following provisions shall apply to the Lowe's Work, if any:

1. **Right To Inspect.** Throughout the course of construction, DOT/PF personnel shall have site access privileges to inspect the Lowe's Work. DOT/PF shall receive a fee not to exceed 15 percent of the contract price of the Lowe's Work for its inspections, which shall be the only fee or charge by DOT/PF regarding the Lowe's Work.
2. **Coordination of Work.** LOWE'S contractor and the DOT/PF's contractor(s) shall coordinate their Work as provided in Section K below.
3. **Guarantee Of Workmanship.** LOWE'S shall guarantee the construction and materials utilized in the construction of the Lowe's Work for a period of one year from the date of acceptance by DOT/PF. The acceptance date is the date of written approval of the improvements through the "Letter of Project Completion" issued by DOT/PF to the Lowe's following correction of deficiencies noted by DOT/PF during inspection and reported in writing to LOWE'S, if any, and submission of as-builts by LOWE'S to DOT/PF, whichever comes last. During the one year guarantee period only, LOWE'S shall remedy at its own expense any failure or defect in the Lowe's Work which is due to construction deficiencies, faulty material, or replacement and shall include any damage to any property, improvements or facilities as a result of the failure or defect. This shall be the sole warranty from LOWE'S, this warranty shall only apply to the Lowe's Work, and no other express or implied warranty or guarantee shall apply. Lowe's and DOT/PF shall notify the other in writing upon discovery of any failure or defect which may be covered by this warranty.

I. LOWE'S TAKEOVER RIGHTS.

1. **The Work.** Except for the LOWE's Work, if any, DOT/PF shall be responsible for the management and completion of the Work. Any Work performed by LOWE's or its General Contractor will not be scheduled or permitted until the Work's impact on ongoing Parks Highway project from Seward Meridian Parkway to Crusey Street is agreed to by DOT/PF and its Contractor through a "Letter of Nonobjection," which shall not be unreasonably withheld or delayed.
2. **Access to Escrowed Funds, Right to Complete.** If DOT/PF fails to complete installation of the temporary traffic signal by December 1, 2004, LOWE'S and its agents, contractors, and subcontractors, shall have the right to access the funds deposited by LOWE'S under this Agreement, and the right to complete the Work

regarding the temporary traffic signal ("Right to Complete"), subject to DOT/PF's Right-of-way permit process for work by others within the state right-of-way, which shall not be unreasonably withheld or delayed.

3. **Manner of Completion.** If LOWE'S exercises its Right to Complete, LOWE'S shall complete the DOT/PF Improvements regarding the temporary traffic signal in accordance with the accepted PS&E package. This shall include providing engineering oversight and inspection to ensure PS&E compliance. DOT/PF shall have no liability for any act or omission of LOWE'S, its agents, contractors and subcontractors involved in the completion of the DOT/PF Improvements regarding the temporary traffic signal. Upon such assumption of control by LOWE'S hereunder, LOWE'S agrees to proceed with all reasonable dispatch to complete that portion of the Work regarding the temporary traffic signal for which LOWE'S has given notice of the exercise of takeover rights.

- J. **COORDINATION.** If LOWE'S either contracts directly with LOWE'S Contractor for Lowe's Work, or exercises its Right to Complete, LOWE'S Contractor and the DOT/PF's General Contractor shall reasonably cooperate with each other in order that the Work, the Lowe's Work, and the improvements to the Parks Highway being constructed by DOT/PF shall be completed in a timely fashion, at no increase in cost, and with a minimum or interference. A Letter of Nonobjection shall be required from DOT/PF's Contractor before LOWE'S Contractor can begin any work in the state right-of-way. All Work Zone Traffic Control for any work in the DOT/PF right-of-way is subject to DOT/PF Right-of-way permit approval prior to affecting public traffic.

DOT/PF agrees that in constructing the Work and the other improvements to the Park Highway being constructed by DOT/PF, it shall use its best efforts, and cause its contractors to use their best efforts, not to unreasonably interfere with access to the LOWE'S Parcel.

K. CONSTRUCTION REQUIREMENTS.

1. **Temporary Signal.** LOWE'S will provide funding for the temporary traffic signal system, complete, to be installed during construction of the Parks Highway. The generic design supplied by LOWE'S will be modified by the DOT/PF as needed to adjust to construction conditions at the time of installation. The estimated funding cost is shown in Attachment 2, which includes and specifically identifies the actual costs for portions of the Work performed prior to the execution of this Agreement.

The General Contractor for the temporary traffic signal will install the temporary traffic signal by December 1, 2004 to meet the anticipated opening of LOWE'S Wasilla store. The road is not expected to be in its permanent configuration until some time in 2006. It is anticipated this signal will be located on a detour route parallel to the Parks Highway. This temporary signal will be in operation until the permanent signal can be brought online.

2. **Letter of Final Acceptance.** Once the construction of the Work is complete, a "Letter of Final Acceptance" will be issued to the General Contractor(s). Any remaining LOWE'S funding not required for the project will be returned to LOWE'S within 90 days of the Letter of Final Acceptance. An interim Letter of Final acceptance will be issued when construction of the Work regarding the temporary traffic signal is complete.

L. UTILITIES REQUIREMENTS. DOT/PF and LOWE'S, through its engineering firm which prepares the PS&E Package, will coordinate regarding utilities for the proposed signal, including working with DOT/PF's Utilities Section to obtain power service for the signal.

The following Sections M through R apply only if LOWE'S contracts independently of the current DOT/PF Parks Highway project to perform the Lowe's Work:

M. MAINTENANCE DURING CONSTRUCTION

From the date physical construction begins until DOT/PF issues Letter of Project Completion, LOWE'S shall continually and effectively, on a daily basis, maintain and keep in good repair the entire project within the ROW construction limits.

LOWE'S shall ensure all roads for public use have a smooth and even asphalt-paved surface at all times. Properly crown the roadbed surface for drainage and install adequate safety facilities. Ensure all illumination and signals, including vehicle detectors, are in good working order.

Suspension of Work

If LOWE'S suspends work due to unfavorable weather (other than seasonal) or due to Contractor's failure to correct unsafe conditions, carry out Contract provisions, or carry out DOT/PF's Notice to Correct Non-Conformance, LOWE'S will bear all costs for traffic maintenance during the suspended period.

When LOWE'S resumes work, any work or materials lost or damaged during the suspended period will be replaced or renewed.

N. INSPECTION REQUIREMENTS

LOWE'S will ensure construction of the project in accordance with the approved plans.

DOT/PF reserves the right to perform spot inspections on items of Work within ROW to include curb and gutter, drainage, pavement and striping, and other traffic items.

DOT/PF reserves the right to perform assurance testing as requested or as determined by DOT/PF to assure continuing compliance with contract Materials testing requirements.

DOT/PF will notify LOWE'S of irregularities or deficiencies observed in the work during performance of its services.

DOT/PF reserves the right to conduct follow-up and final inspections to ensure all deficiencies are corrected.

O. NON-COMPLIANCE NOTIFICATION

Safety and Congestion. When the DOT/PF believes existing conditions may adversely affect the traveling public's safety and/or convenience, LOWE'S will receive a written notice. The notice will state the defect(s), the corrective action(s) required, and the time required to complete such action(s). If LOWE'S fails to take corrective action(s) within the specified time, DOT/PF will immediately close down the construction project within the state right of way until LOWE'S corrects the defects. DOT/PF may require outside forces to correct unsafe conditions. The cost of work by outside forces is not anticipated by this agreement and will have to be reimbursed by LOWE'S.

Design Compliance. When the DOT/PF believes the construction of the work is not in compliance with the accepted 100% PS&E documents, LOWE'S will receive a written notice. The notice will state the defect(s), the corrective action(s) required, and the time required to complete such action(s). When this type of defect does not adversely affect the traveling public's safety and/or convenience, the time required to correct this type of defect will be at least 72 hours and may take until the project completion date to resolve. If LOWE'S fails to take corrective action(s) within the specified time, depending upon the seriousness of the defect, DOT/PF may issue a Stop Work Order through the enforcement of the driveway permit, stopping all or part of the work on the DOT/PF ROW until satisfactory corrective action has been taken.

If defects are not addressed by the time LOWE'S has requested a Letter of Project Completion (See Next Section "P"), DOT/PF will require that LOWE'S complete the work before acceptance. DOT/PF may require outside forces to correct incomplete work. The cost of work by outside forces is not anticipated by this agreement and will have to be reimbursed by LOWE'S.

No part of the time lost due to any such stop orders will be made the subject of claim for extension of time or for excess costs or damages by LOWE'S, or the Contractor.

P. OWNERSHIP & MAINTENANCE REQUIREMENTS

Final Field Review, Project Completion, and Transfer of Maintenance

Upon the completion of project construction, DOT/PF will conduct a Final Field Review, in order to examine that all work is constructed in accordance with the project plans and specifications. Any work found to be unsatisfactory will be identified at this time.

1. LOWE'S shall notify DOT/PF in writing upon completion of all construction provided for under this Agreement. DOT/PF will then schedule and conduct a field review.

2. At the field review, DOT/PF will prepare a punch list for LOWE'S for corrective action. LOWE'S will complete or correct all punch list items within 30 days and request a re-inspection.
3. The DEPARTMENT will take appropriate action to ensure all unsatisfactory work remaining after 30 days of punch listing is completed to meet the project plans and specifications. DOT/PF will then issue a Letter of Project Completion to the LOWE'S.
4. When DOT/PF determines all physical work and cleanup provided for under this Agreement is complete, DOT/PF will issue a Letter of Project Completion. The Letter of Project Completion formally relieves LOWE'S from further maintenance responsibilities and transfers the maintenance responsibility of the project or portions thereof to the DOT/PF Maintenance and Operations.
5. When DOT/PF determines that all permitting, paperwork, billings, as-builts are received and completed, and the contractor is released, the Department will issue a Letter of Final Acceptance. The Letter of Final Acceptance relieves LOWE'S from any further contract responsibilities related to this agreement in the state right of way.
6. DOT/PF will own and operate the traffic signal and all highway improvements in the state right of way.
7. LOWE'S will make available to DOT/PF the Contractor-provided Records of inspections, tests, and similar quality control services. This is preferred at the end of the contract work as one package, however, it may be requested prior to completion.

Q. AS-BUILT PLAN REQUIREMENTS

LOWE'S will provide final As-Builts of those drawing sheets that show work completed in the state right of way.

Before final field review of the work, submit 3 complete sets of as-built plans to DOT/PF to include following information on the appropriate sheets:

- Location and depth of conduit runs
- Station and offset of all junction boxes
- Heights of signal faces and overhead signs
- A list of equipment, including manufacturer, brand, and model number installed in each controller cabinet

R. WARRANTIES, GUARANTEES, AND INSTRUCTION SHEETS

Before DOT/PF assumes maintenance responsibilities, LOWE'S will provide copies of the following for items that will be maintained by DOT/PF:

- applicable product warranties and guaranties
- operating manuals and instruction sheets
- and parts furnished with materials used in the work

S. FUNDING

LOWE'S agrees to provide the DOT/PF with a bond or check in the amount of \$20,000 on or before seven days after the date of this Agreement. This will be to cover all costs associated with review and permitting of the Design plans and Utilities Permitting.

LOWE'S agrees to provide the DOT/PF with a bond or check in the amount of approved bids for the Work, presently estimated to be \$490,000, and an amount to cover the DOT/PF's Construction Administration, presently estimated to be \$74,000 by seven days after the approval of the bids to be accepted. This will be to cover all costs associated with construction of the Work and in the attached cost estimate. This amount is subject to revision up or down. The final obligation will be equal to the cost of construction of the Work prepared for the accepted Design plans, and any additional Change Orders or cost overruns related to the Design plans. This will include administration and overhead costs normally budgeted by the DOT/PF.

The Lowe's Work may be bonded for separately; or if a cash deposit is made, DOT/PF shall release portions of the deposit for interim payments to Lowe's contractor in accordance with DOT/PF's usual and customary practices.

LOWE'S understands the construction estimate is a preliminary estimate only and that the actual costs may be more or less than estimated. LOWE'S will provide additional funding as indicated in final accepted Engineer's Estimate in the Design Requirements, and as needed to cover the final accepted cost of construction by the DOT/PF'S Contractor.

Any Change Orders, or cost overruns on the Work beyond the agreed to budget, must be approved in writing by an authorized representative of LOWE'S prior to the DOT/PF's authorization of the Change Orders or Work.

The DOT/PF will place and track LOWE'S funding into a separate account to incorporate improvements into the schedule for the Parks Highway Reconstruction project, currently under construction. Once the construction is complete, a Letter of Final Acceptance will be issued to the Contractor. Any remaining LOWE'S funding not required for the project will be returned to LOWE'S within 90 days of the Letter of Final Acceptance.

T. SCHEDULE.

LOWE'S will provide the initial 95% design plans for the Work for review, and the funding to do the Work no later than two weeks after both parties have signed this agreement.

U. CONTACTS.

Contacts at DOT/PF:

- Developer-Department Coordination/Planning: Brad Sworts, 269-0513
- Preliminary Design Review/Traffic Analysis: Scott Thomas, 269-0639
- Contracts & Review Engineer: Richard Oldford, 269-0423
- Construction Management: Thomas Dougherty, Project Mgr. 269-0450
- Utilities Permitting: Rory Redick, 269-0629
- ON-SITE POINT OF CONTACT: John Waisanen, Project Engineer 244-3549

Contacts at LOWE'S:

- Designer: Tom Adams, Lounsbury, 357-9129
- Project Manager: Tony Elias, 760-804-5337
- Construction Superintendent: Chris Anderson, Hickel Construction, 272-7713
- Alternate out-of-state contact:

V. MISCELLANEOUS.

1. **Time of the Essence.** Time is of the essence with respect to the completion of the Work.
2. **Relationship Of Parties.** Nothing contained in this Agreement shall be deemed or construed, either by the parties hereto or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture or other association between DOT/PF and LOWE'S.
3. **No Obligation To Continuously Operate.** LOWE'S, including any successors and assigns, is not obligated to continuously operate a business on the LOWE'S Parcel and, specifically, is not obligated to open, continuously operate or operate for any specific period of time a LOWE'S building supply or home improvement retail warehouse or any store or business on the LOWE'S Parcel. Nothing contained in this Agreement shall be construed, interpreted or otherwise read to require LOWE'S to operate a business on the LOWE'S Parcel or to prevent LOWE'S from closing its business on the LOWE'S Parcel.
4. **Incorporation of Exhibits.** Each exhibit attached to and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein. The recitals are incorporated herein by reference as matters of contract and not mere recital.
5. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.

6. **Headings.** Headings used in this Agreement are for convenience only and shall not be considered in construing the meaning of the content or meaning of any section or article.
7. **Binding Agreement.** This Agreement shall become a binding obligation of the parties only upon the complete execution and unconditional delivery thereof by both parties.
8. **Modification.** This Agreement may not be modified in any respect whatsoever, in whole or in part, except in a writing signed by both parties.
9. **Notices.** Any notice or invoice required or permitted to be given under this Agreement shall be in writing. Notice shall be deemed to have been given: (a) five (5) business days after deposit with the United States Mail as Certified Mail, Return Receipt Requested and postage prepaid; or (b) (2) two business days after deposit with a nationally recognized overnight delivery service which provides delivery tracking, with payment made by the sending party; or (c) on the date of personal delivery. Notices shall be addressed to the Party being notified at the address given below (or such other address which any Party may designate for itself from time to time hereafter by written notice to the other Party(ies)):

DOT/PF:

Gordon Keith, P.E., Regional Director
State of Alaska Central Region DOT/PF
P.O. Box 196900
Anchorage, AK 99519-6900

Robert Campbell, P.E., Regional Preconstruction Engineer
State of Alaska Central Region DOT/PF
P.O. Box 196900
Anchorage, AK 99519-6900

LOWE'S:

Lowe's HIW, Inc.
Attention: Tony Elias, Project Manager
1530 Faraday Avenue, Suite #140
Carlsbad, CA 92008

With copies to:

Lowe's HIW, Inc.
Attention: Rob Doane
1530 Faraday Avenue, Suite #140
Carlsbad, CA 92008

and:

Paul M. Harman
Jones Waldo Holbrook & McDonough
170 South Main Street, Suite 1500
Salt Lake City, Utah 84101

10. **Waiver.** The failure of a person to insist upon strict performance of any of the restrictions contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the restrictions contained herein by the same or any other person.
11. **Attorney's Fees.** In the event any party initiates or defends any legal action or proceeding in any way connected with this Agreement, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's fees (including, without limitation, its reasonable costs and attorney's fees on any appeal). All such costs and attorney's fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.
12. **Severability.** If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, then such term or provision shall be to that extent stricken or disregarded and the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.
13. **No Third Party Beneficiary Rights.** This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto.
14. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.
15. **Governing Law.** This Agreement shall be interpreted and governed by Alaska law. This Agreement shall be enforceable by any action in law or equity, including without limitation specific performance and injunctive relief.

**ATTACHMENT 1: LOWE'S LAYOUT: CONCEPTUAL IMPROVEMENTS
WITHIN DOT/PF ROW**

ATTACHMENT 2: DOT/PF CONSTRUCTION ESTIMATE

ATTACHMENT 3: LOWE'S PLAT OF RECORD

LOWE'S HIW, Inc.

APPROVED:

Signature: David E Shelton KPJ

David E. Shelton

Name: Senior Vice President KB

Title: _____

Date: _____

KB

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES

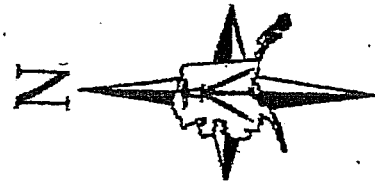
APPROVED:

Signature: [Handwritten Signature]

Name: Robert A. Campbell, P.E.
Title: Central Region Preconstruction Engineer

Date: 9-29-04

ALPINE RD

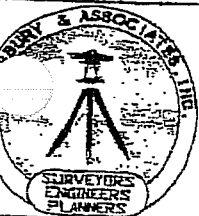


HERMON ROAD

SUN MOUNTAIN AVE

PARKS HIGHWAY
TRAFFIC SIGNAL

OLD MATANUSKA ROAD



723 W. 6th Avenue
Anchorage, Alaska 99501
(907) 272-5451 Fax: 272-9065

3161 E. Palmer-Wasilla Hwy, #2
Wasilla, Alaska 99654
(907) 357-9129 Fax: 357-9140

LOWE'S OF WASILLA
PRELIMINARY SITE PLAN

ATTACHMENT 1

DRAWN BY: PMH
FILE NAME: PLOT

DATE: 03/03/04
SCALE: N.T.S.

PROJECT NO.
03-047

FIGURE 2

**Lowe's Traffic Impact Mitigation
Mitigation Cost Estimate**

Attachment 2

Parks Hwy & Hermon Rd

9/20/2004 13:18

Work	Quantity	Unit	Unit Cost	Total Cost	Remarks
REMOVALS					
Remove Existing Curb	0	LF	\$7.00	\$0	
Unclassified Excavation	0	CY	\$6.00	\$0	
Remove parking meters	0	EA	\$250.00	\$0	
Remove Existing Guardrail	0	LF	\$3.00	\$0	
Remove Existing Pavement	0	SY	\$4.00	\$0	
Remove Sidewalk	0	SY	\$7.00	\$0	
INSTALLATIONS					
Asphalt Concrete Pavement	0	Ton	\$12.00	\$0	
Full Roadway section per lane, per station	7.5	Ln Sta	\$6,000.00	\$45,000	WB RT, SB LT dedicated
Base Course	0	Ton	\$30.00	\$0	
Sidewalk / Pathway	0	LF	\$18.00	\$0	
Curb & Gutter	0	LF	\$15.00	\$0	
Curb Ramp	0	EA	\$700.00	\$0	
End Section	0	EA	\$500.00	\$0	
Culvert, 24"	0	LF	\$45.00	\$0	
Inlet	0	EA	\$3,000.00	\$0	
TRAFFIC CONTROL					
Temporary Signal System + Adjustments	All Req'd	LS	\$100,000.00	\$100,000	Span Wire, Video Detection
New Electroliers	0	EA	\$7,500.00	\$0	
Relocated Electroliers	0	EA	\$3,000.00	\$0	
New Load Center	1	EA	\$7,000.00	\$7,000	
New Controller/Foundation	1	EA	\$25,000.00	\$25,000	
New Junction Boxes	11	EA	\$1,200.00	\$13,200	corners, loop leadins, controller
Loop Detectors	40	EA	\$1,100.00	\$44,000	10 per approach, multilane
New Traffic Signal Wiring	1	EA	\$7,500.00	\$7,500	
New Signal Pole, Heads, Signs	4	EA	\$20,000.00	\$80,000	
New Conduit w/wiring	760	LF	\$20.00	\$15,200	
Regulatory Signing	20	EA	\$600.00	\$12,000	5 per approach
Striping	4800	LF	\$1.50	\$7,200	1200 LF per leg
Preformed Symbols	24	EA	\$300.00	\$7,200	6 per approach
OTHER					
Erosion/Pollution Control		LS	All Req'd	\$3,630	1% of pay items
Field Office		LS	All Req'd	\$0	
Traffic Maintenance		LS	All Req'd	\$54,500	15% of pay items
Construction Surveying		LS	All Req'd	\$21,800	6% of pay items
Mobilization/Demobilization		LS	All Req'd	\$47,230	13% of pay items
CONSTRUCTION CONTRACT COST			Subtotal	\$490,460	
UTILITIES					
Utilities Design	10000	LS	All Req'd	\$10,000	Utility Company Rechecks
Gas Line Relocate	0	LS	\$1,500.00	\$0	
Underground Telephone Relocate	0	LS	\$3,500.00	\$0	
Underground Electric Relocate	0	LF	\$5.10	\$0	
Hydrant Relocate	0	EA	\$15,000.00	\$0	
Sewerline Relocate	0	LF	\$150.00	\$0	
Overhead Electric Relocate	0	LS	\$150,000.00	\$0	
			Utilities Subtotal	\$10,000	
COST ESTIMATE SUMMARY					
Reconnaissance Study		LS	All Req'd	\$0	
Design Review		LS	All Req'd	\$10,000	
Right-of-Way	0	SF	\$30.00	\$0	
Utilities		LS	All Req'd	\$10,000	Permitting
Construction		LS		\$490,000	
Contract Administration		LS	@ 15%	\$74,000	of Construction
Intersection:					
Parks Hwy and Hermon Road			Total:	\$584,000	Est. Design/Construction Costs