

**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

**SUBJECT:** Traffic Signal Maintenance Covenant Between Lowe's Home Centers, Inc. and Seminole County

**DEPARTMENT:** Public Works

**DIVISION:** Traffic Engineering

**AUTHORIZED BY:** Gary Johnson

**CONTACT:** Melonie C. Barrington

**EXT:** 5676

**MOTION/RECOMMENDATION:**

Approve and authorize the Chairman to execute the Traffic Signal Maintenance Covenant between Lowe's Home Centers, Inc. and Seminole County.

District 4 Carlton D. Henley

Melonie C. Barrington

**BACKGROUND:**

The Florida Department of Transportation (FDOT) recently completed a signal warrant analysis at the intersection of US 17-92 and Prairie Lake Drive—Lowe's located in the City of Casselberry. The signal warrant analysis recommended signalization of this intersection. Lowe's Home Centers, Inc. was required to install this traffic signal, which is a mast arm design that meets the typical standard signal design for Seminole County. The mast arm design is more durable and requires less maintenance over the life span of the signal.

Lowe's Home Centers, Inc. will pay Seminole County a maintenance fee at the current rate of \$3,916.00 per year.

**STAFF RECOMMENDATION:**

Approve and authorize the Chairman to execute the Traffic Signal Maintenance Covenant Between Lowe's Home Centers, Inc. and Seminole County.

**ATTACHMENTS:**

1. Traffic Signal Maintenance Covenant - Lowe's Home Centers, Inc.

<p><b>Additionally Reviewed By:</b></p> <p><input checked="" type="checkbox"/> County Attorney Review ( Susan Dietrich )</p>
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TRAFFIC SIGNAL MAINTENANCE COVENANT

THIS COVENANT, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between LOWE'S HOME CENTERS, INC., whose address is 1605 Curtis Bridge Road, Wilkesboro, North Carolina 28697, hereinafter referred to as the "OWNER", and SEMINOLE COUNTY, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as the "COUNTY".

W I T N E S S E T H:

WHEREAS, Chapter 125, Florida Statutes, grants counties broad home rule powers to perform acts in the public interest; and

WHEREAS, the OWNER and the COUNTY recognize that a need exists to develop a coordinated effort for the repair of traffic signals in order to facilitate traffic engineering and the safe and efficient flow of traffic in Seminole County; and

WHEREAS, the OWNER and the COUNTY desire to enter into a mutually beneficial relationship whereby the COUNTY will maintain on a cost basis certain traffic signals installed by the OWNER,

NOW, THEREFORE, in consideration of the mutual promises herein contained, it is hereby agreed as follows:

**Section 1. Responsibilities of the COUNTY.**

(a) Maintenance Service. The COUNTY will provide maintenance service for a traffic signal owned or partially owned by the OWNER that has been agreed to by the COUNTY through its County Traffic Engineer. A specific listing of said traffic signal within the scope

of this Covenant is contained in Exhibit A, attached hereto and incorporated herein by reference, and hereinafter referred to as the Traffic Signal. The COUNTY will maintain the Traffic Signal to the extent of the COUNTY's capabilities (in terms of ordinary maintenance and repair) and will charge the OWNER an Annual Maintenance Fee for said services. Further, the COUNTY shall seek additional compensation from the OWNER for costs it incurs above and beyond normal routine maintenance, to include, but not be limited to: mast arms, controller and/or cabinet replacement, emergency preemption (Opticom) equipment and video and loop detection equipment. These additional costs will not exceed the actual cost to the COUNTY.

(b) Changes to Inventory of Traffic Signal Subject to this Covenant. The parties agree that the County Traffic Engineer, within his/her discretion, may acknowledge the addition of new signals to, or the subtraction of signals from, the inventory of Traffic Signals subject to this Covenant as contained in Exhibit A. As such, the OWNER may request that a traffic signal be added to or subtracted from this Covenant by making such request in writing directly to the County Traffic Engineer at the address listed in Section 7 of this Covenant. Such acceptance of responsibility for the maintenance of a new traffic signal or for the removal of a traffic signal from the inventory of Traffic Signals as contained in Exhibit A will not be effective until the OWNER receives a written notification of such acceptance from the County Traffic Engineer of addition to or removal from said inventory. The OWNER and COUNTY agree that the provisions of this Covenant

including, but not limited to, provisions regarding maintenance and costs, will be applicable to traffic signals added to or removed from the inventory of Traffic Signals subject to this Covenant.

(c) Maintenance Standards. The Traffic Signal will be maintained in accordance with the most current Manual of Uniform Traffic Control Devices promulgated by the State of Florida Department of Transportation pursuant to Section 316.0745, Florida Statutes.

(d) Request for Payment. The COUNTY agrees to send requests for payment of its Annual Maintenance Fee, as calculated in Section 3 hereof, on a yearly basis. Requests for payment of any additional charges, as outlined in section (a) above, which exceed those in Section 3 hereof, shall be billed to the OWNER as incurred by the COUNTY.

**Section 2. Responsibilities of the OWNER.**

(a) Payment. The OWNER agrees to pay an Annual Maintenance Fee for the services provided by the COUNTY pursuant to this Covenant, Section 1(a). Further, the OWNER shall reimburse the COUNTY for any costs the COUNTY incurs above and beyond normal routine maintenance as described in Section 1(a) of this Covenant. The OWNER also agrees to be responsible for the full cost of power required to operate the traffic signal and shall make payment directly to the appropriate power company.

(b) Time. The OWNER agrees to remit payment for each invoice rendered hereunder by COUNTY within thirty (30) days of receipt of the COUNTY's request for payment.

(c) Notice to Successors, Grantees and Assigns. OWNER shall give the COUNTY contemporaneous notice of any transfer of fee title for property served by the Traffic Signal. OWNER shall give its successors, grantees and assigns written notice of this Covenant, which shall also be executed in a form adequate for recording in the Official Public Records of Seminole County, Florida, and shall become a covenant running with the land, described more particularly herein in Exhibit B, attached hereto and incorporated herein by reference.

**Section 3. Calculation of Charges.**

(a) Normal Routine Maintenance. Both parties agree that the OWNER shall pay COUNTY a flat Annual Maintenance Fee for normal routine maintenance services.

(b) Annual Maintenance Fee Calculation.

(1) Both parties agree that the Annual Maintenance Fee shall be based on the following: the calculated total costs to maintain all of the signals in Seminole County, as documented and tracked by the computerized work management system (Mainstar), will be divided by the total number of signals in Seminole County to arrive at an average per intersection cost. This average cost will be the fee charged to the OWNER and shall be calculated each year, based on actual cost averages from the previous year. An amount equal to ten percent (10%) of the full signal maintenance cost calculated above shall be added to the amount otherwise arrived at to determine the amount to be paid by the OWNER to cover risks and other administrative obligations assumed by the COUNTY in maintaining the traffic signal.

(2) From the effective date of this Covenant, until changed, pursuant to the criteria herein, the Annual Maintenance Fee for each signal within the scope of this Covenant shall be as set forth in Exhibit A herein, and shall be increased or decreased from time to time at the request of the County Traffic Engineer with written notice to the OWNER.

**Section 4. Term.** This Covenant shall take effect upon execution by the COUNTY (the OWNER having signed first) and shall remain in force perpetually unless terminated as provided herein.

**Section 5. Default and Remedies.**

(a) It shall be a default if the OWNER fails to make any payment of costs due under this Covenant or any other sums to the COUNTY when due and does not cure such default within thirty (30) days after written notice thereof; or if the OWNER fails in the performance of any other covenant or condition of this Covenant and does not cure such other default within thirty (30) days after written notice from the COUNTY specifying the default complained of unless, however, the nature of the default is such that it cannot, in the exercise of reasonable diligence, be remedied within thirty (30) days, in which case the OWNER shall have such time as is reasonably necessary to remedy the default provided that said OWNER promptly takes and diligently pursues such actions as are necessary.

(b) In the event of a default by the OWNER, the COUNTY shall have the right, at its option, in addition to and not exclusive of any other remedy the COUNTY may have by operation of law, without any

further demand or notice, to terminate this Covenant, in which event the OWNER shall immediately pay the COUNTY a sum of money equal to the total of: (1) the amount of any unpaid costs per this Covenant accrued through the date of termination; and (2) any other amount necessary to compensate the COUNTY for all costs, damages, expenses, fees, charges, or detriment proximately caused by the OWNER's failure to perform its obligations under this Covenant.

(c) If suit shall be brought by the COUNTY for the recovery of any costs due under this Covenant or any other amount due under the provisions of this Covenant, or because of the breach of any other covenant, the OWNER shall pay to the COUNTY any and all expenses incurred therefore, including, but not limited to, reasonable attorney fees. If the COUNTY is represented by the County Attorney's Office, then the COUNTY may recover fees based upon prevailing market rates in private practice, irrespective of actual salaries paid by the COUNTY.

**Section 6. Termination of the Covenant.** Without impairing its right to receive OWNER's payments already due, the COUNTY may terminate this Covenant (1) at any time by giving the OWNER thirty (30) days written notice thereof; or (2) by any method as set forth in Section 5 of this Covenant.

**Section 7. Notices.**

(a) Notice hereunder from one party to the other may be sent to:

**For COUNTY:**

Seminole County Traffic Engineer  
Seminole County Services Building  
1101 East First Street  
Sanford, Florida 32771

**For OWNER:**

Lowe's Home Centers, Inc.  
1605 Curtis Bridge Road  
Wilkesboro, North Carolina 28697

Any party may change, by written notice as provided herein, its addresses or persons designated for receipt of notices.

(b) For the purpose of annual budgeting, the COUNTY will submit a written notice to the OWNER by March 1<sup>st</sup> of each year for all charges provided herein, to the extent they can be anticipated from prior years' charges.

**Section 8. Representations.** The undersigned persons signing on behalf of the OWNER represents that (s)he is the designated officer or general partner acting for the OWNER; that this document has been reviewed and duly approved for execution by all necessary general partners, officers or directors of the named entity for which (s)he purports to sign with all the formalities required by law for such named entity to enter into a binding agreement; and that the respective entity has likewise authorized the undersigned to bind OWNER to the terms and conditions contained in this Covenant.

**Section 9. Severability.** If any provision of this Covenant or the application thereof to any person or circumstance is held invalid, it is the intent of the parties that the invalidity shall not affect other provisions or applications of this Covenant which can be given

effect without the invalid provision or application, and to this end the provisions of this Covenant are declared severable.

**Section 10. Entire Agreement.**

(a) The entire agreement of the parties is contained herein and this Covenant supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof.

(b) Any alterations, amendments, deletions or waivers of the provisions of this Covenant shall be valid only when expressed in writing and duly signed by all parties, except as provided in Section 3.

**Section 11. Governing Law.** The laws of the State of Florida shall govern the validity, enforcement and interpretation of this Covenant. Jurisdiction and venue for any civil legal action in connection herewith shall lie only in the Eighteenth Judicial Circuit Court of the State of Florida, in and for Seminole County and for Federal legal actions, jurisdiction and venue shall be in the United States District Court, Middle District of Florida, Orlando Division.

**Section 12. Parties Bound.** This Covenant is binding upon and shall inure to the benefit of the heirs, successors, personal representatives and assigns of the parties hereto and shall constitute a covenant running with the land.

Section 13. Conflict of Interest.

(a) The OWNER agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Covenant with the COUNTY or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.

(b) The OWNER hereby certifies that no officer, agent or employee of the COUNTY has any material interest (as defined in Section 112.312(15), Florida Statutes, as over 5% of the total assets or capital stock) either directly or indirectly, in the OWNER, and that no such person shall have any such interest during the term of this Covenant.

(c) The OWNER shall have the continuing duty to report to the COUNTY any information that indicates a possible violation of this Section.

[Balance of this page has been left intentionally blank;  
attestations on page 10 of 10]

IN WITNESS WHEREOF, the parties have executed this Covenant as of the day and year first above written.

ATTEST:

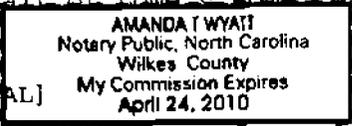
LOWE'S HOME CENTERS, INC.

Jeffrey E. Gray  
Secretary  
Assistant Secretary  
STATE OF North Carolina

By: Kevin D. Bennett  
President  
Kevin D. Bennett  
Vice President

COUNTY OF Wilkes

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of August, 2009, by Kevin D. Bennett and Jeffrey E. Gray, as President and Secretary respectively of Lowe's Home Centers, Inc., who are personally known to me or who have produced as identification. They acknowledged before me that they executed the foregoing instrument as such officers in the name and on behalf of Lowe's Home Centers, Inc.



[NOTARY SEAL]

Amanda J. Wyatt  
Notary Public in and for the County  
And State aforementioned

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

Maryanne Morse  
Clerk to the Board of  
County Commissioners of  
Seminole County, Florida.

By: \_\_\_\_\_  
BOB DALLARI, Chairman

Date: \_\_\_\_\_

For the use and reliance  
of Seminole County only.  
Approved as to form and  
legal sufficiency.

As authorized for execution  
by the Board of County Commissioners  
at their \_\_\_\_\_, 20\_\_\_\_  
regular meeting.

County Attorney  
SED/lpk  
7/8/09

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Attachments:

- Exhibit A - Listing of Traffic Signal
- Exhibit B - Parcel Identification Number

EXHIBIT "A"

SEMINOLE COUNTY - LOWE'S HOME CENTERS, INC.  
TRAFFIC SIGNAL MAINTENANCE COVENANT

The traffic signal(s) covered by this AGREEMENT are located at the following intersections:

1. US 17-92 / Lowe's - Prairie Lake Drive

**Date: July 2009**

**VARIABLE CHARGES FOR MAINTENANCE OF TRAFFIC SIGNALS**

The following charges for the Annual Maintenance Fee under Section 3 of this Agreement shall be as follows, subject to being increased by the County Traffic Engineer pursuant to the terms of this agreement:

1. The Annual Maintenance Fee for signal maintenance within the scope of this AGREEMENT and to be invoiced annually shall be \$3,916.00 per signal.

# US 17-92/Lowe's - Prairie Lake Drive Exhibit "B"



SECTION 17 TWP 21 RANGE 30

### LEGAL DESCRIPTION

SEC 17 TWP 21S R6E 30E BEG SW COR SEC 17 RUN N 01 DEG 29 MIN 26 SEC W 271.86 FT N 51 DEG 45 MIN 45 SEC W 175.07 FT N 68 DEG 47 MIN 01 SEC W 24 FT S 85 DEG 14 MIN W 24 FT N 38 DEG 14 MIN 15 SEC E 88.79 FT S 08 DEG 45 MIN 40 SEC E 24 FT S 34 DEG 44 MIN 29 SEC E 24 FT S 51 DEG 45 MIN 45 SEC E 149.50 FT N 38 DEG 14 MIN 15 SEC E 198.40 FT S 48 DEG 50 MIN 29 SEC E 169.79 FT N 41 DEG 09 MIN 38 SEC E 34.07 FT S 48 DEG 50 MIN 29 SEC E 162.33 FT S 41 DEG 09 MIN 31 SEC W 236.13 FT S 48 DEG 50 MIN 29 SEC E 168.16 FT W 365.34 FT TO BEG



US 17-92/  
Lowe's - Prairie Lake Drive  
Traffic Signal Maintenance  
Agreement

Seminole County Traffic Engineering  
140 Bush Loop  
Sanford, Florida 32773  
Phone (407) 665-5677  
FAX (407) 665-5623

June 2009