

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Amendment to Seminole County-Orlando Lake Forest, Inc. Traffic Signal Maintenance Agreement

DEPARTMENT: Public Works

DIVISION: Traffic Engineering

AUTHORIZED BY: Gary Johnson

CONTACT: Melonie Barrington

EXT: 5676

MOTION/RECOMMENDATION:

Authorize the Chairman to execute the Amendment to Seminole County-Orlando Lake Forest, Inc. Traffic Signal Maintenance Agreement.

District 5 Brenda Carey

Melonie Barrington

BACKGROUND:

At the March 14, 2006, Board of County Commissioners meeting, staff was given direction to proceed with terminating the Traffic Signal Maintenance Interlocal Agreements with the Cities within Seminole County. New agreements with five of the seven cities were approved at the August 22, 2006, County Commission meeting. Staff is now presenting the corresponding Amended Private Traffic Signal Maintenance Agreement with Orlando Lake Forest Inc. Upon recommendation of the County Attorney's Office, the current Private Traffic Signal Maintenance Agreements were not terminated, but amended to reflect the new rate and appropriately define owner and County responsibility. The annual maintenance fee rate of \$3,916 per signal is consistent with the rate used for the City agreements, and reflects staff's evaluation of annual costs incurred during the past two fiscal years to provide normal routine maintenance services. The new rate will be charged on a prorated basis effective May 1, 2008.

STAFF RECOMMENDATION:

Approve and authorize the Chairman to execute the Amended Traffic Signal Maintenance Agreement with Orlando Lake Forest, Inc.

ATTACHMENTS:

1. Orlando Lake Forest Signal Maintenance Agreement

<p>Additionally Reviewed By:</p> <p><input checked="" type="checkbox"/> County Attorney Review (Susan Dietrich)</p>
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**AMENDMENT TO SEMINOLE COUNTY-ORLANDO LAKE FOREST, INC.
TRAFFIC SIGNAL MAINTENANCE AGREEMENT**

THIS AMENDMENT is made and entered into this _____ day of _____, 200__, and is to that certain Agreement made and entered into on the 5th day of March, 2001, between LAKE FOREST MASTER COMMUNITY ASSOCIATION, INC., whose mailing address is c/o NTS Corporation, 10172 Linn Station Road, Louisville, Kentucky 40223, hereinafter referred to as "ASSOCIATION," and SEMINOLE COUNTY, a political subdivision of the State of Florida, whose mailing address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as "COUNTY".

W I T N E S S E T H:

WHEREAS, the ASSOCIATION, COUNTY and ORLANDO LAKE FOREST, INC., c/o NTS Corporation, 10172 Linn Station Road, Louisville, Kentucky 40223, developer of the Lake Forest subdivision, entered into the above referenced Agreement on March 5, 2001, to set forth the terms and conditions for the COUNTY to provide continuing maintenance of traffic signals located at the intersection of State Road 46 and Lake Forest Boulevard for the safe and efficient flow of traffic in Seminole County, Florida; and

WHEREAS, in September 2005, Orlando Lake Forest, Inc. assigned its duties, responsibilities and obligations set forth in the Agreement dated March 5, 2001 to the ASSOCIATION; and

WHEREAS, the ASSOCIATION and COUNTY desire to amend the Agreement so as to enable both parties to continue to enjoy the mutual benefits it provides; and

WHEREAS, Section 9 of the Agreement provides that any amendments to the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties,

NOW, THEREFORE, in consideration of the mutual understandings and agreements contained herein, the parties agree to amend the Agreement as follows:

1. Section 1 of the Agreement is amended to read:

Section 1. Responsibilities of the COUNTY.

(a) Maintenance Service. The COUNTY will provide maintenance service for all traffic signals owned or partially owned by the ASSOCIATION that have been agreed to by the COUNTY through its County Traffic Engineer. A specific listing of said traffic signals within the scope of this Agreement is contained in Exhibit "A", attached hereto and incorporated herein by reference, and hereinafter referred to as the "Traffic Signals". The COUNTY will maintain the Traffic Signals to the extent of the COUNTY's capabilities (in terms of ordinary maintenance and repair) and will charge the ASSOCIATION an Annual Maintenance Fee for said services. Further, the COUNTY shall seek additional compensation from the ASSOCIATION 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 Signals Subject to this Agreement. The parties agree that the County Traffic Engineer, within his/her discretion, may acknowledge additions of new signals or

subtractions of signals to/from the inventory of Traffic Signals subject to this Agreement as contained in Exhibit "A". As such, the ASSOCIATION may request that a traffic signal be added to or subtracted from this Agreement by making such request in writing directly to the County Traffic Engineer at the address listed in Section 6 of this Agreement. 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 ASSOCIATION receives a written notification of such acceptance of addition or removal from the County Traffic Engineer. The ASSOCIATION, and COUNTY agree that the provisions of this Agreement 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 Agreement.

(c) Maintenance Standards. The Traffic Signals 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 as incurred.

2. Section 2 of the Agreement is amended to read:

Section 2. Responsibilities of the Association.

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

(b) Time. The ASSOCIATION 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. ASSOCIATION shall give the COUNTY contemporaneous notice of any transfer of fee title for properties served by the Traffic Signals. ASSOCIATION shall give its successors, grantees and assigns written notice of this Agreement, which shall also be executed in form adequate for recording in the Official Public Records of Seminole County, Florida, and shall become a Agreement running with the land, described more particularly herein as:

"SEE ATTACHED EXHIBIT "B"

3. Section 3 of the Agreement is amended to read:

Section 3. Calculation of Charges.

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

(b) Annual Maintenance Fee Calculation.

(1) The parties agree that the Annual Maintenance Fee shall be based on the following: the calculated total costs to maintain all of the signals in the County as documented and tracked by the computerized work management system (Maintstar) will be divided by the total number of signals in the County to arrive at an average per intersection cost. This average cost will be the fee charged to the ASSOCIATION 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 ASSOCIATION to cover risks and other administrative obligations assumed by the COUNTY in maintaining traffic signals.

(2) From the effective date of this Agreement, until changed, pursuant to the criteria herein, the Annual Maintenance Fee for each signal within the scope of this Agreement 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 ASSOCIATION.

4. Section 4 of the Agreement is amended to read:

Section 4. Term. This Agreement shall take effect upon execution of the Agreement by the COUNTY (the ASSOCIATION having signed first) and shall remain in force until terminated as provided herein.

5. Section 5 of the Agreement is amended to read:

Section 5. Termination of the Agreement. Without impairing its right to receive ASSOCIATION payments already due, the COUNTY may terminate this Agreement (1) at any time by giving the ASSOCIATION sixty (60) days written notice thereof; or (2) by any method as set forth in Section 14 of this Agreement.

6. Section 6 of the Agreement is amended to read:

Section 6. Notices. Whenever either party desires to give notice unto the other, notice may be sent to:

For COUNTY:


Seminole County Traffic Engineer
Department of Public Works
Seminole County
140 Bush Boulevard
Sanford, Florida 32773

For ASSOCIATION:

Community Association Manager
Lake Forest Master Community Association, Inc.
5350 Shoreline Circle
Sanford, Florida 32771

7. Section 7 of the Agreement is amended to read:

Section 7. Representations. The undersigned represent that they are the designated officers of ASSOCIATION, that this document has been reviewed and duly approved for execution by all necessary officers or directors of ASSOCIATION with all the formalities required by law for

them to enter into a binding agreement; and that the ASSOCIATION has likewise authorized the undersigned to bind the ASSOCIATION to the terms and conditions contained in this Agreement.

8. Section 10 of the Agreement is amended to read:

Section 10. Governing Law. The laws of the State of Florida shall govern the validity, enforcement and interpretation of this Agreement. 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.

9. Section 11 of the Agreement is amended to read:

Section 11. Parties Bound. This Agreement 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 Agreement running with the land.

10. Section 12 of the Agreement is amended to read:

Section 12. Conflict of Interest.

(a) The ASSOCIATION agrees that it will not engage in any action that would create a conflict of interest in the performance of their obligations pursuant to this Agreement 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 ASSOCIATION 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 ASSOCIATION and that no such person shall have any interest during the term of this Agreement.

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

11. Section 14 of the Agreement is added to read:

Section 14. Default and COUNTY's Remedies.

(a) It shall be a default if the ASSOCIATION fails to make any payment of costs due under this Agreement 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 ASSOCIATION fails in the performance of any other Agreement or condition of this Agreement 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 ASSOCIATION shall have such time as is reasonably necessary to remedy the default provided that said ASSOCIATION promptly takes and diligently pursues such actions as are necessary.

(b) In the event of a default by the ASSOCIATION 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 Agreement, in which event the ASSOCIATION shall immediately pay the COUNTY a sum of money equal to the total of: (1) the amount of any unpaid costs per

this Agreement 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 ASSOCIATION'S failure to perform its obligations under this Agreement.

(c) If suit shall be brought by the COUNTY for the recovery of any costs due under this Agreement or any other amount due under the provisions of this Agreement, or because of the breach of any other Agreement, the ASSOCIATION 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.

12. Except as herein modified, all terms and conditions of the Agreement shall remain in full force and effect for the term of this Agreement, as originally set forth in said Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this instrument for the purpose herein expressed.

ATTEST:

LAKE FOREST MASTER ASSOCIATION, INC.

[Signature]
Secretary

By: [Signature]
President

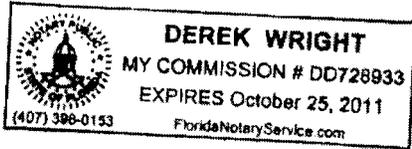
(Corporate Seal)

Date: 3/11/08

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

The foregoing instrument was acknowledged before me this 11 day of March, 2008, by Paul Burton, John Witzig and _____, as President and Secretary, respectively, of Lake Forest Master Association, Inc., who are personally known to me or who

have produced FL. Drivers License as identification. They have acknowledged before me that they have executed the foregoing instrument as such managing members in the name and on behalf of Lake Forest Master Association, Inc.



Derek Wright
Print Name Derek Wright
Notary Public in and for the County
And State aforementioned
My commission expires: 10/25/11

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

ATTEST:

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
BRENDA CAREY, Chairman

Date: _____

For the use and reliance
of Seminole County only.

As authorized for execution by the Board
of County Commissioners at its _____,
20____, regular meeting.

Approved as to form and
legal sufficiency.



County Attorney
SED/lpk/sb
11/29/06 01/10/07 12/19/07 3/5/08
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Attachments:
Exhibit "A" - Traffic Signal Inventory List
Exhibit "B" - Legal Description

EXHIBIT "A"

**SEMINOLE COUNTY - ORLANDO LAKE FOREST, INC
TRAFFIC SIGNAL MAINTENANCE
INTERLOCAL AGREEMENT**

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

1. SR 46 / Lake Forest Boulevard

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.

State Road 46/Lake Forest Boulevard Exhibit "B"



SECTION 30 TWP 19 RANGE 30

LEGAL DESCRIPTION

STREET (LESS FROM NE COR RUN W 1325.38 FT S 815.6 FT W TO WLY R/W OF LAKE FOREST BLVD TO POB
 RUN S 37 DEG 39 MIN 4 SEC W 87.39 FT NWLY ALG CURVE 23.17 FT N 49 DEG 4 MIN 2 SEC W 47.47 FT N 40 DEG 55
 MIN 58 SEC E 55.5 FT S 49 DEG 4 MIN 2 SEC E 42.64 FT NELY ALG CURVE TO BEG)
 LAKE FOREST BLVD PB 41 PGS 11 & 12

	<p>State Road 46 Lake Forest Boulevard</p>	<p>Seminole County Traffic Engineering 140 Bush Loop Sanford, Florida 32773 Phone (407) 665-5677 FAX (407) 665-5623</p>
	<p>Traffic Signal Maintenance Agreement</p>	<p>December 2007</p>