

Item No:
<u>29</u>

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Traffic Signal Maintenance Agreement with Sun Lake Plaza, Inc. District 2.

DEPARTMENT: Public Works **DIVISION:** Traffic Engineering

AUTHORIZED BY: W. Gary Johnson **CONTACT:** Melanie C. Barrington **EXT.** 5676
W. Gary Johnson, Director Traffic Engineer

Agenda Date 02/11/03 **Regular** ☐ **Consent** ☒ **Work Session** ☐ **Briefing** ☐
Public Hearing – 1:30 ☐ **Public Hearing – 7:00** ☐

MOTION/RECOMMENDATION:

Authorize Chairman to execute the Traffic Signal Maintenance Agreement (3 originals) between Seminole County and Sun Lake Plaza, Inc. for the maintenance of the traffic signal at SR 434 and Sun Shadow Drive.

BACKGROUND:

The signal at this intersection was placed on full operation on October 19, 1998, as authorized by the Florida Department of Transportation for access to the new shopping center. 434 Dixieventure, owner of the shopping center entered into a Traffic Signal Maintenance Agreement with Seminole County on September 28, 2000 to maintain the signal in accordance with the terms of the Agreement.

434 Dixieventure has sold the property to Sun Lake Plaza, Inc., who is now requesting to enter into a Traffic Signal Maintenance Agreement with Seminole County to continue the maintenance of the signal located at SR 434 / Sun Shadow Drive.

Attachment: Agreement (3 originals)

Reviewed by:
Co Atty: <u>MB</u>
DFS: <u>N/A</u>
Other: <u>N/A</u>
DCM: <u>MB</u>
CM: <u>CPWTE01</u>

**AMENDMENT NO. 1 TO
TRAFFIC SIGNAL MAINTENANCE AGREEMENT
BETWEEN SEMINOLE COUNTY AND 434 DIXIEVENTURE
ADDING NEW OWNER**

THIS AMENDMENT NO. 1 is entered into on the ____ day of _____, 2003, between 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," and Sun Lake Plaza, Inc., a Florida corporation whose address is 925 North Courtenay Parkway, Suite 28, Merritt Island, Florida 32953, hereinafter referred to as the "NEW OWNER."

W I T N E S S E T H:

WHEREAS, the NEW OWNER and the COUNTY recognize that there is a need 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 NEW OWNER has purchased the shopping center property at the southwest corner of State Road 434 and Sun Shadow Drive in Seminole County, formerly owned by 434 DIXIEVENTURE (the "former OWNER"), and subject to a traffic signal maintenance Agreement, dated September 28, 2000, that the NEW OWNER wishes to adopt and amend by this Amendment No. 1 ("Amendment"); and

WHEREAS, the NEW OWNER desires to continue a mutually beneficial relationship between the COUNTY and the former OWNER whereby the COUNTY will maintain on a cost basis certain traffic signals installed by the former OWNER;

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

SECTION 1. RESPONSIBILITIES OF THE COUNTY.

(a) Maintenance Service. The COUNTY will provide maintenance service for certain traffic signals at Sun Shadow Drive and State Road 434 that serve the entrance to the NEW OWNER's shopping center. A specific listing of the traffic signals within the scope of this Amendment 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 capability (in terms of ordinary repair and availability of parts). If major damage occurs to the signal controller of any of the Traffic Signals and such damage is beyond the COUNTY's ordinary ability to repair, it may be necessary to either:

Remove the controller and place the signal in temporary flashing mode until the said controller can be repaired elsewhere; or

Replace the controller with a back-up unit.

In the event the said controller needs to be repaired elsewhere or replaced, NEW OWNER agrees to reimburse the COUNTY for all costs, as hereinafter defined, of such major repair or replacement.

(b) Maintenance Standards. The Traffic Signals will be maintained in accordance with the most current repair manual promulgated by the State Department of Transportation pursuant to *Section 316.0745, Florida Statutes*.

(c) Request for Payment. The COUNTY agrees to send requests for payment for all charges relating to the Service Component as calculated in Section 3 hereof at least two (2) times per year. The minimum two requests for payment shall be made in April and September of each year. Requests for payment for charges relating to the

Electronic Component as calculated in Section 3 hereof shall be billed on a quarterly basis.

SECTION 2. RESPONSIBILITIES OF THE NEW OWNER.

(a) Payment. The NEW OWNER adopts the Traffic Signal Maintenance Agreement between Seminole County and 434 DIXIEVENTURE, dated September 28, 2000. The NEW OWNER agrees to be the primary obligor and to pay for all of the services provided by the COUNTY pursuant to this Amendment on a materials cost (hereinafter referred to as "Electronic Component") and service cost (hereinafter referred to as "Service Component") basis. 434DIXIEVENTURE has paid in full its obligations as of September 30, 2002.

(b) Time. The NEW OWNER agrees to pay each invoice rendered hereunder by COUNTY within thirty (30) days of a request for payment.

SECTION 3. CALCULATION OF CHARGES.

(a) Routine Maintenance. The NEW OWNER shall pay the COUNTY a flat routine maintenance charge which shall be calculated by the County Traffic Engineer from the average County-wide annual actual cost of traffic signal maintenance services provided by the COUNTY, for both COUNTY-owned signals and those not owned by the COUNTY. The rate for the services may fluctuate on an annual basis depending on the calculation of average costs. This charge will be invoiced semi-annually in each April and September.

(b) Electronic Components. The COUNTY will submit invoices to the NEW OWNER for the repair and replacement of the electronic components in addition to the routine maintenance services. The electronic components shall include the controller,

conflict monitor, loop detectors, opticom controller and detectors, etc. The invoices for repair and replacement of electronic components may be submitted as the COUNTY incurs those expenses.

(c) Current Charges For Service Component. From the effective date of this Amendment, until changed pursuant to the criteria contained herein, the Service Component of the yearly charge for each signal for signal maintenance within the scope of this Amendment shall be as set forth in Exhibit "A" herein, or as it may be increased from time to time at the request of the County Traffic Engineer with the written consent of the NEW OWNER, which shall not be unreasonably withheld.

SECTION 4. TERM. This Amendment shall take effect upon execution by the COUNTY (the NEW OWNER having signed first) and shall remain in force until terminated as provided herein.

SECTION 5. TERMINATION OF THE AGREEMENT. The COUNTY may terminate the Traffic Signal Maintenance Agreement, as amended herein, at any time by giving the NEW OWNER thirty (30) days written notice thereof. The NEW OWNER may terminate the Traffic Signal Maintenance Agreement, as amended herein, on any anniversary of this Amendment by giving sixty (30) days prior written notice. The NEW OWNER shall not be relieved of its obligation to compensate the COUNTY for services rendered up to and including the date of termination.

SECTION 6. NOTICES.

(a) Whenever either party desires to give notice unto the other, notice may be sent to:

FOR THE COUNTY
Melonie Barrington, P.E., County Traffic Engineer
140 Bush Loop
Sanford, FL 32773

FOR THE NEW OWNER
Sun Lake Plaza, Inc.
Attn: Mr. Robert Kodsi
P.O. Box 320219
Cocoa Beach, FL 32932-0219

Either of the parties may change, by written notice as provided herein, the addresses or persons designated for receipt of notices.

(b) For the purpose of annual budgeting, the COUNTY will submit a written notice to the NEW OWNER by March 1st of each year for all charges provided herein, to the extent they can be anticipated from prior years' charges. Additional charges will be levied for relamping and maintenance of the priority pre-emption system (if any). These costs will also be submitted to NEW OWNER for budgeting purposes.

SECTION 7. REPRESENTATIONS. The undersigned represents that (s)he is the designated officer of Sun Lake Plaza, Inc., and that this document has been reviewed and duly approved for execution by all necessary directors or shareholders of the NEW OWNER with all the formalities required by law for it to enter into a binding Amendment.

SECTION 8. SEVERABILITY. If any provision of this Amendment 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 Amendment or the underlying Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Amendment are declared severable.

SECTION 9. ENTIRE AMENDMENT.

(a) It is understood and agreed that the entire agreement of the parties is contained herein and that this Amendment 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 Amendment shall be valid only when expressed in writing and duly signed by both parties, except as provided in Section 3.

SECTION 10. GOVERNING LAW. The laws of the State of Florida shall govern the validity, enforcement and interpretation of this Amendment. Jurisdiction and venue for any legal action in connection herewith shall lie only in the Circuit Court of the State of Florida, in and for Seminole County.

SECTION 11. PARTIES BOUND. This Amendment is binding upon and shall inure to the benefit of NEW OWNER and COUNTY, and their successors and assigns.

SECTION 12. CONFLICT OF INTEREST.

(a) The NEW 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 Amendment 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 NEW 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 NEW OWNER, and that no such person shall have any such interest during the term of the Traffic Signal Maintenance Agreement as amended herein.

(c) [Intentionally left blank.]

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

IN WITNESS WHEREOF, the parties hereto have made and executed this Amendment for the purposes stated herein.

WITNESSES:

SUN LAKE PLAZA, INC.

Christine Groom Stuart
Print name: CHRISTINE GROOM STUART

By:

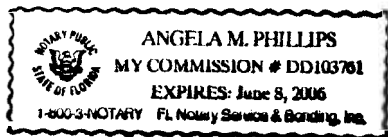
Robert D. Kodosi
Print name: Robert D. Kodosi
Title: Vice President

Brenda L. Adams Date: January 15, 2003
Print name: Brenda L. Adams

(CORPORATE SEAL)

STATE OF FLORIDA)
) ss
COUNTY OF BREVARD)

I HEREBY CERTIFY that, on this 15th day of January, 2003 A.D., before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Robert D. Kodosi, as Vice President of SUN LAKE PLAZA, INC., a corporation organized under the laws of the State of Florida, who is personally known to me or who has produced _____ as identification, and executed the foregoing instrument before me and acknowledged that (s)he executed the same on behalf of and as the act of said corporation for the purposes therein expressed.



Angela M. Phillips
NOTARY PUBLIC

Print Name Angela M. Phillips
Notary Public in and for the County
and State Aforementioned
My commission expires: June 8, 2006

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA**


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

By: _____
DARYL G. McLAIN, 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
_____, 2003, regular meeting.

 1-22-2003

County Attorney

HZ/la

12/23/002

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EXHIBIT "A"

**LOCATION OF TRAFFIC SIGNALS
WITHIN THE SCOPE OF AMENDMENT NO. 1 TO THE AMENDMENT
BETWEEN SEMINOLE COUNTY & 434 DIXIEVENTURE
ADDING NEW OWNER**

The following traffic signal(s) which do not have the Priority Preemption System are located at the intersection of:

A-1 SR 434 and Sun Shadow Drive

The following traffic signal(s) which have the Priority Preemption System are located at the intersection of:

B-1 NONE

VARIABLE CHARGES FOR MAINTENANCE OF TRAFFIC SIGNALS

The following charges for the Service Component under subsection 3(c) of this Amendment shall be as follows until amended by the County Traffic Engineer with the consent of the NEW OWNER:

- 1 The Service Component of the yearly charge for signal maintenance within the scope of this Amendment, half to be invoiced semi-annually each April and September, shall be ONE THOUSAND TWO HUNDRED SIXTY-TWO AND NO/100 DOLLARS (\$1,262.00) per signal.