

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Traffic Signal Maintenance Covenant between Seminole County and Sam's East, Inc. and AutoNation Imports of Longwood, Inc.

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

AUTHORIZED BY: *W. Gary Johnson* **CONTACT:** *Charles R. Wetzel* **EXT.** 5686
W. Gary Johnson, P.E., Director Assistant Traffic Engineer

Agenda Date 0713/04 Regular Consent Work Session Briefing
Public Hearing – 1:30 Public Hearing – 7:00

MOTION/RECOMMENDATION:

Approve and authorize Chairman to execute Traffic Signal Maintenance Covenant with Sam's East, Inc. and AutoNation Imports of Longwood, Inc.

District 5 – Commissioner McLain (Charles Wetzel)

BACKGROUND:

Seminole County has determined a need for a traffic signal at the intersection of Rinehart Road with the entranceways to Sam's Club and to AutoNation, located south of Towne Center Boulevard. The private entities are requesting Seminole County to maintain the signal in accordance with the terms of the attached Agreement. The Agreement details the responsibilities of all parties, including payment to the County for signal maintenance services. Following execution of this Agreement, the private entities will initiate installation of the signal.

Attachment: Agreement

Reviewed by: *SA*
Co Atty: _____
DFS: _____
Other: _____
DCM: *SA*
CM: *SA*

File No. CPWTE02

TRAFFIC SIGNAL MAINTENANCE COVENANT

THIS COVENANT, made this _____ day of _____, A.D. 2004, by and among SAM'S EAST, INC., a foreign corporation qualified to do business in Florida, whose principal place of business is 702 S.W. 8th Street, 0555, Bentonville, Arkansas 72716 (hereinafter, "SAM'S"); AUTONATION IMPORTS OF LONGWOOD, INC., whose principal place of business is 110 S.E. 6th Street, 20th Floor, Fort Lauderdale, Florida 33301 (hereinafter, "AUTONATION," and with SAM'S collectively referred to as the "OWNERS"); 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."

WITNESSETH:

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

WHEREAS, the OWNERS will need continuing maintenance of new traffic signals at the intersection of Rinehart Road with certain of the OWNERS' entrance driveways; and

WHEREAS, the OWNERS 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 OWNERS and the COUNTY desire to enter into a mutually beneficial relationship whereby the COUNTY will maintain on a cost basis one or more traffic signals installed by the COUNTY for the account of the OWNERS at said

intersection, for which the OWNERS will retain financial responsibility for necessary electrical power and continuing maintenance.

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 shall provide maintenance service for one or more traffic signal(s). A specific listing of the traffic signal(s) (hereinafter referred to as the "Traffic Signals") within the scope of this Covenant is contained in Exhibit "A," attached hereto and incorporated herein by reference. 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:

- (1) Remove the controller and place the signal in temporary flashing mode until the said controller can be repaired elsewhere; or
- (2) Replace the controller with a back-up unit.

In the event the said controller needs to be repaired elsewhere or replaced, OWNERS agree to reimburse the COUNTY for all reasonable 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 Florida Department of Transportation pursuant to *Section 316.0745, Florida Statutes.*

(c) Request for Payment. The COUNTY agrees to send invoices for all charges relating to the Service Component (see Section 3 hereof) at least two (2) times per year, in April and September. Charges relating to the Electronic Component as calculated in Section 3 hereof may be invoiced on a quarterly basis or as the COUNTY incurs these expenses. The COUNTY may send SAM'S each invoice for the entire amount due, with a copy of the invoice to AUTONATION marked "duplicate of invoice submitted to [SAM'S EAST, INC., or the name of its successor, grantee or assignee]." Failure to observe these schedules or formats will not invalidate any request.

SECTION 2. RESPONSIBILITIES OF THE OWNERS.

(a) Payment. The OWNERS agree to pay, jointly and severally, for the goods and services provided by the COUNTY pursuant to this Covenant on a materials cost (herein referred to as "Electronic Component") and service cost (herein referred to as "Service Component") basis. The OWNERS agree with each other to allocate said costs between themselves by contributing the following percentages: seventy-five percent (75%) by SAM'S and twenty-five (25%) by AUTONATION. AUTONATION shall reimburse SAM'S for AUTONATION's pro-rata share within ^{forty-five (45)} ~~fifteen (15)~~ days ^{RJD} of receipt of COUNTY's invoice or duplicate invoice, failing which SAM'S shall have the right to pursue AUTONATION for contribution, damages or specific performance. Whichever of the OWNERS actually makes a payment to the COUNTY shall have the right to obtain contribution from the other of the OWNERS. The foregoing provisions for contribution and allocation of costs shall not in any way impair OWNERS' joint and several liability to the COUNTY for the entire amount due.

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(b) Time. The OWNERS agree to pay each invoice rendered hereunder by the COUNTY within thirty (30) days of a request for payment, time being of the essence. If SAM'S fails to pay any invoice in a timely manner, the COUNTY may thereupon invoice all unpaid amounts to AUTONATION (or its successors, grantees or assigns), whereupon AUTONATION shall forthwith pay the entire amount and may seek such contribution from SAM'S (or its successors, grantees or assigns), as is hereinafter provided.

(c) Notice to Successors, Grantees and Assigns. OWNERS shall give the COUNTY contemporaneous notice of any transfer of fee title in their respective properties served by the Traffic Signals. OWNERS shall give their respective successors, grantees and assigns written notice of this Covenant, which shall also be executed in form adequate for recording in the public land records of Seminole County and shall become a covenant running with the land, described more particularly herein as:

All that certain land contained in Lot 1 SANFORD SAMS CLUB, according to the Plat thereof, as recorded in Plat Book 62, Pages 18 and 19, Public Records of Seminole County, Florida.

Parcel ID: 32-19-30-502-0000-0010;

and

SEC 32 TWP 19S RGE 30E BEG 571.09 FT E OF W 1/4 COR RUN E 582.64 FT S 589.67 FT TO NLY R/W OF RINEHART RD S 69 DEG 11 MIN 37 SEC W 577.75 FT SWLY ALONG CURVE 365.83 FT N 24 DEG 16 MIN 01 SEC E 628.04 FT W 163.07 FT N 22 DEG 48 MIN 53 SEC E 392.53 FT TO BEG (LESS RD) 10.43 AC.

Parcel ID: 32-19-30-300-007A-0000.

SECTION 3. CALCULATION OF CHARGES.

(a) Service Component. The OWNERS shall pay the COUNTY a flat routine maintenance charge as the Service Component, which is 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 charge for the Service Component may fluctuate upward on an annual basis depending on recalculation of reasonable average costs. The Service Component charge for the initial year of this Covenant and for each year thereafter shall be as set forth in Exhibit "A" until the foregoing average actual cost of maintenance is recalculated by the County Traffic Engineer and written notice, such as an invoice, is given to OWNERS.

(b) Electronic Component. The COUNTY will submit charges or invoices to the OWNERS for the repair and replacement of the Electronic Components, separately from the Service Component. The Electronic Components shall, without limitation, include the controller, conflict monitor, loop detectors, opticom controller and detectors.

(c) Priority-preemption equipment. Reasonable additional charges will be levied for relamping and maintenance of the priority pre-emption system, if any is installed.

SECTION 4. TERM. This Covenant shall take effect upon execution by the COUNTY (the OWNERS having signed first) and shall remain in force perpetually unless terminated as provided herein.

SECTION 5. TERMINATION OF THE COVENANT. Without impairing its right to receive OWNERS' payments already owing, the COUNTY may terminate this Covenant at any time by giving the OWNERS thirty (30) days written notice thereof.

SECTION 6. NOTICES.

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

FOR THE COUNTY:

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

FOR SAM'S:

Sam's East, Inc.
Attn: Florida Realty Manager
2001 S.E. 10th Street
Bentonville, AR 72716-0550

FOR AUTONATION:

Chip Sabadash, Dir. of Construction
Autonation Imports of Longwood, Inc.
110 S.E. 6th Street, Suite 1700
Ft. Lauderdale, FL 33301

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 OWNERS by March 1st of each year for all charges provided herein, to the extent they can be anticipated from prior years' charges.

SECTION 7. REPRESENTATIONS. The undersigned persons signing on behalf of one of the OWNERS (SAM'S or AUTONATION) each represents that (s)he is the designated officer or general partner acting for one of the OWNERS; 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 SAM'S or AUTONATION to the terms and conditions contained in this Covenant.

SECTION 8. 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 9. 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 10. GOVERNING LAW. The laws of the State of Florida shall govern the validity, enforcement and interpretation of this Covenant. Jurisdiction and venue for any legal action in connection herewith shall lie only in the Eighteenth Judicial Circuit Court of the State of Florida, in and for Seminole County.

SECTION 11. PARTIES BOUND. This Covenant is binding upon and shall inure to the benefit of OWNERS and COUNTY, and their successors, grantees and assigns.

SECTION 12. CONFLICT OF INTEREST.

(a) The OWNERS agree that they 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 OWNERS each hereby certify for their entity 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 OWNERS, and that no such person shall have any such interest during the term of this Covenant.

(c) [Intentionally left blank.]

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

SIGNATURE BLOCKS BEGIN ON PAGE 9

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

ATTEST:

SAM'S EAST, INC.

[Signature]
Print name: John Thompson
as its Assistant Secretary

By: [Signature]
Print name: Frances Coberly
as its ~~Executive Vice President~~
Senior Realty Manager

(CORPORATE SEAL)

Date: 6-8-04

STATE OF ARKANSAS
COUNTY OF BENTON

I HEREBY CERTIFY that, on this 8th day of June, 2004, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Frances Coberly and _____ as ~~Executive Vice President~~ and Assistant Secretary, respectively, of Sam's East, Inc., a corporation organized under the laws of the State of Arkansas and authorized to do business in the State of Florida, 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 the corporation, and that they also affixed thereto the official seal of the corporation.

" NOTARY SEAL "
Carla K. Austin, Notary Public
Benton County, State of Arkansas
My Commission Expires 2/1/2011

[Signature]
Print Name Carla K. Austin
Notary Public in and for the County
and State Aforementioned
My commission expires: 2-1-2011

ATTEST:

AUTONATION IMPORTS OF LONGWOOD,
INC.

J.P. Ferrando MTA
Print name: JONATHAN P. FERRANDO
as its Assistant Secretary

By: Robert F. Dwors MTA
Print name: Robert F. Dwors
as its ~~Executive Vice President~~ Authorized Agent

(CORPORATE SEAL)

Date: 6-8-2004

STATE OF FLORIDA
COUNTY OF BROWARD

I HEREBY CERTIFY that, on this 8TH day of JUNE, 2004, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared ROBERT F. DWORS and JONATHAN P. FERRANDO as ~~Executive Vice President~~ ^{AUTHORIZED AGENT} and Assistant Secretary, respectively, of Autonation Imports of Longwood, Inc., a corporation organized under the laws of the State of Delaware and authorized to do business in the State of Florida, 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 the corporation, and that they also affixed thereto the official seal of the corporation.

Charlene J. Williamson
Print Name CHARLENE J. WILLIAMSON
Notary Public in and for the County
and State Aforementioned
My commission expires: APR. 11, 2008



ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

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

By: _____
DARYL McLAIN, Chairman

Date: _____

For the use and reliance of
Seminole County only. Ap-
proved as to form and legal
sufficiency.

As authorized for execution by the Board
of County Commissioners at its _____,
2004, regular meeting



County Attorney

HZ/dre
05/19/04
Attachment
Exhibit "A"

P:\USERS\SLEE\AGREEMENTS\TRAFFIC SIGNAL MAINTAINANCE (SAMS).DOC

EXHIBIT "A"

**LOCATION OF TRAFFIC SIGNALS WITHIN THE SCOPE OF THE COVENANT
AMONG SEMINOLE COUNTY, SAM'S EAST, INC., AND
AUTONATION IMPORTS OF LONGWOOD, INC.**

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

A. Rinehart Road and the two entrances that align with each other, serving the properties of SAM'S (1101 Rinehart Road) and AUTONATION (1000 Rinehart Road) described in this Covenant, and also identified as follows:

1. The western entrance to "Sam's Club" on the south side of Rinehart Road; and
2. The eastern entrance to the "Honda Dealership" on the north side of Rinehart Road;

as shown on Sheet No. T-4 at approximately Station 77 of the Interconnect Plan for Sam's Club by Kimley-Horn & Assocs., Inc., dated 12/02.

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

B. NONE

SERVICE COMPONENT OF CHARGES FOR TRAFFIC SIGNALS

The annual charge for the Service Component under subsection 3(a) of this Covenant shall be ONE THOUSAND EIGHT HUNDRED FIFTY AND NO/100 DOLLARS (\$1,850.00) until recalculated in accordance with said subsection.