

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Traffic Signal Maintenance Covenant with Aloma Square Owners' Association, Inc. and Loma Vista Property Owners' Association, Inc.

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

AUTHORIZED BY: *Paul Hastings* **CONTACT:** *MCB/pch* **EXT.** 5676
for W. Gary Johnson, P.E. Director Melonie C. Barrington Traffic Engineer

Agenda Date 11/15/05 Regular Consent Work Session Briefing
Public Hearing – 1:30 Public Hearing – 7:00

MOTION/RECOMMENDATION:

Authorize the Chairman to execute a Traffic Signal Maintenance Covenant between Seminole County, Aloma Square Owners' Association, Inc., and Loma Vista Property Owners' Association, Inc.

District 1 – Commissioner Dallari (Melonie C. Barrington, P.E.)

BACKGROUND:

This is a new signal on State Road 426 at the entrance to a private development. The signal was deemed warranted, designed by the developer and approved and permitted by the Florida Department of Transportation (FDOT). The signal is currently flashing, but will be made fully operational once traffic volumes warrant and FDOT concurs.

By execution of this Traffic Signal Maintenance Covenant, Seminole County will maintain this signal for fees outlined in the attached Traffic Signal Maintenance Covenant. The current annual service fee listed in this Covenant is \$1,850.00, which is based on actual expenses from the previous year. Within this Covenant, the County has the right to adjust this service fee annually and also to charge for specific electronic equipment, if necessary. This Covenant is consistent with others in use within the County.

Attachment: Traffic Signal Maintenance Covenant.

Reviewed by: _____
Co Atty: *AHS*
DFS: _____
Other: _____
DCM: *[Signature]*
CM: *[Signature]*

File No. CPWTE01

TRAFFIC SIGNAL MAINTENANCE COVENANT

THIS COVENANT, made this _____ day of _____, 2005, by and among ALOMA SQUARE OWNERS' ASSOCIATION, INC., a Florida non profit corporation whose address is 5405 Diplomat Circle, Suite 100, Orlando, Florida 32810, (hereinafter referred to as the "ALOMA"); LOMA VISTA PROPERTY OWNERS' ASSOCIATION, INC., a Florida non profit corporation whose address is 5405 Diplomat Circle, Suite 100, Orlando, Florida 32810, (hereinafter referred to as the "LOMA VISTA," and with ALOMA 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 SR 426 (Aloma Avenue) and Via Loma Place/Loma Vista Place for the development of a new subdivision; 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. For the purpose of this agreement, Traffic Signals includes, but is not limited to, traffic signals, traffic warning signals, school flashers or warning flashers, variable message signs, and pedestrian 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:

- (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 each of the OWNERS an invoice for the entire amount due with a reference to the OWNERS' agreed upon allocation of costs as set forth in Section 2(a). Failure to observe these schedules or formats will not invalidate any request. The foregoing provisions regarding invoicing shall not in any way impair OWNERS' joint and several liability to COUNTY for the entire amount due.

SECTION 2. RESPONSIBILITIES OF THE OWNER.

(a) Payment. The OWNERS agree to pay 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 to pay for the full cost of Electrical Power required to operate said Traffic Signals and to be billed by, and make payment directly to, the appropriate power company. The OWNERS agree to be held jointly and severally liable to the COUNTY for the entire amount of all said costs due under this Agreement. The OWNERS agree with each other to allocate the entire amount due of all said costs between themselves by contributing the following percentages: fifty percent (50%) by ALOMA and fifty percent (50%) by LOMA VISTA. If one of the OWNERS fails to pay their allocated

portion of the entire amount due of all said costs, whichever of the OWNERS that actually makes a payment to the COUNTY shall have the right to pursue contribution, damages and/or specific performance, as applicable, from the other of the OWNERS. The foregoing provisions for contribution, damages, specific performance, and allocation of the entire amount of all said costs shall not in any way impair OWNERS' joint and several liability to the COUNTY for the entire amount due.

(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 ALOMA fails to pay any invoice in a timely manner, the COUNTY may thereupon invoice all unpaid amounts to LOMA VISTA (or its successors, grantees or assigns), whereupon LOMA VISTA shall forthwith pay the entire amount within thirty (30) days of a request for payment, time being of the essence. LOMA VISTA may seek such contribution, damages, and/or specific performance, as applicable from ALOMA (or its successors, grantees or assigns), as is provided by this Agreement. If LOMA VISTA fails to pay any invoice in a timely manner, the COUNTY may thereupon invoice all unpaid amounts to ALOMA (or its successors, grantees or assigns), whereupon ALOMA shall forthwith pay the entire amount within thirty (30) days of a request for payment, time being of the essence. ALOMA may seek such contribution, damages, and/or specific performance, as applicable from LOMA VISTA (or its successors, grantees or assigns), as is provided by this Agreement.

(c) Notice to Successors, Grantees and Assigns. OWNERS shall give the COUNTY contemporaneous notice of any transfer of fee title in its properties served by the Traffic Signals. OWNERS shall give its 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:

SEE ATTACHED COMPOSITE EXHIBIT "B"

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, and any Priority Preemption System equipment.

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. DEFAULT AND COUNTY'S REMEDIES.

(a) It shall be a default if either of the OWNERS 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 any of the OWNERS fails in the performance of any other covenant 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 said OWNERS shall have such time as is reasonably necessary to remedy the default provided that said OWNERS promptly takes and diligently pursues such actions as are necessary.

(b) In the event of a default by any of the OWNERS, 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 OWNERS shall immediately pay the COUNTY a sum of money equal to the total of (1) the amount of the 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 OWNERS' failure to perform its obligations under the 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 covenant, each and any of the OWNERS shall

pay to the COUNTY any and all expenses incurred therefor, including, but not limited to, reasonable attorney fees. If 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 OWNERS' payments already owing, the COUNTY may terminate this Covenant (1) at any time by giving the OWNERS thirty (30) days written notice thereof; or (2) by any method as set forth in Section 5 of this Agreement.

SECTION 7. 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 ALOMA:

Aloma Square Owners' Association, Inc.
c/o Mr. W. Malcolm Clayton
5405 Diplomat Circle, Suite 100
Orlando, Florida 32810

FOR LOMA VISTA:

Loma Vista Property Owners' Association, Inc.
c/o Mr. W. Malcolm Clayton
5405 Diplomat Circle, Suite 100
Orlando, Florida 32810

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 8. REPRESENTATIONS. The undersigned persons signing on behalf of the OWNERS (ALOMA or LOMA VISTA) each represents that (s)he is the designated officer or general partner acting for 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 OWNERS (ALOMA or LOMA VISTA) 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 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 12. PARTIES BOUND. This Covenant is binding upon and shall inure to the benefit of OWNERS and COUNTY, and their successors, grantees and assigns.

SECTION 13. CONFLICT OF INTEREST.

(a) The OWNERS agree 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 OWNERS each hereby certify 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 10

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

ATTEST:

L. S. Dodge
Print name: Linda S. Dodge as
Secretary of Aloma Square
Owners' Association, Inc.

ALOMA SQUARE OWNERS' ASSOCIATION,
INC.
By: W. Malcolm Clayton
W. MALCOLM CLAYTON
as its President/Director

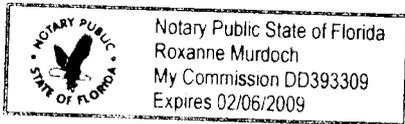
(CORPORATE SEAL)

Date: 10/12/2005

STATE OF FLORIDA)
COUNTY OF ORANGE)

I HEREBY CERTIFY that, on this 12th day of October, 2005, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared W. Malcom Clayton and Linda S. Dodge as President/Director and Secretary, respectively, of Aloma Square Owners' Association, Inc., a corporation organized under the laws of the State of Florida 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.

Sign Name Roxanne Murdoch
Print Name Roxanne Murdoch
Notary Public in and for the County
and State Aforementioned
My commission expires: 2/06/2009



ATTEST:

LOMA VISTA PROPERTY OWNERS' ASSOCIATION, INC.

Linda S. Dodge
Print name: LINDA S. DODGE as
Secretary of Loma Vista Property
Owners' Association, Inc.

By: W. Malcolm Clayton
W. MALCOLM CLAYTON
as its President/Director

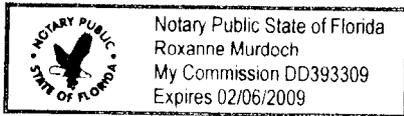
(CORPORATE SEAL)

Date: 10/12/2005

STATE OF FLORIDA)
COUNTY OF ORANGE)

I HEREBY CERTIFY that, on this 12th day of OCTOBER, 2005, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared W. Malcom Clayton and LINDA S. DODGE as President/Director and Secretary, respectively, of Loma Vista Property Owners' Association, Inc., a corporation organized under the laws of the State of Florida 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.

Sign Name Roxanne Murdoch
Print Name ROXANNE MURDOCH
Notary Public in and for the County
and State Aforementioned
My commission expires: 2/6/2009



ATTEST:

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

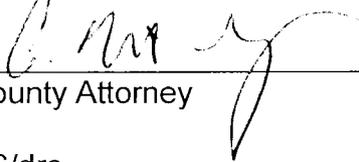
MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
CARLTON D. HENLEY, 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 _____,
2005, regular meeting



County Attorney

AS/dre
6/1/05
Attachments
Exhibit "A"
Composite Exhibit "B"

EXHIBIT "A"

**LOCATION OF TRAFFIC SIGNALS WITHIN THE SCOPE OF THE COVENANT
AMONG SEMINOLE COUNTY, ALOMA SQUARE OWNERS' ASSOCIATION, INC.,
AND LOMA VISTA PROPERTY OWNERS' ASSOCIATION, INC.**

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

- A. NONE.

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

- B. SR 426 (Aloma Avenue) and the two streets that align with each other, which include Via Loma Place and Loma Vista Place, as shown on Sheet No. T-3 at approximately Stations 99 through 101 of the Signalization Plan for by Traffic Planning and Design, Inc., dated 7/02, and as may be modified or amended.

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.

COMPOSITE EXHIBIT "B"

Tracts C, D, E, and F, LOMA VISTA, according to the plat thereof as recorded in Plat Book 59, at Pages 27 through 30, of the Public Records of Seminole County, Florida.

**Parcel I.D. Nos.: 31-21-31-513-0000-0000
31-21-31-513-0C00-0000
31-21-31-513-0D00-0000
31-21-31-513-0E00-0000
31-21-31-513-0F00-0000**

COMPOSITE EXHIBIT "B"

Tracts A, B, C, D, E, and F, ALOMA SQUARE, according to the plat thereof as recorded in Plat Book 66, at Pages 45 through 46, of the Public Records of Seminole County, Florida.

**Parcel I.D. Nos.: 31-21-31-515-0000-0000
31-21-31-515-0A00-0000
31-21-31-515-0B00-0000
31-21-31-515-0C00-0000
31-21-31-515-0D00-0000
31-21-31-515-0E00-0000
31-21-31-515-0F00-0000**

