



Tusk. 95
FOR RECORDING PURPOSES ONLY

(62) 4/1/99
**SERVICE AGREEMENT FOR
LIGHTING SERVICE
(Phase A-1)**

This Agreement is entered into this 28th day of April, 2005, by and between **ORLANDO UTILITIES COMMISSION**, whose address is 500 South Orange Ave., Orlando, Florida 32801 (hereinafter "OUC") and **HARMONY COMMUNITY DEVELOPMENT DISTRICT**, (hereinafter "CUSTOMER") whose address is 10300 N. W. Manor, Coral Springs, Fl. 33071, for the provision of Lighting Service as more particularly set forth below.

SECTION 1: OUC AGREES THAT DURING THE TERM OF THIS AGREEMENT IT SHALL:

- 1.1. Install the lighting service equipment listed in Exhibit 1 ("Lighting Equipment") on the CUSTOMER's property more specifically described in Exhibit 1 (the "Property"), operate and maintain all such Lighting Equipment, and if possible under applicable laws and regulations, provide electric service necessary for the operation of the Lighting Equipment, all in accordance with the rates set forth in Exhibit 1 and the terms and provisions set forth in this Agreement (together, all such installation, operation, maintenance and (if applicable) electric supply services shall be referred to herein as the "Lighting Service").
- 1.2. Bill CUSTOMER for Lighting Service based on the rates set forth in Exhibit 1; provided, however that OUC shall be entitled to adjust the rates charged for Lighting Service as set forth in Exhibit 1. OUC shall annually deliver notice to the CUSTOMER of any such changes to the Lighting Service rates.

SECTION 2: THE CUSTOMER AGREES THAT DURING THE TERM OF THIS AGREEMENT IT SHALL:

- 2.1 Whenever possible under applicable laws and regulations, purchase from OUC all of the electric energy used for the operation of the Lighting Equipment.
- 2.2 Pay by the due date indicated thereon all bills rendered by OUC for Lighting Service provided in accordance with this Agreement.
- 2.3 Trim any and all trees or other foliage that may either obstruct the light output from Lighting Equipment or that may obstruct maintenance access to the Lighting Equipment.

SECTION 3: EASEMENTS AND ACCESS

CUSTOMER hereby grants to OUC an irrevocable right of entry, access, ingress and egress into, over, across, upon and through the Property for purposes of gaining access to the Lighting Equipment. In addition, CUSTOMER hereby grants, transfers and conveys to OUC, an easement over the Property for the purpose of installing, operating, replacing and maintaining the Lighting Equipment as required under this Agreement.

SECTION 4: THE PARTIES MUTUALLY AGREE:

- 4.1 OUC, while exercising reasonable diligence at all times to furnish Lighting Service hereunder, does not guarantee continuous lighting and will not be liable for damages for any interruption, deficiency or failure of electric service, and reserves the right to interrupt electric service at any time for necessary repairs to lines or equipment.
- 4.2 Installation of Lighting Equipment shall be made only when, in the judgment of OUC, the location and the type of the Lighting Equipment are, and will continue to be, easily and economically accessible to OUC equipment and personnel for both construction and maintenance. OUC shall not be in default for its failure to perform its obligations under this Agreement to the extent resulting from delays due to causes outside of its control, including without limitation, acts of God, epidemics, lightning, storms, earthquakes, fires, floods and washouts; strikes, lockouts or other industrial disturbances; acts of the public enemy, wars, blockades, insurrections, civil disturbances and riots; arrests, orders, directives or restraints of government agencies, either local, state, federal, civil or military; or acts of CUSTOMER which prevent OUC from providing Lighting Service (each considered a "Force Majeure Event"). OUC shall be entitled to an extension of time for the performance of Lighting Service sufficient to overcome the effects of any such Force Majeure Event.
- 4.3 Except as specifically permitted under subsection 4.6 below, modification of the Lighting Equipment provided by OUC under this Agreement may only be made through the execution of an additional Agreement between OUC and CUSTOMER or by written amendment to this Agreement, delineating the modifications to be accomplished and (if applicable) setting out any adjustments to the terms and conditions necessitated by the modification. Notwithstanding anything to the contrary contained herein, CUSTOMER shall not possess or have any direction or control over the physical operation of the Lighting Equipment and the possession of the Lighting Equipment and the direction and control of the physical operation of Lighting Equipment shall be vested exclusively with OUC.
- 4.4 OUC shall, at the request of the CUSTOMER, relocate the Lighting Equipment if provided sufficient rights-of-way or easements to do so and the requested relocation does not negatively affect the ability of OUC to provide Lighting Service. The CUSTOMER shall be responsible for the payment of all costs associated with any such CUSTOMER requested relocation of OUC Lighting Equipment.

- 4.5 OUC may, at any time and without the need for CUSTOMER's permission, substitute any luminaire/lamp installed hereunder with another luminaire/lamp which shall be of at least equal illuminating capacity and efficiency.
- 4.6 OUC shall retain all title right and ownership interest in the Lighting Equipment and shall be responsible to repair or replace (and assumes all risk of loss) for any damage to any Lighting Equipment provided pursuant to this Agreement; provided, however that notwithstanding the foregoing, OUC shall not be responsible for and the CUSTOMER agrees to take responsibility for, the cost incurred to repair or replace any Lighting Equipment that has been willfully damaged by CUSTOMER, its employees, agents, invitees or licensees or any other third party in which case OUC shall not be required to make such repair or replacement prior to payment by the CUSTOMER for damage.
- 4.7 Should the CUSTOMER fail to pay any bills due and rendered pursuant to this Agreement or otherwise fail to perform its obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, OUC may cease to supply the Lighting Service until the CUSTOMER has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of OUC to exercise its rights hereunder shall not be deemed a waiver of such rights. It is understood, however, that such discontinuance of the supplying of the Lighting Service shall not constitute a breach of this Agreement by OUC, nor shall it relieve the CUSTOMER of the obligation to perform any of the terms and conditions of this Agreement.
- 4.8 CUSTOMER shall be entitled to assign its rights under this Agreement to the CUSTOMER's successor in title to the Property upon which the Lighting Equipment are installed with the written consent of OUC, which shall not be unreasonably withheld. No assignment shall relieve the CUSTOMER from its obligations hereunder until such obligations have been assumed by the Purchaser in writing and agreed to by OUC.
- 4.9 This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the CUSTOMER and OUC, with respect to the Lighting Service referenced herein and along with OUC's electric service tariffs, constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by OUC to third parties.
- 4.10 CUSTOMER recognizes and agrees that it is ultimately responsible for the payment of all sales, use, excise, gross receipts and other taxes that may apply to, or be impose upon, the transaction that is the subject of this Agreement, if any, irrespective of when such taxes may be charged or assessed against OUC. Any non-collection or non-assessment of such taxes by OUC contemporaneously with the occurrence of the transaction shall not waive, release or diminish CUSTOMER's ultimate responsibility

for the payment thereof, irrespective of whether such taxes are later charged or assessed by OUC or the applicable taxing authority(ies).

- 4.11 This Agreement shall inure to the benefit of, and be binding upon the successors and permitted assigns of the CUSTOMER and OUC.
- 4.12 OUC will exercise reasonable efforts to furnish Lighting Service hereunder in a manner which will allow continuous operation of the Lighting Equipment, but OUC does not warrant the continuous operation of the Lighting Equipment and shall not be liable for any damages for any interruption, deficiency or failure of Lighting Equipment. Notwithstanding any other provision of this Agreement, in no event shall OUC have any liability to CUSTOMER under this Agreement, whether based in contract, in tort (including negligence and strict liability) or otherwise, for: (a) any special, incidental, indirect, exemplary or consequential damages; (b) damages with respect to costs of capital, costs of replacement power, loss of profits or revenues, or loss of use of plant or equipment, irrespective of whether such damages may be categorized as direct, special, consequential, incidental, indirect, exemplary or otherwise;

SECTION 5: TERM, EFFECTIVE DATE, AMENDMENT AND TERMINATION

- 5.1 **Term:** The initial term of this Agreement (the "Term") shall be for twenty (20) years, and thereafter shall automatically renew for successive Terms of ten (10) years hence, unless terminated by written notice of such intention from either party to the other at least sixty (60) days prior to expiration date of the initial Term or subsequent Terms. The initial Term shall begin when the installation of the Lighting Equipment is finally completed and the CUSTOMER is first billed for the Lighting Service based on operation of the full compliment of Lighting Equipment to be provided under this Agreement. In the event that a phased installation of Lighting Equipment is to be provided by OUC by means of the Phase Installation Plan described in Exhibit 1, each development phase completed shall have its own Term under this Agreement. The Term for each such phase shall begin when installation of the Lighting Equipment for that phase is finally completed and the CUSTOMER is first billed for the Lighting Service for that phase based on the operation of the full compliment of Lighting Equipment that is to be provided under the Phase Installation Plan for that phase.
- 5.2 **Effective Date:** The effective date of this Agreement shall be the date of execution by the CUSTOMER or OUC, whichever is later.
- 5.3 **Amendment to Agreement:** This Agreement may only be amended in writing and such amendment must be executed with the same degree of formality as this Agreement. Notwithstanding the foregoing, the annual adjustment to rates as set forth in Exhibit 1 shall not require an amendment to this Agreement provided such annual rate adjustment does not exceed three percent (3%) over the prior year's rate, exclusive of fuel charges.

- 5.4 **Termination:** The CUSTOMER may opt to terminate the Agreement at the end of the initial or subsequent Terms by providing to OUC at least sixty (60) days advance written notice. OUC may terminate this Agreement if at any time during the Term a final court decision is issued, an Internal Revenue Service ruling is issued, or a change in the applicable statutes or regulations occurs, any of which in the reasonable opinion of OUC's general counsel, results in the continued existence of this Agreement having a material adverse effect on OUC's ability to issue tax exempt bonds. Any such termination shall be made by 30 days' prior written notice from OUC to CUSTOMER. The CUSTOMER will be responsible for the cost incurred by OUC to remove the Lighting Equipment. OUC shall issue a bill to the CUSTOMER for removal costs once removal has been completed.

SECTION 6: GOVERNING LAW

The validity, construction, and performance of this agreement, shall be in accordance with the laws of the State of Florida without application of its choice-of-law rules.

Now, therefore, the parties enter into this Agreement as of the dates of execution indicated below.

HARMONY COMMUNITY DEVELOPMENT DISTRICT

Federal ID # 65-0991891

By: MARTHA E. LEWIS

Name: MARTHA E. LEWIS

Title: V. CHAIR

Date: 4-28-05

ATTEST: **HARMONY COMMUNITY DEVELOPMENT DISTRICT**

By: [Signature]

Name: Thomas Tudor

Title: Secretary

By: _____

Name: _____

Title: _____

STATE OF FLORIDA

COUNTY OF Osceola

The foregoing instrument was acknowledged before me this 28 day of April 2005, by Martina Lewis. She is personally known to me or has produced _____ as identification.

(Notarial Seal)



Carolyn McArthur
Notary Public, State of Florida
Print Name: CAROLYN MCARTHUR

ORLANDO UTILITIES COMMISSION

By: [Signature]

Name: Kenneth P. Ksionek
Title: General Manager/CEO

Date: 5/18/05

ATTEST:

By: [Signature]
Name: Sharon L. Knudsen
Title: Assistant Secretary

Approved as to form and legality
OUC Legal Department
DATE: 5-17-05 BY: W.M.

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 18th day of May, 2005, by KENNETH P. KSIONEK, as General Manager, CEO of Orlando Utilities Commission, a municipal utility chartered under the laws of the State of Florida, on behalf of the Commission. He is personally known to me ~~or has produced~~ as identification.

(Notarial Seal)

[Signature]
Notary Public, State of Florida
Print Name: _____



Linda S. Schwab
MY COMMISSION # DD205018 EXPIRES
April 21, 2007
BONDED THROUGH TROY FARM INSURANCE, INC.

EXHIBIT 1

RATE PER MONTH:

The monthly charge for Lighting Service shall consist of the sum of the following items below. These charges may be adjusted subject to review and approval by the Florida Public Service Commission. The charges include:

Monthly Light Fixture, O&M, and Electricity Service Charge \$2,603.53

**Fuel and Energy Charges are normally revised every twelve months

ADDITIONAL CHARGES:

Tax charges may also apply and may be adjusted periodically. The fees established in this Exhibit 1 may be adjusted by OUC annually to reflect changes in OUC rates. In any one year, the rates shall not change by more than three percent (3%), exclusive of fuel charges.

LIGHTING SERVICE

The Lighting Service shall provide to CUSTOMER the foot candle lighting output (illuminating capacity) produced from the installation, operation and maintenance of the Lighting Equipment described below or such other functionally equivalent alternative lighting equipment as may be determined by OUC in its sole discretion, provided that such alternative lighting equipment provides the same illuminating capacity as the Lighting Equipment specified below.

Lighting Equipment:

- (62) 100 watt HPS Hallbook fixtures
- (62) 13ft. Victorian II decorative poles
- (62) 48" Boston Harbor arms
- (62) Boston Harbor slip fitters
- (62) Finial Covers

41.99

All associated poles, fixtures, parts, wires, conduit, junction boxes, photocells, controllers, and bases

OUC is responsible for the installation of the conduit, junction boxes, and bases per OUC specifications. A conduit design layout will be provided to the customer upon full execution of this agreement.

PHASED INSTALLATION PLAN

All at once

LEGAL DESCRIPTION OF THE PROPERTY

(Please Attach)

PROPERTY / PREMISE LOCATION INFORMATION

Premise Name: Harmony Community Development District (A-1)
Premise Address: SR 192 - CR 500 Harmony FL 34773
City, State, Zip: Harmony FL, 34773

BILLING INFORMATION

Billing Contract Name: Harmony Community Development District (A-1)
Billing Address: 10300 N.W. Maner
City, State, Zip: Coral Springs, FL 33071
Billing Contact Name: Vence Smith
Billing Contact Phone: 407 891-1616
Federal Tax ID: 59-3524907

ADDITIONAL ACCOUNT INFORMATION TO BE FILLED BY OUC

Customer Number: _____
Premise Number: _____
Work Request No: _____

BIRCHWOOD P.U.D.
HARMONY, NEIGHBORHOOD A-1
OSCEOLA COUNTY, FLORIDA

LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN A PORTION OF SECTION 30,
TOWNSHIP 26 SOUTH, RANGE 32 EAST, OSCEOLA COUNTY, FLORIDA.
MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Commence at the Southeast Corner of GOLF COURSE TRACT 3, BIRCHWOOD GOLF COURSE, as filed and recorded in Plat Book 15, pages 139 thru 151 of the public records of Osceola County, Florida, thence N26°37'00"E, along the East line of said GOLF COURSE TRACT 3, a distance of 90.14 feet to the Point of Beginning; thence continue, N26°37'00"E, along the East line of said GOLF COURSE TRACT 3, a distance of 988.49 Feet to the point of curve of a non tangent curve to the right, of which the radius point lies S16°48'12"W, a radial distance of 780.77 Feet and having a chord bearing of S62°09'44"E, 298.88 Feet; thence southeasterly along the arc, through a central angle of 22°04'08", a distance of 300.73 Feet; thence S51°07'41"E, a distance of 91.64 Feet to a point of curve to the right having a radius of 965.00 Feet, a central angle of 08°07'35", and a chord bearing of S47°03'54"E, 136.75 Feet; thence southeasterly along the arc a distance of 136.87 Feet; thence S43°00'05"E, a distance of 277.26 Feet to the point of curve of a non tangent curve to the left, of which the radius point lies N47°02'01"E, a radial distance of 845.36 Feet and having a chord bearing of S46°46'35"E, 112.35 Feet; thence southeasterly along the arc, through a central angle of 07°37'13", a distance of 112.43 Feet; thence S41°12'35"W, a distance of 78.31 Feet to a point of curve to the left having a radius of 73.50 Feet, a central angle of 20°19'02", and a chord bearing of S31°03'04"W, 25.93 Feet; thence southwesterly along the arc a distance of 26.06 Feet; thence S20°53'33"W, a distance of 601.93 Feet to a point of curve to the left having a radius of 73.50 Feet, a central angle of 24°44'40", and a chord bearing of S08°31'13"W, 31.50 Feet; thence southerly along the arc a distance of 31.74 Feet; thence S03°51'07"E, a distance of 48.44 Feet; thence S22°54'23"W, a distance of 57.23 Feet; thence S67°05'08"E, a distance of 40.20 Feet; thence S22°54'52"W, a distance of 26.33 Feet; thence N60°13'23"W, a distance of 1,007.36 Feet to the POINT OF BEGINNING.

Containing 19.73 Acres, more or less.