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FOR RECORDING PURPOSES ONLY

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## SERVICE AGREEMENT FOR LIGHTING SERVICE (Phase 2 Roadway)

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.

Prepared by: Wayne A. Morris, Esq.  
Return to: Property & Right-of-Way, Orlando Utilities Commission  
Post Office Box 3193, Orlando, Florida 32802

### 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. Lentz  
Name: MARTHA E. LENTZ  
Title: V. CHAIR  
Date: 4-28-05

ATTEST: **HARMONY COMMUNITY DEVELOPMENT DISTRICT**

By: [Signature]  
Name: Thomas Tukdarian  
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 Martha E. Lentz. 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: [Signature]

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 18<sup>th</sup> 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 # DD285218 EXPIRES  
April 21, 2007  
BONDED THRU 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      \$2,562.56

\*\*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:

- (55) 100 watt HPS Hallbook fixtures
- (55) 18ft. Victorian II decorative poles
- (55) 48" Boston Harbor arms
- (55) Boston Harbor slip fitters
- (55) Finial Covers

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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 (Phase 2)  
Premise Address: SR 192 - CR 500 Harmony FL 34773  
City, State, Zip: Harmony FL, 34773  
Roadway

BILLING INFORMATION

Billing Contract Name: Harmony Community Development District (Phase 2)  
Billing Address: 10300 N.W. Maner  
City, State, Zip: Coral Springs, FL 33071  
Billing Contact Name: Vence Smith  
Billing Contact Phone: 407 691-1616  
Federal Tax ID: 69-3524907  
Roadway

ADDITIONAL ACCOUNT INFORMATION TO BE FILLED BY OUC

Customer Number: \_\_\_\_\_  
Premise Number: \_\_\_\_\_  
Work Request No: \_\_\_\_\_

EXHIBIT A

All that part of Section 24, lying East of State Highway No. 24; all that part of Government Lots 1, 2, 9, 10 and the North 1/4 of Government Lot 3 in Section 25, lying East of State Highway No. 24; all in Township 26 South, Range 31 East.

All that part of the Southwest 1/4 of the Southwest 1/4 of Section 16 lying South of the narrow paved road; all that part of Section 17 lying South of narrow paved road; all that part of Section 18 lying South of narrow paved road; all of Sections 19 and 20; all of Section 21 lying West of narrow paved road; all of Section 27 lying South of narrow paved road; all of Section 28 lying West of narrow paved road; all of Section 29; all of Section 30 lying North of State Highway No. 24; all of Section 31 lying North of State Highway No. 24; all of Section 32 lying North of State Highway No. 24; all of Sections 33, 34 and 35; all of Section 36 lying West of Florida East Coast Railway; all in Township 26 South, Range 32 East; and

All of Section 1 lying West of the Florida East Coast Railway; all of Sections 2 and 3; all of Section 4 lying North of State Highway No. 24; all of Section 5 lying North of State Highway No. 24; all of Section 10 lying North of State Highway No. 24; all of Section 11 lying North of State Highway No. 24, except the Southeast 1/4 of the Southeast 1/4; all of Section 12 lying West of the Florida East Coast Railway except the Southwest 1/4 of the Southwest 1/4; all in Township 27 South, Range 12 East; and

The Northeast 1/4 of Section 31 in Township 26 South, Range 32 East lying Southwesterly of State Road 441 (also known as State Road 24 and US Highway 441 and US Highway 192), all lying and being in Osceola County, Florida.

All property being in Osceola County, Florida;

LESS AND EXCEPT the following:

(a) That certain property conveyed by W. F. Edwards and wife to the State of Florida for the use and benefit of the State Road Department of Florida, dated September 2, 1960, and recorded in OR Book 65, Page 465, described as that part of:

Southwest 1/4 of the Southwest 1/4 of Section 16 South of road; all of Section 17 and 18 South of road; all of Sections 21 and 28, lying West of road; all being in Township 26 South, Range 32 East, lying within 50 feet of the survey line of State Road S-500-A, Section 92503, more particularly set forth in said deed.

(b) That certain property conveyed by deed by W. F. Edwards and wife to Florida Power Corporation, dated March 27, 1963, and recorded in OR Book 105, Page 293, said public records, as in said deed more particularly described as follows: