

AGREEMENT FOR TRAFFIC SIGNAL MAINTENANCE

THIS AGREEMENT is made this 27 day of January 2019, by and between Keys Energy Services, a government corporation created by a special act of the legislature of the State of Florida, herein called "KEYS", acting through the Utility Board of the City of Key West and the City of Key West, Florida, a municipal corporation, herein called "CITY".

WHEREAS, the CITY desires that KEYS provide certain repair and replacements services for traffic signals and cross-walk lights more specifically described in Schedules A and B attached hereto; and

WHEREAS, KEYS, at the request and direction of the CITY, is willing to provide such repair and replacement services; and

WHEREAS, KEYS represents that it is professionally and technically capable of maintaining the CITY's existing traffic signals and cross-walk lights, as well as traffic signals and cross-walk lights that may be installed in the future.

IN CONSIDERATION of the mutual promises and covenants set forth below, the parties agree as follows:

1. KEYS shall provide repair and replacement services for the facilities described in Schedules A and B. Schedule A represents signals owned by the CITY; Schedule B represents signals owned by the Florida Department of Transportation (FDOT). The CITY shall maintain responsibility for the foundations associated with mast arm structures and other foundation-mounted traffic control appurtenances. KEYS shall not be responsible for the maintenance, repair, or replacement of any part of mast arm structures. KEYS shall not be responsible for the maintenance, repair or replacement of any solar powered cross walk lights or signals. Additionally, Schedules A and B may be modified or deleted upon mutual agreement of the City Manager and KEYS General Manager/CEO.

2. KEYS will maintain an adequate inventory of materials, equipment, and replacement parts to repair the facilities as described in Schedule A and B. KEYS will render an invoice (at cost) on a quarterly basis for materials issued from inventory or purchased from vendors to maintain, repair, or replace the facilities in Schedule A and B. Such invoice will include an itemized cost of materials using the average costing method of accounting for inventory or a copy of the vendor invoice. In addition, the net book value less any proceeds received by KEYS for the disposition of obsolete materials will be included. KEYS shall not bill the City more than \$20,000 for such obsolete materials in any single contract year.

3. KEYS will invoice the City in the amount of \$37,500.00 per quarter to compensate KEYS for internal costs such as employee direct costs (normal hours, duty pay and overtime), training, certifications and equipment costs associated with the repair and maintenance of the facilities. The internal cost compensation will increase 3% upon each annual contract renewal.

4. In addition to repair and replacement services, KEYS will, when requested by the CITY, perform final connections for traffic facilities at no additional cost. Labor costs associated with such repairs and replacements that exceed the quarterly compensation in Item #3 will be considered as an "in-kind service" at no cost to the City other than monthly energy and monthly charge pursuant to the appropriate billing tariff approved by the Utility Board and filed with the Public Service Commission or the energy billed at the 210 rate for those lights that are metered.

5. The CITY currently has a maintenance and operations agreement with FDOT. FDOT Traffic signals and pedestrian crossings under such an agreement are listed in Schedule B. The City reserves the right to amend or delete Schedule B upon modification or termination of its agreement with FDOT. KEYS will conduct annual inspections of each FDOT signal and send a report to the City. Additionally, City and KEYS reserves the right to renegotiate the compensation addressed in item #3 upon modification or termination of its agreement with FDOT.

6. For repairs and/or replacement of infrastructure as a result of 3rd party damage, KEYS will invoice the CITY for actual labor, material and transportation costs, along with applicable overhead rates. If City is unable to recover from 3rd party applicable overhead rates, said overhead rates will be waived by KEYS and issue a credit on the next quarterly invoice.

7. The City will be responsible for repairs and/or replacements of traffic signalization and related equipment and infrastructure resulting from a natural disaster such as a tropical storm and/or flood damage,

8. In consideration for the "in-kind services" provided by KEYS referred to herein above, CITY herein expressly agrees to repair any damage to sidewalks within City limits resulting from KEYS repairing or replacing poles for replacement projects involving less than ten poles. When KEYS cuts or otherwise disturbs the sidewalk, KEYS shall cover or fill hole with temporary materials and immediately notify CITY's Community Services Department that a permanent repair needs to be scheduled.

9. With regard to CITY's obligation referred to herein, and to the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, KEYS, to the extent of the CITY'S potential liability pursuant to Section 768.28, Florida Statutes, does hereby agree to defend, indemnify and hold CITY, its officers, agents, or employees, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the acts or omissions of KEYS in connection with this Agreement. Nothing herein is intended to waive the sovereign immunity afforded to KEYS pursuant to Florida law, including section 768.28, Florida Statutes. Nothing herein is intended to waive or restrict the rights of KEYS or CITY against each other related to obligations arising from this agreement.

10. With regard to KEYS' obligation referred to herein, and to the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the CITY, to the extent of KEYS' potential liability pursuant to Section 768.28, Florida Statutes, does hereby agree to defend, indemnify and hold KEYS, its officers, agents, or employees, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the negligent acts or omissions of the CITY in connection with this Agreement. Nothing herein is intended to waive the sovereign immunity afforded to CITY pursuant to Florida law, including section 768.28, Florida Statutes. Nothing herein is intended to waive or restrict the rights of CITY or KEYS against each other related to obligations arising from this agreement.

11. CITY specifically agrees herein to provide to KEYS the proposed construction drawings for new traffic signals to be installed by the CITY for KEYS' input and preapproval for meter location and connection point. Once project is completed the CITY must provide final "as-built" drawing prior to KEYS final connection of traffic signals and cross-walk lights. Notwithstanding the above, KEYS has no obligation to perform a final connection to any of the above stated equipment unless and until such time as drawings are provided and deemed acceptable to KEYS.

12. By April 30th of each year, KEYS will provide the City with a schedule of planned upgrades and associated budget [October 1 to September 30] for the next fiscal year. City authorizes KEYS to perform the planned upgrades and all as needed repairs and emergency replacements (as determined by KEYS). Any non-emergency, unplanned upgrades will only be completed upon written approval of the City.

13. KEYS responsibilities under this agreement do not include any obligation to construct new facilities, to monitor or inspect the facilities or to assume liability or responsibility for the control of traffic. Neither does KEYS have any responsibility for making decisions, judgments, or planning, regarding traffic safety, location of traffic signals and cross-walk lights, the kinds and types of such devices purchased by the CITY, computer hardware and software to operate such equipment, or any other matters that lie within the duties and obligations of the CITY, as a governmental entity to help protect the health safety and welfare of the citizens of the City of Key West and the traveling public.

14. KEYS shall maintain the facilities within Florida Department of Transportation standards and shall provide the repair and replacement services when requested in a reasonable, prudent, and timely manner and with due regard to the fact that the CITY, and not KEYS, has exercised its judgment in the purchase of the facilities. By undertaking the repair and replacement services hereunder KEYS shall not be deemed to have made any assessment, determination or inspection of the facilities, nor shall KEYS be deemed to have approved of the adequacy, sufficiency or appropriateness of the facilities for any purpose, including, but not limited to, safety, security and level of illumination.

15. The responsibility and obligation to provide for the monitoring, inspection and operation of the facilities lies with the CITY and the parties specifically agree that KEYS, by entering into this Agreement, shall neither assume nor be obligated to assume into this any responsibility for the monitoring, inspection, operations and control of the facilities. The CITY shall have the duty to notify KEYS, as hereinafter provided, of the necessity for any repair or replacement services.

16. The parties of this agreement stipulate that each is a governmental agency as defined by Florida Statutes and represents to the other that it has purchased suitable Public Liability, Vehicle liability, and Workers Compensation insurance, or is self-insured, in amounts adequate to respond to any of the activities governed by this agreement.

17. The term of this agreement shall commence on the 27 day of January, 2019 and contain an initial 5 year term with automatic 5 year renewals. Should either party intend to terminate the agreement, written notice must be given no less than one year from the next renewal date.

18. All invoices rendered by KEYS in accordance with this agreement will be paid by the City within 30 days of the invoice date. Should the City not agree with the amount of the invoice, the City will deduct the amount in question and pay the balance of the invoice within the 30 days. The City and KEYS will work together to resolve the billing issue during the next 30 days with a goal of coming to a mutually satisfactory resolution. Should a mutually satisfactory resolution not be accomplished, the City Manager and KEYS General Manager/CEO will resolve the issue.

19. This is the entire agreement between the parties, superseding all prior oral or written agreement or negotiations, and no alterations or modifications or amendments to this agreement shall be valid unless the same be reduced to writing and signed by the parties hereto. This agreement shall be binding on the

successors and assigns of the respective parties, and shall be construed in accordance with the laws of the State of Florida, and shall be interpreted without regard to party or parties deemed to have drafted it.

IN WITNESS, THEREOF, the parties hereto have set their hands and seals the day and the year first above written above.

UTILITY BOARD OF THE CITY OF KEY WEST

By

[SEAL]
ATTEST

By
CITY OF KEY WEST

[SEAL]
ATTEST