

**STANDARD PRIMARY UNDERGROUND EXTENSION AGREEMENT  
LINE EXTENSION "882 UG" REVISED**

Customer: CITY OF KEY WEST, FLORIDA with a mailing address of 1300 WHITE ST, KEY WEST, FL 33040 ("Customer")

Fee Owner: MONROE COUNTY BOARD OF COUNTY COMMISSIONERS with a mailing address of 1100 Simonton St, Key West, FL 33040 ("Fee Owner")

Premises: 5501 COLLEGE RD, STOCK ISLAND, FLORIDA ("Premises")

CBRS Area? Yes \_\_\_\_\_ or N/A  check one

Line Extension Charge: \$272,746.26 ("Line Extension Charge")

Line Extension Description: 400 LINEAR FEET (collectively, the "Line Extension")

CBRS Escrow Deposit, if Applicable: N/A ("CBRS Escrow Deposit")

Estimated Construction Period: 90 days after fulfillment of Article V conditions ("Construction Period")

Date: 04/11/2024 ("Effective Date")

AGREEMENT (this "Agreement") is made as of the Effective Date, by and between the Customer, identified above, the Fee Owner, identified above, and the UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA, DBA KEYS ENERGY SERVICES, organized and existing under the laws of the State of Florida, with an address of 1001 James Street, Key West, Florida 33040 ("KEYS").

WHEREAS, Fee Owner owns the Premises, and has granted to Customer a possessory interest in the Premises pursuant to that certain Keys Overnight Temporary Shelter (KOTS) and Essential Governmental Housing Interlocal Agreement dated September 18, 2019; and

WHEREAS, Customer has applied to KEYS for electric service on the Premises; and

WHEREAS, KEYS' present distribution system does not extend to the Premises, and the Line Extension described above is needed to provide electric service to the Premises; and

WHEREAS, KEYS has agreed to accept a purchase order from the Customer as justification for making said Line Extension prior to the receipt of payment in full for the cost of the Line Extension, provided Customer shall pay the Line Extension Charge to KEYS, upon completion of the Line Extension, within 30 days of provision of an invoice by KEYS; and

WHEREAS, the cost of the Line Extension is the Line Extension Charge set forth above, provided the Line Extension is built in accordance with the E.R. report incorporated herein and attached as **Exhibit "A"** without any changes requested by Customer; and

NOW, THEREFORE, WITNESSETH, that for and in consideration of the mutual covenants and agreement hereafter set forth, the parties covenant and agree as follows:

**PAYMENT OBLIGATIONS FOR THE LINE EXTENSION CHARGE**

ARTICLE I. Upon Customer's execution of this Agreement, Customer shall furnish to KEYS a purchase order for the Line Extension Charge. Customer agrees and shall pay in full the Line Extension Charge to KEYS, upon completion, within 30 days from the date KEYS provides invoice to Customer. The Line Extension Charge set forth above is subject to change if the executed line extension agreement is not received within 90 days from the effective date identified above or if the Customer initiates any site changes that result in revisions to the site layout.

**TITLE AND OWNERSHIP OF LINE EXTENSION**

ARTICLE II. Fee Owner and Customer acknowledge and agree that Fee Owner and Customer shall not have any rights of ownership or use of the Line Extension or any portion thereof. Title to, and complete ownership and control over the Line Extension, shall at all times remain in KEYS, and KEYS shall have the right to use the same for the purpose of service to other customers, or for other purposes in its sole discretion.

**EASEMENTS AND RIGHTS**

ARTICLE III. As a condition to the provision of electric service to the Premises, or to commencement of the Construction Period, at KEYS' sole and exclusive option, Customer and Fee Owner will execute and deliver to KEYS, without cost to KEYS, any and all easements and all rights, permits and privileges which KEYS deems necessary or expedient for the rendering of electric service to the

Premises or the installation of the Line Extension. Receipt by KEYS of a valid, executed easement in a form acceptable to KEYS and receipt of documentation sufficient to KEYS documenting the recording of the easement in the Official Records of Monroe County, Florida are conditions precedent to the provision of electric service. In the event KEYS agrees to provide a specifically-described easement for the infrastructure, Customer must obtain locates for the actual installed infrastructure, and commission and provide a sketch and legal description of the actual installed location of the infrastructure for inclusion in the easement. Any and all expenses related to the performance of locates and generation of sketch and legal description shall be borne by Customer. In the event, due to errors or omissions by individuals performing locates and/or generating sketches and descriptions, any portion of the actual installed infrastructure is not located within the area subject to easement, KEYS shall be deemed to have an easement on the same terms and conditions of the recorded easement for that portion of the actual installed infrastructure.

### **TRIMMING TREES/CLEARING/SITE PREPARATION/PRIMARY LINE REMOVAL AND RELOCATION**

ARTICLE IV. It is expressly understood and agreed that the Line Extension Charge does not include any cost of trimming or removing trees or other obstructions from the Premises or from any right-of-way in order for the Line Extension to be safely and properly constructed and any required lines or equipment installed. All such clearing, tree removal, trimming and site preparation shall be performed at Customer's expense, and KEYS shall not be required to begin construction of the Line Extension until such clearing and trimming is completed to KEYS satisfaction. If the scope of work for the Line Extension requires removal of overhead primary lines or conversion of overhead primary lines to underground, such work shall be undertaken pursuant to the "Removal of KEYS' Overhead High Voltage Primary Facilities" section of KEYS' current Customer Service Policy Manual, which section is expressly incorporated herein by reference.

### **PROCEEDING WITH WORK**

ARTICLE V. KEYS will commence final design of the Line Extension for Customer approval upon submission by the Customer/agent of all surveys, site plans, elevations and other materials requested or needed by KEYS. Approval by the Customer/agent can be submitted via letter and initialing of the final drawing or an email to the KEYS' Project Manager and such approval shall be binding upon Customer. Customer agrees and understands that the final drawing is not to scale, has not been geolocated or surveyed by KEYS, does not reflect locations of other infrastructure which may deviate from drawings provided by Customer, and may not reflect the actual location of installed infrastructure. In some cases, the actual location of installed infrastructure may differ substantially from the locations shown in the final drawing in order to accommodate existing mismarked or unknown underground infrastructure. Customer may, at Customer's discretion and prior to installation of the infrastructure, engage location and/or surveying services to stake the lateral boundaries of the location as shown in the final drawing. In the event, during installation of the infrastructure, KEYS determines that due to existing site conditions (including placement of existing infrastructure) it is necessary to locate the infrastructure outside of such Customer-installed stakes, KEYS will stop work prior to making such installation and await direction from the Customer. In such event, Customer will be liable to KEYS for any costs and expenses incurred as a result of construction delays or any requested re-routing of infrastructure. KEYS will install all infrastructure in a workmanlike manner and in conformance with Customer-installed stakes, and shall have no liability to Customer for any conflicts of the infrastructure with any future improvements as a result of incorrect surveying/staking. Customer/agent may inspect the work at any time during the installation process and may stop work if Customer/agent reasonably believes installation is not in conformance with staking. In such event, provided installation is not in conformance with staking, KEYS shall have liability for costs and expenses incurred to re-route the installation in conformance with the stakes. If installation is in conformance with staking, Customer shall have liability for all costs and expenses incurred as a result of construction delays. In the event Customer determines not to install stakes prior to construction, KEYS shall have no liability for any expenses incurred by Customer as a result of the installation of infrastructure in locations at variance with the final drawing. After the final drawing has been completed and approved by KEYS and by the Customer/agent and all the Customer's obligations fully satisfied, including but not limited to the provision of an easement (if required by KEYS prior to construction per Article III, above) and any staking desired by Customer, the Construction Period set forth above will commence. Any delays resulting from the Customer/agent, directly or indirectly, will allow KEYS to add additional time to the Construction Period and increase the Line Extension Charge accordingly, at KEYS discretion. The Construction Period will NOT commence upon submittal of payment to KEYS or as of the Effective Date or execution date of this Agreement. Furthermore, while KEYS anticipates completion of the Line Extension within the Construction Period, nothing in this Agreement will be construed as a guaranty or warranty by KEYS of any completion date or construction schedule and Customer acknowledges that construction of the Line Extension may be delayed for many reasons, including, but not limited to acts of God and prioritization of work. Any additional work requested outside of this agreement requires a letter from the Customer/agent authorizing KEYS or its subcontractors to perform the additional work. KEYS shall provide an estimated cost and the Customer/agent shall approve the additional cost and submit payment prior to the commencement of the additional work. Any delays or impacts to the project as a result of the additional requested work shall be paid by Customer.

### **JOINER IN THIS AGREEMENT BY CUSTOMERS OF ADJACENT PARCELS/SUCCESSORS AND ASSIGNS**

ARTICLE VI. KEYS may require a joinder to this Agreement, in form and substance acceptable to KEYS in its absolute discretion, from the Customer and from the customer associated with each Adjacent Parcel that applies for electrical service through the Line Extension (the "Notice"). The Notice shall be executed before two (2) subscribing witnesses, notarized and recorded in the public records of Monroe County, Florida at the property customer's expense. Receipt by KEYS of an original recorded Notice is a condition to the provision of electric service to a parcel or home served by the Line Extension.

ARTICLE VII. This Agreement shall inure to the benefit of and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto. Further, this Agreement shall run with the land and be binding upon the successors in title of Customer and Fee Owner. This Agreement shall continue in perpetuity, unless otherwise modified in writing by the Customer and KEYS, or their respective successors and/or assigns.

#### OWNERSHIP OF PREMISES

ARTICLE VIII. Fee Owner covenants with KEYS and represents and warrants to KEYS that Fee Owner is solely seized of the Premises in fee simple and has good right to create, establish, and impose this Agreement on the Premises without the joinder of any non-party to this Agreement. In the event KEYS determines this Agreement has not been validly executed by all persons or entities who have an ownership interest in the Premises (including homestead rights), KEYS may discontinue electric service to the Premises at any time. Owner also covenants and warrants to KEYS that the Premises is free and clear of any and all liens, mortgages, or encumbrances that could impair Fee Owner or Customer's rights to impose this Agreement on the Premises.

#### DEFAULT

ARTICLE IX. If Customer or Fee Owner fails to perform any of its obligations as described in this Agreement, Customer or Fee Owner, as the case may be, is in default under this Agreement. If such default is not cured within twenty days after written notice of the default is provided, KEYS will be entitled to all remedies at law or in equity to enforce this Agreement. In addition, if Customer fails to pay any sums due pursuant to this Agreement, KEYS may elect to terminate or suspend construction of the Line Extension and may elect to terminate or suspend electric service to the Premises. If Customer asserts that KEYS has failed to perform any of its obligations set forth in this Agreement, Customer shall provide written notice to KEYS specifying the obligation(s) KEYS has failed to perform and providing KEYS with thirty (30) days to cure the asserted default. Provided, however, that if the nature of the specified obligation(s) is such that more than thirty (30) days are required for performance, then KEYS shall not be in default if KEYS commences performance within such 30-day period and thereafter prosecutes the same to completion.

#### GENERAL TERMS

ARTICLE X. Time is of the essence to all terms of this Agreement. This Agreement shall not become effective until it has been executed by all of the parties hereto. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but each counterpart shall together constitute one and the same instrument. This Agreement, signatures, initials, documents referenced in this Agreement, counterparts, and written modifications communicated electronically or on paper will be acceptable for all purposes, including delivery, and will be binding with the same force and effect as originals. This Agreement shall be construed under the laws of the State of Florida. This Agreement shall not be construed more strongly against any party, regardless of who was more responsible for its preparation. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render this Agreement invalid or unenforceable. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of the other terms of this Agreement shall in no way be affected thereby. In the event it becomes necessary for either party herein to seek legal means to enforce the terms of this Agreement, the non-prevailing party will be liable for all reasonable attorneys' fees and expenses, including such fees and expenses incurred due to appellate, bankruptcy or post-judgment proceeding, plus court costs. Venue and jurisdiction for purposes of determining any parties rights and/or interests under this Agreement, or any legal or equitable action whatsoever, shall be in the Florida State Court system in Monroe County, Florida, and in no other place or court system. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative and in addition to every other remedy provided therein or by law. The failure of a party to enforce at any time any of the provisions of this Agreement, or to exercise any option which is herein provided, or to require at any time performance by the other party of any of the provisions hereof, shall in no way be construed to be a waiver or create an estoppel from enforcement of such provisions, or in any way to affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every such provision, or to seek relief as a result of the prior breach. This Agreement contains the entire understanding of the Parties and supersedes all previous verbal and written agreements and understandings pertaining to the subject matter of this Agreement.

ARTICLE XI. ALL PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT, AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION THEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANYONE IN CONNECTION THEREWITH.

IN WITNESS WHEREOF, this Agreement is effective as of the Effective Date.

**TWO WITNESSES for Customer's signature**

First Witness for Customer

Todd C. Staughton  
Print Name of First Witness

M. Willman  
Second Witness for Customer

MAH Willman  
Print Name of Second Witness

Customer's signature

Albert P. Childress  
Print Customer Name

City of Key West  
Corporation, LLC Name (if applicable)

City Manager  
Title

Reviewed for Legal Sufficiency  
02 5/24/24  
Ronald J. Ramsingh, City Attorney

**TWO WITNESSES for Fee Owner's signature**

First Witness for Fee Owner

Tammy Acevedo  
Print Name of First Witness

Alan MacEachern  
Second Witness for Customer

Alan MacEachern  
Print Name of Second Witness

Fee Owner's signature

DEVIN G. Wilson  
Print Fee Owner Name

MONROE County, FL  
Corporation, LLC Name (if applicable)

Action County Administration  
Title

MONROE COUNTY ATTORNEY'S OFFICE  
APPROVED AS TO FORM  
Patricia Eables  
PATRICIA EABLES  
ASSISTANT COUNTY ATTORNEY  
DATE: 5/24/2024

UTILITY BOARD - CITY OF KEY WEST, FLORIDA

Account # \_\_\_\_\_

By: \_\_\_\_\_

ER# ER 2935-21

Title: \_\_\_\_\_

APC