

## **AGREEMENT FOR TRAFFIC SIGNAL AND STREET LIGHT MAINTENANCE**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_ 2011, 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 lights including traffic signals, street lights and parks and recreation area lights more specifically described in Schedule "A" 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, street lights, parks and recreation area lights, as well as traffic signals, street lights, and parks and recreation area 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, at the request of the CITY, provide repair and replacement services for the facilities described in Schedule "A". Facilities not listed as "covered" in Schedule "A" will require metering built by the CITY and will be charged for actual energy consumed at the 210 rate. Repair, replacement and inventory of facilities not listed in Schedule "A" will be the responsibility of the CITY.
2. CITY will maintain an adequate inventory of materials, equipment, and replacement parts to repair the facilities as described in Schedule "A".
3. In addition to repair and replacement services, KEYS will, when requested by the CITY, perform final connections for facilities at no additional cost.
4. Such repairs and replacements 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. Additionally, costs associated with inventory will be charged as defined in Schedule "A". In the event the CITY enters into a maintenance and operations agreement with the Florida Department of Transportation that provides reimbursement to the CITY, the City Manager representing the CITY and the General Manager representing KEYS will determine KEYS "fair share" of reimbursement for said repairs and replacements.
5. 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 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 KEYS or CITY against each other related to obligations arising under this agreement.

6. 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 electrical poles for replacement projects involving less than ten poles. KEYS herein expressly agrees to repair any damage to sidewalks within City limits for replacement projects involving ten or more poles. When KEYS cuts or otherwise disturbs the sidewalk, KEYS shall cover or fill holes with temporary materials and immediately notify CITY's Public Works Department that a permanent repair needs to be scheduled. Where KEYS issues a contract to replace 10 poles or more in a 12 month period within the City of Key West, KEYS shall contract and with qualified contractors for the replacement of sidewalk and will build the replacement sidewalks to City standards. With regard to KEYS's obligation referred to in this paragraph, 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 under this agreement.

7. CITY specifically agrees herein to provide to KEYS the proposed construction drawings for new lighting 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, street lights, and parks & recreational lights. Notwithstanding the above, KEYS has not 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.

8. KEYS and CITY agree that any requests for construction and/or maintenance of any lights that are not a facility listed in Schedule "A" will require a separate agreement and or a revision to this agreement.

9. In the event an individual or entity requests shading of a City light, KEYS shall shade the light only after the CITY provides written authorization to KEYS for such alteration and the individual or entity requesting said alteration pays actual costs associated with shading the light.

10. No additional facilities may be added to the scope of this Agreement without KEYS' prior written approval, and if such approval is granted, such additional facilities shall be identified as to location, kind and type in a written schedule to be attached to Schedule "A" and dated and signed by both parties. Facilities not listed as "covered" in Schedule "A" will require metering built by the CITY and will be charged for actual energy consumed at the 210 rate. Repair, replacement and inventory will be the responsibility of the CITY.

11. 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 street 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.

12. KEYS 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.

13. 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.

14. 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-insure, in amounts adequate to respond to any of the activities governed by this agreement.

15. The term of this agreement shall commence on the \_\_\_\_ day of \_\_\_\_\_, 2010, and extend to the \_\_\_ day of \_\_\_\_\_, 2010, with automatic one year renewals upon the same terms and conditions unless either party notifies the other in writing on or

before the \_\_\_\_ day of \_\_\_\_\_ of its intent not to renew the agreement as of \_\_\_\_\_ 1.

16. 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 \_\_\_\_\_  
Lou Hernandez, \_\_\_\_\_

\_\_\_\_\_  
SECRETARY: Lynne Tejada

[SEAL]

[SEAL]  
ATTEST

CITY OF KEY WEST

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
Craig Cates, Mayor