

COMMERCIAL LEASE

THIS LEASE AGREEMENT is made this eighth day of January, 2020 by and between **THE SCHOOL BOARD OF MONROE COUNTY FLORIDA** herein referred to as “**LANDLORD**” and **THE UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA, d/b/a “KEYS ENERGY SERVICES,”** herein referred to as “**TENANT.**”

WHEREAS, TENANT is a municipal utility with a mailing address of 1001 James Street, Key West, Florida 33040; and

WHEREAS, TENANT has a need for additional space to operate its programs and services; and

WHEREAS, LANDLORD currently has a portion of its property that can accommodate temporary facilities to be provided by **TENANT**; and

WHEREAS, LANDLORD finds that the lease of the premises to **TENANT** is in the best interest of the **LANDLORD** and the public;

THEREFORE, in consideration of the mutual covenants and conditions described below, **LANDLORD** and **TENANT** agree as follows:

1. The above recitals are true and correct and incorporated herein.

2. **PREMISES**

LANDLORD hereby leases to **TENANT** and **TENANT** hereby leases from **LANDLORD**:

The real property bounded by yellow lines as identified in the sketch attached hereto as Exhibit “A”.

(hereinafter referred to as the "premises" or "demised premises") for the term hereinafter stated, for the rents hereinafter reserved, and upon and subject to the terms, conditions and covenants hereinafter provided:

3. **TERM**

The term of this Lease (the “Lease Term”) shall commence on the Eighth Day of January, 2020 and end Twelve months from that date, on the Seventh Day of January, 2021

4. **RENT**

The rent and other charges reserved under this Lease for the term hereof shall be and consist of:

A. Base rent shall be One Dollar (\$1.00) per lease term, which shall be payable without demand upon the effective date of this Lease agreement on an annual basis. Rent shall be due upon execution of this Lease Agreement, and upon any renewal thereafter.

B. Rent shall be paid to:

MONROE COUNTY SCHOOL DISTRICT
C/o Mark T. Porter, Superintendent of Schools
241 TRUMBO ROAD
KEY WEST, FL 33040

5. **USE**

The **TENANT** will use and occupy the premises for operations, storage of materials and vehicles and for no other use. **TENANT** must fully comply with all applicable governmental laws and the requirements of the **LANDLORD'S** insurer. Since the **LANDLORD** has no knowledge as to the specifics of how the **TENANT** operates its business the **LANDLORD** does not make any representations or warranties that the **TENANT'S** intended use complies with applicable laws or the **LANDLORD'S** insurer's requirements, and accordingly the **TENANT** assumes all risks and liabilities of compliance and shall comply with the requirements of the applicable governmental authorities, the **LANDLORD'S** insurer's requirements as well as with any provision of this Lease.

6. **ASSIGNMENT**

TENANT shall not assign, sublet, transfer, mortgage, pledge or otherwise encumber or dispose of this Lease during the term hereof, or underlet the demised premises or any part thereof or permit the premises to be occupied by any other persons.

7. **CONSTRUCTION, APPLICABLE LAW**

The words "**LANDLORD**" and "**TENANT**" as used herein shall include the plural as well as the singular. If there be more than one **LANDLORD** or **TENANT**, the obligations imposed hereunder upon the **LANDLORD** or **TENANT** shall be joint or several. The section headings or titles in this Lease are not a part hereof and shall have no effect upon the construction or interpretation of any part hereof. This Lease shall be construed and enforced under the laws of the State of Florida. Should any provisions of

this Lease be illegal or unenforceable under such laws, it or they shall be considered severable and this Lease and its conditions shall remain in force and be binding upon the parties hereto just as though the illegal or unenforceable provisions had never been included herein.

8. PREPARATION OF THE PREMISES

Unless otherwise provided for pursuant to an addendum to this lease, the premises are being delivered in an "AS IS" condition.

9. ACCEPTANCE OF PREMISES

TENANT'S having taken possession of the demised premises shall be conclusive evidence that the demised premises were in good order and satisfactory condition on the day **TENANT** took possession. No promise of the **LANDLORD** to alter, remodel or improve the demised premises and no representations respecting the condition of the demised premises have been made by the **LANDLORD** to the **TENANT**, unless the same is contained herein or made a part hereof, and the **TENANT** will make no claim on account of any representations whatsoever, whether made by any employee, renting agent, broker, officer or other representative of **LANDLORD**, unless the same is specifically set forth in this Lease.

10. ALTERATIONS AND REPAIRS

The **TENANT** will, at **TENANT'S** sole cost and expense, keep the demised premise in good repair and tenantable condition during the term of this Lease. The **TENANT** will, at the termination of this Lease by lapse of time or otherwise, return the premises to the **LANDLORD** in as good condition as when received, ordinary wear and tear excepted.

TENANT shall make no alteration, additions, installation, substitutions, improvements or decorations in or to the premises without the written consent of **LANDLORD**, which consent shall be subject to and upon such terms and conditions as **LANDLORD** may require and stipulate in such consent, including without limitation, (a) physical and spatial limitations, (b) governmental approvals (c) payment, (d) indemnification, (e) liens, and (f) designation of approved contractors and subcontractors, and (g) aesthetic considerations. This clause shall not be construed to mean that the **LANDLORD** shall allow any mechanics' liens upon the premises based upon work ordered by the **TENANT**.

11. COMPLIANCE WITH LAWS, INSURANCE

TENANT shall, during the entire term of this Lease, comply with all statutes, ordinances, rules, orders, regulations, and requirements of the Federal, State, County and City Government, and of any and all their Departments and Bureaus, applicable to said

premises, and shall also comply with all rules, orders and regulations of the **LANDLORD'S** insurer, for the prevention of fires and prevention of accidents as well as damage to property, all at **TENANT'S** own cost and expense. If by reason of any failure of **TENANT** to comply with the provisions of this paragraph, the rate of fire insurance with extended coverage on the building or equipment or other property of **LANDLORD** or liability insurance shall be higher than it otherwise would be, **TENANT** shall reimburse **LANDLORD**, on demand, for the part of the premiums for fire insurance and extended coverage and liability insurance paid by **LANDLORD** because of such failure on the part of **TENANT**. **TENANT** also agrees not to use the premises for any purpose which would increase the cost of liability insurance or fire and extended coverage insurance on the building in which the building in which the leased premises are located over that which applies to normal retail space at the lowest rate. Any use of the premises which would increase such rate must be approved by the **LANDLORD** before **TENANT** may use the premises for such purposes. In the event the use to which the premises occupied by **TENANT** are used increases the insurance rates, then **TENANT** shall pay to the **LANDLORD**, as premiums are paid by **LANDLORD**, amounts equal to the increase caused by **TENANT'S** use. **TENANT'S** use and occupancy may not vitiate the insurance contract.

12. EVENTS OF DEFAULT

The occurrence of any of the following shall constitute an event of default hereunder:

- A. Discontinuance by **TENANT** of the conduct of its function(s) and/or business in the Demised Premises.
- B. Failure of **TENANT** to pay when due any installment of rent hereunder or any other sum herein required to be paid by **TENANT**.
- C. Vacation or desertion of the Demised Premises or permitting the same to be empty and unoccupied.
- D. **TENANT'S** failure to perform any non-monetary covenant or condition of this Lease within ten (10) days to cure, in which event **TENANT'S** failure to proceed diligently to cure such failure shall constitute an event of default.

13. RIGHTS OF LANDLORD UPON DEFAULT BY TENANT

- A. If the **TENANT** is in default as defined in sub-paragraphs A to D inclusive of Paragraph 12 and if the same is not cured by the **TENANT** within three (3) days after written notice to the **TENANT** or if the **TENANT** is in default pursuant to the provisions of sub-paragraph E of Paragraph 13 then the **LANDLORD**, in addition to all rights and remedies granted under the laws of the State of Florida as the same exist or as may be amended, shall have any or all of the following rights:

i. To re-enter and remove all persons and property from the Demised Premises, and such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of **TENANT**, all without service of notice or resort to legal process and without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby.

ii. Terminate the Lease and relet the premises for account of the **LANDLORD** or within the sole discretion of **LANDLORD**, the premises may be relet for the account of the **TENANT**.

B. If any part of the rent shall remain due and unpaid after the expiration of the three (3) day period for curing defaults hereinabove provided for, **LANDLORD** shall have the option of declaring the balance of the entire rent for the entire rental term of this lease to be immediately due and payable, and **LANDLORD** may then proceed immediately to collect all of the unpaid rent called for by this Lease by distress or otherwise, or terminate this Lease should **TENANT** fail to pay the balance of the entire rent for the entire rental term.

C. **TENANT** agrees to pay all costs and expenses of collection, any required fees for posting of a bond, and all attorney's fees for any part of said rental that may be collected by an attorney, suit, distress or foreclosure together with interest on all such amounts at the highest rate allowed by law; and further, in the event that **TENANT** fails to promptly file and fully perform and comply with each and every condition, covenant or obligation hereunder and the matter is turned over to **LANDLORD'S** attorney, **TENANT** shall pay **LANDLORD** its attorney's fees together with **LANDLORD'S** administrative costs, whether suit is instituted or not. In the event **TENANT** goes into default hereunder and **LANDLORD'S** attorney writes a notice to **TENANT** of **TENANT'S** default, **TENANT** agrees that **TENANT** will pay to **LANDLORD** a minimum sum of Two Hundred Fifty Dollars (\$250.00) to cover the **LANDLORD'S** administrative costs and attorney's fees.

D. The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of the **LANDLORD** and **TENANT**, **TENANT'S** use or occupancy of the Demised Premises, and/or non-payment of rent or additional rent, **TENANT** will not interpose any counter-claim of any nature or description in any such proceedings. This shall not, however, be construed as a waiver of the **TENANT'S** right to assert such claims in any separate action or actions brought by the **TENANT**.

E. **TENANT** hereby expressly waives any and all right of redemption granted by or under any present or future laws in the event of **TENANT** being evicted or dispossessed for any cause, or in the event of **LANDLORD** obtaining possession of the

Demised Premises, by reason of violation by **TENANT** of any of the covenants or conditions of this Lease, or otherwise.

F. The remedies herein are cumulative in nature and accordingly no court shall determine that the **LANDLORD** has elected one remedy as the exclusive remedy over any other remedy provided for pursuant to this Lease.

14. **SUBORDINATION**

This lease, and all rights of **TENANT** hereunder, are and shall be subject and subordinate to all ground leases, overriding leases and underlying leases affecting the demised premises now or hereafter existing and to all mortgages which may now or hereafter affect the demised premises and to each and every advance made or hereafter to be made under such mortgages, and to all renewals, modifications, replacements and extensions of such leases and mortgages and spreaders and consolidations of such mortgages (which leases and mortgages are sometimes collectively referred to herein for convenience as the "superior mortgage"). This paragraph shall be self-operative and no further instrument of subordination shall be required to make it effective; however, **TENANT** shall promptly execute and deliver any instrument reasonably requested to evidence such subordination.

TENANT agrees that in the event of any act or omission by the **LANDLORD** which would give **TENANT** the right to terminate this Lease, or to claim a partial or total eviction, **TENANT** shall not exercise any such right until he has notified in writing the holder of any such mortgage which at the time shall be lien on the demised premises or the underlying lessor, if any, of any such act or omission.

15. **INDEMNIFICATION**

Neither **LANDLORD** nor any agent or employee of **LANDLORD** shall be liable to **TENANT** for any injury or damage to **TENANT** or to any other person for any damage to, or loss (by theft or otherwise) of, any property of **TENANT** or of any other person, irrespective of the cause of such injury, damage or loss, unless caused by or due to the negligence of **LANDLORD**, its agents or employees without contributory negligence on the part of **TENANT**, it being understood that no property, other than such as might normally be brought upon or kept in the premises as an incident to the reasonable use of the premises for the purposes herein permitted, will be brought upon or be kept in the premises.

The **TENANT** shall indemnify and save harmless **LANDLORD** and its agents against and from (a) any and all claims (i) arising from (x) the conduct or management of the demised premises or of any business therein; or (y) any work or thing whatsoever done, or any condition created or permitted to exist (other than by **LANDLORD** for **LANDLORD'S** or **TENANT'S** account) in or about the demised premises during the term of this Lease, or during the period of time, if any, prior to the commencement of the

term hereof that **TENANT** may have been given access to the demised premises, or (ii) arising from any negligent or otherwise wrongful act or omission of **TENANT** or any of its subtenants or its or their employees, agents or contractors; and (b) all costs, expenses and liabilities incurred in or in connection with each such claim or action or proceeding brought thereon.

In case any action or proceeding is brought against **LANDLORD** by reason of any such claim, **TENANT**, upon notice from **LANDLORD**, shall resist and defend such action or proceeding. **TENANT** shall carry public liability insurance, in amount of \$1,000,000.00 in respect of injuries to any one person, and \$3,000,000.00 in respect to any one accident or disaster, with companies and on forms acceptable to **LANDLORD**, naming both **LANDLORD** and **TENANT** as parties insured thereby, insuring the parties against any such claim. All such policies of insurance shall provide thirty (30) days notice to **LANDLORD** as a condition precedent to the cancellation. Such policy shall be delivered to **LANDLORD**. **TENANT** shall provide **LANDLORD** with evidence of payment of renewal premiums or replacement of policy and payment of premiums not later than thirty (30) days prior to the expiration of any such policy. The public liability policy shall include premises and operations. The maximum liability imposed upon **TENANT** by virtue of this indemnification shall be one million dollars (\$1,000,000.00).

Nothing contained herein shall be construed to alter or waive either Party's right to sovereign immunity under Florida Statute § 768.28. Both Parties acknowledge that indemnification between government entities may be unenforceable under Florida law, and that neither Party waives any legal defense based on the unenforceability of such indemnification provision.

16. WAIVER

The failure of either the **LANDLORD** or **TENANT** to insist in any one or more instances upon the strict performance of any one or more of the obligations of this Lease, or to exercise any rights or election herein contained, shall not be construed as a waiver or relinquishment for that or the future of the performance of such or more obligations of the Lease or of the right to exercise such election, but the same shall both continue and remain in full force and effect with respect to that and any subsequent breach, act or omission.

17. NOTICES

All notices required by this Contract, unless otherwise provided herein, by either party to the other shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by Federal Express or Express Mail, and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, postage prepaid, addressed as follows:

Monroe County School Board:

Superintendent
Monroe County School District
241 Trumbo Road
Key West, FL 33040

With a copy to District Counsel
Vernis & Bowling of the Florida Keys, P.A.
81990 Overseas Hwy, 3rd Floor
Islamorada, FL 3303

Tenant:
Nick Batty, Esq.
Director of Legal & Regulatory Services
Keys Energy Services
1001 James Street
Key West, FL 33040

19. RULES AND REGULATIONS

TENANT understanding that it will be occupying real property owned by the School Board of Monroe County Florida, expressly agrees to be subject to the reasonable rules and regulations of such body, and hereby covenants and agrees that it and its employees, servants, and agents will at all times observe, perform and abide by said rules and regulations as they exist and as they may be amended hereafter from time to time.

20. ACCESS

LANDLORD or **LANDLORD'S** agents shall have the right, upon request, to enter and/or pass through the demised premises or any part thereof, at reasonable times during reasonable hours. **LANDLORD** shall also have the right to enter on and/or pass through the demised premises, or any part thereof, at such times as such entry shall be required by circumstances of emergency affecting the demised premises or the building.

21. SURRENDER, HOLDING OVER

On the last day of the term of this Lease, or upon any earlier termination of this Lease, or upon any re-entry by **LANDLORD** upon the demised premises, **TENANT** shall peaceably and without notice of any sort, quit and surrender the demised premises to **LANDLORD** in good order, condition and repair, except for ordinary wear and tear and such damage or destruction as **LANDLORD** is required to repair or restore under the terms of this Lease, and **TENANT** shall remove all of **TENANT'S** property therefrom. **TENANT** specifically agrees that in the event **TENANT** retains possession and does not so quit and surrender the demised premises to **LANDLORD**, then **TENANT** shall pay to **LANDLORD** (i) all damages that **LANDLORD** may suffer on account of **TENANT'S** failure to so surrender and quit the demised premises, and **TENANT** will indemnify and save **LANDLORD** harmless from and against any and all claims made by succeeding

tenant of the demised premises against **LANDLORD** on account of delay of **LANDLORD** in delivering possession of the demised premises to said succeeding tenant to the extent that such delay is occasioned by the failure of **TENANT** to so quit and surrender said premises, and (ii) rent for each month or any applicable portion of a month of such holding over at twice the amount payable for the month immediately preceding the termination of this Lease, during the time the **TENANT** thus remains in possession. The provisions of this paragraph do not waive any of the **LANDLORD'S** right of re-entry or any other right under the terms of this Lease. If **TENANT** shall fail to surrender the premises as herein provided, no new tenancy shall be created and **TENANT** shall be guilty of unlawful detainer. No surrender of this Lease or of the premises shall be binding on the **LANDLORD** unless acknowledged by **LANDLORD** in writing.

22. COMMON AREAS

All facilities furnished by **LANDLORD** and designated for the general use, in common, with other occupants of the property, including **TENANT**, their officers, agents employees and customers, including, but not limited to any of the following which may have been furnished by **LANDLORD**: parking areas, driveways, entrances and exits thereto, pedestrian sidewalks and ramps, landscaped areas, and other similar facilities, which are not leased to **TENANTS** shall at all times be subject to the exclusive control and management of **LANDLORD**, and **LANDLORD** shall have the right from time to time to change the area, level, location and arrangement of such facilities; to restrict parking by **TENANTS** and their employees to parking areas; and to limit the numbers of parking spaces to be allocated and used by a specific **TENANT**, its employees, invitees or guests; and to make all rules and regulations necessary for the proper operation and maintenance of the common facilities.

23. SIGNS

TENANT may exhibit a sign identifying its business operation and such other signs as are customary for the purpose of ensuring safe and orderly operation of **TENANT'S** business. **TENANT** further agrees to maintain such signs in good condition and repair at all times and, upon reasonable request of **LANDLORD**, to promptly remove any such signs.

24. LANDLORD'S LIABILITY

Notwithstanding any provision in this Lease to the contrary, **TENANT** agrees that **TENANT** shall look solely to **LANDLORD'S** interest under this leasehold estate in the event of any default or breach by **LANDLORD** with respect to any of the terms and provisions of this Lease on the part of the **LANDLORD** to be performed or observed, and no other assets of **LANDLORD** shall be subject to levy, execution, or other judicial process or award for the satisfaction of **TENANT'S** claim.

ADDITIONAL PROVISIONS

25. **LANDLORD** may terminate this lease following adoption of a finding by the Monroe County School Board that a need for the lease premises requires **TENANT** to vacate in order to carry out the mission of the Monroe County School District. Notice of not less than ninety (90) days shall be given prior to the effective date of termination.
26. The **TENANT** shall not discriminate against any person, or group of persons, on account of race, color, creed, sex, age, religion, national origin, marital status, handicap, having children or ancestry in the use, occupancy, or enjoyment of all or any part of the demised premises nor shall the **TENANT** or any person claiming under or through **TENANT** establish or permit any such practice or practices of discrimination or segregation.
27. **LANDLORD** hereby reserves the right at any time and from time to time to make alterations or additions to the premises and surrounding area. **LANDLORD** also reserves the right to construct other or to add to other buildings or improvements to the premises and adjoining property, and/or to permit others to do so, from time to time.
28. This Agreement shall be construed in accordance with the laws of the State of Florida. Any dispute arising hereunder is subject to the laws of Florida, venue in Monroe County, Florida. The prevailing party shall be entitled to reasonable attorney's fees and costs incurred as a result of any action or proceeding under this Agreement.
29. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application thereof, to any person or circumstance shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the maximum extent possible.
30. This Lease contains the entire agreement between the parties hereto and all previous negotiations leading hereto and it may be modified only by an agreement in writing signed and sealed by the **LANDLORD** and **TENANT**.

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IN WITNESS WHEREOF, the **LANDLORD** and **TENANT** have duly signed and executed these presents on this ____ day of _____, 2019.

Signed, sealed and delivered in the presence of:

"LANDLORD"
SCHOOL BOARD OF MONROE COUNTY FLORIDA

Robert Highsmith, Chairman

Attest:

Mark T. Porter, Superintendent of Schools

"TENANT"
THE UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA
d/b/a "KEYS ENERGY SERVICES"

BY: _____

Printed name and title: _____

Witness as to **TENANT**

Printed name: _____

EXHIBIT “A”

