

Eric Fryson

From: Deniece Eden <dedenkwf@bellsouth.net>
Sent: Monday, April 08, 2013 3:44 PM
To: Filings@psc.state.fl.us
Cc: Martha Brown; Curt Kiser; Andrew Tobin; A Tobin; 'Greg Oropeza'; 'Barton Smith, PL.'; 'Shillinger-Bob'; jlvavia@gbwlegal.com; robert@hartsell-law.com
Subject: ELECTRONIC FILING - DOCKET NUMBER 120054-EM
Attachments: Respondent U.B. Response to 2nd Amended Complaint.pdf

PERSON FILING THIS DOCUMENT:

NATHAN E. EDEN, ESQ.
ON BEHALF OF RESPONDENT UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA d/b/a KEYS ENERGY SERVICES
302 Southard Street, Suite 205
Key West, FL 33040
305-294-5588
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DOCKET NUMBER 120054-EM

DOCUMENT BEING FILED:

RESPONDENT, UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA d/b/a KEYS ENERGY SERVICES RESPONSE TO SECOND AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES

Total Number of Pages Including Exhibits: 51

Exhibits attached to Response:

- A. September 4, 1951 Contract with Monroe County, Florida;
- B. March 7, 2012 Electric Line Extension Agreement between No Name Key Property Owner's Association, Inc., and Utility Board of the City of Key West, Florida d/b/a Keys Energy Services; and
- C. March 7, 2012 Meeting Minutes from the Utility Board of the City of Key West showing approval of Electric Line Extension.

DENIECE L. EDEN
Legal Assistant
LAW OFFICES OF NATHAN E. EDEN, P.A.
302 Southard Street, Suite 205
Key West, FL 33040
305-294-5588

DOCUMENT NUMBER-DATE

01793 APR-8 2013

FPSC-COMMISSION CLERK

**BEFORE THE STATE OF FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NUMBER 120054-EM**

**ROBERT D. REYNOLDS and JULIANNE C.
REYNOLDS,**

Complainants,

v.

**UTILITY BOARD OF THE CITY OF KEY
WEST, FLORIDA, d/b/a KEYS ENERGY
SERVICES, et al**

Respondents.

And

**MONROE COUNTY, a political
Subdivision of the State of Florida,
NO NAME KEY PROPERTY OWNERS
ASSOCIATION, INC.,**

Intervenors.

**RESPONDENT, UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA,
d/b/a KEYS ENERGY SERVICES RESPONSE TO SECOND AMENDED
COMPLAINT AND AFFIRMATIVE DEFENSES**

**RESPONDENT, UTILITY BOARD OF THE CITY OF KEY WEST,
FLORIDA d/b/a KEYS ENERGY SERVICES, (hereinafter KES) files this
Response, Affirmative Defenses in reply to Complainants Second Amended Complaint
and states as follows:**

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.

DOCUMENT NUMBER-DATE

01793 APR-8 2

FPSC-COMMISSION CLERK

6. Admitted.
7. Can neither Admit nor Deny as paragraph contains no factual statement.
8. Denied.
9. Denied as to first sentence; Admit remainder of paragraph.
10. Admitted.
11. Denied; case speaks for itself.
12. Denied; case speaks for itself.
13. Denied; the Statute and case speak for themselves
14. Denied.
15. Admitted but allege that prior contract with Monroe County was and is in existence. See Exhibit A attached hereto.
16. Denied; the Territorial Agreement speaks for itself.
17. Denied.
18. Denied; the Statute speaks for itself.
19. Denied.
20. Unknown therefore denied.
21. Unknown therefore denied.
22. Unknown therefore denied.
23. Unknown therefore denied.
24. Unknown therefore denied.
25. Denied; lawsuit and pleadings speak for themselves.
26. Denied; lawsuit and pleadings speak for themselves.

27. Denied; lawsuit and pleadings speak for themselves.
28. Admitted.
29. Denied; Order speaks for itself.
30. Denied; Order speaks for itself.
31. Admitted.
32. Denied; the lawsuit and pleadings speak for themselves.
33. Denied. Order speaks for itself.
34. Unknown therefore denied.
35. Unknown therefore denied.
36. Unknown therefore denied.
37. Unknown therefore denied.
38. Unknown therefore denied.
39. Unknown therefore denied.
40. Unknown therefore denied.
41. Unknown therefore denied.
42. Denied.
43. Denied.
44. Denied; the Agreement speaks for itself.
45. Denied; the Agreement and Statute speak for themselves.
46. Denied; the Agreement and Statute speak for themselves.
47. Denied; the Statute speaks for itself.
48. Denied; the Statute speaks for itself.

48(2) Unknown therefore Denied.

49. Unknown therefore Denied.

50. Unknown therefore Denied.

51. Unknown therefore Denied.

52. Unknown therefore Denied.

AFFIRMATIVE DEFENSES

1. The issues in said Second Amended Complaint between Complainants and KES are moot and there exists no justiciable issues in that:
 - A. Since the date of the filing of the Verified Complaint, Respondent has entered into a contract with Complainants and others for the provision of electrical service to the area commonly known as No Name Key, on which Complainants Reynolds are property owners.
 - B. A copy of said Agreement, fully executed, is attached hereto and made part hereof as Exhibit B.
 - C. A copy of the minutes of Respondent approving such Agreement is attached hereto and made hereof as Exhibit C.
2. Complainants are not entitled to an award of attorney's fees and costs.

DATED: April 8th 2013

Respectfully Submitted,

NATHAN E. EDEN, P.A.
Attorney for Respondent
302 Southard Street
Suite 205
Key West, FL 33040
305-294-5588

By: _____

NATHAN E. EDEN, ESQ.
FBN: 114752

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Electronic Mail to the individuals listed on the attached Service List this 8th day of April, 2013.

NATHAN E. EDEN, P.A.

Attorney for Respondent

302 Southard Street

Suite 205

Key West, FL 33040

305-294-5588

By: _____

NATHAN E. EDEN, ESQ.

FBN: 114752

**REYNOLDS V. U.B.
FLORIDA P.S.C. DOCKET NUMBER 120054-EM
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**RESOLUTION GRANTING THE CITY OF KEY WEST,
FLORIDA PERMISSION TO USE THE RIGHTS OF WAY
OF CERTAIN PUBLIC STREETS, ROADS, BRIDGES
AND/OR HIGHWAYS IN MONROE COUNTY, FLORIDA.**

WHEREAS, the City of Key West, Florida, desires to run electrical line from the City of Key West, Florida to Pigeon Key, Florida for the purpose of furnishing electricity to the residents of the Florida Keys residing in said area, and,

WHEREAS, the City of Key West, Florida has requested the Board of County Commissioners of Monroe County, Florida to grant easements on and over the public streets, roads, bridges and/or highways under said Board's jurisdiction and control, and,

WHEREAS, the said City of Key West, Florida has agreed not to charge any higher rates to residents of the above areas than it charges within the boundaries of the City of Key West, Florida, and that in furnishing service to residents not residing on a public street, road and/or highway not to charge any higher rate for the extension of the pole line than that which is charged by the Florida Keys Electrical Cooperative Association, which is now operating in another area in Monroe County, Florida, and

WHEREAS, the City of Key West, Florida has agreed to furnish service under the conditions set forth in the above paragraphs to any and all subscribers who may apply for same, now, therefore,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, that permission be and the same is hereby granted to the City of Key West, Florida to construct and maintain an electrical system on and over any of the public streets, roads, bridges and/or highways under said Board's jurisdiction and control within the Florida Keys, Monroe County, Florida, from the City of Key West, Florida up to and including Pigeon Key, Florida, provided that the City of Key West, Florida charges the agreed rates and costs to consumers for extension as set forth in the introductory paragraphs of this Resolution.

Dated this 14th day of September, A.D. 1951.

Reynolds v. Utility Board
Florida P.S.C. Docket No. 120054-EM

EXHIBIT A

CERTIFICATE OF CLERK

STATE OF FLORIDA,
COUNTY OF MONROE.

I EARL R. ADAMS, Clerk of the Circuit Court and ex-officio Clerk of the Board of County Commissioners, in and for said County and State, DO HEREBY CERTIFY that the foregoing is a true and correct copy of a "RESOLUTION granting the City of Key West, Florida permission to use the Right-of-Way of certain public streets, roads, bridges and/or highways in Monroe County, Florida"

passed by the Board of County Commissioners at a Regular Meeting held on September 4th, A. D. 1951, as same appears on file and of record Minute Book "G" page 82 in the Public Records of Monroe County, Florida.

WITNESS my hand and seal of office this 28th day of April,
A. D 1960.

Clerk Circuit Court, and ex-officio Clerk
of the Board of County Commissioners,
in and for Monroe County, Florida

By *Maudie L. Thompson* D.C.

**ELECTRIC EXTENSION AGREEMENT
LINE EXTENSION # 746**

THIS ELECTRIC EXTENSION AGREEMENT (the "Agreement"), made this 7th day of March 2012, by and between NO NAME KEY PROPERTY OWNERS ASSOCIATION, INC. with an address of 32731 Tortuga Lane No Name Key, Big Pine Key, Florida 33043 (see Exhibit "A" for Corporate Documents) hereinafter called "NNKPOA," and the UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA, D/B/A Keys Energy Services, with an address of 1001 James Street Key West, Florida 33040, organized and existing under the laws of the State of Florida, hereinafter called "KEYS."

WHEREAS, the NNKPOA has applied to the KEYS for electric service of the character commonly known as single-phase, starting at Pole S38-36-65 on Watson Boulevard extending through the county right-of-way and proceeding from Old State Road 4A or Watson Road easterly to service customers on No Name Key, Florida; and

WHEREAS, said location requires an extension of KEYS' present distribution system from the last point of electrical service on the west side of the bridge from the Big Pine Key side extending with conduits attached to bridge and approximately 62 poles; and

WHEREAS, KEYS would not be justified in making said extension prior to the receipt of payment in full for the line extension estimated cost at the rate of \$648,752.55 for said Line Extension.

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

ARTICLE I. The obligations of NNKPOA to fund and replenish the escrow account described herein and to pay for catastrophic damage to the electric facilities constructed pursuant to this Agreement will continue in perpetuity or until such obligations are waived in writing by KEYS.

ARTICLE II. Upon execution of this Agreement by NNKPOA, NNKPOA shall advance to KEYS \$459,257.00 representing the known outstanding balance for current estimated construction cost of the requested line extension, \$2,950.00 for specialized training (Article XIV and \$50,000.00 for escrow account (Article XVI). See Exhibit "B" for the full breakdown of expenses paid and estimated to be paid. Upon completion, if actual costs associated with the construction of the requested line extension are less than the estimated construction cost, KEYS will return the difference to NNKPOA. NNKPOA will be responsible for the total cost of construction as described in Article IV and elsewhere in this Agreement, and NNKPOA acknowledges

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EXHIBIT B

that the total cost of construction may exceed the estimate of **\$459,257.00**. In this Agreement **NNKPOA** is obligated to pay for various matters, and such obligation includes the requirement to pay for the total costs of the matters described however incurred, including without limitation, the obligation to reimburse **KEYS** for sums due to third party contractors or the costs of providing the goods or services by **KEYS** through its employees.

ARTICLE III. All costs incurred by **KEYS** shall be documented and presented quarterly to **NNKPOA** upon request.

ARTICLE IV. **NNKPOA** shall be responsible for any and all expenses associated with this line extension from start to finish which includes but is not limited to the cost of litigation, permitting, construction overruns, construction delays, and contractor remobilization resulting from delays. From time to time, **KEYS** shall have the right to require advances from **NNKPOA** above the initial advance set out in Article I. If **NNKPOA** fails to make the payments as required by **KEYS**, construction on the project may be halted and **KEYS** may elect to terminate this Agreement.

In addition to its other duties or obligations stated in this Agreement, **NNKPOA** agrees to engage, pay for and coordinate an "on-site" biologist, with appropriate credentials, during initial construction of the electrical facilities in accordance with the Fish and Wildlife Services (FWS) requirements as stated in the "Stock Island Tree Snail and Garber's Spurge Impact Avoidance Procedures Plan". **NNKPOA** or its consultants will perform all work associated with this plan. Any associated project delays in construction or additional work will be paid by **NNKPOA**.

ARTICLE V. **NNKPOA** shall be responsible for all costs incurred in the event the Contract is cancelled or the project is stopped. **NNKPOA** will be responsible for any material purchased for the project. If such material can be used for another project (at **KEYS** sole determination), **KEYS** will charge a 20% material restocking fee. If bridge conduit system is in place, and contract stopped prior to project completion, **NNKPOA** is responsible for all costs incurred by **KEYS** or by any **KEYS** contractor or "subcontractor" including costs of deconstruction, removal, mitigation, disposal and any repairs to return the bridge or the rights-of-way to their preconstruction condition.

ARTICLE VI. The construction contemplated by this Agreement is limited to the single-phase, primary electrical facilities in the location as depicted on Line Extension drawing **D-4157** attached as **Exhibit "C"**. This Agreement does not include funds for any construction on private property to provide service to a home nor does it include costs that may be needed for construction of customer "Tap Poles" that may be needed to provide service to homes more than approximately **75** feet from the proposed primary lines. Any such construction costs to extend service from the primary electrical facilities to a home or property will be at the property owner's expense. Upon completion of construction and energizing the single phase distribution line shown on Extension drawing **D-4157** attached as **Exhibit "C"**, **KEYS** will have no further obligations under this Agreement.

Initials **KEYS**: JS Customer: KMB

ARTICLE VII. **KEYS** and the **NNKPOA** agree that the Line Extension drawing **D-4157** attached as **Exhibit "C"** is a single phase distribution facility designed to provide electrical service to the existing **43** homes and lots. (Identified under **Exhibit "J"**) The attached line extension drawing # **D-4157**, attached as **Exhibit "C"**, is part of this contract and made part hereof. Previously executed **Line Extension #754** for two poles will become a part of this line extension as **Exhibit "D"**.

ARTICLE VIII. There currently exists **43** residential homes and lots on No Name Key of which **25** are connecting to the electrical facilities as part of this Agreement. . Before the construction of the project is complete, the **NNKPOA** will provide **KEYS** with a list of **NNKPOA** members who are in compliance with their financial obligation to the **NNKPOA** in paying their full prorated financial share. This list will become **Exhibit "I"**. If at a future date, any of the remaining **18** homeowners, not currently listed on **Exhibit "I"**, elect to connect to the electrical facilities, they must meet all of **KEYS** policies. In addition, any of those remaining **18** homeowners will be responsible for paying in advance an amount outlined in **Exhibit "E"** representing their fair share of the total final cost associated with the line extension design and this line extension. Also, those remaining **18** homeowners may have additional costs associated with their specific line extension. **KEYS** shall reimburse the **NNKPOA** 85% of the amount outlined in **Exhibit "D"** and paid by the new customer. If electric service is requested to a parcel on No Name Key not included in the **43** parcels described above, then **KEYS** may deal with such additional parcel or customer in accordance with its then existing policies.

ARTICLE IX. The provisions of Article VIII of this Agreement shall terminate ten years from the date this Agreement is signed. The provisions of Article VIII do not extend to any lots that are not identified as the existing **43** residential homes and lots.

TITLE AND OWNERSHIP

ARTICLE X. Title to, and complete ownership and control over all the electrical facilities or associated items constructed pursuant to this Agreement, 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.

EASEMENTS AND PERMITTING

ARTICLE XI. **NNKPOA** will secure, grant, or cause to be granted to **KEYS**, and without cost to **KEYS**, all rights, permits and privileges necessary for the construction described herein and the rendering of service hereunder. **KEYS** shall work collaboratively with **NNKPOA** to obtain all necessary consents, permitting, easements and licenses necessary to accomplish this line extension but all costs shall be the sole and exclusive obligation of the **NNKPOA**. All permits, permissions and easements shall be obtained and provided to **KEYS** prior to commencement of construction. All

Initials **KEYS**: Customer:

construction will be performed by **KEYS** or through contractors retained by **KEYS** and the entire project must be designed to **KEYS** requirements.

MAINTENANCE

ARTICLE XII. It is expressly understood and agreed that the amount paid by **NNKPOA** to **KEYS**, for the cost of the lines to be built hereunder includes cost of trimming trees or other obstructions from the right-of-way, and to trim all trees adjacent thereto in order that the lines to be built under may be safely and properly constructed. **KEYS** shall clear and trim all trees as necessary to begin the extension at the sole cost of **NNKPOA**. All initial tree trimming on private property prior to installation of service drops shall be performed/cut by the private property owner. After the extension is complete, maintenance of said trees shall be performed by **KEYS** in accordance with its normal operating procedures at no additional cost to **NNKPOA**.

ARTICLE XIII. **NNKPOA** also agrees to pay for required, necessary or appropriate training for **KEYS'** staff so that members of **KEYS'** staff may become certified in accordance with the "Stock Island Tree Snail and Garber's Spurge Impact Avoidance Procedures Plan" (see Exhibit "F"). This training and certification shall be done prior to energizing the new electrical high voltage facilities.

ARTICLE XIV. **NNKPOA** agrees to pay **KEYS** a one time **\$2,950.00** fee to cover the development of a "training program" in accordance with the "Stock Island Tree Snail and Garber's Spurge Impact Avoidance Procedures Plan". Additionally, **NNKPOA** agrees that during construction, **NNKPOA** shall pay and supply the required biologist as required in "Stock Island Tree Snail and Garber's Spurge Impact Avoidance Procedures Plan". This person shall be responsible for compliance in accordance with said Plan.

PROCEEDING WITH WORK

ARTICLE XV. Upon compliance with and completion of all predicate provisions herein, **KEYS** will proceed with construction of the extension outlined herein and as covered by sketch and specifications hereto attached and made a part hereof. It is agreed that construction of said line extension shall require an indeterminable period of time.

COASTAL BARRIER RESOURCES ACT (CBRA) - ESCROW - LIEN

ARTICLE XVI. **NNKPOA** and the owners of property to be served by the line extension acknowledge that **KEYS** shall have no obligation to make any reconstruction or repairs. **NNKPOA** and the owners of property to be served by the line extension

Initials **KEYS**: JK Customer: DMB

further agree and recognize that sections of No Name Key are within a Coastal Barrier Resources Act (CBRA) (see Exhibit "G"), and that certain electrical facilities may not be eligible for FEMA reconstruction funding after a Natural Disaster. **NNKPOA** and the owners of property to be served by the line extension acknowledge and agree that **KEYS** shall have no obligation to pay any sum for repairs or reconstruction that are typically covered by FEMA for non CBRA areas and **NNKPOA** or the owners of property served by the line extension shall be required to pay the cost for reconstruction and repairs that **KEYS** would otherwise have been reimbursed by FEMA. To minimize the possibility of delay in repair or reconstruction pending advanced payment to **KEYS**, **NNKPOA** shall establish an Escrow account to pay for such cost.

This escrow account shall be in **KEYS'** name and **KEYS** shall have total control. **KEYS** will use the funds in escrow solely for the for purposes consistent with this Agreement. This escrow account shall have an initial deposit of **\$50,000.00**, and **NNKPOA** shall pay this **\$50,000.00** to **KEYS** prior to commencement of any construction of the line extension. Interest earned, at the rate paid to **KEYS** by its depository institutions for short term deposit accounts, will remain in the account. In the event **KEYS** uses all or part of the escrow funds for repair or reconstruction of the facilities, the **NNKPOA** shall replenish the account within six (6) months, for the exact amount that was used. Failure to replenish the escrow account to **\$50,000.00** is a default in this Agreement entitling **KEYS** to suspend electric service along the line extension and to other rights as set forth herein.

In the event of a catastrophic damage to the No Name Key facilities constructed pursuant to this Agreement (catastrophic damage for purposes of this Agreement is deemed to be damage resulting in repair costs in an amount exceeding the amount of the escrow deposit held by **KEYS** at the time of the damage), **KEYS** has no obligation to make repairs until **NNKPOA** or the owners of property served by the line extension have paid to **KEYS** 100% of the funds estimated to be needed to pay for **KEYS'** costs that are typically covered by FEMA for non CBRA areas cost to make repairs to **KEYS**. **KEYS** shall have no obligation to restore service or make repairs until it receives or is assured to its satisfaction that all sums needed to restore service or complete the repairs will be paid for by FEMA or by **NNKPOA** so that it incurs no loss or cost associated with such repairs. This shall be in advance of any restoration work in CBRA areas.

Notwithstanding the foregoing, **NNKPOA** and the in the owners of property served by the line extension at the time of the damage hereby authorize **KEYS** to make repairs or to reconstruct the facilities built pursuant to this Agreement in the event of any damage regardless of whether sufficient funds are held in the Escrow account described herein. The costs of such repair in excess of any sums held in the Escrow account shall be a personal obligation of **NNKPOA** and of the property owners whose property was served by the line extension at the time of the damage (but such personal responsibility of the property owners is limited to their prorata share of the costs based on the number of properties served by the line extension). All of the costs of repair or

Initials **KEYS**: JH Customer: KMB

reconstruction, together with interest and all costs and expenses of collection, including reasonable attorneys' fees, are a continuing charge on the land of all such property owners, and **KEYS** shall have a right to a lien against all such property for the payment of such funds. This Agreement constitutes constructive notice to all subsequent purchasers and/or creditors of the existence of **KEYS'** lien rights. **KEYS** from time to time may record a Notice of Lien or in the public records for the purpose of evidencing the lien established by this Article and the priority of the Notice of Lien shall be based on the time and date of recording the Notice of Lien in the public records.

Any sum reflected in any Notice of Lien not paid within 30 days after its due date bears interest at the highest per annum rate of interest allowed by law. **KEYS** may bring an action at law against the property owner(s) personally obligated to pay such assessment and/or or foreclose its lien against such owner's property subject to the Notice of Lien. The lien for sums claimed pursuant to this Article may be enforced by judicial foreclosure in the same manner in which mortgages on real property from time to time may be foreclosed in the State of Florida. In any such foreclosure, the property owner is required to pay all costs and expenses of foreclosure, including reasonable attorneys' fees. All such costs and expenses are secured by the lien foreclosed. Each property owner is deemed to acknowledge conclusively and consent that all sums due to **KEYS** pursuant to this Article are for the improvement and maintenance of any homestead thereon and that **KEYS'** lien has priority over any such homestead.

ARTICLE XVII. **NNKPOA** agrees and acknowledges that each customer that applies for electrical service to a home or parcel on No Name Key shall execute a separate document entitled NOTICE AND AGREEMENT REGARDING PROVISION OF ELECTRIC SERVICE TO NO NAME KEY (the "Notice") (see Exhibit "H") that acknowledges they understand and accept this Agreement.

Prior to providing electric service to a parcel, all persons or entities having an ownership interest in the parcel and all spouses of such persons shall execute the Notice before two (2) witnesses. The Notice shall be notarized and recorded in the public records of Monroe County, Florida at the Monroe County Court House 500 Whitehead Street Key West, Florida at the property owner's expense. The property owner shall deliver the original executed notice to **KEYS**, and receipt by **KEYS** of the original recorded Notice is a condition to the provision of electric service to a parcel or home on No Name Key.

DEFAULT

ARTICLE XVIII. If (a) **NNKPOA** fails to perform any of its obligations as described in this Agreement; or (b) a receiver is appointed for **NNKPOA**; or (c) there is falsity in any material respect of, or any material omission in, any representation or statement made to **KEYS** by or on behalf of **NNKPOA** in connection with this

Initials **KEYS:** KA Customer: RMB

Agreement; or (d) **NNKPOA** is dissolved then **NNKPOA** shall be in default of this Agreement within twenty days after notice of the default is provided to **NNKPOA**, and **KEYS** will be entitled to all remedies at law or in equity to enforce this Agreement. In addition, if **NNKPOA** fails to pay any sums due pursuant to this Agreement, **KEYS** may elect to terminate or suspend construction activities and may elect to terminate or suspend electric service along the line extension contemplated by this Agreement.

If **NNKPOA** asserts that **KEYS** has failed to perform any of its obligations set forth in this Agreement obligations, **NNKPOA** shall give **KEYS** written notice 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 IX. This Agreement supersedes all previous agreements, or representatives, either written or verbal, between **KEYS** and **NNKPOA**, made with respect to the matters herein contained. This Agreement, the Notice and the exhibits attached hereto contain the entire agreement between the parties. There are no promises, agreements, conditions, undertaking, warranties or representations, oral or written, express or implied between the parties other than as herein set forth. No amendment or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto. No waiver of any of the provisions of this Agreement or any other agreement referred to herein shall be valid unless in writing and signed by the party against whom enforcement is sought and any such written waiver shall only be applicable to the specific instance to which it related and shall not be deemed to be a continuing or future waiver. This Agreement shall inure to the benefit of and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

In the event that any party to this Agreement shall be delayed, hindered or prevented from performance of any act required by this Agreement, except with respect to the obligations to pay any fees, expenses or other amounts required by this Agreement, by reason of strikes, labor troubles, inability to procure materials or services necessary for such performance, restrictive governmental laws or regulations, riots, insurrection, war, terrorism, Act of God, or any other reason beyond the reasonable control of such party, then performance of such act shall be excused for the period of the delay, and the period of the performance of any such act shall be extended for the period equivalent to the period of such delay.

Whenever any notice, demand, consent, delivery or request is required or permitted hereunder, it shall be in writing and shall be deemed to have been properly

Initials KEYS: JK Customer: KMB

given or served (a) when delivered in fact to the other party, or (b) three (3) business days after having been deposited in the United States mail, with adequate postage prepaid and sent by registered or certified mail with return receipt requested, or (c) when delivered to Federal Express or other comparable overnight courier which obtains a receipt to confirm delivery, to the addresses set forth above or at such other addresses as are specified by written notice so given in accordance herewith. Any notice to **KEYS** shall be sent to **KEYS** to the attention of the General Manager/CEO with a required copy to the Director of Engineering.

Any captions and headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement nor the intent of any provision hereof. This Agreement shall be construed and interpreted according to the laws of the State of Florida. Whenever used herein, the singular number includes the plural, the plural includes the singular, and the use of any gender includes all genders. This Agreement shall not be construed more strongly against of for either party and the rule of construction against the drafter shall not be followed or applicable to this Agreement. Any provision of this Agreement that is legally unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof. All exhibits referred to within and attached to this Agreement are by this reference incorporated within this Agreement and are considered a part of this Agreement. This Agreement is not a third party beneficiary contract and shall not in any respect whatsoever create any rights on behalf of any third parties. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

The parties agree that from time to time and following a request therefor by a party, each shall promptly execute and deliver to the other parties such further documents and Instruments reasonably necessary to confirm and/or effectuate the obligations of each party hereunder and the consummation of the transactions contemplated hereby.

Time is of the essence in connection with this Agreement and each provision hereof. Unless this Agreement expressly or necessarily requires otherwise, any time period measured in "days" means consecutive calendar days, except that the expiration of any time period measured in days that expires on a Saturday, Sunday or legal holiday automatically will be extended to the next day so that it is not a Saturday, Sunday or legal holiday.

EACH PARTY HEREBY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY EACH PARTY AND EACH PARTY EXPRESSLY ACKNOWLEDGES THAT NEITHER THE OTHER PARTY NOR ANY PERSON ACTING ON BEHALF OF THE OTHER PARTY HAS MADE ANY REPRESENTATIONS OF FACT TO INCLUDE THIS WAIVER OF TRIAL BY

Initials KEYS: JK Customer: KMB

JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. EACH PARTY ACKNOWLEDGES TO THE OTHER THAT IT HAS READ AND UNDERSTANDS THE MEANING AND EFFECT OF THIS WAIVER PROVISION.

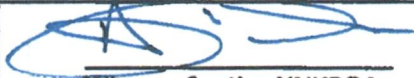


NNKPOA REPRESENTS AND WARRANTS TO KEYS THAT IT HAS CONSULTED LEGAL COUNSEL WITH REGARD TO THIS AGREEMENT OR THAT IT HAS HAD AMPLE OPPORTUNITY TO OBTAIN LEGAL COUNSEL AND HAS ELECTED NOT TO DO SO.

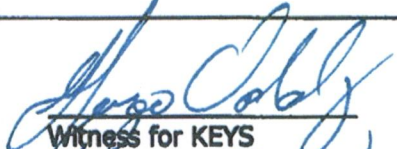


Each person signing this Agreement represents and warrants that he or she has full power and authority to enter into and execute this Agreement and that upon execution and delivery, this Agreement will be binding on and enforceable against the party for whom that persons signs.

REMAINDER OF PAGE INTENTIONALLY BLANK
SIGNATURES APPEAR ON FOLLOWING PAGE

Initials KEYS: ff Customer: LMB

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate the day and year first above written.

 Witness for the NNKPOA	No Name Key Property Owners Association, Inc.
 Witness for the NNKPOA	 Kathryn M. Brown, As president

 Witness for KEYS	UTILITY BOARD CITY OF KEY WEST "Keys Energy Services"
 Witness for KEYS	 Lou Hernandez, Utility Board Chairman
Account # _____	
ER# _____	
WO# _____	

Initials KEYS: K Customer:



No Name Key Property Owner's Association

**No Name Key
Property
Owner's
Association
Officers**

**Kathryn Brown,
President**

**James Newton,
Vice-President**

**John Lentini,
Treasurer**

**Ruth Baken,
Secretary**

**State of Florida
Articles of
Incorporation
#N08000007867**

Lynne,

NNKPOA, Inc. is ready to execute the KEYS Energy LE Contract and go before the KEYS Utility Board on January 12th. We will have the final LE Contract signed and to you by or before January 4th, 2011.

Thank you,
Kathy Brown, President
NNKPOA, Inc.

Mission Statement:

The No Name Key Property Owners Association supports basic infrastructure improvements including a central sewer connection and its electrical power needs for residents of No Name Key in Monroe County, Florida. The Association does not advocate development of the island and has, as its principal goal, the long term, multi generational, and protection of the islands unique character that is achieved by its limited density and abundance of nature. The Association is a strong advocate of a central sewer system to protect our inshore and near-shore waters from pollution. The Association, while an advocate of grid-tie solar net metering and the environmental benefits it offers the world, feels that no one should be forced nor denied civilization's most basic infrastructure improvements such as central sewage treatment and disposal, or commercial electrical power.

2011 NOT-FOR-PROFIT CORPORATION ANNUAL REPORT

DOCUMENT# N08000007867

**FILED
Mar 10, 2011
Secretary of State**

Entity Name: NO NAME KEY PROPERTY OWNERS ASSOCIATION, INC.

Current Principal Place of Business:

New Principal Place of Business:

**32731 TORTUGA LANE
NO NAME KEY, BIG PINE KEY, FL 33043 US**

Current Mailing Address:

New Mailing Address:

**32731 TORTUGA LANE
NO NAME KEY, BIG PINE KEY, FL 33043 US**

FBI Number: 28-8222027

FBI Number Applied For ()

FBI Number Not Applicable ()

Certificate of Status Desired (0)

Name and Address of Current Registered Agent:

Name and Address of New Registered Agent:

**BROWN, KATHRYN M
32731 TORTUGA LANE
NO NAME KEY, BIG PINE KEY, FL 33043 US**

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE:

Electronic Signature of Registered Agent

Date

OFFICERS AND DIRECTORS:

**Title: PRES
Name: BROWN, KATHRYN M
Address: 32731 TORTUGA LANE
City-St-Zip: NO NAME KEY, BIG PINE KEY, FL 33043 US**

**Title: VP
Name: NEWTON, JAMES B
Address: 2047 SANDA SICHLES RD.
City-St-Zip: NO NAME KEY, BIG PINE KEY, FL 33043 US**

**Title: SEC
Name: BAKER, RUTH
Address: 32844 BIRNIE LANE
City-St-Zip: NO NAME KEY, BIG PINE KEY, FL 33043 US**

**Title: TREA
Name: LENTINI, JOHN
Address: 32888 BIRNIE LANE
City-St-Zip: NO NAME KEY, BIG PINE KEY, FL 33043 US**

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 817, Florida Statutes; and that my name appears above, or on an attachment with all other files empowered.

SIGNATURE: KATHRYN MINTON BROWN

PRES

03/10/2011

Electronic Signature of Signing Officer or Director

Date

Exhibit "A"

Exhibit "B"

**No Name Key Cost & Billing Summary
at 1/6/2011**

Costs of Completed Work

Keys Incurred Expenses through 8/14/10	\$	29,398.42	¹
Survey Work (J. Lynn O'Flynn, Inc.)		21,574.80	¹
Bridge Design (CCI Systems)		19,957.86	¹
Completed portion of 2-Pole Pilot Program		4,193.39	¹
Legal Fees (Carbon Fields)		4,234.25	¹
Completed Work to Date:		\$ 79,358.72	

Costs for Estimated Future Work

Expected Future Admin Expenses (included in 8/31/10 billing)	\$	6,529.75	¹
Estimated Remaining 2-Pole Line Extension Pilot Program Costs		4,736.66	¹
Remaining Line Extension Estimate		505,177.42	²
Unbilled Escrow (for FEMA and CBRA)		50,000.00	
Unbilled Training (future training needs for FWS)		2,950.00	
Estimated Cost of Future Work:		\$ 569,393.83	

Total Estimated Cost of Project: \$ 648,752.55

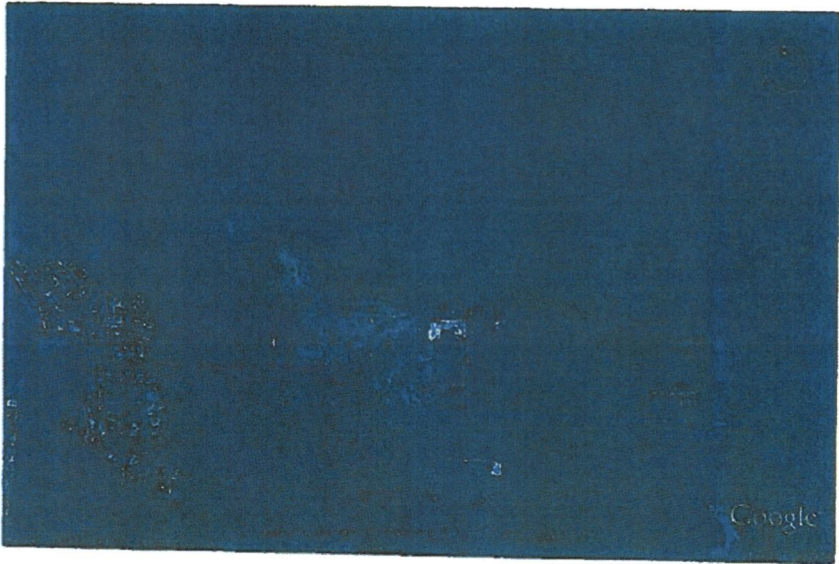
Payments Received as of 11/8/10

Payment Description	Pmt Date	Check#	Amount
2% Estimated Construction	12/4/2009	1003	\$ 13,800.00
Survey Estimate	4/2/2010	1026	12,592.00
Bridge Design Estimate	4/7/2010	1027	19,958.00
True-up of Actual Costs	10/28/2010	1032	35,345.08
2-pole Extension Pilot Program	10/28/2010	1033	8,876.05
Pole Costs & Restocking Fees	12/15/2010	1034	98,924.42
Total Payments to Date:			\$ 189,495.55

Total Due From Customer: \$ 459,257.00

¹ - These Charges Have Been Paid and are Included in the "Payments Received"

² - This estimate includes a 10% contingency. (See attached for detail)



NOTES:

UNDERGROUND DESIGN SUMMARY:
2,200' OF CONDUIT ATTACHED TO BRIDGE
300' OF CONDUIT ON EACH SIDE OF BRIDGE (700' TOTAL).
TWO PANDLES AND UG CABLE.

OVERHEAD DESIGN SUMMARY:
62 POLES
14,200' OF SINGLE PHASE PRIMARY

	INCORPORATED 1910000 00
NEW YORK STATE LICENSE NO. 100 100 100	
REGISTERED PROFESSIONAL ENGINEER	
LICENSE NO. 100 100 100	
EXPIRES 12/31/2000	
10-700	100 100 100
D-000	100 100 100

Exhibit "C"

Exhibit "D"

STANDARD ELECTRIC EXTENSION AGREEMENT
LINE EXTENSION # 754

AGREEMENT, made this 19TH DAY OF OCTOBER 2010, by and between NO NAME KEY, PROPERTY OWNERS ASSOCIATION INC. hereinafter called "Customer," and the UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA, DBA Keys Energy Services, a municipal owned utility, organized and existing under the laws of the State of Florida, hereinafter called "KEYS."

WHEREAS, the Customer has applied to the KEYS for electric service of the character commonly known as single-phase, on county right-of-way on Old State Road, on NO NAME KEY, FLORIDA.

WHEREAS, said location requires an extension of KEYS' present distribution system of approximately 2 poles; and

WHEREAS, KEYS would not be justified in making said extension prior to the receipt of payment in full for the line extension cost at the rate of \$4,438.02 per pole.

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

ARTICLE I. At the time of acceptance of this agreement by the Customer, the said Customer shall advance to KEYS EIGHT THOUSAND, EIGHT HUNDRED AND SEVENTY-SIX DOLLARS AND 05/100 (\$8,876.05) representing a not to exceed total construction cost of the requested line extension.

ARTICLE II. KEYS shall impose and collect a line extension charge from any customer subsequently requesting service that is included in the contract and line extension drawing. The line extension charge shall be applied proportionally to the property based on the total service ability of this line extension. The attached line extension drawing #D-4176 is to be made a part of this contract.

ARTICLE III. KEYS shall reimburse the Customer entering and paying the cost of the line extension covered by this contract, 85% of the line extension charge imposed on any customer subsequently receiving service that is included in the line extension contract and drawing. However, the total refunds allowed under this Article shall not exceed the amount paid by the Customer, to KEYS, and provided further that no refunds will be made to the Customer who is in default in the payment of any bills for service furnished to the Customer, by KEYS. If there are no reimbursements indicated on the line extension drawing, Article III will not apply.

Article IV. This line extension agreement shall terminate ten years from the date the extension was completed. *Excluding services involving underground or over-water construction*

TITLE AND OWNERSHIP

ARTICLE V. Title to, and complete ownership and control over said 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.

EASEMENTS AND RIGHTS

ARTICLE VI. The Customer will grant, or cause to be granted to KEYS, and without cost to KEYS, all rights, permits and privileges necessary for the rendering of service hereunder.

Initials: _____ Initials: _____

TRIMMING TREES

ARTICLE VII. It is expressly understood and agreed that the amount paid by the Customer, to KEYS, for the cost of the lines to be built hereunder does not include any cost of trimming or removing trees or other obstructions from the right-of-way, and to trim all trees adjacent thereto in order that the lines to be built under may be safely and properly constructed. KEYS shall not be required to begin construction of the lines until such clearing and trimming is completed to the satisfaction of KEYS.

PROCEEDING WITH WORK

ARTICLE VIII. KEYS, upon its approval of this agreement, will proceed with the extension outlined herein and as covered by sketch and specifications hereto attached and made a part hereof.

GENERAL TERMS

ARTICLE IX. NNKPOA shall be responsible for all costs incurred in the event the Contract is cancelled or the project is stopped. NNKPOA will be responsible for any material purchased for the project. If material can be used for another project (at KEYS sole determination), KEYS will charge a 20% material restocking fee. If bridge conduit system is in place, and contract stopped prior to project completion, NNKPOA is responsible for all costs incurred by KEYS "subcontractor" including costs of deconstruction, removal, mitigation, disposal and any repairs to return to return the rights-of-way to their preconstruction condition.

ARTICLE X. This agreement supersedes all previous agreements, or representatives, either written or verbal, between the KEYS and the Customer, made with respect to the matters herein contained, and when duly executed constitutes the agreement between the parties hereto.

This agreement shall inure to the benefit of and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate the day and year first above written.

_____	_____
Witness for the Customer	Customer's signature
_____	_____
Witness for the Customer	Corporation name (if applicable)

	Title

_____	By: _____
Witness for KEYS	Title: _____

Witness for KEYS	
Account # _____	UTILITY BOARD - CITY OF KEY WEST
ER# 2770-11	"Keys Energy Services"

Exhibit "F"

Stock Island Tree Snail and Garber's Spurge Impact Avoidance Procedures

Keys Energy Services Power Line Installation and Maintenance

No Name Key, Monroe County



Prepared for:

**No Name Key Property Owners Association
32731 Tortuga Lane
No Name Key, Florida 33043**

Prepared by:

**Terramar Environmental Services, Inc.
1241 Crane Boulevard
Sugarloaf Key, Florida 33042
(305) 393-4200 FAX (305) 745-1192
terramar@bellinsoth.net**

August 9, 2010

Introduction

The Stock Island Tree snail (*Orthalicus retes retes*) is a Federally listed Endangered mollusk that occurs throughout the Florida Keys. A population of this snail was introduced onto No Name Key in 1996 from Key Largo, and that population may persist in areas of hardwood hammock. Garber's spurge (*Chamaesyce garberi*) is a small plant also Federally-listed as Endangered that occurs throughout South Florida, and occurs in pine rocklands, hardwood hammocks and also on disturbed roadsides. It is known to occur on No Name Key where it occurs on the limestone road shoulders.

Keys Energy Services (KEYS) is installing electrical power to No Name Key using concrete power poles and overhead electric lines. The proposed project consists of extending existing electrical service from Big Pine Key to No Name Key, where no electrical service currently exists. The project will employ a total of 61 utility poles located within existing right of way (ROW) owned by Monroe County or on private property. Power poles will be placed in the ROW within six feet of the edge of existing roadway pavement using an auger truck and lift. Trimming of tree branches will be required for the initial installation of the system and ongoing trimming will be required to maintain the system in perpetuity.

KEYS will implement measures specifically designed to avoid impacts to the Stock Island tree snail and Garber's spurge during the initial installation of the system as well as during the long-term maintenance phase of the project.

Stock Island Tree Snail Relocation Procedures

The Stock Island Tree snail may occur on lateral branches and tree trunks that may require trimming during initial installation of the system as well as during ongoing maintenance. The following procedures will be implemented by KEYS during all tree trimming activities throughout the life of the project. These procedures follow the procedures established by Deborah A. Shaw, Ph.D., Environmental Affairs Manager for the Florida Keys Electric Cooperative and are based on many years of experience relocating tree snails associated with the power distribution system on Key Largo.

General Requirements

All staff conducting tree trimming activities will be provided a copy of this protocol and be instructed on tree trimming procedures on No Name Key by a qualified biologist. A qualified biologist is someone with the appropriate combination of education and training that makes them competent to direct trimming in a manner that avoids adverse impacts to tree snails. A qualified biologist will have direct experience in the handling and relocation of tree snails in South Florida. All tree snails associated with the project will be relocated including members of the genus *Orthalicus* and *Liguus*.

All limbs will be cut using hand-held trimming equipment such as a chain saw, power pruner or hand-operated loppers. No trimming using mechanized equipment is authorized.

Equipment Needed

High-quality loppers, cooler with sealed lid; clean spray bottle (plant mister type); source of fresh, clean water; paper towels; plant clippers, bucket to carry snails.

Relocation Procedures

Tree branches will be trimmed and placed on the ground for inspection by a qualified biologist. Each branch will be carefully inspected for tree snails, and any snails identified will be relocated. No tree branches will be removed off-site or chipped until approved by the qualified biologist. The qualified biologist will work directly with KEYS during trimming operations to ensure any tree snails are relocated properly.

Tree snails identified during tree trimming operations will be in one of three conditions:

- 1) sealed on a branch, aestivating during dry and/or cold weather;
- 2) aestivating but detached from branch with protective seal broken;
- 3) active and moving about, normally in warm, wet weather;

Procedures for the three scenarios are discussed below.

Snails sealed on a branch or tree trunk:

As long as the protective seal is intact, the snail can be left on the branch for relocation. Clip the branch with the snail attached. Trim extra twigs and leaves off of the branch leaving a forked branch to use as a hanger. Removing the extra branches and twigs minimizes the wrong turns that the snail can make when it awakens and leaves its twig to climb onto the new host tree and it makes it easier to handle the cut branch.

The trimmed branch with snail still attached is then placed in an appropriate host tree and secured with bio-degradable cotton string as needed. If the snail is sealed onto a branch that is too large to handle and relocate, the snail will have to be removed from the tree bark. This can be done safely by spraying the snail with clean fresh water which will soften the adhesive seal. After the seal softens, gently peel the snail off the tree bark. This should be done by an experienced tree snail handler. The adhesive membrane (seal) will be broken in this process so the snail will then have to be awakened to be relocated. See procedures for detached snails below.

Tree snails detached from branch or with broken protective seals:

Aestivating tree snails with broken protective seals will die of desiccation unless they are awakened by being held in a warm, moist box for a period of time (usually a few hours). To awaken aestivating snails, place them in a tree snail holding pen (cooler). On the bottom of the cooler lay two layers of clean paper towels saturated with clean fresh water. Fill the cooler with cut fresh Pigeon plum, *Coccoloba diversifolia*.

branches with leaves attached. Pigeon plum is a favorite host tree for tree snails and the leaves stay fresh in the cooler for a long time. Spray the branches with water to keep the air in the cooler saturated. Spray the protective membrane of each snail with clean fresh water. As it softens, peel it off to hasten the snail's awakening. Keep the drain plug open and keep the cooler lid open slightly to allow good air flow, but do not allow snails to escape the cooler once they awaken. Once they are active, they can be placed in a new host tree using the same technique described in the next section on active snails. Between uses, the cooler should be thoroughly cleaned and dried as it will become contaminated with snail excrement and mucus.

Active snails:

If the weather is warm and humid, active tree snails can be easily relocated by simply spraying the bark of the new host tree with clean fresh water. Place the snail on the wet bark and support it until it gets a firm grip. The snail will climb up the tree and relocation is complete. If conditions are warm but dry, the snail can still be released as it will simply reseat itself on the new tree as soon as it perceives the dry conditions.

Garber's Spurge Avoidance Procedures

Based on pre-construction surveys conducted at surveyed pole locations, Garber's spurge is either not present or extremely rare at proposed pole locations. Regardless, specific procedures will be implemented during the installation of the 62 power poles that are designed to avoid impacting any individual plants. These procedures include the following:

All staff conducting pole installation activities will be provided a copy of this protocol and be instructed on pole installation procedures by a qualified biologist. A qualified biologist is someone with the appropriate combination of education and training that makes them competent to direct pole installation in a manner that avoids adverse impacts to Garber's spurge. A qualified biologist will have direct experience in the identification of Garber's spurge and relevant construction management experience.

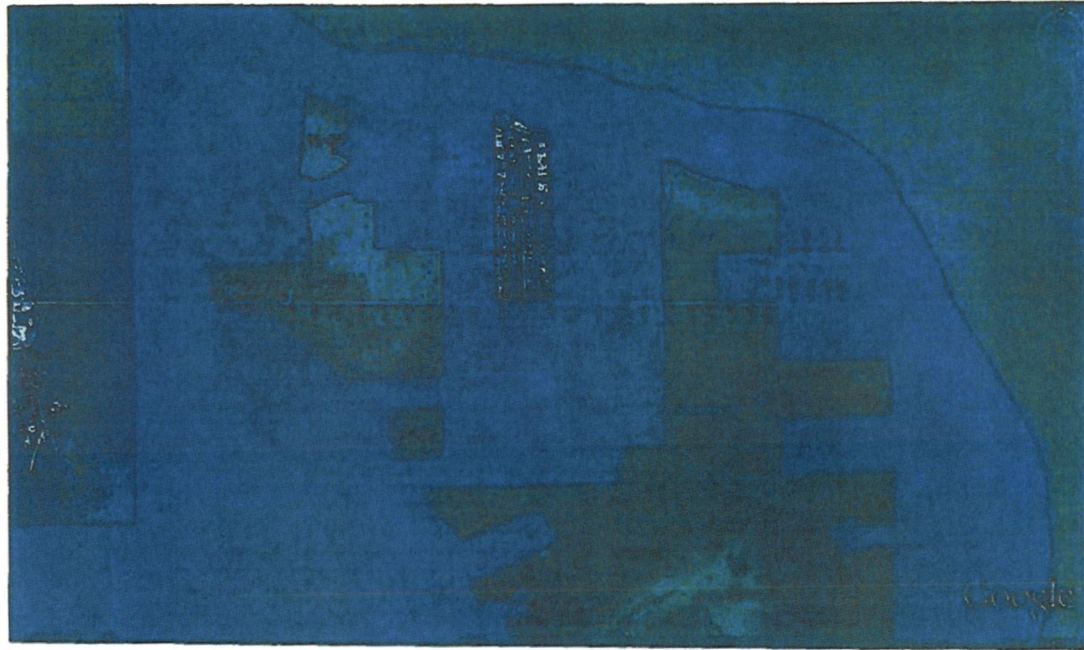
At each pole location, the work area will be delineated using staked silt fencing. This silt fencing will be installed around the pole location to clearly identify the work area; no soil disturbance will occur outside the work area. Work areas will be approximately 10' x 10' and will encompass the proposed pole location with adequate room for installation and containment of spoils.

Once the work area has been staked, a qualified biologist will inspect each work area for the presence of Garber's spurge. If no plants are identified, work may proceed at that location. If a Garber's spurge is found within the work area, the pole location will be relocated by KEYS engineering staff to a suitable adjacent location that will not result in impacts to Garber's spurge. Once the new location has been identified, a new work area will be established at this site. Any spurge identified outside a work area will be marked using traffic cones and protected from impacts during the installation process.

All spoils from the auger process will be contained within the work area and be removed off-site for appropriate disposal. Following pole installation, the work area will be raked smooth to restore the original topography and the silt fence removed for disposal.

Staging of supplies will not occur on the roadsides on No Name Key. Staging of project materials will occur off-site at a KEYS facility and supplies will be transported to the island as-needed. KEYS will maintain control over contractors during pole installation to ensure that the roadsides on No Name Key are not adversely impacted by the proposed project.


Exhibit "G"



FEMA ELIGIBILITY

COLOR DESCRIPTION	FEMA ELIGIBILITY	QUANTITY OF PLOTS
Red	NO FLOOD	24
Green	YES	25
Yellow	YES	27

• 25% of plots of 10.00 - 4.0
 • 10% of plots of 10.00 - 4.0
 • 10% of plots of 10.00 - 4.0
 • 10% of plots of 10.00 - 4.0


 FLORIDA DEPARTMENT OF TRANSPORTATION
 4875 BOYD BLVD.
 TALLAHASSEE, FLORIDA 32310-3042
 PHONE: 904.487.3000
 FAX: 904.487.3001
 WWW: www.floridadot.com

10-2716

Exhibit "H"

Prepared by and
Return to:
KEYS ENERGY SERVICES
Director of Engineering
1001 James Street
Key West, FL 33040

**NOTICE AND AGREEMENT
REGARDING PROVISION OF ELECTRIC SERVICE TO NO NAME KEY**

THIS NOTICE AND AGREEMENT, is made as of this _____ day of _____, 2010, by the following persons or entities who are all persons or entities having any ownership interest in the real property described below (the "Property") and all persons who are married to any person having an ownership interest in the Property, to and for the benefit of the UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA, D/B/A Keys Energy Services ("Keys Energy") with an address of 1001 James Street, Key West, Florida 33040 (Attention: Director of Engineering):

(List of Owners and Spouses)

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

The persons or entities described above may be referred to collectively in this Notice and Agreement as the "Owners" or individually as an "Owner." Wherever used herein the term Owner or Owners includes the heirs, legal representatives and assigns of individuals, and the successors and assigns of any entities.

The Owners have a collective mailing address of the following:

This Notice and Agreement relates to and encumbers the real property located in Monroe County, Florida described as follows:

Property Mailing Address as recognized by the U.S. Post Office:

Monroe County Parcel Appraiser Identification Number for the Property:

Legal Description of the Property as appearing in the Monroe County Property Appraiser's records or complete legal description:

BACKGROUND

At this time Keys Energy has not extended electric service to the Property. The Owners wish to have Keys Energy provide electric service to the Property, but Keys Energy is willing to extend electric service to the Property only on (i) the conditions and agreements set forth in this Notice and Agreement and (ii) the conditions and agreement as set forth in the STANDARD ELECTRIC EXTENSION AGREEMENT LINE EXTENSION # 732 (referred to herein as the "Extension Agreement") attached hereto and made a part hereof for all purposes and (iii) subject to any and all rules, policies, conditions, limitations and procedures as may exist or be established by Keys Energy from time to time.

The Owners have read the Extension Agreement and are in agreement with its terms and conditions. The Owners understand, acknowledge and agree that Keys Energy has no obligation to provide electric service to the Property if the No Name Key Property Owners Association, Inc. fails to comply with any of the requirements of the Extension Agreement at any time.

The Owners further understand, acknowledge and agree that the Extension Agreement or this Notice and Agreement gives them no greater rights than other customers of Keys Energy and that provision of electric service by Keys Energy is subject to all the rules, policies, conditions, limitations and procedures as now exist or as may be established by Keys Energy at any time in the future.

NOW THEREFORE for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Owners agree to the following with and for the benefit of Keys Energy:

1. The Owners represent and warrant to Keys Energy that all the statements set forth in the Background section above are true and correct, and all such statements are incorporated herein.
2. The undersigned Owners acknowledge and join in the Extension Agreement as it relates to the Property.
3. The Owners acknowledge that Keys Energy may require easements on or across the Property and on or across other areas as a requirement prior to provision of electric service to the Property. The Owners acknowledge and agree that the owners will cooperate with Keys Energy with regard to the grant of any easements requested by Keys Energy on or across the Property.
4. The Owners acknowledge and agree that any default or failure of the No Name Key Property Owners Association, Inc. to abide by any and all conditions or requirements of the Extension Agreement, including without limitation, the replenishing of escrow funds, may result in the permanent or temporary termination or cessation of electric power service by Keys Energy to the Property.
5. It is the intention of Owners that the agreements contained in this Notice and Agreement shall touch and concern the Property, run with the land and with the title to the Property, and shall apply to and be binding upon and inure to the benefit of the successors and assigns of Owners, and to Keys Energy, its successors and assigns, and to any and all parties hereafter having any right, title or interest in the Property or any part thereof. Keys Energy, its successors and assigns may enforce the terms and conditions of this Notice and Agreement by injunctive relief and other appropriate available legal remedies. Any forbearance on behalf of Keys Energy to exercise its right in the event of the failure of the Owners, their successors and assigns to comply with the provisions of this Notice and Agreement or the Extension Agreement shall not be deemed or construed to be a waiver of Keys Energy's rights. This Notice and Agreement shall continue in perpetuity, unless otherwise modified in writing by Owners, or their successors, and Keys Energy, its successors and assigns.

6. If any provision of this Notice and Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions thereof. All such other provisions shall continue unimpaired in full force and effect.

7. Owners covenant with Keys Energy and represent and warrant that, on the date of execution of this Notice and Agreement, Owners are seized of the Property in fee simple and have good right to create, establish, and impose this covenant on the Property. In the event Keys Energy determines this Notice and Agreement has not been validly executed by all persons or entities who have an ownership interest in the Property and by all persons who are married to persons having an ownership interest in the Property, Keys Energy may discontinue electric service to the Property at any time. Owners also covenant and warrant that the Property is free and clear of any and all liens, mortgages, or encumbrances that could impair Owners' rights to impose the covenant described in this Notice and Agreement.

8. This Notice and Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. This Notice and Agreement shall be construed, governed, interpreted and enforced in accordance with the laws of the State of Florida.

REMAINDER OF PAGE BLANK
SIGNATURE(S) APPEAR ON FOLLOWING PAGE(S)

IN WITNESS WHEREOF the undersigned Owners have executed this Notice and Agreement as of the date set forth above.

Signed in the presence of two (2) witnesses for each Owner.
(select the form of execution applicable to the type of ownership)

(execution by two natural persons as Owner such as Husband and Wife or Co-owners)
WITNESSES as to Both Signatures: OWNERS:

Signature

Print name

Signature

Print name

Signature

Print name

Signature

Print name

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____ and _____. Each are personally known to me, or have produced his/her _____ driver's license, or his/her _____ respectively as identification.

(AFFIX NOTARIAL SEAL)

(Signature)

(Printed Name) NOTARY PUBLIC

(Commission Expiration Date)

IN WITNESS WHEREOF the undersigned owners have executed this Notice and Agreement as of the date set forth above.

Signed in the presence of two (2) witnesses for each Owner.
(select the form of execution applicable to the type of ownership)

(execution by one natural person as Owner, also use this if co-owners are executing separately)

WITNESSES:

OWNER:

Signature

Signature

Print name

Print name

Signature

Print name

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____ 20 ____ by _____ . He or she is personally known to me, or have produced his/her driver's license, or his/her _____ as identification.

(AFFIX NOTARIAL SEAL)

(Signature)

(Printed Name) NOTARY PUBLIC

(Commission Expiration Date)

IN WITNESS WHEREOF the undersigned owners have executed this Notice and Agreement as of the date set forth above.

Signed in the presence of two (2) witnesses for each Owner.
(select the form of execution applicable to the type of ownership)

(execution by one natural person as Owner, also use this if co-owners are executing separately)

WITNESSES:

OWNER:

Signature

Signature

Print name

Print name

Signature

Print name

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 20____, by _____ He or she is personally known to me, or have produced his/her _____ driver's license, or his/her _____ as identification.

(AFFIX NOTARIAL SEAL)

(Signature)

(Printed Name) NOTARY PUBLIC

(Commission Expiration Date)

IN WITNESS WHEREOF the undersigned Owners have executed this Notice and Agreement as of the date set forth above.

Signed in the presence of two (2) witnesses for each Owner.
(select the form of execution applicable to the type of ownership)

(execution by one natural person as Owner, also use this if co-owners are executing separately)

WITNESSES:

OWNER:

Signature

Signature

Print name

Print name

Signature

Print name

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, He or she is personally known to me, or have produced his/her driver's license, or his/her _____ as identification.

(AFFIX NOTARIAL SEAL)

(Signature)

(Printed Name) NOTARY PUBLIC

(Commission Expiration Date)

IN WITNESS WHEREOF the undersigned Owners have executed this Notice and Agreement as of the date set forth above.

Signed in the presence of two (2) witnesses for each Owner.
(select the form of execution applicable to the type of ownership)

(executed by LLC Owner)
WITNESSES:

OWNER:

Signature

Print name

(Name of
LLC), a _____ (state of organization)
limited liability company

Signature

Print name

By: _____
Print Name: _____
Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, in his/her capacity as _____ of _____ LLC, on behalf of the company. He/She is personally known to me, or has produced his/her _____ driver's license, or his/her _____ as identification.

(AFFIX NOTARIAL SEAL)

(Signature)

(Printed Name) NOTARY PUBLIC

(Commission Expiration Date)

IN WITNESS WHEREOF the undersigned Owners have executed this Notice and Agreement as of the date set forth above.

Signed in the presence of two (2) witnesses for each Owner.
(select the form of execution applicable to the type of ownership)

(Execution by Corporate Owner)
WITNESSES:

OWNER:

Signature

Print name

(Name of
corporation), a _____ (state of
organization) corporation

Signature

Print name

By: _____
Print Name: _____
Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, in his/her capacity as _____ of _____, Inc., on behalf of the corporation. He/She is personally known to me, or has produced his/her _____ driver's license, or his/her _____ as identification.

(AFFIX NOTARIAL SEAL)

(Signature)

(Printed Name) NOTARY PUBLIC

(Commission Expiration Date)

IN WITNESS WHEREOF the undersigned Owners have executed this Notice and Agreement as of the date set forth above.

Signed in the presence of two (2) witnesses for each Owner.
(select the form of execution applicable to the type of ownership)

(execution by other types of entities)
WITNESSES:

OWNER:

Signature

Print name

(Name of
entity), a _____ (state of organization)

Signature

Print name

By: _____
Print Name: _____
Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, in his/her capacity as _____ of _____, on behalf of the entity. He/she is personally known to me, or has produced his/her _____ driver's license, or his/her _____ as identification.

(AFFIX NOTARIAL SEAL)

(Signature)

(Print Name) NOTARY PUBLIC

(Commission Expiration Date)

Exhibit "I"

This page is intentionally left blank as a page holder for the following future addition:

Pursuant to Article VIII, the No Name Key Property Owners Association (NNKPOA) will provide Keys Energy Services with a list of NNKPOA members who are in compliance with their financial obligation to the NNKPOA in paying their full prorated financial share. This list of names will become Exhibit "I".

Exhibit "J"

This page is intentionally left blank as a page holder for the following future addition:

Pursuant to Article VII, Keys Energy Services will insert a legal description of the existing 43 homes and lots. This list will become Exhibit "J".

**MINUTES FROM A REGULAR MEETING OF THE UTILITY BOARD
OF THE CITY OF KEY WEST, FLORIDA, HELD AT 5:00 P.M. ON
MARCH 7, 2012 AT THE WILLIAM ARNOLD SERVICE BUILDING
LOCATED AT 1001 JAMES STREET, KEY WEST, FLORIDA**

The above referenced meeting of the Utility Board of the City of Key West, Florida, convened at 5:00 P.M., on the above date and location and was called to order by Chairman Hernandez. Present and answering to the roll call were Utility Board members: Peter Batty, Charles Bradford; Barry Barroso; and Mona Clark. Also present at the meeting: Lynne Tejada, General Manager & CEO; Jack Wetzler, Assistant General Manager & CFO; Nathan Eden, Board Attorney; David Price, Transmission/Distribution Director; Dale Finigan, Engineering/Control Center Director; Alex Tejada, Customer Services Director; Suzanne Greager, Management Services Director; Eddie Garcia, Generation Director and Stan Rzad, Compliance Administrator.

Before the meeting started, Chairman Hernandez addressed the room to discuss the room's limitations. He mentioned that the fire inspector had recently inspected KEYS Board Room and that the maximum capacity was 50 and that whoever was not in a designated chair would be asked to leave for safety reasons. He mentioned that the doors would be left opened so when a speakers name was called they would be aware of it.

AGENDA ITEM #4 – SET AGENDA

There were no changes to the agenda and the agenda was set.

AGENDA ITEM #5 – INFORMATIONAL ITEMS

Agenda Item #5a – Power Supply Report

Mrs. Tejada informed the Board that the Power Supply Report is included in the Board meeting packet and staff is prepared to answer any questions they may have.

Agenda Item #5b – Financial & Operational Indicators - January

Mrs. Tejada informed the Board that the Financial & Operational Report for January is included in the Board meeting packet and staff is prepared to answer any questions they may have.

Mrs. Tejada wanted to give an update on two other items, the first was about the City Commission Meeting. The Resolution Supporting Keys Energy Services Relocating Inaccessible Electrical Facilities went before the City Commission last night, and there was considerable discussion with commissioners raising concerns regarding the cost to the homeowner. Commissioners addressed two concerns:

- 1) Residents can't afford any additional costs and
- 2) KEYS underestimated the electrician costs.

Reynolds v. Utility Board
Florida P.S.C. Docket No. 120054-EM

EXHIBIT C

Mrs. Tejada explained the opt-out option exists; which would be no cost to the customer, but there was more concern expressed for the residents taking on the unknown costs associated with pole ownership.

Mrs. Tejada said there were some other concerns about the poor timing of the project due to the economy being bad and this is not a good time to add costs to the residents; aesthetics, the polls in the front of the street and houses are ugly and create conflict with trees, sidewalks, driveways and ADA compliant. The commissioners are very sensitive to the aesthetics issue due to the recent Virginia Street sidewalk project. There was also discussion that KEYS can and should go underground as this would help in the future with hurricanes and storm damage.

Mr. Bradford asked if the City had at any time acknowledge that most of the issues are because they permitted homeowners to build in the easement area and now KEYS has to resolve the matter. Mrs. Tejada said they did not.

Mrs. Tejada said the City brought up other issues, such as, waiving the permit fees because there is a cost to the City to send an electrical inspector to make inspections; therefore, KEYS who is requiring the homeowner to do the work should incur the cost; they were curious about the PSC order and if KEYS is mandated to perform the work or can KEYS decide not to go forward with the project or can it be delayed indefinitely; and finally, KEYS needs a commitment from AT&T and Comcast to move and transfer the lines.

Mrs. Tejada also said that she wasn't sure if these were concerns from all 7 Commissioners or individual commissioners.

Mrs. Tejada mentioned that after the discussion the Commission decided to postpone action until April 3, 2012. In postponing action, they asked KEYS to do the following:

- 1) Speak with electricians to get more details on the cost of electrical work for individual homes
- 2) Inquire with the PSC whether this must be done now or if it could be postponed or eliminated altogether
- 3) Open a dialogue with Comcast and AT&T to get a commitment for them to move the lines as well

Mrs. Tejada said that KEYS has a series of decisions to be made; how do we prepare for the next Commission meeting and then how to proceed if the Commission does not approve the Resolution of Support.

Mrs. Tejada asked the Board in preparation for the next City Commission meeting should staff proceed using its discretion; or would the Board want to appoint one or two members to work on a committee or have a workshop to discuss and determine how to proceed; this last option is difficult because of the short time between now and the City

Commission Meeting of April 3rd. Mr. Batty said he felt Staff is well capable to handle the task.

Mr. Barroso asked about the electricians costs. Mr. Finigan said he did get 2 estimates from very reputable electricians and the only way to get actual costs is to ask for sealed quotes from the electricians. Mr. Barroso said he thought the City had to be the driving force behind Comcast and ATT to move the lines. Mr. Barroso asked Nathan Eden what he thought; Mr. Eden said he felt it was a 2-pronged approach and we both needed to work together in order to get them to move their lines.

Mr. Batty asked that representatives from Comcast and ATT be available and attend the next City Commission Meeting.

Mr. Bradford asked who is responsible and who owns the easements that are in question. Mr. Eden said on paper they are dedicated to the City. Mr. Eden also said the easements were initially set up for the utilities.

There was a bit more discussion on the Inaccessible Electrical Facilities and it was determined that staff will prepare at their discretion how KEYS will prepare for the next City Commission meeting and move forward seeking support with the resolution and come back to the board and let the members know if it passes or not. IF it passes, KEYS will move forward with construction; if not, KEYS will move on to Plan B and discuss at a future Board meeting or Board workshop.

Mr. Batty asked Mrs. Tejada if City Staff supported the resolution and she said yes.

Mr. Barroso asked if there would be another Utility Board meeting before the next City Commission Meeting; Mrs. Tejada said yes there would be one in 3 weeks. Mr. Barroso suggested that our Liaison with the City, Mr. Tony Yaniz be asked to attend the next Utility Board Meeting. Mr. Batty said that Mr. Yaniz is doing a yeoman job and doing all he can on this issue and getting staff on board. Mr. Batty also mentioned to the Board members that he, Mr. Finigan and Mrs. Tejada did meet with the entire City Commission individually for anywhere between 45 minutes and 1 hour and somewhere in support and some reserved their opinion.

Mrs. Tejada also wanted to update the Board on the Solar Project, Mrs. Tejada had good news to report, the array on the Stock Island Warehouse was energized this week and is working great and yesterday, the output peaked at 35 kW.

AGENDA ITEM #6 – CONSENT AGENDA

- a) Approve Minutes - Regular Utility Board Meeting – February 22, 2012
- b) Approve Disbursements Report
- c) Approve Purchase Order to Altec Industries, Inc. for Repair of Bucket Truck #18
- d) Approve "Memorandum of Understanding" with the International Brotherhood of Electrical Workers, Local 1990

Motion was made by Mr. Batty and seconded by Ms. Clark to Approve the Consent Agenda. The motion passed unanimously.

AGENDA ITEM #7 – ACTION ITEMS

Agenda Item #7a – Approve Electric Extension Agreement (Line Extension #746) with No Name Key Property Owners Association, Inc.

Mrs. Tejada informed the Board that the next item on the agenda is to approve the line extension agreement number 746 with the No Name Key Property Owners Association. Mrs. Tejada gave a little background on this issue; she explained that at the Utility Board meeting of February 8th staff updated the Utility Board on recent activity regarding with the legal proceedings associated with No Name Key. During that discussion, the Utility Board requested that No Name Key be placed back on a future agenda as an action item. She explained to the Board that what they had in the board packet was the same Agenda Item Summary (AIS) and the same Line Extension Agreement that was previously presented to the Utility Board in January 2011 and March 2011 and that was postponed. The AIS has been updated with recent activity over the last few months but the Agreement itself is the same with the exception of the date which has been corrected to today; the Line Extension 746 is an Agreement between KEYS and No Name Key Property Owners Association to bring power to homes on No Name Key. The agreement has numerous provisions that the board is familiar with or she can go over them or turn it back to the Board.

Mr. Hernandez addressed the audience and asked to hear the pros and cons from the audience. He said that since the pro power residents requested the line extension, he would like to hear from them first. Individual will have three minutes to address the board; the next group would be against the line extension and then the last group would be associations and they would be given five minutes to address the Board.

The following individual speakers addressed the Board for approval of the Line Extension with No Name Key: John Bakke, Mary Frances Bakke, Robert G. Brown, Bob Eaken, David Eaken, Ruth Eaken, Randy Hochberg, Dan Morris, Jim Newton, Gregory Oropeza, Douglas Phillipp, Karen Phillip, Mirkos Pichel, Bart Smith, Dean Thompson, Beth Vickrey, and Brad Vickrey. Kathy Brown spoke on behalf of the No Name Key Property Owners Association, Inc.

The following individual speakers addressed the Board against the Line Extension with No Name Key: Joan Mowery Barrow, Sloan Bashinsky, RL Blazevic, Marney Brown, Tony Harlacher, John Hammerstron, Kandy Kimble, John Lohr, Sheila Mullins, Joyce Newman, and Margaret Romero. George Hollaran spoke on behalf of Last Stand and Alicia Putney spoke on behalf of The Solar Community of No Name Key.

The Executive Assistant was provided with the following information, which is entered as part of the record:

- Copy of Letter read into the record by Mary Frances Bakke dated February 6, 2012 addressed to Lynne Tejada from Andrew Tobin

- Copies of letters provided by Mr. Jim Newton
 - Letter dated June 30, 1993 addressed to Mr. Ernest Damop from KEYS
 - Letter dated February 8, 1995 addressed to Ms. Alicia Roemmele-Putney from KEYS
 - Letter dated January 18, 1996 addressed to Ms. Antonia Gerli from KEYS
 - Letter dated February 15, 1996 addressed to Mr. Dale Finigan from Monroe County

- Copy of letter dated March 3, 2012 addressed to Lynne Tejeda from Robert N. Hartsell, PA and three other documents dated March 7, 2012 provided by Ms. Alicia Putney

- Copy of letter dated March 4, 2012 provided by Mr. George Hollaran on behalf of Last Stand

Mr. Hernandez thanked all the speakers for attending and addressing the Board.

Ms. Clark made a motion to approve the line extension agreement Number 746 with the No Name Key Property Owners Association; Mr. Bradford seconded the motion and the meeting was opened to discussion.

Ms. Clark asked Mr. Eden for his feedback. Mr. Eden said the problem is how we get to where we need to be; KEYS is moving ahead and trying to provide power to all customers. He said the line extension became questionable due to what happened during the Monroe County Board of County Commissioners on December 15, 2010 when the Monroe County said KEYS was violating their ordinances. Mr. Eden said in his opinion the PSC doesn't have jurisdiction over KEYS to provide power or not.

Mr. Bradford expressed his thanks and appreciation to all the speakers for attending the meeting tonight, attending past meetings, sending in e-mails and letters from all parties weather for electricity or against it, but feels KEYS needs to take the appropriate action to approve the line extension agreement, it is required by State of Florida State Statute 366, it is allowed by the franchise agreement by the county, desired by over 70% of the homeowners, reduces carbon foot print of the island by eliminating the running of generators, allows for the resale of solar energy back to KEYS and cuts back on fossil fuels. It is the right thing to do.

Ms. Clark stated that she has read all the letters and e-mails. She explained that things do change, and commented that she has lived in Key West all her life and has seen many changes. She further stated that we as people have to accept changes and that is part of being given free will through democracy.

Mr. Bradford said he wanted to take action tonight to let everyone knows where KEYS stands.

Mr. Barroso asked Mr. Dale Finigan about the construction, Mr. Finigan said that the bids are a year old and KEYS needs to see if the vendors will hold their prices or if

KEYS will need to re-bid. Mr. Barroso asked Mr. Finigan for two dates; one if the contractors hold their prices vs. if KEYS had to re-bid. Mr. Finigan said the timing has to do with whether the job has to be rebid or if contractors agree to hold their prices. KEYS has the poles that the NNKPOA have already paid for ready in Big Pine Key for the project.

Mr. Batty asked about the easement issue with the County; Mr. Finigan said he is unsure on how long it would take to get that issue taken care of; there are 5 lots towards the end of the island that are in question that KEYS needs to get an aerial easement for. Mr. Batty was concerned that the County is not going to grant the easements and if the plan needs to be re-designed that this could delay the project.

Mr. Bradford asked Mr. Eden if the County could deny KEYS an easement. Mr. Eden said in the franchise agreement gives KEYS the right of using existing right of ways. Mr. Bradford said in Florida State Statute 704.01, that the County can't deny a Utility the easements. Mr. Eden said they can deny it.

Mr. Eden also added that he is sure that the County and/or the homeowners against power will file an additional lawsuit seeking an injunction if the line extension is approved. Mrs. Tejada informed the Board that if that happens once the line extension is signed, the costs of the litigation will shift to the NNKPOA as it is one of the provisions covered in the line extension agreement.

Mr. Barroso asked Mr. Finigan, even though we have 2 bids from contractors, could KEYS employees do the work at No Name Key; Mr. Finigan said our staff was more than capable of doing the work. Mr. Eden stated we may need to look at the line extension to see if there was wording on who was to perform the work. Mrs. Tejada stated the line extension states contractor or KEYS; and wanted to point out that KEYS staff is going to perform some of the work; the pricing came in at a very good rate and KEYS couldn't compete with that pricing.

Mr. Batty wanted to express his concern that he doesn't like being in these situations, and feels in his heart of hearts that this will not end with the Utility Board's decision tonight and tonight they are voting on a symbol. He went on a trip up the Keys and saw an area where a project was started and then was unable to be completed and he doesn't want to see poles go up and then the job is stopped. He would like to make a modification to the original motion, that if KEYS approves the Line Extension that they won't put one pole in unless all easement issues are resolved. Mr. Eden stated that Mr. Batty's modification to the motion needed to have a second motion. There was no second.

Mr. Batty wanted to address Mr. George Hollaran. He wanted to clarify with Mr. Hollaran that Mr. Hollaran stated earlier that as a rate payer doesn't want KEYS to spend any more money on litigation. It was confirmed that if the Board votes yes, the Utility will no longer pay for any more legal costs.

Mr. Batty again expressed his concerns that he doesn't want to start a project that KEYS can't finish; he is willing to vote yes for the line extension but does not want an issue to come about with the easements. Mr. Barroso said he would support that as well.

Mr. Bradford doesn't believe legally that the County can deny us the easements. Mr. Batty said that the County may not have the right to stop but they certainly can delay progress and he doesn't want to see any poles go into the ground and it takes 2 years of litigation and the residents are looking at poles without wires.

Mrs. Tejada wanted to clarify that KEYS could serve up to that point which includes the majority of the residents requesting power. She also pointed out that the line extension agreement is with the property owners association not the individual home owner and that it would be up to NNKPOA responsibility to deal with those issues. Mrs. Tejada said as we move through the process we will seek input from the NNKPOA, who is the customer of record paying the bill.

Mr. Batty wants the NNKPOA to clarify that is indeed what they would want to do whether they want to electrify all or only those we are able. There were shouts from the audience from both sides and Chairman Hernandez asked for order.

Mr. Hernandez asked for a vote for the amendment to the motion and that amendment to the motion was clarified by Mrs. Tejada to approve the line extension with the caveat that not one pole will be erected unless all easement issues have been worked out. Roll was called.

Barry Barroso – Yes
Peter Batty – Yes
Charlie Bradford – No
Mona Clark – No
Chairman Hernandez – No

The motion failed.

Mr. Batty asked for another amendment to the original motion that there is written confirmation that the NNKPOA that if we can only provide power to the front portion of the island and not the other 12 homes they will accept. Mr. Barroso seconded. Mr. Bradford asked for a time line; Mr. Batty said 30 days.

Mr. Hernandez asked Mrs. Tejada about the second bullet on the AIS that read, Placing responsibility for litigation, permitting, construction overruns, construction delays and contractor mobilization on NNKPOA and asked if that covered Mr. Batty's amendment. Mrs. Tejada said that Article XI states: NNKPOA will secure, grant, or cause to be granted to KEYS, and without cost to KEYS, all rights, permits and privileges necessary for the construction described herein and the rendering of service hereunder. KEYS shall work collaboratively with NNKPOA to obtain all necessary consents, permitting, easements and licenses necessary to accomplish this line extension but all costs shall be the sole and exclusive obligation of the NNKPOA. All permits, permissions and

easements shall be obtained and provided to KEYS prior to commencement of construction.

Mr. Batty asked that his amendment to the motion be withdrawn. Roll was called.

Barry Barroso – Yes
Peter Batty – Yes
Charlie Bradford – Yes
Mona Clark – Yes
Chairman Hernandez – Yes

The motion passed unanimously.

Mr. Eden asked the Board what they want him to do with the petition filed with the PSC, as there is a deadline. Mr. Batty asked Mr. Eden to provide any information that they request. Mr. Eden will notify them of the outcome of tonight's meeting.

Mr. Bart Smith, on behalf of Bob and Julie Reynolds who filed the petition, said with the vote at tonight's meeting the process should be simplified.

Agenda Item #7b – Award Contract for Circuit Breaker Ten (10) Year Interval Maintenance – Bid #01-12

Mrs. Tejada said that staff is seeking the manufacturer recommended 10-year maintenance on five ABB Circuit Breakers – these are located in US 1 Substation; Thompson Street Substation and three in the Stock Island Substation; this is a very specific maintenance – both the five-year and ten-year specifications which include – checking gas pressure conduct leak test; inspect bushing insulators for cracks; replace seal rings the person factory trained technician for ABB breakers will be on site to conduct that.

Mrs. Tejada said that the reason this is not on the consent agenda is because there is an issue, Siemens, who was the low bid, took exception to our terms & conditions and they added a limitation of liability which in essence limited their liability to the scope of service which in this case is only \$7,500. Staff asked them to strike and they declined indicated they needed a limitation of liability but would be willing to agree to a figure greater than the value of the contract for example \$100,000. KEYS countered and requested that the limitation be at the value of their general liability insurance which is \$2 million, Nathan indicated comfort with going to this level of limitation. Siemens said the best they could do was place the limitation of liability at \$150,000.

Mrs. Tejada stated that at this point Staff is comfortable with this after considering the risk involved; the breaker is value at \$60,000 and in order to perform the work, Siemens would isolate the breaker so if anything goes wrong during the work, damage would be limited to the breaker itself and prior to energizing the breaker there is thorough testing and pre-checks, thus protecting other equipment. Mrs. Tejada believes the savings is worth the risk associated with limitation of liability, and is recommending to award the contract to Siemens Energy Inc in an amount of \$7,500.