

CONTRACT

May 2011
THIS CONTRACT is made and entered into this 4th day of May 2011, *2010*, by and between the **CITY OF KEY WEST**, a municipal corporation, with an address of P.O. Box 1409, Key West, Florida 33041, hereinafter referred to as the "CITY", and **FIRST STATE BANK OF THE FLORIDA KEYS**, a Florida corporation, with an address of 1201 Simonton Street, Key West, Florida, 33040, hereinafter referred to as "FSB".

WHEREAS, CITY issued Request for Proposals 002-11 for merchant services, a copy of which is attached hereto, incorporated by reference, and is more particularly described as Exhibit A; and

WHEREAS, FSB submitted a response dated December 21, 2010, to Request for Proposals 002-11 to provide the services to the CITY, a copy of which is attached hereto, incorporated by reference ; and is more particularly described as Exhibit B; and

WHEREAS, FSB is capable of providing the services requested by the proposal and is in the business of providing these services; and

WHEREAS, CITY desires to engage FSB to provide the services specified herein, and those listed in the FSB Proposal (Exhibit B) , dated December 21, 2010.

NOW, THEREFORE, the parties hereto mutually agree as follows:

SECTION 1. RECITALS

The parties agree that the foregoing recitals are true and correct and are incorporated herein by this reference.

SECTION 2. SCOPE OF SERVICES AND PROJECT COORDINATOR

2.1 The CITY engages FSB to perform those services described in the CITY's Request for Proposals 002-11 (Exhibit A) scope of services, in accordance with FSB's response dated December 21, 2010 to RFP 002-11 (Exhibit B).

SECTION 3. COMPENSATION; TERMS OF PAYMENT

3.1 The CITY and FSB agree that compensation shall be paid according to the terms and conditions contained in FSB's response dated December 21, 2010 to Request for Proposals 002-11 (Exhibit B). Specifically, monthly fees for each merchant services account will be drawn monthly from the City's pooled cash account with FSB.

SECTION 4. TERM

4.1 This Contract is for a period of three years commencing on the 4th day May, 2011, and ending on the 4th day of May 2014. The CITY shall have the option to renew with two (2) one-year extensions upon the same terms and conditions as contained in the initial term..

SECTION 5. TERMINATION AND REMEDIES

5.1 The CITY may terminate this Contract with or without cause by giving FSB written notice at any time. CITY shall be liable for all fees incurred up to the date of the notice. If the CITY does not provide such a notice, it will be obliged to pay all fees for work done and for other charges incurred pursuant to the terms and conditions contained herein. This Contract shall also terminate upon the filing of any petition for bankruptcy or insolvency proceeding regarding FSB.

5.2 Except as otherwise provided in Paragraph 3. above, FSB may terminate this Contract and stop performance hereunder if, after five (5) days written notice to CITY,

- a. CITY or its duly authorized agents do not comply with this Contract;
- b. CITY forms the opinion, on reasonable grounds, that mutual confidence and trust do not exist between both parties; or
- c. FSB believes on reasonable grounds that, by continuing to act for CITY, it may breach the professional conduct rules which are binding upon professionals in the maritime industry.

SECTION 6. INDEMNIFICATION

6.1 FSB shall indemnify and hold harmless the CITY, its officers and employees, from liabilities, property damage, losses, personal injuries, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of CONSULTANT, its employees or agents, in the performance of this Agreement.

SECTION 7. INSURANCE

7.1 FSB will maintain throughout this Contract following insurance:

Worker's compensation and employer's liability insurance as defined the the Florida Statutes.

Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, non-owned, or hired vehicles, with \$1,000,000 combined single limit.

Commercial general liability (including completed operations coverage) insurance covering claims for injuries to members of the public or damage to property of

others arising out of any covered negligent act or omission of FSB or of any of its employees, agents, or subcontractors, with \$1,000,000.00 (combined single limit) per occurrence and \$2,000,000.00 general aggregate coverage.

Professional liability insurance in an amount not less than \$500,000.00 per occurrence and \$1,000,000.00 aggregate.

CITY will be named as an additional insured with respect to FSB's liabilities hereunder in insurance coverages and FSB waives subrogation against CITY as to said policies. Any subcontractor shall be covered as provided for herein above, and shall furnish certificates of coverage acceptable to the CITY before commencing work.

SECTION 8. NOTICES

Notices, requests, or authorizations provided for herein shall be in writing and shall be delivered or mailed addressed as follows:

To the CITY:	City of Key West Attention: City Manager James K. Scholl City Attorney Shawna D. Smith P.O. Box 1409 Key West, FL 33041
To FSB:	FSB Attention: Doria Goodrich Vice President 1201 Simonton St Key West, FL 33040

or addressed to either party at such other address as such party shall hereinafter furnish to the other party in writing. Each such notice, request, or authorization shall be deemed to have been duly given when so delivered, or, if mailed, when deposited in the U. S. mail, registered or certified, return receipt requested, postage prepaid.

SECTION 9. NON-ASSIGNMENT

This Contract is an exclusive agreement for Services and may not be assigned in whole or in part without the written approval of the CITY.

SECTION 10. SEVERABILITY AND CHOICE OF VENUE

This Contract shall be construed in accordance with the laws of the State of Florida. Wherever possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Contract shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Contract. Any action in connection herewith, in law or equity, shall be brought in Monroe County, Florida.

SECTION 11. NO THIRD PARTY RIGHTS

The parties hereto do not intend nor shall this Contract be construed to grant any rights, privileges or interest to any third party.

SECTION 12. JURY TRIAL WAIVER

As consideration of this Contract, the parties hereby waive trial by jury in any action or proceeding brought by any party against another party pertaining to any matter whatsoever arising out of or in any way connected with this Contract.

SECTION 13. MISCELLANEOUS PROVISIONS

Failure of any party to insist upon strict compliance with any provision of this or any other agreement between the parties shall not constitute a waiver of the right to immediately enforce compliance with that provision or any other provision of such agreements. The parties hereto acknowledge that they have read, understand and have had the opportunity to be advised by legal counsel as to each and every one of the terms, conditions, restrictions and effect of all of the provisions of this Contract, and each agrees to the enforcement of any and all of these provisions and executes this Contract with full knowledge of these provisions. Should any provision of this Contract require judicial interpretation, it is agreed that the court interpreting or construing the provision shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the document. Should any party be required to seek judicial relief regarding the terms and conditions of this agreement, the non-breaching party shall be entitled to recover all reasonable attorneys' fees and costs in such proceeding(s).

SECTION 14 COUNTERPARTS/FACSIMILE

This Contract may be executed in any number of counterparts each of which, when executed and delivered, shall be deemed to be an original with all the counterparts constituting but one and the same instrument. Additionally, facsimile signature shall bind the undersigned. The individuals executing this document warrant and represent they have full authority to do so on behalf of the parties named herein.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed on the day and year indicated below and shall become effective upon the signature of the last party to the Contract.

Signed, sealed and delivered in the presence of:

City of Key West, Florida

Attest: _____
Cheryl Smith

By: _____
Jim Scholl, City Manager

City Clerk

Kerry S. Haclas
Witness Kerry S Haclas
Danielle M. Poppo
Witness

First State Bank of the Florida Keys

BY: Alicia M. [Signature]
As its EVP - Personal Banking
and Corporate Secretary