

CONTRACT

THIS CONTRACT is made and entered into this 1st day of August, 2012, by and between the **CITY OF KEY WEST**, 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.**, with an address of 1201 Simonton Street, Key West, Florida, 33040, hereinafter referred to as "FSB".

WHEREAS, the City of Key West has issued a Request for Proposals (RFP) (Exhibit B) for Banking Service (Services) and

WHEREAS, FSB submitted a response to the proposal to provide the Services to the City; 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 A) , dated March 28, 2012

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 RFP 005-12 (Exhibit "B") scope of services, FSB will provide those services as outlined in their response to RFP 005-12.

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 RFP (Exhibit "A"). Specifically monthly fees for each banking 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 with an option to renew with two (2) one-year extensions.

SECTION 5. TERMINATION AND REMEDIES

5.1 The City of Key West may terminate this agreement 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 of Key West 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 Agreement shall also terminate upon the filing of any petition for bankruptcy or insolvency proceeding regarding the FSB.

5.2 Except as otherwise provided in Paragraph 3. above, FSB may terminate this agreement 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 Agreement;
- 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 the City, it may breach the professional conduct rules which are binding upon professionals in the financial industry.

SECTION 6. INDEMNIFICATION

FSB agrees to indemnify and hold the CITY harmless from and against any property damage or bodily injury claim, including reasonable legal fees, arising out of FSB's sole negligence.

SECTION 7. 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 Shawn 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 8. NON-ASSIGNMENT

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

SECTION 9. SEVERABILITY AND CHOICE OF VENUE

This Agreement shall be construed in accordance with the laws of the State of Florida. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement 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 Agreement. Any action in connection herewith, in law or equity, shall be brought in Monroe County, Florida.

SECTION 10. NO THIRD PARTY RIGHTS

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

SECTION 11. JURY TRIAL WAIVER

As consideration of this Agreement, 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 Agreement.

SECTION 12. 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 Agreement, and each agrees to the enforcement of any and all of these provisions and executes this Agreement with full knowledge of these provisions. Should any provision of this Agreement 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 prevailing party shall be entitled to recover all reasonable attorneys' fees and costs in such proceeding(s).

SECTION 13 COUNTERPARTS/FACSIMILE

This Agreement 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 Agreement to be executed on the day and year indicated below and shall become effective upon the signature of the last party to the Agreement.

Signed, sealed and delivered in the presence of:



Cheryl Smith
Cheryl Smith
City Clerk

City of Key West, Florida

By: J. Scholl
City Manager

FSB

Vivian Perez
Witness

BY: Anita Godwin
As its E.O.P.

Angela Bode
Witness