

TO: James L. App, City Manager
FROM: Jim Throop, Director of Administrative Services
SUBJECT: Commercial Card Agreement with Commerce Bank, N.A.
DATE: August 3, 2010

Needs: For the City Council to consider a vendor for electronic payments.

Facts:

1. The City processes approximately 550 vendor payments monthly. Of those, 99% are paid by check, requiring roughly one minute handling time per check.
2. Electronic fund transfer (EFT) allows prompt vendor payments with significantly less staff time.
3. Currently, the City is paying four (4) vendors electronically. These vendors are Blue Cross, First Bank Card, Shell Oil, and Chevron. Each payment is made via electronic fund transfers (EFT) directly to these vendor's bank accounts. These arrangements were made through direct contact with each vendor.
4. There are other vendors that will accept payments via EFT. In lieu of making special arrangements with each vendor that accepts payments via EFT, the City can make EFT payments utilizing a bank to act as a clearing house for the electronic payments.
5. In order to pay participating vendors via EFT, the City needs to establish a business relationship with a bank that will act as a clearing house for payments. The City contacted Heritage Oaks Bank who in turn contacted The Independent BankersBank to see if they offered this program or a similar program. Unfortunately Heritage Oaks Bank via The Independent BankersBank does not offer a similar program. Commerce Bank of Kansas City, Missouri is equipped to act as a clearing house for payments made via EFT. Commerce Bank utilizes the VISA credit card network as their method of clearing payments.
6. Commerce Bank is the only financial institution that gives vendors a choice on payment methods. Exclusive to Commerce, the PayMe payment method, through ControlPay Advanced Technology, allows the City to reduce costs, minimize risk, maximize float time, and works with our existing accounting system. Commerce Bank is the only financial institution that has exclusive Enrollment Teams, Implementation Teams, Relationship Management Teams, Customer Service and Information Technology Teams, meeting the requirements of a sole source merchant. Forbes Magazine in their January 18, 2010 publication ranked the health of the 100 largest banks and thrifts with Commerce Bank as the third best bank, visit www.forbes.com/bank-ratings for more information.
7. No local banks provide this service.

8. The cities of Upland, Rancho Cucamonga, Burlingame, Daly City, Hayward and San Ramon currently use this service through Commerce Bank.

Analysis &
Conclusion:

To utilize the VISA credit card network as a clearing house, the City needs to establish a line of credit with Commerce Bank. Once the line of credit is established, the City will be issued the equivalent of one VISA credit card account. EFT payments to participating vendors will be made through this account and the VISA network. The total of these payments will become a charge against the line of credit. The City will then payoff the line of credit typically on the same day as the EFT payments are applied.

Policy
Reference:

Information Systems Strategic Plan, 1995.

Fiscal
Impact:

There is no cost for utilizing the VISA credit card network as long as the funds are transferred within three (3) business days from the time the EFT payments are sent to the participating vendors. Commerce Bank earns their fee from the participating vendors. Commerce Bank will rebate a portion of their fees back to the City at the rate based upon volume. The rebate will be a minimum of 0.60% to a maximum of 1.00% of the volume paid via EFT. After an analysis of our vendor payments was made, it is estimated the City will earn approximately \$24,000 annually from these rebates.

Options:

- a. That the Council authorize the City Manager to execute the Commercial Card Agreement and adopt a resolution authorizing specific staff members to establish credit card accounts; or
- b. Amend, modify, or reject the above option.

COMMERCE BANK COMMERCIAL CARD AGREEMENT

THIS COMMERCE BANK COMMERCIAL CARD AGREEMENT is made and entered into as of the Effective Date set forth below by and between Commerce Bank, N.A. (Kansas City, MO) (“Commerce”) and City of Paso Robles, California (“Customer”).

1. **DEFINITIONS.** The following terms shall have the following meanings:
 - a. “Administrator” means, individually and collectively, one or more employees, officers, directors, or agents of the Customer who are designated by the Customer to assist Commerce in the administration of the Program.
 - b. “Agreement” means this Commerce Bank Commercial Card Agreement and all Addenda from time to time executed by the parties and attached hereto, and all amendments to the foregoing.
 - c. “Cardholder Agreement” means that agreement delivered to each Employee Cardholder which governs the use of the Commercial Cards, as amended from time to time.
 - d. “Commercial Cards” means the Visa or MasterCard Commercial Cards and the numbers associated with the Commercial Cards issued by Commerce to Employee Cardholder(s) and the account numbers assigned to Customer without an associated Commercial Card under the Program.
 - e. “Effective Date” shall be defined as set forth in Section 15.
 - f. “Employee Cardholders” means, collectively, those designated officers, directors, agents and employees of the Customer.
 - g. “Program” means the Commercial Card Program administered by Commerce as set forth in this Agreement.
 - h. “Public Record Law” means any state’s law which provides that Customer’s contracts are open and available to the public.
 - i. “Unauthorized Charge” means a charge made by an Employee Cardholder to a Commercial Card that (i) has not been authorized by Customer, and (ii) that has been accepted and processed by a merchant having the technology capable of determining and confirming that the charge did not meet the parameters established by Customer for authorized charges.
2. **PROGRAM; CARD ISSUANCE AND RENEWAL.**
 - a. During the term hereof, and subject to the terms and conditions of this Agreement, Commerce agrees to provide the Customer with the Program and to issue Commercial Cards to Employee Cardholders.
 - b. Commerce shall issue a Commercial Card to each Employee Cardholder designated by the Customer, provided that (i) each such designated Employee Cardholder has a business or commercial purpose for the Commercial Card, and (ii) a card issuance request has been made by an Administrator in the form required by Commerce.
 - c. Each Commercial Card shall be valid for the term indicated thereon, unless such Commercial Card has been canceled by Commerce pursuant to the provisions of this Agreement or at the request of the Customer.
 - d. Commerce acknowledges the ability of Customer to cancel the Commercial Card issued to any one or more Employee Cardholder(s), at Customer’s discretion upon proper notice to Commerce; provided, however, Customer shall take all reasonable actions necessary to retrieve the Commercial Card issued to Employee Cardholder and shall immediately destroy the retrieved Commercial Card.
3. **BILLING PROCEDURES.** Central Billed Accounts: Except as otherwise provided herein, Customer shall be liable for all charges made to each Commercial Card requested by Customer. Charges shall be set forth on a billing statement and shall be paid by the Customer as agreed in Addendum A attached hereto and incorporated herein by this reference, and as set forth herein. Except for a proven Unauthorized Charge or as otherwise expressly provided herein, Customer shall pay Commerce for all charges made to each Employee Cardholder’s Commercial Card within the time period provided in Addendum A. Except as provided herein, Commerce shall have no duty or obligation to inquire into the nature of any transaction charged by any Employee Cardholder (e.g., whether such transaction was for a business or personal use.)
4. **PROGRAM ADMINISTRATOR.** Upon signing this Agreement, Customer shall designate one or more Administrator(s) to assist Commerce in the administration of the Program. In addition to any other duties listed elsewhere in this Agreement, as well as any other duties reasonably requested by Commerce, the Administrator shall undertake the following duties on behalf of the Customer:

- a. The Administrator shall have the responsibilities assigned in the Program Administrator Delegation document provided by Customer to Commerce, including, without limitation, the ability to request that Commerce issue Commercial Cards to any person in connection with the Program, to increase or decrease credit limits, to suspend accounts, to order or block cash advances, wire transfers and convenience checks, and to perform any other maintenance activity.
 - b. The Administrator shall be familiar with all aspects of the Program, including, but not limited to, Program procedures, number and status of Commercial Cards, employment status of Employee Cardholders, notice requirements, any disputed transactions, Employee Cardholder credit limits, statement cycles, billing and payment procedures, general program parameters and status of delinquent charges.
 - c. The Administrator shall be responsible for notifying Commerce, in writing, about changes in authorization codes.
 - d. The Administrator shall advise Commerce of any Employee Cardholder's termination of employment.
 - e. The Administrator shall take all reasonable actions necessary to retrieve Commercial Cards issued to Employee Cardholders whose employment has terminated. Such Commercial Cards shall be immediately destroyed.
 - f. The Administrator shall be proficient in the use of the On-Line Service selected by Customer as described in Addendum B.
5. **FEES.** Commerce shall be paid fees and charges set forth in Addendum A. Customer acknowledges that Commerce has based the fees and charges upon the projections given by Customer regarding transaction volume, average ticket amount, number of cards, monthly credit line requested, reporting product selected, and frequency of payment. Fees may be subject to change from time to time by Commerce upon ninety (90) days prior written notice unless otherwise specified in Addendum A. Customer shall have 90 days from statement date to notify Bank of any revenue sharing payment errors.
6. **LINE OF CREDIT.** Commerce will establish a maximum line of credit amount for Customer.
- a. All amounts charged to the Commercial Cards together with any fees and charges owed to Commerce by Customer in connection with the Program, may not exceed, in the aggregate, the line of credit amount unless Commerce in its sole discretion authorizes such charges.
 - b. Commerce may, at any time in its sole discretion, modify the amount of Customer's line of credit upon thirty (30) days prior written notice to Customer; provided, however, that Customer may elect to terminate this Agreement by written notice to Commerce during such thirty (30) day notice period; provided, further, Customer agrees that if any amounts are outstanding on the Commercial Cards which exceed the adjusted line of credit amount, Customer will immediately pay Commerce such excess amounts.
 - c. From time to time, Commerce may request, and Customer shall produce financial records relating to the financial condition of Customer. Customer shall produce such records not later than thirty (30) days following such request. The financial records may be requested as often as quarterly, or for any such other time period as may be reasonably determined by Commerce. Customer shall, upon reasonable request by Commerce, send its annual audit to Commerce within 30 days of its completion by Customer's auditor.
7. **TERM OF AGREEMENT AND RENEWAL.** This Agreement shall remain in full force and effect until terminated by either party as herein set forth. Either party may terminate this Agreement at any time, with or without cause, upon thirty (30) days' prior written notice.
- a. In the event Customer terminates this Agreement prior to the date that is three (3) years from the Effective Date set forth below, Commerce reserves the right to forego all revenue sharing payments for the Program due after termination.
 - b. In the event Customer terminates this Agreement without cause prior to the date that is three (3) years from the Effective Date set forth below, Customer shall pay to Commerce all costs associated with establishing the Program as provided in Addendum A.
 - c. All Commercial Cards and/or related accounts shall be deemed canceled effective upon termination of this Agreement or as otherwise provided herein, and all amounts outstanding under such Commercial Cards shall automatically become immediately due and payable in full by Customer without further notice.
 - d. Notwithstanding the foregoing, either party shall have the right to terminate this Agreement immediately, and without notice, upon the occurrence of any one or more of the following events, whereupon the obligations of Customer arising hereunder and/or under the Commercial Cards shall automatically become immediately due and payable in full (except as otherwise provided by law):

- (i) Dissolution or liquidation of the other party; or
- (ii) Insolvency of the other party; or the institution by or against the other party of any bankruptcy or insolvency proceeding; or the appointment of a receiver or trustee for the other party; or the other party enters into an arrangement with, or for the benefit of, its creditors; or
- (iii) Any material adverse change in the financial condition of the other party; or
- (iv) Any default hereunder, or breach of the obligations undertaken herein, or in any other agreement by and between the parties hereto; or
- (v) Upon the occurrence of any event in any agreement which would allow Commerce or any other person to declare any indebtedness owing by Customer due and payable in full (and Customer shall give Commerce immediate notice of the occurrence of such event); or
- (vi) A change in the ownership of Customer, or a sale of all or substantially all of the Customer's assets.

8. **REPORTING.** Commerce will, either directly or indirectly through its third party vendors, receive data from the transactions made with the Commercial Cards; such data will be delivered to Customer as specified in Addendum A and Addendum B. Commerce shall have no responsibility or liability for the capture, transmission, grouping, reporting, categorizing or any other act performed or required to be performed in connection with the foregoing data that Customer's vendors are transmitting at the point of sale.

9. **CUSTOMER LIABILITY.**

A. Except for proven Unauthorized Charges, the Customer shall be solely liable for the payment of all charges incurred in the use of Commercial Cards except as provided in paragraph B below.

B. The Customer shall not be liable for the payment of charges incurred in the use of Commercial Cards if such charges relate to:

- 1. Charges waived as set forth in Visa Waiver of Liability or MasterCard Zero Liability documentation, as amended from time to time;
- 2. Commercial Card transactions after the original closure request date for a Commercial Card where the request by the Customer was made in accordance with the terms of this Agreement during normal business hours; or
- 3. The use of a stolen Commercial Card if the Commercial Card is reported stolen via facsimile, electronic mail, or telephone as provided in this Agreement within twenty-four (24) hours after the Customer, including, without limitation, any Employee Cardholder, discovers, or, using reasonable care should have discovered, the theft of the Commercial Card; provided that if the Commercial Card is not reported stolen within such time frame, the Customer shall be liable for all charges associated with the stolen Commercial Card until the date the Customer notifies Commerce of such theft.

10. **ASSIGNMENT.** Neither party shall sell, assign or transfer this Agreement or any part thereof without the prior written consent of the other party; provided, however, Commerce may, without the consent of the Customer, assign any or all of its rights and obligations under this Agreement to its parent, any subsidiary (of Commerce or its parent), or any affiliate (of Commerce or its parent) or to any other party pursuant to a merger, acquisition, consolidation, or reorganization.

11. **NOTICES.** All notices hereunder shall be in writing and shall be deemed duly given when personally delivered, when delivered by recognized overnight courier, or, three (3) days after mailing if sent by certified or registered United States mail, return receipt requested, postage prepaid, to the appropriate party at the address set forth below, or at such other address as the applicable party may indicate from time to time in writing. Notice hereunder shall be sent:

If to Commerce:

Commerce Bank, N.A.
 Attn: Commercial Card Services
 811 Main Street
 Kansas City, MO 64105

If to Customer:

City of Paso Robles, California
 Attn: Jennifer Sorenson
 821 Pine Street
 Paso Robles, CA 93446

Communications with Commerce concerning disputed billings shall be made by mail to Commercial Card Services, 811 Main Street, Kansas City, Missouri 64105 or by phone at 800-892-7104.

12. **CONFIDENTIALITY.** Commerce and Customer will keep strictly confidential and will not use or disclose to any third party or to any employee, officer, director or agent (except on a need to know basis) for any purpose whatsoever (other than as contemplated herein or for a business evaluation of the Program performed by either party) all or any portion of the contents of the Program, including but not limited to, any of the terms of, conditions of or other facts concerning the Program and any written or oral information furnished by Commerce or by Customer which is either nonpublic, confidential or proprietary in nature unless such use or disclosure is mutually agreed upon in writing by Customer and Commerce; provided, however, Customer understands and acknowledges that affiliates of Commerce and vendors of Commerce will assist in implementation of, maintenance of, and provision of various services under the Program; and provided, further, that Commerce may use Customer's name, Customer-provided logo, general industry/business description, and Customer's general, non trade-secret product usage in Commerce's customer listings and in its sales presentations without obtaining Customer's prior consent. In the event Customer is subject to a Public Record Law, Customer shall comply with the provisions of this Confidentiality paragraph only to the extent that such compliance is in accordance with the applicable Public Record Law.
13. **INDEMNITY.** Customer agrees to defend, indemnify and hold harmless Commerce, its officers, directors, agents and employees from and against any and all claims by third parties (including, without limitation, Employee Cardholders) and all costs (including reasonable attorneys' fees and costs), expenses and liabilities incurred by Commerce in connection with such claims, arising from or as a result of the establishment of the Program (including, without limitation, the issuance of Commercial Cards and/or the cancellation thereof and actions arising in connection with its use of On-Line Services identified in Addendum B), provided that such claims are not the result of, or connected with, the gross negligence, or willful misconduct of Commerce or the violation by Commerce of any law or regulation relating to credit cards. Customer acknowledges that the pricing provided in Addendum A is based on including this indemnification.

Commerce agrees to defend, indemnify and hold harmless the Customer, its officers, directors, agents and employees from and against any and all claims by third parties (including reasonable attorneys' fees), expenses and liabilities incurred by Customer in connection with such claims, arising from or as a result of the gross negligence or willful misconduct of Commerce.

14. **MISCELLANEOUS.**

- a. Relationship: Nothing contained in this Agreement shall be construed to create any relationship for brokerage, agency, joint venture, partnership or employment between Commerce and Customer.
- b. No Implied Waivers: The rights of any party under any provision of this Agreement shall not be affected by its prior failure to require the performance by the other party under such provision or any other provision of this Agreement, nor shall the waiver by any party of a breach of any provision hereof constitute a waiver of any succeeding breach of the same or any other provision or constitute a waiver of the provision itself. A waiver of any right or obligation hereunder must be in writing and signed by the parties to this Agreement.
- c. Remedies: In the event that either party breaches or violates any of the obligations contained in this Agreement, and in addition to the rights and remedies otherwise provided in this Agreement, the other party shall be entitled to exercise any right or remedy available to it either at law or in equity, including without limitation, termination of this Agreement, damages and injunctive relief. The exercise of any right or remedy shall be cumulative.
- d. Complete Agreement; Amendments: This Agreement constitutes the complete understanding between the parties hereto with respect to the subject matter hereof and all prior oral or written communications and agreements with respect thereto are superseded. In the event of any inconsistency between this Agreement and any other agreements or documents relating to the transactions contemplated herein, this Agreement shall control. No alteration, amendment or modification of any of the terms and provision in this Agreement shall be valid unless made pursuant to an instrument in writing signed by the parties hereto.
- e. Successors and Assigns: All the terms and provisions of this Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.
- f. Severability: The invalidity or unenforceability of any one or more portions, sentences, clauses or paragraphs in this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement or any part thereof.

- g. Force Majeure. Commerce shall not be in default of this Agreement to the extent that performance of its obligations is delayed or prevented by reason of any act of God, war, terrorism, fire, explosion, flood, act of government or any act or omission of a third party, including, but not limited to, telecommunications carriers and utilities or any other matter beyond its reasonable control.
- h. Governing Law: This Agreement shall be governed, construed, and enforced according to the laws of the State of Missouri.
- i. Patriot Act/ OFAC: Commerce complies with the USA Patriot Act and laws administered by OFAC (The Office of Foreign Assets Control). These laws mandate that Commerce verify certain information about customers. Commerce reserves the right, at any time, to request information that may assist Commerce in compliance with these laws. Customer agrees to promptly provide such information as requested by Commerce, including, without limitation, information about Employee Cardholders.
- j. Survival: Notwithstanding anything to the contrary herein, Sections 5, 6(b), 9, 11, 12, 13, and 14 shall survive the termination of this Agreement.

15. **EFFECTIVE DATE**. Notwithstanding anything else contained herein to the contrary, this Agreement will be subject to Commerce performing due diligence and credit investigations and will be effective only upon execution by Commerce as of the date shown below (the "Effective Date").

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized officers of the parties hereto.

**Commerce Bank, N.A. (Kansas City, MO)
(Commerce)**

**City of Paso Robles, California
(Customer)**

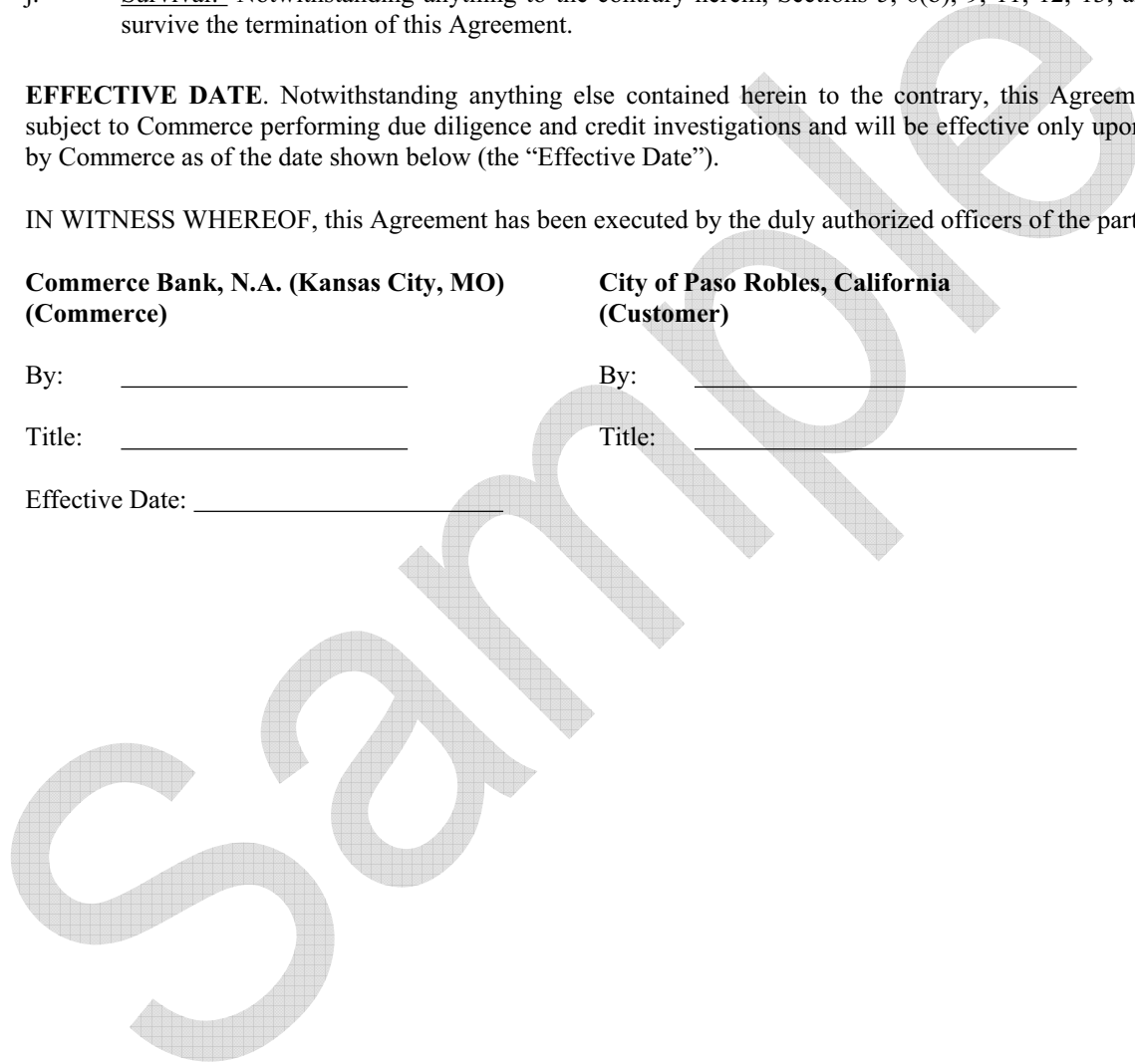
By: _____

By: _____

Title: _____

Title: _____

Effective Date: _____



ADDENDUM A
Pricing and Payment Schedule

| Program Fees | |
|---|--|
| Pricing Term | The pricing outlined herein will expire in 60 days from April 28 th , 2010 unless a Commercial Card Agreement is executed |
| Late Fee for Central Bill Accounts | For each payment not received by the payment due date shown on the billing statement, a late fee will be charged. The late fee for the respective Commercial Card or account will be 2.5% of the amount past due. |
| Cash Advance Fee | All cash advances will be assessed a cash advance fee of 3.0% of the cash advance amount with a \$3.00 minimum. |
| International Service Fee | <p>Visa and MasterCard purchases, cash withdrawals and cash advances made in currencies other than U.S. Dollars will be converted to U.S. Dollars under regulations established by Visa International and MasterCard International. Visa conversion will be at a rate selected by Visa from the range of rates available in wholesales currency markets for the applicable central processing date, which may vary from the rate Visa itself receives, or the government-mandated rate in effect for the applicable central processing date. MasterCard conversion rate will be selected by MasterCard, typically either a government-mandated rate or a wholesale rate provided to MasterCard. Conversion to U.S. Dollars may occur on a date other than the date of the transaction. Therefore, the conversion rate may be different from the rate in effect at the time of the transaction. Customer agrees to pay the converted amount, plus an international service fee in the amount of 2% of the transaction amount on purchases and 1% on cash withdrawals and cash advances. For purchases, cash withdrawals and cash advances made in U.S. dollars outside of the United States and its territories, you agree to pay the transaction amount plus a 1% service assessment fee.</p> |
| Finance Charge on Cash Advances | <p>The periodic rate finance charge begins to accrue on the transaction date of any cash advance and is computed by applying the periodic rate to the average daily balance. Whenever payment in full is credited to the Employee Cardholder account by the statement due date, no additional periodic rate finance charge will be billed on a later statement to collect the periodic rate finance charge earned from the billing statement date to the date of actual payment. Cash advances include advances made by means of convenience checks, an electronic device or machine, a teller of any financial institution, by means of a balance transfer from another credit card, for the purchase of wire transfers, non-US currency, traveler's checks, truck stop transactions, tax payments, money orders, bets, lottery tickets and casino gaming chips.</p> <p>A minimum finance charge of \$.50 will be imposed in any billing period for which a finance charge is payable.</p> <p>Each Employee Cardholder account will accrue a finance charge at a periodic rate equal to 4.9% in excess of the Prime Rate, fixed monthly, divided by 12. As used herein, the "Prime Rate" is the rate published in <i>The Wall Street Journal</i> in its column called "Money Rates" on the last business day of the month immediately preceding the first day of the applicable billing cycle. No representation is made that the Prime Rate is the lowest, the best or the favored rate of interest. If for any reason <i>The Wall Street Journal</i> no longer publishes the "Money Rates" column, then Commerce will choose a new index based on comparable information.</p> |
| Other Fees | |
| Overnight Delivery of Replacement Card | \$25 per occurrence |
| Federal Express Delivery of Bulk Cards | Price Quote |
| Basic Card Design | NO CHARGE |
| Ultragraphic Card Design | \$500 one time fee (waived) |
| Full Customized Plastic and re-order | Price Quote |
| Returned Check Fee | \$29 per occurrence |
| ACH Return | \$15 each after first occurrence |
| Phone Payment | \$15 each after first occurrence |
| Statement Reprinting | \$2 per statement after three occurrences Free through certain software products selected by Customer. |
| Other | For information, copies or other reports not specified in this Addendum, Commerce may charge Customer such fees as Customer and Commerce may agree from time to time. |
| Software Initial Training | <p>Commerce Bank uses a 'train the trainer' model. General training occurs with either in-person or WebEx / Phone training with the Program Administrators. The Program Administrators, in turn, train the cardholders and system users on the chosen reporting and maintenance application.</p> <p>Additional Program Administrator training can be conducted via WebEx / Phone at no additional charge.</p> <p>Cardholder and system user training via WebEx / Phone will be charged at \$250 / hour.</p> <p>In-person training sessions (after initial Program Administrator software training) will be charged at \$250 / hour plus travel expenses and appropriate travel notice is requested for training.</p> |

Reporting and Maintenance Tool Options

ControlPay Advanced

| | |
|--|--|
| Implementation Fee** | \$5,000 WAIVED |
| Annual Maintenance Fee** | \$500 WAIVED |
| Routine maintenance and upgrades | NO CHARGE |
| Initial web-based or phone training for Administrators* | NO CHARGE |
| Customized Programming | <p>AP File Layouts</p> <ul style="list-style-type: none"> ❖ Standard – No Charge ❖ Custom – in those instances where this effort will generate a cost over \$3,000, Commerce will obtain a price quote for Customer. <p>Reconciliation Reports</p> <ul style="list-style-type: none"> ❖ Standard – No Charge ❖ Custom – Commerce will obtain a price quote for Customer. <p>Other Custom Programming</p> <ul style="list-style-type: none"> ❖ Commerce will obtain a price quote for Customer unless development is mutually agreed upon by Customer and Commerce. <p>Development hours beyond the initial 10 hours is typically charged at a rate of \$150.00 per hour.</p> |

Payment Schedule

Commerce will generate a billing statement on a periodic basis as outlined below. All amounts owing on the Commercial Cards, including fees and charges, shall be due and payable in full on a grace period as outlined below, after the date of such statement. The statement will be transmitted to the Employee Cardholder or to Customer via U.S. Mail or made available by an alternative means as agreed upon by both parties.

| | | |
|--------------------------|-----------------------------|-----------------------|
| Billing Frequency | Grace Period in Days | Payment Method |
| Weekly | 3 | AutoPay |

REVENUE SHARING

1. Revenue Share.

- (a) Commerce will pay Customer a revenue share on a monthly basis.
- (b) Total Monthly Net Volume is defined as gross purchases less credits, cash advance amounts, and fraudulent transaction amounts.
- (c) Monthly payments are based on the matrix schedule below. Payment tiers are calculated on total monthly net volume and will be made 3 months in arrears.

| Monthly Net Volume | Corresponding Annual Net Volume | 3 Day Grace |
|--------------------|---------------------------------|-------------|
| | | |
| | | |
| | | |

2. Adjusting Revenue Share.

- (a) Commerce will suspend revenue share payments for Central Billed accounts that become delinquent.
- (b) In addition, Commerce reserves the right to withhold or alter revenue share payments if any of the following instances occur:
 - (i) If the average transaction (the gross dollar amount of purchases divided by total number of transactions) is below \$XX.
 - (ii) If Customer's average Interchange Rate falls below 2.25%.
 - (iii) If Interchange Rates are significantly altered by Visa and / or MasterCard.
 - (iv) Commerce may adjust Revenue Share dollars resulting from fraudulent transactions.
- (c) Large Ticket Interchange (LTI) and Level 3 Interchange (L3) volume will be paid on the following levels. LTI 30% and L3 30%.

(d) Commerce may (without written notice) adjust the revenue sharing percentages, as provided below, at the end of each calendar quarter following the Agreement Effective Date.

(i) Adjustments are based on the Prime Rate, as published in The Wall Street Journal "Money Rates" column on the last business day of the month immediately preceding the first day of the applicable billing cycle.

(ii) Adjustments to revenue share based on Prime Rate fluctuations are not applicable while Prime Rate remains at, or below, the established 4.00% floor.

(iii) When the Prime Rate exceeds 4.00%, Commerce will adjust the revenue share percent payable using the grid below. Commerce will use the same grid to determine subsequent revenue share adjustments should the Prime Rate increase or decrease from any newly established Prime Rate level in future quarters.

(iv) The Established Prime Rate at the time of this contract is 3.25%.

| Billing Cycle | Grace Period | Change in Prime Rate | Revenue Share Adjustment |
|---------------|--------------|----------------------|--------------------------|
| Weekly | 3 Day | 0.50% | 0.010% |

For example, if Prime Rate is 5.00% at the end of a calendar quarter and the Customer has a Weekly Billing Cycle and a 3-Day Grace Period, Commerce will reduce percentages in all revenue share tiers by 2 basis points (0.02%).

All line items noted with a "*" are the costs associated with establishing the Program as referenced in Paragraph 7 of the Agreement.

IN WITNESS WHEREOF, this Addendum A has been executed by the duly authorized officers of the parties hereto, and this Addendum A supersedes any prior Addendum A.

Commerce Bank, N.A. (Kansas City, MO)
(Commerce)

City of Paso Robles, California
(Customer)

By: _____

By: _____

Title: _____

Title: _____

Effective Date: _____

ADDENDUM B
Election of On-Line Services

Customer has elected certain On-Line Service(s) (each a "Service," collectively, the "Services.") The Services are Internet based customer service offerings that enable Customers to inquire about accounts and transaction information, submit account change requests and download information about credit card accounts, among other capabilities. The terms and conditions of the Agreement, including, without limitation, the provisions regarding Indemnification and Liability, govern the use of each Service. Customer understands and accepts the risks inherent in the use of the Internet for each Service, including the potential for the risk of loss. Except as may otherwise be provided in paragraph 9 of the Agreement, Commerce is not responsible for any loss associated with the Customer's use of any Service. By electing a Service, Customer agrees to pay the fees associated with the Service as listed in Addendum A. In addition, Customer agrees to use each Service only as provided in the User Guide relating to the Service in effect from time to time (the "User Guide") and according to the provisions contained in the Service License Agreement, if any, between Customer and the Service provider.

Use of any Service will require a user name and password. Customer acknowledges that Commerce is entitled to rely on the use of the user name and password as authorization for any transaction initiated using each Service. Customer is responsible for all transactions initiated or authorized using any Service. The password Customer selects is for its use and protection. Customer agrees to: (a) not disclose the password or otherwise make it available to anyone else; (b) use the password as instructed in the User Guide; (c) be liable for the password and for its use as described in the Agreement and/or the User Guide.

If Customer permits any person other than the Administrator to make use of any Service to perform any duty or responsibility of the Administrator, Customer will have authorized that person to act as an Administrator. Customer will be responsible for all transactions initiated or authorized by that additional or new Administrator using any Service. In addition, Customer must execute and deliver proper documentation authorizing this additional or new Administrator to act for and on behalf of Customer, and Customer must provide such other documentation as may be requested by Commerce.

IN WITNESS WHEREOF, this Addendum B has been executed by the duly authorized officers of the parties hereto and this Addendum B supersedes any prior Addendum B.

Commerce Bank, N.A. (Kansas City, MO)
(Commerce)

City of Paso Robles, California
(Customer)

By: _____

By: _____

Title: _____

Title: _____

Effective Date: _____

RESOLUTION NO. 10-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF EL PASO DE ROBLES
TO OBTAIN COMMERCIAL CARD ACCOUNTS WITH COMMERCE BANK, N.A.
FOR CONTROL PAY ADVANCED ACCOUNTS PAYABLE

The City Council of the City of Paso Robles does hereby resolve as follows:

WHEREAS, the City has a need to establish credit; and

WHEREAS, the City Council of the City of Paso Robles wishes to authorize and empower select staff members to establish credit card accounts; and

WHEREAS, no local banks currently provide this control pay system.

NOW, THEREFORE, the City Council of the City of Paso Robles, California, does resolve, declare, determine and order as follows”

SECTION 1. That any one of the following officers: 1) City Manager; 2) Director of Administrative Services; and 3) Finance Manager be and each hereby is authorized directed and empowered to establish credit card accounts (“Accounts”) with Commerce Bank, N.A. (Missouri) (herein called “Commerce”), and to execute all documents to effectuate this purpose which he/she may deem necessary and proper, including without limitation any application and/or agreement (each an “Agreement”) to open the Accounts.

SECTION 2. James L. App, as City Manager, is hereby appointed as an authorized signer effective August 3, 2010.

SECTION 3. James Throop, as Director of Administrative Services, is hereby appointed as an authorized signer effective August 3, 2010.

SECTION 4. Jennifer Sorenson, as Finance Manager, is hereby appointed as an authorized signer effective August 3, 2010.

SECTION 5. That any one of the foregoing named officers of this Municipal Corporation may from time to time request Commerce to issue bank cards to any person in connection with any of the Accounts.

SECTION 6. That any one of the foregoing named officers of the Municipal Corporation may from time to time appoint an Administrator to assist Commerce in the administration of the credit card program as provided in the Commerce Bank Commercial Card Agreement.

SECTION 7. Commerce is authorized to act upon these resolutions until written notice of revocation is delivered to Commerce, and that the authority granted shall apply with equal force and effect to the successors in office of the officers named herein.

SECTION 8. The undersigned further certifies that the specimen signatures appearing below are the signatures of the officers authorized to sign for this Municipal Corporation by authority of these resolutions.

Specimen Signatures:

| NAME | TITLE | SIGNATURE |
|-------------------|-------------------------------------|-----------|
| James L. App | City Manager | |
| James Throop | Director of Administrative Services | |
| Jennifer Sorenson | Finance Manager | |

ADOPTED AND APPROVED this 3rd day of August, 2010.

AYES:

NOES:

ABSENT:

ABSTAIN:

Duane Picanco, Mayor

ATTEST:

Caryn Jackson, Deputy City Clerk