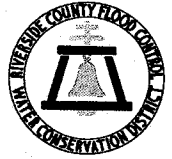


601 B



SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

FROM: General Manager-Chief Engineer

SUBMITTAL DATE: May 1, 2012

SUBJECT: Approval of the Agreement with Commerce Bank to provide E-Payment Solution Services

RECOMMENDED MOTION:

- 1. Approve the E-Payment Services Agreement with Commerce Bank for one (1) year and renew for two (2) successive one (1) year terms in accordance with Ordinance 459.4, and;
2. Authorize the Chairman to sign the E-Payment Services Agreement and any related documents attached to the Agreement, and;
3. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to exercise renewal options and to sign amendments that do not change the substantive terms of the agreement, and
4. Approve Resolution No. F2012-09, to authorize participation in Commerce Bank Active Funds Program.

Continued on Page 2

JR:mc

Handwritten signature of Warren D. Williams

WARREN D. WILLIAMS General Manager-Chief Engineer

Table with 2 columns: FINANCIAL DATA and Budget information. Rows include Current F.Y. District/County Cost, Annual Net District Cost, In Current Year Budget, Budget Adjustment, and For Fiscal Year.

Table for SOURCE OF FUNDS with columns for Positions To Be Deleted Per A-30 and Requires 4/5 Vote.

C.E.O. RECOMMENDATION:

APPROVE

BY: Michael R. Shetler (Handwritten signature) Michael R. Shetler

County Executive Office Signature

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

On motion of Supervisor Tavaglione, seconded by Supervisor Buster and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone and Ashley
Nays: None
Absent: Benoit
Date: May 1, 2012
xc: Flood, Purchasing

Kecia Harper-Ihem Clerk of the Board By: (Handwritten signature) Deputy

Prev. Agn. Ref.:

District: ALL

Agenda Number:

11.1

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

FORM APPROVED COUNTY COUNSEL (Handwritten signature) DATE BY: NEAL R. KIPNIS

FISCAL PROCEDURES APPROVED (Handwritten signature) 4/18/2012 BY: IVAN M. CHAND

Dept't Recomm.: [] Consent [] Policy [] Consent [] Policy Per Exec. Ofc.:

Departmental Concurrence

**FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

SUBJECT: Approval of the Agreement with Commerce Bank to provide E-Payment Solution Services
SUBMITTAL DATE: May 1, 2012

Page 2

BACKGROUND:

As part of a cooperative initiative of the Auditor-Controller's Office and OASIS, the County would like to participate in the Commerce Bank E-Payment Program, thereby qualifying the County for a monthly rebate structure based on spending levels under an E-Payables program. E-Payable Services is an electronic disbursement process which allows the County to pay participating vendors electronically through the financial institution, thereby reducing costs to the County by eliminating the costs associated with the current manual paper warrant process, such as, warrant stock, envelopes, paper, postage, ink, etc. Participation in this strategic initiative yields many benefits to both the County and vendors. Program Administration will be handled by the Auditor Controller.

1. Revenue Sharing Program

- Receive a monthly rebate from Commerce Bank based on the spending levels. Initial estimate by Commerce Bank is \$500,000-1,200,000 for the first year.

2. Cost/Time Savings for the County:

- E-Payable Services reduce the labor, expenses, and risk associated with paper warrants.

3. Enhances Cash Flow:

- E-Payable Services will expedite the receipt of cash by eliminating mail and paper warrant float. Payment can be realized in approximately 1 – 3 business days, resulting in a predictable cash flow for day to day operations or investments.

4. Going Green:

- Paperless, electronic payments are more secure, save money, and also help conserve the environment by eliminating printing and mailing of paper warrants.

5. No costs to the County for implementation:

- Requires no change to current invoicing procedures;
- Enhances efficiencies in the Accounts Payable function; and,
- Eliminates the risk of lost or stolen warrants.

In August 2010, a Request for Proposal (RFP) OSARC-020 was issued to 11 financial firms and was advertised on the County of Riverside Purchasing website. The County received five (5) proposals. An evaluation committee, consisting of representatives of the Auditor-Controller's Office and OASIS, reviewed the proposals. The evaluation committee interviewed two firms and they presented an overview of the E-Payment Solution Services to the County of Riverside. The proposals were evaluated on overall response and general understanding of the RFP requirements; experience, program implementation and technical ability; fees and interest rates; references; financials; clarification, exceptions or deviations. Based on the evaluation committee's scoring and the program offered by the financial institutions for E-Payment Solution Services, the evaluation committee has recommended Commerce Bank to provide services to the County of Riverside.

**FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

SUBJECT: Approval of the Agreement with Commerce Bank to provide E-Payment Solution Services
SUBMITTAL DATE: May 1, 2012

Page 3

BACKGROUND CONTINUED:

In agreement with Commerce Bank, the County has included the following affiliated entities in the Agreement and a separate Form 11 and Resolution will be submitted for each entity: Riverside County Flood Control and Water Conservation District and Riverside County Regional Park and Open-Space District.

The administration of the E-Payment Solution Services will be under the purview of the Auditor-Controller's Office and is one of several proposals introduced by Supervisor Jeff Stone, under the Safeguard County of Riverside Against Preventable Expenses (SCRAPE) program.

The generated revenue from the E-Payment Solution Services will be categorized as ACO department revenue. OASIS will be recovering one time labor costs of \$52,000.

REVIEW and APPROVAL

County Purchasing reviewed the request and County Counsel approved the agreement to form.

REFERENCE

Resolution No. F2012-09

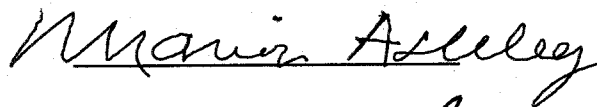
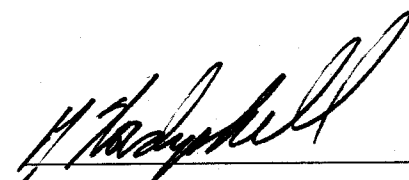
Riverside County Affiliated Entities:

- Riverside County Flood Control and Water Conservation District
- Riverside County Regional Park and Open-Space District

**CERTIFICATE OF INCUMBENCY OF
BOARD OF THE RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
COUNTY OF RIVERSIDE, CALIFORNIA**

I, Kecia Harper-Ihem hereby certify that I am the Clerk of the Board of the Riverside County Flood Control and Water Conservation District ("Board"), and do hereby further certify that:

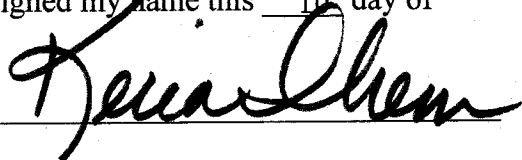
1. The following named persons (the "Authorized Signatories") have been duly appointed, elected or otherwise hold the positions or offices set forth below, beside their names, as of the date of that certain Commerce Bank E-Payment Solutions (ActiveFunds) Agreement, and that the Authorized Signatories' specimen signatures set forth below, beside their respective names, are genuine:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Marion Ashley	Chairman of the Board of the Riverside County Flood Control and Water Conservation District	
Robert Howdyshell	County Purchasing Agent	

2 That certain Resolution No. F2012-09, attached hereto as Exhibit A (the "Resolution"), was duly adopted by the Board as of the 1st day of May, 2012.

3. This Certificate may be signed in any number of counterparts and by facsimile or electronic signature, each of which shall be deemed an original.

IN WITNESS WHEREOF, I have hereunto signed my name this 10 day of May, 2012.

By: 
Name: Kecia Harper-Ihem

Title: Clerk of the Board of the Riverside County
Flood Control and Water Conservation
District

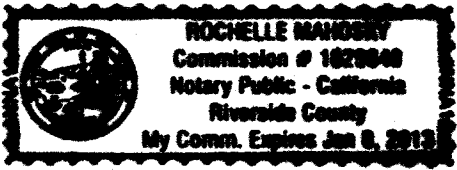
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Riverside }

On 05-10-12 before me, Rochelle Mahosky, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Robert Howdyshell
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Rochelle Mahosky
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

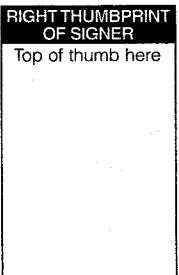
Signer(s) Other Than Named Above: marion Ashley

Capacity(ies) Claimed by Signer(s)

Signer's Name: Robert Howdyshell

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: County Purchasing Agent

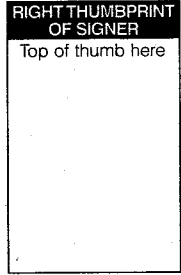
Signer Is Representing: County of Riverside



Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



Flood Control and Water Conservation District

Exhibit A

Resolution

1 Board of Supervisors

Riverside County Flood Control and Water Conservation District

2
3 RESOLUTION NO. F2012-09

4 RESOLUTION OF THE BOARD OF THE
5 RIVERSIDE COUNTY FLOOD CONTROL
6 AND WATER CONSERVATION DISTRICT,

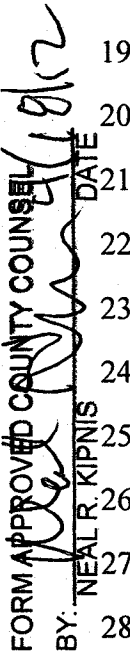
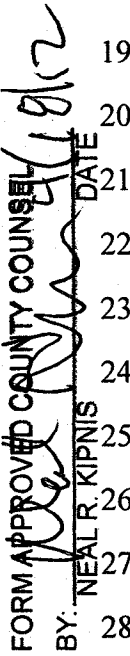
7 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, TO

8 AUTHORIZE PARTICIPATION IN COMMERCE BANK ACTIVE FUNDS PROGRAM

9
10 WHEREAS, the Riverside County Flood Control and Water Conservation District
11 (the "**District**") intends to enter into the Commerce Bank E-Payment Solutions (ActiveFunds)
12 Agreement (the "**Agreement**") with Commerce Bank to allow the District to participate in the
13 Commerce Bank ActiveFunds Program, in accordance with the terms and conditions of the
14 Agreement;

15 BE IT RESOLVED AND ORDERED by the Board of the Riverside County Flood
16 Control and Water Conservation District (the "**Board**"), in regular session assembled on
17 May 1, 2012, that (i) the District is authorized, directed and empowered, to
18 establish an ActiveFunds program ("**Program**") with Commerce Bank, a Missouri bank
19 corporation, and (ii) the Chairman of the Board is hereby authorized, directed and empowered to
20 execute and deliver the Agreement (and, to the extent execution or delivery is required, each
21 addendum and/or exhibit thereto (including, without limitation, the Administrator Document, as
22 defined below)) on behalf of the District.

23 BE IT FURTHER RESOLVED that, without limiting the foregoing, the Riverside
24 County Purchasing Agent, or his designee as stated in writing, is also hereby authorized from
25 time to time execute the Program Administrator Delegation document in substantially the form
26 attached to the Agreement as Exhibit I (the "**Administrator Document**") in order to appoint one
27 or more Administrators, as defined in the Agreement.
28

FORM APPROVED COUNTY COUNSEL
BY:  NEAL R. KIPNIS
DATE: 

1 BE IT FURTHER RESOLVED that Commerce Bank is authorized to act upon this
2 resolution until written notice of revocation is delivered to Commerce Bank, and that the
3 authority hereby granted shall apply with equal force and effect to the successors in office of the
4 officials named herein.

5 BE IT FURTHER RESOLVED that the Riverside County Purchasing Agent shall
6 be authorized to sign and execute on behalf of the District all necessary documents, including
7 without limitation the Administrator Document (as defined above), and any exhibit, application or
8 amendment related to the Agreement or the Program (further including, without limitation, any
9 renewal of the Agreement during the Renewal Terms, as defined in the Agreement), except that
10 any material change to the Agreement or material change in pricing figures relating thereto or to
11 the scope of the Program thereunder shall be returned to the Board for approval.

12 ROLL CALL:

13 Ayes: Buster, Tavaglione, Stone and Ashley
14 Nays: None
15 Absent: Benoit

16 The foregoing is certified to be a true copy of a resolution duly
17 adopted by said Board of Supervisors on the date therein set forth.

18 KECIA HARPER-IHEM, Clerk of said Board

19 By: _____
20 Deputy

COMMERCE BANK E-PAYMENT SOLUTIONS (ACTIVEFUNDS) AGREEMENT

THIS COMMERCE BANK E-PAYMENT SOLUTIONS (ACTIVEFUNDS) AGREEMENT is made and entered into as of the Effective Date by and among Commerce Bank, a Missouri banking corporation ("Commerce") and the Board of Supervisors of the County of Riverside, California, sitting as the governing body of the County of Riverside, California (the "County") and each of the undersigned subsidiary and/or affiliated entities (each an "Affiliate" and collectively the "Affiliates"). Each of the County and the Affiliates is a "Customer Party" hereunder, and the term "Customer" hereunder means, collectively, the County and the Affiliates.

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 any Customer Party who are designated by Customer to assist Commerce in the administration of the Program for any Customer Party.
 - b. "Agreement" means this Commerce Bank E-Payment Solutions (ActiveFunds) Agreement and all Addenda from time to time attached hereto, and all amendments to the foregoing. Such Addenda are deemed to be incorporated into this Agreement by reference.
 - c. "ActiveFunds User" means each Customer Party and any of the officers, directors, agents and employees of such Customer Party who utilize the Commercial Accounts.
 - d. "Commercial Accounts" means the Visa or MasterCard account numbers assigned to Customer without an associated plastic under the Program.
 - e. "Effective Date" shall be defined as set forth in Section 18.
 - f. "Indemnification Law" means any law (including, without limitation, any statute, regulation, ordinance or rule or any budgetary law or case law) applicable to Customer (whether federal, state, local or otherwise) that has the effect of limiting or restricting Customer's power, right or authority to undertake, or make payment pursuant to, any obligation to contractually indemnify third parties.
 - g. "Payment Instruction" means a Customer initiated request for a payment to Customer's vendor initiated through the Service.
 - h. "Program" means the E-Payment Solutions/ControlPay Advanced (ActiveFunds) Program administered by Commerce as set forth in this Agreement.
 - i. "Public Record Law" means any state's law which provides that Customer's contracts are open and available to the public.
 - j. "Service" and/or "Services" means the on-line Service(s) elected by Customer for use with the Program.
 - k. "Unauthorized Charge" means a charge to a Commercial Account that (i) has not been authorized by Customer, and (ii) 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.**
 - a. During the term hereof, and subject to the terms and conditions of this Agreement, Commerce agrees to provide Customer with the Program and to assign Commercial Accounts to Customer under the Program.
 - b. Each Commercial Account shall be valid for the term indicated thereon, unless such Commercial Account has been canceled by Commerce pursuant to the provisions of this Agreement or at the request of Customer. Any funds remaining on a Commercial Account after the Commercial Account has been closed will be returned to Customer.
3. **PROGRAM PROCEDURES.** Commerce has implemented the following Program procedures:
 - a. Customer will utilize the selected Service to process a Payment Instruction. Customer will submit a Payment Instruction following the procedures described in the Program User Guide as amended from time to time. Each Payment Instruction will include a specific dollar amount for payment to Customer's vendor. Customer will authorize Commerce to debit its designated deposit account for all amounts included in each Payment Instruction initiated. Commerce will debit Customer's designated account and will hold the funds for two business days after receipt. Following two business days, Commerce will inform Customer's vendor that payment is available by electronic mail.
 - b. In the event Customer's deposit account does not contain sufficient funds to process the Payment Instruction(s) initiated, no funds will be taken and the Payment Instruction(s) will be rejected. Customer is responsible for understanding the Program and for initiating Payment Instructions in a timely manner. In no event will Commerce be responsible for resolving disputes between Customer and its vendor. Customer shall be liable for all charges made to each Commercial Account. Except as provided herein, Commerce shall have no duty or

obligation to inquire into the nature of any Payment Instruction (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 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 submit Payment Instructions, add vendors, view payment log status, view posted transactions 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, notice requirements, any disputed transactions, and general Program parameters.
 - c. The Administrator shall be proficient in the use of the Service(s) 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, and Service selected. 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.

6. **MAXIMUM PAYMENT AMOUNT; FINANCIAL STATEMENTS.** Commerce may establish a maximum Payment Instruction amount and will notify Customer if and when such maximum Payment Instruction amount is established. 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 for an initial term of one (1) year from the Effective Date (the "Initial Term"). At the expiration of the Initial Term, this Agreement shall renew for two (2) successive one (1) year terms (each a "Renewal Term") (the Initial Term and each Renewal Term individually and collectively, the "Term") unless Commerce or the Customer Parties, acting collectively, provide written notice of the intention of such party or parties not to renew this Agreement within 30 days of the expiration of the then-current Term. Notwithstanding the foregoing and anything to the contrary herein stated, either Commerce or the Customer Parties, acting collectively, may terminate this Agreement at any time whatsoever (during the Initial Term or any Renewal Term), and for any reason whatsoever (with or without cause), by providing the Customer Parties or Commerce, as applicable, with thirty (30) days' prior written notice of such termination. The effective date of any such termination (the "Termination Date") will in all cases be thirty days from the date such notice was given (as determined under Section 11). Effective immediately on the Termination Date, the then-current Term of the Agreement (whether the Initial Term or any Renewal Term) shall automatically terminate.
 - a. In the event Customer terminates this Agreement prior to the date that is three (3) years from the Effective Date, Commerce reserves the right to forego all revenue sharing payments for the Program due after termination.
 - b. All Commercial Accounts shall be deemed canceled effective upon termination of this Agreement or as otherwise provided herein.
 - c. Notwithstanding the foregoing, either Commerce or the Customer Parties, acting collectively, shall have the right to terminate this Agreement immediately, and without notice, upon the occurrence of any one or more of the following events:
 - (i) Dissolution or liquidation of Commerce or any Customer Party; or
 - (ii) Insolvency of Commerce or any Customer Party; or the institution by or against Commerce or any Customer Party of any bankruptcy or insolvency proceeding; or the appointment of a receiver or trustee for Commerce or any Customer Party; or Commerce or any Customer Party enters into an arrangement with, or for the benefit of, its creditors; or
 - (iii) Any material adverse change in the financial condition of Commerce or any Customer Party; or
 - (iv) Any default, or breach of the obligations undertaken, by Commerce or any Customer Party under this or any other agreement by and between Commerce and any Customer Party; 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 any Customer Party 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 any Customer Party, or a sale of all or substantially all of any Customer Party's assets.

8. **REPORTING.** Commerce will, either directly or indirectly through its third party vendors, receive data from the transactions made with the Commercial Accounts; 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 from the point of sale.

9. **CUSTOMER LIABILITY.**

- a. Except for a proven Unauthorized Charge, Customer shall be solely liable for the payment of all charges incurred in the use of Commercial Accounts except as provided in paragraph B below.
- b. Customer shall not be liable for the payment of charges incurred in the use of Commercial Accounts if such charges relate to:
 - i. Charges waived as set forth in Visa Waiver of Liability or MasterCard Zero Liability documentation, as amended from time to time;
 - ii. The use of a stolen Commercial Account number if the Commercial Account number is reported stolen via facsimile, electronic mail or telephone as provided in this Agreement within twenty-four (24) hours after Customer, discovers, or, using reasonable care should have discovered, the theft of the Commercial Account number; provided that if the Commercial Account number is not reported stolen within such time frame, Customer shall be liable for all charges associated with the stolen Commercial Account number until the date Customer notifies Commerce of such theft.

10. **ASSIGNMENT.** Commerce and Customer agree not to 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 any Customer Party, 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
 Attn: Commercial Card Services
 Mike O'Connor, National Sales Manager
 811 Main Street
 Kansas City, MO 64105

If to Customer:

County of Riverside
 Attn: Paul Angulo
 Riverside County Auditor-Controller
 4080 Lemon Street, 11th Floor
 Riverside, CA 92502

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 Commerce or Customer) 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 the implementation and 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.**

- a. Customer Obligation. To the extent permitted under the Indemnification Laws, Customer agrees to defend, indemnify and hold harmless Commerce and its officers, directors, agents and employees from and against any and all claims by third parties (including, without limitation, ActiveFunds Users) 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 Accounts and/or the cancellation thereof and actions arising in connection with its use of the 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 Commercial Accounts. Customer acknowledges that the pricing provided in Addendum A is based on including this indemnification.
- b. Commerce Obligation. Commerce agrees to defend, indemnify and hold harmless Customer and 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.
- c. Limitation of Commerce Obligation. In no event shall the amount of Commerce's obligation under Section 13(b) exceed the maximum amount that Customer would be legally permitted, under the Indemnification Laws in effect as of the date of the event giving rise to such obligation of Commerce, to pay or contractually incur (whichever amount is lower) under Section 13(a) as of such date.

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 Commerce or any Customer 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 non-breaching 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 among 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 provisions 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 California.
 - 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 ActiveFunds Users.
 - j. Survival: Notwithstanding anything to the contrary herein, Sections 5, 9, 11, 12, 13, 14 and 15 shall survive the termination of this Agreement.
 - k. Limitations. Commerce and Customer agree that:
 - i. Commerce shall not be liable for any losses, claims, or liabilities incurred by Customer that arise from any third party's refusal to honor and/or make use of any Commercial Account.
 - ii. Customer agrees that Customer will not use any Commercial Account for any purpose that has been deemed illegal.
 - l. Originals; Counterpart Signatures: More than one (1) copy of this Agreement may be executed, and all parties agree and acknowledge that each executed copy shall be a duplicate original. Any number of counterparts of this Agreement may be executed and each such executed counterpart shall be deemed an original.
15. **JOINT AND SEVERAL LIABILITY**. Notwithstanding anything to the contrary contained herein, each Customer Party hereby jointly and severally agrees to all of the provisions hereof, and all obligations of Customer under this Agreement shall be joint and several. In particular, without limitation, each Customer Party is responsible for the payment of all fees and for charges made to each Commercial Account of Customer as described in this Agreement regardless of the benefit received by such Customer Party.
16. **VENDOR APPROVAL**. Commerce agrees that the Commerce enrollment team will not contact any of Customer's vendors to enroll any such vendor under the Program until an Authorized Person notifies Commerce (whether orally, electronically, in writing, or by any other reasonable notification method) that Commerce is permitted to do so. An "Authorized Person" is any person authorized by Customer to provide such notification and shall expressly include, without limitation, each person specified on the Corporate Resolution (as defined in Section 17), any Administrator, and any other person indicated on Addendum C attached hereto.
17. **OTHER REQUIRED DOCUMENTS**. Notwithstanding anything to the contrary herein stated, this Agreement will be effective only upon receipt by Commerce from Customer of each of the following fully executed documents:
 - (A) Electronic Payment Authorization (Corporate Transactions) document in substantially the form attached hereto as Exhibit II; and
 - (B) Electronic Reimbursement Revenue Share (Corporate Transactions) document in substantially the form attached hereto as Exhibit III.

In addition, within a reasonable time following the execution of the Agreement by the parties, Commerce will require Customer to designate an Administrator by executing a Program Administrator Delegation document in substantially the form attached hereto as Exhibit I.

18. **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. This "Effective Date" of this Agreement shall be the date of the last signature on the signature page hereto.

[Signatures are on the following page.]

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

"Commerce"

Commerce Bank (Kansas City, MO)

By: [Signature]
Title: Executive Vice President
Date: April 16th, 2012

"Customer"

Board of Supervisors of County of Riverside, California, sitting as the governing board of the County

By: _____
Title: Chairman of the Board of Supervisors
Date: _____

Riverside County Flood Control and Water Conservation District

By: [Signature]
Title: Marion Ashley, Chairman
Date: MAY 01 2012

ATTEST:
KECIA HARPER-IHEM, Clerk
By: [Signature]
DEPUTY

Riverside County Regional Park and Open-Space District

By: _____
Title: _____
Date: _____

FORM APPROVED COUNTY COUNSEL
BY: [Signature] DATE: 5/17/12
NEAL R. KIPNIS

**ADDENDUM A
Pricing and Payment Schedule**

Program Fees	
Pricing Term	The pricing outlined herein will expire in 60 days from March 29 th , 2012 unless the Agreement is executed
International Service Fee	<p>Visa and MasterCard purchases 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. For purchase made in U.S. dollars outside of the United States and its territories, Customer agrees to pay the transaction amount plus a 1% service assessment fee.</p>
Other Fees	
ACH Return	\$29 each after first occurrence
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 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>
Reporting and Maintenance Tool Options	
E-Payment Solution/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 20 hours is typically charged at a rate of \$150.00 per hour.</p>
REVENUE SHARING	

1. Revenue Share.

- (a) Commerce will pay the County a revenue share on a monthly basis.
- (b) Total Monthly Net Volume is defined as gross purchases on the Commercial Accounts of the County and the Affiliates, in the aggregate (“**Gross Purchases**”), less credits 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	ActiveFunds
\$0-\$833,332	\$0- \$9,999,999.99	1.23%
\$833,333 - \$2,083,332	\$10,000,000 - \$24,999,999.99	1.30%
\$2,083,333 - \$4,166,666	\$25,000,000 - \$49,999,999.99	1.39%
\$4,166,667 - \$6,249,999	\$50,000,000 - \$74,999,999.99	1.48%
\$6,250,000 - \$8,333,332	\$75,000,000 - \$99,999,999.99	1.54%
\$8,333,333 - \$12,499,999	\$100,000,000 - \$149,999,999.99	1.57%
\$12,500,000+	\$150,000,000+	1.60%

2. Adjusting Revenue Share.

(a) 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 for Customer collectively (the dollar amount of Gross Purchases divided by total number of transactions) is below \$1,000.
- (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.

(b) Large Ticket Interchange (LTI) and Level 3 Interchange (L3) volume will be paid on the following levels, LTI 0.40% and L3 0.40%.

3. Volume Incentive Bonus. Commerce will pay the County, on behalf of itself and each of its Affiliates, two volume incentive bonuses (each a "**Bonus**") as follows: (i) \$50,000 when Customer collectively achieves a net volume (i.e., Gross Purchases less credits and fraudulent transaction amounts) under the Program ("**Net Volume**") of \$25,000,000 and (ii) an additional \$50,000 (for a total of \$100,000) when Customer collectively achieves an additional \$25,000,000 in Net Volume (i.e., for a total Net Volume of \$50,000,000). Commerce shall make each such Bonus payment within 30 days of the last day of the month in which Customer collectively achieved the Net Volume threshold applicable to such Bonus.

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

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 submit Payment Instructions, inquire about accounts and transaction information, submit change requests and download information about 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 Customer's use of any Service. In addition, Customer agrees to use each Service only as provided in the User Guide or online help 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 and authorized access to accounts as allowed for by the Administrator. Customer will be responsible for all Payment Instruction(s) or other 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.

ADDENDUM C
Notification Authorizing Vendor Enrollment

As provided in Section 16 of the Agreement, each of the following persons, or any person holding any of the following positions or offices, has been expressly authorized by Customer to provide the notification to Commerce permitting Commerce to begin contacting Customer's vendors for enrollment under the Program, as provided in said Section 16:

Name of person and/or position/office: County Purchasing Agent, Robert Howdyshell

Name of person and/or position/office: Assistant Director of Purchasing, Mark Seiler

Name of person and/or position/office: Senior Procurement Contract Specialist, Lisa Boerner

Name of person and/or position/office: Procurement Contract Specialist, William Ilten

Name of person and/or position/office: Procurement Contract Specialist, Walter Mack

Name of person and/or position/office: Business Process Analyst, County Purchasing, Dirk Buesing

Name of person and/or position/office: Auditor-Controller, Paul Angulo

Name of person and/or position/office: Deputy Auditor-Controller, Jim Brown

Name of person and/or position/office: Division Chief, Auditor-Controller Office, Frankie Ezzat

EXHIBIT I
Program Administrator Delegation Document

(See attached)



Program Administrator Delegation

The Commerce Bank E-Payment Solutions (ActiveFunds) Agreement (the "Agreement"), dated _____, between Commerce Bank ("Commerce") and the County and its Affiliates (each such term as defined in the Agreement) states:

Program Administrator. Upon signing this Agreement, Customer shall designate one or more Administrator(s) to assist Commerce in the administration of the Program.

In accordance with the above, the individuals listed below are designated as Administrator(s), for each and any Customer Party (as the term "Customer Party" is defined in the Agreement). Each such individual hereby is authorized to conduct the Program administration activities for each or any Customer Party by authority of this Program Administrator Delegation Form, including, but not limited to, submitting Payment Instructions (as defined in the Agreement).

<u>Individual</u>	<u>Signature</u>

Board of Supervisors of County of Riverside, California, sitting as the governing board of the County

By: _____

Print Name _____

Title: _____

Date: _____

Riverside County Flood Control and Water Conservation District

By: _____

Print Name _____

Title: _____

Date: _____

Riverside County Regional Park and Open-Space District

By: _____

Print Name _____

Title: _____

Date: _____

EXHIBIT II
Electronic Payment Authorization (Corporate Transactions)

(See attached)

**ELECTRONIC PAYMENT AUTHORIZATION
(CORPORATE TRANSACTIONS)**



Company Name: _____

This electronic payment authorization by _____ (herein referred to as "Company") authorizes Commerce Bank (herein referred to as "Commerce") to initiate debit entries and to initiate, if necessary, credit entries and adjustments for any entries in error to the checking account indicated held at the depository financial institution named below, herein referred to as "Depository," and to debit and/or credit the same to such account. Company acknowledges that the origination of ACH transactions to Company's account must comply with the provisions of U.S. law.

Account Information (Please print)

Depository (Bank) Name: _____

City & State: _____

Account #: _____

Routing/Transit #: _____

Account Title: _____

This authority is to remain in full force and effect until Commerce has received written notification from Company of its termination in such time and in such manner as to afford Commerce and Depository a reasonable opportunity to act on it. In no event shall such termination be effective as to entries processed prior to receipt of such notice. Commerce may terminate this agreement at any time.

Company

By: _____
Signature and Date

Title: _____


Address for notice: _____

Commerce Bank
Address for notice:

Commerce Bank
Attn: Michelle Moore
P.O. Box 411036
Kansas City, MO 64179-9640

Fax: 816-760-7935

To locate the Routing/Transit # and Account # on your checks, please refer to the image to the right.

- The Routing/Transit # is located between the  symbols.
- The Account # is generally located to the right of the Routing/Transit #.

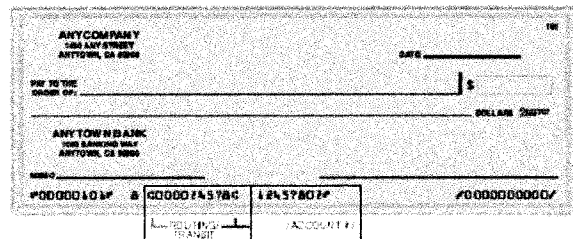


EXHIBIT III
Electronic Reimbursement Revenue Share (Corporate Transactions)

(See attached)

**ELECTRONIC REIMBURSEMENT AUTHORIZATION
REVENUE SHARE
(CORPORATE TRANSACTIONS)**



Company Name: _____

This electronic reimbursement authorization by _____ (herein referred to as "Company") authorizes Commerce Bank (herein referred to as "Commerce") to initiate credit entries and to initiate, if necessary, debit entries and adjustments for any entries in error to the checking account indicated held at the depository financial institution named below, herein referred to as "Depository," and to credit and/or debit the same to such account. These entries will be for payment of revenue share due to Customer or for necessary adjustment entries from Commerce. Company acknowledges that the origination of ACH transactions to Company's account must comply with the provisions of U.S. law.

Account Information (Please print)

Depository (Bank) Name: _____

City & State: _____

Account #: _____

Routing/Transit #: _____

Account Title: _____

This authority is to remain in full force and effect until Commerce has received written notification from Company of its termination in such time and in such manner as to afford Commerce and Depository a reasonable opportunity to act on it. In no event shall such termination be effective as to entries processed prior to receipt of such notice. Commerce may terminate this agreement at any time.

Company

By: _____
Signature and Date

Title: _____


Address for notice: _____

Commerce Bank
Address for notice:

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