

FORM APPROVED COUNTY COUNSEL
 DATE 4/29/15
 BY: GREGORY P. PRIAMOS

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

FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
 May 12, 2015

SUBJECT: Approval of the Modified Agreement with Commerce Bank to provide E-Payment Solution Services for the County of Riverside, All Districts [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the E-Payment Services Agreement with the District and Commerce Bank for five (5) years with or without cause to terminate within 90 days 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.

BACKGROUND:
Summary

On May 1, 2012, the Board of Supervisors approved agenda item 3.5 authorizing the Auditor-Controller's Office and Riverside County Information Department to enter into a service agreement with Commerce Bank. Commerce Bank provides the County with an E-Payment program. The program qualifies the County for a monthly rebate structure based on spending levels under an E-Payables program.

(continued on page 2)

JR:mc
 P8/169493

[Signature]
 WARREN D. WILLIAMS
 General Manager-Chief Engineer

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
NET DISTRICT COST	\$ 0	\$ 0	\$ 0	\$ 0	

SOURCE OF FUNDS: N/A
 Budget Adjustment: No
 For Fiscal Year: 15/16

C.E.O. RECOMMENDATION:

APPROVE
[Signature]
 BY: Steven C. Horn
 County Executive Office Signature

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

On motion of Supervisor Ashley, seconded by Supervisor Benoit and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Benoit and Ashley
 Nays: None
 Absent: None
 Date: May 12, 2015
 xc: Flood

Kecia Harper-Ihem
 Clerk of the Board
 By: *[Signature]*
 Deputy

Prev. Agn. Ref.: 3.5 5/1/12 | District: ALL | Agenda Number:

11-2

FISCAL PROCEDURES APPROVED
 JEANINE J. REY, FINANCE DIRECTOR
 BY: *[Signature]* 4/30/15
 JEANINE J. REY, Departmental Concurrence

- A-30
- 4/5 Vote
- Positions Added
- Change Order

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

FORM 11: Approval of the Agreement with Commerce Bank to provide E-Payment Solution Services for the County of Riverside, All Districts [\$0]

DATE: May 12, 2015

PAGE: Page 2 of 2

BACKGROUND:

Summary (continued)

E-Payables 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 currently 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.

1. Generated Departmental Revenue

- o FY 2013 - \$650,000
- o FY 2014 - \$800,000
- o FY 2015 – projected \$1,100,000

2. Cost/Time Savings for the County

- o E-Payables Services reduce the labor, expenses and risk associated with paper warrants
- o A modified agreement would eliminate the testing and implementation phase
- o Eliminates the risk of lost or stolen warrants

3. Enhanced Cash Flows

- o E-Payables Services have expedited the receipt of cash by eliminating mail and paper warrant float. Payments realized in approximately 1–3 business days, resulting in a predictable cash float for day to day operations

4. Going Green

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

In agreement with Commerce Bank, the County has included the following affiliated entities in the Agreement and a separate Form 11 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 remain under the purview of the Auditor-Controller's Office.

The E-Payment program has eliminated nearly 72,000 paper warrants from being issued; saving County departments including special districts thousands of dollars. The cost savings is in conjunction with the proposed Safeguard County of Riverside Against Preventable Expenses (SCRAPE) program.

Approving the modified agreement will allow the Auditor-Controller Office to continue with the revenue source and growth in a program that has been tested and implemented during the trial period.

Impact on Residents and Businesses

There is no impact to the residents. The County vendors will continue to receive payments in a timelier manner.

SUPPLEMENTAL:

Contract History and Price Reasonableness

Board Approved Agenda Item 3.5 of 5/1/2012. There are no fees associated with this contract.

REFERENCE:

Riverside County Affiliated Entities:

County of Riverside

Riverside County Regional Park and Open-Space District

ATTACHMENTS:

Commerce Bank Modification Agreement

JR:mc
P8/169493

MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT ("Modification Agreement") is made and entered into as of the 17th day of April, 2015, by and between COMMERCE BANK, a Missouri bank and trust company ("Commerce") and the Board of Supervisors of County of Riverside, California, sitting as the governing board of the county (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.

WHEREAS, Commerce and Customer entered into that certain Commerce Bank E-Payment Solutions (ActiveFunds) Agreement dated May 1, 2012 (the "Agreement"); and

WHEREAS, Commerce and Customer have agreed to modify the terms of the Agreement as provided herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Commerce and Customer agree as follows:

1. Terms used herein, which are defined in the Agreement, shall have the meanings given to them in the Agreement.

2. The following definitions in Section 1 shall be modified or added as follows:

Definitions to be modified:

"Commercial Account(s)" means the Visa® or MasterCard® account numbers associated with the Commercial Accounts issued by Commerce to Customer or its Administrator without an associated plastic under the Program. The operating rules, established by card companies, shall govern the services offered.

"Unauthorized Charge" means the use of a Commercial Account and/or Private Network Account by a person, other than the Customer, who does not have actual, implied or apparent authority for such use, and from which the Customer receives no benefit.

Definitions to be added:

"Network Transaction" means the payment transaction where Commerce is only the Commercial Account issuer (issues Commercial Account to Customer) and does not control fees associated with acceptance of a card transaction by the vendor.

"Private Network Account(s)" – means the Commerce Bank Private Network account numbers associated with the Commerce Bank Private Network Accounts issued by Commerce to Customer or its Administrator without an associated plastic under the Program. The operating rules, established by Commerce, shall govern the services offered.

"Private Network Transaction" means the payment transaction where Commerce is both the Private Network Account issuer (issues Private Network Account to Customer) and the acquirer (has limited banking relationship with merchant) and controls the fees associated with the transaction.

3. With the exception of Section 1, Definitions, unless stated otherwise herein, anywhere the term "Commercial Account" or "Commercial Accounts" appears it should read:

"Commercial Accounts(s) and/or Private Network Account(s)"

4. The following paragraph shall be added as Section 2(c):

- c. Customer acknowledges that Commerce is relying upon Customer to perform industry standard screening on the vendors paid using this Program. Customer represents that each vendor to whom it will send payment is an established vendor or has been independently verified by Customer.

5. The following paragraph shall be added as Section 2(d):

- d. If a Private Network Transaction is utilized to pay Customer's vendor, Commerce will agree to pay Customer's vendors so long as the vendor meets certain underwriting criteria, enters into a limited merchant agreement with Commerce, and provides Commerce with requested account information and documentation. Should the vendor fail to meet any of the above, Commerce may reject or terminate said vendor and upon notification to Customer Commerce will no longer be responsible for payment under this Program.

6. The following paragraph shall be added as Section 2(e):

- e. Customer acknowledges that the Private Network Transactions are not Visa transactions and Customer has no recourse against Visa regarding any Private Network Transactions or any other claims arising from the Private Network Accounts. Customer shall indemnify Visa and hold Visa and its members harmless from and against claims, liabilities, losses, and expenses arising from or in connection with the Private Network Accounts.

7. The first paragraph in Section 7 shall be deleted and replaced as follows:

7. TERM OF AGREEMENT AND RENEWAL. This Agreement shall remain in full force and effect for five (5) years after the expiration of the Initial Term and the previous Renewal Terms, beginning May 1, 2015 ("Third Renewal Term"). Either Party may terminate this Agreement, with or without cause, upon ninety (90) days' prior written notice.

7(a) – 7(c) remain unchanged.

8. Section 9, Customer Liability, should be deleted in its entirety and replaced with the following:

9. CUSTOMER LIABILITY. Except as noted below, Customer shall be solely liable for the payment of all charges incurred in the use of Commercial Accounts and/or Private Network Accounts.

- a. Customer shall not be responsible for an Unauthorized Charge that is a result of the use of a stolen Commercial Accounts and/or Private Network Account if the Commercial Account and/or Private Network Account are reported stolen via telephone as provided in this Agreement below, within ninety (90) days after the Unauthorized Charge occurred. If the Commercial Account and/or Private Network Account are not reported stolen within such time frame, Customer shall be liable for all charges associated with the stolen Commercial Account and/or Private Network Account.
- b. It is further understood and agreed that when a chargeback (the reversal of a card transaction previously credited to a vendor account), chargeback fee or any other charges to Customer's vendor occurs, including, but not limited to, loss relating to vendor disputes and vendor processing fees (collectively "Charges"), Commerce will seek payment from vendor's account. Provided, however, if the Charges are a result of a Private Network Transaction and vendor does not have sufficient funds in its account to cover the Charges, then the total amount due from vendor shall be deemed an "Uncollected Vendor Debt". Customer agrees that Commerce shall not be held responsible for any Uncollected Vendor Debt.
- c. Notification of loss, stolen or possible unauthorized use of an Commercial Account and/or Private Network Account, should be communicated to Commerce at 800-892-7104 immediately. 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.

9. The following sentence shall be deleted in Section 11, Notices:

"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."

10. Addendum A to the Agreement is hereby deleted and replaced with the Addendum A attached to this Modification Agreement.

11. The following paragraph shall be added as Section 19:

19. EXECUTION IN COUNTERPARTS. This Agreement and any modifications hereto may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic means shall have the same force and effect as the delivery of an original executed counterpart of this Agreement. Any Party delivering an executed counterpart of this Agreement by telefacsimile or other electronic means shall also deliver an original executed counterpart, but the failure to do so shall not affect the validity, enforceability or binding effect of this Agreement.

12. Except as modified herein or as previously amended and/or modified, all other terms, provisions, conditions and obligations imposed under the terms of the Agreement shall remain in full force and effect and are hereby ratified and certified by Customer and Commerce.

IN WITNESS WHEREOF, Commerce and Customer have executed this First Modification Agreement as of the date first above written.

**Commerce Bank
(Commerce)**

By: Jennifer Wile
Title: VP
Effective Date: 4-17-15

**Board of Supervisors of County of Riverside, California,
sitting as the governing board of the county
(Customer)**

By: _____
Title: _____

**Riverside County Flood Control and Water Conservation
District
(Customer)**

By: _____
Title: _____

FORM APPROVED COUNTY COUNSEL
BY: Dale A. Gardner 4/29/15
DALE A. GARDNER DATE

**Riverside County Regional Park and Open-Space District
(Customer)**

By: _____
Title: _____

ADDENDUM A
Pricing and Payment Schedule

Program Fees	
Pricing Term	The pricing outlined herein will expire in 60 days from March 24th, 2015 unless an 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.

Commercial Accounts		
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%

(d) Volume qualifying from Private Network Transactions is calculated independently of all other volume categories. Monthly payments are based on the table below.

Private Network Transactions (Reduced Rate)*	
Vendor Agreed Upon Rate	Revenue Share
2.00%	1.00%
1.75%	0.75%
1.50%	0.50%
1.25%	0.25%
1.00%	0.10%
*The average monthly transaction amount must be greater than \$1000	

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%.

[Signature Page To Follow]

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
(Commerce)

By: Jennifer White
Title: VP
Effective Date: 4-17-15

Board of Supervisors of County of Riverside, California,
sitting as the governing board of the county
(Customer)

By: Marion Ashley
Title: MARION ASHLEY
CHAIRMAN, BOARD OF SUPERVISORS

Riverside County Flood Control and Water Conservation
District
(Customer)

By: [Signature]
Title: GM-CE

~~FORM APPROVED COUNTY COUNSEL~~
~~Abel A. Gardner 4/28/15~~
~~DALE A. GARDNER DA...~~

Riverside County Regional Park and Open-Space District
(Customer)

By: [Signature]
Title: KEVIN JEFFRIES
Chairman

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