*RA7

RESOLUTION NO. _____

A RESOLUTION OF THE REDEVELOPMENT AGENCY AND CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH COMMERCE BANK, N.A. FOR BANKING SERVICES

WHEREAS, under state law and the Milpitas Municipal Code, the Finance Director of the City of Milpitas is authorized to secure banking services for the City; and

WHEREAS, Commerce Bank, N.A. has developed a product known as ControlPay Advanced, an automated accounts payable service, that would allow the City of Milpitas to derive monthly revenue by replacing paper checks to its vendors with electronic payments through the Visa Network; and

WHEREAS, entering into a contract with Commerce Bank, N.A. to provide such automated accounts payable services is of benefit to the residents of Milpitas through increased revenue to the General Fund.

NOW, THEREFORE, the Agency Board and City Council of the City of Milpitas hereby find, determine, and resolve as follows:

1. The Agency Board and City Council have considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. The Agency Board and City Council do hereby authorize, direct and empower the Finance Director to establish commercial card accounts with Commerce Bank, N.A. (Kansas City, Missouri) to incur debt (in the form of a line of credit established by Commerce Bank for the City of Milpitas) associated with the accounts, and to execute all documents to effectuate this purpose which are deemed necessary and proper, including without limitation any application and/or agreement to open the accounts.

3. The Agency Board and City Council do hereby authorize the Finance Director to act as the administrator of the accounts established for the ControlPay Advanced program.

4. The Agency Board and City Council does hereby authorize Commerce Bank to act upon this Resolution until written notice of revocation is delivered to Commerce Bank, and that the authority granted shall apply with equal force and effect to the successors in office of the City of Milpitas officer named herein.

5. The following represents a specimen signature of the officers authorized to sign the banking agreement(s) for the City of Milpitas by authority of this Resolution:

Name (Typed)	*Title (Typed)*	*Signature*
Thomas C. Williams	City Manager/Executive Director	
Emma C. Karlen	Director of Finance	
Jane Corpus Takahashi	Accounting Services Manager	
Dante Ong	Senior Accountant	

PASSED AND ADOPTED this ____ day of _____, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

_____
Mary Lavelle, Agency Secretary/City Clerk

APPROVED:

_____
Jose S. Esteves, Chair/Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, Agency Counsel/City Attorney

Commerce Bank

Credit Line Form

The following figures best estimate what we are trying to accomplish with our Commerce Bank Commercial Card program.

Estimated Annual Spend: $ 8,000,000

Credit line needed: $ 220,000

Cycle Type: Weekly billing, 3-day grace

While these are estimates for my program, I believe it accurately outlines the goals of our Commercial Card program.

City of Milpitas California
Company Name

_____
Individual Name (Printed)

_____
Signature

_____
Title

_____
Date

_____
Federal Tax ID Number

Commerce Bank

Program Administrator Delegation

The Commerce Bank Commercial Card Agreement, dated_____between Commerce Bank, N.A. (Kansas City, MO) ("Commerce") and **City of Milpitas California** states:

> Program Administrator. Customer, upon signing this agreement, shall designate one or more of its employees (individually and collectively, the "Administrator ") to assist Commerce in the administration of the Program.

In accordance with the above, the individuals listed below are designated as Administrator(s), for **City of Milpitas California.** Each hereby is authorized to establish credit card accounts "(Accounts") with Commerce. The undersigned further certifies that these Administrator(s) are authorized to conduct the Program Administration activities for this corporation by authority of this letter including, but not limited to opening new accounts.

Individual	**Signature**

_____ _____

Signature of Authorized Person Date

Print Name _____

Title _____

ELECTRONIC PAYMENT AUTHORIZATION
(CORPORATE TRANSACTIONS)

Commerce Bank

Company Name: _____

This electronic payment authorization by _____ (herein referred to as "Company") authorizes Commerce Bank, N.A. (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: _____

_____

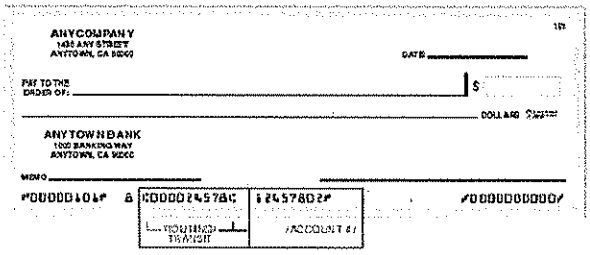
_____

Commerce Bank, N.A.
Address for notice: Commerce Bank, N.A.
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 #.



COMMERCE BANK ACCOUNTS PAYABLE AGREEMENT

THIS COMMERCE BANK ACCOUNTS PAYABLE AGREEMENT is made and entered into as of the Effective Date by and between Commerce Bank, N.A. (Kansas City, MO) ("Commerce") and **City of Milpitas, 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 Accounts Payable Agreement and all Addenda from time to time executed by the parties and attached hereto, and all amendments to the foregoing.
   c. "Account Holder" means Customer and any of its officers, directors, agents and employees who utilize the Commercial Accounts.
   d. "Commercial Accounts" means the Visa or MasterCard account numbers associated with the Commercial Accounts issued by Commerce to the Customer and its Account Holder(s) and the account numbers assigned to Customer without an associated plastic under the Program.
   e. "Effective Date" shall be defined as set forth in Section 16.
   f. "Program" means the Accounts Payable Program administered by Commerce as set forth in this Agreement.
   g. "Public Record Law" means any state, local or municipal law which provides that Customer's contracts are open and available to the public.
   h. "Unauthorized Charge" means a charge made by an Account Holder 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; 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 Accounts to Customer.
   b. Commerce shall issue Commercial Accounts to the Customer, provided that a Commercial Account issuance request has been made by an Administrator in the form required by Commerce.
   c. 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 the Customer.
   d. Commerce acknowledges the ability of Customer to revoke any authority given to an Account Holder, at Customer's discretion upon proper notice to Commerce; provided, however, that Customer shall remain liable for all charges made to each Commercial Account as provided in this Agreement.

3. **BILLING PROCEDURES.** Commerce offers the billing method described below:
   Central Billed Accounts: Except as otherwise provided herein, Customer shall be liable for all charges made to each Commercial Account 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 Commercial Account 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 Account Holder (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 Accounts to any person in connection with the Program, to increase or decrease credit limits, to suspend Commercial Accounts, to order or block 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 Accounts, notice requirements, any disputed transactions, 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 be proficient in the use of the On-Line 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, number of Commercial Accounts, 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.

6. **LINE OF CREDIT.** Commerce will establish a maximum line of credit amount for Customer.

a. All amounts charged to the Commercial Accounts 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 Accounts 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, Commerce reserves the right to forego all revenue sharing payments for the Program due after termination.

b. All Commercial Accounts 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 Accounts shall automatically become immediately due and payable in full by Customer without further notice.

c. 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 Accounts 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 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 at the point of sale.

9. **CUSTOMER LIABILITY.**

A. Except for a proven Unauthorized Charge, the 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. The Customer shall not be liable for the payment of charges incurred in the use of Commercial Accounts 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 Account transactions after the original closure request date for a Commercial Account 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 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 the Customer, including, without limitation, any Account Holder, 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, the Customer shall be liable for all charges associated with the stolen Commercial Account number 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:	**If to Customer:**
Commerce Bank, N.A.	City of Milpitas, California
Attn: Commercial Card Services	Attn: Jane Corpus
811 Main Street	455 E. Calaveras Blvd.
Kansas City, MO 64105	Milpitas, CA 95035

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 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.** 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, Account Holders) 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 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 Commercial Accounts. 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 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.

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 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 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 Account Holders.

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. **LIMITATIONS**. Commerce and Customer agree that:

a. 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.

b. Customer agrees that Customer will not use any Commercial Account for any purpose that has been deemed illegal.

16. **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 Milpitas, 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 November 5th, 2010 unless an Accounts Payable 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 Account will be 2.5% of the amount past due.
International Service Fee	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 purchases 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.

Other Fees	
Returned Check Fee	$29 per occurrence
ACH Return	$29 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	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 Account Holders and system users on the chosen reporting and maintenance application. Additional Program Administrator training can be conducted via WebEx/Phone at no additional charge. Account Holder and system user training via WebEx/Phone will be charged at $250/hour. 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.

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	**AP File Layouts** ❖ 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. **Reconciliation Reports** ❖ Standard – No Charge ❖ Custom – Commerce will obtain a price quote for Customer. **Other Custom Programming** ❖ Commerce will obtain a price quote for Customer unless development is mutually agreed upon by Customer and Commerce. Development hours beyond the initial 10 hours is typically charged at a rate of $150.00 per hour.

Payment Schedule		
Commerce will generate a billing statement on a periodic basis as outlined below. All amounts owing on the Commercial Account, 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 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 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
$0 - $249,999	$0 - $2,999,999.99	0.95%
$250,000 - $499,999	$3,000,000 - $5,999,999.99	1.00%
$500,000 - $666,666	$6,000,000 - $7,999,999.99	1.05%
$666,667 - $833,332	$8,000,000 - $9,999,999.99	1.10%
$833,333+	$10,000,000+	1.15%

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 $500.
      (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 0.30% and L3 0.30%.
   (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 Milpitas, 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 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 and authorized access to accounts as allowed for by the 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 Milpitas, California (Customer)**
By: _____	By: _____
Title: _____	Title: _____

Effective Date: _____