



Commerce Bank

Resolution To Obtain ActiveFunds

The undersigned, Colleen Dengler the Secretary of Elmira Heights Central School District Elmira Heights New York ("District") does hereby certify that the following resolutions were duly and regularly passed and adopted by the Board of Trustees of this District, at a meeting duly called, on the 13th day of August, 2012, and such resolutions are still in full force and effect and have not been amended or revoked.

RESOLVED, that any one of the following:

Mary Beth Fiore


be and each hereby is authorized directed and empowered to establish an ActiveFunds program ("Program ") with Commerce Bank (herein called "Commerce") and to execute all documents to effectuate this purpose which he/she may deem necessary and proper, including without limitation any application and/or agreement (each an "Agreement") to establish the Program.

FURTHER RESOLVED, that any one of the foregoing named officers of this District may from time to time appoint an Administrator to assist Commerce in the administration of the Program as provided in the Agreement (each such term as defined in the Agreement).

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

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

SPECIMEN SIGNATURES:

NAME (typed)	TITLE (typed)	SIGNATURE
<u>Mary Beth Fiore</u>	<u>Superintendent</u>	

IN WITNESS WHEREOF, I have hereunto set my hand as _____ Secretary of this District this _____ day of _____, 20__.

SECRETARY: _____

Colleen

COMMERCE BANK ACTIVEFUNDS AGREEMENT

THIS COMMERCE BANK ACTIVEFUNDS AGREEMENT is made and entered into as of the Effective Date by and between Commerce Bank, a Missouri banking corporation ("Commerce") and Elmira Heights Central School District, Elmira Heights, New York ("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 Customer who are designated by Customer to assist Commerce in the administration of the Program.
 - b. "Agreement" means this Commerce Bank ActiveFunds Agreement and all Addenda from time to time executed by the parties and attached hereto, and all amendments to the foregoing.
 - c. "ActiveFunds User" 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 assigned to Customer without an associated plastic under the Program.
 - e. "Effective Date" shall be defined as set forth in Section 15.
 - f. "Payment Instruction" means a Customer initiated request for a payment to Customer's vendor initiated through the Service.
 - g. "Indemnification Law" means any law (including, without limitation, any statute, regulation, ordinance or rule or any Budget 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.
 - h. "Program" means the 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 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. In the event Customer terminates this Agreement without cause prior to the date that is three (3) years from the Effective Date, Customer shall pay to Commerce all costs associated with establishing the Program as provided in Addendum A, regardless of whether or not the fees were waived at the time the Program was established.
 - c. All Commercial Accounts shall be deemed canceled effective upon termination of this Agreement or as otherwise provided herein.
 - d. Notwithstanding the foregoing, either party shall have the right to terminate this Agreement immediately, and without notice, upon the occurrence of any one or more of the following events:
 - (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 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.** 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 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, reorganization, or a sale of all or any portion of its assets.

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
 811 Main Street
 Kansas City, MO 64105

If to Customer:
 Elmira Heights Central School District
 Attn: Debra Palmer
 2083 College Ave.
 Elmira, NY 14903

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.**

- 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, Employee Cardholders) and all costs (including reasonable attorneys' fees and costs), expenses and liabilities incurred by Commerce in connection with such claims, arising from or as a result of the establishment of the Program (including, without limitation, the issuance of Commercial Cards and/or the cancellation thereof and actions arising in connection with its use of On-Line Services identified in Addendum B), provided that such claims are not the result of or connected with the gross negligence or willful misconduct of Commerce or the violation by Commerce of any law or regulation relating to credit cards. Customer acknowledges that the pricing provided in Addendum A is based on including this indemnification.
- 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 and all costs (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 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; Other Laws: 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. In addition, Customer covenants to comply with any mandatory state or local laws applicable to Customer relating to this Agreement.
- j. Survival: Notwithstanding anything to the contrary herein, Sections 5, 9, 11, 12, 13, and 14 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.

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

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

**Commerce Bank
(Commerce)**

**Elmira Heights Central School District,
Elmira Heights, New York
(Customer)**

By: _____

By: _____

Title: _____

Title: Superintendent

Effective Date: _____

**ADDENDUM A
Pricing and Payment Schedule**

Program Fees

Pricing Term	The pricing outlined herein will expire in 60 days from June 14, 2012 unless a ActiveFunds Agreement is executed
International Service Fee	<p>Visa and MasterCard purchases, cash withdrawals and cash advances made in currencies other than U.S. Dollars will be converted to U.S. Dollars under regulations established by Visa International and MasterCard International. Visa conversion will be at a rate selected by Visa from the range of rates available in wholesales currency markets for the applicable central processing date, which may vary from the rate Visa itself receives, or the government-mandated rate in effect for the applicable central processing date. MasterCard conversion rate will be selected by MasterCard, typically either a government-mandated rate or a wholesale rate provided to MasterCard. Conversion to U.S. Dollars may occur on a date other than the date of the transaction. Therefore, the conversion rate may be different from the rate in effect at the time of the transaction. Customer agrees to pay the converted amount, plus an international service fee in the amount of 2% of the transaction amount on purchases and 1% on cash withdrawals and cash advances. For purchases, cash withdrawals and cash advances made in U.S. dollars outside of the United States and its territories, you agree to pay the transaction amount plus a 1% service assessment fee.</p>

Other Fees

ACH Return	\$29 each after first occurrence
Statement Reprinting	<p>\$2 per statement after three occurrences</p> <p>Free through certain software products selected by Customer.</p>
Other	For information, copies or other reports not specified in this Addendum, Commerce may charge Customer such fees as Customer and Commerce may agree from time to time.
Software Initial Training	<p>Commerce Bank uses a 'train the trainer' model. General training occurs with either in-person or WebEx / Phone training with the Program Administrators. The Program Administrators, in turn, train the cardholders and system users on the chosen reporting and maintenance application.</p> <p>Additional Program Administrator training can be conducted via WebEx / Phone at no additional charge.</p> <p>Cardholder and system user training via WebEx / Phone will be charged at \$250 / hour.</p> <p>In-person training sessions (after initial Program Administrator software training) will be charged at \$250 / hour plus travel expenses and appropriate travel notice is requested for training.</p>

Reporting and Maintenance Tool Options

ControlPay Advanced

Implementation Fee**	\$5,000 WAIVED
Annual Maintenance Fee**	\$500 WAIVED
Routine maintenance and upgrades	NO CHARGE
Initial web-based or phone training for Administrators**	NO CHARGE
Customized Programming	<p>AP File Layouts</p> <ul style="list-style-type: none"> ❖ Standard – No Charge ❖ Custom – in those instances where this effort will generate a cost over \$3,000, Commerce will obtain a price quote for Customer. <p>Reconciliation Reports</p> <ul style="list-style-type: none"> ❖ Standard – No Charge ❖ Custom – Commerce will obtain a price quote for Customer. <p>Other Custom Programming</p> <ul style="list-style-type: none"> ❖ Commerce will obtain a price quote for Customer unless development is mutually agreed upon by Customer and Commerce. <p>Development hours beyond the initial 20 hours are typically charged at a rate of \$150.00 per hour.</p>

REVENUE SHARING

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

Monthly Net Volume	Corresponding Annual Net Volume	Active Funds
\$0 - \$83,332	\$0 - \$999,999	0.81%
\$83,333 - \$249,999	\$1,000,000 - \$2,999,999	1.10%
\$250,000 - \$416,666	\$3,000,000 - \$4,999,999	1.20%
\$416,667 - \$583,332	\$5,000,000 - \$6,999,999	1.28%
\$583,333 - \$749,999	\$7,000,000 - \$8,999,999	1.35%
\$750,000+	\$9,000,000+	1.40%

REVENUE SHARE ADJUSTMENTS

- 1) Volume qualifying at Large Ticket Interchange (LTI) will be paid 0.30%.
- 2) Volume qualifying at Visa Large Purchase Advantage (VLPA) will be paid at 0.10%.
- 3) Volume qualifying at Level 3 Interchange (L3) will be paid 0.30%
- 4) Commerce reserves the right to withhold, suspend or modify payment for the following reasons:
 - a) If the average transaction falls below \$500 (Gross purchase volume / total transaction count)
 - b) If Customer's average Interchange Rate falls below 2.25%
 - c) If Interchange Rates become significantly altered by Visa and / or MasterCard
 - d) If monthly volume contain fraudulent transactions
 - e) If the revenue share payment is less than \$10

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
(Commerce)**

By: _____

Title: _____

Effective Date: _____

**Elmira Heights Central School District,
Elmira Heights, New York
(Customer)**

By: _____

Title: Superintendent

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 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 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.

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
(Commerce)

Elmira Heights Central School District,
Elmira Heights, New York
(Customer)

By: _____

By: _____

Title: _____

Title: Superintendent

Effective Date: _____

