

**STATEMENT OF WORK  
FOR  
AGREEMENT FOR COMMERCIAL CARDS**

This Statement of Work for Agreement for Commercial Cards ("SOW") dated as of December 15, 2011 between Bank of West ("Bank") and The California Special Districts Association, a not-for-profit association organized under Internal Revenue Code Section 501c(6) ("CSDA"), to insure the continued existence of local, independent districts (each a "District"), is a statement of work to be performed by Bank in connection with implementation of individual Agreement for Commercial Cards (as defined in Article 1 below) between Bank and Districts.

**ARTICLE 1**

**DEFINITIONS AND INTERPRETATION**

1.1 Agreement for Commercial Card. As used in this SOW, "Agreement for Commercial Card" means a short form Agreement for Commercial Card between Bank and a District substantially in the form of Exhibit A. This SOW and the terms and conditions of Bank's standard commercial card terms and conditions appearing as Exhibit B to this SOW, as modified and augmented by this SOW (the "Standard Terms and Conditions"), are incorporated by reference into each Agreement for Commercial Card between Bank and a District.

1.2 Defined Terms Generally. Unless otherwise expressly provided in this SOW, capitalized terms are used in this SOW with the meanings given to them in Agreement for Commercial Card.

1.3 Inconsistency. In the event of any inconsistency between this SOW and the Agreement for Commercial Card, SOW shall prevail.

**ARTICLE 2**

**DISTRICT ENROLLMENT, PARTICIPATION AND IMPELEMENTATION**

2.1 Enrollment. Each District that desires to enter into an Agreement for Commercial Card with the Bank shall apply to the Bank and, subject to and upon satisfaction of the terms and conditions required by the Bank and approval by the Bank, in its sole discretion, Bank and such District an Agreement for Commercial Card.

2.2 Nature of SOW and Agreement for Commercial Card. Each District will be responsible for fulfilling its agreements under and making payments when and as required under its Agreement for Commercial Card with Bank. Each Agreement for Commercial Card between the Bank and a District will be solely an agreement between Bank and such District, and none of the CSDA nor any other District shall have any liability or responsibility for duties, liabilities or obligations of the District party to such Agreement for Commercial Card.

2.3 Relationship of Districts, CSDA. Neither this SOW nor the performance of the services of the respective parties hereunder shall be considered or construed to (i) create a partnership, association or joint venture between or among CSDA, any District or Bank, or (ii) constitute any party or any of its respective agents, employees or Representatives as the agent, employee or representative of the any other party, and no party hereto shall make any representations to the contrary. No party hereto will be under any obligation to any other person, except for obligations expressly assumed under this SOW or by operation of law.

2.4 District Administration of Program. Each District will administer its own program under its Agreement for Commercial Card with the Bank and, in connection with the establishment and administration of such program, will comply with procedures established by the Bank for identification of

employees to whom Cards shall be issued and the credit or purchasing authority of each such employee.

2.5 Card Design. CSDA may furnish to Bank artwork (digital file), including logo, that is acceptable to the Bank in order to provide a distinctive card design and color that will identify each Card as a CSDA card. The Districts may not customize the standard Card stock.

### ARTICLE 3

#### REFERRAL FEES; PRICING AND REBATES

3.1 Pricing. For purposes of calculating pricing as set forth on Appendix B of the Standard Terms and Conditions, monthly volumes will be determined by Bank based on the aggregate monthly volumes under all Agreements for Commercial Cards then in effect.

3.2 Rebates.

3.2.1 Bank will calculate rebates as set forth on Appendix C of the Standard Terms and Conditions. Notwithstanding anything in any Agreement for Commercial Card to the contrary, Bank agrees, and each District authorizes Bank, to pay to CSDA and Districts all such rebates on a calendar year basis. Each such payment shall be accompanied by a statement setting forth the total volume by District and proportion of such rebate to be paid to each District.

3.2.2 For rebates to be paid on CSDA volume, CSDA and District agree that CSDA shall be paid rebate equal to 100% of the total rebate earned by CSDA volume.

3.2.3 For rebates to be paid on District volume, CSDA and District agree that District shall be paid rebate equal to 100% of the total rebate earned by the District's volume.

3.2.4 CSDA and District agree to have rebate payments made electronically by an electronic funds transfer directly into an account designated by CSDA and each District.

3.3 Bonus. CSDA shall be paid a bonus rebate rate of 0.10% for the total net aggregate charge volume of CSDA and Districts for each calendar year of the Agreement. On a quarterly basis, Bank agrees to pay to CSDA referral fees equal to \$250.00 for each District that has had an average monthly volume of at least \$20,000 over the previous 6 month period. Only one referral fee will be paid by Bank to CSDA for each district.

3.4 Indemnification by CSDA. Except to the extent arising from the gross negligence or willful misconduct of Bank, CSDA shall indemnify Bank and hold it harmless from and against any and all damage, loss, or injury which CSDA may suffer, incur or sustain arising out of this SOW, including, without limitation, by reason of payments made to CSDA under this SOW.

3.5 Indemnification by Districts. In addition to the indemnifications given to Bank by each District pursuant to its Agreement for Commercial Card, each District shall indemnify CSDA and hold it harmless from and against any and all damage, loss, or injury which CSDA may suffer, incur or sustain arising out of such District's Agreement for Commercial Card, its Cards, its Travel Accounts, its Cardholder Agreements, its Purchasing Card Agreement, its Travel Account Agreements, and any of its Transaction unless such damage, loss, or injury arose from the gross negligence or willful misconduct of CSDA.

3.6 Indemnification by Bank. Bank agrees to hold CSDA harmless from any losses the bank may suffer which arise from a District's use of the card.

## ARTICLE 4

### TERMINATION

4.1 Termination Suspension of Credit Card Agreements. Each Credit Card Agreement (a) will terminate and be terminable in accordance with its terms and (b) shall terminate if this SOW terminates. If a Default occurs under an Agreement for Commercial Card between the Bank and a District, the Bank has the right to exercise the rights provided in such Agreement for Commercial Card, including without limitation the right to suspend availability of all or any portion of the Card program with such District and to terminate such Agreement for Commercial Card, and to suspend correlative provisions of this SOW in respect of such Agreement for Commercial Card.

4.2 Termination of SOW. This SOW (i) shall be in force for an initial period of three years from its effective date, (ii) may be terminated at any time by mutual agreement of Bank and CSDA, (iii) may be terminated by Bank at any time (A) upon termination of any Agreement for Commercial Card with any District, (B) upon material breach by CSDA of its agreements hereunder, (C) if any representation or warranty made by CSDA hereunder is untrue or incorrect in any material respect when made, (D) CSDA commences a voluntary case or other proceeding seeking rehabilitation, bankruptcy, insolvency or other similar law generally affecting the rights of creditors now or hereafter in effect or seeking the appointment of a trustee, rehabilitator, receiver, liquidator, custodian or other similar official of it or substantially all of its property, or consents to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or makes a general assignment for the benefit of creditors, or files an answer admitting the material allegations of a petition filed against it in any such proceeding or fails generally to pay its debts as they become due, or takes any corporate action to authorize any of the foregoing, or (E) if an involuntary case or other proceeding be commenced against CSDA seeking rehabilitation, liquidation, reorganization or other relief with respect to it or its debts under any rehabilitation, bankruptcy, insolvency or other similar law generally affecting the rights of creditors now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding remains undismissed and unstayed for a period of sixty (60) days, and (iii) may be terminated by CSDA at any time (A) upon any material breach by Bank of its agreements hereunder, (B) if any representation or warranty made by Bank here under is untrue or incorrect in any material respect when made, or (C) the Federal Deposit Insurance Corporation is appointed as receiver for Bank.

4.3 Effect of Termination. Termination or suspension of all or any portion of this SOW by Bank will not relieve CSDA or any District of any duty or obligation to Bank and may be limited to application to an individual District or to less than all of this SOW.

## ARTICLE 5

### REPRESENTATIONS AND WARRANTIES

5.1 Bank. Bank hereby represents, warrants and covenants to and with CSDA and each District as follows:

5.1.1 The execution and delivery by it of this SOW, the performance by it of its duties and obligations hereunder and the consummation of the transactions contemplated hereby do not (i) conflict with or result in a violation or breach of any term or provision of any law, rule, regulation, judgment, decree, order or injunction applicable to it or any of its assets and properties or any contractual restriction of any kind binding or affecting it or any of its properties, or (ii) conflict with or result in a violation or breach of or constitute, with or without notice or lapse of time or both, a default under any material agreement to which it is a party or any material obligation or responsibility which it has to any third party.

5.1.2 Bank is a corporation duly organized, validly existing and in good standing under the laws of California. Bank has the corporate power and authority to execute and deliver this SOW and to perform its obligations hereunder.

5.2 CSDA. CSDA hereby represents, warrants and covenants to and with Bank and each District as follows:

5.2.1 The execution and delivery by CSDA of this SOW, the performance by CSDA of its duties and obligations hereunder and the consummation of the transactions contemplated hereby do not (i) conflict with or result in a violation or breach of any term or provision of any law, rule, regulation, judgment, decree, order or injunction applicable to CSDA or any of its assets and properties or any contractual restriction of any kind binding or affecting CSDA or any of its properties, or (ii) conflict with or result in a violation or breach of or constitute, with or without notice or lapse of time or both, a default under any material agreement to which Company is a party or any material obligation or responsibility which CSDA has to any third party.

5.2.2 CSDA is a not-for-profit association organized under Internal Revenue Code Section 501c(6), has the power and authority to execute and deliver this SOW and to perform its obligations hereunder.

5.3 Districts. Each representation and warranty made by a District to Bank under an Agreement for Commercial Card is also made concurrently to CSDA.

## ARTICLE 6

### CONFIDENTIALITY

In addition to, and not in limitation of, terms and conditions contained in any Agreement for Commercial Card between the Bank and any District, each of the Bank, CSDA and each District party to an Agreement for Commercial Card agrees as follows:

6.1 Definitions. For purposes of this SOW, the following terms shall have the meanings assigned to them below:

"Confidential Information" means Bank Confidential Information or Company Confidential Information, as applicable.

"Bank Confidential Information" means all information of Bank, whether or not in written, electronic or optical form, including, without limitation; (i) the names, addresses, social security numbers, telephone and facsimile numbers, financial data, e-mail addresses, and any other Non-Public Personal Information regarding Bank's, its operating subsidiaries', or its affiliates' customers and consumers, or prospective customers and consumers; (ii) that CSDA or a District knows or should have known is proprietary, confidential or a trade secret and (iii) is clearly identified as proprietary, confidential or a trade secret. Notwithstanding the foregoing, Bank Confidential Information shall not include information that: (i) is or becomes generally available to the public other than as a result of a disclosure by CSDA or a District, or any of their Representatives, in violation of this SOW or any Agreement for Commercial Card; (ii) is independently developed by employees or agents of CSDA or a District who had no knowledge of or access to any of the Bank Confidential Information; (iii) was known to the recipient prior to its disclosure by Bank hereunder; (iv) is or becomes available to CSDA or a District from a source other than the Bank; or (v) is disclosed with the consent of Bank; provided that with respect to clauses (iii) and (iv) above, the source of such information was not bound at the time of such disclosure by a nondisclosure, confidentiality or similar agreement with Bank or otherwise prohibited from transmitting the information to CSDA or a District, or any of their respective Representatives, because of a contractual, legal or fiduciary obligation. Each of CSDA and each District shall have the burden of proving that any Bank Confidential Information that it or its respective Representatives uses or discloses contrary to the terms of this SOW is not Bank Confidential Information.

"Company Confidential Information" means all information of CSDA and each District, whether or not in written, electronic or optical form, that (i) is clearly identified as proprietary, confidential or a trade secret, (ii) Bank knows or should have known is proprietary, confidential or a trade secret, and (iii) is information regarding CSDA's and each District's constituencies including, but not limited to, Nonpublic Personal Information regarding such constituencies. Notwithstanding the foregoing, Company Confidential Information shall not include information that: (i) is or becomes generally available to the public other than as a result of a disclosure by Bank, or any of its representatives, in violation of this SOW; (ii) is independently developed by employees or agents of Bank who had no knowledge of or access to any of the Company Confidential Information; (iii) was known to Bank prior to its disclosure by CSDA or a District; (iv) is or becomes available to Bank from a source other CSDA or such District; or (v) is disclosed with the consent of CSDA or such District; provided that with respect to clauses (iii) and (iv) above, the source of such information was not bound at the time of such disclosure by a nondisclosure, confidentiality or similar agreement with CSDA or such District or otherwise prohibited from transmitting the Company Confidential Information to Bank, or any of its representatives, because of a contractual, legal or fiduciary obligation.

"Representatives" or "representatives" means any directors, officers, employees, agents, stockholders, subsidiaries, affiliates, attorneys, accountants and other advisors or representatives of a particular person.

6.2 Bank Regulation. Each of CSDA and each such District acknowledges that (1) the Bank is subject to the consumer and customer privacy provisions of the Gramm-Leach-Bliley Act of 1999 ("Act") and the implementing regulations promulgated by applicable federal banking regulators (the "Regulations"), (2) the Bank Confidential Information covered by this SOW may include Non-Public Personal Information as that term is defined in the Regulations, and (3) that Bank has certain obligations to protect the Bank Confidential Information from unauthorized disclosure to third parties. Each of CSDA and each such District understands that its willingness and ability to cooperate with and to assist Bank in this regard is a material factor in Bank's willingness to enter into this SOW and any Agreement for Commercial Card.

6.3 Survival. The covenants and undertakings of each party hereunder with respect to Confidential Information shall survive termination of this SOW in perpetuity.

6.4 Non-Use and Non-Disclosure of Confidential Information.

6.4.1 Each of CSDA and each District (a) agrees to treat the Bank Confidential Information as strictly confidential and use and disclose the Bank Confidential Information only in connection with its performance of its duties and obligations under this SOW, (b) shall hold all Bank Confidential Information in a fiduciary capacity and shall exercise the highest degree of care in safeguarding all such Bank Confidential Information against loss, theft, intentional or inadvertent use and disclosure, and shall take all steps reasonably necessary to maintain the confidentiality thereof, (c) shall immediately notify Bank of the date of, and circumstances involved in, any loss or unauthorized use or disclosure of Bank Confidential Information, (d) agrees to disclose Bank Confidential Information only to such of its Representatives as is necessary for it to perform its respective duties and obligations under this SOW, (e) shall notify each and every of its respective Representatives that has access to or knowledge of any of the Bank Confidential Information as to the existence of this SOW and require them to abide by the terms hereof, and shall be responsible for any use or disclosure of Bank Confidential Information by its Representatives that is contrary to the terms hereof to the same extent as if it had used or disclosed such Bank Confidential Information, and (f) shall not, directly or indirectly: (i) disclose, divulge or discuss the Bank Confidential Information with any third party (other than its Representatives); (ii) use any of the Bank Confidential Information for any purpose whatsoever other than in connection with their respective performance of their respective duties and obligations under this SOW and, in the case of a District, under its Agreement for Commercial Card; or (iii) use any of the Bank Confidential Information for the gain, benefit, advantage or profit of any other person.

6.4.2 Bank (a) agrees to treat the Company Confidential Information as strictly confidential and use and disclose the Company Confidential Information only in connection with Bank's

performance of its duties and obligations under this SOW, (b) shall hold all Company Confidential Information in a fiduciary capacity and shall exercise the highest degree of care in safeguarding all such Company Confidential Information against loss, theft, intentional or inadvertent use and disclosure, and shall take all steps reasonably necessary to maintain the confidentiality thereof, (c) shall immediately notify CSDA or the relevant District, as applicable, of the date of, and circumstances involved in, any loss or unauthorized use or disclosure of Company Confidential Information, (d) agrees to disclose Company Confidential Information only to such of its Representatives as is necessary for Bank to perform its duties and obligations under this SOW, (e) shall notify each of its Representatives that has access to or knowledge of any of the Company Confidential Information as to the existence of this SOW and require them to abide by the terms hereof, and shall be responsible for any use or disclosure of Company Confidential Information by its Representatives that is contrary to the terms hereof to the same extent as if Bank had used or disclosed such Company Confidential Information, and (f) shall not, and shall cause its Representatives not to, directly or indirectly: (i) disclose, divulge or discuss the Company Confidential Information with any third party (other than its Representatives); (ii) use any of the Company Confidential Information for any purpose whatsoever other than in connection with Bank's performance of its duties and obligations under this SOW and Agreements for Commercial Cards with Districts; or (iii) use any of the Company Confidential Information for the gain, benefit, advantage or profit of any other person.

6.5 Compulsory Disclosure. In the event that CSDA, any District or Bank, as applicable, is requested or required, as a result of any judicial or regulatory proceeding, to make any disclosure of Bank Confidential Information or Company Confidential Information, as applicable, such party agrees to provide the other party with advance notice thereof as promptly as possible (but in no event less than seven business days unless applicable law or a court order provides for disclosure prior to expiration of the seven business day period) so that the other party may seek an appropriate protective order or other appropriate remedy. If the applicable party is unable to timely obtain such a protective order or other appropriate remedy and the other party is compelled to disclose any Confidential Information or else stand liable for contempt or suffer any similar censure, sanction or penalty, then such party may disclose only that portion of the Confidential Information that such party is advised by counsel that it is legally required to be disclosed, and such party shall use reasonable efforts to obtain reliable assurances that the Confidential Information that is so disclosed will be treated confidentially. Any party hereto may reveal so much of the Confidential Information to a regulatory agency with jurisdiction over it, its auditor and attorney as is necessary for such person to satisfy its duties.

6.6 Destruction and Return of Confidential Information. Each of CSDA and each District agrees that all Bank Confidential Information, including any summaries, copies or reproductions permitted hereby, are and shall remain the property of Bank. From time to time, and at any time, in its sole discretion, Bank may request in writing that CSDA or any District either immediately destroy or return the Bank Confidential Information to Bank, and each of CSDA and each District agrees to promptly comply with Bank's request and shall cause its respective Representatives to comply with Bank's request, including, but not limited to, the destruction or deletion of all machine readable, electronic or optical Bank Confidential Information from computer systems and data storage devices. If destruction or return of the Bank Confidential Information is not feasible, the applicable party shall consult with Bank and take prompt action to make such Bank Confidential Information unavailable or inaccessible to such party, its Representatives and other persons. Each of CSDA and each District agrees to promptly provide Bank with written certification of its satisfaction with the terms of this paragraph. Notwithstanding anything to the contrary contained herein, for purposes of this section, the monthly periodic statements on a Card account and the Reports delivered to a District under an Agreement for Commercial Card shall be property of such District and shall not be subject to the provisions of this section. Bank agrees that all Company Confidential Information, including any summaries, copies or reproductions permitted hereby, are and shall, as between Bank and CSDA or any District, remain the property of the applicable party. From time to time, and at any time, in its sole discretion, CSDA or any District may request in writing that Bank either immediately destroy or return to such party, and Bank agrees to promptly comply with such party's request and shall cause its Representatives to comply with such party's request, including, but not limited to, the destruction or deletion of all machine readable, electronic or optical Company Confidential Information from computer systems and data storage devices. If destruction or return of the Company Confidential Information is

not feasible, then Bank shall consult with relevant party and take prompt action to make such Company Confidential Information unavailable or inaccessible to Bank, its Representatives and other persons. Bank agrees to promptly provide, and to cause its Representatives to promptly provide the relevant party with written certification of its satisfaction with the terms of this paragraph.

6.7 No License, Obligation or Warranty. No right, title or license is hereby granted by Bank, by implication or otherwise, to any of CSDA or any District or any of its Representatives, except for the limited usage rights specifically described herein, with respect to any Bank Confidential Information. No right, title or license is hereby granted by CSDA or any District by implication or otherwise, to Bank or any of its Representatives, except for the limited usage rights specifically described herein, with respect to any Company Confidential Information.

## ARTICLE 7

### MISCELLANEOUS

7.1 Survival. Unless otherwise terminated in accordance with its terms, this SOW shall survive termination of Agreement for Commercial Cards. Sections 3.4 and 3.5 and Article 6 of this SOW shall survive termination of this SOW.

7.2 Assignment. Neither this SOW nor any of the rights, interests or obligations of any party hereunder may be assigned by such party without the prior written consent of the other party affected thereby, provided, however, that Bank may subcontract with a third party to perform the non-credit services to be provided by Bank without the consent of CSDA or any District. No such permitted assignment or subcontracting shall release the assignor or subcontractor from its obligations and liabilities under this SOW.

7.3 Binding Effect. This SOW and all of the provisions hereof shall be binding upon and inure to the benefit of CSDA, Bank and each District party to an Agreement for Commercial Card and their respective successors and permitted assigns.

7.4 Notices. All information, Reports, notices, requests, demands, consents and other communications given or required to be given by Bank under this SOW, any Agreement for Commercial Card and related documents may be given to each of CSDA and the relevant District, and all such communications shall be in writing and delivered to the applicable party at the address indicated below:

If to Bank: Bank of the West  
180 Montgomery Street, 13th floor  
San Francisco, CA 94104  
Attention: Commercial Card Manager

If to CSDA: California Special Districts Association  
1112 I Street, Suite 200  
Sacramento, CA 95814

If to a District: To the Address set forth in the Agreement for Commercial Card to which such District is a party

or, as to each party at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this section. Any notices shall be in writing, including telegraphic or facsimile communication, and may (but need not) be sent by registered or certified mail, return receipt requested, postage prepaid or telegraphed. Notices may not be sent by electronic mail. Notice shall be effective upon actual receipt thereof.

7.5 Incorporation. All appendixes attached hereto and to which reference is made herein are incorporated by reference as if fully set forth herein.

7.6 Governing Law. This SOW shall be governed by and interpreted in accordance with the laws of the State of California (excluding its choice of law rules), and as applicable, federal law.

7.7 Entire Agreement. This SOW and its exhibits contains the entire understanding of and all agreements between the parties hereto with respect to the subject matter hereof and supersedes any prior or contemporaneous representation, information, bid, offer, letter of intent, agreement or understanding, oral or written, pertaining to any such matters which agreements or understandings shall be of no force or effect for any purpose; provided, however, that the terms of any confidentiality agreement between the parties hereto previously entered into, to the extent not inconsistent with any provisions of this SOW, shall continue to apply.

7.8 Amendment. This SOW may not be amended or supplemented in any manner except by mutual agreement of CSDA and Bank (and without consent of any District) and as set forth in a writing signed by a duly authorized representative of such parties or their respective successors in interest, provided that, notwithstanding anything to the contrary contained herein, Bank may unilaterally, in its sole discretion, amend the terms and conditions of any Cardholder Agreement or Travel Account Agreement, including, without limitation, the interest, fees and charges related to the Cards, in accordance with the provisions of the Cardholder Agreement or Travel Account Agreement.

7.9 Counterparts. This SOW may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7.10 Headings. The headings used in this SOW are inserted for purposes of convenience of reference only and shall not limit or define the meaning of any provisions of this SOW. As used herein, the singular includes the plural and vice-versa, the masculine includes the feminine, and vice-versa, "and" means "or" and vice-versa, unless the context clearly indicate the contrary.

7.11 Waiver. The waiver of any breach of any provision under this SOW by any party shall not be deemed to be a waiver of any preceding, subsequent or other breach under this SOW. No such waiver shall be effective unless in writing and executed by any authorized signatory.

7.12 Third Party Beneficiaries. Except as expressly provided in this SOW, CSDA and Bank intend that this SOW shall not benefit or create any right or cause of action in or on behalf of any person other than the parties hereto and, to the extent incorporated into any Agreement for Commercial Card to which a District is a party, such District.

7.13 Severability. If any provision of this SOW, as applied to any part or circumstances, shall be adjudged by a court of competent jurisdiction to be void, invalid or unenforceable, the same shall in no way affect any other provision of this SOW, the application of any such provision, or any other circumstances, or the validity or enforceability of the other provisions of this SOW.

7.14 Force Majeure. None of CSDA, Bank or any District shall be liable to the other party for any delay or non-performance of its obligations under this SOW, or any Cardholder Agreement arising from any cause beyond its reasonable control, provided, however, that such party shall, on a best efforts basis, cure such inability to timely perform its obligations hereunder.

7.15 Association Rules. CDSA acknowledges and agrees that the association rules of VISA or MasterCard shall govern and regulate certain issues which arise out of the usage of the Cards and the Travel Accounts.

7.16 Cooperation. The parties shall cooperate to insure that the respective duties and obligations of each of the parties hereunder are effectively, efficiently and promptly discharged. Each party shall execute and deliver to the other parties such further instruments and documents and take such further action as may from time to time be necessary to carry out the intent and purposes of this SOW.

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IN WITNESS WHEREOF, the parties hereto have caused this SOW to be executed by their duly authorized officers as of the date first above written.

<b>THE CALIFORNIA SPECIAL DISTRICTS ASSOCIATION</b>	<b>BANK OF THE WEST</b>
Name:	Name:
Title:	Title:
Signature	Signature

**TERMS AND CONDITIONS  
APPLICABLE TO  
AGREEMENT FOR COMMERCIAL CARD**

**ARTICLE I - DEFINITIONS**

Certain Definitions. As used in the Agreement for Commercial Card, the terms below shall have the meanings set forth.

"Agreement for Commercial Card" means an Agreement for Commercial Card between the Bank and a District into which these Terms and Conditions, including all appendixes incorporated herein, as modified, amended or extended from time to time, are incorporated.

"Bank" means Bank of the West

"Bank Manager" means a natural person designated by the Bank, from time to time, to be the primary contact person with the District Manager.

"Business Credit" means credit offered or extended for a purpose other than Consumer Credit.

"Card" means a Credit Card or Purchasing Card issued by Bank to the District and/or its Employee but does not include a Travel Account.

"Cardholder" means an Employee to whom a Card is issued by Bank, regardless of whether the Employee or the District is liable on the Card.

"Cardholder Agreement" means an agreement pursuant to which a Card is issued to a Cardholder, and which agreement shall include, without limitation, the terms and conditions for obtaining credit through the use of a Card, and includes a Purchasing Card Agreement.

"Cash Advance" means a cash loan or similar transaction under a Credit Card.

"Cash Advance Limit" means the maximum cash loan balance that a Cardholder may have outstanding at any time.

"District" means a special district under the laws of the State of California.

"District Credit Limit" means the maximum indebtedness that the District and all of its Employees may borrow under all Cards (including Cash Advances) and Travel Accounts, and which District Credit Limit shall include the total amount District has agreed to guarantee under the Guaranty and the aggregate amount of all Employee Credit Limits.

"District Manager" means a natural person designated by District, from time to time, to be the primary contact person with the Bank Manager.

"Consumer Credit" means credit offered or extended primarily for personal, family or household purpose.

"Credit Card" means any card, plate, or other single credit device that may be used from time to time to obtain credit but shall not include a Purchasing Card.

"Employee" means any director, officer, and employee of District who is designated by the District to be a Cardholder.

"Employee Credit Limit" means the maximum indebtedness that an Employee may borrow under a Card (including Cash Advances).

"Guaranty" means a limited guaranty under which District will guarantee the performance of all obligations of Employees to whom the Bank has issued a Credit Card, including, without limitation, the payment of all obligations arising under such Credit Cards.

"Person" means any corporation, partnership, trust, or other business entity, other entity or a natural person.

"Travel Account" means a loan account, evidenced in part by an account number and a Travel Account Agreement, but which loan account is established and used without issuance of a card, plate or other device to obtain credit.

"Travel Account Agreement" means the agreement pursuant to which a Travel Account is established, and which agreement shall include, without limitation, the terms and conditions for obtaining credit under the Travel Account.

"Transaction" means a credit transaction under a Card or a Travel Account and includes a Cash Advance.

## **ARTICLE II - ISSUANCE OF THE CARDS**

**II.A. The Program.** Subject to the Bank's then normal and customary underwriting criteria, upon receipt of a card request from a District Manager, the Bank will issue a Credit Card to such applicant Employee, subject to the terms and conditions of the Cardholder Agreement delivered by Bank to Employee and District, as such Cardholder Agreement may be amended from time to time, provided further, that the underwriting shall be based on a credit evaluation of the District. The District shall be liable on all Credit Cards and by its acceptance of these Terms and Conditions, the District agrees, to the fullest extent, on obligations arising under or in connection with all Credit Cards issued to all Employees under the Agreement for Commercial Card and each applicable Cardholder Agreement as if the District had executed each Bank credit application agreeing to be bound by each Cardholder Agreement. In all cases, the Bank shall have the sole and absolute discretion on underwriting decisions.

**II.B. Security Interest.** To secure performance of all District's obligations in respect of the Agreement for Commercial Card and all other obligations owed by District to Bank, whether or not evidenced by this or any other agreement and now existing or hereafter created, District hereby grants to the Bank a security interest in and to all of the following property (hereinafter the "Collateral"): (a) Equipment, all goods now owned or hereafter acquired by District, or in which District has or may acquire any interest, including but not limited to all machinery, equipment, furniture, furnishings, fixtures, tools, supplies and motor vehicles of every kind and description, and all additions, accessions, improvements, replacements and substitutions thereto and thereof; (b) Inventory, all inventory now owned or hereafter acquired by District including but not limited to raw materials, work in process, finished goods, inventory leased to others or held for lease, merchandise, parts and supplies of every kind, including inventory temporarily out of the District's custody or possession, together with all returns on accounts; (c) Accounts, all accounts, letter of credit rights, commercial tort claims, contract rights and general intangibles, including software and payment intangibles, now owned or hereafter created or acquired by District including but not limited to receivables, credit card receivables, health care receivables, insurance receivables, software receivables and license fees, goodwill, trademark rights, trade styles, trade names, patents, patent applications, copyrights and copyright applications, customer lists, business records and computer programs, tapes, disks and related data processing software that at any time evidence or contain information relating to any of the Collateral; (d) Documents, all documents, instruments and chattel paper, whether electronic or tangible, now owned or hereafter acquired by the District, including, but not limited to, warehouse and other receipts, bills of sale, promissory notes and bills of lading; (e) Monies, all monies, deposit accounts, certificates of

deposit, investment property and securities of the District now or hereafter in the Bank's or its agents' possession.

The Bank's security interest in the Collateral shall be a continuing lien and shall include the proceeds and products of the Collateral, including without limitation proceeds of insurance. District hereby consents to Bank filing financing statements in all locations deemed appropriate by the Bank from time to time. The security interest granted to Bank in the Collateral shall not secure or be deemed to secure any Indebtedness of the District which is at the time of its creation subject to the provisions of any state or federal consumer credit or truth-in-lending disclosure statutes.

To the extent permitted by law, District further agrees that if District has previously granted or at any time grants an additional security interest in favor of Bank pursuant to any document or agreement, that notwithstanding the provisions therein such security interest shall also secure all obligations and indebtedness arising in connection with or in respect of the Agreement for Commercial Card. District and Bank hereby amend and modify any such document or agreement to so provide that the security interest granted therein further secures the obligations and in respect of the Agreement for Commercial Card.

## **II.C. Credit Limits.**

- II.C.a** The Employee Credit Limit for each Card and District Credit Limit shall be established from time to time by the Bank in its sole and absolute discretion based on the Bank's then normal and customary underwriting criteria and the District's request. All indebtedness under all Cards and all Travel Accounts shall be deemed to be indebtedness under the District Credit Limit. The Bank may, in its sole discretion, increase the District Credit Limit or an Employee Credit Limit at the request of District, subject to the Bank's then normal and customary underwriting criteria. The Employee may not request an increase in the Employee Credit Limit.
- II.C.b** If the Bank reasonably believes that the prospects for performance by District of its obligations under the Agreement for Commercial Card, all Cards, Cardholder Agreements, the Travel Accounts, and Travel Account Agreements are impaired, the Bank may, in its sole discretion, reduce the District Credit Limit by written notice delivered thirty (30) days prior to the effective date of the reduction in the District Credit Limit.
- II.C.c** If, on the effective date of the reduction in the District Credit Limit, the total outstanding liabilities owed to Bank under all Cards and Travel Accounts exceeds the new credit limit, District will immediately pay (or cause to be paid) Bank an amount sufficient to reduce the total outstanding obligation owed to Bank under the Cards to a sum at least equal to the new District Credit Limit, and if usage of the Cards will cause District to exceed the new District Credit Limit, District shall not use the Cards and Travel Accounts and shall cause the Cardholders and persons authorized to use the Travel Accounts to cease using the Cards and Travel Accounts until such time that credit is available under the new District Credit Limit. Nothing herein shall be construed to prohibit the Bank from charging any applicable over limit fee.
- II.C.d** Notwithstanding anything to the contrary, if the approval of an application for a Card or Travel Account, or increase in an Employee Credit Limit, would cause the then District Credit Limit to be exceeded, the Bank shall not be obligated to issue such Card or Travel Account or grant the application to increase the Employee Credit Limit even if the Bank's then applicable customary and normal underwriting criteria is satisfied.

## **ARTICLE III - LIMITATION OF LIABILITIES ASSUMED**

Limitation of Liabilities. Except in the case of gross negligence of the Bank, or if applicable law, Cardholder Agreement, Travel Account Agreement, or in any Agreement for Commercial Card excuses liability on the part of District or the Cardholder, as the case may be, District, or the Cardholder, as the case may be, shall be fully liable for all Transactions and obligations arising under a Card or Travel Account, regardless of whether the Transaction is for Business Credit or Consumer Credit and regardless of whether the Transaction is authorized or unauthorized by the Employee or District, even if Bank knew

or should have known that such Transaction was unauthorized by the Employee or District or that the Transaction was for Consumer Credit. Bank shall be under no duty to investigate or inquire whether a Transaction is authorized by the District or whether the Transaction was for Consumer Credit.

The provisions of this section shall not apply to an allegation that the Transaction was not authorized because of a forged signature.

In the event of possible loss, theft or unauthorized use of your Card, you agree to notify us immediately. You may be liable for the unauthorized use of any Card issued under the Agreement for Commercial Card. You agree to assist us in determining the facts and circumstances relating to any unauthorized use of a Card. You will not be liable for unauthorized use that occurs after you notify us of loss, theft, or possible unauthorized use.

#### **ARTICLE IV - COVENANTS OF BANK**

Bank covenants with District as follows:

**IV.A. Bank Manager.** Bank will appoint a Bank Manager who shall meet with the District Manager as frequently as mutually agreeable but at least quarterly to discuss matters related to the Cards, Travel Accounts, Cardholder Agreements, Travel Account Agreements, and the Agreement for Commercial Card. Such meetings may be conducted telephonically.

**IV.B. Employee Information.** Provided Bank has a valid and required consent from a Cardholder, Bank shall:

**IV.B.a** provide to the District Manager a copy of each of the Cardholder's monthly periodic statement and the information set forth in section IV.C hereof, and

**IV.B.b** notify the District Manager of the Bank's termination of a Card account.

**IV.C. Management Information Regarding the Cards.** Provided Bank has a valid and required consent from a Cardholder, the Bank shall provide the following to the District Manager:

**IV.C.a** a report in the form of total business reports ("Report") prepared by Total Systems, Inc. which Report shall contain the following information regarding Cardholders and Transactions:

1. List of authorized Cardholders
2. Summary of Transactions
3. Aging report listing delinquent Cardholders
4. Transaction totals for each merchant category

The Report shall be provided monthly on or before the fifteenth day of each month following the month for which the Report is prepared.

**IV.C.b** The information, Report and other information to be provided under this Article IV shall be delivered to the District Manager unless District shall notify Bank of a substitute or additional person (including the address of such person) who is to receive any of the reports described in sections IV.B or IV.C.

#### **ARTICLE V - COVENANTS OF DISTRICT**

District covenants with Bank as follows:

**V.A. District Manager.** District will appoint a District Manager who shall meet with Bank Manager as frequently as mutually agreeable but at least quarterly to discuss matters related to the issuance of the Cards, Travel Accounts, Cardholder Agreements, Travel Accounts Agreements, and the Agreement for Commercial Card. Such meetings may be conducted telephonically.

**V.B. District's Revocation of Authority.** If District revokes the authority of any Cardholder to use a Card or a travel agency to charge Transactions to a Travel Account, the District Manager shall promptly notify Bank, and after a reasonable time to act on such notice, Bank shall terminate the Card

account, or Travel Account, as applicable, and post no Transactions to such Card account or Travel Account, provided that the use of the Card or Travel Account shall not be considered unauthorized by the District until the Bank has had a reasonable time to act upon District's notice. The notice may be provided in writing or orally, telephonically, facsimile transmission or in writing, but not by electronic mail. The District shall use its best efforts to recover the unauthorized Card from such Cardholder and deliver the Card to Bank promptly after recovery of the Card.

- V.C. Cooperation with Investigation.** District will cooperate, execute, acknowledge and deliver such instruments and take such other actions as Bank may reasonably require in connection with any unauthorized or fraudulent use of a Card, loss or theft of a Card, including, without limitation, executing an affidavit in form satisfactory to Bank and providing to Bank a copy of a police report.
- V.D. Reliance.** For purposes of the Agreement for Commercial Card, any Employee shall be deemed authorized to act, and give instruction and notice to Bank (except for a request to increase the Employee Credit Limit), for the Card issued to such Employee. The Bank shall be entitled to act upon such notice from such Employee without liability or obligation to District or the Cardholder, and shall be under no obligation or duty to inquire into or investigate the authenticity, validity, or accuracy of such notice or information, notwithstanding any knowledge that the Bank may have to the contrary. The District Manager shall be deemed authorized to act for, and give instruction and notice to Bank, and bind District.
- V.E. Use of Employee Information.** District agrees that District shall use any information about an Employee provided to District under or in connection with the Agreement for Commercial Card only in connection with the Program as described in section C of the Recitals, and for no other purpose.

## **ARTICLE VI - COVENANTS OF THE PARTIES**

Customer Privacy and Corporate Confidentiality.

- VI.A.** District acknowledges that (1) Bank is subject to the consumer and customer privacy provisions of the Gramm-Leach-Bliley Act of 1999 ("Act") and the implementing regulations promulgated by applicable federal banking regulators (the "Regulations"), (2) the Bank Confidential Information covered by the Agreement for Commercial Card may include Non-Public Personal Information as that term is defined in the Regulations, and (3) that Bank has certain obligations to protect the Bank Confidential Information from unauthorized disclosure to third parties. District understands that District's willingness and ability to cooperate with and assist Bank in this regard is a material factor in Bank's willingness to enter into the Agreement for Commercial Card.
- VI.B.** The covenants and undertakings of each party hereunder with respect to Confidential Information shall survive termination of the Agreement for Commercial Card in perpetuity.
- VI.C.** For purposes of the Agreement for Commercial Card, the following terms shall have the meanings assigned to them below:
- VI.C.a** "Confidential Information" means Bank Confidential Information or District Confidential Information, as applicable.
- VI.C.b** "Bank Confidential Information" means all information of Bank, whether or not in written, electronic or optical form, including, without limitation; (i) the names, addresses, social security numbers, telephone and facsimile numbers, financial data, e-mail addresses, and any other Non-Public Personal Information regarding Bank's, its operating subsidiaries', or its affiliates' customers and consumers, or prospective customers and consumers; (ii) that District knows or should have known is proprietary, confidential or a trade secret and (iii) is clearly identified as proprietary, confidential or a trade secret.

Notwithstanding the foregoing, Bank Confidential Information shall not include information that: (i) is or becomes generally available to the public other than as a result of a disclosure by District, or any of its Representatives, in violation of the Agreement for Commercial Card; (ii) is independently developed by employees or agents of District who had no knowledge of

or access to any of the Bank Confidential Information; (iii) was known to District prior to its disclosure by Bank hereunder; (iv) is or becomes available to District from a source other than the Bank; or (v) is disclosed with the consent of Bank; provided that with respect to clauses (iii) and (iv) above, the source of such information was not bound at the time of such disclosure by a nondisclosure, confidentiality or similar agreement with Bank or otherwise prohibited from transmitting the information to District, or any of its respective Representatives, because of a contractual, legal or fiduciary obligation. District shall have the burden of proving that any Bank Confidential Information that it or its respective Representatives uses or discloses contrary to the terms of the Agreement for Commercial Card is not Bank Confidential Information.

**VI.C.c** "District Confidential Information" means all information of District, whether or not in written, electronic or optical form, that (i) is clearly identified as proprietary, confidential or a trade secret, (ii) Bank knows or should have known is proprietary, confidential or a trade secret, and (iii) is information regarding District's customers and consumers including, but not limited to, Nonpublic Personal Information regarding such customers and consumers and prospective customers and consumers.

Notwithstanding the foregoing, District Confidential Information shall not include information that: (i) is or becomes generally available to the public other than as a result of a disclosure by Bank, or any of its Representatives, in violation of the Agreement for Commercial Card; (ii) is independently developed by employees or agents of Bank who had no knowledge of or access to any of the District Confidential Information; (iii) was known to Bank prior to its disclosure by District; (iv) is or becomes available to Bank from a source other than District; or (v) is disclosed with the consent of District; provided that with respect to clauses (iii) and (iv) above, the source of such information was not bound at the time of such disclosure by a nondisclosure, confidentiality or similar agreement with District or otherwise prohibited from transmitting the District Confidential Information to Bank, or any of its Representatives, because of a contractual, legal or fiduciary obligation. Bank shall have the burden of proving that any information that it or its Representatives uses or discloses contrary to the terms of the Agreement for Commercial Card is not District Confidential Information.

**VI.C.d** "Representatives" means any directors, officers, employees, agents, stockholders, subsidiaries, affiliates, attorneys, accountants and other advisors or representatives of a particular person.

**VI.C.e** Non-Use and Non-Disclosure of Confidential Information. (1) District agrees to treat the Bank Confidential Information as strictly confidential and use and disclose the Bank Confidential Information only in connection with District's performance of its duties and obligations under the Agreement for Commercial Card. District and its Representatives shall hold all Bank Confidential Information in a fiduciary capacity and shall exercise the highest degree of care in safeguarding all such Bank Confidential Information against loss, theft, intentional or inadvertent use and disclosure, and shall take all steps reasonably necessary to maintain the confidentiality thereof. District shall immediately notify Bank of the date of, and circumstances involved in, any loss or unauthorized use or disclosure of Bank Confidential Information. District agrees to disclose Bank Confidential Information only to such of its Representatives as is necessary for District to perform its respective duties and obligations under the Agreement for Commercial Card. District shall notify each and every of its respective Representatives of District that has access to or knowledge of any of the Bank Confidential Information as to the existence of the Agreement for Commercial Card and require them to abide by the terms hereof, and shall be responsible for any use or disclosure of Bank Confidential Information by its Representatives that is contrary to the terms hereof to the same extent as if District had used or disclosed such Bank Confidential Information. District and its Representatives shall not, directly or indirectly: (i) disclose, divulge or discuss the Bank Confidential Information with any third party (other than its Representatives); (ii) use any of the Bank Confidential Information for any purpose whatsoever other than in connection with their respective performance of their respective duties and obligations under the

Agreement for Commercial Card; or (iii) use any of the Bank Confidential Information for the gain, benefit, advantage or profit of any other person.

(2) Bank agrees to treat the District Confidential Information as strictly confidential and use and disclose the District Confidential Information only in connection with Bank's performance of its duties and obligations under the Agreement for Commercial Card. Bank and its Representatives shall hold all District Confidential Information in a fiduciary capacity and shall exercise the highest degree of care in safeguarding all such District Confidential Information against loss, theft, intentional or inadvertent use and disclosure, and shall take all steps reasonably necessary to maintain the confidentiality thereof. Bank shall immediately notify District of the date of, and circumstances involved in, any loss or unauthorized use or disclosure of District Confidential Information. Bank agrees to disclose District Confidential Information only to such of its Representatives as is necessary for Bank to perform its duties and obligations under the Agreement for Commercial Card. Bank shall notify each of its Representatives that has access to or knowledge of any of the District Confidential Information as to the existence of the Agreement for Commercial Card and require them to abide by the terms hereof, and shall be responsible for any use or disclosure of District Confidential Information by its Representatives that is contrary to the terms hereof to the same extent as if Bank had used or disclosed such District Confidential Information. Bank shall not, and shall cause its Representatives not to, directly or indirectly: (i) disclose, divulge or discuss the District Confidential Information with any third party (other than its Representatives); (ii) use any of the District Confidential Information for any purpose whatsoever other than in connection with Bank's performance of its duties and obligations for Bank and under the Agreement for Commercial Card; or (iii) use any of the District Confidential Information for the gain, benefit, advantage or profit of any other person.

**VI.C.f** Compulsory Disclosure. In the event that District or Bank, as applicable, is requested or required, as a result of any judicial or regulatory proceeding, to make any disclosure of Bank Confidential Information or District Confidential Information, as applicable, District or Bank, as applicable, agrees to provide the other party with advance notice thereof as promptly as possible (but in no event less than seven business days unless applicable law or a court order provides for disclosure prior to expiration of the seven business day period) so that the other party may seek an appropriate protective order or other appropriate remedy. If Bank or District, as applicable, is unable to timely obtain such a protective order or other appropriate remedy and the other party is compelled to disclose any Confidential Information or else stand liable for contempt or suffer any similar censure, sanction or penalty, then Bank or District, as applicable, may disclose only that portion of the Confidential Information that such party is advised by counsel that it is legally required to be disclosed, and such party shall use reasonable efforts to obtain reliable assurances that the Confidential Information that is so disclosed will be treated confidentially.

Any party bound hereby may reveal so much of the Confidential Information to a regulatory agency with jurisdiction over it, its auditor and attorney as is necessary for such person to satisfy its duties.

**VI.C.g** Destruction and Return of Confidential Information. District agrees that all Bank Confidential Information, including any summaries, copies or reproductions permitted hereby, are and shall remain the property of Bank. From time to time, and at any time, in its sole discretion, Bank may request in writing that District either immediately destroy or return the Bank Confidential Information to Bank, and District agrees to promptly comply with Bank's request and shall cause its respective Representatives to comply with Bank's request, including, but not limited to, the destruction or deletion of all machine readable, electronic or optical Bank Confidential Information from computer systems and data storage devices. If destruction or return of the Bank Confidential Information is not feasible, then District shall consult with Bank and take prompt action to make such Bank Confidential Information unavailable or inaccessible to District, its Representatives and other persons. District agrees to promptly provide Bank with written certification of its satisfaction with the terms of this paragraph.

Notwithstanding anything to the contrary contained herein, for purposes of this section, the monthly periodic statements on a Card account and the Reports delivered to District under Article IV hereof, respectively, shall be property of District and shall not be subject to the provisions of this section.

Bank agrees that all District Confidential Information, including any summaries, copies or reproductions permitted hereby, are and shall, as between Bank and District, remain the property of District. From time to time, and at any time, in its sole discretion, District may request in writing that Bank either immediately destroy or return to District, and Bank agrees to promptly comply with District's request and shall cause its Representatives to comply with District's request, including, but not limited to, the destruction or deletion of all machine readable, electronic or optical District Confidential Information from computer systems and data storage devices. If destruction or return of the District Confidential Information is not feasible, then Bank shall consult with District and take prompt action to make such District Confidential Information unavailable or inaccessible to Bank, its Representatives and other persons. Bank agrees to promptly provide, and to cause its Representatives to promptly provide District with written certification of its satisfaction with the terms of this paragraph.

**VI.C.h** No License, Obligation or Warranty. No right, title or license is hereby granted by Bank, by implication or otherwise, to District or any of its Representatives, except for the limited usage rights specifically described herein, with respect to any Bank Confidential Information. No right, title or license is hereby granted by District by implication or otherwise, to Bank or any of its Representatives, except for the limited usage rights specifically described herein, with respect to any District Confidential Information.

**VI.C.i** Specific Performance. District and Bank each recognizes and acknowledges, on behalf of itself and their respective Representatives, that the Bank Confidential Information and District Confidential Information are special and unique to Bank, or District, as applicable, and that any breach or threatened breach of any of the provisions of the Agreement for Commercial Card will result in irreparable and continuing harm to Bank or District, as applicable, for which there will be no adequate remedy at law and which could not be adequately compensated by monetary damages. If either party or any of its respective Representatives, breaches, or threatens to commit a breach of, any of the provisions of the Agreement for Commercial Card, then the other party shall have (but shall not be limited to) the right and remedy to have the Agreement for Commercial Card specifically enforced by any court having equity jurisdiction, including but not limited to the right to obtain temporary and permanent injunctions against the party allegedly in breach of the Agreement for Commercial Card, and its Representatives, without having to prove actual damages or post a bond.

In connection with the enforcement of this section VI.C.i., the parties hereby irrevocably submits for the purposes of any action or proceeding to enforce the Agreement for Commercial Card to the jurisdiction of the courts of the State of California and the Federal District Court for the Northern District of California, and to venue in San Francisco, California.

**VI.D.** Notices of Default. Bank and District shall each promptly give written notice to the other upon becoming aware of the impending or threatened occurrence of any event which could reasonably be expected to cause or constitute a breach of any of their respective representations, warranties, covenants or agreements contained in the Agreement for Commercial Card.

## **ARTICLE VII - TERMINATION**

The Agreement for Commercial Card shall be in-force for a period of not less than three (3) years from the effective date.

**VII.A.** The Agreement for Commercial Card may be terminated at any time by delivery of a written notice thirty (30) days prior to the effective date of termination. By the mutual consent of District and Bank

- VII.A.a** By Bank, in the event of a material breach by District of any representation, warranty or agreement contained herein which is not cured or cannot be cured within thirty (30) days after written notice of such breach has been delivered to the breaching party.
- VII.A.b** By District, in the event of a material breach by Bank of any representation, warranty or agreement contained herein which is not cured or cannot be cured within thirty (30) days after written notice of such breach has been delivered to the breaching party.
- VII.A.c** By District, if the Federal Deposit Insurance Corporation is appointed as a receiver for the Bank.
- VII.A.d** By Bank, if District commences a voluntary case or other proceeding seeking rehabilitation, liquidation, reorganization or other relief with respect to itself or its debts under any rehabilitation, bankruptcy, insolvency or other similar law generally affecting the rights of creditors now or hereafter in effect or seeking the appointment of a trustee, rehabilitator, receiver, liquidator, custodian or other similar official of it or substantially all of its property, or consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or make a general assignment for the benefit of creditors, or file an answer admitting the material allegations of a petition filed against it in any such proceeding or fail generally to pay its debts as they become due, or take any corporate action to authorize any of the foregoing;
- VII.A.e** By Bank, if an involuntary case or other proceeding be commenced against District seeking rehabilitation, liquidation, reorganization or other relief with respect to it or its debts under any rehabilitation, bankruptcy, insolvency or other similar law generally affecting the rights of creditors now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding remains undismissed and unstayed for a period of sixty (60) days, the Agreement for Commercial Card shall be terminated as to such party.
- VII.A.f** By District with a payment to Bank equal to 0.25% of the daily average of purchase volume from the effective date of the Agreement for Commercial Card times the number of unused days per the duration of the Agreement for Commercial Card.
- VII.B.** Effect of Termination. In the event of termination of the Agreement for Commercial Card except under Section VII.A.a, the breaching party shall not be relieved of any liability for such breach or otherwise. The termination of the Agreement for Commercial Card shall not affect, diminish, release or impair any obligation or liability incurred by a party to the other party which was incurred prior to the effective date of termination under the Agreement for Commercial Card any obligation or liability incurred by a Cardholder to the Bank prior to the effective date of termination of the applicable Card, or in connection with the Agreement for Commercial Card. On the effective date of termination, the Bank may, without further notice to District or any Cardholder, terminate and cancel all Cards and Travel Accounts, without incurring any further obligation and liability.

## **ARTICLE VIII - INDEMNIFICATION**

**VIII.** Indemnification. District shall indemnify Bank and hold it harmless from and against any and all damage, loss, or injury which Bank may suffer, incur or sustain arising out of the Agreement for Commercial Card, the Cards, the Travel Accounts, the Cardholder Agreements, the Purchasing Card Agreement, the Travel Account Agreements, and any Transaction unless such damage, loss, or injury was caused by the sole negligence of Bank.

To exercise its indemnification rights hereunder as the result of the assertion against it of any claim or potential liability or loss for which indemnification is provided, Bank shall promptly notify District of the assertion of such claim, discovery of any such potential liability or loss or the commencement of any action or proceeding in respect of which indemnity may be sought hereunder. The Bank shall advise District of all facts relating to such assertion within the knowledge of the Bank, and shall afford District the opportunity at its sole cost and expense to defend against such claims for liability. District shall notify Bank within thirty (30) days of receipt of a notice of claim, whether it shall assume the defense of such claim (unless a shorter response period is required under the circumstances). If the defense of a claim is assumed by District, the Bank shall be consulted and kept fully informed with regard to the progress of such claim. The Bank shall cooperate with District in connection with such claim. In any such action or proceeding, the Bank shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at its own expense unless (i) District and the Bank mutually agree to the retention of such counsel, (ii) the named parties to any such suit, action, or proceeding (including any impleaded parties) include both the Bank and District, and in the reasonable judgment of the Bank, representation of the Bank and District the same counsel would be inadvisable due to actual or potential differing or conflicts of interests between them, or (iii) District has failed to promptly assume or diligently prosecute or defend the claim.

## **ARTICLE IX - REPRESENTATIONS AND WARRANTIES**

**IX.A.** Bank hereby represents, warrants and covenants to and with District as follows:

**IX.A.a** The execution and delivery by it of the Agreement for Commercial Card, the performance by it of its duties and obligations hereunder and the consummation of the transactions contemplated hereby do not (i) conflict with or result in a violation or breach of any term or provision of any law, rule, regulation, judgment, decree, order or injunction applicable to it or any of its assets and properties or any contractual restriction of any kind binding or affecting it or any of its properties, or (ii) conflict with or result in a violation or breach of or constitute, with or without notice or lapse of time or both, a default under any material agreement to which it is a party or any material obligation or responsibility which it has to any third party.

**IX.A.b** Bank is a corporation duly organized, validly existing and in good standing under the laws of California. Bank has the corporate power and authority to execute and deliver the Agreement for Commercial Card and to perform its obligations hereunder.

**IX.B.** District hereby represents, warrants and covenants to and with the BANK as follows:

**IX.B.a** The execution and delivery by District of the Agreement for Commercial Card, the performance by District of its duties and obligations hereunder and the consummation of the transactions contemplated hereby do not (i) conflict with or result in a violation or breach of any term or provision of any law, rule, regulation, judgment, decree, order or injunction applicable to District or any of its assets and properties or any contractual restriction of any kind binding or affecting District or any of its properties, or (ii) conflict with or result in a violation or breach of or constitute, with or without notice or lapse of time or both, a default under any material agreement to which District is a party or any material obligation or responsibility which District has to any third party.

**IX.B.b** District is a special district duly organized, validly existing and in good standing under the laws of the State of California. District has the power and authority to execute and deliver the Agreement for Commercial Card and to perform its obligations hereunder.

## **ARTICLE X - MISCELLANEOUS**

- X.A.** Survival. Article III, V.C, V.D., VII.B. Articles VI and VIII shall survive termination of the Agreement for Commercial Card.
- X.B.** Assignment. Neither the Agreement for Commercial Card nor any of the rights, interests or obligations of either party hereunder may be assigned by either of the parties bound hereby without the prior written consent of the other party, provided, however, that Bank may subcontract with a third party to perform the non-credit services to be provided by Bank without the consent of District. No such permitted assignment or subcontracting shall release the assignor or subcontractor from its obligations and liabilities under the Agreement for Commercial Card.
- X.C.** Binding Effect. The Agreement for Commercial Card and all of the provisions hereof shall be binding upon and inure to the benefit of the parties bound hereby and their respective successors and permitted assigns.
- X.D.** Notices. Except as provided in Article 4, all information, Reports, notices, requests, demands, consents and other communications given or required to be given under the Agreement for Commercial Card and under the related documents shall be in writing and delivered to the applicable party at the address indicated below:

If to Bank:                      Bank of the West  
   180 Montgomery Street, 13th floor  
   San Francisco, CA 94104  
   Attention: Commercial Card Manager

If to District:                      As set forth in the Agreement for Commercial Card.

or, as to each party at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this section. Any notices shall be in writing, including telegraphic or facsimile communication, and may (but need not) be sent by registered or certified mail, return receipt requested, postage prepaid or telegraphed. Notices may not be sent by electronic mail. Notice shall be effective upon actual receipt thereof.

- X.E.** Incorporation. All appendixes attached hereto and to which reference is made herein are incorporated by reference as if fully set forth herein.
- X.F.** Governing Law. The Agreement for Commercial Card shall be governed by and interpreted in accordance with the laws of the State of California (excluding its choice of law rules), and as applicable, federal law.
- X.G.** Entire Agreement. The Agreement for Commercial Card and its exhibits contains the entire understanding of and all agreements between the parties thereto with respect to the subject matter hereof and supersedes any prior or contemporaneous representation, information, bid, offer, letter of intent, agreement or understanding, oral or written, pertaining to any such matters which agreements or understandings shall be of no force or effect for any purpose; provided, however, that the terms of any confidentiality agreement between the parties thereto previously entered into, to the extent not inconsistent with any provisions of the Agreement for Commercial Card, shall continue to apply.

The Agreement for Commercial Card may not be amended or supplemented in any manner except by mutual agreement of the parties and as set forth in a writing signed by a duly authorized representative of the parties thereto or their respective successors in interest, provided that, notwithstanding anything to the contrary contained herein, the Bank may unilaterally, in its sole discretion, amend the terms and conditions of any Cardholder Agreement or Travel Account Agreement, including, without limitation, the interest, fees and charges related to the Cards, in accordance with the provisions of the Cardholder Agreement or Travel Account Agreement.

- X.H.** Counterparts. The Agreement for Commercial Card may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- X.I.** Headings. The headings used in the Agreement for Commercial Card are inserted for purposes of convenience of reference only and shall not limit or define the meaning of any provisions of the Agreement for Commercial Card. As used herein, the singular includes the plural and vice-versa, the masculine includes the feminine, and vice-versa, "and" means "or" and vice-versa, unless the context clearly indicate the contrary.
- X.J.** Waiver. The waiver of any breach of any provision under the Agreement for Commercial Card by any party shall not be deemed to be a waiver of any preceding, subsequent or other breach under the Agreement for Commercial Card. No such waiver shall be effective unless in writing and executed by any authorized signatory.
- X.K.** Third Party Beneficiaries. Except as expressly provided in the Agreement for Commercial Card, the parties thereto intend that the Agreement for Commercial Card shall not benefit or create any right or cause of action in or on behalf of any person other than the parties thereto.
- X.L.** Severability. If any provision of the Agreement for Commercial Card, as applied to any part or circumstances, shall be adjudged by a court of competent jurisdiction to be void, invalid or unenforceable, the same shall in no way affect any other provision of the Agreement for Commercial Card, the application of any such provision, or any other circumstances, or the validity or enforceability of the other provisions of the Agreement for Commercial Card.
- X.M.** Force Majeure. Neither party to the Agreement for Commercial Card shall be liable to the other party for any delay or non-performance of its obligations under the Agreement for Commercial Card or any Cardholder Agreement arising from any cause beyond its reasonable control, provided, however, that such party shall, on a best efforts basis, cure such inability to timely perform its obligations hereunder, and if such party is unable to cure such nonperformance within thirty (30) days of the force majeure event, the other party may terminate the Agreement for Commercial Card subject to the provisions of Article VI , Article VII.B and Article X.A.
- X.N.** Association Rules. District acknowledges and agrees that the association rules of VISA or MasterCard shall govern and regulate certain issues which arise out of the usage of the Cards and the Travel Accounts.
- X.O.** No Partnership. Neither the Agreement for Commercial Card nor the performance of the services of the respective parties hereunder shall be considered or construed to (i) create a partnership, association or joint venture between District and the Bank, or (ii) constitute any party to the Agreement for Commercial Card or any of its respective agents, employees or Representatives as the agent, employee or representative of the any other party, and no party to the Agreement for Commercial Card shall make any representations to the contrary. No party to the Agreement for Commercial Card will be under any obligation to any other person, except for obligations expressly assumed under the Agreement for Commercial Card or by operation of law.
- X.P.** Cooperation. The parties shall cooperate to insure that the respective duties and obligations of each of the parties hereunder are effectively, efficiently and promptly discharged. Each party shall execute and deliver to the other parties such further instruments and documents and take such further action as may from time to time be necessary to carry out the intent and purposes of the Agreement for Commercial Card.

**EXHIBIT B**  
**(FORM OF AGREEMENT FOR COMMERCIAL CARD)**

**AGREEMENT FOR COMMERCIAL CARD**

This Agreement for Commercial Card effective as of [ ], 20[ ] (this "Agreement for Commercial Card") is entered into between Bank of the West ("Bank") and [ ] ("District").

**RECITALS**

- A. Bank is a California chartered bank engaged in the business of providing credit cards and related services and whose principal credit card office is located at 450 Regency Parkway, Omaha, NE 68114.
- B. District is a special district in the State of California and a member of The California Special Districts Association ("CSDA").
- C. CSDA and Bank have entered into a Statement of Work for Agreement for Commercial Cards dated as of [ ], 2011 (the "SOW") pursuant to which any member of CSDA may apply to Bank for credit in connection with the payment of certain business expenses of such member on Standard Terms and Conditions (as defined in the SOW) and subject to the other terms and conditions of the SOW.
- D. District must be and maintain its CSDA membership in good standing. This agreement may be subject to termination should the District's membership lapse.

NOW, THEREFOR, in consideration of their mutual promises and obligations and intending to be legally bound thereby, Bank and District agree as follows:

- 1. Incorporation by Reference. The SOW and Standard Terms and Conditions are incorporated into this Agreement for Commercial Card as though set forth at length. Each of Bank and District agree to perform and observe the SOW and Standard Terms and Conditions in accordance with their terms.
- 2. Agreement of Bank and District. Subject to the provisions, terms and conditions of the SOW and Standard Terms and Conditions, Bank will issue Credit Cards, and District will be liable in respect to thereof.
- 3. Address for Notices. For purposes of Article X.D of the Standard Terms and Conditions, the address for District is: \_\_\_\_\_.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement for Commercial Card to be executed by their duly authorized representatives as of the date first above written.

BANK:

DISTRICT:

BANK OF THE WEST

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## APPENDIX A - CREDIT CARD CARDHOLDER AGREEMENT

- 1. General.** This Agreement covers the use of the Corporate Card account that you applied for to use in connection with business expenses incurred on behalf of your Employer. In this Agreement, the words "you" or "your" mean either the individual who signed the Corporate Card Application (the "Application") or the company. The words "we," "us," "our" or "Bank" mean Bank of the West, a BNP Paribas Company. The word "Card" means a Visa or MasterCard Corporate Card issued to you. The word "Employer" means the company which employs you. By signing the Application, you agree to be bound to all the terms and conditions of this Agreement.
- 2. Use.** You agree that the Card may be used only for business purchases of goods or services from participating merchants ("Purchases") or to obtain Cash Advances from automated teller machines ("ATM") displaying the Visa or MasterCard logo up to your Credit Limit. In no case shall total Purchases and Cash Advances exceed the Credit Limit. You agree that the Card will be used solely for business use and not for consumer credit purposes. You may not use the Card to make Purchases or obtain Cash Advances for any illegal transaction, such as online or internet gambling. If you use the Card for any illegal transaction, this Agreement also applies to such transaction and you agree to pay any and all amounts related to such transaction pursuant to the terms of this Agreement. We may, in our sole discretion, restrict the use of or terminate your Card if we notice excessive use of your Card or other suspicious activities or if we reasonably believe the Card is or has been used for one or more illegal transactions. You may not authorize any other person to use your Card.
- 3. Credit Limit.** We will notify you of your Credit Limit. You agree not to incur debt for Purchases, Cash Advances and Finance Charges to us in an amount exceeding the Credit Limit. You may apply to increase the Credit Limit, and we reserve the right to lower it. If you go over the Credit Limit, you must repay the excess amount upon demand by the Bank.
- 4. Agreement to Pay.** Company agrees to pay for all credit (whether for a Purchase or Cash Advance), and the Finance Charges that are due as provided in this Agreement, extended in connection with the Card. Company agrees to pay us for such credit extended regardless of the purpose for which Company obtains credit by use of the Card. Any failure on your part to sign a sales draft or Cash Advance draft shall not release Company's obligation to repay the credit extended.
- 5. Payment.** Each month we will send you a billing statement for the previous billing period. Each billing statement will provide the "Amount Due" for the "Payment Due Date." You must pay the Amount Due by the Payment Due Date. The Amount Due represents the total of all Purchases, Cash Advances, fees and/or other charges made or incurred by you during the previous billing period for which the payment has not been received by the Bank. All payments must be made in the lawful money of the United States of America. When your payment is properly received, we will allocate your payment in a manner we determine except as otherwise required by law. We will add any Cash Advances or Purchases repaid to your available Credit Limit, however, in the event of payment by check, we may delay crediting your available Credit Limit until your check clears, and we may also credit your available Credit Limit based on the same check hold policy that we follow to credit deposits for regular checking accounts. Payments received after the cutoff times of 4:00p.m. are credited as of the following business day.

Payments made by direct debit to your account will be made on the Payment Due Date. If you fail to have available funds or to properly make payments, crediting such payments may be delayed. Payments made after the Payment Due Date may be subject to the following fee(s), if permitted by law, unless such charge would result in an interest charge greater than the maximum allowable by law, in which case we will only charge the maximum allowable. **Late Payment Fee: \$25.00**
- 6. Order of Application.** We will allocate your payment in a manner we determine except as otherwise required by law.
- 7. When You Must Pay to Avoid a Finance Charge on Purchases.** You may avoid paying a Finance Charge on Purchases if you pay the entire Amount Due by the Payment Due Date. If we do not receive the entire Amount Due by the Payment Due Date, the Finance Charge will be charged on the

Purchases from the date of the Purchase transaction. You may not avoid paying Finance Charge on Cash Advances.

8. **Computing Your Finance Charge.** We figure the Finance Charge on your account by multiplying the applicable periodic rate to the "Average Daily Balance" of Purchases and "Average Daily Balance" of Cash Advances (including current transactions).
  - a. **Average Daily Balance.** To get the "Average Daily Balance" of Purchases, we take the beginning balance of your account each day, add any new Purchases, and subtract any Cash Advances, payments or other credits which were applied to Purchases, unpaid Finance Charges, late charges, membership fees, and other fees. This gives us the Purchases daily balance. To get the "Average Daily Balance" of Cash Advances, we take the beginning balance each day, add any new Cash Advances, and subtract any Purchases, payments or other credits which were applied to Cash Advances, unpaid Finance Charges, late charges, membership fees and other fees. This gives us the Cash Advances daily balance. Then, we add up all of the Purchases and Cash Advance daily balances for the billing period and divide each total by the number of days in the billing period. This gives us the "Average Daily Balances."
  - b. **Figuring the FINANCE CHARGE.** We compute the Finance Charge by multiplying these Average Daily Balances by the Daily Periodic Rate, and then we multiply the result by the number of days in the billing period. To determine the Daily Periodic Rate, we divide the Annual Percentage Rate in effect for the billing period by 365. The Daily Periodic Rate for Purchases is a Variable Rate. The way we get the Annual Percentage Rate and the Daily Periodic Rate for Purchases is described below under "Variable Rate". The Daily Periodic Rate for Cash Advances is a Fixed Rate of .0493%, which is equivalent to an Annual Percentage Rate of 18.00%. As noted above, you may avoid paying the Finance Charge on Purchases if you pay the entire New Balance by the Payment Due Date; however, the Finance Charge on Purchases will otherwise accrue from the date of transaction. The Finance Charge on Cash Advances will accrue from the date of the Cash Advance.
  - c. **Variable Rate for Purchases.** The current Annual Percentage Rate and Daily Periodic Rate for Purchases are shown on the variable rate disclosure which has been provided to you with this Agreement. The Daily Periodic Rate and the corresponding Annual Percentage Rate may change on the first day of your billing cycle that begin in March, June, September, and December. Each date on which the rate of interest could change is called a "Change Date." Changes will be based on changes in the "Index." The Index is the highest Prime Rate published in the "Money Rates" table of The Wall Street Journal. If the Index is no longer available, we will choose a new index which is based upon comparable information and will give you notice of our choice. The Index figure published on the second Tuesday (or on the next business day if the second Tuesday is a holiday) of the calendar month in which the Change Date occurs is called the "Current Index." Your interest rate for Purchases is based on a variable rate equal to the sum of the Bank's Prime Rate plus a "Rate Spread" of 6.99 percentage points. Immediately before each Change Date we will determine the new interest rate for Purchases by adding the Rate Spread to the Current Index. For example, if the Current Index was 7.00% and the Rate Spread 6.99 percentage points, the Annual Percentage Rate would be 13.99%, and by dividing this percentage figure by 365, we would compute a Daily Periodic Rate of .0383%. The new interest rate for Purchases will become effective at the start of your first billing cycle after the Change Date. Only one Annual Percentage Rate and Daily Periodic Rate for Purchases will be in effect for any one billing period. The Annual Percentage Rate will not exceed the maximum rate permitted by law. The effect of any increase in the Annual Percentage Rate and the Daily Periodic Rate for Purchases would be to increase the amount of Finance Charge or interest you must pay and thus increase your monthly payments.
9. **Foreign Currency Charges and Advances.** If you make a Purchase or Cash Advance or ATM withdrawal in a foreign currency, it will be billed to you in U.S. Dollars. The conversion rate to U.S.

Dollars will be determined by Visa or MasterCard in accordance with their operating regulations or conversion procedures in effect at the time the transaction is processed. Currently, their regulations and procedures provide that the currency conversion rate they use is either (1) a government-mandated rate or (2) a wholesale market rate, whichever is applicable, in effect one day prior to the processing date, increased by 2.5 percent. Visa or MasterCard will keep one percent increase and Bank will keep the other 1.5 percent increase. We do not determine the currency conversion rate which is used and we not receive any portion of the currency conversion rate. You agree to pay the converted amount in U.S. funds.

**10. Annual Card Maintenance Fee.** The Company agrees to pay us an annual card maintenance fee of \$30.00 (\$45.00 for Purchasing account) for establishing and maintaining a Company account for the Cards issued on behalf of the Company. In addition, the Company agrees to also pay us an annual card maintenance fee for each Card issued under this Agreement. This fee is payable at the time the Card is issued and annually thereafter. This fee is charged whether or not the Card is used.

**a. Fee Discount.** Notwithstanding anything to the contrary contained in this Agreement, Bank will waive the annual card maintenance fee on the Company account and on Cards issued during the first twelve (12) months of this Agreement (the first twelve months and each succeeding twelve month period shall be called the “Fee Discount Period”) if the net aggregate monthly purchasing volume under all CSDA and District Card programs is anticipated to average \$20,000 (\$60,000 for Purchasing) or more per month for the initial Fee Discount Period of this Agreement. The initial Fee Discount Period shall commence on the first calendar day of the month immediately following the date of execution of this Agreement. For each Fee Discount Period thereafter, the Bank will waive the annual card maintenance fee for the Company account and for each Cardholder (including persons who become a Cardholder during such Fee Discount Period) if the actual net monthly purchasing volume under all CSDA and District Card programs during the previous Fee Discount Period averaged \$20,000 (\$60,000 for Purchasing) or more per month during such Fee Discount Period. If the actual net monthly purchasing volume under all CSDA and District Card programs during such Fee Discount Period does not average \$20,000 (\$60,000 for Purchasing) or more per month, the Bank may charge the annual card maintenance fee then in effect for the Company account and such Cards for the following Fee Discount Period for all Cardholders (including persons who become a Cardholder during such Fee Discount Period.) The Company shall not receive a fee discount if the Company was in default under this Agreement at any time during any applicable Fee Discount Period. If the Company is in default at any time during such Fee Discount Period, any waiver of the annual card maintenance fee which would have otherwise been due during such Fee Discount Period shall be revoked and such fee shall be due and payable and paid by the Company on the due date of the immediately succeeding monthly billing statement.

**b. Net Monthly Purchasing Volume.** “Net monthly purchasing volume” shall mean the total amount of Transactions minus any credits posted to the Card account during the applicable measuring period and minus any fraud losses on the Card account.

**11. Other Fees.** You also agree to pay us the fees listed below which may be amended from time to time by us. You shall pay us for such fees by the Payment Due Date on your monthly statement and you authorize us to charge your Corporate Card account for the fees due to us. We reserve the right to waive these fees from time to time but we are not obligated to waive the fees. If we incur special expenses on your account due to a request made by you, we may also charge you for these expenses.

<p><b>Temporary Replacement Card or Emergency Cash Advance.</b>  <b>Domestic Fee</b></p>	<p><b>\$125.00</b></p>
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<b>International Fee</b>	<b>\$165.00</b>
<b>NSF Payment Fee</b>	<b>\$15.00</b>
<b>Over-the-credit-limit Fee</b>	<b>\$25.00</b>
<b>Copy of Sales Draft</b>	<b>\$ 2.00</b>
<b>Cash Advance Withdrawal</b>	
• <b>Domestic</b>	<b>\$1.00</b>
• <b>International</b>	<b>\$2.50</b>
• <b>Balance Inquiry</b>	<b>\$0.50</b>

**Note:** Domestic = at an ATM in Canada, U.S. and its protectorates and territories. We cannot waive these fees.

**Automated Terminal Services:**

- a. **Automated Terminals.** If authorized, you may use your Card to get a Cash Advance from your Corporate Card account in any of the Bank's ATMs or any other ATM that is participating in a network and accepts our Card ("Network ATM").
- b. **Limits of Cash Advances at Automated Terminals.** You may get a Cash Advance from any Bank ATM or any Network ATM up to the aggregate amount provided by such ATM, provided that this amount does not exceed the Credit Limit.

**12. Card and Secret Code Use.** You are responsible for all transactions in which you use the Card in an automated terminal, or the use of the Card by anyone else who uses it with your permission. Security for Card use is provided by a secret code, which we will provide you, and the magnetically encoded stripe on the Card. You agree to keep the Card safe, and protect the secret code. You agree not to record the secret code on the Card. You agree to use the Card and the secret code as instructed by us at all times. You shall notify us promptly of any mechanical or operating failure in connection with the use of your Card. The Card remains the property of the Bank and may be revoked and repossessed at any time. You shall return Card(s) to us when asked. Cards may not be used after the expiration dates.

**13. Unauthorized Use.** In the event of possible loss, theft or unauthorized use of your Card, you agree to notify us immediately. You may be liable for the unauthorized use of any Card issued under this Agreement. You agree to assist us in determining the facts and circumstances relating to any unauthorized use of a Card. You will not be liable for unauthorized use that occurs after you notify us at the telephone number or address in paragraph 14, orally or in writing, of loss, theft, or possible unauthorized use. In any case, your liability for unauthorized use of your Card as a credit card will not exceed \$0.00.

**14. Where to Call or Write.** If you believe any Cards have been lost or stolen or that someone has transferred or may transfer money from the Corporate Card account or otherwise use the Corporate Card account without your permission, call the Bank at 1-800-342-2778. You can also write to: BankCard Security Department, P.O. Box 1959, Honolulu, Hawaii 96805.

**15. Our Business Days.** Our business days are Monday through Friday, except for bank holidays.

**16. Authorizations by Bank; Disputes with Merchants.** Some Purchases and Cash Advances will require our prior authorization. In our sole discretion, we may limit the number of authorizations we give on an account on any day or for other reasons. We will not be liable if a merchant does not honor a Card or if authorization for a particular transaction is not given. We shall have no liability for the goods or services obtained by use of any Card. You shall attempt to settle any claims of disputes for purchases with the seller and hereby waive any and all claims against us in connection therewith.

**17. Default.** We may declare the entire balance due and payable at once with or without notice or demand if any of these events (a "Default") happens:

- a. If you terminate your employment with your employer for any reason; or

- b. If you miss a payment under this Agreement or any other obligation you owe us; or
- c. If you violate any term of this Agreement; or
- d. If any representation or warranty made by you to us was or becomes false; or
- e. If you become insolvent or bankrupt, or a petition for relief under the Bankruptcy Code is filed by or against you; or
- f. If any creditor attempts to attach or garnishee your property; or
- g. If you die, or file a petition for relief under the Bankruptcy Code; or
- h. If we, in good faith, believe that the chances of you making payments as required under this Agreement are substantially impaired; or
- i. If any default occurs with respect to any guaranty or the occurrence of any event which renders any guaranty ineffective; or
- j. If you or any guarantor fails to pay or perform as agreed under any other agreement you or such guarantor has with us or any of our affiliates.

If you are in Default, we may terminate your Corporate Card account, make no more additional loans, and require you to immediately repay the entire unpaid balance of all amounts due on your Corporate Card account, including but not limited to all loan amounts, late charges and other charges assessed but not paid, and all of the Finance Charges accrued but not paid. If we terminate your Corporate Card account, your obligation to repay the amounts you already owe would continue. In addition to any other right or remedy we have, if you are in Default, we may also increase your Daily Periodic Rate to .0493%, which has a corresponding Annual Percentage Rate OF 18% fixed, for the entire outstanding balance, from and after the date of Default. Your payments under this Agreement, including the amount of the Finance Charge, will increase as a result of the increase in your Daily Periodic Rate and Annual Percentage Rate.

- 18. Collection.** You promise to pay all collection costs, including reasonable attorneys' fees and court costs, permitted by law.
- 19. Right of Offset Authorized.** In the event of any acceleration of the balance due hereunder, you authorize us to offset the amount due against any amount you have on deposit with us.
- 20. No Waiver of Rights.** If we choose to waive any terms or conditions of this Agreement on a case-by-case basis, such as by not declaring immediate payment of amounts due over your Credit Limit, it does not mean that we have waived, or given up, our right to exercise any of our rights or remedies under this Agreement in the future. We are not required to use any particular kind of demand or notice in order to collect amounts due to us under this Agreement. No indulgence or acceptance by us of delinquent or partial payments constitute a waiver of our rights or of any provision of this Agreement. No waiver of any existing default shall be deemed to waive any subsequent default.
- 21. Waiver of Certain Rights.** You and any guarantor agree that you will be liable for repayment of everything you owe under this Agreement, even if we do not follow all legal procedures such as diligence, demand, presentment and notice and protest of dishonor, which we might be required to follow if it were not for this waiver.
- 22. Changing Terms.** We can change, add to, delete or otherwise modify the terms found in this Agreement or the Application in any way permitted by law. We will notify you of changes to this Agreement at any time in any way permitted by law. You agree that the changes may cover all Purchases and Cash Advances made on or before the effective date of the change and any outstanding unpaid balances at that time. We do not have to send a notice of change if it favors you, such as by reducing rates, increasing the maximum credit limit, etc.
- 23. Other Agreements.** Use of your Card is subject to the terms of existing regulations governing deposit accounts and other agreements and disclosures for your checking, savings and credit card accounts, and any future changes.
- 24. Confidentiality.** The Bank and you will keep strictly confidential and will not use for any purpose whatsoever (other than for the purpose of the evaluation of this program) the entire contents of this 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 the Bank or by you which is either nonpublic, confidential or proprietary in nature unless mutually agreed upon by you and the Bank to do so; provided, you understand and acknowledge that affiliates of the Bank and vendors of the Bank will assist in implementation, maintenance and providing of this program and therefore, for purposes of this paragraph 26, the Bank shall include all affiliates of the Bank. Information concerning the use of the Card, including details regarding each individual transaction, may be furnished by Bank to Company.

**25. Indemnity.** You agree to defend, indemnify and hold harmless the Bank, its officers, directors, agents and employees from and against any and all claims by third parties and all costs (including reasonable attorney's fees and costs), expenses and liabilities incurred by the Bank in connection with such claims, arising from or as a result of the establishment of the program (including, without limitation, the issuance of any Cards and/or the cancellation thereof), provided that such claims are not the result of, or connected with, the negligence, or willful misconduct of the Bank or the violation of any law or regulation relating to credit cards.

**26. Miscellaneous.** By signing the Application you agree that:

- When we give you notice, we may give the notice by mailing it to you at the address shown in this Application or at any address you may later give to us in writing;
- You will not assign this Agreement to any other entity or person, without our prior written consent.
- You will notify us promptly in writing of (i) your termination with your employer, (ii) any changes to your name or address, or (iii) the occurrence of any Default on your part under this Agreement.

## APPENDIX B - PRICING

<ul style="list-style-type: none"> <li>○ Annual per card fees* <ul style="list-style-type: none"> <li>○ Corporate Cards</li> </ul> </li> </ul>	<b>\$30.00</b> (Waived if aggregate average monthly volume is ≥ \$20,000)
<ul style="list-style-type: none"> <li>○ Reporting fees</li> </ul>	<b>\$0.00</b>
<ul style="list-style-type: none"> <li>○ Late fees</li> </ul>	<b>\$25.00</b>
<ul style="list-style-type: none"> <li>○ Fraud protection per card</li> </ul>	<b>\$0.00</b>
<ul style="list-style-type: none"> <li>○ ATM fees - Domestic</li> </ul>	<b>\$1.00</b>
<ul style="list-style-type: none"> <li>○ ATM fees - International</li> </ul>	<b>\$2.50</b>
<ul style="list-style-type: none"> <li>○ Foreign exchange fee</li> <li>○ Foreign exchange conversion fee (Visa/MasterCard fees)</li> </ul>	1.5% 1.0%
<ul style="list-style-type: none"> <li>○ Finance Charge - Purchase (if past due)</li> </ul>	<b>Prime + 4.99% (Corporate Billing)</b> <b>Prime + 6.99% (Individual Billing)</b>
<ul style="list-style-type: none"> <li>○ Finance Charge - Cash Advance</li> </ul>	<b>18%</b>
<ul style="list-style-type: none"> <li>○ Emergency Replacement Card (24 hour service)</li> <li>○ Emergency Cash Advance</li> </ul>	<b>Domestic Fee: \$125</b> <b>International: \$165</b>
<ul style="list-style-type: none"> <li>○ NSF Payment Fee</li> </ul>	<b>\$15.00</b>
<ul style="list-style-type: none"> <li>○ Over-the-credit-limit Fee</li> </ul>	<b>\$25.00</b>
<ul style="list-style-type: none"> <li>○ Copy of Sales Draft</li> </ul>	<b>\$2.00</b>
<ul style="list-style-type: none"> <li>○ Logo Card Fees</li> </ul>	<b>\$300</b> (Waived for CSDA and member Districts)
<ul style="list-style-type: none"> <li>○ G/L Interface (For Specific Customization)</li> </ul>	<b>\$1,500</b> (Waived if average monthly volume is ≥ \$60,000) Optional feature, payable by District if chosen
<ul style="list-style-type: none"> <li>○ Replacement Card Fees</li> </ul>	<b>\$0.00</b>

\* Fees are always waived the first year and thereafter pursuant to Appendix A section 10.

## APPENDIX C - REBATES

Bank will pay CSDA and Districts a rebate based on the formula and terms set forth herein.

Rebates are paid on the total net aggregate charge volume of CSDA and Districts for each calendar year of the Agreement. See CSDA and District Payout Sample Table below for an example of rebate calculations and payout distributions under this agreement.

CSDA and each District account must be in good standing to earn rebates. No rebates will be earned or paid on CSDA volume if CSDA was in default under this Agreement at any time during the applicable rebate year. No rebates will be earned or paid on a District's volume if the District was in default under this Agreement at any time during any applicable rebate year.

Rebates are paid yearly within thirty days after the end of each calendar year of the Agreement. In no event shall Bank pay CSDA or District a rebate for the year in which the Agreement is terminated if such termination occurs during any rebate year and such termination is not a termination at the end of such rebate year.

Cash advances and other cash transactions do not earn rebates. Fraud losses are deducted from the rebate.

The Rebate Schedule is subject to change or discontinuance if the interchange rate received by the Bank is materially reduced. Such change in the rebate schedule will not impact any rebates previously earned and Bank will provide at least 60 days notice of any such change

Bank will not pay CSDA or District a rebate if CSDA or District also participates in the Bank of the West Travel Reward program.

### Rebates Schedule:

ANNUAL VOLUME		REBATE RATE*
Minimum	Maximum	
0	999,999	0.50%
1,000,000	4,999,999	0.70%
5,000,000	7,499,999	0.80%
7,500,000	14,999,999	0.90%
15,000,000	19,999,999	1.00%
20,000,000	49,999,999	1.05%
50,000,000	79,999,999	1.15%
80,000,000	Over	1.25%

\* Rebate rate effective from dollar one (\$1)

If reduced interchange is received due to "large ticket transaction rates" as defined by MasterCard, Bank reserves the right to apply the Large Dollar Rebate table shown below for those "large ticket transactions."

### Large Dollar Rebate Chart for Transactions of \$5,000 or More:

AVERAGE TICKET		REBATE RATE*
Minimum	Maximum	
5,000	9,999	0.35%
10,000	19,999	0.20%
20,000	29,999	0.15%
30,000	Over	0.10%

**Agency Payout Sample Table**

<b>Entity</b>	<b>Volume</b>	<b>Rebate %</b>	<b>Payout</b>
Agency A	400,000	0.80%	3,200
Agency B	2,000,000	0.80%	16,000
Agency C	400,000	0.80%	3,200
Agency D	1,500,000	0.80%	12,000
Agency E	600,000	0.80%	4,800
Agency F	800,000	0.80%	6,400
<b>Total</b>	<b>5,700,000</b>		<b>45,600</b>