

ADDENDUM TO CONTRACT #40238

This Addendum to Contract #40238 ("Contract") between the K-State Student Union Corporation ("KSSU") and Commerce Bank ("Bank") is entered into this 22nd day of June, 2011. The purpose of this Addendum is to incorporate changes to the Contract made by Commerce Bank in its response to RFP #40238 and through the process of negotiating the final Contract and Lease.

Terms and Conditions in RFP #40238

1. The section entitled **Contract Documents** in the Terms and Conditions in RFP #40238 (page 8) is deleted and replaced by the following new section:

Contract Documents: The Contract, as amended by the Addendum, and its attachments (RFP #40238; RFP Addendum #1; Signature Sheet; and Financial Proposal – Best and Final; State of Kansas DA-146a) constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings and agreements, oral and written, relating hereto.

In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:

- a. Form DA-146a, as amended by the Addendum to Contract;
 - b. Written modifications and addenda to the executed Contract, including the Addendum to Contract;
 - c. The Contract document;
 - d. Contractor's response to the Request for Proposal RFP #40238, including Financial Proposal-Best and Final and any addenda, appendices, and exhibits;
 - e. The Request for Proposal RFP #40238, including RFP Addendum #1.
2. The section entitled **Termination for Cause** in the Terms and Conditions in RFP #40238 (page 9) is deleted and replaced by the following new section:

Termination for Cause: Either party may terminate this Contract for cause under any one of the following circumstances:

- (1) The Contractor fails to make delivery of goods or services as specified in this Contract; or
- (2) Either party fails to perform any material provision of this Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms.

The party seeking to terminate the Contract shall give the other party a written notice of the conditions endangering performance, and the party receiving said notice shall have thirty (30) days (or such longer period as may be authorized in writing) after its receipt of said notice to remedy such failure. If the failure is not remedied by the defaulting party within the time period provided above, the non defaulting party may terminate this Contract by giving the defaulting party written notice. Receipt of the notice shall be presumed to have occurred within three (3) business days of the date of the notice. If the breach is remedied by the defaulting party within the time period provided above, then this Contract shall continue as though no such notice had been given.

3. The section entitled **Termination for Convenience** in the Terms and Conditions in RFP #40238 (page 9) is deleted.
4. The section entitled **Rights and Remedies** in the Terms and Conditions in RFP #40238 (page 9) is revised by adding, at the end of the third paragraph, the following: Provided, however, that cancellation, suspension or termination of the Contract is KSSU's sole remedy for Bank's failure to comply with sections b), (c) or d) or if Bank is found guilty of any violation of the Acts in

paragraph 5 entitled Anti-Discrimination Clause in the State of Kansas DA-146a Contractual Provisions Attachment.

5. The section entitled **Staff Qualifications** in the Terms and Conditions in RFP #40238 (page 10) is revised, by deleting the second sentence, to read as follows: The Contractor shall warrant that all persons assigned by it to the performance of this Contract shall be employees of the Contractor (or specified Subcontractor) and shall be fully qualified to perform the work required. Failure of the Contractor to provide qualified staffing at the level required by the proposal specifications may result in termination of this Contract and/or damages.
6. The last sentence in the section entitled **Criminal or Civil Offense** in the Terms and Conditions in RFP #40238 (page 13) is revised to read as follows: "Failure to disclose a conviction may result in termination of the Contract, as KSSU's sole remedy."
7. The section entitled **Statutes** in the Terms and Conditions in RFP #40238 (page 13) is deleted.

Specifications Section in RFP #40238

8. The section entitled EMPLOYEES in the SPECIFICATIONS section of RFP #40238 (page 16) is deleted and replaced by the following new section:

EMPLOYEES: Bank employees are held to its customary business standards of performance and customer service. Commerce maintains a corporate practice of background checks and testing for new employees. These internal practices may vary from those outlined in the RFP. Commerce provides extensive training on the company's Corporate Code of Ethics and annual training on customer privacy, fraud and other topics. The Bank would take under advisement any issues or concerns that KSSU had with an employee. However, the Bank must retain all discretion with respect to the place and nature of a person's employment.

Section (b) in paragraph 5 entitled Anti-Discrimination Clause in the State of Kansas DA-146a Contractual Provisions Attachment is revised to read as follows: "(b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer" or equivalent provision;"

9. The second paragraph in the section entitled PROMOTION/ADVERTISING/MARKETING POLICIES in the Specifications section of RFP #40238 (page 17) shall be deleted and replaced by the following new paragraph:

KSSU reserves the right to use the Bank's logo in selected publications with the Bank's approval. Bank will obtain KSSU's approval for any new permanent signage. Signage must be in compliance with UGB's policies and procedures. Bank will continue to be responsible for trade fixtures, decorations and other advertising materials on the premises without the approval of KSSU.

10. The next to last sentence in the section entitled ORIENTATION PROGRAMS in the Specifications section of RFP #40238 (page 17) shall be revised to read as follows:

The Bank would take into consideration any request by KSSU that forms, brochures and other materials be provided in other languages. However, the Bank must retain all discretion with respect to the production of materials in other languages.

11. The section entitled AUDIT PRIVILEGES in the SPECIFICATIONS section of RFP #40238 (page 19) is deleted and replaced by the following new section:

AUDIT PRIVILEGES: KSSU may, with reasonable notice during regular business hours, have access to Bank's summary reports with respect to active checking accounts at the KSSU Branch

for the purpose of compliance with the performance revenue paid to KSSU as provided in the Financial Proposal – Best & Final (Contract Appendix A).

12. The section entitled GROUP 1: BANKING SERVICES – PERIOD OF CONTRACT in the SPECIFICATIONS section of RFP #40238 (page 20) is revised by deleting the following sentence: “During the renewal period, the Union reserves the right to review the Contract and cancel the agreement on the anniversary date of the Contract with 120 days written notice, if it is deemed to be in the KSSU’s best interest.”
13. The section entitled GROUP 2: AUTOMATIC TELLER MACHINE SERVICES – PERIOD OF CONTRACT in the SPECIFICATIONS section of RFP #40238 (page 21) is revised by deleting the following sentence: “During the renewal period, the Union reserves the right to review the Contract and cancel the agreement on the anniversary date of the Contract with 120 days written notice, if it is deemed to be in the KSSU’s best interest.”
14. The section entitled GROUP 2: AUTOMATIC TELLER MACHINE SERVICES - VENDOR RESPONSIBILTIES in the SPECIFICATIONS section of RFP #40238 (page 21) lines 7-8 are deleted and replaced by the following: “Upon notice from KSSU that the ATM in the Union is inoperative, take reasonable business measures to restore the ATM to operation in a timely manner.”

K-State Student Union Full Service Branch Bank Agreement (“Lease Agreement”)

15. Paragraph 2(j) Responsibilities of Bank of the Lease Agreement (page 1) is ~~deleted and replaced by the following new paragraph 2(j)~~ revised to delete the following sentence:

j) The Bank shall pay to the KSSU rent in the amount of \$4500.00 per month for Premises and \$700.00 per month for full service ATM machine. Rent will be due by the 15th day of the month. Rent not received by the 15th day shall accrue interest at the rate of 12% per annum effective the first day of the month in which that payment is delinquent. The KSSU shall have a lien on the automated teller machine installed by the Bank when any payment is delinquent for a period exceeding 30 days after written notice of such delinquency from KSSU. The lien excludes any deposited cash or checks, or cash for disbursement to users of the ATM and the camera and its contents. In the event of such lien, the KSSU will grant Bank immediate access to the ATM to remove these items.

Common area maintenance fee is \$425 per month for the first year, to be reviewed annually. A non-restricted gift of \$50,000 to the KSSU Friends of the Union will be paid within sixty (60) days of contract signing.

16. Paragraph 3 Responsibilities of KSSU of the Lease Agreement (page 2) is revised to add the following paragraph:

d) KSSU will reimburse Bank for the unamortized portion of any amortized improvements to the Premises (being amortized over 10 years using straight line depreciation method) in the event the Lease is not extended following the initial term of this Lease through the end of the amortization period or the Lease is terminated prior to June 30, 2021 for any reason.

17. Paragraph 5 Terms and Conditions of the Lease Agreement (page 3) is deleted and replaced by the following new paragraph 5:

This agreement, as amended by the Addendum, and its attachments (RFP #40238); RFP Addendum #1; Signature Sheet; and Financial Proposal – Best and Final; State of Kansas DA-146a) constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings and agreements, oral and written, relating hereto.

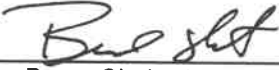
18. Paragraph 10 Liability of the Lease Agreement (page 3) is revised to add the following sentence at the end of the paragraph:

In no event shall either party be liable for special or consequential damages arising from the performance of nonperformance of services hereunder or the failure to comply with any terms of the Contract.


IN WITNESS WHEREOF, the parties have signed below as of the date written above.

K-STATE STUDENT UNION CORPORATION

By:  7-19-11
Bernard J. Pitts
Executive Director

By:  7-20-11
Bruce Shubert
Corporate Treasurer

COMMERCE BANK

By: 
Tom Giller
Community Bank President
Manhattan, Kansas

K-STATE STUDENT UNION
FULL SERVICE BRANCH BANK AGREEMENT

This Lease of Space (Lease) is entered into this 1 day of May 2011 at Manhattan, Kansas, between Commerce Bank, N.A., a national banking association with offices at 727 Poyntz Avenue, Manhattan, Kansas 66502, (Bank) and the K-State Student Union Corporation with offices located at the K-State Student Union, Manhattan, Kansas 66506 (KSSU).

Under the terms and conditions of this Lease, KSSU leases to Bank, for the purpose of operating a full service retail branch banking facility (Branch), space in the K-State Student Union Building on the Kansas State University campus in Manhattan, Kansas, more fully described as approximately 932 square feet at the south end of the main floor of the K-State Student Union (Premises).

1. Duration of the Lease

The term of this Lease shall commence on July 1, 2011 and will continue until June 30, 2016 (Initial Term), with one (1) additional five-year renewal by written agreement of the parties.

2. Responsibilities of the Bank

- a) Bank will provide a full service bank and ATM and operate in accordance with the provisions applicable to this Lease through the Initial Term and any renewal term or extensions thereof.
- b) Bank will provide, train, compensate, and insure all of its own personnel staff that shall be employees of the bank and not of KSSU.
- c) Bank will pay for all costs associated with remodeling existing space in the K-State Student Union building to meet the needs of the Bank, subject to the approval of KSSU Executive Director.
- d) Bank will provide all office and operating equipment it may need to operate the Branch Bank and ATM, which will remain the property of Bank.
- e) Bank will post its hours and will post any holiday closures within a reasonable time prior to the holiday. All posted hours will be within the K-State Student Union published building hours.
- f) Bank will be responsible for the full costs of installation and services of ATM and any required telephones, computer lines and/or related equipment required for their branch bank operation.
- g) Bank will maintain the Premises and Bank's equipment in good appearance and in first class working order in a manner consistent with the general policies and procedures of the Union Governing Board while the Lease is in effect; provided, however, that Bank may display, post and distribute its marketing and regulatory materials within the Branch. Signage at the Branch and ATM will provide clear and visible identification of Bank consistent with signage standards for contracted retail services located in the K-State Student Union.
- h) Bank will maintain insurance at its expense on Bank's furnishings, equipment, and other personal property on the Premises.
- i) Bank to provide a complete list of future lease improvements and equipment that may be amortized.
- j) The Bank shall pay to the KSSU rent in the amount of \$4500.00 per month for Premises and \$700.00 per month for full service ATM machine. Rent will be due by the 15th day of the month. Rent not received by the 15th day shall accrue interest at the rate of 12% per annum

effective the first day of the month in which that payment is delinquent. The KSSU shall have a lien on the automated teller machine installed by the Bank when any payment is delinquent. Common area maintenance fee is \$425 per month for the first year, to be reviewed annually. A non-restricted gift of \$50,000 to the KSSU Friends of the Union will be paid within sixty (60) days of contract signing.

- k) Refer to Appendix A for additional details regarding annual performance revenue and pricing schedule should contract be renewed.

3. Responsibilities of KSSU

- a) KSSU will provide the Premises to Bank to be used for the Branch.
- b) KSSU will provide all utilities and perform custodial services to Premises as provided for through the common area maintenance (CAM) charge.
- c) While the Lease is in effect, KSSU will, at its expense, maintain the K-State Student Union building in a good state of repair and will keep all common areas clean, all elevators in good working condition keep open access to the Premises and make all repairs to building necessary to keep such building in first class condition. KSSU shall also make all necessary utilities applicable to Bank's use of the Premises available including the maintenance of water, steam, sewer and electrical lines (except for phone lines, computer lines, security lines or additional electrical lines) and space heating systems, provided that Bank will bear expenses of repairs necessary because of their own renovations or caused by its employees' fault or negligence. All repairs and renovation plans require prior approval by KSSU. Bank is responsible for notifying KSSU, in writing, of any conditions or repairs of which Bank is aware which require repair or correction.

4. Termination of Lease

Either party may terminate this Lease for cause under any one of the following circumstances:

- a) The Bank fails to make delivery of goods or services as specified in this contract; or
- b) Either party fails to perform any material provisions of this Contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms.

The party seeking to terminate the contract shall give the other party a written notice of the conditions endangering performance, and the party receiving said notice shall have thirty (30) days (or such longer period as may be authorized in writing) after its receipt of said notice to remedy such failure. If the failure is not remedied by the defaulting party within the time period provided above, the non-defaulting party may terminate this contract by giving the defaulting party written notice. Receipt of the notice shall be presumed to have occurred within three (3) business days of the date of the notice. If the breach is remedied by the defaulting party within the time period provided above, then this contract shall continue as though no such notice had been given. Except as otherwise provided herein, the obligation of either party to perform any acts required hereunder, will be suspended during the period such performance is prevented by "an act of God", war; riot; invasion; fire; accident; government interference; regulations, appropriations; or any other occurrence beyond the control of parties. Upon termination or expiration of the Lease, Bank shall have the right to remove such furnishings and equipment placed in or upon or affixed to the Premises by the Bank.

5. Terms and Conditions

This agreement and its attachments (RFP #40238; RFP amendment #1; signature sheet and cost proposal; best and final offer; State of Kansas DA-146a) constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings and agreements, oral and written, relating hereto.

6. Compliance with Laws

The performance of the Lease and Bank's branch will be in compliance with all Federal, State and local laws and regulations. Bank will conduct its business in a manner consistent with general policies and procedures of KSSU and the Kansas State University; provided, however, that Bank may operate the Branch in accordance with its policies and procedures. Bank will secure and pay for all licenses, permits, fees and applicable taxes for its own operation of the branch. Bank agrees to indemnify and hold KSSU harmless from any claim resulting from the Bank's failure to comply with any law or regulation applicable to its operation of a branch bank on the Premises.

7. Quiet Enjoyment

Upon paying the rent and performing its obligations and duties under the Lease, Bank shall and may peaceably and quietly enjoy the use of the Premise for the term of the Lease.

8. Casualty/Unattainability

If the Premises or any area of the K-State Student Union building which affect access to or Bank's operations in the Premises is destroyed or made unattainable by fire or other casualty or cause, Bank shall have the option to terminate this Lease effective as of the date of such casualty or cause. KSSU will make every reasonable effort to repair or correct any such damage or cause which made Bank's Premises unattainable and will abate Bank's monthly charges for rent and services until Bank is able to open for business. If any part of the Premises or any material part of the common area immediately surrounding said area, is acquired or condemned under powers of eminent domain, then this Lease shall automatically expire and terminate upon title vesting.

9. Default

If Bank shall fail to pay any rent when due or shall default in the performance of any of its obligations under this Lease and such failure to pay rent or default in its performance shall continue for a period of thirty (30) days after receipt of written notice of such failure or default from KSSU, then KSSU may terminate the Lease. If KSSU shall fail to perform any of its obligations under this Lease and such failure shall continue for a period of (30) days after receipt of written notice of such failure from Bank, then Bank may terminate this Lease.

10. Liability

Bank shall be liable to and shall indemnify and hold KSSU harmless from and against any and all loss, liability, cost, damage and expense to which KSSU may be subjected or which it may incur in connection with any claims which arise from or out of or as the result of the intentional, fraudulent

or negligent conduct, acts or omission of Bank, its employees or agents, in the performance of Bank's duties and obligations under the Lease within the course and scope of their employment or when such actions or inactions have been ratified by Bank. To the extent authorized by Kansas law, including, without limitation the Kansas Tort Claims Act, KSSU shall be liable to and shall indemnify and hold Bank harmless from and against any and all loss, liability, cost, damage and expense (including reasonable legal fees and expense) to which Bank may be subjected or which it may incur in connection with any claims, which arise from or out of or as the result of (i) the intentional fraudulent, negligent acts or omissions and/or fraudulent conduct of KSSU, its officers, employees, agents, subcontractors, consultants and affiliates, in the performance of KSSU's duties and obligations under this Agreement within the course and scope of their employment, or (ii) KSSU's failure to comply with applicable federal and state laws and regulations.

11. Change in Ownership

Bank shall not sublet any part of the Premises or transfer this Lease by assignment or sale, without prior consent of KSSU; provided, however, that Bank may assign this Lease to any acquirer of all or substantially all of Bank's assets or to an entity that is controlled by, or under common control with Bank, without the prior consent of KSSU.

12. Amendments to the Lease

The terms and provisions of the Lease may be amended or modified only in writing signed by the parties. No oral statement of any person will in any manner or degree, modify or otherwise affect the terms and provisions of the Lease.

13. Notices

Any notices required or permitted in this Lease will be deemed to have been sufficiently given if sent by registered or certified mail, or delivered by hand, to the receiving party at the following offices:

K-State Student Union
Kansas State University
Manhattan, Kansas 66506
Attn: Executive Director, KSSU

Commerce Bank
727 Poyntz
Manhattan, Kansas 66502
Attn: Community Bank President

14. Governing Law


This Lease shall be construed in accordance with the laws of the State of Kansas and any actions brought relating to this Lease shall be brought in the District Court of Riley County, Kansas.

15. Ownership

This Lease is entered into by Bank on the expressed warranty and representation that KSSU has the authority to enter into this Lease and that the consent or approval of any other person or entity is not required as a condition to the enforceability of this Lease or KSSU's performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties to this Lease have set their hands.

K-STATE STUDENT UNION
CORPORATION



Bernard J. Pitts,
Executive Director

Date 7-19-11



Bruce Shubert
Corporate Treasurer

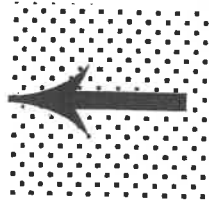
Date 7-20-11

COMMERCE BANK, N.A.

by: 

Tom Giller,
Community Bank President *Manhattan, KS*

Date 6-22-11



FINANCIAL PROPOSAL – Best & Final



Group 1: Banking Services

April 4, 2011

1. Commerce Bank will provide remuneration to KSSU as indicated below.
2. Commerce Bank will provide \$50,000 payments in Term 1 and Term 2 within 60 days of contract signing. Payments will be made to the KSSU as unrestricted gifts to Friends of KSSU.
3. Commerce will pay performance revenue to KSSU in each term year based on the total number of active checking accounts as of June 30 at the KSSU branch. The revenue payment will be made within 30 days of the June account performance reporting beginning in 2012.
4. Performance revenue payment will be paid based on the model below.
5. Renewal for a second 5-year term beginning on July 1, 2016 will be upon mutual agreement of KSSU and Commerce Bank.
6. Commerce Bank will pay reasonable monthly ATM monitoring fees to KSSU.
7. Common Area Maintenance (CAM) may be adjusted annually per Addendum 1 of RFP.

KSSU Remuneration Schedule – Term 1 (5 years)		
Monthly Branch Rent \$4,500	\$54,000 annually	\$270,000 (5 years)
Monthly Branch Common Area Maintenance \$425	\$5,100+ annually	\$25,500+ (5 years)
Monthly ATM Location Rent \$700	\$8,400 annually	\$42,000 (5 years)
Payment to Friends of KSSU \$50,000 (unrestricted use)	\$50,000 paid in Year 1	\$50,000
Annual Performance Revenue Paid to KSSU for active checking accounts 6,500 – 7,500 \$10,000 7,501 – 8,500 \$12,000 8,501 – 9,500 \$15,000 9,501 – 10,500 \$20,000 10,501+ \$25,000	\$10,000+/-	\$50,000+/- (5 years)
TOTAL PAYMENTS	\$127,500 (Year 1)	\$437,500+/- (5 Years)

KSSU Remuneration Schedule – Term 2 (5 years)		
Monthly Branch Rent \$4,600	\$55,200 annually	\$276,000 (5 years)
Monthly Branch Common Area Maintenance \$425	\$5,100+ annually	\$25,500+ (5 years)
Monthly ATM Location Rent \$700	\$8,400 annually	\$42,000 (5 years)
Payment to Friends of KSSU \$50,000 (unrestricted use)	\$50,000 paid in Year 1	\$50,000
Annual Performance Revenue Paid to KSSU for active checking accounts REVENUE MODEL SAME AS TERM 1	\$10,000+/-	\$50,000+/- (5 years)
TOTAL PAYMENTS	\$128,700+/- (Year 1)	\$443,500+/- (5 Years)

TOTAL PAYMENTS TO KSSU 10 Year Commitment	\$881,000+/- (10 years)
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