

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

July 23, 2024

FROM

ENSEN MASON, Auditor-Controller/Treasurer/Tax Collector

SUBJECT

Agreement with Tradeweb, LLC for Electronic Trading Platform

RECOMMENDATION(S)

Approve **User Agreement No. 24-662**, including non-standard terms, and side letter with Tradeweb, LLC to provide access to trade securities on a dealer network trading platform effective July 23, 2024, until terminated by either party with a minimum of seven days' notice. (Presenter: John Johnson, Assistant Auditor-Controller/Treasurer/Tax Collector, 382-7005)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost) as the trading platform has no financial cost to the County. Tradeweb, LLC (Tradeweb) will waive the U.S. Treasuries Trading Access fee contingent upon an active Tradeweb User Agreement (Agreement) with San Bernardino County. Although Tradeweb shall have the right to terminate the Fee Waiver upon 60 days prior written notice, either party can terminate the Agreement for any reason with not less than seven days' notice, which provides the ability to prevent any future charges should the Fee Waiver be terminated.

BACKGROUND INFORMATION

The Auditor-Controller/Treasurer/Tax Collector's (ATC) Treasurer Division utilizes various trading systems and platform technologies to execute trades for the purpose of investing funds in the \$15 billion County Investment Pool. Tradeweb is a leading proprietary electronic trading platform that facilitates trading primarily in fixed income products. Tradeweb's platform connects institutional investors, dealers, and other market participants to execute electronic trades in real-time, supporting centralized trading for U.S. treasuries and repurchase agreements in which the County Investment Pool has significant exposure. The recommended Agreement would provide trade execution efficiencies and best execution of trades benefiting the County Investment Pool significantly.

Allowing access to available investment resources and security inventories that are distributed to market participants in a centralized location improves the scalability of Treasury's operations. Tradeweb offers access to the institutional, wholesale, and retail markets. Tradeweb's platform provides additional data resources to realize efficiencies in trade execution. Similar to other trading platforms utilized by ATC, Tradeweb will waive the U.S. Treasuries Trading Access fee,

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due to the County's large public entity Investment Pool, for up to six users for a period of one year, which shall automatically renew annually until terminated.

The Agreement is the Contractor's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. The non-standard and missing terms include the following:

1. Governing law and venue are the State of New York and the courts in the state of New York and the United States Federal District Courts for the Southern District of New York.
 - **Standard Term:** Governing law is the State of California and venue is in San Bernardino County.
 - **Potential Impact:** The Agreement will be interpreted under New York law. Any questions, issues or claims arising under this Agreement will require the County to hire outside counsel competent to advise on New York law, which may result in fees.
2. The County is required to indemnify, protect and hold harmless the Contractor against all claims that arise out of a breach of the Agreement, or the cancellation of or change to transactions initiated by the County. The Contractor agrees to indemnify, protect and hold harmless the County from any actions resulting from or arising out of the infringement by Contractor's systems of any intellectual property or proprietary right of a third party.
 - **Standard Term:** The County standard contract requires the Contractor to indemnify, defend and hold the County harmless from this party, claims arising out of the acts, errors or omissions of any person.
 - **Potential Impact:** The County may be solely liable for the costs of defense and damages that arise out of the County's breach of the Agreement, or cancellation or change to transactions initiated by the County. Contractor's only liability will arise in the event of intellectual property infringement.
3. The Agreement does not require Contractor to meet the County's insurance standards as required pursuant to County Policies 11-05, 11-07, and 11-07SP.
 - **Standard Term:** County policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and as set forth in County policy and in the County standard contract.
 - **Potential Impact:** The County has no assurance that Contractor will be financially responsible for claims that may arise under the Agreement, which could result in expenses to the County that exceed the total Agreement amount.
4. Contractor provides the services "AS IS" and disclaims all warranties of any kind.
 - **Standard Term:** A Contractor is required to fully warrant its services and products.
 - **Potential Impact:** The County's use of the services is solely at its own risk. County Counsel cannot advise on, whether and to what extent, New York law may limit or expand the disclaimers of warranty to the extent prohibited by applicable law.
5. The term of the Agreement is indefinite beginning July 23, 2024, and continuing until seven days' notice of termination by either party.

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- Standard Term: County policies 11-05 and 11-06SP1 do not permit indefinite term contracts except in certain circumstances or when approved by the Board.
- Potential Impact: There is no end term to the Agreement and the County is indefinitely bound to the terms and conditions of the Agreement until the County terminates the Agreement for any reason upon seven days' notice, for insolvency, or inoperability of the system.

ATC recommends approval of the Agreement, including non-standard terms, in order to improve ATC's trading operations.

PROCUREMENT

Purchasing supports the non-competitive procurement of the Tradeweb trading platform based on unique benefits that align with the Treasurer's Investment Policy requirement of best execution of trades. Tradeweb offers advanced analytics, real time market data, and customizable trading options which cannot be procured from any other vendor. ATC's Treasurer Division actively follows and surveys the industry for any tools or resources to enhance its operations in a cost-effective way. Access to Tradeweb's platform would allow Treasury staff to better perform its investment responsibilities and add a resource that is not currently available.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Kristina Robb, Deputy County Counsel, 387-5455) on May 24, 2024; Risk Management (Loretta Acuna, Staff Analyst, 386-9039) on June 11, 2024; Purchasing (Jessica Barajas, Supervising Buyer, 387-2065) on June 10, 2024; Finance (Penelope Chang, Administrative Analyst, 387-4886) on June 17, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on July 2, 2024.

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Curt Hagman Seconded: Joe Baca, Jr.
Ayes: Col. Paul Cook (Ret.), Dawn Rowe, Curt Hagman, Joe Baca, Jr.
Absent: Jesse Armendarez

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: July 23, 2024



cc: ATC - Bhatt w/agree
 Contractor - c/o ATC w/agree
 File - w/agree
CCM 07/25/2024