

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

July 27, 2021

FROM

ENSEN MASON, Auditor-Controller/Treasurer/Tax Collector

SUBJECT

Contract with U.S. Bank for Pay Card Program

RECOMMENDATION(S)

Approve Amended and Restated **Agreement No. 14-541 A-1** with U.S. Bank for continued participation in its Pay Card Program for payroll purposes, amending the original agreement effective July 27, 2021, to add a Federal Deposit Insurance Corporation required Regulatory Records Addendum, with successive one-year terms subject to termination upon ninety (90) days' written notice prior to the end of any such term.

(Presenter: Tori Roberts, Assistant Auditor-Controller/Treasurer/Tax Collector, 382-7005)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Improve County Government Operations.

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). The program is funded by fees charged to merchants accepting cards used in the Pay Card Program and will not result in any cost to the County.

BACKGROUND INFORMATION

The Auditor-Controller/Treasurer/Tax Collector has contracted with U.S. Bank for participation in its Pay Card Program since 2010. Pay cards are a type of reloadable debit card that serve as an alternative for employers to replace payroll paper warrants. Pay cards give the County the ability to offer payroll direct deposit to employees who either do not qualify for, or choose not to have, traditional bank accounts. Once an employee enrolls in the Pay Card Program, a Visa-branded pay card embossed with the employee's name is mailed to the employee's home address. Central Payroll then deposits payroll funds to the employee's pay card each pay period in the same manner as direct deposit to a checking or savings account via the Automated Clearing House process. Employees can access only the funds that have been loaded to the pay card. Funds loaded onto the pay cards are Federal Deposit Insurance Corporation (FDIC) insured. Cardholders can withdraw their cash at banks, credit unions, or ATMs; and they can make purchases everywhere that Visa is accepted.

Pay cards save the County money on paper, printing, distribution, storage, and staff time required to issue paper warrants, and reduce the County's exposure to lost and stolen checks. U.S. Bank provides fraud protection to employees and is responsible for replacing lost or stolen pay cards. The Pay Card Program also offers numerous benefits to participating employees,

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saving them money by eliminating check-cashing fees; giving them faster access to their paychecks (they can access their money on the morning of payday); and giving them 24/7 access to account information online, through ATMs, and by phone.

The FDIC's Recordkeeping for Timely Deposit Insurance Determination (12 CFR Part 370) prompted a required Regulatory Records Addendum to U.S. Bank's Pay Card Program to facilitate prompt payment of FDIC-insured deposits in the event of the bank's failure. In the unlikely event U.S. Bank fails, the County will be required to provide demographic information on all pay card direct deposit account holders upon the FDIC's request to enable the FDIC to conduct the deposit insurance determination.

The County currently makes over 10,000 direct deposits each year to employees' pay cards. Continued participation in the Pay Card Program under the amended agreement will allow employees to have uninterrupted use of their pay cards and allow the County to avoid the administrative burden of re-enrolling employees into a new program, issuing new cards, and updating direct deposit information for all participating employees.

U.S. Bank's Amended and Restated Agreement (Agreement) contains its standard commercial contract terms, which include 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. U.S. Bank may, without prior notice to or consent of County, assign or delegate the Agreement and any of its rights or obligations under this Agreement to any Affiliate, Subsidiary, corporate parent, successor-in-interest, or successor by merger having the authority to operate the Program in the same manner as U.S. Bank.
 - The County must approve any assignment of the contract.
 - Potential Impact: U.S. Bank may assign the contract to a third party or business with which the County is legally prohibited from doing business due to issues of Federal debarment or suspension and conflict of interest, without the County's knowledge.
2. Neither party may bring a legal claim against the other party more than one year from the date the party had or should have had actual knowledge of the facts giving rise to the claim.
 - The County standard contract does not include a limit on the time to bring action.
 - Potential Impact: Limiting the County's ability to bring suit to one year amounts to a waiver of the Statute of Limitations for claims and shortens the period of time in which the County may file a lawsuit under the contract.
3. After the initial three-year term, the contract automatically renews for annual periods unless notice is given 60 days prior to the end of the initial term or 90 days prior to the end of any renewal period.
 - County Policy 11-06SP does not permit indefinite term or automatically renewing contracts unless approved by the Board.
 - Potential Impact: There is no end term to the contract and the County is indefinitely bound to the terms and conditions of the contract.
4. There is no termination for convenience.
 - The County standard contract gives the County the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination

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without any obligation other than to pay amounts for services rendered and expenses reasonably incurred prior to the effective date of termination.

- Potential Impact: The County can only terminate for certain causes and conditions, including an excusable delay lasting more than 60 consecutive days, a material breach that remains uncured for 45 days, or the other party's bankruptcy or insolvency. Any attempted termination by County without cause would result in payment liability for the full contract amount, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.

PROCUREMENT

On December 15, 2009 (Item No. 30), as the result of a successful competitive process, the Board of Supervisors approved Agreement No. 09-1123 with U.S. Bank for participation in the Bank's AccelaPay Pay Card program. U.S. Bank upgraded its Pay Card Program from AccelaPay to the Focus Card in 2014, necessitating a new program agreement. On June 24, 2014 (Item No. 22), as the result of a successful competitive process, the Board of Supervisors approved Agreement No. 14-541 with U.S. Bank to participate in the upgraded Pay Card Program. The term of this agreement was for an initial three-year period of July 1, 2014, through June 30, 2017, with successive one-year term renewals, subject to termination upon ninety (90) days' written notice prior to the end of any such term.

The Purchasing Agent recommends the continued use of U.S. Bank for the Pay Card Program on a non-competitive basis due to the advantages offered by the Agreement. Additionally, migrating to a new pay card vendor at this time would result in additional substantial costs to the County. This Agreement includes an indemnification clause that holds each party to the Agreement harmless for losses related or attributable to the Agreement.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Robert F. Messinger, Chief Assistant County Counsel, 387-5455) on June 7, 2021; Risk Management (Victor Tordesillas, Interim Director, 386-8621) on July 1, 2021; Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on July 2, 2021; Finance (Carl Lofton, Administrative Analyst, 387-5404) on July 12, 2021; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on July 12, 2021.

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Dawn Rowe Seconded: Col. Paul Cook (Ret.)

Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: July 27, 2021



cc: ATC - Alexander w/agree
Contractor - C/O ATC w/agree
File - w/agree

CCM 08/4/2021