

# **REPORT/RECOMMENDATION TO THE BOARD OF DIRECTORS OF SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT AND RECORD OF ACTION**

**February 27, 2024**

## **FROM**

**DAN MUNSEY, Fire Chief/Fire Warden, San Bernardino County Fire Protection District**

## **SUBJECT**

**Non-Financial Agreement with Avenza Systems, Inc. for Avenza Maps**

## **RECOMMENDATION(S)**

Acting as the governing body of the San Bernardino County Fire Protection District:

1. Approve a non-financial Terms and Conditions **Agreement No. 24-161**, including non-standard terms, with Avenza Systems, Inc. for Avenza Maps, beginning upon download, installation, or use of the services and continuing until terminated by either party.
2. Authorize the Fire Chief/Fire Warden to electronically accept the Terms and Conditions Agreement identified in Recommendation No. 1.

(Presenter: Dan Munsey, Fire Chief/Fire Warden, 387-5779)

## **COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Improve County Government Operations.**

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

**Provide for the Safety, Health and Social Service Needs of County Residents.**

## **FINANCIAL IMPACT**

Approval of the recommended actions will not result in the use of Discretionary General Funding (Net County Cost). The Avenza Systems, Inc. (Avenza) Terms and Conditions Agreement (Agreement) is non-financial in nature and does not commit the San Bernardino County Fire Protection District (SBCFPD) to make any purchases. If future purchases are made in conjunction with the Agreement, SBCFPD will adhere to purchasing policies and return to the Board of Directors (Board) for approval, if necessary.

## **BACKGROUND INFORMATION**

SBCFPD uses multiple information technology products to provide professional fire protection and advanced life support services to the public. Avenza provides a map application widely used by the fire industry to view geo-referenced PDFs (portable document format files) on mobile devices and is optimized for geo-location and data collection in offline environments. This is an ideal solution for hosting SBCFPD wildland preplan maps that SBCFPD uses regularly, while working with outside cooperators in hazardous fuels reduction services and incident management activities.

Avenza is headquartered in Canada, with no apparent presence within the United States, and the terms and conditions of the Agreement are governed by the laws of the Province of Ontario, Canada, or any jurisdiction or authority that Avenza defers as it sees fit, in its sole discretion. County Counsel is unable approve the Agreement as to legal form because County Counsel is

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not sufficiently knowledgeable about the requirements for forming an enforceable agreement under Province of Ontario, Canada law, or any speculative jurisdiction or authority that Avenza defers as it sees fit. The non-standard terms in this contract include:

- Avenza may modify or amend the terms of the Agreement at any time by posting on the store website and continued use of the services constitutes acceptance of the new terms.
- There is no provision regarding assignment by Avenza.
- There is no attorneys' fees provision.
- There is no stated term.
- There is no indemnification of SBCFPD by Avenza.
- There are no insurance provisions.
- SBCFPD indemnifies and hold Avenza harmless for all claims resulting from the use of Avenza and third-party content, products, and services.
- Avenza disclaims all liability to SBCFPD (\$0 cap).
- Venue for legal matters arising under the contract is the Province of Ontario, Canada or any jurisdiction or authority that Avenza defers as it sees fit, in its sole discretion.
- Software is provided "as is" and "as available" without warranty of any kind.

Per Policy 11-05, non-standard contract language must be approved by the Board. Because County Counsel is not able to advise on Province of Ontario, Canada law (or any speculative jurisdiction or authority to which Avenza may defer), there is no specific analysis of possible legal impacts from any Agreement provisions, including those that appear to be inconsistent with County Policy 11-05. If the Board approves the contract, it will be subject to the jurisdiction of the courts located in Province of Ontario, Canada, or any jurisdiction or authority that Avenza defers as it sees fit, in its sole discretion, to resolve any legal matter arising from the Agreement.

Notwithstanding the non-standard provisions, SBCFPD recommends that the Board approve the Agreement associated with Avenza Maps as it will allow SBCFPD to purchase a software map application that supports SBCFPD operational efforts.

**PROCUREMENT**

The recommended Agreement will be used to accompany future purchase orders to be approved, as necessary, per County Policy 11-04 Procurement of Goods, Supplies, Equipment and Services.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on January 30, 2024; Risk Management (Victor Tordesillas, Director, 386-8623) on January 16, 2024; Finance (Ivan Ramirez, Administrative Analyst, 387-4635) on January 31, 2024; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on February 2, 2024.

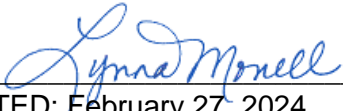
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Record of Action of the Board of Directors  
San Bernardino County Fire Protection District

**APPROVED (CONSENT CALENDAR)**

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

Lynna Monell, SECRETARY

BY   
DATED: February 27, 2024



cc:    SBCFPD - Munsey w/ agree  
     Contractor c/o SBCFPD w/ agree  
     File w/ agree  
JLL    02/28/2024