

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

March 26, 2024

**FROM**

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

**SUBJECT**

Non-Financial Agreement with DeCesha Inc dba ForceReadiness.com for FireSync Enterprise™ Software Services

**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. 24-247**, including non-standard terms, with DeCesha Inc dba ForceReadiness.com for FireSync Enterprise™ Software Services, 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 DeCesha Inc dba ForceReadiness.com (ForceReadiness) 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. ForceReadiness provides FireSync Enterprise™ Software Services (FireSync Enterprise). FireSync Enterprise would allow the radios used in the fire engines to be able to quickly switch away from their primary channel and utilize a tactical channel used by SBCFPD or another agency when working on an emergency incident. FireSync Enterprise includes a geolocation map that integrates the user's phone GPS location and shows them radio channels in their immediate area that can be used to contact SBCFPD's dispatch center and the dispatch centers of cooperating agencies.

**Non-Financial Agreement with DeCesha Inc dba ForceReadiness.com  
for FireSync Enterprise™ Software Services  
March 26, 2024**

The Agreement is ForceReadiness' standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. The Agreement is a non-negotiable clickwrap agreement accepted upon downloading, installing, or using the services. The non-standard and missing terms include the following:

1. ForceReadiness may amend the Agreement terms without notice at any time.
  - County Policy 11-06 requires that any changes to the contract be reduced to writing, executed and attached to the original contract and approved by the person(s) authorized to do so on behalf of the contractor and County.
  - Potential Impact: SBCFPD could be agreeing to new terms without review by anyone, including County Counsel, and without approval of the new terms by the Board.
2. ForceReadiness may assign the Agreement without notice to SBCFPD and without SBCFPD's approval.
  - The County standard contract requires that the County must approve any assignment of the contract.
  - Potential Impact: ForceReadiness could assign the Agreement to a third party or business with which SBCFPD is legally prohibited from doing business due to issues of Federal debarment or suspension and conflict of interest, without SBCFPD's knowledge. Should this occur, SBCFPD could be out of compliance with the law until it becomes aware of the assignment and terminates the Agreement.
3. The prevailing party in any arbitration is entitled to recover attorneys' fees and costs.
  - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
  - Potential Impact: If either party institutes any legal proceedings related to the Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees and costs, which could exceed the total Agreement amount.
4. All disputes arising under the Agreement must be settled by binding arbitration in a location mutually agreed upon by the parties.
  - The County standard contract does not require arbitration.
  - Potential Impact: Binding arbitration decisions are not appealable. In addition, disputes that might otherwise be settled in small claims court would incur arbitration costs that could exceed the costs of a small claims action and the Agreement amount.
5. The Agreement does not require ForceReadiness to indemnify SBCFPD, as required by County Policies 11-05 and 11-07, including for intellectual property infringement claims.
  - The County standard contract indemnity provision requires the contractor to indemnify, defend, and hold County harmless from third party claims arising out of the acts, errors or omissions of any person. The standard contract provision for intellectual property indemnity is: Contractor will indemnify, defend, and hold harmless County and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services.

**Non-Financial Agreement with DeCesha Inc dba ForceReadiness.com  
for FireSync Enterprise™ Software Services  
March 26, 2024**

- Potential Impact: ForceReadiness is not required to defend, indemnify or hold SBCFPD harmless from any claims, including indemnification for claims arising from ForceReadiness' negligent or intentional acts and intellectual property infringement. If SBCFPD is sued for any claim, including intellectual property infringement based on its use of ForceReadiness' software or services, SBCFPD may be solely liable for the costs of defense and damages, which could exceed the total Agreement amount.
6. SBCFPD is required to indemnify ForceReadiness against all claims arising out of the SBCFPD's (a) use of or inability to use the Site or services; (b) any user postings made by SBCFPD; (c) SBCFPD's violation of any terms of the Agreement or violation of any third-party rights; or (d) violation of any applicable laws.
    - The County standard contract does not include any indemnification or defense by the County of a contractor.
    - Potential Impact: By agreeing to indemnify ForceReadiness, SBCFPD could be contractually waiving the protection of sovereign immunity or other statutory immunities. Claims that may otherwise be barred against SBCFPD, time limited, or expense limited could be brought against ForceReadiness without such limitations and SBCFPD would be responsible to reimburse ForceReadiness for costs, expenses, and damages, which could exceed the total Agreement amount.
  7. The Agreement does not require ForceReadiness to meet SBCFPD's insurance standards as required pursuant to County Policy 11-07.
    - County Policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and set forth in the County standard contract.
    - Potential Impact: SBCFPD has no assurance that ForceReadiness will be financially responsible for claims that may arise from SBCFPD's use of the service, which could result in expenses to SBCFPD that exceed the total Agreement amount.
  8. ForceReadiness disclaims all liability to SBCFPD, direct, indirect, and otherwise.
    - The County standard contract does not include a limitation of liability.
    - Potential Impact: SBCFPD is financially liable for all claim amounts.
  9. ForceReadiness provides the services and/or products "AS IS" and disclaims all warranties of any kind, including any warranty non-infringement.
    - County Policy 11-05 requires a contractor to fully warrant its services and products.
    - Potential Impact: SBCFPD's use of the services and/or products is solely at its own risk.

Notwithstanding the non-standard provisions, SBCFPD is recommending that the Board approve the Agreement associated with ForceReadiness as it will allow SBCFPD to purchase FireSync Enterprise software services which will improve SBCFPD operations.

**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.

**Non-Financial Agreement with DeCesha Inc dba ForceReadiness.com  
for FireSync Enterprise™ Software Services  
March 26, 2024**

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on February 27, 2024; Risk Management (Victor Tordesillas, Deputy Executive Officer, 386-8623) on February 27, 2024; Finance (Ivan Ramirez, Administrative Analyst, 387-4635) on March 7, 2024; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on March 11, 2024.

**Non-Financial Agreement with DeCesha Inc dba ForceReadiness.com  
for FireSync Enterprise™ Software Services  
March 26, 2024**

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: March 26, 2024



cc:   SBCFPD - Munsey w/ agree  
      Contractor c/o SBCFPD w/ agree  
      File w/ agree  
JLL   03/27/2024