

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

April 9, 2024

FROM

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

SUBJECT

Non-Financial Agreement with Faronics Corporation for Deep Freeze Software Services

RECOMMENDATION(S)

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

1. Approve non-financial Deep Freeze Cloud Terms of Service **Agreement No. 24-298**, including non-standard terms, with Faronics Corporation, for subscription to a software as a service platform providing security tools and protection against damage to information technology products, beginning upon electronic acceptance, or download, or use of the services, and continuing for a one-year subscription period, renewing on mutual agreement an annual basis, or terminated by Faronics Corporation.
2. Authorize the Fire Chief/Fire Warden to electronically accept the Deep Freeze Cloud Terms of Service Agreement identified in Recommendation No. 1 and to electronically accept updates to the Deep Freeze Cloud Terms of Service Agreement, subject to review by County Counsel, provided that such documents do not substantively modify the terms applicable to the County.
3. Direct the Fire Chief/Fire Warden to transmit printed copies of any updated terms related to the Deep Freeze Cloud Terms of Service Agreement to the Clerk of the Board of Supervisors within 30 days of electronic acceptance.

(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 Faronics Corporation (Faronics) Terms of Service 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. The SBCFPD Office of the Fire Marshal (OFM) has kiosks that provide customers access to the California Environmental Reporting

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System and allows them to upload the required documents necessary to be in compliance with hazardous waste requirements.

Faronics provides Deep Freeze Software Services (Deep Freeze) which allows OFM customer kiosks to be protected from tampering or any unauthorized changes. SBCFPD has been using Deep Freeze since 2015 and the subscription is up for renewal. However, in accordance with County Policy 11-05 that became effective on March 10, 2020, agreements that include non-standard terms must be presented to the Board for approval.

Faronics 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 British Columbia and the laws of Canada. County Counsel is unable approve the Agreement as to legal form because County Counsel is not sufficiently knowledgeable about the requirements for forming an enforceable agreement under Canadian law. The non-standard terms in this contract include:

- Faronics may amend the terms of the Agreement without notice at any time.
- Faronics may assign the Agreement upon notice to SBCFPD, but without SBCFPD's approval.
- There is no attorneys' fees provision.
- There is no indemnification of SBCFPD by Faronics.
- SBCFPD fully indemnifies Faronics for all costs (including costs of responding to inquiries or legal proceedings by regulatory authorities) related to the services, including breach of privacy laws and SBCFPD data, that do not result from Faronics' own negligence. In addition, SBCFPD agrees to indemnify, defend, and hold Faronics, affiliated entities and their employees and third party suppliers and licensors against all costs arising from: (i) SBCFPD's use of the services, (ii) SBCFPD's breach of the Agreement, (iii) SBCFPD's violation of any third-party rights, (iv) SBCFPD's misuse of credit and debit cards, (v) violation of export laws, rules and regulations, and (vi) any claim of misuse of the services, including any claim that subscriber is storing illegal files or data in its account.
- There are no insurance provisions.
- Faronics limits its aggregate maximum liability to SBCFPD to one twelfth of the subscription fee actually paid to Faronics for the applicable services during the subscription period in which the claim arises.
- SBCFPD has no right to terminate the Agreement.
- Venue for legal matters arising under the contract is in the courts of British Columbia, Canada.
- Software is provided "as is" and "as available" and Faronics disclaims all warranties of any kind, including the warranty of non-infringement.

County Counsel is not able to advise on Province of British Columbia and Canada law as 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 British Columbia, Canada to resolve any legal matter arising from the Agreement.

Notwithstanding the non-standard provisions, SBCFPD recommends that the Board approve the Agreement associated with Faronics as it will allow SBCFPD to purchase a software application that protects data from tampering or any unauthorized changes.

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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 March 6, 2024; Risk Management (Victor Tordesillas, Director, 386-8623) on March 13, 2024; Finance (Ivan Ramirez, Administrative Analyst, 387-4635) on March 19, 2024; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on March 19, 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: April 9, 2024



cc: SBCFPD - Munsey w/ agree
 Contractor c/o SBCFPD w/ agree
 File w/ agree

JLL 04/10/2024