

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

September 24, 2024

FROM

MELANIE OROSCO, County Librarian, Library

SUBJECT

Agreement with Faronics Technologies (U.S.A.) Inc. for Resetting Computers to Factory Settings

RECOMMENDATION(S)

Approve On-Premise Master Software License **Agreement No. 24-935**, including non-standard terms, with Faronics Technologies (U.S.A.) Inc., for deepfreeze technology services to reset computers and devices to factory settings after public use, in the total not-to-exceed amount of \$17,000, from October 1, 2024 to September 30, 2027.

(Presenter: Kristin Stevens, Assistant County Librarian, 387-2220)

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 Discretionary General Funding (Net County Cost). The \$17,000 cost to the for the On-Premise Master Software License Agreement (Agreement) with Faronics Technologies (U.S.A.) Inc. (Faronics) is funded by Property Tax Revenue. Adequate appropriation has been included in the County Library's (Library) 2024-25 budget and will be included in subsequent recommended budgets.

BACKGROUND INFORMATION

The Library has utilized Faronics to reset over 1,200 public Library computers to factory settings since 2020. Library patrons can log onto the Library's public computers to work on items that may include sensitive information, personally identifiable information, school assignments, etc. When patrons log off the computers, the deepfreeze technology resets the computer to factory settings so any items worked on by the previous user are no longer accessible by another Library patron. This process is one of the measures used to mitigate cybersecurity and information privacy concerns or issues since the technology is cleansing (i.e., factory reset) the computer between each patron use. This process mitigates potential information privacy matters and/or malicious software being stored knowingly or unknowingly by Library patrons.

Because these deepfreeze services are utilized for public computers within the Library's branch locations, Library procures these separately from the Countywide licenses provided for County staff and departments through the Innovation and Technology Department.

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The Agreement with Faronics is the Faronics standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. Faronics is unwilling to negotiate these terms. The non-standard and missing terms include the following:

1. Faronics' maximum liability to the County is limited to the fees actually paid by the County in the 12-month period preceding the event giving rise to the claim, with no exclusions.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the Agreement amount leaving the County financially liable for the excess.
2. The Agreement does not require Faronics to indemnify the County, as required by County Policies 11-05 and 11-07, including for intellectual property infringement claims.
 - The County standard contract indemnity provision requires contractor to indemnify, defend and hold County harmless from third party claims arising out of acts, errors or omissions of any person. The standard contract provision or 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 a United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services.
 - Potential Impact: Faronics is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from Faronics' negligent or intentional acts and intellectual property infringement. If the County is sued for any claim, including intellectual property infringement based on its use of Faronics' software or services, the County may be solely liable for the cost of defense and damages, which could exceed the total Agreement amount.
3. The Agreement does not require Faronics to meet the County's insurance standards as required pursuant to County Policies 11-05, 11-07, and 11-07SP.
 - 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 the County policy and in the County standard contract.
 - Potential Impact: The County has no assurance that Faronics will be financially responsible for claims that may arise under the Agreement, which could result in expenses that exceed the total Agreement amount.
4. The County may not terminate the Agreement for convenience. In addition, the County agrees to non-refundable fees.
 - County Policy 11-05 requires that the County have the right to terminate the contract, for any reason, with a 30-day written notice of termination 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 the Agreement during the term for an uncured breach by Faronics. Any attempted termination by County without cause could result in payment liability for the full Agreement amount, which could result in payment liability where no funds are available due to lack of allocation or loss of funding.

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5. Faronics may assign the Agreement without notice to the County and without the County's approval.
 - The County standard contract requires that the County must approve any assignment of the contract.
 - Potential Impact: Faronics could assign the Agreement 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. Should this occur, the County could be out of compliance with the law until it becomes aware of the assignment and terminates the Agreement.
6. Faronics may change the Agreement terms without notice at any time.
 - County Policy requires that any changes to the contract be reduced to writing, executed and attached to the original contract and approved by the persons authorized to do so on behalf of the contractor and County.
 - Potential Impact: If Faronics amends the Agreement without notifying the County, the County could be agreeing to new terms without review by anyone, including County Counsel, and without approval of the new terms by the Board of Supervisors.
7. The Agreement requires that the County comply with Canadian anti-SPAM law.
 - The County standard contract requires California governing law.
 - Potential Impact: County Counsel is not sufficiently knowledgeable about the requirements for complying with Canadian anti-SPAM law. County Counsel is not able to advise on Canadian law, there is no specific analysis of possible legal impacts from this provision.
8. The Agreement is silent on governing law.
 - The County standard contract requires California governing law.
 - Potential Impact: Having no specified governing law in the Agreement results in uncertainty over which state or country's law will govern the interpretation of the Agreement, and leads to ambiguity in interpretation of the Agreement terms. Faronics is a corporation based in Canada. The Agreement could be interpreted under Canadian law depending on where the claim is brought. Any questions issues or claims arising under this Agreement could require the County to hire outside counsel competent to advise on the applicable law, which may result in fees that exceed the total Agreement amount.

The Library recommends approval of the Agreement with Faronics, including non-standard terms, to avoid disruption of its fully automated online customer services at its Library branch locations. The current contract for Faronics' deepfreeze services expires on September 30, 2024.

PROCUREMENT

Library contracted three vendors, Faronics, ThreatLocker, Inc., and Manage Engine – division of Zoho Corp., requesting quotes for deepfreeze technology services to reset the Library's public computers to their factory settings. All three vendors submitted a response. After reviewing all the quotes, the Library is recommending to award a three-year contract to Faronics based on its ability to provide the required services at the lowest price. The Purchasing Department supports this competitive procurement based on the informal quotes solicited for the services.

REVIEW BY OTHERS

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This item has been reviewed by County Counsel (Daniella Hernandez, Deputy County Counsel, 387-5455) on August 20, 2024; Innovation and Technology Department (Robert Pittman, Chief Information Security Officer, 388-5510) on September 6, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst, 386-9008) on August 23, 2024; Purchasing (Jessica Barajas, Supervising Buyer, 387-2065) on August 27, 2024; Finance (Elias Duenas, Administrative Analyst, 387-4052) on September 9, 2024; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on September 9, 2024.

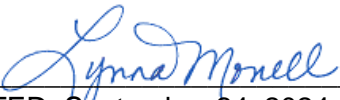
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: September 24, 2024



cc: Library - Ortiz w/agree
 Contractor - c/o Library w/agree
 File - w/agree
CCM 09/30/2024