

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

July 23, 2024

FROM

SHANNON D. DICUS, Sheriff/Coroner/Public Administrator

SUBJECT

Non-Financial Agreement with Magnet Forensics, LLC for GrayKey Forensics Software Licensing

RECOMMENDATION(S)

Approve non-financial **End User License Agreement No. 24-648** with Magnet Forensics, LLC, including non-standard terms, for the use of its GrayKey forensic software licensing, maintenance, and support services, for the period beginning July 23, 2024 and continuing for one year after the termination or expiration of the license term, as specified in quotes accepted by the Purchasing Agent as authorized by County Policy.
(Presenter: Kelly Welty, Chief Deputy Director, 387-3760)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

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 this item will not result in the use of additional Discretionary General Funding (Net County Cost). Magnet Forensics, LLC's (Magnet Forensics) End User License Agreement (EULA) is non-financial in nature and does not commit the County to make purchases. If purchases are made under this EULA, the Sheriff/Coroner/Public Administrator (Department) will adhere to County purchasing policies and return to the Board of Supervisors (Board) for approval, if necessary.

BACKGROUND INFORMATION

The Department's High-Tech Crimes Detail investigates criminal cases that require detailed technical information and quick action by investigators. Magnet Forensics' GrayKey forensic software (GrayKey) allows the Department to conduct critical evidence recovery operations from several types of electronic devices, allowing for faster case resolutions.

Magnet Forensics is the sole manufacturer and distributor of GrayKey, and the EULA is required to use the forensics software. The EULA is Magnet Forensics' standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard terms. While the parties negotiated certain contract terms to County standards, Magnet Forensics would not agree to all County standard terms. The non-standard and missing terms include the following:

1. Magnet Forensics may assign the EULA without notice to the County and without the County's approval.

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- The County standard contract requires that the County must approve any assignment of the contract.
 - Potential Impact: Magnet Forensics could assign the EULA 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 EULA.
2. The EULA does not require Magnet Forensics to meet the County'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 County's Risk Management Department and set forth in the County standard contract.
 - Potential Impact: The County has no assurance that Magnet Forensics will be financially responsible for claims that may arise from the County's use of the software, which could result in expenses to the County that exceed the total EULA amount.
3. Magnet Forensics' maximum liability to the County under the EULA is limited to the amount paid for the product in the 12 months preceding a claim, excluding Magnet Forensics' indemnification obligations, which are limited to the less of three times the amount paid for the software in the months prior to the claim and \$1,000,000. There are no exclusions for gross negligence, willful misconduct or violation of law,
- The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the amount paid for the software, leaving the County financially liable for the excess.

The Department recommends approval of the EULA with Magnet Forensics, including the non-standard terms, to ensure that the Department's investigations are completed without delays.

PROCUREMENT

Magnet Forensics holds proprietary rights to the GrayKey forensic software. The EULA will be used to accompany future purchases to be approved, as necessary, per County Policy 11-04 Procurement of Goods, Supplies, Equipment and Services, provided that Magnet Forensics does not substantively modify the EULA. Additionally, County Policy 11-05 requires departments to obtain Board approval for procurement of goods and services with non-standard terms and conditions.

Approval of this item will provide the Department with the ability to obtain software licensing, including maintenance and support services, for the period of July 23, 2024 continuing for one year after the termination or expiration of the license term.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on July 8, 2024; Purchasing (Jason Cloninger, Lead Buyer, 387-0321) on July 2, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst, 396-9008) on July 3, 2024; Finance (Erika Rodarte, Administrative Analyst, 387-4919) on July 8, 2024; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on July 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.), Dawn Rowe, Curt Hagman, Joe Baca, Jr.
Absent: Jesse Armendarez

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: July 23, 2024



cc: Sheriff - Welty w/agree
 Contractor - c/o Sheriff w/agree
 File - w/agree
CCM 07/24/2024