

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

June 14, 2022

FROM

SHANNON D. DICUS, Sheriff/Coroner/Public Administrator

SUBJECT

GrayKey Forensic Software Licensing Including Maintenance and Support Subscriptions and End User License Agreement with Grayshift, LLC

RECOMMENDATION(S)

Approve **Agreement No. 22-466** with Grayshift, LLC for GrayKey forensic software licensing, maintenance and support services, and End User License Agreement, including non-standard terms, in a total contract amount of \$27,995 for a one-year period from June 15, 2022 to June 14, 2023.

(Presenter: John Ades, Deputy Chief, 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). The cost of software licenses and maintenance and support services in the amount of \$27,995 will be funded within the Sheriff/Coroner/Public Administrator's (Department) existing budget allocation (4430001000).

BACKGROUND INFORMATION

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

Grayshift, LLC (Grayshift) is the sole manufacturer and distributor of GrayKey, and both the End User License Agreement (EULA) and Maintenance and Support Agreement are required to use GrayKey software.

The EULA is Grayshift's standard commercial agreement and includes terms that differ from the standard County contract and omits certain County standard contract terms, and Grayshift is not willing to revise the agreement to include County terms. The non-standard and missing terms include the following:

1. The EULA does not require Grayshift to indemnify the County for any claims.

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- a. The County standard contract indemnity provision requires the Contractor to indemnify, defend, and hold the County harmless from third party claims arising out of the acts, errors, or omissions of any person
 - b. Potential Impact: Grayshift is not required to defend, indemnify, or hold the County harmless from any claims, including indemnification for claims arising from Grayshift's negligent or intentional acts. If the County is sued for any claim based on its use of Grayshift's software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total license amount. The County cannot contractually claim compensation from Grayshift for third party claims related to the services provided under the agreement.
2. The EULA does not require Grayshift to meet the County's insurance standards as required pursuant to County Policy 11-07.
- a. 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.
 - b. Potential Impact: The County has no assurance that Grayshift will be financially responsible for claims that may arise from the County's use of the software, which could result in expense to the County that exceed the total agreement amount.

The Department recommends approval of the licensing agreement, including maintenance and support services, and the EULA, including non-standard terms, with Grayshift, to ensure that Department investigations are completed without delays.

PROCUREMENT

Grayshift holds proprietary rights to the GrayKey forensic software. The EULA, including non-standard terms, will be used to accompany future purchases to be approved, as necessary, per County Policy 11-04 Procurement of Goods, Supplies, Equipment and Services. 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 software licensing, including maintenance and support services to the Department beginning June 15, 2022, through June 14, 2023.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Richard D. Luczak, Deputy County Counsel, 387-5455) on May 24, 2022; Purchasing (Michael Candelaria, Lead Buyer, 387-0321) on May 24, 2022; Risk Management (Victor Tordesillas, Director, 386-8623) on April 26, 2022; Finance (Tom Forster, Administrative Analyst, 387-4635) on May 26, 2022; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on May 26, 2022.

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: June 14, 2022



cc: Sheriff - Welty w/agree
 Contractor - C/O Sheriff w/agree
 File - w/agree
CCM 06/30/2022