

B.O.C.C. Regular

Agenda Item 11. f.

Meeting Date: 06/21/2022

Title: Sheriff's Office- Contract Renewal for Secure Warrant

Submitted For: James Matteson, Purchasing Agent

Submitted By: James Matteson, Purchasing Agent

TOPIC:

Sheriff's Office contract with auto-renewal for Secure Warrant Software

BACKGROUND:

The Sheriffs Office is requesting Commissioner approval for a new annual contract Secure Warrant software. The cost for the fiscal year July 1, 2022 - June 30th, 2023 is \$8,800.00.

RECOMMENDED ACTION:

Approve the request and return a copy to Finance

Attachments

S.O. Contract Secure Warrant

SOFTWARE LICENSE AGREEMENT

Law Enforcement Support Services, Inc., a statutory closely held corporation of the State of Montana doing business as Secure Warrant (“SECURE WARRANT”), and the Yellowstone County Sheriff’s Office (“AGENCY”), a law enforcement agency operating within the State of Montana, hereby enter into this *Software License Agreement* on June 16, 2022.

RECITALS

WHEREAS, SECURE WARRANT is engaged in the business of designing and developing computer software and has developed a web-based computer application located at <https://securewarrant.com> (“SOFTWARE”), which is intended to be used by law enforcement agencies to assist in drafting and obtaining search warrants and other documents;

WHEREAS, the AGENCY is a law enforcement agency authorized under the laws of the State of Montana, and desires to utilize the SOFTWARE; and

WHEREAS, SECURE WARRANT and the AGENCY believe that it is in their mutual interest to enter into this *Software License Agreement* whereby the AGENCY would use the SOFTWARE belonging to SECURE WARRANT, pursuant to the terms and conditions hereinafter provided.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and mutual covenants of this *Software License Agreement*, SECURE WARRANT and the AGENCY hereby agree as follows:

1. **LICENSE:** SECURE WARRANT, hereby grants to the AGENCY a limited, terminable, nonexclusive, and non-assignable license to use the SOFTWARE in connection with its law enforcement activities. No right or license is being conveyed to the AGENCY to use the SOFTWARE for any other purpose. The AGENCY acknowledges that the SOFTWARE is provided under license, and not sold, to the AGENCY, and that the AGENCY acquires no ownership interest in the SOFTWARE, or rights other than those granted under the terms, conditions and restrictions of this *Software License Agreement*.
2. **TERM:** This *Software License Agreement* shall be effective as of the date of execution by both parties and shall extend until the end of the fiscal year 2022, unless otherwise

terminated pursuant this agreement. This *Software License Agreement* shall be automatically renewed on an annual basis unless the AGENCY provides SECURE WARRANT with written notification of its intent not to renew the *Software License Agreement*. Notice shall be provided at least thirty (30) days prior to the end of the fiscal year.

3. **COMPENSATION:** In consideration for the license granted herein, and during the term of this *Software License Agreement*, the AGENCY agrees to pay to SECURE WARRANT the fees and costs recited in Schedule A.
4. **CONFIDENTIALITY:** The AGENCY recognizes that the SOFTWARE is the proprietary and confidential property of SECURE WARRANT. The AGENCY further agrees to take all reasonable precautions to protect and preserve the confidentiality of the SOFTWARE and shall assume responsibility and warrant that its employees will similarly protect and preserve the proprietary nature and confidentiality of the SOFTWARE against third parties. The AGENCY may disclose the existence and/or use of the SOFTWARE.
5. **LOGIN CREDENTIALS:** The AGENCY shall be responsible for keeping user account login credentials (username and password) confidential and shall not share them with unauthorized users. If the AGENCY or the AGENCY user discloses login credentials to an unauthorized user, the AGENCY is solely responsible for any use, disclosure, additions, deletions and modifications of the SOFTWARE, or any end user data, and the damages that may arise therefrom. In addition, if the disclosure results in a third-party acquiring the source code or other confidential and proprietary information owned by SECURE WARRANT, the AGENCY shall be liable to SECURE WARRANT for all damages arising therefrom. In the event of such a disclosure, inadvertent or otherwise, the AGENCY shall immediately notify SECURE WARRANT of the disclosure, and shall cooperate with SECURE WARRANT to rectify the same. SECURE WARRANT shall not disclose login credentials to third parties. SECURE WARRANT reserves the right to share the AGENCY's Login Credentials with 1099 independent contractors of SECURE WARRANT for any purpose(s) necessary to carry out the terms and intentions of this Agreement. Any such Independent Contractor(s) of SECURE WARRANT will be subject to the same confidentiality obligations owed to the AGENCY by SECURE

WARRANT under this Agreement.

6. **AGENCY STAFF CREDENTIALS and ACCESS:** AGENCY must provide SECURE WARRANT with the government issued contact information for each AGENCY user including his/her government email and phone number. AGENCY users must access SECURE WARRANT software exclusively with the government issued email accounts provided to SECURE WARRANT by the AGENCY. Accessing SECURE WARRANT software with personal accounts may result in the restriction or termination of that user's access to the SECURE WARRANT software.

AGENCY must notify SECURE WARRANT of any changes in staff, employee, and/or administrative personnel within 15 days of such change. Changes which require notification include but may not be limited to any instance that affects an AGENCY user's access to the SECURE WARRANT software including new hires, termination of employment, newly granted access, access termination, and/or access restriction.

7. **TRANSFER:** The AGENCY may not rent, lease, lend, sell, redistribute, or sublicense the SOFTWARE. The AGENCY assumes responsibility that its employees shall be similarly prohibited. The provisions of this clause are perpetual and shall survive termination of this *Software License Agreement*.
8. **REVERSE ENGINEERING:** The AGENCY may not copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, or create derivative works of the SOFTWARE. The AGENCY assumes responsibility and warrants that its employees shall be similarly prohibited. The provisions of this clause are perpetual and shall survive termination of this *Software License Agreement*.
9. **WARRANTIES:** All electronic information located at <https://securewarrant.com> and the SOFTWARE is provided "as is" without representation or warranty of any kind, including as to suitability, reliability, applicability, merchantability, fitness, non-infringement, result, outcome, or any other matter. SECURE WARRANT, does not warrant that such information is or will always be up-to-date, complete, or accurate. Any representation or warranty that might be otherwise implied is expressly disclaimed. The SOFTWARE is provided to the AGENCY "as is" and "as available." SECURE WARRANT, does not guarantee or warrant continuous, uninterrupted or secure access to

the Software. **THE WARRANTY PROVIDED FOR HEREIN IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, THAT MAY ARISE EITHER BY AGREEMENT BETWEEN THE PARTIES OR BY OPERATION OF LAW, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** AGENCY also acknowledges that every business decision involves an assumption of risk and that SECURE WARRANT does not and will not, in furnishing the SOFTWARE and related service to AGENCY, underwrite that risk in any manner whatsoever.

10. **REMEDY:** In the event of a claim by the AGENCY under the warranty identified in § 8, SECURE WARRANT shall have the option to either repair or replace the Software. In the event that SECURE WARRANT is unable to repair or replace the Software within a reasonable period of time, the AGENCY's sole recourse shall be to terminate the *Software License Agreement* and SECURE WARRANT's sole obligation shall be to return any fees paid by the AGENCY for that fiscal year. In no event shall SECURE WARRANT be liable for any incidental, consequential, or punitive damages as a result of its performance or breach of this *Software License Agreement*.
11. **IMPROVEMENTS:** Any improvements or modifications made by SECURE WARRANT to the SOFTWARE shall be promptly provided to the AGENCY and shall be automatically included in this *Software License Agreement*. SECURE WARRANT may from time to time in its sole discretion develop and provide SOFTWARE updates, which may include upgrades, bug fixes, patches and other error corrections or new features. Updates may also modify or delete entirely certain features and functionality. The AGENCY agrees that SECURE WARRANT has no obligation to provide any updates or to continue to provide or enable any particular features or functionality; provided, however, that the discontinuance, removal or disengagement of any service, feature or function deemed by the AGENCY to be essential shall be grounds for termination of this agreement by the AGENCY.
12. **TERMINATION:** The following termination rights are in addition to the termination rights that may be provided elsewhere in the *Software License Agreement*:
 - a. **Right to Terminate During Evaluation Period.** The AGENCY shall have thirty (30) days to evaluate the SOFTWARE from the execution of the *Software License*

Agreement. The AGENCY may terminate the *Software License Agreement* during this time period for any reason. Any fees and costs shall be refunded as set forth in Schedule A.

13. **CRIMINAL JUSTICE INFORMATION:** The AGENCY warrants to SECURE WARRANT, that it is a criminal justice agency as defined by § 44-5-103(7), MCA, and that it is permitted to collect, process, and preserve criminal justice information pursuant to § 44-5-201, MCA. The AGENCY agrees that its use of the SOFTWARE shall be in accordance with § 44-5-101 et seq., MCA. SECURE WARRANT agrees that it shall maintain criminal justice information system security in accordance with § 44-5-401, MCA. AGENCY represents and warrants that it will only use the SOFTWARE and related services for lawful purposes.
14. **LIMITED INDEMNITY:** SECURE WARRANT and the AGENCY recognize and acknowledge that a criminal defendant who is the subject of a warrant procured or arising from AGENCY's use of the SOFTWARE, or related services, could subpoena SECURE WARRANT records and officers, and that responding to such a subpoena would cause SECURE WARRANT to suffer significant financial hardship. In recognition and acknowledgment of this potential risk and financial hardship, the parties recognize and acknowledge that part of the consideration for use of the SOFTWARE and related services provided, and in addition to the present cost as set forth on Schedule A, is that AGENCY shall have a duty to defend and indemnify the fees, costs and expenses that SECURE WARRANT incurs in responding to such a subpoena.
15. **LEGAL ADVICE:** The AGENCY acknowledges that all communication of information to or from SECURE WARRANT, or to or from or relating to the use of the SOFTWARE, shall not constitute the practice of law as defined by § 37-61-201, MCA. No communication shall constitute or create an attorney-client relationship. No communication shall constitute solicitation or legal advice.
16. **ASSIGNABILITY:** The license granted hereunder is personal to the AGENCY and may not be assigned by any act of the AGENCY or by operation of law, unless made in connection with a transfer of substantially all the assets of AGENCY or with the consent of SECURE WARRANT
17. **COPYRIGHT/TRADEMARK:** Unless otherwise noted, all materials, including but not

limited to images, illustrations, designs, icons, photographs, video clips, software, software codes, algorithms, data, and written and other materials that are part of <https://securewarrant.com>, or any other website maintained, owned or operated by SECURE WARRANT, are protected under copyright laws and are the trademarks and/or other intellectual property owned, controlled or licensed by SECURE WARRANT

18. **CHOICE OF LAW/VENUE:** This *Software License Agreement* shall be governed and interpreted by the laws of the State of Montana. Missoula County, Montana, shall be the appropriate venue and jurisdiction for the resolution of any disputes hereunder. SECURE WARRANT and the AGENCY hereby consent to such personal and exclusive jurisdiction.

19. **MONITORING:** The Agency acknowledges that SECURE WARRANT may monitor use of the SOFTWARE for all lawful purposes, including to ensure that the AGENCY is authorized, for management of the system, to facilitate protection against unauthorized access, and to verify security procedures, survivability and operational security. Monitoring includes active attacks by authorized entities to test or verify the security of the SOFTWARE. During monitoring, information (with the exception of confidential criminal justice information) may be examined, recorded, copied, and used for authorized purposes. All information, including personal information, placed on or sent over SOFTWARE may be monitored.

20. **DISPUTE RESOLUTION:** This *Software License Agreement* and any extensions hereof shall be governed and construed in accordance with the laws of the State of Montana. If a dispute arises, the proper venue for the hearing of the case is the District Court of the Fourth Judicial District of the State of Montana, in and for the County of Missoula.
 - a. **Default:** If either party to this *Software License Agreement* defaults in the performance of any term or condition of this *Software License Agreement*, the other party may give the defaulting party notice of the default. The notice shall specify the action required to correct the default and a period of time, not less than 30 days, within which to correct the default. If the default is not corrected within the time specified in the notice, the party not in default may terminate this *Software License Agreement* without further obligation under this *Software*

License Agreement, other than obligations incurred or accrued up to the date of termination. The non-defaulting party may also bring suit for damages, specific performance, and any other remedy available by law.

21. **SEVERABILITY:** If any provision of this *Software License Agreement* is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be deemed to be severed from the *Software License Agreement*.
22. **NOTICES:** Any notice required to be given pursuant to this *Software License Agreement* shall be in writing and mailed by certified mail, or delivered by a national overnight express service. Either party may change the address to which notice or payment is to be sent by written notice to the other party pursuant to the provisions of this paragraph. Invoices for costs and fees set forth in Schedule A may be provided by email.
23. **AGREEMENT BINDING ON SUCCESSORS:** This *Software License Agreement* shall be binding on and shall inure to the benefit of the parties hereto, and their heirs, administrators, successors, and assigns.
24. **INDEPENDENT CONTRACTOR STATUS:** The parties agree that SECURE WARRANT is an independent contractor for purposes of this *Software License Agreement* and is not to be considered an employee of the AGENCY, for any purpose. SECURE WARRANT is not subject to the terms and provisions of the AGENCY's personnel policies handbook and may not be considered an employee for workers' compensation or any other purpose. SECURE WARRANT is not authorized to represent the AGENCY or otherwise bind the AGENCY in any dealings between SECURE WARRANT and any third parties.
25. **WORKERS COMPENSATION:** SECURE WARRANT must comply with the provisions of the Montana Workers' Compensation Act. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. This insurance/exemption must be valid for the entire term of this Agreement and any renewal. Upon expiration, SECURE WARRANT must send a proof of renewal to the AGENCY.
26. **INSURANCE:** SECURE WARRANT will provide the AGENCY with proof of liability insurance issued by a reliable company or companies for personal injury and property

damage, upon request, in an amount not less than \$1.0 million per occurrence and \$2.0 million aggregate per year for bodily injury, personal injury, and property damage. If any professional services are rendered in connection with this *Software License Agreement*, SECURE WARRANT must also provide proof of professional liability insurance in an amount no less than \$1,000,000 per claim and \$2,000,000 annual aggregate. The insurance must be in a form suitable to AGENCY and must name the AGENCY as an additional insured. SECURE WARRANT must immediately notify the AGENCY of any changes to its insurance policy during the term of this *Software License Agreement*. SECURE WARRANT's insurance coverage shall be primary insurance with respect to AGENCY, its elected and appointed officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the AGENCY, its elected and appointed officials, officers, agents, employees, and volunteers shall be in excess of SECURE WARRANT's insurance and shall not contribute with it.

27. **NONDISCRIMINATION:** SECURE WARRANT agrees that it will not discriminate based on any protected class in any of its activities or provision of services regardless of whether or not those activities or services are provided in connection with this *Software License Agreement*. SECURE WARRANT agrees that all hiring of persons in connection with this *Software License Agreement* will be on the basis of merit and qualification and will not discriminate on the basis of race, creed, religion, color, national origin, age, physical or mental disability, marital status, sex, pregnancy, childbirth or medical condition related to pregnancy or childbirth, sexual orientation or expression, political beliefs or affiliation, genetic information, veteran status, culture, social origin or condition, or ancestry.
28. **ORIGINAL AGREEMENT:** SECURE WARRANT, shall retain the original *Software License Agreement*, which shall be available for review by the AGENCY during normal business hours in Missoula County, Montana. The AGENCY shall retain a copy of the *Software License Agreement*.
29. **HEADINGS:** Headings used in this *Software License Agreement* are for convenience only and shall not be used to interpret or construe its provisions.
30. **LABELS:** The term "parties" shall include SECURE WARRANT, and the AGENCY.
31. **MCA:** Any reference to the laws of the State of Montana are for the laws that are in

effect as of the date of this *Software License Agreement*.


32. **ENTIRE AGREEMENT**: This *Software License Agreement* contains the entire understanding of the parties and shall not be modified or amended, except in a separate written document labeled "Addendum to Software License Agreement" and thereafter signed by parties. This *Software License Agreement* shall take precedence over any other document that may be in conflict therewith.



DATED on June 16, 2022.

John Schroeder
Law Enforcement Support Services, Inc.
d/b/a Secure Warrant

DATED on June ²¹16, 2022.



Donald W. Jones
Chair

SCHEDULE A

1. **INITIATION FEE:** The AGENCY agrees to pay an initiation fee to SECURE WARRANT in the sum of \$0 per each full-time law enforcement officer employed by the AGENCY, to set up and initiate the SOFTWARE. SECURE WARRANT agrees to set up and initiate the AGENCY's users within thirty (30) days after the execution of the *Software License Agreement*.
2. **ANNUAL FEE July 1,2022-June30, 2023:**
 - a. The AGENCY shall pay the sum of \$8,800 per year for SOFTWARE accounts for all sworn law enforcement officers employed, deputized, or volunteering for the AGENCY.
 - b. The fee in § 2 includes access by the Montana Attorney General's Office, and all necessary County Attorney's Offices, City Attorney's Offices, and all necessary District Court Judges, Justices of the Peace, and Municipal Judges, in Montana within the AGENCY's jurisdiction.
3. **INITIAL PAYMENT:** SECURE WARRANT shall send the AGENCY an invoice for the initiation and annual fees provided for in §§ 1-2. The annual fee shall be pro-rated based upon the actual number of calendar days remaining in the calendar year. Payment shall be due within thirty (30) days of the invoice. LESS, INC., reserves the right to add a 10% fee for any late payment received.
4. **RENEWAL PAYMENT:** The *Software License Agreement* shall be automatically renewed each calendar year. SECURE WARRANT, shall send the AGENCY an invoice for the annual fees provided for in § 2 on or before the first day of July in any given calendar year. Payment shall be due within thirty (30) days of the invoice. LESS, INC., reserves the right to add a 10% fee for any late payment received. An additional fee of 3.4% of the total invoice shall be added for a credit card payment.
5. **UPDATES:** The AGENCY shall periodically update users who have access to the SOFTWARE based on their legitimate association with the AGENCY. Updates shall be made free of charge and shall not incur an initiation fee.
6. **REFUNDS:** The AGENCY shall have thirty (30) days from the execution of the *Software License Agreement* to evaluate the SOFTWARE. The AGENCY may terminate the *Software License Agreement* at any time during this thirty (30) day

period and SECURE WARRANT shall refund all annual fees paid. After the thirty (30) day period no refunds shall be provided.

7. **TRAINING:** SECURE WARRANT agrees to provide the AGENCY with sufficient training to operate the SOFTWARE. AGENCY agrees to assist SECURE WARRANT with the training as may be necessary, including coordination of training events to ensure that training is conducted within the AGENCY in an efficient manner.
 - a. Training shall be provided free of cost to the AGENCY, except that the AGENCY shall be responsible for SECURE WARRANT's necessary fixed costs (travel, food, and lodging) incurred to complete the training. Fixed costs shall be calculated at the current per diem rate established by U.S. General Services Administration.
 - b. SECURE WARRANT shall periodically send the AGENCY an invoice for fixed costs in § 7, no later than sixty (60) days after they are incurred. Payment shall be due within thirty (30) days of the invoice. SECURE WARRANT, reserves the right to add a 10% fee for any late payment received. An additional fee of 3.4% of the total invoice shall be added for a credit card payment.