



# Monterey County

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## Board Report

Legistar File Number: A 16-376

December 13, 2016

**Introduced:** 11/28/2016

**Version:** 1

**Current Status:** Agenda Ready

**Matter Type:** BoS Agreement

- a. Approve and authorize the Contracts/Purchasing Officer or Contracts/Purchasing Supervisor to execute a four (4) year Agreement with Netsmart Technologies, Inc. for the provision of implementation services of the Electronic Medical Record system for additional professional/technical consulting services for Fiscal Years (FYs) 2016-17 through FY 2019-20 in the amount of \$300,000, and software license subscriptions, maintenance/ support and professional services, and technical support in the amount of \$95,250 for FY 2016-17, \$668,596 for FY 2017-18, \$668,596 for FY 2018-19, and \$668,596 for FY 2019-20, for a total Agreement amount not to exceed \$2,401,038, retroactive to July 1, 2016 through June 30, 2020; and
- b. Accept the non-standard risk terms regarding limitations on liability, limitations of warranty, indemnification, and insurance, as recommended by the Director of Health; and
- c. Approve and authorize the Contracts/Purchasing Officer or Contracts/Purchasing Supervisor to approve up to three (3) future amendments that do not exceed ten percent (10%) (\$240,104) of the original Agreement amount and do not significantly alter the scope of services.

### RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Approve and authorize the Contracts/Purchasing Officer or Contracts/Purchasing Supervisor to execute a four (4) year Agreement with Netsmart Technologies, Inc. for the provision of implementation services of the Electronic Medical Record system for additional professional/technical consulting services for Fiscal Years (FYs) 2016-17 through FY 2019-20 in the amount of \$300,000, and software license subscriptions, maintenance/ support and professional services, and technical support in the amount of \$95,250 for FY 2016-17, \$668,596 for FY 2017-18, \$668,596 for FY 2018-19, and \$668,596 for FY 2019-20, for a total Agreement amount not to exceed \$2,401,038, retroactive to July 1, 2016 through June 30, 2020; and
- b. Accept the non-standard risk terms regarding limitations on liability, limitations of warranty, indemnification, and insurance, as recommended by the Director of Health; and
- c. Approve and authorize the Contracts/Purchasing Officer or Contracts/Purchasing Supervisor to approve up to three (3) future amendments that do not exceed ten percent (10%) (\$240,104) of the original Agreement amount and do not significantly alter the scope of services.

### SUMMARY/DISCUSSION:

Netsmart Technologies, Inc. (Netsmart) was selected as the Electronic Health Record (EHR) vendor for Monterey County Behavioral Health as a result of a formal Request for Proposal (RFP) process in 2008. Since 2008, Netsmart's Avatar product has processed over 3.3 million services for the Behavioral Health Bureau.

This Agreement will provide for current needs and will establish a new four-year Agreement with Netsmart for the continuation of system implementation services. For Fiscal Year (FY) 2016-17, this Agreement will add new services that are not included in the current Netsmart Agreement A-12829, which is set to expire June 20, 2017. For FYs 2017-2020, this Agreement renews, adds and deletes services and supports for the implementation of the Electronic Medical Record (EMR) system, Meaningful Use, Consumer and Care Connect Services, Plexus Cloud Hosting, and My LearningPointe software licensing subscriptions, technical and support maintenance, and professional service components for the term of the Agreement. Accordingly, the Behavioral Health Bureau requests Board approval of an effective term date retroactive to July 1, 2016 in order to add the new services that are required in FY 2016-17 to meet the Department's needs.

The Health Information Technology for Economic and Clinical Health (HITECH) Act, as part of the American Recovery and Reinvestment Act of 2009 (ARRA), provides significant financial incentives to hospitals and behavioral health professionals who demonstrate meaningful use of certified EHR technology. Beginning in 2015, the law also imposes penalties (Medicare reimbursement reductions) to those organizations that are not meeting Meaningful Use criteria. The continuation of the application through Netsmart Technologies, Inc. will assist the Health Department, Behavioral Health Bureau to meet Meaningful Use criteria.

The Health Department seeks approval of numerous non-standard provisions in the Netsmart Agreement that continue with this new Agreement. The Netsmart Agreement contains indemnity provisions that protect the County in the event of third party intellectual property infringement claims, but the Agreement also requires the County to indemnify Netsmart if third parties file claims against Netsmart for the County's improper use of its Netsmart software licenses. Whereas the Agreement provides that Netsmart shall warrant that its software will substantially conform to the requirements of the Agreement and that Netsmart shall use commercially reasonable measures to screen the software to avoid viruses from disabling the County's systems, the Agreement also attempts to limit the County's legal remedies and the County's right to recover certain damages.

This Agreement contains the County's standard 30-day "no cause" provision (Section 15.0(a)), a "good cause" provision effective immediately (Section 15.0(b)), and a defunding provision (Section 15.0(d)).

While this work is not directly in support of a Health Department strategic initiative, it is in support of one or more of the ten essential public health services, specifically: Enforce laws and regulations that protect health and ensure safety and evaluate effectiveness, accessibility, and quality of personal and population-based health services.

OTHER AGENCY INVOLVEMENT:

this Agreement as to technology form, legal form and fiscal provisions, respectively. Risk Management does not approve due to the modified liability and indemnification provisions. This Agreement is on file with the Clerk of the Board.

FINANCING:

This Agreement is funded by Federal Funding Participation (FFP), Realignment, and Mental Health

Services Act (MHSA) funds. The funds for FY 2016-17, for this Agreement are included in the Health Department's Behavioral Health Bureau (HEA012, Unit 8410) FY 2016-17 Adopted Budget. The funds for this Agreement for FY 2017-18, FY 2018-19, and FY 2019-20 will be included in the Health Department's Behavioral Health Bureau (HEA012, Unit 8410) respective FY 2017-18, FY 2018-19, FY 2019-20 Requested Budgets.

Prepared by: Gloria Rodriguez, Management Analyst II, 8986

Approved by: Elsa Jimenez, Director of Health, 4526

Attachment:

Agreement is on file with the Clerk of the Board