



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: A 16-302, **Version:** 1

- a. **Ratify Approve** and authorize the Director or Acting Director of the Information Technology Department to execute a non-standard agreement with Open Text Inc. for service and maintenance of Right Fax, which allows staff to send a fax from their desktop, in an amount not to exceed \$17,802.00, for the term of July 1, 2016 to June 30, 2019;
- b. Accept non-standard language as recommended by the Director or Acting Director of the Information Technology Department; and
- c. Authorize the Director or Acting Director of the Information Technology Department to sign up to two (2) amendments to this Agreement, extending services by one (1) year each, where any increased costs do not exceed 10% of the original contract amount (\$1,780.20), cumulatively, and do not significantly alter the terms of the Agreement. (REVISED VIA ADDITIONS & CORRECTIONS)

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. **Ratify Approve** and authorize the Director or Acting Director of the Information Technology Department to execute a non-standard agreement with Open Text Inc. for service and maintenance of Right Fax, which allows staff to send a fax from their desktop, in an amount not to exceed \$17,802.00, for the term of July 1, 2016 to June 30, 2019;
- b. Accept non-standard language as recommended by the Director or Acting Director of the Information Technology Department; and
- c. Authorize the Director or Acting Director of the Information Technology Department to sign up to two (2) amendments to this Agreement, extending services by one (1) year each, where any increased costs do not exceed 10% of the original contract amount (\$1,780.20), cumulatively, and do not significantly alter the terms of the Agreement.

SUMMARY/DISCUSSION:

The County has used the Right Fax product for over five years. Right Fax allows users to send a fax from their desktops. Approximately 400 County employees use this product. The product is important to the County because it is compliant with the privacy and security requirements of the Health Insurance Portability and Accountability Act (HIPPA).

Right Fax is manufactured by Open Text Inc. Previously the County used a Value Added Reseller (VAR) to obtain support and maintenance for the Right Fax product, but recently Open Text Inc. stopped working with VARs. As a result, the Information Technology Department is entering into an agreement with Open Text Inc. directly.

Open Text Inc. will only provide support and maintenance of the Right Fax product pursuant to its own contract documents. The proposed agreement, using Open Text Inc. contract language, does contain provisions that are not standard to the County, but are standard in the software support and maintenance industry. In the opinion of Information Technology Department staff, the non-standard Agreement with Open Text Inc. poses minimal risk to the County and acceptance of these terms by the Board is recommended.

OTHER AGENCY INVOLVEMENT:

County Counsel has reviewed the agreement with Open Text Inc. and does not approve the following non-standard contract terms: Lump-sum, upfront payment of the entire contract amount; interest due on late payments; limitations on remedies available to the County for breach of warranty; limitations on warranty; indemnification of the County limited to infringement claims; limitations on the type and amount of damages available to the County; non-standard right of Open Text Inc. to terminate the agreement; obligation of County to indemnify Open Text Inc.; absence of standard proof of insurance provisions; Open Text Inc.'s right to unilaterally change service and maintenance terms; and applicability of Delaware law. Risk does not approve non-standard indemnity provisions.

FINANCING:

The funds for payment of the costs of this Agreement have been included in the FY 16-17 Approved Budget for the Information Technology, ITD 1930, Unit 8436, Appropriations Unit INF 002. Transactions relating to future fiscal years will be included in each respective Recommended Budget.

Prepared by: Elizabeth Crooke, Management Analyst III, 755-5108

Approved by:

Eric Chatham, Acting Director of Information Technology, 759-6920

Attachments: Open Text Inc. End User License Agreement, including Exhibits

Attachments are on file with the Clerk of the Board