

COUNTY OF VENTURA CONTRACT NUMBER #7914

This Contract is hereby entered into by and between the County of Ventura ("County") and Gartner, Inc. ("Gartner "or "Contractor") (collectively, "parties").

WHEREAS, it is necessary and desirable that Contractor be engaged by County for the purpose of performing Information Technology Consulting services hereinafter described.

NOW, THEREFORE, IT IS HEREBY AGREED by the parties as follows:

1. **SERVICES TO BE PERFORMED BY CONTRACTOR**

Contractor will perform services for County in accordance with the terms, conditions and specifications set forth herein and in the Scope of Work entitled: Ventura County RFP 5962 Table 2 – Service Descriptions, Attachment A, which is incorporated herein by reference.

2. **PAYMENTS**

For services rendered in accordance with all terms, conditions and specifications set forth herein and in Attachment A, County will make payment to Contractor in the amount and in the manner specified in the Fee Schedule entitled: Ventura County RFP 5962 Table 1 – Research and Advisory Services, Attachment B.

3. **INDEPENDENT CONTRACTOR**

Contractor is an independent contractor, and no relationship of employer and employee is created by this Contract. Neither Contractor nor any of the persons performing services for Contractor pursuant to this Contract, whether said person be a member, partner, employee, subcontractor or otherwise of Contractor, will have any claim under this Contract or otherwise against County for sick leave, vacation pay, retirement benefits, social security, workers' compensation, disability, unemployment insurance benefits, or other employee benefits of any kind.

Except as provided in this Contract, Contractor in the performance of the services hereunder agreed to be performed is subject to the control or direction of County solely as to the results to be accomplished by the services and not as to the means and methods for accomplishing the results.

If, in the performance of this Contract, any third persons are employed by Contractor, such persons will be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging, and applicable requirements of law will be the responsibility of and determined by Contractor, and County will have no right or authority over such persons or the terms of such employment, except as provided in this Contract.

Contractor will comply with all applicable provisions of the Worker's Compensation Insurance and Safety Act of the State of California (codified as amended

commencing at Labor Code section 3200), including, without limitation, divisions 4 and 5 of the California Labor Code, and all amendments thereto, and all similar state and federal laws, and will indemnify and hold harmless County from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including attorney fees and costs, presented, brought or recovered against County, for or on account of any liability under any of said laws which may be incurred by reason of any work to be performed under this Contract.

4. **NON-ASSIGNABILITY**

Contractor will not assign this Contract or any portion thereof to a third party without the prior written consent of County, and any attempted assignment without such prior written consent will be null and void and will be cause, at County's sole and absolute discretion, for immediate termination of this Contract. County may withhold its consent to assignment at its discretion.

5. **TIMING**

Time is of the essence in the performance of this Contract.

6. **TERM**

The term of this Contract will commence on March 12, 2019 and be in effect through March 11, 2024, unless earlier terminated pursuant to the terms and conditions set forth herein.

Continuation of the Contract is subject to the appropriation of funds for such purpose by County's Board of Supervisors. If funds to effect such continued payment are not appropriated, County may terminate this Contract and Contractor will relieve County of any further obligation hereunder.

7. **TERMINATION**

Termination for Breach - Either party may, upon giving ten (10) business days' written notice identifying specifically the basis for such notice, terminate the Master Agreement or a Service Agreement issued subject to the Master Agreement for breach of a material term or condition of the Master Agreement, provided the other party shall not have cured such breach within the ten (10) business day cure period.

Termination for Convenience - County may terminate this Master Agreement for its convenience upon thirty (30) calendar day's written notice to Contractor. In the event of such termination, Contractor shall be entitled to payment of all Service Agreements issued prior to the effective date of such termination. All provisions of this Agreement which are by their nature intended to survive the expiration or termination of this Agreement for breach and/or County's convenience shall survive such expiration or termination.

8. **TRANSFER OF PROPERTY**

On completion or termination of this Contract, County will be entitled to immediate possession of and Contractor will furnish on request, all computations, plans, correspondence and other pertinent data gathered or computed by Contractor for

this particular Contract prior to any termination. Contractor may retain copies of said original documents for Contractor's files.

9. DEFAULT; TERMINATION AFTER DEFAULT

If Contractor defaults in the performance of any term or condition of this Contract, Contractor must cure that default by satisfactory performance within 10 days after service upon Contractor of written notice of the default. If Contractor fails to cure the default within that time, then County may terminate this Contract without further notice. The foregoing requirement for written notice and opportunity to cure does not apply to a termination pursuant to section 6.

10. INDEMNIFICATION AND HOLD HARMLESS

Person and/or Tangible Property - Contractor agrees to indemnify, defend and hold harmless the County, its employees, officers and agents, from and against any third party claims, demands, loss, damage or expenses (including reasonable attorney's fees and court costs) relating to bodily injury or death of any person or damage to real and/or tangible personal property directly caused by the negligence or willful misconduct of the Contractor, its personnel, or agents during the course of the Services under this Agreement.

Contractor agrees to waive all rights of subrogation against County for losses arising proximately and directly from the activities and work covered by this Agreement.

11. INSURANCE PROVISIONS

A) Contractor, at Contractor's sole cost and expense, will obtain and maintain in full force during the term of this Contract the following types of insurance:

- 1) General liability "occurrence" coverage in the minimum amount of \$1,000,000 combined single limit (CSL) bodily injury and property damage each occurrence and \$2,000,000 aggregate, including personal injury, broad form property damage, products/completed operations, broad form blanket contractual and \$50,000 fire legal liability.
- 2) Commercial automobile liability coverage in the minimum amount of \$1,000,000 CSL bodily injury and property damage, including owned, non-owned, and hired automobiles, and also including uninsured/underinsured motorists coverage in the minimum amount of \$100,000 when there are owned vehicles.
- 3) Workers' compensation coverage, in full compliance with California statutory requirements, for all employees of Contractor and employer's liability coverage in the minimum amount of \$1,000,000.
- 4) Professional liability coverage in the minimum amount of \$1,000,000 each occurrence and \$2,000,000 aggregate.

- B) All insurance coverage Contractor is required to obtain and maintain will be primary coverage as respects County, and any insurance or self-insurance maintained by County will be excess of Contractor's insurance coverage and will not contribute to it.
- C) County is to be notified immediately if any aggregate insurance limit is exceeded. Contractor must purchase additional coverage to meet requirements.
- D) For the general liability insurance required above, County and, if applicable, County's dependent special districts are to be named as additional insureds as respects work done by Contractor under the terms of this Contract.
- E) Contractor agrees to waive all rights of subrogation against County and its boards, agencies, departments, officers, employees, agents and volunteers for losses arising directly or indirectly from the services, work and/or activities performed under the terms of this Contract.
- F) Contractor shall employ commercially reasonable efforts to advise County within thirty (30) days of any cancellation or determination to affect a material change in the insurance coverage's listed herein and/or maintained by Contractor in support of this Agreement
- G) Contractor agrees to provide County with the following insurance documents on or before the commencement date of this Contract:
 - 1. Certificates of Insurance for all required coverage.
 - 2. Additional Insured endorsement for general liability insurance.
 - 3. Waiver of Subrogation endorsement (also known as Waiver of Transfer Rights of Recovery Against Others, Waiver of Our Right to Recover from Others) for workers' compensation insurance.

Failure to provide these documents will be, at County's sole discretion, grounds for immediate termination of this Contract or suspension of the commencement date.

12. **NON-DISCRIMINATION**

A) General.

No person will on the grounds of race, color, national origin, religious affiliation or non-affiliation, sex, age, handicap, disability, or political affiliation, be excluded from participation in, be denied the benefits, or be subjected to discrimination under this Contract.

B) Employment.

Contractor will insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this Contract. Contractor's personnel policies will be made available to County upon request.

13. **SUBSTITUTION OF PERSONNEL**

If Attachment A identifies specific personnel of Contractor to work on this Contract, Contractor will not assign others to work in their place without advance written approval of County. Any substitution will be with a person of commensurate experience and knowledge.

14. **CONTRACTOR INVESTIGATION AND RESEARCH; ENTIRE UNDERSTANDING**

Contractor by investigation and research has acquired reasonable knowledge of all conditions affecting the services to be performed under this Contract, and Contractor acknowledges that Contractor's execution of this Contract is based on such investigation and research, and not upon any representation made by County or any of its officers, agents or employees, except as provided herein. This Contract supersedes all previous agreements, understandings and representations of any nature whatsoever, whether oral or written, between the parties hereto, and constitutes the entire understanding between them, regarding the subject matter hereof. Contractor acknowledges that no representations, inducements or promises have been made by or on behalf of County except those expressly set forth herein and that no representation, inducement or promise not contained in this Contract will be valid or binding against County.

15. **CONTRACT MONITORING**

County will have the right to review the work being performed by Contractor under this Contract at any time during Contractor's usual working hours. Review, checking, approval or other action by County will not relieve Contractor of Contractor's responsibility for the thoroughness of the services to be provided hereunder. This Contract will be administered on behalf of County by Brian Ganley or his authorized representative.

16. **CHANGES TO CONTRACT**

County may from time to time require changes in the scope of the services or other terms or conditions of this Contract. Such changes, including any increase or decrease in the amount of Contractor's compensation, which are mutually agreed upon by the parties will be effective only when set forth in a written amendment to this Contract signed by the parties.

17. **CONFLICT OF INTEREST**

Contractor covenants that Contractor presently has no interest, including, but not limited to, other projects or independent contracts, and will not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Contract. Contractor further covenants that in the performance of this Contract no person having such interest will be employed or retained by Contractor under this Contract.

18. **CONFIDENTIALITY**

Any reports, information, data, statistics, forms, procedures, systems, studies, communications or other forms of knowledge given to or prepared or assembled by Contractor under this Contract which County requests in writing to be kept confidential will not be made available to any individual or organization by Contractor without the prior written approval of the County except as authorized by law.

19. **NOTICES**

All notices required under this Contract will be made in writing and addressed or delivered as follows:

TO COUNTY: COUNTY OF VENTURA
GENERAL SERVICES AGENCY
PROCUREMENT SERVICES
800 SOUTH VICTORIA AVENUE
VENTURA, CALIFORNIA 93009-1080

TO CONTRACTOR: GARTNER, INC.
LEGAL & CONTRACTS
1201 WILSON BLVD – 17TH FLOOR
ARLINGTON, VA 22209

Either party may, by giving written notice in accordance with this paragraph, change the names or addresses of the persons or departments designated for receipt of future notices. When addressed in accordance with this paragraph and deposited in the United States mail, postage prepaid, notices will be deemed given on the third day following such deposit in the United States mail. In all other instances, notices will be deemed given at the time of actual delivery.

20. **ORDER OF PRECEDENCE**

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by resort to the following documents in the following order:

1. This Contract;
2. County of Ventura RFP # 5962
3. Contactor's Proposal dated December 18, 2018

21. **GOVERNING LAW**

The validity of this contract and any of its terms or provisions, as well as the rights and duties of the parties under this contract, will be construed pursuant to and in accordance with the laws of the State of California.

22. **SEVERABILITY OF CONTRACT**

If any term of this contract is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the contract terms will remain in full force and effect and will not be affected.

23. **CUMULATIVE REMEDIES**

The exercise or failure to exercise of legal rights and remedies by the County of Ventura in the event of any default or breach hereunder will not constitute a waiver or forfeiture of any other rights and remedies, and will be without prejudice to the enforcement of any other right or remedy available by law or authorized by this contract.

24. **COMPLIANCE WITH LAWS**

Each party to this contract will comply with all applicable laws.

25. **CONSTRUCTION OF COVENANTS AND CONDITIONS**

Each term and each provision of this contract will be construed to be both a covenant and a condition

26. **LIVING WAGE ORDINANCE**

Unless otherwise exempt in accordance with the provisions of this Ordinance, this contract is subject to the applicable provisions of the Living Wage Ordinance (LWO) Nos. 4233 and 4236, and as amended from time to time.

Payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and provision of health benefits as defined in the LWO. Contractor further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. Contractor shall require each of its Subcontractors within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. Contractor shall deliver the executed pledges from each such Subcontractor to the County within 90 days of the execution of the Subcontract. Contractor's delivery of executed pledges from each such Subcontractor shall fully discharge the obligation of the Contractor to comply with the provision in the LWO contain in Section 4957 concerning compliance with the LWO.

27. **PAYMENT**

Payment terms are typically Net 30 Days, in arrears for deliverables based Consulting services. Payment terms for Subscription based Research Services is net/30 from the date a service agreement is executed and/or access is provided. Reimbursement for travel and expenses are to be in accordance with the County's expense reimbursement policy (Administrative Manual).

28. **ACCESS TO AND USE OF COUNTY TECHNOLOGY**

As part of this contract Contractor shall agree with and abide by the provisions set forth in the Ventura County Non-Employee Information Technology Usage Policy, which by this reference is made a part hereof. Any employee, sub-contractor, or agent of the Contractor who will access (which shall include, but is not limited to, the use, maintenance, repair or installation of) County information technology in the course of his, or her, work for the County is required to sign the Ventura County Non-Employee Information Technology Usage Policy before accessing, using, maintaining, repairing or installing any County information technology system or component. Information technology shall include, but is not limited to, the network, Internet access, electronic mail, voice mail, voice message systems, facsimile devices, or other electronic or telecommunication systems used by the County.

29. SPECIAL TERMS — RESEARCH SUBSCRIPTIONS

A. An individual Service Agreement (SA) for subscription-based research and related services (the "Services") once issued is non-cancelable, and may be terminated only for material breach by either party, upon 30 days prior written notice, if the breach is not cured within the notice period.

B. Ownership and Use of the Services. Contractor owns and retains all rights to the Services not expressly granted to County in a SA. Only the individuals named in a SA (each a "Licensed User") may access the Services. Each Licensed User will be issued a unique password, which may not be shared. County agrees to review and comply with the Usage Guidelines for Contractor Services ("Guidelines"), which are accessible to all Licensed Users via the "Policies" section of gartner.com. Among other things, these Guidelines describe how County may substitute Licensed Users, excerpt from and/or share Contractor research documents within the County organization, and quote or excerpt from the Services externally.

C.Disclaimer of Warranties. The services are provided on an "as is" basis, and contractor expressly disclaims all warranties, express or implied, statutory or otherwise, including, without limitation, any implied warranties of fitness for a particular purpose or as to accuracy, completeness or adequacy of information. Client recognizes the uncertainties inherent in any analysis or information that may be provided as part of the services, and acknowledges that the services are not a substitute for its own independent evaluation and analysis and should not be considered a recommendation to pursue any course of action. Contractor shall not be liable for any actions or decisions that county may take based on the services or any information or data contained therein. County understands that it assumes the entire risk with respect to the use of the services.

D.County Confidential Information. Contractor agrees to keep confidential any County-specific information communicated by County to Contractor in connection with this SA that is (i) clearly marked confidential if provided in written form, or (ii) preceded by a statement that such information is confidential, if provided in oral form, and such statement is confirmed in writing within 15 days of its initial disclosure. This obligation of confidence shall not apply to any information that: (1) is in the public domain at the time of its communication; (2) is independently developed by Gartner; (3) entered the public domain through no fault of Contractor subsequent to County's communication to Gartner; (4) is in Gartner's possession free of any obligation of confidence at the time of County's communication to Gartner; or (5) is communicated by the County to a third party free of any obligation of confidence. Additionally, Contractor may disclose such information to the extent required by legal process.

E. Miscellaneous

A. **Assignability.** A SA and the rights granted to County in a SA may not be assigned, sublicensed or transferred, in whole or in part, by either party without the prior written consent of the other party, except to a successor to substantially all of the business or assets of a party by merger or acquisition. Where consent is required, it will not be unreasonably withheld.

B. **Use of Name, Trademark, and Logo.** Absent the prior written consent of the other party, neither party shall use the name, trademarks, or logo of the other in promotional materials, publicity releases, advertising, or any other similar publications or communications.

C. **No Third Party Beneficiaries.** SA's are for the benefit of the parties only.

30. SPECIAL TERMS — AD HOC CONSULTING PROJECTS

Ownership of Deliverables: Deliverables, as defined in the ordering documents, are subject to the payment of applicable fees contained in an individual Statement of Work. Contractor shall assign to County ownership of any project Deliverable(s) originally created for and submitted to the County, provided, however, that Contractor may use, reproduce, display and distribute excerpts and data from the Deliverables, either alone or together with other material, in the ordinary course of Gartner's business, so long as such excerpts and data do not identify County by name or contain any of the County's confidential or proprietary information, and provided further that Contractor retains all right, title and interest in and to its processes, benchmarking data and data collection tools, assessment models and pertinent methodologies such as Strategic Planning, Gartner's copyrighted proprietary research and other pre-existing materials and data, such as Data Collection Templates and Survey Tools for Applications and Infrastructure, and benchmark comparisons ("Preexisting Intellectual Property").

Nothing contained in this Agreement shall preclude Contractor from rendering services to others or developing work products that are competitive with, or functionally comparable to, the Services. Contractor shall not be restricted in its use of ideas, concepts, know-how, data and techniques acquired or learned in the course of performing the Services, provided that Contractor shall not use or disclose any of County's confidential information.

Indemnification for Intellectual Property:

Upon notification of a claim against County alleging any Contract Deliverable infringes a copyright, patent or trade secret of any third party, Contractor will defend such claim at its expense and will pay any costs or damages that may be finally awarded against County. Contractor will not indemnify County however, if the claim of infringement is caused by (1) County's misuse or modification of the Deliverable; (2) County's failure to use corrections or enhancements made available by Contractor; (3) County's use of the Deliverable in combination with any product or information not owned or developed by Contractor (4) Information direction, specification or materials provided by County. If any Deliverable is, or in Contractor's opinion is likely to be, held to be infringing, Contractor shall at its expense and option either: (a) procure the right for County to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing, or (d) direct the return of the Deliverable and refund to County the fees paid for such Deliverable.

Preexisting Materials: County shall retain its rights in any proprietary material that County supplies to Contractor. If the County provides Contractor with materials owned or controlled by County or with use of, or access to, such materials, the County grants to Contractor all rights and licenses that are necessary for Contractor to fulfill its obligations under each Statement of Work. Contractor grants to County for internal purposes only a worldwide, royalty-free, perpetual license to use, reproduce, display, distribute copies of, and prepare derivative works of any Contractor "Preexisting Intellectual Property" embodied in the Deliverables.

Limitation of Liability: Neither party shall be liable for any consequential, indirect, special or incidental damages, such as damages for lost profits, business failure or loss arising out of use of the Deliverables or the Services, whether or not advised of the possibility of such damages.

Warranty: a) The County warrants that Contractor's use of any materials furnished by the County in connection with a specific consulting order's Statement of Work does not infringe any copyright, trademark, trade secret or other right of any third party. (b) Contractor warrants that the Deliverables, in the form provided to the County, do not infringe any copyright, trademark, trade secret or other right of any third party. (c) ALL SERVICES ARE PROVIDED ON AN "AS IS" BASIS. CONTRACTOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE INFORMATION IN THE DELIVERABLES HAS BEEN OBTAINED FROM SOURCES THAT CONTRACTOR BELIEVES TO BE RELIABLE. ALL DELIVERABLES SPEAK AS OF THE DATE OF DELIVERY TO THE COUNTY.

COUNTY OF VENTURA

CONTRACTOR*

Authorized Signature

Printed Name

Title

Date


Authorized Signature

Phillip A. Cummings
Printed Name

Contracts Counsel
Title

05 March
Date

04-3099750
Tax Identification Number

CONTRACTOR*

Authorized Signature

Printed Name

Title

Date

* If a corporation, this Contract must be signed by two specific corporate officers.

The first signature must be either the (1) Chief Executive Officer, (2) Chairman of the Board, (3) President, or any (4) Vice President.

The second signature must be the (a) Secretary, an (b) Assistant Secretary, the (c) Chief Financial Officer, or any (d) Assistant Treasurer.

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

