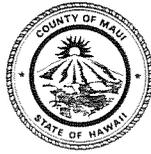


DANNY A. MATEO
County Clerk



RECEIVED JOSIAH K. NISHITA
Deputy County Clerk

2017 NOV -6 AM 11:36

OFFICE OF THE COUNTY CLERK

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/county/clerk

OFFICE OF THE
COUNTY COUNCIL

November 6, 2017

Honorable Riki Hokama, Chair
Budget and Finance Committee
Council of the County of Maui
Wailuku, Hawaii 96793

Dear Chair Hokama:

By letter dated October 18, 2017 (County Communication No. 17-425), the Acting Director of Finance transmitted 59 contracts/grants for filing with the County Clerk.

At the November 3, 2017 Council meeting, the foregoing communication was filed; however, Contract No. C6315 was referred to your Committee at your request. Transmitted is a copy of the contract.

Respectfully,

A handwritten signature in cursive script that reads "Danny A. Mateo".

DANNY A. MATEO
County Clerk

/jym

Enclosures

cc: Director of Council Services

✓

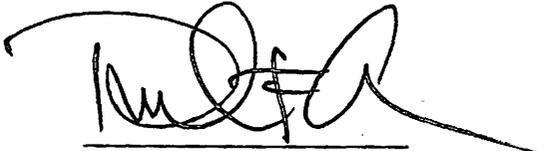
CONTRACT CERTIFICATION

I, **DANILO F. AGSALOG**, Director of Finance of the County of Maui, State of Hawaii, do certify that there is available appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the foregoing contract, i.e.

| <u>Appropriation Index</u> | <u>Title</u> | <u>Amount Required</u> |
|--------------------------------|--------------|------------------------|
| 904015B | IT SERVICES | (6132) \$228,034.56 |

CONTRACT NO. C 6315 GARTNER, INC.

Date: 1 day of SEPTEMBER 2017
Time of Performance: August 1, 2017 - December 31, 2019


DANILO F. AGSALOG
Director of Finance

Human Capital Management
System Implementation
Management for MGMT
Job #18-6
ORDINANCE NO.4456 (FY2018)

FY 2018

jh
2017
angali bak

*jh
9/8/17*

CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

Department: Management – ITSD Division
Project Title: Human Capital Management System Implementation Management
Job No.: 18-6
Certification Requested from County: \$228,034.56

This CONTRACT is made and entered into by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose business address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter referred to as the "County", and **Gartner, Inc.**, a foreign profit corporation, whose mailing address is 1350 Ala Moana Boulevard, Suite 1707, Honolulu, Hawaii 96814,, hereinafter referred to as the "Contractor." County and Contractor shall hereinafter be referred to collectively as the "Parties".

Source of Funds. The source(s) and availability of the funds for this Contract shall be as set forth in the Contract Certification signed by the Director of Finance of the County of Maui on or before the effective date of this Contract. Contract Certification shall be on file in the office of the Director of Finance of the County of Maui.

RECITALS:

WHEREAS, the County desires to retain and engage the Contractor to provide the goods or services, or both, as described in this Contract and its attachments, and the Contractor desires to provide such goods or services, or both, for, and on behalf of, the County; and

WHEREAS, the Contract is for goods or services, or both, as those terms are defined in Section 103D-104, Hawaii Revised Statutes ("HRS"); and

WHEREAS, pursuant to Section 46-1.5(4), HRS, the County is authorized to enter into this Contract.

NOW, THEREFORE, in consideration of the following mutual promises and agreements set forth, the Parties agree as follows:

1. Scope of Work. Provided that the County complies with its obligations thereunder, the Contractor shall provide all goods or services, or both, in accordance with the Statement of Work ("SOW") executed by the County and Contractor attached hereto as Exhibits 1 (hereinafter, "Contract Document.") Contract Documents are on file in the office of the Director of Finance

CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

of the County of Maui, and are incorporated herein by reference and hereby made a part of this Contract.

2. Time of Performance. Performance periods shall be as set forth in the Statement of Work, attached hereto as Exhibit "1" and future Statements of Work.

3. Compensation and Payment Schedule. The Contractor shall be compensated for services rendered and costs incurred under this Contract in accordance with the Contract Documents. The County and Contractor acknowledge that funding for each SOW entered pursuant to this Contract is Dependent upon appropriation and allotment of funds by the Maui County Council for each County fiscal year during which a SOW is in effect. The County shall in good faith seek funds from the Maui County Council or other appropriate funding sources sufficient to support County's obligations under a SOW for each Client fiscal year during which SOW is in effect. If the Maui County Council fails to appropriate and allot funds sufficient to support the County's continued performance of its obligations under a SOW during a given fiscal year, the County shall notify Contractor within ten days after the County learns of such circumstances, in which case Contractor shall be permitted to terminate the SOW for convenience. Within 30 days of termination due to this Section, to the extent Maui County Council appropriations and allocations allow, the County shall pay Contractor for any deliverables accepted prior to the date of termination and a mutually-agreed upon amount that represents that equitable value of any other services provided by Contractor to the County.

4. *[This paragraph is intentionally left blank.]*

5. General Conditions. The Contractor shall comply with the General conditions of this Contract (the "General Conditions"), which are attached hereto and are hereby made a part of this Contract.

6. Standards of Conduct Declaration. The Standards of Conduct Declaration of the Contractor is attached hereto and is made a part of this Contract.

7. Other Terms and Conditions. Any Special Conditions are attached hereto and made a part of this Contract. In the event of any inconsistencies or conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. Any general, miscellaneous, or other terms, conditions, or provisions that are found in any of the Contractor's proposals for this Contract or in any sub-contractor's proposals attached thereto shall be

CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

unenforceable as against the County, unless the subject of such terms, conditions, or provisions is addressed in the County's General Conditions, and such terms, conditions, or provisions are consistent with the County's General Conditions.

8. *[This paragraph is intentionally left blank.]*

9. Conflict. In the event of any conflict between or among this Contract and other documents that are attached hereto or incorporated herein by reference or both, the terms within the following documents in order of precedence shall control: Contract shall control first, the County's Special Conditions attached hereto as Attachment "A" second, the County's General Conditions third, the Statement of Work attached hereto as Attachment "B" fourth, other documents prepared by the County fifth, and documents prepared or submitted, or both, by the Contractor last.

10. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice required to be given to the County shall be sent to:

Procurement Officer
Department of Finance
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

Notice to the Contractor shall be sent to the Contractor's address as indicated in this Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The Contractor is responsible for notifying the County in writing of any change of address.

11. Officer-in-Charge. The Director of Management, IT Service Division, or an authorized representative, shall be the Officer-in-Charge for all services provided herein, and shall have the right to oversee the successful completion of contract requirements, including monitoring, coordinating and assessing Contractor's performance and approving completed work/services with verification of same for Contractor's invoices or requests for payment. The Officer-in-Charge also serves as the point of contact for the Contractor from award to contract completion.

12. Notwithstanding Sections 2 and 3 of 3-125-21 HAR, the County acknowledges and agrees that the terms between the County and Contractor will govern the parties' respective

CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

ownership rights with respect to intellectual property used and developed during the course of this Contract.

13. Notwithstanding Sections 3 and 4 of 3-125-21, HAR, in the event that the County chooses to terminate the Contract for convenience, the Contractor will not be required to sell any completed Project Deliverables or work in process and the County agrees that the contractor will be paid the fees for the Project Deliverables and work in process performed up to the effective date of such termination.

IN WITNESS WHEREOF, the Parties execute this Contract by their signatures, on the dates below, to be effective as of the date of last signature hereto.

**EXECUTION PAGES FOLLOW
[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

CONTRACT NO. C6315
CONTRACT FOR GOODS AND SERVICES

I hereby represent and warrant that I have the legal right and authority to execute this Contract on behalf of the Contractor.

CONTRACTOR:

GARTNER, INC.

By 

(Signature)

Phillip A. Cummings

(Print Name)

Its Contracts Counsel

(Title)

Date 13 August 2017

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

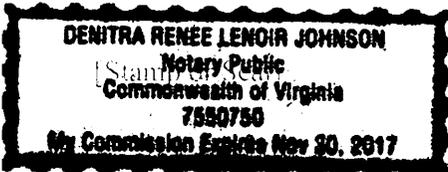
CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

STATE OF Virginia)
Prince William County) SS.

On this 18th day of August, 2017, before me personally appeared Phillip A. Cummings, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Denitra Renee Lenoir Johnson
Notary Public, State of Virginia

Print Name: Denitra Renee Lenoir Johnson

My commission expires: November 30, 2017

| NOTARY PUBLIC CERTIFICATION | |
|-----------------------------|-------------------------|
| Doc. Date: _____ | # Pages: _____ |
| Notary Name: _____ | Judicial Circuit: _____ |
| Doc. Description: _____ | |
| _____ | |
| _____ | |
| _____ | |
| Notary Signature: _____ | |
| Date: _____ | |

[Stamp or Seal]

CONTRACT NO. C6315
CONTRACT FOR GOODS AND SERVICES
COUNTY EXECUTION PAGE

COUNTY OF MAUI



By _____
DANILO F. AGSALOG
Its Finance Director

Date SEP 08 2017

REVIEWED AND APPROVED:



JACOB VERKERKE
Chief Technology Officer

Date 8/22/17

APPROVED AS TO FORM
AND LEGALITY:



CALEB P. ROWE
Deputy Corporation Counsel

Date 8/29/17

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

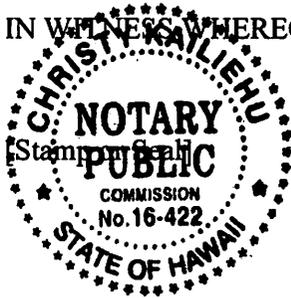
CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

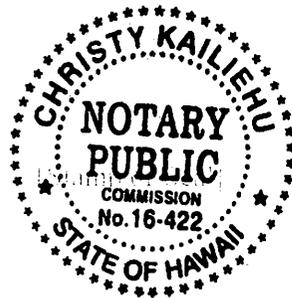
On this 8th day of September, 2017, before me appeared DANILO F. AGSALOG, to me personally known, who being by me duly sworn, did say that he is the Director of Finance of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 9-18 of the Charter of the County of Maui; and the said DANILO F. AGSALOG acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Christy Kailiehu
Notary Public, State of Hawaii
Print Name: CHRISTY KAILIEHU
My commission expires: NOV 27 2020

| NOTARY PUBLIC CERTIFICATION | | | |
|-----------------------------|--|-------------------|------------|
| Doc. Date: | <u>SEP 08 2017</u> | # Pages: | <u>26</u> |
| Notary Name: | <u>CHRISTY KAILIEHU</u> | Judicial Circuit: | <u>2nd</u> |
| Doc. Description: | <u>Contract for Goods and Services, Contract No. C6315 Human Capital Management System Implementation Management</u> | | |
| Notary Signature: | <u>Christy Kailiehu</u> | | |
| Date: | <u>SEP 08 2017</u> | | |



CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

CONTRACTOR'S STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Substantial interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the County, including members of boards, commissions, and committees, and employees under contract to the County, but excluding members of the County Council ("County Council Members").

On behalf of GARTNER, INC., Contractor, the undersigned does declare as follows:

1. Contractor is is not a County Council Member or an Employee or a business in which a County Council Member or an Employee has a substantial interest.
2. Contractor has not been represented or assisted personally in the matter by an individual who has been an Employee of the County department awarding this Contract within the preceding year and who participated while so employed in the matter with which the Contract is directly concerned.
3. Contractor has not been assisted or represented by a County Council Member or Employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a County Council Member or Employee for a fee or other compensation in the performance of this Contract, if the County Council Member or Employee has been involved in the development or award of the Contract.
4. Contractor has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an Employee, or in the case of the County Council, a County Council Member, and participated while an Employee or a County Council Member on matters related to this Contract.

*Reminder to agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$500, the Contract may not be awarded unless the Contract is made after competitive bidding.

CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

Contractor understands that the Contract to which this document is attached is voidable on behalf of the County if this Contract was entered into in violation of any provision of Article 10 of the Revised Charter of the County of Maui ("Code of Ethics"), including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the County.

CONTRACTOR:

GARTNER, INC.

DocuSigned by:
Melissa McKay
38838E34258B4E6...

By _____

(Signature)

Melissa McKay

(Print Name)

Its Sr. Contracts Specialist

(Title)

Date August 24, 2017

CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

**COUNTY OF MAUI
GENERAL CONDITIONS
FOR GOODS & SERVICES CONTRACTS**

1. COORDINATION OF SERVICES BY THE COUNTY. The Officer-in-Charge shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in this Contract. The CONTRACTOR shall maintain communications with the Officer-in-Charge at all stages of the CONTRACTOR's work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any COUNTY department or division which is authorized to enter into contracts for the procurement of goods and services.

2. RELATIONSHIP OF PARTIES: INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES.

a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this agreement; however, the COUNTY shall have a general right to inspect work in progress to determine whether, in the COUNTY's opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the COUNTY does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the COUNTY.

b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Contract, agents or employees of the COUNTY for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the COUNTY any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to the COUNTY employees.

c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.

d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes and (iii) general excise taxes. Unless provided otherwise by agreement between the parties, the CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.

e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, Hawaii Revised Statutes ("HRS"), and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the CONTRACTOR have been paid and submit the same to the COUNTY prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under Section 103-53, HRS and Paragraph 17 of these General Conditions.

f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and sections 3-122-112, Hawaii Administrative rules, ("HAR") that is current within six months of the date of issuance.

h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.

3. PERSONNEL REQUIREMENTS.

a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Contract.

b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under Federal, State or County law, and all

CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. **NONDISCRIMINATION.** No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable Federal, State, or County law.

5. **CONFLICTS OF INTEREST.** The CONTRACTOR represents that neither the CONTRACTOR, nor any employees or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Contract.

6. **SUBCONTRACTS AND ASSIGNMENTS; CHANGE OF NAME.**

a. No assignment without consent. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (1) the CONTRACTOR obtains the prior written consent of the COUNTY and (2) the CONTRACTOR'S assignee or subcontractor submits to the COUNTY a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the COUNTY.

b. Recognition of a successor in interest. When in the best interests of the COUNTY, a successor in interest may be recognized in an assignment agreement in which the COUNTY, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- 1) The Assignee assumes all of the CONTRACTOR'S obligations;
- 2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the COUNTY; and
- 3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

c. Change of name. When the CONTRACTOR asks to change the name under which it holds this Contract with the COUNTY, the contract officer of the purchasing agency shall, upon receipt of a document acceptable or satisfactory to said officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms or conditions of this Contract are thereby changed.

d. Reports. All assignment contracts and amendments to this Contract effecting changes of CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer as defined in section 103D-203(b), HRS, within 30 days of the date that the assignment contract or amendment becomes effective.

e. Actions affecting more than one purchasing agency. Notwithstanding the provisions of Subparagraphs b. through d. herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the COUNTY, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the County Department of Finance

7. **INDEMNIFICATION AND DEFENSE.** Except as provided for in Section 103D-713, HRS, the CONTRACTOR shall defend, indemnify and hold harmless the COUNTY, the contracting department and their directors, employees and agents from and against all liability, loss, damage, cost and expense, including all attorneys' fees and costs, and all claims, suits and demands therefor, arising out of or in connection with any acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents or subcontractors under this Contract. The provisions of this Paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract for any reason.

8. **COST OF LITIGATION.** In case the COUNTY shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay any cost and expense incurred by or imposed on the COUNTY, including attorneys' fees.

9. **LIQUIDATED DAMAGES.** When the CONTRACTOR is given notice of delay or nonperformance as specified in Paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the COUNTY the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the COUNTY reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for

CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

default. To the extent that the CONTRACTOR's delay or nonperformance is excused under Subparagraph 13.d. (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR shall remain liable for damages caused other than by delay. This Paragraph is of no force and effect unless the amount of liquidated damages is specified in the Contract.

10. COUNTY'S RIGHT OF OFFSET. The COUNTY may offset against any monies or other obligations the COUNTY owes to the CONTRACTOR under this Contract, any amounts owed to the COUNTY by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the COUNTY by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The COUNTY will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this Paragraph, amounts owed to the COUNTY shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the COUNTY, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the COUNTY under such payment or other settlement plan.

11. DISPUTES. Disputes shall be resolved in accordance with §103D-703, HRS and Chapter 3-126, HAR.

12. SUSPENSION OF AGREEMENT. The COUNTY reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

a. Order to stop performance. The head of the purchasing agency may, by written order to the CONTRACTOR at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period of time not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the head of the purchasing agency shall either:

1) Cancel the stop performance order; or
2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery or performance schedule or compensation, or both, and the Contract shall be modified in writing accordingly, if:

1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract and

2) The CONTRACTOR asserts a claim for such adjustment within thirty (30) days after the end of the period of performance stoppage provided that if the head of the purchasing agency decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this Paragraph shall be determined in accordance with the price adjustment provisions of this Contract.

13. TERMINATION FOR DEFAULT.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, or otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the head of the purchasing agency may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the head of the purchasing agency, the head of the purchasing agency may terminate the CONTRACTOR's right to proceed with the Contract or such part of the Contract as to which there has been delay or failure to properly perform. In the event of termination in whole or in part the head of the purchasing agency may procure similar goods or services in a manner and upon the terms deemed appropriate

CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

by the head of the purchasing agency. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods and services.

b. **CONTRACTOR'S duties.** Notwithstanding termination of the Contract and subject to any directions from the head of the purchasing agency, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the COUNTY has an interest.

c. **Compensation.** Payment for completed goods and services delivered and accepted by the COUNTY shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the head of the purchasing agency. If the parties fail to agree, the head of the purchasing agency shall set the amount subject to the CONTRACTOR's rights under chapter 3-126, HAR. The COUNTY may withhold from amounts due the CONTRACTOR such sums as the head of the purchasing agency deems to be necessary to protect the COUNTY against loss because of outstanding liens or claims of former lien holders and to reimburse the COUNTY for the excess costs incurred by the COUNTY in procuring similar goods and services.

d. **Excuse for nonperformance or delayed performance.** Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, if the CONTRACTOR has notified the head of the purchasing agency within fifteen (15) days after the cause of the delay and the failure arises out of causes including acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the head of the purchasing agency shall ascertain the facts and extent of the failure, and, if he or she determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule or the time of performance shall be revised accordingly, subject to the rights of the COUNTY under the clause entitled, in fixed-price contracts, "Termination for Convenience," and in cost-reimbursement contracts, "Termination." As used in this Paragraph the term "subcontractor" means subcontractor at any tier.

e. **Erroneous termination for default.** If, after notice of termination of the CONTRACTOR's right to proceed under this Paragraph, it is determined for any reason that the CONTRACTOR was not in default under this Paragraph, or that the delay was excusable under the provisions of Subparagraph d., "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 14.

f. **Additional rights and remedies.** The rights and remedies provided in this Paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. TERMINATION FOR CONVENIENCE BY THE COUNTY.

a. **Termination for convenience.** The head of the purchasing agency may, when the interests of the COUNTY so require, terminate this Contract in whole or in part, for the convenience of the COUNTY. The head of the purchasing agency shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when such termination becomes effective.

b. **CONTRACTOR's obligations.** The CONTRACTOR shall incur no further obligations in connection with the terminated performance, and on the date(s) set in the notice of termination the CONTRACTOR shall stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the County's approval. The head of the purchasing agency may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the COUNTY. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as are necessary to do so.

c. **Right to goods and work product.** The head of the purchasing agency may require the CONTRACTOR to transfer title and deliver to the COUNTY in the manner and to the extent directed by the head of the purchasing agency:

- 1) Any completed goods or work product or both; and
- 2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract. The CONTRACTOR shall, upon direction of the head of the purchasing agency, protect and preserve property in the possession of the CONTRACTOR in which the COUNTY has an interest. If the head of the purchasing agency does not exercise this right, the CONTRACTOR shall use CONTRACTOR'S best efforts to sell such goods and manufacturing

CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

materials. Use of this Paragraph in no way implies that the COUNTY has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience, together with cost or pricing data to the extent required by subchapter 15, chapter 3-122 of the HAR, bearing on the claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the head of the purchasing agency may pay the CONTRACTOR, if at all, an amount set in accordance with d.(3) of this Paragraph.

2) The head of the purchasing agency and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted to the extent required by subchapter 15, chapter 3-122 of the HAR, and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the COUNTY, the proceeds of any sales of goods and manufacturing materials under Subparagraph c. of this Paragraph, and the Contract price of the performance not terminated.

3) Absent complete agreement under Subparagraph d.2) above, the head of the purchasing agency shall pay the CONTRACTOR the following amounts, provided payments agreed to under Subparagraph d.2) shall not duplicate payments under this Subparagraph for the following:

(A) Contract prices for goods or services or both accepted under the Contract;

(B) Costs incurred in preparing to perform and performing the terminated portion of the work or performance plus a five per cent markup on actual direct costs on the portion of the work or performance, the markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services or both; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(C) Subject to the prior approval of the head of the purchasing agency, costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph b. Subcontractors shall be entitled to a markup of no more than ten per cent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with Subparagraph d.3)(B).

(D) The total sum to be paid the CONTRACTOR under this Subparagraph shall not exceed the total Contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph c.3) and the Contract price of performance not terminated.

4) Costs claimed, agreed to, or established under Subparagraphs d.2) and d.3) above shall be in accordance with Chapter 3-123, HAR.

15. CLAIMS BASED ON THE HEAD OF THE PURCHASING AGENCY'S ACTIONS OR OMISSIONS.

a. Change in scope. If any action or omission on the part of the head of the purchasing agency (which term includes the designee of such person) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of proper officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages or extension of time for completion, provided:

1) The CONTRACTOR shall have given written notice to the head of the purchasing agency:

(A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

(B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance or

(C) Within such further time as may be allowed by the head of the purchasing agency in writing.

2) This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages or an extension of time. The head of the purchasing agency or his or her designee, upon receipt of such a notice, may rescind such action, remedy such omission or take such other steps as may be deemed advisable in the discretion of the head of the purchasing agency or his or her designee.

3) The notice required by Subparagraph a.1) of this Paragraph must describe as clearly as practicable, at the time, the reasons why the CONTRACTOR believes that additional compensation, damages or an extension of time may be remedies to which the CONTRACTOR is entitled; and

4) The CONTRACTOR must maintain and, upon request, make available to the head of the purchasing agency within a reasonable time, detailed records to the extent practicable, and other documentation and

CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

evidence satisfactory to the COUNTY, of the claimed additional costs or an extension of time in connection with such changes.

b. Nothing herein contained, however shall excuse the CONTRACTOR from compliance with any rules or laws precluding any County officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

c. Any adjustment in the price made pursuant to this Paragraph shall be determined in accordance with the price adjustment provisions of the Contract and these General Conditions.

16. COST AND EXPENSES. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

a. Reimbursement for air transportation shall be for actual cost or coach class airfare, whichever is less.

b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.

c. Unless prior written approval of the head of the purchasing agency is obtained, reimbursement for subsistence allowable allowance (i.e., hotel and meals) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel for County officers and employees in the executive branch who are excluded from collective bargaining coverage. No other travel or living expense (e.g., tips, entertainment, alcohol, etc.) shall be reimbursed by the COUNTY, other than those items listed in Subparagraphs a. and b. of this Paragraph. Invoices shall document the days of travel by including the name of the traveler, itinerary, airfare receipt, hotel receipt, and ground transportation receipts. All travel must be pre-approved by the COUNTY Officer-in-Charge.

d. CONTRACTORS with an office located on the same island as the site of the services to be provided pursuant to this Contract are not entitled to per diem or transportation expense reimbursement unless expressly specified in the Contract.

17. PAYMENT PROCEDURES; FINAL PAYMENT; TAX CLEARANCE.

a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.

b. Subject to available funds. Such payments are subject to availability of funds, and all payments shall be made in accordance with and subject to Article 9 of the County of Maui Charter.

c. Payment only for work under contract. The COUNTY is not responsible to pay for work performed by CONTRACTOR or its subcontractors that is not in this Contract and any amendments or change orders thereto. CONTRACTOR must follow Paragraph 19, Contract Modifications, or Paragraph 20, Change Orders, and must have proper authorization before performing work outside the original Contract.

d. Compensation Retained.

1) Pursuant to §103-32.1(a), HRS, the County may retain a portion of the amount due under the contract to the Contractor to ensure proper performance of the contract, provided that the sum withheld shall not exceed five percent (5%) of the amount due the Contractor and that after fifty percent (50%) of the contract is completed and progress is satisfactory, no additional sum shall be withheld; provided further that if progress is not satisfactory, the Procurement Officer may continue to withhold as compensation retained sums not exceeding five percent (5%) of the amount due the Contractor; provided further that the compensation retained shall not include sums deducted and withheld separately as liquidated damages from moneys due or that may become due the Contractor under the contract.

2) The County may enter into an agreement with the Contractor which will allow the Contractor to withdraw from time to time the whole or any portion of the sum retained under sub-paragraph (a) upon depositing with the County any general obligation bond of the State or its political subdivisions with a market value not less than the sum to be withdrawn; provided that the County may require that the total market value of such bond be greater than the sum to be withdrawn.

e. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. FEDERAL OR STATE FUNDS. If this Contract is payable in whole or in part from federal or state of Hawaii ("State") funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal or State funds, the CONTRACTOR shall be paid only from such funds received from the federal or State

CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

government, and shall not be paid from any other funds. Failure of the County to receive anticipated federal or State funds shall not be considered a breach by the County or an excuse for nonperformance by the CONTRACTOR.

19. CONTRACT MODIFICATIONS.

a. Modification in writing; no verbal modification. At any time, and without notice to any surety, the head of the purchasing agency, subject to mutual agreement of the parties to the Contract in writing and all appropriate adjustments, may make modifications within the general scope of this Contract to include any one or more of the following:

performed;

- 1) Drawings, designs, or specifications, for the goods to be furnished or services to be

- 2) Method of shipment or packing;

- 3) Place of delivery;

- 4) Description of services to be performed;

- 5) Time of performance (i. e., hours of the day, days of the week, etc.);

- 6) Place of performance of the services; or

- 7) Other provisions of the contract accomplished by mutual action of the parties to the contract.

b. No verbal modification. No verbal modification, alteration, amendment, change or extension of any term, provision or condition of this Contract shall be permitted or acknowledged.

c. Adjustment of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.

d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if the claim is not received by the head of the purchasing agency prior to final payment under this Contract.

e. Other claims not barred. In the absence of a written modification to the Contract, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.

f. Professional Services Contract. If this is a professional services contract awarded pursuant to Section 103D-304, HRS, any modification, alteration, amendment, change or extension of any term, provision or extension of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial Contract price must receive the prior approval of the County Director of Finance.

g. Tax clearance. The COUNTY may, at its discretion, require the CONTRACTOR to submit to the COUNTY, prior to the COUNTY'S approval of any modification, alteration, amendment, change or extension of any term, provision or condition of the Contract, a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued against the CONTRACTOR have been paid.

h. Sole source agreements. Amendments to sole source agreements that would change the original scope of the agreement, or increase the original contract price by ten percent or more, may only be made with the approval of the Chief Procurement Officer. Annual renewal of a sole source agreement for services shall not be submitted as an amendment.

20. CHANGE ORDERS.

A change order is a written order signed by the head of the purchasing agency, directing the CONTRACTOR to make changes which the "changes clause" described below authorizes the head of the purchasing agency to order without the consent of the CONTRACTOR.

a. Changes Clause Generally. By written order, at any time, and without notice to any surety, the head of the purchasing agency may, unilaterally, order of the CONTRACTOR:

- 1) Changes in the work within the scope of the Contract; and

- 2) Changes in the time of performance of the Contract that do not alter the scope of the

contract work.

b. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment in contract price shall be resolved in accordance with Subparagraph a.5) of Paragraph 21 on Price Adjustment. Failure of the parties to agree to an adjustment in time shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the head of the purchasing agency, within fourteen days after the changed work commences, makes the provisional adjustments in time as the head of the purchasing agency deems reasonable. The right of the CONTRACTOR to dispute the contract price or time required for performance or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established by the Contract.

CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

c. Time period for claim. Except as may be provided otherwise by section 103D-501(b), HRS, the CONTRACTOR must file a written claim disputing the contract price or time provided in a change order within ten days after receipt of a written change order, unless such period for filing is extended by the head of the purchasing agency in writing. The requirement for filing a timely written claim cannot be waived and shall be a condition precedent to the assertion of a claim.

1) Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if the claim is not received by the head of the purchasing agency prior to final payment under this Contract.

2) Other claims not barred. In the absence of such a change order, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. PRICE ADJUSTMENT.

a. Price adjustment. Any adjustment in the Contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:

1) By agreement on a fixed price adjustment before commencement of the pertinent performance;

2) By unit prices specified in the Contract or subsequently agreed upon before commencement of the pertinent performance;

3) By the costs attributable to the events or situations covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon before commencement of the pertinent performance;

4) In such other manner as the parties may mutually agree upon before commencement of the pertinent performance; or

5) In the absence of agreement between the parties, the adjustment shall be made pursuant to 103D-501(b)(5), HRS.

b. Submission of cost or pricing data. The CONTRACTOR shall be required to submit cost or pricing data for any price adjustment subject to the provisions of subchapter 15, chapter 3-122, HAR. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in Subparagraph (a)(1) through (a)(4) of this Paragraph shall be issued within ten days after agreement on the method of adjustment.

22. VARIATIONS IN QUANTITY FOR ANY DEFINITE QUANTITY CONTRACT. If this is a definite quantity goods or services contract, upon the agreement of the COUNTY and the CONTRACTOR, the quantity of goods or services, or both, specified in this Contract, may be increased by a maximum of ten per cent (10%), provided (1) the unit prices will remain the same except for any price adjustments otherwise applicable; and (2) the head of the purchasing agency makes a written determination that such an increase will either be more economical than awarding another Contract or that it would not be practical to award another agreement.

23. CHANGES IN COST-REIMBURSEMENT CONTRACT. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

a. The head of the purchasing agency may at any time by written order, and without notice to the sureties, in any, make changes within the general scope of the Contract in any one or more of the following:

1) Description of performance;

2) Time of performance (i.e., hours of the day, days of the week, etc.)

3) Place of performance of services;

4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the COUNTY in accordance with the drawings, designs, or specifications;

5) Method of shipment or packing of supplies; or

6) Place of delivery.

b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the head of the purchasing agency shall make an equitable adjustment in the 1) estimated cost, deliver or completion schedule, or both; 2) amount of any fixed fee; and 3) other affected terms and shall modify the Contract accordingly.

c. The CONTRACTOR must assert the CONTRACTOR's rights to an adjustment under this provision within 30 days from the day of receipt of the written order. However, if the head of the purchasing agency decides that the facts justify it, the head of the purchasing agency may receive and act upon a proposal submitted before final payment under the Contract.

d. Failure to agree to any adjustment shall be a dispute under the provision on Dispute herein. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.

CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

e. Notwithstanding the terms and conditions of Subparagraphs a. and b. of this Paragraph, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if the contract is incrementally funded, the new amount allotted to the contract.

24. PROMPT PAYMENT OF SUBCONTRACTORS.

a. Generally. Any money paid to a CONTRACTOR shall be disbursed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the procurement agency has withheld payment.

b. Final payment. Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

c. Penalty. The procurement officer or the CONTRACTOR, as applicable, will be subject to a penalty of one and one-half per cent per month upon outstanding amounts due that were not timely paid by the responsible party under the following conditions. Where a subcontractor has provided evidence to the CONTRACTOR of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in Subparagraph d. of this Paragraph, and:

1) Has provided to the CONTRACTOR an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in section 103-32.1, HRS; or

2) The following has occurred:

(A) A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to CONTRACTOR and the surety, as provided for in section 103D-324, HRS; and

(B) The subcontractor has provided to the CONTRACTOR, an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the CONTRACTOR; any other bond acceptable to the CONTRACTOR; or any other form of mutually acceptable collateral, then, all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the procurement officer to the CONTRACTOR and subsequently, upon receipt from the procurement officer, by the CONTRACTOR to the subcontractor within the applicable time periods specified in Subparagraph b. of this Paragraph and section 103-10, HRS. The penalty may be withheld from future payment due to the CONTRACTOR, if the CONTRACTOR was the responsible party. If a CONTRACTOR has violated Subparagraph b. three or more times within two years of the first violation, the Contractor shall be referred by the procurement officer to the contractor's license board for appropriate action, including action under section 444-17(14), HRS.

d. A properly documented final payment request from a subcontractor, as required by Subparagraph c., shall include:

1) Substantiation of the amounts requested;

2) A certification by the subcontractor, to the best of the subcontractor's knowledge and belief,

that:

(A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;

(B) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and

(C) The payment request does not include any amount that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and

3) The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

The procurement officer shall return any final payment request that is defective to the CONTRACTOR within seven days after receipt, with a statement identifying the defect.

e. This section shall not be construed to impair the right of a CONTRACTOR or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under Subparagraph c. of this Paragraph; provided that any such payments withheld shall be withheld by the procurement officer.

CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

25. ACCEPTANCE OF GOODS AND SERVICES. The COUNTY shall accept goods and services or give CONTRACTOR notice of rejection within a reasonable time, notwithstanding any payment, prior test, or inspection. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or other nonconformance with the specifications, shall relieve CONTRACTOR of any obligations under this Contract or impair any rights or remedies of the COUNTY.

26. OBSOLETE PARTS/LONG TERM PARTS AVAILABILITY. Contractor shall timely report on the status of end of life (EOL) hardware that has been procured for the purchased or leased product. EOL hardware includes the following: electronic components/piece parts and mechanical hardware. Contractor shall provide advanced notification in writing to the Officer-in-Charge of any changes to tooling, facilities, materials, availability of parts, or processes that could affect the contracted product. This includes but is not limited to fabrication, assembly, handling, inspection, acceptance, testing, facility relocation, or introduction of a new manufacturer. Contractor shall notify the COUNTY of any pending or contemplated future action to discontinue articles purchased or replacement parts for the articles purchased pursuant to this Contract and shall work with the COUNTY to determine the need to stockpile any parts for the likely life of the product and offer those parts to the COUNTY prior to the actual discontinuance. Contractor shall extend opportunities to the COUNTY to place last time buys of such articles with deliveries not to exceed twelve months after the last time buy date.

27. CONFIDENTIALITY OF MATERIAL.

a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the COUNTY.

b. All information, data, or other material provided by the CONTRACTOR to the COUNTY is subject to the Uniform Information Practices Act, chapter 92F, HRS.

28. PUBLICITY. The CONTRACTOR shall not refer to the COUNTY or any office, agency, or Officer thereof, or any COUNTY employee, including the head of the purchasing agency, the County procurement officers, the COUNTY council members, or members or directors of any County Board, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR without the explicit written consent of the COUNTY. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the head of the purchasing agency.

29. OWNERSHIP RIGHTS AND COPYRIGHT. The COUNTY shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled or conceived by the CONTRACTOR pursuant to this Contract and all such material shall be considered "works for hire." All such materials shall be delivered to the COUNTY upon expiration or termination of this Contract. The COUNTY, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled or conceived by the CONTRACTOR pursuant to this Contract.

30. INSURANCE. During the term of this Contract, CONTRACTOR shall maintain at all times or cause to be maintained general and professional liability insurance coverage for CONTRACTOR and its employees rendering services to the COUNTY under this Contract. The insurance policies shall be issued by a company or companies authorized to do business in Hawaii and approved by the COUNTY, with combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and TWO MILLION DOLLARS (\$2,000,000) in the aggregate for Contracts with a total certified amount of \$1,000,000 or less, and THREE MILLION DOLLARS (\$3,000,000) in the aggregate for Contracts with a total certified amount of \$1,000,001 or more, or such greater amount as may be required from time to time by the COUNTY. CONTRACTOR shall also carry workers' compensation insurance for CONTRACTOR'S employees in the amounts required by applicable law. CONTRACTOR shall provide COUNTY not less than thirty (30) days' notice prior to any cancellation or material change or reduction in coverage. No such material change or reduction may be made without approval from the COUNTY. The COUNTY shall be listed as an additional insured on all policies, with the exception of professional liability and workers' compensation policies. Prior to the commencement of this Contract, CONTRACTOR shall provide the COUNTY with a certificate of insurance. Thereafter, prior to the expiration of each policy period, the insurance carriers for CONTRACTOR shall provide the COUNTY with certificates of insurance evidencing the foregoing coverage and provisions. The COUNTY reserves the right to request and receive a certified copy of the policies. Failure to maintain the necessary insurance in accordance with the provisions set forth herein shall constitute a material breach of this Contract and the COUNTY shall thereafter have the options of pursuing remedies for such breach and/or immediate termination of this Contract.

31. LIENS AND WARRANTIES.

CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

a. Liens. All products provided under this Contract shall be free of all liens and encumbrances.

b. Warranties for products and services. In the event this Contract is for the provision of products (goods or equipment), CONTRACTOR warrants that it has all rights, title and interest in and to all products sold, leased or licensed to the COUNTY. CONTRACTOR also warrants that the products shall substantially conform to all descriptions, specifications, statements of work and representations set forth in the Contract, schedules, publications of CONTRACTOR and/or any order(s) and will be free from defects in materials, performance, workmanship and design. CONTRACTOR further warrants that it will perform any services required with promptness, diligence and in accordance with prevailing standards in the industry to the reasonable satisfaction of the COUNTY. The Warranty period shall commence after Acceptance, as defined in this Contract. Any specific warranty periods shall be as set forth in the proposals, schedules, orders or Special Conditions pertaining to this Contract but in any event such warranty period shall not be less than one (1) year.

32. AUDIT OF BOOKS AND RECORDS OF THE CONTRACTOR. The COUNTY may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

- a. The cost or pricing data, and
- b. A county contract, including subcontracts, other than a firm fixed-price contract.

33. COST OR PRICING DATA.

a. Cost or pricing data must be submitted to the head of the purchasing agency and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the head of the purchasing agency.

b. If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the County is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

34. AUDIT OF COST OR PRICING DATA. When cost or pricing principles are applicable, the County may require an audit of cost or pricing data.

35. RECORDS RETENTION.

a. Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the COUNTY.

b. The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the COUNTY, and any cost or pricing data, for at least three years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three year or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS, or returned to the County at the request of the County.

36. ANTITRUST CLAIMS. The COUNTY and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to the COUNTY any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the COUNTY under an escalation clause.

37. PATENTED ARTICLES. The CONTRACTOR shall defend, indemnify, and hold harmless the COUNTY, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorney's fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the COUNTY any such infringement or improper or unauthorized use, including, without limitation a. furnishing at no cost to the COUNTY a substitute article, process, or appliance acceptable to the COUNTY;

CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

b. paying royalties or other required payments to the patent holder; c. obtaining proper authorizations or releases from the patent holder; and d. furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

38. POLLUTION CONTROL. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the COUNTY and all other appropriate state, county, or federal agencies as required by law. The CONTRACTOR shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the COUNTY determines that this Contract requires and adjustment of the time for performance, the Contract shall be modified in writing accordingly.

39. CONFIDENTIALITY OF PERSONAL INFORMATION.

a. Definitions.

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

- 1) Social security number;
- 2) Driver's license number or Hawaii identification card number; or
- 3) Account number, credit or debit card number, access code, or password that would permit

access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedure for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

1) All material given to or made available to the CONTRACTOR by the COUNTY by virtue of this Contract which is identified as personal information shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the COUNTY.

2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.

3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the COUNTY to reduce the risk of unauthorized access to personal information.

4) CONTRACTOR shall report to the COUNTY in a prompt and complete manner any security breaches involving personal information.

5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this Paragraph.

6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the COUNTY, or personal information created or received by CONTRACTOR on behalf of the COUNTY.

c. Security awareness training and confidentiality agreements.

1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.

2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:

(A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;

(B) Access to the personal information will be allowed only as necessary to perform the Contract; and

(C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the COUNTY learns of a material breach by CONTRACTOR of this Paragraph by CONTRACTOR, the COUNTY may at its sole discretion:

- 1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- 2) Immediately terminate this Contract.

CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

- 40. GOVERNING LAW.** The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a State court of competent jurisdiction in Wailuku, Maui, Hawaii.
- 41. COMPLIANCE WITH LAWS.** The CONTRACTOR shall comply with all federal, State, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract. This specifically includes, without limitation, Sections 103-55 and 103-55.5, HRS, dealing with wages, hours and working conditions of employees of contractors providing services or construction.
- 42. CONFLICT BETWEEN GENERAL CONDITIONS AND PROCUREMENT RULES.** In the event of a conflict between the General Conditions and the procurement rules in the HAR, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
- 43. ELECTION-RELATED CONTRIBUTIONS BY COUNTY CONTRACTORS.** CONTRACTOR acknowledges and shall comply with Section 11-355, HRS.
- 44. DRAFTING.** No provision of this Contract shall be interpreted for or against any party on the basis that such party was the draftsman of such provision, and no presumption of burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Contract.
- 45. CAPTIONS.** The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.
- 46. COUNTERPARTS.** This Contract may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. Such executions may be transmitted to the parties by facsimile or electronically and such facsimile or electronic execution and transmission shall have the full force and effect of an original signature. All fully executed counterparts, whether original executions or facsimile or electronic executions or a combination thereof shall be construed together and shall constitute one and the same Contract.
- 47. SEVERABILITY.** In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or non-enforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
- 48. WAIVER.** The failure of the COUNTY to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the COUNTY's right to enforce the same in accordance with this Contract. The fact that the COUNTY specifically refers to one provision of the law, and does not include other provisions shall not constitute a waiver or relinquishment of the COUNTY's rights or the CONTRACTOR's obligations under the law.
- 49. ENTIRE AGREEMENT.** This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the COUNTY and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the COUNTY and the CONTRACTOR other than as set forth or as referred to herein.

[END OF GENERAL CONDITIONS FOR GOODS & SERVICES SERVICES CONTRACTS]

CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

Special Terms: Attachment "A"

1. Intellectual Property. (a) Subject to payment of fees specified in the applicable SOW, Gartner grants to County ownership of any Deliverable originally created for and submitted to County. Gartner shall retain sole and exclusive ownership of its preexisting tools, methodologies, questionnaires, responses, and proprietary research and/or any data generated in the course of performing the consulting services, together with all intellectual property rights therein (collectively, the "Gartner Materials"). Gartner grants to County a perpetual, non-exclusive, royalty-free license to use and to disclose during the course of its internal business operations any Gartner Materials embodied in a Deliverable.

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

(c) With respect to any benchmarking Services performed by Gartner (if any), County acknowledges that (i) the contents of the Benchmarking Report (as defined in the applicable Statement of Work) and other deliverables are based upon information which is proprietary to Gartner and contained in Gartner's proprietary database, (ii) the contents of the database belong to Gartner solely, (iii) County's data will become part of the database, (iv) Gartner will code any presentation of County's data to preserve County's anonymity, and (v) the database will be used by Gartner in future consulting and benchmarking engagements.

(d) County shall retain its rights in any proprietary material that County supplies to Gartner. If County provides Gartner with materials owned or controlled by County or with use of, or access to, such materials, County grants to Gartner all rights and licenses that are necessary for Gartner to fulfill its obligations under each Statement of Work for consulting services.

2. Confidentiality. (a) The parties agree to keep confidential and not to use or disclose to any third parties any non-public business information of the other party learned or disclosed in connection with each Statement of Work, including the Gartner Materials ("Confidential Information"). The obligation of the parties with respect to the Confidential Information shall terminate with respect to any particular portion of the Confidential Information if and when: (i) it is in the public domain at the time of its communication; (ii) it is developed independently by the receiving party without use of any confidential information; (iii) it enters the public domain through no fault of the receiving party subsequent to the time of the disclosing party's communication to the receiving party; (iv) it is in the receiving party's possession free of any obligation of confidence at the time of the disclosing party's communication; (v) it is communicated by the disclosing party to a third party free of any obligation of confidence; or (vi) the receiving party has the disclosing party's written permission.

CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

Special Terms: Attachment "A"

(b) Each party shall provide notice to the other of any demand made upon it under lawful process to disclose or provide any of the other party's confidential information. The receiving party agrees to cooperate with the disclosing party, at the disclosing party's expense, if the disclosing party elects to seek reasonable protective arrangements or oppose such disclosure. Any confidential information disclosed pursuant to such lawful process shall continue to be confidential information.

3. Limitation of Liability. (a) 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 consulting services, whether or not advised of the possibility of such damages. Except for liability for personal injury or death or for damage to property caused by the negligence or willful misconduct of Gartner or its employees, Gartner's total liability arising out of this Agreement and the provision of the consulting services shall be limited to the fee paid by County under the Statement of Work under which such liability arises.

4. Indemnity. Gartner shall indemnify, defend and hold harmless the County and its employees, directors, officers, principals 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 Gartner, its personnel, or agents during the course of the performance of Services under this Agreement.

Upon notification of a claim against County alleging any Deliverable infringes a copyright, US patent or trade secret of any third party, Gartner will defend such claim at its expense and will pay any costs or damages that may be finally awarded against County. Gartner 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 Gartner; (3) County's use of a Deliverable in combination with any product or information not owned or developed by Gartner. If any Deliverable is, or in Gartner's opinion is likely to be, held to be infringing, Gartner 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.

5. Warranty. (a) Gartner warrants that the Deliverables, in the form provided to County, do not infringe any copyright, trademark, trade secret or other right of any third party.

(b) ALL SERVICES ARE PROVIDED ON AN "AS IS" BASIS. GARTNER 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

CONTRACT NO. C6315

CONTRACT FOR GOODS AND SERVICES

Special Terms: Attachment "A"

FROM SOURCES THAT GARTNER BELIEVES TO BE RELIABLE. ALL DELIVERABLES SPEAK AS OF THE DATE OF DELIVERY TO THE COUNTY.

6. Acceptance of Deliverables. All Deliverables provided by Gartner to County shall be deemed to be accepted within 15 days of receipt by County unless Gartner receives written notice of non-acceptance within 15 days after delivery. Any notice of non-acceptance must state in reasonable detail how the Deliverables did not conform to the Statement of Work and Gartner shall use its reasonable business efforts to correct any deficiencies in the Deliverables so that they conform to the Statement of Work.

7. Employee Hiring. County acknowledges that Gartner has invested substantial time and expense in recruiting, hiring, training and retaining employees. County agrees not to hire any of Gartner's employees or agents who are involved with the consulting services during the term of this Agreement and for 12 months thereafter, without Gartner's prior written consent. For purposes of this section "to hire" means to hire as an employee or otherwise to engage or retain as an independent contractor or consultant.

8. No Third-Party Beneficiaries. This Agreement is for the benefit of the parties only. None of the provisions of this Agreement are for the benefit of, or enforceable by, any third party. It is the intention of Gartner and County that no third party shall have the right to (i) rely on the consulting services provided by Gartner or (ii) seek to impose liability on Gartner as a result of the consulting services or any Deliverables furnished to County.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii, without reference to conflict of law principles.

10. Independent Contractors. The relationship of the parties is that of independent contractors. Each party, its employees and agents, shall not be deemed to be employees, agents, joint venturers or partners of the other and shall not have the authority to bind the other.

11. Force Majeure. Neither party shall be in default of any obligation under this Agreement to the extent performance of such obligation is prevented or delayed by a Force Majeure Event. For purposes of this section, Force Majeure Events include fire, flood, explosion, strike, war, insurrection, embargo, government requirement, act of civil or military authority, act of God, or any similar event, occurrence or condition which is not caused, in whole or in part, by that party, and which is beyond the reasonable control of that party. The parties shall take all reasonable action to minimize the effects of a Force Majeure Event. If a Force Majeure Event prevents or delays the performance of a party for 30 days, the other party shall have the right to terminate the affected Statement of Work upon written notice at any time before performance resumes.

Statement of Work - Maui's Human Capital Management (HCM) Replacement Project

Gartner PM/QA Support

Prepared for: County of Maui



21 June 2017
Engagement: 330041596

GARTNER CONSULTING

Jon Kashare
Sr. Managing Partner
Gartner Consulting

Gartner

ProjectNumber | Version #1 | 21 June 2017

CONFIDENTIAL AND PROPRIETARY

This presentation, including any supporting materials, is the property of Gartner and its affiliates and is for the use of the intended Gartner audience only. It is confidential, proprietary or otherwise legally protected information and should not be distributed or publicly displayed without the express written permission of Gartner. All rights reserved.

Table of Contents

- Understanding and Objectives
- Statement of Work
- Project Schedule
- Project Team Organization
- Investment Summary
- Assumptions
- Changes in Scope
- Authorization

Understanding and Objectives

Maui County is in the beginning phases of implementing a new Human Capital Management (HCM) system. The project implementation phase will begin in Q1 FY2018 with final negotiations and preparation activity underway.

After assisting the County through the planning and procurement phases of the project, the County has requested Gartner provide Project Monitoring and Quality Assurance (PM/QA) support through the implementation of the HCM solution and provide further support of the County's PMO function. The County anticipates a 24-month HCM implementation period.

Gartner's PM/QA approach is based on project management best practices, relevant Gartner Research and our Consulting team's experience providing PM/QA services for many projects similar to HCM and client organizations such as Maui County. Our approach leverages the principles of the Project Management Body Of Knowledge (PMBOK) and other best practice sources of Project management principles and methodology.

Gartner's proposed scope of work focuses on direct, ongoing interaction with the County's Project Team, key stakeholders and vendors to provide a hands on approach to supporting the project's goals and objectives. Our PM/QA team will work directly with the County's team to proactively address project risks and issues, aid in decision support and ensure the County and vendors deliver against their respective obligations, roles and responsibilities as well as help the County evolve its project management capabilities which can then be extended to other IT projects.

We have tailored our scope to align with the needs of this type of project and with consideration of the County's capacity and resources. *We have also referenced, where appropriate, ancillary project scope and resources currently engaged with the County whereby we expect to leverage personnel to assist in supporting our proposed pricing that assumes noted resource efficiencies.*

The following proposal describes Gartner's PM/QA approach, assumptions and summary costs.

Statement of Work – Scope Summary

Project Monitoring/Quality Assurance (PM/QA)

Gartner's **PM/QA** approach is designed to establish a baseline oversight framework for the HCM project and define how PM/QA will engage and support the project over the proposed 24-month period.

| | Task 1 Initiation and PM/QA Planning | Task 2 Ongoing PM/QA Oversight | Task 3 Monthly Risk Reporting | Task 4 Project Closeout and Knowledge Transfer |
|---------------------|--|---|--|--|
| | <i>Month 1</i> | <i>Month 2 – Ongoing</i> | <i>Month 2 – Ongoing</i> | <i>Week (Close - 4)</i> |
| Activities | <ul style="list-style-type: none"> Conduct project initiation meeting Identify PM/QA artifacts and County priorities Develop PM/QA artifacts (e.g., QA Report, analysis tools) Define PM/QA communication plan | <ul style="list-style-type: none"> Support bi-weekly internal project meetings and provide risk analysis Support bi-weekly vendor meetings Provide decision support and alternatives analysis Provided ad hoc subject matter expertise Review and assess vendor activity and key deliverables against contractual obligations and best practice Ad hoc project support, as needed | <ul style="list-style-type: none"> Summary reporting of progress, status of QA deliverable and key project risks Provide monthly summary QA Report to designated County stakeholders | <ul style="list-style-type: none"> Review final deliverables against contractual obligations Review project document structure, organization and communication Develop knowledge transfer recommendations Conduct lessons learned exercise Develop project closeout report and brief key stakeholders |
| Deliverables | <ul style="list-style-type: none"> Project Initiation Document (PID) Draft QA Toolset PM/QA Plan | <ul style="list-style-type: none"> Summary QA report (monthly) Issue Analysis, as required | <ul style="list-style-type: none"> Monthly PM/QA Risk Report and Executive Briefing | <ul style="list-style-type: none"> Knowledge Transfer Recommendations Lessons Learned Summary Summary Closeout Report |



Statement of Work – HCM and Adjacent Gartner Projects

Efficiency Through Coordinated Resources

Gartner's role in support of the HCM project implementation phase will provide the County with the added benefit of support for select, ad hoc project areas as they arise. The areas where Gartner will provide ad hoc support are summarized below along with Gartner's existing PM/QA engagement for the County's MAPPS project. Gartner will leverage resources across its engagements with the County as it supports HCM to maximize efficiency and provide the County with broad and agile engagement model.

| Project/Focus Area | Role | Description |
|---|-------------|--|
| MAPPS | PM/QA | Ongoing, direct involvement |
| HCM | PM/QA | Ongoing, direct involvement |
| CAD/RMS | Targeted | Strategic support, by priority, by County request |
| Capabilities Development <ul style="list-style-type: none">• PMO• Governance• OCM | Ad Hoc | Support to grow and evolve core competencies; based on capacity and availability |
| Deeper PM/QA | Ad Hoc | Targeted support above current PM/QA support, by priority, by County request |

Statement of Work Detail

Project Monitoring/Quality Assurance (PM/QA) – Task 1

Task 1: Initiation and PM/QA Planning

Overview

Objective:

- Initiate project support, confirm assumptions and work plan and establish effective Project Team communication
- Establish PM/QA processes and documentation to ensure ongoing PM/QA role is structured, consistent and meets the County's project objectives

Activities Performed by Gartner:

- Conduct project initiation meeting
- Identify PM/QA artifacts and County priorities
- Develop PM/QA artifacts (e.g., QA Report, analysis tools)
- Define PM/QA communication plan

County Responsibilities:

- Schedule and participate in initiation meeting
- Confirm and accept PM/QA plan
- Provide all relevant background material and project information

Deliverable(s) and Time Frame

Deliverable(s):

- Project Initiation Document (PID)
- Draft QA Toolset
- PM/QA Plan

Timeframe:

- Month 1

Assumptions:

- 1 x 1 hour project initiation meeting conducted by teleconference
- Up to 4 x 1 hour interviews conducted by teleconference with County project team and key stakeholders representatives
- 1 x 2 hour PM/QA artifact prioritization workshop by teleconference
- 1 x 2 hour final PM/QA Plan review by teleconference
- All relevant project documentation will be provided NLT the end of Week 1

Statement of Work Detail

Project Monitoring/Quality Assurance (PM/QA) – Task 2

Task 2: Ongoing PM/QA Oversight

Overview

Objective:

- Provide objective, independent assessment of and guidance for the Program through delivery based on best practices program management and aligned Subject Matter Expertise (SME)

Activities Performed by Gartner:

- Support bi-weekly internal project meetings and provide risk analysis
- Support bi-weekly vendor meetings
- Provide decision support and alternatives analysis
- Provided ad hoc subject matter expertise
- Review and assess vendor activity and key deliverables against contractual obligations and best practice
- Ad hoc support as agreed upon between the County and Gartner; may include: CAD and RMS strategic support, capabilities development (for PMO, Governance and OCM) and deeper PM/QA support if necessary

County Responsibilities:

- Provide access to all relevant project meetings, artifacts, vendors and vendor deliverables
- Provide access to vendor contract and key stakeholders as appropriate

Deliverable(s) and Time Frame

Deliverable(s):

- Summary QA report (monthly)
- Issue Analysis, as needed

Timeframe:

- Monthly - ongoing (beginning month 2)

Assumptions:

- Support 1 x 1 hour project meeting bi-weekly by teleconference
- Support up to 2 x 1 hour vendor project meetings bi-weekly by teleconference
- Support 1 x 1 hour QA review monthly by teleconference
- Support up to 3 hours/week of deliverable review (structural review only) – feedback provided online and/or via monthly QA meeting
- Support up to 6 x 1 hours per week of Subject Matter Expert support
- PM/QA tools will not be formalized until week 4
- Ad hoc support will be determined by collaborative discussion with the County on scope, level of effort and deliverables, as needed

Statement of Work Detail

Project Monitoring/Quality Assurance (PM/QA) – Task 3

Task 3: Monthly Risk Reporting

Overview

Objective:

- Provide ongoing independent perspective on project progress, key risks and recommendations to County Project Team and stakeholders
- Provide ongoing summary of PM/QA activities

Activities Performed by Gartner:

- Summary reporting of progress, status of QA deliverable and key project risks
- Provide monthly summary QA Report to designated County stakeholders

County Responsibilities:

- Provide access to all relevant vendor deliverables and processes
- Coordinate County stakeholders as required
- Schedule and participate in monthly PM/QA briefings

Deliverable(s) and Time Frame

Deliverable(s):

- Monthly PM/QA Risk Report and Exec Briefing

Timeframe:

- Monthly: ongoing (beginning Month 2)

Assumptions:

- 1 x 2 hour Monthly QA briefing conducted via teleconference (onsite quarterly)
- Monthly Risk Report will be delivered in PowerPoint format
- Baseline risk criteria and deliverable framework will be established within the first month and assumptions of Task 1
- Monthly PM/QA report content, risk categories have been confirmed during the PM/QA baseline (Task 1)

Statement of Work Detail

Project Monitoring/Quality Assurance (PM/QA) – Task 4

Task 4: Project Closeout and Knowledge Transfer

Overview

Objective:

- Provide a structured, transparent process to ensure County team receives all required documentation and adopts defined project responsibilities

Activities Performed by Gartner:

- Review final deliverables against contractual obligations
- Review project document structure, organization and communication
- Develop knowledge transfer recommendations
- Conduct lessons learned exercise
- Develop project closeout report and brief key stakeholders

County Responsibilities:

- Schedule and participate in closeout interviews
- Schedule and participate in knowledge transfer workshops
- Schedule and participate in closeout briefing

Deliverable(s) and Time Frame

Deliverable(s):

- Knowledge Transfer Recommendations
- Lessons Learned Summary
- Summary Closeout Report

Timeframe:

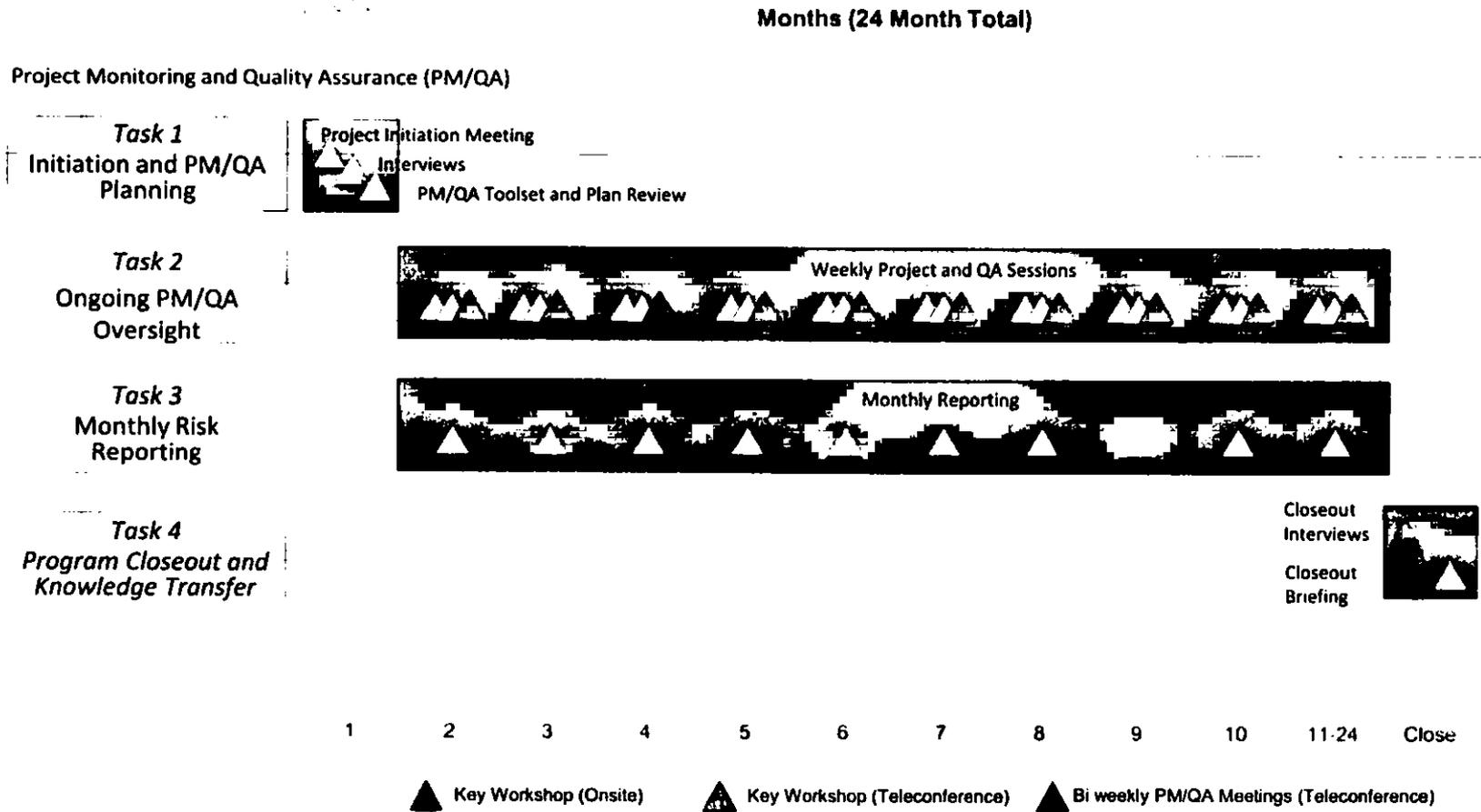
- 4 Weeks – Week Final (-4)

Assumptions:

- 6 x 1 hour closeout interviews conducted onsite
- 4 x 2 hour knowledge transfer workshops conducted via teleconference
- 1 x 2 hour final Closeout Report briefing; inclusive of Lessons Learned Summary by teleconference

Project Schedule – HCM

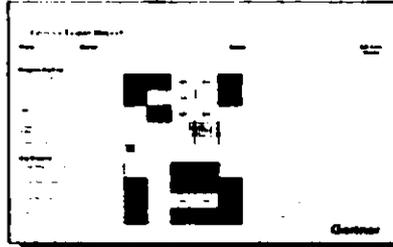
Project Monitoring/Quality Assurance (PM/QA)



Sample Deliverables Example PM/QA Artifacts

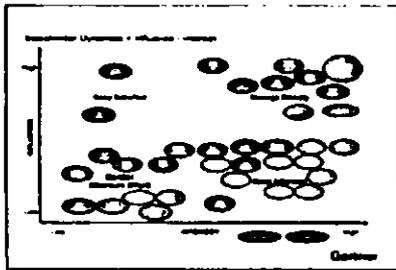


Governance Development

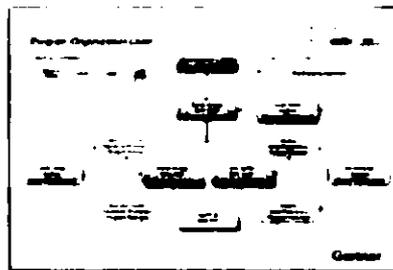


Project Monitoring and Reporting

Example PM/QA Control Processes and Tools that may be developed through Gartner engagements



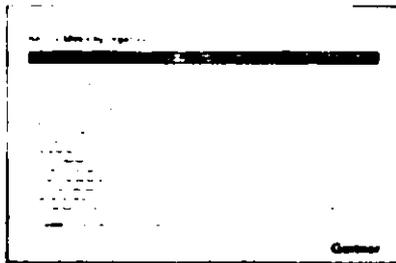
Stakeholder Analysis



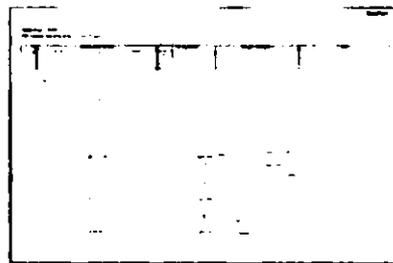
Program Org Design

| Communication Type | Project Lead | Start Date | End Date |
|--------------------------|--------------|------------|----------|
| Project Kick-off Meeting | | | |
| Project Status Report | | | |
| Project Meeting | | | |
| Project Review | | | |
| Project Close | | | |
| Project Handover | | | |
| Project Review | | | |

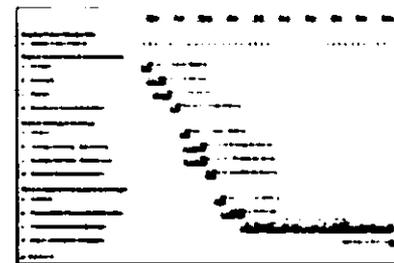
Communications Planning



Roles and Responsibilities (RACI-V)



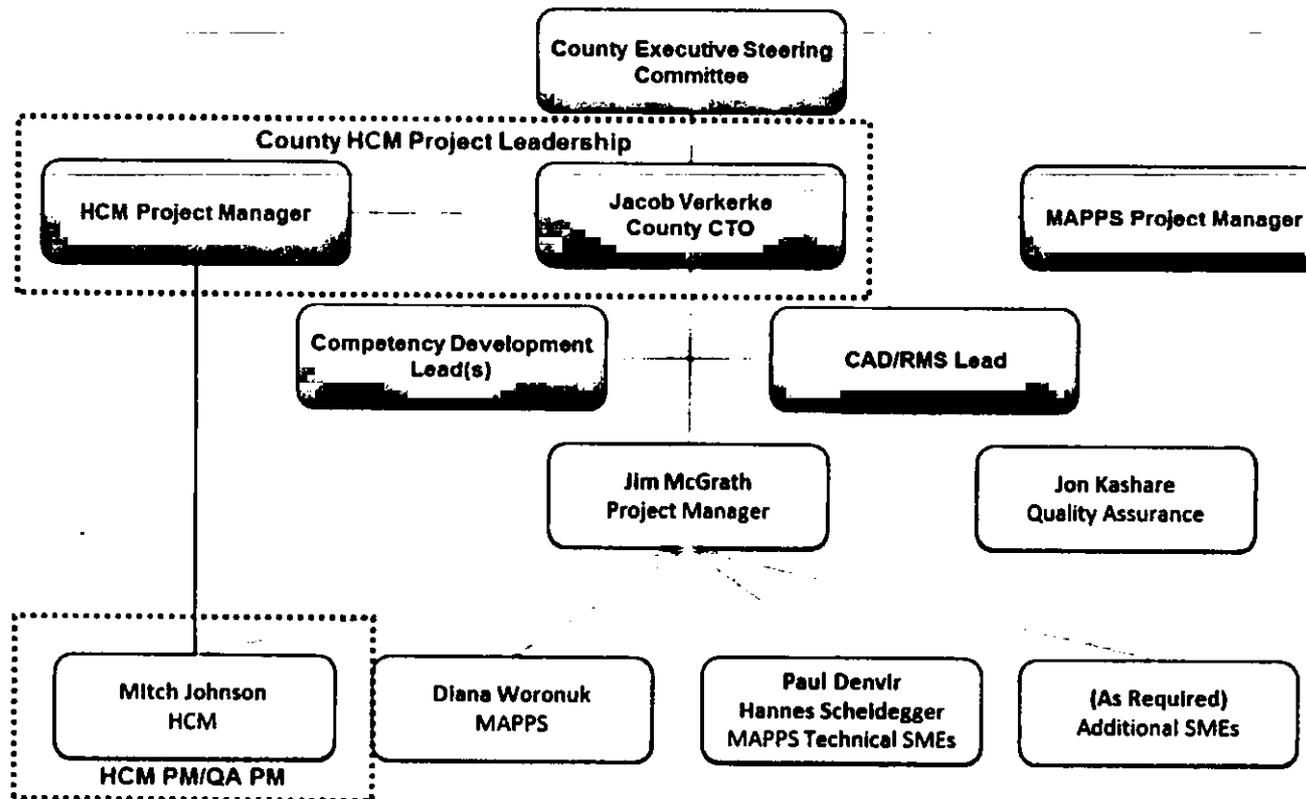
Risks and Issues Management



Schedule and Dependencies Management

Project Organization

Gartner's HCM team is centered on Mitch Johnson, who led Gartner's procurement support engagement to maximize continuity and project understanding. Mr. Johnson will leverage additional Gartner SMEs and resources currently engaged in County projects to support delivery efficiency. Additional, adjacent team members are noted in the graphic below.



Investment Summary

Gartner proposes to complete the scope defined in this proposal for the following costs on a **Fixed Fee** basis inclusive of expenses and applicable taxes):

HCM PM/QA

Monthly @ \$18,272/month (24 months)

\$438,528.00

State Tax

\$ 17,541.12

TOTAL \$456,069.12*

Invoicing

Gartner will invoice for PM/QA monthly

* Total costs include 4% State tax

Assumptions

The deliverables, schedule and pricing in this proposal are based on the following assumptions.

Maui County (County) Participation

- The County will designate a project manager to act as the primary point of contact for this project.
- The County project manager will be expected to work closely with the Gartner employees as needed and will: (a) approve project priorities, detailed task plans and schedules; (b) facilitate the scheduling of Gartner interviews with appropriate client personnel; (c) notify Gartner in writing of any project or performance issues; (d) assist in resolving project issues that may arise; and (e) coordinate deliverable distribution, review and feedback in a timely basis.
- The work effort described in this proposal assumes that County personnel are available to actively participate in interviews and deliverable/report review sessions as scheduled. In the event that County personnel are not available, a change of scope may be necessary.
- The County will make every effort to review and approve documents within 5 business days.
- The County is to schedule its resources for project activities and provide meeting facilities as necessary.

Interviews, Document Collection, and Analysis

- Gartner assumes that the County will provide requested relevant documentation prior to in scope interviews, a document request will be submitted before the project start date for any documentation that Gartner does not currently have. The final document list will be agreed upon between Gartner and the County in conjunction with preparation activities for Task 1.
- Gartner also assumes that the interview schedule will be confirmed NLT one week prior to any required interviews. We understand that individual changes may occur and will be worked out to the mutual satisfaction of both parties.
- Maui County will provide working facilities for activities scheduled to occur at the County that are commensurate with the tasks described in this scope of work.
- All deliverables will be developed using Microsoft products (specifically PowerPoint but also Excel and Word where appropriate). The Quarterly Executive and Monthly Reports will be in PowerPoint format.
- Any requests for additional information (beyond the details described in the tasks above) that are made by the County may be considered a change in scope for this engagement and will be handled accordingly (see Changes to Scope section of this proposal).

Assumptions

Other Key Assumptions

With the exception of onsite activities defined by the statement of work, Gartner work will be performed at Gartner locations, unless mutually agreed to by both parties.

Maui County will provide working facilities for activities scheduled to occur at the County that are commensurate with the tasks described in this scope of work.

All deliverables will be developed using Microsoft products (specifically PowerPoint but also Excel and Word where appropriate). The Quarterly Executive and Monthly Reports will be in PowerPoint format.

Any requests for additional information (beyond the details described in the tasks above) that are made by the County may be considered a change in scope for this engagement and will be handled accordingly (see Changes to Scope section of this proposal).

Changes in Scope

All County requests for changes to the SOW must be in writing and must set forth with specificity the requested changes. As soon as practicable, Gartner shall advise the County of the cost and schedule implications of the requested changes and any other necessary details to allow both parties to decide whether to proceed with the requested changes. The parties shall agree in writing upon any requested changes prior to Gartner commencing work.

As used herein, "changes" are defined as work activities or work products not originally planned for or specifically defined by this SOW. By way of example and not limitation, changes include the following:

- Any activities not specifically set forth in this SOW
- Providing or developing any deliverables not specifically set forth in this SOW
- Any development of non-critical functional or technical requirements
- Any change in the respective responsibilities of Gartner and the County set forth in this SOW, including any reallocation or any changes in engagement or project manager staffing
- Any rework of completed activities or accepted deliverables
- Any investigative work to determine the cost or other impact of changes requested by the County
- Any additional work caused by a change in the assumptions set forth in this SOW
- Any delays in deliverable caused by a modification to the acceptance criteria set forth in this SOW
- Any changes requiring additional research analyst time or changes to research analyst resources

Validity Period and Further Assurances

The Proposal, including the Statement of Work, is valid for 30 days from 21 June 2017.

Gartner Research and Consulting recommendations are produced independently by the Company's analysts and consultants, respectively, without the influence, review or approval of outside investors, shareholders or directors. For further information on the independence and integrity of Gartner Research, see "Guiding Principles on Independence and Objectivity" on our website, gartner.com or contact the Office of the Ombudsman at ombudsman@gartner.com or +1 203 316 3334.

Authorization

This Proposal is submitted under the terms and conditions of the Master Services Consulting Agreement between Maui County, Hawaii and Gartner, Inc. Contract Number C5174 dated December 31, 2012. When the period of performance of the master agreement is extended and signed by Gartner and Maui County, this SOW is an attachment to and governed by the Master Services Consulting Agreement between the parties. These two documents will set forth the relationship between the parties for this engagement.

This Statement of Work may be modified at any time provided such changes are agreed to by the parties in writing.

SUBMITTED ON BEHALF OF GARTNER, INC.

AGREED ON BEHALF OF MAUI COUNTY

SIGNATURE

Jon Kashare, Sr. Managing Partner

PRINT NAME AND TITLE

June 21, 2017

DATE

SIGNATURE

PRINT NAME AND TITLE

DATE

PO NUMBER (If applicable)

Contacts

Gartner Contact

Jon Kashare
Sr. Managing Partner
Gartner Consulting
Telephone: 917 882 3274
jonathan.kashare@gartner.com

Gartner Contact

Mitch Johnson
Sr. Director
Gartner Consulting
Telephone: 303 324 5920
Mitchell.johnson@gartner.com

Gartner Contact

Jim McGrath
Vice President
Gartner Consulting
Telephone: 917 767 9207
jim.mcgrath@gartner.com