

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM: 3.4
(ID # 17505)

MEETING DATE:

Tuesday, April 12, 2022

FROM : FACILITIES MANAGEMENT:

SUBJECT: FACILITIES MANAGEMENT: Ratification and Approval of the Subscription Agreement with EnergyCAP, LLC for Maintenance of the EnergyCAP Utility Bill Management System Without Seeking Competitive bids for the Period of December 1, 2021 to November 30, 2026, All Districts. [Total Cost \$422,950, 100% Facilities Management-Energy Management Budget]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Ratify and approve the Agreement with EnergyCAP, LLC, for maintenance of the EnergyCAP Utility Bill Management System without seeking competitive bids for a total aggregate amount of \$422,950 for the period of December 1, 2021 to November 30, 2026;
2. Authorize the current Chair of the Board to sign the Agreement on behalf of the County;
3. Authorize the Purchasing Agent to issue annual purchase orders to EnergyCAP, LLC for a total aggregate amount of \$422,950 for the 5-year maintenance renewal;
4. Authorize the Director of Facilities Management, or her designee, to administer and delegate management authority for the maintenance agreement with EnergyCAP, LLC in accordance with applicable Board policies;
5. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, based on the availability of fiscal funding and as approved by County Counsel to sign amendments that exercise the options of the Agreement including modifications of the statement of work that stay within the intent of the Agreement; and sign amendments to the compensation provisions that do not exceed the sum total of ten percent (10%) annually; and
6. Direct the Clerk of the Board to return (3) copies of the executed Agreement to Department of Facilities Management, Purchasing.

ACTION:Policy

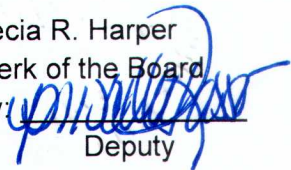

Rose Salgado, Director of Facilities Management 3/10/2022


Aaron Gettis, Deputy County Counsel 3/17/2022

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Perez, seconded by Supervisor Jeffries and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: April 12, 2022
xc: FM

Kecia R. Harper
Clerk of the Board
By: 
Deputy

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FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 47,959	\$ 75,726	\$ 422,950	\$ 0
NET COUNTY COST	\$ 47,959	\$ 75,726	\$ 422,950	\$ 0
SOURCE OF FUNDS: Facilities Management – Energy Management Budget			Budget Adjustment: NO	
			For Fiscal Year: 21/22 – 26/27	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

On February 24, 2009, Item 3.25, the Board of Supervisors approved the purchase of EnergyCAP, a utility bill management system. Since then, the partnership between the County and EnergyCAP has yielded many benefits and savings. Over the course of 11 years, many new efficiencies have been realized through the implementation of various EnergyCAP modules. In an average month, Facilities Management receives and processes over 1400 utility invoices from 93 vendors. The EnergyCAP Utility Bill Management System has provided the County:

1. Automated utility bill uploads utilizing BillCAPture
2. Automated reformatting and upload of utility bills into PeopleSoft
3. Enrollment in electronic billing from four high volume utility vendors (EDI – Electronic Data Interchange)
4. Automated monthly upload of utility customer chargebacks to PeopleSoft

These process improvements have reduced the cost of manual data entry by staff, improved the accuracy of system data, increased expeditious processing of vendor payments, and provided real time cost and usage data for analytical purposes. It has allowed increases in the volume of invoices without the necessity to add additional Accounts Payable staff. The Bill Audits in EnergyCAP have resulted in the identification and resolution of over \$517,540 erroneous vendor charges. EnergyCAP has been a critical component in the management of the County's building portfolio with providing essential cost and usage data for maintenance and energy efficiency upgrades.

Continued success of the EnergyCAP system will require the renewal of the software maintenance agreement. This will offer County personnel continued access to program experts, which is vital in resolving testing, performance, exploring features and requesting modifications and new functionality as needed. EnergyCAP continues to create more features in the system that can lead to cost savings and greater processing efficiencies.

Impact on Residents and Businesses

The ability of the Department of Facilities Management-Energy Division to timely and accurately process utility invoices will allow the County to achieve savings and process efficiencies that will

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result in reduced overall utility costs for the County. Prompt payment of utility invoices also ensures the continuation of critical services for our County staff and constituents.

Contract History and Price Reasonableness

On January 9, 2009 (Item# 3.25) the Department of Facilities Management was granted permission by the Board of Supervisors to utilize Orange County's bid analysis and award process and move forward with the purchase of the EnergyCAP software system for Riverside County through the process known as piggybacking, which was awarded through a publicized competitive bid process. EnergyCAP, LLC provided the same pricing and terms as awarded through the Orange County Agreement.

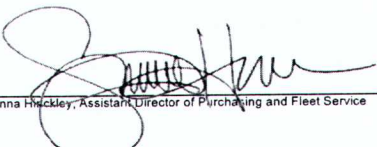
Piggybacking off other competitively bid governmental procurements met the County's requirement of seeking competition and assists with expediting the implementation/acquisition of the needed services.

Through the continued success and partnership between the county and EnergyCap, LLC., on December 6, 2016 (Item# 3.20) the Board approved the additional agreement with EnergyCAP, LLC, for maintenance of the EnergyCAP Utility Bill Management System without seeking competitive bids through November 30, 2021.

The Department of Facilities Management is requesting the approval of the second sole source with EnergyCAP (Purchasing Approved SSJ# 154975749), as they have proprietary ownership of the software and computer code. No other supplier is authorized to alter the EnergyCAP system computer code, install software upgrades, or maintain the system outside of EnergyCAP, LLC. Therefore, a market search for alternate maintenance and service support providers is not possible. The additional components requested (server hosting and Bill CAPture), are exclusive system enhancements rendered only by EnergyCAP, LLC. Through contract negotiation the department was able to maintain the previously offered Friends and Family pricing structure instead of transitioning into the new GS2 tiered pricing structure which went into effect in August of 2021. Through this negotiation the new contract was able to save the county on average \$20,000 per year over the next 5 years.

Attachments:

- EnergyCAP Subscription Agreement
- Sole Source SSJ# 154975749


Suzanna Hackley, Assistant Director of Purchasing and Fleet Service

3/17/2022


Meghan Hahn, Senior Management Analyst

3/31/2022



County of Riverside

EnergyCAP Subscription Agreement

EnergyCAP, LLC

360 Discovery Drive
Boalsburg, PA 16827

T: 877-327-3702
F: 719-623-0577

ENERGYCAP®

EnergyCAP® Subscription Agreement

This Subscription Agreement (this "Agreement"), dated as of October 28, 2021 ("Effective Date"), is by and between EnergyCAP, LLC, a Delaware limited liability company ("ENC"), and the County of Riverside, a political subdivision of the State of California ("Licensee"). ENC and Licensee are referred to individually as a "Party" and collectively as the "Parties."

In consideration of the mutual covenants and agreements set forth herein, the Parties agree as follows:

1. DEFINITIONS.

- 1.1. "Applicable Law" means any statute, ordinance, judicial decision, executive order, directive or regulation having the force and effect of law in each case to the extent applicable to a Party, the Services or, in connection with this Agreement.
- 1.2. "Defect" has the meaning assigned in Section 6.1.2 below.
- 1.3. "Documentation" means any explanatory materials, such as user manuals, training manuals, specifications regarding the implementation and use of the Subscription Services (electronic or written) that is provided by ENC regarding the Subscription Services, as may be updated from time to time.
- 1.4. "Fees" means any fees due for the Subscription Services set forth on the applicable Order.
- 1.5. "Force Majeure Event" means any event or circumstance that is beyond the control of an affected Party and that prevents the performance of any of the affected Party's obligations under this Agreement or prevents Licensee from using the benefits of the Subscription Services including acts of God, acts of war, riots, acts of terror and other acts or omissions of third parties such as interruptions, delays, or malfunctions of service by third-party service providers; provided, however, "Force Majeure Event" expressly excludes any event that ENC could reasonably have prevented by testing, reasonable work around, other exercise of diligence or the use of technology common and prevalent in the industry.
- 1.6. "Initial Term" has the meaning assigned in Section 3.1.
- 1.7. "Licensee Data" means all data uploaded into the Subscriptions Services or otherwise provided to ENC for purposes of the providing the Subscription Services.
- 1.8. "Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.
- 1.9. "Meter" means a point of service as itemized on a vendor bill and tracked in the Services as a meter/logical device. A Meter may represent points of service for which no physical meter exists, such as sewer, fire lines, outdoor lighting, fuel oil tanks, storm drainage, internet service provider and telephone service, etc. Meter records that are used in split, calculated, and virtual bill processes for chargeback, cost allocation, and distribution purposes are included in the total Meter count for purposes of this Agreement.
- 1.10. "Order" means any mutually agreed document referencing this Agreement that defines the specific Subscription Services purchased by Licensee pursuant to this Agreement.
- 1.11. "Professional Services" means the consulting, development, implementation, training and other services described in a mutually agreed statement of work (each, a "SOW") executed by the Parties.
- 1.12. "Renewal Term" has the meaning assigned in Section 3.1.
- 1.13. "Subscription Services" means the online, Web-based applications and platform provided by ENC as specifically described on the applicable Order.
- 1.14. "Support Services" means the services described in Section 6 below.
- 1.15. "Term" means the Initial Term and each Renewal Term, collectively.
- 1.16. "Users" means individuals who are authorized by Licensee to use the Subscription Services and who have been supplied user identifications and passwords by Licensee (or by ENC at Licensee's request). Users may include Licensee's employees, consultants, contractors and agents.

2. LICENSE GRANT; RESTRICTIONS.

- 2.1. During the Term, ENC hereby grants Licensee a right to access and use the Subscription Services in accordance with the Documentation, this Agreement, the Bill CAPture services in Exhibit 2 and the limitations set forth in the applicable Order.

2.1.1. The Fees listed in the applicable Order are based upon the Licensee's Meter inventory and Licensee's current software module utilization needs as of the Effective Date. Licensee is permitted to track the number of Meters stated in the applicable Order using the Subscription Services. If Licensee requires use of the Subscription Services for Meters in excess of the number specified in the applicable Order, Licensee will pay the fees set forth in such Order or provided in a Quotation upon request by Licensee.

2.1.2. Licensee may authorize its Users to access and use the Subscription Services. Licensee is responsible for (i) the confidentiality of all usernames and passwords and all activities that occur under such usernames; and (ii) each User's compliance with the terms of this Agreement. Licensee shall promptly notify ENC of any suspected unauthorized access to the Subscription Services at support@energycap.com. Licensee and its authorized Users are only permitted to track data from Meters provided by Licensee.

2.1.1. Licensee may (i) include its company name or logo in the Subscription Services interface and reports; and/or (ii) create its own branded login screen; however, the EnergyCAP logo and other identifiable EnergyCAP content may be present throughout the application and in help content.

2.1.2. Licensee is responsible for the telecommunications, broadband and computer equipment and services needed to access and use Subscription Services.

2.2. Maximum payments by COUNTY to CONTRACTOR shall not exceed FOUR HUNDRED FIVE THOUSAND FOUR HUNDRED TWENTY SEVEN (\$405,427) including all expense for the scope of the Subscription Services described on the initial Order as of the Effective Date. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products. Unless otherwise specifically stated in Exhibit 3 COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement."

2.3 Licensee will not (i) alter, modify, or adapt the Subscription Services or Documentation, in whole or in part, in any way; (ii) disassemble, decompile, reverse engineer, translate or create derivative works of the Subscription Services; or (iii) transfer, distribute, rent, sub-license, or lease the Subscription Services or the Documentation; (iv) use any external program to alter, edit or append records to the data files without using ENC-provided external tools and interfaces; (v) remove, alter or obscure any product identification, copyright or proprietary notices; (vi) upload or provide any information or materials that are defamatory, offensive, abusive, obscene, of menacing character, or that any third party's violate privacy or intellectual property rights; (vii) use the Subscription Services to threaten, defame, bully, harass, or harm persons or their property; (viii) send, store or distribute any Malicious Code with the intent or effect of damaging, destroying, disrupting, monitoring or otherwise impairing ENC's or any third party's network, computer system, or other equipment, or any third party data contained therein; or (ix) access the Subscription Services or use the Documentation in order to build a similar or competitive product.

3. TERM.

3.1. All Subscription Services will be provided beginning on the effective date of the applicable Order (the "Order Effective Date") and continuing the initial term identified on the applicable Order (the "Initial Term") unless earlier terminated in accordance with this Agreement. Upon completion of the Initial Term, the term for all Subscription Services may be renewed subject to the mutual agreement of the parties.

3.2. A Party may terminate this Agreement and/or any then current Order for cause: (i) upon thirty (30) days written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period or such longer period as may be mutually agreed in writing; or (ii) immediately if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

3.3. Upon any termination for cause by Licensee, ENC shall refund any prepaid Fees covering the remainder of the then current Term. Upon any termination for cause by ENC, Licensee shall pay any all Fees due and to become due during the Term of any then current Order(s). In no event shall any termination relieve Licensee of its obligation to pay any Fees due for Services provided prior to the effective date of termination.

3.4. During the period of ten (10) days after the effective date of termination of the applicable Order, Licensee may retrieve Licensee Data via existing reports, out-of-the box export capabilities or from screen captures. After such 10-day period, ENC shall have no obligation to provide any Licensee Data to Licensee or

otherwise maintain the Licensee Data and may thereafter, unless legally prohibited, delete all Licensee Data in its systems or otherwise in ENC's possession or under ENC's control.

- 3.5. ENC may suspend Licensee's access to or use of any of the Subscription Services without the notice if ENC reasonably believes that such suspension is necessary to preserve the security, integrity, or accessibility of the Subscription Services. If ENC determines it is necessary to temporarily suspend Licensee's use of the Subscription Services, then ENC will use all reasonable efforts to (a) provide Licensee with reasonable advance notice of the need for any such suspension, and at least 5 days for Licensee to cure any breach that is the cause for such suspension, and (b) at Licensee's request, meet with Licensee to discuss potential alternatives to such suspension. ENC will ensure that any suspension made pursuant to this section will only be in effect for as long as necessary to address the issues giving rise to the suspension and, to the extent possible, will be limited only to the affected portions of the Subscription Services.
- 3.6. Surviving Provisions. Section 3.4, this Section 3.6, Section 4.2, Sections 7 through 11 and Section 14 shall survive any termination or expiration of this Agreement.

4. WARRANTIES; DISCLAIMERS.

- 4.1. ENC warrants that during the Term the Subscription Services, ENC will perform materially in accordance with the Documentation and the functionality of the Subscription Services will not be materially decreased. In the event of any breach of the foregoing warranty, ENC will use commercially reasonable efforts to correct the reported non-conformity and/or breach, at no charge to Licensee, or if ENC is unable to do so within a reasonable period, not to exceed thirty (30) days, Licensee may terminate the applicable Order, and Licensee will receive a pro-rata refund of any unearned Fees, based on the date Licensee reported the non-conformance, that Licensee has pre-paid for the Subscription Services.
- 4.2. **Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS, THE SUBSCRIPTION SERVICES ARE PROVIDED AS IS, WITHOUT WARRANTY OF ANY KIND. ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED. SUPPLIER DOES NOT WARRANT THAT THE SUBSCRIPTION SERVICES WILL RUN WITHOUT ERROR OR BE PROBLEM-FREE.

5. HOSTING SERVICES; SECURITY; PROFESSIONAL SERVICES.

- 5.1. ENC will make the Subscription Services available 99% of the time determined on a quarterly basis during the Term except for: (a) planned downtime (of which ENC will provide at least 24 hours' prior notice which notice will be provided via the Subscription Services and be scheduled to the extent practicable during the weekend hours from 6:00 p.m. Eastern time Friday to 6:00 a.m. Eastern time Monday), or (b) any unavailability caused by a Force Majeure Event. If the Subscription Services do not meet the foregoing availability commitment, Licensee shall be entitled to a credit of \$100 per each 0.1% below 99% for that quarter.
- 5.2. ENC will implement and maintain administrative, physical, and technical safeguards designed to ensure that the Subscription Services meet then-current and relevant industry standards relating to the privacy, security, confidentiality, integrity, and availability of Licensee Data, including by maintaining a written information security program that includes applicable policies, procedures, training, and technology controls designed to protect Licensee Data from unauthorized access, use, disclosure, alteration, or destruction. ENC will only use and/or process Licensee Data in accordance with this Agreement and for purposes of providing the Services.
- 5.3. ENC will promptly (and in any event within forty-eight (48) hours) notify Licensee in the event of the occurrence of any unauthorized access to Licensee Data (a "Data Privacy Breach"). ENC will provide as many details as known at that time (and regularly update Licensee thereafter in writing or by email followed by a written notification) setting out in reasonable detail, without limitation, the nature of the information compromised, threatened, or potentially compromised, the specific information compromised or potentially compromised and of all events which may adversely affect ENC's ability to provide the Subscription Services. ENC further agrees to provide reasonable assistance and cooperation requested by Licensee in the furtherance of any correction, remediation, or investigation of any Data Privacy Breach.
- 5.4. ENC grants to Licensee a limited, nonexclusive, nontransferable, non-sublicensable, worldwide, license during the Subscription Term to use and make calls to the API to develop, implement and distribute Licensee-owned applications solely for use by Licensee and its End Users in connection with the Subscription Services. ENC may modify, amend, change, or deprecate all or part of any API in its

reasonable discretion at any time (an “API Modification”). ENC shall use commercially reasonable efforts to notify Licensee of any such actions as soon as reasonably practical. Licensee shall, within thirty (30) days from the date of first notice of any API Modification(s) (or such shorter period of time specified in the notice of the API Modification(s)) (the “Conformance Period”) comply with such modification(s) by (i) implementing and using the most current version of the API, (ii) making any changes to Licensee’s application using the API that may be required as a result of such API Modification, (iii) using commercially reasonable efforts to stop distribution of all prior versions of Licensee applications using the API and (iv) using commercially reasonable efforts to upgrade all prior versions of Licensee’s applications using the API then in use to the most recent version. Licensee acknowledges that an API Modification may have a material adverse effect on Licensee’s applications using the API, including causing such applications to not operate as designed. ENC shall have no liability of any kind to Licensee or any User with respect to such API Modifications or any adverse effects resulting from the use or failure to use such API Modifications. ENC reserves the right to monitor and enforce, within reason, rate-limiting and throttling of API calls.

5.5. Hosting services include the ability to store bill images and file attachments for up to five (5) Gigabytes of storage or at the storage limits set forth in the applicable Order if greater.

5.6. ENC will provide Professional Services in accordance with the terms set forth on Exhibit 1 to this Agreement.

6. SUPPORT SERVICES.

6.1. During the Term:

6.1.1. ENC will provide (i) all enhancements and updates to the Subscription Services that are not separately marketed by ENC and are made available by ENC to its customers generally during the Term to Licensee. ENC will use reasonable efforts to notify Licensee at least two weeks in advance of all major enhancements which require planned downtime. Release notes will be provided and made available to Licensee at the same time and in the same format at ENC provides to its customers generally.; (ii) Support Services for the Subscription Services such that the Subscription Services perform substantially in accordance with Documentation;

6.1.2. ENC will use commercially reasonable efforts to correct or replace Subscription Services and/or provide Support Services to remedy any failure of the Subscription Services to perform substantially in accordance with Documentation (a “Defect”). SUCH CORRECTION, REPLACEMENT, OR SUPPORT SERVICES SHALL BE LICENSEE’S SOLE AND EXCLUSIVE REMEDY, AND ENC SHALL HAVE NO OTHER LIABILITY, FOR DEFECTS.

6.1.3. In the event (i) any Defect is determined by ENC to be attributable to Licensee’s acts or omissions or to Licensee’s software, hardware, modifications or system changes, or (ii) Licensee requests assistance in connection with additional training, correction of database errors and/or data conversion, ENC shall provide a quotation to Licensee for additional Professional Services at its then current rates for the Professional Services.

6.1.4. Telephone support will be provided between the hours of 8:00 AM-5:00 PM ET Monday through Friday except federal holidays. Licensee may access this support via the toll-free support hotline at 877-327-3702.

6.1.5. Licensee may call or submit support tickets via the online support ticketing system only to report a Defect, but not a “how do I?” operating or training question.

6.1.6. After-Hours Support is available via the support ticket system at <http://Support.EnergyCAP.com>, and online help manuals accessible from within the Subscription Services.

6.1.7. ENC will use reasonable efforts to respond to all support requests in accordance with the times set forth in the table below. Support requests are prioritized by Licensee at time of submission into one of three categories, and ENC will make a reasonable effort to resolve the request within the specified time:

Service Level	Response	Resolution	Definition
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Emergency	1 business hour	1 business day	The Subscription Services is offline or unavailable, data has been corrupted or lost and must be restored from a backup, and/or a business-critical feature/function is not available.
Urgent	2 business hours	2 business days	Important features of the Subscription Services are unavailable with no acceptable workaround; however, operations can continue in a restricted fashion.
Routine	8 business hours	5 business days	Inquiry regarding a routine technical issue; information requested on application capabilities, navigation, installation or configuration; bug affecting a small number of users. Acceptable workaround available.

- 6.2. Licensee is responsible for (a) any services relating to software or hardware not provided by ENC, including, without limitation, any programming performed by Licensee; (b) training of current or new Licensee employees (technical support requests may not be used as a substitute for software training); and (c) correction of user errors and database errors; (d) supporting software and hardware such as operating systems, browsers, and client workstations.
- 6.3. Support Services include support for all ENC developed interfaces, reformatters, custom reports, and other deliverables as part of the applicable Order for purposes of ensuring that all custom-developed ENC deliverables function as documented after upgrades are released. Except as set forth in this clause, Support Services do not revisions to deliverables. If revisions are requested, then ENC shall provide a quotation to Licensee for Professional Services at ENC's then-current rates for such services.

7. FEES, PAYMENT TERMS.

- 7.1. ENC agrees to invoice Licensee and Licensee shall pay for the Subscription Services in accordance with the terms set forth in the applicable Order. Payment is due within 30 days from the date of the applicable invoice unless otherwise set forth in the applicable Order.
- 7.2. Licensee shall be responsible for all taxes imposed by any governmental agency with respect to the Subscription Services and related services rendered by ENC other than taxes based on ENC's income or property.
- 7.3. If any undisputed amount owed hereunder is more than 30 days past due, and ENC promptly provided written notice of the amount past due, ENC may impose a late payment fee not exceeding the lesser of 1% per month and the maximum amount permitted by law on the undisputed amount past due.

8. PROPRIETARY RIGHTS.

- 8.1. Reservation of Rights. The Subscription Services and the Documentation, and any and all enhancements, modifications, improvements or derivative works thereto, whether or not created or developed in conjunction with Licensee (collectively, the "Enhancements") are and will remain the sole and exclusive property of ENC. Except for the rights granted pursuant to this Agreement, ENC retains all copyrights,

patents, trade secrets, trademarks, and all other intellectual property interests in and to the Subscription Services and the Enhancements.

- 8.2. Licensee Data. As between Licensee and ENC, Licensee exclusively owns all rights, title and interest in and to all of Licensee Data and is solely responsible for the accuracy, quality, integrity and legality of Licensee Data and of the means by which Licensee acquired the Licensee Data. Licensee grants ENC and its third-party providers a non-exclusive, worldwide, royalty-free and fully paid license to use the Licensee Data solely as necessary to perform the Subscription Services.
- 8.3. Feedback. The parties acknowledge that the Subscription Services may collect and aggregate certain de-identified information and data regarding the use and operation of the Subscription Services by Licensee. Licensee agrees that ENC may utilize such information and data as well as any Licensee suggestions, enhancement requests or other recommendations (collectively, "Feedback") for any lawful business purpose, without a duty of accounting to Licensee so long as such Feedback does not identify Licensee or Licensee Data. No compensation shall be paid with respect to ENC's use of Feedback.
- 8.4. Licensee grants ENC a non-exclusive, royalty-free license to Use De-identified Licensee data in business intelligence initiatives. "De-identified" means data that is not attributable to or identifiable as specific buildings, utility accounts, utility meters or premise addresses in a manner that could allow an observer to identify the point of service. "Use" means analysis for purposes of creating and displaying useful data-based cross-licensee products and tools, industry and regional key performance indicators (KPIs), benchmarks, and statistical results such as averages and means, for distribution to and the benefit of ENC customers generally. De-identified data and analyses may be shared with third parties such as consultants, vendors, educational and public entities. Licensee may, at its option, opt out of data sharing, in which case any functionality otherwise included in the Subscription Services which uses De-identified data shall be inaccessible to Licensee. In no event will De-identified data include any Identifiable Licensee data.

9. CONFIDENTIAL INFORMATION.

- 9.1. Definition of Confidential Information. "Confidential Information" is any document or other media or tangible items that relates to research, development, trade secrets, clients, business affairs or that contains any other information of a Party that was not generally available to the public when received by the other Party. "Confidential Information" includes Licensee's technology, Licensee's utility billing and rate information, ENC's technology, and the terms and conditions of this Agreement. "Confidential Information" does not include information that: (i) is known to the receiving Party prior to receipt from the disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (ii) becomes known (independently of disclosure by the disclosing Party) to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving Party; or (iv) is independently developed by the receiving Party.
- 9.2. Protection of Confidential Information. Each Party acknowledges that it will or may have access to Confidential Information of the other Party and therefore each Party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or required to achieve the purposes of, this Agreement, nor disclose to any third party (except as required by law or to that Party's attorneys, accountants and other advisors as reasonably necessary and providing that they agree to be bound by obligations of confidentiality at least as strict as those contained herein), nor permit any of its partners, shareholders, directors, officers, employees, agents or contracting parties to use or disclose, any of the other Party's Confidential Information and will take precautions necessary to protect the confidentiality of such Confidential Information using the same degree of care used to protect its own Confidential Information, but in any case using no less than a reasonable degree of care.
- 9.3. Compelled Disclosure. The receiving Party may disclose Confidential Information pursuant to the requirements of a governmental agency or as required by law, provided that it gives the disclosing Party reasonable prior written notice sufficient to permit the disclosing Party to contest such disclosure. If the disclosing Party is not successful in precluding the requesting legal body from requiring disclosure of the Confidential Information, the receiving Party shall furnish only that portion of the Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded with the Confidential Information.
- 9.4. Ownership of Confidential Information. All of Confidential Information disclosed pursuant to this Agreement (including information in computer software or held in electronic storage media) shall be and remain the property of the disclosing Party. All such information in tangible form shall be returned to the disclosing Party promptly upon written request or the termination or expiration of this Agreement and shall not

thereafter be retained in any form by the receiving Party, its Affiliates, or any employees or independent contractors of the receiving Party or its Affiliates.

9.5. Survival. SECTION 9 SHALL REMAIN IN FULL FORCE AND EFFECT FOR SO LONG AS EITHER PARTY RETAINS ANY CONFIDENTIAL INFORMATION OF THE OTHER PARTY.

10. INDEMNIFICATION.

- 10.1. Indemnification by ENC. ENC will defend Licensee against any claim, demand, suit, or proceeding (“Claim”) made or brought against Licensee by a third party alleging that the use of the Subscription Services as permitted hereunder infringes or misappropriates the intellectual property rights of such third party, and ENC shall indemnify and hold harmless Licensee from and against any damages finally awarded against, and for reasonable attorney’s fees incurred by, Licensee in connection with any such Claim.
- 10.2. Indemnification by Licensee. Licensee shall defend ENC against any Claim made or brought against ENC alleging that Licensee Data, or Licensee’s use of the Subscription Services in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify and hold ENC harmless from and against any damages finally awarded against, and for reasonable attorney’s fees incurred by, ENC in connection with any such Claim.
- 10.3. Exclusive Remedy. ENC shall have no obligation under Section 10.1 for any Claim to the extent arising out of or is based upon: (i) Licensee’s use of the Subscription Services not in compliance with this Agreement or the Documentation; (ii) Licensee’s combination of the Subscription Services with software, hardware, system, data, or other materials not supplied or authorized by ENC (unless expressly permitted by the Documentation) without ENC’s prior written authorization; or (iii) the Licensee Data. In the event an infringement or misappropriation Claim involving the Subscription Services is brought or threatened, or is likely to be brought or threatened in ENC’s reasonable opinion, ENC will, at its sole option and expense: (x) procure for Licensee the right to continue to use the Subscription Services, (y) modify the Subscription Services in a manner that does not materially degrade the functionality of the Subscription Services functionality, or (z) terminate the affected Subscription Services and, with respect such termination, refund the unearned portion of the applicable pre-paid Fees. Notwithstanding anything else herein, the foregoing indemnification obligations are ENC’s only obligations and liability, and Licensee’s exclusive remedy, in respect of any infringement or misappropriation Claim.
- 10.4. Process. Each Party seeking indemnification hereunder shall provide the other Party with: (i) prompt written notice of any Claim for which indemnification is sought; (ii) complete control of the defense and settlement of such claim; and (iii) reasonable assistance and cooperation in such defense at the indemnifying Party’s expense. Notwithstanding the foregoing, the indemnifying Party may not enter into a settlement of a claim that involves a remedy other than the payment of money by the indemnified Party (which amounts must be subject to indemnification by the indemnifying Party) without the indemnified Party’s written consent.

11. LIMITATION OF LIABILITY.

- 11.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY OTHER PERSON OR ENTITY FOR (I) ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND OR NATURE, HOWEVER ARISING, UNDER ANY THEORY OF LIABILITY, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE SUBSCRIPTION SERVICES OR THESE TERMS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) DIRECT DAMAGES IN EXCESS OF THE FEES ACTUALLY PAID OR PAYABLE BY LICENSEE UNDER THE APPLICABLE ORDER DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH THE CLAIM RESULTING IN SUCH DAMAGES AROSE. THE FOREGOING LIMITATIONS AND EXCLUSIONS DO NOT APPLY TO EITHER PARTY’S INDEMNIFICATION OBLIGATIONS, OR LICENSEE’S FAILURE TO REMIT ALL FEES PROPERLY DUE AND OWING TO ENC.

12. INSURANCE.

- 12.1. During the Term, ENC will maintain in effect, at all times, all the insurance specified below with insurers having an A.M. Best rating of A-VIII or better.
- 12.2. Commercial General Liability Insurance. ENC shall maintain commercial general liability insurance (“CGL”) with a limit of not less than \$1,000,000 per occurrence, and \$2,000,000 aggregate.
- 12.3. Workers’ Compensation and Employer’s Liability Insurance. ENC shall maintain statutory workers’

compensation insurance as required by applicable laws. ENC shall also maintain employer's liability insurance. The limit for each policy shall not be less than \$500,000 per occurrence.

- 12.4. Business Auto Liability Insurance. ENC shall maintain business auto liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto, including owned, hired and non-owned.
- 12.5. Excess/Umbrella Liability Insurance. ENC shall maintain excess or umbrella liability insurance with a limit of not less than \$4,000,000 per occurrence.
- 12.6. Errors and Omissions Insurance. ENC shall maintain errors and omissions insurance with a limit of not less than \$5,000,000.
- 12.7. ENC shall procure and maintain for the duration of the contract insurance against claims for injuries to person or damages to property which may arise from or in connection with the performance of the work hereunder by ENC, its agents, representatives, or employees. ENC shall procure and maintain for the duration of the contract insurance claims arising out of their services and including, but not limited to loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data.

Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by ENC in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

Certificates of insurance evidencing all these coverages shall be provided to Licensee upon request once each year during the Term.

13. ADDITIONAL TERMS FOR SUBSCRIPTION DATA SERVICES.

- 13.1. Licensee's use of the following subscription-based data products is subject to the additional terms set forth below: the interface to ENERGY STAR Portfolio Manager, Weather Data, and Greenhouse Gas Emission factor updates (the "Subscription Products"):
 - 13.1.1. Licensee will indemnify and hold harmless EnergyCAP, LLC, its partners, agents, officers, directors, employees, subcontractors, successors, assigns, third party suppliers of information and documents, and affiliates (collectively, "ENC") from and against any liability, loss, claim and expense related to Licensee's use of the Subscription Products.
 - 13.1.2. In no event, will ENC be liable for any damages including, but not limited to, direct, indirect, special, incidental or consequential damages or losses arising out of or inability to use ENC Products.
 - 13.1.3. Licensee must use the Subscription Products solely for its own business purpose and Licensee is prohibited from offering the same for redistribution, re-broadcast, or resale of any kind.
 - 13.1.4. ENC retains all right, title and interest in and to the Subscription Products, modified or unmodified, other than the license rights granted under this Agreement.
 - 13.1.5. The Subscription Products and contents therein are property of ENC or its independent third-party providers. Third party content and/or data may be imported or may be accessible via links from our Products. Licensee acknowledges and agrees that ENC is not responsible for and assumes no liability for any loss or damages which may be incurred as a result of any mistakes, omissions, or incorrect data or representations or any other form of content provided by ENC.
 - 13.1.6. The SUBSCRIPTION PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. Neither ENC, nor any data suppliers or third-party providers make any warranty whatsoever as to the accuracy or completeness of the content or the results to be obtained from using the information contained therein, and neither ENC nor any data suppliers or third-party providers will be responsible for any claims attributable to errors, omissions, or other inaccuracies in the information contained in the content or results thereof. The entire risk for the results and performance of the Subscription Products is assumed by Licensee.

14. GENERAL TERMS.

- 14.1. Changes to the Subscription Services. ENC may modify the Subscription Services from time to time by removing unused features or substituting outdated features with new features that have similar or improved functionality or otherwise, as may be necessary to meet any applicable legal, regulatory, or industry-standard requirements or demands.
- 14.2. Notice. Any notices required by this Agreement, or any attachment hereto, shall be in writing and shall be given to the parties by hand, by nationally recognized overnight courier service or by express, registered or certified mail, postage prepaid, return receipt requested or by email (provided the original is delivered via one of the preceding methods on or prior to the fifth (5th) day after transmission of the e-mail). Notices shall be deemed to have been given upon actual receipt thereof. Notices to ENC shall be directed via mail to EnergyCAP, LLC, 360 Discovery Drive, Boalsburg, PA, 16827, via fax: 719.623.0577, or via email: Accounts@EnergyCAP.com. Notices to Licensee will be sent to County of Riverside at 3133 Mission Inn Ave., Riverside, CA 92507.
- 14.3. Governing Law and Jurisdiction. These Agreement shall be governed by, construed in accordance, and subject to the laws of the State of California, without regard to its conflict of laws provisions. The venue for any disputes relating to this Agreement shall be resolved exclusively in the state or federal courts located in Riverside County, State of California.
- 14.4. Waiver of Jury Trial. Each Party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.
- 14.5. Force Majeure. A Party shall be excused from complying with this Agreement and the Orders if, to the extent, and for as long as, such Party's compliance is delayed or prevented by a Force Majeure Event; provided, however, a Force Majeure Event shall not excuse performing duties that are unrelated to the Force Majeure Event, including discharging financial obligations.
- 14.6. Export Compliance. Each Party shall comply with the export laws and regulations of the United States in providing and using the Services. Without limiting the foregoing, (i) each Party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) You shall not permit Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction.
- 14.7. Relationship of the Parties. The parties are independent contractors. These Agreement do not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.
- 14.8. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.
- 14.9. Waiver and Cumulative Remedies. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.
- 14.10. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 14.11. Attorney Fees. In the event of suit or other proceeding to enforce, defense, or interpret the terms of this Agreement, the prevailing party (as defined by Civil Code §1717) in any such proceeding shall be entitled to a reasonable award of attorneys' fees from the other party only if the prevailing party has prevailed in a judgment by a court of competent jurisdiction. As used herein, "attorneys' fees" includes all reasonable attorneys' fees actually incurred, reasonable costs for pursuit of discovery, including deposition transcripts, preparation of exhibits, and the like, and all other costs normally recoverable in civil actions.
- 14.12. Assignment. Neither Party may assign this Agreement or any Order without the prior written consent of the other Party, except to an Affiliate or an entity that acquires all or substantially all of its stock, business or assets, whether through merger, consolidation, reorganization or otherwise. Any assignment in violation of the foregoing shall be void and of no effect.
- 14.13. Entire Agreement. These Agreement, together with any Order, attachments and all documents incorporated by reference herein, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreements, negotiations, understandings, or other matters, whether oral or written, with respect to the subject matter hereof. These Agreement shall take precedence over any conflicting terms in any Order or any Licensee-provided purchase or procurement

documentation, such as a purchase order, acknowledgement form, or other similar documentation and any pre-printed terms and conditions on or attached to Licensee's purchase orders or invoices will be of no force or effect.

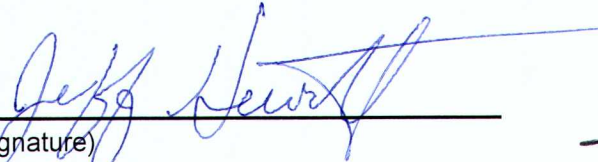
14.14. Modifications. These Agreement can only be modified, changed or amended in writing and signed by a duly authorized representative of each of the parties.


14.15 Dispute Resolution. The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute. Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. The parties shall share the cost of the mediations.

IN WITNESS, WHEREOF, the parties, by their duly authorized representatives, have caused this Agreement to be executed as of the date first written below.

Licensee
County of Riverside
3133 Mission Inn Avenue
Riverside, California 92507

EnergyCAP
EnergyCAP, LLC
360 Discovery Drive
Boalsburg, PA 16827

By: 
(Signature)
Name: Jeff Hewitt

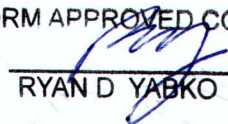
By: 
(Signature)
Name: John Heinz

Title: Chair, Board of Supervisors

Title: Chief Sales Officer

Date: APR 12 2022

Date: 1/18/22

FORM APPROVED COUNTY COUNSEL
BY  3/15/22
RYAN D YANKO DATE


ATTEST:
KECIA R. HARPER, Clerk
By 
DEPUTY

Exhibit 1

Professional Services Terms

This Exhibit sets forth the terms and conditions pursuant to which ENC will provide Professional Services to Licensee. The Professional Services will be subject to the terms of the Agreement except to the extent otherwise set forth in this Exhibit.

1. PROJECT PLAN.

- 1.1. Baseline Project Plan and Delays. Promptly following the effective date of the applicable SOW, ENC and Licensee will agree to a baseline project plan outlining the tasks, milestones, and resources that are necessary to complete the Professional Services (the "Baseline Project Plan"). Each of ENC and Licensee will provide the necessary resources to execute the tasks contained in the mutually agreed Baseline Project Plan.
- 1.2. Management of the Project Plan. During the performance of the Professional Services, an active project plan will be maintained by ENC to reflect the progress of the Professional Services as well as any delays (the "Active Project Plan"). Project delays will be measured by comparing the Baseline Project Plan duration to the Active Project Plan duration (Active Project Plan Duration – Baseline Project Plan Duration / Baseline Project Plan Duration).
 - 1.2.1. If the variance is 10% or greater, ENC shall notify Licensee and propose a course of action to prevent further delays. Delays caused by ENC will be refactored into the Baseline Project Plan in order to reduce the calculated project variance.
 - 1.2.2. If the variance is 20% or greater through no fault of ENC, ENC and Licensee shall select one of the following remedies:
 - 1.2.2.1. Reduce Scope of Work. ENC and Licensee agree to reduce the remaining Professional Services in order to accommodate finishing the project within a maximum of 20% project variance.
 - 1.2.2.2. Extend Project Duration. ENC and Licensee agree to amend the applicable SOW to provide the additional budget necessary to complete the remaining Professional Services. Additionally, ENC and Licensee will update the Baseline Project Plan to reflect the revised timeline for completing the Professional Services.
- 1.3. Change Requests. If, due to Licensee action or request, the implementation task attributes (description, conditions for satisfactory completion, resource assignment, duration) outlined in the SOW or the Baseline Project Plan change at any point following agreement on the same, ENC retains the right to provide a Change Order quotation to Licensee for additional Professional Services and, upon acceptance, invoice Licensee for costs incurred by ENC due to the task change(s). Task changes for which additional fees may apply include, but are not limited to, addition of Subscription Services features, changing the primary point(s)-of-contact designated by the Licensee resulting in the need for duplication of training and coordination tasks, acceleration of the project timeline, or placing the implementation project on hold for an extended period of time, resulting in the need for remobilization at a later time. Fees related to the task change(s) will be calculated at ENC's then-current hourly rates and documented in the applicable Change Order, and the Change Order will be submitted to Licensee for approval prior to acceptance or invoicing by ENC.

2. HISTORICAL DATA CONVERSION.

- 2.1. To the extent the Professional Services include data conversion services by ENC, ENC and Licensee will determine the most appropriate method for validating imported bill history prior to commencing conversion. Validation methodology is largely dependent upon the level of detail contained in the history as well as the existence of an external source of comparison. Subsequent to the initial conversion, should Licensee discover the method of validation was incomplete, did not account for important details, or discovers some other material defect which renders the historical conversion invalid, ENC will perform up to two additional conversion iterations provided that (i) the total effort involved in the iterations following the first conversion consume no more than 10% of the total initial conversion effort; and (ii) requests for additional iterations

are made within the four-week period after the date ENC notified Licensee the first historical conversion was completed. If requested iterations do not meet these criteria, then ENC shall provide a quote to Licensee based on ENC's then-current rates.

3. CUSTOM DEVELOPMENT.

- 3.1. Licensee is responsible for delivering complete custom development specifications to ENC prior to the commencement of development services. ENC will develop the mutually agreed deliverables in the timeframe set forth in the Baseline Project Plan. Delivered items will be referenced as "functional deliverables."
- 3.2. Receipt of full payment for the deliverable based on the invoicing schedule, or a statement of acceptance of the deliverable, constitutes "final acceptance" by Licensee that ENC has delivered custom software that meets mutually agreed specifications.
- 3.3. Prior to final acceptance, ENC will provide up to two iterations of functional deliverables as long as the scope change is minimal and the incremental cost to create such iterations is less than 10% of the total cost of the deliverable. Each iteration must be requested by Licensee within the four-week period after the initial delivery of the functional deliverable. If (i) the incremental costs exceed 10%, (ii) Licensee requests more than two iterations, or (iii) the timeframe exceeds four weeks from original delivery date, then ENC shall provide a quotation to Licensee for additional Professional Services at ENC's then-current rates for such services.

4. ACCEPTANCE.

- 4.1. Each deliverable will be subject to review by Licensee to verify that the deliverable meets the mutually agreed upon specifications. If a deliverable does not meet such specifications, Licensee shall notify ENC within fourteen (14) days after delivery and cooperate with ENC in identifying the non-conformances. ENC shall, at no additional cost to Licensee, promptly correct any deficiencies which prevent such deliverable from conforming. If the deliverable does not conform within a reasonable period of time after initial delivery to Licensee, Licensee may (i) immediately terminate the affected Professional Services, or (ii) require ENC to continue to attempt to correct the deficiencies, reserving the right to terminate as above at any time.

5. WARRANTIES.

- 5.1. ENC's Warranties. ENC will exercise due professional competence and care consistent with generally accepted industry standards and practices in the performance of the Professional Services. In the event of a breach of the foregoing warranty, ENC will either (i) re-perform the deficient Professional Services; or (ii) return to Licensee the fees paid for such services prior to the breach. Any claim for breach of the foregoing warranty must be made by notice to ENC within thirty (30) days of completion of the Professional Services with respect to which the claim is made, or said claim shall be deemed waived by Licensee.
- 5.2. LIMITATIONS. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 1(A) ABOVE, ENC DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROFESSIONAL SERVICES PROVIDED OR THE RESULTS OBTAINED THEREFROM, AND ENC EXPRESSLY DISCLAIMS ANY OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, ARISING BY USAGE OF TRADE, COURSE OF DEALING, COURSE OF PERFORMANCE OR OTHERWISE.
- 5.3. LIMITATION ON REMEDIES AND AGGREGATE LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, MULTIPLE, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, SAVINGS, OR REVENUES OF ANY KIND, BUSINESS INTERRUPTION, DOWN TIME, OR LOSS OF INFORMATION) OR ATTORNEYS' FEES, REGARDLESS OF WHETHER SUCH DAMAGES OR ATTORNEYS' FEES ARE BASED ON BREACH OF CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES OR ATTORNEYS' FEES. UNDER NO CIRCUMSTANCES SHALL A PARTY'S AGGREGATE LIABILITY FOR PROFESSIONAL SERVICES,

WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, EXCEED THE TOTAL AMOUNT OF FEES FOR PROFESSIONAL SERVICES RECEIVED BY OR PAYABLE TO ENC PURSUANT TO THE APPLICABLE SOW.

6. OWNERSHIP OF INTELLECTUAL PROPERTY.

- 6.1. ENC has developed and continues to develop and enhance its proprietary intellectual property ("ENC IP"), which includes, without limitation, concepts, frameworks, methodologies, analytic techniques, management tools, know-how, software, survey designs, metrics, diagnostic instruments, data sets and databases. ENC IP is an integral part of ENC's knowledge base and may be reused from project to project and with multiple clients. In the performance of its obligations hereunder, ENC will use, replicate, create, modify or enhance elements of the ENC IP, and all such elements, modifications and enhancements shall remain the sole and exclusive property of ENC; provided, however, that no proprietary and Confidential Information of Licensee will be deemed to be ENC IP. All applicable rights to patents, patent applications, copyrights, trademarks, trade secrets and all other proprietary rights in and to the ENC IP are, shall be and shall remain in ENC, and neither Licensee nor its employees or agents shall have any proprietary interest whatsoever in or to the ENC IP.
- 6.2. The Parties agree that all documents, reports and any other materials created solely by ENC specifically for Licensee as part of the Professional Services (collectively, "Deliverables") shall be considered by the Parties as "work made for hire" (as that term is defined in the United States Copyright Act) with Licensee being considered the author and owner of such Deliverables. In the event by operation of law any Deliverable or part thereof is deemed not to be a work made for hire, ENC agrees to assign all its right, title and interest, in and to the Deliverables to Licensee; provided, however, with respect to any third party materials or ENC IP that are incorporated by ENC into a Deliverable, ENC hereby grants to Licensee a perpetual, royalty-free, nonexclusive, non-assignable limited right and license to use that portion of the ENC IP or such third party materials solely in connection with the use of the Deliverable and not on a stand-alone basis.

Exhibit 2

CAPture Services Terms

ARTICLE 1. BILL CAPTURESM SERVICE

EnergyCAP, LLC (“ENC”) will provide ongoing Bill CAPture utility bill processing services to Licensee for bill import into Licensee’s EnergyCAP database. Licensee must maintain an active and current License and Maintenance Agreement in order to subscribe to the Bill CAPture service. The following service terms apply:

1.1. Definition of a Meter: A meter is a point of service as itemized on a vendor bill and/or tracked in EnergyCAP as a meter. It may represent points of service for which no physical meter exists, such as sewer, fire lines, outdoor lighting, fuel oil tanks, storm drainage, ISP and telephone service, etc.

1.2. Definition of a Transaction: Each meter (refer to 1.1. Definition of a Meter) present on a utility bill invoice constitutes a transaction. Utility bills that include multiple meters, therefore, will result in multiple transactions – one transaction for each meter. Deregulated bills issued separately by a supplier and an LDC count as two transactions per deregulated meter. Multiple bills from the same vendor for the same meter(s) for the same service period – whether they be rebills or corrected bills – will be counted as additional transactions.

1.3. Meter Enrollment: The Meter Enrollment Fee stated in Exhibit 3 is a one-time fee for the enrollment of the listed number of meters (refer to 1.1. Definition of a Meter) in the Bill CAPture service. Deregulated meters serviced by a supplier and an LDC require two-meter enrollments. An additional per-meter enrollment fee will be charged when a new meter is submitted by Licensee or a Licensee vendor for Bill CAPture enrollment or when Licensee requests a substantial change to the way a utility bill is mapped. The fee covers the cost of preparing the Bill CAPture service for processing a new meter. ENC and Licensee will schedule a time for initiation of the enrollment process. Meter enrollment will commence within sixty (60) calendar days following ENC’s receipt of all Licensee Meter Enrollment data. Enrollment will be completed within a mutually agreed upon timeframe. Licensee must enroll the majority of contracted meters at one time and does not have the option to enroll the contracted meters in phases, unless otherwise mutually agreed upon. Phases are defined as groups of enrollment meters that are greater than 10% of the total number of contracted meters. If Licensee prefers to enroll in phases then ENC retains the right to charge, with acceptance from Licensee, an activation fee each time Licensee requests meter enrollments.

1.3.1. Meter Enrollment for Processing Services: It is expected that account numbers and all data will be set up correctly in Licensee’s EnergyCAP database prior to Bill CAPture enrollment. If, upon the initial entry of bill data, bill records unsuccessfully import and return in the bill kick-out log file, it is the responsibility of Licensee to make the necessary corrections in EnergyCAP to resolve the kick-outs. Licensee is responsible for all EnergyCAP data revisions and maintenance including but not limited to: the creation of new accounts, meters, places, and vendors, managing account number changes, and taking action on bill kick-out reports. Licensee is responsible for notifying ENC about any expected account or meter number changes the utility vendors may make to Licensee’s utility accounts. This will assist the Bill CAPture processing team in distinguishing what meters are considered new meter enrollments and which are existing meter enrollments. If advance notice is not given, then all processed meters that have new account or meter numbers will be considered new meters and additional meter enrollment fees may be charged to Licensee. If Licensee requires ENC’s assistance, ENC retains the right to provide a Change Order quotation to Licensee for the necessary scope of work to edit existing account, meter, and vendor fields and, upon acceptance, invoice Licensee for the additional work.

1.3.2. Meter Enrollment for Processing and Management Services: If Management Services are purchased, ENC will be responsible for completing the data set up in Licensee’s EnergyCAP database as part of Bill CAPture enrollment. If, upon the initial entry of bill data, bill records unsuccessfully import and return in the bill kick-out log file, it is the responsibility of ENC to work with Licensee to make the necessary corrections in EnergyCAP. ENC is responsible for EnergyCAP data revisions and maintenance including but not limited to: the creation of new accounts, meters, places, and vendors, managing account number changes, and taking action on bill kick-out reports. Licensee is responsible for notifying ENC about any expected account or meter number changes the utility vendors may make to Licensee’s utility accounts. This will assist the Bill CAPture processing team from distinguishing what

meters are considered new meter enrollments and which are existing meter enrollments. If advance notice is not given, then all processed meters that have new account or meter numbers will be considered new meters and additional meter enrollment fees may be charged to Licensee.

1.4. Bill Processing: The Bill CAPture service is contracted for a stipulated term with annual processing fees at a stipulated rate for a stipulated number of contracted transactions. The stipulated number of contracted transactions is used by ENC to reserve processing capacity for Licensee and may include ENC contractual obligations to one or more third party service providers. ENC counts a transaction when data is first submitted by Licensee or via automated delivery method authorized by Licensee during enrollment. There is no refund for unused transactions. The annual processing fee does not include historical bill data (refer to 1.5. Service Level Agreement, Historical Bills) transactions which may be charged at a different rate. The annual processing fee stated herein assumes that Licensee, and utility vendors on behalf of Licensee, will provide bills to ENC in the formats defined in Exhibit A or Quote Form. Data files can be transferred via website upload, secure FTP transfer, or other means agreed to by both ENC and Licensee. If the Licensee requests a change in utility bill formats causing the scope of bill delivery to change at any point, ENC retains the right to provide a Change Order quotation to Licensee and, upon acceptance, invoice Licensee for any changes in costs due to the task change(s).

1.5. Service Level Agreement: ENC will process Licensee's utility bills within the timeframe selected below by Licensee. ENC's processing includes all body lines from the utility bills. If available, an electronic image of each bill will be linked to each utility bill processed by ENC and is subject to the terms of Licensee's database hosting agreement and associated image hosting fees.

- Pre-Payment Bills: Processed within three (3) business days of receipt by ENC from Licensee or Licensee's vendor(s). Pre-Payment Bills are defined as "live" current bills; bills that have not yet been processed for payment by Licensee. Licensee will use the Bill CAPture service as part of its bill payment process. Current bills are defined as bills with an end date no earlier than sixty (60) calendar days before the upload date.
- Post-Payment Bills: Processed within five (5) business days of receipt by ENC from Licensee or Licensee's vendor(s). Post-Payment Bills are defined as current bills that have already been processed for payment by Licensee via other means and EnergyCAP is not part of Licensee's bill payment process. Current bills are defined as bills having an end date no earlier than sixty (60) calendar days before the upload date.

Web CAPture: Processed within five (5) business days in addition to the processing times listed above for Pre-and Post-Payment Bills. In the event of credential failures, missing bills, website changes, or other issues outside of ENC's control that prevent the system from accessing bill images, these incidents are excluded from SLA calculations. Service is limited to utility vendors that ENC has verified are able to consistently provide a quality utility bill within this SLA. ENC continuously evaluates the quality of the vendors for which Web CAPture is available and may, at its discretion and communication in writing to Licensee, discontinue service when the level of consistency prevents ENC from meeting or exceeding this SLA agreement. When ENC discontinues Web CAPture for a utility vendor, Licensee has the option to manually upload the PDFs of bills using the ENC bill image portal or switchover to another Bill CAPture data acquisition method. Pricing changes will be made accordingly and will be agreed upon by both parties in writing if the delivery method changes.

Historical Bills: Processing time varies based on volume. Delivery dates will be mutually agreed upon by both ENC and Licensee. Historical bills are defined as bills having an end date greater than sixty (60) calendar days from the upload date.

1.6. Additional Bill CAPture subscription details.

1.6.1. Services included in the Bill CAPture Processing Service:

- ✦ Capture billing data, valid for import to EnergyCAP, exactly as it is presented by the utility vendor. Calculations or alternations of any kind are not supported.
- ✦ Provide multiple methods for data acquisition. Methods supported are listed below and the acquisition methods Bill CAPture will deliver are those purchased by Licensee.
 - Email (*unique_licensee_email@energycap.com*)
 - Web CAPture

- Licensee upload via Bill CAPture website (billcapture.energycap.com)
- Mail Redirect
- EDI (available from some utility vendors)
- ✦ Execute pre-configured EnergyCAP audits on bills imported into ENC hosted databases.
- ✦ Process bills encountered for new utility meters that were not included as part of the original enrollment. ENC advises Licensee to coordinate directly with ENC in cases where the volume of new meters is expected to exceed twenty-five. When enrolling new meters, enrollment and processing fees apply. ENC may require assistance from Licensee in the event that enrollment guidelines do not govern how to process the billing data contained in the new utility meters.
- ✦ Maintain online documentation of scanning and upload guidelines to prevent bills from being rejected or captured incorrectly.
- ✦ Adapt to changes in vendor utility bill layout changes in order to provide an uninterrupted service to Licensee.
- ✦ Deliver and process bills within the SLA timeframe.

1.6.2. Services included in the Bill CAPture Processing and Management Service: All services listed in section 1.6.1. and the following additional services. ENC will consult with Licensee to clarify and document the execution of these services (processes, capabilities, etc.) in order to ensure a seamless integration with Licensee business operations.

- ✦ Execution of documented Bill kickout management and resolution best practices.
- ✦ Problematic scan resolution.
- ✦ Execution of documented best practice to void suspected duplicate bills.
- ✦ Create accounts and meters in EnergyCAP as identified. Licensee may be required to provide ENC with information to complete account and meter setup.
- ✦ Document and, to the extent possible, operate by customer-specified business rules regarding bill Adjustments, Cancelled/Rebills, Credits, Payment Reversals.
- ✦ Utility vendor follow-up services to request missing bills, confirm account changes (e.g. account code, service address, new accounts, etc.), confirm account status (i.e. inactive/active), notify vendor(s) of changes to Licensee's contact information, add/remove utility bill accounts to/from vendor website credentials.
- ✦ Actions taken on Licensee bills within EnergyCAP will be documented within the application where possible, externally when necessary. Licensee will be aware of actions through in-app documentation and automated reports, and via regularly scheduled phone calls or online meetings.

1.6.3. Services not included in the Bill CAPture Service:

- ✦ Perform calculations or alternations of the original vendor utility bill data.
- ✦ Capture hand-written billing data.
- ✦ Process billing history reports.
- ✦ Remove duplicate bill submissions from processing when uploaded by Licensee.
- ✦ Process data from formats other than the formats agreed upon during Bill CAPture enrollment.

1.6.4. Services included in Web CAPture:

- ✦ Download bills in PDF and pre-approved electronic formats.
- ✦ Monitor accessibility of bill images and notify Licensee of vendor website issues (login or other website failures).
- ✦ Generate new passwords to ensure a consistent flow of data for ENC created utility vendor logins that are governed by an expiration policy.
- ✦ Auto-discover utility meters and accounts that the Licensee or utility vendor adds to currently active vendor website logins. ENC shall then offer Licensee the option to add the newly discovered utility bill accounts to their active Web CAPture subscription. ENC shall provide Licensee with as much information as is readily available to assist Licensee with the dENCsion to confirm the utility bill account should be added to the Web CAPture subscription. Upon receiving confirmation from Licensee, ENC will download the next bill posted, not the most recent currently posted bill, following the date the utility account was added to Licensee's Web CAPture subscription.
- ✦ Deliver and process bills within the SLA for Bill CAPture's Web CAPture.
- ✦ Check for new utility bills once every weekday, typically between 12am and 4am EDT.

- ✦ Utilize service dates, statement date, total due, and delivery date, by utility bill account number and utility vendor login credentials, to reduce the possibility of duplicates being downloaded and processed.

1.6.5. Services not included in Web CAPture:

- ✦ Unless contracted to do otherwise, download bills with statement date prior to the date that enrolled with Web CAPture. These are considered historical bills and are the responsibility of the Licensee to provide to ENC to process or otherwise process themselves.
- ✦ Generate new passwords to ensure a consistent flow of data for Licensee created utility vendor logins that are governed by an expiration policy. Unless otherwise agreed to, Licensee is responsible to generate a new password and inform ENC of the change to ensure an uninterrupted flow of data.
- ✦ Monitor or report on errors contained in utility vendor bill data including, but not limited to the following:
 - Vendor's billing system does not update service dates on its bill, so the bill is processed to the same billing period as an existing bill.
 - Vendor does not update posted bills until they are paid or due, so bill is not downloaded or processed until after due date has passed.
 - Vendor may not post a corrected bill or a re-bill to the website, which presents issues with reconciliation.
- ✦ Make changes to vendor website user credentials and/or update account settings unless the changes have been pre-approved by Licensee.
- ✦ Add utility bill accounts that have not been pre-approved by Licensee to vendor website credentials.
- ✦ Remove utility bill accounts that have not been pre-approved by Licensee from vendor website credentials.
- ✦ Download any files or information that has not been pre-approved to be delivered as a bill through the Bill CAPture service.

1.7. Licensee may cancel the service upon thirty (30) days written notice to ENC. ENC may cancel the service upon ninety (90) days written notice to Licensee. If canceled by ENC, Licensee will be refunded 100% of the amount calculated as follows: annual contracted amount less cost of processed annual and historical bill transactions. If canceled by Licensee, Licensee will be credited 50% of the amount calculated as follows: value of remaining unused calendar months in the specified term less cost of processed annual and historical bill transactions that are in excess of the expected monthly transaction total for the specified period. A reactivation fee may apply if Licensee cancels subscription and in the future wishes to re-subscribe to service.

1.8. ENC reserves the right to subcontract portions of the Deliverables, provided that (1) the subcontracting firm is capable of providing the services, (2) the use of subcontractor will be disclosed to Licensee upon request, and (3) ENC will remain responsible to Licensee for all subcontracted portions.

1.9. Upon the anniversary date of each annual term stipulated in the contract, ENC will invoice Licensee for the current contracted Bill CAPture annual processing fee for the next annual term. If the total number of meter enrollments and/or transactions (by delivery type and format; historical and annual) processed in the completed term exceeds the contracted amount, ENC will invoice Licensee for the additional charges. When the total number of meter enrollments and/or transactions (by delivery type and format; historical and annual) processed in the completed term is less than the contracted amount, they shall be considered unused. Any unused meter enrollment and/or transactions shall not roll over into the next renewal term nor shall Licensee receive any credit, allowance, or deduction as a result.

1.10. ENC may increase Bill CAPture fees upon renewal for any reason. ENC will provide to Licensee written notice of any fee increase at least thirty (30) days in advance of the renewal date.

1.11. Limitation of Liability: ENC'S LIABILITY HEREUNDER SHALL BE LIMITED IN THE AGGREGATE TO AN AMOUNT EQUAL TO ALL BILL CAPTURE FEES PAID BY LICENSEE TO ENC FOR LIVE TRANSACTION PROCESSING SERVICES FOR THE 12-MONTH PERIOD PRECEDING ANY CLAIM OR DEMAND BY LICENSEE. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION DATA LOSS, LOSS TO BUSINESS, OR OTHERWISE), INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE LOSS OR DAMAGE, ARISING FROM OR RELATED IN ANY WAY TO THE SERVICES HEREUNDER, OR THE SOFTWARE AND/OR

DOCUMENTATION LICENSED BY ENC, WHETHER SUCH DAMAGES OR LOSS SOUND IN CONTRACT, TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY, AND ALL OTHERS), WARRANTY, OR UNDER STATUTE. ENC SHALL NOT BE LIABLE FOR THE PAYMENT OF UTILITY VENDOR LATE FEES, INTEREST CHARGES, OTHER VENDOR-IMPOSED PENALTIES, OR DAMAGES PERTAINING TO UTILITY SERVICE DISRUPTIONS UNLESS (1) ENC IS PROVIDING SERVICES FOR BILLS THAT ARE PRE-PAYMENT (DEFINED AS BILLS BEING PROCESSED BEFORE BEING PAID BY LICENSEE'S ACCOUNTING SYSTEM, AND (2) SUCH FEE IS WHOLLY THE RESULT OF A FAILURE OF ENC TO ACCURATELY PROCESS A UTILITY BILL THAT COMPLIES WITH BILL CAPTURE PROCESSING GUIDELINES FROM RECEIPT OF BILL (FROM VENDOR OR LICENSEE) TO DELIVERY OF BILLS TO LICENSEE WITHIN THE TIMEFRAME LISTED IN THE SERVICE LEVEL AGREEMENT.

ARTICLE 2. OPTIONAL SMART CAPTURESM SERVICE

If elected by Licensee, EnergyCAP, LLC ("ENC") will provide ongoing SMART CAPture meter data processing services to Licensee for import into Licensee's EnergyCAP database. As a SMART CAPture service subscriber, ENC will automate the process of extracting, transforming, and loading interval data that is already available to the Licensee. Licensee must maintain an active and current ECMA in order to subscribe to the SMART CAPture service. The following service terms apply:

2.1. ETL Process and Timing. ENC shall extract, transform, and load interval data provided from the identified data source on behalf of the Licensee. ENC guarantees that data provided by the data source shall be loaded into Licensee's EnergyCAP database within an agreed upon timeframe between ENC and Licensee. Licensee is responsible for ensuring data is available from the subscribed data sources.

2.2. Data Quality. ENC does not evaluate the accuracy or quality of the data provided by the data source, however it does ensure the highest level of accuracy and quality in the extract, transform, and load process.

2.3. Enrollment Process and Responsibilities. ENC shall work with Licensee through each step of enrollment leading up to live interval data appearing in Licensee's EnergyCAP database. Enrollment steps vary based on the data source providing the interval data. ENC shall not configure Licensee or third-party owned equipment in the process of enrollment. Licensee is responsible to provide ENC with the required credentials and/or access to the data sources containing the interval data. Licensee is responsible to create and maintain the credentials for each data source. Licensee is responsible for configuring EnergyCAP meters to receive the interval data provided by the SMART CAPture Subscription. This includes updating Import IDs with the correct data source meter identifier as well as creating interval data channels to receive the data provided by each data source for the enrolled meters. Training Services are recommended to assist Licensee with this effort.

2.4. Ongoing Service Terms and Conditions. Licensee is responsible for all EnergyCAP data revisions and maintenance including but not limited to: the creation of new meters, managing Import ID changes, and taking action when data sources fail to provide data on the expected schedule. SMART CAPture is an economical service designed to eliminate manual interval data entry. It is not a complete outsource solution and does not include such services as: researching missing data; contacting utility vendors or other third-parties on behalf of Licensee; setting up new meters in EnergyCAP or otherwise managing meter data; producing reports and automating processes other than stated as Deliverables; analyzing interval data; resolving or managing issues caused by vendors and/or third-parties such as data outages, data quality, changes in data formats, or other issues impacting the availability of subscription data covered by the SMART CAPture Service. ENC and Licensee will schedule a time for initiation of the enrollment process. Licensee may at any time request a quote to enroll additional meters in the service.

2.5. Cancellation. Licensee may cancel the service upon thirty (30) days written notice to ENC. ENC may cancel the service upon ninety (90) days written notice to Licensee. If so canceled by either party, Licensee will be refunded one-twelfth of the SMART CAPture fee for every full month remaining in Licensee's prepaid annual subscription. A reactivation fee may apply if Licensee cancels subscription and in the future wishes to re-subscribe to service.

2.6. Subcontracting. ENC reserves the right to subcontract portions of the Deliverables, provided that the subcontracting firm is (1) capable of providing the services, (2) will be disclosed to Licensee upon request, and that (3) ENC will remain responsible for all subcontracted portions. Licensee consents to ENC and to ENC's

subcontracting firm(s) contacting Licensee's utility vendors from time to time when general information related to vendor utility bills is required.

2.7. Renewal. Upon renewal, ENC will invoice Licensee for the total annual SMART CAPture fee for the new renewal term, based upon the subscribed number of meters per month. ENC may increase SMART CAPture fees upon renewal for any reason. ENC will provide to Licensee written notice of any fee increase at least thirty (30) days in advance of the renewal date.



Prepared for:

Quote Form

County of Riverside

3133 Mission Inn Avenue

Riverside, California 92507

Quote Number
30809-18

Date
February 22, 2022

Expiration
90 Days

EnergyCAP Maintenance Agreement Renewal

Licensee purchased a license of the EnergyCAP Enterprise software from EnergyCAP, Inc ("ENC") in 2016. Following are terms to renew Licensee's annual EnergyCAP Maintenance Agreement for a five-year term commencing December 1, 2021.

Five-Year Fee Summary

The prices in the following five-year cost summary are based on current software features and service levels. Annual renewals are optional at Licensee's discretion.

Item	12/2021 – 12/2022	12/2022 – 12/2023	12/2023 – 12/2024	12/2024 – 12/2025	12/2025 – 12/2026
Software License	\$32,170.17	\$33,778.67	\$35,467.60	\$37,240.98	\$39,103.03
Additional 500 Meters (GSA)	\$5,737.65	\$5,909.77	\$6,087.06	\$6,269.67	\$6,457.76
Database Hosting Service (Open Market)	\$8,736.98	\$9,173.83	\$9,632.52	\$10,114.15	\$10,619.85
Bill CAPture Services (15,000 annual transactions) (Open Market)	\$27,000.00 (\$1.80 per transaction)	\$28,350.00 (\$1.89 per transaction)	\$29,700.00 (\$1.98 per transaction)	\$31,200.00 (\$2.08 per transaction)	\$32,700.00 (\$2.18 per transaction)
Total	\$73,644.80	\$77,212.27	\$80,887.18	\$84,824.80	\$88,880.64

Terms and Conditions

- This quote and product pricing are the proprietary property of EnergyCAP, LLC (ENC), are provided to the recipient at recipient's request, and may not be divulged to any third parties.
- Invoicing Schedule: Term is net 30 days; 1% per month late fee may be applied.
 - Software License:** Annually upon ECMA renewal 100%
 - Annual Bill CAPture Service Fee:** Annually upon ECMA renewal 100%
 - Database Hosting:** Annually upon ECMA renewal 100%

Acceptance

To order, please sign and return this page, provide a purchase order or payment referencing this Order Form, or request a formal proposal that includes all license agreements from your EnergyCAP, LLC account executive.

I signify that I am an authorized representative of the organization named above. My signature below confirms the organization's intent to purchase the above-noted products and services ("Products") and authorizes EnergyCAP, LLC ("ENC") to deliver and invoice for the Products under the Terms & Conditions outlined herein.

Signature: _____
 Date: _____
 Name: _____
 Title: _____
 PO #: _____



Use this form to submit a single or sole source requisition for review by your Buyer and/or Procurement Contract Specialist. All procurements valued **\$5,000 or more** must seek competitive bids from a minimum of three suppliers, or the expectation that three or more suppliers will respond, or be justified by a Single/Sole Source. All purchases exceeding **\$50,000** require a formal public bid. Procurement's may not be artificially segregated to lesser dollar amounts for the purpose of bypassing this requirement.

Sole/Single Source service requests that are greater than **\$50,000** require additional Board of Supervisors approval.

Supplier Details

Vendor EnergyCAP LLC
Fulfillment Address CCorp - Services: (preferred)
 360 Discovery Dr
 Boalsburg, Pennsylvania 16827-2506
 United States
Vendor Phone +1 877-327-3702

Distribution

The system will distribute purchase orders using the method(s) indicated below:

Check this box to customize order distribution information.

Email (HTML Body) accounts@energycap.com
Contract

Background Information

Please indicate if this is a single or sole source below

Sole Source

Have you previously requested and received approval for a sole/single source request for this vendor for your department?

Yes

If selected "yes", please provide the approved SSJ# below

SSJ# 149408222

If selected "yes", was the request approved for a different project?

No

Purchase Details

1. Supply/Service being requested:

In 2009, Facilities Management purchased EnergyCAP, a utility bill management system (M.O. 3.25, 2/24/2009). The original 5 year contract was approved to be renewed in 2016 (M.O. 3.20 12/06/2016). As this contract expiration date is approaching, we are looking to renew the contract with EnergyCAP for another 5 years expiring on November 30, 2026. Over the past 10 years, EnergyCAP has allowed Facilities Management to increase business process efficiencies by deploying automation features included in the software deliverables. These include the Accounts Payable Reformatter, which interfaces with the County's PeopleSoft Financial System, Electronic Data Interfacing (EDI) which allows for electronic processing of four high volume utility vendors, automated utility audits on invoices that has resulted in over \$517,540 of cost savings to the County and BillCAPture which is the PDF mapping of invoices reducing manual processing. BillCAPture has resulted in reduced keying errors and a higher volume of invoices to be processed without additional staff.

Current Year Cost

6. Identify all costs for this requested purchase.

You do not need to include previous fiscal year amounts. If approval is for multiple years, ongoing costs must be identified below. If annual increases apply to ongoing costs such as CPI or other contract increases, provide the estimated annual cost for each consecutive year. If the annual increase may exceed the Purchasing Agent's authority, Board approval must be obtained.

Describe all current fiscal year costs associated with this procurement in the box below. Insert all one time costs associated with this project in the table below.

EnergyCAP has provided the means to extract detailed reports of cost and usage by department and building for budgetary means and information to our customer departments. It has also allowed analysis to potentially identify cost savings projects and measures. These reports are used by all levels of Executive Management and have been presented to the BOS.

2. Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:

EnergyCAP has exclusive ownership of the software and computer code. Therefore, a market search for alternate maintenance and service support providers is not possible.

No other supplier is authorized to alter in any way the EnergyCAP system computer code, install software upgrades, or maintain the system outside of EnergyCAP, Inc. Please see the attached letter from EnergyCAP stating the proprietary nature of their software.

3. Reasons why my department requires these unique features and what benefit will accrue to the county:

With the passing of the Board of Supervisor Policy H-32, Facilities Management assumed responsibility for processing most county utility bills. Even though some agencies were exempt from the policy, several have recognized the value of EnergyCAP and transferred the processing of their bills to Facilities Management. Given the challenges of staffing constraints and volume of work, Facilities Management has worked hard to explore and exhaust streamlining and automation opportunities where possible. EnergyCAP software and its accompanying modules have made these efficiencies possible and yielded cost savings to the County of \$517,540 through the use of automated audits. EnergyCAP has been the standard process for the County to process the utility invoices in a timely manner with minimal staff. Any interruption in this process would cause dire consequences to the County regarding continuation of services to the public.

4. Period of Performance 12/01/2021
From:
Period of Performance To: 11/30/2026
Is this an annually renewable contract or is it fixed term?
 Annually Renewable

5. Price Reasonableness:

EnergyCAP is a robust software platform whose use has yielded significant savings and process efficiencies. The original system purchase price was \$118,000. With utility incentives (\$47,957) and audit cost savings (\$517,540), the system has paid for itself over the 10 year period. The system efficiencies have allowed the volume of invoices paid to increase without the necessity to hire additional staff. The Facilities Management AP Division is able to process all of the utility invoices for the County with one staff member and this is crucial with current staffing shortages.

The department customer chargeback process is also derived from reports directly extracted from EnergyCAP. Since use of EnergyCAP has been so successful, there are no plans to bid this service out in the future.

Projected Board of Supervisor 11/16/2021
Date (if applicable):

Commodity Code 20821

All current FY and future FY costs are detailed in the attachment D1.

After initial approval of SSJ 149408222, additional meters were requested creating an increase in annual spend.

Original SSJ FY 22/23 \$46,713
Revised SSJ FY 22/23 \$47,959
Increase of \$1,246

Insert all current fiscal year costs in the table below. Label the 'description' as the item that is being purchased.

Current FY Costs

Description	Price
Yearly Software Maintenance Agreement	18,766.00
Additional 500 Meters (GSA Pricing)	3,347.00
Yearly Server Hosting Agreement	5,097.00
BillCAPture (15,000*1.80)	15,750.00
Custom Design Reports for move to Version 7	5,000.00

Enter all additional FY costs in the table below. Only enter one fiscal year cost per line and identify the fiscal year that it pertains to. Fiscal year is from 7/1/00 to 6/30/00.. Example : FY 18/19 \$200

FY FY 22/23 \$75,725
FY FY 23/24 \$91,856
FY FY 24/25 \$83,184
FY FY 25/26 \$87,191
FY FY 26/27 \$37,034

Additional FY Cost

Describe all additional costs associated with this procurement in the box below. Include the dollar amounts for subsequent fiscal years if it differs from above.

I have attached Exhibit D1 for a detailed cost breakdown for all 5 years of the contract.

Additional Meters Required
Original SSJ FY 23/24 \$73,593
Revised SSJ FY 23/24 \$75,726
Increase of \$2,133

Original SSJ FY 24/25 \$89,728
Revised SSJ FY 24/25 \$91,856
Increase of \$2,128

Original SSJ FY 25/26 \$85,088
Revised SSJ FY 25/26 \$87,191

	Increase of \$2,103 Original SSJ FY 26/27 \$36,160 Revised SSJ FY 26/27 \$37,034 Increase of \$874 Total SSJ increase of \$8,484 Current Year Cost Total: 47,960.00
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Supporting Documentation

If this request is for professional services, attach the service agreement to this sole source request. The Purchasing Agent, or designee, is the signing authority for agreements unless the service is exempted by Ordinance 459, Board delegated authority or by State law.

- Additional supporting documentation includes:
- Previously approved SSJ's
 - other

For all other requests, attach the vendor's cost proposal

Internal Attachments

Purchasing Approval

	Approved by	Date Approved	Approval Conditions/Comments
This section to be filled out by Purchasing Management only upon approval.	Suzanna Hinckley	10/25/2021	

Total 47,960.00