

**AMENDMENT NO. 1
FOR
UTILITY MANAGEMENT AND BILLING SYSTEM**

This AMENDMENT is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California (“County”) and EnergyCAP, Inc., with a place of business at 2026 Sandy Drive, State College, Pennsylvania (“Contractor”), with County and Contractor sometimes individually referred to as “Party” or collectively referred to as “Parties”.

RECITALS

WHEREAS, County and Contractor entered into Contract MA-080-18011369 for Utility Management and Billing System, effective May 1, 2018 through April 30, 2021, in the amount of \$340,671.00, (“Contract”); and,

WHEREAS, the Parties now desire to renew the Contract; and,

NOW THEREFORE, the Parties agree as follows:

AMENDMENT TO CONTRACT ARTICLES

1. This amendment is effective May 1, 2021 through April 30, 2023 with a total Contract amount not to exceed \$135,067.50.
2. Article 2 of the Contract shall be amended to read in its entirety as follows:
 2. **Term of Contract:** Contract shall be effective May 1, 2021 and shall continue for two (2) year(s) from that date, unless otherwise terminated as provided herein.
3. Article 3 of the Contract shall be amended to read in its entirety as follows:
 3. **Renewal:** This Contract may be renewed by mutual written agreement of both Parties for one (1) additional, two (2) year term. The County does not have to give reason if it elects not to renew. Renewal periods shall be subject to approval by the County of Orange Board of Supervisors.

Annual fee is subject to CPI increase; percentage not to exceed 5%.
4. Article 12 of the Contract has been deleted in its entirety.
5. Article 21 shall be amended to read in its entirety as follows:
 21. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the parties’ project managers’ routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other

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address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor: EnergyCAP, Inc.
Attn: Steven Heinz
2026 Sandy Drive
State College, PA 16803
Phone: 877-327-3702 ext. 22
Email: Steve.Heinz@EnergyCAP.com

Attn: John Heinz
Phone: 877-327-3702 ext. 28
Email: John.Heinz@EnergyCAP.com

County's Project Manager: OC Public Works/Procurement Services
Attn: Damisha English-Corsey
601 North Ross Street, 4th Floor
Santa Ana, CA 92701
Phone: 714-667-1628
Email: damisha.english-corsey@ocpw.ocgov.com

cc: OC Public Works/Procurement Services
Attn: Derek Savosh, County DPA
601 North Ross Street, 4th Floor
Santa Ana, CA 92701
Phone: 714-667-9668
Email: derek.savosh2@ocpw.ocgov.com

6. Article 24 has been added as follows:
 24. **John Wayne Airport:** To adhere with Federal Aviation Administration (FAA) 5190.6B Appendix E, Policies and Procedures Concerning the Use of Airport Revenue, and 49 U.S.C. § 47107(b) and 47133, John Wayne Airport (JWA) must directly manage their facilities, including management of utilities specific to JWA. JWA operates as an enterprise fund, self-supported through revenues it generates and receives no monies from the County General Fund.
7. Contract Attachments B. "Contractors Pricing," and C. "Staffing Plan" have been revised and attached hereto and incorporated herein by this reference.
8. All other terms and conditions in this Contract shall remain unchanged and with full force and effect.

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Signature Page

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment on the date first above written.

ENERGYCAP, INC.*

<i>John Heinz</i>	John Heinz	Vice President	12/22/2020
Signature	Name	Title	Date

<i>Chris Heinz</i>	Chris Heinz	Secretary	12/22/2020
Signature	Name	Title	Date

COUNTY OF ORANGE, A political subdivision of the State of California
COUNTY AUTHORIZED SIGNATURE:

		Deputy Purchasing Agent	
Signature	(Print) Name	Title	Date

APPROVED AS TO FORM:

County Counsel

By *Lauren Kramer*
Deputy

Date 12/22/2020

* If the contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signee to bind the corporation.

**ATTACHMENT B
CONTRACTORS PRICING**

- A. **Compensation:** This is a firm-fixed fee Contract between the County and Contractor for Utility Management & Billing Systems as set forth in Attachment A, "Scope of Work."

The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. **The County shall have no obligation to pay any sum in excess of the Fixed Prices and Total Contract Amount specified herein unless authorized by amendment in accordance with Articles C and P of the County Contract Terms and Conditions, which may require approval by the County Board of Supervisors.**

- B. **Fees and Charges:** County will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:

Annual/Recurring Costs						
			Current Renewal		Final Renewal	
#	Cost Item	Item Description	Year 4	Year 5	Year 6	Year 7
1	Customer Information System software (Maintenance, support, upgrades for previously paid Perpetual License)	EnergyCAP v7 (See notes 1 & 3)	\$35,700.00	\$35,700.00	\$35,700.00	\$35,700.00
2	Database Hosting	Hosting Service (Includes second instance for test / training)	\$ 6,483.75	\$ 6,483.75	\$ 6,483.75	\$ 6,483.75
3	Other software modules	Bill CAPture service – annual EDI & OCR processing (note 2)	\$19,950.00	\$19,950.00	\$19,950.00	\$19,950.00
Annual/Recurring Costs			\$62,133.75	\$62,133.75	\$62,133.75	\$62,133.75
Two Year total			\$ 124,267.50			

<i>Training Offerings or Ad Hoc Projects Hourly Costs</i>					
#	Cost Item	Item Description	Cost	Unit of Measure	Total
1.	Additional training offerings not included in licensing and associated costs	Online Training	\$ 200	Hour	\$10,800.00*
Training and Other Costs Sub-Total					\$10,800.00*

<i>Ad Hoc Projects or Misc. Training Hourly Costs</i>			
1.	Business Analyst	Labor	\$ 190/hour
2.	Developer	Labor	\$ 250/hour
3.	Project Management	Labor	\$ 190/hour
*Hourly Costs and On-line Training Not to Exceed			*see above

TOTAL CONTRACT AMOUNT NOT TO EXCEED:\$ 135,067.50

Notes/Assumptions:

1. OCPW owns a perpetual EnergyCAP license for up to 25,000 meters. This fee is for support, maintenance, periodic upgrades. Report Designer module license and assistance with Report Designer deployment are included.
2. Bill CAPture service limited to NTE 500 OCR PDF invoices/month and 575 EDI81 invoices from SCE, SDG&E and SCG per month. Excess transactions fees are \$2.00/invoice for PDF and \$0.80/invoice for EDI. OC Waste Management invoices are not EDI 810, they are electronic flat file, and will be managed by OCPW, not be Bill CAPture.
3. Annual license and assistance for the Report Designer custom report Excel Power Pivot Add-on included in #1.

- C. **Pricing Increases/Decreases:** No price increases will be permitted during the first period of the Contract. The County requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of one hundred eighty (180) days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. The County may enforce, adjust, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain company during the period of the Contract. Adjustments increasing the Contractor’s profit will not be allowed.
- D. **Discounts and Pricing Structure:** Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract. Contractor shall provide the list price and discount price on all invoice(s).
- E. **Contractor’s Expense:** Contractor will be responsible for all administrative costs including but not limited to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.
- F. **Payment Terms** –Invoices are to be submitted annually in advance of services provided to the address specified below. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange. Invoices shall be verified and approved by the County and subject to routine processing requirements.

Should the Contract be terminated prior to the expiration date, Contractor shall promptly refund to County one twelfth (1/12) of the Annual Maintenance Fees paid in advance for the terminated services for each month remaining in the Contract period which shall be computed based upon the date of written notice of termination.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

G. **Taxpayer ID Number:** The Contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.

H. **Payment - Invoicing Instructions:**

The Contractor shall submit invoices to County on Contractor's letterhead. Each invoice shall have a unique number and shall include the following information:

1. Contractor's name and address
2. Contractor's remittance address, if different from (1), above
3. Name of County agency/department/contact person
4. Delivery/service address
5. Contract number
6. Service Date
7. Description of Services
8. Detailed description of commodity transition with unit price, discounted price and totals.
9. Detailed description of total labor hours and charges by employee/location/date/time
10. Total
11. Taxpayer ID number

Invoices and support documentation are to be forwarded to:

OC Public Works/Procurement Services
Attn: Accounts/Payables
PO Box 4048
Santa Ana, CA 92702-4048
Email: accountspayables@ocpw.ocgov.com

Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the DPA.

**ATTACHMENT C
STAFFING PLAN**

Name	Classification/Designation	Years of Experience
Steve Heinz	Founder & CEO	40
Dan Behringer	Chief Project Officer	6
Robert Mozingo	Sr. Project Manager	3

Additional key personnel for ECI are listed below.

Principal-in-Charge, Contracting Authority

Steven D. Heinz, PE, CEM, Founder & CEO
 John C. Heinz, MSM, MBA, Chief Sales Officer
 Blaine E. Clapper, MBA, BEP, Chief Marketing Officer
 Ted Garlin, Regional Sales Manager

EnergyCAP Development, Technology, and Support Services

David Ulmer, MBA, PMP, Chief Product Officer
 Chris Houdeshell, Chief Technology Officer
 Samata Prabhu, Asst. Vice President, Software Development
 Zac O-Donnell, Asst. Vice President, Technology Division
 Joel Brickell, Asst. Vice President, Support

EnergyCAP Project Management Office

Dan Behringer, PMP, Chief Project Officer
 Christopher Underwood, PMP, CEM, Asst. Vice President, PM Team Lead
 Robert Mozingo, Sr. Project Manager
 Darryl Thompson, Sr. Project Manager JB Evans, Sr. Project Manager
 Beth Calehuff, Project Manager
 Jeremy Amaismeier, Sr. Project Engineer Team Lead
 Josh Condo, Sr. Project Engineer
 Scott Anthony, Project Engineer
 Cassandra Caldwell, Project Engineer

EnergyCAP CAPture Services

Ryan Ohlson, BEP, Chief Business Development Officer
 Ashley Kraige, Asst. Vice President, CAPture Services
 Lane LaBelle, CAPture Services Specialist

The Contractor understands that the personnel represented as assigned to the Contract must remain working on the Contract throughout the duration of the Contract unless otherwise requested or approved by the County. Substitution or addition of key personnel in any given category or classification shall be allowed only with prior written approval of the County Building Manager. **Note: The written approval of substituted Key Personnel is for departmental use only and shall not be used for auditing purposes outside OC Public Works.**

Contractor may reserve the right to involve other personnel, as their services are required. The specific individuals will be assigned based on the need and timing of the service/classification required. Assignment of additional key personnel shall be subject to County's Project Manager written approval. ***Note: The written approval of additional Key Personnel is for departmental use only and shall not be used for auditing purposes outside OC Public Works.*** County reserves the right to have any personnel removed from providing services to County under this Contract. County is not required to provide any reason for the request for removal of any personnel.