

CONTRACT MA-080-18011369

FOR

UTILITY MANAGEMENT & BILLING SYSTEM

BETWEEN

OC PUBLIC WORKS

AND

ENERGYCAP, INC.



**CONTRACT MA-080-18011369
WITH
ENERGYCAP, INC.
FOR
UTILITY MANAGEMENT AND BILLING SYSTEM**

THIS CONTRACT, MA-080-18011369 for Utility Management and Billing System (hereinafter referred to as “Contract”) 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; hereinafter referred to as “County and EnergyCAP, Inc., with a place of business at 2026 Sandy Drive, State College, Pennsylvania (hereinafter referred to as “Contractor”), with a County and Contractor sometimes individually referred to as “Party” or collectively as “Parties”.

ATTACHMENTS

THIS CONTRACT is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Work

Attachment B – Contractor Pricing

Attachment C – Staffing Plan

RECITALS

WHEREAS, Contractor and County are entering into this Contract for Utility Management and Billing System under an all-inclusive fixed price Contract; and,

WHEREAS, County solicited Contract for Utility Management and Billing System as set forth herein, and Contractor represented that it is qualified to provide Utility Management and Billing System to the County as further set forth here; and,

WHEREAS, Contractor agrees to provide Utility Management and Billing System to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and,

WHEREAS, County agrees to pay Contractor based on the schedule fees and hourly rates set forth in Payment/Compensation, attached hereto as Attachment B; and,

WHEREAS, the County Board of Supervisors has authorized the Procurement Officer or designee to enter into a Contract for Utility Management and Billing System with the Contractor; and,

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DPA shall mean the Deputy Purchasing Agent assigned to this Contract.

ARTICLES

General Terms and Conditions:

A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the

event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.

- B. **Entire Contract:** This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Procurement Officer or designee.
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
- E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.
- F. **Acceptance Payment:** Unless otherwise agreed to in writing by County; 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnittees as identified in **article "Z"** below, and as more fully described in **article "Z,"** harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as

modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in **article "Z"** below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.

- I. **Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. **Performance Warranty:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.
- O. **Insurance Requirements:**

Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor

agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

Coverage

Minimum Limits

Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
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Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence
Technology Errors & Omissions	\$1,000,000 per claims-made \$1,000,000 aggregate

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange its elected and appointed officials, officers, agents and employees*** as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT.***
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, agents and employees*** or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT.***

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

If Contractor's Technology Errors & Omissions is "Claims-Made" policy, Contractor shall agree to maintain coverage for two (2) years following the completion of the Contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Procurement or the agency/department procurement division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

Q. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of **article "Z"** below, Contractor agrees that it shall defend, indemnify and hold County and County

- INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- U. **Freight:** Prior to the County's express acceptance of delivery of products. Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.
- X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.
- Y. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- AA. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing company hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable

records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the County's project manager.

- BB. Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
- CC. Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

Additional Terms and Conditions:

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure Utility Management and Billing System from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".
2. **Term of Contract:** This Contract shall commence on May 1, 2018 and continue for three (3) calendar years from that date, unless otherwise terminated by County. This Contract may be renewed as set forth in article 3 below.
3. **Renewal:** This Contract may be renewed by mutual written agreement of both Parties for two (2) additional two (2) year terms. 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 beginning in year #4 (the first renewal). CPI increase of 5% in year #4, no increase in year #5. Subsequent years to be determined.

4. **Adjustments – Scope of Work:** No adjustments made to the Scope of Work will be authorized without prior written approval of the County assigned Deputy Purchasing Agent.
5. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County

may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

- a) Terminate the Contract immediately, pursuant to Section K herein;
 - b) Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - c) Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - d) Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
6. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
7. **Conflict of Interest – Contractor’s Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.
8. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
9. **Contractor’s Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager, which consent shall not be unreasonably withheld.
- The Contractor’s Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager from providing services to the County under this Contract. The County’s Project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within five (5) business days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor’s Project Manager from providing further services under the Contract.
10. **Contractor Personnel – Reference Checks:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor’s employees assigned to this project

must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.

11. **Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.

12. **County of Orange Child Support Enforcement:** All Contractors are required to comply with the child support enforcement requirements of the County of Orange. Failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. In order to comply with the child support enforcement requirements of the County of Orange, all bidders/proposers must furnish to the Contract administrator, the Procurement Officer, or the agency/department Deputy Purchasing Agent:
 - A. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address;
 - B. In the case of a Contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the Contracting entity;
 - C. A certification that the Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
 - D. A certification that the Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

13. **Data – Title to:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

14. **Default – Reprourement Costs:** In case of Contract breach by Contractor, resulting in termination by the County, the County may procure the goods and/or services from other sources. If the cost for those goods and/or services is higher than under the terms of the existing Contract, Contractor will be responsible for paying the County the difference between the Contract cost and the price paid, and the County may deduct this cost from any unpaid balance due the Contractor. The price paid by the County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.

15. **Disputes – Contract:**

- A. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager, as specified in Article 22. "Notices," such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:
1. The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 2. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.
- B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for cause or termination for convenience as stated in section K herein.

16. **Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
2. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace;
 - b. The organization's policy of maintaining a drug-free workplace;
 - c. Any available counseling, rehabilitation and employee assistance programs; and
 - d. Penalties that may be imposed upon employees for drug abuse violations.

3. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
 - a. Will receive a copy of the company's drug-free policy statement; and
 - b. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

1. The Contractor has made false certification, or
 2. The Contractor violates the certification by failing to carry out the requirements as noted above.
17. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, sub article B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent Contractors. An independent Contractor is defined as "an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at http://www.edd.ca.gov/Employer_Services.htm

18. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as project manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.
19. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as

supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

20. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.
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 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: Kristine Mariscal
 300 North Flower Street

Santa Ana, CA 92703
Phone: 714-667-1628
Email: kristine.mariscal@ocpw.ocgov.com

cc: OC Public Works/Procurement Services
Attn: Nancy Foroughi, CPPB, County DPA
300 North Flower Street, Suite 861
Santa Ana, CA 92703
Phone: 714-667-4951
Email: nancy.foroughi@ocpw.ocgov.com

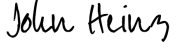
22. **Precedence:** The Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.

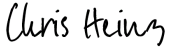
23. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Contract.

Signature Page

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the date following their respective signatures.

ENERGYCAP, INC.*

<small>DocuSigned by:</small>			
	John Heinz	Vice President	3/7/2018
<small>20FD0E83EF214F2...</small>	Name	Title	Date

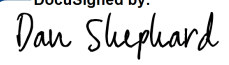
<small>DocuSigned by:</small>			
	Chris Heinz	Secretary	3/6/2018
<small>F6E06FBADC32400...</small>	Name	Title	Date

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

Signature	Name	Title	Date
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APPROVED AS TO FORM:

County Counsel

By  _____
D832D1F95454446...
 Deputy

Date 3/7/2018

* 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 A SCOPE OF WORK

I. OVERVIEW

The County of Orange, Public Works requires superior qualifications, experience, and knowledge as it relates to a fully integrated utility management and billing system (“System”) that functions from a government entity perspective. The System should provide the County with capabilities to properly manage and monitor utility usage, process bill payments, and provide reliable reporting. The System would entail an all-inclusive fixed price contract for software, license, database hosting and maintenance.

- A. The System must provide a flexible mechanism to allow integration with other business applications. The Contractor must demonstrate the professional capability to assist County of Orange in integrating with its payment processing system, “Countywide Accounting and Personnel System” (CAPS+).
- B. The System must provide most of the desired functionality “out of the box”, allowing for customization only where the County’s requirements are deemed “unique” such as certain interfaces and custom reports and alerts; however, it is anticipated that the System will allow for ad-hoc reporting and staging of tables where importing and exporting of data is easily manipulated in normally accepted data standards (XML JASON, etc.).

II. VISION

The County is seeking a solution to provide full functionality as it relates to utility management and payment. The current system is not fully integrated; however, it does include customized features that meet the needs of the County. The County is interested in modern, open systems that promote the exchange and extraction of information. It is the desire of the County to select and maintain a position that will encourage efficiencies to current processes. If implementation is needed, the anticipated project timeline is 90 days. Through collaborative efforts with the selected vendor, an appropriate timeframe will be identified accordingly.

III. BACKGROUND, CURRENT ENVIRONMENT AND FUTURE HIGH-LEVEL REQUIREMENTS

As a regional service provider, the County delivers a broad range of services to the citizens of Orange County. Services provided include public protection, public health, infrastructure maintenance, community and social services.

The County services 3.1 million residents by dividing its organization into over 24 Agencies and Departments from public safety, social services, health care services, infrastructure management, parks and beaches to technology. Comprising of 798 square miles, the County employs 18,029 and supports Countywide structural assets of about 200 buildings.

The County of Orange, OC Facilities Maintenance Division manages the County buildings and their systems for lighting, heating, cooling, etc., administering contracts for these services and operating the Central Utility Facility (CUF), which provides electricity, steam for heating buildings and chilled water for cooling buildings. This service is provided to both County and external clients and therefore requires both internal and external billing processes.

The County is seeking a solution that will satisfy current functionality and will scale with future utility customer information system needs.

IV. CURRENT STATE UTILITY MANAGEMENT AND BILLING SYSTEM PROCESSES

The County has documented current state utility management and billing processes to be used as input into the process analysis activities of this project. As such, Contractor is not responsible for documenting the current state processes but analyzing how current processes will best be incorporated into the System with the appropriate customization. Function requirements as outlined within this Contract.

A. Interfaces

1. Current system has a data feed from Waste Management of OC, Southern California Edison, Southern California Gas, and San Diego Gas & Electric
2. Current system interfaces with CGI/AMS 3.7, a County/server ERP solution: www.cgi.com/en/solutions/cgi-advantage

B. Interfaces/Integration Preferences

The County prefers an application architecture and methodology that promotes information sharing between applications. The County desires to be able to provide selected data to other organizations through the internet (web-based user interfaces and reporting). The County expects that System provided by Contractor will use standards-based architecture such as XML to provide the needed environment for such activity.

System must have the following interface capabilities:

1. Accept a data feed from Southern California Edison, Southern California Gas, and San Diego Gas & Electric;
2. Be expandable to accept data from other utilities such as water providers;
3. Interface with CGI's most recent client/server Enterprise Resource Planning (ERP) solution CGI Advantage www.cgi.com/en/solutions/cgi-advantage; and,
4. Interface with Geographic Information System (GIS) mapping solution (ERSI GIS).

C. Metrics

1. Accounts:
 - i. Estimated over 1,500 utility accounts from over 40+ utility providers.
2. Cost Allocation Summary:
 - i. Electricity – 51.9%
 - ii. Water – 17.7%
 - iii. Natural Gas – 7.4%
 - iv. Steam – 5.5%
 - v. Refuse – 4%

D. Network Infrastructure

Contractor shall be responsible to provide cloud based technology and support as the County's network infrastructure is decentralized with minimal resources. In addition, the

Contractor shall provide the software solution accompanied by bandwidth connectivity to the County. Standard protocols, industry best practices and security standards are strictly adhered to.

E. Network Requirements

Contractor must take responsibility for specifying the requirements necessary for network communications as required to successfully implement the proposed systems. To this end, the following concepts should be observed:

1. The Contractor may propose additional network expansion, or may instead choose to identify capacity requirements between devices.
2. Contractor must provide specific bandwidth requirements between clients and servers, as well as between the various servers.
3. Contractor is expected to define the required interface connection (*wired and wireless*) between the System and the County network. This should include, but not be limited to, explanations of client-side software requirements, supported operating systems, device options, and bandwidth requirements.
4. Contractor must specify proposed demarcation of responsibilities between the County and the Contractor during System installation, testing, warranty, and maintenance.

F. GIS Capabilities

The Contractor must demonstrate Geographic Information System (GIS) capabilities. GIS represents a critical component in the County's technology strategies. Contractor is encouraged to include their GIS capabilities and future strategies to incorporate within the System.

G. Data Migration

The County intends to maintain all historical data in the current system. At the minimum, the County must have all current balances and sufficient historical data to full utilization of the new solution. The County will collaborate with the vendor to determine the appropriate scope for data conversion needs and alternatives.

H. Training

End-user (train-the-trainer), system administration, and report writing training, along with a thorough transfer of knowledge of system configuration and set-up, is desired and should be included. Training is strongly preferred at County facilities however, County will consider travel to another class-convening location if required. Contractor shall provide a list of available trainings accompanied by cost.

I. Implementation/Configuration/Consultation

The County is requesting full support in its implementation of the chosen solution. The following activities, as applicable to your proposed solution, should be included.

1. Table and system set-up and configuration options
2. Fit-gap and best practices use of your solution

3. Security design and set-up
4. Configuration of interfaces with other applications
5. Project management and support
6. User Testing, Acceptance and County sign-off from County Project Manager

The County expects the Contractor to name a project manager for the project, provide onsite project management when needed, produce and maintain the overall project implementation plan and schedule. The County will also provide a project management team to coordinate internal resources, facilitate communication at all levels, facilitate decision-making and provide oversight and auditing. The County may at any time and for any reason request a new Project Manager. It is the responsibility of the Contractor to replace the Project Manager in a manner consistent with the "Additional Terms and Conditions," Article 9.

Other elements related to the project support include:

1. Status reports
2. Meeting facilitation, issue resolution, etc.
3. Documentation of changes, required actions, decisions, etc.
4. Conduct management briefings
5. Identification, mitigation planning, and research for any identified risks
6. Support and participation in project communication activities.
7. Deployment and post go-live, on-site support

V. DOCUMENTATION

Complete technical, security, administrative and end-user documentation must be included.

VI. TESTING AND USER ACCEPTANCE

Development of test plan, use cases are the responsibility of the Contractor. User acceptances and testing process will be agreed upon by both the Contractor and the County, however it is the responsibility of the Contractor to develop a sign-off process that is agreed upon by the County. Deliverables and payment will be developed based on this process.

VII. TIMELINE

The County plans to start the project upon contract award in late May 2018.

VIII. TECHNICAL REQUIREMENTS

A. Technical Requirements/Minimum System Requirements:

1. Minimum workstation configuration.

Operating system(s) with version number	Windows 7 +
Minimum hard drive free space	n/a
Minimum RAM	4 GB
Minimum processor and speed	Intel i3 or AMD 6300 (2014+)

B. Technical Requirements:

1. Contractor shall host database within internal servers. Database administrators and software support personnel provided by Contractor.
2. Technical, security, administrative and end-user documentation.
3. Any APIs or other standards-based modules that will aid enterprise integration.
4. Data dictionary or other similar that supports the creation of ad-hoc reports.
5. Facilitation of future changes, management of the "software patches" and version control. Support the distribution of patches and fixes. Technical documentation that accompanies a patch or fix.
6. Nightly data back-up and archiving in SQL Server Enterprise Manager / Server Management.
7. Administration of application security
8. Creation of account notation
9. Data searching for primary data (request, etc.). Use of wildcards, partial searches, like searching, case sensitivity, Soundex, and amount of data returned.
10. Ability to roll-back transactions or provide recovery points.
11. Navigation from screen-to-screen maintaining context (primary focus or subject of the task being performed; e.g., customer, request, etc.)
12. Scalability of the software. Ensure acceptable performance.

IX. **FUNCTIONAL REQUIREMENTS**A. Functional Requirements:

1. Intake of Electronic Data Interface (EDI)
2. Chargeback to external agencies
3. Year-end accruals
4. Bill audit and approvals
5. Bill split
6. Payment and Journal Voucher ("JV") interface
7. Usage tracking and cost avoidance
8. Benchmarking
9. Energy STAR reporting and compliance
10. Customized reporting

B. Functional Requirements Table, Specifications:

Available – Indicates that the associated specification is resident in your solution—no measurable configuration or programming is required.

Minimum – Indicates that a small amount of configuration or programming is needed to provide the related functionality. Some cost may be associated with the effort.

Moderate – Indicates that a moderate amount of configuration or programming is needed to provide the related functionality. Some cost will likely be associated with the effort.

Significant – Indicates that a large amount of configuration or programming is needed to provide the related functionality. Perhaps not usually provided in your solutions. Significant cost will likely be associated with the effort.

New Code – Indicates completely new programming/data structure is needed to provide the related functionality. Perhaps not included in any of your previous solutions. Cost will likely be associated with the effort.

Can't Provide – Indicates the solution is unable to provide this functionality.

Note – For your use, caveats, explanations, etc.

Specification Information				Level of Configuration or Programming Needed						
ID	Title	Description	Subject Area	Available	Minimum	Moderate	Significant	New Code	Can't Provide	Note
F1.	General	Must have database capacity to manage over 1,500 utility accounts	General	X						
F2.	General	Consumption and meter readings must be available for entire account history	General	X						
F3.	General	System must have the ability to interface with automated meter reading systems.	Interface	X						2
F4.	General	System must have the ability to upload data received from Utility providers (from Utility Vendor invoice) currently need interface for Waste Management of OC, Southern California Edison, Southern California Gas and San Diego Gas & Electric	Interface	X						9
F5.	General	Must be able to interface with ERP - CGI (XML standard based) by importing Payment Vouchers and Journal Vouchers to system	Interface	X						10

Specification Information				Level of Configuration or Programming Needed						
ID	Title	Description	Subject Area	Available	Minimum	Moderate	Significant	New Code	Can't Provide	Note
F6.	Billing	Can create an invoice from a bill received from CUF by reading Account Name, Number, Address, Meter Reads, Rates etc.	Billing	X						11
F7.	Billing	Can include all utilities (Refuse, Water, Sewer, Electricity, Gas) on one customer monthly invoice	Billing			X				1
F8.	Billing/Account Reconciliation	Can create JV for ERP solution from Customer Invoices based on an amount associated with a unique identifier within the invoice rather than the entire invoice amount	Billing			X				12
F9.	Duplicate invoice	Can produce an exact duplicate of a customer's bill WITHOUT storing an image file (i.e., system generated). Can view the duplicate without printing.	Billing	X						
F10.	Future Bills	Can calculate and display a future bill. (when a customer calls and said meter has been read and wants to know how much electric bill is.)	Billing			X				5
F11.	Charge Configuration	Can configure charges based on either usage or a % of electric amount. Can calculate and add a % of overhead to the bills	Billing	X						10
F12.	Online Bill Presentment	Can provide the customer internet access to billing information	Billing	X						
F13.	Summary Bill	Can provide summary bill of customer's accounts	Billing	X						A report not a bill

Specification Information				Level of Configuration or Programming Needed						
ID	Title	Description	Subject Area	Available	Minimum	Moderate	Significant	New Code	Can't Provide	Note
F14.	Pre-Billing Review	Can accommodate a pre-billing review process	Billing	X						
F15.	Configurable Billing Statement	Can configure billing statement to custom needs	Billing		X					12
F16.	Alternative Billing Address	Can store alternate billing addresses	Billing			X				5
F17.	Billing hold	Can hold or “flag” a billing process (group) to allow meter reads to complete	Billing			X				
F18.	Optional bill presentations	Can “toggle” on or off, by account, billing graphs, degree-day charts, and other “optional” invoice presentment	Billing	X						12
F19.	Messages on Statements	Can add a message to a customer’s statement	Billing			X				5
F20.	Providing Duplicate Bills	Can flag accounts to send duplicate bill to alternate location	Billing							5
F21.	Targeted Messages on Statements	Can configure statement messages by customer type (e.g., internal customers can get different message than commercial); can email the messages to the email address on the account	Billing				X			5
F22.	Billing edits	Can set edits (automatically measured limits), that operate prior to invoice creation, to help minimize incorrect bill amounts.	Billing	X						
F23.	Billing edit scope	Billing edits can be set to measure meter reading values or billing amounts (or both).	Billing			X				5
F24.	Usage graph	Can print usage graph, for at least 12 months, on bill invoice	Billing	X						

Specification Information				Level of Configuration or Programming Needed						
ID	Title	Description	Subject Area	Available	Minimum	Moderate	Significant	New Code	Can't Provide	Note
F25.	Bill messages	Can insert, through online screen, a bill message and target message to customer groups (residential, commercial, by zip code, etc.) can then email mass notifications to email address listed on both the master account and individual	Billing				X			5
F26.	Customer Hierarchy	Can configure customer account by "Super Customer" (Agency), Customer (Department within Agency), Billable Customer, and possibly more; must associate a "general ledger" number per customer and super customer	Customer Information	X						
F27.	Customer	Supports single accounts with multiple meters and service lines.	Customer Information	X						
F28.	Customer Records	Includes: Account Number, Name (last and first), County Facility number, Service Address, Neighborhood (parcel), billing address, email address (must support multiple), telephone number (multiple), account type (multiple), etc.	Customer Information	X						11
F29.	Disconnect/Connect Flags	Can configure flags to associate with connect and disconnect events	Credit/Collect ions				X			5
F30.	Customer Historical Data	Can view customer data historically	Customer Information	X						
F31.	Customer Account Audit Log	Provides audit log of changes made to customer accounts	Customer Information						X	5
F32.	Personal Data Search	Can search on a unique customer identification	Customer Information			X				5

Specification Information				Level of Configuration or Programming Needed						
ID	Title	Description	Subject Area	Available	Minimum	Moderate	Significant	New Code	Can't Provide	Note
F33.	Duplicate/Copy Records	Can duplicate and copy from previous/specified record	Customer Information						X	5
F34.	Account Search by Person	Can search by person on account, whether or not primary	Customer Information				X			5
F35.	Alternate Contact Information	Can store information on alternate contact	Customer Information						X	5
F36.	Duplicate Bill: Address	Can store address of location to send duplicate bill	Customer Information				X			5
F37.	Multiple Persons per Account	Can store multiple persons for each account with primary person designated	Customer Information				X			5
F38.	Customer Billing History	Can reference/view customer billing history	Customer Information	X						
F39.	Load Information	Can store load information such as heating type, sq. footage, water heater type, etc.	Customer Information	X						6
F40.	Employee-Customer Interaction: Location	Can track individual employee interactions with customers (i.e., record a note/date/reason) in central location	Customer Information						X	5
F41.	Account Phone Numbers	Can record multiple phones numbers for each Customer account (at least 2 or 3)	Customer Information			X				5
F42.	Customer Contact: Independent of Activity	Can record a customer contact independent of any other customer-related activity	Customer Information						X	5
F43.	Site note	Can record a note against a given service location, and the note will remain attached to the location, and not be lost as new customers are connected	Customer Information						X	5
F44.	Note Association	Can record a note against either a site/premise, or a customer or meter record	Customer Information	X						

Specification Information				Level of Configuration or Programming Needed						
ID	Title	Description	Subject Area	Available	Minimum	Moderate	Significant	New Code	Can't Provide	Note
F45.	Alternate Contact Designation	Can designate alternate contacts for each account	Customer Information				X			5
F46.	New customer	Can open a customer account without a meter number or site (premise) information	Customer Information	X						
F47.	New buildings	Can establish and maintain new buildings and facilities	Customer Information	X						
F48.	Basic Rate	Can bill basic charge for service when read provides no data	Customer Information	X						
F49.	Site note	Site-based notes can be included with service orders or sent to meter reading handheld devices	Customer Information						X	5
F50.	Customer related alerts	Can configure customer-related alerts (outstanding service order, collection action pending, etc.) and display them on the "primary" customer screen and can automatically send alerts via email	Customer Information						X	5
F51.	Notes Field Capacity	Can capture text of length equivalent to memo data type (Access) or text data type (SQL Server) within Notes field	Customer Information	X						
F52.	Meter Data	Can capture all data related to a meter (dials, type, class, etc.)	Meter Reading	X						
F53.	Meter Read Tolerances	Provide configurable tolerances to identify when a meter read is out of range	Meter Reading	X						
F54.	Seasonal Meter Tolerances	Can configure meter read tolerances location, season and annual thresholds	Meter Reading			X				5
F55.	Customer Payment Search	Can search customer payments by amount charged	Payment						X	5

Specification Information				Level of Configuration or Programming Needed						
ID	Title	Description	Subject Area	Available	Minimum	Moderate	Significant	New Code	Can't Provide	Note
F56.	Payment through ERP system	Can support automatic update of Payment receipt, once the System has issued a Journal Voucher to the ERP system	Payment		X					10
F57.	Time of Use	Can support at least 4 daily time-of use periods	Rates	X						
F58.	Rate Schedule	Can ratchet on rate schedule based on historical demand usage	Rates						X	5
F59.	Unbundled Rates	Can support unbundled rates	Rates						X	5
F60.	Rate Tests	Can rate test on historical data (what-ifs)	Rates						X	5
F61.	Season Rate	Can pro-rate seasonal rate change	Rates						X	5
F62.	Rate Change Model	Can model proposed rate change to determine possible revenue impact	Rates						X	5
F63.	Remove/Replace Service Order	Can accomplish removal and replacement of a meter in one service order (versus two)	Service Orders						X	5
F64.	Service Order Status/Notes	Can record completion status and notes for service orders (e.g., can show "in progress")	Service Orders						X	5
F65.	Service Order: Temporary Service	Can automatically create service order to remove temporary service, based on install date plus X months.	Service Orders						X	5
F66.	Service Order Queue: Work Group	Can set service orders to route to a given queue for processing by a defined work group.	Service Orders						X	5

Specification Information				Level of Configuration or Programming Needed						
ID	Title	Description	Subject Area	Available	Minimum	Moderate	Significant	New Code	Can't Provide	Note
F67.	Service Order fee—surcharge	A larger fee (e.g., after hours reconnect) can be assigned to a given service, and larger fee will bill based upon time of day or day of week. New service order type does not need to be selected.	Service Orders						X	5
F68.	Service Order Status by Order Type	Can configure service order status by order type	Service Orders						X	5
F69.	Read-Only Disconnect	Can perform a disconnect of service without actually conducting the service order to remove the meter.	Service Orders						X	5
F70.	Service order alert	Open service orders for any given customer account display indicate on the account record screen.	Service Orders						X	5
F71.	Service Order Routing: Printer	Can set service orders to print to a given printer based on order type.	Service Orders						X	5
F72.	Service Order: Priority	Can set certain service orders to act as priority/emergency and move to top of queue (e.g. Outages)	Service Orders						X	5
F73.	Service Order Fee	Can assign a standard fee to selected service orders and fee will automatically bill to customer.	Service Orders						X	5
F74.	Service Order Queuing	Can configure service orders to electronically queue instead of print	Service Orders						X	5
F75.	Service Order Report Formats	Can configure service order report format according to service order type	Service Orders						X	5
F76.	Service Order: Centralized Notes	Can route centralized notes (e.g., meter notes) with service order	Service Orders						X	5

Specification Information				Level of Configuration or Programming Needed						
ID	Title	Description	Subject Area	Available	Minimum	Moderate	Significant	New Code	Can't Provide	Note
F77.	Can configure chargeable cost by service order	Can configure chargeable cost by service order	Service Orders						X	5
F78.	Service Order: Costing by Time/Date	Can define service order cost according to time of day/ day of week	Service Orders						X	5
F79.	Service Order: Non-Operations Work	Can create service orders for non-operations work (e.g., call customer about X)	Service Orders						X	5
F80.	Service Order History: Customer Accounts	Can associate service order history with customer account	Service Orders						X	5
F81.	Service Order Types	Can configure and manage multiple service order types, e.g., re-read, high-bill, connect, disconnect, collection action, trouble-call, etc.	Service Orders						X	5
F82.	Vendor Management	Has capability to add vendors within the System and associate vendor by utility (vendor management)	Accounts Payable	X						
F83.	Vendor Management	Has capability to establish unique vendor numbers	Accounts Payable	X						
F84.	Vendor Search	Can search by vendor	Accounts payable	X						
F85.	Vendor Unique Identifier	Can generate a unique Vendor # for all vendors in system	Accounts payable	X						
F86.	Payment Transactions for Vendors	Can designate vendor transactions to pay separately (vs. batched)	Accounts payable	X						10
F87.	Vendor Payment	Can create a Payment Voucher (PV) to ERP solution	Accounts Payable	X						10
F88.	Vendor Payment Status	Can provide vendor payment status (reconcile cleared payment)	Accounts payable	X						10
F89.	Online Review of Expenses	Can conduct online review of expense by account number, date, project, or vendor, etc.	Accounts payable	X						

Specification Information				Level of Configuration or Programming Needed						
ID	Title	Description	Subject Area	Available	Minimum	Moderate	Significant	New Code	Can't Provide	Note
F90.	Vendor Name Validation	Can validate vendor name input through use of drop-downs or other edits	Accounts payable	X						
F91.	Duplicate Payment Processing	Can prevent duplicate processing of payments	Accounts payable	X						10
F92.	Invoice Number Search	Can search by invoice number	Accounts payable	X						
F93.	Date Range Query of Invoices to be Paid	Can provide online list of all invoices to be paid for the user-defined date range in user-defined order (include invoice #, invoice date, vendor #, vendor name, and invoice amount.)	Accounts payable	X						
F94.	Vendor Transaction Consolidation	Can consolidate transactions for Vendors	Accounts payable	X						10
F95.	Management Dashboard	Provides configurable dashboard to provide key productivity indicators and allow drill-down	Reporting	X						
F96.	Reports Menu	Can add a custom report to the reports menu (w/o vendor intervention)	Reporting	X						7
F97.	Alert	MUST be able to identify outage area within system from notices received from Vendor (accounts affected by future Vendor utility outage) and must be able to notify customer via email and print through the System.	Reporting and Alert		X					6
F98.	Report Generation Tool	Can create Ad-hoc reports through supplied report generation tool	Reporting	X						7
F99.	Security: Report Control	Can control reports through system security	Reporting	X						8

Specification Information				Level of Configuration or Programming Needed						
ID	Title	Description	Subject Area	Available	Minimum	Moderate	Significant	New Code	Can't Provide	Note
F100.	Reports Customization	Can customize existing reports (w/o vendor intervention)	Reporting	X						7
F101.	User-Defined Fields	Provides user-defined fields	Database	X						6
F102.	System Database Connection	Can accommodate live connection with system database	Database	X						4
F103.	Application Security: Purchase Orders	Can configure application security to limit who has ability to create a PO	Operating system / Operating environment						X	5
F104.	Export	Can export data into common desktop tools (such as Excel and pdf.)	Operating system / Operating environment	X						
F105.	Single Sign-On	Can accommodate single sign-on and support interfacing with directory services such as AD, Active Directory etc.	Operating system / Operating environment	X						
F106.	Test/train instance	License allows for multiple instances of the software/database without incurring ANY additional cost. E.g., production, test, training	Operating system / Operating environment	X						13
F107.	Role Based Security	Can support role-based security (e.g. user log-in is associated with system functionality such as reporting, viewing, account management etc..	Operating system / Operating environment	X						
F108.	Web Enabled	System is web-enabled or large portion of system is web-enabled	Operating system / Operating environment	X						

Contractor Notes/Assumptions:

- Existing CUF sub-meter derived invoice creation functionality is limited to one meter per invoice. Customers will be able to view all accounts and bills online in view only mode, and dashboards can be created per customer if desired.
- Proposal INCLUDES one new interface to new CUF customer sub-meter system.
- Not used.

4. This is a hosted solution. Live connection to the database is available to your IT via published APIs and dashboard links.
5. These features are important for a municipal utility billing system that has as its primary purpose the preparation and presentation of utility bills to thousands of customers. These functions are not available in EnergyCAP and cannot be economically added. We don't believe that they are necessary at this time, given the stated County customer scenario. NOT INLCUDED in proposal.
6. Account, meter and facility data, including SCE rotating outage groups, can be tracked as user-defined fields. Email report groups can be used to send notifications via a specialized notification report.
7. Proposal INCLUDES and annual license to Report Designer, an Excel Power Pivot add-on that provides custom report, query and chart/graph capability to all of your users.
8. Reports are subject to security controls but not control of individual reports.
9. Proposal INCLUDES Bill CAPture service for 12,900 annual bills, 500/mo via OCR capture and 575/mo via EDI (SCE, SCG, SDG&E). The existing Xebec service will be replaced by Bill CAPture; Xebec is not supportable and of concern due to unknown business continuity contingencies. OC Waste Management will continue to be handled as current done (electric but not industry-standard EDI 810). Note: An excess fee will apply for annual transactions over the contracted limit, \$2.00/invoice for OCR/PDF and \$0.80/invoice for EDI 810.
10. Proposal includes continuation of current CAPS+ interfaces, plus a modification to allow multi-meter same commodity bills.
11. Proposal includes continuation of current CUF invoicing workflow plus conversion of chargebacks from Enterprise to Online plus implementation of new CUF sub-metering system interface when available.
12. More specifics needed for this Requirement in order to scope the effort needed. NOT INCLUDED in proposal.
13. Proposal INCLUDES 2 hosted database instances, PROD and TEST/TRAIN. TEST/TRAIN will be restored from PROD upon demand, no more frequently than 10x/year.

**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									
						1 st Renewal		2 nd Renewal	
#	Cost Item	Item Description	Year 1	Year 2	Year 3	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)	\$34,000.00	\$34,000.00	\$34,000.00	\$35,700.00	\$35,700.00	\$35,700.00	\$35,700.00
2.	Database Hosting	Hosting Service (Includes second instance for test / training)	\$ 6,175.00	\$ 6,175.00	\$ 6,175.00	\$ 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)	\$19,000.00	\$19,000.00	\$19,000.00	\$19,950.00	\$19,950.00	\$19,950.00	\$19,950.00
Annual/Recurring Costs			\$59,175.00	\$59,175.00	\$59,175.00	\$62,133.75	\$62,133.75	\$62,133.75	\$62,133.75
3 Year Total				\$ 177,525.00					

<i>One Time Charges</i>			
#	Cost Item	Item Description	One Time
1.	Project Management Control (Deliverables: Progress management, communication, corrective action and project closure)	EnergyCAP database review, re-organization and clean-up & recommissioning	\$ 25,000.00
2.	Project Management Control	Convert OCPW "Wen" SSRS reports to EnergyCAP	\$ 3,400.00
3.	Project Management Control	EDI provider upgrade (<i>note 4</i>)	\$ 9,800.00
4.	Project Management Control (Optional item)	Addition of John Wayne Airport to EnergyCAP database. Bill CAPture service scope not known, not included.	\$ 50,000.00
5.	All required data conversion (state assumptions)	Convert JV split process to EnergyCAP Online	\$ 13,200.00
6.	End to end configuration	Development and implementation of new interface to one new CUF sub-metering system	\$ 27,000.00
One Time Charges Sub-Total			\$ 128,400.00

<i>Training Offerings and Associated 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	*
2.	Additional training offerings not included in licensing and associated costs	Onsite Training (2-day sessions)	\$ 6,950	1 each	\$ 6,950.00
3.	Additional training offerings not included in licensing and associated costs	Four (4) EnergyCAP Catalyst registration fees (September 25-27, 2018)	\$ 699	4 each	\$ 2,796.00
Training and Other Costs Sub-Total					\$ 9,746.00

<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 Not to Exceed			\$ 25,000.00

TOTAL CONTRACT AMOUNT NOT TO EXCEED:.....\$ 340,671.00

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.
 4. The EDI conversion is needed to remove Xebec from the EDI processing workflow. Xebec is a third-party provider that has proven to be slow to respond to some issues and may have resiliency issues with older technology, redundancy and intrusion/security controls.
- 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	37
Dan Behringer	VP of Implementation Solutions	4
Roy Long	Senior Customer Success Manager	4

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, Vice President of Sales & Marketing
 Blaine E. Clapper, MBA, BEP, Asst. Vice President of Sales & Marketing, CMO
 Ted Garlin, Regional Sales Manager

EnergyCAP Software Design, Programming, and Development

Ryan Booz, BEP, Chief Technology Officer
 David Ulmer, MBA, Vice President of Software Development
 Samata Prabhu, Asst. Vice President of Software Development
 Chris Houdeshell, Asst. Vice President of Software Development
 Timothy Marte, Sr. Software Developer
 Zac O-Donnell, Sr. Software Developer
 Luke Fraenza, Software Developer
 Stephen Clewell, Software Developer
 Vance Hensler, Software Developer
 Kurt Kroeker, Sr. Software Business Analyst
 Emiline Ensley, Report Designer

EnergyCAP Implementation and Support Services

Dan Behringer, Vice President of Implementation Solutions
 John Pierce, CEM, Asst. Vice President of Implementation Solutions
 Scott Bair, CEM, Sr. Project Manager
 Christopher Underwood, Sr. Project Manager
 Greg Elliott, Project Manager
 Josh Berkheimer, Project Manager
 Peter Caton, Sr. Manager, CAPture Services
 Ashley Kraige, CAPture Services
 Josh Condo, Project Engineer
 Jeremy Amaismeier, Project Engineer
 Joel Brickell, Asst. Vice President of Customer Service

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.