

Memorandum



Date: March 7, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

Agenda Item No. 8(P)(14)

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Subject: Recommendation for Approval to Award a Designated Purchase Contract: EnergyCAP Maintenance and Support Services

Summary

This item is for the award of a Designated Purchase for software licensing, maintenance, third-party hosting, and support services for the continued use of the utility bill management software, Energy Cost Avoidance Program (EnergyCAP), for a turnkey enterprise utility bill management software. Award of this contract to EnergyCAP, LLC, a non-local vendor, is recommended as EnergyCAP, LLC is the original equipment manufacturer (OEM) and proprietary owner of EnergyCAP, which is integral to managing the vast number of utility bills that are processed on an annual basis, as well as managing the energy and water consumption for Miami-Dade County (County). This contract is managed by the Internal Services Department on behalf of the County and various departments rely on EnergyCAP for daily billing operations.

EnergyCAP has been working successfully for every user department which has electricity bills from Florida Power & Light (FPL) and water bills from Miami-Dade Water and Sewer Department (WASD). It provides an understanding of what a department or building has expended or consumed over a given period of time, and instant access to actionable data, which allows departments to better manage resource consumption, reduce the County's carbon footprint, and derive savings. There are 3,810 County buildings managed in EnergyCAP, and since inception it has benefited the County in numerous ways, including the reduction of staff time to import, analyze, and process bills, a decrease in FPL late payment fees, and finding concealed water leaks or broken pipes due to alerts flagging bills that are abnormally high. In addition, this software can provide a breakdown of costs and use by commodity (electric, water, sewer, storm drainage, and fire protection).

Recommendation

It is recommended that the Board of County Commissioners (Board) approve this request for award of Designated Purchase *Contract No. L-766, EnergyCAP Maintenance and Support Service*, to Energy CAP, LLC for the Internal Services Department (ISD) in the amount of \$450,488 for the initial three-year term. The current contract, Contract No. RFP766-4(4), was approved by the Board through Resolution No. R-1047-11. Approval of a designated purchase is requested, pursuant to Section 2-8.1(b)(3) of the Miami-Dade County Code, by a two-thirds vote of the Board members present, to authorize award of a contract for continuity of services. Additional market research will be conducted, and an Industry Day will be held to identify if other software providers could meet the County's needs and, if available, a competitive solicitation will be issued in the future, per the recommendation of the Resilience Action Team at its December 13, 2022 meeting. If another competitive contract is established, this contract may be terminated early.

In an effort to address rising costs for electricity, the Board passed Resolution No. R-228-09, which directed a plan to reduce electric energy consumption in County operations by 20% no later than 2014. Subsequently, the County was awarded \$12.5 million in federal funds through the American Recovery and Reinvestment Act (ARRA) of 2009, for the implementation of the Energy Efficiency and Conservation Block Grant (EECBG) program. The objective of the EECBG program was to obtain and implement an energy and utility management solution to transition the County from a manual process to an automated enterprise solution. As such, the decision was made to invest in a modern utility billing management solution that would meet the County's energy reduction goals, and EECBG funds were allocated to obtain a sustainable system now and into the future.

MDC001

Background

Prior to the implementation of EnergyCAP, the County utilized a legacy system that was developed in-house and implemented in the 1980's. The legacy system was utilized to track energy consumption and related services. With the expansion of the County, this process became inefficient as it required County personnel to enter data in various financial systems used by departments. In addition, it lacked the functionality needed to manage a government agency as large as the County.

Through a competitive request for proposals process, EnergyCAP was selected to be the centralized software to manage the County's utility bills. EnergyCAP is capable of importing utility bills for tracking, reporting, managing, as well as interfacing with all the current County's accounts payable systems; interfacing with the US. Environmental Protection Agency's Energy Star Portfolio Manager for benchmarking energy and water consumption; tracking greenhouse gas emissions; analyzing savings; and flagging issues such as bill abnormalities, changes in usage, or changes in bill formats from utility providers.

EnergyCAP processes approximately 80,000 invoices annually for more than 4,500 active FPL accounts and 2,600 WASD accounts with combined charges in excess of \$160 million. With this user-friendly software, departments can review, approve, analyze, benchmark, and generate reports to track and understand the use and cost of the energy and water utilized throughout the County. The use of EnergyCAP offers some key benefits which include but are not limited to: eliminating manual processes for thousands of invoices, promoting internal and external data transparency, tracking detailed energy and water usage, and ranking the efficiencies of facilities to support data driven decisions for improvements.

Competition for the products and services being provided by EnergyCAP, LLC is not practicable at this time as EnergyCAP, LLC is the industry leader and has not authorized any third party to provide access to their proprietary software. Additionally, it would not be feasible to replace EnergyCAP at this time, due to the replacement costs that would be required which include, but are not limited to: software licenses, interface development, configuration, customization, data migration, training, and the cost of maintaining multiple systems until the new system is ready for go-live and final acceptance. To date, the County has invested over \$1.7 million in EnergyCAP, and replacement costs are estimated to be upward of \$2 million, when inflation, training, data migration, integrations, configuration and customizations, and annual renewals are factored in.

Accordingly, it is in the County's best interest to award this designated purchase pursuant to Section 2-8.1(b)(3) of the County Code to continue purchasing software licensing, maintenance, third-party hosting, and support services from Energy CAP.

Scope

The scope of this item is countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact for the three-year term is \$450,488. Should the County choose to exercise, at its sole discretion, the three, three-year option to renew terms, the estimated cumulative value will be \$2,217,888. The current contract, Contract No. RFP766-4(4), is valued at \$1,716,132 for a cumulative term of 11 years and six months and expires on April 30, 2023. The allocation under the current contract is lower than the requested allocation for the replacement contract on an annualized basis. The department has expanded the use of EnergyCAP since it was initially implemented and continues to expand to meet the needs. The department is adding natural gas invoices from two vendors and over 200 accounts and has included a twenty percent contingency for additional projects and services through the life of the contract.

Department	Allocation	Funding Source	Contract Manager
ISD	\$450,488	Proprietary Funds/ General Fund	Milton Hernandez
Total:	\$450,488		

Track Record/Monitor

Angela Mathews-Tranumn of the Strategic Procurement Department is the Procurement Contracting Manager.

Delegated Authority

If this item is approved, the County Mayor or County Mayor’s designee will have the authority to exercise all provisions of the contract, including any cancellation, renewal or extension provisions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Vendor Recommended for Award

Pursuant to Resolution No. R-477-18, the recommended vendor for this non-competitive acquisition does not have a local address. The recommended vendor is the proprietary owner of the software and there are no authorized third-party vendors. There are no Small Business Enterprise (SBE) firms certified under the applicable commodities codes.

Vendor	Principal Address	Local Address	Number of Employee Residents	Principal
			1) Miami-Dade 2) Percentage*	
EnergyCAP, LLC	360 Discovery Drive Boalsburg, PA	None	0 0 %	Adi Filipovic


*Provided pursuant to Resolution No. R-1011-15. Percentage of employee residents is the percentage of vendor’s employees who reside in Miami-Dade County as compared to the vendor’s total workforce.

Due Diligence

Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with the Internal Services Department’s Procurement Guidelines to determine contractor responsibility, including verifying corporate status and that there are no performance or compliance issues through various vendor responsibility lists and a keyword internet search. The lists that were referenced included convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to contractor responsibility.

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision applies.
- The Small Business Enterprise measures and Local Preference do not apply.
- The Living Wage does not apply as the services to be procured are not covered services under the Ordinance.



Edward Marquez
 Chief Financial Officer



MEMORANDUM
(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: March 7, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(P)(14)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present , 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(P)(14)
3-7-23

RESOLUTION NO. _____

RESOLUTION AUTHORIZING DESIGNATED PURCHASE PURSUANT TO SECTION 2-8.1(B)(3) OF THE COUNTY CODE BY A TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT; AUTHORIZING AWARD OF CONTRACT NO. L-766 FOR THE PURCHASE OF ENERGYCAP MAINTENANCE AND SUPPORT SERVICES TO ENERGYCAP, LLC IN AN AMOUNT NOT TO EXCEED \$2,217,888.00 FOR THE INITIAL THREE-YEAR TERM AND THREE, THREE-YEAR OPTION TO RENEW TERMS FOR THE INTERNAL SERVICES DEPARTMENT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY CANCELLATION OR EXTENSION PROVISIONS, PURSUANT TO SECTION 2-8.1 OF THE COUNTY CODE AND IMPLEMENTING ORDER 3-38

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. This Board finds it is in the best interest of Miami-Dade County to award Contract No. L-766 as a designated purchase, in substantially the form attached and made a part hereof, for the purchase of EnergyCAP Maintenance and Support Services to EnergyCAP, LLC in an amount not to exceed \$2,217,888.00 for the initial three-year term and three, three-year option to renew terms for the Internal Services Department, pursuant to section 2-8.1(b)(3) of the Code of Miami-Dade County, by a two-thirds vote of the Board members present.

Section 2. This Board authorizes the County Mayor or County Mayor's designee to exercise all provisions of the contract, including any cancellation or extension provisions, pursuant to section 2-8.1 of the County Code and Implementing Order 3-38.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman	
Anthony Rodríguez, Vice Chairman	
Marleine Bastien	Juan Carlos Bermudez
Kevin Marino Cabrera	Sen. René García
Roberto J. Gonzalez	Keon Hardemon
Danielle Cohen Higgins	Eileen Higgins
Kionne L. McGhee	Raquel A. Regalado
Micky Steinberg	

The Chairperson thereupon declared this resolution duly passed and adopted this 7th day of March, 2023. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

LUIS G. MONTALDO, CLERK AD INTERIM

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Eduardo W. Gonzalez

EnergyCAP Maintenance and Support Services
Contract No. L-766

THIS AGREEMENT for the provision of EnergyCAP Enterprise Software System, made and entered into as of this _____ day of _____ by and between EnergyCAP LLC., a corporation organized and existing under the laws of the State of Delaware, having its principal office at 360 Discovery Drive, Boalsburg, PA 16827 (the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 NW 1st Street, Miami, Florida 33128 (the "County") (collectively, the "Parties").

WITNESSETH:

WHEREAS, the County has obtained EnergyCAP Enterprise Software System (System) inclusive of Licenses, Implementation, Integration, and Maintenance and Support Services under Contract No. RFP766; and

WHEREAS, the County wishes to obtain ongoing maintenance, hosting, and support services, and to establish a framework for obtaining additional licenses, hardware, hosting services and/or professional services for the System;

WHEREAS, the Contractor agrees to provide ongoing maintenance and technical support services, and to establish a framework for delivering additional licenses, hardware, hosting services and/or professional services for the System; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- 1.1 The words "Article" or "Articles" to mean the terms and conditions delineated in this Agreement.
- 1.2 The word "Contract" or "Agreement" to mean collectively the (i) Articles, (ii) Scope of Services, (iii) Price Schedule, (iv) all other appendices and attachments hereto, and (v) all amendments issued hereto.
- 1.3 The words "Contract Manager" to mean the Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.
- 1.4 The word "Contractor" to mean EnergyCAP LLC. and its permitted successors.
- 1.5 The words "County Data" to mean all data uploaded into the Subscriptions Services or otherwise provided to Contractor for purposes of the providing the Subscription Services.
- 1.6 The word "Days" to mean calendar days.
- 1.7 The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the Project Manager for review and approval pursuant to the terms of this Agreement.
- 1.8 The words "Developed Works" to mean all rights, title, and interest in and to certain Deliverables identified as "Developed Works" in the applicable SOW developed by the Contractor and its Subcontractors specifically for the County as part of the Services.
- 1.9 The words "Documentation" to mean any explanatory materials, such as user manuals, training manuals, specifications regarding the implementation and use of the Subscription Services (electronic or written) that is provided by Contractor regarding the Subscription Services, as may be updated from time to time.
- 1.10 The words "Licensed Software" to mean the software component(s) provided pursuant to the Contract.

- 1.11 The words "Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents, or programs.
- 1.12 The word "Meter" means a point of service as itemized on a vendor bill and tracked in the Services as a meter/logical device. A Meter may represent points of service for which no physical meter exists, such as sewer, fire lines, outdoor lighting, fuel oil tanks, storm drainage, internet service provider and telephone service, etc. Meter records that are used in split, calculated, and virtual bill processes for chargeback, cost allocation, and distribution purposes are included in the total Meter count for purposes of this Agreement.
- 1.13 The word "Order" means any mutually agreed document referencing this Agreement that defines the specific Subscription Services purchased by Licensee pursuant to this Agreement.
- 1.14 The words "Preexisting Materials" to mean any and all preexisting Contractor proprietary materials incorporated into the Developed Works and any derivative works, improvements, enhancements, changes, modifications, adaptations, or functionality variations made to such preexisting materials that are incorporated into the Developed Works.
- 1.15 The words "Professional Services" to mean the consulting, development, implementation, training, and other services described in a mutually agreed statement of work (each, a "SOW") executed by the Parties.
- 1.16 The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- 1.17 The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the Work to be performed by the Contractor.
- 1.18 The word "Subcontractor" or "Subconsultant" to mean any person, entity, firm, or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- 1.19 The words "Subscription Services" means the online, web-based applications and platform provided by Contractor as specifically described on the applicable Order.
- 1.20 The words "Support Services" means the services described in Appendix A.
- 1.21 The word "Users" means individuals who are authorized by the County to use the Subscription Services and who have been supplied user identifications and passwords by Licensee (or by Contractor at Licensee's request). Users may include County's employees, consultants, contractors, and agents.
- 1.22 The word "Work" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) Articles 1 through 54, 2) Appendix A (Support Services), 3) Appendix B (Price Schedule), 4) Attachment A (Professional Services Terms), and 5) Attachment B (CAPture Services Terms).

ARTICLE 3. RULES OF INTERPRETATION

- 3.1 References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- 3.2 Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- 3.3 The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this

Agreement.

- 3.4 The terms "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the Project Manager.
- 3.5 The terms "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary to the Project Manager.
- 3.6 The titles, headings, captions, and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify, or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- 4.1 The Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the Parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered, or amended only by a written amendment duly executed by the Parties hereto or their authorized representatives.
- 4.2 The Contractor shall provide the services set forth in the Scope of Services and render full and prompt cooperation with the County in all aspects of the Work performed hereunder.
- 4.3 The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described, and delineated.
- 4.4 The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work necessary for the completion of this Contract. All Work shall be accomplished at to the reasonable satisfaction of the Project Manager.
- 4.5 The Contractor acknowledges that the County shall make all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor shall implement changes in providing Services hereunder as a result of a policy change implemented by the County as set forth in a mutually agreed change order. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM

The Contract shall become effective on the date of the Parties' execution, whichever is later, and shall continue through the last day of the 36th month, thereafter. The County and the Contractor may agree to renew this Contract for three (3), three-year option to renew periods. The County may extend this Contract for up to an additional one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners (the "Board").

ARTICLE 6. ENERGY CONSERVATION

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C Section 6321 et seq.).

ARTICLE 7. GRANT OF LICENSE

- 7.1 Contractor hereby grants the County a right to access and use the Subscription Services in accordance with the Documentation, this Agreement and the limitations set forth in the applicable Order.

- a. The Fees listed in the applicable Order are based upon the County's Meter inventory and County's current software module utilization needs as of the Effective Date. The County is permitted to track the number of Meters stated in the applicable Order using the Subscription Services. If County requires use of the Subscription Services for Meters in excess of the number specified in the applicable Order, the County will pay the fees set forth in such Order or provided in a Quotation upon request by the County.
 - b. The County may authorize its Users to access and use the Subscription Services. The County is responsible for (i) the confidentiality of all usernames and passwords and all activities that occur under such usernames; and (ii) each User's compliance with the terms of this Agreement. The County shall promptly notify Contractor of any suspected unauthorized access to the Subscription Services at support@energycap.com. The County and its authorized Users are only permitted to track data from Meters provided by the County.
 - c. The County may (i) include its company name or logo in the Subscription Services interface and reports; and/or (ii) create its own branded login screen; however, the Contractor logo and other identifiable Contractor content may be present throughout the application and in help content.
 - d. The County is responsible for the telecommunications, broadband and computer equipment and services needed to access and use Subscription Services.
- 7.2 The County will not (i) alter, modify, or adapt the Subscription Services or Documentation, in whole or in part, in any way; (ii) disassemble, decompile, reverse engineer, translate or create derivative works of the Subscription Services; or (iii) transfer, distribute, rent, sub-license, or lease the Subscription Services or the Documentation; (iv) use any external program to alter, edit or append records to the data files without using Contractor-provided external tools and interfaces; (v) remove, alter or obscure any product identification, copyright or proprietary notices; (vi) upload or provide any information or materials that are defamatory, offensive, abusive, obscene, of menacing character, or that any third party's violate privacy or intellectual property rights; (vii) use the Subscription Services to threaten, defame, bully, harass, or harm persons or their property; (viii) send, store or distribute any Malicious Code with the intent or effect of damaging, destroying, disrupting, monitoring or otherwise impairing Contractor's or any third party's network, computer system, or other equipment, or any third party data contained therein; or (ix) access the Subscription Services or use the Documentation in order to build a similar or competitive product.

ARTICLE 8. HOSTING SERVICES; SECURITY; PROFESSIONAL SERVICES

- 8.1 Contractor will make the Subscription Services available 99% of the time determined on a quarterly basis during the Term except for: (a) planned downtime (of which Contractor will provide at least 8 hours' prior notice which notice will be provided via the Subscription Services and be scheduled to the extent practicable during the weekend hours from 6:00 p.m. Eastern time Friday to 6:00 a.m. Eastern time Monday), or (b) any unavailability caused by a Force Majeure Event. If the Subscription Services do not meet the foregoing availability commitment, the County shall be entitled to a credit of \$100 per each 0.1% below 99% for that quarter.
- 8.2 Contractor will implement and maintain administrative, physical, and technical safeguards designed to ensure that the Subscription Services meet then-current and relevant industry standards relating to the privacy, security, confidentiality, integrity, and availability of County Data, including by maintaining a written information security program that includes applicable policies, procedures, training, and technology controls designed to protect Licensee Data from unauthorized access, use, disclosure, alteration, or destruction. Contractor will only use and/or process County Data in accordance with this Agreement and for purposes of providing the Services.
- 8.3 Contractor will promptly (and in any event within forty-eight (48) hours) notify the County in the event of the occurrence of any unauthorized access to Licensee Data (a "Data Privacy Breach"). Contractor will provide as many details as known at that time (and regularly update Licensee thereafter in writing or by email followed by a written notification) setting out in reasonable detail, without limitation, the nature of the information compromised, threatened, or potentially compromised, the specific information compromised or potentially compromised and of all events which may adversely affect Contractor's ability to provide the Subscription Services. Contractor further agrees to provide reasonable assistance and cooperation requested by the County in the furtherance of any correction, remediation, or investigation of any Data Privacy Breach.

- 8.4 Contractor grants to the County a limited, nonexclusive, nontransferable, non-sublicensable, worldwide, license during the Subscription Term to use and make calls to the application programming interface (API) to develop, implement and distribute County-owned applications solely for use by County and its End Users in connection with the Subscription Services. Contractor may modify, amend, change, or deprecate all or part of any API in its reasonable discretion at any time (an "API Modification"). Contractor shall use commercially reasonable efforts to notify the County of any such actions as soon as reasonably practical. The County shall, within thirty (30) days from the date of first notice of any API Modification(s) (or such shorter period of time specified in the notice of the API Modification(s)) (the "Conformance Period") comply with such modification(s) by (i) implementing and using the most current version of the API, (ii) making any changes to the County's application using the API that may be required as a result of such API Modification, (iii) using commercially reasonable efforts to stop distribution of all prior versions of the County applications using the API and (iv) using commercially reasonable efforts to upgrade all prior versions of the County's applications using the API then in use to the most recent version. The County acknowledges that an API Modification may have a material adverse effect on County's applications using the API, including causing such applications to not operate as designed. Contractor shall have no liability of any kind to the County or any User with respect to such API Modifications or any adverse effects resulting from the use or failure to use such API Modifications. Contractor reserves the right to monitor and enforce, within reason, rate-limiting and throttling of API calls.
- 8.5 Hosting services include the ability to store bill images and file attachments for up to five (5) Gigabytes of storage or at the storage limits set forth in the applicable Order if greater.
- 8.6 Contractor will provide Professional Services in accordance with the terms set forth on Attachment A, Professional Services Terms, to this Agreement.

ARTICLE 9. SUPPORT SERVICES

Contractor shall provide the County with support services in the manner outlined in Appendix A (Support Services) for the Licensed Software throughout the term of this Agreement, including any options or extensions exercised by the County.

ARTICLE 10. FUNCTIONALLY EQUIVALENT SOFTWARE

For as long as the County remains current on maintenance and support fees for the Licensed Software, the Contractor is obligated to provide maintenance and support pursuant to the Contract. In the event the Contractor should wish to discontinue maintenance and support of the then current version of the Licensed Software as set forth in Appendix A (Support Services) or any amendment thereto, and as long as the County is current on Software Maintenance, Contractor shall be required to provide to the County, free of charge, and with reasonable time to allow for uninterrupted use by the County, a new version of the Software, if one is generally made available to all Contractor customers of the Licensed Software current on Software Maintenance, which shall replace the previous version and perform the functions described in Appendix A (Support Services) or any amendment thereto, and to support and maintain such new version of the Licensed Software for the balance of the term of this Agreement without additional costs to the County, other than then payment of applicable support fees.

In the case that Contractor is providing support of the then current version of the Licensed Software being used by the County, Contractor shall only provide any new version of the Licensed Software if the County is current on Software Maintenance and there are no outstanding account receivables and the new Licensed Software is generally made available to all Contractor's customers current on support. Any Licensed Software that includes additional functionality or modules that the County wishes to use may require fees which fees shall be mutually agreed upon in writing by the parties herein.

In the event of a conflict between this Article 10 and any other Articles contained within this Agreement, this Article 10 will prevail.

ARTICLE 11. PURCHASE OF ADDITIONAL PRODUCTS AND SERVICES

Additional products and services related to the Licensed Software for which the Contractor is the proprietary provider or authorized reseller/distributor may be purchased during the term of the Contract. In the event the County wishes to purchase such additional products and/or services, a County representative will contact the Contractor to obtain a price proposal for the additional products and/or services.

In the event that the County opts to proceed with the purchase, an amendment or ordering document will be mutually agreed upon by the parties and executed in writing.

This Contract shall include the following attachments:

Attachment A: Professional Services Terms

Attachment B: CAPture Services Terms

Should there be any inconsistency between the terms and conditions of this Agreement and any Attachments to this Agreement, the terms and conditions of this Agreement shall take precedence.

ARTICLE 12. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by: (i) Registered or Certified Mail, with return receipt requested; (ii) personally by a by courier service; (iii) Federal Express Corporation or other nationally recognized carrier to be delivered overnight; or (iv) via facsimile or e-mail (if provided below) with delivery of hard copy pursuant to (i), (ii), or (iii) in this paragraph. The addresses for such notice are as follows:

(1) To the County

a) to the Project Manager:

Miami-Dade County
Attention: Milton Hernandez
Phone: (305) 375-1818
E-mail: Milton.Hernandez@miamidade.gov

and

b) to the Contract Manager:

Miami-Dade County
Internal Services Department, Strategic Procurement Division
Attention: Chief Procurement Officer
111 NW 1st Street, Suite 1300
Miami, FL 33128-1974
Phone: (305) 375-4900
E-mail: Namita.Uppal@miamidade.gov

(2) To the Contractor

EnergyCAP LLC
360 Discovery Drive
Boalsburg, PA 16827

Attention: John Heinz
Phone: 814-413-0708
E-mail: John.Heinz@energycap.com

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 13. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The compensation for all Work performed under this Contract, including all costs associated with such Work and Services, shall be paid in accordance with Appendix B (Price Schedule). The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

ARTICLE 14. PRICING

Prices shall remain firm and fixed for the term of the Contract, including any mutually agreed extension periods, pursuant to Appendix B (Price Schedule); however, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any extension thereof.

ARTICLE 15. METHOD AND TIMES OF PAYMENT

The Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor pursuant to Appendix B (Price Schedule). All invoices shall be taken from the books of account kept by the Contractor, shall be supported (to the extent applicable to the Services) by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust (the "Trust"), shall be made in a timely manner and that interest payments be made on late payments. All firms, including Small Business Enterprises, providing goods and services to the County, shall receive payment to maintain sufficient cash flow. In accordance with Section 218.74 of the Florida Statutes, and Section 2-8.1.4 of the Code of Miami-Dade County (the "Code"), the time at which payment shall be due from the County or Trust shall be forty-five (45) calendar days from receipt of a proper invoice. Billings from prime contractors under services and goods contracts with the County or Trust, that are Small Business Enterprise contract set-aside, bid preference or contain a subcontractor goal, shall be promptly reviewed and payment made by the County or Trust on those amounts not under dispute within fourteen (14) calendar days of receipt of such billing by the County or the Trust pursuant to Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Code. All payments due from the County or Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded not later than sixty (60) days after the date on which the proper invoice was received by the County or Trust.

In accordance with Miami-Dade County Implementing Order No. 3-9, Accounts Receivable Adjustments, if money is owed by the Contractor to the County, whether under this Contract or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Contractor under this Contract. Such retained amount shall be applied to the amount owed by the Contractor to the County.

Invoices and associated back-up documentation shall be submitted electronically or in hard copy format by the Contractor to the County as follows:

Miami-Dade County
Facilities and Infrastructure Management Division
111 NW 1St Street, 24 Floor, Miami, FL 33128
Attention: Michele Markovits

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

ARTICLE 16. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the claim of a third party alleging that the use of the Services as permitted hereunder infringes or

misappropriates the intellectual property rights of such third party. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents, and instrumentalities as herein provided. Contractor shall have no obligation under this Article 16.1 for any claim to the extent arising out of or is based upon: (i) the County's use of the Subscription Services not in compliance with this Agreement or the Documentation; (ii) the County's combination of the Subscription Services with software, hardware, system, data, or other materials not supplied or authorized by Contractor (unless expressly permitted by the Documentation) without Contractor's prior written authorization; (iii) Contractor's adherence to the County's written specifications or written instructions pursuant to a separate SOW.

Upon County's notification, the Contractor shall furnish to the Internal Services Department, Strategic Procurement Division, certificate(s) of insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

- A. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
- B. Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate, not to exclude coverage for Products and Completed Operations. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- D. Professional Liability Insurance in an amount not less than \$1,000,000 per claim.
- E. Cyber Liability Insurance to include data breach and third-party liability, in an amount not less than \$1,000,000 per occurrence.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength, by Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Financial Services and are a member of the Florida Guaranty Fund.

The mailing address of Miami-Dade County as the certificate holder must appear on the certificate of insurance as follows:

**Miami-Dade County
111 NW 1st Street
Suite 2340
Miami, Florida 33128-1974**

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days. If the certificate of insurance is received within the specified timeframe but not in the manner prescribed in this Agreement, the Contractor shall have an additional five business days to submit a corrected certificate to the County. If the Contractor fails to submit the required

insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Contractor shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the County.

The Contractor shall assure that the certificate of insurance required in conjunction with this section remain in full force for the term of the Contract, including any renewal or extension periods that may be exercised by the County. If the certificate of insurance is scheduled to expire during the term of the Contract, the Contractor shall submit new or renewed certificate of insurance to the County before such expiration. If expired certificate of insurance is/are not replaced or renewed to cover the Contract period, the County may suspend the Contract until the new or renewed certificate is/are received by the County in the manner prescribed herein. If such suspension exceeds thirty (30) calendar days, the County may, at its sole discretion, terminate the Contract for cause and the Contractor shall be responsible for all direct and indirect costs associated with such termination.

ARTICLE 17. MANNER OF PERFORMANCE

- 17.1 The Contractor shall provide the Work described herein in a competent and professional manner reasonably satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a reasonably satisfactory performance of all Work described herein and to full and prompt cooperation by the Contractor in all aspects of the Work. At the reasonable request of the County, the Contractor shall promptly remove from the Project any Contractor's employee, Subcontractor, or any other person performing Work hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- 17.2 The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for all claims, suits, actions, damages, and costs (including attorneys' fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing Services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and/or demotion of such Contractor's personnel.
- 17.3 The Contractor always agrees that it will employ, maintain, and assign to the performance of the Work a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The County reserves the right to recommend to Contractor replacement of personnel staffing that is working directly with the County if the County believes that said personnel staffing is inappropriate or that the individual is not performing in a manner consistent with the requirements of such a position. The Contractor will consider said request and replace the individual if it deems appropriate.
- 17.4 The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character, and licenses as necessary to perform the Work described herein, in a competent and professional manner.
- 17.5 The Contractor shall reasonably cooperate with the County and coordinate its respective work efforts to maintain the progress most effectively and efficiently in performing the Work.
- 17.6 The Contractor shall comply with all provisions of all federal, state, and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 18. EMPLOYEES OF THE CONTRACTOR

All employees of the Contractor shall be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

ARTICLE 19. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all Work and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the Work performed or Services provided pursuant to this Agreement shall always, and in all places, be subject to the Contractor's sole direction, supervision, and control. The Contractor shall

exercise control over the means and manner in which it and its employees perform the Work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement, or representation other than specifically provided for in this Agreement.

ARTICLE 20. DISPUTE RESOLUTION PROCEDURE

20.1 The Contractor must, in the first instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. **Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.**

20.2 In the event of such dispute, the Parties authorize the County Mayor or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Mayor's purview as set forth above shall be conclusive, final and binding on the Parties. Any such dispute shall be brought, if at all, before the County Mayor within sixty (60) days of the occurrence, event or act out of which the dispute arises.

20.3 The County Mayor may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Mayor participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Mayor for a decision, together with all evidence and other pertinent information regarding such questions, in order that a fair and impartial decision may be made. Whenever the County Mayor is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Mayor, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

20.4 This Article will survive the termination or expiration of this Agreement.

ARTICLE 21. MUTUAL OBLIGATIONS

21.1 This Agreement, including attachments and appendices to the Agreement, shall constitute the entire Agreement between the Parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of the Parties.

21.2 Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

21.3 In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose and such participation shall be at the expense of the County. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for such defense or settlement costs from the Contractor.

ARTICLE 22. PROJECTS AND SERVICES

The parties anticipate that from time to time they will be in contact regarding the County's needs for assistance on a clearly defined project ("Project") in the areas of business strategy, business integration, business process improvement, training, management development, project management, computer programming, systems integration, data processing, software development and other

specific activities related to improving the County's computer systems, training or personnel to operate the same, creation or modification of software, and related consulting activities ("Additional Services").

ARTICLE 23. SOFTWARE ENHANCEMENT OR MODIFICATIONS

Software Enhancement or Modifications. The County may, from time to time, request that the Contractor incorporate certain features, enhancements or modification in the Software. When requested by the County and agreed by the Contractor, the Contractor shall provide the mutually agreed system enhancement/modifications including all relevant source code. Upon the County's request for such enhancements/modifications the County shall prepare a Statement of Work (SOW) for the specific Project that shall define detail the services to be performed. The Contractor shall submit a cost and/or temporary revenue sharing including all costs pertaining to furnishing the County with the enhancements/modifications.

- a. The SOW will include detailed requirements and detailed design document shall be submitted illustrating the complete financial terms that govern the SOW, proposed Project staffing, anticipated Project schedule, and other information relevant to the Project. Each SOW executed hereunder shall automatically incorporate the terms and conditions of this Agreement. Intellectual property rights to such enhancements or modification shall be specified in the agreed to SOW. Notwithstanding the foregoing, performance of any such modifications shall not compromise the Contractor's warranty obligations.
- b. Following the Contractor's confirmation that the enhancements/modification was applied to the Licensed Software, and any and all Documentation relating to the Licensed Software and or enhancements/modification thereto, the grant of license for such enhancements/modification shall be in accordance with Article 7, "Grant of License".

ARTICLE 24. WARRANTIES

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

ARTICLE 25. LIMITATION OF LIABILITY

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

ARTICLE 26. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its Subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Agreement. The Contractor and its Subcontractors and suppliers shall retain such records, and all other documents relevant to the Work furnished under this Agreement for a period of three years from the expiration date of this Agreement and any extension thereof.

ARTICLE 27. AUDITS

The County, or its duly authorized representatives and governmental agencies, shall until the expiration of three years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its Subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to Section 2-481 of the Code, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds within five business days of the Commission Auditor's request. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 28. SUBSTITUTION OF PERSONNEL

In the event the Contractor needs to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor will use reasonable efforts to notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution. However, such substitution shall not become effective until the County has approved said substitution.

ARTICLE 29. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title, or interest in or to the same or any part thereof without the prior written consent of the County, which consent will not be unreasonably withheld, delayed or denied. Written consent shall be deemed to have been received for Contractor's assignment of this Agreement to any acquirer of, or successor to, all or substantially all of its assets or ownership interests, provided that Contractor provides the County with not less than ten (10) business days written notice of such assignment and the County does not raise good faith objections to such assignment within ten (10) business days from the receipt of such notice.

ARTICLE 30. SUBCONTRACTUAL RELATIONS

- 30.1 If the Contractor causes any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts, omissions, and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- 30.2 The Contractor, before making any subcontract for any portion of the Work, will state in writing to the County the name of the proposed Subcontractor, the portion of the Work which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may reasonably require.
- 30.3 Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Work to be performed.
- 30.4 In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Work in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed Work of the same general type which is required to be performed under this Agreement.
- 30.5 The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the Subcontractor will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and permitted Subcontractors; provided, such copies may be redacted with respect to the Contractor's confidential information. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any Subcontractor hereunder as more fully described herein.

ARTICLE 31. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 32. TERMINATION AND SUSPENSION OF WORK

- 32.1 This Agreement may be terminated for cause by the non-breaching party for reasons including, but not limited to, (i) the Contractor commits an Event of Default (as defined below in Article 33) and fails to cure said Event of Default (as delineated below in Article 34), or (ii) Contractor attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement; or (iii) the County fails to comply with any of the terms of this Agreement and fails to cure the same within thirty (30) days after notice from the Contractor.
- 32.2 This Agreement may also be terminated for convenience by the County. Termination for convenience is effective on the termination date stated in the written notice provided by the County. No fees will be refunded by Contractor following termination under this Section 34.2.
- 32.3 The foregoing notwithstanding, if the Contractors attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement, the Contractor may be debarred from County contracting in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the Code.
- 32.4 In the event that this Agreement is terminated in accordance with the terms set forth above, the Contractor shall, upon the effective date of termination:
- i. stop providing the Subscription Services and all other Services on the effective date of termination (the "Effective Termination Date");
 - ii. take such action as may be reasonably necessary for the protection and preservation of the County's materials and property;
 - iii. cancel any then current orders;
 - iv. take no action which will increase the amounts payable by the County under this Agreement; and
 - v. if the Agreement is terminated as a result of breach by Contractor, reimburse the County a proration of the fees paid annually based on the remaining months of the term per the compensation listed in Appendix B (Price Schedule); if the Agreement is terminated as a result of breach by the County, County shall promptly remit all fees then due and owing to Contractor.
- 32.5 All compensation pursuant to this Article are subject to audit.

ARTICLE 33. EVENT OF DEFAULT

- 33.1 An Event of Default is a material breach of this Agreement by the breaching party, and includes but is not limited to the following:
- i. the Contractor has not delivered Deliverables and/or Services on a timely basis;
 - ii. the Contractor has refused or failed to supply enough properly skilled staff personnel;
 - iii. the Contractor has failed to make prompt payment to Subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or

- debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
- v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection b below;
 - vii. the Contractor has failed in the representation of any warranties stated herein; or
 - viii. the Contractor fails to comply with Article 47 (County User Access Program (UAP)).
 - ix. the county has failed to make timely payment to the Contractor for the Services; or
 - x. the County has failed to comply with the terms of this Agreement

ARTICLE 34. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs in the determination of the non-breaching party, the non-breaching party shall notify the breaching party (the "Default Notice"), specifying the basis for such default, and advising the breaching party that such default must be cured within thirty (30) days, or this Agreement may be terminated. The non-breaching party may grant an additional period of such duration as the non-breaching party shall deem appropriate without waiver of any of the non-breaching party's rights hereunder, so long as the breaching party has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the non-breaching party prescribes. The Default Notice shall specify the Effective Termination Date.

ARTICLE 35. PATENT AND COPYRIGHT INDEMNIFICATION

- 35.1 The Contractor shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third-party proprietary rights in the performance of the Work.
- 35.2 The Contractor warrants that all Deliverables furnished hereunder and used as permitted under this Agreement, including but not limited to equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.
- 35.3 The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.
- 35.4 In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the Contractor's option to (i) modify, or require that the applicable Subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s); or (iii) terminate the affected Services and, with respect such termination, refund the unearned portion of any prepaid fees. Notwithstanding anything else herein, the foregoing indemnification obligations are Contractor's only obligations and liability in respect of any infringement or misappropriation claim against the County.
- 35.5 The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or Subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and Subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

ARTICLE 36. CONFIDENTIALITY

- 36.1 All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County or provided by Contractor in connection with the Services performed under this Agreement, made or developed by the Contractor or its Subcontractors in the course of the performance of such Services, or the results of such Services, or for which the County or the Contractor holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the disclosing party, be used by the receiving party or its employees, agents, Subcontractors or suppliers for any purpose other than for the performance of this Agreement, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither the receiving party nor its employees, agents, Subcontractors, or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the disclosing party. Additionally, the receiving party expressly agrees to be bound by and to defend, indemnify and hold harmless the disclosing party, and their officers and employees from the breach of any federal, state, or local law in regard to the privacy of individuals.
- 36.2 The receiving party shall advise each of its employees, agents, Subcontractors, and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the disclosing party in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or Subcontractor's or supplier's employees, present or former. In addition, the receiving party agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- 36.3 In the event of a breach of this Article damages may not be an adequate remedy and the disclosing party shall be entitled to seek injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the disclosing party, upon the completion of the Services performed hereunder, the receiving party shall immediately turn over to the disclosing party all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the receiving party or its employees, agents, Subcontractors, or suppliers without the prior written consent of the disclosing party. A certificate evidencing compliance with this provision and signed by an officer of the receiving party shall accompany such materials.

ARTICLE 37. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of the public records laws of the State of Florida (the "Public Records Law").

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the Contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used, or is using, is holding for use, or which are otherwise in the possession of the County (the "Computer Software"). All third-party license agreements must also be honored by the Contractor and its employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers, and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure, or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure, or removal.

ARTICLE 38. PROPRIETARY RIGHTS

- 38.1 The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data,

documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, Subcontractors and suppliers may use only in connection with the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, Subcontractors, or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.

38.2 All Developed Works shall become the property of the County.

38.3 Accordingly, neither the Contractor nor its employees, agents, Subcontractors, or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced, or distributed by or on behalf of the Contractor, or any employee, agent, Subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.

38.4 Except as otherwise provided in subsections 38.1, 38.2, and 38.3 above, or elsewhere herein, the Contractor and its Subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Preexisting Materials and Licensed Software provided hereunder. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its Subcontractors and suppliers grant, if the County so desires, a perpetual, right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Preexisting Materials and Licensed Software and the associated specifications, technical data and other Documentation to the extent incorporated into the Developed Works and not on a stand-alone basis solely for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County.

ARTICLE 39. VENDOR REGISTRATION/CONFLICT OF INTEREST

39.1 Vendor Registration

The Contractor shall be a registered vendor with the County – Internal Services Department, Strategic Procurement Division, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the vendor's Federal Employer Identification Number (FEIN) must be provided, via submission of Form W-9 and 147c Letter, as required by the Internal Revenue Service (IRS). If no FEIN exists, the Social Security Number of the owner must be provided as the legal entity identifier. This number becomes Contractor's "County Vendor Number." To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:

- Identification of individual account records
- Payments to individual/Contractor for goods and services provided to Miami-Dade County
- Tax reporting purposes
- Provision of unique identifier in the vendor database used for searching and sorting departmental records

The Contractor confirms its knowledge of and commitment to comply with the following:

- | | |
|---|---|
| 1. <i>Miami-Dade County Ownership Disclosure Affidavit</i>
<i>(Section 2-8.1 of the Code of Miami-Dade County)</i> | 5. <i>Miami-Dade County Debarment Disclosure Affidavit</i>
<i>(Section 10.38 of the Code of Miami-Dade County)</i> |
| 2. <i>Miami-Dade County Employment Disclosure Affidavit</i>
<i>(Section 2.8.1(d)(2) of the Code of Miami-Dade County)</i> | 6. <i>Miami-Dade County Vendor Obligation to County Affidavit</i>
<i>(Section 2-8.1 of the Code of Miami-Dade County)</i> |
| 3. <i>Miami-Dade County Employment Drug-free Workplace Certification</i>
<i>(Section 2-8.1.2(b) of the Code of Miami-Dade County)</i> | 7. <i>Miami-Dade County Code of Business Ethics Affidavit</i>
<i>(Article I, Section 2-8.1(i) of the Code of Miami-Dade County)</i> |
| 4. <i>Miami-Dade County Disability and Nondiscrimination Affidavit</i>
<i>(Section 2-8.1.5 of the Code of Miami-Dade County)</i> | 8. <i>Miami-Dade County Family Leave Affidavit</i>
<i>(Article V of Chapter 11 of the Code of Miami-Dade County)</i> |
| | 9. <i>Miami-Dade County Living Wage Affidavit</i> |

(Section 2-8.9 of the Code of Miami-Dade County)

10. **Miami-Dade County Domestic Leave and Reporting Affidavit**
(Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)
11. **Miami-Dade County Verification of Employment Eligibility (E-Verify) Affidavit.**
(Section 448.095, of the Florida State Statutes)
12. **Miami-Dade County Pay Parity Affidavit**
(Resolution No. R-1072-17)
13. **Miami-Dade County Suspected Workers' Compensation Fraud Affidavit**
(Resolution No. R-919-18)

14. **Office of the Inspector General**
(Section 2-1076 of the Code of Miami-Dade County)

15. **Small Business Enterprises**
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.

16. **Antitrust Laws**
By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

39.2 Conflict of Interest and Code of Ethics

Section 2-11.1(d) of the Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Code relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1(y) of the Code, the Miami-Dade County Commission on Ethics and Public Trust shall be empowered to review, interpret, render advisory opinions and letters of instruction, and enforce the Conflict of Interest and Code of Ethics Ordinance.

ARTICLE 40. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order No. 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (the "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision apply to the Contractor, its officers, agents, employees, Subcontractors, and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities, and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts. The cost of the audit for this Contract shall be one quarter of one percent (0.25%) of the total Contract amount which cost shall be included in the total Contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all Contract renewals and extensions.

Exception: The above application of one quarter of one percent (0.25%) fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Board; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Implementing Order No. 3-38; (m) federal, state and local government-funded grants; and (n) interlocal agreements. **Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter of one percent (0.25%) in any exempted contract at the time of award.**

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present, and proposed County and Trust contracts, transactions, accounts, records, and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications, and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of IPSIGs to audit, investigate, monitor, oversee, inspect, and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the Contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful Subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 41. FEDERAL, STATE, AND LOCAL COMPLIANCE REQUIREMENTS

As applicable, Contractor shall comply, subject to applicable professional standards, with the provisions of all applicable federal, state and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including, but not limited to:

- a) Equal Employment Opportunity clause provided under 41 C.F.R. Part 60-1.3 in accordance with Executive Order 11246, "Equal Employment Opportunity", as amended.
- b) Miami-Dade County Small Business Enterprises Development Participation Provisions.
- c) The Clean Air Act (42 U.S.C. § 7401-7671q.) and the Federal Water Pollution Contract Act (33 U.S.C. §§ 1251-1387), as amended.
- d) The Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by the Department of Labor regulations (29 C.F.R. Part 5).
- e) The Copeland "Anti-Kickback" Act (40 U.S.C. § 3145) as supplemented by the Department of Labor regulations (29 C.F.R. Part 2).
- f) Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics".
- g) Section 10-38 of the Code of Miami-Dade County, "Debarment of Contractors from County Work".
- h) Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave".
- i) Section 21-255 of the Code of Miami-Dade County, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.
- j) The Equal Pay Act of 1963, as amended (29 U.S.C. § 206(d)).
- k) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited".
- l) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 *et seq.*) "Discrimination".

- m) Chapter 22 of the Code of Miami-Dade County (§ 22-1 *et seq.*) "Wage Theft".
- n) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 *et seq.*) "Business Regulations".
- o) Any other laws prohibiting wage rate discrimination based on sex.
- p) Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).
- q) Executive Order 12549 "Debarment and Suspension", which stipulates that no contract(s) are "to be awarded at any tier or to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs".
- r) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07) and regulations issued pursuant thereto (24 C.F.R. Part 146).

Pursuant to Resolution No. R-1072-17, by entering into this Contract, the Contractor is certifying that the Contractor is in compliance with, and will continue to comply with, the provisions of items "f" through "k" above.

The Contractor shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the County or Contractor for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Contractor. The Project Manager shall verify the certification(s), license(s), and permit(s) for the Contractor prior to authorizing Work and as needed.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

ARTICLE 42. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 43. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment, or compensation, whether tangible or intangible, in connection with the award of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into

by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent, or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

- i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the Services, Deliverables or Work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any Subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
 - d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
 - e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information and comply with the instructions Contractor receives from the Project Manager regarding remedying the situation.

ARTICLE 44. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Work to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, Subcontractors, and suppliers will not represent, directly or indirectly, that any Work, Deliverables or Services provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 45. BANKRUPTCY

The County may terminate this Contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 46. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue shall be in Miami-Dade County.

ARTICLE 47. COUNTY USER ACCESS PROGRAM (UAP)**a) User Access Fee**

Pursuant to Section 2-8.10 of the Code, this Contract is subject to a user access fee under the County User Access Program ("UAP") in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from the solicitation referenced on the first page of this Contract, and the utilization of the County Contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all Contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Contractor providing goods or services under this Contract shall invoice the Contract price and shall accept as payment thereof the Contract price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Contractor participation in this invoice reduction portion of the UAP is mandatory.

b) Joint Purchase

Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive County Contract pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Contractor must obtain the participation number from the entity prior to filling any order placed pursuant to this Section. Contractor participation in this joint purchase portion of the UAP, however, is voluntary. The Contractor shall notify the ordering entity, in writing, within three business days of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Contractor shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

The County shall have no liability to the Contractor for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the Contractor and shall be paid by the ordering entity less the 2% UAP.

c) Contractor Compliance

If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with Article 24 of this Contract.

ARTICLE 48. INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES AND FORMER MEMBERS, OFFICERS OR EMPLOYEES

No member, officer, or employee of the County, no member of the governing body of the locality in which the Project is situated, no member of the governing body in which the County was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.

ARTICLE 49. LIENS

The Contractor is prohibited from placing a lien on County property. This prohibition shall apply to all Subcontractors.

ARTICLE 50. FIRST SOURCE HIRING REFERRAL PROGRAM

Pursuant to Section 2-2113 of the Code, for all contracts for goods and services, the Contractor, prior to hiring to fill a vacancy solely dedicated to the performance of a County contract shall (1) first notify Career Source South Florida ("CSSF"), the designated Referral Agency, of the vacancy and list the vacancy with CSSF according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the CSSF. If no suitable candidates can be employed after a Referral Period of three to five days, the Contractor is free to fill its vacancies from other sources.

Contractor will be required to provide quarterly reports to the CSSF indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of Contract until Contractor performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of \$1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the First Source Hiring Referral Program are available at <https://iapps.careersourcesfl.com/firstsource/>.

ARTICLE 51. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

The Contractor shall comply with the Public Records Laws, including by not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the County in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Contractor upon termination of the Contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of the Agreement.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, ISD-VSS@MIAMIDADE.GOV, 111 NW 1st STREET, SUITE 1300, MIAMI, FLORIDA 33128.

ARTICLE 52. FORCE MAJEURE

Neither party shall be liable for any failure of or delay in performance of its obligations (except for payment obligations) under this Agreement to the extent such failure or delay is due to acts of God, acts of a public enemy, fires, floods, power outages, wars, civil disturbances, sabotage, terrorism, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and/or within the party's power to satisfy), failure of common carriers, Internet Service Providers, or other communication devices, acts of cyber criminals, terrorists or other criminals, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, authorizations, licenses, franchises or permits, inability to obtain labor, materials, power, equipment, or transportation, or other circumstances beyond its reasonable control (collectively referred to herein as "Force Majeure Occurrences"), however, nothing in this section shall relieve the County of the obligation to make payments for any products or services provided by the Contractor. Any delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays. Neither party shall be liable to the other for any liability claims, damages or other loss caused by or resulting from a Force Majeure Occurrence.

ARTICLE 53. VERIFICATION OF EMPLOYMENT ELIGIBILITY (E-VERIFY)

By entering into this Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095 of the Florida Statutes, titled "Verification of Employment Eligibility". This includes but is not limited to utilization of the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all newly hired employees by the Contractor effective January 1, 2021 and requiring all Subcontractors to provide an affidavit attesting that the Subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply may lead to termination of this Contract, or if a Subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination and the Contractor may be liable for any additional costs incurred by the County resulting from the termination of the Contract. If this Contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one year after the date of termination. Public and private employers must enroll in the E-Verify System (<http://www.uscis.gov/e-verify>) and retain the I-9 Forms for inspection.

ARTICLE 54. SURVIVAL

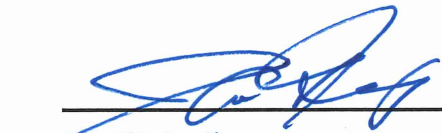
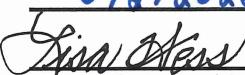
The Parties acknowledge that any of the obligations in this Agreement will survive the term, termination, and cancellation hereof.

Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation, or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the last date that the Agreement is executed below,

Contractor

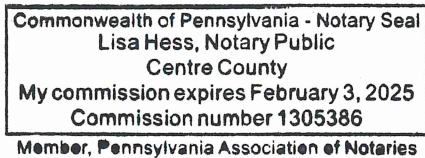
Miami-Dade County

By: 
 Name: John Heinz
 Title: Chief Sales Officer
 Date: 8/2/2022
 Attest: 
 Corporate Secretary/Notary Public

By: _____
 Name: Daniella Levine Cava
 Title: Mayor
 Date: _____
 Attest: _____
 Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form and legal sufficiency



Assistant County Attorney

Signed (or attested) before me
 on August 2, 2022
 by John Heinz

Commonwealth of Pennsylvania
 County of Centre

APPENDIX A – SUPPORT SERVICES

Contractor shall provide ongoing support services for the EnergyCAP Enterprise Software System (“System”) in use by the Internal Services Department Facilities and Infrastructure Management Division. The Contractor shall provide all required software licenses and Support Services, subject to the payment of the Support Services fee. In addition, the county reserves the right to purchase additional licenses, software, and professional services as needed throughout the resultant contract term. The Contractor shall provide the following services:

- A. Contractor will provide (i) all enhancements and updates to the Subscription Services that are not separately marketed by Contractor and are made available by Contractor to its customers generally during the Term to Licensee. Contractor will use reasonable efforts to notify Licensee at least two weeks in advance of all major enhancements which require planned downtime. Release notes will be provided and made available to Licensee at the same time and in the same format at Contractor provides to its customers generally; (ii) Support Services for the Subscription Services such that the Subscription Services perform substantially in accordance with Documentation.
- B. Contractor will use commercially reasonable efforts to correct or replace Subscription Services and/or provide Support Services to remedy any failure of the Subscription Services to perform substantially in accordance with Documentation (a “Defect”). SUCH CORRECTION, REPLACEMENT, OR SUPPORT SERVICES SHALL BE THE ONLY SERVICES OF THE CONTRACTOR THAT THE COUNTY IS ENTITLED TO IN THE EVENT OF A DEFECT, AND ENC SHALL HAVE NO OTHER RESPONSIBILITY WITH RESPECT TO CORRECTING OR REPLACING DEFECTS. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT OR OTHERWISE AFFECT CONTRACTOR’S RESPONSIBILITY TO INDEMNIFY AND DEFEND THE COUNTY AS PROVIDED IN ARTICLE 16 (INDEMNIFICATION AND INSURANCE).
- C. In the event (i) any Defect is determined by Contractor to be attributable to Licensee’s acts or omissions or to the County’s software, hardware, modifications, or system changes, or (ii) Licensee requests assistance in connection with additional training, correction of database errors and/or data conversion, Contractor shall provide a quotation to Licensee for additional Professional Services at its then current rates for the Professional Services.
- D. Telephone support will be provided between the hours of 8:00 AM-5:00 PM ET Monday through Friday except federal holidays. The County may access this support via the toll-free support hotline at 877-327-3702.
- E. The County may call or submit support tickets via the online support ticketing system only to report a Defect, but not a “how do I?” operating or training question.
- F. After-Hours Support is available via the support ticket system at <http://Support.EnergyCAP.com>, and online help manuals accessible from within the Subscription Services.
- G. Contractor will use reasonable efforts to respond to all support requests in accordance with the times set forth in the table below. Support requests are prioritized by the County at time of submission into one of three categories, and Contractor will make a reasonable effort to resolve the request within the specified time:

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

The County is responsible for (a) any services relating to software or hardware not provided by Contractor, including, without limitation, any programming performed by Licensee; (b) training of current or new County employees (technical support requests may not be used as a substitute for software training); and (c) correction of user errors and database errors; (d) supporting software and hardware such as operating systems, browsers, and client workstations.

- H. Support Services include support for all Contractor developed interfaces, reformatters, custom reports, and other deliverables as part of the applicable Order for purposes of ensuring that all custom-developed Contractor deliverables function as documented after upgrades are released. Except as set forth in this clause, Support Services do not revisions to deliverables. If revisions are requested, then Contractor shall provide a quotation to Licensee for Professional Services at Contractor's then-current rates for such services.

Description of Deliverables

- The EnergyCAP Software Maintenance Agreement is an annual subscription that provides unlimited access to technical support, regular software upgrades, as well as access to Weather Data, Greenhouse Gas conversion factors, and the ENERGY STAR interface to Portfolio Manager. Support is provided via emails, phone calls, and web meetings.
- User access to EnergyCAP is unlimited.
- Annual renewal includes tracking up to 18,000 meters and the following features: Accruals, Accounting Export, Chargebacks, Interval Data, Report Designer BI, and Standard Database Hosting services.
 - Two additional databases for testing are included in the annual renewal fee.
 - Based on the current services, automation, level of effort, and inability for the EnergyCAP software to rollback releases, Licensee does not have the option to return to self-hosted environment.
- Contractor will provide ongoing Bill CAPture utility bill processing services to the County for bill import into the County's EnergyCAP database.
 - The County's contracted Bill CAPture count is based on transactions.
 - If the total number of transactions processed the annual renewal term exceeds the number contracted, a per transaction fee will be invoiced at the next renewal date.
 - If the total number of meter enrollments processed the annual renewal term exceeds the number contracted, a per transaction fee will be invoiced at the next renewal date.
- Additional Meters may be necessary throughout the course of the contract, can be purchased in blocks, and will be invoiced annually.
- Annual Overview Training will be provided and is included in the annual renewal fee.
 - Training format will be defined by Contractor as 6 hours of online training or one day of on-site training.
 - The primary purpose of training is a refresher course to review EnergyCAP and/or new software update features.
- If the County requests cancellation, then Contractor reserves the right to use the then-current rates and annual subscription model. Continuous service and payment are required to honor the pricing provided in this agreement.

If features are removed, Contractor will provide the then-current pricing if Licensee requests to re-add features

APPENDIX B – PRICE SCHEDULE

Pricing Summary

Subscription Services		Initial Period:	2/1/2023 - 1/31/2026
Item	Description		Price
Software License	EnergyCAP Enterprise Software License – Year 1		\$104,807.85
Additional Services	Bill CAPture Processing, Bill CAPture Meter Enrollment, Additional Software License Meters – Year 1		\$15,000.00
Fee	County User Access Program & Inspector Audit Fee – 2.25%		\$2,695.68
		Subtotal Year 1	\$122,503.53
Software License	EnergyCAP Enterprise Software License – Year 2		\$110,048.24
Additional Services	Bill CAPture Processing, Bill CAPture Meter Enrollment, Additional Software License Meters – Year 2		\$15,000.00
Fee	County User Access Program & Inspector Audit Fee – 2.25%		\$2,813.59
		Subtotal Year 2	\$127,861.83
Software License	EnergyCAP Enterprise Software License – Year 3		\$115,550.65
Additional Services	Bill CAPture Processing, Bill CAPture Meter Enrollment, Additional Software License Meters – Year 3		\$15,000.00
Fee	County User Access Program & Inspector Audit Fee – 2.25%		\$2,937.39
		Subtotal Year 3	\$133,488.04
		Initial Period Subtotal	\$383,853.40

Option to Renew (OTR) Pricing Summary

Subscription Services		OTR 1 Period:	2/1/2026 - 1/31/2029
Item	Description		Price
Software License	EnergyCAP Enterprise Software License – OTR 1 Year 4		\$121,328.19
Additional Services	Bill CAPture Processing, Bill CAPture Meter Enrollment, Additional Software License Meters – Year 4		\$15,000.00
Fee	County User Access Program & Inspector Audit Fee – 2.25%		\$3,067.38
		Subtotal Year 4	\$139,395.57
Software License	EnergyCAP Enterprise Software License – OTR 1 Year 5		\$127,394.60
Additional Services	Bill CAPture Processing, Bill CAPture Meter Enrollment, Additional Software License Meters – Year 5		\$15,000.00
Fee	County User Access Program & Inspector Audit Fee – 2.25%		\$3,203.88
		Subtotal Year 5	\$145,598.48
Software License	EnergyCAP Enterprise Software License – OTR 1 Year 6		\$133,764.33
Additional Services	Bill CAPture Processing, Bill CAPture Meter Enrollment, Additional Software License Meters – Year 6		\$15,000.00
Fee	County User Access Program & Inspector Audit Fee – 2.25%		\$3,347.20
		Subtotal Year 6	\$152,111.52
		OTR 1 Subtotal	\$437,105.57

Subscription Services		OTR 2 Period:	2/1/2029 - 1/31/2032
Item	Description		Price
Software License	EnergyCAP Enterprise Software License – OTR 2 Year 7		\$140,452.54
Additional Services	Bill CAPture Processing, Bill CAPture Meter Enrollment, Additional Software License Meters – Year 7		\$15,000.00
Fee	County User Access Program & Inspector Audit Fee – 2.25%		\$3,497.68
		Subtotal Year 7	\$158,950.23
Software License	EnergyCAP Enterprise Software License – OTR 2 Year 8		\$147,475.17
Additional Services	Bill CAPture Processing, Bill CAPture Meter Enrollment, Additional Software License Meters – Year 8		\$15,000.00
Fee	County User Access Program & Inspector Audit Fee – 2.25%		\$3,655.69
		Subtotal Year 8	\$166,130.86
Software License	EnergyCAP Enterprise Software License – OTR 2 Year 9		\$154,848.93
Additional Services	Bill CAPture Processing, Bill CAPture Meter Enrollment, Additional Software License Meters – Year 9		\$15,000.00
Fee	County User Access Program & Inspector Audit Fee – 2.25%		\$3,821.60
		Subtotal Year 9	\$173,670.53
		OTR 2 Subtotal	\$498,751.62

Subscription Services		OTR 3 Period:	2/1/2032 - 1/31/2035
Item	Description		Price
Software License	EnergyCAP Enterprise Software License – OTR 3 Year 10		\$162,591.37
Additional Services	Bill CAPture Processing, Bill CAPture Meter Enrollment, Additional Software License Meters – Year 10		\$15,000.00
Fee	County User Access Program & Inspector Audit Fee – 2.25%		\$3,995.81
		Subtotal Year 10	\$181,587.18
Software License	EnergyCAP Enterprise Software License – OTR 3 Year 11		\$170,720.94
Additional Services	Bill CAPture Processing, Bill CAPture Meter Enrollment, Additional Software License Meters – Year 11		\$15,000.00
Fee	County User Access Program & Inspector Audit Fee – 2.25%		\$4,178.72
		Subtotal Year 11	\$189,899.66
Software License	EnergyCAP Enterprise Software License – OTR 3 Year 12		\$179,256.99
Additional Services	Bill CAPture Processing, Bill CAPture Meter Enrollment, Additional Software License Meters – Year 12		\$15,000.00
Fee	County User Access Program & Inspector Audit Fee – 2.25%		\$4,370.78
		Subtotal Year 12	\$198,627.77
		OTR 3 Subtotal	\$570,114.62
		Total OTR	\$1,505,971.81
		Grand Total	\$1,889,825.20

ATTACHMENT A - PROFESSIONAL SERVICES TERMS

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

1. PROJECT PLAN.

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

2. HISTORICAL DATA CONVERSION.

- 2.1. To the extent the Professional Services include data conversion services by ENC, ENC and Licensee will determine the most appropriate method for validating imported bill history prior to commencing conversion. Validation methodology is largely dependent upon the level of detail contained in the history as well as the existence of an external source of comparison. Subsequent to the initial conversion, should Licensee discover the method of validation was incomplete, did not account for important details, or discovers some other material defect which renders the historical conversion invalid, ENC will perform up to two additional conversion iterations provided that (i) the total effort involved in the iterations following the first conversion consume no more than 10% of the total initial conversion effort; and (ii) requests for additional iterations are made within the two-week period after the date ENC notified Licensee the first historical conversion was completed. If requested iterations do not meet these criteria, then ENC shall provide a quote to Licensee based on ENC's then-current rates.

3. CUSTOM DEVELOPMENT.

- 3.1. Licensee is responsible for delivering complete custom development specifications to ENC prior to the commencement of development services. ENC will develop the mutually agreed deliverables in the timeframe set forth in the Baseline Project Plan. Delivered items will be referenced as "functional deliverables."

4. WARRANTIES.

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

THE FOREGOING LIMITATIONS AND EXCLUSIONS DO NOT APPLY TO EITHER PARTY'S INDEMNIFICATION OBLIGATIONS, OR LICENSEE'S FAILURE TO REMIT ALL FEES PROPERLY DUE AND OWING TO CONTRACTOR.

5. OWNERSHIP OF INTELLECTUAL PROPERTY.

- 5.1. ENC has developed and continues to develop and enhance its proprietary intellectual property ("ENC IP"), which includes, without limitation, concepts, frameworks, methodologies, analytic techniques, management tools, know-how, software, survey designs, metrics, diagnostic instruments, data sets and databases. ENC IP is an integral part of ENC's knowledge base and may be reused from project to project and with multiple clients. In the performance of its obligations hereunder, ENC will use, replicate, create, modify, or enhance elements of the ENC IP, and all such elements, modifications and enhancements shall remain the sole and exclusive property of ENC; provided, however, that no proprietary and Confidential Information of Licensee will be deemed to be ENC IP. All applicable rights to patents, patent applications, copyrights, trademarks, trade secrets and all other proprietary rights in and to the ENC IP are, shall be and shall remain in ENC, and neither Licensee nor its employees or agents shall have any proprietary interest whatsoever in or to the ENC IP.

The Parties agree that all documents, reports, and any other materials created by ENC for Licensee as part of the Professional Services (collectively, the "Deliverables") shall be ENC IP. For purposes of the Agreement and this Exhibit, Licensee shall have the right to use such Deliverables as part of the Subscription Services.

ATTACHMENT B - CAPTURE SERVICES TERMS

In addition to the terms set forth in the Agreement, this Attachment B sets forth the terms and conditions pursuant to which ENC will provide ongoing Bill CAPture utility bill processing services (the "Bill CAPture Services") to Licensee. Licensee must be current under a Subscription Agreement in order to subscribe to the Bill CAPture Services.

1. Additional Definitions.

- 1.1. "Receipt Date" is the date bills are received by ENC.
- 1.2. "Current Bills" are bills with a statement date within sixty (60) calendar days of the receipt date after live processing begins.
- 1.3. "Historical Bills" are bills having a statement date greater than sixty (60) calendar days from the receipt date.
- 1.4. "Live Processing" is the period beginning when meter enrollment is complete, and all bills received by ENC for the enrolled meters can be processed.
- 1.5. "Transaction" means each Meter present on a utility bill invoice. Utility bills that include multiple Meters are counted as multiple Transactions on the basis of one Transaction for each Meter. Deregulated bills issued separately by a supplier and an LDC count as two transactions per deregulated Meter. Multiple bills from the same vendor for the same Meter(s) for the same service period – whether they be rebills or corrected bills – will be counted as additional Transactions.

2. Meter Enrollment.

- 2.1. The Meter Enrollment Fee stated on the applicable Order is a one-time fee for the enrollment of the listed number of Meters in the Bill CAPture Services. Deregulated Meters serviced by a supplier and an LDC require two-Meter enrollments. An additional per-Meter enrollment fee will be charged when a new Meter is submitted by Licensee or a Licensee vendor for enrollment in the Bill CAPture Services or when Licensee requests a change to the way a utility bill is mapped. The Meter Enrollment Fee covers the cost of preparing the Bill CAPture service for processing a new Meter. ENC and Licensee will schedule a time for initiation of the enrollment process.
- 2.2. Meter enrollment will commence within sixty (60) days after ENC's receipt of all Meter enrollment data from Licensee and be completed within a mutually agreed upon period. Licensee must enroll the majority of contracted Meters at one time unless the parties mutually agree in the applicable Order that Meters can be enrolled in phases provided the total number of phases does not exceed the number indicated on the Order Form.
- 2.3. It is expected that account numbers and all data will be set up correctly in Licensee's EnergyCAP database prior to Meter enrollment in the Bill CAPture Services. If, upon the initial entry of bill data, bill records unsuccessfully import and return in the bill kick-out log file, Licensee is responsible for making the necessary corrections in the EnergyCAP database to resolve the kick-outs.
- 2.4. Licensee is responsible for all EnergyCAP data revisions and maintenance including: the creation of new accounts, Meters, places, and vendors, managing account number changes, and taking action on bill kick-out reports, and for notifying ENC about any expected account or Meter number changes a utility vendor may make to Licensee's utility accounts. If Licensee fails to provide such notice, then all processed Meters that have new account or Meter numbers will be considered new Meters and additional Meter enrollment fees may be charged to Licensee. If Licensee requires ENC's assistance in connection with the performance of these responsibilities (collectively, "Management Services"), ENC may provide a Change Order to Licensee to address the scope of work to edit existing account, Meter, and vendor fields and, upon acceptance, invoice Licensee for the additional services.
- 2.5. If Management Services are purchased (as set forth in the applicable Order or Change Order), ENC will be responsible for completing the data set up in Licensee's EnergyCAP database as part of Bill CAPture enrollment. If, upon the initial entry of bill data, bill records unsuccessfully import and return in the bill kick-out log file, ENC will work with Licensee to make the necessary corrections in the EnergyCAP database.
- 2.6. The Management Services consist of any EnergyCAP data revisions and maintenance including: the creation of new accounts, Meters, places, and vendors, managing account number changes, and taking action on bill kick-out reports. Licensee is responsible for notifying ENC about any expected account or Meter number changes the utility vendors may make to Licensee's utility accounts. This will assist the ENC Bill CAPture processing team from distinguishing which Meters are considered new Meter enrollments and which are existing Meter enrollments. If Licensee fails to provide such advance notice, then all processed Meters that have new account or Meter numbers will be considered new Meters and additional Meter enrollment fees may be charged to Licensee.

3. Bill Processing.

- 3.1. The Bill CAPture services will be provided for the term set forth on the applicable Order and subject to payment of the applicable annual fees based on the number of Transactions set forth on the applicable Order. ENC counts a Transaction when data is first submitted by Licensee or via automated delivery method authorized by Licensee during Meter enrollment. There is no refund for unused Transactions.
- 3.2. Upon the anniversary date of the applicable term, ENC will invoice Licensee for the then current Bill CAPture Services annual fee for the next annual term. ENC will notify Licensee of any changes to the fees payable for the Bill CAPture Services at least thirty (30) days prior to the end of the then current term. If the total number of Meter enrollments and/or Transactions (by delivery type and format; historical and annual) processed in the completed term exceeds the amount set forth in the original Order, the number of Transactions will be increased accordingly, and ENC will invoice Licensee for the additional fees. When the total number of Meter enrollments and/or Transactions (by delivery type and format; historical and annual) processed in the completed term is less than the amount set forth in the original Order, such excess Transactions will be forfeited.
- 3.3. The Bill CAPture Services do not include historical bill data (refer to Section 4.2 below). Transactions associated with historical bill data will be charged at a different rate.
- 3.4. The annual processing fee for the Bill CAPture Services is based on the assumption that Licensee, and utility vendors on behalf of Licensee, will provide bills to ENC in the formats defined in the applicable Order Form. Data files can be transferred via website upload, secure FTP transfer, or other means as mutually agreed by the parties. If the Licensee requests a change in utility bill formats causing the scope of bill delivery to change at any point, ENC may provide a Change Order to Licensee and, upon acceptance, invoice Licensee for any changes in costs due to the task change(s).

4. Bill CAPture Services Service Levels.

- 4.1. ENC will process Licensee's utility bills within the timeframe set forth in the applicable Order Form (and as defined below). ENC's processing includes all body lines from the utility bills. If available, an electronic image of each bill will be linked to each utility bill processed by ENC.
- 4.2. The following Service Levels apply to the Bill CAPture Services:

Service	Service Level	Definition
Pre-Payment Bills	Within three (3) business days of receipt by ENC from Licensee or Licensee's vendor(s)	Pre-Payment Bills are Current Bills that have not yet been processed for payment by Licensee.
Post-Payment Bills	Within five (5) business days of receipt by ENC from Licensee or Licensee's vendor(s)	Post-Payment Bills are Current Bills that have already been processed for payment by Licensee via a means other than the Bill CAPture Services.
Web Capture	Within five (5) business days after the processing times listed above for Pre-and Post-Payment Bills	Web Capture is a method of bill delivery where bill data, in PDF format, is downloaded directly from vendor websites using Licensee's login credentials.
Historical Bills	Varies based on volume and will be agreed during implementation	Historical Bills are Post-Payment Bills that have an end date greater than sixty (60) calendar days from the receipt date.

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

5. In addition to the terms set forth in Section 26 of the Agreement, ENC SHALL NOT BE LIABLE FOR THE PAYMENT OF UTILITY VENDOR LATE FEES, INTEREST CHARGES, OTHER VENDOR-IMPOSED PENALTIES, OR DAMAGES PERTAINING TO UTILITY SERVICE DISRUPTIONS UNLESS (1) ENC IS PROVIDING PRE-PAYMENT BILL CAPTURE SERVICES, (2) THE PROCESSING SERVICE IS OTHER THAN WEB CAPTURE, AND (3) SUCH FEE IS IMPOSED DIRECTLY AS A RESULT OF A FAILURE OF ENC TO ACCURATELY PROCESS A UTILITY BILL THAT HAS BEEN PROVIDED IN COMPLIANCE WITH THE TERMS OF THIS EXHIBIT WITHIN THE SERVICE LEVEL SET FORTH IN SECTION 4.2 ABOVE.
6. OPTIONAL SMART CAPTURESM SERVICE
 - 6.1. If elected by Licensee, ENC will provide ongoing SMART CAPture Meter data processing services to Licensee for import into Licensee's EnergyCAP database. As a SMART CAPture service subscriber, ENC will automate the process of extracting, transforming, and loading interval data that is already available to the Licensee.
 - 6.2. The following additional terms apply to the SMART CAPTURE SERVICE:
 - 6.2.1. Process and Timing. ENC shall extract, transform, and load interval data provided from the identified data source on behalf of the Licensee. ENC guarantees that data provided by the data source shall be loaded into Licensee's EnergyCAP database within the mutually agreed timeframe between ENC and Licensee. Licensee is responsible for ensuring data is available from the subscribed data sources.
 - 6.2.2. Data Quality. ENC does not evaluate the accuracy or quality of the data provided by the data source, however it does ensure accuracy and quality in the extract, transform, and load process.
 - 6.3. Enrollment Process and Responsibilities.
 - 6.3.1. ENC shall work with Licensee through each step of enrollment leading up to live interval data appearing in Licensee's EnergyCAP database. Enrollment steps vary based on the data source providing the interval data.
 - 6.3.2. ENC shall not configure Licensee or third-party owned equipment in the process of enrollment.
 - 6.3.3. Licensee must (i) provide ENC with the required credentials and/or access to the data sources containing the interval data; (ii) create and maintain the credentials for each data source; (iii) configure EnergyCAP Meters to receive the interval data provided by the SMART CAPture Subscription. This includes updating Import IDs with the correct data source Meter identifier as well as creating interval data channels to receive the data provided by each data source for the enrolled meters.
 - 6.4. Ongoing Service Terms and Conditions. Licensee is responsible for all EnergyCAP data revisions and maintenance including but not limited to: the creation of new Meters, managing Import ID changes, and taking action when data sources fail to provide data on the expected schedule. ENC and Licensee will schedule a time for initiation of the enrollment process. Licensee may at any time request a quote to enroll additional Meters in the service.
7. ENC may use third party subcontractors in connection with the provision of the Bill CAPture Services so long as (1) the subcontracting firm is capable of providing the applicable services, and (2) ENC remains responsible to Licensee for performance of the Bill CAPture Services.