



PURCHASING ITEM
FOR
COUNCIL AGENDA

1. Agenda Item Number:

21

2. Council Meeting Date:
June 11, 2015

TO: MAYOR & COUNCIL

3. Date Prepared: June 1, 2015

THROUGH: CITY MANAGER

4. Requesting Department: City Manager

5. SUBJECT: Agreement with EnergyCAP, Inc., for a Utility Tracking System

6. RECOMMENDATION: Staff recommends City Council approve Agreement No. CM5-208-3416, with EnergyCAP, Inc., for a utility tracking system, in the amount of \$130,143.44, plus applicable State Use Tax in the amount of \$4,180.31, or a total approved amount of \$134,323.75.

7. BACKGROUND/DISCUSSION: Building and Facilities, along with several other City divisions, are responsible for the utility management of City buildings. Currently, the Accounting Division manually enters the data and reconciles the utility accounts through an Access database. Hard copy reports are sent to each division with utility accounts. Each division then enters the information into their own database. This utility tracking software will provide one central database that will provide accurate and timely utility information on utility accounts. This new software will allow for electronic billing from the utility companies to be automatically downloaded into the system thus eliminating manual entry by City staff. The software will also integrate into the Oracle Financial System and perform audits on utility accounts and red-flag any abnormalities. Reports can be generated for division managers with the latest utility cost and consumption information that is currently not available with the existing system.

8. EVALUATION: On November 13, 2014, City staff issued a Request for Proposal for a system that can track the City's various utility costs. Notification was sent to all registered vendors. One proposal was received from EnergyCAP, Inc.

The Evaluation Committee reviewed EnergyCAP's proposal in accordance with the evaluation criteria and determined that the proposal meets the City's needs. The Committee determined that the proposal is advantageous to the City and recommends award to EnergyCAP.

Once the system is fully implemented, the term of the ongoing maintenance agreement will commence in the amount of \$11,943.75, for a one-year period, with the option of four one-year extensions.

9. FINANCIAL IMPLICATIONS:

The City shall pay EnergyCAP, Inc., a total amount

Cost:	\$ 130,143.44
Applicable State Use Tax:	\$ 4,180.31
Total:	\$ 134,323.75

<u>Acct. No.:</u>	<u>Fund:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Funds:</u>
401.1285.5219 61C093.0	Gen Govt Cap	Utility Tracking Software	Yes	\$134,323.75

10. PROPOSED MOTION: Move City Council approve Agreement No. CM5-208-3416, with EnergyCAP, Inc., for a utility tracking system, in the amount of \$130,143.44, plus applicable State Use Tax in the amount of \$4,180.31, for a total approved amount of \$134,323.75.

ATTACHMENTS: Agreement

APPROVALS

11. Requesting Department

KK

Kris Kircher, Facilities Maintenance Manager

13. Department Head

Marian Norris

Marian Norris, Assistant to the City Manager

12. Procurement Officer

Carolee Stees

Carolee Stees, CPPB

14. Acting City Manager

Marsha Reed

Marsha Reed

**CITY OF CHANDLER SERVICES CONTRACT
UTILITY TRACKING SYSTEM
CONTRACT NO.: CM5-208-3416**

THIS CONTRACT is made and entered into this ____ day of May, 2015, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "City", and EnergyCAP, Inc., hereinafter referred to as "Contractor".

WHEREAS, Contractor agrees to provide a license to use EnergyCAP Enterprise version software and provide related implementation and training services described in the Contract.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. CONTRACT ADMINISTRATOR:

- 1.1. Contract Administrator.** Contractor shall act under the authority and approval of the IT Project Manager or designee (Contract Administrator), to provide the services required by this Contract.
- 1.2. Key Staff.** This Contract has been awarded to Contractor based partially on the key personnel proposed to perform the services required herein. Contractor shall not change nor substitute any of these key staff for work on this Contract without prior written approval by City.
- 1.3. Subcontractors.** During the performance of the Contract, Contractor may engage such additional Subcontractor as may be required for the timely completion of this Contract. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Contract rests with Contractor.
- 1.4. Subcontracts.** Contractor shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of City. The subcontract shall incorporate by reference the terms and conditions of this Contract.

2. SCOPE OF WORK: Contractor shall provide the City with a license to use the EnergyCAP Enterprise software, implementation services and on-going support and maintenance for the software all as more specifically set forth in Exhibit A, (Scope of Work), Exhibit C (EnergyCAP Enterprise Software End-User License), Exhibit D (EnergyCAP Enterprise Maintenance Agreement), attached hereto and made a part hereof by reference.

- 2.1 Non-Discrimination.** The Contractor shall comply with all applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.
- 2.2 Licenses.** Contractor shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this contract.
- 2.3 Advertising, Publishing and Promotion of Contract.** The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the City.
- 2.4 Compliance with Applicable Laws.** Contractor shall comply with all applicable Federal, state and local laws, and with all applicable licenses and permit requirements.
 - 2.4.1** The Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify, hereinafter "Contractor Immigration Warranty" (Exhibit E).

- 2.4.2 A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.
- 2.4.3 The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.
- 2.4.4 The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verification.
- 2.4.5 The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
- 3. ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
- 3.1. Records.** The Contractor shall retain and shall contractually require each Subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
- 3.2. Audit.** At any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.3. New/Current Products.** All equipment, materials, parts and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.
- 3.4. Property of City.** Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of City. Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. Contractor shall not use or release these materials without the prior written consent of City.
- 4. PRICE:**
- 4.1.** City shall pay Contractor the cost as set forth in Exhibit B, attached hereto and made a part hereof by reference.
- 4.2. Taxes.** Contractor shall be solely legally responsible for any and all tax obligations, which may result out of Contractor's performance of this Contract. City shall have no legal obligation to pay any amounts for taxes, of any type, incurred by Contractor. City agrees that Contractor may bill the City for applicable privilege license taxes which are paid for by Contractor and that the City will reimburse Contractor for privilege license taxes actually paid by Contractor. If Contractor obtains any refund of privilege license taxes paid, City will be entitled to a refund of such amounts.
- 4.3.** Contractor shall be solely responsible for any and all tax obligations, which may result out of the Contractor's performance of this Contract. The City shall have no obligation to pay any amounts for taxes, of any type, incurred by the Contractor.

4.4. **Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice.

4.5. **IRS W9 Form.** In order to receive payment Contractor shall have a current I.R.S. W9 Form on file with City, unless not required by law.

5. **TERM:**

5.1. Following execution of this Contract by City, the Contractor and City shall commence work with the expectation that both parties will strive to complete all implementation and training services described herein within 36 weeks from the date the Contractor is notified to proceed.

5.2. The annual support and maintenance shall be due one year from the first date of live data processing of a current utility bill in other than a testing, training, or demonstration mode and shall extend each year thereafter for up to four additional terms of one year each unless sooner terminated in accordance with the provisions herein.

6. **USE OF THIS CONTRACT:** The Contract is for the sole convenience of the City of Chandler. City reserves the rights to obtain like services from another source to secure significant cost savings or when timely completion cannot be met by Contractor.

6.1. **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the Contractor, this Contract may be extended for use by other municipalities and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City shall not be responsible for any disputes arising out of transactions made by other agencies who utilize this Contract.

6.2. **Emergency Purchases:** City reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the Contractor.

6.3. **Non-Exclusive Contract:** This contract is for the sole convenience of the City of Chandler. The City reserves the right to obtain like goods or services from another source when necessary.

6.4. **Exclusive Possession:** All services, information, computer program elements, reports and other deliverables created under this Contract are the sole property of the City of Chandler and shall not be used or released by the Contractor or any other person except with prior written permission by the City.

7. **CITY'S CONTRACTUAL REMEDIES:**

7.1. **Right to Assurance.** If the City in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.

7.2. **Stop Work Order.** The City may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with

its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

- 7.3. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 7.4. **Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.
- 7.5. **Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.
- 7.6. **Right of Offset.** The City shall be entitled to offset against any sums due Contractor, any expenses or costs incurred by the City, or damages assessed by the City concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by City.

8. TERMINATION:

- 8.1.1 **Termination for Convenience:** City reserves the right to terminate this Contract or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, Contractor shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. As compensation in full for services performed to the date of such termination, the Contractor shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the Contractor and City, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director or designee shall determine the percentage of work performed under each task detailed in the Scope of Work and the Contractor's compensation shall be based upon such determination and Contractor's fee schedule included herein.
- 8.1.2 **Termination for Cause:** City may terminate this Contract for Cause upon the occurrence of any one or more of the following events:
 - 1) If Contractor fails to perform pursuant to the terms of this Contract
 - 2) If Contractor is adjudged a bankrupt or insolvent;
 - 3) If Contractor makes a general assignment for the benefit of creditors;
 - 4) If a trustee or receiver is appointed for Contractor or for any of Contractor's property;
 - 5) If Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
 - 6) If Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
 - 7) Where Contract has been so terminated by City, the termination shall not affect any rights of City against Contractor then existing or which may thereafter accrue.
- 8.3. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, City may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the City is or becomes at any time while this Contract or an extension of this Contract is in effect, an employee of or a consultant to any other party to this Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time.

- 8.4. **Gratuities.** City may, by written notice, terminate this Contract, in whole or in part, if City determines that employment or a Gratuity was offered or made by Contractor or a representative of Contractor to any officer or employee of City for the purpose of influencing the outcome of the procurement or securing this Contract, an amendment to this Contract, or favorable treatment concerning this Contract, including the making of any determination or decision about contract performance. The City, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by Contractor.
- 8.5. **Suspension or Debarment.** City may, by written notice to the Contractor, immediately terminate this Contract if City determines that Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the Contractor is not currently suspended or debarred. If Contractor becomes suspended or debarred, Contractor shall immediately notify City.
- 8.6. **Continuation of Performance Through Termination.** The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 8.7. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 8.8. **Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this Contract beyond the current fiscal year. No legal liability on the part of the City for services may arise under this Contract beyond the current fiscal year until funds are made available for performance of this Contract. The City may reduce services or terminate this Contract without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.
9. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
10. **DISPUTE RESOLUTION:**
- 10.1. **Arizona Law.** This Contract shall be governed and interpreted according to the laws of the State of Arizona.
- 10.2. **Jurisdiction and Venue.** The parties agree that this Contract is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Contract shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.
- 10.3. **Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Contract is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees.
11. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not

limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Contract or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Contractor, or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Contract, including but not limited to, any injury or damages claimed by any of Contractor's and subcontractor's employees.

The amount and type of insurance coverage requirements set forth in the Contract will in no way be construed as limiting the scope of indemnity in this paragraph.

12. **INSURANCE:**

1. General.

- A. At the same time as execution of this Contract, the Contractor shall furnish the City of Chandler a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to City. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Workers' Compensation coverage.
- B. The Contractor and any of its subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, the insurances set forth below.
- C. The insurance requirements set forth below are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.
- D. The City in no way warrants that the minimum insurance limits contained in this Contract are sufficient to protect Contractor from liabilities that might arise out of the performance of the Contract services under this Contract by Contractor, its agents, representatives, employees, subcontractors, and the Contractor is free to purchase any additional insurance as may be determined necessary.
- E. Failure to demand evidence of full compliance with the insurance requirements in this Contract or failure to identify any insurance deficiency will not relieve the Contractor from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Contract.
- F. Use of Subcontractors: If any work is subcontracted in any way, the Contractor shall execute a written Contract with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the Contractor in this Contract. The Contractor is responsible for executing the Contract with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

2. Minimum Scope And Limits Of Insurance. The Contractor shall provide coverage with limits of liability not less than those stated below.

- A. *Commercial General Liability-Occurrence Form.* Contractor must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If

any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

- B. *Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles*
Vehicle Liability: Contractor must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on Contractor owned, hired, and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Contract. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
- C. *Workers Compensation and Employers Liability Insurance:* Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of work or services under this Contract and must also maintain Employers' Liability insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee.
- D. *Professional Liability.* If the Contract is the subject of any professional services or work performed by the Contractor, or if the Contractor engages in any professional services or work adjunct or residual to performing the work under this Contract, the Contractor must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the Contractor, or anyone employed by the Contractor, or anyone whose acts, mistakes, errors and omissions the Contractor is legally liable, with a liability limit of \$1,000,000 each claim and \$2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage must extend for 3 years past completion and acceptance of the work or services, and the Contractor, or its selected Design Professional will submit Certificates of Insurance as evidence the required coverage is in effect. The Design Professional must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 3 year period.

3. Additional Policy Provisions Required.

- A. *Self-Insured Retentions Or Deductibles.* Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.
- B. *City as Additional Insured.* The policies are to contain, or be endorsed to contain, the following provisions:
 - 1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the Contractor including the City's general supervision of the Contractor; Products and Completed operations of the Contractor; and automobiles owned, leased, hired, or borrowed by the Contractor.
 - 2. The Contractor's insurance must contain broad form contractual liability coverage and must not exclude liability arising out of explosion, collapse, or underground property damage hazards ("XCU") coverage.

Phone: 480-782-2400
FAX: 480-782-2410

FAX: 719-623-0577

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

14. CONFLICT OF INTEREST:

- 14.1. No Kickback.** Contractor warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the City has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in Contractor's proposal to the City.
- 14.2. Kickback Termination.** City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the City is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a Contractor to any other party to the Contract with respect to the subject matter of the Contract. The cancellation shall be effective when written notice from City is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).
- 14.3. No Conflict:** Contractor stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

15. GENERAL TERMS:

- 15.1. Ownership.** All software source code is the exclusive property of the Contractor. All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by Contractor in performance of the Contract) shall be the sole, absolute and exclusive property of City, free from any claim or retention of right on the part of Contractor, its agents, sub-contractors, officers or employees.
- 15.2. Entire Agreement.** This Contract, including all Exhibits attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Contract may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 15.3. Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of the City.
- 15.4. Amendments.** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the City in writing or made unilaterally by the Contractor are violations of the Contract. Any such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on such changes.
- 15.5. Independent Contractor.** The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

- 15.6. **No Parole Evidence.** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 15.7. **Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this ____ day of May, 2015.

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

Mayor

By: _____
Signature

Approved as to form:

ATTEST: If Corporation

City Attorney

Secretary

ATTEST:

City Clerk

SEAL

**EXHIBIT A
SCOPE OF WORK**

Contractor shall provide the following:

1.1. Software License.

Product Name	Release	
EnergyCAP Enterprise	6.3 or latest	
EnergyCAP Web Client	3.3 or latest	
Licensed Number of Users	Unlimited	
Licensed Number of Meters	2500	
Base Software License Features		
Account & Meter Tracking	Energy Dashboard	Reports, Charts & Graphs
Benchmarking Charts	Energy Procurement	Report Distribution
Bill Audits	ENERGY STAR Benchmarking	Setup Wizards
Budgets & Forecasts	Greenhouse Gas Tracking	Target Comparison
Custom Spreadsheets for Export	Issue Tracker	Tree View Navigation
Data Import Templates	EnergyCAP Microsoft® SQL Server® Database	User Permissions
Electronic Bill Import	PowerViews™	Weather Data Import
Energy Contract Administration	Project Tracking	Web Access
	Rate/Tariff Analysis	Workflow Management
Advanced Software License Features		
Accounts Payable or General Ledger Export		

1.2. Implementation Services.

Contractor shall assign an experienced project manager to assist the City with the implementation of the software. Contractor's project manager and implementation solution staff shall provide the following services:

- Set up the City's EnergyCAP database on Contractor owned and maintained SQL servers for the implementation period; Contractor will then transfer the database to the City's servers prior to completion of the implementation process
- Consult with the City on the process of installing the EnergyCAP Enterprise software and required server software on City computers, as needed
- Work with assigned City personnel to identify the Setup Data required to implement EnergyCAP, including but not necessarily limited to the following:
 - Facility data – Square footage, year constructed, primary use, etc.
 - Vendor data – Name, commodity provided, rate schedule name, etc.
 - Utility cost center and account data
 - Accounting data – General Ledger codes, etc. as needed
- Import the Setup Data (maximum scope of up to 2500 total meters or points of utility service) that is provided to Contractor in electronic format into the City's EnergyCAP database. Consult with the City on structure of the data within EnergyCAP.
- Set up bill entry templates and establish workflow rules as determined by the City
- Convert the City's historical utility bill data – three years of data in Excel format – into the proper format for import into EnergyCAP; import the data into EnergyCAP and perform

- manual entry of Setup Data, if necessary
- Develop, document and deliver an interface to facilitate the export of data from EnergyCAP in a format this is import-ready for the City's Oracle accounting system
- Assist with the production of a Knowledge Transfer Document that will be maintained by the City following the EnergyCAP implementation
- Work with the City Project Manager to create a detailed project schedule following the Project Kickoff meeting
- Hold regular bi-weekly project meetings throughout the implementation process to review project status, discuss completed tasks, assign new tasks, etc.

1.3. Training Services.

Item	Description
Onsite Training	Sessions are provided in two-day format; total of six hours per day using City's data and customized to cover topics requested by the City. All trainer expenses are included. Licensee to provide training facility and equipment. No limit on number of attendees. Total Number of Training Days: 2
Catalyst User Group	Comprehensive User Group Training Session to be held April 2016 in State College, PA. Training Fee includes registration for two City representatives.
Training Videos	Unlimited access to web-based technical training videos at: www.EnergyCAP.com/support/techvideos

1.4. Approximate Project Schedule. (Specific dates will be determined by City and Contractor after contract execution)

Activity	Start Week	End Week
Acceptance	0	0
Remote Kickoff Meeting	1	1
Implementation database installed at Contractor	1	1
EnergyCAP Software installed & tested at City site	2	2
Data collection—identify required data, available data, and data sources	1	8
Setup of billing templates and workflow	1	8
Entry of setup data (facilities, organizational structure, accounts, meters)	1	12
Entry of electronic historical billing data	12	18
Development of data interfaces (if purchased)	6	20
Live data processing of a current utility bill in other than a testing, training, or demonstration mode	20	20
Training Sessions—upon completion of all sessions	16	24
Knowledge Transfer Document provided to City	24	24
Transfer production database to City (if City hosting)	24	24
Project Completion	24	24

1.5. Annual Software Maintenance.

Item	Description
Standard EnergyCAP Maintenance	Upon the one-year anniversary of the first date of live data processing of a current utility bill in other than a testing, training or demonstration mode, City will have the option of continuing the Maintenance Agreement for successive one-year periods. The Maintenance Agreement provides technical support, regular software upgrades, and access to Weather Data, Greenhouse Gas conversion factors, and the ENERGY STAR interface to Portfolio Manager. After the initial five-year contract period, Contractor reserves the right to increase fees each year not to exceed 3% or the then current CPI-U (Phoenix), whichever is greater.

**EXHIBIT B
FEE SCHEDULE**

City shall pay Contractor a fee in the amount of \$130,143.44 for the EnergyCAP software license and implementation services per the following schedule:

Activity	Invoice Schedule	Amount
Acceptance		
Remote Kickoff Meeting		
Implementation database installed at Contractor		
EnergyCAP Software installed & tested at City site:	Software License: 50%	\$37,324.22
	Implementation Services: 25%	\$12,248.75
Data collection—identify required data, available data, and data sources		
Setup of billing templates and workflow		
Entry of setup data (facilities, organizational structure, accounts, meters)		
Entry of electronic historical billing data		
Development of data interfaces (if purchased)		
Live data processing of a current utility bill in other than a testing, training, or demonstration mode	Software License: 40%	\$29,859.38
	Implementation Services: 50%	\$24,497.50
Training Sessions—upon completion of all sessions	Training Services: 100%	\$6,500.00
Knowledge Transfer Document provided to City		
Transfer production database to City		
Project Completion	Software License: 10%	\$7,464.84
	Implementation Services: 25%	\$12,248.75
	TOTAL 100%	\$130,143.44
Software Maintenance and Support—upon the anniversary of the Maintenance Start Date	Annual Maintenance: 100%	\$11,943.75

Optional Products & Services

The following items are not included in the Total Initial Fee, and City is not obligated to purchase the items at any time. Prices quoted for all optional items are valid for a period of three years after the initial purchase date. Prices are subject to change after the initial three-year period. The license, implementation, and annual maintenance fees will be adjusted accordingly, with updated prices to be

reflected in invoices from Contractor to City.

Item	Software License Fee	Implementation/ Training Fee	Total Initial Fee	Annual Maintenance Fee *
Software License				
Meter Growth: Block of 100 Meters	\$2,239.45	-	\$2,239.45	\$358.31
Chargebacks, Submeters, Bill Splits	\$23,887.50	\$14,332.50	\$38,220.00	\$3,822.00
Cost Avoidance (M&V), Calendarization, Normalization	\$17,915.63	\$10,749.38	\$28,665.00	\$2,866.50
Interval Data, Meter Data Import	\$14,929.69	\$5,971.88	\$20,901.56	\$2,388.75
Implementation Services				
Development of Interface to TBD Metering System	-	\$4,500.00	-	-
Development of Bill Import Reformatter for TBD vendor(s)	-	\$3,500-\$5,500	-	-
Training Services				
Online Training, 5 Hours of Training	-	\$1,000.00	-	-
Catalyst: Comprehensive User Group Training Session. For more details go to www.EnergyCAP.com/training	-	Registration Fees Apply, Fees Waived for up to Two Attendees for 2016 Conference	-	-
Annual Maintenance				
Database Hosting	-	\$2,500.00	-	\$2,500.00
Bill CAPture Service	-	\$6.50-\$8 per account enrollment; \$1.50-\$2.00/bill processing fee	-	-

* Will be added to the next renewal period.

EXHIBIT C
ENERGYCAP ENTERPRISE SOFTWARE END-USER LICENSE

EnergyCAP, Inc. ("Contractor") owns all rights and copyrights in and to the subject software product ("Software") called "EnergyCAP Enterprise version."

The Software is furnished subject to the terms and conditions of this License Agreement, which has a 10-day unconditional Acceptance Period. If the Software itself or any terms of this License Agreement are not acceptable for any reason, the software and documentation must be returned within ten (10) days of purchase to Contractor for a full refund. If returned, all installed copies must be uninstalled and all Setup files must be permanently deleted.

By this License Agreement, City is granted a license to use the Software subject to the following terms, restrictions, and limitations:

ARTICLE 1. INSTALLATION AND USE

1.1 City may install the Software on one or more file servers or multiple microcomputers for simultaneous use by multiple users within City's organization. City may make copies of the Software for archival, testing, training, and back-up purposes only.

1.2. This license allows City to use the Software for internal use by its employees or contractors/consultants for the benefit of the City organization only. City may not use the Software to process the data of third parties or in a service bureau capacity without written authorization from Contractor.

ARTICLE 2. SCOPE

2.1. License covers those program features, functions and modules purchased by City (as documented in Exhibit A), as well as any subsequent enhancements to these features furnished to City pursuant to the City's Maintenance Agreement. City must pay an additional license fee to add features, functionality, and modules that are outside of the scope of its initial license. Such functionality (1) may have been available to City at time of purchase but City elected not to purchase, or (2) may be added to the Software's capabilities and offered to City at a later date.

2.2. City may not alter, modify, or adapt the Software or documentation, or portions thereof, in any way. City may not disassemble, decompile, reverse engineer, translate or create derivative works of the Software, or portions thereof, in any way. City must install and operate the Software in accordance with the documentation. This License Agreement shall be deemed automatically terminated if City violates any of the foregoing.

2.3. Use of an external program to alter, edit or append records to the data files voids all warranties, as it may corrupt the database.

2.4. This License Agreement and Contractor's copyrights also apply to any data that City may have obtained from Contractor, including without limitation weather data libraries, bundled type tables (such as the energy type table) and separate data bases. City may use these data files in conjunction with its licensed copy of the Software. City may not provide them to any third parties, nor may City install them on any computer not running City's licensed copy of the Software.

2.5. This license does not include supporting software and hardware required to be furnished by City, such as operating systems, browsers, database engines, servers and client workstations.

ARTICLE 3. TERM

3.1. This License Agreement and the licenses granted hereunder are effective upon acceptance by City and shall remain in effect until terminated.

3.2. Upon termination of the License Agreement, City shall discontinue use of the Software, remove Software from computers, destroy all copies of Software, and discontinue use of the EnergyCAP Enterprise SQL Server database. User data contained within the database is owned by the City and may be exported to other databases at City's expense, but shall not be retained in Contractor's proprietary EnergyCAP SQL Server database format.

ARTICLE 4. LICENSE VALIDATION

Contractor reserves the right to include periodic expiration and validation processes in the Software to hinder software piracy and protect its rights, copyrights and intellectual property. City will be provided with activation keys at no additional charge for the term of this License Agreement.

ARTICLE 5. ASSIGNMENT AND DELEGATION

The license hereunder is not assignable by City without Contractor's prior written consent. City may not transfer, distribute, rent, sub-license, or lease the Software or the documentation.

ARTICLE 6. WARRANTY

Intentionally Omitted

ARTICLE 7. GENERAL TERMS

Intentionally Omitted

EXHIBIT D
ENERGYCAP ENTERPRISE MAINTENANCE AGREEMENT

ARTICLE 1. TERM AND FEES

1.1. City's Maintenance Agreement subscription shall be for one year ("Term"). The initial Term shall commence on the one year anniversary of the first date of live data processing of a current utility bill in other than a testing, training or demonstration mode. On each subsequent anniversary date of City's Maintenance Agreement subscription, the Maintenance Agreement subscription will, upon acceptance by City, renew for another Term, and will continue to renew for additional Terms thereafter, unless City cancels the subscription by written notice at least 30 days prior to the expiration of the then current Term.

1.2. The annual Maintenance Agreement fee is \$11,943.75. If no additional software licenses or services are purchased by City, the stated fee will remain unchanged for a period of five years from the Maintenance Agreement anniversary. Thereafter, Contractor retains the right to increase the Maintenance Agreement fee on an annual basis not to exceed 3% or the then current CPI-U (Phoenix), whichever is greater.

ARTICLE 2. MODIFICATION AND TERMINATION

2.1. Contractor may modify the Maintenance Agreement Fees or these Terms upon written notice to City ("Maintenance Agreement Modification"), but no such Maintenance Agreement Modification shall be effective prior to the end of the current Term of the subscription. If City receives an Maintenance Agreement Modification, City may elect not to extend this Maintenance Agreement beyond the end of the subscription Term then in effect by canceling in accordance with Article 1.

2.2. Contractor may cancel this Agreement at any time upon 30 days written notice to City. If so canceled, City will be refunded one-twelfth of the Maintenance Agreement fee for every month remaining in its prepaid annual subscription.

ARTICLE 3. SCOPE OF SERVICES

3.1. The licensed software covered under these Terms (the "Software") is EnergyCAP Enterprise versions 6.x and later and EnergyCAP Online versions 3.x and later and related database versions.

3.2. Maintenance Agreement services include support for all Contractor developed interfaces, reformatters, custom reports, or other deliverables as part of this Agreement in addition to EnergyCAP Software code. Support ensures that all custom-developed Contractor deliverables function as expected after software upgrades are released. This Agreement does not provide support if City requests revisions to deliverables due to a reason outside of the control of Contractor. If revisions are required then Contractor shall provide a quotation to City for services at Contractor's then-current rates for services.

3.3. During the Term, Contractor will use reasonable efforts to correct or replace Software and/or provide support services to remedy material programming errors that are attributable to the Software, and which significantly affect use of the Software ("Software Defects").

3.4. Contractor agrees to only provide the support services described above in Section 3.2 if City (a) uses reasonable efforts to provide Contractor with reports, screen prints and all other relevant diagnostic information and assistance required by Contractor; and (b) Contractor is able to duplicate the problem as reported by City. City further agrees to provide all necessary IT

support and test time on City's computer system to demonstrate to Contractor's reasonable satisfaction the existence of a Software Defect.

3.5. City shall inform Contractor in writing of any modifications made by City to the Software source code or underlying database structure. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT SHALL Contractor BE RESPONSIBLE FOR SUPPORTING, MAINTAINING OR PROVIDING ANY SERVICES WITH RESPECT TO SOFTWARE MODIFIED BY LICENSEE.

3.6. In the event any problems, difficulties or defects are determined by Contractor to be traceable to City's software, hardware, modifications or system changes, Contractor shall provide a quotation to City for services at Contractor's then-current rates for the services provided by Contractor in connection with any such problem, difficulty, or defect.

3.7. During the term of this Maintenance Agreement, Contractor will provide to City:

- a. Updates to all current licensed features, as they are commercially and generally released by Contractor. In the event Contractor releases new product features that are not included as standard product features for all EnergyCAP users and for which City does not have a current license, then Contractor shall provide a quotation to City for the new features. City has the sole option to add the features and is under no obligation to do so.
- b. Office Hours: Staffed 8:00 AM-5:00 PM ET Monday through Friday except federal holidays. Telephone toll free support hotline 877-327-3702.
- c. After-Hours Support: Support ticket system at <http://Support.EnergyCAP.com>, website at <http://www.EnergyCAP.com/Support>, and online help manuals at <http://Docs.EnergyCAP.com> and <http://Help.EnergyCAP.com>.
- d. Additional Support Resources: Tech Support via Internet e-mail and website, <http://Support.EnergyCAP.com> and <http://www.EnergyCAP.com/Support>. The scope and content of such materials and services shall be determined by Contractor at its sole discretion. Contractor shall retain absolute discretion as to the timing, scope, and content of updates, upgrades, new releases and/or new versions of the Software, including without limitation, the pricing (if any) therefore.
- e. Program activation codes as may be required by the EnergyCAP piracy protection scheme to operate authorized modules of the program.
- f. Subscription services for the ENERGY STAR interface, access to EPA eGrid Greenhouse Gas factors, and mean daily temperature weather data provided by AccuWeather®.

3.8. The services provided hereunder do not include: (a) any services relating to software or hardware not provided by Contractor, including, without limitation, any programming performed by City; (b) training of current or new City employees (technical support requests may not be used as a substitute for software training); (c) correction of user errors and database errors; (d) installation of updates, new versions, or new releases; or (e) data conversion.

3.9. Contractor will use reasonable efforts to respond to all support requests submitted during standard business hours within four hours of submission. Support requests are prioritized by the City at time of submission into one of three categories, and Contractor will make a reasonable effort to resolve the request within the specified time:

- (a) Routine – 5-day resolution - An EnergyCAP feature/function is not performing as intended, but the City is able to continue using EnergyCAP for primary functions of utility bill entry/import, auditing, and (where needed) export to Accounting.
- (b) Urgent – 2-day resolution - An EnergyCAP feature/function is not performing as intended. The City is able to continue to process utility bills for payment, but other important operations are inoperable or require a temporary work-around.

(c) Emergency – 1-day resolution - An EnergyCAP feature/function is not performing as intended, and essential business processes and bill payment activities are interrupted. Contractor will respond to Emergency-level issues with a resolution or work-around that allows the critical process to proceed within one business day.

For After-Hours Support requests, City will submit a support ticket using Contractor's support ticket system at <http://support.energycap.com>. Contractor will receive notification via email.

Technical Support Issue Escalation Path

1. Submit ticket via Technical Support website at <http://support.energycap.com>. Site is available 24X7, and technicians are notified via email of all tickets submitted, including those submitted outside of EnergyCAP, Inc. standard business hours.
2. Call Technical Support during standard business hours of 8:00am-5:00pm ET to 877-327-3702 x2
3. Call general EnergyCAP, Inc. office line during standard business hours of 8:00am-5:00pm ET to 877-327-3702
4. Contact V.P. of Customer Service via phone (877-327-3702 x45) or email at matthew.heinz@energycap.com
5. Contact assigned EnergyCAP project manager via phone (877-327-3702) or email

ARTICLE 4. LICENSEE'S RESPONSIBILITIES

4.1. City shall use reasonable efforts to thoroughly research all software or system problems before reporting a problem to the Contractor support staff. If, upon analyzing a suspected error at City's request, Contractor determines that no error exists in the Software, Contractor reserves the right to provide a quotation to City for time spent in response to City's request at Contractor's then-current rates.

4.2. City shall use reasonable efforts install software provided by Contractor, including all updates, patch disks, diagnostic programs, database scripts and new system releases. City agrees and acknowledges that failure to promptly install new system releases shall release Contractor from its support obligations hereunder until such time as the new release is installed.

4.3. City acknowledges that it is City's sole responsibility, at all times, including specifically during service functions performed by Contractor, to protect the computer system database, files and software from all possible losses, including power failures, hardware failures, software problems, external influences, and inadvertent mistakes, such as operator errors, or any other cause by maintaining copies, through the use of verified daily file saves, stored on and off the premises, and such other additional methods of protection as may be available for the computer system database, files and software.

ARTICLE 5. EXPENSES

In the event that Contractor anticipates incurring additional expenses ("Expenses") not included in the Maintenance Agreement Fee specified herein, including but not limited to, travel to and from City's site, lodging, meals, telephone, and shipping, Contractor agrees to notify City before any expenses are incurred and upon authorization from City agrees to perform the requested services.

ARTICLE 6. LIMITATIONS OF LIABILITY

Intentionally Omitted

ARTICLE 7. GENERAL TERMS

Intentionally Omitted

ARTICLE 8. SUBSCRIPTION SERVICES TERMS & CONDITIONS OF USE

Intentionally Omitted

EXHIBIT E

**Contractor Immigration Warranty
To Be Completed by Contractor Prior to Execution of Contract**

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the Contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form the Contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number: <u>CM5-208-3412</u>		
Name (as listed in the contract): <u>Energy CAP, Inc.</u>		
Street Name and Number: <u>2026 Sandy Drive</u>		
City: <u>State College</u>	State: <u>PA</u>	Zip Code: <u>16803</u>

I hereby attest that:

1. The Contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

Signature of Contractor (Employer) or Authorized Designee:



Printed Name: Jonathan Heller
Title: VP of Human Resources
Date (month/day/year): 5/26/15