

**FIRST AMENDMENT TO THE AGREEMENT
BETWEEN THE CITY OF SAN JOSE
AND
ECONOLITE SYSTEMS, INC.
FOR
AN AUTOMATED TRAFFIC SIGNAL PERFORMANCE MEASURES
SYSTEM**

This First Amendment to the Agreement between the City of San José, a municipal corporation, (hereinafter “City”), and Econolite Systems, Inc., a California corporation registered to conduct business in the State of California, (hereinafter “Contractor”), is entered into on the date of execution by City (“Effective Date”). Each of City and Contractor are sometimes hereinafter referred to as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, on November 18, 2020, City and Contractor entered into an agreement entitled “Agreement Between the City of San José and Econolite Systems, Inc. for an Automated Traffic Signal Performance Measures System” (“Agreement”); and

WHEREAS, on November 22, 2021, City and Contractor executed Change Order 1 to implement the Automated Signal Performance Measures System at the intersection of Monterey and Curtner and increase compensation by \$1,550 for a revised maximum compensation of \$238,317; and

WHEREAS, on July 25, 2022, City and Contractor executed Change Order 2 to add bicycle metrics to the Mobility Signal Performance Measures service and increase compensation by \$14,000 for a revised maximum compensation of \$252,317; and

WHEREAS, the City and the Contractor now desire to amend the Agreement to add professional services for mobility modifications and increase compensation by **\$11,870** for a revised maximum compensation of **\$264,187**;

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

SECTION 1. Section 8, entitled “COMPENSATION,” is hereby amended to read as set forth below:

8. COMPENSATION

City shall pay Contractor an amount not to exceed **Two Hundred and Sixty-Four Thousand One Hundred Eighty-Seven Dollars (\$264,187)** during the Initial Term (“Maximum Compensation”). The terms, rates, and schedule of payment are set forth in the attached Exhibit A “Scope of Work,” including all addenda thereto, and Third Revised Exhibit B “Compensation and Payment Schedule.” Contractor shall submit to City invoices

at the completion of each milestone that include a breakdown of Services as provided in attached Seventh Revised Exhibit B, entitled “Compensation and Payment Schedule.”

SECTION 2. Exhibit A-1 “Scope of Services” is hereby amended to add Addendum 1 to Exhibit A-1 “Scope of Services” which is attached hereto and incorporated herein.

SECTION 3. Second Revised Exhibit B “Compensation” is hereby replaced in its entirety with the Third Revised Exhibit B “Compensation” which is attached hereto and incorporated herein.

SECTION 4. All terms and conditions of the original Agreement not specifically modified by this Second Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year set forth beneath the respective name below.

City of San José (“City”)
a municipal corporation

Econolite Systems, INC. (“Contractor”)
a Delaware limited liability company registered to
conduct business in the State of California



Email: ryan.maher@sanjoseca.gov
Date: 03/20/2023 GMT

By _____
Ryan Maher
Senior Analyst, Finance Department



Email: jtracey@econolite.com
Date: 03/20/2023 GMT

By _____
John Tracey
Chief Financial Officer

APPROVED AS TO FORM:



Email: johnny.phan@sanjoseca.gov
Date: 03/20/2023 GMT

By _____
Johnny V. Phan
Chief Deputy City Attorney



Email: cflores@econolite.com
Date: 03/20/2023 GMT

By _____
Christopher Flores
Vice President

ADDENDUM 1 TO EXHIBIT A-1 SCOPE OF SERVICES

1. Contractor shall provide to City professional services to complete the following modifications:

- 1.1 Add a series of mobility modifications to the existing bicycle congestion delay report including a setting for bicycle startup lost time to help minimize delay.
- 1.2 Customize the current Econolite Centracs® platform with additional signal performance metrics to generate charts for bicycle control delay and red-light running metrics similar to the existing vehicle charts.
- 1.3 Add a new chart to identify locations of excessive red light running using detection existing equipment.

2. Maximum Compensation

The maximum amount of compensation to be paid to Contractor for the professional services specified in this Addendum 1 shall not exceed **Eleven Thousand Eight Hundred and Seventy Dollars (\$11,870)**. The City shall be invoiced no more frequently than monthly for work performed and services rendered. Any services provided for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the City.

THIRD REVISED EXHIBIT B COMPENSATION

1. COMPENSATION AND PAYMENT TERMS

- 1.1 The maximum amount payable for all products and services provided under this Agreement shall not exceed **Two Hundred Sixty-Four Thousand One Hundred Eighty-Seven Dollars (\$264,187)** during the Initial Term. Any additional services requested by the City that would exceed the preceding maximum amount will be addressed in accordance with the Change Order Procedures. No additional services will be performed unless both Parties execute a Change Order outlining the services requested and the compensation agreed for such services.
- 1.2 Progress payments shall be made to Contractor by City based on net thirty (30) days payment terms, following delivery and acceptance of designated milestones as shown below in Table B1: Payment Schedule. All payments are based upon City's acceptance of Contractor's performance as evidenced by successful completion of all of the deliverables as set forth for each milestone. City shall have no obligation to pay unless Contractor has successfully completed, and City has approved the milestone for which payment is due.
- 1.3 Payment for any deliverable under this Agreement, or inspection or testing thereof by City, shall not constitute acceptance or relieve Contractor of its obligations under this Agreement. City may inspect each deliverable and reject upon notification to Contractor any that do not conform to the specifications or other requirements of this Agreement. Rejected deliverables shall be promptly corrected, repaired, or replaced by Contractor. If City receives deliverables with defects or nonconformities not reasonably apparent on inspection, the City reserves the right to require prompt correction, repair, or replacement by Contractor in accordance with Contractor's warranty obligations.

2. PROJECT PERFORMANCE AND PAYMENT SCHEDULE

- 2.1 Work shall commence within two weeks of Agreement execution. All timeline dates are understood to be close of business, 5:00 pm Pacific Time. If timeline dates fall on a weekend or City holiday, the date is understood to be the next business day.
- 2.2 Compensation and payments shall be made to Contractor by City based on Net Thirty (30) days payment terms.
- 2.3 Implementation Invoicing Procedure: Contractor will invoice the City upon completion of each milestone but not more frequently than monthly.
- 2.4 Ongoing Annual Services Invoicing Procedure: Contractor shall invoice the City annually for applicable ongoing services including subscription, technical support, maintenance, and hosting fees at the end of the Warranty Period. City shall prepay a year in advance for applicable ongoing subscription, technical support, maintenance, and hosting services provided under the Agreement.
- 2.5 The City agrees to compensate Contractor for the Services performed and the Software and software customizations provided in accordance with the terms and

conditions of this Agreement. Contractor shall invoice City in accordance with the Payment Schedule in Table B1 below:

Table B1: Payment Schedule

Milestone/Tasks	Deliverable(s)	Estimated Completion Date	Cost
Task 1: Project Management	Project Kickoff / Project Management / Project Implementation Plan. Completion of Deliverables Specified in Exhibit A-1, Sections 5.5 and 5.6	June 1, 2021	\$29,602
Task 2: System Deployment	Requirements Gathering, Installation, Configuration, Integration, and Deployment. Completion of Deliverables Specified in Exhibit A-1, Sections Error! Reference source not found. , Error! Reference source not found. , and Error! Reference source not found.	March 30, 2021	115,202
Task 3: System Testing	Final Verification of the ATSPM System per the Final Verification Plan and Go-Live. Completion of Deliverables Specified in Exhibit A-1, Sections Error! Reference source not found. and Error! Reference source not found.	June 7, 2021	10,122
Task 4: Training	Training. Completion of Deliverables Specified in Exhibit A-1, Section Error! Reference source not found.	November 10, 2021	5,332
Task 5: System Documentation	System Documentation. Completion of Deliverables Specified in Exhibit A-1, Section Error! Reference source not found.	June 7, 2021	5,332
Task 6: Warranty	ATSPM System-related Software License(s)/Subscription(s) & Support & Maintenance (Years 1-3). Exhibit A-1, Section Error! Reference source not found.	June 7, 2024	71,177
Change Order 1	Add intersection of Monterey and Curtner to the ATSPM System	February 28, 2022	1,550
Change Order 2	Add bicycle metrics to the Mobility Signal Performance Measures (SPM) service	June 30, 2023	14,000
First Amendment	Professional services to add mobility modifications including bicycle congestion delay, bicycle control delay, and bicycle red light running.	March 30, 2023	11,870
MAXIMUM COMPENSATION (INITIAL TERM)			\$264,187

Table B2: Price List

	Initial Term (Years 1-3)
One-Time Implementation Costs	
Project Management	\$29,602
System Deployment	115,202
System Testing	10,122
Training	5,332
System Documentation	5,332
Warranty	71,177
Subtotal Implementation	\$236,767
Additional Changes through Change Orders and Amendments	Initial Term (Years 1-3)

Change Order 1	1,550
Change Order 2	14,000
First Amendment	11,870
Subtotal Additional Changes	27,420
MAXIMUM COMPENSATION NOT TO EXCEED (INITIAL TERM)	
	\$264,187

Ongoing Costs	Option 1 (Year 4)	Option 2 (Year 5)	Option 3 (Year 6)	Option 4 (Year 7)	Option 5 (Year 8)	Option 6 (Year 9)	Option 7 (Year 10)	Total Not to Exceed
Software License(s)/Subscription(s) - ATSPM Software, Including Integration with Controllers and Vehicle Detection Systems, APIs, FTP	\$23,725	\$23,725	\$23,725	\$23,725	\$23,725	\$23,725	\$23,725	\$166,075

All amounts stated above are in United States Currency.

*The signed Final Solution Acceptance Certificate (Exhibit A-3) triggers payment of the 20% retainer

3. RENEWAL PERIOD COMPENSATION

- 3.1 After the Initial Term, the City reserves the right to extend the term of this Agreement pursuant to Section **Error! Reference source not found.** (“Options to Extend”) at the same rates as the Initial Term unless otherwise quoted and agreed to in writing by the Parties.
- 3.2 Price Renegotiation. Contractor may request adjustments to compensation rates sixty (60) days prior to an option term. Contractor shall provide information justifying reasons for any increase, and City shall not unreasonably withhold approval of any increase provided the renewal quote for ongoing services does not increase by more than the Producer Price Index (PPI) final demand - WPUFD4 (<https://data.bls.gov/cgi-bin/surveymost?wp>) and does not exceed 3% over the previous year’s fees.
- 3.3 City shall provide Contractor prior written notice in the form of Exhibit E of its intention to exercise its option for the next term prior to the end of the then current term. The City’s Director of Finance or designee is authorized to exercise options on behalf of the City.

4. ADDITIONAL SERVICES

- 4.1 In the event the City requires additional services, Contractor shall provide a written quotation, at no cost to the City, of the type of Additional Service requested and the time required to complete the requested work.
- 4.2 Supplemental professional service rates shall not exceed the following:

Additional Services	Hourly Rate
Senior Advisor	\$185
Technical Lead	\$306
Senior ITS Engineer	\$245
ITS Engineer	\$153
Junior ITS Engineer	\$130

- 4.3 The City reserves the right to request a fixed priced quote in lieu of time and materials. Any fixed price quotes shall be consistent with or less than the agreed-upon additional service rates in Section 4.2 above and must be good for at least ninety (90) days.
- 4.4 Quotes must be approved by the City through an executed Change Order prior to any work being performed.