

RESOLUTION NO. 21-71

Resolution Of The City Council Of The City Of Emeryville Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute A First Amendment To The Professional Services Contract With Econolite Systems, Inc., For An Additional Amount Not To Exceed \$146,342.00 For The Emeryville Innovative Deployment To Enhance Arterials (IDEA) Project, For A Total Contract Amount Not To Exceed \$679,349.00; Appropriating \$136,936 Of MTC IDEA Grant Funding In FY2021/2022 To CIP Project No. 20254001; Transferring and Appropriating \$245,000 from CIP Project No. 1645036 Fund 475 to CIP Project No. 20254001 Fund 475

WHEREAS, on July 21, 2020, the City Council passed Resolution 20-79 authorizing the City Manager to execute a Professional Services Agreement with Econolite Systems, Inc. ("Contractor") for an amount not to exceed \$533,007 for project management, vendor supply, and delivery/installation/verification of equipment for the Emeryville Innovative Deployments to Enhance Arterials (IDEA) Project ("Project"); and

WHEREAS, the Contractor has completed delivery and installation of equipment related to the Automated Traffic Management System (ATMS) element of the Project; and

WHEREAS, during QA/QC work for the ATMS system, the Contractor found issues with traffic signal timings and video detection configurations that would make it difficult to implement the Project as originally intended; and

WHEREAS, the Contractor and Staff have agreed on a scope of work that is required to fully implement the elements of the Project as described in Exhibit A-1 of the First Amendment Professional Services Contract; and

WHEREAS, the Contractor has proposed to provide this additional service for an additional fee not to exceed \$146,342.00 for a new contract amount not to exceed a total amount of \$679,349; and

WHEREAS, the City has determined that the Contractor is qualified by training and experience to render such services; and

WHEREAS, the following adjustment in funds is required to fund the Econolite contract:

Project	Fund	Amount
16475036	475	(\$245,000)
20254001	475	\$245,000

With the above budget amendment adequate funds are available in CIP Project 20254001 to fund the Econolite Systems, Inc. contract as follows:

	Fund	Amount
Original Contract	254-20254001 (MTC)	\$178,782.32
	254-20254001 (ACTC)	34,383.68

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 IDEA Project – 1st Amendment (Econolite)
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	475-20254001	319,841.00
	Subtotal	533,007.00
1 st Amendment	254-20254001 (MTC)	122,737.04
	254-20254001 (ACTC)	23,604.96
	Subtotal	146,342.00
	Grand Total	\$679,349.00

And;

WHEREAS, an additional \$136,936 of revenues from the MTC IDEA Grant funding is required for Fiscal Year 2021/2022 in CIP Project No. T-10 (Account 254-20254001) to cover the additional contract amount; now, therefore, be it

RESOLVED, by the City Council of the City of Emeryville that \$245,000 from CIP Project No. 116475036 Fund 475 be transferred and appropriated to CIP Project No. 20254001 Fund 475 and be it further

RESOLVED, that \$136,936 of MTC IDEA Grant funding for Fiscal Year 2021/2022 in CIP Project No. T-10 (Account 254-20254001) be appropriated; and, be it, further

RESOLVED, by the City Council of the City of Emeryville that the City Manager is authorized to execute a First Amendment to the Professional Services Contract with Econolite Systems, Inc. in the form attached hereto as Exhibit A-1, for an additional amount not to exceed \$146,342.00, for a total contract amount not to exceed \$679,349.00.

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ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, July 6, 2021, by the following vote:

AYES:	<u>4</u>	Mayor Martinez, Vice Mayor Donahue, and Council Members Bauters and Medina
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

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MAYOR

ATTEST:

DocuSigned by:

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CITY CLERK

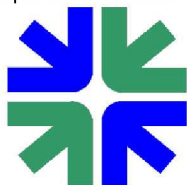
APPROVED AS TO FORM:

DocuSigned by:

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INTERIM CITY ATTORNEY

ATTACHMENTS

- 1st Amendment Professional Services Contract
- Exhibit A-1 – Additional Scope of Work
- Attachment A - Original Professional Services Contract



City of Emeryville

CALIFORNIA

PROFESSIONAL SERVICES CONTRACT

FIRST AMENDMENT

THIS FIRST AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT ("Amendment") is effective as of _____, by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **ECONOLITE SYSTEMS, INC.** ("Contractor"), individually referred to as a "Party" and collectively as the "Parties".

WITNESSETH THAT

WHEREAS, the City and Contractor entered into a Professional Services Contract dated August 14, 2020 ("Contract") for the purpose of retaining the services of Contractor to provide project management, vendor supply, and delivery/installation/verification of equipment for the Emeryville Innovative Deployments to Enhance Arterials (IDEA) Project; and

WHEREAS, the City and Contractor desire to amend the Contract; and

WHEREAS, the public interest will be served by this Amendment.

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

1. AMENDMENT

The Parties agree to amend the Contract as checked below:

1.1 Exhibit A

- ☐ Exhibit A of the Contract is hereby amended in its entirety and replaced with **Exhibit A-Revision Number**;

OR

- ☒ Exhibit A of the Contract is hereby amended to include the provisions of **Exhibit A-1**, attached hereto and incorporated herein by this reference.

1.2 Termination Date

- ☐ The Parties desire to extend the termination date. Section 1.3 of the Contract is hereby amended to extend the termination date to **NEW END DATE**.

FOR CITY USE ONLY

Contract No.		CIP No.	
Resolution No.		Project No.	

City of Emeryville | Professional Services Contract Amendment
REV 01/2020

1.3 Total Compensation Amount

- ☒ The Parties desire to increase the Total Compensation Amount as set forth in Section 3.2 of the Contract by **ONE HUNDRED FORTY SIX THOUSAND, THREE HUNDRED FORTY TWO DOLLARS AND NO CENTS (\$146,342.00)**. The total amount paid under the Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **SIX HUNDRED SEVENTY NINE THOUSAND, THREE HUNDRED FORTY NINE DOLLARS AND NO CENTS (\$679,349.00)**.

2. CONTINUING EFFECT OF CONTRACT

Except as amended by this Amendment, all other provisions of the Contract remain in full force and effect and shall govern the actions of the Parties under this Amendment. From and after the date of this Amendment, whenever the term "Contract" appears in the Contract, it shall mean the Contract as amended by this Amendment.

3. ADEQUATE CONSIDERATION

The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

4. SEVERABILITY

If any portion of this Amendment is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

5. WAIVER

The City's failure to enforce any provision of this Amendment or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

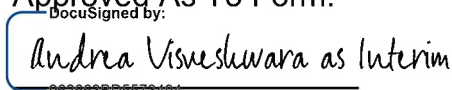
SIGNATURES ON FOLLOWING PAGE

City of Emeryville | Professional Services Contract Amendment
REV 01/2020

**6. SIGNATURE PAGE TO PROFESSIONAL SERVICES CONTRACT
FIRST AMENDMENT**

IN WITNESS WHEREOF the City and the Contractor have executed this Contract,
which shall become effective as of the date first written above.

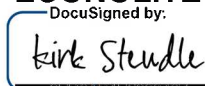
Approved As To Form:

DocuSigned by:

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City Attorney

Dated: **CITY OF EMERYVILLE**

Christine S. Daniel, City Manager

Dated: **ECONOLITE SYSTEMS, INC.**

DocuSigned by:

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5/25/2021
Kirk Steudle, Senior Vice President (Signature)

City of Emeryville Signal Timing

City of Emeryville – Public Works

Emeryville, CA

EXHIBIT A-1

ITEM #	Item Description	Unit	Qty	Total
1	Video Detection Adjustments	LS	1	\$24,572
	<p>Scope: Econolite Systems quote includes pricing to supply the following items.</p> <ul style="list-style-type: none"> 40th @ Adeline: Relocate the EB and WB video detection cameras from the luminaire arms to the mast arms and reconfigure detection zones for all cameras per SPM detection layout. 40th @ Harlan: Relocate the EB and WB video detection cameras from the luminaire arms to the mast arms and reconfigure detection zones for all cameras per SPM detection layout. Shellmount @ IKEA Entrance, IKEA Exist, Bay St Garage and Ohlone intersections: Re-aim NB and SB cameras for each of these locations to allow for advanced detection and program all cameras per SPM detection layout. Powell @ Beaudry: Pull new DLC cable to the advanced detection pull boxes (EB and WB), separate advanced detection loops and re-splice to individual DLC cables. Reprogram video detection systems per the SPM detection layout at all remaining locations: 40th/Emery, 40th/Hollis, 40th/Horton, Christie/Shellmound St, Shellmount St/Shellmound Way, Christie/Shellmound Way, Powell/Christie, Powell, Hollis, Powell, Doyle Furnish and install SDLC cable from all Autoscope systems to new Cobalt controllers to allow for SPM detection programming <p>Assumptions:</p> <ul style="list-style-type: none"> Christie @ Powell St Plaza will have no changes done in this scope of work. Cobalt controllers are installed, operational, and has stable communication to the TMC. Video detection systems are installed, operational, and has stable communication to the TMC. Econolite Systems is not responsible for network changes done to the video detection systems or if communication issues arise. Includes a 10% contingency. 			

ITEM #	Item Description	Unit	Qty	Total
2	Signal Timing (Phase 1)	LS	1	\$64,157
	<p>Scope:</p> <p>Phase 1</p> <ul style="list-style-type: none"> Conduct field visits at the study intersections to determine the reasons for traffic signal controllers not transitioning and implementing the optimized timing plans under time-of-day plans. Troubleshoot to ensure traffic signal controllers go through transition and optimize timing plans. Confirm timing plans developed and implemented in the field are as per the MTC PASS deliverables and provide good progression along the study corridors. Determine if the offsets need to be fine-tuned to enhance the progression. <p>Deliverables:</p> <ul style="list-style-type: none"> Technical Memorandum summarizing work completed under this Phase <p>Assumptions:</p> <ul style="list-style-type: none"> Phase 1 will consist of 17 intersections from the City of Emeryville IDEA project list. Includes a 5% contingency 			

City of Emeryville Signal Timing

City of Emeryville – Public Works

Emeryville, CA

EXHIBIT A-1

ITEM #	Item Description	Unit	Qty	Total
3	Signal Timing (Phase 2)	LS	1	\$42,771
	<p>Scope: Phase 2</p> <ul style="list-style-type: none"> Develop bicycle and transit priority parameters and timings to be implemented at 17 intersections. Develop parameters for priority and submit to City staff for review and input. Develop the timings for priority and implement at intersections. Adjustment to timing plans will be conducted based on field observations to ensure that timing plans are working to achieve objective. <p>Deliverables:</p> <ul style="list-style-type: none"> Bicycle and Transit Priority Timing Plans, Implementation and Fine-Tuning <p>Assumptions:</p> <ul style="list-style-type: none"> Phase 2 requires Phase 1 to be completed. Includes a 5% contingency. Phase 2 will consist of 17 intersections from Phase 1. 			

ITEM #	Item Description	Unit	Qty	Total
4	Project Management	LS	1	\$14,842
	<p>Scope:</p> <ul style="list-style-type: none"> Provide a project schedule to ensure on-time deliverables, invoices, and progress reports to summarize project status. Establish bi-weekly project meetings via teleconference to keep City informed of project progress and upcoming activities. Develop consensus on the overall project approach and clarify areas of responsibilities for Econolite and City for the implementation. Identify implementation risks and propose mitigation factors. Fine-tune the Centracs Mobility site to integrate changes from Item #1-3. <p>Assumptions:</p> <ul style="list-style-type: none"> Fine-tuning will occur once Item #1,2, and 3 are complete and approved by City. The Econolite Team will participate in bi-weekly progress meetings via teleconference. Includes a 10% contingency. 			

City of Emeryville Signal Timing

City of Emeryville – Public Works

Emeryville, CA

EXHIBIT A-1

General Terms & Conditions

1. All prices quoted inclusive of freight.
2. Payment shall be in accordance with the mutually agreed upon contract.
3. Price quotation is valid for 60-days.

Special Conditions

1. Please examine explanation below each bid item carefully for inclusions and exclusions.

Quote Date: May 12, 2021

Quoted by: Christopher Flores
Manager, Project Delivery
<mailto:cflores@econ>

Contact: (714) 408-8375

RESOLUTION NO. 20-79

Resolution Of The City Council Of The City Of Emeryville Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Enter Into A Professional Services Contract In The Amount Of \$533,007 With Econolite Systems, Inc. For The City Of Emeryville Innovative Deployments To Enhance Arterials (IDEA) Deployment Project And To Take Further Action As Necessary To Implement The Project, Including Executing A Centracs Software License Agreement, Centracs Cloud Services Agreement, And Software Maintenance Agreement

WHEREAS, in August 2017, Metropolitan Transportation Commission (MTC) initially invited eligible Bay Area public agencies to submit applications for consideration under a new regional initiative called “Innovative Deployments to Enhance Arterials” (IDEA); and

WHEREAS, on November 17th, 2017, City Staff turned in an IDEA application to MTC for a proposed project that included a fusion of various technology-focused transportation elements to be deployed throughout the City of Emeryville; and

WHEREAS, on February 14th, 2018, MTC’s Programming and Allocations Committee selected the Project to be programmed and funded; and

WHEREAS, on January 10, 2020, the Public Works Department issued a Request for Proposals for the City of Emeryville IDEA Deployment Project (“Project”) and on April 30, 2020 the City received nine proposals; and

WHEREAS, the City utilized the “Best Value” method of procurement, in conformance with the RFP and applicable procurement guidelines, to score the proposal from Econolite Systems, Inc. as highest for all three elements of the Project; and

WHEREAS, staff recommends that City Council awards the contract for all three elements of the Emeryville IDEA Deployment Project to the top scoring proposal from Econolite Systems, Inc; and

WHEREAS, as part of installing the equipment and software as described in their proposal, the City will need to execute various agreements with Econolite Systems, Inc. including executing these agreements which are in substantial form to the Sample Centracs Software License Agreement, Sample Contracs Cloud Services Agreement, and Sample Software Maintenance Agreement, included in the Appendix to the Proposal submitted by Econolite Systems, Inc., dated April 30, 2020, as approved as to form by the City Attorney; and

WHEREAS, there is adequate funding in the Capital Improvement Program under ST-11 and T-10 to fund this project; now, therefore, be it

RESOLVED, by the City Council of the City of Emeryville authorizes the City Manager to enter into a Professional Services Contract in the amount of \$533,007 with Econolite

Resolution No. 20-79
Award Contract – IDEA Deployment Project (Econolite)
City Council Meeting | July 21, 2020
Page 2 of 2

Systems, Inc. for the City Of Emeryville Innovative Deployments to Enhance Arterials (IDEA) Deployment Project; and, be it, further

RESOLVED, by the City Council of the City of Emeryville hereby authorizes the City Manager to take further action as necessary to implement the Project, including executing a Centracs Software License Agreement, Centracs Cloud Services Agreement, and Software Maintenance Agreement, which are in substantial form to the Sample Centracs Software License Agreement, Sample Centracs Cloud Services Agreement, and Sample Software Maintenance Agreement, included in the Appendix to the Request for Proposals submitted by Econolite Systems, dated April 30, 2020, as approved as to form by the City Attorney.

ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, July 21, 2020, by the following vote:

AYES:	<u>5</u>	Mayor Patz, Vice Mayor Martinez, and Council Members Bauters, Donahue, and Medina
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

DocuSigned by:

Christian R. Patz

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MAYOR

ATTEST:

DocuSigned by:

Sheri Hartz

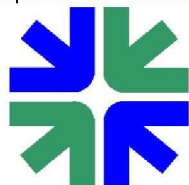
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CITY CLERK

APPROVED AS TO FORM:

Michael Quinn

CITY ATTORNEY



City of Emeryville

CALIFORNIA

CONTRACT

THIS CONTRACT ("Contract") is effective as of _____ (the "Effective Date"), by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **ECONOLITE SYSTEMS, INC.** ("Contractor"), individually referred to as a "Party" and collectively as the "Parties".

WITNESSETH THAT

WHEREAS, the City desires to engage Contractor for the City of Emeryville Innovative Deployments to Enhance Arterials ("IDEA") Deployment Project ("Project"); and

WHEREAS, on July 1, 2018, the City and the Metropolitan Transportation Commission ("MTC") entered into the Master Funding Agreement for Planning, Programming, Transportation, Transit, Land Use or Other Projects ("Master Funding Agreement"); and

WHEREAS, on July 26, 2018, the City and the Alameda County Transportation Commission ("ACTC") entered into a Project Funding Agreement for Emeryville Next Generation Traffic Signals Project (IDEA Grant Match) to provide 2014 Measure BB funds for the Project;

WHEREAS, on August 1, 2018, pursuant to the Master MTC Agreement, the City and MTC entered into Supplement 1 to the Master Funding Agreement to provide funds for the Project;

WHEREAS, on January 10, 2020, the City issued Requests for Proposals for City of Emeryville Innovative Deployments to Enhance Arterials (IDEA) Deployment Project ("RFP");

WHEREAS, Contractor submitted a timely response to the RFP; and

WHEREAS, the City finds that specialized knowledge, skills, and training are necessary to render the services necessary to do the work contemplated under this Contract; and

WHEREAS, the City has determined that the Contractor is qualified by training, experience, and offers the best value in rendering such services; and

WHEREAS, the Contractor desires to provide such services; and,

WHEREAS, the public interest will be served by this Contract; and

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

FOR CITY USE ONLY			
Contract No.		CIP No.	
Resolution No.		Project No.	

1. SCOPE OF SERVICES AND TERMINATION DATE

1.1 *Project Description*

A complete project description is set forth in the Scope of Work, attached hereto as **Exhibit A** and incorporated herein by this reference.

1.2 *Services*

The services to be completed under this Contract ("Services") are described in the Scope of Work set forth in **Exhibit A**. The Services shall be performed in accordance with terms, conditions, and specifications set forth herein. To the extent there is a conflict between the Scope of Work, and the terms, conditions, and specifications set forth herein, the terms, conditions, and specifications set forth herein shall govern.

1.3 *Schedule and Completion Date*

The Services to be provided by Contractor under this Contract shall commence on the Effective Date and shall be completed by **DECEMBER 31, 2023**. The Parties may, by mutual, written consent, extend the term of this Contract.

2. WORK CHANGES

2.1 *City Rights to Change*

The City reserves the right to order changes in the Services to be performed under this Contract by altering, adding to or deducting from the Scope of Work. All such changes shall be incorporated in amendments executed by the Contractor and the City. Such amendments shall specify the changes ordered and any necessary adjustment of compensation and completion time.

2.2 *Additional Work Changes*

Any work added to the Scope of Work by an amendment shall be executed under all the applicable conditions of this Contract. No claim for additional compensation or extension of time shall be recognized unless contained in an amendment duly executed on behalf of the City and the Contractor.

2.3 *City Manager Execution*

The City Manager has authority to execute without further action of the Emeryville City Council, any number of amendments so long as their total effect does not materially alter the terms of this Contract or increase the total amount to be paid under this Contract, as set forth in Section 3.2 below.

3. COMPENSATION AND METHOD OF PAYMENT

3.1 *Compensation for Services Performed*

City agrees to pay the Contractor for the Services performed and costs incurred by Contractor upon certification by the City that the Services were actually performed and

costs actually incurred in accordance with the Contract. Compensation for Services performed and reimbursement for costs incurred shall be paid to the Contractor upon receipt and approval by the City of invoices setting forth in detail the Services performed and costs incurred. The City shall pay the Contractor within forty-five (45) days after approval of the invoice by City staff.

3.2 Total Compensation Amount

The total amount paid under this Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **FIVE HUNDRED THIRTY-THREE THOUSAND, SEVEN DOLLARS AND NO CENTS (\$533,007)**, except as outlined in Section 2.3 above. The compensation for Services performed shall be as set forth in **Exhibit A**. Reimbursement for costs incurred shall be limited as follows. Long distance telephone and telecommunications, facsimile transmission, normal postage and express mail charges, photocopying and microcomputer time shall be at cost. Supplies and outside services, transportation, lodging, meals and authorized subcontracts shall be at cost plus no more than a 10% administrative burden. Automobile mileage shall be no more than the current deductible rate set by the Internal Revenue Service.

4. COVENANTS OF CONTRACTOR

4.1 Assignment of Contract

The Contractor covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Contract, without the prior express written consent of the City. As to any approved subcontractors, the Contractor shall be solely responsible for reimbursing them and the City shall have no obligation to them.

4.2 Responsibility of Contractor and Indemnification of City

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless City, the Metropolitan Transportation Commission ("MTC"), the Alameda County Transportation Commission ("ACTC"), and their respective governing bodies, officials, members, officers, agents, employees and volunteers (collectively referred to as "Indemnitees"), from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including without limitation injury to or death of an employee of Contractor or subcontractors as well as any claim by any employee, agent, Contractor or independent contractor hired or employed by Contractor that such persons or individuals are entitled to any benefit otherwise provided to employees of the City, including coverage under the California Public Employee Retirement System), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses, and fees of expert contractors or expert witnesses incurred in connection therewith and the costs of investigation, arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Contractor, any subcontractor, anyone directly or indirectly employed by them or anyone that they control. This indemnification obligation is not

limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor. This obligation to indemnify and defend the Indemnitees shall survive termination of this Contract.

If Contractor's obligation to defend, indemnify, and/or hold harmless arises out of Contractor's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Contractor's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, and, upon Contractor obtaining a final adjudication by a court of competent jurisdiction, Contractor's liability for such claim, including the cost to defend, shall not exceed the Contractor's proportionate percentage of fault.

4.3 Independent Contractor

The Contractor hereby covenants and declares that it is engaged in an independent business and agrees to perform the Services as an independent contractor and not as the agent or employee of the City. The Contractor agrees to be solely responsible for its own matters relating to the time and place the Services are performed; the instrumentalities, tools, supplies and/or materials necessary to complete the Services; hiring of contractors, agents or employees to complete the Services; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Contractor agrees to be solely responsible for its own acts and those of its subordinates and employees during the term of this Contract.

4.4 Insurance

Contractor shall not commence Services under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under **Exhibit B**, attached hereto and incorporated herein by this reference. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under **Exhibit B**. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

4.5 Records, Reports and Audits

4.5.1 Records

- A. Records shall be established and maintained by the Contractor in accordance with requirements prescribed by the City with respect to all matters covered by this Contract. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Contract. Furthermore, records that are the subject of audit findings shall be retained for five years or until such audit findings have been resolved, whichever is later.

City of Emeryville | Professional Services Contract
REV 08/2019

- B. All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible.

4.5.2 Reports and Information

Upon request, the Contractor shall furnish to the City any and all statements, records, reports, data and information related to matters covered by this Contract in the form requested by the City.

4.5.3 Audits and Inspections

At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Contract. The Contractor will permit the City to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Contract.

4.6 ***Conflicts of Interest***

The Contractor covenants and declares that, other than this Contract, it has no holdings or interests within the City of Emeryville, nor business holdings, contracts or agreements with any official, employee or other representative of the City. For the duration of this Contract, in the event the Contractor or its principals, agents or employees acquire such a holding, interest, contract, or agreement within the City of Emeryville or with any official, employee or representative of the City in the future, the Contractor will immediately notify the City of such holding, interest, contract, or agreement in writing.

4.7 ***Confidentiality***

The Contractor agrees that such reports, information, opinions or conclusions shall not be made available to or discussed with any individual or organization, including the news media, without prior written approval of the City. The Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether deemed confidential or not.

4.8 ***Discrimination Prohibited***

The Contractor covenants and agrees that in performing the Services required under this Contract, the Contractor shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin or ancestry, age or disability, except as provided in section 12940 of the Government Code.

4.9 Licenses, Certifications and Permits

The Contractor covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Contractor by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the Services contracted for under this Contract. All work performed by Contractor under this Contract shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

4.10 Key Personnel

All of the individuals listed in Exhibit A are necessary for the successful prosecution of the Services due to their unique expertise and depth and breadth of experience. There shall be no change in Contractor's Project Manager or members of the project team without the City's approval. Contractor recognizes that the composition of this team was instrumental in the City's decision to award the work to Contractor and that compelling reasons for substituting these individuals must be demonstrated for the City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Contractor's obligations under this Contract and shall be grounds for termination.

4.11 Authority to Contract

The Contractor covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Contractor to the terms of this Contract, if applicable.

4.12 Ownership of Work

All reports, designs, drawings, plans, specifications, schedules, work product and other materials prepared or in the process of being prepared for the Services to be performed by the Contractor ("Materials") shall be and are the property of the City and the City shall be entitled to full access and copies of all such Materials. Any such Materials remaining in the hands of the Contractor or subcontractor upon completion or termination of the work shall be delivered immediately to the City. The Contractor assumes all risk of loss, damage or destruction of or to such Materials. If any Materials are lost, damaged or destroyed before final delivery to the City, the Contractor shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Contractor agrees to execute any additional documents that may be necessary to evidence such assignment.

4.13 City Labor Requirements

4.13.1 Compliance

At the Effective Date, compliance with the City's living wage ordinance is ☒ **required** / ☐ **not required** for this Contract. If this Contract provides for compensation to

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Contractor of \$25,000 or more within a single fiscal year for providing Services to the City, then Contractor shall comply with the requirements of the City's Living Wage Ordinance set forth in <https://www.codepublishing.com/CA/Emeryville/#!/Eme>, unless (i) Contractor is a governmental entity, (ii) this Contract is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Contract is subject to federal or state laws or regulations that would preclude the application of the City's laws.

4.13.2 Applicability

Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Contract for all employees of Contractor who perform at least twenty-five percent (25%) of the work arising from this Contract, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to <https://www.codepublishing.com/CA/Emeryville/#!/>. Contractor shall promptly provide to the City documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from the City.

4.13.3 Non-Compliance

Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Contractor for back pay, reinstatement and compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the City may terminate the Contract and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.

4.13.4 Living Wage

Contractor shall notify each of its affected employees with regards to wages that are required to be paid pursuant to this Contract. "Living Wage" means no less than **\$16.69 PER HOUR** (which is <http://www.ci.emeryville.ca.us/1208/Livir> to reflect the twelve-month average increase to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Area for the preceding year from May to April, not to exceed three percent (3%) in any one year) including wages and health benefits. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.

4.13.5 Minimum Wage and Paid Sick Leave

In addition to the Living Wage Ordinance, the Contractor may be required to comply with the <http://www.ci.emeryville.ca.us/1024/Minimum-Wage-Ordinance> <http://www.>, as set forth in <https://www.codepublishing.com/CA/Emeryville/#!/Eme>, to the extent it is applicable.

4.14.1 Prevailing Wage Requirements

4.14.2 Registration

4.14.3 Labor Compliance Oversight

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Pursuant to the requirements of section 1860 of the <https://leginfo.ca.gov/>, Contractor will be required to secure the payment of workers' compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. By signing this Contract, Contractor certifies the following:

"I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

Failure by Contractor to comply with any provision of this Section shall constitute a default of this Contract and shall be grounds for termination as provided in this Contract.

- A. The City shall have the right to terminate this Contract for any reason whatsoever by providing written notice thereof at least five (5) calendar days in advance of the termination date.
- B. All termination notice periods triggered pursuant to written notice shall begin to run from the date of the United States Postal Service postmark.
- C. Upon termination, City shall provide for payment to the Contractor for Services rendered and expenses incurred prior to the termination date.
- D. Upon receipt of a termination notice the Contractor shall: (1) promptly discontinue all Services affected, unless the notice directs otherwise; and (2) promptly deliver to the City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Contractor in performing this Contract, whether completed or in process, in the form specified by the City.
- E. Notwithstanding anything to the contrary, this Contract is subject to immediate termination in the event the City Council does not appropriate sufficient funds for this Contract.
- F. The rights and remedies of the City and the Contractor provided in this Section are in addition to any other rights and remedies provided under this Contract or at law or in equity.

No member, official or employee of the City shall be personally liable to the Contractor or any successor in interest in the event of any default or breach by the City or for any

amount which may become due to the Contractor or successor or on any obligation under the terms of this Contract.

7. ENTIRE AGREEMENT

This Contract constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Contract not contained in this Contract shall be valid or binding. This Contract may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.

8. SUCCESSORS AND ASSIGNS

Subject to the provisions of this Contract regarding assignment, this Contract shall be binding on the heirs, executors, administrators, successors and assigns of the respective Parties.

9. APPLICABLE LAW AND ATTORNEY'S FEES; VENUE

If any action at law or in equity is brought to enforce or interpret the provisions of this Contract, the rules, regulations, statutes and laws of the State of California will control. The prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which said party may be entitled. The exclusive venue for any legal action taken pursuant to this Contract shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

10. SEVERABILITY

The caption or headnote on articles or sections of this Contract are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Contract nor in any way affect this Contract. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the remainder of this Contract shall remain in full force and effect to the extent possible.

11. BUSINESS TAX CERTIFICATE

Prior to commencement of the Services to be provided hereunder, Contractor shall apply to the City of Emeryville Finance Department for a business tax certificate, pay the applicable business tax and maintain said business tax certificate during the term of this Contract, as provided in Article 1 of Chapter 1 of Title 3 of the Emeryville Municipal Code.

12. NOTICES

12.1 *Communications Relating to Daily Activities*

All communications relating to the day-to-day activities of the work and invoices shall be exchanged between **Ryan O'Connell** for the City and **Michael Villafuerte** for the Contractor:

CITY	CONTRACTOR
Ryan O'Connell, Senior Civil Engineer Phone No: 510-596-4346 E-Mail : roconnell@emeryville.org	Michael Villafuerte, Project Manager Phone No: 714-575-5799 E-Mail : mVillafuerte@econolite.com

12.2 *Official Notices*

All other notices, writings or correspondence as required by this Contract shall be directed to the City and the Contractor, respectively, as follows:

CITY	CONTRACTOR
Mary Grace Houlihan, Public Works Director 1333 Park Avenue Emeryville, California 94608 Phone No: 510-596-4341 E-Mail : mghoulihan@emeryville.org <i>with a copy to:</i> Ryan O'Connell, Senior Civil Engineer 1333 Park Avenue Emeryville, California 94608 Phone No: 510-596-4346 E-Mail : roconnell@emeryville.org	Alice Cook, General Counsel 1250 N. Tustin Avenue Anaheim, CA 92807 Phone No: 714-630-3700 E-Mail : acook@econolite.com

13. COUNTERPARTS

This Contract may be signed in counterparts, each of which shall constitute an original. It is expressly agreed that each Party to this Contract shall be bound by its own telecopied, scanned, electronic or digital signature and shall accept the telecopied, scanned, electronic or digital signature of the other Party to this Contract.

14. NO THIRD-PARTY BENEFICIARIES

Except to the extent expressly provided for herein, there are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

15. NON-EXCLUSIVITY

City reserves right to employ other contractors in connection with the Services covered under this Contract.

16. ASSIGNMENT OR TRANSFER

Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Contract or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

17. WAIVER

The City's failure to enforce any provision of this Contract or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

18. OTHER REQUIREMENTS

Compliance with terms and conditions set forth in **Exhibit C-1, C-2, C-3, C-4, and C-5** are ☒ **required** / ☐ **not required** for this Contract. Contractor shall also fully and adequately comply with the provisions included in **Exhibit C-1** ("FHWA Form 1273 – Required Contract Provisions Federal-Aid Construction Contracts"), **Exhibit C-2** ("MTC Contract Requirements"), **Exhibit C-3** ("ACTC Contract Requirements"), **Exhibit C-4** ("LAPM Forms"), and **Exhibit C-5** ("DBE and Prevailing Wage Determinations") when attached hereto and incorporated herein by reference ("Other Requirements"). With respect to any conflict between such Other Requirements and the terms of this Contract and/or the provisions of state law, **Exhibit C-1, C-2, C-3, C-4, and C-5** shall control, and within Exhibit C-1, C-2, C-3, C-4, and C-5, if there is a conflict, the more stringent requirements shall control.

SIGNATURES ON FOLLOWING PAGE

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19. SIGNATURE PAGE TO PROFESSIONAL SERVICES CONTRACT

IN WITNESS WHEREOF the City and the Contractor have executed this Contract, which shall become effective as of the date first written above.

Approved As To Form:

DocuSigned by:
Michael Guina
City Attorney

Dated: **CITY OF EMERYVILLE**

Christine S. Daniel, City Manager

Dated: **ECONOLITE SYSTEMS, INC.**

7/10/2020
DocuSigned by:
Kirk Steidle (Signature)
Kirk Steidle, Senior Vice President