

## **SYSTEM SUPPLY AGREEMENT**

THIS SYSTEM SUPPLY AGREEMENT (this "Agreement") is made and entered into by and between the City of Norman, Oklahoma, with its principal address at 201 W. Gray Street, Norman, Oklahoma 73069, (hereinafter referred to as "Agency"), and Econolite Control Products, Inc., a California corporation located at 3360 E. La Palma Avenue, Anaheim, California 92806 (hereinafter referred to as "Econolite").

### **I. RECITALS**

- A. Econolite is a manufacturer and supplier of traffic control equipment, advanced traffic management systems and traffic controller firmware.
- B. Econolite, alone and in partnership with others, has developed proprietary software systems, including the adaptive control system registered as "*Centracs Adaptive*".
- C. Agency desires to employ Econolite to develop, furnish, integrate and test hardware and software systems to provide a fully operational *Centracs Adaptive* system.

## **AGREEMENT**

NOW, THEREFORE, the parties hereto agree as follows:

### **II. SCOPE OF WORK**

Econolite and Agency, for the mutual consideration hereinafter set forth agree that the services shall conform to Econolite Quote dated November 11, 2014, except where modified by this agreement.

In this scope of work, Econolite shall deliver the following materials and services on or before the delivery dates agreed to during the project kickoff meeting.

#### ***Deliverables Section***

- Centracs Adaptive Module
- Centracs Adaptive Data Keys (Quantity 6)
- Centracs Adaptive installation, training and testing for six intersections
- Supply of Advance+ Radar Sensor for TS2, with SDLS (Quantity 12)
- Configuration of 12 Advance+ Radar Sensors. Installation to be provided by the Agency

***TOTAL AGREEMENT PRICE: \$ 105,000.00***

### **III. DELIVERY SCHEDULE**

Econolite shall provide the *Centracs Adaptive* system and deliverables in accordance with the milestone schedule defined and agreed to during the project kickoff meeting with Agency.

### **IV. PAYMENT TERMS**

The materials and services listed under Section II above establish invoicing and payment milestones under this Agreement. Payment for all invoices shall occur within thirty (30) days. All computer equipment will be shipped F.O.B. Colorado Springs, Colorado. All cabinets, controllers and field components will be shipped F.O.B. Anaheim, California.

Econolite shall not be liable for delays in delivery or in performance or failure to manufacture or deliver, due to causes which are unavoidable or beyond its reasonable control, acts of God, acts of Agency, acts of civil or military authority,

fires, strikes or other labor disturbances, floods, epidemics, war, riot, delays in transportation, or inability on account of causes beyond its reasonable control to obtain necessary labor, materials, components or manufacturing facilities. In the event of any such delay, the date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay. If the delay is due to causes other than attributable to Agency, and is such that the delivery of services voids the essential period for this contract, Agency may cancel this contract upon thirty (30) days written notice.

This Agreement is made subject to any federal, state or local allocations, priorities, restrictions or regulations now or hereafter in effect; or allocations imposed upon Econolite by Econolite's suppliers or for delays caused by failure of its supplier to deliver parts to Econolite.

The compensation set forth in this paragraph shall be the total compensation for hardware, software and services provided by Econolite, including all out of pocket expenses incurred. Payment shall be made per the following:

Software, Installation & Integration	- 85% of total system price less hardware upon completion of installation
Training	- 10% of total system price less hardware upon completion of training
Acceptance Test	- 5% of total system price less hardware upon completion of test
Field Equipment	- 100% upon shipment of material(s)

#### **V. PAYMENTS EARNED**

Agency acknowledges that the rights of Econolite in and to the consideration payable by Agency under Section II are absolute and unconditional upon completion of the discrete tasks set forth in said section of this Agreement, notwithstanding that the payment dates may be set at a time later in the future than the performance date.

In the event of default by Agency and Agency failing to cure such default within thirty (30) days from receiving Econolite's written notice of Agency default, Econolite shall be entitled, at its option, to upon written notice to Agency, declare all unpaid payments, plus all other amounts payable by Agency, hereunder, to be immediately due and payable, discounted, to the then present value (using an interest rate equal to that of a comparable treasury note at the date this Agreement was accepted by Econolite). The remedies referred to or set forth herein shall be cumulative and any single or partial exercise of any remedy shall not preclude any other or further exercise thereof or of any other remedy.

#### **VI. SALES AND SIMILAR TAXES**

Econolite's price does not include sales, use, excise or similar taxes. Consequently, in addition to the price specified herein, the amount of any present or future sales, use, excise, or other tax applicable to the sale or use of the equipment hereunder shall be paid by Agency, or in lieu thereof Agency shall provide Econolite with a tax exemption certificate acceptable to taxing authorities.

#### **VII. CANCELLATION AND "HOLD" CHARGES**

Agency may cancel, place a "stop notice" or delay the completion of performance of Econolite upon 30 days written notice in advance to Econolite. In the event of any such action, Agency shall make payment to Econolite of reasonable and proper cancellation charges, and/or appropriate costs associated with the delay and/or "holds". In addition to the purchase price as agreed upon herein, Agency agrees to make payments to Econolite for labor and materials expended (including overhead and G & A costs) directly attributable to the delays, "holds" or cancellation caused by Agency. Agency may cancel this order, if after written notice to Econolite and thirty (30) days to cure, Econolite fails to fulfill in a timely manner its obligations under this agreement.

#### **VIII. WARRANTY**

Econolite warrants to Agency that all software and equipment to be delivered hereunder will be free from defects in material or workmanship and will be of the kind and quality designated or specified by Econolite herein. This warranty

shall apply only to defects appearing within one year from the date of shipment by Econolite for system software and controller software and two years from the date of shipment by Econolite for hardware products manufactured by Econolite. All other equipment not manufactured by Econolite carries the manufacturer's standard warranty. If Econolite installs the Econolite manufactured equipment, software or supplies technical directions of installation by contract, the warranty period shall run from the completion of installation, provided same is not unreasonably delayed by Agency.

If the Econolite manufactured equipment delivered hereunder does not meet the above warranty, and if Agency promptly notifies Econolite in writing, Econolite shall thereupon correct any defect, including non-conformance with the specifications, either (at its option) by repairing any defective or damaged parts of the equipment, or by making available at Econolite's plant necessary replacement parts.

Agency will return the defective product to Econolite, at Econolite's expense. Econolite shall repair or replace the defective item and return it to Agency at Econolite's expense.

The liability of Econolite under this warranty, or for any loss or damage to the equipment whether the claim is based on contract or negligence, shall not in any case exceed the cost of correcting defects in the equipment as herein provided and, upon the expiration of the warranty period, all such liability shall terminate. The foregoing shall constitute the exclusive remedy of ("Agency") and the exclusive liability of Econolite.

The foregoing warranty is exclusive and in lieu of all other warranties whether written, oral, implied or statutory. NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY. Econolite does not warrant any equipment of other manufacture designated by Agency. Econolite shall supply to Agency, in a timely manner, any software revisions of the standard PRODUCT software modules to correct "bugs" or deficiencies, which would appear within one (1) year from the date of final acceptance of the standard PRODUCT traffic management system.

## **IX. REPRESENTATIONS**

***Non-infringement*** - Econolite represents that to the best of its knowledge the technology embodied in the products sold herein does not infringe upon a United States patent or United States copyright in effect as of the Effective Date.

***Authority*** - Each party represents as follows: (a) that it has full power and authority to execute, deliver and perform its obligations under this Agreement; (b) that there are no actions, proceedings or investigations pending or, to the best of each party's knowledge, threatened against such party which may in any manner whatsoever materially affect the enforceability of this Agreement or the rights, duties and obligations of the parties hereunder; and (c) that the execution, delivery and performance of this Agreement will not constitute a breach or default under any agreement, law or court order under which such party is a party to or may be bound or affected by or which may affect the rights, duties and obligations hereunder.

***No Other Representations*** - Each party acknowledges and agrees that it is relying on no representation of the other party except as expressly set forth herein.

## **X. LIMITATION OF LIABILITY**

Except for negligence and/or intentional acts, Econolite's liability on any claim for loss or damage arising out of, connected with, or resulting from this Agreement, or from the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, installation, technical direction of installation, inspection, repair, operation or use of any software and equipment covered by or furnished under this contract shall not exceed an amount equal to the insurance policy limits as required as part of this Agreement. Econolite's liability extends only to products provided and services performed during the period in which an active warranty or support agreement is in effect. In no event, whether as a result of breach of contract or warranty, shall Econolite be liable for special or consequential damages including but not limited to loss of profits or revenue, loss of use of the equipment, or any associated equipment, cost of capital, downtime costs, or claims of customers of the Agency for such damages.

Econolite will not be liable for any claims or back charges on behalf of the Agency arising out of this contract unless they are made in a reasonable time and supported in writing within thirty (30) days from the date on which the Agency becomes aware of same, giving full details, including costs incurred, if any. Claims not presented within such time limit shall be deemed to have been waived by the Agency. Econolite will be given reasonable opportunity and access to investigate the merits of such claims or back charges and its liability limited as above.

#### **XI. INDEMNIFICATION**

Notwithstanding the limitations on liability imposed under Section, "Limitation of Liability" hereof, Econolite shall indemnify, defend and hold harmless Agency and its officers, agents and employees, or any of them from any and all suits, liability, reasonable attorneys' fees and costs of litigation damages to the extent arising out of any negligent or intentional act, error or omission of Econolite, its officers, agents, employees, or any of them relating to or arising out of the performance of this Agreement; excepting only those actions, claims, liabilities, obligations, judgments, expenses or damages arising out of the negligence of the Agency.

If a final judgment is rendered against the Agency, its officers, agents, employees and/or any of them, or jointly against Agency and Econolite and their respective officers, agents and employees, or any of them, Econolite shall satisfy the same to the extent that such judgment was due to Econolite's negligent acts or omissions.

#### **XII. LICENSES**

Econolite grants to Agency for exclusive use in Agency, a fully paid non-exclusive, non-transferable product software license for the products and their specific licensing limits set forth under Section II (Scope of Work). Agency shall be entitled to:

- a) Use the licensed programs but only in machine-readable form on licensed computers.
- b) Use the support material supplied but only as required to support the use of the licensed programs.
- c) Make only as many backup copies of the licensed programs in machine readable form as required to support the use of the licensed programs on each computer. All backup copies must include the copyright notice in the original form as it appears on the licensed programs.

Agency may not copy, modify, adapt, merge, disassemble, decompile or distribute the software, its documentation or create derivative works based upon the software. None of the support material in human readable form included with the licensed programs may be copied in any way. Agency may print any screen the software will allow, however, no copyright notices may be removed from the printing.

The licensed programs and support material included with this Agreement are confidential information that is the property of Econolite. The licensed programs, program concepts or any of the support materials shall not be made available to any other party or organization without the written consent of Econolite.

Title to all intellectual property rights including patent, trademark, copyright and trade secret rights and title to all ownership rights and all copies of and all media bearing the licensed programs, support materials and program concept shall remain in Econolite.

#### **XIII. DATA RIGHTS**

Agency shall retain ownership and associated rights of all traffic data generated by the system provided under this agreement (the "data"). Agency shall not sell or transfer the data to any private entities for purposes not directly related to Agency activities without the prior written consent of Econolite. In furtherance of Econolite's commitment to the advancement of future system-based technologies and the betterment of the nation's traffic management planning,

Agency shall provide the data to Econolite at Econolite's request. Econolite shall notify Agency prior to transfer of any data to private entities.

#### **XIV. CONFIDENTIAL INFORMATION**

**Confidential Information** - In the performance of this Agreement or in contemplation thereof, the parties and their respective employees and agents may have access to private or confidential information owned or controlled by the other party and such information may contain proprietary details and disclosures. All information and data identified in writing as proprietary or confidential by either party ("Confidential Information") and so acquired by the other party or its employees or agents under this Agreement or in contemplation thereof shall be and shall remain the disclosing party's exclusive property. The recipient shall use all reasonable efforts (which in any event shall not be less than the efforts the recipient takes to ensure the confidentiality of its own proprietary and other confidential information) to keep, and have its employees and agents keep, any and all "Confidential Information" confidential, and shall not copy, publish or disclose it to others, nor authorize its employees, agents or anyone else to copy or disclose it to others without the disclosing party's written approval; nor shall the recipient make use of the "Confidential Information" except for the purposes of executing its obligations hereunder, and (except as provided for herein) shall return the Confidential Information and data to the first party at its request. Agency's duty to maintain confidentiality as described hereunder shall be subject to the laws of the State of Oklahoma.

**Excluded Information** - The foregoing conditions will not apply to information or data which is, or which becomes generally known to the public by publication or by any means other than a breach of duty on the part of the recipient hereunder, is information previously known to the recipient, is information independently developed by or for the recipient or is information generally released by the owning party without restriction.

**Right to Injunctive Relief** - Because of the unique nature of the Confidential Information, the parties agree that each party may suffer irreparable harm in the event that the other party fails to comply with any of its obligations under this Article, and that monetary damages may be inadequate to compensate either party for such breach. Accordingly, the parties agree that either party will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief to enforce the terms of this Article.

#### **XV. SOFTWARE UPDATES & NEW FEATURES**

Software updates for the basic product system are included in the annual system update or through scheduled software releases during the warranty period or active system support agreement period. New software development for additional features beyond the basic product software for other agencies, or as part of Econolite's ongoing research and development shall be offered to Agency at a fixed, quoted price, not to exceed pricing for an Agency of comparable size, architecture and integration. The offer shall remain firm for 90 days from the date of the offer.

#### **XVI. COMPLIANCE WITH ALL LAWS**

Econolite shall, at its sole expense, comply with all of the requirements of County, State and Federal laws now in force pertaining to this Agreement, and shall faithfully observe in all activities relating to or growing out of this Agreement all ordinances, statutes, rules or regulations now in force.

#### **XVII. INDEPENDENT CONTRACTOR**

This Agreement calls for the performance of services of Econolite as an independent contractor. Econolite is not an agent or employee of Agency for any purpose and is not entitled to any of the benefits provided by Agency to its employees. This Agreement shall not be construed as forming a partnership or any other association with Econolite other than that of an independent contractor.

**XVIII. INSURANCE AND BONDS**

Econolite shall maintain for the duration of this contract the following types of insurance:

- a) Automobile liability insurance (minimum \$2.5 Million)
- b) Commercial general liability insurance (minimum \$2.5 Million)
- c) Worker's compensation insurance (per state requirement)
- d) Product Liability Insurance (minimum \$2.5 Million)

The insurance required hereunder shall be primary and maintained until all work required and all material to be supplied under the terms of this Agreement is satisfactorily completed as evidenced in writing by an authorized representative of Agency.

**XIX. ADVERTISING**

Agency grants Econolite permission to include Agency in its list of *Centracs* customers in any advertising or publicity materials without the specific prior written approval of Agency.

**XX. EXECUTION**

This Agreement is effective upon execution. It is the product of negotiation and all parties are equally responsible for the authorship of this Agreement.

**XXI. NOTICES**

The notices relative to this Agreement shall be given in writing and shall be personally served, sent by registered mail or faxed with telephone confirmation by addressee that it was received. The parties shall be addressed as follows, or at any other address designated by notice:

**Econolite:** Econolite Control Products, Inc.  
3360 E. La Palma, Anaheim, CA 92806  
Attention: Roy Howard  
Title: Senior Project Manager  
Phone: 719-471-9866  
Fax: 719-471-9063  
E-mail: rhoward@econolite.com

**Agency:** City of Norman  
1311 DaVinci Street, Norman, OK 73069  
Attention: David Riesland, P.E.  
Title: City Traffic Engineer  
Phone: 405-329-0528  
Fax: 405-292-9765  
Email: David.Riesland@normanok.gov

**XXII. FORUM**

Any lawsuit pertaining to any matter arising under, or growing out of this Agreement shall be instituted in the State of Oklahoma.

**XXIII. ASSIGNMENT**

This Agreement shall not be assigned by any party, or any party substituted, without prior written consent of Agency and Econolite.

**XXIV. MERGER AND MODIFICATION**

No supplement, modification or amendment of this Agreement or waiver of the provisions thereof shall be binding unless executed in writing by Agency and Econolite. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

**XXV. ATTORNEYS' FEES**

In the event any action in law or equity, arbitration or other proceeding is brought for the enforcement of this Agreement or in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to its attorneys' fees and other costs reasonably incurred in such action or proceeding.

**XXVI. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

**XXVII. OTHER MATTERS**

**Severability** - In the event any of the provisions of this Agreement shall, for any reason, be held void or unenforceable, the remaining provisions shall remain in full effect and shall control.

**Invalidity** - Any provisions of this Agreement prohibited by the law of any state shall, as to said state, be ineffective to the extent of such prohibition without invalidating the remaining provisions of this Agreement.

**Force Majeure** - Should any obligation of either party hereunder (except with respect to timely payment of invoices) be delayed by events beyond such party's control, including but not limited to, natural or man-made disasters, strikes, government actions or regulations, failure of a third party to comply or conform or inability to obtain labor or materials through its regular sources, that party's time for performance shall be extended by the period of delay upon approval by Agency.

**Absence of Third Party Beneficiary Rights** - Except as otherwise provided in this Agreement, no provision of this Agreement is intended, nor shall be interpreted, to provide or create any third party beneficiary rights or any other rights of any kind in any affiliate or subsidiary, and all provisions hereof shall be personal solely between the parties hereto.

**Headings** - Article and Section headings are included solely for convenience, are not to be considered a part of this Agreement nor are they intended to be full and accurate descriptions of the contents thereof.

**Survival** - The following provisions shall survive the expiration, cancellation or early termination of this Agreement: Sections V, VII, VIII, IX, X, XII, and XIII and any other provision which by its nature shall survive the expiration, cancellation or early termination of this Agreement.

The sworn, notarized statement below must be signed and notarized before this Agreement will become effective.

STATE OF CALIFORNIA  
COUNTY OF ORANGE

\_\_\_\_\_, of lawful age, being first duly sworn, on oath says that (s)he is the agent authorized by Econolite to submit the above Agreement to the Agency. Affiant further states that Econolite has not paid, given or donated or agreed to pay, give, or donate to any officer or employee of the Agency any money or other thing of value, either directly or indirectly, in the procuring of the Agreement.

\_\_\_\_\_  
Submitted and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_



IN WITNESS WHEREOF, the said parties of the First and Second Part have hereunto set their hands and seals respectively the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Corporate Seal) (where applicable)

Principal

ATTEST:

Signed: \_\_\_\_\_

Authorized Representative

\_\_\_\_\_  
Corporate Secretary (where applicable)

\_\_\_\_\_  
Title

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

CITY OF NORMAN

Approved as to form and legality this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
City Attorney

Approved by the City of Norman this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

**Attachments:**

Exhibit A – Econolite Quote dated November 11, 2014