

EXHIBIT A

**CITY OF SANTA ROSA
PROFESSIONAL SERVICES AGREEMENT
WITH MCCAIN INC.
AGREEMENT NUMBER _____**

This "Agreement" is made as of this ____ day of _____, 2019, by and between the City of Santa Rosa, a municipal corporation ("City"), and McCain Inc., a California Corporation. ("Consultant").

R E C I T A L S

- A. City desires to purchase traffic signal controllers and advanced traffic management system software which will be used to operate City traffic signals.
- B. City desires to retain a qualified firm to conduct the services described above in accordance with the Scope of Services as more particularly set forth in Exhibit A to the Agreement.
- C. Consultant represents to City that it is a firm composed of highly trained professionals and is fully qualified to conduct the services described above and render advice to City in connection with said services.
- D. The parties have negotiated upon the terms pursuant to which Consultant will provide such services and have reduced such terms to writing.

A G R E E M E N T

NOW, THEREFORE, City and Consultant agree as follows:

1. SCOPE OF SERVICES/LICENSE

Consultant shall provide to City the services described in Exhibit A ("Scope of Services") and grants a software license to City under the terms set forth in Attachment A to Exhibit A. Consultant shall provide the services at the time, place, and in the manner specified in Exhibit A. Exhibit A is attached hereto for the purpose of defining the manner and scope of services to be provided by Consultant and is not intended to, and shall not be construed so as to, modify or expand the terms, conditions or provisions contained in this Agreement. In the event of any conflict between this Agreement and any terms or conditions of any document prepared or provided by Consultant and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the terms of this Agreement shall control and prevail.

2. COMPENSATION

a. City shall pay Consultant for services rendered pursuant to this Agreement. Consultant shall submit monthly statements to City which shall itemize the services performed as of the date of the statement and set forth a progress report, including work accomplished during the period, percent of each task completed, and planned effort for the next period. Invoices shall identify personnel

who have worked on the services provided, the number of hours each worked during the period covered by the invoice, the hourly rate for each person, and the percent of the total project completed, consistent with the rates and amounts shown in Exhibit B.

b. The payments prescribed herein shall constitute all compensation to Consultant for all costs of services, including, but not limited to, direct costs of labor of employees engaged by Consultant, travel expenses, telephone charges, copying and reproduction, computer time, and any and all other costs, expenses and charges of Consultant, its agents and employees. In no event shall City be obligated to pay late fees or interest, whether or not such requirements are contained in Consultant's invoice.

c. Notwithstanding any other provision in this Agreement to the contrary, the total maximum compensation to be paid for the satisfactory accomplishment and completion of all services to be performed hereunder shall in no event exceed the sum of one hundred sixty nine thousand, three hundred fifty four dollars and no cents (\$169,354.00). The City's Chief Financial Officer is authorized to pay proper claims of \$89,325 (Items 1 & 2 on Exhibit B) from Charge Number JL 17003 and \$80,209 from Charge Number JL 17156 (Items 3 thru 15 on Exhibit B).

3. DOCUMENTATION; RETENTION OF MATERIALS

a. Consultant shall maintain adequate documentation to substantiate all charges as required under Section 2 of this Agreement.

b. Consultant shall keep and maintain full and complete documentation and accounting records concerning all extra or special services performed by it that are compensable by other than an hourly or flat rate and shall make such documents and records available to authorized representatives of City for inspection at any reasonable time.

c. Consultant shall maintain the records and any other records related to the performance of this Agreement and shall allow City access to such records during the performance of this Agreement and for a period of four (4) years after completion of all services hereunder.

4. INDEMNITY

a. Consultant shall, to the fullest extent permitted by law, indemnify, protect, defend and hold harmless City, and its employees, officials and agents ("Indemnified Parties") from all claims, demands, costs or liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, interest, defense costs, and expert witness fees), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, or agents, in said performance of professional services under this Agreement, excepting only liability arising from the sole negligence, active negligence or intentional misconduct of City.

b. The existence or acceptance by City of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of City's rights under this Section 4, nor shall the limits of such insurance limit the liability of Consultant hereunder. This Section 4 shall not apply to any

intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 17(b), below. The provisions of this Section 4 shall survive any expiration or termination of this Agreement.

5. INSURANCE

a. Consultant shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements." Maintenance of the insurance coverage set forth in Attachment One is a material element of this Agreement and a material part of the consideration provided by Consultant in exchange for City's agreement to make the payments prescribed hereunder. Failure by Consultant to (i) maintain or renew coverage, (ii) provide City notice of any changes, modifications, or reductions in coverage, or (iii) provide evidence of renewal, may be treated by City as a material breach of this Agreement by Consultant, whereupon City shall be entitled to all rights and remedies at law or in equity, including but not limited to immediate termination of this Agreement. Notwithstanding the foregoing, any failure by Consultant to maintain required insurance coverage shall not excuse or alleviate Consultant from any of its other duties or obligations under this Agreement. In the event Consultant, with approval of City pursuant to Section 6 below, retains or utilizes any subcontractors or subconsultants in the provision of any services to City under this Agreement, Consultant shall assure that any such subcontractor has first obtained, and shall maintain, all of the insurance coverages set forth in the Insurance Requirements in Attachment One.

b. Consultant agrees that any available insurance proceeds broader than or in excess of the coverages set forth in the Insurance Requirements in Attachment One shall be available to the additional insureds identified therein.

c. Consultant agrees that the insurance coverages and limits provided under this Agreement are the greater of: (i) the coverages and limits specified in Attachment One, or (ii) the broader coverages and maximum limits of coverage of any insurance policy or proceeds available to the name insureds.

6. ASSIGNMENT

Consultant shall not assign any rights or duties under this Agreement to a third party without the express prior written consent of City, in City's sole and absolute discretion. Consultant agrees that the City shall have the right to approve any and all subcontractors and subconsultants to be used by Consultant in the performance of this Agreement before Consultant contracts with or otherwise engages any such subcontractors or subconsultants.

7. NOTICES

Except as otherwise provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party, shall be in writing and may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage, and addressed as indicated below, and depositing in the United States mail to:

City Representative:

Consultant Representative:

Robert Sprinkle
City of Santa Rosa
Transportation and Public Works
Traffic Engineering
69 Stony Circle
Santa Rosa, CA, 95401
(707) 543-3817
Email: rsprinkle@srcity.org

Jeff Pearson
McCain Inc
Transparency ATMS Upgrade
2365 Oak Ridge Way
Vista, CA, 92081
(831)236-8869
Email: jpearson@mccain-inc.com

8. INDEPENDENT CONTRACTOR

a. It is understood and agreed that Consultant (including Consultant's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither Consultant nor Consultant's assigned personnel shall be entitled to any benefits payable to employees of City. City is not required to make any deductions or withholdings from the compensation payable to Consultant under the provisions of this Agreement, and Consultant shall be issued a Form 1099 for its services hereunder. As an independent contractor, Consultant hereby agrees to indemnify and hold City harmless from any and all claims that may be made against City based upon any contention by any of Consultant's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any services under this Agreement.

b. It is further understood and agreed by the parties hereto that Consultant, in the performance of Consultant's obligations hereunder, is subject to the control and direction of City as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by Consultant for accomplishing such results. To the extent that Consultant obtains permission to, and does, use City facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the Consultant's sole discretion based on the Consultant's determination that such use will promote Consultant's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the City does not require that Consultant use City facilities, equipment or support services or work in City locations in the performance of this Agreement.

c. If, in the performance of this Agreement, any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision, and control of Consultant. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Consultant. It is further understood and agreed that Consultant shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of Consultant's assigned personnel and subcontractors.

d. The provisions of this Section 8 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between

City and Consultant. Consultant may represent, perform services for, or be employed by such additional persons or companies as Consultant sees fit.

9. ADDITIONAL SERVICES

Changes to the Scope of Services shall be by written amendment to this Agreement and shall be paid on an hourly basis at the rates set forth in Exhibit B, or paid as otherwise agreed upon by the parties in writing prior to the provision of any such additional services.

10. SUCCESSORS AND ASSIGNS

City and Consultant each binds itself, its partners, successors, legal representatives and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect of all promises and agreements contained herein.

11. TERM, SUSPENSION, TERMINATION

a. This Agreement shall become effective on the date that it is made, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.

b. City shall have the right at any time to temporarily suspend Consultant's performance hereunder, in whole or in part, by giving a written notice of suspension to Consultant. If City gives such notice of suspension, Consultant shall immediately suspend its activities under this Agreement, as specified in such notice.

c. City shall have the right to terminate this Agreement for convenience at any time by giving a written notice of termination to Consultant. Upon such termination, Consultant shall submit to City an itemized statement of services performed as of the date of termination in accordance with Section 2 of this Agreement. These services may include both completed work and work in progress at the time of termination. City shall pay Consultant for any services for which compensation is owed; provided, however, City shall not in any manner be liable for lost profits that might have been made by Consultant had the Agreement not been terminated or had Consultant completed the services required by this Agreement. Consultant shall promptly deliver to City all documents related to the performance of this Agreement in its possession or control. All such documents shall be the property of City without additional compensation to Consultant.

12. TIME OF PERFORMANCE

The services described herein shall be provided during the period, or in accordance with the schedules set forth in Exhibits A and B. Consultant shall complete all the required services and tasks and complete and tender all deliverables to the reasonable satisfaction of City, not later than ten weeks after the receipt of the Notice to Proceed to the Consultant. As described in Exhibit B, line item 15, the term of the maintenance agreement shall commence upon project acceptance and expire two years thereafter.

13. STANDARD OF PERFORMANCE

Consultant shall perform all services performed under this Agreement in the manner and according to the standards currently observed by a competent practitioner of Consultant's profession in California. All products of whatsoever nature that Consultant delivers to City shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in Consultant's profession, and shall be provided in accordance with any schedule of performance. Consultant shall assign only competent personnel to perform services under this Agreement. Consultant shall notify City in writing of any changes in Consultant's staff assigned to perform the services under this Agreement prior to any such performance. In the event that City, at any time, desires the removal of any person assigned by Consultant to perform services under this Agreement, because City, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, Consultant shall remove such person immediately upon receiving notice from City of the desire of City for the removal of such person.

14. CONFLICTS OF INTEREST

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of City or that would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of City. Consultant agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City at all times during the performance of this Agreement.

15. CONFLICT OF INTEREST REQUIREMENTS

a. **Generally.** The City's Conflict of Interest Code requires that individuals who qualify as "consultants" under the Political Reform Act, California Government Code sections 87200 *et seq.*, comply with the conflict of interest provisions of the Political Reform Act and the City's Conflict of Interest Code, which generally prohibit individuals from making or participating in the making of decisions that will have a material financial effect on their economic interests. The term "consultant" generally includes individuals who make governmental decisions or who serve in a staff capacity.

b. **Conflict of Interest Statements.** The individual(s) who will provide services or perform work pursuant to this Agreement are "consultants" within the meaning of the Political Reform Act and the City's Conflict of Interest Code:

___ yes X no (*check one*)

If "yes" is checked by the City, Consultant shall cause the following to occur within 30 days after execution of this Agreement:

- (1) Identify the individuals who will provide services or perform work under this Agreement as "consultants"; and

- (2) Cause these individuals to file with the City Clerk the assuming office statements of economic interests required by the City's Conflict of Interest Code.

Thereafter, throughout the term of the Agreement, Consultant shall cause these individuals to file with the City Clerk annual statements of economic interests, and "leaving office" statements of economic interests, as required by the City's Conflict of Interest Code.

The above statements of economic interests are public records subject to public disclosure under the California Public Records Act. The City may withhold all or a portion of any payment due under this Agreement until all required statements are filed.

16. CONFIDENTIALITY OF CITY INFORMATION

During performance of this Agreement, Consultant may gain access to and use City information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the City. Consultant agrees to protect all City Information and treat it as strictly confidential, and further agrees that Consultant shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of City. In addition, Consultant shall comply with all City policies governing the use of the City network and technology systems. A violation by Consultant of this Section 16 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

17. CONSULTANT INFORMATION

a. City shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by Consultant pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. Consultant shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by City.

b. Consultant shall fully defend, indemnify and hold harmless City, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by Consultant pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. City shall make reasonable efforts to notify Consultant not later than ten (10) days after City is served with any such claim, action, lawsuit or other proceeding, provided that City's failure to provide such notice within such time period shall not relieve Consultant of its obligations hereunder, which shall survive any termination or expiration of this Agreement.

c. All proprietary and other information received from Consultant by City, whether received in connection with Consultant's proposal, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to City, City shall give notice to Consultant of any request for the disclosure of such information. Consultant shall then have five (5) days from the date it receives such notice to enter into an agreement with the City, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorneys' fees) incurred by City in any legal action to compel the disclosure of such information under the California Public Records Act. Consultant shall have sole responsibility for defense of the actual "trade secret" designation of such information.

d. The parties understand and agree that any failure by Consultant to respond to the notice provided by City and/or to enter into an agreement with City, in accordance with the provisions of subsection c, above, shall constitute a complete waiver by Consultant of any rights regarding the information designated "trade secret" by Consultant, and such information shall be disclosed by City pursuant to applicable procedures required by the Public Records Act.

18. MISCELLANEOUS

a. Entire Agreement. This Agreement contains the entire agreement between the parties. Any and all verbal or written agreements made prior to the date of this Agreement are superseded by this Agreement and shall have no further effect.

b. Modification. No modification or change to the terms of this Agreement will be binding on a party unless in writing and signed by an authorized representative of that party.

c. Compliance with Laws. Consultant shall perform all services described herein in compliance with all applicable federal, state and local laws, rules, regulations, and ordinances, including but not limited to, (i) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101, et seq.) ("ADA"), and any regulations and guidelines issued pursuant to the ADA; and (ii) Labor Code sections 1720, et seq., which require prevailing wages (in accordance with DIR determinations at www.dir.ca.gov) be paid to any employee performing work covered by Labor Code sections 1720 et seq. Consultant shall pay to the City when due all business taxes payable by Consultant under the provisions of Chapter 6-04 of the Santa Rosa City Code. The City may deduct any delinquent business taxes, and any penalties and interest added to the delinquent taxes, from its payments to Consultant.

d. Discrimination Prohibited. With respect to the provision of services under this Agreement, Consultant agrees not to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of that person.

e. Governing Law; Venue. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or

connected with this Agreement shall lie exclusively in the state trial court in Sonoma County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such court, and consent to service of process issued by such court.

f. Waiver of Rights. Neither City acceptance of, or payment for, any service or performed by Consultant, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

g. Incorporation of Attachments and Exhibits. The attachments and exhibits to this Agreement are incorporated and made part of this Agreement, subject to terms and provisions herein contained.

19. AUTHORITY; SIGNATURES REQUIRED FOR CORPORATIONS

Consultant hereby represents and warrants to City that it is (a) a duly organized and validly existing corporation formed and in good standing under the laws of the State of California, (b) has the power and authority and the legal right to conduct the business in which it is currently engaged, and (c) has all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. Consultant hereby further represents and warrants that this Agreement has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement binding on Consultant in accordance with the terms hereof.

If this Agreement is entered into by a corporation, it shall be signed by two corporate officers, one from each of the following two groups: a) the chairman of the board, president or any vice-president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The title of the corporate officer shall be listed under the signature.

Executed as of the day and year first above stated.

CONSULTANT:

Name of Firm: McCain Inc.

TYPE OF BUSINESS ENTITY:

- Individual/Sole Proprietor
- Partnership
- Corporation
- Limited Liability Company
- Other (please specify: _____)

Signatures of Authorized Persons:

By: _____

Print Name: _____

Title: _____

By: _____

Print Name: _____

Title: _____

City of Santa Rosa Business Tax Cert. No.

Attachments:

- Attachment One - Insurance Requirements
- Exhibit A - Scope of Services/License
- Exhibit B - McCain's Proposal and Rates dated November 26, 2018

CITY OF SANTA ROSA

a Municipal Corporation

By: _____

Print Name: _____

Title: _____

APPROVED AS TO FORM:

Office of the City Attorney

ATTEST:

City Clerk

**ATTACHMENT ONE
INSURANCE REQUIREMENTS FOR
LICENSE AGREEMENTS**

A. Insurance Policies: Licensee shall, at all times during the term of this License, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City.

Insurance	Minimum Coverage Limits	Additional Coverage Requirements
1. Commercial general liability	\$ 1 million per occurrence \$ 2 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. Coverage may be met by a combination of primary and umbrella or excess insurance but umbrella and excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.
2. Business auto coverage	\$ 1 million	ISO Form Number CA 00 01 covering any auto (Code 1), or if Licensee has no owned autos, then hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
3. Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Licensee, its employees, agents and subcontractors.

B. Endorsements:

1. All policies shall provide or be endorsed to provide that coverage shall not be canceled by either party, except after prior written notice has been provided to the entity in accordance with the policy provisions.
2. Liability, umbrella and excess policies shall provide or be endorsed to provide the following:
 - a. For any claims related to this project, Licensee's insurance coverage shall be primary and any insurance or self-insurance maintained by City shall be excess of the Licensee's insurance and shall not contribute with it; and,

- b. **The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy.** General liability coverage can be provided in the form of an endorsement to Licensee's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

C. Verification of Coverage and Certificates of Insurance: Licensee shall furnish City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the City before work commences and must be in effect for the duration of the License. The City reserves the right to require complete copies of all required policies and endorsements.

D. Other Insurance Provisions:

1. No policy required by this License shall prohibit Licensee from waiving any right of recovery prior to loss. Licensee hereby waives such right with regard to the indemnitees.
2. All insurance coverage amounts provided by Licensee and available or applicable to this License are intended to apply to the full extent of the policies. Nothing contained in this License limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
3. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either Licensee or City. Self-insured retentions above \$10,000 must be approved by City. At City's option, Licensee may be required to provide financial guarantees.
4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
5. City reserves the right to modify these insurance requirements while this License is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

EXHIBIT A

Consultant agrees to license to City an Advanced Traffic Management System (ATMS) branded as Transparency TMS by McCain, to improve traffic flows, management, functionality, and provide traffic signal surveillance within the traffic signal system throughout the CITY's signal infrastructure, under the terms set forth in Attachment A to this Exhibit. The ATMS system shall provide the CITY's signal network with the ability to upload and download signal timing, monitor real-time status, schedule responsive and time of day programs, provide an interface to McCain's adaptive traffic control program and allow for backwards compatibility with the existing QuicNet Pro traffic surveillance software. Transparency TMS will function and communicate with 2070 controllers operating Omni eX or 2033 local intersection software through ethernet and serial connectivity. Transparency TMS shall also be compatible with the CITY's existing Type 170 controllers using 233 Intersection Control Software and 1200 and 9600 baud modems. Communications between the traffic operations center and the field controllers shall be capable of being maintained over the existing infrastructure once the upgrade to Transparency TMS has been completed.

Transparency TMS shall have complete functionality of the following features:
Transparency TMS shall be capable of importing shape files, Bing or Google maps; the authorized user will be able to add new intersection data or update existing information, to include, but not limited to timing, drawings, street names and detection zones; permission levels shall provide multiple levels of access from full control of Administrator to read-only of a user; permissions shall be assigned using Windows login credentials.

The City will provide a virtual server running Windows Server 2016. The server will host all necessary supporting software (i.e. SQL Server-Full Version) to fully run the latest version of Transparency TMS.

Transition of the QuicTrac adaptive system on Santa Rosa Avenue to the Transparency Adaptive utilizing the 2070LX controllers and Omni eX software shall be completed by McCain as part of this Agreement.

Existing 170 controllers not receiving an immediate controller upgrade shall be capable of communicating to Transparency through existing serial communications and existing ancillary equipment.

Licensing and setup for each intersection existing within QuicNet Pro as of the date this Agreement is made, shall be included as part of the 250 Transparency TMS licenses listed as Item 1 of the McCain Quote within Exhibit B. Setup for any additional Intersections shall be completed by City forces up to the 250 quantity.

Actual installation, setup and configuration of Transparency TMS software may be accomplished remotely by McCain technicians. Any setup or configuration of the software or hardware that cannot be accomplished remotely shall be completed by the Consultant on site. Installation, setup and configuration shall be a completed phase of the project so implementation is a "turn-key" solution. Existing communications/functionality with QuicNet Pro shall remain until Transparency TMS is on-line and functional.

Exceptions include only incomplete communications to planned intersections. All intersections currently communicating with QuicNet Pro and functioning ethernet over copper communications shall be included as part of the completed project.

Within 10 days of the completed project, Consultant shall contact the City to schedule training. Training shall be completed no later than 30 days after completion of the project and shall be held at the City of Santa Rosa - Municipal Services Center, 69 Stony Circle, Santa Rosa, CA 95401.

Final Demonstration testing shall be completed within three days following on-site training.

Transparity TMS software maintenance agreement shall be two years and begin upon project acceptance by the City. The Transparity TMS maintenance agreement shall include 16 hours of annual tech support, plus four quarterly maintenance sessions, annually. The annual tech support shall be in the form of phone support and may include remote access by the Consultant. If phone support with remote access cannot resolve issues, the Consultant may conduct on-site troubleshooting as part of the annual tech support. If the City experiences problems that require phone support and/or on-site troubleshooting, and it has been determined that the problem is a result of a product deficiency or from an initial setup error, the time for support shall not be charged against the maintenance agreement.

All technical support provided, whether phone support and/or remote access, shall be supported by an invoice itemizing the hours expended by the Consultant's technicians. This invoice can be mailed to: City of Santa Rosa, Municipal Services Center, 69 Stony Circle, Santa Rosa, CA 95401.



McCain, Inc. - Software License

LICENSE AGREEMENT

Software Program and Version: Transparency TMS v1.6
Licensee: City of Santa Rosa
Number of Licensed Copies: License for 250 locations
Unlimited users (must be City staff)

Important — Read carefully before installing

By installing McCain software, you indicate your agreement to be bound by the terms of this agreement. If you do not agree to the terms of this agreement, promptly return the software and all accompanying material to the place of purchase for a refund. This agreement continues in effect until you destroy or return all these materials and all copies made.

McCain, Inc. SOFTWARE LICENSE

1) GRANT OF LICENSE

McCain, Inc. grants you a single, non-exclusive, license to use the software provided you agree to abide by the terms of this agreement. Only direct employees of the purchasing municipality or entity may use this software on systems that are owned and operated by the municipality. Copies of this software may be made up to the number of licensed copies indicated but only for use on traffic control equipment owned and operated by the licensing agency. You may not transfer the software to another municipality, contractor, consultant or other party.

2) COPYRIGHT

Copyright and other laws concerning software and intellectual property protect the software in part and not exclusively. You may make copies solely for use on systems that are owned and operated by your agency, and only up to the number of licensed copies indicated on this license. You may make one additional copy for backup purposes. You agree not to physically or electronically transmit the software, or make it available to users outside your municipality through a network configuration or other data sharing facility. No right to create a derivative work is conveyed by this license.

3) OTHER RESTRICTIONS

You acknowledge that you do not become the owner of the software and/or documentation. You agree not to transfer, rent, lease, sub-license, reverse engineer, modify, translate, or share the software and/or documentation in any format with any other entity.

LIMITED WARRANTY

While we have attempted to ensure the reliability of the software, McCain, Inc. cannot assume any liability for damage that occurs because of usage of this software, whether or not in accordance with the instructions or specifications. It is not possible to guarantee the software's performance under all circumstances, at all times, with all hardware and/or software configurations, or with any user data, programs, or series of commands. McCain, Inc. warrants the distribution media and manual to be free from defects in material or manufacture for a period of 30 days from your receipt. When you open the software package or use the software, you indicate you accept this as the only warranty. You agree that regardless of the form of any claim, McCain, Inc.'s liability for any damages or loss to you or anyone else shall not exceed the price paid for the use of the software.

Except for the warranty described in the above paragraph there are no warranties expressed or implied, including but not limited to, implied warranties of merchantability or fitness for a particular purpose, and all such warranties are expressly and specifically disclaimed.

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McCain, Inc.
2365 Oak Ridge Way
Vista CA, 92081



Exhibit B

QUOTE

March 7, 2019

From: Ray Laigo
 McCain Inc.
 2365 Oak Ridge Way
 Vista, CA 92081

Attn: Rob Sprinkle
 City of Santa Rosa - Public Works
 55 Stony Point Rd.
 Santa Rosa, CA 95401

RE: Quote #RL033018 - Santa Rosa, CA - Transparency TMS Upgrade revG (revised 3-7-19)

Dear Mr. Sprinkle

McCain is pleased to provide this quotation on the following item(s):

Item #	Qty	Unit	Description	Unit Cost	Ext. Cost
Central System <small>(see scope notes 1 & 2)</small>					
1	1	Lump	Transparency TMS License for 250 locations (60% discount - \$1,000/license standard) (Credit for 138 MC1 licenses also applied)	\$86,200.00	\$86,200.00
2	1	Lump	Remote install and config, Communications cutover, and System Map population for 250 signals	\$3,125.00	\$3,125.00
3	12	EA	Custom intersection graphics (internet aerial backgrounds)	\$300.00	\$3,600.00
Communications Equipment <small>(see scope note 3)</small>					
4	7	EA	ML604D - 4 pairs x 1 Add-Drop EFM-bonded G.SDHSL, 1x10/100Base-T, standard QoS Ethernet Extender, DIN Rail, ROHS-6 compliant, Fanless, -24/48VDC, Dual power input	\$839.00	\$5,873.00
5	7	EA	ML684D - 4 pairs (2+2 or 1x4) EFM-bonded G.SDHSL, up to 60Mbps, up to 1Mbps@16kft, Ethernet Switch and Extender, 6x10/100Base-T+2x100/1000Base-FX SFP, DIN Rail, ROHS-6 compliant, Fanless, -24/48VDC single power input, SFP should be ordered separately	\$1,298.00	\$9,086.00
6	1	EA	ML6916E (w/o SyncE) - Compact Aggregator, 4HSL, 16 pairs, CE2.0, advanced H-QoS, 4x10/100/1000Base-T+2x100/1000Base-FX, ROHS-6 compliant, SFP should be ordered separately	\$4,053.00	\$4,053.00
7	15	EA	AC-DC Adapter NA for ML600/ML740/ML58N RevB/ML530 DOE6 compliant 110/220VAC Feed, North American type power cord	\$73.00	\$1,095.00
8	8	EA	DSL dual port cable 2 X RJ45 to open end solid; DSL dual port cable 2 X RJ45 to open end solid; For connecting 4 pairs ML648D Industrial CPE DSL lines to a terminal block	\$46.00	\$368.00
9	7	EA	ML6416 DSL Octal Dual Port Cable, 8xRJ-45 to open end solid wires, 10ft/3m; For connecting 16 pairs ML6416 DSL lines to a terminal block	\$92.00	\$644.00
Local Controller and Software and Adaptive					
10	10	EA	(M74405) 2070LX CONTROLLER: 1C, 2B, 3B-LX, 4A with (S-OMNI) local software <small>(see scope note 4)</small>	\$2,656.00	\$26,560.00
11	12	EA	Adaptive licenses - normally \$3,500/location - waived for existing QuicTrac licenses	\$0.00	\$0.00
12	1	Lump	Adaptive configuration for 12 locations <small>(see scope note 5)</small>	\$7,200.00	\$7,200.00
Training, Testing, and Maintenance					
13	3	Day	Training - Transparency TMS, Transparency Adaptive, and Omni eX local software - 3 days onsite <small>(see scope note 6)</small>	\$2,200.00	\$6,600.00
14	1	Day	Demonstration Test at City of Santa Rosa, CA - 1 day onsite <small>(see scope note 6)</small>	\$2,200.00	\$2,200.00
15	1	Lump	2-Yr. Software Maintenance Agreement <small>(see scope note 7)</small>	\$12,750.00	\$12,750.00
				Total	\$169,354.00

To be paid according to the following Billing Schedule/Milestones	Billable Amount
A. Delivery of DELL traffic server with Transparency installed and configured	\$92,925
B1. Delivery of communications equipment - when agency receives	\$21,119
B2. Delivery of controllers - when agency receives	\$26,560
C. Turn-on of adaptive system	\$7,200
D. Completion of 3 Days of Training.	\$6,600
E. Completion of Demonstration Testing - 1 Day. This marks project completion and also begins the 1-Yr. TMS and adaptive maintenance period	\$14,950

Scope Notes:

- All labor is remote unless indicated otherwise. VPN or internet access is required to provide remote support. Customer is providing server hardware.
- Customer is responsible for ensuring that communications and detection is operational and for providing the network scheme.
- Does not include field installation support.
- Does not include field installation support.
- Agency is responsible for the following:
 - Base coordination plans
 - Advance detection - must be deployed and separated by lane
 - Detector inventory documentation
- Testing and Training will be provided on consecutive days. McCain requires 4 weeks advance notice on onsite tasks.
- Maintenance Agreement begins on the date of project completion. Includes 14 hrs. of tech support and 3 remote maintenance sessions.
Pricing is based on old pricing structure. After 2-yr. period, cost is subject to increase based on number of signals or number of adaptive locations.
- After receipt of the PO, Transparency can be installed on the server within 6-8 weeks. This includes the lead time on the server hardware.

Quote Notes:

- Discounted pricing is only available through sole-source purchase.
- All prices are in US Dollars. All payments to be made in US Dollars.
- Purchase orders are required to be broken out by line item.
- Prices are firm for 30 days. Tax and freight are **not** included.

Quotation prepared by:

Ray Laigo
 ITS Project Manager
 McCain, Inc.

cc: Jeff Pearson, Northern California Sales, McCain Inc.
 cc: Fedrico Hormozi, Director of ITS, McCain Inc.
 cc: Lori Tackett, Senior Project Manager, McCain Inc.