Date _____April 20, 2020_____

APPROVING AN EXCEPTION TO THE PROCUREMENT ORDINANCE COMPETITIVE PROCUREMENT PROCESS FOR GOOD CAUSE AND APPROVING MANAGEMENT SOLUTIONS SERVICES AGREEMENT WITH MCCAIN, INC. FOR TRANSPARITY TRAFFIC MANAGEMENT SOFTWARE IN AN AMOUNT NOT TO EXCEED $382,000.

WHEREAS, on November 19, 2018, by Roll Call No. 18-1895, the City Council adopted the Intelligent Transportation System (ITS) Master Plan as the framework for the City's future traffic management and communications systems infrastructure; and

WHEREAS, the ITS Master Plan includes upgrading the existing Model 170 controllers to 2070 ATC Controllers for all traffic signals and upgrading the City's traffic signal management software; and

WHEREAS, the Transparity Traffic Management Software, licensed by McCain, Inc., 2365 Oak Ridge Way, Vista, CA 92081, is the only traffic management system software that will communicate with both the new 2070 ATC controllers and existing Model 170 controllers; and

WHEREAS, City staff have negotiated the terms of a Management Solutions Services Agreement with McCain, Inc. for Citywide licensing of Transparity Traffic Management Software, and installation, training, and maintenance services for such Software at a cost not to exceed $382,000, a copy of which is on file in the City Clerk's Office; and

WHEREAS, the City Manager recommends that the procurement of such software and services be exempted from the competitive Request for Proposals process for good cause shown, pursuant to Section 2-710 of the Municipal Code of the City of Des Moines.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that good cause has been shown to exempt the procurement of Transparity Traffic Management Software and services from McCain, Inc.

BE IT FURTHER RESOLVED that the City Engineer is authorized and directed to execute the Solutions Services Agreement for the above described services in an amount not to exceed $382,000 in the first year and $17,000 annually thereafter for a period of 5 years, with annual renewals thereafter by mutual agreement, copy of which is on file in the City Clerk's Office, and the City Clerk is authorized to attest to his signature.

★ Roll Call Number

Date _____ April 20, 2020 _____

      BE IT FURTHER RESOLVED that the City Manager is authorized and directed to execute the Management Solutions Services Agreement with McCain, Inc. with McCain, Inc. for Citywide licensing of Transparity Traffic Management Software for the above described services in an amount not to exceed $382,000, a copy of which is on file in the City Clerk's Office, and the City Clerk is authorized to attest to his signature.

<div align="center">(Council Letter Number 20-190 attached)</div>

Moved by _____ to adopt.

FORM APPROVED: _Ann DiDonato_

                         Ann DiDonato
                         Assistant City Attorney

Funding Source: 2019-20 CIP, Page Street – 42, Traffic System Operations Improvements, TR097

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				

MOTION CARRIED   APPROVED

_____ Mayor

CERTIFICATE

I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ City Clerk

<div align="center">

INTERNET TECHNOLOGY
MANAGEMENT SOLUTION SERVICES AGREEMENT
BETWEEN
CITY OF DES MOINES, IOWA
AND
MCCAIN, INC.
TRANSPARITY TRAFFIC MANAGEMENT SOFTWARE

</div>

      THIS AGREEMENT is made and entered into as of _____, 2020, by and between the City of Des Moines, Iowa, a municipal corporation organized and existing pursuant to the laws of the State of Iowa, ("City") and McCain Inc., 2365 Oak Ridge Way, Vista, CA 92081, a California corporation, ("McCain").

      WHEREAS, the City desires to procure City-Wide Licensing of Transparity Traffic Management Software, and installation, training, and maintenance services for such Software, as described herein.

      In consideration of the mutual promises herein contained, the parties hereto, intending to be legally bound, agree as follows:

1. TRAFFIC MANAGEMENT SOFTWARE IMPLEMENTATION SCOPE OF SERVICES

McCain agrees to perform the services set forth in Attachment 2 of this Agreement. This Scope of Services shall not be modified except by written agreement of the parties.

2. TRAFFIC MANAGEMENT SOFTWARE LICENSE AND SOFTWARE MAINTENANCE PLAN

McCain agrees to license the Transparity Traffic Management Software (TMS) version 1.7.2 ("**Software**") on a perpetual, irrevocable, City-Wide basis including all existing and future traffic signal controller locations as set forth in Attachment 3 of this Agreement, which is incorporated as part of this Agreement ("**License**"). McCain agrees to provide the maintenance services for the CITY and the Software pursuant to the terms of Attachment 4, which is incorporated as part of this Agreement.

3. AGREEMENT ADMINISTRATION, AGREEMENT DOCUMENTS, AND AMENDMENT OF AGREEMENT

The Deputy Chief Information Officer and the City Engineer, or his or her designee, shall be the project managers and liaisons between McCain for the purpose of administration of the services to be performed under this Agreement. The services to be performed by McCain shall at all times be subject to the general supervision of the City project managers.

4. TERM OF AGREEMENT

McCain shall complete the Scope of Services as outlined in Attachment 2 by September 28, 2020. McCain agrees to meet implementation milestones as listed below:

Notice to Proceed Issued..May 15, 2020

Kick off Meeting (Task 1) .... Week of June 15, 2020

System Acceptance Test Plan (Task 2)... June 22, 2020 – August 14, 2020

<div align="center">

1

</div>

Training (Task 3) ....Within 2 weeks of Go "Live" Date

Software Installation (Go "Live" Date)* .... August 17, 2020 – August 28, 2020

Live System Acceptance and Testing Period (Task 4) .... 1 month (August 28, 2020 – September 28, 2020)

Start of Annual Maintenance Support Period* .... September 28, 2020

* Period of Annual Maintenance Support shall start one (1) month after acceptance by the City of Task 4 as described in Attachment 2.

6.   FEES AND PAYMENT

Compensation to McCain for the Scope of Services and for the License under this Agreement shall be a lump sum of $365,000, which includes all travel costs and expenses. The City shall pay the fees for services and the License as follows: one-fourth of the lump sum amount upon execution of this Agreement by both parties; one-half of the lump sum amount upon completion of the Task 2, SYSTEM ACCEPTANCE TEST PLAN AND SOFTWARE INSTALLATION and Task 3, TRAINING, as described in Attachment 2; one-fourth of the lump sum amount upon completion of Task 4, LIVE SYSTEM ACCEPTANCE AND TESTING PERIOD, as described in Attachment 2 at the conclusion of the Live System Acceptance and Testing Period.

The Annual Software Maintenance Plan shall be for a period of eighteen (18) months starting one (1) month after acceptance of Task 4 in Attachment 2, Live System Acceptance and Testing Period. Compensation to McCain for the Annual Software Maintenance Plan shall be a lump sum of $17,000 less the remaining prorated cost of the City's existing QuicNet Pro Maintenance Agreement. The existing QuicNet Pro Maintenance Agreement fee of $17,000 was previously paid by the City and is active from March 16, 2020 to March 15, 2021. The remaining prorated cost of the Annual Software Maintenance Plan shall be:

> $17,000 – (Days remaining on existing Annual Software Maintenance at the end of the 1-month Live System Acceptance and Testing Period) x $46.57.

The City shall pay the fees for the Annual Software Maintenance Plan at the conclusion of the Live System Acceptance and Testing Period.

After the initial 18 month period, the Annual Software Maintenance Plan shall be renewed on an annual basis. The cost of the Annual Software Maintenance Plan shall remain at $17,000 per year for five additional years.

In the event of an early termination of this Agreement, the City shall receive a pro rata reimbursement for the Annual Software Maintenance Plan paid by the City for the annual term in which the termination occurs.

No work will be performed beyond the Scope of Services except pursuant to the City's written request as mutually agreed in an amendment executed by McCain and the City.

If the City suspends or terminates the service to be rendered by McCain under this Agreement, payment shall be made by the City for Services rendered by McCain prior to the date of notification of termination.

7. OWNERSHIP OF TRAFFIC SIGNAL DATA

The parties agree that all traffic signal data and information contained, or a part of the traffic signal software are the sole and exclusive property of the CITY.

8. NOTICES AND PAYMENT

Any notice, request, reports, payments and invoices, or other communication to either party by the other concerning the terms and conditions of this Agreement, shall be in writing and shall be deemed given when hand-delivered or sent postage prepaid, by certified or registered United States mail, return receipt requested, or deposited in to the United States mail, and actually received by the addressee, addressed as follows:

If to McCain:	Accounts Receivable 2365 Oak Ridge Way Vista, CA 9081
If to City:	City of Des Moines Traffic & Transportation Division 400 Robert D. Ray Drive Des Moines, Iowa 50309-1891 Attn: Corey Bogenreif, Principal Traffic Engineer
With a copy to:	City of Des Moines IT Department 602 Robert D. Ray Drive Des Moines IA 50309 Attn: MaryLee Woods, Deputy Chief Information Officer

The person and the place to which notices are to be mailed to either party may be changed from time to time by notice given in accordance with the provisions of this Section.

9. TERMINATION

If the City determines in its discretion that McCain is not satisfactorily performing its obligations under this Agreement, or that further performance by McCain under this Agreement is no longer beneficial to the City, the City may terminate this Agreement by giving McCain 30 day written notice of such termination and issue payment for any undisputed outstanding invoicing.

The City may also terminate this Agreement if the City Council fails to appropriate the necessary funds, with allowance that McCain will be paid in full for any outstanding undisputed invoices.

10. PERSONNEL

McCain will assign qualified professional personnel and other McCain support staff as necessary to complete the Scope of Services. All assigned McCain professional personnel shall be subject to the reasonable approval of City. In the event that the employment of any such person should be terminated

prior to the completion of the Scope of Services, then in such event McCain shall, at its discretion, and with the approval of the City, assign such other persons as necessary to complete the services.

11. INSURANCE/INDEMNIFICATION

McCain shall purchase and maintain insurance in accordance with the insurance requirements set forth in Attachment 1 to protect McCain and City throughout the duration of this Agreement. McCain shall not commit any act which shall invalidate any policy of insurance. McCain shall defend, indemnify, and hold harmless City in accordance with the indemnification requirements set forth in Attachment 1 of this agreement. McCain shall be subject to all terms and provisions set forth in Attachment 1 of this Agreement.

12. GENERAL

A. Modifications – This Agreement or any part thereof may not be modified, except by written agreement of the parties signed by the duly authorized representatives of the parties.

B. No Waiver – No omission or delay by either party to this Agreement at any time to enforce any rights or remedy reserved to it, or to require performance of any of the terms of this Agreement, shall be a waiver of any such right or remedy to which either party is entitled, nor shall it in any way affect the right of either party to enforce such provisions thereafter.

C. Applicable Law – This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa, and any action relating to this Agreement shall be brought in the Iowa District Court in Polk County, Iowa or the United States District Court for the Southern District of Iowa. If any provision of this Contract is held to be invalid or unenforceable, the remainder shall be valid and enforceable.

D. Severability – If any provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity of all other provisions hereof shall in no way be affected thereby.

E. Successors and Assigns – Neither party shall assign or transfer this Agreement or any of its rights hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Any request to assign or transfer this Agreement shall be deemed to be granted if the recipient of such a request has not acted upon such request within thirty (30) days of its receipt. This Agreement shall inure to the benefit of the parties and their respective permitted successors and assigns.

F. Force Majeure – In the event that performance by either party of any of its obligations or undertakings under this Agreement shall be interrupted or delayed by any occurrence not occasioned by the conduct of either party hereto, whether such occurrence be an act of God such as lightning, earthquakes, floods, or other like causes, the common enemy, the result of war, riot, strike, lockout, civil commotion, sovereign conduct, explosion, fire, or the act or conduct of any person or persons not a party to or under the direction or control of a party hereto, then such performance shall be excused for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

G.   Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

H.   Non-Discrimination. McCain shall not discriminate or permit discrimination in its operations or employment practices against any person or group of persons on the grounds of race, color, creed, national origin, gender, age, sex, religion, sexual orientation, gender identity, disability, or familial status and shall furnish evidence of compliance with this provision when so requested by the City.

I.   Independent Contractor. McCain's relationship with City shall at all times be that of an independent contractor. The method and manner in which McCain's services hereunder shall be performed shall be determined by McCain in its sole discretion, and City will not exercise control over McCain or its employees except insofar as may be reasonably necessary to ensure performance and compliance with this Agreement. The employees, methods, equipment and facilities used by McCain shall at all times be under its exclusive direction and control. Nothing in this Agreement shall be construed to designate McCain or any of its employees, as employees or agents of City.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

CITY OF DES MOINES, IOWA   **MCCAIN, INC.**

_____   _____
Scott Sanders   Nathan Welch
City Manager   Vice President of Sales and Marketing

Attest:

_____
P. Kay Cmelik
City Clerk

Approved as to Form:

_____
Ann DiDonato
Assistant City Attorney

5

STATE OF IOWA   )
) ss:
COUNTY OF POLK   )

On this ___ day of _____, 2020, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared SCOTT SANDERS and KAY CMELIK, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of the City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of Roll Call No. 20-____, passed by the City Council on _____, 2020 and that SCOTT SANDERS and KAY CMELIK acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.

_____
Notary Public in the State of Iowa

ATTACHMENT 1
INSURANCE & INDEMNIFICATION REQUIREMENTS
FOR
CITY OF DES MOINES, IOWA
TRANSPARITY TRAFFIC MANAGEMENT SOFTWARE

INSURANCE & INDEMNIFICATION REQUIREMENTS

For the purposes of this Attachment and all provisions included herein, the term "CITY" shall mean the City of Des Moines, Iowa, including its elected and appointed officials, employees, agents, volunteers, boards, commissions and others working on its behalf. For the purposes of this Attachment, the term "CONSULTANT" shall refer to McCain, Inc.

A. GENERAL

The CONSULTANT shall purchase and maintain insurance to protect the CONSULTANT and CITY throughout the duration of the Agreement. Said insurance shall be provided by insurance companies "admitted" or "non-admitted" to do business in the State of Iowa having no less than an A. M. Best Rating of "B+." All policies, except professional liability, shall be written on an occurrence basis and in form and amounts satisfactory to the CITY. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the CITY prior to Agreement execution or commencement of work and/or services.

B. INSURANCE REQUIREMENTS

A. COMMERCIAL GENERAL LIABILITY INSURANCE: The CONSULTANT shall procure and maintain Commercial General Liability insurance on an occurrence basis with limits of liability not less than $1,000,000 per occurrence and/or aggregate combined single limit covering Personal Injury, Bodily Injury and Property Damage. Coverage shall include: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) Explosion, Collapse and Underground- XCU (when applicable). *Waiver of Subrogation in favor of the CITY is required as per paragraph 2.F. below.*

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by ISO standard Commercial General Liability Policy form ISO CG 0001 including standard exclusions or a non-ISO equivalent form. *The CITY shall not be included as an Additional Insured.*

B. CONTRACTUAL LIABILITY: Where required above, Contractual Liability coverage shall include the cost of defense and settlement. CONSULTANT agrees to submit to its insurance carrier, on behalf of the CITY, any claim or demand against the CITY for which the CONSULTANT has agreed to defend, indemnify and hold the CITY harmless in Section 3 Indemnification below, and to do so in a timely manner so required in its insurance policies.

C. WORKER'S COMPENSATION & EMPLOYER'S LIABILITY INSURANCE: CONTRACTUAL LIABILITY: As required by State of Iowa Workers' Compensation Law, the CONSULTANT shall procure and maintain Worker's Compensation Insurance, including Employer's Liability Coverage. The Workers' Compensation Insurance shall be written with State of Iowa statutory limits. If, by Iowa Code Section 85.1A, the CONSULTANT is not

required to purchase Workers' Compensation Insurance, the CONSULTANT shall submit a copy of the Nonelection of Workers' Compensation or Employers' Liability Coverage form filed with the Iowa Workers' Compensation Insurance Commissioner, as required by Iowa Code Section 87.22. *Waiver of Subrogation in favor of the CITY is required as per paragraph 2.F. below.*

D.   PROFESSIONAL LIABILITY INSURANCE: The CONSULTANT shall procure and maintain Professional Errors and Omissions Insurance with limits not less than $1,000,000 per claim and in the aggregate. *Waiver of Subrogation in favor of the CITY is required as per paragraph 2.F. below.*

E.   CANCELLATION & NONRENEWAL NOTIFICATION ENDORSEMENT: The General Liability Insurance and Professional Liability Insurance policies shall include a policy endorsement providing the CITY with no less than thirty (30) days Advance Written Notice of Cancellation, forty-five (45) days Advance Written Notification for Nonrenewal and ten (10) days Written Notification of Cancellation due to non-payment of premium.
Written notifications shall be sent to: City of Des Moines, Procurement Administrator, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.

F.   WAIVER OF SUBROGATION: To the fullest extent permitted by law, CONSULTANT hereby releases the CITY from and against any and all liability or responsibility to the CONSULTANT or anyone claiming through or under the CONSULTANT by way of subrogation or otherwise, for any loss without regard to the fault of the CITY or the type of loss involved including loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Agreement. The CONSULTANT'S Workers Compensation Insurance and General Liability Insurance policies shall contain either a policy provision or endorsement affirming the above stated release in favor of the CITY, including its elected and appointed officials, agents, employees and volunteers, and others working on its behalf.

G.   PROOF OF INSURANCE: The CONSULTANT shall provide the following proof of insurance to the CITY:

> (1) Certificates of Insurance evidencing all insurance coverage as required in paragraphs A through F above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify the Title of the Agreement under "Description of Operations/Locations/Vehicle/Special Items" and indicate Waiver of Subrogation by marking the corresponding boxes on COI and/or including a statement of compliance under Description of Operations.
> (2) If applicable as per paragraph 2.C. above, a copy of the Nonelection of Workers' Compensation or Employers' Liability Coverage form.
> (3) A copy of the Cancellation and Nonrenewal Notification Endorsements required in paragraph 2.E. above, or its equivalent.

Mail Certificates of Insurance to: City of Des Moines, Procurement Administrator, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.

H.   AGENTS, SUBCONSULTANTS AND SUBCONTRACTORS: The CONSULTANT shall require all its agents, subconsultants and subcontractors who perform work and/or services on behalf of the CONSULTANT to purchase and maintain the types of insurance customary for the services being provided.

C. INDEMNIFICATION REQUIREMENTS

For other than professional services rendered, to the fullest extent permitted by law, CONSULTANT agrees to defend, pay on behalf of, indemnify, and hold harmless the CITY against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys' fees and court costs that may be asserted or claimed against, recovered from or suffered by the CITY by reason of any injury or loss including, but not limited to, personal injury, bodily injury including death, property damage including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with CONSULTANT'S work or services under this Agreement, including that of its officers, agents, employees, subconsultants, subcontractors and others under the control of CONSULTANT.

For professional services rendered, to the fullest extent permitted by law, CONSULTANT agrees to pay on behalf of, indemnify, and hold harmless the CITY against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys' fees and court costs and economic damages that may be recovered from or suffered by the CITY that arise out of any negligent act, error or omission of the CONSULTANT, including that of its officers, agents, employees, subconsultants, subcontractors and others under the control of CONSULTANT.

CONSULTANT'S obligation to indemnify the CITY contained in this Agreement is not limited by the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefit acts, or other employee benefits acts.

The CITY shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by CONSULTANT arising out of or in any way connected or associated with CONSULTANT'S work or services under this Agreement, including that of its officers, agents, employees, subconsultants, subcontractors and others under control of CONSULTANT, except to the extent caused by or resulting from the negligent act or omission of the CITY.

CONSULTANT expressly assumes responsibility for any and all damage caused to CITY property arising out of or in any way connected or associated with CONSULTANT'S work or services under this Agreement, including that of its officers, agents, employees, subconsultants, subcontractors and others under the control of CONSULTANT.

CONSULTANT shall ensure that its activities on CITY property will be performed and supervised by adequately trained and qualified personnel and CONSULTANT will observe all applicable safety rules.

ATTACHMENT 2
SCOPE OF SERVICES
FOR
CITY OF DES MOINES, IOWA
TRANSPARITY TRAFFIC MANAGEMENT SOFTWARE

McCain agrees to perform the Services set forth in the Scope of Services described in this Attachment 2.

Project shall mean the performance of the Transparity Traffic Management System (TMS) installation, testing, and training as descried in this Scope of Services.

Task 1 - PROJECT COORDINATION

A. Monitoring Project Schedule

MCCAIN shall prepare and submit monthly Project status updates (1-page) via email, outlining the following activities during the reporting period: activities completed during the prior month, activities planned for the following month, problems encountered and recommended solutions, and overall project status. If work is not progressing in a manner to comply with the anticipated completion date, MCCAIN shall provide a brief summary of the actions to be taken to reduce or eliminate any delays in completing the study in accordance with the agreed upon schedule. The monthly update shall include a list of requested information from the CITY with a desired response date noted to avoid delay of the MCCAIN'S services.

B. Project Review Meetings

Upon receipt of Notice to Proceed, the Project shall begin with a Kickoff meeting where representatives from MCCAIN and the CITY shall establish a regular schedule for Project management meetings which shall serve to provide updates to Project schedule and Project clarification where needed.

C. Invoice Processing and Review

MCCAIN shall create, process, and review invoices and verify all necessary information is included. Invoices shall be provided based on the Fee and Payment Schedule provided in section 6 of this agreement. MCCAIN shall coordinate with CITY staff, as necessary, and answer any questions.

Task 2 - SYSTEM ACCEPTANCE TEST PLAN AND SOFTWARE INSTALLATION

McCain shall deploy and install the Transparity TMS on existing server hardware provided by the CITY and on up to 12 client workstations. McCain shall coordinate with the City of Des Moines Information Technology (IT) Department for server requirements. The Transparity TMS License shall be a City-Wide license and include all existing and future traffic signal controller locations. Remote access for upgrades and/or maintenance will be provided using a mutually agreed upon tool. All remote access must be attended by appropriate City of Des Moines Engineering or IT staff.

Prior to the start of the Project, McCain shall provide a System Acceptance Test Plan for review and approval by the CITY to verify that the Transparity TMS meets the functional requirements of the City of Des Moines and is properly configured such that all system components are operating properly. McCain shall support the CITY with the full migration of the existing and reusable QuicNet database including:

- Channel Configurations of all Controller Locations
- Intersection Configurations
- Intersection displays converted from QuicNet (excluding detectors)
- System Map and georeferenced all Controller Locations
- Intersection timings – bring over .dat files from QuicNet to Transparity
- Configure all user accounts
- Create existing events/schedules with QuicNet into Transparity

The switch over from the City's existing central software, QuicNet Pro, to Transparity TMS shall include the following steps:

1. Allocate a static IP address and hostname to the new Transparity TMS server.
2. Ping networked DIGI from the Transparity TMS server to verify connectivity.
3. Inventory current communications status of intersections on QuicNet Pro.
4. Turn off QuicNet Pro service on the QN server.
5. Run the current DIGI drivers on the Transparity TMSserver. This creates the serial ports that will be used to communicate to field controllers.
6. Turn on Transparity services. Compare comms status with inventoried status.
7. Perform timing copy from field controllers for each individual intersection to verify timing migration

Task 2 will be considered complete upon acceptance by the CITY after successful completion of the approved Systems Acceptance Plan and implementation of the deliverable in this task.

Task 3 - TRAINING

McCain shall provide 20 hours of on-site training for up to 12 CITY employees. Training will be broken into two 8-hour days and one 4-hour day. McCain shall provide the CITY with access to McCain training materials at the beginning of the Project. Training shall cover detailed operations of the system, day-to-day operation, troubleshooting, and functionally of the software. McCain shall provide User Manuals and training materials to all training attendees. McCain shall provide an outline of training topics at least one (1) week prior to the scheduled training session.

Training shall occur within 3 weeks after the Transparity TMS has been installed on the CITY servers. Task 3 will be completed upon acceptance by the CITY after receipt of the required training.

Task 4 - LIVE SYSTEM ACCEPTANCE AND TESTING PERIOD

After the Transparity TMS has been installed on CITY servers and the software has gone "live", there shall be a one-month live system acceptance and testing period. During this time McCain staff shall be available for technical support as described in Attachment 3. The hours required by McCain staff to complete this task shall be separate from and not be counted against the time allocated for Software Maintenance Plan described in Attachment 3, Technical Support. One (1) month after acceptance and testing period in Task 4 by the CITY, the Software Maintenance Plan, described in Attachment 3, Technical Support, shall commence.

ATTACHMENT 3
MCCAIN INC. SOFTWARE LICENSE
FOR
CITY OF DES MOINES, IOWA
TRANSPARITY TRAFFIC MANAGEMENT SOFTWARE

McCain, Inc. - Software License

LICENSE AGREEMENT

Software Program and Version:	Transparity TMS v1.7.2
Licensee:	City of Des Moines
Number of Licensed Copies:	Citywide License
	Unlimited Users (must be City staff)

McCAIN, INC. SOFTWARE LICENSE

1) GRANT OF LICENSE
McCain, Inc. grants you irrevocable, perpetual 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.

In no event shall McCain, Inc., or its suppliers, if any, be responsible for any special, incidental, or consequential damages whatsoever (including, without limitation, damages for lost profits, business interruption, loss of information, or any other loss) arising out of the use or the inability to use this product, even if McCain, Inc. has been advised of the possibility of such damage. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

U.S. GOVERNMENT RESTRICTED RIGHTS

If you are or represent an agency of the United States, use of this package indicates your explicit agreement to observe the terms limiting copying and usage of the software irrespective of the applicability of copyright law. If you do not agree to observe the terms of this license agreement, return this package unopened to the place of purchase for a full refund.

This agreement is governed by the laws of the State of Iowa.

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

ATTACHMENT 4
TRAFFIC CONTROL SOFTWARE LICENSE AGREEMENT AND SOFTWARE
MAINTENANCE PLAN AGREEMENT
FOR
CITY OF DES MOINES, IOWA
TRANSPARITY TRAFFIC MANAGEMENT SOFTWARE

DEFINITIONS

"Software" or "Transparity TMS" is Transparity Traffic Management System Software and/or its components.

"Maintenance" is the Software Maintenance Plan as defined in this Agreement.

"Software Upgrades" are software upgrades, including new minor versions of Software.

"Software Updates" are maintenance software releases, bug fixes, and patches. McCain agrees to provide software maintenance for software identified in this Agreement. Purchase of this Software Maintenance Plan does not in any way extend, modify, or enhance the original Software product warranty. CITY must have the current version of the Software in order to purchase the Software Maintenance Plan. This Agreement does not cover any Software that has been modified, amended, or deleted by a party other than McCain.

"Software Upgrades" and "Software Updates" do not include optional/add-on Transparity TMS Modules.

TERMS OF MAINTENANCE AGREEMENT

The duration of this Agreement shall be for a period of eighteen (18) months starting one (1) month after acceptance by the CITY of Task 4 in Attachment 2, Live System Acceptance and Testing Period.

TECHNICAL SUPPORT

This Software Maintenance Plan includes twenty-six (26) hours of technical support and is restricted to the scope defined by this Agreement. Specific technical support items covered by this Agreement include:

- **Transparity TMS Workstation Installations** – Often existing workstations are replaced and/or repaired in a manner that removes the Transparity TMS from the computer. These workstations may be re-installed by McCain under the terms of this Agreement.

- **Intersection Display Diagrams** – Production of new intersection display diagrams is covered by this Agreement, given there are enough hours left on the contract to create them.

- **GIS Map Maintenance** – McCain staff will work with the CITY's IT Department/GIS Division to ensure the GIS map is maintained when adding new intersections or layers to the existing map.

- **Traffic Data Collection** –System Detector and Count Detector data collection is a powerful feature offered by Transparity; however, these tools are often underutilized. McCain can configure data collection parameters and schedule operations to gather the data. With system detector data, link congestion can also be configured for display on system maps.

- **Responsive Operation Configuration** – While the creation of timing plans for responsive operation is not covered in the Scope of Services under the Management Services

Solutions Agreement, the configuration of responsive operation and detectors affiliated with responsive operation is covered by this Agreement. McCain shall provide suggestions for under/over- count conditions, offset determination, plan lockouts, and demonstrate how to use responsive logs. McCain staff shall also demonstrate how to utilize real-time data in responsive operations to run responsive on a test controller without affecting the operation of controllers in the field.

- **Communication Error Diagnostics** – There are many factors involved in establishing solid communication with an intersection. When experiencing lag or complete failure when attempting to communicate with a new or existing intersection, McCain staff can diagnose the communication sent and received by the central system. Communication diagnostics include:
  - Interpretation of CommDebug Logs
  - Analysis of Baud Rate vs. Polling Frequency
  - Verification of Communication Addressing Parameters
  - Identification of troubled intersections/controllers
  - Configuration of McCain 170 Ethernet to Serial Modems
  - Identification of TCP/IP Network configuration issues

*Evaluation of Interconnect (such as fiber optic cabling) and Third-Party communication devices is not covered by this Agreement.

- **SQL Server Database Maintenance** – SQL Server maintains the system and history database for all devices configured in Transparity. The performance of SQL Server can impact the Transparity Central system and should be reviewed from time to time. The following activities are covered by this Agreement on a quarterly basis:
  - Backups/Archives of SQL Server Data
  - Review of SQL Server Performance/Optimization Plans

- **Local Controller Firmware Support** – Whether reviewing an issue with newly produced coordination timing or providing suggestions on logic and special events, McCain will provide a thorough understanding of local controller firmware and how each feature operates in the field.

- **Ongoing Training** – New or existing CITY staff may require refresher training or brief walkthrough to ensure the CITY's team is getting the most from central software. The CITY can exchange two (2) out of four (4) remote quarterly maintenance sessions for 8 hours of on-going training. Additional days of training can be purchased via a separate purchase order.

- **Quarterly Maintenance** – As a part of this Maintenance Agreement, the following services will be performed up to four times a year using a mutually agreed upon remote access connection.
  - Review software versions of all Transparity TMS used by CITY to determine whether version updates are due, and if so perform the necessary updates.
  - Review event logs, etc. and advise CITY regarding any issues as requiring attention.
  - Review general system status including communications with field devices, work stations, etc. and provide a report to CITY, if necessary, regarding any issues.
  - Review maintenance on SQL database.
  - Written report to include work performed, issues found and fixed, and any proposed action for CITY.

Additional technical support time will be available to the CITY at an hourly rate of $150.00 plus applicable travel expenses. Technical support is offered through McCain and is available during normal business hours of 7:00 AM PDT to 5:00 PM PDT, Monday through Friday. Technical support is provided to CITY with a maximum response time of 48 hours.

LOCAL CONTROLLER FIRMWARE SUPPORT

When new McCain local controller firmware is deployed, the central Software will require updates to enable communication to these new programs. This Maintenance Agreement will provide the central system in a timely manner with up-to-date firmware support for the latest local controller technology produced by McCain.

EXTENDED WORKSTATION LICENSING

While this Agreement is in effect and support hours remain in the Management Solution Services Agreement, the CITY is authorized to expand the number of Transparity TMS.

SOFTWARE UPDATES AND UPGRADES

When McCain, at its sole discretion, releases Software Updates and Software Upgrades, McCain shall supply such Software Updates and Upgrades to the CITY, as a Licensee with a Software Maintenance Plan free of charge. Such Software Upgrades and Updates will be provided by McCain when McCain makes them generally available to the market. It is McCain's policy to utilize the Internet and Remote Support technology for software distribution. If the CITY as a Licensee requires CD-media and/or hard copies of documentation, the CITY will be responsible for CD-media, hard copies of documentation, and shipping costs. All Software Updates and Upgrades provided, including documentation and program materials, are subject to this Agreement and the applicable Software License Agreement, Attachment 3 to the Management Solution Services Agreement.

MAINTENANCE RENEWAL

Software Maintenance Plan renewal quote shall be mailed to the CITY, as a Licensee sixty (60) days prior to Maintenance Plan expiration. The Maintenance Renewal quote includes the maintenance renewal dollar amount and billing and shipping information. The Software Maintenance Plan is considered renewed once payment is received. If the Maintenance Plan has not been renewed, an invoice will be sent 30 days prior to the expiration date, and again on the due date. The Software Maintenance Plan is terminated if a payment is not received within 30 days after the expiration date.

TERMINATION

This Agreement may be terminated by the CITY as a Licensee subject to the thirty (30) days' advance written notice.

FORCE MAJEURE

In the event that performance by either party of any of its obligations or undertakings under this Agreement shall be interrupted or delayed by any occurrence not occasioned by the conduct of either party hereto, whether such occurrence be an act of God such as lightning, earthquakes, floods, or other

like causes, the common enemy, the result of war, riot, strike, lockout, civil commotion, sovereign conduct, explosion, fire, or the act or conduct of any person or persons not a party to or under the direction or control of a party hereto, then such performance shall be excused for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

CUSTOMER REMEDIES

McCain and its suppliers' entire liability and the City's exclusive remedy shall be, at McCain's discretion, either (a) return of the price paid, or (b) repair or replacement of the Software or hardware that does not meet McCain's Limited Warranty and which is returned to McCain with a copy of the receipt. This Limited Warranty is void if failure of the Software or hardware has resulted from accident, abuse, or misapplication. Any replacement Software will be warranted for full original warranty period or thirty (30) days, whichever is longer. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, supersedes all prior and contemporaneous agreements and negotiations, oral or written, express or implied, and may only be modified in writing and signed by authorized representatives of both parties. No waiver of any breach hereof shall be held to be a waiver of any other or subsequent breach.

** Remote access for upgrades and/or maintenance will be provided using a mutually agreed upon tool. All remote access must be coordinated with appropriate City of Des Moines Engineering and IT staff.