

**CITY MANAGER'S REPORT  
MARCH 11, 2024 CITY COUNCIL REGULAR MEETING**

**ITEM: APPROVE PURCHASE OF SOFTWARE AND ENTERPRISE LICENSE AND APPROVE MAINTENANCE SERVICE AGREEMENT WITH SWARCO MCCAIN, INC. ASSOCIATED WITH THE CITY-WIDE TRAFFIC SYSTEMS AND SAFETY UPGRADES PROJECT, CIP PS 23-01**

**RECOMMENDATION: Adopt Resolution Approving the Purchase of Software and Enterprise License and Approve a Maintenance Service Agreement with Swarco McCain, Inc. associated with the City-Wide Traffic Systems and Safety Upgrades Project, CIP PS 23-01**

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**SUMMARY:**

On July 11, 2022, by Resolution No. 22-5111, Council approved the creation of Capital Improvement Project (CIP), PS 23-01 for City-Wide Traffic Systems and Safety Upgrades Project for various upgrades that will maintain and improve the reliability, safety and function of various traffic control devices in the City. Staff requested & received a quote from Swarco McCain, Inc. (Swarco) for McCain Transparency Software (Transparency) as shown in Attachment "B". Transparency will give staff the ability to remotely monitor and change the City's traffic signals, which will improve reliability and function.

Staff requests Council approve a ten (10) year term Enterprise License Agreement with Swarco for the use of Transparency Software with a total start-up cost of \$56,253 to be funded through the CIP and the yearly enterprise license cost of \$7,325 to be funded through the Street Operating Fund account 2080-5010-420-58-00. Sufficient funds have been approved in the FY 23-24 budget.

**BACKGROUND:**

On July 11, 2022, by Resolution No. 22-5111, Council approved the creation of CIP PS 23-01 for City-Wide Traffic Systems and Safety Upgrades (Project). These upgrades include the replacement of obsolete traffic controllers, installation of video and radar detection systems, communication upgrades, and safety upgrades including guard rails, signs, striping and bicycle facilities. A component of this Project is to improve the traffic signal technology throughout the City to promote mobility, safety and visibility.

The City does not currently have a central traffic control monitoring system and therefore, all monitoring, diagnostics, and changes have to be performed at the intersections. This results in delayed responses to critical issues and consumes staff time.

**MARCH 11, 2024 CITY COUNCIL REGULAR MEETING****APPROVE PURCHASE OF SOFTWARE AND ENTERPRISE LICENSE AND APPROVE MAINTENANCE SERVICE AGREEMENT WITH SWARCO ASSOCIATED WITH THE CITY-WIDE TRAFFIC SYSTEMS AND SAFETY UPGRADES PROJECT, CIP PS 23-01**

The proposed Transparency will connect to all 26 of the City's traffic signals through a single software platform that allows for remote monitoring, diagnostics and changes. In addition, Transparency can constantly check the status of the City's traffic signals and instantly relay any issues to staff, which can then be observed and corrected remotely. Transparency offers a wide range of advantages besides monitoring including but not limited to group timing for coordination, event timing, reports of signal function, and event logs for diagnostics. This product is proprietary and Swarco has provided a Sole Source Documentation, included as Attachment "C".

**RECOMMENDATION:**

A component of the City-Wide Traffic Systems and Safety Upgrade Project is to upgrade the traffic signal technology throughout the City, which will help improve traffic flow and level of service. Therefore, staff recommends Council approve the purchase of Transparency.

**FISCAL IMPACT:**

The Agreement with Swarco, included as Attachment "B," has a start-up cost of \$56,253 and a yearly cost of \$7,325. Sufficient funds were approved in the CIP FY 23-24 budget for the start-up cost, including the yearly enterprise license cost of \$7,325, which will be funded through the Street Operating Fund account 2080-5010-420-58-00.

**ATTACHMENTS:**

- A. Resolution Approving the Purchase of Software and Enterprise License and Approve a Maintenance Service Agreement with Swarco McCain, Inc. associated with the City-Wide Traffic Systems and Safety Upgrades Project, CIP PS 23-01
- B. Transparency Traffic Software License and Maintenance Services Agreement with Swarco McCain, Inc. for the City-Wide Traffic Systems and Safety Upgrades Project, CIP PS 23-01
- C. Sole Source Letter – Swarco, Inc.

MARCH 11, 2024 CITY COUNCIL REGULAR MEETING

APPROVE PURCHASE OF SOFTWARE AND ENTERPRISE LICENSE AND APPROVE MAINTENANCE SERVICE AGREEMENT WITH SWARCO ASSOCIATED WITH THE CITY-WIDE TRAFFIC SYSTEMS AND SAFETY UPGRADES PROJECT, CIP PS 23-01


APPROVALS:

  
\_\_\_\_\_  
Brad Taylor  
City Engineer

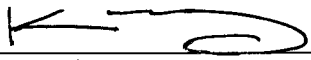
3/4/2024  
Date

  
\_\_\_\_\_  
Tony Fernandes  
Information Systems Director

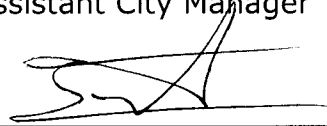
3-4-2024  
Date

  
\_\_\_\_\_  
Cari James  
Finance Director

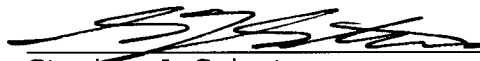
3/5/2024  
Date

  
\_\_\_\_\_  
Michael King  
Assistant City Manager

3-4-2024  
Date

  
\_\_\_\_\_  
Salvador Navarrete  
City Attorney

3.5.2024  
Date

  
\_\_\_\_\_  
Stephen J. Salvatore  
City Manager

3.6.24  
Date

**RESOLUTION NO. 24-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LATHROP TO APPROVING PURCHASE OF SOFTWARE AND ENTERPRISE LICENSE AND APPROVE A MAINTENANCE SERVICE AGREEMENT WITH SWARCO MCCAIN, INC. ASSOCIATED WITH THE CITY-WIDE TRAFFIC SYSTEMS AND SAFETY UPGRADES PROJECT, CIP PS 23-01**

**WHEREAS**, on July 11, 2022, by Resolution No. 22-5111, Council approved the creation of Capital Improvements Project (CIP) PS 23-01 for City-Wide Traffic Systems and Safety Upgrades; and

**WHEREAS**, a component of this project is to improve the reliability, safety and function of various traffic control devices in the City; and

**WHEREAS**, staff received a proposal from Swarco McCain, Inc. (Swarco) to provide 26 Transparency licenses and a ten (10) year software maintenance with a total start-up cost of \$56,253 and yearly enterprise license cost of \$7,325; and

**WHEREAS**, the ten (10) year term Enterprise License Agreement with Swarco for Transparency Software is for a total start-up cost of \$56,253 to be funded through the CIP and the yearly enterprise license cost of \$7,325 to be funded through the Street Operating Fund account 2080-5010-420-58-00; and

**WHEREAS**, sufficient funds were budgeted in the approved FY 23-24 budget; and

**WHEREAS**, Transparency will give staff the ability to remotely monitor and change the City's traffic signals, which will improve reliability and function; and

**WHEREAS**, this product is proprietary therefore, Swarco has provided a Sole Source Documentation, as shown in the City Manager's Report dated, March 11, 2024.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Lathrop does hereby approve the Purchase of Software and Enterprise License and Approve Maintenance Services Agreement With Swarco McCain, Inc. associated with the City-Wide Traffic Systems and Safety Upgrades Project, CIP PS 23-01.

The foregoing resolution was passed and adopted this 11<sup>th</sup> day of March, 2024, by the following vote of the City Council, to wit:

AYES:

NOES:

ABSTAIN:


ABSENT:

\_\_\_\_\_  
Sonny Dhaliwal, Mayor

**ATTEST:**

\_\_\_\_\_  
Teresa Vargas, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Salvador Navarrete, City Attorney

**CITY OF LATHROP**

**AGREEMENT WITH SWARCO MCCAIN, INC.**

**FOR THE PURCHASE OF SOFTWARE AND ENTERPRISE LICENSE  
AND MAINTENANCE SERVICES, CIP PS 23-01**

**THIS AGREEMENT**, dated for convenience this **11<sup>th</sup> day of March 2024**, is by and between **SWARCO McCain, Inc.** ("CONSULTANT") and the **City of Lathrop**, a California municipal corporation ("CITY");

**RECITALS:**

**WHEREAS**, CONSULTANT is specially trained, experienced, and competent for of the software and enterprise license and maintenance service agreement; and

**WHEREAS**, CITY selected the CONSULTANT pursuant to said qualifications; and

**WHEREAS**, CONSULTANT is willing to render such enterprise software license and maintenance services, as hereinafter defined, on the following terms and conditions;

**NOW, THEREFORE**, CONSULTANT and the CITY agree as follows:

**AGREEMENT**

**(1) Scope of Service**

CONSULTANT agrees to perform services in accordance with the scope of work and fee proposal provided by CONSULTANT, attached hereto as Exhibit "A" and incorporated herein by reference. CONSULTANT represents it is prepared to and can diligently perform these services in accordance with the customary standards of its profession and to CITY'S satisfaction. The fee proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved of in advance and in writing, by the CITY.

**(2) Compensation**

CITY hereby agrees to pay CONSULTANT a sum not to exceed \$56,253 for the initial set-up cost and \$73,250 (\$7,325 per year), incorporated herein by reference, notwithstanding any contrary indications, which is attached hereto as Exhibit "A".

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CONSULTANT shall be paid any uncontested sum due and payable within thirty (30) days of receipt of billings containing all information pursuant to Paragraph 5 below. Compensation for any task must be equal to or less than the percentage of task complete. In no event shall CONSULTANT be entitled to compensation for work not included in Exhibit “A”, unless a written change order or authorization describing the extra work and payment terms has been executed by CITY’s authorized representative prior to the commencement of the work. Payment is made based on a time and materials basis.

**(3) Effective Date and Term**

The effective date of this Agreement is **March 11, 2024**, and it shall terminate no later than **March 31, 2034**.

**(4) Independent Contractor Status**

It is expressly understood and agreed by both parties that CONSULTANT, while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and not an employee of the CITY. As an independent contractor, CONSULTANT is responsible for controlling the means and methods to complete the scope of work described in Exhibit “A” to City’s satisfaction. CONSULTANT expressly warrants not to represent, at any time or in any manner, that CONSULTANT is an employee of the CITY.

**(5) Billings**

CONSULTANT shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONSULTANT’S bills shall include a list of all tasks, a total amount due, the amounts previously billed, and the net amount due on the invoice. Except as specifically authorized by CITY, CONSULTANT shall not bill CITY for duplicate services performed by more than one person. In no event shall CONSULTANT submit any billing for an amount in excess of the rates or the maximum amount of compensation provided in section (2) for either task or for the entire Agreement, unless modified by a properly executed change order.

**(6) Advice and Status Reporting**

CONSULTANT shall provide the CITY with timely reports, orally or in writing, of all significant developments arising during performance of its services hereunder, and shall furnish to CITY such information as is necessary to enable CITY to monitor the performance of this Agreement. CONSULTANT shall submit to CITY such reports, diagrams, drawings and other work products developed pursuant to the Scope of Services.

**(7) Auditing**

CITY reserves the right to periodically audit all charges made by CONSULTANT to CITY for services under this Agreement. Upon request, CONSULTANT agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONSULTANT agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONSULTANT agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with the requirement. CONSULTANT further agrees to maintain such records for a period of three (3) years after final payment under this agreement.

**(8) Assignment of Personnel**

CONSULTANT acknowledges that the CITY has relied on CONSULTANT's capabilities and on the qualifications of CONSULTANT's principals and staff as identified in its proposal to CITY. The services shall be performed by, or under the direct supervision, of CONSULTANT's Authorized Representative: **Ray Laigo**. CITY shall be notified by CONSULTANT of any change of its Authorized Representative, and CITY is granted the right of approval of all original, additional, and replacement personnel at CITY's sole discretion, and shall be notified by CONSULTANT of any changes of CONSULTANT's project staff prior to any change.

CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. If CITY asks CONSULTANT to remove a person assigned to the work called for under this Agreement, CONSULTANT agrees to do so immediately, without requiring the City to process a reason or explanation for its request.

**(9) Assignment and Subcontracting**

It is recognized by the parties hereto that a substantial inducement to CITY for entering into this Agreement was, and is, the professional reputation and competence of CONSULTANT. Neither this Agreement nor any interest therein may be assigned by CONSULTANT without the prior written approval of CITY'S authorized representative. CONSULTANT shall not subcontract any portion of the performance contemplated and provided for herein, other than the subcontractors noted in the proposal, without prior written approval of the CITY'S authorized representative.



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(10) **Insurance**

On or before beginning any of the services or work called for by any term of this Agreement, CONSULTANT, at its own cost and expense, shall carry, maintain for the duration of the Agreement, and provide proof thereof that is acceptable to the CITY the insurance specified in subsections (a) through (c) below with insurers and under forms of insurance satisfactory in all respects to the CITY. CONSULTANT shall not allow any subcontractor to commence work on any subcontract until all insurance required of the CONSULTANT has also been obtained for the subcontractor. Verification of this insurance shall be submitted and made part of this Agreement prior to execution.

- (a) **Workers' Compensation.** CONSULTANT shall, at CONSULTANT'S sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by CONSULTANT. Said Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than one million dollars (\$1,000,000). In the alternative, CONSULTANT may rely on a self-insurance program to meet these requirements provided that the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or the CONSULTANT, if a program of self-insurance is provided, shall waive all rights of subrogation against the CITY for loss arising from work performed under this Agreement.
  
- (b) **Commercial General and Automobile Liability Insurance.** CONSULTANT, at CONSULTANT'S own cost and expense, shall maintain commercial general and automobile liability insurance for the period covered by this Agreement in an amount not less than one million dollars (\$1,000,000) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) and Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 (any auto).

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Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- (i) CITY, its officers, employees, agents, and volunteers are to be covered as insured with respect to each of the following: liability arising out of activities performed by or on behalf of CONSULTANT, including the insider's general supervision of CONSULTANT; products and completed operations of CONSULTANT; premises owned, occupied or used by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents, or volunteers.
- (ii) The insurance shall cover on an occurrence or an accident basis, and not on a claim made basis.
- (iii) An endorsement must state that coverage is primary insurance and that no other insurance affected by the CITY will be called upon to contribute to a loss under the coverage.
- (iv) Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- (v) Insurance is to be placed with California-admitted insurers with a Best's rating of no less than A: VII.
- (vi) Notice of cancellation or non-renewal must be received by CITY at least thirty days prior to such change.

(c) Professional Liability. CONSULTANT, at CONSULTANT'S own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than Two Million Dollars (\$2,000,000) per claim made and per policy aggregate covering the licensed professionals' errors and omissions, as follows:

- (i) Any deductible or self-insured retention shall not exceed \$250,000 per claim.
- (ii) Notice of cancellation, material change, or non-renewal must be received by the CITY at least thirty days prior to such change shall be included in the coverage or added as an endorsement to the policy.
- (iii) The policy must contain a cross liability or severability of interest clause.

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- (iv) The following provisions shall apply if the professional liability coverages are written on a claims made form:
  - 1. The retroactive date of the policy must be shown and must be before the date of the Agreement.
  - 2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
  - 3. If coverage is canceled or not renewed and it is not replaced with another claims made policy form with a retroactive date that precedes the date of this Agreement, CONSULTANT must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The CITY shall have the right to exercise at the CONSULTANT'S cost, any extended reporting provisions of the policy should the CONSULTANT cancel or not renew the coverage.
  - 4. A copy of the claim reporting requirements must be submitted to the CITY prior to the commencement of any work under this Agreement.
  
- (d) Deductibles and Self-Insured Retentions. CONSULTANT shall disclose the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. During the period covered by this Agreement, upon express written authorization of the CITY's authorized representative, CONSULTANT may increase such deductibles or self-insured retentions with respect to CITY, its officers, employees, agents, and volunteers. The CITY's authorized representative may condition approval of an increase in deductible or self-insured retention levels upon a requirement that CONSULTANT procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.
  
- (e) Notice of Reduction in Coverage. In the event that any coverage required under subsections (a), (b), or (c) of this section of the Agreement is reduced, limited, or materially affected in any other manner, CONSULTANT shall provide written notice to CITY at CONSULTANT'S earliest possible opportunity and in no case later than five days after CONSULTANT is notified of the change in coverage.

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- (f) In addition to any other remedies CITY may have if CONSULTANT fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, CITY may, at its sole option:
- (i) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
  - (ii) Order CONSULTANT to stop work under this Agreement or withhold any payment which becomes due to CONSULTANT hereunder, or both stop work and withhold any payment, until CONSULTANT demonstrates compliance with the requirements hereof;
  - (iii) Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies CITY may have and is not the exclusive remedy for CONSULTANT'S breach.

**(11) Indemnification - CONSULTANT'S Responsibility**

As to the CONSULTANT'S work hereunder, it is understood and agreed that (a) CONSULTANT has the professional skills necessary to perform the work, (b) CITY relies upon the professional skills of CONSULTANT to perform the work in a skillful and professional manner, and (c) CONSULTANT thus agrees to so perform.

Acceptance by CITY of the work performed under this Agreement does not operate as a release of said CONSULTANT from such professional responsibility for the work performed. It is further understood and agreed that CONSULTANT is apprised of the scope of the work to be performed under this Agreement and CONSULTANT agrees that said work can and shall be performed in a fully competent manner in accordance with the standard of care applicable to CONSULTANT'S profession.

CONSULTANT shall indemnify, defend, and hold CITY, its officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused by the willful misconduct or negligent acts or omissions of CONSULTANT, its employees, subcontractors, or agents, or on account of the performance or character of this work, except for any such claim arising out of the negligence or willful misconduct of the CITY, its officers, employees, agents, or volunteers. It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve

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CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

**(12) Licenses**

If a license of any kind, which term is intended to include evidence of registration, is required of CONSULTANT, its employees, agents, or subcontractors by federal or state law, CONSULTANT warrants that such license has been obtained, is valid and in good standing, and CONSULTANT shall keep it in effect at all times during the term of this Agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

**(13) Business Licenses**

CONSULTANT shall obtain and maintain a CITY of Lathrop Business License until all Agreement services are rendered and accepted by the CITY.

**(14) Termination**

Either CITY or CONSULTANT may cancel this Agreement upon 30 days written notification to the other party. Upon termination, or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONSULTANT to CITY within ten (10) calendar days.

**(15) Funding**

CONSULTANT agrees and understands that renewal of this agreement in subsequent years is contingent upon action by the City Council consistent with the appropriations limits of Article XIII (B) of the California Constitution and that the Council may determine not to fund this agreement in subsequent years.

**(16) Notices**

All contracts, appointments, approvals, authorizations, claims, demands, Change Orders, consents, designations, notices, offers, requests and statements given by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if (1) personally served, (2) sent by the United States mail, postage prepaid, (3) sent by private express delivery service, or (4) in the case of a facsimile transmission, if sent to the telephone FAX number set forth below during regular business hours of the receiving party and followed with two (2) Days by delivery of a hard copy of the material sent by facsimile transmission. Personal service shall include, without limitation, service by delivery and service by facsimile transmission.

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LICENSE AND MAINTENANCE SERVICE, CIP PS 23-01

To City: City of Lathrop  
City Clerk  
390 Towne Centre  
Lathrop, CA 95330

Copy to: City of Lathrop  
Department of Public Works  
390 Towne Centre  
Lathrop, CA 95330  
MAIN: (209) 941-7430  
FAX: (209) 941-7449

To Consultant: SWARCO McCain, Inc.  
2365 Oak Ridge Way  
Vista, CA 92081

**(17) Miscellaneous**

- (a) Consent. Whenever in this Agreement the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.
- (b) Contract Terms Prevail. All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and attached exhibits, the terms of this Agreement shall prevail.
- (c) Controlling Law. The parties agree that this Agreement shall be governed and construed by and in accordance with the Laws of the State of California.
- (d) Definitions. The definitions and terms are as defined in these specifications.
- (e) Force Majeure. Neither party shall be deemed to be in default on account of any delay or failure to perform its obligations under this Agreement, which directly results from an Act of God or an act of a superior governmental authority.
- (f) Headings. The paragraph headings are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.
- (g) Incorporation of Documents. All documents constituting the Agreement documents described in Section 1 hereof and all documents which may, from time to time, be referred to in any duly executed amendment hereto are by such reference incorporated in the Agreement and shall be deemed to be part of this Agreement.

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- (h) Integration. This Agreement and any amendments hereto between the parties constitute the entire Agreement between the parties concerning the Project and Work, and there are no other prior oral or written agreements between the parties that are not incorporated in this Agreement.
- (i) Modification of Agreement. This Agreement shall not be modified or be binding upon the parties unless such modification is agreed to in writing and signed by the parties.
- (j) Ownership of Documents. All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, and which have been paid for in full by City for services required to produce said documents, shall be deemed the property of the CITY. Upon CITY's request, CONSULTANT shall allow CITY to inspect all such documents during the CONSULTANT's regular business hours.
- (k) Provision. Any agreement, covenant, condition, clause, qualification, restriction, reservation, term or other stipulation in the Agreement shall define or otherwise control, establish or limit the performance required or permitted or to be required of or permitted by either party. All provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.
- (l) Severability. The invalidity in whole or part of any provision of this Agreement shall not void or affect the validity of any other provision of this agreement. If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the provisions of this Agreement not so affected shall remain in full force and effect.
- (m) Status of CONSULTANT. In the exercise of rights and obligations under this Agreement, CONSULTANT acts as an independent contractor and not as an agent or employee of CITY.  
  
CONSULTANT shall not be entitled to any rights and benefits accorded or accruing to the City Council members, officers or employees of CITY, and CONSULTANT expressly waives any and all claims to such right and benefits.
- (n) Successors and Assigns. The provisions of this Agreement shall inure to the benefit of, and shall apply to and bind, the successors and assigns of the parties.
- (o) Time of the Essence. Time is of the essence of this Agreement and each of

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its provisions. In the calculation of time hereunder, the time in which an act is to be performed shall be computed by excluding the first Day and including the last. If the time in which an act is to be performed falls on a Saturday, Sunday or any Day observed as a legal holiday by CITY, the time for performance shall be extended to the following Business Day.

- (p) Venue. In the event that suit is brought by either party hereunder, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of San Joaquin or in the United States District Court for the Eastern District of California.
- (q) Recovery of Costs. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs, including reasonable attorney's fees, incurred or expended in connection with such action against the non-prevailing party.

**(18) Notice to Proceed**

Prior to commencing work under this agreement, CONSULTANT shall receive a written "Notice to Proceed" from CITY. A Notice to Proceed shall not be issued until all necessary insurances have been received. City shall not be obligated to pay CONSULTANT for any services prior to issuance of the Notice to Proceed.

**(19) Signatures**

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY. This agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.



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Approved as to Form:

City of Lathrop  
City Attorney



3.5.2024

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Salvador Navarrete

Date

Recommended for Approval:

City of Lathrop  
Assistant City Manager

---

Michael King

Date

Approved by:  
Resolution No. \_\_\_\_\_

City of Lathrop  
390 Towne Centre Drive  
Lathrop, CA 95330

---

Stephen J. Salvatore  
City Manager

Date

Consultant:

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

Fed ID # \_\_\_\_\_

Business License # \_\_\_\_\_

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Signature

Date

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Print Name and Title



**PROPOSAL**

February 27, 2024

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

Attention: **Brad Taylor, P.E., T.E. - City Engineer**  
 Company/Agency: City of Lathrop - Public Works Department  
 Address: 390 Town Centre Dr.  
 Lathrop, CA 95330

Project Description: Lathrop, CA - Transparency TMS Proposal (revised 2/27/24)  
 Proposal Number: RL020624-3 revB

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

Item #	Qty	Unit	Description	Unit Price	Sale Price
<b>Central System Software</b> <small>(see scope notes 1 &amp; 2)</small>					
1	26	Each	On-Prem / Enterprise Transparency Traffic Management System (TMS) Licensing - qty: <u>26</u> - this increases agency's total Transparency licenses to qty: <u>26</u>	\$ 1,200	\$ 31,200
<b>Professional Services / Labor Items</b> <small>(see scope notes 1 &amp; 2)</small>					
2	1	Lump	Project Management/Administration/Professional Services/ Labor: - Database creation and system map configuration - Assistance with communications cutover	\$ 5,148	\$ 5,148
3	26	Each	Signal Performance Measure Setup / Configuration	\$ 330	\$ 8,580
<b>Training, Testing, and Maintenance</b>					
4	1	Lump	Onsite Systems Acceptance and Validation Testing <small>(see scope note 3)</small>	\$ 4,000	\$ 4,000
5	1	Year	Transparency TMS Annual Maintenance for up to <u>26</u> locations (recurring) <small>(see scope note 4)</small>	\$ 7,325	\$ 7,325
				<b>Total</b>	<b>\$ 56,253</b>

NOTE: This amount does not include tax

To be paid according to the following Billing Schedule/Milestones	Billable Amount
Transparency Traffic Management System (TMS) Licensing <i>Deliverable: Billed at NTP</i>	\$ 31,200
Completion of Transparency TMS installation, database creation, and system map configuration <i>Deliverables: Transparency TMS system map with configured locations (agency specified) and completed install sign-off sheet</i>	\$ 5,148
Completion of Signal Performance Measure Setup / Configuration <i>Deliverables: Populated SPM reports for identified intersections</i>	\$ 8,580
Completion of Onsite Transparency Testing. This signals project completion and start of maintenance period. <i>Deliverables: Completed test document and project sign-off</i>	\$ 11,325

**Scope Notes:**

- All labor is remote unless indicated otherwise. VPN or internet access is required to provide remote support
- Customer is responsible for ensuring that communications and detection is operational and for providing the network scheme, as applicable. Does not include field installation or timing conversion support.
- On-site testing to be provided by Swarco McCain ITS Project Engineer. McCain requires up to 4-8 weeks advance notice for scheduling.
- TMS Maintenance agreement covers a total of ten (10) hours that include telephone, email, or remote support and two (2) remote maintenance sessions each year. Agreement is for a system with up to 26 licenses. As licenses increase, cost is subject to increase.

**Proposal Notes:**

- All prices are in US Dollars. All payments to be made in US Dollars. Project will be billed per the schedule/milestones
- Purchase order (PO) must match line items in proposal.
- Prices are firm for 30 days. Tax and freight are not included.
- All software available through remote download only.
- Sale is subject to SWARCO McCain's standard terms and conditions

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Public Works Department  
City of Lathrop  
390 Towne Centre Drive  
Lathrop, CA 95330

**ATTACHMENT "C"**

February 20, 2024

**Subject: Sole Source Letter**

To Whom It May Concern,

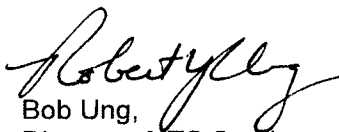
This letter establishes that the City of Lathrop, CA purchases products and services directly from SWARCO McCain Inc., located in Vista, CA.

Transparity TMS central software is the only central software that is fully compatible with the OMNI local controller software and all controllers installed accross the City. As the software developer, SWARCO McCain is the sole source of installation and maintenance of the Transparity TMS software, currently in use by the City of Lathrop. Working directly with SWARCO McCain's ITS Services and Solutions team greatly reduces system down time and blind troubleshooting that could result with the lack of a product expert's knowledge and proficiency.

Furthermore, SWARCO McCain's support staff has fostered an excellent working relationship with the City's traffic operations personnel. SWARCO McCain's history of working with the City of Lathrop's traffic department provides an intimate familiarity of the City's traffic system needs that cannot be replicated by any other provider.

SWARCO McCain welcomes the opportunity to upgrade and support the City of Lathrop's current central traffic management system and looks forward to collaborating with the agency in ensuring that their system is in optimum condition.

Sincerely,



Bob Ung,  
Director of ITS Services and Solutions  
SWARCO McCain, Inc.

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