CITY OF SAN CARLOS

Request for Proposals (RFP)

Community Development Land Management, Code Compliance & Permitting Application

RFP Release Date:	Thursday, June 1, 2023
Project Contact:	Maureen McNulty mmcnulty@cityofsancarlos.org
Proposal Due:	**Tuesday, July 11, 2023 @ 4:00 PM Pacific Time**

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PURPOSE

The City of San Carlos (hereinafter referred to as "City") is issuing this Request for Proposal (RFP) for a Community Development Land Management, Code Compliance & Permitting Application, and its related installation, conversion, migration, and implementation services. It is the City's preference to enter into an agreement with a single vendor who can provide the complete range of required functionality and related services.

The City is seeking a complete response from vendors who can demonstrate that they possess the organizational, functional, and technical capabilities to perform the services, and meet or exceed the requirements and service levels specified herein.

This RFP seeks to identify the provider/vendor/services platform that offers the greatest value. The proposal should take great care to fully explain services for the quotes costs and differentiate themselves from their competitors.

Vendors submitting a proposal ("Proposer") in response to this RFP **must meet** the following requirements:
- The software must meet accounting and reporting standards for governmental funds, account groups, expendable trust funds and enterprise funds in accordance with Generally Accepted Accounting Principles (GAAP) and the Governmental Accounting Standards Board (GASB), Payment Card Industry (PCI), International Building Code, California Statutes and other local codes and regulations.
- The following applications are to be included in the new Land Management, code compliance and Permitting system:
  - Mandatory Applications:
    - Planning and Land Development
    - Code Compliance
    - Permitting and Inspections
    - Reporting
    - Customer and Outside Agency Facing Online Solution for Land Management, Code Compliance and Permitting.
    - Mobile Application for City Employee Use
- The City desires the capability to interface with current and future applications via upgradeable vendor supported application program interfaces (APIs). To the extent possible, the system should support online, interactive data capture and retrieval. Paper reports should be minimized. Documentation for system and training should be computer generated wherever possible and updated accordingly.
- GIS data is sourced from the San Mateo County Assessor. Vendors must have a method to update GIS/parcel owner/title information from the County to the City's system.
- The City will consider systems using industry-standard open system architecture that. supports equipment and applications running on Microsoft Windows 10 OS and later, current versions of Microsoft Edge or Google Chrome, and in a virtual environment. The customer desktop should be able to run in user mode and not require each workstation. to have administrative permissions.
- The City intends to utilize existing PCs, printers and related equipment wherever possible.

with the proposed system. The City will consider acquiring or replacing end-user devices identified. by the vendor as necessary to the successful implementation of the proposed system.
- The systems must coexist in a Windows Active Directory environment, future plans for the The city includes moving to Azure AD. The City's preference is to only consider systems running. Microsoft SQL.
- The system must be able to process credit card, check, eCheck and cash transactions or interface with Tyler Technologies' cashiering platform.

Information concerning the City's objectives, current environment, project scope and timeline, requirements, RFP response parameters and evaluation criteria are discussed in the balance of this document.

The City will consider proposals from single suppliers or from multiple suppliers working as a team. In the event multiple suppliers submit a proposal together, the City expects that there will be one primary contact who will be responsible for the whole project and for coordinating the work of the other suppliers.

The award shall be made to the qualified supplier whose proposal is most advantageous to the City of San Carlos with price and other factors considered. Other factors that may contribute to the selection process include but are not limited to:

- Project approach and understanding of the City's objectives and requirements.
- Supplier's implementation methodology and success
- Feedback from customer references
- Compliance with the City's terms and conditions
- Ability to meet the City's requirements (functionality, usability, performance, flexibility, integration, and technology)
- Supplier's installed base and experience with municipalities similar to the City of San Carlos
- Cost and support quality for ongoing maintenance and support.

TIMELINE

It is the intent of the City to enter into a contract before September 1, 2023.

CLARIFICATION OF COMMITMENT TO PURCHASE

This Request for Proposal is not a commitment to purchase, and any expenditures incurred by the Proposer in preparing and submitting its proposal shall not be reimbursed by the City, nor is the City obligated with respect to any action taken by Proposer in responding to this Request for Proposal. Further, the City reserves the right to reject all proposals received and not award a contract to any Proposer.

STATEMENT OF RIGHTS

The City has the right to:

- Cancel or re-issue the RFP at any time.
- Accept the proposal or parts of a proposal deemed most advantageous to the

City, or to reject any or all proposals for any causes whatsoever as it deems for the best interests of the City.

- Waive any minor informalities or irregularities contained in any proposal.
- Amend the RFP in any manner prior to contract award.
- Reject any proposal which contains false or misleading statements or is not in compliance with submittal requirements.
- Obtain clarification of any point in a proposal. Such clarification may be in any form, such as conference calls, email communications, web demos, onsite demos, vendor headquarters visits, or other method of the City's choosing.
- Share the RFP; proposals and subsequent vendor-provided information with any consultant of the City's choosing in order to secure expert opinion.
- Make copies of any Proposals for evaluation purposes or as required for legal and regulatory compliance.
- Record all demos.
- Request from the software vendor a different implementation partner than the one proposed.
- At the City's sole discretion, select a different implementation vendor on its own.

CONTRACT DEFINITION

The contract between the City and the selected vendor to provide the required software and/or related services will consist of:

- This Request for Proposal.
- The selected vendor's Proposal.
- The vendor's product demonstration, and related handouts and electronic presentations
- Related Commentary – any product literature, vendor documentation, and communications from the vendor clarifying the proposal, technology, project planning, implementation services, training, 3rd party applications, software functionality, support services and professional.
  services
- Pricing information and options.
- A mutually agreed upon Statement of Work that outlines the project scope, project timeline, Project Manager, assigned responsibilities (vendor and customer), estimated hours by role for the major work components, deliverables, milestones, services to be performed by the vendor, and costs by major work component.
- The contract documents (Appendix E - Professional Services, Software License, and Maintenance and Support Services Agreements).

CITY OF SAN CARLOS PROFILE

The City of San Carlos is a full-service, general law city, governed by a council-manager form of government. The City employs approximately 100 full-time employees. San Carlos provides many services including public safety, parks, recreation, housing, and general administrative and support services.

Incorporated in June 1925, San Carlos has a population of approximately 30,000.

Encompassing 5.6 square miles, San Carlos is situated 25 miles south of San Francisco, on the San Francisco Peninsula, in San Mateo County. Within 5.6 square miles, the City tracks and records more than 11,000 unique parcels.

TECHNOLOGY ENVIRONMENT OVERVIEW

The City of San Carlos has been using CentralSquare's TRAKiT software product for, planning and land development, code compliance and permitting for the past 12 years. The City solely relies on the in-house Information Technology Department for all day-to-day operations and maintenance of these systems.

Primary users of the current Land Management software include Community Development and Public Works departments. Tertiary users are from the Finance Division for fee collections and reporting. The existing technology as it relates to each business process is described in the following table.

TABLE 1: CITY OF SAN CARLOS EXISTING TECHNOLOGY

Business Process	Application Name	Vendor	Application Version	Install Date	Database	Hardware	Operating System
• Planning & Land Development • Code Compliance • Building/Permitting • Reporting	TRAKiT	Central Square	2019	2009	Microsoft SQL	VMware Virtual Server	Windows 2012
• Plan Review	Bluebeam Revu	Bluebeam	2021	2017	N/A	Dell OptiPlex Workstations	Windows 10

There are multiple processes involved in managing the City's land development, code compliance and permitting functions. The common business processes and their respective key activities are listed in Table 2.

Business Process	Key Activities
Planning & Development	- Application Intake - Application Review - Internal Routing amongst Departments - Routing to external reviewers - Hearings, Appeals, Hearing Notifications and notices, Decisions, Recordation, Resolutions, Modifications, Extension Tracking - Reports - The system must be capable of quickly generating a variety of custom reports based on planning application data such as: average processing time, number of approvals issued within a given date range, workload by assigned planner, among others. - Calendaring – There should be a way to schedule activities in the future and/or a way to track specific tasks that could occur in one year time, etc. - Ability to add various fields within each case. - Fee Calculation - Fee Distributions - Commission Reporting & Recommendation - External website where applicants can view status of permits. - Payment and Refund Processing - Link open/active projects to GIS map - Should allow for different levels of user access. - Dashboard Reporting capabilities – ability to track/view project progress and staff workload. - Web Portal - online permit submittal and tracking, including ability to upload large files. - Plan Review Routing and Tracking - Document Management & Retention - Transaction Management – online payment capability - Data Migration – ability to migrate all permit data and attachments from existing permit system (Trakit) - Customization – as indicated below under "Permitting" - Ability for offsite users to access via a web-based solution.
Code Enforcement Services	- Complaint Intake - Notice of Violations - Citation Issuance - Processing of Fines and Fees - Inspections and Follow-ups - Abatement, Compliance Tracking, Property Research - Cost Recovery
Permitting (Building, Engineering, Fire, Utilities)	- Should allow for different levels of user access. - Ease of Use- Intuitive permit and code enforcement interface for both frequent and casual users. - Reports - The system must be capable of quickly generating a variety of custom reports based on permit data such as: average processing time, number of permits issued within a given date range, number of solar or solar battery permits, number of housing units completed, daily inspections, among others. - Dashboard Reporting capabilities – ability to track/view project progress and staff workload. - Web Portal - online permit submittal and tracking, including ability to upload large files, and request inspections. - GIS Integration – including ability to refresh parcel data from county and display location of current permits online. - Field Module – to allow for mobile field inspection. - Plan Review Routing and Tracking - Electronic Plan Review Integration (Optional) - automation and efficiency - Code Compliance – case management for miscellaneous code enforcement issues

	• Document Management & Retention • Transaction Management – online payment capability • Data Migration – ability to migrate all permit data and attachments from existing permit system (Trakit) • Customization – The City of San Carlos must be able to quickly, and without additional cost, modify key aspects of the permit tracking system such as: adding or deleting permit types, changing information fields, changing the format of reports, permits, and receipts, adding, editing, or deleting permit conditions, and changing permit fee amounts and types. Levels of customization and associated costs should be provided in detail.

PROJECT SCOPE AND TIMELINE

SCOPE

The City is seeking one vendor to act as a prime vendor to be legally and financially responsible for all software and implementation services. The vendor may propose a subcontracted third-party integration partner who must then work under the umbrella of the vendor, hereinafter referred to as the "vendor".

The packaged software systems should be supplemented where necessary by modifications to existing packages and custom-developed software for specialized applications. Preferably the modifications should be endorsed by integration partners with supported, maintained code for the vendor's base package.

Vendor/systems integrator proposals should include all business processes identified above. Additionally, proposals should attempt to address any solutions to the City's existing challenges/deficiencies found in Section 2.3. Proposals that do not include the listed business processes may receive less consideration during evaluation.

The term of the contract is anticipated to be three (3) years.

TIMELINE

The City intends to complete the selection process using the following schedule. However, the City reserves the right to modify or reschedule as necessary.

Event	Date
Release RFP to Vendors	June 1, 2023
Vendor Questions Due	June 15, 2023
Answers to RFP Questions Released	June 20, 2023
RFP Responses Due	July 11, 2023
Short List	July 18, 2023
Vendor Demo (if necessary)	July 31 – August 3, 20223
Decision on Final Vendor	August 9, 2023

The City expects that the vendor will respond with a proposed timeline for the project based on the Final Vendor Decision date of July 11, 2023.

SUBMITTAL REQUIREMENTS

Those organizations interested in responding to this Request for Proposal are required to submit their proposal in the following format.

Bidders must email an electronic copy of their proposal, with a subject line: "RFP – Community Development Land Management, Code Compliance & Permitting Application" to City Clerk Crystal Mui at cmui@cityofsancarlos.org.

Proposals must be received by 4:00 p.m. Pacific Time on July 11, 2023

Proposals received after 4:00 p.m. Pacific Time will not be considered.

All questions regarding this RFP must be in writing and directed to Maureen McNulty at mmcnulty@cityofsancarlos.org by 4:00 p.m. Pacific Time on June 15, 2023.

From the issue date of the RFP until contract award is made, respondents are not permitted to communicate with any employee or agent about the subject or contents of the RFP except as outlined in the RFP. Violation of this provision may result in rejection of the respondent's submission. No information provided verbally or by any other personnel will be considered binding. All respondents shall use the RFP and its attachments and amendments as the sole basis for the proposal at this time.

SUBMITTAL FORMAT

Proposals should be prepared simply, providing a straightforward, concise delineation of the capabilities necessary to satisfy the requirements of the RFP. Technical literature and elaborate promotional materials should not be submitted at this time.

Emphasis in the proposal should be on completeness, clarity of content and adherence to the presentation structure required by this RFP and not on volume. Costs for developing proposals in response to the RFP are the obligation of the Proposer and are not chargeable to the City. All proposals and accompanying documentation will become the property of the City and will not be returned.

The submittal format for the proposal is with the following sections with the required information provided in each section as noted below. For the original and hard copies, the City requests that physical tabs be used to separate each section.

Suppliers must prepare proposals using a word processor and electronic versions of the forms provided in Chapter II of this RFP. An electronic copy of the proposal must be provided along with three hard copies.

SECTION	TITLE	SECTION CONTENTS
Section 1	**Title Page**	Present the subject of your proposal, the name of your organization, local address of the office that will be installing the application, name of the contact person (with their title and their contact information) and the date.
Section 2	**Table of Contents**	Present a clear and comprehensive identification of the contents of your proposal by section and by page number.
Section 3	**Letter of Transmittal**	A signed letter of transmittal is required. Within this letter include statements to the following: • Your organization's understanding of the work to be accomplished. • Upon award of this contract, your organization will make a positive commitment to perform the implementation work within the scheduled time period. • A summary of the cost-of-service fee(s) to be charged for the work, and a statement indicating if fees are fixed, complete, inclusive, or negotiable. • All proposals submitted are to be valid for a period of 180 days after this proposal date. • The name of the individuals who will be authorized to make representations for your organization, their titles, addresses, email addresses and telephone numbers. • A statement that the signatory of the transmittal letter with his/her printed name and title has authority to bind your organization.
		Each submitted hard copy of the proposal is to have an original signed letter of transmittal by an official authorized to legally bind the proponent.

Section 4	**Company Profile and Customer References**	Please complete the forms in Appendix A (Company Profile) and Appendix B (Reference) and include them in this section.
		A. A profile of your organization is required. The profile should include the following information:
		• Basic organizational information, such as, size of organization, how long in business, public or private entity, etc.
		• Whether your organization is local, regional, national, or international.
		• A listing of the other similar governmental customers that are using this proposed solution.
		B. A Summary of your organization's qualifications (Not to exceed 5 pages).
		• Provide a summary of your organization's expertise in the area of software development, support, implementation, training, etc. pertaining to the software submitted in the proposal (including any 3rd party systems included as a part of your proposal).
		• *Include at least three (3) references where your organization provided similar methods using the same software at other Municipal Government agencies of similar size and complexity (the references must be using the same version of software that you are proposing). Include contact names, telephone numbers and addresses. Indicate the year and timeframe in which each reference was engaged with your organization. <u>Use the enclosed form in Appendix B for submitting this information. Vendors must submit one form for each reference.</u>*
Section 5	***Project Management and Implementation Methodology***	*Please provide a detailed description of your project management approach and implementation methodology (not to exceed 10 pages).*
		Describe your implementation plan, including your training, data conversion, systems integration and testing processes:
		• *Approach and philosophy*
		• *Options: Internal, subcontractor, implementation vendor*
		Provide a high-level project plan, along with expected deliverables and estimated timelines. Include typical expectations of City staff commitment and what staff the City can anticipate it will need to backfill during implementation.
		A formal Statement of Work (SOW) will be required for the project and agreed to by all parties prior to the commencement of work. This agreed upon Statement of Work is to be completed before contract execution and included as part of the executed agreement.

Section 6	*Proposed Costs*	*The vendor will provide line-item costs for three (3) years either using the schedule in Appendix C – Pricing Worksheet or their own worksheet for all project deliverables. All 3rd party software, optional items listed in Additional Services of this RFP and customization estimates need to be identified in Appendix C – Pricing Worksheet.*
Section 7	*Specifications*	*Please complete the Appendix D - Vendor Questions, providing answers and any comments necessary to clarify the functionality and submit as requested in this section.*
Section 8	**Additional Data**	Provide any other documentation necessary to describe the functionality/delivery of the proposed system. Vendors who submit pricing for a Hosted or Subscription based option are asked to provide details about the level of hosting services provided (i.e., DBA, upgrade support, backup services, system monitoring, etc.), contractual terms (minimum contract length, performance guarantees, service level guarantees, etc.), hardware related costs, infrastructure costs, and other items pertaining to this service. If such a service is offered indirectly through a hosting partner the City requests disclosure of the partner, and the terms of agreement between said partner and the software vendor. Vendors may also provide in this section any other information that they believe will assist the City in making its selection.
Section 9	**Contract Performance**	If at any time in the past 5 years your firm has had a contract terminated for convenience, non-performance, or any other reason, or has entered. legal action with a customer, describe the situation(s) including the name and address of the contracting party, and circumstances.
Section 10	**Vendor's Recommended Architecture and Hardware Requirements**	• Indicate recommended infrastructure required for the proposed solution. • Include information for cloud or hosted options for implementation, including a review of integration and security options. • Vendors should also submit hardware, database, and operating system requirements for the server, peripherals, and mobile devices.

EVALUATION OF PROPOSALS

The City's project team will evaluate the RFP responses provided by vendors. The evaluators will consider how well the proposed solution meets the City's requirements as described in the RFP.

It is important that the responses be clear and complete to ensure that the evaluators can adequately understand all aspects of the proposal. Based on the evaluation of the RFP responses, the City will have a Short List of vendors for its final review and evaluation through a software demo and other due diligence actions.

Evaluation Factors. Selection of finalists will be primarily according to the following criteria:

- Quality, clarity, and completeness of the proposal.
- Adherence to requirements for RFP preparation.

- Vendor viability and strength.
- Ability to meet functional and technical requirements.
- Software scalability, flexibility, and ease of use.
- Compatibility and integration with existing hardware and software.
- Vendor's experience on similar projects.
- Software demos.
- Total cost of ownership.
- Customer references.
- Quality of the software and the vendor's implementation methodology and team.
- Vendor's ability to implement its system on time and on budget.
- Quality and performance of the vendor's ongoing support and software development.

The evaluation factors identified above reflect a wide range of considerations. While cost is important, other factors are also significant. The City may select something other than the lowest cost solution. The objective is to choose a vendor capable of providing a reliable and integrated solution within a reasonable budget. All proposals will be evaluated using the same criteria.

The City reserves the right to request from any vendor additional information, interviews, follow-up demonstrations, or any other type of clarification of proposal information it deems necessary to evaluate the vendors.

Notification. Based on the evaluation of the RFPs the City will select a Short List of two to four vendors and invite them to participate in Pre-Demo Meetings and Structured Software Demos. The selected vendors will be notified in writing or via email by the date indicated in Section 4.

Pre-Demo Meetings. Once the Short List of vendors has been identified, the vendors will be invited to participate in a Pre-Demo Conference Call Meeting with the City's Project Team. The purpose of this conference call meeting will be to allow the vendor time to acquire additional information about the scope of the project and to ask questions about the Demo Script presented to the vendors.

Structured Demos. The Short-Listed vendors will be asked to demonstrate their software according to a customized demonstration script designed to reflect the City's requirements. This script will be issued to Short Listed vendors according to the timeline indicated in Section 4.

These functional and technical product Demos will be presented to the City by the Short-Listed vendors according to the pre-defined script issued by the City. All vendors must follow this script during their Demo process.

Post-Demo Technical Evaluation. In addition to scripted functional demonstrations, the City may request a more extensive technical Demo. This Demo will be scheduled on an as-needed basis for specific applications.

Implementation Vendor Selection. Once the selection of the software is completed, the City will determine if a separate implementation vendor selection project is necessary. The City reserves the right to not select the implementation partner or value-added reseller (VAR) that responds to the RFP or demonstrates the software on behalf of the software vendor.

Reference Checks and Site Visits. The City may choose to conduct site visit(s) to the software vendor's headquarters and/or other users, and to do customer reference checks (such as site visits or conference calls) as part of the evaluation process. The visits, calls and other communications may be used to determine the successful vendor and will be conducted following scheduled software demonstrations of the Short-Listed vendors. Evaluation of the vendor client sites will be based on the following: assessment of the vendor's service during system implementation, assessment of the quality and timeliness of vendor's ongoing support, overall user satisfaction with the performance of the system.

Contract Award and Execution. The City reserves the right to make an award without further discussion of the proposal submitted. The City shall not be bound or in any way obligated until both parties have executed the applicable contracts. The City also reserves the right to delay the contract award, to make a partial award, or not to make any contract award and to reject all proposals.

CONDITIONS OF PAYMENT

The following provides clarification on the conditions for payment listed in the Payment for Software License or Subscription schedule in the table in Section 4 – Project Scope, Timeline and Payment Schedule of the RFP.

INSTALLATION AND INITIAL CONFIGURATION OF THE SOLUTION

(a) Installation of the Solution shall be complete when both of the following occur:

1. All software is copied onto the hardware environment at the City and is fully operational, and a complete system backup of all software and the initial configuration data is made for the City by the vendor with complete instructions for restoration.
2. When technical documentation, which shall include without limitation, data dictionaries, system schema, and instructions as to how to completely re-install the contents of the media containing the Licensed Software onto the City's hardware environment, has arrived at the City.

(b) Installation of the hardware and Licensed Software will be considered complete upon receipt of all hardware and Software components specified in the sales order and the Statement of Work which will be attached to the agreement.

(c) Both parties will develop a mutually agreeable installation schedule in which the City and vendor will be present during the installation and initial configuration of the system.

(d) When possible and if in the best interests of the City, delivery of the Solution, Customizations and all supporting documentation will occur electronically and without physical media.

Risk of Loss

(a) During the time period where the Software and its supporting documentation, are in transit and until the Software is installed in good working order, the vendor or its insurer shall be responsible for the Software and documentation and shall hold the City and its agents harmless from and against all risk or loss, or damage to the Software and the documents.

(b) The vendor shall hold the City and its agents harmless from any risk of loss or damage

arising out of occurrences during the installation of the Software.

(c) During the time period where any hardware or Third-Party Software purchased from the vendor is in transit and until these are delivered to a secured location identified by the City, the vendor or its insurer shall be responsible for ownership of these products and relieve hold the City and its agents harmless from and against all risk or loss, or damage of the products.

Acceptance

General Acceptance Terms

(a) In order for the System to be Accepted, it must successfully complete Functionality and Performance Testing.

(b) Functionality Testing shall be completed within thirty (30) days of delivery, installation, and configuration of the System, including all required interfaces.

(c) Performance Testing shall be completed within sixty (60) days of "go-live" of the System.

Functionality Testing

(d) Functionality Testing serves to confirm that the promised functionality, as indicated on the vendor's response to the Functional Requirements in the RFP, has been delivered and that the System performs the functions described in the vendor's system documentation, the functional requirements in the RFP and the vendor's response thereto.

(e) The City will assign an internal staff who shall be responsible for overseeing the execution of the Functionality Test.

(f) At its sole option and expense, the vendor may have a representative present during Functionality Testing.

(g) The Functionality Test will be conducted by executing each of the items in the functional requirements in the RFP, for which Vendor has responded with a "Yes," indicating that the System performs the described functionality without modification.

(h) For the purposes of the Functionality Test, some line items from the functional requirements document may be included, or demonstrated, as part of other functional requirements line items.

(i) At the conclusion of the Functionality Test, the City will notify the vendor, in writing, of either the System's successful completion of the Functionality Test or the specific items that the System could not perform.

(j) The City, at its sole option, may waive any irregularities occurring during the Functionality Test.

Remedy for Failed Functionality Test

(k) In its sole judgment, the City may terminate this Agreement for cause if, during Functionality Testing, the Software/Solution or Customizations fail to perform as specified in the functional requirements or the Software's supporting documentation.

(l) In its sole determination, City may exercise any, or all, of the following remedies in lieu of termination of this Agreement:

1. Vendor shall be given the opportunity to extend the acceptance testing period for up to thirty (30) calendar days to allow the vendor to bring any irregularities

into compliance. If after such time the irregularity is not remedied to the City's sole satisfaction, the City may terminate the Agreement for cause, or;

2. If the non-compliant component is hardware which was purchased from the vendor or purchased due to the vendor's written specifications, the City may require the Vendor to replace the component with one that successfully remedies the irregularity (at no charge to the City), or;

3. At the City's sole option, notwithstanding (1) through (3) above, the City may relegate the non-compliant component as a Customization to be completed at a mutually agreeable date and subject to the following terms:

   i. As security to ensure timely completion of a Customization, final payment for the Software licenses and Customizations for the defective or non- conforming software function will be held by the City until all Customizations created under the agreement are accepted by the City.

   ii. If Customizations created under the agreement ultimately fail to correct the irregularity, and the irregularity materially affects the functionality of the System or materially deviates from the City's functional requirements, the vendor will forfeit the final payment for the Software and Customizations, provided that.

4. At the City's sole option, the City will exercise one, or any combination, of the options as described above. Should the System fail to successfully complete the Functionality Test, the System will be deemed to have failed Acceptance and the City will be entitled to a full refund.

Performance Testing

(m) The purpose of the Performance Test is to confirm that the System performs in a production environment, under normal loads and utilization, as specified in the Functional Specifications and Documentation, and is stable, accessible, and responsive.

(n) The City shall be responsible for overseeing the execution of the Performance Test.

(o) At its sole option and expense, the Vendor may have a representative present during the Performance Test.

(p) At the conclusion of the Performance Test, the City shall notify the vendor, in writing, of either the System's successful completion of the Performance Test or the specific items that the System could not perform.

(q) The City, at its sole option, may waive any irregularities occurring during the Performance Test.

Remedy for Failed Performance Testing

(r) In its sole judgment, the City may terminate the agreement for cause if the System fails to meet the criteria for success defined above. In its sole determination, the City may exercise any, or all, of the following remedies in lieu of termination of this Agreement:

1. The vendor shall be given the opportunity to extend the Acceptance Testing period for up to thirty (30) calendar days to allow the vendor to diagnose and correct performance problems that may be caused by the Software or the configuration of the Software, or;

2. The vendor shall be given the opportunity to install additional hardware or platform components, at the vendor's sole expense, at the City to enable the Software to meet the performance requirements specified in the Performance Test, or;

3. The vendor shall be given up to thirty (30) days following the diagnosis of any problem related to the Software to correct, at the vendor's sole expense, the defects in the Software/Solution and install these corrections at the City, or;

4. The City may conduct the Performance Test again, or;

5. At the City's sole option, the City will exercise one, or any combination, of the options described above. Should the System fail to successfully complete the Performance Test, the System will be deemed to have failed Acceptance and the City will be entitled to a full refund.