

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: September 10, 2024
PUBLIC HEARING DATE: Not Applicable

CONTACT PERSON(S) NAME AND PHONE NUMBER:
Anthony R. Dekeyzer, Director of Mass Transit, (915) 212-3306
K. Nicole Cote, Managing Director (915) 212-1092

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: No. 7 – Enhance and Sustain El Paso's Infrastructure Network

SUBGOAL: 7.3 – Enhance regional comprehensive transportation system

SUBJECT:

Discussion and action on the request that the Managing Director of Purchasing & Strategic Sourcing be authorized to issue Purchase Order(s) for solicitation 2024-0190 Genfare Support Agreement to Genfare LLC., the sole and authorized distributor for a term of three (3) years for an estimated amount of \$184,577.00. Supplier will be required to provide an updated sole source letter and affidavit each year.

BACKGROUND / DISCUSSION:

The agreement with Genfare LLC., is for software, hardware maintenance and support requirements currently paid on a-per ticket or per hour basis. Support will be for the fare collection system reporting manager, farebox and ticket vending machines functions.

SELECTION SUMMARY:

General Exemption under Local Government Code Section 252.022 Part 7 a procurement of items that are available from only one source, including: (A) items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies.

CONTRACT VARIANCE:

The difference based in comparison to the previous contract is as follows: A decrease of \$99,790.24 for the initial term, which represents a 35.09% decrease due to the previous contract being funded for five years. This contract is funded for three years.

PROTEST

N/A

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

Amount: \$184,577.00
Funding Source: Sun Metro Operating Fund
Account: 560-3210-60070-531050- P6003

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES ___ NO

PRIMARY DEPARTMENT: Mass Transit (Sun Metro)

SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

Jerry DeMuro

Deputy Transit Officer for

Anthony R. Dekeyzer, Director of Mass Transit

Project Form
Non-Competitive

*****Posting Language Below*****

Please place the following item on the Regular Agenda for the Mass Transit Board Meeting of September 10, 2024

Strategic Goal 7 - Enhance and Sustain El Paso's Infrastructure Network

The linkage to the Strategic Plan is subsection: 7.3 Enhance a regional comprehensive transportation system

Award Summary:

Discussion and action on the request that the Managing Director of Purchasing & Strategic Sourcing be authorized to issue Purchase Order(s) for solicitation 2024-0190 Genfare Support Agreement to Genfare LLC., the sole and authorized distributor for a term of three (3) years for an estimated amount of \$184,577.00. Supplier will be required to provide an updated sole source letter and affidavit each year. The Software support agreement with Genfare LLC. is for software, hardware maintenance and support requirements currently paid on a-per ticket or per hour basis. Support will be for the fare collection system reporting manager, farebox and ticket vending machines functions

Contract Variance:

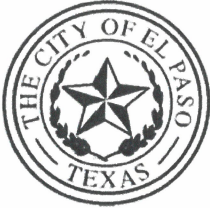
The difference based in comparison to the previous contract is as follows: A decrease of \$99,790.24 for the initial term, which represents a 35.09% decrease due to the previous contract being funded for five years. This contract is funded for three years.

Department:	Mass Transit (Sun Metro)
Award to:	Genfare LLC.
City & State:	Elk Grove Village, IL
Item(s):	All
Initial Term:	3 Years
Option Term:	N/A
Total Contract Time:	3 Years
Year 1:	\$59,716.00
Year 2:	\$61,508.00
Year 3:	\$63,353.00
Initial Term Estimated Award:	\$184,577.00
Option Term Estimated Award:	N/A
Total Estimated Award:	\$184,577.00
Account(s):	560-3210-60070-531050- P6003
Funding Source(s):	Sun Metro Operating Fund
District(s):	All

Non-Competitive Procurement under Local Government General Exemption: Section 252.022 - (7) a procurement of items that are available from only one source – (D) captive replacement parts or components for equipment;

The Purchasing & Strategic Sourcing and Mass Transit (Sun Metro) Departments recommend award as indicated to Genfare, LLC., under the exemption listed above.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.



PURCHASING & STRATEGIC SOURCING DEPARTMENT

SOLE SOURCE AFFIDAVIT

THIS IS AN OFFICIAL PURCHASING DOCUMENT-RETAIN WITH PURCHASE ORDER FILE

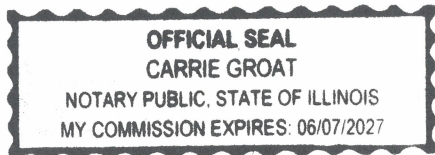
Before me, the undersigned official, on this day, personally appeared _____ a person known to me to be the person whose signature appears below, whom after being duly sworn upon his/her oath deposed and said:

1. My name is Eric Kaled. I am over the age of 18, have never been of a convicted crime and am competent to make this affidavit.
2. I am an authorized representative of the following company or firm: Genfare, LLC
3. The above named company or firm is the sole source for the following item(s), product(s) or service(s):
Genfare TVM, Vault, Farebox, Garage Data System, Spare Parts and Components
4. Competition in providing the above named item(s) product(s), service(s) is precluded by the existence of a patent, copyright, secret process or monopoly as stated under Section 252.022, Subchapter A of the Local Governmental Code 7A or as provided for under 7B-F of the same section. Also, attached hereto is a sole source letter, which sets forth the reasons why this Vendor is a sole source provider (dated and signed).
5. There is/are no other like item(s) or product(s) available for purchase that would serve the same purpose or function.
6. **Note: This Vendor understands that by providing false information on this Sole Source Affidavit, it may be considered a non-responsible Vendor on this and future purchases and may result in discontinuation of any/all business with the City of El Paso.**

DocuSigned by:
Eric kaled
E3F78E940D544D3
Signature

SUBSCRIBED AND SWORN to before me on this 4th day of October

Carrie Groat
NOTARY PUBLIC
CARRIE GROAT
PRINTED NAME
6.7.27
MY COMMISSION EXPIRES



COMPANY NAME: Genfare LLC
 ADDRESS, CITY, STATE & ZIP CODE: 800 Arthur Avenue, Elk Grove Village, IL 60007
 PHONE: 847-871-1231 FAX NUMBER: _____
 CONTACT NAME AND TITLE: Eric Kaled, President
 WEB ADDRESS: www.Genfare.com EMAIL: Genfare.sales@spx.com
 FEDERAL TAX ID NUMBER: 88-2123131 TEXAS SALES TAX NUMBER: _____

October 4, 2023

Sun Metro
Norma E. Jimenez, Contract Compliance Manager
10151 Montana Ave.
El Paso, TX 79925

Subject: **SOLE SOURCE LETTER, FOR FARE COLLECTION EQUIPMENT, SPARE PARTS AND COMPONENTS**

Dear Ms. Jimenez:

In accordance with your request for information relative to the sole source nature of the fare collection equipment, spare parts and components, Genfare uses proprietary custom coding and encryption as part of the security system used in our equipment. This will assure system compatibility so that the equipment continues to perform at the required level of reliability and accuracy.

Genfare also manufactures all of the parts and components used in the fare collection system equipment in use by your transit agency. Many of these parts and components are custom made by Genfare using special production techniques, tooling and set-ups. The mechanical and electrical components and parts are made to our exact specifications and tested by Genfare to assure optimum performance and the highest level of reliability.

Obviously, Genfare systems deal with cash and electronic revenue, therefore, it is imperative that software and components utilized within the system are designed to maintain system integrity.

Genfare sells fareboxes and their related parts exclusively to Transit Authorities. Due to the nature of our product, Genfare is considered to be the sole source supplier of this equipment and their related maintenance parts/service. It is to be noted that these prices represent "Most Favored Customer Prices" and Genfare warrants that the prices charged to your transit agency will be equal to or less than prices charged to other customers for similar parts or components.

All prices quoted are FOB Elk Grove Village, Illinois. Standard method of shipment is UPS Ground. If air shipments are requested, customer will be liable for air charges. Genfare payment terms are Net 30 Days.

Sincerely,



Terese Gillum
Sales Operations Specialist

GENFARE SOFTWARE SUPPORT AGREEMENT

This Software Support Agreement (this "Agreement") is effective as of _____, ("Effective Date"), by and between Genfare, LLC, a Delaware limited liability company, with its principal place of business at 800 Arthur Avenue, Elk Grove Village, IL 60007 ("Genfare") and The City of El Paso through its Mass Transit Department ("Sun Metro"), a Texas home rule municipality, having a place of business at 10151 Montana Avenue, El Paso, TX 79925 ("City", "Customer"), each a Party and collectively the Parties.

WHEREAS, City purchased certain Genfare hardware identified in the Genfare Sales Quotation regarding Support Agreement ("System");

WHEREAS, Genfare provides support services for the purposes of supporting the System's software (the "Software") (such support services as specified in the attached Schedule, collectively the "Services");

WHEREAS, City desires to obtain Services, and Genfare is willing to provide the Services on the terms and conditions set forth herein; and

NOW THEREFORE, in consideration of the obligations herein made and undertaken, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the Parties intending to be legally bound, covenant and agree as follows:

- 1. Scope of Work.** Genfare shall provide the services as more fully described in Schedule A. This Agreement consists of this contract document and the attached Schedules and sets forth the full and complete understanding of the parties with regard to the subject matter hereof, and it supersedes any and all agreements and representations whether written or verbal with regard to the same subject matter. In the event of any conflict between the main body of this Agreement and any of the Schedules hereto, the main body of the Agreement shall control unless it is specifically stated in such Schedule that those terms are intended to and shall supersede the main body of the Agreement.
- 2. Term.** The term of this Agreement shall begin on the Effective Date and shall be in effect for three (3) years (the "Initial Term") and terminate thereafter. The confidentiality and intellectual property provisions shall survive the expiration or termination of this Agreement.
- 3. Price and Payment.** City shall make all payments for Services within thirty (30) days from City's receipt of Genfare's invoice. Pricing is set forth in Schedule A.
- 4. Confidentiality.** "Confidential Information" shall mean any information owned by a Party, including any and all proprietary technical, financial and business information, design, manufacturing, customer information, personnel information, new product developments, and general business plans of any kind whatsoever, regardless of whether furnished in oral, visual, written and/or other any tangible and intangible embodiments thereof, whether or not patentable. All such information shall be treated by the receiving Party as confidential and proprietary. The receiving Party (a) shall safeguard and keep all Confidential Information confidential, (b) shall use the Confidential Information only in furtherance of the Agreement, and (c) shall not disclose such Confidential Information to any other person, firm or entity except in furtherance of the Services (i) to those of its employees, officers, managers, members or representatives (collectively, "Representatives") who have a need to know such Confidential Information to provide the Services provided herein, (ii) as allowed by the express, written consent of the disclosing Party or (iii) as compelled by a court of competent jurisdiction (provided that the receiving Party provides the disclosing

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Genfare Software Support Agreement

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Party with prompt written notice so that the disclosing Party may seek a protective order or other appropriate remedy). The receiving Party shall be responsible for all actions and omissions of its Representatives. Upon the termination or expiration of this Agreement, receiving Party shall return all Confidential Information to the disclosing Party. However, the receiving Party may retain Confidential Information as may reasonably form a part of the governance record of the receiving Party, and as necessary to comply with legal requirements pertaining to the retention of documents. Notwithstanding the termination or expiration of this Agreement, the obligations in this Section shall survive such termination or expiration for a period of five (5) years after such termination or expiration. In the event that any disclosure is required, City must furnish only that portion of Confidential Information that is legally required and must exercise commercially reasonable efforts to obtain a reliable assurance that confidential treatment will be accorded to Confidential Information that is disclosed.

Notwithstanding anything to the contrary in Section 4 or in any other provision of this Agreement, Genfare acknowledges that City is a governmental entity subject to the Public Information Act, Chapter 552, Texas Government Code ("the Act"). City will maintain confidentiality as provided in this Agreement, to the extent permitted by law and agrees that, as required by the Act, it will notify Genfare if a request relating to such proprietary information is received. Genfare represents that it understands that the Act excepts disclosure of trade secrets and confidential commercial information and that Genfare will need to assert the proprietary interest of Genfare as a basis for nondisclosure. City will, before responding to any disclosure request, provide Genfare notice and Genfare will provide a version of documents for disclosure with information that Genfare considers to be privileged, confidential, and/or trade secret information redacted.

5. Intellectual Property. Genfare owns and shall retain title to all intellectual property, patents, trademarks, know-how, copyrights, software, engineering work product, designs, models, production prints, drawings, technical data, source code, object code and other information and documents that relate to the Services. All such intellectual property, information and documents disclosed by Genfare to the City are to be deemed proprietary to Genfare and shall be used by the City solely for inspecting, installing, operating and maintaining the goods and services sold to the City and not used by the City for any other purpose.

6. Warranty. Genfare warrants that during the Term, all Services provided for under the terms of this Agreement shall be performed (a) in accordance with all applicable laws and regulations, and (b) in a professional, diligent and workmanlike manner by qualified and skilled personnel appropriately supervised. If during the Term it shall be proven to City's reasonable satisfaction that any Services are nonconforming, then such Services shall, be corrected, or re-performed by Genfare. **THE FOREGOING WARRANTIES ARE IN LIEU OF, AND GENFARE EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED IN FACT OR BY LAW, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. THE FOREGOING WARRANTIES STATE GENFARE'S ENTIRE AND EXCLUSIVE LIABILITY AND THE CITY'S SOLE AND EXCLUSIVE REMEDY, IN CONNECTION GENFARE'S WARRANTY AND OBLIGATIONS**

7. Termination. Either Party may terminate this Agreement at any time, for any reason and without cause, with thirty (30) days written notice to the other Party. If this Agreement is terminated by either Party, a credit in the amount of any unused Services (the number of prepaid months of service after the termination date) will be applied to City's account.

8. Waiver of Consequential Damages. Notwithstanding anything in this Agreement to the contrary, to the fullest extent permitted by applicable law, Genfare shall not be liable under any theory of relief, arising out of or related to the Agreement or Genfare's acts or omissions in connection therewith for incidental, special or consequential damages of any nature, including, without limitation, loss of profits or contract, damage to property or loss of use, any business interruption or loss of profit, anticipated savings, data, contract, goodwill or the like that may be suffered by the City or claimed against it. Any action for breach of contract or otherwise must commence within one year after cause of action accrues. Notwithstanding anything to the contrary, this waiver of consequential damages under this section does not apply to Genfare's indemnification and/or insurance obligations under this Agreement.

9. Limitation of Liability. Genfare's maximum aggregate liability under the Agreement shall not exceed the annual total cost of Services performed by Genfare and paid for by The City. Any action for breach of contract or otherwise must commence within one year after cause of action accrues.

10. Force Majeure. To the extent that either party is not able to perform an obligation under this Agreement due to fire, flood, acts of God, severe weather conditions, strikes or labor disputes, war or other violence, acts of terrorism, any law or order of any governmental City, or other cause beyond that Party's reasonable control, that Party may be excused from such performance so long as such Party provides the other Party with prompt written notice describing the condition and takes all reasonable steps to avoid or remove such causes of nonperformance and immediately continues performance whenever and to the extent such causes are removed.

11. INDEMNIFICATION/RELEASE/RESPONSIBLE FOR DAMAGED PROPERTY. GENFARE WILL INDEMNIFY, DEFEND AND HOLD HARMLESS, THE CITY AND THE CITY'S OFFICIALS, EMPLOYEES, CONTRACTORS, AND AGENTS, FROM ANY AND ALL CLAIMS FROM THIRD PARTIES TO THE EXTENT RESULTING DIRECTLY FROM THE NEGLIGENT ACTS OR OMISSIONS OF GENFARE AND/OR GENFARE'S CONTRACTORS, SUBCONTRACTORS, AGENTS, EMPLOYEES, AND/OR OFFICERS FOR CLAIMS INVOLVING ANY BODILY INJURY, DEATH, PROPERTY DAMAGE, PROPERTY LOSS, INTELLECTUAL PROPERTY RIGHT INFRINGEMENT, BREACH OF PRIVACY, OR RELEASE OF CONFIDENTIAL INFORMATION. Without modifying any conditions above, the City will promptly forward to Genfare every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Genfare will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as Genfare may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Genfare will pay all judgments finally establishing liability of the City in actions defended by Genfare pursuant to this section. The City, at its election, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest at its sole expense.

GENFARE REPRESENTS AND WARRANTS THAT IT HAS THE NECESSARY LICENSES AND SKILLS TO PERFORM THE SERVICES UNDER THIS AGREEMENT. GENFARE RELEASES THE CITY FROM ANY AND ALL CLAIMS FOR DAMAGES SUSTAINED BY GENFARE IN THE PERFORMANCE OF SERVICES UNDER THIS CONTRACT INCLUDING BUT NOT LIMITED TO ANY LOSS OR DAMAGE TO PROPERTY.

GENFARE IS RESPONSIBLE FOR ANY DAMAGE OR LOSS DIRECTLY CAUSED BY GENFARE TO PROPERTY OF THE CITY. THE CITY WILL INVOICE GENFARE FOR THE COSTS OF ANY SUCH DAMAGES OR LOSS OF SUCH TANGIBLE PROPERTY DIRECTLY

CAUSED BY GENFARE. GENFARE SHALL PAY SUCH INVOICES WITHIN 30 CALENDAR DAYS OF RECEIPT.

12. Insurance.

12.1 Genfare will maintain the following:

12.1.1 Commercial General Liability Insurance written on an occurrence basis for providing coverage at a minimum for premises and operations liability, products and completed operations liability, personal and advertising injury, contractual liability, property damage, and coverage for work performed by independent contractors when work is performed on behalf of Genfare. The amounts for the Commercial General Liability insurance are \$1,000,000 for bodily injury per occurrence and \$1,000,000 for property damage per occurrence and \$1,000,000 in the aggregate.

12.1.2 Automobile Liability Insurance in the amounts of \$1,000,000 combined single limit.

12.1.3 If required by law, worker compensation insurance in the amounts required by law.

12.1.4 Professional Liability Insurance (Errors & Omissions) in the amount of \$1,000,000 per claim and \$1,000,000 in the aggregate.

12.2 Genfare will name the City, its officials, employees, agents, and contractors as additional insured in all insurance policies required above. To the extent allowable by law, Genfare's Commercial General Liability insurance shall be primary insurance as it related to the City, its officials, employees, agents, and contractors. The City's insurance, if any, will only act as excess insurance and shall not contribute to Genfare's Commercial General Liability insurance.

12.3 Prior to undertaking any services under this Agreement Genfare, at no expense to the City shall furnish to the City a certificate of insurance and all original endorsements required herein.

12.4 Any waivers of any of the requirements above must be approved in advance in writing by the City's Risk Manager.

13. Miscellaneous.

13.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Texas and the federal laws of the United States applicable therein. The Parties submit to the exclusive jurisdiction of the courts of El Paso County, Texas for the resolution of any and all disputes relating to this Agreement or any of its terms.

13.2 Waiver. No party will be deemed to have waived the exercise of any right that it holds under this Agreement unless such waiver is made in writing. No waiver made with respect to any instance involving the exercise of any such right will be deemed to be a waiver with respect to any other instance involving the exercise of the right or with respect to any other such right.

13.3 Taxes. Fees stated in the Schedules do not include applicable taxes. Unless City is a tax exempt entity and provides Genfare with reasonable documentation demonstrating tax exempt status, City shall be responsible for the payment of all taxes.

13.4 Notice. Any notice under this Agreement shall be sufficiently given if given by: personal delivery; or registered or certified mail, postage prepaid, and mailed through a US post office; or reputable overnight courier.

In the case of Genfare addressed to:

Genfare
800 Arthur Avenue
Elk Grove Village, IL 60007
Attn: Contracts Department
Email: genfare.sales@spx.com
Phone: 847-593-8855

In the case of City addressed to:

City of El Paso Mass Transit Department (Sun Metro)
10151 Montana Avenue
El Paso, TX 79925
Attn: Mass Transit Director


or to any address as may be designated in writing by the parties in accordance with this provision. The date of receipt of any notice shall be deemed conclusively given (i) on the day it was received by personal delivery, (ii) at the beginning of business on the third (3rd) business day after it was mailed by registered mail or (iii) at the end of business on the next business day after it was mailed by reputable overnight courier.

13.5 Party Status. Neither Genfare nor City shall be deemed to be an agent or employee of the other and each is an independent entity and the legal relationship of any person performing services for Genfare or City shall be one solely between that person and Genfare or City.

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

EXECUTED THIS _____ DAY OF _____, 2024

APPROVED AS TO FORM:




Joyce Garcia
Assistant City Attorney

CITY OF EL PASO, TEXAS:

Dionne Mack
City Manager

APPROVED AS TO CONTENT:



K. Nicole Cote
Managing Director
Purchasing & Strategic Sourcing Department



Anthony R. Dekeyzer, Director
Sun Metro/Mass Transit Department

(Signatures continue on the following page)

GENFARE:

DocuSigned by:

Eric Kaled

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Eric Kaled

8/16/2024

**SCHEDULE A
PRICING AND SCOPE OF WORK**

1. Pricing

Software Support – September 11, 2024-September 10, 2025 – Invoiced prior to the start of the agreement.	\$59,716.00
Software Support – September 11, 2025-September 10, 2026 — Invoiced prior to the start of the agreement.	\$61,508.00
Software Support – September 11, 2026- September 10, 2027 – Invoiced prior to the start of the agreement.	\$63,353.00
Extension pricing – For each year after the Initial Term, the most recent pricing will increase by 3% at the beginning of each annual term.	TBD

2. Scope of Work

Support Levels	Gold
Portal Licenses	6 users
Access	Knowledge Base, Case Management, Assets and Training
Support Hours	24/7
Email and Phone Support	Included
Online Training	Up to 6 users
Software Updates	Included
Fare Structure*	1 per year
3-Day System Review**	Not Included
Managed Services	Not Included

*Fare structure changes require a minimum of six (6) weeks’ notice with the fare structure checklist completed and provided to Genfare’s team. Requests where Genfare receives less than six (6) weeks’ notice are subject to availability and are subject to an expedite fee.

3. Definitions

“Error” means any situation where the Services or the Software (a) does not operate in accordance with the Documentation; and/or (b) does not produce incorrect results; and/or (c) encounters any other problems or issues set out in the chart in Section 6.4 of this Exhibit.

“Resolution” or **“Resolve”** refers to actions taken to correct or provide a reasonable work-around for a reported issue by delivering new code or otherwise restoring the Services to a functional state. In the case of a work-around as a solution, Genfare shall continue working to more permanently resolve the Error until such Error is fully resolved.

“Standard Service Hours” are defined as Monday through Friday beginning at 8:00am and ending at 5:30pm Central Time, excluding federal, Customer, and Genfare holidays.

The Holiday List is updated annually and can be found on the Customer Portal within the knowledge base searchable by: Genfare Holidays.

“Telephone Support” means an oral responses, “Email Support” means an electronic response, and “Customer Portal” means an electronic response by Genfare's Customer Care Representatives and Technicians to questions regarding (a) the functions of the Services, (b) the steps for Customer to follow in operating the Services, (c) the proper format for the input of Customer's data or information, (d) steps to improve the efficiency of operation of the Services, (e) the interface of the Services, and any related system in Customer's current technical environment, (f) the interface of the Services and other software, (g) the Documentation relating to the Services, and/or (h) changes to the operation of the Services due to the provision of a maintenance and/or support service to Customer.

4. Software patches and updates

- (a) Genfare shall (i) develop, test, provide and/or implement all applicable “patches” or updates that become necessary to remedy the Errors in the Services or the Software and (ii) provide all version updates, software patches and error corrections necessary for the Services and the Software to maintain functionality.
- (b) All SaaS/Software updates and/or upgrades are based on the minimum hardware requirements needed for such update and/or upgrade.
- (c) Genfare strongly recommends the customer utilize a test environment for all software updates. Customer is agreeing to assume all risk and liability associated with accepting an update in their production environment.
- (d) Applicable Software updates will be made available to Customers as they are released. Customer's involvement may be required as Genfare may need access to certain Customer equipment or systems to effectuate updates.
- (e) For Errors in the Software, prior to implementing any patches or upgrades, Genfare shall first notify Customer's IT department in advance to schedule a time and date for the installation. Depending on the scope of the change, Customer may wish to back-up their Services prior to the software upgrade.
- (f) Genfare Support includes new features in modules subscribed to by the Customer, but does not include modules not subscribed to or new modules developed by Genfare.

5. Exceptions

5.1 The provisions of this Schedule A shall not apply to issues arising from:

- (a) the negligence of Customer, its customers, employees, or representatives,
- (b) any loss or damage resulting from a force majeure event (as set forth in Section 10 of this Agreement),
- (c) alteration, misuse, or abuse of the Services or Software,
- (d) use of the Services or Software contrary to the terms of this Agreement, or the instructions in any Documentation provided to the Customer,
- (e) the combination of the Services or Software with any third party hardware or software not expressly recommended or approved by Genfare,
- (f) any improper installation, operation or maintenance of the Services or Software by the Customer or a third party, including use of non-OEM parts in the Services and a Customer's failure to promptly install all patches, error corrections and updates provided by Genfare,

- (g) Customer's failure to report a known Error in a timely manner (no more than seven (7) business days from identification of such Error), or
- (h) a Genfare-supplied hardware failure (except to the extent that such hardware is under warranty).

5.2 Genfare will not provide Support or any associated services for the Customer's Oracle database environment. Oracle database adjustments, enhancements and/or recommendations will be communicated and passed to Customer for implementation. Genfare is not responsible for executing updates to maintenance for the Customer's network manager/Oracle database virtual environments, operating systems, database version, database allocation or similar Customer-provided resources.

6. Genfare and Customer Duties

Although Genfare shall be responsible for the Support, Customer shall be the Party that initially responds to all Errors. Genfare agrees to assist the Customer, as required and contracted by the Customer.

6.1 Genfare SHALL:

- (a) Provide remote support for the Services and Software, as required by this Agreement;
- (b) Respond to and Resolve any Errors in accordance with the chart in Section 7.4;
- (c) Perform the Support in a competent manner by qualified personnel;
- (d) Ensure that the Services or Software will operate and function with updates, upgrades, modifications or fixes, that are provided by Genfare, including without limitation, software patches or bug fixes;
- (e) Ensure that Genfare personnel or contractors are available to carry out the obligations of Genfare hereunder;
- (f) Provide contact information for Genfare personnel, available to receive notices of Errors under Section 9.2 of this Exhibit; and
- (g) Notify Customer of any identified indication of deliberate tampering or patterns of damage not consistent with normal usage.
- (h) Agree to abide by the City of El Paso Third Party Network and User Agreement prior to receiving access to equipment on the City of El Paso network.

Genfare SHALL NOT:

- (i) Be responsible for any malfunction of Equipment, servers, computer equipment, communications infrastructure, cabling, networking capability or any other element or Errors that are not attributable to the Services or Software; or
- (j) Pay any claim pertaining to work done by or on behalf of Customer for removing modules or Equipment to be shipped to Genfare for repair.

6.2 Customer SHALL:

- (a) Provide any information reasonably requested by Genfare to understand and describe an Error in order to allow Genfare to carry out its duties hereunder;
- (b) Provide any access to Equipment or systems as reasonably requested by Genfare to provide patches or updates to Software;
- (c) Perform all preventative maintenance of Software and Equipment according to the Documentation; if asked, Customer must provide a history of preventative maintenance and support of the system as part of the terms of keeping the full fare collection system in good working order.
- (d) Be entitled to use any third party to carry out all or part of the hardware maintenance of the Services, or to carry out such maintenance itself (Genfare

- shall have no obligation to correct Errors attributable to such third-party or self-performed maintenance under this Schedule A);
- (e) Make all requests for support through a Customer's representative, or Customer's representative's substitute(s) or designee(s);
 - (f) Provide appropriate personnel and support as is necessary for Genfare personnel to perform their duties, such as IT technical support, communications support, revenue service support and security personnel, flaggers and other proper personnel;
 - (g) Inform Genfare of all Customer operating and security policies established for the safe, secure and proper interaction with the Services;
 - (h) Be responsible for freight charges to Genfare, located in Elk Grove Village, IL, and all costs, expenses related thereto;
 - (i) Be responsible for any Genfare travel expenses for on-site support;
 - (j) Promptly notify Genfare when any change is made to the Services; and
 - (k) Promptly (no later than 10 business days after receipt) install in the Test environment all patches, error corrections and updates provided by Genfare.
 - (l) Customer shall provide the first level of support to its employees, staff, agents, contractors, riders or its Client's riders using Mobile Link.
 - (m) Customer shall reconcile all reports on a monthly basis and notify Genfare of any discrepancies within thirty (30) days. Genfare shall not be liable for any amounts reported as a discrepancy if Customer does not reconcile on a monthly basis.

7. Support Response Time and Availability

7.1 Response Time.

Genfare shall make available an adequate number of personnel to ensure that the requirements hereunder, including, without limitation, all response times as described under Section 7.4, are met.

7.2 Initial Response.

Genfare shall provide an initial response (the "Initial Response") in accordance with Section 7.4 below. As part of the Initial Response Genfare shall:

- (a) Request access to the Services or any part thereof, other than to the actual TVM itself, in order to determine the nature of the reported Error. Genfare access must be coordinated through the primary Customer representative or his/her designate. Access will only be provided upon request and will be terminated upon Resolution of the Error. During said access, Genfare agrees to observation by Customer staff.
- (b) Determine the cause of the Error and the solution to the Error.
- (c) Provide Customer with an estimate of the time required to correct the reported Error in accordance with Section 7.4 below.

7.3 Support Availability. Telephone Support shall be available 24/7 via Genfare's support telephone numbers. Customer Portal Support is available 24/7 for P2 and P3 Severity Issues. All P1 calls will to be directed to a live person based on the time of day listed below.

- (a) Main Hour Support: 847.871.1231 – 8:00am to 5:30pm CST
- (b) After Hour Support: 844.287.5234 – 5:31pm to 7:59am CST
- (c) Customer Portal: <https://genfare-community.force.com/customer/> or at www.genfare.com on the home page top right corner.

7.4 Support Response Time and Availability.

Error Priority Classification and Response

24/7 Support Breakdown				
Severity/Impact	Description	Acknowledgement Goal	Response Time Goal	Resolution Goal
P1	System Down – Critical production issue affecting ability to collect fares, including system unavailability, with no workaround available	Less than 30 minutes, 24/7	Less than 3 hours, 24/7	24 hours
P2	Major – Production issue impacting data integrity, loss of functionality and/or significantly degraded performance, issue is persistent with no workaround available	Less than 30 minutes, 24/7	Less than 4 hours, during main business hours	24 hours, during main business hours
P3	Minor – Any system issue that affects functionality or impacts performance, workaround may be possible but not sustainable	Less than 30 minutes, 24/7	Less than 24 hours, during main business hours	20 days

*Genfare will give the highest schedule priority to P1 issues, the second highest to P2 and third highest to P3. For issues self-reported by the Customer at a P1 or P2 issue, Genfare will review and if Genfare determines the issue is not P1 or P2, Genfare will reclassify the issue.

A comprehensive list of P1, P2, and P3 issue classifications can be found on the customer portal within the knowledge base searchable by: Severity: P1, P2, and P3

ALL RESPONSE TIMES CONTAINED IN THIS AGREEMENT ARE CALCULATED FROM THE TIME CITY MAKES AN INITIAL CALL FOR ERROR RESOLUTION. RESOLUTION TIMES ARE DEPENDENT UPON ACCESSIBILITY TO THE APPLICABLE SYSTEM, AS GRANTED BY THE CITY.

8. **Customer Assets**

Product	Quantity	Date(s)
Odyssey Farebox	116	2010-2021
Fast Fare Farebox	20	2023
Garage Data System	3	2009-2018
Network Manager	1	2014
Ticket Vending Machine	78	2009-2018
VIP	1	2010
Mobile Vault	8	2013

As a part of the support package, Genfare and Customer will review each of the products that make up Customer’s current fare collection solution. This will include Customer’s current software, hardware, and any integrations integral to Customer’s fare collection solution so these can be referenced within the Customer Portal.

9. Help Desk Services

Genfare will provide Help Desk Services to assist Customer with use of the Services and assistance in resolving problems encountered by Customer.

9.1 Help Desk Services

(a) Contacting the Help Desk

- (i) Customer Portal (all users must be registered to access the Customer Portal): <https://genfare-community.force.com/customer/>
- (ii) Email: genfare.customercare@spx.com
- (iii) Phone:
 - (A) Main Hour Support: 847.871.1231 – 8:00am to 5:30pm CST
 - (B) After Hour Support: 844.287.5234 – 5:31pm to 7:59am CST

(b) Ticketing Procedures

- (i) Each inquiry will be documented, assigned a ticket number and a confirmation email will be sent to the originator to confirm the request has been received.
- (ii) Each ticket will be assigned to a technical support engineer to follow up and resolve each issue.
- (iii) A technical support engineer will make contact according to the contact information within the ticket to work on the ticket, or to schedule a time to work on the ticket.

9.2 Communications protocol

- (a) In order to connect to the Customer's system and Resolve Errors in the Services or Software, Genfare must be able to reach the Customer Representative (or delegate), or Genfare will be unable to connect to the system to identify the root cause of, and subsequently Resolve, the reported Error.
- (b) Genfare may use the following tools to remotely access the Customer system:
 - (i) LogMeIn Rescue/Pro (default and preferred option)
 - (ii) TeamViewer
 - (iii) VPN (Cisco or Junos)

9.3 Customer Portal

- (a) Customer may purchase additional Customer Portal licenses for access to the customer portal and digital training, such licenses are available at a rate of \$900/per user per year. Additional licenses will be prorated at the time of addition and will be updated annually.
- (b) Customer Portal licenses are available for a single user and cannot be assigned to shared email addresses.
- (c) Customer may change Customer's users listed below once per year, upon applicable contract renewals, or upon an employee leaving the Customer's employ.
- (d) Genfare reserves the right to audit Customer's Customer Portal licenses and use of such licenses and may remove any registered Customer Portal user for inactivity. If Genfare removes a registered Customer Portal user for inactivity, Customer may not re-fill that Customer Portal License until the removed Customer Portal license would have been eligible to be changed as specified in 9.4(c) above.
- (e) Initial Customer Portal License Users

Up to 6 contacts are allowed for portal access. If you go over the set number of contacts, each additional customer is \$900 and is added to the base of the contract. Customers can be added anytime as we will pro-rate the license.

#	Name	Title	Email	Phone
1				
2				
3				
4				
5				
6				