

**SERVICE AGREEMENT
CITY OF FRESNO, CALIFORNIA**

THIS AGREEMENT is made and entered into effective the ___ day of _____ 2021, by and between the CITY OF FRESNO, a California municipal corporation (City), and Genfare, a division of SPX Corporation (Service Provider).

RECITALS

WHEREAS, City desires to obtain a Fare Collection System Maintenance provider; and

WHEREAS, Service Provider is engaged in the business of furnishing such services as Fare Collection Maintenance and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, Service Provider acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107; and

WHEREAS, this Agreement will be administered for City by its Director of Transportation (Administrator) or designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. Service Provider shall perform the services described in **Appendix D** in accordance with this Agreement, including all work incidental to, or necessary to perform, such services even though not specifically described in **Appendix D**.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above (Effective Date) and shall continue in full force and effect through _____ with provisions for four (1) year extensions, provided both parties mutually agree to such renewal in writing, subject to any earlier termination in accordance with this Agreement. Either party may elect not to renew by submitting written notice of such party's intent not to renew at least thirty (30) days prior to the expiration of the then-current term. The services of Service Provider as described in **Appendix D** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Appendix D**.

3. Compensation.

(a) Service Provider's sole compensation for performance of all services required or rendered pursuant to and in accordance with this Agreement shall be a total fee not to exceed \$2,235,432 paid on the basis of the rates set forth in the schedule of fees and expenses contained in the **Cost Proposal**. Such fee includes all expenses incurred by Service Provider in performance of the services.

(b) Detailed statements shall be rendered for services performed and will be payable in the normal course of City business. City shall not be obligated to reimburse any expense for which

Fare Collection System Maintenance, RFP No. 9563

it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.

(c) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to Service Provider's compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. Service Provider shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

4. Termination, Remedies, and Force Majeure.

(a) This Agreement shall terminate without any penalty of City to Service Provider upon the earlier of : (i) Service Provider's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against Service Provider; (ii) seven calendar days' prior written notice with or without cause by City to Service Provider; (iii) City's non-appropriation of funds sufficient to meet its obligations hereunder during any City fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b) The City reserves the right to terminate this Contract for any reason, upon sixty (60) days written notice to the Contractor. In the event of such termination, the Contractor shall be paid for satisfactory service performed to the date of termination

(c) Upon any termination or expiration of this Agreement, Service Provider shall (i) promptly stop all work hereunder; (ii) promptly cause any and all of its subcontractors to cease work; and (iii) return to City any and all unearned payments and all properties and materials in the possession of Service Provider that are owned by City. Subject to the terms of this Agreement, Service Provider shall be paid compensation for services performed in accordance with this Agreement up to the effective date of termination. Service Provider shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(d) In the event of termination due to failure of Service Provider to perform in accordance with the terms of this Agreement, City may withhold an amount that would otherwise be payable as an offset to, but not in excess of, City's damages caused by such failure. In no event shall any payment by City pursuant to this Agreement constitute a waiver by City of any breach of this Agreement which may then exist on the part of Service Provider, nor shall such payment impair or prejudice any remedy available to City with respect to the breach.

(e) Upon any breach of this Agreement by Service Provider, City may (i) exercise any right, remedy (in contract, law or equity), or privilege, except where expressly limited or excluded within this Agreement, which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover damages for the breach of the Agreement. If it is determined that City improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(f) Service Provider shall provide City with adequate written assurances of future performance, upon Administrator's request, in the event Service Provider fails to comply with any material terms or conditions of this Agreement.

(g) Service Provider shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of Service Provider and without its fault or negligence such

Fare Collection System Maintenance, RFP No. 9563

as, acts of God or the public enemy, acts of City in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Service Provider shall notify Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

(h) In the event of a termination for default, City shall give Service Provider written notice of such default and not less than thirty (30) days to cure such default. If Service Provider does not so cure, City shall be entitled to obtain replacement goods or services substantially similar and functionally equivalent to those to be purchased pursuant to this Agreement, and Service Provider's sole liability shall be to pay the reasonable excess costs incurred by City in reprocurring such goods or services.

5. Confidential Information and Ownership of Documents.

(a) Any reports, information, or other data prepared or assembled by Service Provider pursuant to this Agreement shall not be made available to any individual or organization by Service Provider without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, Service Provider shall not, without the prior written consent of City, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of City, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in City.

(b) Any and all writings and documents prepared by Service Provider pursuant to this Agreement and specifically for City are the property of City at the time of preparation and shall be turned over to City upon expiration or termination of the Agreement. Service Provider shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(c) If Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider shall cause each subcontractor to also comply with the requirements of this Section 5.

(d) During this Agreement, City will learn information that Service Provider regards as confidential or proprietary, including information regarding Service Provider's business. To the extent permitted by law, City will keep this information confidential, unless and until Service Provider consents to disclosure, or unless such information otherwise becomes generally available to the public through no fault of City.

(e) This Section 5 shall survive expiration or termination of this Agreement.

6. Level of Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as Service Provider represents to City that Service Provider and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said industry necessary to perform the services agreed to be done by it under this Agreement, City relies upon the skill of Service Provider and its subcontractors, if any, to do and perform such services in a skillful manner and Service Provider agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by City shall not operate as a release of Service Provider or any subcontractors from said industry and professional standards.

Fare Collection System Maintenance, RFP No. 9563

7. Indemnification. To the furthest extent allowed by law, Service Provider shall indemnify, hold harmless and defend City and each of its officers, officials, employees, and agents from any and all loss (including data loss), liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence or willful misconduct of Service Provider, its principals, officers, employees or agents in the performance of this Agreement. Service Provider's obligations under the preceding sentence shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the negligence or the willful misconduct of CITY or any of its officers, officials, employees, agents or volunteers.

If Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, and agents in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, Service Provider shall pay for and maintain in full force and effect all insurance as required in Appendix B, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City's Risk Manager or designee at any time and in its sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the limits specified herein.

(b) If at any time during the life of the Agreement or any extension, Service Provider or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Service Provider shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Service Provider of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Service Provider shall not be deemed to release or diminish the liability of Service Provider that arise out of, pertain to, or relate to the negligence or willful misconduct of Service Provider, its principals, officers, employees, or agents in the performance of this Agreement, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability for that which Service

Fare Collection System Maintenance, RFP No. 9563

Provider is legally liable for under Section 7 of this Agreement regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Service Provider. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the other liability of Service Provider, its principals, officers, agents, employees, or persons under the supervision of Service Provider, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

e) If Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with Service Provider and City prior to the commencement of any services by the subcontractor. Subcontractor/sub-consultant shall establish additional insured status for City, its officers, officials, employees, agents, and volunteers by using Insurance Service Office (ISO) Form CG 20 10 11 85 or both forms CG 20 10 10 01 and CG 20 37 10 01 or their equivalent by an executed manuscript company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

9. Conflict of Interest and Non-Solicitation.

(a) Prior to City's execution of this Agreement, Service Provider shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Appendix E**. During the term of this Agreement, Service Provider shall have the obligation and duty to immediately notify City in writing of any change to the information provided by Service Provider in such statement.

(b) Service Provider shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state, and local conflict of interest laws and regulations including, without limitation, California Government Code Sections 1090 et. seq., the California Political Reform Act (California Government Code §§ 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations §§18700 et. seq.). At any time, upon written request of City, Service Provider shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, Service Provider and the respective subcontractor(s) are in full compliance with all laws and regulations. Service Provider shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, Service Provider shall immediately notify City of these facts in writing.

(c) In performing the work or services to be provided hereunder, Service Provider shall not employ or retain the services of any person while such person either is employed by City or is a member of any City council, commission, board, committee, or similar City body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) Service Provider represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit, or procure this Agreement or any rights/benefits hereunder.

(e) Service Provider and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, Service Provider shall remain responsible for complying with Section 9(a), above.

Fare Collection System Maintenance, RFP No. 9563

(f) If Service Provider should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, Service Provider shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 9 shall survive expiration or termination of this Agreement.

10. Recycling Program. In the event Service Provider maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, Service Provider at its sole cost and expense shall:

- (i) Immediately establish and maintain a viable and ongoing recycling program, approved by City's Solid Waste Management Division, for each office and facility. Literature describing City recycling programs is available from City's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (ii) Immediately contact City's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (iii) Cooperate with and demonstrate to the satisfaction of City's Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

11. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of City within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Administrator or designee.

(b) Records of Service Provider's expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to City or its authorized representatives upon request, and after giving Service Provider reasonable notice, during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of Service Provider pertaining to the Project shall be available, upon written request and reasonable notice, for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to City until such action is resolved, or until the end of said time period whichever shall later occur. If Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by City, Service Provider shall have provided evidence to City that Service Provider is licensed to perform the services called for by this Agreement (or that no license is required). If Service Provider should subcontract all or any portion of the work or services to be performed under this Agreement, Service Provider shall require each subcontractor to provide evidence to City that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, Service Provider shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry,

Fare Collection System Maintenance, RFP No. 9563

physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, Service Provider agrees as follows:

(a) Service Provider will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) Service Provider will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Service Provider shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to Service Provider's employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Service Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) Service Provider will, in all solicitations or advertisements for employees placed by or on behalf of Service Provider in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) Service Provider will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of Service Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider shall cause each subcontractor to also comply with the requirements of this Section 12.

13. Independent Contractor.

(a) In the furnishing of the services provided for herein, Service Provider is acting solely as an independent contractor. Neither Service Provider, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venturer, partner, or associate of City for any purpose. City shall have no right to control or supervise or direct the manner or method by which Service Provider shall perform its work and functions. However, City shall retain the right to administer this Agreement so as to verify that Service Provider is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between Service Provider and City. Service Provider shall have no authority to bind City absent City's express written

Fare Collection System Maintenance, RFP No. 9563

consent. Except to the extent otherwise provided in this Agreement, Service Provider shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, Service Provider and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to City employees. Service Provider shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, Service Provider shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of Service Provider's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, Service Provider may be providing services to others unrelated to City or to this Agreement.

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. Binding. Subject to Section 16, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

16. Assignment.

(a) This Agreement is personal to Service Provider and there shall be no assignment by Service Provider of its rights or obligations under this Agreement without the prior written approval of the City Manager or designee. Any attempted assignment by Service Provider, its successors or assigns, shall be null and void unless approved in writing by the City Manager or designee.

(b) Service Provider hereby agrees not to assign the payment of any monies due Service Provider from City under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). City retains the right to pay any and all monies due Service Provider directly to Service Provider.

17. Compliance With Law. In providing the services required under this Agreement, Service Provider shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless

Fare Collection System Maintenance, RFP No. 9563

in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

20. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

21. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

22. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

23. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

24. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

25. The order of precedence of documents shall be: (1) Rules and Regulations of Federal Agencies relating to the source of funds for this project; (2) Supplemental Agreements, Change Orders, or Contract the one dated later having precedence over another dated earlier; (3) Special Conditions; (4) General Conditions; (5) Scope of Work.

Whenever any conflict appears in any portion of the Contract, it shall be resolved by application of the order precedence.

26. Cumulative Remedies. Except where limited or excluded under this Agreement, no remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. No Third Party Beneficiaries. The rights, interests, duties, and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

28. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and Service Provider.

Fare Collection System Maintenance, RFP No. 9563

29. Limitation of Liability. IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY NATURE. NEITHER PARTY'S AGGREGATE LIABILITY FOR ANY DAMAGES RESULTING FROM ITS PERFORMANCE OR FAILURE TO PERFORM HEREUNDER SHALL EXCEED the total fees paid by City in the twelve (12) month preceding the date on which the cause of action accrued, the limitation of liability contained herein shall not apply to Service Provider's indemnity obligations under Section 7 of the Agreement

30. Liquidated Damages. The total of all liquidated damages under this Agreement shall not exceed 5% of the annual maintenance costs paid by City to Service Provider during the year in which City demands liquidated damages. No liquidated damages shall be assessed until Service Provider has been provided written notice of City's intent to assess liquidated damages against Service Provider and Service Provider has been given at least sixty (60) days to cure. Cure for the purposes of liquidated damages will mean remediation or repair of the non-performing or alleged defect or submittal of the delayed documentation/deliverable. In the event City intends to assess liquidated damages, the parties will meet during the associated cure period to discuss the alleged defect or non-performance, diagnose the cause of the alleged defect or non-performance and reasonably cooperate to develop and implement plans and/or policies to prevent the alleged defect or non-performance from reoccurring; provided however, Service Provider will not be required to hire additional employees or contractors or provide additional services hours unless compensated by the City to prevent such reoccurrence. Promptly, after Service Provider cures, City will give written confirmation to Service Provider accepting the remediation, repair, or delivery of the alleged defect or non-performance and waive City's right to assess liquidated damages for such alleged defect or non-performance. No liquidated damages will apply if City terminates Service Provider's right to proceed. Liquidated damages shall not apply to the extent that Service Provider can reasonably demonstrate that Service Provider delays did not impact any project schedules of other projects performed in connection with (or concurrent with) the performance of the work under this Agreement, and did not cause any cost or delay impacts to City. Any demands for liquidated damages must be submitted to Service Provider within 90 calendar days after the date of delivery of the delayed item or service. Liquidated damages shall be City's sole and exclusive remedy for any Service Provider delay or nonperformance. Service Provider shall have no liability for any delays beyond its control.

32. Warranty. For a period of forty-five (45) days from the date of performance of services on all equipment being maintained by Service Provider, excluding fareboxes, and for a period ninety (90) from the date of performance of services on fareboxes by Service Provider pursuant to this Agreement, Service Provider warrants, to City, the services performed by Service Provider to be in accordance with the specifications of this Agreement. If within such period it shall be proven to Service Provider's reasonable satisfaction that the services are nonconforming, Service Provider will reperform the non-conforming services. This warranty shall not apply to (i) any loss or damage resulting from normal wear and tear or alteration, misuse, abuse or (ii) improper installation, operation or maintenance by City or a third party. THE FOREGOING WARRANTIES ARE IN LIEU OF, AND SERVICE PROVIDER 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 SERVICE PROVIDER'S ENTIRE AND EXCLUSIVE LIABILITY AND CITY'S SOLE AND EXCLUSIVE REMEDY, IN CONNECTION WITH THE SALE OR FURNISHING OF MATERIALS, THEIR DESIGN, SUITABILITY FOR USE, INSTALLATION, OPERATION OR OTHERWISE.

33. Intellectual Property. City and Service Provider acknowledge and agree that the work performed under this Agreement does not constitute experimental, developmental or research work.

Fare Collection System Maintenance, RFP No. 9563

Notwithstanding any other provision in this Agreement, Service Provider retains title to all intellectual property, patents, trademarks, know-how, copyrights, software, engineering and designs, models, production prints, drawings, work products, technical data, and other information and documents that relate to the goods and services sold to City. Unless specified by Service Provider in writing to the contrary, all such intellectual property, information and documents disclosed or delivered by Service Provider to City are to be deemed proprietary to Service Provider and shall be used by City solely for inspecting, installing, operating and maintaining the goods and services sold to City and not used by City for any other purpose.

34. Disputes. If any disputes arising in the performance of this Agreement are not resolved by mutual agreement of the parties, the decision of one party will not bind the other party without such other party's agreeing to such decision in writing.


Fare Collection System Maintenance, RFP No. 9563

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

Genfare, a division of SPX Corporation,
a Delaware Corporation

By: _____
Gregory A. Barfield
Director of Transportation

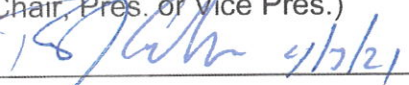
By:  _____

Name: Eric Koled 4/7/21

APPROVED AS TO FORM:
City Attorney's Office

Title: President
(If corporation or LLC., Board
Chair, Pres. or Vice Pres.)

By:  4/9/21
Deputy City Attorney

By:  4/12/21

Name: Ben Andrews

ATTEST:
YVONNE SPENCE
City Clerk, CRM MMC

Title: CFO
(If corporation or LLC., CFO,
Treasurer, Secretary or Assistant
Secretary)

By: _____
Deputy

Addresses:

CITY:
City of Fresno
Attention:
2223 "G" Street
Fresno, CA 93706
Phone: (559) 621-####
FAX: (559) [#]

CONTRACTOR: Genfare, a division of
SPX Corporation
Attention: Daria van Engelen
Street, 800 Arthur Avenue
Elk Grove Village, IL 60007
Phone: 847- 871-1102
FAX:

DIVISION III – GENERAL CONDITIONS

Summary:

Division III describes the framework for the entire relationship between the parties in connection to a project.

1. **DEFINITIONS:** Wherever used in the Specifications, including the Instructions to Proposers, the proposal, or any of the Contract Documents, the following words shall have the meaning herein given, unless the context requires a different meaning.

- (a) "City" and "City of Fresno" shall each mean the City of Fresno, CA, unless otherwise indicated.
- (b) "City Manager" shall mean the City Manager of the City of Fresno.
- (c) "Contract" and "Contract Documents" shall each mean and refer to these Specifications, including the Instructions to Proposers, the proposal and any addenda thereto, the Contract and all City of Fresno specifications, and other papers and documents incorporated by reference into or otherwise referred to in any of the foregoing documents, whether or not attached thereto.
- (d) "Contractor" shall mean each person or entity awarded a Contract hereunder and named or to be named in the Contract with the City of Fresno to furnish the goods or services, or both, to be furnished under the Contract.
- (e) "Council" and "City Council" shall each mean the Council of the City of Fresno.
- (f) "Proposer" shall mean each person or entity submitting a proposal, whether or not such person or entity shall become a Contractor by virtue of award of a Contract by the City.
- (g) "Purchasing Manager" shall mean the Purchasing Manager of the City of Fresno.
- (h) "Specifications" shall mean the Contract Documents.

2. **DELIVERY OF SERVICES:** If Contractor is delayed providing services by (i) any acts or omissions of City or its employees, or others acting under authority of City by contract or otherwise, (ii) acts of God which Contractor could not reasonably have foreseen and provided for, (iii) illegal strikes, boycotts or like illegal obstructive action by employee or labor organizations, or (iv) any illegal general lockouts or other defensive action by employers, whether general or by organizations of employers; Contractor shall have no claim for damages against City for any such cause of delay, but shall be entitled to an extension of time as will reasonably compensate Contractor for actual loss of time occasioned thereby. Contractor may apply to the City Manager for such extension. However, no such extension of time shall be granted unless Contractor shall have notified the Purchasing Manager, in writing, within one week after the commencement or occurrence of the condition or event which is expected to cause a delay in delivery, of such condition or event and the actual or estimated number of days of delay anticipated on account thereof. The decision of the City Manager as to the number of additional days,

if any, to be allowed for completion of delivery on account of such condition or event, will be given in writing to Contractor

3. RESERVED

4. RESERVED

5. CONTRACT DOCUMENTS: Upon award of the Contract, the Contractor shall execute and submit all required documents to the Purchasing Manager, in a form acceptable to the City of Fresno within fifteen (15) calendar days from the date of Notice of Award. Failure to provide said documents within the designated period shall be sufficient cause to forfeit the proposal deposit and initiate a City departmental recommendation for City to award the Contract to another Proposer.

6. RESERVED

7. FEDERAL IMMIGRATION REFORM AND CONTROL ACT OF 1986: As a material part of any contract for a City of Fresno project, every Contractor who has employees who will work on a City of Fresno project, is required to comply with all of the provisions of the Federal Immigration Reform and Control Act of 1986 (P.L. 99-603, 100 Stat. 3359). This requirement includes compliance with all of the employee documentation provisions. Furthermore, the Contractor will make any employee documentation required to comply with the Act immediately available to the City upon its request for each individual employee working on a City of Fresno project.

8. RESERVED

9. RESERVED

10. CONTRACT CHANGES: No changes or modifications to the Contract shall be made unless agreed to and signed by both parties. No prior, current or post award verbal agreement or agreements with any officer, agent, or employee of the City shall affect or modify any terms or obligations of these Specifications or any Contract resulting from this procurement.

11. AMENDMENTS: The City of Fresno reserves the right to add, modify, or delete items from the Contract including Special Conditions or Scope of Work. Any changes shall be made only by means of a formal amendment signed by both the City and Contractor.

12. RESERVED

13. TERMINATION BY CITY FOR NON-APPROPRIATION: In the event of non-appropriation relating to the Contract, City shall have the right to terminate the Contract at the end of any fiscal year of City, in the manner and subject to the terms specified in this paragraph. City shall endeavor to give written notice of such termination not less

than sixty (60) days prior to the end of such fiscal year, and shall notify Contractor of any anticipated termination. For purposes of this paragraph, "fiscal year" shall mean the twelve month fiscal period of City which commences on July 1 in every year and ends on the following June 30. For purposes of this paragraph, "non-appropriation" shall mean the failure of the City or City's governing body to appropriate money for any fiscal year of City sufficient for the continued performance of the Contract by City.

14. RESERVED

15. RESERVED

16. RESERVED

17. SEVERABILITY: The provisions of the Contract are severable. The invalidity, or unenforceability of any one provision in the Contract shall not affect the other provisions.

18. INTERPRETATION: The Contractor acknowledges that the Contract in its final form is the result of the combined efforts of the parties and that, should any provision of the Contract be found to be ambiguous in any way, such ambiguity shall not be resolved by construing the Contract in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

19. RESERVED

20. EXHIBITS: Each exhibit and attachment referenced in the Contract is, by the reference, incorporated into and made a part of the Contract.

21. RESERVED

22. RECYCLING: RESERVED.

23. RESERVED

24. BINDING: Subject to Section 15 of these General Conditions, once this Contract is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

25. RESERVED

26. RESERVED

27. RESERVED

28. RESERVED

29. HEADINGS: The section headings in this Contract are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Contract

30. INCORPORATED APPENDICES: The following documents are appended to this Agreement and are incorporated by reference:

- Appendix A – Special Conditions
- Appendix B – Insurance Requirements
- Appendix C – Federal Conditions
- Appendix D – Statement of Work
- Appendix E – Disclosure of Conflict of Interest

APPENDICES

Table of Contents

Appendix A – Special Conditions

Appendix B – Insurance Requirements

Appendix C – Federal Conditions

Appendix D – Statement of Work

Appendix E – Disclosure of Conflict of Interest

APPENDIX A

SPECIAL CONDITIONS

Summary:

Appendix A provides clarification, specificity, and added content in addition to the General Conditions that are to be followed during the life of a contract.

Appendix A – Special Conditions

1. TERM OF CONTRACT: This Contract shall be in effect for an initial term of three (3) years from the date of the Notice to Proceed. The Contract may be extended, with the mutual written consent of both parties, for up to two (2) additional one (1) year terms with price increases/decreases in accordance with the provisions set forth herein, all other terms and conditions specified herein remaining the same. If either the City or Contractor elects not to extend the Contract, or upon expiration of the final one-year extension term, the Contractor shall aid the City in continuing, uninterrupted, the requirements of the Contract, by continuing to perform on a temporary basis, when specifically requested to do so in writing by the Purchasing Manager, on a month to month basis not to exceed twelve months. Such continuance shall be subject to price increases/decreases in accordance with the provisions set forth herein, and all other terms and conditions remaining the same as if the Contract had been extended for such a temporary period by an amendment hereto.

2. PRICING CONDITIONS Pricing for the duration of the contract, including option years, shall be fixed per Service Providers proposal schedule and as negotiated in the final proposal price with five service technicians. Sixty days prior to the anniversary date of the Contract, the City may elect to exercise add alternates 3, 4, 11, and/or 12 provided in the cost proposal with no change in price.

3. PAYMENT: The Proposer shall invoice the City of Fresno monthly for services provided in the prior 30 days in order to initiate the payment process. Invoices shall conspicuously display the City's purchase order number and shall be submitted to:

ATTENTION:

City of Fresno
Department of Transportation/FAX
Accounts Payable
2223 G. Street
Fresno, CA 93706

Contractor hereby agrees not to assign the payment of any monies due Contractor from City under the terms of this Contract to any other individual(s), corporation(s) or entity(ies). City retains the right to pay any and all monies due Contractor directly to Contractor.

4. COMPENSATION ESCALATION DUE TO CHANGES IN MINIMUM WAGE: In the event Contractor is required by the Federal Government or the State of California to increase the minimum wage, then the minimum wage and salary rates paid to the Contractor employees shall be subject to negotiation between Contractor and the City of Fresno. Any wage rate increase will only apply to those maintenance employees that are currently at the minimum wage rate. In the event that negotiated changes in wages and salaries cannot be agreed upon by the City of Fresno and Contractor, then the Contract may be terminated by City in accordance with the General Conditions of this Contract.

If Contractor and the City of Fresno agree to a negotiated change in wages, Contractor shall increase the minimum hourly wages paid to its employees performing services for only those positions that are affected.

6. CHANGES TO CONTRACT DOCUMENTS: The City of Fresno may, from time to time, without invalidating the Contract, modify the Contract; by adding, deleting or changing sections of the Contract; by adding deleting or changing usage or space; by adding, deleting or changing Routine Work or Projects; by adding deleting or changing Special Conditions; or by adding, deleting or changing Specifications. All such changes shall be ordered by means of a Written Change Order. Any changes in the compensation to Contractor resulting from such Change Orders shall be agreed upon by the City of Fresno and the Contractor. Additionally, the parties may modify the Contract by written amendment.

7. NOTICE TO PROCEED: Contractor shall not commence any work nor shall he/she enter the Premises until he/she has received a written Notice to Proceed.

8. CONTRACT ADMINISTRATOR: The City of Fresno designates the Director, Department of Transportation/FAX, as Contract Administrator, who shall act on behalf of the City with respect to all aspects of this Contract. The City shall promptly notify Contractor in writing if the Contract Administrator is changed.

The Contract Administrator and Service Providers will reasonably cooperate to resolve any claims or disputes. Contractor shall strictly and promptly follow the instructions of the Contract Administrator consistent with resolution of claims or disputes. The Contract Administrator shall exercise any discretionary authority in a reasonable manner.

Contractor shall provide the Contract Administrator free and easy access to inspect and measure the manner and progress of the Services at all times and to inspect the types and quantities of tools, equipment, chemicals, supplies and all other materials used in the performance of the Services. It is agreed that such inspection and measurement is not for the purpose of controlling or directing the Services or employees of the Contractor, but to assure that all Services meet the requirements of the Contract.

The Contract Administrator shall decide any and all questions which may arise as to conformance of and acceptability of tools, equipment, chemicals, supplies and all other materials and methods and procedures used in the performance of the Services with regard to the requirements included herein. The Contract Administrator shall decide all questions which may arise as to the interpretation of the Contract Documents relative to the Services and the fulfillment of the Contract on the part of Contractor.

The Contract Administrator will determine the amount and quality of the several kinds of Services performed and materials furnished which are to be paid for under this Contract.

The Contract Administrator shall have the authority to require Contractor to make temporary changes in the assignment of routine work, tasks and task frequencies. Such temporary changes shall not affect the amount of payment to Contractor.

9. CONTRACT COORDINATOR: The Contract Administrator shall designate the Maintenance Manager, Department of Transportation/FAX as Contract Coordinator to monitor and inspect the performance and progress of the Services provided under this Contract.

The Contract Coordinator has no authority to alter, waive or revoke any provision of this Contract. Any failure of Contractor to comply with the provisions of the Contract may be called to the attention of the Contract Administrator by the Contract Coordinator.

The Contract Coordinator shall have the authority to suspend the performance of the Services and compensation to Contractor until the Contract Administrator can decide any questions at issue.

The Contract Coordinator shall perform frequent inspections of each work assignment. The emphasis during these inspections should concentrate on the existence of those factors which significantly affect the probability of the custodial assignment being performed as specified.

The Contract Coordinator shall coordinate the activities of Contractor and the occupants to minimize any interference or delay to either party. The Coordinator shall submit suggestions regarding revisions of the specifications to the Contract Administrator. The Coordinator shall receive and respond, with clerical assistance, to requests, complaints, and suggestions concerning the performance of the work directed under the Contract.

The Contract Coordinator shall in no instance have the authority to act as foreman, or supervisor for Contractor, and shall not interfere with the Contractor in the supervision or direction of Contractor's employees.

Any advice provided to Contractor by the Contract Coordinator shall in no way be construed as binding upon the City of Fresno, or release the Contractor from fulfilling the provisions of the Contract.

10. PERFORMANCE OF THE SERVICES: Contractor shall be responsible for the complete and timely performance of all the Services under this Contract and for all manner and type of tools, chemicals, equipment, supplies and materials of every description required to successfully perform all Services under this Contract. Contractor shall focus efforts on corrective/reactionary maintenance first, and primary preventative maintenance second.

11. NON-PERFORMANCE OF SERVICES: Services shall be considered not to have been performed when, in the judgment of the Contract Administrator, any one or more of, but not limited to, the following conditions exist:

- a. Failure to meet established maintenance, service and inspection schedules
- b. Adherence to established response times
- c. Repetitive failures occur related to the same component which is either a directly or indirectly result of poor workmanship or error.
- d. Failure to provide reports per schedule and on time
- e. Failure to report conditions identified during inspections, service, maintenance or repairs that results in failure
- f. Negligent behavior on the part of contractor that results in component failure

12. LIQUIDATED DAMAGES FOR NON-PERFORMANCE OF SERVICES:

Liquidated Damages are structured to be a last resort measure for system deliverables that fail or continue to fail, or are defined by FAX as being non-compliant to the specifications defined in this document. FAX will work with the Contractor to identify any such areas and come to resolution pursuant to an Action Plan to be developed within five (5) days. Any reported equipment failure or non-compliant attribute of this specification after a period of five (5) consecutive days after the Action Plan has been approved by FAX will be assessed by FAX at its discretion for the damages as listed below and preceded by a declaration of breach, and actual damages arising from the breach suffered by the FAX after the declaration of breach, as follows:

- a. Two hundred fifty dollars (\$250.00) maximum penalty per day per defined non-performance system failure or a portion thereof, until the problem is resolved.
- b. In the event FAX staff or a contracted sub-contractor is called upon to address or mitigate a system failure not resolved by the Contractor/Vendor within 48 hours, a rate of one hundred dollars (\$100) per hour will be assessed for such downtime.
- c. If the such problems continue to be unresolved after the specified cure period, FAX has the option at their discretion to assess the Contractor/Vendors an additional two-hundred dollars (\$200.00) per day penalty.

APPENDIX B

INSURANCE REQUIREMENTS

Summary:

Appendix B describes type and coverage amount required of a successful bidder.

INSURANCE REQUIREMENTS

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for “bodily injury,” “property damage” and “personal and advertising injury” with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, indemnity obligations under the Agreement) with limits of liability not less than those set forth under “Minimum Limits of Insurance.”
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.
4. Professional Liability (Errors and Omissions) and Cyber Liability (Privacy and Data breach) insurance appropriate to SERVICE PROVIDER’S profession.

MINIMUM LIMITS OF INSURANCE

SERVICE PROVIDER, or any party the SERVICE PROVIDER subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**

- (i) \$2,000,000 per occurrence for bodily injury and property damage;
- (ii) \$2,000,000 per occurrence for personal and advertising injury;
- (iii) \$4,000,000 aggregate for products and completed operations; and,
- (iv) \$4,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**

\$1,000,000 per accident for bodily injury and property damage.

3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.

4. **EMPLOYER'S LIABILITY:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

5. **TECHNOLOGY PROFESSIONAL LIABILITY (Errors and Omissions):**

- (i) \$1,000,000 per claim/occurrence; and,
- (ii) \$2,000,000 policy aggregate.

UMBRELLA OR EXCESS INSURANCE

In the event SERVICE PROVIDER purchases or uses an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies) and

such Umbrella or Excess insurance policy(ies) will only apply to the extent necessary to meet the succinct limits specified in this Appendix B. In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

SERVICE PROVIDER shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and SERVICE PROVIDER shall also be responsible for payment of any self-insured retentions. Any self-insured retentions must be declared to on the Certificate of Insurance. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. SERVICE PROVIDER shall establish additional insured status for the City and for all ongoing operations by use of ISO Form CG 20 10 11 85 or CG 20 10 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. The specified limits and coverage of policies agreed upon herein shall be available to the Additional Insured.
3. For any claims relating to this Agreement, SERVICE PROVIDER'S Commercial General Liability insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of SERVICE PROVIDER'S insurance and shall not contribute with it. SERVICE PROVIDER shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: SERVICE PROVIDER and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

The Technology Professional Liability shall cover claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information (including credit monitoring costs), alteration of electronic information, extortion and network security. Such coverage is required for claims involving any professional services for which SERVICE PROVIDER is engaged with the City for such length of time as necessary to cover any and all claims

If the Technology Professional Liability policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by SERVICE PROVIDER.
2. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a three (3) year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by SERVICE PROVIDER, SERVICE PROVIDER must purchase "extended reporting" coverage for a minimum of three (3) years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to CITY for review.
5. These requirements shall survive expiration or termination of the Agreement.

Coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. SERVICE PROVIDER is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, SERVICE PROVIDER shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, SERVICE PROVIDER shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy as soon as available.

Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

VERIFICATION OF COVERAGE

SERVICE PROVIDER shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. When ordered to do so by a court of competent jurisdiction, SERVICE PROVIDER shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all relevant endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

SUBCONTRACTORS - If SERVICE PROVIDER subcontracts any or all of the services to be performed under this Agreement, SERVICE PROVIDER shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, SERVICE PROVIDER will be solely responsible for ensuring that it's subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

Proposers who plan to participate repeatedly in City bids are encouraged to submit annual insurance certificates at time of bid which will remain on file in the Purchasing Unit.

APPENDIX C

FEDERAL CONDITIONS

Summary:

*Appendix C describes the federal conditions required of
Federal Transit Administration (FTA) funded projects.*

**FEDERAL CONDITIONS
GREATER THAN \$250,000**

This contract/purchase agreement is subject to a financial assistance contract between the City of Fresno and the Federal Transit Administration, which requires that this contract/agreement contain the following clauses:

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

(1) The City and contractor/vendor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the purchaser, contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

(1) The contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. sections 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the contractor to the extent the Federal Government deems appropriate.

(2) The contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. section 1001 and 49 U.S.C. section 5323(l) on the contractor, to the extent the Federal Government deems appropriate.

(3) The contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

ACCESS TO RECORDS AND REPORTS

(1) Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

(2) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. section 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

(3) Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

(4) Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

FEDERAL CHANGES

(1) Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the [Master Agreement](#) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

TERMINATION

(1) Termination for Convenience: The City of Fresno may terminate this contract, in whole or in part, at any time by written notice to the contractor. The contractor shall be paid its costs, including contract close out costs, and profit on work performed up to the time of termination. The contractor shall promptly submit its termination claim to be paid by contractor. If the contractor has any property in its possession belonging to the City of Fresno, the contractor will account for the same, and dispose of it in the manner the City of Fresno directs.

(2) Termination for Default: If the contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the contractor fails to perform in the manner called for in the contract or if the contractor fails to comply with any other provisions of the contract, the City of Fresno may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

(3) If it is later determined by the City of Fresno that the contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of, or are beyond the control of the contractor, the City of Fresno, after setting up a new delivery or performance schedule, may allow the contractor to continue work, or treat the termination as a termination for convenience.

CIVIL RIGHTS

The City is an Equal Opportunity Employer. As such, the City agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the City agrees to comply with the requirements of 49 U.S.C. section 5323(h)(3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

(1) Nondiscrimination – In accordance with Federal transit law at 49 U.S.C. section 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying contract:

(a) **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. section 2000e et seq., and Federal transit laws at 49 U.S.C. section 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. section 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. section 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity).

Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) **Age** - In accordance with the Age Discrimination in Employment Act, 29 U.S.C. sections 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. sections 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, and Federal transit law at 49 U.S.C. section 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) **Disabilities** - In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. sections 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. sections 4151 et seq., and Federal transit law at 49 U.S.C. section 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The contractor also agrees to include these requirements in each subcontract financed whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

(1) **Policy:** It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 C.F.R. Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with Federal funds under this agreement. Consequently, the DBE requirements of 49 C.F.R. Part 26 applies to this agreement.

(2) **DBE Obligation:** The recipient or its contractor agrees to ensure that disadvantaged business enterprises as defined in 49 C.F.R. Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts."

(3) This Contract is subject to the requirements of Title 49, Code of Federal Regulations,

Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 13%. A separate contract goal has not been established for this procurement.

INCORPORATION OF FTA 4220.1F TERMS

(1) The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Fresno request, which would cause the City of Fresno to be in violation of the FTA terms and conditions.

(2) Flow Down – The incorporation of FTA terms has unlimited flow down.

SUSPENSION AND DEBARMENT

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government Wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City. If it is later determined by the City that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension

and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C, as supplemented by 2 C.F.R. Part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

(1) The validity of this Agreement and of any of its terms and provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of California. In the event of litigation between the two parties, proper venue shall be laid in a court of competent jurisdiction in the County of Fresno, State of California.

(2) Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s Maintenance Manager. This decision shall be final and conclusive unless with ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Maintenance Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Maintenance Manager shall be binding upon the contractor and the Contractor shall abide by the decision.

(3) Pending final resolution of a dispute in hereunder, the Contractor shall proceed diligently with the performance of this Agreement and in accordance with the City's decision.

LOBBYING

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(3) The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

The certificate titled *Non Lobbying Certification* must be completed and returned with your proposal. This certificate is located behind the form page 14.

CLEAN AIR

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. sections 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

CLEAN WATER

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. sections 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

CARGO PREFERENCE REQUIREMENTS

Use of United States-Flag Vessels. The contractor agrees:

(1) To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

Appendix C – Federal Conditions

(2) To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington D.C. 20590 and the FTA recipient (through the contractor in the case of a subcontractor’s bill-of lading).

(3) To include these requirements in all subcontracts issued pursuant to the contract when the subcontract may involve the transport of equipment, materials, or commodities by ocean vessel.

FLY AMERICA

Fly America Requirements:

(1) Definitions. As used in this clause- “International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. “United States” means the 50 States, the District of Columbia, and outlying areas. “U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(2) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(3) If available, the contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

(4) In the event that the contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403.

Stated

Reason(s): _____

(5) The contractor shall include the substance of this clause, including this paragraph, in each subcontract or purchase under this contract that may involve international air transportation.

CONTRACT WORK HOURS AND SAFETY STANDARDS FOR AWARDS NOT INVOLVING CONSTRUCTION

(1) The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. Section 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. Section 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

(2) The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(3) Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

(4) The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

ENERGY CONSERVATION

(1) The contractor agrees to comply with mandatory standards and policies relating to

energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

RECYCLED PRODUCTS

(1) The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. section 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. Part 247.

ADA ACCESS

(1) In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. sections 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. section 4151 et seq., and Federal transit law at 49 U.S.C. section 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

SAFE OPERATION OF MOTOR VEHICLES

(1) *Seat Belt Use* - The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or City.

(2) *Distracted Driver* - The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

PROMPT PAYMENT

(1) The Prime Contractor shall pay any Subcontractor for work that has been satisfactorily performed no later than thirty (30) days from the date of the Prime Contractor’s receipt of each payment made by the City of Fresno. Additionally, within thirty (30) days of satisfactory completion of all work required of the Subcontractor, the Prime Contractor shall release any retainage payments withheld to the Subcontractor.

FTA PROTEST NOTIFICATION

A protestant must exhaust all City of Fresno Procurement administrative procedures and remedies before pursuing a protest with the FTA.

(1) Any and all protests shall be in writing and shall be filed with the Purchasing Manager with the City of Fresno. A protest relating to the process for determining the most responsive and responsible contractor shall be filed within five (5) calendar days after the protestor knows or should have known the basis of the determination. The Contract Officer shall respond to a protest within fourteen (14) calendar days after the receipt of the protest. The Purchasing Manager may grant the Contract Officer an extension for the response if warranted. A request for reconsideration of any and all determinations by the Contract Officer shall be filed with the Purchasing Manager within seven (7) calendar days after the receipt of the determination.

(2) A protest shall include:

- (a) The name, address, and telephone number, including FAX number if available, of the protestor;
- (b) The signature of the protestor or authorized representative;
- (c) Identification of the contract/solicitation;
- (d) A detailed statement of the legal and/or factual grounds of protest including copies and/or citations of relevant documents, and;
- (e) The form of relief requested.

(3) If any of the above information is omitted or incomplete, then the Protestor shall be notified, in writing, within two (2) calendar days after that determination, and the Protestor shall have two (2) calendar days in which to remedy the specified problem.

(4) The City will not make award prior to the resolution of a protest, or open proposals prior to resolution of a protest filed before proposal opening unless the Purchasing Manager determines in writing that it is in the best interests of the City or in keeping with Item 7 of this procedure to do otherwise. Potential contractors will be advised of a pending protest if the protest is filed before award.

(5) The Purchasing Manager may allow for an informal conference on the merits of a protest with all interested parties allowed to attend. Interested parties include all bidding contractors, and may also include a subcontractor or supplier provided they have a substantial economic interest in a portion of the IFB or RFP.

Fare Collection System Maintenance, RFP No. 9563
Appendix C – Federal Conditions

(6) The Purchasing Manager shall respond "in writing", in detail, to each substantial issue raised in the protest. The Purchasing Manager has the sole authority to make determinations for the City, and a determination shall be considered final when it is labeled as such. A request for reconsideration will be allowed by the Purchasing Manager if he determines that data has become available that was not previously known, or that there has been an error of law or regulation.

(7) The City may proceed with procurement when a protest is pending if the City determines that:

- (a) The items to be procured are urgently required;
- (b) Delivery or performance will be unduly delayed by failure to make the award promptly; or
- (c) Failure to make award will otherwise cause undue harm to the grantee for the Federal Government.

(8) FTA will only entertain a protest that alleges:

- (a) The City failed to have or to adhere to its protest procedures, or failed to review a complaint or protest; or
- (b) Violations of Federal law or regulation.

(9) A protest to FTA must be filed in accordance with FTA Circular 4220.1F, available from the Contract Officer. Specifically, protestors shall file a protest with FTA Region 9 or FTA Headquarters Office no later than five (5) days after a final decision is rendered under the City's protest procedure. In instances where the protestor alleges that the City failed to make a final determination on the protest, protestors shall file a protest with FTA not later than five (5) calendar days after the protestor knew or should have known of the grantee's failure to render a final determination on the protest.

A protest filed with FTA shall:

- (a) Include the name and address of the protestor.
- (b) Identify the grantee, project number, and the number of the contract solicitation.
- (c) Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to have or adhere to protest procedures, failure to review a complaint or protest; or Violation of Federal law or regulation.

Include a copy of the local protest filed with the grantee and a copy of the grantee's decision, if any.

APPENDIX D

STATEMENT OF WORK

Summary:

Appendix D is a narrative description of the project's work requirements.

STATEMENT OF WORK

Introduction and Background

Fresno is located in the San Joaquin Valley of California mid-way between San Francisco and Los Angeles. As the largest mass public transportation provider in the region, Fresno Area Express (FAX) serves 299 square miles in the Fresno-Clovis Metropolitan Area (FCMA).

FAX operates scheduled service throughout the FCMA on 18 routes, seven days per week. Service hours generally run from 5:30 a.m. until 12:00 a.m. weekdays and from 6:30 a.m. until 12:00 a.m. on weekends. FAX operates 114 fixed route buses and 51 paratransit cutaway vehicles.

In February 2018, FAX implemented its first Bus Rapid Transit (BRT) service with 52 bus shelters and two transit centers. Passengers may either purchase bus fares at ticketing vending machines located along the BRT route or fare boxes located in each bus. In late 2020, FAX plans to launch smartcard technology and mobile ticketing platforms as additional options for our riders to purchase fares.

Purpose:

The purpose of this RFP is to contract with a service provider to maintain all ticketing vending machine (TVM), fare collection and related equipment manufactured and sold by Genfare SPX for the Department of Transportation Fresno Area Express (FAX).

General Requirements

1. Equipment

- a. The proposer recognizes that this service contract includes all equipment manufactured by Genfare SPX as utilized by FAX, including contracted services at the Handyride Division. A brief summary of the major equipment utilized by FAX includes, but not limited to following:
 - i. TVM Model Vendstar 4, including Bezel8 credit card equipment.
 1. (53) TVMs in service to the public
 2. (1) TVM test bench
 3. (2) TVM spares
 - ii. Odyssey fare boxes and associated equipment
 1. (114) in service
 2. Approximately (4) spares
 - iii. Various fare devices such as fast fare-e (FFE) in paratransit and fixed route vehicles
 - iv. Various hand held inspection devices (HTID)

Appendix D – Statement of Work

- v. (3) Farebox collection probes
 - vi. (2) Farebox collection vaults
 - vii. Various back of house equipment/servers, including fare collection data and software.
 - viii. Various smartcard contactless payment equipment
 - ix. Credit card processing (Bezel8) equipment, including DSS/PCI certification.
 - x. Various printer encoder machines (PEM)
 - xi. Various fare validators
- b. Should Proposer be unable to provide service and support for the items included in 1.a. above, this shall be clearly noted in the proposal and shall be evaluated by the committee, and shall not disqualify the proposer.

2. Service Requirements

- a. Proposer shall submit a maintenance plan with their proposal that adequately describes the appropriate maintenance requirements for the equipment (adjusted for environmental, operating and weather conditions consistent in Fresno, California)
- i. Repair
 - ii. PMs
 - iii. Diagnostics
 - iv. Cleaning
 - v. Low voltage work.
 - vi. 120v troubleshooting
 - vii. Firmware updates/patches for the fareboxes
 - viii. Equipment programming
 - ix. Software upgrades for fareboxes
 - x. Network security patches internal to equipment
 - xi. Transaction compliance
 - xii. **Track inventory of TVM media**
 - xiii. **Refill TVM media**
- b. Should Proposer be unable to provide service and support for the items included in 2.a. above, this shall be clearly noted in the proposal and shall be evaluated by the committee, and shall not disqualify the proposer.
- c. The proposer shall provide to FAX recommended spare parts to be stocked and purchased by FAX, including establishing recommended reorder levels. This Agreement does not include the purchase of parts.
- d. The proposer recognizes that the number of equipment to be maintained may be adjusted by FAX through the deployment of additional vehicles, change in public transportation services, additional spares or added

convenience to riders. Increases in the equipment maintained shall not be a valid justification for the proposer to request a contract modification and shall be performed at no additional cost to FAX.

- e. Proposer shall be responsible for setting up, submitting, tracking and shipping parts, (including shipping costs) back to the manufacture for warranty return (RMA).
- f. Proposer shall provide their own work order and resource management system to track work, parts consumed, resources utilized. Reports shall be provided to FAX upon request.
- g. Removal and installation of fare boxes in vehicles, either replacements or purchased new from the manufacturer.
- h. Removal and installation of TVMs in the field damaged beyond repair through vehicle collisions, etc. The proposer shall be responsible for hauling, delivering, offloading, installation and commissioning. FAX shall be responsible for providing traffic control, permit fees, and coordination with other City Departments if required to perform the work. Due to the unique nature of this work, this requirement has been included in Bid item #2 on a per each basis and billed for accordingly.
- i. **Proposer shall be responsible for changing and/or refilling TVM media. Additionally, proposer shall be responsible for keeping track of media inventory quantities and advise FAX when additional media should be re-ordered.**

3. Level of Service Requirements

- a. Service resources will be provided by the Proposer as required to maintain equipment in service at time of the RFP.
- b. Service hours
 - i. Proposer shall provide service from 5:00 a.m. to 7:00 p.m. weekdays.
 - ii. Proposer shall provide service from 8:00 a.m. to 5:00 p.m. on Sundays and holidays. Service is required on all holidays, with exception to Thanksgiving Day and Christmas Day.
 - iii. Hours shall only be changed through mutual agreement by FAX and the proposer. FAX may initiate and require service hours changes.
 - iv. The proposer shall maintain service levels and provide adequate resources during planned employee absences.
- c. Off hours and on-call work:

Appendix D – Statement of Work

- i. Should FAX direct and authorize work outside regular service hours, this work shall be billed for separately and in accordance with the rates included in this Agreement.

4. Resources

- a. Proposer to provide all manpower, transportation, tools, vehicles, consumable goods (lubricants, cleaners, etc.) equipment and similar as necessary to perform the general requirements.
- b. FAX shall provide work space within the bus maintenance shop for use by the vendor
 - 1. (1) Open air shared space within the bus maintenance shop: 1,000 S.F.
 - 2. (1) Secured room within the bus maintenance shop 250 S.F.
- c. TVM test bench
 - i. This test bench shall be provided to test, troubleshoot and train technicians. The test TVM shall not be cannibalized for parts or inoperable for longer than 72 hours if needed to facilitate training.
- d. Proposer to be granted access to the Vendstar Information Processor (VIP) portal as a tool to remotely view the health and maintenance needs of the TVMs.
 - i. The proposer shall be responsible to continually monitor the health of the TVM for adherence to the response requirements identified herein.
- e. Proposer shall be provided adequate power and network connectivity (Wi-Fi) to perform the scope of work.

5. TVM Critical Failure Field Response Requirements

- a. Identified critical failures
 - i. TVM not able to issue tickets:
 - ii. TVM not able to accept either cash, credit cards or coins
 - iii. TVM not able to dispense any form of change
 - iv. TVM is non-responsive, blank screen, frozen or no power at all.
 - v. Vandalism which poses a safety risk to the customer or poses a risk to revenue loss
- b. Response requirements
 - i. Amount of time between when the event was recorded in the VIP to when troubleshooting starts or email from FAX indicating vandalism, if not apparent in the VIP.
 - 1. 2 business hours weekdays and weekends

APPENDIX E

DISCLOSURE OF CONFLICT INTEREST

Summary:

Appendix E is the Disclosure of Conflict of Interest form.

DISCLOSURE OF CONFLICT OF INTEREST

REQUEST FOR PROPOSAL FOR FARE COLLECTION SYSTEM MAINTENANCE		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

3. Genfare currently has a contract for on-site maintenance at Fresno Area Express (FAX).

Additional page(s) attached.

 12/14/2020
 Signature

Eric Kaled, President
 (Name)

Genfare, a division of SPX Corporation
 (Company)

800 Arthur Avenue
 (Address)

Elk Grove Village, IL 60007
 (City, State Zip)