File No. 121070

Committee Item No. 4
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee **Date** 11/28/2012

Board of Supervisors Meeting **Date** _____

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Completed by: Victor Young **Date** November 21, 2012
Completed by: Victor Young **Date** _____

[Contract Amendment - New Flyer of America, Inc. - Purchase Low Floor Diesel-Hybrid Buses - Not to Exceed $48,669,369]

Resolution approving Amendment No. 1 to Contract No. SFMTA-2013-08 with New Flyer of America, Inc., to purchase 17 additional 40-foot low floor diesel-hybrid buses through the Cooperative Purchasing Venture established by the State of Minnesota's Materials Management Division, for an additional amount of $11,780,005 and a total contract amount of $48,669,369.

WHEREAS, Under Section 21.16 of the San Francisco Administrative Code, the San Francisco Municipal Transportation Agency (SFMTA) may utilize the competitive procurement process of any other public agency to make purchases of commodities under the terms established in that agency's procurement process and as agreed upon by the SFMTA and the procuring agency, upon making a determination that the other agency's procurement process was competitive and the use of the other agency's procurement process would be in the City's best interests; and

WHEREAS, The State of Minnesota, through its Materials Management Division (MMD), established the Cooperative Purchasing Venture (CPV) to allow eligible entities to purchase goods, certain services and utilities from contracts established by the MMD for Minnesota state agencies; and

WHEREAS, Minnesota statute Section 471.59, subdivision 1, known as the Joint Powers Act, defines the governmental entities that may join the CPV program to include counties, cities, towns, townships, and school districts, and other entities; and

WHEREAS, In 2011, the State of Minnesota issued a competitive request for proposal for 2012-13 model year transit buses, including heavy duty (Class 700) low floor diesel hybrid

coaches, on behalf of the members of the Minnesota CPV (the Minnesota Procurement); the Minnesota Procurement complied with the third party procurement requirements of the Federal Transit Administration; and

WHEREAS, On March 6, 2012, the San Francisco Municipal Transportation Agency (SFMTA) Board of Director adopted Resolution No. 12-029, which authorized the SFMTA to join the Minnesota CPV; and

WHEREAS, On September 4, 2012, the SFMTA Board of Directors adopted Resolution No. 012-116, authorizing the Director of Transportation to execute Contract No. SFMTA-2013-08 (Procurement of Low Floor Diesel Hybrid Coaches) with New Flyer of America, Inc. (New Flyer), for an amount not to exceed $36,889,364, which contract is on file with the Clerk of the Board of Supervisors in File No. 120908, which is hereby declared to be a part of this motion as if set forth fully herein; and

WHEREAS, On October 2, 2012, the Board of Supervisors adopted Resolution No. 356-12, which approved Contract No. SFMTA-2013-08; and

WHEREAS, In July 2012, the Federal Transit Administration awarded the SFMTA $15 million in federal State of Good Repair (SOGR) grant funds that will be used to fund this project; and,

WHEREAS, Based on the price of the buses in the contract with New Flyer, the level of the SOGR grant, along with local matching sales tax funds through Proposition K, will allow the SFMTA to purchase 17 additional low floor diesel-hybrid buses; and

WHEREAS, On November 6, 2012, the SFMTA Board of Directors adopted Resolution No. XXXX, in which the SFMTA Board found that it was in the best interests of the City that the SFMTA procure 17 more low floor diesel-hybrid buses through the Minnesota CPV, and further authorized the Director of Transportation to execute Amendment No. 1 to the contract

with New Flyer for the purchase of 17 additional 40-foot low floor diesel-hybrid buses, for an additional amount of $11,780,005, and a total contract amount of $48,669,369, with no change to the term of the contract, which amendment is on file with the Clerk of the Board of Supervisors in File No. 121070, which is hereby declared to be a part of this motion as if set forth fully herein; now, therefore, be it

RESOLVED, That the Board of Supervisors approves Amendment No. 1 to Contract with New Flyer of America Inc. for the purchase of 17 additional 40-foot low floor diesel-hybrid buses through the Cooperative Purchasing Agreement established by the State of Minnesota's Materials Management Division, for an additional amount of $11,780,005, and a total contract amount not to exceed $48,669,369, with no change to the term of the contract.

Item 4 File 12-1070	Department: San Francisco Municipal Transportation Agency (SFMTA)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would amend the contract between SFMTA and New Flyer of America Inc. (New Flyer), which authorized the purchase of 45 40-foot, heavy-duty, low-floor diesel hybrid buses in order to purchase an additional 17 40-foot, heavy-duty, low-floor diesel hybrid buses for a total of 62 buses. The total contract amount is not-to-exceed $48,669,369 for a term not to exceed six-years.

Key Points

- On October 2, 2012 the Board of Supervisors approved a resolution that authorized the SFMTA Director of Transportation to execute a contract with New Flyer to purchase 45 40-foot low-floor diesel hybrid buses under a competitive process through the Minnesota Cooperative Purchasing Venture.
- The Federal Transit Administration subsequently awarded the SFMTA $15 million in a State of Good Repair grant toward the replacement of its fleet of 40-foot low-floor diesel hybrid buses that have been in service beyond their useful life of 12 years. SFMTA staff has analyzed their local and federal funding sources and determined SFMTA could fund an additional 17 diesel hybrid buses, for a total of 62 buses (45 plus 17).
- SFMTA staff determined that the most cost-effective and expeditious way to procure the additional 17 diesel hybrid buses is to amend the previously approved existing contract with New Flyer.

Fiscal Impacts

- The proposed amendment for an additional 17 buses would increase the contract not-to-exceed amount by $11,780,005, from not-to-exceed amount of $36,889,364 to not-to-exceed amount of $48,669,369. The contract amount includes: (1) the cost of 62 new heavy-duty low-floor diesel-hybrid coaches; (2) tools and diagnostics to maintain the new vehicles; (3) training for staff to drive the new buses; (4) insurance and storage costs; and (5) an allowance for tools and spare parts.
- SFMTA will incur associated project costs with the contract, including: (1) an 8.5% Sales Tax on the new buses, tools, and spare parts; (2) warranty support; (3) SFMTA and consultant staff to provide project support to acquire and implement the new buses, and (4) Federal Transit Authority required vehicle inspection at the New Flyer plant. These associated costs total $6,747,768, resulting in a total project cost of $55,417,137 ($48,669,369 plus $6,747,768).
- SFMTA has identified funds to pay for the total project cost o f $55,417,137 includin g $39,113,138 in Federal grants, (which include the $15,000,000 State of Good Repair grant funds), $16,257,805 in funds from Proposition K Sales Tax monies, and $46,194 in previously appropriated SFMTA Operating Funds.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT/BACKGROUND

Mandate Statement

In accordance with Charter Section 9.118, any agreement (a) for more than $10,000,000, (b) that extends for longer than ten years, or (c) with an amendment of more than $500,000, is subject to Board of Supervisors approval.

Background

On September 4, 2012, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors adopted a resolution that authorized the Director of Transportation to execute a contract with New Flyer of America Inc. (New Flyer), to purchase 45 40-foot, heavy-duty, low-floor diesel hybrid buses under a competitive process through the Minnesota Cooperative Purchasing Venture. On October 2, 2012 the Board of Supervisors approved the resolution authorizing this contract (Resolution No. 356-12).

In July 2012, the Federal Transit Administration (FTA) awarded the SFMTA $15 million in a State of Good Repair (SOGR) grant toward the replacement of its fleet of 40-foot, heavy-duty, low-floor diesel hybrid buses that have been in service beyond their useful life of 12 years. This grant was to partially fund the original 45 vehicle procurement. Since the Board of Supervisors approval of the original contract, SFMTA staff has analyzed their local and Federal funding sources as well as the cost of diesel hybrid buses and determined that SFMTA could fund an additional 17 diesel hybrid buses, for a total of 62 buses (45 plus 17).

SFMTA staff determined that the most cost-effective and expeditious way to procure the additional 17 diesel hybrid buses is to amend the previously approved existing contract with New Flyer. If the proposed amendment is executed prior to the end of 2012, then SFMTA would receive the same price per model for the additional 17 diesel hybrid buses as the original 45 diesel hybrids (see Table 1 below) and all the buses would be in the same production run. On November 6, 2012, the SFMTA Board of Directors adopted a resolution authorizing the purchase of the 17 additional diesel hybrid buses.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would amend the previously approved existing contract between SFMTA and New Flyer, which authorized the purchase of 45 40-foot, heavy-duty, low-floor diesel hybrid buses as well as related tools, training, manuals, and spare parts, to allow for the purchase of an additional 17 40-foot low-floor diesel hybrid, totaling 62 new buses. The proposed amendment to the existing contract for an additional 17 buses would increase the not-to-exceed amount by $11,780,005, from not-to-exceed amount of $36,889,364 to not-to-exceed amount of $48,669,369. The contract term of six years would remain unchanged.

The 17 additional buses will have the same specifications as the 45 buses to be acquired under the original contract.

Since the effective date of the original contract, October 23, 2012, New Flyer has begun work on the buses for the original contract and will deliver a prototype of the bus within 180 days of October 23, 2012. Once SFMTA approves the prototype, New Flyer has 180 days to deliver a

total of 62 new buses. The term of the contract is for six years to cover the vehicle warranty periods.

FISCAL IMPACT

As shown in Table 1 below, the budget for the proposed amended contract with New Flyer is $48,669,369. This amount includes: (1) the cost for a total of 62 new heavy-duty low-floor diesel-hybrid coaches; (2) tools and diagnostics to maintain the new vehicles; (3) training for staff to drive the new vehicles; (4) insurance and storage costs; and (5) an allowance for spare parts.

Table 1: Itemized Costs of New Flyer Contract

Item	Per Item Cost	Number	Total Cost
XDE40 (ISL/EV50) Hybrid Bus	$741,069	23[1]	$ 17,044,587
XDE40 (ISB/BAE) Hybrid Bus	691,941	39	26, 985,699
Subtotal for All Vehicles		62	$44,030,286
Tools and Diagnostics	NA	NA	278,037
Training	NA	NA	1,299,046
Fee for Insurance/Storage of Engines	1,000	62	62,000
Allowance for Spare Parts	NA	NA	3,000,000
Subtotal for Other Contract Costs			4,639,083
Contract Total			**$48,669,369**

[1] Total of 62 buses with 23 buses having a slightly different hybrid technology than the remaining 39 buses.

SFMTA will incur other associated project costs with the contract, including: (1) an 8.5% Sales Tax on the new buses, tools, and spare parts; (2) warranty support; (3) SFMTA and consultant staff to provide project support to acquire and implement the new buses, and (4) Federal Transit Administration required vehicle inspection at the New Flyer plant. As shown in Table 2 below, with associated costs of $6,747,768, the total estimated project costs are $55,417,137 ($48,669,369 plus $6,747,768).

Table 2: Associated Project Costs for the New Flyer Contract Amendment

Item	Cost
Tax (8.5%)	$4,136,896
Warranty support	229,622
Project support (SFMTA staff, ODC)	1,781,250
Vehicle Inspection at Plant (FTA Required)	600,000
Subtotal Other Associated Costs	$6,747,768
Contract Total (see Table 1 above)	$48,669,369
Total Estimated Project Costs Including Contract Total & Associated Costs	**$55,417,137**

As shown in Table 3 below, the SFMTA has identified the needed funding sources of $55,417,137 to pay for this project.

Table 3: Financial Plan for Total Project Cost

Fund Source	Amount
Federal State of Good Repair Grant	$15,000,000
Federal 5307 Grant	24,113,138
Subtotal, Federal Grants	39,113,138
Proposition K Sales Tax[2]	16,257,805
SFMTA Operating Funds	46,194
Total	**$55,417,137**

RECOMMENDATION

Approve the proposed resolution.

[2] Proposition K was passed by San Francisco voters in November 2003, allowing the half-cent transportation Sales Tax to be allocated to the Prop K Expenditure Plan. The Expenditure Plan does not provide guidance as to the allocation of those revenues over the 30-year period, but instead only stipulates eligible programs.

SFMTA
Municipal Transportation Agency

November 2, 2012

The Honorable Members of the Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton Goodlett Place
San Francisco, CA 94102

Re: Request for Approval – Amendment No. 1 to Contract No. SFMTA-2013-08 with New Flyer of America for the purchase of 17 Additional 40-foot diesel-hybrid buses

Honorable Members of the Board of Supervisors:

The San Francisco Municipal Transportation Agency (SFMTA) requests that the San Francisco Board of Supervisors approve Amendment No. 1 to Contract No. SFMTA-2013-08 between the City and New Flyer of America Inc. (New Flyer), for the purchase of 17 additional 40-foot diesel-hybrid buses, increasing the total amount of the contract to $48,669,369 without changing the six-year term of the contract.

Edwin M. Lee
Mayor

Tom Nolan
Chairman

Cheryl Brinkman
Vice-Chairman

Leona Bridges
Director

Malcolm Heinicke
Director

Jerry Lee
Director

Joél Ramos
Director

Cristina Rubke
Director

Edward D. Reiskin
Director of Transportation

Background

On September 4 of this year, the SFMTA Board of Directors (Board) adopted Resolution No. 012-116, authorizing the Director of Transportation to execute Contract No. SFMTA-2013-08 with New Flyer to purchase 45 low floor diesel-hybrid coaches. On October 2, the Board of Supervisors adopted Resolution No. 356-12, approving the contract.

The SFMTA is using the Minnesota Cooperative Purchasing Venture (CPV) to procure these 45 coaches. The Minnesota CPV allows eligible entities to purchase goods, certain services and utilities from contracts established by the Materials Management Division (MMD) for Minnesota state agencies. MMD issues competitive solicitations for vendors to provide goods, services and utilities to state agencies. This program allows eligible governmental entities, such as the City, to use these contracts just like Minnesota agencies. MMD's current list of qualified vendors for hybrid buses expires December 31, 2012.

On March 6 of this year, the SFMTA Board adopted Resolution No. 12-029, which authorized the SFMTA to join the CPV. FTA encourages such arrangements provided that all FTA requirements are followed.

One South Van Ness Ave.
Seventh Floor
San Francisco, CA 94103

Tele: 415.701.4500

www.sfmta.com

This past July, the Federal Transit Administration (FTA) awarded the SFMTA $15 million in a State of Good Repair (SOGR) grant toward the replacement of its fleet of 40-foot high floor diesel buses that have been in service beyond their useful life of 12 years.

The scope of the SOGR grant was intended to fund a portion of the original 45-vehicle procurement with the balance going toward replacing a number of Gillig buses, depending on the cost of each bus. Staff needed time to perform an analysis to identify local matching funds, and to determine the number of additional buses that could be purchased with the balance of the SOGR funds. In order to avoid delaying the procurement of the original 45 vehicles, SFMTA opted to proceed with the New Flyer contract approved by the Board of Supervisors in early October. Recently, staff concluded their analysis, and determined that 17 buses can be purchased in addition to fully funding the original contract for 45 buses.

Staff has determined that the most cost-effective and expeditious way to procure the additional 17 low floor diesel-hybrid coaches is to include the order with the existing contract to purchase 45 coaches. However, in order to keep the price of the additional coaches the same as the 45 coaches in the existing contract, and include these additional coaches in the same production run, the amendment needs to be executed prior to the end of 2012. If the City is not able to meet this timetable, it will have to wait until MMD issues a new request for proposal and finalizes the 2013 list, which is expected to occur in February 2013.

Bid Process

MMD's 2012 competitive solicitation would apply to the buses procured through this amendment.

Description of Work

The 17 additional coaches will have the exact same specifications as the 45 coaches in the base contract. All available funds were used to purchase the maximum number of coaches as possible since all special tools, diagnostics equipment, training and spare parts are already part of the base contract.

Alternatives Considered

Staff did not consider other alternatives to purchasing the additional coaches. Beginning a new RFP process, or waiting to utilize the 2013 MMD list will increase the time to procure these coaches and possibly increase the price of the vehicles.

Funding Impact

The base New Flyer contract is $36,889,364. The purchase of 17 additional buses will increase the contract amount with New Flyer to $48,669,369 and the total project cost will be $55,417,137. See below for details of the new total project budget.

Total Project Budget

Category	Cost
New Flyer Contract Total	
Vehicles (45)	$44,030,286
Tools and Diagnostics	$278,037
Training	$1,299,046
Fee for insurance/storage of engines	$62,000
Allowance for Spare Parts	$3,000,000
Subtotal New Flyer Contract	**$48,669,369**
Other Associated Costs	
Tax (8.5%)	$4,136,896
Warranty support	$229,622
Project support (SFMTA staff, ODC)	$1,781,250
Vehicle Inspection at Plant (FTA Required)	$600,000
Subtotal Other Associated Costs	**$6,747,137**
Total Cost	**$55,417,137**

The recent award of federal SOGR grant results in a revision in the project financial plan as shown below:

Financial Plan

Project Funding Source	Amount
Federal Grant (5307)	$24,113,138
Federal Grant (SOGR)	$15,000,000
Proposition K	$16,257,805
SFMTA Operating Funds	$46,194
Total Funding	**$55,417,137**

Based on the financial plan shown above, the entire project including the procurement of 17 additional buses is now fully funded. The total number of buses to be purchased under this contract will be 62.

SFMTA Board Action

The SFMTA Board is scheduled to take action on this amendment at its upcoming meeting on November 6. This amendment is being introduced at the Board of Supervisors meeting prior to the SFMTA Board meeting, in order to expedite the approval process and enable the SFMTA to procure the buses using the Minnesota MMD's 2012 approved vendor list before it expires.

Recommendation

The SFMTA recommends that the Board of Supervisors adopt the resolution approving Amendment No. 1 to Contract No. SFMTA-2013-008 between the City and New Flyer of America Inc. to procure 17 additional diesel-hybrid buses, for an additional amount of $11,780,005 and a total contract amount not to exceed $48,669,369.

Thank you for your consideration of this proposed amendment. Should you have any questions or require more information, please do not hesitate to contact me at any time.

Sincerely,

Edward D. Reiskin
Director of Transportation

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 12-139

WHEREAS, Under Section 21.16 of the San Francisco Administrative Code, the SFMTA may utilize the competitive procurement process of any other public agency to make purchases of commodities under the terms established in that agency's procurement process and as agreed upon by the City and the procuring agency, upon making a determination that the other agency's procurement process was competitive and the use of the other agency's procurement process would be in the City's best interests; and

WHEREAS, The State of Minnesota, through its Materials Management Division (MMD), established the Cooperative Purchasing Venture (CPV) to allow eligible entities to purchase goods, certain services and utilities from contracts established by the MMD for Minnesota state agencies; and

WHEREAS, Minnesota statute Section 471.59, subdivision 1, known as the Joint Powers Act, defines the governmental entities that may join the CPV program to include counties, cities, towns, townships, and school districts, and other entities; and

WHEREAS, In 2011, the State of Minnesota issued a competitive request for proposal for 2012-13 model year transit buses, including heavy duty (Class 700) low floor diesel hybrid coaches, on behalf of the members of the Minnesota CPV (the Minnesota Procurement); the Minnesota Procurement complied with the third party procurement requirements of the Federal Transit Administration; and

WHEREAS, On March 6, 2012, the San Francisco Municipal Transportation Agency (SFMTA) Board of Director adopted Resolution No. 12-029, which authorized the SFMTA to join the Minnesota CPV; and

WHEREAS, On September 4, 2012, the SFMTA Board of Directors adopted Resolution No. 012-116, authorizing the Director of Transportation to execute Contract No. SFMTA-2013-08 (Procurement of Low Floor Diesel Hybrid Coaches) with New Flyer, for an amount not to exceed $36,889,364, which contract was approved by the Board of Supervisors under Resolution No. 356-12; and

WHEREAS, In July 2012, the Federal Transit Administration awarded the SFMTA $15 million in federal State of Good Repair (SOGR) grant funds that will be used to fund this project; and

WHEREAS, Based on the price of the buses in the original contract with New Flyer, the level of the SOGR grant, along with local matching sales tax funds through Proposition K, will allow the SFMTA to purchase 17 additional low floor diesel hybrid coaches; now, therefore be it

RESOLVED, Based on the above, the SFMTA Board of Directors finds that it is in the best interests of the City that the SFMTA procure 17 additional 40-foot low floor diesel hybrid buses through the Minnesota Cooperative Purchasing Venture by amending its contract with New Flyer; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute Amendment No. 1 to Contract No. SFMTA-2013-08 with New Flyer of America Inc., to purchase 17 additional 40-foot low floor diesel-hybrid buses through the Cooperative Purchasing Agreement established by the State of Minnesota's Materials Management Division, for an additional amount of $11,780,005, and a total contract amount of $48,669,369, with no change to the term of the contract; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors commends Amendment No. 1 to the Board of Supervisors for its review and approval.

I certify that the foregoing resolution was adopted by the Municipal Transportation Agency Board of Directors at its meeting of November 6, 2012.

R. Boomer

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

Amendment No. 1 to

Agreement between

the City and County of San Francisco

and

New Flyer of America Inc.

for Procurement of Heavy Duty Low Floor Diesel Hybrid Coaches

through the Minnesota Cooperative Purchasing Venture

Contract No. SFMTA-2013-08

CCO No. 12-1201
Minnesota Contract No. 40763

This Amendment No. 1 is made and effective this _____ day of _____, 2012, in the City and County of San Francisco, State of California, by and between: New Flyer of America Inc., a North Dakota corporation, 711 Kernaghan Avenue, Winnipeg, Manitoba, Canada R2C 3T4 ("Contractor" or "New Flyer"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its San Francisco Municipal Transportation Agency ("SFMTA").

Recitals

A. In 2011, the State of Minnesota (Minnesota) issued a request for proposal (RFP) for 2012-13 Model Year transit buses, including heavy duty (Class 700) low floor diesel hybrid coaches (Buses), on behalf of the members of the Minnesota Cooperative Purchasing Venture (CPV) (the Minnesota Procurement). The Minnesota Procurement complied with the third party procurement requirements of the Federal Transit Administration.

B. New Flyer submitted a proposal in response to the Minnesota Procurement that was opened on December 23, 2011. Minnesota accepted the proposal and issued Notification of Contract Award to New Flyer on or about February 3, 2012.

C. On or about March 7, 2012, the SFMTA entered into an agreement with Minnesota to become a member of the CPV.

D. On October 23, 2012, the City entered into Contract No. SFMTA-2013-08 with New Flyer (the Agreement) to purchase 45 Buses under the terms and conditions of the Minnesota Procurement, as modified by the provisions of the Agreement.

E. The City now wishes to purchase 17 additional Buses from New Flyer under the Minnesota Procurement, according to the terms set forth in this Amendment.

Now, THEREFORE, the parties agree as follows:

1. Section 2 of the Agreement (Agreement) is amended to read as follows:

2. Agreement. Under this Agreement, Contractor agrees to sell, and the City agrees to purchase, 62 new Standard Low Floor Hybrid Diesel Buses, associated spare parts,

training, manuals, and special tools, as itemized in Exhibits A, A-1, A-2, B, and D, according to the terms and conditions set forth in this Agreement. Exhibit B sets forth the changes from the Contractor's Proposal to Minnesota and the respective price differentials of those changes.

2. ***Section 6.1 of the Agreement (Amount) is amended to read as follows:***

6.1 Amount. The City agrees to pay an amount not to exceed Forty-Eight Million, Six Hundred Sixty-Nine Thousand, Three Hundred Sixty-Nine Dollars ($48,669,369) (the "Total Contract Amount"), as summarized in Exhibit A (Price Schedule), and in accordance with the terms and conditions of this Agreement. The Total Contract Amount includes an allowance of $3,000,000 for spare parts. The parties will amend this Agreement to include a final list of spare parts to be supplied under the Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement and has not remedied such default within a reasonable period of time. In no event shall City be liable for interest or late charges for any late payments.

3. Exhibit A is replaced with a new Exhibit A, attached to this Amendment and incorporated by reference as though fully set forth.

4. Exhibit C is replaced with a new Exhibit C, attached to this Amendment and incorporated by reference as though fully set forth.

5. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

San Francisco Municipal Transportation Agency

_____
Edward D. Reiskin
Director of Transportation

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
Robin M. Reitzes
Deputy City Attorney

San Francisco Municipal Transportation Agency

Board of Directors

Resolution No. _____

Dated: _____

Attest:

_____
Secretary, SFMTA Board of Directors

Board of Supervisors
Resolution No. _____
Dated: _____
Attest:

_____
Clerk of the Board

Exhibits:

Exhibit A – Price Schedule
Exhibit C – Delivery Schedule

CONTRACTOR

New Flyer of America

_____
Name: Paul Smith

Title: Executive Vice President Sales and Marketing

_____
Name: Glenn Asham

Title: Chief Financial Officer

711 Kernaghan Avenue
Winnipeg, Manitoba, Canada R2C 3T4

City vendor number:

EXHIBIT A

PRICE SCHEDULE

Item	Price per unit	Number of units	Total Price
XDE40 (ISL / EV50) hybrid coach	$741,069	23	$17,044,587
XDE40 (ISB / BAE) hybrid coach	$691,941	39	$26,985,699
Tooling & Diagnostics	See Exhibit A-1	See exhibit A-1	$278,037
Training	See Exhibit A-2	See Exhibit A-2	$1,299,046
Fee for insurance/storage of engines	$1,000	62	$62,000
Allowance for Spare Parts	To be determined	TBD	$3,000,000
Contract Total			**$48,669,369**

EXHIBIT C

DELIVERY SCHEDULE

Item	Calendar Days after Notice to Proceed
Submittal of Baseline Schedule	60
Submittal of vehicle drawings	90
Submittal of training program (including lesson plans)	90
Delivery of prototype coach[1]	180
Submittal of draft operations, maintenance, parts manuals, recommended spare parts	180
Start of training program	180

Item	Calendar Days after Approval of Prototype
Beginning of coach delivery[2]	90
Delivery of first half of spare parts (Lot 1)	90
Delivery of second half of spare parts (Lot 2)	180
Submittal of final operations, maintenance, and parts manuals	30
Delivery of special tools	90
Completion of coach delivery	180

[1]Approval to deliver prototype will not be granted until after receipt and approval of all vehicle drawings, control and test plans.
[2]Approval to deliver production vehicles will not be granted until after submittal of a satisfactory training plan; draft operations, maintenance, and parts manuals; and after successful completion of all appropriate pre-acceptance tests.

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

☒ 1. For reference to Committee: Budget and Finance

An ordinance, resolution, motion, or charter amendment.

☐ 2. Request for next printed agenda without reference to Committee.

☐ 3. Request for hearing on a subject matter at Committee:

☐ 4. Request for letter beginning "Supervisor _____ inquires"

☐ 5. City Attorney request.

☐ 6. Call File No. _____ from Committee.

☐ 7. Budget Analyst request (attach written motion).

☐ 8. Substitute Legislation File No.

☐ 9. Request for Closed Session (attach written motion).

☐ 10. Board to Sit as A Committee of the Whole.

☐ 11. Question(s) submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission

☐ Planning Commission ☐ Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a different form.

Sponsor(s):

Supervisor Wiener

Subject:

Amendment No. 1 to contract with New Flyer of America for the purchase of 17 additional low floor diesel-hybrid buses

The text is listed below or attached:

Resolution approving Amendment No. 1 to Contract No. SFMTA-2013-08 (Procurement of Low Floor Diesel Hybrid Coaches) with New Flyer of America Inc., to purchase 17 additional 40-foot low floor diesel-hybrid buses through the Cooperative Purchasing Venture established by the State of Minnesota's Materials Management Division, for an additional amount of $11,780,005, and a total contract amount of $48,669,369.

Signature of Sponsoring Supervisor:

For Clerk's Use Only:

121070

Agreement between

the City and County of San Francisco

and

New Flyer of America Inc.

for Procurement of Heavy Duty Low Floor Diesel Hybrid Coaches

through the Minnesota Cooperative Purchasing Venture

Contract No. SFMTA-2013-08

CCO No. 12-1201
Minnesota Contract No. 40763

This Agreement is made this _____ day of _____, 2012, in the City and County of San Francisco, State of California, by and between: New Flyer of America Inc., a North Dakota corporation, 711 Kernaghan Avenue, Winnipeg, Manitoba, Canada R2C 3T4 ("Contractor" or "New Flyer"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its San Francisco Municipal Transportation Agency ("SFMTA").

Recitals

A. In 2011, the State of Minnesota (Minnesota) issued a request for proposal (RFP) for 2012-13 Model Year transit buses, including heavy duty (Class 700) low floor diesel hybrid coaches (Buses), on behalf of the members of the Minnesota Cooperative Purchasing Venture (CPV) (the Minnesota Procurement). The Minnesota Procurement complied with the third party procurement requirements of the Federal Transit Administration.

B. New Flyer submitted a proposal in response to the Minnesota Procurement that was opened on December 23, 2011. Minnesota accepted the proposal and issued Notification of Contract Award to New Flyer on or about February 3, 2012.

C. On or about March 7, 2012, the SFMTA entered into an agreement with Minnesota to become a member of the CPV.

D. Under the authority of Administrative Code Section 21.16, SFMTA now wishes to acquire 45 Buses from New Flyer under the terms and conditions contained in the Minnesota Procurement, as amended by the provisions of this Agreement.

E. CITY has requested various specification changes for the buses, and has negotiated with Contractor price increases for these items, as appropriate. Contractor has also agreed to additional terms and conditions as consideration for this Agreement.

1. Minnesota Procurement Terms and Conditions; Priority of Documents. The terms and conditions of the Minnesota Procurement, including the Contract Release, dated January 25, 2012, as amended on July 10, 2012, are incorporated by reference as though fully set forth, except those terms and conditions applicable solely to Minnesota and Minnesota agencies. The following documents, in order of preference, constitute the entire Contract between Contractor and the City:

1.1. This Agreement and any subsequent amendments to the Agreement.

1.2. The Contractor's Proposal to Minnesota, including all deviations to the Technical Specifications.

1.3. The Minnesota Procurement and Contract Release.

In the event of any conflict in language among the above documents the terms and conditions of this Agreement and any later executed documents shall prevail over conflicting terms and conditions contained in the earlier documents, in their original form or as amended.

2. Agreement. Under this Agreement, Contractor agrees to sell, and the City agrees to purchase, 45 new Standard Low Floor Hybrid Diesel Buses, associated spare parts, training, manuals, and special tools, as itemized in Exhibits A, A-1, A-2, B, and D, according to the terms and conditions set forth in this Agreement. Exhibit B sets forth the changes from the Contractor's Proposal to Minnesota and the respective price differentials of those changes.

3. Insurance.

3.1. The Contractor shall maintain, at its own expense, throughout the term of this Agreement, insurance as follows:

(a) Workers' Compensation, including Employers' Liability coverage, with limits not less than $1,000,000 each accident, or as required by law in the jurisdiction in which the work is performed.

(b) Comprehensive or Commercial General Liability insurance with limits not less than $5,000,000 each occurrence combined single limit of Bodily Injury and Property Damage, including coverage's for Contractual Liability, Independent Contractor, Broad-form Property Damage, Products and Completed Operations.

(c) Comprehensive or Business Automobile (Transit Coach, Truck, and other vehicles included) Liability Insurance, with limits not less than $5,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverage's for owned, non-owned, and hired vehicles, as applicable.

(d) During the course of this Agreement, should any vehicles already accepted by City and in which title is vested in the City, be returned to Contractor for any reason, Contractor shall maintain, with respect to such vehicles, Garagekeepers' Legal Liability Insurance with limits not less than 100 percent of the value of City vehicles and equipment in Contractor's care, custody, or control, including coverage's for fire, theft, riot and civil commotion, vandalism or malicious mischief, and collision; all-risk transportation insurance for the full value of all City-owned coaches in transit between Contractor and City premises; and any loss payable to the City as its interest may appear.

3.2. Comprehensive or Commercial General Liability and Comprehensive or Business Automobile policies shall be endorsed to provide the following:

(a) Name as Additional insured's the City and County of San Francisco, its Officers, Agents, Employees and Members of the Commissions;

(b) That such policies are primary to any other insurance available to the Additional Insured's, with respect to any claims arising out of this Agreement, and that such insurance applies separately to each insured against whom claim is made or suit is brought and that such coverage shall not exceed policy limits.

3.3. All policies shall be endorsed to provide: Thirty (30) days advance written notice to City will be provided if coverage is materially reduced or altered, and mailed to the following address:

City and County of San Francisco
Gary Chang, P.E.
Project Manager
Contract No. SFMTA-2013-08
Fleet Engineering Section
700 Pennsylvania Ave.
San Francisco, CA 94107

Before commencement of the term of this Contract, certificates of insurance, and copies of additional insurance endorsements, in form and with insurers acceptable to City, evidencing all required insurance, shall be furnished with complete copies of policies to City promptly upon request.

3.4. Should any of the required insurance be provided under a claims-made form, the Contractor shall maintain such coverage continuously throughout the term of this Contract and, without lapse, for a period of three years beyond the Contract expiration, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Contract, such claims shall be covered by such claims-made policies.

3.5. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence limits specified above.

3.6. Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Contract, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

4. Bonds

4.1. The Contractor shall maintain at its own expense, and furnish to City, corporate surety bonds, as follows:

(a) Performance Bond. Within 20 days following the receipt of a notice of tentative award of contract, the Contractor shall furnish to City a performance bond in the amount

of 20 percent of the total contract amount, to guarantee Contractor's faithful performance of all obligations of the contract. Upon delivery and acceptance by the City of 50 percent of the original contracted number of vehicles, the amount of the performance bond may be reduced to 65 percent of the original bond amount. Upon delivery and acceptance by the City of 75 percent of the original contracted number of vehicles, the amount of the performance bond may be reduced to 30 percent of the original bond amount. If the Contractor requests any further reduction in the amount of the performance bond, the request shall be subject to approval by SFMTA and the City's Risk Manager. One year after the City fully accepts the last bus, the City will release the obligations of the surety under the performance bond, provided that all contract deliverables have been performed and accepted and, if the City has so elected, a warranty bond meeting the requirements of Subsection 4.1(b) is in place. The original bond document(s) shall be retained by the City.

(b) Warranty Bond; Extension Option. Contractor shall provide a two-year warranty or guaranty bond in the amount of 10 percent of the Contract price covering all of Contractor's warranty obligations under the Contract, which bond shall become effective upon release of the Performance Bond required under Subsection 4.1(a) above. At the end of the first year of warranty coverage, the Contractor may request a reduction of coverage, which may be approved at the discretion of SFMTA and the City's Risk Manager. Additionally, at City's election, and subject to approval of the surety issuing the bond, Contractor shall provide for up to two one-year extensions or renewals of the warranty or guaranty bond at an amount approved by SFMTA and the City's Risk Manager. If the original surety declines to extend or renew the initial bond, Contractor shall in good faith try to obtain the required additional coverage from another surety and shall document to the City its efforts in this regard.

4.2. The corporate surety on these bonds must be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties, bond coverage forms, and requests for changes to the bonding requirements must be approved by the City's Risk Manager.

4.3. During the period covered by the Contract, if the surety on these bonds shall, in the opinion of the City's Risk Manager, become insolvent or unable to pay promptly the amount of such bonds to the extent to which surety might be liable, the Contractor, within 30 days after notice given by the City to the Contractor, shall by supplemental bonds or otherwise substitute another and sufficient surety approved by the Risk Manager in place of the surety becoming insolvent or unable to pay. If the Contractor fails within such 30 day period to substitute another and sufficient surety, the Contractor shall, if the City so elects, be deemed to be in default in the performance of its obligations hereunder, and the City, in addition to any and all other remedies, may terminate the Contract or bring any proper suit or proceeding against the Contractor and the surety, or may deduct from any monies then due or which thereafter may become due to Contractor under the Contract the amount for which the surety, insolvent or unable to pay as aforesaid, is obligated on the bonds, and the monies so deducted shall be held by the City as collateral security for the performance of the conditions of the bonds.

4.4. In lieu of a surety bond as required above, Contractor may elect to furnish the City with a letter of credit in conformance with the requirements of Section 5.

5. Letter of Credit

5.1. Any and all letters of credit issued pursuant to this Agreement shall be obtained from a national or California bank with at least a Moody's A rating and having at least one branch office within the City and County of San Francisco. The letter of credit shall be a confirmed, clean irrevocable letter of credit in favor of the City and County of San Francisco, a municipal corporation. The letter of credit shall have an original term of one year, with

automatic extensions of the principal amount throughout the term of the contract, or until released by the City. The letter of credit shall provide that payment of the entire face amount of the letter of credit, or any portion thereof, shall be made to the City and County of San Francisco, upon presentation of a written demand to the bank signed by the General Manager on behalf of the City and County of San Francisco. The letter of credit shall constitute a security deposit guaranteeing all progress payments for which the letter of credit is issued.

5.2. If Contractor defaults with respect to any provision of this Agreement, City may, but shall not be required to, make its demand under the letter of credit for all or any portion thereof to compensate City for any loss of progress payments, which City may have incurred by reason of Contractor's default. City shall present its written demand to the bank for payment under the letter of credit only after City shall have made its demand for payment directly to Contractor, and five full business days have elapsed without Contractor having made payment to City or otherwise cured the default. City need not terminate this Agreement in order to receive compensation for its damages. If any portion of a letter of credit is so used or applied, Contractor, within 10 business days after written demand therefore, shall reinstate the letter of credit to its original amount; Contractor's failure to do so shall be a material breach of this Agreement.

5.3. Any letter of credit issued hereunder shall provide for 60 days notice by the bank to City in the event of non-extension of the letter of credit; in that event, Contractor shall replace the letter of credit at least 10 business days prior to its expiration. If Contractor fails to do so, City shall be entitled to present its written demand for payment of the entire face amount of the letter of credit. Any amounts so received by City shall be returned to Contractor upon replacement of the letter of credit.

5.4. If City receives any payments from the aforementioned bank under the letter of credit by reason of having made a wrongful or excessive demand for payment, City shall return to Contractor the amount by which City's total receipts from Contractor and from the bank under the letter of credit exceeds the amount to which City rightfully is entitled, together with interest thereon at the legal rate of interest, but City shall not otherwise be liable to Contractor for any damages or penalties.

6. Compensation; Payment

6.1. Amount. The City agrees to pay an amount not to exceed Thirty-Six Million, Eight Hundred Eighty-Nine Thousand, Three Hundred Sixty-Four Dollars ($36,889,364) (the "Total Contract Amount"), as summarized in Exhibit A (Price Schedule), and in accordance with the terms and conditions of this Agreement. The Total Contract Amount includes an allowance of $3,000,000 for spare parts. The parties will amend this Agreement to include a final list of spare parts to be supplied under the Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement and has not remedied such default within a reasonable period of time. In no event shall City be liable for interest or late charges for any late payments.

6.2. Invoices. Contractor shall submit its invoices to the following address:

San Francisco Municipal Transportation Agency
Fleet Engineering Section
Attn: Gary Chang, P.E.
Project Manager
700 Pennsylvania Avenue
San Francisco, CA 94107

Each invoice shall include:

- Relevant milestones
- Contract order number;
- Quantity of items;
- Description of items;
- Unit price;
- Total invoice amount;
- Sales Tax (separately itemized)

6.3. Payments Terms.

(a) All payments shall be made as provided herein, less a retention of 2%.

(b) Subject to the provisions of Section 11.1, the City will make payments for buses at 98 percent of the unit price for each bus as itemized in the Price Schedule within 30 calendar days after acceptance of each bus and receipt of a proper invoice.

(c) The City will make payments for spare parts within 30 calendar days after completion of delivery of, and receipt of a proper invoice for, each lot of spare parts, as provided in Section 9.3.

(d) The City will make payments for special tools within 30 days after delivery and receipt of a proper invoice for each delivery of special tools.

(e) The City will make an advance payment for the Cummins engines no later than December 1, 2012, subject to receipt of FTA approval.

(f) The City will make a final payment for all retained funds within 60 calendar days after receipt of a final proper invoice and completion of all of the following:

(i) Delivery and acceptance of all Contract deliverables, including spare parts, special tools, manuals and other documentation, but not including training.

(ii) Receipt from Contractor of all certifications as required by law and/or regulations.

(iii) Completion of post-delivery audits required under the Contract.

7. Budget And Fiscal Provisions; Termination In The Event Of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not

appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THE AGREEMENT.

8. Miscellaneous Provisions

8.1. City Business Tax. The San Francisco Business Tax Ordinance requires that firms located in San Francisco or doing business in San Francisco, except for non-profit and tax-exempt businesses, have a current Business Tax Registration Certificate. Contractor shall maintain said Certificate throughout the term of this Contract and pay timely any and all business taxes due to the City.

8.2. Disputes. For any dispute involving a question of fact that does not involve a claim for additional compensation, the aggrieved party shall furnish the other party with a notice of dispute within 15 business days of the determination of the dispute. The party receiving a notice of dispute shall submit a written reply within 14 business days of delivery of the notice. The notice and response shall contain the following: (a) a statement of the party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the party's position.

Disputes arising in the performance of this Agreement which are not resolved by negotiation between the parties shall be decided in writing by the City's Project Manager. The Project Manager's decision shall be administratively final and conclusive unless within 10 days from the date of such decision, the Contractor mails or otherwise furnishes a written appeal to the Director of Transit, or his/her designee. In connection with such an appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position in order that a fair and impartial decision can be made by the Director. The decision of the Director shall be administratively final and conclusive; except if such decision is arbitrary, capricious or so erroneous as to evidence bad faith.

Pending final resolution of a properly filed dispute hereunder, the Contractor shall proceed diligently with the performance of its obligations under the Agreement in accordance with the written directions of the City's Project Manager.

Subject to exhaustion of applicable administrative remedies under this Disputes section, the parties may seek to have their disputes resolved by any court of competent jurisdiction within San Francisco. If agreed to by both parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

8.3. Sunshine Ordinance. In accordance with S.F. Administrative Code Section 67.24(e), contractors' bids, responses to RFPs and all other records of communications between the City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organizations net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

8.4. Nondiscrimination; Penalties

(a) Contractor Shall Not Discriminate. In the performance of this Agreement, Contractor agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Contractor, in any of Contractor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Contractor.

(b) Non-Discrimination in Benefits. Contractor does not as of the date of this Agreement and will not during the terms of this Agreement, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in section 1, 4-B. of Appendix D for 12B Provisions, 12B.2(b) of the San Francisco Administrative Code.

(c) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as through fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to Section 12B.2(h) (see Appendix D) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

8.5. Conflict of Interest. Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

8.6. False Claims. Pursuant to San Francisco Administrative Code sections 6.80 to 6.83 and section 21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor or subcontractor who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to $10,000 for each false claim. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c)conspires to defraud the City by getting a false claim allowed or paid by

the City; (d)knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

8.7. Disallowance. If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

8.8. Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

8.9. Non-Waiver of Rights The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

8.10. Independent Contractor; Payment of Taxes and Other Expenses

(a) Independent Contractor. Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

(b) Payment of Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due

withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

8.11. Time. Time is of the essence in this Agreement.

8.12. Compliance with Laws. Consultant shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

9. Delivery Schedule

9.1. General. Contractor shall comply with the Delivery Schedule attached as Exhibit C.

9.2. Coach Delivery Procedure. Delivery shall be determined by signed receipt of the SFMTA Project Manager Representative at the point of delivery and may be preceded by a cursory inspection of the coach. Delivery of the coaches shall be F.O.B. point of delivery, freight pre-paid and allowed. Contractor shall ensure that all coaches are fully operable when they are delivered. The point of delivery shall be:

Standard Hybrid-Electric Diesel Coaches
SFMTA Woods Maintenance Facility 1095 Indiana Street San Francisco, California 94107

Drivers shall keep a complete and accurate maintenance log en route, which shall be delivered to the SFMTA Project Manager with the coach. The log shall show the driver's compliance with the tire manufacturer's highway operating procedures. If the coaches are towed, the rear axle shafts shall be removed during the towing and re-coupled by the Contractor after arrival at the point of delivery. Contractor shall deliver each coach with a full tank of fuel and fully cleaned (exterior, interior, underside, and topside) prior to presentation for inspection. If the coaches are towed from the Contractor's facility to SFMTA, highway-type tires shall be installed. Upon arrival at the SFMTA maintenance facility or within San Francisco, Contractor, at its expense, shall install city-type tires.

9.3. Spare Parts Delivery Procedure. Contractor shall divide delivery of spare parts into two lots, and a manifest shall accompany each delivery. Lot 1 shall be approximately 50 percent of the quantity of spare parts finally agreed to by the parties. Lot 2 shall be the remaining quantity of spare parts_. At the SFMTA's option, the lots may be split into more than two

deliveries. Delivery shall be determined by signed receipt of the SFMTA Project Manager at the point of delivery and may be preceded by a cursory inspection of the parts. Within 20 business days of delivery, City will notify Contractor whether there are any problems related to the delivery. The point of delivery shall be as stated above in Section 9.2, or as otherwise provided in writing by SFMTA. Delivery of spare parts shall be F.O.B. point of delivery, freight pre-paid and allowed.

9.4. Coach Delivery Schedule. The coaches and other items shall be delivered between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. Contractor shall deliver a maximum of five coaches per week.

10. Project Planning, Scheduling and Control

10.1. Introduction. This Section specifies the requirements for project planning, scheduling and progress reporting to be performed by the Contractor in conjunction with the Contract work. Critical Path Method scheduling (CPM) shall be employed by the Contractor for planning, scheduling and reporting all work required by the Contract Documents.

10.2. Required Schedules.

(a) Baseline Schedule: The Baseline Schedule is the detailed schedule, in bar-chart format, prepared by the Contractor, indicating the Contractor's plan for executing the Contract work. Contractor shall develop the Baseline Schedule using Microsoft Project Software or approved equal. Contractor shall revise the Baseline Schedule as necessary to incorporate approved Contract modifications. The Contractor's performance or other avoidable delays shall not be considered justification for Baseline Schedule revision. The schedule documents, reports, lists, computer software with documentation and computer diskettes and e-mail files are required with each submittal. Contractor shall submit the Baseline Schedule as required in Exhibit C.

(b) Current Schedule: The Current Schedule is the updated logic network and supporting reports indicating actual progress to date and forecasted logic and progress for the remaining work. The update shall be, at a minimum, to the same level of detail as the Baseline Schedule.

(c) Supplemental Schedule(s): Supplemental Schedules are detailed schedules prepared by the Contractor, at the request of the SFMTA, to substantiate proposed Contractor changes that may have a schedule impact.

10.3. Modifications to the Schedule. When requested by the Engineer, the Contractor shall submit Supplemental Schedules to the Engineer to substantiate proposed Contract changes that may have an impact on the schedule. Contractor shall submit such schedules to the Engineer for review and approval within three working days from the request; otherwise, any proposed Contract change will not be considered by the City. On approval of a Contract modification by the City, the approved change will be incorporated in the Baseline Schedule during the monthly update process.

11. Acceptance of Buses (supplementing Section 78.d of the Minnesota RFP)

11.1. Conditional Acceptance. If a coach does not meet all requirements for final acceptance, SFMTA may, at its exclusive option, "conditionally accept" the bus and place it into revenue service, pending receipt of Contractor-furnished materials and/or labor necessary to effectuate corrective action for acceptance. For any conditionally accepted coach, the payment shall be reduced by an amount equal to three percent of the amount of the Bus, which amount

shall be withheld and paid after corrective action by the Contractor and final acceptance by SFMTA.

11.2. TitleError! Bookmark not defined.. At the time the Bus is delivered, Contractor shall provide to the SFMTA Project Manager adequate documents for securing the title for the Bus in the State of California. Upon conditional acceptance of each coach, title to each coach shall pass to the City, which title Contractor warrants shall be free and clear of all liens, mortgages and encumbrances, financing statements, security agreements, claims, and demands of any character.

12. Taxes and Other Governmental Charges

The City agrees to pay sales taxes levied by the State California on articles purchased by the City under this Agreement directly to the State. The City warrants that it is a public entity exempt from certain federal excise taxes and in connection therewith that it has obtained a federal excise tax exemption certificate. Contractor shall pay all other taxes, licenses, imposts, duties, and all other governmental charges of any type whatsoever.

13. Fleet Defects (superseding Section 4.1.6.1 of Contractor's Standard Warranty)

13.1. A fleet defect is defined as cumulative failures of any kind in the same components in the same or similar application where such items are covered by the warranty and such failures occur within the warranty period in at least 20 percent of all Buses delivered under this contract; provided, however, that components manufactured by the following companies shall not be subject to the fleet defect provisions unless a manufacturer agrees to honor the fleet defect provisions: Allison, Cummins, BAE, Thermo King. SFMTA shall have final approval of corrections or changes under these conditions.

13.2. The Contractor shall correct a fleet defect under the warranty provisions defined in its "Repair Procedures" (Section 4.12). Within 10 days of receipt of notification of a fleet defect, the Contractor shall provide SFMTA with a plan, acceptable to SFMTA, specifying how and when all coaches with defects shall be corrected. Said plan is subject to approval by SFMTA. In addition, after correcting such defects, the Contractor shall promptly undertake and complete a work program, acceptable to SFMTA, reasonably designed to prevent the occurrence of the same defect in all other coaches and spare parts purchased under this contract. Any proposed changes to a fleet defect work plan or program must be submitted to SFMTA for its approval.

14. Disadvantaged Business Enterprises (DBE) (superseding Section 72 of the Minnesota Procurement)

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate

15. Training and Publications

15.1. Contractor shall provide training to SFMTA employees, as described in the attached Exhibit A-2. Training shall be scheduled as convenient to SFMTA and its employees.

Unless SFMTA and Contractor otherwise agree to a training schedule, Contractor shall provide training within 30 days of receipt of notice from SFMTA for particular training.

15.2. Contractor shall provide the Publications attached hereto as Exhibit D.

16. Term

The term of the Agreement shall commence on the date the City's Controller certifies the availability of funds for this Agreement and shall expire six years thereafter unless earlier terminated as otherwise provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

San Francisco Municipal Transportation Agency

_____
Edward D. Reiskin
Director of Transportation

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
Robin M. Reitzes
Deputy City Attorney

San Francisco Municipal Transportation Agency
Board of Directors
Resolution No. _____
Dated: _____
Attest:

_____
Secretary, SFMTA Board of Directors

Board of Supervisors
Resolution No. _____
Dated: _____
Attest:

_____
Clerk of the Board

CONTRACTOR

New Flyer of America

_____
Name: Paul Smith

Title: Executive Vice President, Sales & Marketing

_____
Name: Glenn Asham

Title: Chief Financial Officer

711 Kernaghan Avenue
Winnipeg, Manitoba, Canada R2C 3T4

City vendor number: 49642

Exhibits:

Exhibit A – Price Schedule
Exhibit A-1 – Special Tools

Exhibit A-2 – Training
Exhibit B – Proposal Changes
Exhibit C – Delivery Schedule
Exhibit D – Publications

EXHIBIT A

PRICE SCHEDULE

Item	Price per unit	Number of units	Total Price
XDE40 (ISL / EV50) hybrid coach	$741,069	23	$17,044,584
XDE40 (ISB / BAE) hybrid coach	$691,941	22	$15,222,697
Tooling & Diagnostics	See Exhibit A-1	See exhibit A-1	$278,037
Training	See Exhibit A-2	See Exhibit A-2	$1,299,046
Fee for insurance/storage of engines	$1,000	45	$45,000
Allowance for Spare Parts	To be determined		$3,000,000
Contract Total			**$36,889,364**

EXHIBIT A-1

SPECIAL TOOLS

New Flyer Part #	Description	Category	Bid Qty	Unit	Total Unit Selling Price	Total Ext. Selling Price
122321	Twin Vision Elyses Software	Destination Sign - Twin Vision	1	Each	$1,175.76	$1,175.76
128951	6 to 9 pin adapter	ABS - Meritor Wabco	5	Each	$143.29	$716.46
6360894	USB Key	Destination Sign - Twin Vision	1	Each	$70.55	$70.55
6408310	Repair Kit - Disc Brakes & Calipers	Disc Brakes - MAN	2	Each	$2,879.42	$5,758.84
6362070	EMP Software (Download from Net)	Electric Fan Drive - EMP	5	Each	$0.00	$0.00
6352122	Dearborn DPA4+ USB Translator (Estimate)	Hybrid Drive - Allison	5	Each	$1,600.00	$8,000.00
6394788	Cummins ISL Full Service Tool Kit - 2010 Engines	Engine - Cummins	1	Each	$22,746.77	$22,746.77
6358421	Vapor Class System Diagnostic Interface Kit	Exit Doors - Vapor Class	5	Each	$97.07	$485.36
6359028	Vapor Class System Software	Exit Doors - Vapor Class	5	Each	$0.00	$0.00
6360381	Alignment Tool - Flex Connector	Engine - Cummins	2	Each	$649.61	$1,299.21
6355551	Amerex SafetyNet Software & Interface	Fire Suppression - Amerex	5	Each	$474.99	$2,374.95
52132	Amerex Discharge Hose Blowout Adapter	Fire Suppression - Amerex	5	Each	$86.56	$432.82
135582	Amerex Fire Alarm/Simulator Module	Fire Suppression - Amerex	5	Each	$259.25	$1,296.25

New Flyer Part #	Description	Category	Bid Qty	Unit	Total Unit Selling Price	Total Ext. Selling Price
6393934	Intelligaire III Diagnostic Software & Cables	HVAC - TK	5	Each	$1,324.05	$6,620.25
6393985	EMP Diagnostic Interface Kit	Electric Fan Drive - EMP	5	Each	$419.13	$2,095.64
6358069	Hybrid Drive Overhaul Tool Kit	Hybrid Drive - Allison	1	Each	$18,154.70	$18,154.70
6345918	Hybrid Drive Service Tool Kit	Hybrid Drive - Allison	1	Each	$11,605.13	$11,605.13
108658	Panasonic CF31 Laptop	Laptop PC	5	Each	$5,790.20	$28,951.00
159687	Vansco Software (Download from Net)	PLC - Vansco	5	Each	$0.00	$0.00
6314711	Torque Multiplier	Axles - MAN	2	Each	$1,451.69	$2,903.39
6334596	Wabco Software	ABS - Meritor Wabco	5	Each	$339.86	$1,699.31
6339620	Wabco Cable for 6334596 - Converter	ABS - Meritor Wabco	5	Each	$117.51	$587.53
6339621	Wabco Cable for 6334596 - 6 pin Deutch	ABS - Meritor Wabco	5	Each	$96.93	$484.65
6339622	Wabco Cable for 6334596 - Male/Female extension	ABS - Meritor Wabco	5	Each	$16.17	$80.87
6351820	DLA Adapter Kit	PLC - Vansco	5	Each	$534.97	$2,674.85
6399628	BAE IDS Software	Hybrid Propulsion - BAE	5	Each	$2,939.40	$14,697.00
6399629	KVASER Interface	Hybrid Propulsion - BAE	5	Each	$947.96	$4,739.82
6400474	BAE Overhaul Tool Kit	Hybrid Propulsion - BAE	1	Each	$35,102.40	$35,102.40
6400209	Cummins ISB Full Service Tool Kit - 2010 Engines	Engine - Cummins	1	Each	$23,225.08	$23,225.08

New Flyer Part #	Description	Category	Bid Qty	Unit	Total Unit Selling Price	Total Ext. Selling Price
6408306	Hub Repair Kit - MAN HY-1336 RR Axle	Axles - MAN	2	Each	$3,082.08	$6,164.16
6408307	ABS Sensor R&R Kit - MAN HY-1336 RR Axle	Axles - MAN	2	Each	$784.29	$1,568.59
6408309	Pinion Seal Repair Kit - MAN HY-1336 RR Axle	Axles - MAN	2	Each	$472.45	$944.90
6408308	Differential Repair Kit - MAN HY-1336 RR Axle	Axles - MAN	2	Each	$14,103.37	$28,206.74
6408311	Hub Repair Kit - MAN VOK-07 Frt Axle	Axles - MAN	2	Each	$11,625.80	$23,251.59
6408312	King Pin Press Kit - MAN VOK-07 Frt Axle	Axles - MAN	2	Each	$9,961.33	$19,922.66
Total					**$172,277.77**	**$278,037.21**

EXHIBIT A-2

TRAINING

Description	Spare ID	Bid Qty	Unit	Total Unit Selling Price	Total Ext. Selling Price
Operator Orientation - Training	9.1	32	Hour	$234.90	$7,516.80
Maintenance Orientation - Training	9.1	24	Hour	$234.90	$5,637.60
Vansco Multiplex - Training	9.1	144	Hour	$234.90	$33,825.60
Towing - Training	9.1	8	Hour	$234.90	$1,879.20
Doors - Training	9.1	32	Hour	$234.90	$7,516.80
Wheelchair Ramp - Training	9.1	32	Hour	$234.90	$7,516.80
Air System & ABS Brakes - Training	9.1	32	Hour	$234.90	$7,516.80
Steering & Suspension - Training	9.1	12	Hour	$234.90	$2,818.80
Axles & Disc Brakes - Training	9.1	96	Hour	$234.90	$22,550.40
Preventive Maintenance - Training	9.1	0	Hour	$234.90	$0.00
Body - Training	9.1	32	Hour	$234.90	$7,516.80
BAE Hybrid System Maintenance & Diagnostics - Training	9.1	288	Hour	$607.50	$174,960.00
ISB Engine Maintenance & Diagnostics - Training	9.1	144	Hour	$472.50	$68,040.00
EV50 Hybrid System Maintenance & Diagnostics - Training	9.1	288	Hour	$607.50	$174,960.00
ISL Engine Maintenance & Diagnostics - Training	9.1	144	Hour	$472.50	$68,040.00
A/C System Maintenance & Diagnostics - Training	9.1	0	Hour	$337.50	$0.00
Air/ABS Training Board - Mock-ups	9.1.2	1	Each	$27,675.00	$27,675.00
Exit Doors Training Aid - Mock-ups	9.1.2	1	Each	$38,475.00	$38,475.00
Dest. Sign Maintenance & Diagnostics - Training	9.1	16	Hour	$0.00	$0.00
Training Videos - Videos	9.1.8	10	Each	$40,500.00	$405,000.00

Description	Spare ID	Bid Qty	Unit	Total Unit Selling Price	Total Ext. Selling Price
eLearning Courses - Interactive Multimedia Training	9.1.10.1	5	Each	$47,250.00	$236,250.00
Laminated Training Schematics - Training Charts	9.1.9	1	Each	$1,350.00	$1,350.00
Total					**$1,299,045.60**

EXHIBIT B - Proposal Changes from Base Bus Price

Base Bus Price Change for Allison Propulsion System

Reference No.	Option No.	Option Group	Description	Total	Total Contract
1	420	Body A/P Before Paint	Add Docket 90 per 1-12	$853	$19,630
2	246	Air, Brake & Lev System	Add E-stroke per 5-3	$2,519	$57,944
3	205	Tires	Change to customer supplied LEASED tires, to be furnished by contractor per 5-7	-$2,861	-$65,804
4	219	Engine	Add engine probalizer per 6-3	$55	$1,269
5	246	Air, Brake & Lev System	Change air dryer to Graham White QBA60 per 5-5	$1,181	$27,172
6	246	Air, Brake & Lev System	Add Automatic traction control per 5-3	$84	$1,938
7	260	Battery Compartment	Change batteries to 8D (AGM/Deka) East Penn, 1350 CCA batteries.	$204	$4,685
8	260	Battery Compartment	Add Anderson jumpstart per 7-4. Remove per customer request	$0	$0
9	277	Interior Lighting	Change passenger lights to Docket 90 per 3-4	$1,805	$41,514
10	280	Passenger Signal	Change passenger signals at wheelchair positions to pushbuttons per 3-9.	$2	$56
11	280	Passenger Signal	Add pushbuttons on all vertical stanchions per 3-9	$198	$4,557
12	350	Drivers Control	Add hill holder switch per 4-6 and 5-4	$19	$442
13	304	Paint & Decal	Change paint to Silver with Red Decals and Anti Graffiti Clearcoat per 2-3 and attachment.	$9,788	$225,125
14	422	Body A/P After Paint	Remove rollerblind per California Vehicle Code, Section 26708. Note, NF can't install sun visor due to sawtooth per 4-9.	-$74	-$1,699
15	423	Advertising Frames	Add two interior ad frames 17" x 11" per 3-22	$34	$781
16	450	Flooring A/P	Change flooring to composite per 2-7	$1,502	$34,544
17	450	Flooring A/P	Change floor covering to Altro D25-421 "Midnight" per 2-7. Color Change onyly from base bus. No cost impact	$0	$0
18	460	Windows	Change windows to include window protection sheet (specific glazing), scratch resistant per 3-1 and attachment	$2,856	$65,690
20	600	Customer Options	Add Sportworks with indicator light per 2-3	$1,198	$27,545
21	600	Customer Options	Add Motorolla Radio system per 3-17.	$645	$14,843
23	600	Customer Options	Add dash panel rack (4 compartments) per 3-22	$167	$3,848
24	600	Customer Options	Add Emergency Warning light system (activated when silent alarm is tripped) per sec 3-22	$165	$3,786
25	600	Customer Options	Add S1 guard per 3-23	$1,929	$44,357
26	600	Customer Options	Add NEXTBUS system per 3-23	$2,298	$52,863

Reference No.	Option No.	Option Group	Description	Total	Total Contract
27	600	Customer Options	Add trash receptacle per 4-9	$11	$257
28	600	Customer Options	Add storage locker behind operator seat per 4-10	$87	$1,993
29	600	Customer Options	Rev C - Add Fleetmanagement	$1,102	$25,347
30	600	Customer Options	Add fire suppression per 5-7	$4,210	$96,828
31	549	HVAC System	Remove floor heating system and auxilliary heater.	-$3,635	-$83,604
32	470	Destination Signs	Rev C - Change destination signs to TwinVision Color Destination Signs (Front, C/side, S/side). Add amber rear.	$12,620	$290,252
33	600	Customer Options	Rev C - DTI Camera System	$21,671	$498,435
34	600	Customer Options	Add On-Board AVAS per 3-12 to 3-13	$14,559	$334,848
35	526	Seating & Stanchions	Rev C- Re-quote to American Seating 6468, 36 passenger seats (perimeter in the L/D and forward facing in upper deck), staggered forward facing Q'Straint W/C restraint, with blue push button, BC55 flip seats	$157	$3,601
36	526	Seating & Stanchions	Change driver seat to USSC 9100ALX non-D90 per 4-7.	$277	$6,365
37	600	Customer Options	Add APC per 3-20 to 3-22	$8,627	$198,410
38	Manuals	Deliverable	Remove MDOT Specific Manuals, replace with SFMTA specific manuals	$1,519	$34,929
39	280	Passenger Signal	Add Stop request sign on destination sign compartment door	$322	$7,405
42	Delivery	Deliverable	Add Delivery Quote	$3,909	$89,907
43	PPI	Producer Price Index	New Flyer/Allison Hybrid Credit	-$24,747	-$569,172
44	246	Air, Brake & Lev System	Rev C - Add rapid recover and equip with raise feature for steep inclines, 1" at 3 MPH is preferred to prevent chances of damaging front shocks.	$692	$15,922
45	600	Customer Options	Rev C - Add beeper exterior sound when buses are turning with via footswitch. Note, the volume of the exterior beeper will not be adjustable by the driver.	$43	$998
46	350	Drivers Control	Rev B- Change to teleflex pedals.	$975	$22,416
47	600	Customer Options	Rev B- Add additional feature for exterior announcement as passenger exit the bus "Do not walk in fornt of bus". No additional cost, feature is standard in AVAS system	$0	$0
48	491	Door Exit	Rev B - Re-quote Vapor Class system to include Activair baseplate with locking mechanism.	$3,369	$77,482
49	526	Seating & Stanchions	Rev B- Add 10" seat belt extender, to change seat belt length.	$78	$1,797
50	549	HVAC System	Rev B - Change to Heat only. (Pricing per MDOT contract)	-$11,073	-$254,679

Reference No.	Option No.	Option Group	Description	Total	Total Contract
51	600	Customer Options	Rev B- Delete the farebox pedestal portion of the farebox, the farebox will sit on the floor so it does not obscure the driver's view in the event a 41" farebox installed.	-$190	-$4,374
52	600	Customer Options	Rev B - Add transfer mounting bracket, farebox mounting support plate and wiring.	$105	$2,412
53	526	Seating & Stanchions	Rev B- Add qty 12 metal grab straps. Change stanchions to cast fittings for use with metal grab straps. Note: Metal grab straps not useable with bonded stanchions.	$654	$15,042
54		Customer Options	Rev C - Add customer specific farebox pedestal (in the event an 41" farebox is installed)	$538	$12,381
55	205	Tires	Rev C - Change the wheels to Alcoa Dura-Brite.	$682	$15,686
56	273	Exterior Lamp	Rev C - Change to two 18"x 1"LED center stop/deceleration light above the engine door in lieu of flashing decel system per Section 3.3.2.	$64	$1,470
57	600	Customer Options	Rev C - Add two (2) external recessed buttons (elevator switches)	$319	$7,328
58	600	Customer Options	Rev C - Clipper cable harnesses.	$463	$10,638
59	231	Cooling System	Rev C - Add EMP cooling system to base.	$8,625	$198,375
60	422	Body A/P After Paint	Rev C - Add byfold drivers enclosure.	$2,470	$56,805
61	600	Customer Options	Rev C - Add rearview camera system with 7" color monitor in driver's area	$1,666	$38,316
62	600	Customer Options	Rev C - Add Drive cam with event recorder	$625	$14,375
63	422	Body A/P After Paint	Rev C - Add two more for a total of four Equipment Trays.	$351	$8,068
65	Ext. Warranty	Deliverable	Add 2nd Year Bumper to Bumper extended warranty	$9,944	$228,714
66	Ext. Warranty	Deliverable	Add 3 year Extended Allison Warranty	$17,545	$403,535
69	Bonding	Deliverable	Add 20% Performance Bond and 2 year,10% Warranty Bond	$6,020	$138,460
70	Discount	Discount	Customer Discount	-$6,020	-$138,460
71	219	Engine	Change to Allison EV50	$22,947	$527,781
Base Bus Price Change Total				$126,147	$2,901,376
41	705	Contract Spares	One Spare Wheel per bus	$456	$10,490
Contract Spares Base Bus Price Change Total				$456	$10,490
Grand Total				$126,603	$2,911,866

Base Bus Price Change for B.A.E Propulsion System

Reference No.	Option No.	Option Group	Description	Total	Total Contract
1	420	Body A/P Before Paint	Add Docket 90 per 1-12	$853	$18,776
2	246	Air, Brake & Lev System	Add E-stroke per 5-3	$2,519	$55,425
3	205	Tires	Change to customer supplied LEASED tires, to be furnished by contractor per 5-7	-$2,861	-$62,943
4	219	Engine	Add engine probalizer per 6-3	$55	$1,214
5	246	Air, Brake & Lev System	Change air dryer to Graham White QBA60 per 5-5	$1,181	$25,991
6	246	Air, Brake & Lev System	Add Automatic traction control per 5-3	$84	$1,854
7	260	Battery Compartment	Change batteries to 8D (AGM/Deka) East Penn, 1350 CCA batteries.	$204	$4,481
8	260	Battery Compartment	Add Anderson jumpstart per 7-4. Remove per customer request	$0	$0
9	277	Interior Lighting	Change passenger lights to Docket 90 per 3-4	$1,805	$39,709
10	280	Passenger Signal	Change passenger signals at wheelchair positions to pushbuttons per 3-9.	$2	$54
11	280	Passenger Signal	Add pushbuttons on all vertical stanchions per 3-9	$198	$4,359
12	350	Drivers Control	Add hill holder switch per 4-6 and 5-4	$19	$423
13	304	Paint & Decal	Change paint to Silver with Red Decals and Anti Graffiti Clearcoat per 2-3 and attachment.	$9,788	$215,337
14	422	Body A/P After Paint	Remove rollerblind per California Vehicle Code, Section 26708. Note, NF can't install sun visor due to sawtooth per 4-9.	-$74	-$1,625
15	423	Advertising Frames	Add two interior ad frames 17" x 11" per 3-22	$34	$747
16	450	Flooring A/P	Change flooring to composite per 2-7	$1,502	$33,042
17	450	Flooring A/P	Change floor covering to Altro D25-421 "Midnight" per 2-7. Color Change onyly from base bus. No cost impact	$0	$0
18	460	Windows	Change windows to include window protection sheet (specific glazing), scratch resistant per 3-1 and attachment	$2,856	$62,834
20	600	Customer Options	Add Sportworks with indicator light per 2-3	$1,198	$26,348
21	600	Customer Options	Add Motorolla Radio system per 3-17.	$645	$14,198
23	600	Customer Options	Add dash panel rack (4 compartments) per 3-22	$167	$3,681

Reference No.	Option No.	Option Group	Description	Total	Total Contract
24	600	Customer Options	Add Emergency Warning light system (activated when silent alarm is tripped) per sec 3-22	$165	$3,621
25	600	Customer Options	Add S1 guard per 3-23	$1,929	$42,428
26	600	Customer Options	Add NEXTBUS system per 3-23	$2,298	$50,565
27	600	Customer Options	Add trash receptacle per 4-9	$11	$246
28	600	Customer Options	Add storage locker behind operator seat per 4-10	$87	$1,907
29	600	Customer Options	Rev C - Add Fleetmanagement	$1,102	$24,245
30	600	Customer Options	Add fire suppression per 5-7	$4,210	$92,618
31	549	HVAC System	Remove floor heating system and auxilliary heater.	-$3,635	-$79,969
32	470	Destination Signs	Rev C - Change destination signs to TwinVision Color Destination Signs (Front, C/side, S/side). Add amber rear.	$12,620	$277,632
33	600	Customer Options	Rev C - DTI Camera System	$21,671	$476,764
34	600	Customer Options	Add On-Board AVAS per 3-12 to 3-13	$14,559	$320,289
35	526	Seating & Stanchions	Rev C- Re-quote to American Seating 6468, 36 passenger seats (perimeter in the L/D and forward facing in upper deck), staggered forward facing Q'Straint W/C restraint, with blue push button, BC55 flip seats	$157	$3,444
36	526	Seating & Stanchions	Change driver seat to USSC 9100ALX non-D90 per 4-7.	$277	$6,089
37	600	Customer Options	Add APC per 3-20 to 3-22	$8,627	$189,783
38	Manuals	Deliverable	Remove MDOT Specific Manuals, replace with SFMTA specific manuals	$1,559	$34,288
39	280	Passenger Signal	Add Stop request sign on destination sign compartment door	$322	$7,083
42	Delivery	Deliverable	Add Delivery Quote	$3,909	$85,998
43	PPI	Producer Price Index	New Flyer/Allison Hybrid Credit	-$24,747	-$544,426
44	246	Air, Brake & Lev System	Rev C - Add rapid recover and equip with raise feature for steep inclines, 1" at 3 MPH is preferred to prevent chances of damaging front shocks.	$692	$15,230
45	600	Customer Options	Rev C - Add beeper exterior sound when buses are turning with via footswitch. Note, the volume of the exterior beeper will not be adjustable by the driver.	$43	$955

Reference No.	Option No.	Option Group	Description	Total	Total Contract
46	350	Drivers Control	Rev B- Change to teleflex pedals.	$975	$21,441
47	600	Customer Options	Rev B- Add additional feature for exterior announcement as passenger exit the bus "Do not walk in fornt of bus". No additional cost, feature is standard in AVAS system	$0	$0
48	491	Door Exit	Rev B - Re-quote Vapor Class system to include Activair baseplate with locking mechanism.	$3,369	$74,113
49	526	Seating & Stanchions	Rev B- Add 10" seat belt extender, to change seat belt length.	$78	$1,719
50	549	HVAC System	Rev B - Change to Heat only. (Pricing per MDOT contract)	-$11,073	-$243,606
51	600	Customer Options	Rev B- Delete the farebox pedestal portion of the farebox, the farebox will sit on the floor so it does not obscure the driver's view in the event a 41" farebox installed.	-$190	-$4,184
52	600	Customer Options	Rev B - Add transfer mounting bracket, farebox mounting support plate and wiring.	$105	$2,307
53	526	Seating & Stanchions	Rev B- Add qty 12 metal grab straps. Change stanchions to cast fittings for use with metal grab straps. Note: Metal grab straps not useable with bonded stanchions.	$654	$14,388
54		Customer Options	Rev C - Add customer specific farebox pedestal (in the event an 41" farebox is installed)	$538	$11,843
55	205	Tires	Rev C - Change the wheels to Alcoa Dura-Brite.	$682	$15,004
56	273	Exterior Lamp	Rev C - Change to two 18"x 1"LED.center stop/deceleration light above the engine door in lieu of flashing decel system per Section 3.3.2.	$64	$1,407
57	600	Customer Options	Rev C - Add two (2) external recessed buttons (elevator switches)	$319	$7,009
58	600	Customer Options	Rev C - Clipper cable harnesses.	$463	$10,176
59	231	Cooling System	Rev C - Add EMP cooling system to base.	$8,625	$189,750
60	422	Body A/P After Paint	Rev C - Add byfold drivers enclosure.	$2,470	$54,335
61	600	Customer Options	Rev C - Add rearview camera system with 7" color monitor in driver's area	$1,666	$36,650
62	600	Customer Options	Rev C - Add Drive cam with event recorder	$625	$13,750

Reference No.	Option No.	Option Group	Description	Total	Total Contract
63	422	Body A/P After Paint	Rev C - Add two more for a total of four Equipment Trays.	$351	$7,718
64	219	Engine	REV C - Add APS 2	$15,000	$330,000
65	Ext. Warranty	Deliverable	Add 2nd Year Bumper to Bumper extended warranty	$9,944	$218,770
66	Ext. Warranty	Deliverable	Add 3 year Extended BAE Warranty	$16,500	$363,000
69	219	Engine	Change to Electric power steering and compressor	$5,078	$111,715
71	Bonding	Deliverable	Add 20% Performance Bond and 2 year,10% Warranty Bond	$6,020	$132,440
72	Discount	Discount	Customer Discount	-$6,020	-$132,440
Base Bus Price Change Total				$122,273	$2,689,997
41	705	Contract Spares	One Spare Wheel per bus	$456	$10,034
Contract Spares Base Bus Price Change Total				$456	$10,034
Grand Total				$122,729	$2,700,031

EXHIBIT C

DELIVERY SCHEDULE

Item	Calendar Days after Notice to Proceed
Submittal of Baseline Schedule	60
Submittal of vehicle drawings	90
Submittal of training program (including lesson plans)	90
Delivery of prototype coach[1]	180
Submittal of draft operations, maintenance, parts manuals, recommended spare parts	180
Start of training program	180
Beginning of coach delivery[2]	90
Delivery of first half of spare parts (Lot 1)	90
Delivery of second half of spare parts (Lot 2)	180
Submittal of final operations, maintenance, and parts manuals	30
Delivery of special tools	90
Completion of coach delivery	180

[1]Approval to deliver prototype will not be granted until after receipt and approval of all vehicle drawings, control and test plans.
[2]Approval to deliver production vehicles will not be granted until after submittal of a satisfactory training plan; draft operations, maintenance, and parts manuals; and after successful completion of all appropriate pre-acceptance tests.

EXHIBIT D
PUBLICATIONS

Description	Quantity	Customer Delivery	Updates (Years)	Comments
New Flyer Standard Bus Publications (BAE)				
Draft Operator's Guide (8.5 x 11 3-hole)	1	With prototype bus delivery	12	
Draft Parts Manual	1	With prototype bus delivery	12	
Draft Service Manual	1	With prototype bus delivery	12	
Draft Bus System Drawings Manual (11 x 17 3-hole regular paper)	1	With prototype bus delivery	12	
Draft TIV CD ROM	1	With prototype bus delivery	12	CD includes only New Flyer manuals plus
Final Operator's Guide (8.5 x 11 3-hole)	400	20 business days after last bus delivery	12	
Final Parts Manual	15	20 business days after last bus delivery	12	
Final Service Manual	15	20 business days after last bus delivery	12	
Final Bus System Drawings Manual (11 x 17 3-hole regular paper)	15	20 business days after last bus delivery	12	
Final Response Guides (8.5 x 11 laminated cards)	22	20 business days after last bus delivery	12	
TIV CD ROM	1	20 business days after last bus delivery	12	CD includes only New Flyer manuals plus
OEM Vendor Publications				
Cummins ISB 2010 (CM2150) Engine OEM Vendor Manual Set (includes only the following)				
Custom parts manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Troubleshooting & Repair - Electronic Control System (Volume 1-4)	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Service Manual (Volume 1 & 2)	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	

Description	Quantity	Customer Delivery	Updates (Years)	Comments
Operation and Maintenance Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Owner's Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Custom parts manual PDF file	1	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
BAE HDS200 HybriDrive OEM Manual Set (includes only the following)				
HDS200 HybriDrive System Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	Includes all parts, service, and maintenance information
Thermo King HVAC OEM Manual (includes only the following)				
Unit Maintenance Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Intelligaire III Diagnostic Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
EMP Cooling OEM Manual (includes only the following)				
MH Cooling System Service Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
OK6 Oil Cooler Service Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Twin Vision Destination Sign OEM Manual (includes only the following)				
Operation & Maintenance Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
AVA/AVL System OEM Manual (includes only the following)				
DR600 Operations and Maintenance Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Video Surveillance System OEM Manual (includes only the following)				

Description	Quantity	Customer Delivery	Updates (Years)	Comments
Operation & Maintenance Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
WABCO ABS System OEM Manual (includes only the following)				
Operation & Maintenance Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Amerex FSS OEM Manual (includes only the following)				
Operation & Maintenance Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Operation & Maintenance Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Vansco Multiplexing System OEM Manual (includes only the following)				
Hardware User Guide	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Software User Guide	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	

Description	Quantity	Customer Delivery	Updates (Years)	Comments
New Flyer Standard Bus Publications (Allison)				
Draft Operator's Guide (8.5 x 11 3-hole)	1	With prototype bus delivery	12	
Draft Parts Manual	1	With prototype bus delivery	12	
Draft Service Manual	1	With prototype bus delivery	12	
Draft Bus System Drawings Manual (11 x 17 3-hole regular paper)	1	With prototype bus delivery	12	
Draft TIV CD ROM	1	With prototype bus delivery	12	CD includes only New Flyer manuals plus
Final Operator's Guide (8.5 x 11 3-hole)	400	20 business days after last bus delivery	12	
Final Parts Manual	15	20 business days after last bus delivery	12	
Final Service Manual	15	20 business days after last bus delivery	12	
Final Bus System Drawings Manual (11 x 17 3-hole regular paper)	15	20 business days after last bus delivery	12	
Final Response Guides (8.5 x 11 laminated cards)	23	20 business days after last bus delivery	12	
TIV CD ROM	1	20 business days after last bus delivery	12	CD includes only New Flyer manuals plus
OEM Vendor Publications				
Cummins ISL 9L 2010 (CM2250) Engine OEM Vendor Manual Set (includes only the following)				
Custom parts manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Troubleshooting & Repair - Electronic Control System (Volume 1-4)	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Service Manual (Volume 1 & 2)	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Operation and Maintenance Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	

Description	Quantity	Customer Delivery	Updates (Years)	Comments
Owner's Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Custom parts manual PDF file	1	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Allison EP50 Hybrid Drive OEM Manual Set (includes only the following)				
Service Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Parts Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Troubleshooting Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Principle of Operations	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Mechanics Tips	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Operator's Manuals	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Thermo King HVAC OEM Manual (includes only the following)				
Unit Maintenance Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Intelligaire III Diagnostic Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
EMP Cooling OEM Manual (includes only the following)				
MH Cooling System Service Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
OK6 Oil Cooler Service Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Twin Vision Destination Sign OEM Manual (includes only the following)				

Description	Quantity	Customer Delivery	Updates (Years)	Comments
Operation & Maintenance Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Video Surveillance System OEM Manual (includes only the following)				
Operation & Maintenance Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
WABCO ABS System OEM Manual (includes only the following)				
Operation & Maintenance Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Amerex FSS OEM Manual (includes only the following)				
Operation & Maintenance Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Operation & Maintenance Manual	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Vansco Multiplexing System OEM Manual (includes only the following)				
Hardware User Guide	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	
Software User Guide	15	With prototype bus delivery or soon after receiving from OEM supplier	N/A	

File No. 121070

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL

(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information *(Please print clearly.)*	
Name of City elective officer(s):	City elective office(s) held:
Members, SF Board of Supervisors	Members, SF Board of Supervisors

Contractor Information *(Please print clearly.)*	
Name of contractor: **New Flyer of America Inc.**	
Please list the names of (1) members of the contractor's board of directors; Brian Tobin, V. James Sardo, Wayne McLeod, Larry Edwards, Patricia Jacobsen, John Marinucci, Adam Gray, William Millar, Paul Soubry *(2) the contractor's chief executive officer, chief financial officer and chief operating officer; Paul Soubry (President and CEO), Glenn Asham (Chief Financial Officer), Wayne Joseph (Executive Vice President, Operations)* *(3) any person who has an ownership of 20 percent or more in the contractor; None* *(4) any subcontractor listed in the bid or contract; None* *and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary. None*	
Contractor address: **Corporate Office: 711 Kernaghan Avenue, Winnipeg Manitoba, Canada R2C 3T4**	
Date that contract was approved:	Amount of contract: **$48,669,369**
Describe the nature of the contract that was approved: **SFMTA: Amendment No. 1 to Contract No. SFMTA-2013-08 increasing contract amount from $36,889,364 to $48,669,369.**	
Comments:	

This contract was approved by (check applicable):

☐ the City elective officer(s) identified on this form

☒ a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board

☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

_____
Print Name of Board

Filer Information *(Please print clearly.)*	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: 415-554-5184
Address: City Hall, Room 244 1 Dr. Carlton B. Goodlett Pl., San Francisco CA 94102	E-mail: Board.of.Supervisors@sfgov.org

_____ _____
Signature of City Elective Officer (if submitted by City elective officer) Date Signed

_____ _____
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk) Date Signed