

**Amendment No. 1**  
to  
**Agreement between**  
**the City and County of San Francisco**  
and  
**New Flyer of America Inc.**  
**for the Procurement of Trolley Buses**  
**through Assignment from King County, Washington**  
**Contract No. CPT 632**  
**CCO No. 12-1206**

This Amendment No. 1 is made and effective this 31<sup>st</sup> day of August, 2016, 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. King County, a home rule charter county and political subdivision of the State of Washington, by and through its Department of Transportation, Metro Transit Division, entered into a contract with New Flyer, identified as ETB 12-1 ("Manufacture and Delivery of 40 Foot and 60 Foot Articulated Heavy Duty Low Floor Electric Trolley Buses"), for the procurement of electric trolley buses (the "Bus Procurement Contract").

B. Section A1 .01 of the Bus Procurement Contract established a base quantity of up to 500 buses to be potentially purchased by King County over a five-year period and an option quantity of up to an additional 200 buses. Section B2.19 of the Bus Procurement Contract authorizes King County to assign to another transit property or governmental entity part or all of the option quantity of buses.

C. Under the authority of Administrative Code Section 21.16, on December 6, 2013, the City entered into a Bus Options Assignment Agreement with King County and New Flyer (Assignment Agreement), under which King County assigned to the City the right to purchase from New Flyer up to 240 40-foot electric trolley buses and 93 60-foot electric trolley buses from the options available under the Bus Procurement Contract.

D. On February 26, 2014, the City entered into Contract No. CPT 632 with New Flyer (the Agreement) to purchase 60 60-foot electric trolley buses and associated spare parts, training, manuals, and special tools under the terms and conditions of the Agreement.

E. The Agreement allows the City to acquire up to 33 additional 60-foot electric trolley buses and up to 240 40-foot electric trolleys buses at various points during life of the Bus Procurement Contract, subject to securing adequate funding.

F. City now wishes to exercise the option to purchase 33 60-foot electric trolley buses and associated spare parts, training, manuals and special tools from New Flyer under the terms set forth in this Amendment.

Now, THEREFORE, the parties agree as follows:

1. **Definitions.** The following definitions shall apply to this Amendment:

1a. **Agreement.** The term "Agreement" shall mean the Agreement dated February 26, 2014, between Contractor and City.

1b. **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. **Modifications to the Agreement.** The Agreement is modified as follows:

2a. **Section 1.Q. B7.02.01 (Agreement)** is replaced in its entirety to read as follows:

**B7.02.01 Agreement.**

Under this Agreement, Contractor agrees to sell, and the City agrees to purchase, 60 new articulated low floor trolley buses, associated spare parts, training, manuals, and special tools, as itemized in Exhibit B-1 (Schedule of Prices) for the base Contract, and 33 new articulated low floor trolley buses, associated spare parts, training, manuals, and special tools, as itemized in Exhibit B-2 (Schedule of Prices) for the Contract Amendment 1, according to the terms and conditions set forth in this Agreement. Exhibit A sets forth the changes from the Contractor's Proposal to King County and the respective price differentials of those changes.

2b. **Section 1.Q. B7.02.02.01 (Amount)** is replaced in its entirety to read as follows:

**B7.02.02.01 Amount.**

The City agrees to pay an amount not to exceed One Hundred Fifty Million, Four Hundred Forty-Eight Thousand, Seven Hundred Twenty-Nine Dollars (\$150,448,729) (the "Total Contract Amount"), as summarized in Exhibit B (Schedule of Prices), 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.

2c. **Section 1, Q. B7.02.02.02 (Invoices)** is replaced in its entirety to read as follows:

**B7.02.02.02 Invoices**

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)

Within thirty (30) days after receipt of an approved invoice, the City will pay the Contractor pursuant to its invoice as adjusted according to additions the Payment Schedule below and to charges by the City under the Contract. Funds withheld and processed pursuant to these provisions shall not give rise to any rights in the Contractor for additional payments because funds were not received within thirty (30) days after Acceptance of each bus. Amounts withheld from earlier payments that become releasable according to the Contract Documents will be paid within thirty (30) days after the date the amounts become releasable.

2d. Section 2 amended by adding Section H to read as follows:

**H. Consideration of Criminal History in Hiring and Employment Decisions.**

- (1) Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.
- (2) The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

2e. Exhibit B is deleted and replaced with a new Exhibit B, attached to this Amendment and incorporated by reference as though fully set forth.

2f. Exhibit B-1, attached to this Amendment is added and incorporated by reference as though fully set forth.

**2g.** Exhibit B-2, attached to this Amendment is added and incorporated by reference as though fully set forth.

**2h.** Exhibit C is deleted and replaced with a new Exhibit C, attached to this Amendment and incorporated by reference as though fully set forth.

**3. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

**4. Legal Effect.** 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   
David A. Greenburg  
Deputy City Attorney

San Francisco Municipal Transportation Agency

Board of Directors

Resolution No. 16-066

Dated: 5-17-16

Attest:   
Secretary, SFMTA Board of Directors

Board of Supervisors

Resolution No. 279-10

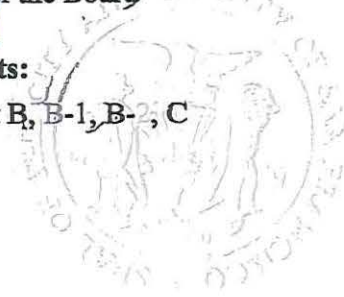
Dated: 6-14-16

Attest:

  
Clerk of the Board


Exhibits:


Exhibit B, B-1, B-2, C



CONTRACTOR

New Flyer of America Inc.

  
Paul Smith  
Executive Vice President, Sales and Marketing

  
David White  
Executive Vice President, Supply Management

711 Kernaghan Avenue  
Winnipeg, Manitoba,  
Canada R2C 3T4

City vendor number: 49642

**EXHIBIT B**  
**SCHEDULE OF PRICES**

<b>Description</b>	<b>Contract Amount</b>
CPT-632 Base Contract Reference Exhibit B-1	\$94,950,444
CPT-632 Amendment 1 Reference Exhibit B-2	\$55,498,285
Grand Total	\$150,448,729

**EXHIBIT B-1  
SCHEDULE OF PRICES FOR BASE CONTRACT**

<b>Line No.</b>	<b>Description</b>	<b>Parts &amp; Labor</b>	<b>Sales Tax</b>	<b>Total</b>	<b>Quantity</b>	<b>Extended Price (See Note 1)</b>
1	Low Floor 60-Ft Articulated Trolley Pilot Coach	\$1,374,652.90	\$114,489.73	\$1,489,142.63	1	\$1,489,143
2	Low Floor 60-Ft Articulated Trolley Coaches	\$1,374,652.90	\$114,489.73	\$1,489,142.63	59	\$87,859,415
3	Spare Parts	\$3,000,000	\$262,500	\$3,262,500	LS	\$3,262,500
4	Training	\$456,558.80	0	\$456,558.80	LS	\$456,559
5.	Operating, Maintenance and Parts Manuals	\$128,231.94	\$11,220.29	\$139,452.23	LS	\$139,452
6.	Special Tools	\$1,200,504.00	\$105,044.10	\$1,305,548.10	LS	\$1,305,548
7.	Harris/ACS/Radio System (See Note 1)	\$6,710.00	\$587.13	\$7297.13	60	\$437,828

Note 1: Extended Prices are rounded off to the nearest dollar.

<b>GRAND TOTAL</b>	<b>\$94,950,444</b>
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**EXHIBIT B-2  
SCHEDULE OF PRICES FOR AMENDMENT 1**

<b>Line No.</b>	<b>Description</b>	<b>Parts &amp; Labor</b>	<b>Sales Tax</b>	<b>Total</b>	<b>Quantity</b>	<b>Extended Price (See Note 1)</b>
1.	Low Floor 60-Ft Articulated Trolley Coaches	\$1,476,200.85	\$129,167.57	\$1,605,368.42	33	\$52,977,158
2.	NOT USED	N/A	N/A	N/A	N/A	N/A
3.	Spare Parts	\$0.00	\$0	\$0	LS	\$0.00
4.	Training	\$1,000,000.00	0	\$1,000,000.00	LS	\$1,000,000
5.	Operating, Maintenance and Parts Manuals	\$128,231.94	\$11,220.29	\$139,452.23	LS	\$139,452
6.	Special Tools	\$1,000,000.00	\$87,500.00	\$1,087,500.00	LS	\$1,087,500
7.	Harris/ACS/Radio System	\$8,197.12	\$717.25	\$8,914.37	33	\$294,175

Note 1: Extended Prices are rounded off to the nearest dollar.

<b>GRAND TOTAL</b>	<b>\$55,498,285</b>
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**EXHIBIT C**  
**DELIVERY SCHEDULE**

Contractor shall complete the items indicated below before the time periods listed have elapsed.

Item	Calendar Days after Notice-to-Proceed	
1	Submittal of Baseline Schedule and Management Work Plan	175
2	Submittal of vehicle drawings and test plans	259
3	Submittal of training program (including lesson plans)	350
4	Delivery of prototype coach <sup>1</sup>	428
5	Submittal of draft operations, maintenance, parts manuals, recommended spare parts	428
6	Approval of Prototype Coach (estimated)	518

Item	Calendar Days after Approval of Prototype	
7	Delivery of 1 <sup>st</sup> production coach <sup>2</sup> (Lot1) <sup>3</sup>	107
8	Delivery of first half of spare parts (Lot 1)	100
9	Delivery of second half of spare parts (Lot 2)	200
10	Completion of training program	300
11	Delivery of final operations, maintenance, and parts manual	100
12	Delivery of special tools	100
13	Delivery of Last Production Coach (Lot1) <sup>3</sup>	220
14	Delivery of 1st Production Coach (Lot 2) <sup>4</sup>	240
15	Delivery of Last Production Coach (Lot 2) <sup>4</sup>	360
16	Delivery of Last Production Coach (Lot3) <sup>5</sup>	991

<sup>1</sup> Approval to deliver prototype will not be granted until after receipt and approval of all vehicle drawings, control and test plans.

<sup>2</sup> Approval to deliver production vehicles will not be granted until after submittal of a satisfactory training plan; draft operations, maintenance and parts manuals, and recommended spare parts lists.

<sup>3</sup> Lot 1 shall include production coach numbers 1 through 30.

<sup>4</sup> Lot 2 shall include production coach numbers 31 through 60.

<sup>5</sup> Lot 3 shall include production coach numbers 61 through 93.