

Amendment No. 2
to
Agreement between
the City and County of San Francisco
and
New Flyer of America Inc.
for Procurement of 40-Ft and 60-Ft Low Floor Diesel Hybrid Coaches
Contract No. CPT 713
CCO No. 14-1287

This Amendment No. 2 to Agreement is made and effective this _____ day of _____, 2015, 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. On December 30, 2014, the City entered into Contract No. CPT 713 with New Flyer (the Agreement) to purchase 61 60-ft (articulated) low floor, diesel hybrid coaches (coaches) and associated spare parts, training, manuals, and special tools.

B. On June 29, 2015, the City issued Contract Amendment No. 1 to change the base order quantity of 61 articulated parallel propulsion coaches to a combination of 55 articulated parallel propulsion coaches and six articulated series propulsion coaches. In addition, as authorized by Section 65 of the Agreement, under Amendment No. 1 the City exercised its option to purchase 24 series propulsion standard coaches, 24 parallel propulsion standard coaches, 25 series propulsion articulated coaches, 25 parallel propulsion articulated coaches, and associated spare parts, training, manuals, and special tools.

C. Section 65 of the Agreement contains an option for the City to procure up to 265 additional coaches. City now wishes, subject to funding, to exercise the remaining options in order to purchase 30 series propulsion standard coaches, 122 parallel propulsion standard coaches, and 113 parallel propulsion articulated coaches from New Flyer under the terms set forth in this Amendment.

Now, THEREFORE, the parties agree as follows:

1. Section 5.1 of the Agreement is amended in its entirety to read as follows:

5.1 In no event shall the amount of this Agreement exceed Four Hundred Twelve Million, Two Hundred Seventy Thousand, Four Hundred Twenty-One U. S. Dollars (\$412,270,421 U.S.). This amount does not include California sales taxes, which shall be paid directly by the SFMTA. The breakdown of costs associated with this Agreement

appears in Exhibit 1 (Schedule of Prices), incorporated by reference as though fully set forth herein.

2. Section 6 of the Agreement is amended by adding a new Subsection 6.5 to read as follows:

6.5 Amendment No. 2 to this Agreement will be initially certified for \$91,649,312 to procure 54 parallel propulsion standard coaches and 44 parallel propulsion articulated coaches. Contractor shall not incur costs in excess of such amount without written authorization from the SFMTA, signed by the SFMTA Chief Financial Officer. In the event that the full option amount of \$244,637,752 is not certified within one year from the date that Amendment No. 2 is initially certified, any additional option vehicles shall be priced in accordance with Section 65.1 of the Agreement.

3. Section 7.2 of the Agreement is amended in its entirety to read as follows:

7.2 Invoice. Contractor’s invoices shall be submitted to the following address:

San Francisco Municipal Transportation Agency
 Fleet Engineering Section
 Attn: Gary Chang
 Project Manager
 700 Pennsylvania Avenue, Bldg. B, Rm. 207
 San Francisco, CA 94107

Each invoice shall include:

- Relevant milestones;
- Contract order number;
- Quantity of items;
- Description of items;
- Unit price;
- Total invoice amount.
- Supporting documentation and/or documentation referencing submittal or delivery.

4. In Section 7.3 (Progress Payments) on page 6 of the Agreement, the table under Item 1 – Diesel Hybrid Buses is deleted and replaced with the following:

Milestone	Maximum Percent of Bid Item 1 as applicable
(a) Authorization by SFMTA to ship each vehicle and authorization by Contractor to release each vehicle as described in Sections 12.2.3 of the Technical Specifications	55% of Unit Price
(b) Conditional acceptance of each vehicle by SFMTA	35% of Unit Price
(c) Full acceptance of each vehicle by SFMTA	5% of Unit Price

Milestone	Maximum Percent of Bid Item 1 as applicable
(d) All contract deliverables with the exception of training have been received and accepted as satisfactory	5%

5. *Schedules 2, 2.1, 3 and 3.1 of Exhibit 1 of the Agreement (Schedule of Prices) are deleted and replaced by the attached Schedules 2, 2.1, 3 and 3.1.*

6. *Exhibits 2 and 2.1 of the Agreement (Project Delivery Schedule) are deleted and replaced by the attached Exhibits 2 and 2.1.*

7. **Release.** The compensation (time and cost) set forth in this Amendment comprises the total of all compensation due to Contractor, and all subcontractors and suppliers (collectively, Contractor), as a result of the events giving rise to the Amendment and for the additional Work described in this Amendment, including, but not limited to, costs for labor, materials, equipment, delay, escalation, profit, inefficiency, overhead and administration. The execution of this Amendment constitutes a release and accord and satisfaction of any claim that Contractor may bring, as of the date of the approval of Amendment, for the Option Vehicles and parts, for additional compensation or time arising from, or related to, the procurement and delivery of the Option Vehicles to the City as described in this Amendment.

8. 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

CONTRACTOR

San Francisco Municipal Transportation Agency

New Flyer of America Inc.


Edward D. Reiskin
Director of Transportation

Paul Soubry
President & Chief Executive Officer

Approved as to Form:

Dennis J. Herrera
City Attorney

Glenn Asham
Chief Financial Officer

By  _____
David A. Greenburg
Deputy City Attorney

711 Kernaghan Avenue
Winnipeg, Manitoba,
Canada R2C 3T4

San Francisco Municipal Transportation Agency

City vendor number: 49642

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 1, Schedules 2, 2.1, 3, and 3.1
Exhibits 2 and 2.1

Exhibit 1
Schedule of Prices

SCHEDULE 2 - SCHEDULE OF PRICES
40-FT LOW FLOOR (SERIES) DIESEL HYBRID COACHES

No	Qty.	Description	Unit Price	Total Price
1.	24	Option for 1-48 40-ft Low Floor Series Diesel Hybrid Coaches in year 2015	\$723,790 + \$6,234 PPI ⁽¹⁾ \$730,024	\$17,520,576
2.	Per schedule 2A	Spare Parts for 40-ft Low floor Diesel Hybrid coaches (from Schedule 2A)	\$1,087,362 + \$9,366 PPI ⁽¹⁾ \$1,096,728	\$1,096,728
3.	Per Tech. Specs., Attachment 14	Training for 40-ft Low Floor Diesel Hybrid Coaches	\$1,104,030	\$1,104,030
4.	Per Section 9 of Tech. Specs.	Interactive Multimedia Training for 40 ft Low Floor Diesel Hybrid Coaches	\$236,250	\$236,250
5.	Per Section 9 of Tech. Specs.	Operating, Maintenance and Parts Manuals for 40-ft Low Floor Diesel Hybrid Coaches	\$ 0	\$ 0
6.	Per Schedule 2B	Special Tools for 40-ft Low Floor Diesel Hybrid Coaches (from Schedule 2B)	\$1,106,541 + \$9,531 PPI ⁽¹⁾ \$1,116,072	\$1,116,072
7.	41	Option for 1-41 40-ft Low Floor Series Diesel Hybrid Coach in year 2016	<u>\$Item 1 Unit Price</u> + PPI⁽⁴⁾	<u>\$Item 1 Total Price</u> + PPI⁽⁴⁾
8.	30	Option for 1-30 40-ft Low Floor Series Diesel Hybrid Coaches in year 2017	\$723,790 + \$36,819 PPI ⁽¹⁾ \$760,609	\$22,818,270
9.	36	Option for 1-36 40-ft Low Floor Series Diesel Hybrid Coaches in year 2018	<u>\$Item 1 Unit Price</u> + PPI⁽⁴⁾	<u>\$Item 1 Total Price</u> + PPI⁽⁴⁾
10.	45	Option for 1-45 40-ft Low Floor Series Diesel Hybrid Coaches in year 2019	<u>\$Item 1 Unit Price</u> + PPI⁽⁴⁾	<u>\$Item 1 Total Price</u> + PPI⁽⁴⁾
			Grand Total	\$43,655,676

(1) PPI: Producer's Price Index for Transportation Equipment Manufacturing: NAICS 336 to be determined at the time the options are exercised, calculated from the effective date of the contract.

**SCHEDULE 2.1 - SCHEDULE OF PRICES
40-FT LOW FLOOR (PARALLEL) DIESEL HYBRID COACHES**

No	Qty.	Description	Unit Price	Total Price
1	24	Option for 1-48 40-ft Low Floor Parallel Diesel Hybrid Coaches in year 2015	\$782,035 + \$6,736 PPI ⁽¹⁾ \$788,771	\$18,930,504
2	Per schedule 2A.1	Spare Parts for 40-ft Low floor Diesel Hybrid coaches (from Schedule 2A)	\$1,492,330 + \$12,854 PPI ⁽¹⁾ \$1,505,184	\$1,505,184
3	Per Tech. Specs., Attachment 14	Training for 40-ft Low Floor Diesel Hybrid Coaches	\$1,104,030	\$1,104,030
4	Per Section 9 of Tech. Specs.	Interactive Multimedia Training for 40 ft Low Floor Diesel Hybrid Coaches	\$236,250	\$236,250
5	Per Section 9 of Tech. Specs.	Operating, Maintenance and Parts Manuals for 40-ft Low Floor Diesel Hybrid Coaches	\$ 0	\$ 0
6	Per Schedule 2B.1	Special Tools for 40-ft Low Floor Diesel Hybrid Coaches (from Schedule 2B)	\$1,108,918 + \$9,551 PPI ⁽¹⁾ \$1,118,469	\$1,118,469
7	41	Option for 1-41 40-ft Low Floor Parallel Diesel Hybrid Coach in year 2016	\$782,035 + \$30,803 PPI ⁽¹⁾ \$812,838	\$33,326,358
8	30	Option for 1-30 40-ft Low Floor Parallel Diesel Hybrid Coaches in year 2017	\$Item 1 Unit Price + PPI⁽¹⁾	\$Item 1 Total Price + PPI⁽¹⁾
9	36	Option for 1-36 40-ft Low Floor Parallel Diesel Hybrid Coaches in year 2018	\$782,035 + \$30,803 PPI ⁽¹⁾ \$812,838	\$29,262,168
10	45	Option for 1-45 40-ft Low Floor Parallel Diesel Hybrid Coaches in year 2019	\$782,035 + \$30,803 PPI ⁽¹⁾ \$812,838	\$36,577,710
Grand Total				\$121,824,423

(1) PPI: Producer's Price Index for Transportation Equipment Manufacturing: NAICS 336 to be determined at the time the options are exercised, calculated from the effective day of the contract.

**SCHEDULE 3 - SCHEDULE OF PRICES
60-FT LOW FLOOR (SERIES) DIESEL HYBRID COACHES**

No.	Qty.	Description	Unit Price	Total Price
1.	6	60-ft Low Floor Series Diesel Hybrid Coaches – Base Contract	\$1,024,838	\$6,149,028
2.	Per Schedule 3A	Spare Parts for 60-ft Low floor Diesel Hybrid coaches (from Schedule 3A)	\$1,438,128	\$1,438,128
3.	Per Tech. Specs., Attachment 14	Training for 60-ft Low Floor Diesel Hybrid Coaches	\$1,104,030	\$1,104,030
4.	Per Section 9 of Tech. Specs.	Interactive Multimedia Training for 60-ft Low Floor Diesel Hybrid Coaches	\$236,250	\$236,250
5.	Per Section 9 of Tech. Specs.	Operating, Maintenance and Parts Manuals for 60-ft Low Floor Diesel Hybrid Coaches	\$ 0	\$ 0
6.	Per Schedule 3B	Special Tools for 60-ft Low Floor Diesel Hybrid Coaches (from Schedule 3B)	\$1,105,812	\$1,105,812
7.	25	Option for 1-50 60-ft Low Floor Series Diesel Hybrid Coaches in year 2015	\$1,024,838 + \$8,827 PPI ⁽¹⁾ \$1,033,665	\$25,841,625
8.	48	Option for 1-48 60-ft Low Floor Series Diesel Hybrid Coaches in year 2016	<u>\$Base Unit Price</u> + PPI ⁽¹⁾	<u>\$Base Unit Price</u> + PPI ⁽¹⁾
9.	35	Option for 1-35 60-ft Low Floor Series Diesel Hybrid Coaches in year 2018	<u>\$Base Unit Price</u> + PPI ⁽¹⁾	<u>\$Base Unit Price</u> + PPI ⁽¹⁾
10.	30	Option for 1-30 60-ft Low Floor Series Diesel Hybrid Coaches in year 2019	<u>\$Base Unit Price</u> + PPI ⁽¹⁾	<u>\$Base Unit Price</u> + PPI ⁽¹⁾
Grand Total				\$35,874,873

(1) PPI: Producer's Price Index for Transportation Equipment Manufacturing: NAICS 336, to be determined at the time the options are exercised, calculated from the effective date of the contract.

**SCHEDULE 3.1 - SCHEDULE OF PRICES
60-FT LOW FLOOR (PARALLEL) DIESEL HYBRID COACHES**

No.	Qty.	Description	Unit Price	Total Price
1.	55	60-ft Low Floor Parallel Diesel Hybrid Coaches – Base Contract	\$1,041,443	\$57,279,351
2.	Per Schedule 3A.1	Spare Parts for 60-ft Low floor Diesel Hybrid coaches (from Schedule 3A)	\$1,891,719	\$1,891,719
3.	Per Tech. Specs., Attachment 14	Training for 60-ft Low Floor Diesel Hybrid Coaches	\$1,104,030	\$1,104,030
4.	Per Section 9 of Tech. Specs.	Interactive Multimedia Training for 60-ft Low Floor Diesel Hybrid Coaches	\$236,250	\$236,250
5.	Per Section 9 of Tech. Specs.	Operating, Maintenance and Parts Manuals for 60-ft Low Floor Diesel Hybrid Coaches	\$ 0	\$ 0
6.	Per Schedule 3B.1	Special Tools for 60-ft Low Floor Diesel Hybrid Coaches (from Schedule 3B)	\$1,497,529	\$1,497,529
7.	25	Option for 1-50 60-ft Low Floor Parallel Diesel Hybrid Coach in year 2015	\$1,041,443 + 8,970 PPI ⁽¹⁾ \$1,050,413	\$26,260,325
8.	48	Option for 1-48 60-ft Low Floor Parallel Diesel Hybrid Coaches in year 2016	\$1,041,443 + 43,922 PPI ⁽¹⁾ \$1,085,365	\$52,097,520
9.	35	Option for 1-35 60-ft Low Floor Parallel Diesel Hybrid Coaches in year 2018	\$1,041,443 + 43,922 PPI ⁽¹⁾ \$1,085,365	\$37,987,775
10	30	Option for 1-30 60-ft Low Floor Parallel Diesel Hybrid Coaches in year 2019	\$1,041,443 + 43,922 PPI ⁽¹⁾ \$1,085,365	\$32,560,950
Grand Total				\$210,915,449

(1) PPI: Producer's Price Index for Transportation Equipment Manufacturing: NAICS 336, to be determined at the time the options are exercised, calculated from the effective date of the contract.

Exhibit 2: PROJECT DELIVERY SCHEDULE

40-FT LOW FLOOR DIESEL HYBRID COACHES (All Options)

Item	Calendar Days after Notice-to-Proceed
Submittal of Baseline Schedule and Management Work Plan	35
Submittal of vehicle drawings, control, Reliability Program Plan and test plans	175
Submittal of training program (including lesson plans)	60
Delivery of prototype coach ¹	203
Submittal of draft operations, maintenance, parts manuals, recommended spare parts	203

Item	Calendar Days after Approval of Prototype Coach
Beginning of coach delivery ²	105
Delivery of first half of spare parts (Lot 1)	100
Delivery of second half of spare parts (Lot 2)	200
Completion of training program	730
Submittal of final operations, maintenance, and parts manual	100
Delivery of special tools	100
Completion of coach delivery	1067

¹ Approval to deliver lead coach 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 tests as described in Section 11.2 of the Technical Specification.

Exhibit 2.1: PROJECT DELIVERY SCHEDULE

60-FT LOW FLOOR DIESEL HYBRID COACHES – Base Order Plus All Options

Item	Calendar Days after Notice-to-Proceed
Submittal of Baseline Schedule and Management Work Plan	35
Submittal of vehicle drawings, control, Reliability Program Plan and test plans	175
Submittal of training program (including lesson plans)	60
Delivery of prototype coach ¹	203
Submittal of draft operations, maintenance, parts manuals, recommended spare parts	203

Item	Calendar Days after Approval of Prototype Coach
Beginning of coach delivery ²	105
Delivery of first half of spare parts (Lot 1)	100
Delivery of second half of spare parts (Lot 2)	200
Completion of training program	730
Submittal of final operations, maintenance, and parts manual	100
Delivery of special tools	100
Completion of coach delivery	1137

¹ Approval to deliver lead coach 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 tests as described in Section 11.2 of the Technical Specification.