

AGREEMENT AND BILL OF SALE
NO. _____

This Agreement and Bill of Sale No. _____ (Agreement) is made and entered into by and between City and County of San Francisco, acting by and through its Airport Commission (SFO), and the City of Phoenix, an Arizona municipal corporation, acting through the Aviation Department and Phoenix Sky Harbor International Airport (City). SFO and the City are collectively referred to herein as the "Parties" and individually as "Party." This Agreement is effective when signed by the City.

SECTION 1. Authorization.

1.1 For the City, this transaction is authorized by Ordinance No. S-50785, which was passed by the Phoenix City Council on May 1, 2024. The ordinance authorizes the City to sell (14) 40-foot Eldorado National Axess low-floor buses (Buses) to SFO for a total amount not to exceed Three Hundred and Fifty Thousand Dollars (\$350,000.00).

1.2 The City represents that its representative executing this Agreement has the authority to transfer title to the Buses to SFO pursuant to the provisions of this Agreement.

1.3 For SFO, by Ordinance No. 235-23, effective on November 21, 2023, the San Francisco Board of Supervisors authorized SFO to procure up to 14 Buses for a total amount not to exceed amount of Three Hundred and Fifty Thousand Dollars (\$350,000.00), waiving requirements of the Municipal Code as required.

SECTION 2. Status of Parties.

SFO and the City understand and agree that the Parties are not merchants under the Arizona Uniform Commercial Code provisions, A.R.S. §§ 47-1101, *et seq.*

SECTION 3. Sale of Goods.

3.1 The City agrees to sell, and SFO agrees to buy, for the Purchase Price (as defined in Section 5 below) and subject to the provisions of this Agreement, the 14 Buses. The Buses are described in **Exhibit A** attached. The Buses will be picked up by SFO or SFO's designee at the offices or property of the City in Phoenix, Arizona, at the Closing, which shall, subject to the provisions of Section 4 below, occur by July 1, 2024 and no later than August 1, 2024 (or on such later date and subject to extension as may be agreed to in writing by SFO and the City).

3.2 References in this Agreement to the "Closing" mean the date on which SFO or SFO's designee obtains possession of all 14 Buses pursuant to the provisions of this Agreement.

SECTION 4. Condition of Property.

The City represents and warrants that the Buses currently remain in their as-is condition, and a thorough inspection conducted by SFO on April 4, 2023, revealed that the overall condition of the Buses has not undergone any modifications. Despite the passage of time since the last inspection, the Buses maintain their existing state, indicating stability in their operational condition. All Buses are sold as-is, where-is, without warranties or guarantees of any kind except for the warranties and guarantees contained herein.

SECTION 5. Purchase Price.

As full payment for the transfer of title of the Buses, SFO shall pay to the City the amount of Three Hundred and Fifty Thousand Dollars (\$350,000.00) (Purchase Price) prior to or upon Closing by check or as otherwise agreed by the Parties.

SECTION 6. Representations and Warranties.

6.1 City Representations and Warranties:

City represents and warrants to SFO that the statements contained in this Section are correct and complete as of the date of this Agreement and will be correct and complete as of the date of the Closing (as though made then and as though the date of the Closing were substituted for the date of this Agreement).

A. City is an Arizona municipal corporation duly existing under the laws of the State of Arizona and has the power and authority to enter into and perform this Agreement. Each person signing this Agreement on behalf of the City has full power and authority to do so.

B. The execution, delivery, and performance by the City of this Agreement has been approved as required under all applicable laws, and there are no additional approvals required or appeal periods that must expire in order for the City's actions under this Agreement to be valid and effective.

C. No Security Interest. The Buses are not encumbered by any pledge, lien, encumbrance, charge, or other security interest but not including liens for taxes not yet due and payable.

6.2 SFO Representations and Warranties:

SFO represents and warrants to the City that the statements contained in this Section are correct and complete as of the date of this Agreement and will be correct and complete as of the date of the Closing (as though made then and as though the date of the Closing were substituted for the date of this Agreement).

A. Authorization of Transaction. SFO is a California municipal corporation and has the power and authority to enter into and perform this Agreement

and has taken all action necessary to execute and deliver this Agreement, to consummate the transactions contemplated hereby, and to perform its obligations hereunder, and no other proceedings on the part of SFO are necessary to authorize the execution, delivery, and performance of this Agreement and to consummate the transactions contemplated hereby. This Agreement, and each agreement or instrument that has been or shall be entered into or executed by SFO in connection with this Agreement, has been or will be duly executed and delivered by SFO and is a valid and binding obligation of SFO, enforceable against it in accordance with its terms (except to the extent that enforcement may be affected by applicable bankruptcy, reorganization, insolvency, and similar laws affecting creditors' rights and remedies and by general principles of equity (regardless of whether enforcement is sought at law or in equity)).

B. No Violation. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not (i) violate any provision of the charter of the City and County of San Francisco, (ii) conflict with or violate any statute or law, or any judgement, decree, order, regulation or rule of any court or governmental authority, binding upon or applicable to SFO or by which the property or assets of SFO, including the Buses, are bound or affected, or (iii) conflict with, result in a material breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any agreement, contract, lease, license, instrument or other arrangement to which SFO is a party or by which it is bound or to which any of the Buses are subject (or result in the imposition of or violate any security interest upon any of the Buses).

SECTION 7. Payment of Taxes.

SFO shall pay to any federal, state, local, and other governmental authority any taxes imposed on the sale of the Buses by the City to SFO.

SECTION 8. Condition to Obligation of the City.

The obligation of the City to consummate the transactions provided for in this Agreement is subject to satisfaction of the following conditions at the Closing:

A. The City shall have procured and delivered all of the third-party releases and other evidence, if necessary, in order to transfer the Buses to SFO free and clear of all liens, claims and encumbrances;

B. No action, suit, or proceeding shall be pending or threatened before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator wherein an unfavorable decision, judgment, order, decree, ruling, or charge would (i) prevent consummation of any of the transactions contemplated by this Agreement, (ii) cause any of the transactions contemplated by this Agreement to be rescinded following consummation, or (iii) affect adversely the right of SFO to own the Buses;

C. The City shall have performed in all material respects its agreements, covenants, and obligations contained in this Agreement and required to be performed at or prior to the Closing; and

D. The representations and warranties of the City set forth in this Agreement shall be true in all material respects as of the date of the Closing.

SECTION 9. Condition to Obligation of SFO.

The obligation of SFO to consummate the transactions provided for in this Agreement is subject to satisfaction of the following conditions at the Closing:

A. SFO shall have performed in all material respects its agreements, covenants, and obligations contained in this Agreement and required to be performed at or prior to the Closing; and

B. The representations and warranties of SFO set forth in this Agreement shall be true in all material respects as of the date of the Closing.

SECTION 10. Warranty of Title.

The City, for itself and its successors, hereby covenants to and with SFO, its successors and assigns, that the City is the lawful owner of the Buses, that they are free from all liens and encumbrances, that the City has good right to sell the Buses to SFO as aforesaid, and that if the Closing has occurred, the City will warrant and defend the same against the lawful claims and demands of all persons whomsoever.

SECTION 11. Representation by Counsel: Mutual Negotiation.

The Parties have been represented by counsel of their choice in negotiating this Agreement. This Agreement shall, therefore, be deemed to have been negotiated and prepared at the joint request, direction, and construction of the Parties, at arm's length, with the opportunity for advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any Party.

SECTION 12. Entire Agreement.

This Agreement (including the exhibits hereto) constitutes the entire agreement between SFO and the City concerning their rights and obligations with respect to the sale of the Buses. Any agreement or representations respecting such sale not expressly set forth in this Agreement shall have no effect, except for any subsequent written modification signed by both of the Parties.

SECTION 13. San Francisco Sunshine Ordinance and California Public Records Act

City acknowledges that this Agreement and all records related to its formation, City's performance of the Agreement, and City's payment are subject to the California

Public Records Act (California Government Code Section 7920.000 et. seq.), and the San Francisco Sunshine Ordinance (Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

SECTION 14. Severability

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

SECTION 15. Indemnification.

Each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) ("Claims"), but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

Each party must use its best efforts to cause all contractors (each an "Additional Indemnitor") to indemnify, defend, save and hold harmless the other party from and against any and all Claims caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the Additional Indemnitor and persons for whom they are vicariously liable.


SECTION 16. Applicable Law.

16.1 The validity and interpretation of this Agreement shall be governed by, and construed in accordance with, the laws and regulations of the State of Arizona, and any dispute arising from this Agreement shall be heard, in whatever forum the Parties choose, in Phoenix, Maricopa County, Arizona.

16.2 This Agreement is subject to prior approval of the Phoenix City Council and may be cancelled by the City Pursuant to A.R.S. § 38-511.


(The signature page follows.)

CITY OF PHOENIX, an Arizona municipal corporation
JEFFREY BARTON, City Manager

By: 
Chad R. Makovsky, A.A.E.
Aviation Director

Date: May 30, 2024

ATTEST:


City Clerk

Date: Jun 4, 2024

APPROVED AS TO FORM,
JULIE M. KRIEGH, City Attorney

By: 
David Lavelle (May 23, 2024 13:01 PDT)
Carolina Potts SML
Assistant Chief Counsel



City and County of San Francisco

By: 
Ivar Satero
Airport Director

Date: 5/7/24

APPROVE AS TO FORM:

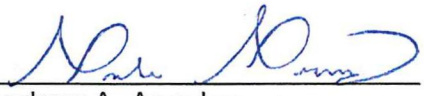
By: 
Andrew A. Angeles
Deputy City Attorney

EXHIBIT A

Bus #	Vin #	License	Year	Make	Eng. Make	Trans	Fuel	Mileage	Out of Service
610	1N9APALG49C084270	GA10763	2009	EL DORADO	CUMMINS	ALLISON B400R	CNG	375,555	03/17/23
612	1N9APALG29C084266	GA10815	2009	EL DORADO	CUMMINS	ALLISON B400R	CNG	318,357	03/17/23
615	1N9APALG49C084267	GA10818	2009	EL DORADO	CUMMINS	ALLISON B400R	CNG	347,854	03/17/23
616	1N9APALG89C084269	GA10764	2009	EL DORADO	CUMMINS	ALLISON B400R	CNG	385,940	03/17/23
617	1N9APALG89C084272	GA10761	2009	EL DORADO	CUMMINS	ALLISON B400R	CNG	375,566	03/17/23
618	1N9APALGX9C084273	GA10760	2009	EL DORADO	CUMMINS	ALLISON B400R	CNG	372,395	03/17/23
621	1N9APALG19C084274	GA10757	2009	EL DORADO	CUMMINS	ALLISON B400R	CNG	368,821	03/17/23
623	1N9APALG09C084279	GA10770	2009	EL DORADO	CUMMINS	ALLISON B400R	CNG	390,348	03/17/23
624	1N9APALG79C084280	GA10769	2009	EL DORADO	CUMMINS	ALLISON B400R	CNG	452,805	03/17/23
625	1N9APALG99C084278	GA10755	2009	EL DORADO	CUMMINS	ALLISON B400R	CNG	410,347	03/17/23
627	1N9APALG49C084284	GA10765	2009	EL DORADO	CUMMINS	ALLISON B400R	CNG	439,764	03/17/23
628	1N9APALG09C084282	GA10767	2009	EL DORADO	CUMMINS	ALLISON B400R	CNG	409,012	03/17/23
631	1N9APALG89C084286	GA10773	2009	EL DORADO	CUMMINS	ALLISON B400R	CNG	438,217	03/17/23
635	1N9APALG39C084289	GA10775	2009	EL DORADO	CUMMINS	ALLISON B400R	CNG	450,038	03/17/23



City of Phoenix

To: Sarah J. Demory, A.A.E., ACE
Assistant Aviation Director

Date: May 6, 2024

From: Gabriel Nevarez, C.M. *GN*
Deputy Aviation Director

Subject: DELEGATION OF AUTHORITY

Linda Duarte, Facilities and Services Special Projects Administrator, is authorized to act on my behalf, to approve and sign all documents requiring the approval of the Deputy Aviation Director in the Facilities and Services Division, beginning Thursday, May 16, 2024, at 5:00 p.m. until Monday, May 20, 2024, at 6:00 a.m., or until my return.

This is in accordance with Administrative Regulation 1.51 revised January 2, 2002.

Linda Duarte

Linda Duarte, C.M.
Facilities and Services Special Projects Administrator

C. SharePort
Sarah J. Demory, A.A.E., ACE
Facilities and Services Aviation Superintendents
Jennifer Maples
Dan Gluck