

File No. 130713

Committee Item No. 6

Board Item No. 14

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date January 15, 2014

Board of Supervisors Meeting

Date January 28, 2014

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
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Completed by: Linda Wong Date January 10, 2014
 Completed by: L.W. Date January 17, 2014

1 [Agreement - New Flyer of America Inc. - Purchase of Trolley Buses - Not to Exceed
2 \$94,950,444]

3 **Resolution approving a contract with New Flyer of America Inc., for the purchase of 60**
4 **articulated trolley buses, associated equipment and spare parts, for an amount not to**
5 **exceed \$94,950,444.**

6
7 WHEREAS, Under Section 21.16 of the San Francisco Administrative Code, the San
8 Francisco Municipal Transportation Agency (SFMTA) may utilize the competitive procurement
9 process of any other public agency to make purchases of commodities under the terms
10 established in that agency's procurement process and as agreed upon by the City and the
11 procuring agency, upon making a determination that the other agency's procurement process
12 was competitive and the use of the other agency's procurement process would be in the City's
13 best interests; and

14 WHEREAS, Since 2011, the San Francisco Municipal Transportation Agency (SFMTA)
15 has been working with King County Metro (King County) in Seattle to jointly procure standard
16 and articulated trolley buses; and

17 WHEREAS, King County issued a competitive request for proposals in May 2012 to
18 procure 100 standard trolley buses, with an option for 250 additional standard buses, and 55
19 articulated trolley buses, with an option for 125 additional articulated trolley buses; and

20 WHEREAS, The SFMTA has a fleet of 60 articulated New Flyer buses purchased in
21 1992 that are beyond the end of their useful life; and

22 WHEREAS, SFMTA wishes to purchase 60 articulated trolley buses through the King
23 County procurement to replace the 1992 New Flyer trolley buses and plans to procure
24 additional trolley buses when funding is identified and secured; and

1 WHEREAS, On June 4, 2013, pursuant to Resolution No. 13-066, the SFMTA Board of
2 Directors found that it was in the best interests of the City that the SFMTA procure 60
3 articulated trolley buses from the selected vendor through the Bus Options Assignment
4 Agreement with King County ("Bus Options Assignment Agreement"), and authorized the
5 SFMTA to enter into a Bus Options Assignment Agreement and the selected vendor to
6 acquire 60 articulated trolley buses, associated equipment, training, manuals, spare parts and
7 taxes at a cost not to exceed \$98,717,875; and

8 WHEREAS, King County awarded King County Bus Procurement Contract ETB 12-1 to
9 New Flyer of America Inc. in July 2013; and

10 WHEREAS, Acquiring trolley buses through the King County competitive procurement
11 process will save the public significant taxpayer funds, serve the public interest in improved
12 public transit and yield tangible benefits to both agencies, including (1) acquiring new vehicles
13 at the best price by minimizing the necessary supplier engineering investment, and taking
14 advantage of economies of scale; (2) reducing the operating costs of the agencies; (3)
15 improving the reliability of the service;(4) avoiding the unnecessary and considerable
16 expenditure of federal and local funds for two separate yet identical procurement processes
17 with the same vendors; and (5) ensuring that the ambitious environmental policy goals at the
18 local, state and federal levels are exceeded through the purchase of zero-emission vehicles;
19 and

20 WHEREAS, On December 6, 2013, SFMTA, King County and New Flyer of America
21 executed the Bus Options Assignment Agreement, which assigned to SFMTA the option to
22 purchase the 60 articulated trolley coaches, and up to 240 standard trolley coaches and 33
23 additional articulated trolley coaches under the terms and conditions of the King County Bus
24 Procurement Contract; a copy of the Bus Options Assignment Agreement is on file with the
25

1 Clerk of the Board of Supervisors in File No. 130713, and is declared to be a part of this
2 motion as if set forth fully herein; and

3 WHEREAS, The SFMTA has negotiated a contract with New Flyer for the purchase of
4 60 articulated trolley coaches, including associated equipment, training, manuals and spare
5 parts for an amount not exceed \$94,950,444 ; the contract also includes an option to
6 purchase up to 33 additional articulated trolley buses and up to 240 additional standard trolley
7 buses; a copy of the contract is on file with the Clerk of the Board of Supervisors in File No.
8 130713, and is declared to be a part of this motion as if set forth fully herein; now, therefore,
9 be it

10 RESOLVED, That the Board of Supervisors authorizes the SFMTA to enter into a
11 contract with New Flyer of America Inc. for the purchase of 60 articulated trolley buses,
12 associated equipment, special tools, training and spare parts, in an amount not to exceed
13 \$94,950,444; and be it

14 FURTHER RESOLVED, That the Board of Supervisors authorizes the SFMTA to enter
15 into any amendments or modifications to the contract (including without limitation, the exhibits)
16 that the Director of Transportation determines, in consultation with the City Attorney, are in the
17 best interests of the City, do not increase the obligations or liabilities of the City, are
18 necessary or advisable to effectuate the purposes of the contract or this Resolution, and are
19 in compliance with all applicable laws, including the City's Charter.



SFMTA
Municipal
Transportation
Agency

Edwin M. Lee, *Mayor*

Tom Nolan, *Chairman*

Malcolm Heinicke, *Director*

Joél Ramos, *Director*

Edward D. Reiskin, *Director of Transportation*

Cheryl Brinkman, *Vice-Chairman*

Jerry Lee, *Director*

Cristina Rubke, *Director*

January 3, 2013

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

Subject: Request for Approval of Agreement for the Purchase of 60 Articulated Trolley Buses

Honorable Members of the Board of Supervisors:

The San Francisco Municipal Transportation Agency (SFMTA) requests that the San Francisco Board of Supervisors authorizes the SFMTA to enter into an Agreement with New Flyer of America Inc. (New Flyer) for the purchase of 60 articulated trolley buses, in an amount not to exceed \$94,950,444.

The purpose of this procurement is to replace the 60 articulated trolley buses in SFMTA's current fleet that have exceeded the end of their useful life. The SFMTA continues to purchase replacement trolley coaches in support of the greenhouse gas emissions limits set by the May, 2008 Greenhouse Gas Reduction Ordinance passed by the Board of Supervisors.

On December 6, 2013, the SFMTA entered into a Bus Option Assignment Agreement with King County Metro in Washington State and New Flyer Inc. Under this agreement King County Metro assigned 240 standard and 93 articulated option buses under their existing contract with New Flyer Inc. to SFMTA. In order to make an initial purchase of 60 of the articulated trolley buses, SFMTA has negotiated a separate agreement with New Flyer per the terms of the Bus Options Agreement.

Background

In 1992, the SFMTA acquired a fleet of 60 articulated trolley buses from New Flyer Inc. These 60 articulated trolley buses have been in service since 1994 and are now well past their useful life of 15 years.

The SFMTA has been looking at alternative procurement avenues to reduce the time it takes to purchase replacement vehicles. Staff has determined that by purchasing replacement vehicles through the options available from King County's contract, it is possible to achieve this objective.

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.

Starting in March of 2011, SFMTA staff collaborated with King County Metro's staff to develop the specifications for standard and articulated trolley buses. By combining the coach requirements of SFMTA and King County Metro, both agencies are able to take advantage of the economies of scale of a larger procurement. Additionally, they can benefit in the future when maintaining these buses by encouraging vendors to stock enough parts on their shelves to supply both fleets of buses.

King County issued a Request for Proposals (RFP) on May 15, 2012. The RFP contains the following base equipment and options, with bid prices tiered depending on the number of vehicles ordered:

- A. Standard trolley buses: 100 base vehicles, 250 option vehicles
- B. Articulated trolley buses: 55 base vehicles, 125 option vehicles

Under this agreement, SFMTA will purchase 60 articulated trolley buses. SFMTA also intends to purchase up to 240 standard buses and 33 more articulated trolley buses at various intervals during the term of King County's contract to replace the remainder of its trolley bus fleet. The total option quantities designated for SFMTA (240 standard and 93 articulated) would provide the requisite one-for-one replacement of the entire trolley fleet, and accommodate proposed service expansion for trolley buses. SFMTA would return to this Board in the future to seek approval for these additional procurements when funding has been secured. SFMTA intends to purchase the standard buses in 2016-2017 and the articulated trolley buses in 2018-2019.

Throughout RFP process, SFMTA staff worked with King County Metro staff by providing technical support in the evaluation of the proposals received from several vendors. On July 31, 2013, after a competitive negotiated procurement process, King County awarded the procurement contract to New Flyer. On December 6, 2013, King County, SFMTA and New Flyer signed a Bus Option Assignment Agreement assigning the 240 standard and 93 articulated trolley coaches available in the contract to SFMTA.

SFMTA conducted negotiations with New Flyer for minor changes to the buses that are specific to the needs of SFMTA, such as color scheme, deletion of air-conditioning, type of seat material, Li-Ion batteries, door sizes, warranty, training, spare parts and special tools, in order to finalize the price of the trolley buses. Changes were also made to the terms and conditions of the agreement that were deemed necessary to better manage the contract.

SFMTA Board Action

On June 4, 2013, the SFMTA Board of Directors adopted Resolution No. 13-066, which authorized the Director of Transportation to execute a bus options assignment agreement with King County and its selected vendor in an amount not to exceed \$98,717,875 and for a term not to exceed six years. At that time, King County had not completed its procurement process. A final contract has now been negotiated between SFMTA and New Flyer. The final price for this sixty bus purchase does not exceed the \$98,717,875 amount approved by the SFMTA Board (see contract amount below).

Alternatives Considered

Staff considered other alternatives, such as purchasing option vehicles from a cooperative purchasing schedule (similar to the procurement of hybrid electric buses through the cooperative purchasing schedule of the State of Minnesota) or purchasing vehicles through the regular RFP process. Staff did not find these alternatives feasible because of the following:

1. Purchasing through a cooperative purchasing schedule: There are no available cooperative purchasing schedules that include trolley buses.
2. Purchasing through the regular RFP process: This alternative will take longer since King County's RFP was ready nine months ahead of SFMTA's planned RFP.

Staff also conducted analyses comparing diesel-hybrid buses to electric trolley buses. Trolley buses provide numerous benefits that advantage them over diesel buses in San Francisco's operating environment. Trolley coaches perform better on steep hills, are quieter, and produce zero emissions. With the existence of the infrastructure we have in place and federal funds available to trolleys but not diesels, trolley buses are also less expensive to operate. In addition, a switch from trolleys to diesels would require considerable one-time expenditures to modify maintenance facilities and remove infrastructure. Finally, trolley buses are more consistent with various city policies – replacing zero-emission vehicles with those that generate greenhouse gases and other pollutants would run counter to well established and broadly supported city policies.

Funding Impact

Funding for the initial 60 vehicles has been identified and will come from a combination of federal and local funds. SFMTA will purchase the remainder of the option buses, up to 240 standard buses and 33 articulated trolley buses, during the term of the contract to replace its current fleet when the agency becomes eligible to receive Federal Transit Administration funds to replace those vehicles beginning in 2017.

The following is a breakdown of the contract amount with New Flyer and funding sources for the initial 60 vehicles:

Contract Breakdown

Category	Cost
New Flyer Contract Total	
Trolley buses	\$89,348,558
Capital Spares	\$3,262,500
Training	\$456,559
Operating, Maintenance and Parts Manuals	\$139,452
Special Tools & Test Equipment	\$1,305,548
Harris/ACS Radio Cable Harness	\$437,828
Total for New Flyer Contract	\$94,950,444

Financial Plan

Funding Source	Amount
Federal Grants	\$75,960,355
Local Grants (Proposition K)	\$18,790,089
Local Grants (AB664)	\$200,000
Total Available Funds	\$94,950,444

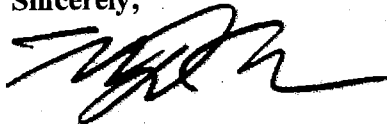
There are currently \$66,442,057 in Federal funds and \$200,000 in Local AB664 funds booked into the project. The remaining federal funds are scheduled to arrive in August 2014. The Proposition K funds will arrive within three months after SFMTA submits a request for funding to the San Francisco County Transportation Authority.

Recommendation

The SFMTA requests and recommends that the San Francisco Board of Supervisors authorize the SFMTA to enter into an Agreement with New Flyer for the purchase of 60 articulated trolley buses and related tools, training and spare parts, in an amount not to exceed \$94,950,444, and for a term not to exceed six years. The contract includes an option for the purchase of up to an additional 33 articulated trolley buses and 240 standard trolley buses; however, SFMTA would return to the Board of Supervisors for approval for those additional procurements.

Thank you for your consideration of this proposed agreement. 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. 13-066

WHEREAS, In 1992, the SFMTA acquired a fleet of 60 articulated trolley buses from New Flyer Inc.; and,

WHEREAS, These articulated trolley buses have been in service since 1994 and are now well past their useful life of 15 years; and,

WHEREAS, Since March 2011, the San Francisco Municipal Transportation Agency (SFMTA) has been collaborating with King County Metro in Seattle to develop specifications for the joint procurement of standard and articulated trolley buses; and,

WHEREAS, King County Metro issued a competitive request for proposals in May 2012 to procure 100 standard trolley buses, with an option for 250 additional standard buses, and 55 articulated trolley buses, with an option for 125 additional trolley buses; and,

WHEREAS, King County Metro expects to award the contract in July 2013; and,

WHEREAS, SFMTA currently wishes to purchase 60 articulated trolley buses from the King County Metro procurement to replace the 1992 New Flyer trolley buses and plans to procure additional trolley buses when funding is identified and secured; and

WHEREAS, Under Administrative Code Section 21.16, the SFMTA is authorized to utilize the competitive procurement process of another public agency to make purchase of commodities for the use of the City under the terms established in that agency's competitive procurement process and as agreed upon by the City and the procuring agency; and

WHEREAS, Acquiring trolley buses through the King County competitive procurement process will save the public significant taxpayer funds, serve the public interest in improved public transit and yield tangible benefits to both agencies, including (1) acquiring new vehicles at the best price by minimizing the necessary supplier engineering investment, and taking advantage of economies of scale; (2) reducing the operating costs of the agencies; (3) improving the reliability of the service; (4) avoiding the unnecessary and considerable expenditure of federal and local funds for two separate yet identical procurement processes with the same vendors; and (5) ensuring that the ambitious environmental policy goals at the local, state and federal levels are exceeded through the purchase of zero-emission vehicles; and

WHEREAS, The SFMTA estimates that the cost for all 60 articulated buses, equipment, manuals, training, spare parts and taxes will not exceed \$98,717,875; and

WHEREAS, The SFMTA will negotiate the terms of the Option Assignment Agreement, including changes to technical specifications for buses being purchased by SFMTA once King County Metro awards the contract to the successful bidder; and

WHEREAS, The SFMTA believes that the proposed transaction is in the best interests of the City; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Agency, through the Director of Transportation, to enter into a Bus Options Assignment Agreement with King County Metro and the selected vendor to acquire 60 articulated trolley buses, associated equipment, training, manuals, spare parts and taxes at a cost not to exceed \$98,717,875, and for a term not to exceed six years.

I certify that the foregoing resolution was adopted by the Municipal Transportation Agency Board of Directors at its meeting of June 4, 2013.

R. Boomer

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

BUS OPTIONS ASSIGNMENT AGREEMENT

by and among

King County's Department of Transportation, Metro Transit Division

and

The City and County of San Francisco

and

New Flyer of America Inc.

THIS BUS OPTIONS LIMITED ASSIGNMENT OF RIGHTS AND ASSUMPTION OF DUTIES AGREEMENT, (the "Bus Options Assignment Agreement"), is made and entered into this 6th day of December, 2013, by and among 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 (the "County" and/or "Metro Transit" and/or the "Assignor"),

the City and County of San Francisco, a municipal corporation (the "City"), acting by and through its Municipal Transportation Agency ("SFMTA" and/or the "Assignee"),

and

New Flyer of America Inc. a North Dakota corporation ("New Flyer" and/or the "Contractor"),

any of which entities may be referred to hereinafter individually as "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the County and New Flyer are parties to a contract, 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 certain transit buses detailed therein (the "Bus Procurement Contract"); and

WHEREAS, Section A1.01 of the Bus Procurement Contract established a base quantity of up to 155 buses to be potentially purchased by the County over a five-year period and an option quantity of up to an additional 375 buses; and

WHEREAS, Section B2.19 of the Bus Procurement Contract authorizes the County to assign to another transit property or governmental entity part or all of the option quantity of buses; and

WHEREAS, the Assignee desires to acquire a number of additional buses for its transit fleet and has asked the County to assign part of the available option quantity to the Assignee; and

WHEREAS, the County has determined that it has sufficient capacity in the combined base quantity and remaining option quantity available to it through the Bus Procurement Contract to meet its own bus procurement needs over the remaining term of the Bus Procurement Contract; and

WHEREAS, New Flyer has been informed of the Assignee's desire to acquire up to 240 40-foot electric trolley buses and up to 93 60-foot electric trolley buses via an assignment of a portion of the option quantity of buses available to the County through the Bus Procurement Contract; and

WHEREAS, the Contractor has no objection to the County assigning a portion of the available option quantity of buses to the Assignee;

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth herein, the Parties agree as follows:

1. **PURPOSE**

The purpose of this Bus Options Assignment Agreement is to set forth the terms and conditions upon which the County will assign to the Assignee a portion of the option quantity of buses available to the County through the Bus Procurement Contract.

2. **ASSIGNOR'S LIMITED ASSIGNMENT OF RIGHT TO PURCHASE BUS OPTIONS**

Pursuant to Section B2.19.01 of the Bus Procurement Contract and the terms and conditions of this Bus Options Assignment Agreement, the County hereby assigns to the Assignee the right to purchase from the Contractor 240 40-foot electric trolley buses and 93 60-foot electric trolley buses of the option quantity of 375 buses available to the County as provided for in Section A1.01 of the Bus Procurement Contract.

3. ASSIGNEE'S COMPLIANCE WITH CONTRACT TERMS AND ASSUMPTION OF CONTRACTUAL DUTIES

In consideration of the County's foregoing assignment to the Assignee, the Assignee hereby accepts the foregoing assignment, and agrees to assume all applicable contractual duties and responsibilities associated with the exercise of its right to purchase buses from the Contractor via this Bus Options Assignment Agreement. The parties acknowledge that Assignee and Contractor intend to enter into a separate agreement for purchase of the assigned buses.

4. REVERSION OF OPTIONS

In the event the Assignee fails, within 54 months from the date this Bus Options Assignment Agreement is signed by all the Parties hereto, to exercise the right assigned to it pursuant to this Bus Options Assignment Agreement to purchase from the Contractor up to 240 40-foot electric trolley buses and up to 93 60-foot electric trolley buses from the option quantity provided for in the Procurement Contract, the unexercised options shall revert back to the County.

5. CONTRACTOR'S ACKNOWLEDGMENT OF AND CONSENT TO ASSIGNMENT

The Contractor hereby acknowledges and consents to the County's assignment to the Assignee, pursuant to Section B2.19.01 of the Procurement Contract and the terms and conditions of this Bus Options Assignment Agreement, of the right to purchase up to 240 40-foot electric trolley buses and up to 93 60-foot electric trolley buses of the option quantity of buses available to the County as provided for in the Procurement Contract.

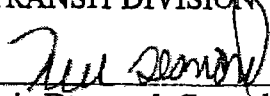
6. INDEMNIFICATION AND HOLD HARMLESS

Both the Assignee and the Contractor hereby agree to indemnify and hold harmless the County, its elected officials, officers, employees, agents and representatives from any and all claims, actions, judgments, liabilities, proceedings and costs, including reasonable attorneys' fees and other costs of defense and damages, arising out of the assignment of rights provided for in this Bus Options Assignment Agreement or in any way resulting from the Assignee's exercise of the bus purchase options, including any acts or omissions associated therewith, whether contractual or otherwise, arising out of or related to the assignment provided for herein.

IN WITNESS WHEREOF, each of the Parties hereto accepts the terms and conditions provided for herein and has caused this Assignment Agreement to be signed and executed by a duly authorized representative.

ASSIGNOR:

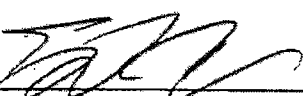
KING COUNTY
DEPARTMENT OF TRANSPORTATION
METRO TRANSIT DIVISION

By: 
Kevin Desmond, General Manager

Date: 12/6/13

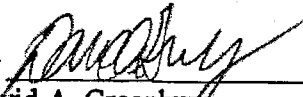
ASSIGNEE:

CITY AND COUNTY OF SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

By: 
Edward D. Reiskin
Director of Transportation

Date: 11-25-13

Approved as to Form:
Dennis J. Herrera, City Attorney

By: 
David A. Greenburg
Deputy City Attorney

Authorized by:

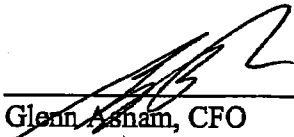
SFMTA Board of Directors
Resolution No. 13-066
Dated: 6-4-13

Attest:


Secretary, Board of Directors

CONTRACTOR:

NEW FLYER OF AMERICA INC.

By: 
Glenn Asham, CFO

Date: 11-21-13

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. SFMTA- CPT-32
CCO No. 12-1206

This Agreement is made this _____ day of _____, 2013, 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 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. The City wishes to acquire 60 60-foot electric trolley buses from New Flyer under the terms of the Assignment Agreement and the Bus Procurement Contract, as amended by the provisions of this Agreement.

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

F. City intends to exercise its option to acquire up to 33 additional 60 foot electric trolley buses and up to 240 40-foot electric trolley buses for its transit fleet at various points during the life of the Bus Procurement Contract, subject to securing adequate funding for such procurements.

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth herein, the Parties agree as follows:

1. The following provisions of the Bus Procurement Contract are amended with respect to this Agreement:

A. Section A2.35 (Washington State Requirements) is replaced by a new Section A2.35 (California State Requirements) to read as follows:

A2.35.01

Pursuant to Section 11700 et seq. of the California Vehicle Code. Contractor shall be duly licensed by the State of California and in compliance with all California laws and regulations governing licensure of vehicle manufacturers.

A2.35.02

Contractor shall also be duly registered with the California Secretary of State and the State Board of Equalization.

A2.35.03

The Contractor's name on the required California registration and licensure documents, the Contractor's name on the Assignment Agreement, and the Contractor's name on invoices must be the same.

B. Section A2.36 (King County Requirements) is replaced by a new Section A2.36 (San Francisco Requirements) to read as follows:

A2.36.01 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.

A2.36.02 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.

C. Section B1.01 (Definitions) is amended as follows:

- (1) Replace all references to "Contract Officer" and "Contract Administrator" with "Project Manager, or his or her designee."
- (2) Replace all references to "County" with "City."
- (3) Replace all references to "Department of Transportation" with "SFMTA."
- (4) Replace all references to "General Manager" with "Director of Transit."
- (5) Replace all references to "KCMetro," "Metro" or "Metro Transit" with "SFMTA."
- (6) Except as otherwise noted, replace all references to "Seattle" or "King County" with "City and County of San Francisco."
- (7) Replace all references to "Washington" with "California."
- (8) Delete the following definitions: "County;" "Department of Transportation;" "Director;" "General Manager;" "KCC;" "Maintenance Personnel Skill Levels;" "Metro or Metro Transit;" "Procurement Officer;" "Purchaser;" "RCW;" "Wheelchair."
- (9) Add the following new definitions:
 - a. Board of Supervisors: Board of Supervisors of City
 - b. Certification: Certification by the Controller of City that funds necessary to make payments as required under the Contract are available in accordance with the City's Charter.

- c. City: City and County of San Francisco, a municipal corporation
- d. Director: The Director of Transportation of the SFMTA, or his or her designee.
- e. Final Acceptance: Acceptance by the Director that all Contract deliverables have been satisfactorily completed and Accepted. This will authorize the SFMTA to release the final payment, including all retention, to the Contractor.
- f. Municipal Transportation Agency (SFMTA): The City agency responsible for the Municipal Railway (Muni) and the Division of Sustainable Streets. The SFMTA is governed by a Board of Directors.
- g. Wheelchair: A mobility aid belonging to any class of three- or more wheeled devices, usable indoors, designed or modified for and used by individuals with mobility impairments, whether operated manually or powered.

D. Section B2.02.05 is amended to read as follows:

B2.02.05

Whenever the Inspector(s) is (are) present at the Contractor's worksite, the Contractor shall make available a private and lockable office adjacent to the final inspection area with:

1. Lockable desk (one per inspector);
2. Office desk chair;
3. A minimum of one bookcase;
4. A minimum of one four-drawer file cabinet;
5. Telephone service providing all inside lines, one outside line, and fax data lines; (Contractor pays telephone charges);
6. Internet access,
7. Office supplies as needed.
8. Use of copy, fax and scanning equipment (Contractor shall provide all paper and toner supplies).

E. Sections B2.12.01 and B2.12.02 are deleted and replaced with the following provisions:

B2.12.01 Requiring Minimum Compensation for Covered Employees

Contractor agrees to pay covered employees no less than the minimum compensation required by San Francisco's Minimum Compensation Ordinance (MCO), and shall otherwise comply with the MCO as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P). The provisions of Chapter 12P, including but not limited to the penalties for noncompliance provided therein, are incorporated herein by this reference, and made part of this Agreement as though fully set forth herein.

B2.12.02 Health Benefits for Covered Employees

Contractor agrees to choose and perform one of the Health Care Accountability options set forth in Section 12Q.3 of the Health Care Accountability Ordinance (HCAO), and to comply with the HCAO as set forth in San Francisco Administrative Code Chapter 12Q.

F. Section B2.15 (Dispute Resolution) is amended to read as follows:

B2.15.01

Disputes arising in the performance of this Agreement that are not resolved by negotiation between the SFMTA Project Manager and Contractor shall be decided in writing by the SFMTA Manager of Fleet Engineering. The 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 Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director of Transit shall be administratively final and conclusive. Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the written directions of the Engineer. If agreed to by both parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

G. Section B3.06.01 is amended to read as follows:

B3.06.01

A prototype bus shall be made available for inspection and testing at the City's facilities. The cost of transporting the prototype bus to and from the City's facilities shall be at the expense of the Contractor. The prototype review shall be scheduled by the Contractor when a vehicle has been completed with all equipment and furnishings installed, but early enough so design changes resulting from the review will not delay production or cause scrapping of production material. The prototype must be available for inspection and approval under the Contract Documents in accordance with the Delivery Schedule (Exhibit C) and prior to start of production of any buses of its type. The Contractor shall bear the delay, expense and inefficiency resulting from failure to schedule and complete the prototype review sufficiently in advance of production. The Contractor may wish to build an additional prototype, which will remain at the Contractor's plant during prototype review and testing by the City.

H. Section B4.05 (Warranty) is amended as follows:

- (1) **Section B4.05.01 [section number omitted in original] is amended to read as follows:**

The Contractor warrants and guarantees to the City each complete bus and specific components as follows:

1. **COMPLETE BUS:** The complete bus, as supplied by the Contractor, is warranted and guaranteed by the Contractor to be free from defects due to design or workmanship for two years or 100,000 miles, whichever comes first, beginning on the date of acceptance for each bus. During this warranty period the bus shall maintain its structural integrity. The warranty is based on normal operation of the bus under the operating conditions prevailing in the service area of the City.

2. COMPONENTS: Specific components are warranted and guaranteed by the Contractor to be free from defects and related defects for the following times (beginning on the same date of the Complete Bus Warranty) or mileages:

FIGURE 10-1 TROLLEY SUBSYSTEM AND COMPONENT WARRANTY

Items	Description	Years*	Mileage*
1	Traction Motors	4	400,000
2	Ventilation Motors	4	400,000
3	Compressor	2	100,000
4	H/V Units	2	Unlimited
5	Power Steering System	2	100,000
6	Drive Axles	5	300,000
7	Brake System (excluding friction material)	3	105,000
8	Basic Body Structure	3	150,000
9	EPU & 24 V Batteries	4	400,000
10	Articulation Section ATG component only	3	105,000
	Articulation Section non-ATG components	2	100,000
11	Differential and Housing	5	175,000
12	Propulsion Control and Components (Vossloh Kiepe Components Only)	4	400,000
13	Wheelchair Ramp	3	150,000
14	Current Collection System including Base and Reel	4	400,000
15	Auxiliary Inverters	4	400,000
16	Auxiliary Converters	4	400,000
17	Door Systems	5	175,000
18	Structural Integrity Corrosion	7	350,000
19	Frame and Structure	15	500,000

*Whichever Occurs First

- (2) *Sections B4.05.04 through B.4.05.07 are replaced by the following:*

B.4.05.04. General.

The Contractor shall be responsible for all warranty-covered repair work with the exception of the following major systems: propulsion system (Vossloh Kiepe), HVAC (Thermo King), and destination signs (Luminator) which mandates that all repairs to these systems and their component be performed by an authorized dealer. The Contractor or its designated representative shall secure parts and perform all affected warranty repair work. At its discretion, SFMTA may perform such work if it determines it needs to do so based on transit service or other requirements. The Contractor shall be responsible, and shall reimburse SFMTA, for all costs for warranty work performed by SFMTA personnel or by any contractor(s) hired by SFMTA to perform warranty work.

B.4.05.05 Repairs by Contractor

When SFMTA requires the Contractor to perform warranty-covered repairs, the

Contractor's representative must begin work necessary to effect repairs in a proper and timely manner, within 24 hours after receiving notification of a defect from SFMTA. Whenever the Contractor makes warranty repairs, new parts, subcomponents and subsystems shall be used, unless the repair of original parts is authorized in writing by SFMTA. SFMTA shall make the coach available to complete repairs timely with the Contractor's repair schedule.

The Contractor shall provide, at its own expense, all spare parts, labor, and tools to complete repairs. SFMTA will provide the space required to conduct such repairs. The Contractor shall reimburse SFMTA for all expenses incurred, including labor for driving coaches, or towing charges for coaches transported, between SFMTA's facilities and Contractor's service center or the facilities of its subcontractors or suppliers. At SFMTA's option, the Contractor shall repair coaches at an offsite location, and not on SFMTA's property. If the coach is removed from SFMTA's property, the Contractor's representative shall diligently pursue the acquisition of parts and repair procedures. The schedule and scope of the repairs shall be approved by SFMTA. Towing coverage for warranty work shall be for 2 years/100,000 miles (whichever occurs first). Towing and repair, as a result of failure of the following major systems and/or their components, shall be excluded from this coverage. These shall include the Propulsion system (Vossloh Kiepe), HVAC (Thermo King), and destination signs (Luminator),

The Contractor may request that defective parts or components covered by warranty be returned to the manufacturing plant. The Contractor shall pay the total cost for this action. Materials will be returned in accordance with the Contractor's instructions. Contractor shall provide such instructions to the SFMTA Project Manager at the beginning of the project.

SFMTA must return all defective parts (with the exception of glass and dangerous goods) to the contractor within 45 days from the date of failure. Shipping charges are to be paid by the contractor.

4.05.06 Repairs by SFMTA.

If SFMTA elects to perform or procure a contractor to perform the warranty-covered repairs, the following shall apply.

4.05.06.01 Parts Used

SFMTA shall use new parts, subcomponents and subsystems that Contractor shall provide specifically for this repair. Contractor shall stock the majority of parts, including those of its sub-suppliers. All parts shall be stamped or permanently marked with the OEM part number, and serial number if applicable. Warranties on parts used shall begin once the vehicle has been repaired and shall have the unexpired warranty period of the original subsystem.

SFMTA shall use parts or components available from its own stock only on an emergency basis. Monthly reports, or reports at intervals mutually agreed upon, of all

repairs covered by warranty will be submitted by SFMTA to the Contractor for reimbursement or replacement of parts or components. The Contractor shall provide forms for these reports. In the event SFMTA uses its own parts for warranty repairs, the Contractor shall reimburse SFMTA for those parts, including all defective parts, components, and consequential parts supporting the warranty repair. The handling charge shall be 15% of the total cost of the warranty part, not to exceed \$250.00 per claim plus applicable taxes.

4.05.06.02 Contractor-Supplied Parts

The contractor will send all warranty "coach-down" parts pre-paid to SFMTA via overnight priority whenever possible and all other warranty parts will be expedited and direct shipped when required, as long as parts are ordered under New Flyer's warranty process

4.05.06.03 Reimbursement for Labor

The Contractor shall provide reimbursement to SFMTA. The amount shall be determined by multiplying the number of man-hours required by a qualified mechanic to correct the defect. The warranty labor rate charged to the Contractor will be the day shift hourly wage rate of a Mechanic, plus 62% fringes plus 125% overhead. As of November 1, 2012, the warranty rate is \$99.23/hour, based on the Mechanic wage rate of \$34.05/hour. The labor rate is to be agreed to, in writing, at the beginning of coach acceptance, and is to be fixed for a period of one year and the adjustment for each year must not exceed the Producer Price Index (1413 Truck and Bus Bodies) for that year.

In the event SFMTA deems it necessary to contract out for warranty repairs, SFMTA shall notify and the contractor shall approve the warranty repair before SFMTA proceeds with contracting out the repair. The Contractor shall reimburse SFMTA for the actual cost of the repair, including charges for any warrantable parts, consequential parts or damages, labor, and towing or transportation. The handling charge shall be 15% of the total cost of the warranty part not to exceed \$250.00 per claim plus applicable taxes.

Contractor shall reimburse SFMTA for approved warranty claims within thirty (30) days after each warranty claim has been submitted by SFMTA. If SFMTA does not receive payment within thirty (30) days, SFMTA may deduct the amount of the approved claim from the progress payments due to Contractor.

B4.05.07 Towing Costs

The warranty will include the cost of towing the bus or a coach change if either is necessary because of a failure of a warranted part. The cost of a coach change will consist of the warranty labor rate in section B4.05.04 above for the actual number of mechanics sent (one or two), plus a charge for a tow truck, if used, of \$174.00 per tow within San Francisco and \$225 per tow up to 50 miles outside the City limits, subject to change, whenever the City's towing contract is renewed. When a warrantable failure occurs

resulting in an environmental spill of fluids, oils, coolant, etc. and necessitates a special clean up process, the Contractor will be charged for the City's clean up expenses. Towing coverage for warranty work shall be for 2 years/100,000 miles (whichever occurs first). Towing and repair, as a result of failure of the following major systems and/or their components, shall be excluded from this coverage. These shall include the propulsion system (Vossloh Kiepe), HVAC (Thermo King), and destination signs (Luminator).

(3) *Section B4.05.09 (Fleet Defects) is amended to read as follows:*

B4.05.09 Fleet Defects

In the event that, during the receipt of coach delivery, pre-acceptance inspection, and warranty period, specific repairs or modifications for any part and/or any component of that part, necessitated by defects in design, material or workmanship are required on an order of buses delivered under this Contract, that shall be considered a fleet defect. For orders of twelve (12) or more buses of one type, the proportion shall be twenty (20%). The 20 percent shall be applied to each order of buses delivered. For major components (major components are defined as the propulsion system and all items supplied by the propulsion system manufacturer(s); drive axle; brake system,), the fleet defect proportion shall be twenty (20%). The Contractor shall promptly pay for all necessary labor and material to affect those repairs or modifications to all buses, including buses for which the warranty had expired. If one or more of the Contractor's sub-suppliers does not honor this fleet defect language, coverage for all fleet defects becomes the financial responsibility and obligation of the Contractor. Repairs or modifications shall commence as scheduled on the corrective action plan submitted by the Contractor and approved by the City.

The warranty on parts or components used to remedy fleet defects, project work and/or recalls shall begin when the retrofit parts are installed and shall be extended for the time and or miles remaining on the original coach warranty or the part manufacturer's part(s) warranty, whichever is greater. This extended warranty shall begin on the repair/replacement date for the corrected parts.

In the event a retrofit requires the Contractor to supply parts to the City, the parts shall be shipped to the City in individual kits, each kit consisting of all of the parts and only the parts necessary to complete the repair/retrofit on one bus. In the event retrofit parts are delivered to the City in any other form other than individual kits, the Contractor will reimburse the City (through the warranty claim process) for the cost of labor and materials incurred by the City to assemble parts into individual kits.

In the event that City inventory parts are made obsolete due to retrofit or redesign caused by a fleet defect or Contractor-initiated modifications, the City will return the obsolete parts to the Contractor for a full refund of their original cost, with no restocking fee or shipping cost. Once a fleet defect is resolved, the resolution shall be applied to all current and future bus orders, and all buses delivered under this contract.

In the event vehicles are removed from service for defects in design, or safety related issues, upon completion of the modifications to correct the defects, the warranty for each vehicle shall extend for the total period of time the vehicles were held out of service for such defects.

Following written notification of a fleet defect, it shall be the Contractor's responsibility to investigate and provide a permanent resolution regardless of failed component origin. This includes the management, notification and communications with any and all suppliers, sub-suppliers, and/or subcontractors. The resolution shall be inclusive of all parts and materials used in the manufacture and delivery of an acceptable vehicle.

Within ten (10) days of receipt of notification of a fleet defect, unless the SFMTA grants an extension, the Contractor shall provide the SFMTA with a corrective action plan, subject to review and approval by SFMTA. After a corrective action plan has been established and approved by SFMTA, the Contractor will specify how and when all coaches with defects shall be corrected. After acceptance and approval of the final work plan and schedule, the Contractor shall promptly undertake and complete the work program within the timeline established in the approved plan. The corrective work shall be reasonably designed to prevent the occurrence of the same defect on 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.

If (a) Contractor does not provide a plan for correction within the time specified above (or as extended by SFMTA); or (b) a specific declared fleet defect is not fully corrected within the time specified in the plan; or (c) the remainder of the coaches are not corrected in accordance with the Contractor's work program; SFMTA may begin assessing liquidated damages in accordance with Section B6.03 five days after providing written notice to Contractor.

(4) Section B4.05.12 (Warranty Claims) is amended to read as follows:

The City will file all warranty claims with the Contractor, and the Contractor will process all warranty claims filed by the City, unless the Contractor requests, and the City agrees, in writing, to file claims with one of the Contractor's sub-suppliers. The City will endeavor to file a warranty claim within ninety (90) days after discovering a warrantable defect. In the event the repair for the warrantable defect is dependent on receipt of a coach down part, the City will submit the warranty claim within 60 days of receipt of said part. Defective parts will be returned to the Contractor's local representative within 30 days of the claim date. In the event the Contractor has no local representative, the City will return defective parts to the determined Contractor's location within 45 days of the claim date. Filing is understood to mean sending an e-mail, filing claims within the Contractor's electronic claim processing system or putting a letter into the U.S. Postal Service via regular first class mail. The City will add a handling charge to defray warranty processing costs. The handling charge shall be 15% of the total cost of the warranty repair not to exceed \$250.00 per claim.

The Contractor will resolve all claims for warranty made by the City within sixty (60) days from the latter of these two dates: (1) date of City invoice sent by mail or date the City submits the claim on line to the Contractor (2) date parts are shipped from the City to the Contractor. Payment of warranty claims shall be by check only, not by credit memorandum. Warranty claims remaining unpaid more than ninety (90) days after the invoice date may be deducted from Contract amounts earned by the Contractor at the City's discretion. Denials of the claims must be written and must contain the reason(s) for denial. All denials and/or debits for the City's warranty accounts must be processed to the City within 180 days of the claim date. Denials may be subject to negotiation between the Contractor and the City.

In the event SFMTA uses its own parts for warranty repairs, the Contractor shall reimburse SFMTA for those parts, including all defective parts, components, and consequential parts supporting the warranty repair. The reimbursement shall be at the invoice cost of the parts or components at the time of repair and shall include applicable taxes plus a 15% handling fee. The handling charge shall be 15% of the total cost of the warranty part not to exceed \$250.00 per claim plus applicable taxes.

The contractor will be the sole contact for all warranty claims except for the Propulsion System, HVAC and destination signs.

I. Sections B4.06.01 and B4.06.02 are amended to read as follows:

B4.06.01 General

Parts shall be available both as separate components and built-up assemblies. Parts or rebuild kits shall be offered for all repairable or rebuildable components on the bus. Parts manuals shall be provided in hard copy, PDF and electronic (Excel) formats. Parts manuals shall be submitted per Exhibit C – Delivery Schedule.

The City may relieve the Contractor of a portion of the responsibility for providing spare parts once the established warranty periods have ended. If the Contractor desires to reduce its responsibility for providing spare parts, it shall establish direct purchasing by the City from the Contractor's subcontractors and suppliers or from open market distributors. Such direct purchasing may take the form of agreements between the City and various spare parts suppliers facilitated by the Contractor in compliance with all applicable regulations.

When parts are shipped to the City, the Contractor will include priced packing slips with all shipments, and the Contractor will ensure the City part number is printed on all packing slips and invoices.

The City is interested in purchasing directly from subcontractors, suppliers and/or open market distributors spare parts included in the following bus systems:

- | | |
|----------------------------|------------------------------|
| 1. Propulsion System | 8. Wheelchair Ramp Parts |
| 2. Brake System | 9. Flat Glass |
| 3. Axles | 10. Electrical Components |
| 4. Suspension (wear items) | 11. HVAC |
| 5. Seating | 12. Battery Packs |
| 6. Air System | 13. Current Collector System |
| 7. Bearings | 14. Trolley Poles |

B4.06.01.01 Recommended Spare Parts:

The Contractor shall submit a recommended spare parts list for the City to use when planning and ordering spare parts and to support the City's initial start-up for revenue operation. The quantities shall be based on the quantity of coaches on order at the time the parts list is generated, and shall be sufficient to cover the City's reasonable needs for five (5) years.

Spare parts shall be interchangeable with their corresponding part. All spare parts shall be reconfigured to the latest revision during the warranty period. The recommended spare parts list shall take into consideration the potential for certain unused parts and assemblies to "age" and otherwise experience degradation in performance or reliability when installed. All such parts and assemblies should be clearly marked with date of manufacture, ideal storage conditions information, and shelf life date. This information tag should be clearly visible when the part, container, or assembly is stored.

The Contractor's recommended spare parts list shall include the following information which shall be provided in hard copy, PDF and Excel formats:

- (a) Grouping by system, and special tool for stocking identification.
- (b) Generic name, trade name, description, rating, accuracy, Contractor's part number, original equipment manufacture's (OEM's) name, OEM's part number, drawing references, and correlation with the maintenance manuals.
- (c) Correlation for the recommended quantities with reliability requirements and lead time.
- (d) A cross-reference and indexing system for replacement components common to more than one subsystem (whether vehicle, test equipment, or special tool). Such components shall have only one part number.
- (e) Alternate sources of supply for all commercially available replacement parts.
- (f) Current prices for all replacement parts.

B4.06.01.02. Substitute Parts

After the warranty period, the City may use substitute parts. Where it is feasible to make a substitution, and the Contractor has prior knowledge or experience, the Contractor will share any knowledge and technical information on parts substitutions.

The Contractor shall respond to the City in writing within ten (10) Working Days, and agrees, if requested by the City, to provide any information in the Contractor's

possession regarding the potential parts substitution.

B4.06.02 Initial Parts Order

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 below, 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. Parts shall be delivered as agreed upon in Exhibit C - Delivery Schedule.

Low-Floor Articulated Trolley Coaches
SFMTA Potrero Maintenance Facility 2500 Mariposa Street San Francisco, California 94110

J. Section B5.02 (Performance and Payment Security) is replaced by the following:

B5.02 Performance and Payment Security

B5.02.01 Bonds.

The Contractor shall maintain at its own expense, and furnish to City, corporate surety bonds, as follows. In lieu of a surety bond, Contractor may elect to furnish the City with a letter of credit in conformance with the requirements of Section B5.02.02.

B5.02.01.02 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.

B5.02.01.02 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.

B5.02.01.03 Surety. The corporate surety on these bonds must be legally authorized to engage in the business of furnishing surety bonds in the State of California and shall have an AM Best Rating of at least A-, VIII. All sureties, bond coverage forms, and requests for changes to the bonding requirements must be approved by the City's Risk Manager.

During the period covered by the Contract, if the rating on the surety drops below the minimum set forth above, or if the surety on these bonds, in the opinion of the City's Risk Manager, becomes 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.

B5.02.02 Letter of Credit

B5.02.02.01. 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.

B5.02.02.02. 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.

B5.02.02.03. 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.

B5.02.02.04. 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.

K. Section B6.01.01 is amended to read as follows:

Time shall be strictly of the essence of the Contract. The Contractor shall promptly begin the Work under the Contract. All portions of the Contract shall be begun and prosecuted so that the buses and other contract deliverables shall be delivered and ready for full use as agreed upon and set forth in Exhibit C – Delivery Schedule.

L. Section B6.02.01 is amended to read as follows:

The delivery schedule shall remain in effect unless modified in writing by the Contractor and by the City. Beginning sixty (60) days after Notice to Proceed and every month thereafter until all buses are Delivered, the Contractor will send to the City a current production and delivery schedule showing buses at major milestones during production, and deliveries per week. The schedule shall include subcontractor and supplier activities, if necessary, and shall reflect a detailed breakdown of Work activities that represents the Contractor's plan for completing and delivering the buses within the required Contract time. The schedule shall show the interdependence of planned Work activities and shall provide a logical sequence of the Work to be accomplished.

Duration shall be in days, and weekends and holidays over the duration of the Contract should be accounted for. The critical path shall be shown on the production and delivery schedule.

Thirty (30) days shall be used for submittal review by the City unless otherwise specified.

M. Section B6.03.01 is amended to read as follows:

Buses and other contract deliverables shall be Delivered as agreed upon and set forth in Exhibit C - Delivery Schedule. The City and Contractor acknowledge that Contractor's failure to deliver any bus and other Contract deliverable within the time specified in the Contract Documents, unless a written extension of time has been granted by the City, will result in damage to the City.

Because of the difficulty in computing the actual material loss and disadvantage to the City caused by delay, it is determined in advance and agreed by the parties hereto that the Contractor will pay the City the amount as indicated in Exhibit D – Schedule of Liquidated Damages as damages representing a reasonable forecast of the actual damages which the City will suffer by the failure of the Contractor to deliver buses or other Contract deliverables within the stipulated time.

The City further reserves the right to claim such damages as they occur during the Contract as charges against the Contract. If the Contractor refuses or fails to pay the charges within thirty (30) days of receipt of a written demand from the City which sets forth the basis for charge, the City may deduct costs associated with liquidated damages from any payments then due, or to become due, to the Contractor.

Nothing in this section will affect the City's right to terminate the Contract if delivery cannot be remedied to the City's satisfaction.

If the contractor is delayed at any time during the performance of the work by the neglect or failure of the City or by delay or failure of the Contractor caused by an event beyond its control, including, but not limited to, natural disasters, acts of war or terrorism, labor shortages, strikes or lock-outs or shortages or loss of transportation, then the time for

completion of the work and/or the delivery dates shall be extended by the City by a reasonable period of time after such event of delay has ended in order that the Contractor may complete the work or deliver the buses.

N. Section B6.06.01 is amended to read as follows:

Buses provided under this Contract shall be delivered at the Contractor's expense by a qualified and experienced common or contract carrier who is properly licensed and insured. The Contractor shall make all arrangements for delivery of buses to:

Low-Floor Articulated Trolley Coaches SFMTA Potrero Maintenance Facility 2500 Mariposa Street San Francisco, California 94110
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Delivery shall be determined by the 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 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 three (3) coaches per week.

O. B6.11.03 (Jurisdiction and Venue) is amended to read as follows:

All claims, counterclaims, disputes and other matters in question between the City and the Contractor that are not resolved between the Director of Transit and the Contractor, or waived, will be decided in the San Francisco Superior Court, which shall have exclusive jurisdiction and venue over such claims, counterclaims, disputes and other matters. This Contract shall be interpreted and construed in accordance with the laws of the State of California.

P. Section B6.08.01 is amended to read as follows:

Within fifteen (15) calendar days after delivery of the bus to the City, the City shall conduct acceptance tests on each bus. If the bus passes these tests or if the City does not notify the Contractor of non-acceptance within 15 calendar days after delivery of the bus, then acceptance of the bus by the City shall be deemed to have occurred on the 15th day after delivery of the bus. Acceptance shall occur earlier if the City notifies the Contractor of early acceptance of the bus or places the bus in revenue service.

As buses are received, the City will perform such inspections and tests as are deemed necessary to determine if each bus is in conformance with Contract requirements both as to configuration and performance parameters. Certain of these procedures may be performed on a sampling basis, and others may be performed only on buses which give indication of problem areas. Representatives of the Contractor may witness acceptance inspections and testing if so requested by the Contractor.

The City retains the right to complete as thorough an inspection as deemed necessary by the Project Manager. Representatives of the Contractor may witness acceptance inspections and testing if so requested by the Contractor.

The Contractor's Field Representative shall coordinate and manage the Contractor's post-delivery inspection process and notify the City's Project Manager of scheduling and availability of buses ready for pre-acceptance inspection. The Contractor's Field Representative shall also coordinate all supplier, sub-supplier and/or subcontractor completed post-delivery inspections and repairs generated during the City's pre-acceptance inspection process. It is a requirement of this contract that a representative of the engine, propulsion system, will complete a post-delivery inspection of their specific supplied components. This is to be completed following the delivery drive out to the City and prior to the City's acceptance of any unit.

Prior to acceptance, all communication regarding this process shall be directed solely to the City's Project Manager.

Q. Section 7.02 (Payment Procedures) is replaced by the following:

B7.02 Compensation and Payment

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 (Schedule of Prices), 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.

B7.02.02 Compensation; Payment

B7.02.02.01 Amount. The City agrees to pay an amount not to exceed Ninety-Four Million, Nine Hundred Fifty Thousand, Four hundred Forty Four Dollars (\$94,950,444) (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.

B7.02.02.02 Invoices. Contractor shall submit its invoices to the following address:

San Francisco Municipal Transportation Agency
Fleet Engineering Section
Attn: TJ Lansang, 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.

B7.02.02.03 Progress Payments. The City will pay the Contractor for milestones achieved in the production process. Title to material included in any progress payment request shall pass to the City when payment is made to the Contractor. The City reserves the right to file a security interest (UCC-1 form) on material or equipment purchased by the Contractor during the production process. Said title shall be free of all encumbrances. However, such transfer of title shall not relieve the Contractor of its responsibility for the furnishing, installation, fabrication or inclusion of said materials as a deliverable element of buses procured in accordance with the requirements of this Contract.

Milestone payment requests shall be accompanied by an affidavit or declaration, signed by a duly authorized representative of the Contractor certifying that the work covered by the progress payment requested has been completed. The City reserves the rights of inspection and audit to verify said progress as provided in Section B5.13.

B7.02.02.03 Payment Terms.

- a. Subject to the provisions of Section B6.08, the City will make payments as per the Payment Schedule shown below within thirty (30) calendar days after receipt of a proper invoice.

- b. In the event that a bus does not meet all requirements for Acceptance, the City 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.
- c. For any conditionally Accepted bus, the payment shall be further reduced by an amount equal to three percent (3%) of the bus, which amount shall be withheld and paid upon corrective action by the Contractor and final Acceptance by the City.

Payment Schedule:

Milestones	Percentage of unit or lump sum price
Acceptance of shipment of the pilot coach by SFMTA inspector from the contractor's facility.	60% of unit price
Acceptance of the pilot coach, including all modifications required to match the production coaches, at the designated delivery location.	40% of unit price less 3% retention
Acceptance of shipment of production coaches by SFMTA inspector from the contractor's facility	60 % of unit price
Acceptance of production coaches at the designated delivery location	40% of unit price less 3% retention
Delivery and acceptance of first half of spare parts (Lot 1)	as invoiced less 3% retention
Delivery and acceptance of second half of spare parts (Lot 2)	as invoiced less 3% retention
Completion of first 50% of hours of training	as invoiced less 3% retention
Completion of final 50% of hours of training	as invoiced less 3% retention
Delivery and Acceptance of operating, maintenance and parts manuals	as invoiced less 3% retention
Delivery and acceptance of special tools	as invoiced less 3% retention

B7.02.02.04 Final Payment. The City will make a final payment to release all retained funds within forty-five (45) calendar days after receipt of a final proper invoice and completion of all of the following:

- a. Acceptance of all Contract deliverables, including spare parts, special tools, manuals and other documentation.
- b. Receipt from Contractor of all certifications as required by law and/or regulations.
- c. Completion of post-delivery audits required under the Contract and under federal regulations.

d. Final Acceptance by the Director of the Transportation.

R. Sections B7.09.01 and B7.10.01 are deleted.

S. Section B7.12.01 is amended to read as follows:

B7.12.01

This indefinite delivery/indefinite quantity unit price contract is for the purchase of buses and optional equipment items as specified, and is effective for a 54-month period from the date of award of this contract. The quantities of buses and optional equipment items represent estimates only. All buses and optional equipment items to be furnished under the contract shall be ordered through this Agreement or amendments to this Agreement approved by the SFMTA Board of Directors, and if required, by the City's Board of Supervisors. SFMTA may include a Bus Order Form (Form E6) in any order, and issue a Notice to Proceed when the Amendment is certified by the City Controller. The ordering process will conform generally to the process outlined on Process Flow for Bus Orders (Form E7).

The City reserves the right to order buses plus optional equipment items over the 54-month period commencing with the date of contract award. The base unit prices of such buses and optional equipment items shall be set and remain firm at the base unit selling price(s) negotiated pursuant to this RFP for any procurements by the City within a period of one year of contract award. The base unit prices of any buses and optional equipment items ordered by the City after the initial one year firm/fixed price period has expired shall be subject to price adjustment in accordance with this section.

The base unit selling price and optional equipment items shall be adjusted in accordance with the percentage change of the index stated below as published by the U.S. Department of Labor/Bureau of Labor Statistics, and referred to hereinafter as the index:

Series ID: WPU 1413 – Not Seasonally Adjusted
Group: Transportation Equipment
Item: Truck and Bus Bodies
Base Date: 198212

The percentage change in the index will be used to adjust the base bus unit selling price for future orders of buses and optional equipment items (for those orders placed after the initial one-year firm/fixed price period has expired). The base unit selling price(s) of the buses and optional equipment items shall be adjusted annually, and the adjustment shall be calculated using the final index for the anniversary month of the contract award date for each succeeding year of the contract. Adjusted unit selling prices shall remain firm for all units ordered in the ensuing 12 months. The adjusted unit selling price may go up or down depending on the fluctuations of the index. However, in no event shall any adjusted unit selling price increase exceed 3.5% of the previous year's base unit selling price.

An example of a price adjustment utilizing the index and the methodology described herein is provided below.

T. Section B7.13.01 is amended to read as follows:

B7.13.01

Concurrent with the initial payment or release of the retention, the City shall provide written notice of Acceptance of the buses required to be manufactured and delivered pursuant to an order of buses under this Contract. Such notice of Acceptance shall not revise or extinguish any obligations and liabilities of the Contractor related to warranties, spare parts and other post-delivery provisions of this Contract. All such obligations and liabilities shall continue as provided in this Contract and by law.

Subsequent payments or release of the retention shall not revise or extinguish any obligations and liabilities of the Contractor related to warranties, spare parts and other post-delivery provisions of this Contract. All such obligations and liabilities shall continue as provided in this Contract and by law.

U. Form EB5.01 is deleted.

2. The following provisions are added to this Agreement:

A. 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.

B. 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.

C. 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.

D. 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.

E. Independent Contractor; Payment of Taxes and Other Expenses

- (1) **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.

- (2) **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.

F. Term of Agreement

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

G. Terms and Conditions; Priority of Documents

The terms and conditions of the Bus Procurement Contract, including all revisions, are incorporated by reference as though fully set forth, except those terms and conditions that have been added or modified under this Agreement. The following documents, in order of preference, constitute the entire Contract between Contractor and the City:

- (1) This Agreement and any subsequent amendments to this Agreement;
- (2) The Bus Procurement Contract; and
- (3) The Contractor's Proposal, including all deviations to the Technical Specifications.

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.

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. 13-066

Dated: JUNE 4, 2013

Attest:

Secretary, SFMTA Board of Directors

Board of Supervisors

Resolution No. _____

Dated: _____

Attest: _____

Clerk of the Board

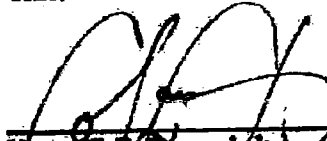
CONTRACTOR

New Flyer of America



Name: Glenn Asham

Title: Chief Financial Officer



Name: Colin Pawanchuk

Title: Executive Vice President, General Counsel

711 Kernaghan Avenue
Winnipeg, Manitoba, Canada R2C 3T4

City vendor number: 49642

EXHIBITS:

- Exhibit A: Technical Changes and Price Differentials**
- Exhibit B: Schedule of Prices**
- Exhibit C: Delivery Schedule**
- Exhibit D: Schedule of Liquidated Damages**

EXHIBIT A

TECHNICAL CHANGES AND PRICE DIFFERENTIALS

Ref No.	Option No.	Option Group	Description	Total
2	205	Tires	Add E-strokes per 5-3 (Included in Bus Procurement Contract ("BPC")).	\$ 0.0
3	205		Change wheels to Aluminum Polished with Durabright.	\$ 3,148.20
6	246	Air, Brake & Lev System	Add Automatic traction control per 5-3	\$ 293.41
7	423	Advertising Frames	Delete Ext Advertising Frames per BPC.	\$(1,147.19)
10	280	Passenger Signal	Change passenger signals at wheelchair positions to pushbuttons per 3-9.	\$ 3.06
11	280	Passenger Signal	Add pushbuttons on all vertical stanchions per 3-9.	\$ 284.71
13	304	Paint & Decal	Change paint to Silver with Red Decals and Anti Graffiti Clearcoat per 2-3 and attachment.	\$14,470.41
14	422	Body A/P After Paint	Change visors per SR1794 (Hybrid Procurement).	\$150.00
15	423	Advertising Frames	Add two interior ad frames 17" x 11" per 3-19.	\$ 35.48
17	450	Flooring A/P	Change floor covering to Altro D25-421 "Midnight" per 2-4.	\$ 357.75
18	460	Windows	Change windows to include window protection sheet (specific glazing), scratch resistant per 3-1 and attachment	\$ 2,726.76
19	600	Customer Options	Add Sportworks with indicator light per 2-2.	\$ 1,250.85
20	600	Customer Options	Add Motorola Radio system cable harness only per 3-15. Note: This option item will be deleted if SFMTA radio project team has deemed that the Harris/AVS radio system is ready prior to line entry of the pilot bus.	\$ 927.42
21	600	Customer Options	Add dash panel rack (2 compartments) per 3-19.	\$ 109.05
22	600	Customer Options	Add Emergency Warning light system (activated when silent alarm is tripped)	\$ 172.62

Ref No.	Option No.	Option Group	Description	Total
			per sec 3-21.	
23	600	Customer Options	Add S1 guard per 3-22.	\$ 2,930.42
24	600	Customer Options	Add NEXTBUS system per 3-23.	\$ 2,400.55
25	600	Customer Options	Add trash receptacle per 4-9.	\$ 11.66
26	600	Customer Options	Add storage locker behind operator seat per 4-12.	\$ 90.51
27	600	Customer Options	Add fleet management system per 5-8.	\$ 1,151.01
28	600	Customer Options	Add fire suppression per BPC.	\$ 9,955.00
29	549	HVAC System	Remove floor heating system and auxiliary heater per BPC.	\$ (4,200.00)
30	470	Destination Signs	Change destination signs to TwinVision Color Destination Signs (Front, C/side, S/side) per 3-10. Add amber rear.	\$ 13,180.53
31	600	Customer Options	DTI Camera System per 3-13.	\$ 25,970.43
32	600	Customer Options	Add On-Board AVAS per 3-12 to 3-13.	\$ 20,972.78
33	526	Seating & Stanchions	Re-quote to American Seating 6468, 47 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 per 3-7.	\$ 8,266.11
34	526	Seating & Stanchions	Change driver seat to USSC 9100ALX non-D90 per 4-2.	\$ 389.55
35	600	Customer Options	Add APC per 3-18.	\$ 12,396.60
37	280	Passenger Signal	Add Stop request sign on destination sign compartment door per 3-8.	\$ 336.29
41	246	Air, Brake & Lev System	Add rapid recover and equip with raise feature for steep inclines, 1" at 3 MPH is preferred to prevent chances of damaging front shocks per 5-1.	\$ 723.02

Ref No.	Option No.	Option Group	Description	Total
42	600	Customer Options	Add beeper exterior sound when buses are turning via footswitch. Note, the volume of the exterior beeper will not be adjustable by the driver per 4-1.	\$ 5.32
44	600	Customer Options	Add additional feature for exterior announcement as passenger exit the bus "Do not walk in front of bus". No additional cost, feature is standard in AVAS system per SR1794.	\$ 0.0
45	491	Door Exit	Re-quote Vapor Class system to include Activair baseplate with locking mechanism per 3-2.	\$ 3,761.99
46	526	Seating & Stanchions	Add 10" seat belt extender, to change seat belt length per 4-2.	\$ 81.59
49	600	Customer Options	Add transfer mounting bracket, farebox mounting support plate and wiring per 3-16.	\$ 109.53
50	526	Seating & Stanchions	Add qty 36 Nylon grab straps. Change stanchions to cast fittings for use with metal grab straps per 3-9. Note: Metal grab straps not useable with bonded stanchions.	\$ 810.93
51	.	Customer Options	Add customer specific farebox pedestal (in the event a 41" farebox is installed) per 3-16.	\$ 562.23
53	273	Exterior Lamp	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.	\$ 68.88
54	600	Customer Options	Add four (4) external recessed buttons (elevator switches) per 3-2.	\$ 582.92
55	600	Customer Options	Clipper cable harnesses per 3-17.	\$ 483.08
57	422	Body A/P After Paint	Add bi-fold drivers enclosure per 4-8.	\$ 2,579.55
59	600	Customer Options	Add DriveCam with event recorder per 3-14.	\$ 662.50
60	422	Body A/P After Paint	Add two more for a total of four Equipment Trays per SR1794.	\$ 366.39
63	Bonding	Deliverable	Add 20% Performance Bond and 2 year, 10% Warranty Bond per Agreement Section B5.02.	\$ 6,381.20

Ref No.	Option No.	Option Group	Description	Total
65	526	Seating & Stanchions	Driver's park brake alarm from seat cushion to seat belt activation per 4-2.	\$ (70.00)
67	273	Exterior Lamp	Add cornering lamp to curbside rear per 3-3.	\$ 320.83
68	422	Body A/P After Paint	Add keyed paddle latches to the SDS enclosure door per BPC.	\$ (8.65)
71	600	Customer Options	Add Equipment Box to Curbside Luggage Rack per BPC.	\$ 467.40
77	284	Elect - Side/Console	Add guard to hill switch per 5-3.	\$ 25.93
80	246	Air, Brake & Lev System	Add front tow & change air connect fitting tags per 5-5.	\$ 24.60
81	304	Paint & Decal	Add ramp decal below kneeling light per 3-6.	\$ 29.17
83	549	HVAC System	Change to ball valves on coolant lines per BPC.	\$ 121.56
84	203	Suspension Front	Add splash apron behind front wheels per 2-2.	\$ 205.64
85	480	Mirrors	Replace driver's exterior mirror and arm per 4-5.	\$ 85.10
86	600	Customer Options	Add exterior camera above driver's window per 3-13.	\$ 834.44
87	491	Door Exit	Add retaining screw to exit door frangible cover box per BPC.	\$ 11.45
89	470	Destination Signs	Add CONNECT software per BPC.	\$ 2,480.40
90	290	Wiring Diagrams	Change delay on pressure sensor on driver's seat from 5 seconds to 1 second per 4-2.	\$ 0.0
91	Warranty	Deliverable	Additional warranty (Basic Body Structure, Brake system, Ramp, ATG Joints).	\$ 4,826.00
92	Warranty	Steering Wheel	Change Steering wheel to 18" / 2 Spokes per 4-1.	\$ 0.0
93	549	HVAC System	Delete cost of AC per Seattle contract. AC is provided at no charge per BPC.	\$(18,766.00)
94	600	Customer Options	Vossloh Kiepe Adjustments for line voltage per 6-3.	\$ 1,937.52
95	219	Engine	Vossloh Kiepe Circuit Diagrams per 6-3.	\$ 312.00
96	219	Engine	Vossloh Kiepe Bus Type Test per 6-3.	\$ 1,268.10
97	Warranty	Deliverable	Vossloh Kiepe Additional warranty Spares for San Francisco per Agreement Section B4.05	\$ 1,188.00

Ref No.	Option No.	Option Group	Description	Total
99	219	Engine	Vossloh Kiepe O & M Manuals per BPC.	\$ 780.00
100	219	Engine	Vossloh Kiepe Operator interface and Project Management per BPC.	\$ 925.60
101	219	Engine	Vossloh Kiepe Software adjustments in general per 6-3.	\$ 665.60
102	219	Engine	Vossloh Kiepe Duty cycle and route profile, wire heights, and OSA adjustments per 6-3.	\$ 665.60
103	219	Engine	Vossloh Kiepe Enhanced Performance Mode per 6-3.	\$ 1,040.60
104	219	Engine	Vossloh Kiepe ESS Change over Control per 6-3.	\$ 509.60
105	219	Engine	Vossloh Kiepe Hot coach adjustment per 6-3.	\$ 322.40
106	219	Engine	Vossloh Kiepe Radio Box: Integration of the VK equipment into the radio box per BPC.	\$ 104.00
Base Bus Price Change Total				134,160.00
38	705	Contract Spares	One Spare Wheel per bus	\$ 684.90

Original Contract Price Base Coach	\$ 1,239,808.00
Base Bus Price Change Total	\$ 134,160.00
Spare Wheel	\$ 684.90
Revised Price Base Bus (including ADA & delivery)	\$ 1,374,652.90
California Tax 8.75%	\$ 114,489.73
Total Bus price (Including ADA, Delivery and Taxes)	\$ 1,489,142.63

**EXHIBIT B
SCHEDULE OF PRICES**

Line No.	Description	Parts & Labor	Sales Tax	Total	Quantity	Extended Price (See Note 1)
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.

GRAND TOTAL	\$94,950,444
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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 ¹	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 st production coach ² (Lot1) ³	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) ³	220
14	Delivery of 1st Production Coach (Lot 2) ⁴	240
15	Delivery of Last Production Coach (Lot 2) ⁴	360

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 recommended spare parts lists.

³ Lot 1 shall include production coach numbers 1 through 30.

⁴ Lot 2 shall include production coach numbers 31 through 60.

EXHIBIT D
SCHEDULE OF LIQUIDATED DAMAGES

	Milestone	Amount Per Day
1.	Submittal of Baseline Schedule & Management Work Plan	\$100
2.	Submittal of Vehicle Drawings & test plans	\$100
3.	Delivery of Prototype Coach	\$250
4.	Submittal of Draft Training Program & Lesson Plans	\$100
5.	Submittal of Draft Operation, Maintenance, and Parts Manual and Recommended Spare Parts	\$100
6.	Delivery of First Production Coach (see note 2)	\$200
7.	Delivery of Last Production Coach (see note 3)	\$200
8.	Delivery of Spare Parts Delivery (Lot 1)	\$200
9.	Delivery of Spare Parts Delivery (Lot 2)	\$200
10.	Completion of Training Program	\$200
11.	Delivery of Special Tools	\$150
12.	Delivery of Final Operation, Maintenance, and Parts Manuals	\$150
13.	Warranty Fleet Defect Correction (see Section B4.05.09 Fleet Defects)	\$100 per coach/day

Note 1: Liquidated Damages shall be capped at 5% of the total contract amount.

Note 2: Liquidated Damages shall apply to both production Lots.

Note 3: Liquidated Damages shall apply to any and all coaches, for both production lots, that are not delivered within this milestone date.



July 2, 2013

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

***Subject: Request for Authority to Enter into Bus Options Assignment Agreement for the
Purchase of 60 Articulated Trolley Buses***

Honorable Members of the Board of Supervisors:

The San Francisco Municipal Transportation Agency requests that the San Francisco Board of Supervisors authorize the SFMTA to enter into an Assignment Agreement with King County in Seattle (King County) and New Flyer of America Inc. (New Flyer) for the purchase of 60 articulated trolley buses, in an amount not to exceed \$98,717,875, and for a term not to exceed six years. King County, through the Metro Division of its Department of Transportation, operates the bus system in Seattle and other cities within the County.

Edwin M. Lee
Mayor

Tom Nolan
Chairman

Cheryl Brinkman
Vice-Chairman

Malcolm Heinicke
Director

Jerry Lee
Director

Joél Ramos
Director

Cristina Rubke
Director

Edward D. Reiskin
*Director of
Transportation*

The purpose of this procurement is to replace the 60 articulated trolley buses in SFMTA's current fleet that have reached the end of their useful life. King County has recently selected New Flyer after an extensive competitive negotiated procurement. King County's contract contains options for additional trolley buses that may be assigned to the SFMTA. Exercising the options for trolley buses through the King County contract will enable the SFMTA to reduce the time it normally takes for a major bus procurement by approximately nine months. The Federal Transit Administration has approved this arrangement.

Background

In 1992, the SFMTA acquired a fleet of 60 articulated trolley buses from New Flyer Inc. These 60 articulated trolley buses have been in service since 1994 and are now well past their useful life of 15 years.

The SFMTA has been looking at alternative procurement avenues to reduce the time it takes to purchase replacement vehicles. Staff has determined that by purchasing replacement vehicles through the options available from King County's contract, it is possible to achieve this objective.

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.

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

Tele: 415.701.4500

www.sfmta.com



Starting in March of 2011, SFMTA staff collaborated with King County Metro's staff to develop the specifications for standard and articulated trolley buses. By combining the coach requirements of SFMTA and King County Metro, both agencies are able to take advantage of the economies of scale of a larger procurement. Additionally, they can benefit in the future when maintaining these buses by encouraging vendors to stock enough parts on their shelves to supply both fleets of buses.

King County issued a Request for Proposals (RFP) on May 15, 2012. The RFP contains the following base equipment and options, with bid prices tiered depending on the number of vehicles ordered:

- A. Standard trolley buses: 100 base vehicles, 250 option vehicles
- B. Articulated trolley buses: 55 base vehicles, 125 option vehicles

Under this assignment, SFMTA seeks to option 60 articulated trolley buses now. SFMTA also intends to option up to 240 standard buses and 33 more articulated trolley buses at various intervals during the five-year term of King County's contract to replace the remainder of its trolley bus fleet,. The total option quantities designated for SFMTA (240 standard and 93 articulated) would provide the requisite one-for-one replacement of the entire trolley fleet, and accommodate proposed service expansion for trolley buses. SFMTA would return to this Board in the future to seek approval for additional assignment(s) when funding has been secured.

Throughout RFP process, SFMTA staff worked with King County Metro staff by providing technical support in the evaluation of the proposals received from several vendors. On June 17, 2013, after a competitive negotiated procurement process, King County announced that it had awarded the procurement contract to New Flyer.

SFMTA will be negotiating with New Flyer for minor changes to the buses that are specific to the needs of SFMTA, such as color scheme, deletion of air-conditioning, type of seat material, Li-Ion batteries, door sizes, warranty, training, spare parts and special tools, in order to finalize the price of the trolley buses.

SFMTA Board Action

On June 4, 2013, the SFMTA Board of Directors adopted Resolution No. 13-066, which authorized the Director of Transportation to execute a bus options assignment agreement with King County and its selected vendor in an amount not to exceed \$98,717,875 and for a term not to exceed six years. At that time, King County had not completed its procurement process. Now that a final contract has been negotiated between King County and New Flyer, SFMTA is confident that the final price for the assignment agreement will not exceed the \$98,717,875 amount approved by the SFMTA Board (see estimates).

Alternatives Considered

Staff considered other alternatives, such as purchasing option vehicles from a cooperative purchasing schedule (similar to the procurement of hybrid electric buses through the cooperative purchasing schedule of the State of Minnesota) or purchasing vehicles through

the regular RFP process. Staff did not find these alternatives feasible because of the following:

1. Purchasing through a cooperative purchasing schedule: There are no available cooperative purchasing schedules that include trolley buses.
2. Purchasing through the regular RFP process: This alternative will take longer since King County's RFP was ready nine months ahead of SFMTA's planned RFP.

Funding Impact

SFMTA estimates that the Project cost, as reflected in the table below, will be \$105,156,000. SFMTA further estimates that that the cost for the Bus Options Assignment Agreement will not exceed \$98,321,473. SFMTA understands from King County that the final base price for the buses (for King County) will be \$1,241,500. Based on that information, SFMTA believes that the final price for San Francisco (with the required modifications) will not exceed the estimates below.

Funding for the initial 60 vehicles has been identified and will come from a combination of federal and local funds. SFMTA would also like to option up to 240 standard buses and 33 articulated trolley buses during the term of the contract to replace its current fleet when the agency becomes eligible to receive Federal Transit Administration funds to replace those vehicles beginning in 2017.

The following is a breakdown of the project budget and funding sources for the initial 60 vehicles:

Project Budget

(Note: Estimates only until negotiations are completed with NF)

Category	Cost
New Flyer Contract Total	
Trolley buses	\$84,000,000
Capital Spares	\$3,360,000
Customized Manuals	\$250,000
Training	\$1,500,000
Special Tools & Test Equipment	\$1,500,000
Sales Tax	\$7,711,473
Sub-Total for New Flyer	\$98,321,473
Other Associated Costs	
Warranty Support	\$400,000
Consultant Services	\$2,000,000
Vehicle Inspection at Plant (FTA Required)	\$750,000
Project Support(SFMTA staff, ODC)	\$3,684,533
Sub-Total for Other costs	\$6,834,533
Total Cost	\$105,156,006

Financial Plan

Funding Source	Amount
Federal Grants	\$84,124,805
Local Grants (Proposition K)	\$20,931,201
Local Grants (AB664)	\$100,000
Total Available Funds	\$105,156,006

There are currently \$66,642,057 in Federal funds and \$100,000 in Local AB664 funds booked into the project. An additional \$15 million in federal funds are scheduled to arrive in August 2013 and the rest in August 2014. The Proposition K funds will arrive within three months after SFMTA submits a request for funding to the San Francisco County Transportation Authority.

Recommendation

The SFMTA requests and recommends that the San Francisco Board of Supervisors authorize the SFMTA, through the Director of Transportation, to enter into a Bus Options Assignment Agreement with King County Metro and the selected vendor for the purchase of 60 articulated trolley buses and related tools, training and spare parts, in an amount not to exceed \$98,717,875, and for a term not to exceed six years. In order to get the buses as quickly as possible, SFMTA seeks this authority now rather than waiting until all negotiations with New Flyer have been completed.

Thank you for your consideration of this proposed agreement. 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

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.
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. [130713]
- 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 Imperative

Sponsor(s):

Supervisor Wiener

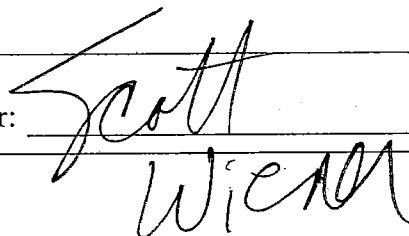
Subject:

Contract with New Flyer of America for purchase of trolley buses

The text is listed below or attached:

Resolution approving a contract with New Flyer of America Inc. for the purchase of 60 articulated trolley buses, associated equipment and spare parts, for an amount not to exceed \$94,950,444.

Signature of Sponsoring Supervisor:



For Clerk's Use Only:

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.
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 Imperative

Sponsor(s):

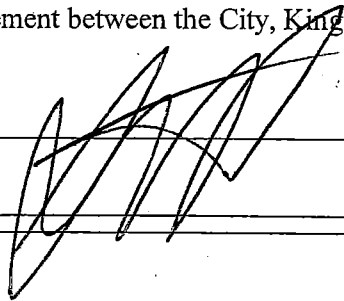
Supervisor Wiener

Subject:

Purchase of 60 Trolley Buses through Assignment from King County

The text is listed below or attached:

Resolution approving a Bus Options Assignment Agreement for the purchase of 60 articulated trolley buses, associated equipment and spare parts as a cooperative buying agreement between the City, King County, and New Flyer of America Inc. for an amount not to exceed \$98,717,875.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

130713

<p>Item 6 File 13-0713</p>	<p>Department: San Francisco Municipal Transportation Agency (SFMTA)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p>	
<ul style="list-style-type: none"> • The proposed resolution would approve an agreement between the City, on behalf of the SFMTA, and New Flyer of America, Inc. (New Flyer), through assignment from King County, Washington, for the purchase of 60 articulated trolley buses and the associated equipment and spare parts for an amount not to exceed \$94,950,444. 	
<p style="text-align: center;">Key Points</p>	
<ul style="list-style-type: none"> • Administrative Code Section 21.16 provides that the SFMTA may use the competitive procurement process of another public agency to procure buses, upon making a determination that (a) the other public agency’s procurement process was competitive or the result of a sole source award, and (b) is in the best interests of the City. In March of 2011, the SFMTA staff began collaborating with King County Metro Transit’s staff in Seattle, Washington to develop specifications for standard and articulated trolley buses. • Based on a competitive Request for Proposal (RFP) process, King County selected New Flyer and on July 31, 2013, King County entered into an agreement with New Flyer to purchase 141 buses, including 86 standard trolley buses and 55 articulated trolley buses at a total cost of \$146,405,255. King County’s average cost for the 55 articulated trolley buses is \$1,265,649, including \$24,149 of optional equipment. • On December 6, 2013, SFMTA, King County and New Flyer executed a Bus Options Assignment Agreement, which assigned SFMTA the option to purchase from New Flyer (a) an initial 60 articulated trolley buses, (b) up to 33 additional articulated trolley buses, or a total of up to 93 articulated trolley buses, and (c) up to 240 standard trolley buses, or an overall total of 333 buses, under the terms of the King County agreement with New Flyer. 	
<p style="text-align: center;">Fiscal Impacts</p>	
<ul style="list-style-type: none"> • The \$94,950,444 proposed cost for 60 articulated trolley buses, includes spare parts, tools, equipment, training, manuals and related radio components. Bus base costs are \$89,348,558 for the 60 articulated trolley buses or \$1,489,143 per bus. Without sales tax, the SFMTA cost per vehicle is \$1,374,653, which is \$109,004 or 8.6% more than the \$1,265,649 King County base cost per vehicle. SFMTA provided Attachment II, which explains the policy, maintenance, safety, disability access, operational and maintenance cost rationale for each of the major (over \$1,000 per bus) optional equipment items. • Federal grants, local Proposition K funds and local grants will fund the purchase, with \$66,642,057 received to date, and \$28,308,387 to be received by SFMTA by Fall 2014. 	
<p style="text-align: center;">Recommendation</p>	
<ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT/BACKGROUND**Mandate Statement**

In accordance with Charter Section 9.118(b), City agreements with anticipated expenditures of \$10,000,000 or more, or amendments to such City agreements with \$500,000 or more of anticipated expenditures, are subject to approval by the Board of Supervisors.

City Administrative Code Section 21.16 authorizes the City to use the competitive procurement process of any other public agency to make purchases of commodities or services for use by the City under the terms established by that other public agency's competitive procurement process, upon determining that (a) the other agency's procurement process was competitive or the result of a sole source award, and (b) the use of the other agency's procurement would be in the City's best interests.

Background

In 1992, based on a competitive Request for Proposal (RFP) process, the San Francisco Municipal Transportation Agency (SFMTA) purchased 60 articulated trolley buses¹ from New Flyer, Inc. (New Flyer). These 60 articulated trolley buses have been in operation by the SFMTA since 1994, or 19 years, which is four years beyond their stated useful life of 15 years. In addition, in 1997, based on another competitive RFP process, SFMTA purchased an additional 33 articulated trolley buses from Electric Transit, Inc. (ETI).

As noted above, in accordance with Administrative Code Section 21.16, the SFMTA may use the competitive procurement process of another public agency to procure commodities for the City, upon making a determination that (a) the other public agency's procurement process was competitive or the result of a sole source award, and (b) is in the best interests of the City. In March of 2011, the SFMTA staff began collaborating with King County Metro Transit's staff in Seattle, Washington to develop specifications for both standard and articulated trolley buses. According to a July 2, 2013 memorandum from Mr. Edward Reiskin, SFMTA Director of Transportation to the Board of Supervisors, the SFMTA was looking at alternative procurement procedures to purchase replacement vehicles for the SFMTA to (a) reduce the time required to purchase vehicles and (b) take advantage of the economies of scale with larger procurement of vehicles and larger requirements for stocking parts for vendors to supply more than one transit agency under a single procurement.

¹ Articulated trolley buses are 100% electric and battery powered buses that operate on 615 volts of electricity while connected to a network of overhead wires via trolley poles. Articulated vehicles are 60-feet in length as compared to standard vehicles which are 40-feet in length.

On May 15, 2012, King County Metro issued a Request for Proposal (RFP) to purchase up to 530 standard and articulated trolley buses and the associated equipment and spare parts for these buses, as shown in Table 1 below.

Table 1: Total Number and Types of Trolley Buses to be Purchased under the RFP

Vehicle Type	Base Number of Vehicles	Option To Purchase Additional Vehicles	Total Potential Number of Vehicles
Standard Trolley Buses	100	250	350
Articulated Trolley Buses	55	125	180
Total	155	375	530

King County received three responses from (a) New Flyer of America (New Flyer), (b) Nova Bus and (c) Design Line, Inc. King County determined that only New Flyer and Nova Bus were responsive proposers based on financial resources, satisfactory past performance, industry reputation of satisfactory business ethics and performance, and ability to meet delivery requirements. King County then formed an in-house evaluation committee, to review the specific vehicle characteristics, price, responsibility, support and documentation criteria. Mr. Reiskin advises that SFMTA staff worked with King County Metro staff throughout the RFP process by providing technical support in the evaluation of the proposals.

On June 4, 2013, prior to the selection of a preferred vendor, the SFMTA Board of Directors authorized the Director of Transportation to execute a bus options assignment agreement with King County and its selected vendor to purchase 60 articulated trolley buses, including related equipment, training, manuals and spare parts for a not to exceed \$98,717,875, including sales taxes, and a term not to exceed six years (SFMTA Resolution 13-066). On June 17, 2013, King County selected New Flyer as the successful proposal. On July 31, 2013, King County entered into an agreement with New Flyer (King County Bus Procurement Contract) to purchase 141 buses, including 86 standard trolley buses and 55 articulated trolley buses at a total cost of \$146,405,255. King County's average cost for the 86 standard trolley buses was \$892,960, including \$20,321 of optional equipment. King County's average cost for the 55 articulated trolley buses was \$1,265,649, including \$24,149 of optional equipment.

On December 6, 2013, SFMTA, King County and New Flyer executed a Bus Options Assignment Agreement, which assigned to SFMTA the option to purchase from New Flyer (a) an initial 60 articulated trolley buses, (b) up to 33 additional articulated trolley buses, or a total of up to 93 articulated trolley buses, and (c) up to 240 standard trolley buses, or an overall total of 333 buses, under the terms of the King County Bus Procurement Contract. As shown in Table 1 above, the total option of 333 buses for SFMTA is within the original RFP option to purchase up to 375 additional vehicles. The Bus Options Assignment Agreement acknowledges that there would be separate agreement(s) between SFMTA and New Flyer for the purchase of the additional buses, which would be subject to future approval by the SFMTA Board of Directors and the Board of Supervisors. SFMTA plans to return to the Board of Supervisors in the future

for approval of the additional trolley bus procurements from New Flyer, when funding for these additional purchases is secured. SFMTA anticipates securing the funds to purchase the up to 240 standard trolley buses in FY 2016-17 and the up to 33 additional articulated trolley buses in FY 2018-19.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve an agreement between the City, on behalf of the SFMTA, and New Flyer of America, Inc. (New Flyer), through assignment from King County, Washington, for the purchase of an initial 60 articulated trolley buses and the associated training, special tools, manuals and spare parts for an amount not to exceed \$94,950,444. The proposed agreement would extend for six years, from approximately February 1, 2014 through January 31, 2020.

According to Mr. Elson Hao, Principal Engineer at the SFMTA, under the City Charter, SFMTA has exclusive authority over its contracts and to act as the purchaser for the subject contract. In compliance with the City’s Administrative Code Section 21.16, Mr. Hao advises that the SFMTA determined that King County’s procurement process was competitive as King County received bids from three manufacturers and followed the Federal Transit Administration’s guidelines in evaluating the technical and price proposals received from the three manufacturers. The proposed resolution states that the use of King County’s procurement would be in the City’s best interests by (a) allowing SFMTA to acquire new vehicles at the best price by minimizing the necessary supplier engineering investment and taking advantage of economies of scale, (b) reducing operating costs of the agencies, (c) improving the reliability of service, (d) avoiding unnecessary and considerable expenditure of federal and local funds for two separate yet identical procurement processes with the same vendor, and (e) assuring that environmental policy goals at the local, state and federal levels are exceeded through the purchase of zero-emission vehicles.

According to Mr. Hao, if the Board of Supervisors approves the subject resolution, the SFMTA anticipates issuing a notice to proceed to New Flyer by the end of January 2014, such that New Flyer would deliver one initial prototype articulated trolley bus to the SFMTA by the end of February 2015, or approximately one year later. SFMTA would then fully test the prototype vehicle for three months and allow for subsequent design changes through July 2015. Mr. Hao advises that the SFMTA anticipates that New Flyer would commence production of the remaining 59 articulated trolley buses by the end of July 2015, and that the first new articulated trolley buses could be placed in operation by the SFMTA by the beginning of October 2015.

FISCAL ANALYSIS

The proposed resolution would approve an agreement to purchase 60 articulated trolley buses, spare parts, tools, equipment, training, manuals and related radio components for a total a not-

to-exceed \$94,950,444, as summarized in Table 2 below. As shown in Table 2, the base costs for the 60 articulated trolley buses would total \$89,348,558 or \$1,489,143 per bus.

Table 2: Estimated Cost to Purchase 60 Articulated Trolley Buses

Vehicle and Related Costs	Amount
60 Articulated Trolley Buses-Base Cost	\$89,348,558
Spare Parts	3,262,500
Customized Manuals	139,452
Training	456,558
Special Tools & Test Equipment	1,305,548
Harris/ACS Radio Cable Harness	437,828
Total Vehicle and Related Costs	\$94,950,444

As shown in Table 2 above, \$437,828 is for a Harris/ACS² Radio Cable Harness, which reflects the cost to wire each of the 60 new articulated buses, at an average cost of \$7,297 per vehicle, to accept the new radio system hardware which will replace SFMTA's existing Motorola radio system. However, Mr. Hao notes that the design and testing of the new Harris/ACS radio system has not yet been completed³. Therefore, the SFMTA is also including an additional \$55,645, or an average cost of \$927 per vehicle, to equip the new buses with the existing Motorola radio system. Mr. Hao advises that if the 60 proposed new vehicles are manufactured after the final design and successful testing of the new Harris/ACS radio system is completed, New Flyer will be instructed to delete the \$55,645 for the Motorola radio system components.

Table 3 below identifies the funding sources, amounts, funds received to date and the remaining amounts to be received for the proposed total purchase cost of \$94,950,444 for the 60 articulated trolley buses and related equipment.

Table 3: Funding Sources

Source	Total Amount	Received to Date	Remaining Amount to be Received
Federal Grants	\$75,960,355	\$66,442,057	\$9,518,298
Local Grants (Proposition K)	18,790,089	0	18,790,089
Local Grants (AB664)	200,000	200,000	0
Total Sources	\$94,950,444	\$66,642,057	\$28,308,387

² Harris/ACS Transportation Management System is the full name of the vendor providing the new radio system.

³ Mr. Hao advises that a prototype of the new radio system is anticipated to be submitted to the SFMTA during the last quarter of 2014 for testing and refinement. However, Mr. Hao cannot estimate when testing and final design of the radio system will be completed.

Mr. Hao advises that the remaining \$9,518,298 of Federal grant funds are anticipated to be received in October 2014. The Proposition K funds will be received approximately three months after the SFMTA submits a request for these funds from the San Francisco County Transportation Authority, which is anticipated to be requested in July 2014.

Comparison of Costs with King County

Although the proposed resolution states that the requested purchase is through an assignment agreement with King County, in order to allow SFMTA to acquire new vehicles at the best price by minimizing the necessary supplier engineering investment and taking advantage of economies of scale, the costs to be paid by King County for each articulated trolley bus as compared to the proposed costs to be paid by SFMTA reflect significant differences.

As shown in Table 2 above, the SFMTA's base costs for the proposed 60 articulated trolley buses would total \$89,348,558 or \$1,489,143 per vehicle. As shown in Table 4 below, the SFMTA cost per vehicle of \$1,489,143 includes \$114,490 of sales taxes, or a cost before sales taxes of \$1,374,653 per vehicle. King County recently entered into an agreement with New Flyer to purchase 55 articulated trolley buses at an average cost of \$1,265,649 per vehicle⁴, including \$24,149 of optional equipment. In comparison, SFMTA is requesting \$134,845 per vehicle in optional equipment⁵, or \$110,696 more than King County. As shown in Table 4 below, without sales tax, the cost per vehicle for SFMTA would be \$1,374,653, which is \$109,004 or 8.6% more than the cost per vehicle of \$1,265,649 for King County.

Table 4: Comparison of Costs per Vehicle and Optional Equipment

	King County	SFMTA	Difference
Base Price/Vehicle	\$1,241,500	\$1,239,808	\$1,692
Optional Equipment	24,149	134,845	110,696
Subtotal Price/Vehicle	\$1,265,649	\$1,374,653	\$109,004
Sales Tax	Not applicable	114,490	Not applicable
Total Price/Vehicle	Not applicable	\$1,489,143	Not applicable

Overall, the SFMTA would therefore expend a total of \$6,540,240 more (\$109,004 x 60 buses) than King County for the New Flyer articulated trolley buses.

Attachment I to this report identifies each of the additional SFMTA optional equipment items that would be included and the cost for each. Mr. Hao advises that the additional optional equipment is required by SFMTA as they are necessary to operate and maintain the buses more effectively. Attachment II, provided by the SFMTA, explains the policy, maintenance, safety,

⁴ King County's agreement with New Flyer specifies that the agreed upon prices does not include the State of Washington's sales taxes.

⁵ This net amount for SFMTA's optional equipment subtracts options included for the Seattle Metro vehicles, including \$18,766 cost for air conditioning.

disability access, operational and maintenance cost rationale for each of the major (over \$1,000 per bus) optional equipment items.

RECOMMENDATION

Approve the proposed resolution.

EXHIBIT A

TECHNICAL CHANGES AND PRICE DIFFERENTIALS

Ref No.	Option No.	Option Group	Description	Total
2	205	Tires	Add E-strokes per 5-3 (Included in Bus Procurement Contract ("BPC")).	\$ 0.0
3	205		Change wheels to Aluminum Polished with Durabright.	\$ 3,148.20
6	246	Air, Brake & Lev System	Add Automatic traction control per 5-3	\$ 293.41
7	423	Advertising Frames	Delete Ext Advertising Frames per BPC.	\$(1,147.19)
10	280	Passenger Signal	Change passenger signals at wheelchair positions to pushbuttons per 3-9.	\$ 3.06
11	280	Passenger Signal	Add pushbuttons on all vertical stanchions per 3-9.	\$ 284.71
13	304	Paint & Decal	Change paint to Silver with Red Decals and Anti Graffiti Clearcoat per 2-3 and attachment.	\$14,470.41
14	422	Body A/P After Paint	Change visors per SR1794 (Hybrid Procurement).	\$150.00
15	423	Advertising Frames	Add two interior ad frames 17" x 11" per 3-19.	\$ 35.48
17	450	Flooring A/P	Change floor covering to Altro D25-421 "Midnight" per 2-4.	\$ 357.75
18	460	Windows	Change windows to include window protection sheet (specific glazing), scratch resistant per 3-1 and attachment	\$ 2,726.76
19	600	Customer Options	Add Sportworks with indicator light per 2-2.	\$ 1,250.85
20	600	Customer Options	Add Motorola Radio system cable harness only per 3-15. Note: This option item will be deleted if SFMTA radio project team has deemed that the Harris/AVS radio system is ready prior to line entry of the pilot bus.	\$ 927.42
21	600	Customer Options	Add dash panel rack (2 compartments) per 3-19.	\$ 109.05
22	600	Customer Options	Add Emergency Warning light system (activated when silent alarm is tripped)	\$ 172.62

Ref No.	Option No.	Option Group	Description	Total
			per sec 3-21.	
23	600	Customer Options	Add S1 guard per 3-22.	\$ 2,930.42
24	600	Customer Options	Add NEXTBUS system per 3-23.	\$ 2,400.55
25	600	Customer Options	Add trash receptacle per 4-9.	\$ 11.66
26	600	Customer Options	Add storage locker behind operator seat per 4-12.	\$ 90.51
27	600	Customer Options	Add fleet management system per 5-8.	\$ 1,151.01
28	600	Customer Options	Add fire suppression per BPC.	\$ 9,955.00
29	549	HVAC System	Remove floor heating system and auxiliary heater per BPC.	\$ (4,200.00)
30	470	Destination Signs	Change destination signs to TwinVision Color Destination Signs (Front, C/side, S/side) per 3-10. Add amber rear.	\$ 13,180.53
31	600	Customer Options	DTI Camera System per 3-13.	\$ 25,970.43
32	600	Customer Options	Add On-Board AVAS per 3-12 to 3-13.	\$ 20,972.78
33	526	Seating & Stanchions	Re-quote to American Seating 6468, 47 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 per 3-7.	\$ 8,266.11
34	526	Seating & Stanchions	Change driver seat to USSC 9100ALX non-D90 per 4-2.	\$ 389.55
35	600	Customer Options	Add APC per 3-18.	\$ 12,396.60
37	280	Passenger Signal	Add Stop request sign on destination sign compartment door per 3-8.	\$ 336.29
41	246	Air, Brake & Lev System	Add rapid recover and equip with raise feature for steep inclines, 1" at 3 MPH is preferred to prevent chances of damaging front shocks per 5-1.	\$ 723.02

Ref No.	Option No.	Option Group	Description	Total
42	600	Customer Options	Add beeper exterior sound when buses are turning via footswitch. Note, the volume of the exterior beeper will not be adjustable by the driver per 4-1.	\$ 5.32
44	600	Customer Options	Add additional feature for exterior announcement as passenger exit the bus "Do not walk in front of bus". No additional cost, feature is standard in AVAS system per SR1794.	\$ 0.0
45	491	Door Exit	Re-quote Vapor Class system to include Activair baseplate with locking mechanism per 3-2.	\$ 3,761.99
46	526	Seating & Stanchions	Add 10" seat belt extender, to change seat belt length per 4-2.	\$ 81.59
49	600	Customer Options	Add transfer mounting bracket, farebox mounting support plate and wiring per 3-16.	\$ 109.53
50	526	Seating & Stanchions	Add qty 36 Nylon grab straps. Change stanchions to cast fittings for use with metal grab straps per 3-9. Note: Metal grab straps not useable with bonded stanchions.	\$ 810.93
51		Customer Options	Add customer specific farebox pedestal (in the event a 41" farebox is installed) per 3-16.	\$ 562.23
53	273	Exterior Lamp	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.	\$ 68.88
54	600	Customer Options	Add four (4) external recessed buttons (elevator switches) per 3-2.	\$ 582.92
55	600	Customer Options	Clipper cable harnesses per 3-17.	\$ 483.08
57	422	Body A/P After Paint	Add bi-fold drivers enclosure per 4-8.	\$ 2,579.55
59	600	Customer Options	Add DriveCam with event recorder per 3-14.	\$ 662.50
60	422	Body A/P After Paint	Add two more for a total of four Equipment Trays per SR1794.	\$ 366.39
63	Bonding	Deliverable	Add 20% Performance Bond and 2 year, 10% Warranty Bond per Agreement Section B5.02.	\$ 6,381.20

Ref No.	Option No.	Option Group	Description	Total
65	526	Seating & Stanchions	Driver's park brake alarm from seat cushion to seat belt activation per 4-2.	\$ (70.00)
67	273	Exterior Lamp	Add cornering lamp to curbside rear per 3-3.	\$ 320.83
68	422	Body A/P After Paint	Add keyed paddle latches to the SDS enclosure door per BPC.	\$ (8.65)
71	600	Customer Options	Add Equipment Box to Curbside Luggage Rack per BPC.	\$ 467.40
77	284	Elect - Side/Console	Add guard to hill switch per 5-3.	\$ 25.93
80	246	Air, Brake & Lev System	Add front tow & change air connect fitting tags per 5-5.	\$ 24.60
81	304	Paint & Decal	Add ramp decal below kneeling light per 3-6.	\$ 29.17
83	549	HVAC System	Change to ball valves on coolant lines per BPC.	\$ 121.56
84	203	Suspension Front	Add splash apron behind front wheels per 2-2.	\$ 205.64
85	480	Mirrors	Replace driver's exterior mirror and arm per 4-5.	\$ 85.10
86	600	Customer Options	Add exterior camera above driver's window per 3-13.	\$ 834.44
87	491	Door Exit	Add retaining screw to exit door frangible cover box per BPC.	\$ 11.45
89	470	Destination Signs	Add CONNECT software per BPC.	\$ 2,480.40
90	290	Wiring Diagrams	Change delay on pressure sensor on driver's seat from 5 seconds to 1 second per 4-2.	\$ 0.0
91	Warranty	Deliverable	Additional warranty (Basic Body Structure, Brake system, Ramp, ATG Joints).	\$ 4,826.00
92	Warranty	Steering Wheel	Change Steering wheel to 18" / 2 Spokes per 4-1.	\$ 0.0
93	549	HVAC System	Delete cost of AC per Seattle contract. AC is provided at no charge per BPC.	\$(18,766.00)
94	600	Customer Options	Vossloh Kiepe Adjustments for line voltage per 6-3.	\$ 1,937.52
95	219	Engine	Vossloh Kiepe Circuit Diagrams per 6-3.	\$ 312.00
96	219	Engine	Vossloh Kiepe Bus Type Test per 6-3.	\$ 1,268.10
97	Warranty	Deliverable	Vossloh Kiepe Additional warranty Spares for San Francisco per Agreement Section B4.05	\$ 1,188.00

Ref No.	Option No.	Option Group	Description	Total
99	219	Engine	Vossloh Kiepe O & M Manuals per BPC.	\$ 780.00
100	219	Engine	Vossloh Kiepe Operator interface and Project Management per BPC.	\$ 925.60
101	219	Engine	Vossloh Kiepe Software adjustments in general per 6-3.	\$ 665.60
102	219	Engine	Vossloh Kiepe Duty cycle and route profile, wire heights, and OSA adjustments per 6-3.	\$ 665.60
103	219	Engine	Vossloh Kiepe Enhanced Performance Mode per 6-3.	\$ 1,040.60
104	219	Engine	Vossloh Kiepe ESS Change over Control per 6-3.	\$ 509.60
105	219	Engine	Vossloh Kiepe Hot coach adjustment per 6-3.	\$ 322.40
106	219	Engine	Vossloh Kiepe Radio Box: Integration of the VK equipment into the radio box per BPC.	\$ 104.00
			Base Bus Price Change Total	134,160.00
38	705	Contract Spares	One Spare Wheel per bus	\$ 684.90

Original Contract Price Base Coach	\$ 1,239,808.00
Base Bus Price Change Total	\$ 134,160.00
Spare Wheel	\$ 684.90
Revised Price Base Bus (including ADA & delivery)	\$ 1,374,652.90
California Tax 8.75%	\$ 114,489.73
Total Bus price (Including ADA, Delivery and Taxes)	\$ 1,489,142.63

Rationale for Major Cost Items					
Reference No.	Option No.	Option Group	Description	Total	Rationale
3	205		Change tires to Aluminum Polished with Durabright	\$ 3,148.20	The item reduces maintenance cost because Aluminum polished wheels are easier to clean than regular steel rims, while enhancing customers' experience of riding in nicer looking buses.
13	304	Paint & Decal	Change paint to Silver with Red Decals and Anti Graffiti Clearcoat per 2-3 and attachment.	\$ 14,470.41	This is Muni's brand and color scheme. The anti-graffiti Clearcoat paint on the buses allows for easier removal of graffiti and therefore reduces maintenance cost.
18	460	Windows	Change windows to include window protection sheet (specific glazing), scratch resistant per 3-1 and attachment	\$ 2,726.76	This item reduces maintenance cost because the protective sheet is a sacrificial piece that protects the window from being etched. The protective sheet can be removed and replace when etched instead of replacing the actual window..
19	600	Customer Options	Add Sportworks with indicator light per 2-3	\$ 1,250.85	This item enhances customers' experience by allowing riders to transport their bicycle when riding the bus.
23	600	Customer Options	Add S1 guard per 3-23	\$ 2,930.42	This is a safety item that prevents people from being run over by the rear wheels of the bus in the event they trip and fall between the front rear wheels of the bus when exiting.
24	600	Customer Options	Add NEXTBUS system per 3-23	\$ 2,400.55	This item enhances customers' experience when riding the bus because it allows patrons the ability to determine when the next bus is arriving either at the bus stop or via the internet.
27	600	Customer Options	Add Fleetmanagement	\$ 1,151.01	This item is a maintenance tool that automatically keeps track of mileage, fuel and other fluids used on the bus.
28	600	Customer Options	Add fire suppression per Seattle Spec	\$ 9,955.00	This item is a safety feature that will automatically put out fires if should occur inside the equipment compartments of the bus.
30	470	Destination Signs	Change destination signs to TwinVision Color Destination Signs (Front, C/side, S/side), Add amber rear.	\$ 13,180.53	This item enhances customers' experience when riding the bus because it allows customers to easily read the destination of the bus. The colored signs are especially useful for the disabled community.
31	600	Customer Options	DTI Camera System	\$ 25,970.43	This item is a safety feature that allows for the recording of events inside the bus. This items is especially useful to law enforcement to obtain records of altercations, robberies and other event that require review by authorities.
32	600	Customer Options	Add On-Board AVAS per 3-12 to 3-13	\$ 20,972.78	For the convenience of Muni patron's, especially the disabled community, it is Muni's policy to have automatic voice announcements of all stop request, current bus stop location and the next bus stop.
33	526	Seating & Stanchions	Re-quote to American Seating 6468, 47 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	\$ 8,266.11	For the convenience of Muni patron's, especially the disabled community, it is Muni's policy to use this type of restraint on all new bus procurement.
35	600	Customer Options	Add APC per 3-20 to 3-22	\$ 12,396.60	This item is an operational tool that will allow SFMTA staff planner to determine the number of passengers that use the system. Information obtain by system can be use to adjust the service needed in the various lines within the system.
45	491	Door Exit	Re-quote Vapor Class system to include Activair baseplate with locking mechanism.	\$ 3,761.99	This item improves the maintainability of the door system because it does not require the passengers to activate an electro-mechanical system to open the doors from inside the bus. This system also includes a positive lock on the doors to prevent passengers from forcing open the doors and jumping off the bus.
57	422	Body A/P After Paint	Add byfold drivers enclosure.	\$ 2,579.55	It is Muni policy to install a protective enclosure for the drivers on all new bus procurements.
63	Bonding	Deliverable	Add 20% Performance Bond and 2 year, 10% Warranty Bond	\$ 6,381.20	The performance bond will ensure that the City is protected from claims in case the vendor does not pay its sub-contractors. The Warranty Bond will ensure that the vendor meet their warranty obligations on the equipment.
89	470	Destination Signs	Add CONNECT software	\$ 2,480.40	This is a maintenance tool that will enhance the maintainability and service reliability of its buses. The CONNECT system provides real time data on the condition of any bus through the internet and all trouble can be recorded and accessed for future troubleshooting and repair.

Rationale for Major Cost Items

Reference No.	Option No.	Option Group	Description	Total	Rationale
91	Warranty	Deliverable	Additional warranty (Basic Body Structure, Brake system, Ramp, ATG Joints)	\$ 4,826.00	This item will reduce maintenance cost because the vendor will be required to cover the maintenance cost of major systems for an extended period of time.
94	600	Customer Options	Vossloh Kiepe Adjustments for line voltage	\$ 1,937.52	This is an operational requirement because adjustments have to be made on the propulsion system of the bus in order to accommodate the lower operating voltage that Muni's buses will be using. KCM uses 700 VDC and Muni uses 600VDC
96	219	Engine	Vossloh Kiepe Bus Type Test	\$ 1,268.10	
97	Warranty	Deliverable	Vossloh Kiepe Additional warranty Spares for San Francisco	\$ 1,188.00	This will improve maintenance of the vehicle by having spare part readily available when needed.
103	219	Engine	Vossloh Kiepe Enhanced Performance Mode	\$ 1,040.60	

**FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)**

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

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: New Flyer of America Inc.	
Please list the names of (1) members of the contractor's board of directors; <i>Brian Tobin, V. James Sardo, Wayne McLeod, Larry Edwards, Patricia Jacobsen, John Marinucci, Adam Gray, William Millar, Paul Soubry</i> (2) the contractor's chief executive officer, chief financial officer and chief operating officer; <i>Paul Soubry (President and CEO), Glenn Asham (Chief Financial Officer), Wayne Joseph (Executive Vice President, Operations)</i> (3) any person who has an ownership of 20 percent or more in the contractor; <i>None</i> (4) any subcontractor listed in the bid or contract; <i>None</i> and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary. <i>None</i>	
Contractor address: Corporate Office: 711 Kernaghan Avenue, Winnipeg Manitoba, Canada R2C 3T4	
Date that contract was approved:	Amount of contract: Not to Exceed: \$98,717,875.00

Describe the nature of the contract that was approved: SFMTA: Option Agreement to Procure 60 – 60' Low floor Articulated Trolley Coaches
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 <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: 1 Dr. Carlton B. Goodlett Place, Room 244 San Francisco, CA 94102	E-mail: <u>Board.of.Supervisors@sfgov.org</u>

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