

**Amendment No. 2**  
**to the**  
**Agreement between**  
**the City and County of San Francisco**  
**and**  
**New Flyer of America Inc.**  
**for the Procurement of Trolley Buses**  
**through Assignment from King County, Washington**  
**Contract No. CPT 632**  
**CCO No. 12-1206**

This Amendment No. 2 is made and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2017, in the City and County of San Francisco, State of California, by and between: New Flyer of America Inc., a North Dakota corporation, 711 Kernaghan Avenue, Winnipeg, Manitoba, Canada R2C 3T4 (“Contractor” or “New Flyer”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its San Francisco Municipal Transportation Agency (“SFMTA”).

**Recitals**

A. King County, a home rule charter county and political subdivision of the State of Washington, by and through its Department of Transportation, Metro Transit Division, entered into a contract with New Flyer, identified as ETB 12-1 (“Manufacture and Delivery of 40 Foot and 60 Foot Articulated Heavy Duty Low Floor Electric Trolley Buses”), for the procurement of electric trolley buses (the “Bus Procurement Contract”).

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

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

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

E. On August 31, 2016, the City issued Contract Amendment No. 1 to purchase 33 60-foot electric trolley buses and associated spare parts, training, manuals and special tools from New Flyer.

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

G. City now wishes to exercise the option to purchase 185 40-foot electric trolley buses and associated spare parts, training, manuals and special tools from New Flyer under the terms set forth in this Amendment.

Now, THEREFORE, the parties agree as follows:

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

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

Contract Amendment 1, dated August 31, 2016.

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

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

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

**B7.02.01 Agreement.**

Under this Agreement, Contractor agrees to sell, and the City agrees to purchase, 60 new articulated low floor trolley buses, associated spare parts, training, manuals, and special tools, as itemized in Exhibit B-1 (Schedule of Prices) for the base Contract, 33 new articulated low floor trolley buses, associated spare parts, training, manuals, and special tools, as itemized in Exhibit B-2 (Schedule of Prices) for Contract Amendment 1, and 185 new 40-foot electric trolley buses, associated spare parts, training, manuals, and special tools, as itemized in Exhibit B-3 (Schedule of Prices) for Contract Amendment 2, according to the terms and conditions set forth in this Agreement. Exhibit A sets forth the changes from the Contractor's Proposal to King County and the respective price differentials of those changes.

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

**B7.02.02.01 Amount.**

The City agrees to pay an amount not to exceed Three Hundred Ninety Five Million, Sixty Seven Thousand, Three Hundred Twelve Dollars (\$395,067,312) (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 \$9,000,000 for spare parts. The parties will amend this Agreement to include a final list of spare parts to be supplied under the Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement and has not remedied such default within a reasonable period of time. In no event shall City be liable for interest or late charges for any late payments.

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

**B7.02.02.02 Invoices**

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

Each invoice shall include:

- Relevant milestones
- Contract order number;
- Quantity of items;
- Description of items;
- Unit price;
- Total invoice amount;
- Sales Tax (separately itemized)
- Due date based on contract payment terms

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

2d. Section 1, Q. B7.02.02.03 (Payment Terms): The Payment Schedule at the end of this subsection is deleted and replaced in its entirety to read as follows:

**Payment Schedule:**

Milestones	Percentage of unit or lump sum price
<b>Pilot Coach</b>	
(a) Acceptance of shipment of the pilot coach by SFMTA inspector from the contractor's facility.	60% of unit price
(b) Conditional acceptance of the pilot coach, including all modifications required to match the production coaches, at the designated delivery location.	36% of unit price
(c) Full acceptance of pilot coach by SFMTA	3% of unit Price
(d) All contract deliverables with the exception of training have been received and accepted as satisfactory.	1% of unit Price
<b>Production Coach</b>	
(a) Acceptance of shipment of production coaches by SFMTA inspector from the contractor's facility.	60 % of unit price
(b) Conditional acceptance of production coaches at the designated delivery location	36% of unit price
(c) Full acceptance of each vehicle by SFMTA	3% of unit price
(d) All contract deliverables with the exception of training have been received and accepted as satisfactory.	1% of unit price
Delivery and acceptance of spare parts	as invoiced
Completion of first 50% of hours of training	as invoiced
Completion of final 50% of hours of training	as invoiced
Delivery and Acceptance of operating, maintenance and parts manuals	as invoiced
Delivery and acceptance of special tools	as invoiced

2e. Section 1, Q. B7.02.02.04 (Final Payment) is replaced in its entirety to read as follows:

**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.
  - e. All items not included in the bus price, such as spare parts, will be billed separately, paid for at the time of delivery, net 30 days = 100% of the Unit Price of the Deliverable. Retainage and hold backs shall not apply to items that are not included in the bus price.
- 2f. Exhibit B is deleted and replaced with a new Exhibit B, attached to this Amendment and incorporated by reference as though fully set forth.
- 2g. Exhibit B-3, attached to this Amendment is added and incorporated by reference as though fully set forth.
- 2h. Exhibit C is deleted and replaced with a new Exhibit C, attached to this Amendment and incorporated by reference as though fully set forth.
3. **Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.
4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

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

CITY

San Francisco Municipal Transportation Agency

\_\_\_\_\_  
Edward D. Reiskin  
Director of Transportation

Approved as to Form:

Dennis J. Herrera  
City Attorney

By \_\_\_\_\_  
David A. Greenburg  
Deputy City Attorney

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San Francisco Municipal Transportation Agency

Board of Directors

Resolution No. \_\_\_\_\_

Dated: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Secretary, SFMTA Board of Directors

Board of Supervisors

Resolution No. \_\_\_\_\_

Dated: \_\_\_\_\_

Attest:


\_\_\_\_\_  
Clerk of the Board

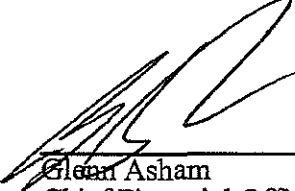
Exhibits:

Exhibit B, B-3, C

CONTRACTOR

New Flyer of America Inc.

  
\_\_\_\_\_  
Paul Smith  
Executive Vice President, Sales and Marketing

  
\_\_\_\_\_  
Glenn Asham  
Chief Financial Officer

711 Kernaghan Avenue  
Winnipeg, Manitoba,  
Canada R2C 3T4

City vendor number: 49642

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

<b>Description</b>	<b>Contract Amount</b>
CPT-632 Base Contract Reference Exhibit B-1	\$94,950,444
CPT-632 Amendment 1 Reference Exhibit B-2	\$55,498,285
CPT-632 Amendment 2 Reference Exhibit B-3	\$244,618,583
Grand Total	\$395,067,312

**EXHIBIT B-3  
SCHEDULE OF PRICES FOR AMENDMENT 2**

<b>Line No.</b>	<b>Description</b>	<b>Parts &amp; Labor</b>	<b>Sales Tax</b>	<b>Total</b>	<b>Quantity</b>	<b>Extended Price (See Note 1)</b>
1.	Low Floor 40-Ft Trolley Coaches	\$1,152,459	\$97,959	\$1,250,418	185	\$231,327,333
2.	NOT USED	N/A	N/A	N/A	N/A	N/A
3.	Spare Parts	\$6,000,000	\$510,000	\$6,510,000	LS	\$6,510,000
4.	Training	\$2,000,000	\$170,000	\$2,170,000	LS	\$2,170,000
5.	Operating, Maintenance and Parts Manuals	\$250,000	\$21,250	\$271,250	LS	\$271,250
6.	Special Tools	\$2,000,000	\$170,000	\$2,170,000	LS	\$2,170,000
7.	NOT USED	N/A	N/A	N/A	N/A	N/A
8.	Training Simulator	\$2,000,000	\$170,000	\$2,170,000	LS	\$2,170,000

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

<b>GRAND TOTAL</b>	\$244,618,583
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**EXHIBIT C**  
**DELIVERY SCHEDULE**

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

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

Item	Calendar Days after Approval of Prototype	
7	Delivery of 1 <sup>st</sup> production coach <sup>2</sup> (Lot1) <sup>3</sup>	107
8	Delivery of first half of spare parts (Lot 1)	100
9	Delivery of second half of spare parts (Lot 2)	200
10	Completion of training program	300
11	Delivery of final operations, maintenance, and parts manual	100
12	Delivery of special tools	100
13	Delivery of Last Production Coach (Lot1) <sup>3</sup>	220
14	Delivery of 1st Production Coach (Lot 2) <sup>4</sup>	240
15	Delivery of Last Production Coach (Lot 2) <sup>4</sup>	360
16	Delivery of Last Production Coach (Lot3) <sup>5</sup>	991
17	Delivery of Last Production Coach (Lot 4) <sup>6</sup>	1721

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

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

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

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

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

<sup>6</sup> Lot 4 shall include production numbers 94 through 278

