

File No. 170479

Committee Item No. 6  
Board Item No. \_\_\_\_\_

**COMMITTEE/BOARD OF SUPERVISORS**  
AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee Date May 25, 2017

Board of Supervisors Meeting Date \_\_\_\_\_

**Cmte Board**

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| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form                            |
| <input type="checkbox"/>            | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
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**OTHER (Use back side if additional space is needed)**

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>MTA Board of Director Resolution</u> |
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Completed by: Linda Wong Date May 19, 2017  
Completed by: Linda Wong Date \_\_\_\_\_

1 [Contract Amendment- New Flyer of America Inc. - Purchase of Low Floor Electric Trolley  
2 Buses - Not to Exceed \$395,067,312]

3 **Resolution approving Amendment No. 2 to Contract No. CPT 632 (Procurement of**  
4 **Electric Trolley Buses) with New Flyer of America Inc., to purchase an additional 185**  
5 **standard low floor electric trolley buses, for an additional amount of \$244,618,583 and a**  
6 **total contract amount not to exceed \$395,067,312 with no change to the term of the**  
7 **contract.**

8  
9 WHEREAS, The SFMTA's fleet of electric trolley buses includes 40 foot trolley buses  
10 that have been in service since 2001, past their useful life of 15 years; and

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

15 WHEREAS, On December 6, 2013, the City entered into a Bus Options Assignment  
16 Agreement with King County, Washington and New Flyer of America Inc. (Assignment  
17 Agreement), under which King County assigned to the City the right to purchase from New  
18 Flyer up to 240 40-foot electric trolley buses and 93 60-foot electric trolley buses from options  
19 available under a bus procurement contract that King County had previously entered into with  
20 New Flyer; and

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

1           WHEREAS, On August 31, 2016, the City issued Contract Amendment No. 1 to the  
2 New Flyer Contract for the purchase of an additional 33 60-foot electric trolley buses and  
3 associated spare parts, training, manuals and special tools; and

4           WHEREAS, The SFMTA now wishes to amend the New Flyer Contract to exercise the  
5 option to purchase 185 40-foot (standard) electric trolley buses and associated spare parts,  
6 training, manuals and special tools, and

7           WHEREAS, This Amendment No.2 will be funded by a combination of federal formula  
8 funds and local matching funds; and

9           WHEREAS, On March 28, 2017, the SFMTA, under authority delegated by the  
10 Planning Department, determined that Amendment No. 2 to Contract No. CPT 632 is not a  
11 "project" under the California Environmental Quality Act (CEQA) Guidelines Sections 15060(c)  
12 and 15378(b) because the actions would not result in a direct physical change in the  
13 environment, or a reasonably foreseeable indirect physical change in the environment; and

14           WHEREAS, On April 18, 2017, the SFMTA Board of Directors adopted Resolution No.  
15 170418-051, which authorized the Director of Transportation to execute Amendment No. 2 to  
16 Contract No. CPT 632 with New Flyer of America Inc., to purchase an additional 185 standard  
17 low floor electric trolley buses, for an additional amount of \$244,618,583 and a total contract  
18 amount not to exceed \$395,067,312 with no change to the term of the contract; now,  
19 therefore, be it

20           RESOLVED, That the Board of Supervisors approves Amendment No. 2 to Contract  
21 No. CPT 632 with New Flyer of America Inc., to purchase an additional 185 standard low floor  
22 electric trolley buses, and associated spare parts, training, manuals and special tools, for an  
23 additional amount of \$244,618,583 and a total contract amount not to exceed \$395,067,312  
24 with no change to the term of the contract; and, be it  
25

1           FURTHER RESOLVED, That within 30 days of Amendment No.2 to Contract No. CPT  
2 632 being fully executed by all parties, the final documents shall be provided to the Clerk of  
3 the Board for inclusion in the official file.  
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<p><b>Item 6</b> <b>File 17-0479</b></p>	<p><b>Department:</b> Municipal Transportation Agency (MTA)</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p>	
<ul style="list-style-type: none"> <li>• Subsequent to a competitive procurement process administered by King County in Washington, the proposed resolution would approve Amendment No. 2 to the contract between the SFMTA and New Flyer for SFMTA to purchase an additional 185 40-foot electric trolley buses, increasing the existing not-to-exceed contract amount of \$150,448,729 by \$244,618,583, for a new total not-to-exceed contract amount of \$395,067,312.</li> </ul>	
<p style="text-align: center;"><b>Key Points</b></p>	
<ul style="list-style-type: none"> <li>• In January 2014, the Board of Supervisors approved a contract between SFMTA and New Flyer for SFMTA to purchase 60 60-foot electric trolley buses and associated spare parts, training, manuals, and special tools to maintain the buses. The contract also included options for the SFMTA to acquire up to 33 additional 60-foot electric trolley buses and up to 240 40-foot electric trolley buses at various points during the life of the contract. In June 2016, the Board of Supervisors approved Amendment No. 1 to the contract between the SFMTA and New Flyer for SFMTA to purchase an additional 33 60-foot electric trolley buses.</li> <li>• The SFMTA only needs 185 electric trolley buses as the current fleet is being reduced to right-size the fleet and in compliance with Federal Transit Administration requirements.</li> <li>• The buses will begin arriving in late 2017, and majority of payments for the contract will be ongoing through FY 2019-20 as new buses are built and delivered to SFMTA. A small portion of the training hours may continue after FY 2019-20.</li> </ul>	
<p style="text-align: center;"><b>Fiscal Impact</b></p>	
<ul style="list-style-type: none"> <li>• The \$244,618,583 budget for the increased contract amount with New Flyer for 185 additional 40-foot buses, together with the contract support costs of \$21,004,659, results in total contract costs of \$265,623,242.</li> <li>• \$53,124,648 of the total project costs will be funded by San Francisco Proposition K Sales Tax Funds. The remainder will be funded by federal sources.</li> </ul>	
<p style="text-align: center;"><b>Recommendation</b></p>	
<ul style="list-style-type: none"> <li>• Approve the proposed resolution.</li> </ul>	

**MANDATE STATEMENT**

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

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**

The San Francisco Municipal Transportation Agency (SFMTA) currently has a fleet of 240 40-foot and 93 60-foot electric trolley buses.

In December 2013, the SFMTA entered into a Bus Options Assignment Agreement with King County, Washington and New Flyer of America, Inc. (New Flyer), under which King County assigned to the City the right to purchase buses from New Flyer under a bus procurement contract that King County had previously entered into with New Flyer. Under San Francisco Administrative Code Section 21.16, the SFMTA is authorized to utilize the competitive procurement process of another public agency to purchase commodities for the use of the City under the terms established in that agency's competitive procurement process.

The Board of Supervisors has previously authorized SFMTA to purchase 93 replacement 60-foot electric trolley buses under a contract between SFMTA and New Flyer.

- In January 2014, the Board of Supervisors approved a contract between SFMTA and New Flyer for SFMTA to purchase 60 60-foot electric trolley buses and associated spare parts, training, manuals, and special tools to maintain the buses. The contract expiration date was 2020, with a not-to-exceed amount of \$94,950,444. The contract also included options for the SFMTA to acquire up to 33 additional 60-foot electric trolley buses and up to 240 40-foot electric trolley buses at various points during the life of the contract.
- In June 2016, the Board of Supervisors approved Amendment No. 1 to the contract between the SFMTA and New Flyer for SFMTA to purchase an additional 33 60-foot electric trolley buses, increasing the existing not-to-exceed contract amount of \$94,950,444 by \$55,498,285, for a new total not-to-exceed contract amount of \$150,448,729. The contract expiration date remained 2020.

SFMTA has spent or encumbered \$94,950,444 to purchase 60 60-foot electric trolley buses under the original contract between SFMTA and New Flyer, as seen in Table 1 below. SFMTA has spent \$92,489,948 as shown in Table 1 below of which \$77,292,852 came from federal

grants, and the remainder came from local grants through Proposition K<sup>1</sup> and the Metropolitan Transportation Commission (MTC).<sup>2</sup>

**Table 1: Expenditures to Date for New Flyer Contract**

Category	Amount
Expenditures to date	\$92,489,948
Encumbrances	2,460,496
<b>Total</b>	<b>\$94,950,444</b>

According to Mr. Enoch Chu, SFMTA Project Engineer, SFMTA has not yet encumbered \$55,498,285 to purchase the 33 60-foot electric trolley buses under Amendment No. 1 to the contract between SFMTA and New Flyer. SFMTA anticipates award of the Federal grant funds and local Prop K funds in summer or fall of 2017. SFMTA will pay for the 33 60-foot electric trolley buses under Amendment No. 1 to the contract between SFMTA and New Flyer through FY 2017-18 as new buses are built and delivered to SFMTA.

#### DETAILS OF PROPOSED LEGISLATION

Subsequent to a competitive procurement process administered by King County in Washington, the proposed resolution would approve Amendment No. 2 to the contract between the SFMTA and New Flyer for SFMTA to purchase an additional 185 40-foot electric trolley buses, increasing the existing not-to-exceed contract amount of \$150,448,729 by \$244,618,583, for a new total not-to-exceed contract amount of \$395,067,312. The contract expiration date will remain 2020.

According to Mr. Chu, although the original contract allowed for a purchase of up to 240 additional 40-foot electric trolley buses, the SFMTA only needs 185 electric trolley buses. The current fleet is being reduced to right-size the fleet and in compliance with Federal Transit Administration requirements. There is currently no plan to buy the remaining 55 electric trolley buses.

#### FISCAL IMPACT

The \$244,618,583 budget for the increased contract amount with New Flyer for 185 additional 40-foot buses, together with SFMTA's related support costs of \$21,004,659, results in total project costs of \$265,623,242, as shown in Table 2 below.

<sup>1</sup> Prop K is a half-cent local sales tax for transportation that was approved by San Francisco voters in November 2003 that is used to fund transportation projects for the City of San Francisco.

<sup>2</sup> The MTC is a regional transportation planning agency and allocates funding as a pass through from the federal government. Such funds are conditional upon congressional appropriation.

**Table 2: New Flyer Contract Amendment and SFMTA Related Support Costs**

Item	Cost
185 Electric Trolley Buses (\$1,152,459 per bus)	\$213,204,915
Spare Parts	6,000,000
Tools & Diagnostics	2,000,000
Training & Manual	2,250,000
Training Simulator	2,000,000
Sales Tax (8.50%) <sup>3</sup>	19,163,668
<b>Subtotal New Flyer Contract Amendment No. 2</b>	<b>\$244,618,583</b>
Warranty Support	1,239,625
Project Support	16,246,544
Consultant Support and Vehicle Inspection at Plant	3,518,490
<b>Subtotal SFMTA Related Support Costs</b>	<b>21,004,659</b>
<b>Total SFMTA Project Costs</b>	<b>\$265,623,242</b>

**Contract Costs**

According to Mr. Chu, the City has not previously purchased 40-foot electric trolley buses from New Flyer, and therefore will need spare parts for the 185 new vehicles.

According to Mr. Chu, New Flyer will lead trainings for approximately 600 drivers of the electric trolley buses, as well as approximately 200 mechanics. The proposed second amendment also includes \$2,000,000 for a training simulator. According to Mr. Chu, the SFMTA is currently purchasing a light rail vehicle training simulator, but has no rubber tire bus (such as the electric trolleys) simulator. The SFMTA staff reached out to other transit agencies in Michigan and Massachusetts beginning in 2016 to elicit feedback on the simulators. The SFMTA predicts that using the simulator will decrease the amount of time spent training new drivers, a process that currently takes 30-40 days.

**Other Costs**

According to Mr. Chu, the \$16,246,544 for project support will be used to fund (a) SFMTA staff costs for vehicle inspection at the New Flyer plant and vehicle acceptance, (b) project management, engineering and administrative support, and (c) vehicle testing. According to Mr. Chu, approximately \$2,000,000 of the total \$3,518,490 for consultant support will go towards the Federal Transit Administration required full time consultant on-site inspection coverage in the bus manufacturing plant in Winnipeg, Canada and Crookston, Minnesota.

<sup>3</sup> This is the total of state, county, and city sales tax rates for the City and County of San Francisco. According to Mr. Enoch, the City has to pay taxes on and related to the purchasing of new vehicles.



**Funding Sources**

The total project funding sources of \$265,623,242, including \$244,618,583 for the New Flyer contract and \$21,004,659 for contract support, as seen in Table 2 above, will be provided by federal and local sources, as shown in Table 3 below. According to Mr. Chu, the buses will begin arriving in late 2017, and majority of payments for the contract will be ongoing through FY 2019-20 as new buses are built and delivered to SFMTA. A small portion of the training hours may continue after FY 2019-20.

**Table 3: Source of funds for Proposed New Flyer Contract Amendment**

Funding Source	Amount
Federal Grant FY15	\$20,000,000
Federal Grant FY17	95,660,612
Federal Grant FY18	96,837,982
San Francisco Proposition K Sales Tax Funds	53,124,648
<b>Total</b>	<b>\$265,623,242</b>

**RECOMMENDATION**

Approve the proposed resolution.

**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 trolley 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

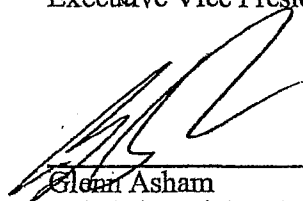
**Exhibits:**

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

**Amendment No. 1**

to

**Agreement between**

**the City and County of San Francisco**

**and**

**New Flyer of America Inc.**

**for the Procurement of Trolley Buses  
through Assignment from King County, Washington**

**Contract No. CPT 632**

**CCO No. 12-1206**

This Amendment No. 1 is made and effective this 31<sup>st</sup> day of August, 2016, in the City and County of San Francisco, State of California, by and between: New Flyer of America Inc., a North Dakota corporation, 711 Kernaghan Avenue, Winnipeg, Manitoba, Canada R2C 3T4 ("Contractor" or "New Flyer"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its San Francisco Municipal Transportation Agency ("SFMTA").

**Recitals**

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

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

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

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

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

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

Now, THEREFORE, the parties agree as follows:

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

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

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

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

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

**B7.02.01 Agreement.**

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

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

**B7.02.02.01 Amount.**

The City agrees to pay an amount not to exceed One Hundred Fifty Million, Four Hundred Forty-Eight Thousand, Seven Hundred Twenty-Nine Dollars (\$150,448,729) (the "Total Contract Amount"), as summarized in Exhibit B (Schedule of Prices), and in accordance with the terms and conditions of this Agreement. The Total Contract Amount includes an allowance of \$3,000,000 for spare parts. The parties will amend this Agreement to include a final list of spare parts to be supplied under the Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement and has not remedied such default within a reasonable period of time. In no event shall City be liable for interest or late charges for any late payments.

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

**B7.02.02.02 Invoices**

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

Each invoice shall include:

- Relevant milestones
- Contract order number;
- Quantity of items;
- Description of items;
- Unit price;
- Total invoice amount;
- Sales Tax (separately itemized)

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

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

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

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

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

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

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

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

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

**4. Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

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


CITY

San Francisco Municipal Transportation Agency

  
Edward D. Reiskin  
Director of Transportation

Approved as to Form:

Dennis J. Herrera  
City Attorney

By   
David A. Greenburg  
Deputy City Attorney

San Francisco Municipal Transportation Agency

Board of Directors

Resolution No. 16-066

Dated: 5-17-16

Attest:   
Secretary, SFMTA Board of Directors

Board of Supervisors

Resolution No. 279-14

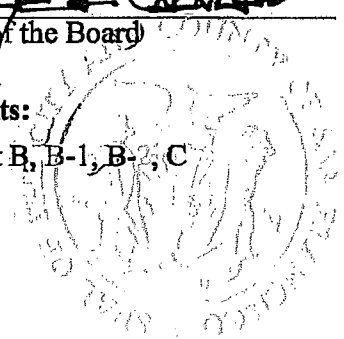
Dated: 8-14-14

Attest:

  
Clerk of the Board


Exhibits:


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



CONTRACTOR

New Flyer of America Inc.

  
Paul Smith  
Executive Vice President, Sales and Marketing

  
David White  
Executive Vice President, Supply Management

711 Kernaghan Avenue  
Winnipeg, Manitoba,  
Canada R2C 3T4

City vendor number: 49642

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

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



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

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

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

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

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

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

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

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

Item	Calendar Days after Notice-to-Proceed	
1	Submittal of Baseline Schedule and Management Work Plan	175
2	Submittal of vehicle drawings and test plans	259
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<sup>1</sup> Approval to deliver prototype will not be granted until after receipt and approval of all vehicle drawings, control and test plans.

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**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 26<sup>th</sup> day of February, <sup>2014</sup>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.

<b>Low-Floor Articulated Trolley Coaches</b>
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:

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

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 15<sup>th</sup> 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:**

<b>Milestones</b>	<b>Percentage of unit or lump sum price</b>
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

CONTRACTOR

San Francisco Municipal Transportation Agency

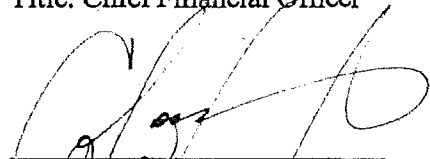
New Flyer of America


  
Edward D. Reiskin  
Director of Transportation

  
Name: Glenn Asham  
Title: Chief Financial Officer

Approved as to Form:

Dennis J. Herrera  
City Attorney

  
Name: Colin Pewarchuk  
Title: Executive Vice President, General Counsel

By   
David A. Greenburg  
Deputy City Attorney

Title: Executive Vice President, General Counsel

San Francisco Municipal Transportation Agency

711 Kernaghan Avenue  
Winnipeg, Manitoba, Canada R2C 3T4

Board of Directors

City vendor number: 49642

Resolution No. 13-066

Dated: 6-4-2013

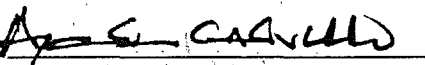
Attest:   
Secretary, SFMTA Board of Directors

Board of Supervisors

Resolution No. 20-14

Dated: 2/7/14

Attest:

  
Clerk of the Board

**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**

<b>Ref No.</b>	<b>Option No.</b>	<b>Option Group</b>	<b>Description</b>	<b>Total</b>
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
			<b>Base Bus Price Change Total</b>	<b>134,160.00</b>
38	705	Contract Spares	One Spare Wheel per bus	\$ 684.90

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

**EXHIBIT B  
SCHEDULE OF PRICES**

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

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

<b>GRAND TOTAL</b>	<b>\$94,950,444</b>
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## EXHIBIT 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

<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.

**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.



**SFMTA**  
Municipal  
Transportation  
Agency

Edwin M. Lee, *Mayor*

Tom Nolan, *Chairman*

Chevi Brinkman, *Vice-Chairman*

Gwyneth Borden, *Director*

Edward D. Reiskin, *Director of Transportation*

Malcolm Heinicke, *Director*

Joél Ramos, *Director*

Cristina Rubke, *Director*

**Additional Electric Trolley Bus Purchase**

Amendment No. 2 to Contract No. CPT 632 with New Flyer of America Inc.

On February 26, 2014, the City initially purchased 60 60-foot articulated electric trolley buses from New Flyer of America Inc., and associated spare parts, training, manuals, and special tools. On August 31, 2016, the SFMTA purchased approximately 33 additional 60-foot articulated electric trolley buses.

The SFMTA proposes to purchase a further 185 electric trolley buses and associated spare parts, training, manuals, and special tools.

Not a "project" pursuant to CEQA as defined in CEQA Guidelines Sections 15060(c) and 15378(b) because the action would not result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

A handwritten signature in black ink, appearing to read "Erik Jaszewski", written over a horizontal line.

3/28/2017

Erik Jaszewski

Date

San Francisco Municipal Transportation Agency

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. 170418-051

WHEREAS, The SFMTA's fleet of electric trolley buses includes 60 foot articulated trolley buses that have been in service since 1994, well past their useful life of 15 years; 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, On December 6, 2013, the City entered into a Bus Options Assignment Agreement with King County, Washington and New Flyer of America (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 options available under a bus procurement contract that King County had previously entered into with New Flyer; and,

WHEREAS, On February 26, 2014, the City entered into Contract No. CPT 632 with New Flyer 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; and,

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

WHEREAS, The Agreement includes options to purchase up to an additional 240 40-foot electric trolleys buses over the next six years should funding be identified; and,

WHEREAS, The SFMTA now wishes to amend the Agreement to exercise the option to purchase 185 40-foot electric trolley buses and associated spare parts, training, manuals and special tools; and

WHEREAS, This Amendment No.2 will be funded by a combination of federal formula funds and local matching funds; and

WHEREAS, On March 28, 2017, the SFMTA, under authority delegated by the Planning Department, determined that Amendment No. 2 to Contract No. CPT 632 is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b) because the actions would not result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment; and,

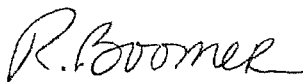


WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference; now therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute Amendment No. 2 to Contract No. CPT 632 with New Flyer of America Inc., to exercise the option to purchase an additional 185 40-foot low floor electric trolley buses and associated spare parts, training, manuals and special tools, for an additional amount of \$244,618,583, and a total contract amount not to exceed \$395,067,312, with no change to the term of the contract; and be it

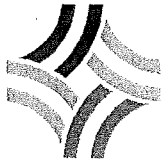
FURTHER RESOLVED, That the SFMTA Board of Directors commends Amendment No. 2 to the Board of Supervisors for approval.

I certify that the foregoing resolution was adopted by the Municipal Transportation Agency Board of Directors at its meeting of April 18, 2017.



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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency



**SFMTA**  
Municipal  
Transportation  
Agency

Edwin M. Lee, *Mayor*

Cheryl Brinkman, *Chairman*

Malcolm Heinicke, *Vice-Chairman*

Gwyneth Borden, *Director*

Lee Hsu, *Director*

Tom Nolan, *Director*

Joel Ramos, *Director*

Cristina Rubke, *Director*

Edward D. Reiskin, *Director of Transportation*

**April 24, 2017**

**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 – Amendment No. 2 to Contract No. CPT 632 with New Flyer of America Inc., to purchase an additional 185 standard low floor Electric Trolley Buses***

**Honorable Members of the Board of Supervisors:**

The San Francisco Municipal Transportation Agency (SFMTA) requests that the San Francisco Board of Supervisors approve Amendment No. 2 to Contract No. CPT 632 (the Agreement) with New Flyer of America Inc. (New Flyer). The purpose of this Amendment is to purchase an additional 185 40-foot (standard) low floor electric trolley buses. Amendment No. 2 would increase the Contract amount by \$244,618,583, for a total Contract amount not to exceed \$395,067,312, with no change to the term of the contract.

**Background**

SFMTA has modernized its procurement program over the past five years with the goal of stabilizing the average age of the bus fleet, continuing to support San Francisco's environmental policies and anticipating and accommodating vehicle expansion and fleet mix needs. The 40-foot electric trolley bus procurement is the last significant piece of this five-year procurement strategy, replacing the SFMTA's oldest and most unreliable subfleet.

The existing 40-foot electric trolley buses manufactured by Electric Transit, Inc (ETI) are up to 17 years of age, with over half of the subfleet already exceeding its useful life. ETI is no longer in business and the Agency has struggled to obtain replacement parts for the aging coaches. The ETI coaches consume a disproportionate amount of bus maintenance resources. While accounting for only 23 percent of the miles driven on the rubber tire fleet, these vehicles are responsible for over 40 percent of mechanical related service delays incurred by the rubber tire fleet.

The procurement of New Flyer 40-foot electric trolley coaches will help improve service reliability to approximately 200,000 daily passengers that rely on the 40-foot electric trolley buses. The fifteen trolley routes serve neighborhoods with the City's steepest hills with historically high transit ridership.

In 2013, the SFMTA exercised its authority under the San Francisco Administrative Code to utilize the competitive procurement processes of another public agency to purchase commodities where the SFMTA determines that the other agency's procurement process is competitive and use of the other agency's procurement process would be in the City's best interests.

On December 6, 2013, the City entered into a Bus Options Assignment Agreement with King County, Washington and New Flyer, under which King County assigned to the City the right to purchase from New Flyer

up to a total of 240 40-foot electric trolley buses and 93 60-foot electric trolley buses from the options available under King County's Bus Procurement Contract with New Flyer.

After negotiating minor changes to the buses specific to the needs of the SFMTA, the City entered into Contract No. CPT 632 with New Flyer to purchase 60 60-foot electric trolley buses and associated spare parts, training, manuals, and special tools on February 26, 2014. On August 31, 2016 the City issued Contract Amendment No. 1 to purchase an additional 33 60-foot electric trolley buses and associated spare parts, training, manuals, and special tools, as authorized under the Bus Options Assignment Agreement.

The SFMTA now seeks to exercise an option under the Contract to purchase an additional 185 40-foot electric trolley buses and associated spare parts, training, manuals and special tools.

### **Bid Process**

The 2012 King County competitive procurement process, which SFMTA deemed to be competitive, would apply to the buses procured through this Amendment.

### **Alternatives Considered**

The alternative to exercising this option would be to rehabilitate the existing fleet to extend the lives of these buses. However, extending the lives of the existing buses would mean that the majority of SFMTA's electric trolley fleet will continue to be high floor design and will not be able to take advantage of the low floor design which improves the passenger flow and speeds up boarding and alight time. In addition, SFMTA anticipates that the parts needed to rehabilitate and continue to maintain the existing buses would become increasingly difficult and expensive to maintain. Also, patrons would not be able to avail themselves of features such as the newly configured wheelchair securement and new stroller storage space which the older fleet does not have.

In view of the above, the best alternative available to the SFMTA is to purchase additional new electric trolley buses to continue replacement of its fleet of old trolley buses.

### **Funding Impact/Budget**

The purchase of the option vehicles under this Amendment will be funded through grants from the Federal Transit Administration and additional General Fund appropriation authorized under Proposition B, which was approved by the voters in November 2014.

A budget of \$265,623,242 has been allocated to fund this procurement, and sources for the funds have all been identified. The budget includes the cost of the buses, capital spares, training, manuals, special tools, and taxes, project engineering, maintenance support and consultant support.

This Amendment will increase the contract amount by \$ 244,618,583, for a total contract amount of \$395,067,312. Following is the detailed project budget:

<b>New Flyer Amendment No. 2</b>	<b>Cost</b>
Vehicles (185 40-ft electric trolley buses)	\$ 213,204,915
Spare Parts	\$ 6,000,000
Special Tools & Diagnostics	\$ 2,000,000
Training & Manuals	\$ 2,250,000
Training Simulator	\$ 2,000,000

<b>New Flyer Amendment No. 2</b>	<b>Cost</b>
Tax (8.50%)	\$ 19,163,668
<b>Subtotal New Flyer Contract Amendment No. 2</b>	<b>\$ 244,618,583</b>

<b>Other Associated Cost Items Amendment No. 2</b>	<b>Cost</b>
Warranty support	\$ 1,239,625
Project support (SFMTA staff, Other Direct Cost)	\$ 16,246,544
Consultant Support and Vehicle Inspection at Plant	\$ 3,518,490
<b>Subtotal Other Associated Cost Items Amendment No. 2</b>	<b>\$ 21,004,659</b>
<b>Total Cost Amendment No. 2</b>	<b>\$ 265,623,242</b>

<b>Total Project Cost Summary</b>	<b>Cost</b>
Base Order Plus Amendment 1 Amount	\$ 150,448,729
Base Order Plus Amendment 1 Other Associated Cost Items	\$ 12,895,177
Amendment No. 2 Contract Amount	<b>\$ 244,618,583</b>
Amendment No. 2 Other Associated Cost Items	\$ 21,004,659
<b>Total Project Amount</b>	<b>\$ 428,967,148</b>

#### **SFMTA Board Action**

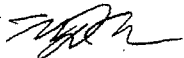
On April 18, 2017, the SFMTA Board of Directors approved Resolution No. 170418-051 authorizing the Director of Transportation to execute this Amendment (see attached).

#### **Recommendation**

The SFMTA recommends that the San Francisco Board of Supervisors adopt the resolution approving Amendment No. 2 to Contract No. CPT 632 with New Flyer of America, Inc., to exercise an option to purchase an additional 185 standard low floor electric trolley buses and associated spare parts, training, manuals and special tools, for an additional amount of \$244,618,583, and a total contract amount not to exceed \$395,067,312, with no change to the term of the contract.

Thank you for your consideration of this proposed amendment. 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**

Attachments: SFMTA Board Resolution No. 170418-051  
Amendment No. 2

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2017 APR 25 PM 3:47  
Time stamp  
or meeting date

BY



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. Reactivate File No. [ ]
- 10. 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 Form.**

**Sponsor(s):**

President London N. Breed

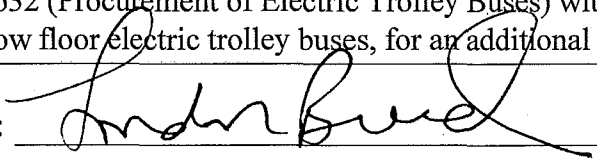
**Subject:**

Contract Amendment No. 2 -- New Flyer of America Inc. -- Purchase of Low Floor Electric Trolley Buses -- Not to Exceed \$395,067,312

**The text is listed below or attached:**

Resolution approving Amendment No. 2 to Contract No. CPT 632 (Procurement of Electric Trolley Buses) with New Flyer of America Inc., to purchase an additional 185 standard low floor electric trolley buses, for an additional

Signature of Sponsoring Supervisor:



For Clerk's Use Only:

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

<b>City Elective Officer Information</b> <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
<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name of contractor: <b>New Flyer of America Inc.</b>	
Please list the names of (1) members of the contractor's board of directors; <i>Brian V. Tobin, Larry Edwards, V. James Sardo, John Marinucci, Adam Gray, Phyllis Cochran, Krystyna Hoeg, Paulo Cezar Da Silva Nunes</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 (President, Transit Bus Business)</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: <b>Corporate Office: 711 Kernaghan Avenue, Winnipeg Manitoba, Canada R2C 3T4</b>	
Date that contract was approved:	Amount of contract: <b>Not to Exceed: \$395,067,312</b>
Describe the nature of the contract that was approved: <b>SFMTA: CPT 632: Procurement of Electric Trolley Buses Amendment No. 2</b>	
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

<b>Filer Information</b> <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

\_\_\_\_\_  
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