

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 26th day of February, 2013, ²⁰¹⁴ in the City and County of San Francisco, State of California, by and between: New Flyer of America Inc., a North Dakota corporation, 711 Kernaghan Avenue, Winnipeg, Manitoba, Canada R2C 3T4 (“Contractor” or “New Flyer”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

- A.** King County, a home rule charter county and political subdivision of the State of Washington, by and through its Department of Transportation, Metro Transit Division, entered into a contract with New Flyer, identified as ETB 12-1 (“Manufacture and Delivery of 40 Foot and 60 Foot Articulated Heavy Duty Low Floor Electric Trolley Buses”), for the procurement of electric trolley buses (the “Bus Procurement Contract”).
- B.** Section A1 .01 of the Bus Procurement Contract established a base quantity of up to 500 buses to be potentially purchased by King County over a five-year period and an option quantity of up to an additional 200 buses. Section B2.19 of the Bus Procurement Contract authorizes King County to assign to another transit property or governmental entity part or all of the option quantity of buses.
- C.** Under the authority of Administrative Code Section 21.16, on December 6, 2013, the City entered into a Bus Options Assignment Agreement with King County and New Flyer (Assignment Agreement), under which King County assigned to the City the right to purchase from New Flyer up to 240 40-foot electric trolley buses and 93 60-foot electric trolley buses from the options available under the Bus Procurement Contract.
- D.** The City wishes to acquire 60 60-foot electric trolley buses from New Flyer under the terms of the Assignment Agreement and the Bus Procurement Contract, as amended by the provisions of this Agreement.

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

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

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

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

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

A2.35.01

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

A2.35.02

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

A2.35.03

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

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

A2.36.01 Conflict of Interest. Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

A2.36.02 Nondiscrimination; Penalties.

- a. **Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual

orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Contractor, in any of Contractor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Contractor.

- b. **Non-Discrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the terms of this Agreement, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in section 1, 4-B. of Appendix D for 12B Provisions, 12B.2(b) of the San Francisco Administrative Code.
- c. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as through fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to Section 12B.2(h) (see Appendix D) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

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

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

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

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

B2.02.05

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

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

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

B2.12.01 Requiring Minimum Compensation for Covered Employees

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

B2.12.02 Health Benefits for Covered Employees

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

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

B2.15.01

Disputes arising in the performance of this Agreement that are not resolved by negotiation between the SFMTA Project Manager and Contractor shall be decided in writing by the SFMTA Manager of Fleet Engineering. The decision shall be administratively final and conclusive unless within 10 days from the date of such decision, the Contractor mails or otherwise furnishes a written appeal to the Director of Transit, or his/her designee. In connection with such an appeal, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director of Transit shall be administratively final and conclusive. Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the written directions of the Engineer. If agreed to by both parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

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

B3.06.01

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

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

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

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

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

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

FIGURE 10-1 TROLLEY SUBSYSTEM AND COMPONENT WARRANTY

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

*Whichever Occurs First

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

B.4.05.04. General.

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

B.4.05.05 Repairs by Contractor

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

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

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

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

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

4.05.06 Repairs by SFMTA.

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

4.05.06.01 Parts Used

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

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

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

4.05.06.02 Contractor-Supplied Parts

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

4.05.06.03 Reimbursement for Labor

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

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

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

B4.05.07 Towing Costs

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

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

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

B4.05.09 Fleet Defects

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B4.06.01 General

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

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

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

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

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

B4.06.01.01 Recommended Spare Parts:

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

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

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

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

B4.06.01.02. Substitute Parts

After the warranty period, the City may use substitute parts. Where it is feasible to make a substitution, and the Contractor has prior knowledge or experience, the Contractor will share any knowledge and technical information on parts substitutions. The Contractor shall respond to the City in writing within ten (10) Working Days, and agrees, if requested by the City, to provide any information in the Contractor's

possession regarding the potential parts substitution.

B4.06.02 Initial Parts Order

Contractor shall divide delivery of spare parts into two lots, and a manifest shall accompany each delivery. Lot 1 shall be approximately 50 percent of the quantity of spare parts finally agreed to by the parties. Lot 2 shall be the remaining quantity of spare parts. At the SFMTA's option, the lots may be split into more than two deliveries. Delivery shall be determined by signed receipt of the SFMTA Project Manager at the point of delivery and may be preceded by a cursory inspection of the parts. Within 20 business days of delivery, City will notify Contractor whether there are any problems related to the delivery.

The point of delivery shall be as stated below, or as otherwise provided in writing by SFMTA. Delivery of spare parts shall be F.O.B. point of delivery, freight pre-paid and allowed. Parts shall be delivered as agreed upon in Exhibit C - Delivery Schedule.

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

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

B5.02 Performance and Payment Security

B5.02.01 Bonds.

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

B5.02.01.02 Performance Bond. Within 20 days following the receipt of a notice of tentative award of contract, the Contractor shall furnish to City a performance bond in the amount of 20 percent of the total contract amount, to guarantee Contractor's faithful performance of all obligations of the contract. Upon delivery and acceptance by the City of 50 percent of the original contracted number of vehicles, the amount of the performance bond may be reduced to 65 percent of the original bond amount. Upon delivery and acceptance by the City of 75 percent of the original contracted number of vehicles, the amount of the performance bond may be reduced to 30 percent of the original bond amount. If the Contractor requests any further reduction in the amount of the performance bond, the request shall be subject to approval by SFMTA and the City's Risk Manager. One year after the City fully accepts the last bus, the City will release the obligations of the surety under the performance bond,

provided that all contract deliverables have been performed and accepted and, if the City has so elected, a warranty bond meeting the requirements of Subsection 4.1(b) is in place. The original bond document(s) shall be retained by the City.

B5.02.01.02 Warranty Bond; Extension Option. Contractor shall provide a two-year warranty or guaranty bond in the amount of 10 percent of the Contract price covering all of Contractor's warranty obligations under the Contract, which bond shall become effective upon release of the Performance Bond required under Subsection 4.1(a) above. At the end of the first year of warranty coverage, the Contractor may request a reduction of coverage, which may be approved at the discretion of SFMTA and the City's Risk Manager. Additionally, at City's election, and subject to approval of the surety issuing the bond, Contractor shall provide for up to two one-year extensions or renewals of the warranty or guaranty bond at an amount approved by SFMTA and the City's Risk Manager. If the original surety declines to extend or renew the initial bond, Contractor shall in good faith try to obtain the required additional coverage from another surety and shall document to the City its efforts in this regard.

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

During the period covered by the Contract, if the rating on the surety drops below the minimum set forth above, or if the surety on these bonds, in the opinion of the City's Risk Manager, becomes insolvent or unable to pay promptly the amount of such bonds to the extent to which surety might be liable, the Contractor, within 30 days after notice given by the City to the Contractor, shall by supplemental bonds or otherwise substitute another and sufficient surety approved by the Risk Manager in place of the surety becoming insolvent or unable to pay. If the Contractor fails within such 30 day period to substitute another and sufficient surety, the Contractor shall, if the City so elects, be deemed to be in default in the performance of its obligations hereunder, and the City, in addition to any and all other remedies, may terminate the Contract or bring any proper suit or proceeding against the Contractor and the surety, or may deduct from any monies then due or which thereafter may become due to Contractor under the Contract the amount for which the surety, insolvent or unable to pay as aforesaid, is obligated on the bonds, and the monies so deducted shall be held by the City as collateral security for the performance of the conditions of the bonds.

B5.02.02 Letter of Credit

B5.02.02.01. Any and all letters of credit issued pursuant to this Agreement shall be obtained from a national or California bank with at least a Moody's A rating and having at least one branch office within the City and County of San Francisco. The letter of credit shall be a confirmed, clean irrevocable letter of credit in favor of the

City and County of San Francisco, a municipal corporation. The letter of credit shall have an original term of one year, with automatic extensions of the principal amount throughout the term of the contract, or until released by the City. The letter of credit shall provide that payment of the entire face amount of the letter of credit, or any portion thereof, shall be made to the City and County of San Francisco, upon presentation of a written demand to the bank signed by the General Manager on behalf of the City and County of San Francisco. The letter of credit shall constitute a security deposit guaranteeing all progress payments for which the letter of credit is issued.

B5.02.02.02. If Contractor defaults with respect to any provision of this Agreement, City may, but shall not be required to, make its demand under the letter of credit for all or any portion thereof to compensate City for any loss of progress payments, which City may have incurred by reason of Contractor's default. City shall present its written demand to the bank for payment under the letter of credit only after City shall have made its demand for payment directly to Contractor, and five full business days have elapsed without Contractor having made payment to City or otherwise cured the default. City need not terminate this Agreement in order to receive compensation for its damages. If any portion of a letter of credit is so used or applied, Contractor, within 10 business days after written demand therefore, shall reinstate the letter of credit to its original amount; Contractor's failure to do so shall be a material breach of this Agreement.

B5.02.02.03. Any letter of credit issued hereunder shall provide for 60 days notice by the bank to City in the event of non-extension of the letter of credit; in that event, Contractor shall replace the letter of credit at least 10 business days prior to its expiration. If Contractor fails to do so, City shall be entitled to present its written demand for payment of the entire face amount of the letter of credit. Any amounts so received by City shall be returned to Contractor upon replacement of the letter of credit.

B5.02.02.04. If City receives any payments from the aforementioned bank under the letter of credit by reason of having made a wrongful or excessive demand for payment, City shall return to Contractor the amount by which City's total receipts from Contractor and from the bank under the letter of credit exceeds the amount to which City rightfully is entitled, together with interest thereon at the legal rate of interest, but City shall not otherwise be liable to Contractor for any damages or penalties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Delivery shall be determined by the signed receipt of the SFMTA Project Manager Representative at the point of delivery and may be preceded by a cursory inspection of the coach. Delivery of the coaches shall be F.O.B. point of delivery, freight pre-paid and allowed. Contractor shall ensure that all coaches are fully operable when they are delivered.

The coaches and other items shall be delivered between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. Contractor shall deliver a maximum of three (3) coaches per week.

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

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

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

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

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

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

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

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

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

B7.02 Compensation and Payment

B7.02.01 Agreement.

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

B7.02.02 Compensation; Payment

B7.02.02.01 Amount. The City agrees to pay an amount not to exceed Ninety-Four Million, Nine Hundred Fifty Thousand, Four hundred Forty Four Dollars (\$94,950,444) (the "Total Contract Amount"), as summarized in Exhibit B (Schedule of Prices), and in accordance with the terms and conditions of this Agreement. The Total Contract Amount includes an allowance of \$3,000,000 for spare parts. The parties will amend this Agreement to include a final list of spare parts to be supplied under the Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement and has not remedied such default within a reasonable period of time. In no event shall City be liable for interest or late charges for any late payments.

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

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

Each invoice shall include:

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

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

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

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

B7.02.02.03 Payment Terms.

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

- b. In the event that a bus does not meet all requirements for Acceptance, the City may, at its exclusive option "conditionally accept" the bus and place it into revenue service pending receipt of Contractor furnished materials and/or labor necessary to effectuate corrective action for Acceptance.
- c. For any conditionally Accepted bus, the payment shall be further reduced by an amount equal to three percent (3%) of the bus, which amount shall be withheld and paid upon corrective action by the Contractor and final Acceptance by the City.

Payment Schedule:

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

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

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

d. Final Acceptance by the Director of the Transportation.

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

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

B7.12.01

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

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

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

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

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

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

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

B7.13.01

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

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

U. Form EB5.01 is deleted.

2. The following provisions are added to this Agreement:

A. Budget And Fiscal Provisions; Termination In The Event Of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THE AGREEMENT.

B. City Business Tax

The San Francisco Business Tax Ordinance requires that firms located in San Francisco or doing business in San Francisco, except for non-profit and tax-exempt businesses, have a current Business Tax Registration Certificate. Contractor shall maintain said Certificate throughout the term of this Contract and pay timely any and all business taxes

due to the City.

C. Sunshine Ordinance

In accordance with S.F. Administrative Code Section 67.24(e), contractors' bids, responses to RFPs and all other records of communications between the City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organizations net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

D. False Claims

Pursuant to San Francisco Administrative Code sections 6.80 to 6.83 and section 21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor or subcontractor who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

E. Independent Contractor; Payment of Taxes and Other Expenses

- (1) **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing

same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

- (2) **Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

F. Term of Agreement

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

G. Terms and Conditions; Priority of Documents

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

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

In the event of any conflict in language among the above documents the terms and conditions of this Agreement and any later executed documents shall prevail over conflicting terms and conditions contained in the earlier documents, in their original form or as amended.

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

CITY

CONTRACTOR

San Francisco Municipal Transportation Agency

New Flyer of America



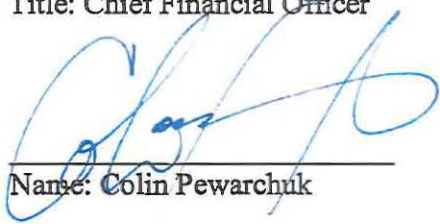
Edward D. Reiskin
Director of Transportation

Name: Glenn Asham

Title: Chief Financial Officer

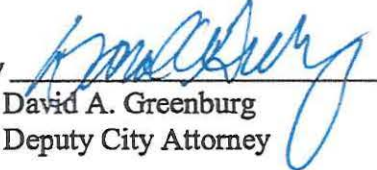
Approved as to Form:

Dennis J. Herrera
City Attorney



Name: Colin Pewarchuk

Title: Executive Vice President, General Counsel

By 
David A. Greenburg
Deputy City Attorney

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

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

| Ref No. | Option No. | Option Group | Description | Total |
|---------|------------|-------------------------|--|---------------|
| | | | per sec 3-21. | |
| 23 | 600 | Customer Options | Add S1 guard per 3-22. | \$ 2,930.42 |
| 24 | 600 | Customer Options | Add NEXTBUS system per 3-23. | \$ 2,400.55 |
| 25 | 600 | Customer Options | Add trash receptacle per 4-9. | \$ 11.66 |
| 26 | 600 | Customer Options | Add storage locker behind operator seat per 4-12. | \$ 90.51 |
| 27 | 600 | Customer Options | Add fleet management system per 5-8. | \$ 1,151.01 |
| 28 | 600 | Customer Options | Add fire suppression per BPC. | \$ 9,955.00 |
| 29 | 549 | HVAC System | Remove floor heating system and auxiliary heater per BPC. | \$ (4,200.00) |
| 30 | 470 | Destination Signs | Change destination signs to TwinVision Color Destination Signs (Front, C/side, S/side) per 3-10. Add amber rear. | \$ 13,180.53 |
| 31 | 600 | Customer Options | DTI Camera System per 3-13. | \$ 25,970.43 |
| 32 | 600 | Customer Options | Add On-Board AVAS per 3-12 to 3-13. | \$ 20,972.78 |
| 33 | 526 | Seating & Stanchions | Re-quote to American Seating 6468, 47 passenger seats (perimeter in the L/D and forward facing in upper deck), staggered forward facing Q'Straint W/C restraint, with blue push button, BC55 flip seats per 3-7. | \$ 8,266.11 |
| 34 | 526 | Seating & Stanchions | Change driver seat to USSC 9100ALX non-D90 per 4-2. | \$ 389.55 |
| 35 | 600 | Customer Options | Add APC per 3-18. | \$ 12,396.60 |
| 37 | 280 | Passenger Signal | Add Stop request sign on destination sign compartment door per 3-8. | \$ 336.29 |
| 41 | 246 | Air, Brake & Lev System | Add rapid recover and equip with raise feature for steep inclines, 1" at 3 MPH is preferred to prevent chances of damaging front shocks per 5-1. | \$ 723.02 |

| Ref No. | Option No. | Option Group | Description | Total |
|---------|------------|----------------------|--|-------------|
| 42 | 600 | Customer Options | Add beeper exterior sound when buses are turning via footswitch. Note, the volume of the exterior beeper will not be adjustable by the driver per 4-1. | \$ 5.32 |
| 44 | 600 | Customer Options | Add additional feature for exterior announcement as passenger exit the bus "Do not walk in front of bus". No additional cost, feature is standard in AVAS system per SR1794. | \$ 0.0 |
| 45 | 491 | Door Exit | Re-quote Vapor Class system to include Activair baseplate with locking mechanism per 3-2. | \$ 3,761.99 |
| 46 | 526 | Seating & Stanchions | Add 10" seat belt extender, to change seat belt length per 4-2. | \$ 81.59 |
| 49 | 600 | Customer Options | Add transfer mounting bracket, farebox mounting support plate and wiring per 3-16. | \$ 109.53 |
| 50 | 526 | Seating & Stanchions | Add qty 36 Nylon grab straps. Change stanchions to cast fittings for use with metal grab straps per 3-9. Note: Metal grab straps not useable with bonded stanchions. | \$ 810.93 |
| 51 | . | Customer Options | Add customer specific farebox pedestal (in the event a 41" farebox is installed) per 3-16. | \$ 562.23 |
| 53 | 273 | Exterior Lamp | Change to two 18"x 1"LED center stop/deceleration light above the engine door in lieu of flashing decel system per Section 3-3. | \$ 68.88 |
| 54 | 600 | Customer Options | Add four (4) external recessed buttons (elevator switches) per 3-2. | \$ 582.92 |
| 55 | 600 | Customer Options | Clipper cable harnesses per 3-17. | \$ 483.08 |
| 57 | 422 | Body A/P After Paint | Add bi-fold drivers enclosure per 4-8. | \$ 2,579.55 |
| 59 | 600 | Customer Options | Add DriveCam with event recorder per 3-14. | \$ 662.50 |
| 60 | 422 | Body A/P After Paint | Add two more for a total of four Equipment Trays per SR1794. | \$ 366.39 |
| 63 | Bonding | Deliverable | Add 20% Performance Bond and 2 year, 10% Warranty Bond per Agreement Section B5.02. | \$ 6,381.20 |

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

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

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

**EXHIBIT B
SCHEDULE OF PRICES**

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

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

| | |
|--------------------|---------------------|
| GRAND TOTAL | \$94,950,444 |
|--------------------|---------------------|

EXHIBIT C

DELIVERY SCHEDULE

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

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

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

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

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

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

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

EXHIBIT D
SCHEDULE OF LIQUIDATED DAMAGES

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

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

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

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