

BUS OPTIONS ASSIGNMENT AGREEMENT

by and among

King County's Department of Transportation, Metro Transit Division

and

The City and County of San Francisco

and

New Flyer of America Inc.

THIS BUS OPTIONS LIMITED ASSIGNMENT OF RIGHTS AND ASSUMPTION OF DUTIES AGREEMENT, (the "Bus Options Assignment Agreement"), is made and entered into this 6th day of December, 2013, by and among King County, a home rule charter county and political subdivision of the State of Washington, by and through its Department of Transportation, Metro Transit Division (the "County" and/or "Metro Transit" and/or the "Assignor"),

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

and

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

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

RECITALS

WHEREAS, the County and New Flyer are parties to a contract, identified as ETB 12-1 ("Manufacture and Delivery of 40 Foot and 60 Foot Articulated Heavy Duty Low Floor Electric Trolley Buses"), for the procurement of certain transit buses detailed therein (the "Bus Procurement Contract"); and

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

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

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

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

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

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

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

1. PURPOSE

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

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

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

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

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

4. REVERSION OF OPTIONS

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

5. CONTRACTOR'S ACKNOWLEDGMENT OF AND CONSENT TO ASSIGNMENT

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

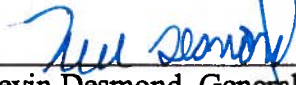
6. INDEMNIFICATION AND HOLD HARMLESS

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

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

ASSIGNOR:

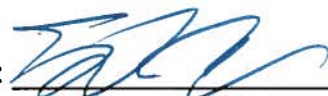
KING COUNTY
DEPARTMENT OF TRANSPORTATION
METRO TRANSIT DIVISION

By: 
Kevin Desmond, General Manager

Date: 12/6/13

ASSIGNEE:

CITY AND COUNTY OF SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

By: 
Edward D. Reiskin
Director of Transportation

Date: 11-25-13

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

By: 
David A. Greenburg
Deputy City Attorney

Authorized by:

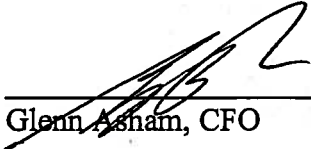
SFMTA Board of Directors
Resolution No. 13-066
Dated: 6-4-13

Attest:

Secretary, Board of Directors

CONTRACTOR:

NEW FLYER OF AMERICA INC.

By: 
Glenn Asham, CFO

Date: 11-21-13