

THIS PRINT COVERS CALENDAR ITEM NO.: 10.5

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transit

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute Amendment No. 5 to Contract No. CPT 632 with New Flyer of America Inc. (New Flyer), to extend the term of the contract from 7.5 years to 9.5 years due to impacts from the COVID-19 pandemic so that New Flyer may complete required and additional trainings, with no change to the amount of the contract.



SUMMARY:

- On February 26, 2014, the City entered into Contract No. CPT 632 (Agreement) with New Flyer to purchase 60 60-foot electric trolley buses and associated spare parts, training, manuals, and special tools in an amount not to exceed \$94,950,444.
- On August 31, 2016, the parties entered into Contract Amendment No. 1 to purchase an additional 33 60-foot electric trolley buses, for a new contract amount not to exceed \$150,448,729.
- On June 6, 2017, the parties entered into Contract Amendment No. 2 to purchase an additional 185 40-foot electric trolley buses, for a revised contract amount not to exceed \$395,067,312.
- On June 7, 2018, the City issued Contract Amendment No. 3 for miscellaneous changes to the buses, resulting in a decrease in the total contract amount of \$9,562,368, for a new contract amount of \$385,504,944.
- On February 8, 2020, the parties entered into Contract Amendment No. 4 to modify the Agreement to delete \$30,082,839 in sales taxes from the amount of the Contract, for a new contract amount of \$355,422,105, and extend the term of the Agreement by one and a half years so that the Contractor could complete required trainings.
- Due to delays from the pandemic, staff recommends that the SFMTA extend the term of the contract by two years so that the Contractor may complete required and additional trainings.

ENCLOSURES:

1. SFMTAB Resolution
2. CPT632 Amendment No. 5

APPROVALS:

	DATE
DIRECTOR 	<u>May 10, 2021</u>
SECRETARY 	<u>May 10, 2021</u>

ASSIGNED SFMTAB CALENDAR DATE: May 18, 2021

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PURPOSE

Authorizing the Director of Transportation to execute Amendment No. 5 to Contract No. CPT632 with New Flyer of America Inc. (New Flyer), to extend the term of the contract from 7.5 years to 9.5 years due to impacts from the COVID-19 pandemic, so that New Flyer may complete required and additional trainings, with no change to the amount of the contract.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

The item will support the following goals and objectives of the SFMTA Strategic Plan:

- Goal 1: Create a safer transportation experience for everyone.
Objective No. 1.2: Improve the safety of the transit system.
- Goal 2: Make transit and other sustainable modes of transportation the most attractive and preferred means of travel.
Objective No. 2.1: Improve transit service.
- Goal 3: Improve the quality of life and environment in San Francisco and the region.
Objective No. 3.4: Provide environmental stewardship to improve air quality, enhance resource efficiency, and address climate change.

This item will support the following Transit First Policy Principles:

- 2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.
- 9. The ability of the City and County to reduce traffic congestion depends on the adequacy of regional public transportation. The City and County shall promote the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.

DESCRIPTION

The 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 anticipate and accommodate 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 sub-fleet.

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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 sub-fleet already exceeding its useful life. ETI is no longer in business, and the SFMTA has struggled to obtain replacement parts for the aging coaches. The ETI coaches consume a disproportionate amount of bus maintenance resources and make up over 40 percent of mechanical-related service delays.

The SFMTA partnered with King County, Washington (King County), which was procuring the 40-foot electric trolley buses from New Flyer. In 2013, the SFMTA exercised its authority under the San Francisco Administrative Code to utilize the competitive procurement processes of King County to purchase commodities. On December 6, 2013, the City entered into a Bus Options Assignment Agreement with King County 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.

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 (Agreement) to purchase 60 60-foot electric trolley buses and associated spare parts, training, manuals, and special tools on February 26, 2014, for an amount not to exceed \$94,950,444.

The SFMTA and New Flyer have entered into the following amendments to the Agreement:

- On August 31, 2016, the parties entered into Contract Amendment No. 1 to purchase an additional 33 60-foot electric trolley buses and associated spare parts, training, manuals, and special tools, for a contract amount not to exceed \$150,448,729.
- On June 6, 2017, the parties entered into Contract Amendment No. 2 to purchase 185 40-foot electric trolley buses and associated spare parts, training, manuals, and special tools, for a contract amount not to exceed \$395,067,312.
- On June 7, 2018, the parties entered into Contract Amendment No. 3 to modify the Agreement to (1) include equipment added during the production phase of the Agreement; (2) incorporate an allowance for any future regulatory mandated changes, further requested passenger enhancements, and system modifications resulting from changes to project interfaces; and (3) amend the Schedule of Prices to reflect these changes. The aforementioned changes result in a decrease to the total contract amount of \$9,562,368, for a new contract amount not to exceed \$385,504,944.
- On February 8, 2020, the parties entered into Contract Amendment No. 4 to modify the Agreement to (1) delete \$30,082,839 in sales taxes from the amount of the Contract since the City will be paying sales taxes directly to the State of California, and remove references to sales taxes; and (2) extend the term of the Agreement by one and a half years so that the Contractor could complete required and additional trainings; the total contract amount decreased to \$355,422,105, and the term of contract extended from 6 years to 7.5 years.

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Due to impacts from the COVID-19 pandemic, it was not feasible to conduct training at the SFMTA's maintenance yards throughout most of 2020, so training could not be completed by the contract end date. The SFMTA now seeks to extend the term of the Agreement from 7.5 years to 9.5 years so that the Contractor may complete required and additional training, with no change to the amount of the Agreement.

STAKEHOLDER ENGAGEMENT

Staff discussed the need for completing contractual and additional training with stakeholders in the SFMTA's Maintenance division. These discussions indicated a need for extending the term of Contract No. CPT 632 with New Flyer of America, Inc.

ALTERNATIVES CONSIDERED

The main alternative to extending the term of Contract No. CPT 632 considered by staff, was to complete all the contract training before the August 2021 contract end date. However, due to the COVID-19 pandemic, it was not feasible to conduct training throughout most of 2020, so training could not be completed by the contract end date.

Another alternative considered was to create a new contract for training through a sole-source procurement process. However, staff did not find this alternative preferable because creating a new contract through the sole-source procurement process would not give the SFMTA any benefit over extending the original contract term, and would also take more time than it would to extend the term of the original contract.

In view of the above, the best option available to the SFMTA is to modify the contract to extend the term of the Agreement by two years so that the Contractor may complete required and additional trainings.

FUNDING IMPACT

There is no funding impact from this Contract Amendment.

ENVIRONMENTAL REVIEW

On April 22, 2021, the SFMTA, under authority delegated by the Planning Department, determined that Amendment No. 5 to Contract No. CPT 632 with New Flyer is not a project under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

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OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney's Office has reviewed this calendar item.

RECOMMENDATION

Due to impacts from the COVID-19 pandemic, staff recommends that the SFMTA Board authorize the Director of Transportation to execute Amendment No. 5 to Contract No. CPT 632 with New Flyer of America Inc., to extend the term of the contract from 7.5 years to 9.5 years so that the Contractor may complete required and additional trainings, with no change to the amount of the contract.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On December 6, 2013, the City entered into a Bus Options Assignment Agreement with King County, Washington and New Flyer of America (New Flyer), 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 in an amount not to exceed \$94,950,444; and,

WHEREAS, On August 31, 2016, the City and New Flyer entered into Contract Amendment No. 1 to purchase an additional 33 60-foot electric trolley buses and associated spare parts, training, manuals, and special tools, for a new contract amount not to exceed \$150,448,729; and,

WHEREAS, On June 6, 2017, the City and New Flyer entered into Contract Amendment No. 2 to purchase an additional 185 40-foot electric trolley buses and associated spare parts, training, manuals, and special tools, for a new contract amount not to exceed \$395,067,312; and,

WHEREAS, On June 7, 2018, the City and New Flyer entered into Contract Amendment No. 3 to modify the Agreement to (1) include equipment added during the production phase of the Agreement; (2) incorporate an allowance for any future regulatory mandated changes, further requested passenger enhancements, and system modifications resulting from changes to project interfaces; and (3) amend the Schedule of Prices to reflect these changes; resulting in a decrease to the total contract amount of \$9,562,368, and a revised contract amount of \$385,504,944; and,

WHEREAS, On February 2, 2020, the City and New Flyer entered into Contract Amendment No. 4 to (1) delete \$30,082,839 in sales taxes from the amount of the Contract since the City will be paying sales taxes directly to the State of California; remove references to sales taxes; and (2) extend the term of the Agreement by one and a half years to 7.5 years so that the Contractor may complete required and additional trainings; the total contract amount decreased to \$355,422,105, and,

WHEREAS, Due to impacts from the COVID-19 pandemic, the SFMTA now wishes to amend the Agreement to extend its term from 7.5 years to 9.5 years so that the Contractor may complete required and additional trainings, with no change to the amount of the contract; and,

WHEREAS, On April 22, 2021, the SFMTA, under authority delegated by the Planning Department, determined that Amendment No. 5 to Contract No. CPT 632 with New Flyer 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. 5 to Contract No. CPT 632 with New Flyer of America Inc., to extend the term of the Agreement from 7.5 years to 9.5 years due to impacts from the COVID-19 pandemic so that New Flyer may complete required and additional trainings, with no change to the amount of the contract.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of May 18, 2021.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

Amendment No. 5
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. 5 to Contract is made and effective on _____, 2021, 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, 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 (SR-1849) and associated spare parts, training, manuals, and special tools under the terms and conditions of the Agreement.

E. On August 31, 2016, the City and Contractor entered into Amendment No. 1 to the Agreement for the City to purchase 33 60-foot electric trolley buses (SR 2129) and associated spare parts, training, manuals, and special tools.

F. On June 6, 2017, the City and Contractor entered into Amendment No. 2 to the Agreement to for the City to purchase 185 40-foot electric trolley buses (SR 2180) and associated spare parts, training, manuals, and special tools from New Flyer.

G. On June 7, 2018, the City and Contractor entered into Amendment No. 3 to modify the Agreement to (1) include the list of equipment added during the production phase of the Agreement (Exhibits E-1, E-2, E-3); (2) incorporate an allowance for any future regulatory mandated changes, further requested passenger enhancements, and system modifications resulting from changes to project interfaces; and (3) amend the Schedule of Prices to reflect these changes. The aforementioned changes result in a decrease to the total contract amount by \$9,562,368, and the total contract amount decreased from \$395,067,312 to \$385,504,944.

H. On February 8, 2020, the City and Contractor entered into Amendment No. 4 to modify the Agreement to (1) delete \$30,082,839 in sales taxes from the amount of the Contract (Exhibit B) since the City will be paying sales taxes directly to the State of California, and remove references to sales taxes from Exhibits B-1, B-2, B-3; and (2) extend the term of the Agreement by one and a half years so that the Contractor may complete required and additional trainings; and the total contract amount decreased from \$385,504,944 to \$355,422,105, and the term of contract extended from 6 years to 7.5 years.

I. Due to impacts from the COVID-19 pandemic, the City now wishes to modify the Agreement to extend the term of the Agreement by two years so that the Contractor may complete required and additional trainings, with no change to the amount of the Agreement.

Now, THEREFORE, the parties agree that the Agreement shall be amended as follows:

1. Section 2. F. (Term of Agreement) is replaced in its entirety to read as follows:

The term of the Agreement shall commence on February 26, 2014 (Effective Date), and shall expire nine and a half years thereafter unless earlier terminated as otherwise provided herein.

- 2. Release.** Contractor, and all subcontractors and suppliers (collectively, Contractor), understand that this extension of time results in no additional compensation to Contractor, including, but not limited to, costs for labor, materials, equipment, delay, escalation, profit, inefficiency, overhead and administration. The execution of this Amendment constitutes a release and accord and satisfaction of any claim that Contractor may bring, as of the date of the approval of Amendment, for the Option Vehicles and parts, for additional compensation or time arising from, or related to, the procurement and delivery of the Option Vehicles to the SFMTA.
- 3.** Except as expressly modified by this Amendment, all of the terms and conditions of the Contract 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

CONTRACTOR

San Francisco Municipal Transportation Agency

New Flyer of America Inc.

Jeffrey P. Tumlin
Director of Transportation

Jennifer McNeill
Vice President, Sales and Marketing

Authorized By:

San Francisco Municipal Transportation Agency
Board of Directors

711 Kernaghan Avenue
Winnipeg, Manitoba,
Canada R2C 3T4

City vendor number: 0000030698

Resolution No: _____

Adopted: _____

Attest: _____
Secretary, SFMTA Board of Directors

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
Robin M. Reitzes
Deputy City Attorney