

**SECOND AMENDMENT TO THE RESTATED AGREEMENT
FOR LEASE AND MAINTENANCE OF COMPRESSED NATURAL GAS (CNG)
SHUTTLE BUSES BETWEEN THE CITY OF SAN JOSE
AND PENSKE TRUCK LEASING CO., L.P.**

This Second Amendment ("Second Amendment") to the Restated Agreement for Lease and Maintenance of Compressed Natural Gas (CNG) Shuttle Buses is entered into as of the City's execution date ("Effective Date") between the City of San José, a municipal corporation ("City"), and Penske Truck Leasing Co., L.P., a Delaware limited partnership authorized to do business in the state of California ("Contractor").

RECITALS

WHEREAS, on December 18, 2007, City and Contractor entered into a seven-year agreement entitled "Agreement for Lease and Maintenance of Compressed Natural Gas (CNG) Shuttle Buses" ("Original Agreement"), in which the Contractor provided the lease and maintenance services for fourteen (14) CNG shuttle buses to City; and

WHEREAS, under Resolution No. 73876, the San José City Council authorized the Director of Finance to add additional CNG shuttle buses as required; and

WHEREAS, on September 16, 2009, instead of amending the Original Agreement, City and Contractor entered into a restated agreement entitled "Restated Agreement for Lease and Maintenance of Compressed Natural Gas (CNG) Shuttle Buses" ("Restated Agreement") in which the Contractor provided the lease and maintenance services for ten (10) additional CNG shuttle buses to the City, for a total of twenty-four (24) buses; and

WHEREAS, on May 23, 2012, City and Contractor entered into a First Amendment to the Restated Agreement to terminate the lease on fourteen (14) CNG buses in order to sell these buses directly to the San Francisco International Airport; and

WHEREAS, City and Contractor now wish to further amend the amended Restated Agreement to extend the term for up to three (3) years through May 31, 2020, in order to continue the lease and maintenance of the ten (10) CNG shuttle buses while the City procures new replacement buses, subject to the provisions of Section 8 of the Restated Agreement.

NOW THEREFORE, the parties agree to further amend the amended Restated Agreement as follows:

1. Section 2.3 entitled "Lease and Maintenance Term" is hereby amended to read as follows:

"Fleet A (14 buses)

The lease and maintenance term shall be from June 1, 2008 to May 23, 2012, inclusive, subject to the provisions of Section 8.

Fleet B (10 buses)

Original Term

The original lease and maintenance term shall be from June 30, 2010 to May 31, 2017, inclusive, subject to the provisions of Section 8.

Extension Term - The lease and maintenance term, with respect to the vehicles listed on Schedule A No. 16-01 dated February 15, 2017, which is attached hereto and incorporated herein, shall be from June 1, 2017 to May 31, 2019, inclusive, subject to the provisions of Section 8 ("Extension Term").

Option Term - The City, at its sole discretion, reserves the right to extend the term of this Restated Agreement for one additional one-year term through May 31, 2020 ("Option Term"), subject to the provisions of Section 8. City shall provide Contractor written notice, in the form of Exhibit H, of its intention to exercise its option prior to the end of the then current term."

2. Section 8 of the Restated Agreement is hereby amended to add Section 8.6 to be numbered, entitled, and to read as follows:

"8.6 Termination for Convenience (Fleet B)

Notwithstanding any of the other provisions of this Section 8, provided the City is not in default of any of the provisions hereunder, the City shall have the option to terminate this Restated Agreement following the first anniversary date of the Extended Term with respect to the vehicles listed on Schedule A No. 16-01 dated February 15, 2017, without cause, by giving Contractor not less than thirty (30) days prior written notice. In the event of such termination by City, the City shall pay Contractor for services performed and reimbursable expenses incurred to the date of termination."

3. Exhibit C, entitled "Compensation", is amended to read as shown in Revised Exhibit C, attached hereto and incorporated herein.
4. A new Schedule A No. 16-01 dated February 15, 2017, with respect to vehicles 577156-577165, is attached hereto and incorporated herein.
5. A new Exhibit H, entitled "Notice of Exercise of Option to Extend Agreement", is attached hereto and incorporated herein.
6. All of the terms and conditions of the amended Restated Agreement not modified by this Second Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year set forth beneath the respective names below.

City of San José
a municipal corporation

Penske Truck Leasing Co., L.P.
a Delaware limited partnership
authorized to conduct business in California

By _____

By _____

First Authorized Signature

Name: Mark Giovannetti

Name: _____

Title: Deputy Director, Finance

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

Rosa Tsongtaatarii
Senior Deputy City Attorney
Date: _____

By _____
Second Authorized Signature

Name: _____

Title: _____

Date: _____

REVISED EXHIBIT C COMPENSATION

1. BAY AREA AIR QUALITY MANAGEMENT DISTRICT (BAAQMD) GRANT

- 1.1. The Airport has received Bay Area Air Quality Management District (BAAQMD) grant funding to help defer the costs of fabricating the buses with CNG engines and ancillary equipment and controls. The Contractor must track and document all costs for labor and materials for the differential costs in order for the Airport to submit invoices to BAAQMD. The documentation of costs will be submitted in a format acceptable to the Airport.

2. COMPENSATION

2.1. Lease Costs

Fleet A

From August 1, 2008 through May 23, 2012, City shall pay Contractor lease costs in the amount of Six Thousand Seven Hundred Twenty-One Dollars and Seventy Cents (\$6,721.70) per bus per month. This rate shall remain in constant as long as the total annual bus hours range of 40,000 to 70,000 hours remains in effect.

Fleet B

Original Term (8/1/10 to 5/31/17) – From August 1, 2010 through May 31, 2017 (“Original Term”), City shall pay Contractor lease costs in the amount of Six Thousand Nine Hundred Twelve Dollars and Ninety Cents (\$6,912.90) per bus per month. This rate shall remain in constant as long as the total annual bus hours range of 40,000 to 70,000 hours remains in effect.

****Fleet B - For every rise or fall of 10 basis points in the 7 year Treasury Bill rate, occurring between the signing of this agreement and the delivery date of the buses, the monthly lease rate will be adjusted upward or downward by \$27.00**

Extension Term (6/1/17 to 5/31/19) – From June 1, 2017 through May 31, 2019 (“Extension Term”), City shall pay Contractor lease costs in the amount of Five Thousand Nine Hundred Seventy-Nine Dollars and Seventy-Five Cents (\$5,979.75) per bus per month. This rate shall remain in constant as long as the total annual bus hours range of 40,000 to 70,000 hours remains in effect.

Option Term (6/1/19 to 5/31/20) – From June 1, 2019 through May 31, 2020 (“Option Term”), City shall pay Contractor lease costs in the amount of Five Thousand Nine Hundred Seventy-Nine Dollars and Seventy-Five Cents (\$5,979.75) per bus per month. This rate shall remain in constant as long as the total annual bus hours range of 40,000 to 70,000 hours remains in effect.

2.2. Changes in Fleet Size

The agreement cost for Maintenance Services shall be adjusted to correspond to increases or decreases in fleet size (on a vehicle-equivalent basis as specified by Airport) if such changes are more than ten (10) percent (higher or lower) of the fleet

size specified at the time of agreement effective date. These adjustments shall be made annually in equal proportion with the change in fleet size.

2.3. Maintenance Costs

Throughout the term of this Restated Agreement, City shall pay Contractor fees for maintenance services in the following amounts:

Fleet A

Year	Fixed maintenance cost per bus per month	Per engine hour
6/1/08 - 7/31/09	\$904.13	\$5.87
8/1/09 - 7/31/10	\$911.36	\$5.92
8/1/10 - 7/31/11	\$926.85	\$6.02
8/1/11 - 5/23/12	\$952.80	\$6.19

Fleet B

Year	Fixed maintenance cost per bus per month	Per engine hour
8/1/10 - 7/31/11	\$931.85	\$6.05
8/1/11 - 7/31/12	\$957.94	\$6.22
8/1/12 - 7/31/13	\$978.06	\$6.35
8/1/13 - 7/31/14	\$1,001.53	\$6.50
8/1/14 - 7/31/15	\$1,029.57	\$6.68
8/1/15 - 7/31/16	\$1,054.28	\$6.84
8/1/16 - 5/31/17	\$1,082.75	\$7.02
6/1/17 - 5/31/18	\$1,055.25	\$10.15
6/1/18 - 5/31/19	\$1,055.25 ^(a)	\$10.15 ^(a)
6/1/19 - 5/31/20	\$1,055.25 ^(a)	\$10.15 ^(a)

(a) Subject to future year adjustment pursuant to Section 3 of this exhibit.

2.4. Non-Maintenance Costs

Fees for Non-Maintenance services as defined Hourly Labor Rates (Mechanic) Straight Time: \$85.00
Overtime: \$105.00
Sundays and Holidays: \$105.00

2.5. Monthly Invoice

Contractor shall submit to City within fifteen (15) working days of the last day of each month, in advance, for payment for services performed pursuant to this Restated Agreement. The monthly invoice shall include a statement of work performed during the month. City shall review the monthly invoice submitted by Contractor and within 10 working days shall notify Contractor of any discrepancies in said invoice.

2.6. Invoicing for Non-Maintenance Services

Invoices for Non-Maintenance Services must include line item documentation of costs incurred (e.g., wages, parts, subcontractor services, etc.) as well as documentation of Airport's authorization to incur Non-Maintenance Costs. Within each Non-Maintenance category, individual repair orders with associated labor charges, parts costs, and subcontracted services shall be delineated.

3. FUTURE YEAR ADJUSTMENT TO COMPENSATION RATES

For each additional year of the Restated Agreement following the initial year, the fixed and variable Maintenance Compensation Rates shall be adjusted as follows:

The base for computing the adjustment shall be the Consumer Price Index (CPI) for All Urban Consumers (with a base year of 1982-1984-+100) for the San Francisco-Oakland-San José area, published by the United States Department of Labor Bureau of Labor Statistics ("Index") for the month of April. If the Extension Index published has increased over or decreased under the Beginning Index the Base rates for such Anniversary Year shall be set by multiplying the Base Rate for the first Anniversary Year by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. Upon the adjustment of the Base Rates, the parties shall immediately execute a written Revised Schedule of rates setting forth the new rates, and attach the same as a revised Schedule to the Restated Agreement.

If the Index is changed so that the base year differs from that used as of November 1996, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of the Restated Agreement such other government index or computation with which it has been replaced will be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

The preceding provisions notwithstanding, the adjustment of any Base rates for any Anniversary Year shall not exceed 8% of the previous Anniversary Year's Base Rates.

For the purpose of illustration only, if a Beginning Index is 115 and the Extension Index is 124, the Base Rate to be paid during the extension term shall be \$ X (the then expiring term's Base Rate compensation rate) multiplied by 124/115.

Fleet A – The Compensation shall be adjusted each August 1, from August 1, 2009 through May 23, 2012. The data for the month of April, which is published in May shall be used for the calculation.

Fleet B - Starting August 1, 2011, the Compensation shall be adjusted each August 1 for the duration of the Restated Agreement. The data for the month of April, which is published in May, shall be used for the calculation.

Fleet No.	Compensation Adjustment Period	Compensation Adjustment Period
Fleet A	6/1/08 to 7/31/09	Each August 1, starting August 1, 2009
Fleet B	Upon delivery to 7/31/11	Each August 1, starting August 1, 2011

4. PAYMENT TO CONTRACTOR

Except as otherwise provided in this Restated Agreement, City shall make monthly payments within ten (10) business days of City's approval of Contractor's invoice. If City makes any payments or incurs any costs for which City is entitled to reimbursement from any payment otherwise due to Contractor from City, City may deduct such reimbursement from any payment otherwise due to Contractor from City. City shall submit to Contractor written documentation in support of such deduction upon Contractor's request. In the event City does not deduct such reimbursement from Contractor's payment but submits to Contractor an invoice for reimbursement, Contractor shall reimburse City within thirty (30) days of receipt of such invoice.

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Date of Preparation: 02/15/2017

Extension for vehicles 577156-577165. This is a full maintenance guarantee including major component repairs.

Penske Truck Leasing Co. L.P.
CUSTOMER: City of San Jose

Proposal Id - 268225, AccountId - 1434730, Associate Name - James Ferris, Status - Quoted, Printed Date - 02/15/2017

EXHIBIT H
NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE:	
CONTRACTOR Name and Address:	
DATE:	

Pursuant to Section _____ of the Agreement referenced above, the City of San José hereby exercises its option to extend the term under the following provisions:

OPTION NO.	_ of _
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NEW OPTION TERM

Begin date:	
End date:	

☐ **CHANGES IN RATE OF COMPENSATION**

Percentage change in CPI upon which adjustment is based:	
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Pursuant to Section ____ of the Agreement the Rates of Compensation are hereby adjusted as follows:

MAXIMUM COMPENSATION for New Option Term:	
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For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of San José hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

CITY OF SAN JOSE a municipal corporation By _____ Name: Title:
