

**CITY OF EL PASO, TEXAS  
REQUEST FOR COUNCIL ACTION (RCA)**

**DEPARTMENT:** Sun Metro  
**AGENDA DATE:** March 11, 2008  
**CONTACT PERSON/PHONE:** Terrence Freiburg, Purchasing Manager, 541-4313  
**DISTRICT(S) AFFECTED:** All

**SUBJECT:**

Approve an Agreement by and between Massachusetts Bay Transportation Authority and El Paso Mass Transit Department (Sun Metro) for the Assignment of Option Rights in order to purchase forty (40) CNG buses under formal Contract No. 639 (IFB No. CAP 9-01) and approve the purchase of forty option CNG buses from North American Bus Industries, Inc.

**BACKGROUND / DISCUSSION:**

On the agenda today is a resolution that the City Manager be authorized to approve an Agreement by and between Massachusetts Bay Transportation Authority and City of El Paso for the Assignment of Option Rights in order to purchase forty (40) 40-foot low floor compressed natural gas (CNG) option buses under formal Contract No. 639 (IFB No. CAP 9-01) and approve the purchase of forty (40) option CNG buses from North American Bus Industries, Inc. The cost for thirty-three (33) of the buses is \$397,430.00 (\$404,430.00 net of discount of \$7,000.00) plus spare parts in the amount of \$686,045.00. The cost for seven (7) of the rapid transit buses is \$404,412.00 (\$411,412 net of \$7,000.00 discount). The total purchase amount for forty (40) buses is \$16,632,119.00. The funding for these buses will come from a combination of federal and local funding. Federal funds in the amount of \$13,556,714 have been allocated for this purchase with a required local match of \$2,952,000. The local match as well as any remaining funding needed for the buses will be funded through the lease purchase financing agreement approved by the City Council on July 25, 2006, or fund balances or both. The amount financed shall be paid through revenues generated from the Mass Transit Department.

**PRIOR COUNCIL ACTION:**

Prior Board approval on April 24, 2007 for purchase of twenty (20) buses.

**AMOUNT AND SOURCE OF FUNDING:**

See Agenda posting.

**BOARD / COMMISSION ACTION:**

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_  
(Example: if RCA is initiated by Purchasing, client department should sign also)  
*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:** \_\_\_\_\_

**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

## RESOLUTION

**WHEREAS**, pursuant to the Federal Transit Administration (the "**FTA**") Third Party Contracting Requirements Circular #C 4220.IE, a grantee of FTA grants may purchase equipment under the terms of a contract entered into by and between another governmental entity and a vendor; provided that such contract contains an assignability clause that provides for the assignment of all or a portion of the specified deliverable as originally advertised, competed, evaluated, and awarded;

**WHEREAS**, the Massachusetts Bay Transportation Authority's ("**MBTA**") and North American Bus Industries, Inc. ("**NABI**") entered into formal Contract No. 639 (the "**Contract**") relating to IFB No. CAP 9-01 whereby MBTA agreed to purchase from NABI 175 40-foot Low Floor Compressed Natural Gas Buses ("**CNG Buses**");

**WHEREAS**, under Section C, Part C2.00 of the Contract, MBTA reserved the right to assign its option to purchase additional vehicles under Option I of up to 100% of the base bid to another transit agency, subject to the acceptance of the terms and conditions of the Contract by said agency;

**WHEREAS**, the City of El Paso (the "**City**") is a grantee of FTA grants;

**WHEREAS**, MBTA desires to assign and the City desires to accept assignment of a portion of MBTA's powers, rights, remedies, and privileges under Option I of the Contract to allow the City to purchase forty (40) CNG Buses from NABI; and

**WHEREAS**, the City desires to purchase forty (40) CNG Buses under the terms of the Contract.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City is hereby authorized to enter into an assignment agreement by and between the City and Massachusetts Bay Transportation Authority ("**MBTA**") whereby MBTA assigns and the City accepts assignment of MBTA's powers, rights, remedies, and privileges under Option I of the Contract to allow the City to purchase forty (40) CNG Buses from NABI (the "**Assignment Agreement**");

That the City is hereby authorized to purchase forty (40) 40-foot CNG Buses from NABI pursuant to the terms and conditions set forth in the Contract, thirty-three (33) of which shall be at the cost per bus of \$397,430.00 plus spare parts in the amount of \$686,045.00 and seven (7) of which shall be at a cost per bus of \$404,412.00, for a total purchase price of \$16,632,119.00;

That the City Manager is hereby authorized to approve, execute, and deliver the Assignment Agreement and any other necessary documents to effectuate this assignment and the purchase of the forty (40) CNG Buses.

**PASSED AND APPROVED THIS \_\_\_\_\_ day of \_\_\_\_\_ 2008.**

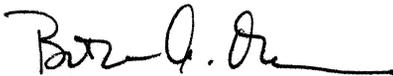
**THE CITY OF EL PASO**

\_\_\_\_\_  
John F. Cook  
Mayor

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Bertha A. Ontiveros  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Terry Freiburg  
Purchasing Manager



# Massachusetts Bay Transportation Authority

Deval L. Patrick  
Governor

Timothy P. Murray  
Lt. Governor

Bernard Cohen  
Secretary and MBTA Chairman

Daniel A. Grabauskas  
General Manager

2008 FEB 15 AM 10:40

RECEIVED  
PURCHASING DEPARTMENT

February 14, 2008

City of El Paso  
Financial Services – Purchasing  
Attn: Terry Freiburg, Purchasing Manager, City of El Paso  
2 Civic Center Plaza – 7<sup>th</sup> Floor  
El Paso, Texas 79901

**SUBJECT: Agreement for the Assignment of Option Rights  
40 - 40-Foot Low Floor CNG Buses  
Formal Contract No. 639 with NABI**

Dear Mr. Freiburg:

Please find attached, an Agreement between the Massachusetts Bay Transportation Authority (MBTA) and the City of El Paso Mass Transit Department, for the assignment of Option Rights for Forty Option 40-foot Low Floor CNG Buses.

Please sign the last page of the Agreement in triplicate and return to the Authority for counter signatures. A duplicate copy of the Agreement including the attached “Notice of Assignment” is being forwarded to Mr. Bill Coryell, Vice President of Sales, North American Bus Industries for his approval and signature.

Once the originals are returned and co-signed by the MBTA, one original Agreement and Notice of Assignment will be forwarded to each party.

If there are any questions or concerns please contact Mr. Jack Shea at (617) 222-5194.

Sincerely,

Robert A. Johnson  
Director of Materials Management

Attachments

***Driven by Customer Service***

Massachusetts Bay Transportation Authority, Ten Park Plaza, Boston, MA 02116-3974

JOHN COOK  
MAYOR

JOYCE WILSON  
CITY MANAGER

TERRY FREIBURG  
PURCHASING MANAGER



CITY COUNCIL  
ANN MORGAN LILLY, DISTRICT 1  
SUSANNAH M. BYRD, DISTRICT 2  
VACANT, DISTRICT 3  
MELINA CASTRO, DISTRICT 4  
RACHEL QUINTANA, DISTRICT 5  
EDDIE HOLGUIN JR., DISTRICT 6  
STEVE ORTEGA, DISTRICT 7  
BETO O'ROURKE, DISTRICT 8

## FINANCIAL SERVICES PURCHASING

February 12, 2008

Massachusetts Bay Transportation Authority (MBTA)  
Attn: Mr. Robert A. Johnson  
Deputy Director of Materials  
Transportation Building  
Ten Park Plaza  
2<sup>nd</sup> Floor, Room 2810  
Boston, MA 02116

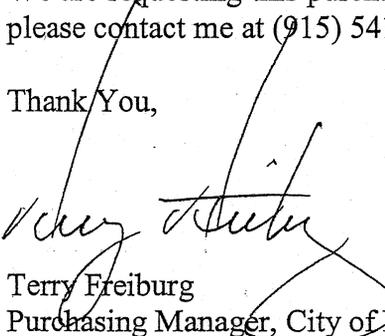
Re: Contract No. CAP 9-01

The City of El Paso requests the MBTA's permission to utilize certain of its assignable options under the subject contract number for the purchase of forty (40), 40-foot low floor CNG buses.

I understand that the above mentioned contract includes the necessary clauses and language that would allow another Third Party Grantee, as the City of El Paso, to "piggyback" (as defined by the FTA in its Dear Colleague correspondence dated October 1, 1998) on the MBTA's contract.

We are requesting this purchase as soon as possible. If you have any questions or concerns, please contact me at (915) 541-4313 or by email at [freiburgtx@elpasotexas.gov](mailto:freiburgtx@elpasotexas.gov).

Thank You,

  
Terry Freiburg  
Purchasing Manager, City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901

**AGREEMENT BY AND BETWEEN**  
**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY,**  
**THE CITY OF EL PASO, AND THE CITY OF EL PASO MASS TRANSIT DEPARTMENT**  
**ASSIGNMENT OF OPTION RIGHTS FOR FORTY OPTION CNG BUSES**  
**UNDER FORMAL CONTRACT NO. 639 (IFB #CAP 9-01):**  
**175 NEW 40-FOOT LOW FLOOR COMPRESSED NATURAL GAS BUSES**

This Agreement entered this \_\_\_\_\_ day of \_\_\_\_\_, 2008 by and between the MASSACHUSETTS BAY TRANSPORTATION AUTHORITY (hereinafter referred to as "MBTA" or "Authority"), a body politic and corporate and political subdivision of the Commonwealth of Massachusetts having a usual place of business at Ten Park Plaza, Boston, Massachusetts 02116, the CITY OF EL PASO and the CITY OF EL PASO MASS TRANSIT DEPARTMENT (hereinafter referred to as "EL PASO") having a usual place of business at 2 Civic Center Plaza, El Paso, Texas, 79901.

**R E C I T A L S:**

**WHEREAS**, the MBTA and the North American Bus Industries, Inc. ("NABI") entered into Formal Contract No. 639 ("Contract"), dated February 20, 2002, whereby NABI agreed to furnish and deliver to the MBTA 175 New 40-Foot Low Floor Compressed Natural Gas ("CNG") Buses in strict conformity with the provisions contained in the Contract;

**WHEREAS**, the MBTA agreed to pay NABI the total contract value of fifty-six million, nine hundred sixty-four thousand, nine hundred seventy-three dollars and thirty-nine cents (\$56,964,973.39) which consists of the following elements:

- 175 New Low Floor 40-Foot CNG Buses at the unit price of \$311,262 – extended total \$54,534,550;
- Capital Spares Parts at the not-to-exceed sum of \$1,060,787;
- Training Aids at the not-to-exceed sum of \$243,296;
- Bus Communications/Radio System at the not-to-exceed sum of \$791,875; and
- Change Orders Nos. 1, 2, 3, 4, 5, and 6 at the all inclusive not-to-exceed value of \$334,465.39;

**WHEREAS**, under Section C, Part C2.00 of the Contract, the MBTA reserved the right to assign its options to purchase additional vehicles under Option I of up to 100% of the base bid to another transit agency, subject to the acceptance of the terms and conditions of the Contract;

**WHEREAS**, El Paso desires to acquire up to forty (40) NABI buses and the MBTA desires to assign a portion of its powers, rights, remedies, and privileges under Option I to El Paso so that El Paso may acquire such buses;

**WHEREAS**, the Option I time period extends to within a twenty-four (24) month period from approval of pilot design and has been confirmed by NABI per correspondence dated October 2, 2007 to be valid until March 31, 2008; and

**WHEREAS**, prices for Option I are all the same as the base price if purchased within the first twenty-four (24) months from Contract execution (Execution Date: February 22, 2002; Twenty-fourth month from execution date: February 22, 2004). Prices are subject to stated escalation indices as stipulated in Section C2.02 if purchased after this time frame. The base indices for Labor and Material shall be determined by taking the first preliminary published index for the month prior to Bid/Proposal submission. (Bid/Proposal submission date: September 5, 2001; Base month for escalation indices: August 2001).

### **A G R E E M E N T:**

**NOW, THEREFORE**, in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

#### **I. ASSIGNMENT**

1. The MBTA, as assignor, hereby assigns its powers, rights, remedies, and privileges under Option I of the Contract to El Paso, as assignee, for the purchase of up to forty (40) NABI buses. By assigning a portion of its rights under Option I, the MBTA does not waive, release or relinquish any of its powers, rights, remedies, and privileges to any future assignment of rights or conditions under the Contract in any way it deems necessary and appropriate.

2. The MBTA hereby reserves all of its powers, rights, remedies, and privileges, including, but not limited to, the rights of the MBTA to insist upon strict compliance and performance by NABI with the representations, warranties, covenants, agreements, terms, and conditions of the Contract, with the exception of that portion of Option I assigned to El Paso.

3. El Paso and the MBTA acknowledge and agree that, effective on the date of this Agreement, El Paso shall become and is deemed to be the Contractor for purposes of the Contract, it

being understood that the MBTA shall have no right, title, interest or liability arising from any exercise of that portion of Option I (i.e., 40 buses) assigned to El Paso. El Paso hereby accepts, without any limitation or qualification, the MBTA's assignment of all rights, title, and interest in and to that portion of Option I exclusively, and agrees, without any limitation or qualification, to assume and perform all of the duties, obligations, and responsibilities under the assignment as if El Paso had been the original party to the Contract.

## **II. NOTICES**

Any and all notices required to be given hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when sent by registered or certified mail, return receipt requested, as follows:

Massachusetts Bay Transportation Authority  
Attention: Director of Materials Management  
Ten Park Plaza – Room 2810  
Boston, MA 02116-3974

Massachusetts Bay Transportation Authority  
Attention: General Counsel  
Ten Park Plaza  
Boston, MA 02116-3974

City of El Paso  
Financial Services – Purchasing  
Attention: Terry Freiburg, Purchasing Manager, City of El Paso  
2 Civic Center Plaza – 7<sup>th</sup> Floor  
El Paso, Texas 79901

City of El Paso Mass Transit Department  
Attn: Tim Omick, Director  
700A San Francisco  
El Paso, Texas 79901

## **III. AMENDMENTS**

This Agreement may be amended only by written instrument executed by the parties hereto.

## **IV. SEVERABILITY**

If any part of this Agreement is determined to be invalid, illegal, or unenforceable, such determination shall not affect the validity, legality, or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be enforced as if such invalid, illegal, or unenforceable part were not contained herein.

**V. CONSTRUCTION OF AGREEMENT**

This Agreement is to be construed as a Massachusetts contract and takes effect as a sealed instrument. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns, and is to be construed in conformity with any and all other agreements and documents referenced herein wherever such construction reasonably permits.

**(Signature page to follow)**

**AGREEMENT BY AND BETWEEN**  
**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY AND**  
**THE CITY OF EL PASO, AND THE CITY OF EL PASO MASS TRANSIT DEPARTMENT**  
**ASSIGNMENT OF OPTION RIGHTS FOR FORTY OPTION CNG BUSES**  
**UNDER FORMAL CONTRACT NO. 639 (IFB #CAP 9-01):**  
**175 NEW 40-FOOT LOW FLOOR COMPRESSED NATURAL GAS BUSES**

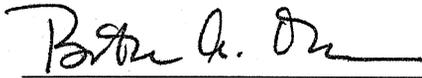
*Signature Page*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**MASS TRANSIT DEPARTMENT BOARD**

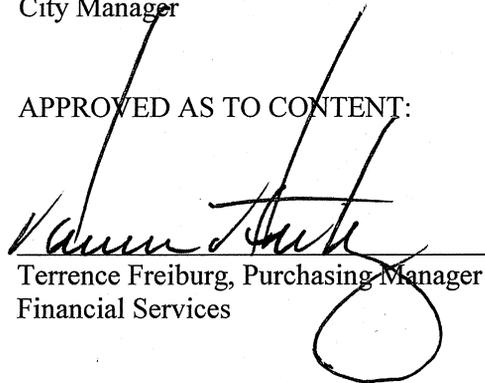
\_\_\_\_\_  
Joyce Wilson,  
City Manager

APPROVED AS TO FORM:



\_\_\_\_\_  
Bertha A. Ontiveros  
Assistant City Attorney

APPROVED AS TO CONTENT:



\_\_\_\_\_  
Terrence Freiburg, Purchasing Manager  
Financial Services

\_\_\_\_\_  
Tim Omick, Director  
Mass Transit Department

APPROVED AS TO FORM:

**MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY**

\_\_\_\_\_  
William A. Mitchell, Jr.  
General Counsel

\_\_\_\_\_  
Robert A. Johnson  
Director of Materials Management

**NOTICE OF ASSIGNMENT**

NORTH AMERICAN BUS INDUSTRIES, INC., ("NABI") hereby acknowledges assignment of a portion of Option I, of Contract No. 639: 175 New 40 Foot Low Floor Compressed Natural Gas Buses, by and between the MASSACHUSETTS BAY TRANSPORTATION AUTHORITY ("MBTA"), as assignor, and the CITY of EL PASO and the CITY OF EL PASO MASS TRANSIT DEPARTMENT ("EL PASO"), as assignee, and discharges the MBTA from any and all further obligations under said portion of Option I of said Contract with regard to the purchase by El Paso of up to forty (40) New 40-Foot Low Floor Compressed Natural Gas Buses. Under Option I, the MBTA reserved the right to purchase additional vehicles in an amount not to exceed 100% of the base bid. El Paso, as assignee, agrees to purchase up to forty (40) New 40-Foot Low Floor Compressed Natural Gas Buses from NABI.

In accordance with the Contract assignment privileges stipulated in Section C, Part C2.01, the MBTA hereby reserves all of its powers, rights, remedies, and privileges, including, but not limited to, the rights of the MBTA to insist upon strict compliance and performance by NABI with the representations, warranties, covenants, agreements, terms, and conditions of the Contract, with the exception of that portion of Option I assigned to El Paso as hereinabove stated.

**NORTH AMERICAN BUS INDUSTRIES, INC.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_