

**FIRST 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., LP**

This Amendment to the Restated Agreement for Lease and Maintenance of Compressed Natural Gas Shuttle Buses (Restated Agreement) is entered into this ____ day of May, 2012, by the City of San Jose ("City"), a municipal corporation, Penske Truck Leasing Co, a Delaware Limited Partnership ("Contractor").

RECITALS

WHEREAS on December 21, 2007, City and Contractor entered into a seven year agreement with Contractor for the lease and maintenance of fourteen (14) CNG Shuttle Buses;

WHEREAS on September 16, 2009 the City acquired ten (10) additional CNG shuttle buses and decided to execute the Restated Agreement with Contractor rather than amend the original agreement;

WHEREAS on May 1, 2012, the City desires to terminate the lease on fourteen (14) CNG buses in order to be able to sell these buses directly to the San Francisco International Airport (SFO);

NOW THEREFORE, City, Contractor, and SFO agree to the following:

1. Section 8 of the Restated Agreement is hereby amended by adding a new Section 8.5 to read as follows:

8.5 Early Termination and Buy Out by City

Notwithstanding any of the other provisions of this Section 8, City shall have the right to terminate its lease obligations to Contractor with respect to one or more of the Shuttle Buses in order to buy them from Contractor. In the event of such termination by City, Contractor shall deliver to City copies of all reports, documents, and other work performed by Contractor under this Agreement, and upon receipt thereof, City shall pay Contractor for services performed and reimbursable expenses incurred to the date of termination, and purchase the vehicles as to which notice has been given at the original agreed value of the vehicle(s) set forth in the Schedule 'A' less the monthly depreciation credit of the vehicle(s) set forth in the Schedule 'A' multiplied by the number of months elapsed from the in service date of the vehicle(s) to the termination date.

2. City hereby exercises its rights under Section 8.5 above. City and Contractor agree that City's Purchase Price for all 14 vehicles that comprise Fleet A (as indicated on Exhibit A) shall be Four Million Four Hundred Seven Thousand Five Hundred Eight Dollars (\$4,407,508). Upon payment of the Purchase Price by City, Contractor shall:

- a. make all fourteen (14) Buses constituting Fleet "A" available for transfer and inspection by the City and County of San Francisco at Contractor offices located at 2380 Lafayette Street, Santa Clara, CA 95050;
 - b. Deliver all inspection and maintenance records pertaining to the vehicles together with two (2) sets of keys for each vehicle
 - c. Deliver a bill of sale and all title documents releasing Contractor's interest in vehicles.
3. Following the fulfillment of all of the conditions set forth above, Contractor shall have no further ownership interest in the Fleet A vehicles and all of City's obligations under the Restated Lease with respect to such vehicles shall be deemed terminated.
 4. All of the terms and conditions of the original Restated Agreement not modified by this Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year first written above.

APPROVED AS TO FORM:

City of San José
a municipal corporation

Brian Doyle
Senior Deputy City Attorney

By _____
Name:
Title:
Date: _____

Penske Truck Leasing Co.
a Delaware Limited Partnership

By _____
Name:
Title:
Date: _____

**EXHIBIT A
SAN JOSE AIRPORT FLEET "A" BUSES**

| <u>Penske</u> <u>#</u> | <u>Airport #</u> | <u>VIN #</u> |
|---|-------------------------|---------------------|
| 281371 | 41 | 5FYC4FB198C033437 |
| 281372 | 42 | 5FYC4FB108C033438 |
| 281373 | 43 | 5FYC4FB128C033439 |
| 281374 | 44 | 5FYC4FB198C033440 |
| 281375 | 45 | 5FYC4FB108C033441 |
| 281376 | 46 | 5FYC4FB128C033442 |
| 281377 | 47 | 5FYC4FB148C033443 |
| 281378 | 48 | 5FYC4FB168C033444 |
| 281379 | 49 | 5FYC4FB188C033445 |
| 281380 | 50 | 5FYC4FB1X8C033446 |
| 281381 | 51 | 5FYC4FB118C033447 |
| 281382 | 52 | 5FYC4FB138C033448 |
| 281383 | 53 | 5FYC4FB158C033449 |
| 281384 | 54 | 5FYC4FB118C033450 |