

**MBTA CONTRACT # 15-03 CBS**

**AGREEMENT REGARDING PURCHASE OF PARATRANSIT VEHICLES.**

**THIS AGREEMENT** is made and entered into on June 1, 2016 between and among **CREATIVE BUS SALES, INC.**, a California corporation, with its principal place of business located at 14740 Ramona Avenue, Chino, California 91710 ("SELLER"), and **MORONGO BASIN TRANSIT AUTHORITY** ("MBTA"). SELLER and MBTA may be referred to herein individually as "Party" or collectively as "Parties."

**RECITALS**

**WHEREAS**, MBTA, by its Request for Proposals #15-03, duly advertised for written proposals to be submitted on or before 11:30 a.m. on January 15, 2016 for the purchase of Paratransit and Transit Vehicles ("BUSES") on behalf of the California Association for Coordinated Transportation ("CALACT") by the MBTA; and

**WHEREAS**, the MBTA's RFP is attached hereto as Exhibit "A", and is incorporated herein by reference as if set forth in full; and

**WHEREAS**, SELLER submitted a sealed bid in response to MBTA's Notice Inviting Proposals; and

**WHEREAS**, after it was determined that SELLER was a successful responsive and responsible bidder; and

**WHEREAS**, SELLER's proposal in response to MBTA's Notice Inviting Proposals is attached hereto as Exhibit "B", and is incorporated herein by reference as if set forth in full; and

**WHEREAS**, the MBTA Board of Directors has authorized the staff via Resolution and board action to award contracts and accept SELLER'S bid through agreement by and between SELLER and MBTA upon the terms and conditions set forth herein; and



**WHEREAS**, MBTA has fully complied with all federal, state, and local laws governing the public bidding process for the purchase of the BUSES;

**NOW, THEREFORE**, incorporating the foregoing recitals herein, for and in consideration of the promises and of the mutual covenants and agreements herein contained, **SELLER and MBTA hereby agree as follows:**

1. **CONTRACT DOCUMENTS.** This Agreement, along with all Exhibits referenced herein, and including without limitation, all documents referenced in

said Exhibits shall hereinafter be referred to as the "Contract Documents." In the event of any conflict, the Contract Documents, including specifically RFP #15-03 and any addendums thereto, shall take priority in interpreting the respective rights and obligations of the Parties created by this Agreement. Any contract, agreement, or other document subsequently created by any Party in connection with a purchase order issued pursuant to this Agreement and which changes or otherwise modifies the terms and conditions set forth in the Contract Documents shall not be valid without the prior written approval of both of the Parties to this Agreement.

2. **DESCRIPTION OF BUSES PURCHASED.** SELLER hereby agrees that it shall sell the BUSES manufactured by Braun, Champion, ElDorado National, Goshen, Hometown, Mobility Ventures, Starcraft, StarTrans and Transit Works as more particularly described in RFP #15-03 (attached hereto as Exhibit "B") to any and all CalACT/MBTA participants who desire to purchase such BUSES from SELLER. BUSES are to be vehicles with less than 4000 miles and that have never been previously registered.

3. **CONTRACT PRICING.** SELLER hereby agrees to sell such BUSES as more particularly described in RFP #15-03 (attached hereto as Exhibit "B") under the terms and conditions set forth in RFP #15-03.

4. **DELIVERY.** SELLER shall deliver F.O.B. per terms and conditions of MBTA RFP #15-03 Section SP 7.4, 11 and 12 and as proposed.

5. **PAYMENT BY COOPERATIVE PARTICIPANTS.** SELLER shall collect payment from CalACT/MBTA participants within thirty (30) days after the delivery and acceptance of the BUSES by the participant, and a receipt of an invoice thereof, per RFP #15-03, Section SP 10.

6. **NO ASSIGNMENT.** Neither this Agreement, nor any interest in it, may be assigned or transferred by any Party without the prior written consent of all of the Parties to this Agreement.

7. **NO ATTORNEYS' FEES.** If litigation is required to enforce or interpret the provisions of this Agreement, neither SELLER nor the Cooperative shall be entitled to an award of attorneys' fees or costs, but shall be entitled to any other relief to which it may be entitled by law.

8. **MODIFICATION.** This Agreement may be modified only in a writing approved by the MBTA Board and signed by all Parties.

9. **GOVERNING LAW.** The laws of the State of California will govern the validity of this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in San Bernardino County, California.

10. **NO WAIVER OF DEFAULT**. The failure of any Party to enforce against another party any provision of this Agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Agreement.

11. **FURTHER ASSURANCES**. Each Party shall execute and deliver such papers, documents, and instruments, and perform such acts as are necessary or appropriate, to implement the terms of this Agreement and the intent of the parties to this Agreement.

12. **BINDING EFFECT; CONTEXT; COUNTERPARTS**. Subject to Paragraph 6, the rights and obligations of this Agreement shall inure to the benefit of, and be binding upon, the parties to the contract and their heirs, administrators, executors, personal representatives, successors and assigns. Whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural. This Agreement may be executed in any number of counterparts, each of which shall be considered as an original and be effective as such.

13. **NON-INTEREST**. No officer or employee of the MBTA shall hold any interest in this Agreement (California Government Code section 1090).

14. **CORPORATE AUTHORITY**. Each individual signing this Agreement on behalf of an entity represents and warrants that he or she is respectively, duly authorized to sign on behalf of the entity and to bind the entity fully to each and all of the obligations set forth in this Agreement.

15. **INDEMNIFICATION**. SELLER shall indemnify, defend, and hold harmless MBTA, its officers, agents and employees against any and all liability, claims, actions, causes of action or demands whatsoever against them, or any of them, before administrative or judicial tribunals of an kind whatsoever, arising out of, connected with, or caused by SELLER'S employees, agents, independent contractors, companies, or subcontractors in the performance of, or in any way arising from, the terms and provisions of this Agreement whether or not caused in part by a party indemnified hereunder, except for MBTA's sole active negligence or willful misconduct.

16. **WARRANTY**. The BUSES are warranted by SELLER to be new and to be free from defects in material and workmanship pursuant to and in accordance with those certain manufacturer's warranties collectively attached hereto as Exhibit "B", and as submitted in response to RFP #15-03 by SELLER and incorporated herein by reference as if set forth in full. During said warranty periods, the BUSES shall maintain structural and functional integrity. The warranty is based on regular operation under operating conditions prevailing in the purchaser's operating area.

17. **WARRANTY OF FITNESS.** SELLER hereby warrants that the BUSES and all materials furnished shall meet the requirements and conditions of the Contract Documents and shall be fit for the purposes intended. Acceptance of this warranty and acceptance the BUSES and materials to be manufactured or assembled pursuant to the specifications in these Contract Documents shall not waive any warranty, either express or implied.

18. **NOTICE.** All notices relative to this Agreement shall be given in writing and shall be personally served or sent by certified or registered mail and be effective upon depositing in the United States mail. The Parties shall be addressed as follows, or at any other address designated by proper notice:


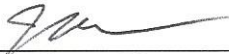
19. **CONTINGENCY.** Contract validity is subject to successful completion of facility and pilot vehicle inspections.

**MBTA:** Joe Meer  
Director of Purchasing  
Morongo Basin Transit Authority  
62405 Verbena Road  
Joshua Tree, CA 92252

**SELLER:** Anthony Matijevich  
President  
Creative Bus Sales, Inc.  
14740 Ramona Avenue  
Chino, California 91710

19. **EXECUTION.** This Agreement is effective upon execution by both Parties. It is the product of negotiation and all parties are equally responsible for authorship of this Agreement. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.

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

<b>CREATIVE BUS SALES, INC.,</b> a corporation	<b>Morongo Basin Transit Authority</b>
By  Anthony Matijevich, President	By  Joe Meer, Director of Purchasing