

MBTA CONTRACT # 23-01 NEW FLYER**AGREEMENT REGARDING PURCHASE OF TRANSIT VEHICLES.**

THIS AGREEMENT is made and entered into on July 31, 2024 between and among **New Flyer of America Inc.**, with its principal place of business located at 6200 Glen Carson Drive, St. Cloud Minnesota, 56301 ("SELLER"), and **BASIN TRANSIT** ("Morongo Basin Transit Authority/MBTA"). SELLER and Basin Transit may be referred to herein individually as "Party" or collectively as "Parties."

RECITALS

WHEREAS, MBTA, by its Request for Proposals #23-01, duly advertised for written proposals to be submitted for the purchase of Heavy Duty Transit ("BUSES") on behalf of itself and Consortium members ("Consortium") identified in the Participating Agencies List in the RFP collected by the California Association of Coordinated Transportation ("CalACT") 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 proposal in response to BASIN TRANSIT's Notice Inviting Proposals; and

WHEREAS, after it was determined that SELLER was a successful responsive and responsible proposer for battery electric, compressed natural gas, diesel, diesel hybrid and hydrogen fuel cell powered buses; and

WHEREAS, SELLER's proposal in response to BASIN TRANSIT'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 BASIN TRANSIT Board of Directors has authorized the staff via Resolution and board action to award contracts and accept SELLER'S proposal through agreement by and between SELLER and BASIN TRANSIT upon the terms and conditions set forth herein; and

WHEREAS, BASIN TRANSIT has fully complied with all federal, state, and local laws governing public procurement 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 BASIN TRANSIT 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 #23-01 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 as more particularly described in RFP #23-01 (attached hereto as Exhibit "B") to any and all participants named in the RFP 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 #23-01 (attached hereto as Exhibit "B") under the terms and conditions set forth in RFP #23-01.

4. **DELIVERY.** SELLER shall deliver F.O.B. per terms and conditions of BASIN TRANSIT RFP #23-01 Section SP 7.4, 11 and 12 and as proposed.

5. **PAYMENT BY CONSORTIUM PARTICIPANTS.** SELLER shall collect payment from Consortium 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 #23-01, 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 BASIN TRANSIT 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 and 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 BASIN TRANSIT 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.** Indemnification will be as per the terms and conditions specified in RFP #23-01, GC 9.1.

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 #23-01 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:

BASIN TRANSIT:



Joe Meer
Director of Cooperative Purchasing Programs
Morongo Basin Transit Authority
62405 Verbena Road
Joshua Tree, California 92252

SELLER:

Jennifer McNeil
Vice President of Sales and Marketing
New Flyer of America, Inc.
6200 Glen Carson Drive, St. Cloud Minnesota,
56301

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.

New Flyer of America, Inc.	Morongo Basin Transit Authority
By  Jennifer McNeil, Vice President of Sales and Marketing	By  Joe Meer, Director of Purchasing
07/08/24	