

MBTA CONTRACT # 20-01 AZ (ZEB VAN)

**AGREEMENT REGARDING PURCHASE OF PARATRANSIT VEHICLES.
For Driverge Z-1 E-Transit Vans**

THIS AGREEMENT is made and entered into on **November 8, 2023** between and among **A-Z BUS SALES, INC.**, a California corporation, with its principal place of business located at 1900 South Riverside Avenue, Colton, California ("SELLER"), and **BASIN TRANSIT** ("Morongo Basin Transit Authority"). SELLER and BASIN TRANSIT may be referred to herein individually as "Party" or collectively as "Parties."

R E C I T A L S

WHEREAS, BASIN TRANSIT, by its Request for Proposals (RFP) #20-01 (ZEB VAN), duly advertised for written proposals to be submitted for the purchase of Paratransit and Transit Vehicles ("VANS") on behalf itself and Consortium members ("Consortium") identified in the Participating Agencies List in the RFP collected by the California Association of Coordinated Transportation ("CalACT") for BASIN TRANSIT; and

WHEREAS, '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; 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 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 the public solicitation process for the purchase of the VANS;

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 #20-01 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 VANS PURCHASED.** SELLER hereby agrees that it shall sell the VANS manufactured by Driverge and proposed in the Z-1 category as more particularly described in RFP #20-01 (attached hereto as Exhibit "B") to any and all Consortium participants who desire to purchase such VANS from SELLER. VANS 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 VANS as more particularly described in RFP #20-01 (attached hereto as Exhibit "B") under the terms and conditions set forth in RFP #20-01.

4. **DELIVERY.** SELLER shall deliver F.O.B. per terms and conditions of BASIN TRANSIT RFP #20-01 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 VANS by the participant, and a receipt of an invoice thereof, per RFP #20-01, 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 Purchasing Agencies 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 writing approved by the BASIN TRANSIT 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 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. SELLER shall indemnify, defend, and hold harmless BASIN TRANSIT, 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 any 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 BASIN TRANSIT's sole active negligence or willful misconduct.

16. WARRANTY. The VANS 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 20-01 by SELLER and incorporated herein by reference as if set forth in full. During said warranty periods, the VANS 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 VANS 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 VANS 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:



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

SELLER: John Landherr
President
A-Z BUS SALES, INC.
1900 South Riverside Avenue
Colton, CA 92324

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.

20. CONTINGENCY. Contract validity for Driverge Z-1 ER model is subject to vehicle successfully completing First Article Inspection of the first production vehicle to be ordered and delivered.

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

A-Z BUS SALES, INC., a corporation	Basin Transit, A Joint Powers Authority
By  John Landherr, President	By  Joe Meer, Director of Purchasing

AMENDMENT 2
BASIN TRANSIT CONTRACT NO. 20-01 – Z1-AZ-1
(For Driverge Z1 Electric Vans)

THIS AMENDMENT is made and entered into on November 8, 2024 between and among **A-Z BUS SALES, INC.**, a California corporation, with its principal place of business located at 1900 South Riverside Avenue, Colton, California, ("SELLER"), and **BASINTRANSIT** (Morongo Basin Transit Authority).

R E C I T A L S

WHEREAS, **BASIN TRANSIT**, by its Request for Proposals # 20-01, duly advertised for written proposals for the purchase of Paratransit Vehicles ("BUSES") on behalf of itself and the listed participating agencies by Basin Transit; and

WHEREAS the parties entered into an **AGREEMENT**, Basin Transit Contract No.20-01 on November 8, 2023;

WHEREAS the **AGREEMENT** was for a one-year base period with four one-year options; and



WHEREAS the Basin Transit Board of Directors has provided authorization to exercise option year extensions;

NOW THEREFORE BE IT RESOLVED 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** thereby agree as follows:

1. Per Section SP-3, Period of Performance, the period of contract performance is extended to exercise the **first** one-year option. The new Period of Performance is extended through November 7, 2025.

2. Per Section SP-5.3, Vehicle and Optional Feature Pricing, the price of the vehicles and of the optional features for each option period shall be the unit price established in the schedule adjusted by PPI 1413 as stipulated in the Contract and amendment. For this one-year period, the price increase is 2.7%. The new pricing is attached to this Amendment and shall become effective for orders placed on or after November 8, 2024.

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

A-Z BUS SALES, INC., a California corporation	MORONGO BASIN TRANSIT AUTHORITY
	
John Landherr, President	Joe Meer, Director of Purchasing