

AGENDA ITEM 1 D
Consent Item

MEMORANDUM

DATE: November 7, 2019

TO: El Dorado County Transit Authority

FROM: Matthew Mauk, Executive Director

SUBJECT: Extension of Vehicle Lease Agreement for One (1) Cutaway

REQUESTED ACTION:
BY MOTION,

- 1. Authorize the Executive Director to extend the short term, vehicle lease agreement with Creative Bus Sales, Inc. for one (1) cutaway vehicle**
- 2. Approve the revised Purchase Order No. 24229 issued to Creative Bus Sales, Inc. in an amount not to exceed \$50,000**

BACKGROUND

The El Dorado County Transit Authority (El Dorado Transit) currently owns and maintains thirteen (13) cutaway buses in its passenger fleet. The term “cutaway” refers to smaller, raised floor transit vehicles built on medium duty truck chassis with seating capacity for approximately twenty (20) passengers. El Dorado Transit typically uses at least eight (8) cutaways in fixed route, Dial-A-Ride and contracted demand response services on a daily basis. Some of the cutaways in the fleet are limited to demand response services because of the Federal funding source used to purchase those particular vehicles.

El Dorado Transit is currently waiting for delivery of six (6) replacement cutaway vehicles ordered in February 2019, five (5) of which are scheduled replacements and one (1) replacement for a vehicle totaled in an accident. In addition to the loss of the vehicle that was totaled, a second cutaway received extensive damage in an accident and has been out of service since July 2019. That vehicle is currently undergoing a second round of major frame and body repairs and a return date is uncertain.

DISCUSSION

Due to the impacts of the issues discussed above, El Dorado Transit began to experience difficulties in maintaining enough cutaways to provide scheduled services. In an effort to mitigate these fleet shortages, staff executed a short term lease agreement to temporarily acquire one (1) additional cutaway vehicle beginning in June 2019. The agreement with Creative Bus Sales, Inc. (copy attached) included a base five (5) month lease term with a month to month

option thereafter. Exercising the month to month extension is now needed to maintain fleet readiness until the first of the expected replacement cutaways are received and put into service.

Staff recommends extending the short term lease agreement with Creative Bus Sales, Inc. on a month to month basis for a maximum of an additional six (6) months and revising Purchase Order No. 24229 to a total amount not to exceed \$50,000 accordingly. Per the terms of the agreement, El Dorado Transit will have the option to terminate the agreement earlier with thirty (30) days' notice.

FISCAL IMPACT

Expenses associated with this lease are posted to a separate account. Once final expenses are incurred a budget adjustment will be made during the Mid-Year Budget Adjustment process to reflect actuals.

4995.00	Lease Payment	\$24,000	\$50,000
5040.00	Maintenance	\$ - 0 -	\$50,000 (reduced by actual cost)

LEASE AGREEMENT

Between

**CREATIVE BUS SALES, INC. and any related companies or
affiliates of Creative Bus Sales, Inc. (Lessor)**

**14740 Ramona Avenue
Chino, CA 91710
Phone: 909-465-5528
Fax: 909-465-5529**

And

Eldorado County Transit Authority (Lessee)

**6565 Commerce Way
Diamond Springs, CA 95619
Attn: Scott Ousley
530-642-5383 ext 211
sousley@eldoradotransit.com**

DESCRIPTION OF LEASED VEHICLES:

One (1) Vehicle

Unit #:66060 VIN #:1FDGF5GY2JEB75727 Year:2018 Make:Starcraft Allstar XL
Value:\$95,000.00

DURATION OF LEASE:

(5)Month lease term, month to month thereafter.
(Start Date:6/10/19 - End Date: 11/10/19)

Monthly from the date of acceptance of delivery of each vehicle by the Lessee until the date of acceptance by the Lessor of the returned vehicle. The duration of lease of each vehicle will be based on the duration of each particular vehicle. Lessee must provide Lessor with notice of termination of the lease 30 days or more prior to termination date.

Lessor may reject the vehicle upon return by Lessee at Lessor's sole cost and expense.

RATE OF LEASE:

(5) Month lease term, month to month thereafter.
(Start Date: 6/4/19 - End Date: 11/4/19)
\$4,200.00 per month per bus.
Pro-rated to a calendar basis for the first month's payment.

SALES TAX:

Paid by Lessee with each monthly payment.
Adjusted as applicable for Diamond Springs, CA.

DEPARTMENT OF MOTOR VEHICLE REGISTRATION FEES:

Lessee will reimburse Lessor for first year's annual DMV fees at inception of lease. If the vehicles are retained by the Lessee beyond the DMV renewal date, Lessee will reimburse the Lessor for the annual renewal fees.

TERMS AND CONDITIONS

The initial lease payment and first year's DMV fees will be due before the vehicles are delivered to Lessee. The initial lease payment will be first month's amount (pro-rated if necessary for partial month), plus second month's amount (if applicable). Subsequent lease payments will be due in advance by the first of each calendar month. Lease payments will be due for each month until vehicles are returned and accepted by Lessor. If a vehicle is returned before the end of a calendar month, Lessor will return the pro-rated portion of that month's lease payment to Lessee within 10 business days after Lessor's acceptance of the vehicle. Lessee will be responsible for any additional taxes, fees or penalties relating to Lessee's operation or storage of the vehicles.

Lessee will return the vehicle at the end of the lease in good condition with no excessive wear and use as that term is defined in the paragraph titled "Standards for Wear and Use".

INSURANCE: Lessee will at Lessee's expense provide and maintain for the term of this lease Auto Liability and Physical Damage Insurance on the leased vehicle covering both Lessee and Lessor. The coverage must be in amounts not less than \$5,000,000 bodily injury, and property damage and physical damage coverage with deductibles not to exceed \$1,000.00 for collision and \$1,000.00 for comprehensive. Lessee's insurance must provide hired auto physical damage coverage equal to or greater than the value of the vehicle.

Lessee will at all times during the term of this Lease maintain at Lessee's expense insurance of the types and in the amounts specified. The policies must reflect "Creative Bus Sales, Inc. its successor and assigns" as an "Additional Insured" and "Loss Payee". This coverage must be written by a carrier acceptable to Lessor and which is authorized to do business in the state where Lessee's is domiciled or stores the vehicle. Lessee will provide appropriate evidence of this coverage, by certificate of insurance and written endorsement to the Lessor before delivery can be achieved. Thirty days advance written notice of non-renewal or cancellation will immediately be forwarded to the Lessor. Cancellation clause on the certificate of the insurance is to read, **"Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will mail 30 days written notice to the certificate holder named."** Lessee accepts responsibility for the vehicle to the full extent of its value during the term of this lease.

LOSS OR DAMAGE: In the event that any vehicle shall become lost, stolen, destroyed, or damaged beyond repair for any reason, or in the event of any condemnation, confiscation, theft, or seizure or requisition of title or use of any vehicle, Lessee shall promptly notify Lessor of such event and pay to Lessor within thirty days of such event an amount equal to the Lease End Value less any proceeds of insurance previously applied by Lessor, if any. Upon the making of such payment, the Lease shall terminate with respect to such vehicle and any proceeds of insurance received by Lessor subsequent to the above payment will be

for Lessee. Lease End Value is defined as the value of the vehicle stated on page 1 of this agreement.

EXPENSES AND MAINTENANCE: Lessee shall pay all expenses with respect to the use and operation of the vehicle, including, without limitation, the cost of gasoline, tires, storage, washing, parking, towing, tolls and fines. Lessee, at its own expense, shall maintain the vehicle in good operating condition and repair (ordinary wear and tear excepted), including, without limitation, suggested maintenance as set forth in any applicable Owner's Manual. Lessee shall not cause or permit to be caused any Manufacturer's Warranty covering any vehicle to become void for any reason. Lessee shall be liable for any damage resulting from Lessee's failure to comply with the terms of this Subparagraph.

STANDARDS FOR WEAR AND USE: "Excessive wear and use" includes, among other things: (a) glass breakage or discoloration; (b) damage or deterioration of body, fenders, metal work, trim or paint; (c) missing wheel covers, jack or wheel wrench; (d) torn dash, floor covers, seats, head-liners, upholstery or interior work or trunk liners; (e) any wheels or tires (including spare) that are missing or not in safe condition; (f) damage from flood water, hail, sand; or (g) any damage that makes the vehicle either unsafe or unlawful to operate. Lessee acknowledges that vehicle was received in a clean, uncluttered condition without physical damage to the interior or exterior except as noted on the date of acceptance of the vehicle by Lessee.

USE: Lessee will allow only the appropriately licensed drivers to operate the vehicle. Such drivers shall be duly authorized by Lessee, properly licensed to perform the type of driving for which they are employed, and while operating the vehicle, acting within the scope of their employment. Lessee will keep the vehicle free of all fines liens and encumbrances. Lessee agrees to pay any such fines or remove any such liens and encumbrances immediately. If Lessee does not, Lessor may do so and any amounts paid by Lessor shall be additional amount owed by Lessee under the lease. Lessee will not allow any use of the vehicle to tow or push anything. Lessee will not allow the vehicle in any test, race or contest and will not allow its use for any illegal, improper, or unsafe purpose. Lessee will not operate the vehicle with any damage that makes the vehicle either unsafe or unlawful to operate. Lessee will not remove the vehicle from the United States or Canada. Lessee will not alter, mark or install equipment in the vehicle without Lessor's written consent.

Lessee will return vehicle on Lessor's demand in the event of default. Lessee will be in default if any of the following occur; (1) Lessee's property is the subject of a proceeding in bankruptcy, receivership or insolvency or Lessee makes an assignment for the benefit of creditors; (2) Lessee fails to comply with the insurance requirements of this lease agreement; (3) Lessee has made any material misrepresentation on or in connection with this lease agreement; (4) Lessee fails to answer any traffic summons or pay fines when due; (5) Lessee fails to comply with any other terms or conditions of this lease agreement. Lessor retains the right to waive any or all of the above events or default, and any waiver of a default shall operate only to waive the event so waived and shall not operate as a continuing or permanent waiver of any default by Lessee. If Lessee is in default, Lessor may terminate this lease prior to the scheduled term.

Upon lease termination, it is Lessee's responsibility to return the equipment to a location chosen by Lessor.

COLLECTION: All charges, fees and expenses, including payment for loss of or damage to the vehicle are due at Lessors request. If Lessee is in default Lessor will have the rights and duties provided by law. Lessor will have the right to sue Lessee for damages and/or recovery of the vehicle. Lessor may take the vehicle from Lessee without demand. To take, Lessor may enter Lessee's premises or the premises where the vehicle is stored, so long as it is done peacefully. If there is any personal property in the vehicle when Lessor takes it from Lessee, Lessor can take it or store it for Lessee. The taking of the vehicle by Lessor shall be considered an early termination and Lessee will not be released from any obligation from this lease. Lessee will be charged the reasonable expenses for taking and storing the vehicle. Lessee will also be charged reasonable attorney's fees and legal expenses incurred by Lessor, or the extent permitted by law. If Lessee does not pay all charges when due, Lessee agrees to pay a late charge of \$150 per month or portion of a month on the past due balance.

INDEMNIFICATION: Lessee agrees that the payment will not be subject to any defense, set-off, counterclaim or recoupment. Lessee also agrees to indemnify and hold Lessor and its assignees and employees harmless from all losses, damages, injuries, claims, and demands and expenses arising out of the condition, maintenance, use or operation of the vehicle.

INSPECTION: Lessor may inspect the vehicle at any reasonable time. If Lessor asks to inspect the vehicle, Lessee will tell Lessor the location of the vehicle and allow inspection. If the vehicle is damaged or there is excessive wear and use, Lessor will decide if the vehicle is reasonably repairable. If the vehicle is reasonably repairable, Lessee will promptly have the necessary repairs made when Lessor asks that Lessee do so.

OWNERSHIP: This is a lease only and Lessor remains the owner of the vehicle. Lessee will not transfer, sublease, rent or do anything to interfere with Lessor's ownership of the vehicle.

TOTALITY OF AGREEMENT: This lease contains the entire agreement between Lessee and Lessor. There are no other agreements between Lessee and Lessor except those included in writing in this lease. No change or other agreement will be binding unless in writing and signed by Lessee and Lessor.

ASSIGNMENT: Lessee agrees that this lease or any rentals may be assigned by Lessor. Lessee has no right to assign this lease.

NONCANCELABLE FOR TERM OF LEASE: This lease with respect to any vehicle cannot be canceled or terminated by Lessee for the term of this lease applicable to such vehicle, and Lessee shall not be entitled to any abatement, setoff or reduction of basis rent or other amounts due hereunder, whether arising from past, present, or future claims of any kind by Lessee against Lessor or otherwise. Lessee's obligation to pay all basic rent and other amounts hereunder shall be absolute and unconditional, except as expressly provided herein.

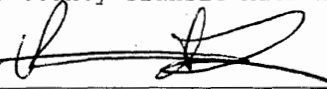
SEVERABILITY AND VENUE: If any part of this lease is not valid according to law, all other parts will remain enforceable. The laws of the State of California, the County of San Bernardino and the City of Chino, CA will govern this lease.

Lessee agrees to all the provisions of this Lease Agreement.

Lessee signed this agreement at (city) Diamond Springs,
California (State) and received a copy

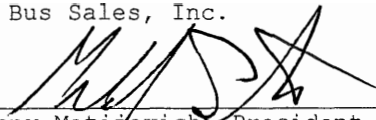
on (date) June 4, 2019.

Lessee: El Dorado County Transit Authority

By:  Printed Name: MATTHEW C MARK
Signature

Executive Director
Title

Lessor: Creative Bus Sales, Inc.

By: 
Anthony Matijevich, President or,
Terry McCrea, Chief Financial Officer, or
Mike Stoller, Director of Finance

Date: 6/4/19

EL DORADO COUNTY TRANSIT AUTHORITY
6565 COMMERCE WAY
DIAMOND SPRINGS, CA 95619-9454
(530) 642-5383

REVISED 11/07/19

PURCHASE ORDER NO. 24229

THIS NUMBER MUST APPEAR ON ALL INVOICES,
 PACKING LISTS, PACKAGES, AND BILLS OF LADING.

DATE: 06/05/2019

ACCOUNT: 4995.00 CLASS: 125

TO: Creative Bus Sales
 14740 Ramona Avenue
 Chino, CA 91710

SHIP & INVOICE TO:
EL DORADO COUNTY TRANSIT AUTHORITY
6565 COMMERCE WAY
DIAMOND SPRINGS, CA 95619-9454

Contact: Dan Williams

Vendor Phone No: 510-728-1500

Fax No: (909) 465-5529

PROMISED DELIVERY DATE		TERMS: Net 30 Days		
		F.O.B. DESTINATION		
QTY	UNIT	DESCRIPTION	UNIT PRICE	EXTENDED TOTAL
		Vehicle Lease Unit #66060 VIN #1FDGF5GY2JEB75727		Not to Exceed \$50,000.00
I hereby certify that this purchase order is in accordance with procedures in the purchase manual governing of such items for El Dorado County Transit Authority.			SUBTOTAL	\$50,000.00
			DELIVERY	
			SALES TAX	
			TOTAL	\$50,000.00
PURCHASING AGENT				

PLEASE NOTE CONDITIONS ON REVERSE SIDE

"This Purchase Order expressly limits acceptance to the terms and conditions stated herein, set forth on the reverse side and any supplementary or additional terms and conditions annexed hereto or incorporated herein by reference. Any additional or different terms and conditions proposed by seller are objected to and hereby rejected."

Circle Distributing: Vendor - Accounting - Requestor - Purchasing