



BYD Motors Inc.

Agreement

This Agreement (herein after "Agreement") is made between BYD Motors Inc., a corporation organized in the State of Wyoming, with the authority to transact business in the State of Missouri (hereinafter referred to as "BYD"), and City of Columbia, Missouri, a municipal corporation (hereinafter referred to as "City") with principal offices at: 701 East Broadway, Columbia 65205-6015, on the date of the last signatory noted below (hereinafter "Effective Date").

WITNESSETH:

WHEREAS, City operates a public transit system and desires to add five (5) electric buses for use in its transit system.

WHEREAS, BYD has offered to provide City with five (5), used K9, low floor BYD electric buses on the terms set forth herein.

NOW, THEREFORE, the parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows:

1. **BYD'S USED ELECTRIC BUSES AND CHARGING STATIONS:**
 - a. BYD shall deliver to City at the Grissum Building, 1313 Lakeview Avenue, Columbia, Missouri, the five (5), K9 low floor BYD electric buses and charging stations as set forth in Exhibit A. Each bus and charging station shall be considered a unit for purposes of this Agreement.
 - b. Each unit shall be in good working order as determined by City. In addition, each bus shall pass the State of Missouri's motor vehicle registration inspection.

2. **TERM OF AGREEMENT:** This Agreement will cover the period from the Effective Date to November 1, 2028. This Agreement is structured as a lease to purchase of the units and includes an early buy-out option.

3. **OPTIONS TO PURCHASE UNITS:**
 - a. **EARLY BUY-OUT OPTION:** The early buy-out option allows City to purchase each unit for six hundred and twenty thousand dollars (\$620,000.00) minus the amount of lease payments made to BYD for the units purchased as of the date of the early buy-out. Should City elect to purchase the unit(s) via the early buy out option, City shall notify BYD in writing thirty (30) days prior to exercising the early buy out option. Within five (5) business days of receipt of the early buy out payment for a unit, BYD shall provide title to the unit(s).
 - b. **PURCHASE UPON FINAL LEASE PAYMENT AT END OF TERM.** Should City retain the units for the entire term of the lease, upon final lease payment(s), BYD shall provide title(s) to unit(s) to City and all lease payments shall be considered payment in full for the unit(s).

4. **NATURE OF CITY'S OBLIGATIONS:** All obligations of City under this Agreement which require the expenditure of funds are conditional upon the availability of funds budgeted and appropriated for that purpose.

5. **PROGRAM SUPPORT COST:** By signing this Agreement, CITY agrees to lease each of the units for: four thousand nine hundred and eighty-eight dollars (\$4,988.00) per month, per unit. BYD will invoice the first month lease payment which will be due and payable upon City's acceptance of the delivery of the unit(s). Each



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subsequent payment will be due by the 5th day of each month. Should City accept delivery of the units on different dates, the parties may agree in writing signed by both parties to pro-rate the monthly payments to align the subsequent payment dates.

- a. The following services and support are included with this lease:
 - i. Five (5) Power Interfaces, EVA080KS/01 480VAC, 3Ø. CITY is responsible for installation and making the facility available for the connection with 480VAC, 3Ø.
 - ii. BYD warranty and maintenance service for the BYD Bus (BYD will support a 48 hour response time).
 1. If the BYD Bus remains out of service for twenty (20) calendar days, only a payment of the daily pro-rate four thousand nine hundred eighty eight (\$4,988) divided by thirty (30), multiplied by number of days-in-service will be invoiced.
 2. BYD training of drivers and technicians for first month.
- b. The following is not included in the service and support fee and City must provide the following:
 - i. City will pay any fee regarding the inspection, registration or any items on the bus from any local, state or federal authority during the lease period.
 - ii. All insurance costs during the period of this Agreement will be covered under City's standard insurance policy and name BYD_Motors Inc. as 'ASSIGNEE.'
 - iii. Any "basic" maintenance costs for operation of the bus (i.e. windshield wipers and/or flat-repairs).

6. MAINTENANCE STATEMENT: The cost of following Service/Warranty maintenance over the Agreement period is included in service and support fee:
- | | |
|---------------------------|---|
| a. BASIC WARRANTY: | 3 years, 150,000 miles (except normal wear parts) |
| b. BODY/CHASSIS WARRANTY: | 8 years, 300,000 miles (body, structure, frame, doors, bumpers) |
| c. POWER-TRAIN WARRANTY: | 5 years, 300,000 miles (in-wheel motors) |
| d. BATTERY WARRANTY: | 12 years, 500,000 miles (capacity residual > 65%) |

7. This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable.

The venue for all litigation arising out of, or relating to this Agreement, shall be Boone County, Missouri or the United States Western District of Missouri. The parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri and waive any defense of forum non conveniens.

8. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.



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9. **TERMINATION:**

- a. **By Mutual Agreement.** This Agreement may be terminated at any time during its Term upon mutual agreement by both parties.
- b. **By Default.** Upon the occurrence of an event of default, the non-defaulting party shall be entitled to immediately terminate this Agreement.
- c. **Events of Default.** A party shall be considered in default of this Agreement upon:
 - i. the failure to perform or observe a material term or condition of this Agreement, including but not limited to any material default of a representation, warranty or covenant made in this Agreement;
 - ii. the party (i) becoming insolvent; (ii) filing a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or consenting to the filing of any bankruptcy or reorganization petition against it under any similar law; (iii) making a general assignment for the benefit of its creditors; or (iv) consenting to the appointment of a receiver, trustee or liquidator;
 - iii. the purported assignment of this Agreement in a manner inconsistent with the terms of this Agreement; or
 - iv. the failure of the party to provide information or data to the other party as required under this Agreement, provided that the party entitled to the information or data under this Agreement requires such information or data to satisfy its obligations under this Agreement.

10. **NOTICES:** The following persons are designated by the respective parties to act on behalf of such party and to receive all written notices and payment invoices:

If to BYD:

BYD Motors Inc.

Attn: Macy Neshati

1800 South Figueroa Street

Los Angeles, California 90015

If to City:

City of Columbia

Attn: Director of Public Works

P.O. Box 6015

Columbia, Missouri 65205

Any notice required by this Agreement to be given in writing or that either City or BYD wishes to give to the other in writing shall be signed by or on behalf of the party giving notice. The notice shall be deemed to have been completed when sent by certified or registered mail to the other party at the address set forth herein, or delivered in person to said party or their authorized representative.

11. **INSURANCE:** BYD shall maintain, on a primary basis and at its sole expense, at all times during the life of this Agreement the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by BYD is not intended to, and shall not in any manner limit or qualify the liabilities or obligations assumed by BYD under this Agreement. Coverage to be provided as follows by a carrier with A.M. Best minimum rating of A- VIII:

- a. **Workers' Compensation & Employers Liability.** BYD shall maintain Workers' Compensation in



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- accordance with Missouri State Statutes or provide evidence of monopolistic state coverage. Employers Liability with the following limits: \$500,000 for each accident, \$500,000 for each disease for each employee, and \$500,000 disease policy limit.
- b. Commercial General Liability. BYD shall maintain Commercial General Liability at a limit of not less than \$2,000,000 Each Occurrence, \$3,000,000 Annual Aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.
 - c. Business Auto Liability. BYD shall maintain Business Automobile Liability at a limit not less than \$2,000,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event BYD does not own automobiles, BYD agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.
 - d. BYD may satisfy the minimum liability limits required for Commercial General Liability or Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum per occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for either Commercial General Liability or Business Auto Liability. BYD agrees to endorse City as an Additional Insured on the Umbrella or Excess Liability, unless the Certificate of Insurance state the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
 - e. The City of Columbia, its elected officials and employees are to be Additional Insured with respect to the project to which these insurance requirements pertain. A certificate of insurance evidencing all coverage required is to be provided at least ten (10) days prior to the Effective Date of this Agreement between BYD and City. BYD is required to maintain coverages as stated and required to notify City of a Carrier Change or cancellation within two (2) business days. City reserves the right to request a copy of the policy.
 - f. The parties hereto understand and agree that City is relying on, and does not waive or intend to waive by any provision of this Agreement, any monetary limitations or any other rights, immunities, and protections provided by the State of Missouri, as from time to time amended, or otherwise available to City, or its elected officials or employees.
 - g. Failure to maintain the required insurance in force may be cause for termination of this Agreement. In the event BYD fails to maintain and keep in force the required insurance or to obtain coverage from its subcontractors, City shall have the right to cancel and terminate this Agreement without notice.
 - h. The insurance required by the provisions of this article is required in the public interest and City does not assume any liability for acts of BYD and/or their employees and/or their subcontractors in the performance of this Agreement.
12. NO ASSIGNMENT: This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. Neither party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party.



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13. **NO THIRD-PARTY BENEFICIARY:** No provision of this Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such person a third-party beneficiary under this Agreement.
14. **AMENDMENT:** No amendment, addition to, or modification of any provision hereof shall be binding upon the parties, and neither party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable party or parties.
15. **GENERAL LAWS:** Contractor shall comply with all federal, state, and local laws, rules, regulations, and ordinances.
16. **EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED:** BYD agrees to comply with Missouri State Statute Section 285.530 in that BYD shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri. As a condition for the award of this contract, BYD shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. BYD shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. BYD shall require each subcontractor to affirmatively state in its contract with BYD that the subcontractor shall not knowingly employ, hire for employment or continue to employ an unauthorized alien to perform work within the State of Missouri. BYD shall also require each subcontractor to provide BYD with a sworn affidavit under the penalty of perjury attesting to the fact that the subcontractor's employees are lawfully present in the United States.
17. **HOLD HARMLESS AGREEMENT:** To the fullest extent not prohibited by law, BYD shall indemnify and hold harmless the City of Columbia, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) for bodily injury and/or property damage arising by reason of any act or failure to act, negligent or otherwise, of BYD, of any subcontractor (meaning anyone, including but not limited to, consultants having a contract with Contractor or a subcontractor for part of the services), of anyone directly or indirectly employed by BYD or by any subcontractor, or of anyone for whose acts the BYD or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require BYD to indemnify, hold harmless, or defend the City of Columbia from its own negligence.
18. **CONTRACT DOCUMENTS:** This Agreement includes the following exhibits, which are incorporated herein by reference:

Exhibit

A Description of Buses with Vehicle Identification Numbers and Mileage



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In the event of a conflict between the terms of an exhibit and the terms of this Agreement, the terms of this Agreement controls.

[SIGNATURE PAGE FOLLOWS]



BYD Motors Inc. Agreement

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives, effective as of the date of the last signatory noted below.

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

Date: _____

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM

By: _____
Nancy Thompson

CERTIFICATION: I hereby certify that this Agreement is within the purpose of the appropriation to which it is to be charged, Account No. 5530-351000 ^{5530 1110-507354}, and that there is an unencumbered balance to the credit of such appropriation sufficient to pay for the first year of the Agreement therefor.

Michele Nix, Director of Finance *[Signature]*

BYD MOTORS INC.

By: _____
[Signature]

Name & Title: Macy Neshati, Senior Vice President

Date: 9/29/2016



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Exhibit A

BYD (5) K9s Mileage & Vin

<u>Bus</u>	<u>VIN</u>	<u>Mileage</u>
1001	LC06S24R2E1000176	8099
1002	LC06S24R4E1000177	8492
1003	LC06S24R6E1000178	7110
1004	LC06S24R8E1000179	9510
1005	LC06S24R4E1000180	7538