

Pinellas Suncoast Transit Authority



## Florida Electric Transit Buses with Charging and Associated Equipment



## AGREEMENT FOR ELECTRIC TRANSIT BUSES WITH CHARGING AND ASSOCIATED EQUIPMENT

THIS AGREEMENT for ELECTRIC TRANSIT BUSES WITH CHARGING AND ASSOCIATED EQUIPMENT ("Agreement") is made on October 27, 2021, by and between the Pinellas Suncoast Transit Authority ("PSTA"), an independent special district with its principal place of business located at 3201 Scherer Drive, St. Petersburg, Florida, 33716 and BYD Coach and Bus ("Contractor"), a Limited Liability Company with its principal place of business located at 1800 South Figueroa Street, Los Angeles, CA 90015 (collectively, the "Parties").

WHEREAS, PSTA issued RFP 21-980369 for Electric Transit Buses with Charging and Associated Equipment on July 15, 2021 (the "RFP"); and

WHEREAS, Contractor timely submitted its response to the RFP on or before September 23, 2021 ("Contractor's Response"); and

WHEREAS, PSTA's Board of Directors awarded the contract to Contractor at its duly held Board of Directors meeting on October 27, 2021 (the "Effective Date").

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

**1. RECITALS.** The above recitals are true and correct and incorporated herein by reference.

**2. CONTRACT DOCUMENTS.** The "Contract Documents" shall mean and refer to this Agreement, the RFP including all exhibits attached thereto including any and all duly executed and issued addenda (attached hereto as **Exhibit 1**), any and all Purchase Orders (as defined below and attached as composite **Exhibit 2**), Contractor's Best and Final Offer (BAFO), if any (attached hereto as **Exhibit 3**), and Contractor's Response (attached hereto as **Exhibit 4**). All of the foregoing are incorporated herein by reference and are made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities or conflicts between this Agreement and the exhibits, this Agreement takes precedence over the exhibits and any inconsistency between the exhibits will be resolved in the following order:

Exhibit 1	RFP
Exhibit 2	Purchase Order(s)
Exhibit 3	Contractor's BAFO
Exhibit 4	Contractor's Response

**3. SCOPE OF SERVICES.** Contractor, at the direction of PSTA, shall furnish to PSTA Electric Transit Buses with Charging and Associated Equipment as described in, and in accordance with the specifications, tasks, and scope of work set forth in the RFP (the "Services"), and in the amount set forth in the RFP. Contractor acknowledges that it has read the specifications and understands them. Contractor also agrees to provide electric transit buses with charging and associated equipment to all permissible assignees of PSTA. PSTA's permissible assignees shall have the option to purchase electric transit buses and charging and associated equipment in accordance with the terms and conditions of the RFP, and specifically SP 3 of the RFP.

**4. EFFECTIVE DATE AND TERM OF AGREEMENT.** This Agreement shall become effective and commence on the Effective Date and shall remain in effect for five (5) years.



## 5. TERMS OF PERFORMANCE.

- 5.01. *Time for Completion/Purchase Orders.* PSTA will issue purchase orders for the electric buses with charging and associated equipment it needs provided under this Agreement ("Purchase Order(s)"). Upon issuance, the Purchase Order shall be appended to this Agreement and incorporated as an exhibit, Contractor shall immediately begin providing the Services pursuant to the Purchase Order, and all work and deliverables shall be completed by the date set forth in the Purchase Order, unless modified in writing by the Parties. In the event a Purchase Order approved during the term of the Contract Term has a completion date beyond the Contract Term, the terms and conditions of this Agreement shall be automatically extended through the completion of the Purchase Order to the full satisfaction of PSTA.
- 5.02. *Representatives.* Prior to the start of any ordering or supplying the Services under this Agreement, Contractor shall designate a primary and alternate representative, who will have management responsibility for the Services and who will have authority to act on technical matters and resolve problems with the Services, Purchase Order(s), and the Contract Documents, to PSTA in writing. Such designation shall include the contact information (including phone numbers) of Contractor's representative. PSTA will advise Contractor in writing of the personnel who will represent PSTA in the administration of the Contract Documents. Such writing from PSTA may include the specific duties of each individual and each representative's limits of authority.
- 5.03. *Non-exclusive Contract.* PSTA specifically reserves the right to contract with other entities for the Services described in the Contract Documents or for similar products if it deems, in its sole discretion, such action to be in PSTA's best interest.
- 5.04. *Contractor Responsibility.* Contractor shall provide electric buses with charging and associated equipment of first quality, and the workmanship must be in accordance with customary standards of the various trades and industries involved in the manufacturing and furnishing of such products. The Services and the work associated therewith shall be of high-quality in all respects. No advantage will be taken by Contractor in the omission of any part or detail of the Services. Contractor hereby assumes responsibility for all materials, equipment, and processes used in the manufacturing and furnishing of the electric buses and charging and associated equipment, whether the same is manufactured by Contractor or purchased readymade from a source outside Contractor's company.
- 5.05. *Compliance with Laws.* Contractor shall comply with all federal, state, county, and local laws, rules and/or regulations, and lawful orders of public authorities including those set forth in this Agreement and that, in any manner, could bear on the provision of the Services under the Contract Documents. Omission of any applicable laws, ordinances, rules, regulations, standards or orders by PSTA in the Contract Documents shall be construed as an oversight and shall not relieve Contractor of its obligations to comply with such laws fully and completely. Upon request, Contractor shall furnish to PSTA certificates of compliance with all such laws, orders and regulations. Contractor shall be responsible for obtaining all necessary permits and licenses required for performance under this Agreement.

**6. COMPENSATION.** In consideration of Contractor's faithful performance of the Contract Documents, PSTA agrees to pay Contractor pursuant to the rates and pricing set forth in Contractor's Response or Contractor's BAFO, if any. However, all payments to Contractor individually and in the aggregate shall not exceed the Contract Total. Payment shall be made in accordance with the RFP and the Florida Prompt Payment Act, section 218.70, *et seq.*, Florida Statutes.

- 6.01. *Invoices.* All invoices shall be submitted in accordance with the Florida Prompt Payment Act, section 218.72, *et seq.*, Florida Statutes, with all details prescribed by PSTA, and delivered to the following address:



Pinellas Suncoast Transit Authority  
Attention: Finance Department/Accounts Payable  
Purchase Order or Contract #: C-22-MT-002  
3201 Scherer Drive  
St. Petersburg, Florida 33716

or via electronic mail to:  
[AccountsPayable@psta.net](mailto:AccountsPayable@psta.net)

- 6.02. *Disputed Invoices.* In the event of a disputed invoice, only that portion so contested may be withheld from payment and the undisputed portion shall be due and payable on the terms set forth herein.
- 6.03. *Availability of Funds.* Contractor understands that the funds are not presently available under this Agreement beyond the current fiscal year. PSTA's obligation for performance under this Agreement beyond the current fiscal year is contingent upon the availability of funds from which payments can be made. PSTA is not legally liable for any payment that may arise under this Agreement beyond the current fiscal year, until the Contractor receives a written notice of availability of funds from the PSTA's Contracting Officer.

## **7. WARRANTIES AND COVENANTS.**

- 7.01. *Patent, Trademark, Copyright, and Trade Secret.* Contractor warrants that the Services, and all goods and work associated therewith, do not infringe on any patent, trademark, copyright or trade secret of any third parties and agrees to defend, indemnify and hold PSTA, its officers, agents, employees, trustees and its successors and assigns, harmless from and against any and all liabilities, loss, damage or expense, including, without limitation, court costs and reasonable attorneys' fees, arising out of any infringement or claims of infringement of any patent, trade name, trademark, copyright or trade secret by reason of the sale or use of any goods or services purchased under this Agreement. PSTA shall promptly notify Contractor of any such claim. PSTA makes no warranty that the production, sale or use of goods or services under this Agreement will not give rise to any such claim and PSTA shall not be liable to Contractor for any such claim brought against Contractor. If any invention, improvement, or discovery of the Contractor is conceived or first actually reduced to practice in the course of providing the Services under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Contractor agrees to notify the PSTA immediately and provide a detailed report. The rights and responsibilities of the Contractor and PSTA with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.
- 7.02. *Covenants against Gratuities.* Contractor warrants that he or she has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any official or employee of PSTA with a view toward securing favorable treatment in the awarding, amending, or evaluating performance of this Agreement.
- 7.03. *E-Verify.* Contractor shall utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of: (a) all persons employed by Contractor throughout the term of this Agreement; and (b) all persons, including subcontractors, retained or hired by Contractor, regardless of compensation, to perform work on the Services provided pursuant to the Contract Documents.

## **8. DELAY IN PERFORMANCE/FORCE MAJEURE.**

- 8.01. *Time of the Essence.* The timely receipt of the Services and deliverables to PSTA is essential. If the Services and all deliverables under each Purchase Order are not received by PSTA within the date specified in each Purchase Order, PSTA may cancel the unfilled portion of the Purchase Order and this



Agreement for cause, purchase substitutes elsewhere, and recover from Contractor any increased costs and damages thereby incurred by PSTA.

8.02. *Unavoidable Delay.* If completion of the Services under any Purchase Order is unavoidably delayed, PSTA may, in its sole and absolute discretion, extend the time for completion for a determined number of days of excusable delay. A delay is unavoidable only if the delay was not reasonably expected to occur in connection with or during Contractor's performance; was not caused directly or substantially by negligent errors, omissions, or mistakes of Contractor, its subcontractors, or its suppliers or their agents; was substantial; and, in fact, caused Contractor to miss delivery dates and could not adequately have been guarded against by contractual or legal means.

8.03. *No Damages for Delay.* Contractor shall not be entitled to any claim for damages on account of hindrances or delays in the work from any cause whatsoever, including any delays or hindrances caused by PSTA. This paragraph shall include, but not be limited to, any actions which result in delays in scheduling, substantial changes in scope of the Services or deliverables or substantial increases in the costs of performing the work under the Contract Documents.

8.04. *Notification.* Contractor will notify PSTA as soon as Contractor has, or should have, knowledge that an event has occurred which will delay completion of the Services under a Purchase Order. Within five (5) working days, Contractor will confirm such notice in writing, furnishing as much detail as is available and including any request for extension of time. Contractor shall supply, as soon as such data is available, any reasonable proofs that are required by PSTA to make a decision on any request for extension. PSTA will examine the request and any documents supplied by Contractor and will determine if Contractor is entitled to an extension and the duration of such extension. PSTA will notify Contractor of its decision in writing. It is expressly understood and agreed that Contractor will not be entitled to any extension and the granting of such extension is in the sole discretion of PSTA. It is further expressly understood that Contractor shall not be entitled to any damages or compensation, and will not be reimbursed for any losses, on account of delays resulting from any cause.

## **9. DISPUTES, BREACHES, DEFAULTS, OR OTHER LITIGATION.**

9.01. *Rights and Remedies.* The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by PSTA or Contractor shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

9.02. *Attorneys' Fees.* In the event of legal action or other proceeding arising under this Agreement, PSTA shall be entitled to recover from Contractor all its reasonable attorneys' fees and cost incurred by PSTA in the prosecution or defense of such action, or in any post-judgment or collection proceedings and whether incurred before suit, at the trial level or at the appellate level. This shall include any bankruptcy proceedings filed by or against Contractor. PSTA also shall be entitled to recover any reasonable attorneys' fees and costs incurred in litigating the entitlement to attorneys' fees and costs, as well as in determining the amount of attorneys' fees and costs due to PSTA. The reasonable costs to which PSTA will be entitled include costs that are taxable under any applicable statute, rule, or guideline, as well as costs of investigation, copying costs, electronic discovery costs, mailing and delivery charges, costs of conducting legal research, consultant and expert witness fees, travel expenses, court reporter fees and mediator fees, regardless of whether such costs are taxable under any applicable statute, rule or guideline.

## **10. INDEMNIFICATION.**

10.01 *Indemnification.* The Parties recognize that Contractor is an independent contractor. Contractor



agrees to assume liability for and indemnify, hold harmless, and defend PSTA, its board members, officers, employees, agents and attorneys, of, from, and against all liability and expense, including reasonable attorneys' fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, arising out of the execution, performance, nonperformance, or enforcement of this Agreement, whether or not due to or caused by the negligence of PSTA, its board members, officers, employees, agents, and/or attorneys excluding only the sole negligence of PSTA, its officers, employees, agents, and attorneys. This includes claims made by the employees of Contractor against PSTA, and Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. Contractor's liability hereunder shall include all attorneys' fees and costs incurred by PSTA in the enforcement of this indemnification provision. Notwithstanding anything contained herein to the contrary, this indemnification provision shall not be construed as a waiver of any immunity from or limitation of liability to which PSTA is entitled to pursuant to the doctrine of sovereign immunity or Section 768.28, Florida Statutes. The obligations contained in this provision shall survive termination of this Agreement, however terminated, and shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement.

**10.02 Control of Defense.** Subject to the limitations set forth in this provision, Contractor shall assume control of the defense of any claim asserted by a third party against PSTA arising from or in any way related to this Agreement and, in connection with such defenses, shall appoint lead counsel, in each case at Contractor's expense. Contractor shall have the right, at its option, to participate in the defense of any third party claim, without relieving Contractor of any of its obligations hereunder. If Contractor assumes control of the defense of any third party claim in accordance with this paragraph, Contractor shall obtain the prior written consent of PSTA before entering into any settlement of such claim. Notwithstanding anything to the contrary in this provision, Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by PSTA and all expenses including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of PSTA, be detrimental in any material respect of PSTA's reputation; (ii) the third party claim seeks an injunction or equitable relief against PSTA; or (iii) Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

## **11. MISCELLANEOUS PROVISIONS.**

**11.01 Entire Agreement.** The Contract Documents, including all exhibits, constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous written or oral negotiations, agreements, proposals and/or understandings. There are no representations or warranties unless set forth in the Contract Documents.

**11.02 Notices.** All notices required or made pursuant to this Agreement shall be made in writing and sent by certified U.S. mail, return receipt requested, addressed to the following:

**To PSTA:**

Pinellas Suncoast Transit Authority  
Attn: Brad Miller, CEO  
3201 Scherer Drive  
St. Petersburg, FL 33716

**To Contractor:**

BYD Coach and Bus LLC  
Attn: Patrick Duan, Senior VP of Operations  
1800 S Figueroa St  
Los Angeles, CA 90015



***With required copy to:***

Alan S. Zimmet, B.C.S.  
Bryant Miller Olive  
One Tampa City Center  
Suite 2700  
Tampa, FL. 33602

Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this section.

- 11.03 Waiver of Remedies for any Breach.** In the event that PSTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Agreement, such waiver by PSTA shall only be valid if set forth in writing and shall not limit PSTA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.
- 11.04 Modification.** The Contract Documents, including the scope, specification, and details of the Services may only be modified by written agreement of the Parties. No modification shall serve to increase the Contract Total unless such change has been approved by PSTA's Board of Directors prior to any work being performed that would serve to increase the Contract Total.
- 11.05 Headings and Section References.** The headings and section references in this Agreement are inserted only for the purpose of convenience and shall not be construed to expand or limit the provisions contained in such sections.
- 11.06 Authorization.** Both parties to this Agreement represent and warrant that they are authorized to enter into this Agreement without the consent and joinder of any other party and that the parties executing this Agreement have full power and authority to bind their respective parties to the terms hereof.
- 11.07 Assignment.** The terms and provisions of this Agreement shall be binding upon the Parties and their respective partners, successors, heirs, executors, administrators, assigns and legal representatives. Notwithstanding the foregoing, a party's rights and obligations under this Agreement may only be transferred, assigned, sublet, mortgaged, pledged or otherwise disposed of or encumbered in any way with the other party's prior written consent.
- 11.08 Severability.** If any one or more provisions of this Agreement shall be held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby and this Agreement shall be treated as though the invalidated portion(s) had never been a part hereof.
- 11.09 Electronic Signatures.** This Agreement may be executed by electronic signature technology and such electronic signature shall act as the Parties' legal signatures on this Agreement and shall be treated in all respects as an original handwritten signature.
- 11.010 Counterparts.** This Agreement may be executed in one or more counterparts, any one of which need not contain the signatures of more than one party, but all such counterparts taken together will constitute one and the same instrument.

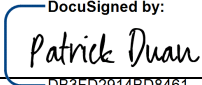
(SIGNATURES ON FOLLOWING PAGE)

RFP 21-980369  
Electric Transit Buses with Charging and Associated Equipment



IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be duly executed on the date first above written.

CONTRACTOR:

By:   
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Print Name: Patrick Duan

PSTA:

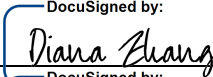
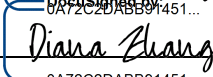
By:   
Brad Miller, CEO

Title: Senior VP of operations

Attest:

  
Rachael Cappolla, Executive Assistant

WITNESS/ATTEST:

By:   
0A72C2DABB91451...  
By:   
0A72C2DABB91451...  
Print Name: Diana Zhang

Approved as to form:



Alan S. Zimmet, General Counsel